Neutral citation number [2023] EWHC 2644 (Ch)

CLAIM NUMBER: BL-2020-000522

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN ENGLAND AND WALES
BUSINESS LIST (ChD)

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Before Andrew Lenon KC

Sitting as a Judge of the High Court

Date: 25 October 2023

BETWEEN:

(1) ROBERT LAWRENCE
(2) KEYGUARD U.K LIMITED

Claimants

-and-

(1) JONATHAN COWELL
(2) GEOFFREY WARREN
(3) JOHN HOLMES
(4) ROGER MACMILLAN

Defendants

Stuart Cutting instructed by Moore Barlow LLP
appeared for the Claimants

Carl Troman and Hannah Daly instructed by McFadden LLP
appeared for the Defendants

Hearing dates: 7, 10 - 14, 17, 18, 25 July 2023

APPROVED JUDGEMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was handed down remotely by the judge and circulated to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Wednesday 25 October 2023 at 14:00.

Introduction 3

The Claimants' factual witnesses 4

The Defendants' factual witnesses 8

The Facts 10

The marketing of Keyguard and the representations 10

The SPA 13

Events following the SPA 15

Subsequent events 23

Sale of Keyguard to Westminster Group 26

Claim 1 27

The representations 28

Falsity 29

Mr Lawrence's knowledge 39

Inducement 42

The effect of Clause 20 42

Conclusion in relation to Claim 1 44

Claim 2 45

(1) Payment to Mr Cowell (£5,000) 47

(2) Payment to ADB Accountants (£7,682.48) 48

(3) Shogun leasing agreements (£9,678.35) 49

(4) Payments to directors: Cowell & Warren (£11,075.56) 51

(5) Payments to Armatus Risks Security Services (£144,413.03) and Armatus Risks Canine Services Limited (£64,716.30) 52

(6) Payment of sub-contractor costs 56

(7) Barclaycard credit card (£7,295.81) 57

(8) Payroll payments (£55,382) 58
(9) Payments to other individuals (£43,308.09) 59
(10) Leasing agreements with Shire: Mercedes and Aston Martin (£18,332.79) 60
(11) Leasing agreement with Shire: Quad bike (£1,048.76) 61
(12) Payments to third parties (£1,815.20) 62
(13) Payments to Moon Computers (£7,415.30) 64
(14) Payments to HMRC (£53,927) 65
Conclusion in relation to Claim 2 67

Introduction

1. These proceedings arise out of a share purchase agreement made on 14 June 2017 ("**the SPA**") under which the First Claimant, Robert Lawrence ("**Mr Lawrence**"), sold 60% of his shares in the Second Claimant, Keyguard U.K. Limited ("**Keyguard**"), to Armatus Risks Holdings Limited ("**Armatus**") for the sum of £315,000. Armatus was at all material times a company owned by the Defendants. Both Keyguard and Armatus carried on business in the security industry, providing guards for commercial and industrial sites. Under the terms of the SPA, each of the Defendants, Jonathan Cowell ("**Mr Cowell**"), Geoffrey Warren ("**Mr Warren**"), John Holmes and Roger MacMillan, provided a personal guarantee as to the purchase price.

2. Armatus paid the first two of twelve instalments of the purchase price but then stopped paying.

3. The claim in these proceedings is split into two parts. In the first claim ("**Claim 1**"), Mr Lawrence seeks to recover the balance of the purchase price under the SPA from the Defendants as guarantors of Armatus' obligations under the SPA. The Defendants deny any liability to pay because they say that the SPA and guarantee were procured by fraudulent misrepresentations by Mr Lawrence about the financial position of Keyguard. They say that Keyguard had been defrauding its customers through the practice of "ghosting", that is to say charging clients for the provision of security guards who were not in fact present at a site when they were recorded as being present or by recording more hours worked by a guard than were in fact

worked. They say that this had the effect of artificially inflating Keyguard's revenue and profits and understating its liabilities as represented in the accounts which were provided to them by Mr Lawrence prior to the SPA. On this basis, the Defendants say the SPA has been validly rescinded so that the guarantees are of no legal effect.

4. By the second claim ("**Claim 2**"), Keyguard is claiming damages from Messrs Cowell and Warren in their capacity as former directors of Keyguard for alleged breaches of their statutory duties and/or for alleged breaches of trust. In response to Armatus' failure to pay the purchase price under the SPA, in September 2018 Mr Lawrence exercised a debenture over Armatus and put Armatus into administration. On 7 November 2018, Keyguard was sold by the administrators to Westminster Group plc ("**Westminster**") for £18,000 with Mr Lawrence receiving £7,200 for his 40% shareholding. Mr Lawrence contends that, between the time of the SPA, when Keyguard had been valued at £525,000, and the time of the sale to Westminster, Messrs Cowell and Warren had stripped Keyguard of its assets. Claim 2 is advanced under 14 separate discrete heads, each alleging that Messrs Cowell and Warren allowed payments to be made out of Keyguard's bank accounts for which there was no valid justification. Messrs Cowell and Warren dispute each head of claim on its facts.

The Claimants' factual witnesses

5. Mr Lawrence started out as a door supervisor in a nightclub in Weymouth. He later took on management roles in various door supervision businesses before setting up Keyguard in 2006.

6. Mr Lawrence was not a satisfactory witness. His evidence that ghosting did not exist at Keyguard was inconsistent. His case in the Reply and in his witness statement was that ghosting did not exist at Keyguard. After being shown two earlier witness statements of one of the Claimants' witnesses, Mark Berg, admitting that ghosting did take place and a transcript of an interview which Mr Lawrence himself gave to the Security Industry Association in which he admitted that ghosting had taken place, Mr Lawrence changed his evidence, admitting that ghosting had taken place but now contending that he did not know about it:

Q. …It says "Ghosting did not take place." That is wrong, is it not?
A. Okay, I cannot argue with that. It should be "I did not know ghosting took place in my company."
Q. So why then did you authorise Miss Rafalska to sign a statement of truth, which she did on page 57, saying something that was factually wrong?
A. Because I would have read it as it was in my mind.

(Day 1 page 92)

7. His evidence that he did not know about ghosting at Keyguard was implausible and his account of how ghosting came to light following the SPA was at variance with the contemporaneous documents. Mr Lawrence was clearly furious with Messrs Cowell and Warren for the failure to pay for his shares and later for what he perceived as their mismanagement of Keyguard. Mr Lawrence's evidence in relation to Claim 2 appeared to owe more to his conviction that Messrs Cowell and Warren had stripped Keyguard of its assets than to an accurate recollection of the facts.

Mark Berg

8. Mr Berg was the operations director of Keyguard since 2006 and a long term colleague of Mr Lawrence. He gave his evidence remotely for reasons of ill-health. My impression was that Mr Berg was keener to support the Claimants' case than to give full and truthful evidence. He claimed to have no recollection about an important meeting in August 2017 with Ms Keegan and Mr Willey. He insisted that his recollection as to when the meeting took place was correct even when shown contemporary WhatsApp messages showing that he was wrong. He refused to accept that after leaving Keyguard he came back to help Keyguard with rotas even when that was set out in a contemporaneous email.

Other witnesses

9. Gavin Garrity was the operations manager for Keyguard and Armatus between 2017 and 2018. He was employed to sort out the operations side of the business and to grow Keyguard's business. Mr Garrity alleged that Mr Cowell was fully aware of and instrumental in the ghosting at Keyguard after the SPA although in his oral

evidence he accepted that Mr Cowell was working to try to stop the ghosting.

10. Natalie Keegan worked as a security guard consultant. She started working for Armatus in around 2015, later working for Keyguard after its acquisition by Armatus. She gave evidence in her witness statement about a meeting with Mr Berg on 16 August 2017 but in cross-examination had no clear recollection of what was said.

11. Michael Bedall worked as a security guard and later as an administration assistant at Keyguard. His evidence in his witness statement was that Mr Cowell had started to investigate ghosting before the share sale in June 2017 and that Messrs Cowell and Warren had had a meeting with Mr Lawrence to discuss ghosting. Mr Bedall's recollection was rather patchy given that he said in the course of cross-examination that he had no recollection of who Rachelle Willis was, even though in her evidence (which was not challenged) Ms Willis explained she had had a number of conversations with him.

12. Scott Steadman worked as a security guard for Keyguard and Armatus in 2017. He was taken on as a night-time supervisor at the Stanton Cross site at about the time of Armatus' acquisition of Keyguard. His witness statement referred to one instance of ghosting when he was paid for a shift at Stanton Cross despite being pulled off to do another shift somewhere else. His witness statement also referred to the possibility that there was more widespread ghosting but in cross-examination he was not specific as to dates or as to the individuals involved.

13. Luke Good has worked as a security guard for Keyguard for some 11 years and clearly feels great loyalty towards Mr Lawrence. In his witness statement, Mr Good claimed that there was no ghosting at Keyguard before Armatus took over but that afterwards "stuff started happening which I didn't like", including failing to arrange for guards to turn up and removing Keyguard guards for no reason. Mr Good criticised Armatus for the removal of one of the guards, Jason Townsend, from one of the sites, Galliford Try. He said he was 100% certain that there was no reason at all to remove him but the contemporaneous evidence showed that Mr Townsend's replacement was demanded by the client following an incident at the site and was requested by the client.

14. Gillian Houghton was a friend of Mr Lawrence and worked for Keyguard on a freelance basis on compliance issues and training. She would turn up at sites unannounced to check on staffing arrangements, in particular checking whether anyone was missing. She had autonomy in the way she operated and would turn up unannounced at sites. She did not have the sense that she was a "patsy". She said in her witness statement that she was not aware of any ghosting but accepted in cross-examination that if there was ghosting at Keyguard, it was possible for her to have been entirely unaware of it. She thought that Mr Lawrence would never have allowed ghosting. She also accepted the possibility that Mr Lawrence arranged ghosting without her knowing about it but could not understand why someone would employ someone to do compliance and then do things that "they could catch you out on".

15. Beverley Davies (now Beverley Kidman) worked as a bookkeeper for Keyguard from 2013 until about 2019, reporting to Mr Lawrence. Prior to the takeover of Keyguard by Armatus, she would receive timesheets from Mr Berg which she would use for invoicing. Later she was sent spreadsheets. She was not aware of ghosting taking place and was not aware of any complaints by clients. In 2021 she was asked to review a report produced by Martin Leeder, a security expert engaged by the Defendants, and concluded that the discrepancies identified in that report were mostly the result of computational errors by the author of the report. She confirmed in her oral evidence that the exercise she carried out to investigate ghosting was different from that carried out by Julian Davies, the Defendants' security expert at the trial, and that, whilst she was unaware of ghosting, it was not her job to discover it and she could not have discovered it even if it were occurring. She considered that in the period after June 2017 i.e. after Keyguard was taken over by Armatus, ghosting was rife with clients being invoiced for contracted hours even where there was no guard there and timesheets being produced to cover this up.

16. Mark Hughes is the Chief Financial Officer of Westminster which specialises in the provision of security services for businesses and governments. His evidence concerned Westminster's acquisition of Keyguard in 2018 for which Westminster paid £18,000. Mr Hughes did not shy away from alleging that Messrs Cowell and Warren had behaved dishonestly in relation to the various payments which form the

subject matter of Claim 2, despite not appearing to have any detailed knowledge of the circumstances of those payments.

17. Joanna Fowler is an operational accountant employed by Westminster. Her evidence also described the acquisition of Keyguard by Westminster. She was involved in the due diligence process. Like Mr Hughes, she suspected that there may have been fraudulent accounting but, as became apparent in her cross-examination, she did not have detailed knowledge of the underlying facts. She did not claim to have carried out the analysis of time sheets carried out by the Defendants' expert Mr Davies.

The Defendants' factual witnesses

18. Mr Cowell has worked in the security industry since 1997. He joined Mr Warren as a director and shareholder of Armatus Risks Security Services (**ARSS**) in 2015. He was the person principally involved in the negotiations on behalf of Armatus for the purchase of the shares in Keyguard.

19. On the issue of the intended source of funding for the acquisition of Mr Lawrence's shares in Keyguard, Mr Cowell's evidence was unsatisfactory. He said in cross-examination that the purchase price was intended to be funded by Armatus and by Messrs Cowell and Lawrence personally and that it was never the intention that Keyguard would pay for the purchase.

> Q. Okay. So it was never the intention that Keyguard would pay for the purchase of the shares?
> A. No.
>
> (Day 2 page 520)

20. However, in an email dated 25 May 2018 from Mr Cowell to Mr Warren. Mr Cowell admitted that "… the plan was always for Keyguard to pay the monthly instalments." As well as being contradicted by this email, Mr Cowell's evidence was inherently implausible, given that Armatus did not have the necessary funds (as admitted in the same email) to pay for the shares. Mr Cowell's evidence on this point was also inconsistent with Mr Warren's evidence that payment of the instalments out of Keyguard was considered and discussed with Mr Cowell at the time the SPA was

entered into. In relation to other matters, I was not persuaded that Mr Cowell was giving other than honest evidence.

Geoffrey Warren

21. Mr Warren has worked in the security industry for some twenty years and was the founder of ARSS. His evidence was mainly concerned with Claim 2. Although his credibility as a witness was challenged by the Claimants, I consider that Mr Warren, like Mr Cowell, was an honest witness.

Other witnesses

22. Andrew Grief is a self-employed consultant to security companies who wish to become licensed by the Security Industry Authority. He has been friends with Mr Cowell since 2014 when ARSS had worked for a company of which he was head of compliance. In his witness statement he described how he attended the offices in Corby to review the existing policies and procedures and gave an account of a conversation he overheard with Mr Lawrence concerning the practice of ghosting.

23. Alan Brown is a chartered tax adviser who was engaged by Keyguard to provide accountancy services. He gave evidence as to the work he carried and his charges which were the subject of one of the heads of claim in Claim 2.

24. Rachel Willis is an account assistant. She is a long standing friend of Mr Cowell and business associate of Mr Cowell's wife. Her recollection of events was patchy. In cross-examination she was unable to remember the date of her conversation with Mr Cowell in which she reported on discrepancies in Keyguard's timesheets and could not remember what Mr Cowell's reaction was. I consider nevertheless she was an honest witness who was seeking to assist the Court.

25. Michael Willey works in the security industry as a consultant and has worked with the Armatus group of companies for some twelve years. His evidence mainly concerned the meeting with Mr Berg which is alleged to have taken place on 16 August 2017. He confirmed the Defendants' account of what took place at that meeting. Mr Willey was confident and clear in his recollection.

The Expert Witnesses

26. The Claimants called Daniel Djanogly to give expert evidence on accountancy matters. Mr Djanogly is a Chartered Accountant and works as a forensic accountant with experience as an expert witness. The Defendants called Jeffrey Nedas who is also a Chartered Accountant to give expert evidence on accounting.

27. The Defendants called Julian Davies to give evidence on the issue of the alleged ghosting and its extent at Keyguard and any breaches of the security industry accreditations held by Keyguard. Mr Davies is a founder of a consulting business specialising in risk mitigation and dispute resolution in matters relating to security and operation risk. The Claimants did not call a security expert.

The Facts

The marketing of Keyguard and the representations

28. As noted above, Keyguard was incorporated in 2006 by Mr Lawrence and was in the business of providing security guards to patrol commercial or industrial sites by foot and in vehicles. Keyguard provided its services to clients predominantly on sites in the East Midlands. Keyguard's offices were in Wellingborough. Until the signing of the SPA, Mr Lawrence was the sole shareholder and director of Keyguard.

29. Keyguard obtained many industry accreditations including the Security Industry Authority ("**SIA**") Approved Contractor Scheme ("**ACS**") which were key to winning new business with large corporate clients. Keyguard had to undergo an annual three day audit to maintain its ACS accreditation.

30. In 2013 Mr Warren established ARSS, which also carried on business as a provider of security guards to commercial sites and events. In 2015, Mr Cowell became a fellow director and shareholder of ARSS. On 7 April 2016, Messrs Cowell and Warren caused Armatus to be incorporated as a vehicle for the acquisition of other security businesses. Messrs Cowell and Warren became directors and shareholders of Armatus.

Mr Holmes and Mr MacMillan were also shareholders. Mr Cowell was tasked with identifying any potential acquisition targets for Armatus.

31. In 2016, Mr Lawrence decided to sell Keyguard. He engaged a sales agent, Hilton Smythe Commercial (UK) Ltd ("**Hilton Smythe**"), to market the company and Adam Shakespeare of ISIS Tax Ltd to carry out a valuation of Keyguard. Mr Lawrence did not want to be involved in negotiating the sale of Keyguard himself so he instructed Mr Shakespeare to negotiate the sale of the company on his behalf. He also instructed Caroline Kemsley-Pein of Kemsley & Company Solicitors LLP to act for him in relation to the sale of Keyguard.

32. On 10 March 2016, Mr Cowell received a marketing email from Hilton Smythe attaching a document entitled 'Confidential Sale' which provided brief details of a security business. The document stated:

> *"The business generates a turnover in the region of £532,000 per annum, with a gross profit of approximately 28%. We are advised that the projected turnover is approximately £1,500,000."*

33. Mr Cowell followed up the details with Hilton Smythe, who sent him further documents including (i) copies of the accounts for Keyguard filed at Companies House for the years ended December 2011 to 2014; and (ii) a management profit and loss account for the 12 months to 31 December 2015, which was provided on the basis that they set out a true and fair view of the financial performance of Keyguard, and which showed Keyguard's turnover to be £1,119,736.22. Hilton Smythe also explained to Mr Cowell that the reason Mr Lawrence wanted to reduce his interest in or sell Keyguard was in order to care for his sick mother, and also to devote more time to a business opportunity in Libya.

34. On 10 May 2016, Mr Shakespeare sent Mr Cowell an email to which he attached a business valuation report dated 20 April 2016. The report stated that the maintainable earnings of Keyguard (adjusted to take account of Mr Lawrence's salary) were £195,000 and valued Keyguard at £525,000.

35. Also in May 2016, Mr Cowell was sent unaudited management accounts of

Keyguard for the period 1 January 2016 to 30 April 2016. They showed a turnover in that four month period of £547,810 (which would have annualised to a turnover of £1.5 million), a gross profit of 30.43% for the 12 months ending 31 December 2015 and 32.1% for the four months ending 30 April 2016.

36. On 9 September 2016, Messrs Cowell and Warren attended a meeting with Mr Shakespeare. Mr Shakespeare explained that part of the reason for the high profit margins of the business was that Keyguard carried out work for Pontins on very lucrative terms.

37. Negotiations stalled for a short time, but in March 2017, Mr Lawrence contacted Mr Cowell to inquire whether he was still interested in the purchase, which Mr Cowell confirmed. Mr Cowell attended a meeting on 30 March 2017 at the offices of Mr Lawrence's solicitor. Mr Lawrence also attended. Draft terms of the sale were discussed.

38. In around May 2017, copies of Keyguard's unaudited accounts for the year ended 30 December 2016 were provided to Mr Cowell by Mr Shakespeare. These showed a turnover in 2016 of £1,447,495 and profit before tax in 2016 of £199,868.

39. The Defendants' case is that the statements and figures contained in the documents received by Mr Cowell amounted to representations about the turnover and profit generated by Keyguard, which were relevant to its value.

40. The way in which Mr Cowell on behalf of Armatus went about the acquisition appears to have been amateurish and imprudent. Armatus did not obtain any legal advice prior to entering into the SPA. It failed to make the sort of enquiries into Keyguard's business that a prudent purchaser would have made. The report prepared by Mr Nedas, the accounting expert called by the Defendants, identified the type of information needed in order to value a company such as up to date management accounts, budget forecasts, cashflow forecasts, details of major contracts and business plans as well as informative discussions with management. Messrs Cowell and Warren do not appear to have asked for this kind of information or to have done any detailed due diligence. Had they done so, they might have realised that, as

appears from Mr Nedas's report, Keyguard's turnover in the year to December 2016 was crucially dependent on two contracts with solar power companies, Bester and Solarcentury, that the Bester contract had produced negligible income from January 2016 onwards and that there was a risk that the Solarcentury contract would also come to an end, which is what happened in May/June 2017.

41. Messrs Cowell and Warren also wrongly assumed that the purchase price for Mr Lawrence's shares could be paid for out of Keyguard's cash flow. The fact that Messrs Cowell and Warren appear to have put Armatus forward as the purchaser of Mr Lawrence's shares without careful consideration of how the shares were to be paid for is a regrettable aspect of the saga giving rise to this litigation, albeit one not relevant to its outcome.

42. Shortly before the SPA was signed, it was agreed that Armatus would only purchase 60% of the shares of the company, with Mr Lawrence retaining the remaining 40% and his directorship.

The SPA

43. The SPA was entered into on 14 June 2017 between Mr Lawrence, Armatus, and the Defendants. The terms of the SPA provided as follows:

    a. Mr Lawrence would sell 60% of his shares in Keyguard to Armatus (being 12 shares out of 20) for £315,000. That price valued Keyguard at £525,000, in line with the ISIS valuation (Clause 2).

    b. The purchase price would be paid in 12 monthly instalments of £26,250. The first instalment was to be paid immediately (Clauses 2.1, 2.2).

    c. Mr Lawrence agreed that £75,000 would be left in Keyguard as working capital (Clause 2.3).

    d. Mr Lawrence and Armatus gave certain standard representations and warranties concerning such matters as the absence of legal impediments to the SPA or of pending legal actions (Clauses 3 and 4).

e. Under Clause (10) the Defendants agreed to guarantee the due and punctual performance, observance and discharge by Armatus of its obligations under the SPA and to indemnify Mr Lawrence for any loss incurred as a result of Armatus' failure to perform its obligations as follows:

> For the purposes of this Agreement, 'Guaranteed Obligations' shall mean all present and future obligations and liabilities of the Purchaser under this Agreement, including all money and liabilities of any nature from time to time due, owing or incurred by the Purchaser under this Agreement (or any agreement entered into pursuant to or in connection with it.
> 10.1 The Guarantors guarantee to the Seller the due and punctual performance, observance and discharge by the Purchaser of all the Guaranteed Obligations if and when they become performable or due under this Agreement (or, as the case may be) any agreement entered into pursuant to or in connection with it.
> 10.2 If the Purchaser defaults in the payment when due of any amount that is a Guaranteed Obligation the Guarantors shall, immediately on demand by the Seller, pay that amount to the Seller in the manner prescribed by this Agreement (or, as the case may be) any agreement entered into pursuant to or in connection with it) as if it were the Purchaser. The obligations of the Guarantors under this Agreement shall be joint and several.
> 10.3 The Guarantors as principal obligors and as a separate and independent obligation and liability from its obligations and liabilities under Clauses 10.1 and 10.2, agree to indemnity and keep indemnified the Seller in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Seller arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason, or the Buyer's failure to perform or discharge any of the Guaranteed Obligations.

f. Clause (16) provided for interest to be paid on any amount due under the SPA at the rate of 3% per annum above the base lending rate.

g. By Clause (19) each party confirmed that they had been advised to seek their own independent legal advice. The Defendants did not in fact obtain any legal advice prior to entering the SPA, believing that they had all the relevant information they required to make an informed purchase.

44. Clause (20) entitled 'Full and Final Agreement' provided as follows:

> "This Agreement comprises the entirety of the terms and conditions of the transaction between the Seller and the Purchaser. Both parties state that they have not relied on any representations regarding the subject matter of this Agreement except the representations specifically set forth in this Agreement; there are no further items or provisions, either written or oral. Both the Seller and Purchaser acknowledge that they have relied upon their own inspection, investigation and judgment in entering into this Agreement."

45. Armatus acquired an option at the same time to purchase the remaining 40% of Keyguard's shares. This was set out in Schedule 3 of a Shareholders Agreement also dated 14 June 2017 between Armatus, Mr Lawrence and Keyguard ("the **Shareholders Agreement**"). Schedule 2 to the Shareholders Agreement comprised a list of matters requiring the approval of all shareholders including the acquisition of assets or interests on assets in payment of consideration having an aggregate value in excess of £1,000. It was put to Messrs Cowell and Warren in cross-examination that certain of the transactions featuring in Claim 2 involved breaches of the Shareholders Agreement. This contention was not part of the Claimants' pleaded case and does not call for determination in this judgment.

46. Mr Lawrence was also granted a debenture over Keyguard's and Armatus's assets.

Events following the SPA

47. Pursuant to the Shareholders Agreement, Messrs Cowell and Warren were appointed directors of Keyguard, alongside Mr Lawrence. Following completion, there was a transitional period over the subsequent few months during which they sought to understand the operational details of Keyguard. Mr Lawrence came to Keyguard's offices on an occasional basis.

48. During this transitional phase, Mr Cowell deployed Rachelle Willis, ARSS's bookkeeper, to become familiar with the Keyguard systems, operations and bookkeeping. Ms Willis, over time, managed to ascertain that the Keyguard system for bookkeeping appeared to work in the following way:

a. There were timesheets on some sites (but not all) on which the hours worked by guards were recorded.

b. Information was sent weekly to Beverley Kidman, Keyguard's external bookkeeper; some data was sent on a monthly basis to Ms Kidman by Mark Berg.

c. Ms Kidman then used the information provided to her to create invoices for clients and payroll data so that payments to staff could be approved.

49. At some point in July 2017 Mr Cowell became concerned about the authenticity of Keyguard's records of hours worked by guards. On 17 July 2017 Mr Lawrence sent the following text to Mr Berg:

> "I will forward this invoice to Jon Cowell but there is an investigation going on with the signing in sheets and payments irregularities. Jon wants information. I tried to get Ryans money released today but I only have a 50% vote and Jon wants some questions answered because Ryans name is all over the signing in books at Bester when he was not working. It will need you to speak with Jon face to face to sort this out. He already thinks I am covering for Ryan. I don't know what has really been going on. It may look worse that it really is. I will go with you to see Jon if you want to go and see him and sort this out. I am so sick to death with the stress of all this and so sick of having so many bad thoughts in my head thinking I have been turned over I've gone passed caring and just want the whole fucking mess to go away."

50. Mr Lawrence sent the following further WhatsApp message to Mr Cowell on 24 July 2017:

> "Berg us [*sic*] in now which is unusual. Richard has picked up anomalies in Bester signing in 007 book. I told Berg we are conducting a due diligence audit as per business ethics policy as part of share purchase process. He is rather nervous. More excuses about rota. I think he will crack once we ask questions. We can commence digital rota today when we hand rota over Richard."

51. Mr Cowell's evidence was that his concerns were prompted by a conversation with Ms Willis. The date of the first of messages set out above indicates that this conversation must have taken place by 17 July 2017. According to Ms Willis'

witness statement, however, her conversation with Mr Cowell in which she expressed her concerns took place later, following receipt of a spreadsheet by Michael Bedall on 10 August 2017 which appeared to show a number of significant discrepancies. There is, however, no doubt that a due diligence audit focusing on the rotas at Keyguard was being carried out at least by 17 July 2017, as is evident from the WhatsApp messages. This suggests that there is likely to have been a conversation between Ms Willis and Mr Cowell by that date, prior to the conversation she recalled in August.

52. According to the spreadsheet sent by Mr Bedall, one guard, Craig Faulkner Smith, had worked a total of 86 hours at two sites in a single week, another guard, Chris Hillson had worked a total of 96 hours at two sites, Sean Hodkins had worked 72 hours at two sites, and Glen Berg had work 108 hours at a single site. It was put to Ms Willis in cross-examination that Keyguard might have been applying a double hourly rate to bank holidays, nights or unsociable hours, but Ms Willis said that, if so, she would have expected an explanatory note.

53. Following a conversation between Ms Willis and Mr Bedall, he sent a revised timesheet showing reduced hours for Chris Hilson and other adjustments which Ms Willis found suspicious as they appeared to have been created by Mr Bedall. She chased for timesheets. When these were eventually provided by Mr Bedall, they struck her as unsatisfactory as there was no provision for the guard to sign the timesheet to confirm the number of hours worked, leaving it open to other Keyguard personnel to fill in any information regarding the times worked by each guard.

54. The gaps in the timesheets led Ms Willis to raise the matter with Mr Lawrence at Keyguard's offices. Her evidence was that she was shocked when Mr Lawrence asked her just to fill in different guards' names before sending over the timesheets to Beverley Kidman for processing and told her that this was "standard ghosting". Her evidence on this point was supported by that of Mr Grief who said that he overheard the conversation between Ms Willis and another individual whom he subsequently identified as Mr Lawrence in the course of which Ms Willis is alleged to have said something along the lines of "we can't just put in names" and Mr Lawrence replied something along the lines of "Just do it. It's ghosting and it's

normal in the industry." Mr Cowell confirms that Ms Willis told him about this incident afterwards. Mr Lawrence denied that the conversation took place and did not recall meeting Mr Grief in August 2017.

55. I accept the evidence of Ms Willis and Mr Grief on this issue which is corroborated by an email sent by Mr Cowell to Mr Warren on 21 September 2017 which referred to "Ghosting (discussed in the office in front of a fraud investigator)". The fraud investigator must have been a reference to Mr Grief. This email was sent before any dispute had arisen concerning the payments under the SPA. Mr Cowell would have had no motive to concoct the email at that point.

56. Ms Willis and Mr Cowell decided to introduce a style of timesheet used by Armatus filled in by the guards showing their arrival and departure time although this change met some resistance from Keyguard guards and the timesheets continued to be signed by someone other than the guards themselves.

The Bester incident

57. Mr Lawrence's evidence in his witness statement was that the only time he suspected ghosting was when he walked on to a site referred to as Bester either slightly before or during the purchase by Armatus. He claimed that there were supposed to be two guards on site, one of whom was Ryan Berg, Mr Berg's son, who was not there, despite being signed in. Mr Lawrence's evidence was that he reported this anomaly to Mr Cowell and that they then held an interview with Ryan Berg who explained that he had gone off site for a short time to carry out security duties at a site that was contracted to Mark Berg. Mr Lawrence alleged that this explanation satisfied Mr Cowell and that he subsequently gave a verbal warning to Mark Berg and Ryan Berg.

58. Mr Cowell denied this account in its entirety. He accepted that he had a meeting with Ryan Berg but denied that it had anything to do with ghosting.

59. The WhatsApp message of 24 July 2017 quoted above indicate that anomalies had come to light on the Bester site but that this happened some time after the SPA rather than before or at the time of it. I reject Mr Lawrence's evidence concerning the

Bester incident and its aftermath. Contrary to his evidence that this was the only occasion on which he suspected ghosting, I am satisfied for the reasons set out later in this judgment that Mr Lawrence was well aware at all material times that ghosting was widely practised at Keyguard.

The termination of Mark Berg's employment

60. There were issues between witnesses concerning the circumstances in which Mr Berg left Keyguard's employment and as to what was said at subsequent meetings attended by Mr Berg. These issues are tangentially relevant to the existence of ghosting at Keyguard and Mr Lawrence's knowledge of it.

61. The evidence of Mr Lawrence and Mr Berg was that Mr Berg resigned rather than being sacked by Mr Lawrence. In his witness statement Mr Lawrence said as follows:

> "Mark came to my old office and sat down. He came to tell me Cowell had set up a meeting to speak to him and he had been interviewed without my knowledge. Mark felt like they were trying to bully him and push him into saying things he had not done. Not sure who turned up, he just explained about Ryan going to lockup the site and that's all it was. He said sometimes he could not get to lockdown, sometimes his leg is bad and if it is bad, someone did it but this time he couldn't get anyone to do it so he asked Ryan. In the end Mark resigned because he said he could always work with me but he couldn't work with a man like Jon Cowell. I am not sure when exactly Mark resigned, he could tell you. Jon Cowell did not commence disciplinary procedure against Mark or Ryan and did not terminate their employment."

62. Mr Berg's evidence was similarly that he left Keyguard after the takeover because he did not trust Armatus. However, in a contemporaneous WhatsApp message to Mr Cowell on 31 July 2017, Mr Lawrence said "*I binned Berg today*". When this was put to him in cross-examination, he claimed that the WhatsApp text was a lie:

A. So no, I did not bin him.
Q. We agree that this was a lie then on your evidence as you are giving it now?
A. Yes, that was not true.

(Day 1 page 123)

63. Mr Lawrence asserted in cross-examination that the reason he told Mr Cowell that he had "binned" Mr Berg was "*because I need the sale to go through, I need Jon Cowell to see that I am on side with him.*" But this explanation makes no sense given that the WhatsApp message to Mr Cowell was sent several weeks after the sale had already gone through.

64. Mr Lawrence's evidence that Mr Berg had resigned rather than being sacked was also inconsistent with an email dated 18 July 2018 from Heather Dobson of Moore Blatch (Mr Lawrence's solicitor at the time) to the Defendants' solicitors, which stated as follows:

> "… He [Mr Lawrence] became aware of half a dozen or so incidents of ghosting, which he then investigated, put a stop to, and brought to the attention of his co-directors, and he also sacked the guard concerned."

65. This email was put to Mr Lawrence in cross-examination:

> Q. But it is extraordinary, Mr. Lawrence, that you should have sent a WhatsApp message that was a pack of lies and then lied to your solicitor, but only now you are telling the truth. That is just nonsense, is it?
> A. The only thing that was not true was the fact that I had sacked Mark. I did not sack Mark and you can speak to Mark when you see him. He just said, "I will go". You know, you can interpret that as being sacked, but he was not. He just said, "I will go. I cannot work for Armatus. I do not want to work for John Cowell."
>
> (Day 1 pages 125- 126)

66. There was no convincing explanation as to why Mr Lawrence would have told Mr Cowell and his solicitor that he had sacked Mr Berg if this was not true. I conclude that Mr Lawrence did sack Mr Berg. I infer that the reason why he did so was because he wished to make Mr Berg a scapegoat for the ghosting which had taken place at Keyguard and to distance himself from the ghosting because he realised that this was a significant problem at Keyguard which would trouble Messrs Cowell and Warren.

67. This conclusion is consistent with Mr Cowell's evidence that towards the end of July he spoke to Mr Lawrence about concerns that Rachelle Willis had expressed concerning the authenticity of Keyguard's record keeping and that Mr Lawrence immediately blamed Mr Berg and shortly afterwards dismissed him.

68. My conclusion that Mr Berg was sacked is also consistent with what was said by Mr Berg at two subsequent meetings attended by Mr Berg. Mr Cowell's evidence was that after Mr Lawrence told him that he had "binned" Mr Berg, he (Mr Cowell) asked Mick Willey, a trusted employee of Keyguard, to make contact with Mr Berg to find out what had happened between him and Mr Lawrence. Mr Willey and Natalie Keegan met Mr Berg on 16 August 2017 at a café on the A45. Mr Willey's evidence as to what happened at the meeting was that Mr Berg stated that he was aware that Mr Cowell had been investigating potential ghosting and that Mr Lawrence was denying any knowledge about it, choosing instead to blame him (i.e. Mr Berg). Mr Berg told Mr Willey and Ms Keegan that Mr Lawrence was fully aware of ghosting because he was the person who was allowing the practice to take place, and that, whenever members of Mr Berg's family were paid for shifts they had not worked, the money was always paid over, on instruction, to Mr Lawrence. Mr Berg also explained that Mr Lawrence could be very aggressive and that he always felt under pressure from Mr Lawrence to ensure that all rotas were filled. Mr Berg stated that Mr Lawrence instructed him to insert names into timesheets.

69. It was not in dispute that the meeting on 16 August 2017 between Mr Berg, Mr Willey and Ms Keegan took place, although Mr Berg did not address this in his witness statement and claimed not to be able to remember what was said. Nor is it in dispute that Mr Berg admitted to ghosting in Keyguard at that meeting. However, there was a dispute about whether Mr Berg merely confirmed the ghosting had only happened on a handful of occasions or whether he made the further statements recounted in Mr Willey's evidence, in particular as to Mr Lawrence's knowledge of and involvement in the ghosting. Mr Berg's evidence in cross-examination was that if anything was said at the meeting about Mr Lawrence's knowledge it was to the effect that he did not know about ghosting, not that he did know. According to Ms Keegan's witness statement, Mr Berg stated that Mr Lawrence knew nothing about the ghosting, but she retreated from that in oral evidence and was only able to say that she could not remember.

70. After they had finished their meeting with Mr Berg, Mr Cowell received a WhatsApp message from Ms Keegan in which she said "Just leaving now. Lots of info. Mick

says if you want to ring him he's on hands free or ring me."

71. I accept Mr Willey's evidence as to what was said at the meeting which I consider to be both inherently credible and consistent with the fact that Mr Berg had been dismissed by Mr Lawrence. Mr Willey wrote up an account of the meeting in October 2018 which was consistent with his evidence at the trial. Moreover, Mr Berg's and Ms Keegan's recollections of the meeting, in contrast to Mr Willey's, were sketchy.

72. Mr Cowell's evidence was that he then asked Mr Willey to arrange a further meeting with Mr Berg. Mr Cowell met him at the Beefeater Pub in Corby on 21 August 2017. I accept his evidence about this meeting in his witness statement which was as follows:

> "I spent just over an hour with him and he was still visibly upset; he admitted the same things to me as he had to Mick Willey. He admitted to ghosting staff and to using unlicensed staff to cover sites, which is absolutely forbidden in the industry. He told me that Mr Lawrence was aware of this and that they did not have the manpower to cover all the sites, particularly at night or that people cancelling shifts forced them to run short. He also explained that in order to hide some of it he would put the name of his son (Ryan Berg) on the spreadsheet. On the occasions that he used his son's name and the wages were paid, he said that he would use the money to pay for door supervisor courses for some of the un-licensed employees he had used so that they could work full time for Keyguard. He also admitted that this had been going on for a length of time. He also said that he and members of his family would be required by Mr Lawrence to pay him back the money paid to them as a result of the ghosting."

73. There were conflicting accounts of a subsequent meeting in August 2017 between Mr Cowell and Mr Lawrence. Mr Cowell's evidence, which I accept, is that when he told Mr Lawrence about what Mr Berg had said, Mr Lawrence was furious that Mr Cowell had met with Mr Berg alone, calling Mr Berg a "useless prat" and complaining that Mr Berg had betrayed him. Mr Lawrence's evidence about this meeting is that he criticised Mr Cowell for meeting Mr Berg without his knowledge and that any ghosting had taken place at a time when Mr Berg was Mr Lawrence's employee. I reject Mr Lawrence's evidence which is inconsistent with my findings that the Bester incident took place several weeks after the SPA and the fact that Mr

Lawrence had already dismissed Mr Berg.

Subsequent events

74. On 27 September 2017, a board meeting (the first since the SPA) was held attended by Mr Cowell, Mr Warren and Mr Lawrence. As recorded in the minutes, the directors discussed how the Armatus and Keyguard businesses would work together. The minutes also record the directors' agreement that the company would be rebranded, changing its name from Keyguard to 'Armatus Security Ltd". It was also agreed that all directors would receive the same salary. The change of the company's name was effected shortly afterwards, so that on 2 October 2017, Keyguard became 'Armatus Security Limited'.

75. By early October 2017 Mr Lawrence had become aware that Keyguard's cashflow was being used to pay for Armatus's shares. He was also annoyed by the name change which he considered would interfere with Keyguard's accreditations. On 2 October 2017, Mr Lawrence sent an email addressed to his solicitor (Ms Caroline Kemsley-Pein) to Mr Cowell, apparently inadvertently in which he complained that two deferred payments under the SPA had been paid to him out of Keyguard's own resources rather than by Armatus. He insisted that "*we need to act before Armatus strip Keyguard and destroy it.*"

76. The Defendants accept that they procured two further instalments of the deferred payments of the purchase price to be paid out of Keyguard (amounting to £52,500). Messrs Cowell and Warren now accept that the payments ought not to have come from Keyguard.

77. On 4 October 2017, Mr Cowell sent an email to Mr Warren entitled 'Thoughts'. In it, Mr Cowell postulated different options for the business vis a vis Mr Lawrence. He considered the options to be:

> "1. do we want to clear up the negativity and move on as agreed in the board meeting? I am absolutely ok with that but I'm certain there will be something else in the near future that will light a touch paper!
>
> 2. Our money back and the contract torn up? I'd rather not do this as the effort already gone into this is immense

> 3, An agreement to purchase the remainder of Robs shares at a new value (or even any further value) due to the ghosting issues and he steps away permanently? This would be the best solution in my opinion. Or we bite the bullet and agree his asking price and structure a deferred payment scheme? (Not preferred)
>
> 4, Rob agrees to have no further interaction in the business and he is supplied regularly with up to date information about the business and he remains as just as a shareholder? I do not believe in any way shape or form he would go for this. However possibly with the threat of reporting his ghosting to the authorities and to clients this may force his decision???"

78. Messrs Cowell and Warren gave evidence as to why, notwithstanding the discovery of ghosting, they sought to continue with the business of Keyguard. Firstly, they did not know at that stage whether they were able to exit the business and avoid liability under the SPA. Second, they thought they might be able to remedy the situation by running the business honestly and without Mr Lawrence, which they assessed would still leave sufficient value to make it worth continuing.

79. A meeting took place on 9 October 2017 attended by Mr Cowell, Mr Warren Mr Lawrence and, Ms Caroline Kemsley-Pein, Mr Lawrence's solicitor. Mr Warren's evidence, which I accept, was that during the meeting he asked to speak with Mr Lawrence alone for a few minutes because he wanted to confront Mr Lawrence about the ghosting and did not want to embarrass him in front of his solicitor. Ms Kemsley-Pein and Mr Cowell stepped out of the meeting to allow them to talk. Mr Lawrence accepted that Mr Warren put to him that there had been extensive ghosting in Keyguard prior to the SPA, the value of the ghosting was said to be in the region of £80,000. and that they had "bought a pup". Mr Lawrence's evidence was that he told Mr Warren that the suggestion of ghosting was ridiculous and that it would amount to something like 800 shifts. Mr Warren's evidence, which I accept, was that Mr Lawrence said that it was normal in the industry and that everyone does it, to which Mr Warren replied that he disagreed and that it had to stop.

80. I accept Mr Lawrence's evidence (denied by Mr Warren) that Mr Warren told him in the course of their conversation that the problem was that Armatus did not have any money to which Mr Lawrence responded by asking what he was doing buying

Keyguard. Mr Warren then suggested that they should move on and proposed invoice factoring as a means of releasing capital to meet the outstanding deferred payments (with the capital being loaned to Armatus by Keyguard, so that Armatus could pay Mr Lawrence). It was agreed that Ms Kemsley-Pein would draw up some heads of terms for Messrs Cowell and Warren to consider.

81. A further board meeting took place on 28 November 2017 at which there was a discussion about financial issues, including directors remuneration and arrangements for future instalments of the purchase price.

82. Following that meeting, Ms Kemsley-Pein drafted heads of terms for the release of the remainder of the deferred payments and sent the draft to the barrister retained by Mr Cowell, Micaila Williams, on 21 February 2018. The draft terms provided that Keyguard was to use invoice financing to release the outstanding sum of £262,500 which would be loaned by Keyguard to Armatus so that Armatus could make payment to Mr Lawrence. It also made provision for Mr Lawrence's remaining 40% of shares to be purchased with the value used under the SPA, for £210,000 to be paid in four quarterly instalments. The heads of terms were never finalised. There is a dispute as to why they were not finalised which is not necessary for me to determine.

83. In April 2018 Mr Lawrence instructed new solicitors (Moore Barlow, then Moore Blatch, who continue to represent the Claimants) who requested a meeting with Mr Cowell. A meeting took place on 11 May 2018, following which Mr Cowell was asked to submit a revised proposal which he did on 29 May 2018. On 29 May and 1 June 2018, Moore Blatch requested information about the assets and liabilities of Armatus, ARSS and Armatus Risks International Ltd and a list of assets and liabilities of each of the guarantors. They demanded that the information requested, together with a payment of £20,000, be provided by 5 June 2018 or else a winding up petition would be presented against Armatus and statutory demands would be issued against the Defendants as guarantors under the SPA. It was at that point that the Defendants decided to instruct their own solicitors, McFaddens (who represent them in these proceedings).

84. McFaddens sent a detailed response on 18 June 2018, in which, among other things, the allegations of ghosting were repeated; it was pointed out that the Defendants'

decision to enter the SPA, and their decision to provide a guarantee, was made in reliance on financial statements of Keyguard; they explained that Armatus and the Defendants wished to retain a forensic accountant to review Keyguard's books and records but that Mr Lawrence had denied access to these. In the event, no progress was made into the Defendants' proposed investigation of Keyguard's affairs. On 24 September 2018, Mr Lawrence enforced his debenture and appointed administrators (CVR Global LLP) over Armatus. At that point, Messrs Cowell and Warren were removed as directors of Keyguard.

85. The parties remained in dispute. Statutory demands were served on all four Defendants in respect of their alleged obligations as guarantors under the SPA. The Defendants applied to set them aside on the basis that the alleged debt was disputed on substantial grounds, namely the avoidance and rescission of the SPA and the guarantees. The demands were subsequently withdrawn with Mr Lawrence paying the Defendants' costs.

Sale of Keyguard to Westminster Group

86. On 8 November 2018, the administrator of Armatus sold 60% of the shares in Keyguard to Longmoor Security Ltd, a subsidiary of Westminster, for £18,223.86. The Defendants played no part in the negotiation of the sale.

87. Westminster was initially interested in Keyguard because it held a guarding licence which Westminster needed in order to win a contract at Heathrow (which did not in the end materialise). The evidence of Mr Hughes was that Keyguard's accounts were in a mess. In an email dated 17 October 2018 to Moore Blatch and the Administrators, Westminster explained that through the due diligence process significant issues had come to light including what appeared to be fraudulent accounting and possible criminal activity meaning that the company could be at risk of unknown future costs and actions in the light of which the sum of £18,223.86 was considered to be a more than fair price. Mr Hughes' evidence was that the "fraudulent accounting and possible criminal activity" was a reference to payments which appeared to be to HMRC, payments to Moon Computers and missing stock. Mr Hughes' evidence was that there was no mention of ghosting at the time of the

due diligence; allegations of ghosting did not affect Westminster's valuation of Keyguard.

88. The claim form was issued on 17 March 2020.

Claim 1

89. By Claim 1, Mr Lawrence is seeking to enforce the guarantee in clause 10 of the SPA. The pleaded claim is made to recover: (i) the outstanding Deferred Payments, amounting to £262,500; (ii) interest on those outstanding Deferred Payments pursuant to clause 16 of the SPA; (iii) the administrators' costs of £68,000; (iv) Mr Lawrence's own legal costs in connection with enforcing his debenture over Armatus and issuing statutory demands, being £14,400; and (v) the costs which Mr Lawrence was ordered to pay to the Defendants as a result of issuing statutory demands and causing the Defendants to apply to set them aside, being £48,348.80.

90. The Defendants deny any liability because they say they were induced to enter into the SPA by Mr Lawrence's representations about the value of Keyguard, which were false because the company was being used by Mr Lawrence as the vehicle for extensive ghosting. The Defendants say Mr Lawrence made the representations dishonestly and that the SPA has therefore been avoided and rescinded.

91. In reply, Mr Lawrence relies on clause 20 of the SPA (providing that no party had entered into it in reliance on any representations). He denies that the representations were made with the intention of inducing entry into the SPA. He further denies any ghosting took place prior to the SPA or that he acted dishonestly.

92. Claim 1 gives rise to the following issues:

    a. What representations were made – were they express or implied?

    b. Were the representations false?

c. Did Mr Lawrence have knowledge as to the falsity of the representations or was he reckless as to whether they were false or not?

d. Did Armatus rely on the representations?

e. What is the effect of the entire agreement and non-reliance clause on any claim for misrepresentation?

93. It should be noted that Mr Lawrence's case did not raise any of the traditional "bars" to rescission such as affirmation of the contract which it is sought to rescind following discovery of misrepresentations, delay in seeking rescission or impossibility of restitution of the benefits conferred under the contract.

The representations

94. The representations pleaded in the Defence comprise the contents of the financial information provided to the Defendants and, in particular:

a. a representation that Keyguard's filed accounts for the years 2011 to 2014 and a management profit and loss account for the 12 months to 31 December 2015 set out a true and fair view of the financial performance of Keyguard;

b. a representation that unaudited management accounts for the period 1 January 2016 to 30 April 2016 were provided in May 2016 on the basis that they set out a true and fair view of the financial performance of Keyguard; they showed a turnover in that four month period of £547,810 together with a gross profit of: (1) 30.43% for the 12 months ending 31 December 2015 and (2) 32.1% for the four months ending 30 April 2016;

c. a representation that Keyguard's unaudited accounts for the years ended 30 December 2016 which were provided to Mr Cowell by Mr Shakespeare in around May 2017 set out a true and fair view of the financial performance of Keyguard; they showed a turnover in 2016 of

£1,447,495 and profit before tax in 2016 of £199,868.

95. In the Reply, Mr Lawrence "neither denied nor admitted" the representations. I am satisfied that, as claimed by the Defendants, the statements in the accounts as to turnover and profit were express representations and that there was an implied representation that the accounts represented a true and fair view of Keyguard. As regards the audited accounts, the implication arose from the requirement under section 393 of the Companies Act 2006 ("**the 2006 Act**") that directors must not approve accounts unless they are satisfied that they give a true and fair view of the financial situation of the company. As regards both the audited and unaudited accounts, the implication arose from the fact that they were being provided to the Defendants to enable them to make a reliable assessment of Keyguard's finances for the purpose of deciding whether to proceed with the acquisition of Mr Lawrence's shares.

Falsity

96. The Defendants' case was that the representations were falsified by the widespread practice of ghosting, the effect of which was that Keyguard was worth very much less than it would have been, had the representations been true so that the accounts did not represent a true and fair view. It was alleged that they overstated Keyguard's true revenues to which Keyguard was properly entitled, they substantially overstated Keyguard's true profit margin and substantially understated Keyguard's potential liabilities to customers who had been defrauded.

97. This case gives rise to two main issues, first as to the extent of any ghosting and second as whether the ghosting meant that the representations were untrue.

The extent of the ghosting

98. The Defendants' case as to the extent of ghosting was largely based on the expert evidence of Julian Davies. Mr Davies defined ghosting, as that term is used in the security guarding industry, as meaning the illegal and dishonest practice of charging

a customer for time which is not in fact worked. He said that ghosting is common in the security industry because of the difficulty of recruiting sufficient manpower and the difficulty for anyone outside the security guarding company to detect ghosting unless they are conversant with how it is done and they are actively looking for it.

99. He said that ghosting is done in four ways:

a. by recording a guard as being in two or more places at the same time;

b. by recording more hours on the timesheet than a guard in fact worked;

c. by recording a guard as having been on duty when he was asleep;

d. by recording hours worked when the shift was not worked at all; this involves inserting into the timesheet the name of a guard who might or might not be a real person.

100. Mr Davies concluded that during the period April 2016 to June 2017 ghosting occurred in Keyguard and that it was "widespread and intentional".

101. Mr Davies's review covered the period from 31 December 2014 until 30 June 2018. His investigation entailed the following steps.

a. Step One – Mr Davies examined every timesheet to identify if any guard was recorded as having worked overlapping hours (i.e. hours recorded by a guard in two or more places at the same time), comparing signing-in and signing-out sheets for different sites;

b. Step Two – he added up the overlapping hours;

c. Step Three – using the timesheets, Mr Davies calculated what he considered to be excessive hours, (i.e. hours breaching what Mr Davies considered to be a reasonable threshold of 12 hours followed by a minimum break of 6 hours).

102. Mr Davies' conclusions were as follows:

a. In the period which he reviewed, he found 173 individual instances of overlapping hours and 199 individual instances of excessive hours in the available timesheets.

b. Overlapping hours started in February 2016, and excessive hours from October 2015. Both measures peaked between November 2016 and April 2017.

c. The total estimated overlapping hours from 31 December 2014 to 30 June 2018 was 831 hours and the total number of excessive hours was 5,743 hours.

d. Between April 2016 and June 2017, there was evidence of ghosting at 13 of the 14 sites in the East Midlands for which timesheets were available. Only three sites/clients showed no evidence of ghosting (Pontins in Prestatyn, Denbighshire; the Cube nightclub in Bangor, Gwynedd; and the Solar century account).

e. Between April 2016 and June 2017, the mean average % of guards in the timesheets with overlapping and/or excessive hours was 30%. Some guards (notably Chris Hillson) appeared to have ghosted much more than others.

103. Mr Davies accepted that, in relation to excessive hours, there was no clear criterion and that it was impossible to be precise about how many excessive hours were in fact worked and how many were not. His approach had been to ignore many single shifts of between 12 to 14 hours and in a few cases up to 18 hours where he considered that these shifts may have been worked. But where there were several long consecutive shifts of 16 hours with short breaks between them, he drew the line at 12 hours and started counting from 12 so that the excessive hours may have included hours that were in fact worked. The excessive length of many shifts led him to infer that guards must have been asleep for parts of those shifts. There was no evidence to suggest that this was permitted. He concluded that part of the charge for guards' time for such shifts was ghosted.

104. Based on these findings, Mr Davies concluded that the practice of ghosting in

Keyguard at the time was “widespread and intentional”. That practice was embedded in Keyguard’s culture and Keyguard’s management took no steps to detect, monitor, supervise or otherwise remedy the ghosting despite having ample opportunity to do so. Keyguard’s clients were therefore being invoiced and were paying for a service that they did not receive. The extent and duration of ghosting also meant that Keyguard was in breach of the SIA ACS accreditation it held from February 2014 until January 2018. Whilst neither the SIA ACS accreditation standards, nor any other accreditations held by Keyguard, refer explicitly to ‘ghosting’, he had no doubt that accreditation would have been withdrawn had the SIA been aware of the evidence he had reviewed.

105. The main point put to Mr Davies in cross-examination was that he could not be sure whether overlapping hours were ghosted because he had not seen the client contracts and therefore did not know whether individual sites were supplied with static guarding or mobile patrols (the latter allowing guards to be at more than one site simultaneously). Mr Davies’ response was that he had made a well-founded assumption about mobile patrolling based on the pattern of hours shown in the time sheets, sporadic hours being indicative of a mobile patrol contract, with long shifts indicative of static guarding.

106. In re-examination Mr Davies expanded on this point, explaining that, as far as he could recall, invoice sheets did provide details of whether a service was static or mobile and that he recalled a conversation with Messrs Cowell and Warren in which they confirmed that the three sites which were on the map annexed to Mr Davies report and which it was suggested in cross-examination may have been mobile sites, were in fact static.

107. Mr Davies conceded in cross-examination that management was not necessarily involved in systematic ghosting, and that there was no direct evidence that Mr Lawrence was aware of systematic ghosting. However, when asked whether it was unreasonable for management in a company such as Keyguard to undertake processes which might disclose ghosting, his evidence was as follows.

"Now, what that would mean it practice, and I am pragmatic, particularly when it comes to small companies like Keyguard, one is not undertaking an elegant thorough auditing process, let us say once a year or every two years, the workload is too high and the question is too complex. But if every month one very simply does what I did and puts three timesheets together and does a quick detection check, that is not onerous. That is a five-minute job. So I am asserting that a company should be doing that."

(Day 8 pages 1177 -1178)

108. It was put to Mr Davies that the percentage of ghosted hours as a percentage of the total hours of security guarding charged was relatively small, about 2%, which was not "widespread" to which Mr Davies' response was that it depended on the variable against which ghosting was measured. A small number of ghosted hours represented a "fat tail risk" by which he meant a risk with major consequences.

109. Mr Lawrence did not adduce any expert evidence of his own as to the existence or extent of ghosting at Keyguard. His evidence was that there was not widespread ghosting at Keyguard. Any discovery of ghosting would lead to loss of accreditation and, more importantly, would ruin a company's reputation:

Q I think we would also agree, I think you probably said so in terms, that ghosting would risk very serious damage to the reputation of a security guarding company?
A. I think it would.
Q. And it would likely badly damage the trust that customers would place in that company, if discovered?
A. Yes, I think it would.

(Day 1 page 28)

110. Mr Lawrence's evidence was that Keyguard's processes for guards signing in and out of some sites would have made ghosting impossible. He relied on the existence of a 'check call' system called Gallinet, by which guards would be regularly contacted to check in during their shift from which it would have been obvious if a guard was missing.

111. Mr Lawrence disagreed with Mr Davies's conclusions because, if ghosting had taken

place, it would have been noticed by him and by others:

> "What I am saying is I cannot think that could have happened, because a client would have spotted it. The rest of the guards would have spotted it, because they would have to fill in for people. It would have been fed back to me. Surely I would have gone on to site and found someone not there."

(Day 1 page 10)

112. The Defendants did not dispute Mr Lawrence's evidence that, if ghosting had taken place, it would have been noticed by him.

113. Mr Berg's evidence was that ghosting happened on no more than 8 or 10 occasions amounting to approximately £4,000 or 12 hours.

114. I accept Mr Davies's evidence as to the numbers of ghosted hours that he found, that is to say, in the timesheets available for the period April 2016 until June 2017 173 individual instances of overlapping hours and 199 individual instances of excessive hours, and his evidence as to the percentage of numbers of guards and sites affected. I consider that his approach to the calculation of overlapping and excessive hours was reasonable.

115. His findings were also consistent with the fact that Mr Lawrence, in his conversation with Ms Willis in August 2017 and with Mr Warren at the October meeting, appears to have regarded ghosting as a routine matter and the fact that Mr Berg admitted at the meetings in August 2017 that ghosting was practised at Keyguard. I reject Mr Lawrence's evidence that, had there been any ghosting it would have been detected by customers or reported on by guards, so that it cannot have been widespread. Ghosting is a concealed practice, hidden from customers. If guards knew about it, it would not necessarily be in their interest to report it. The existence of the Gallinet system, if properly deployed, would have meant that Mr Lawrence was aware of ghosting, not that ghosting did not occur. Mr Lawrence was the principal operational manager and admitted that he was the one monitoring Gallinet.

116. Mr Lawrence relied on evidence that timesheets were handed over to Beverley

Kidman so that she could create invoices and payroll from them. There was, however, no way for Ms Kidman to check the timesheets were accurate and it was not her role to do so, as she accepted. Ms Houghton, a compliance offer, accepted that if there was ghosting, it would have been possible, though unlikely, for her not to have known about it. The same point was conceded by Ms Fowler, who had not, as part of any due diligence by Westminster, carried out a comparison of timesheets to timesheets for different sites over the same period.

117. Based on the evidence referred to above, I conclude that the fraudulent practice of ghosting was an established and significant feature of the way in which Keyguard was carrying on its business prior to the SPA.

Effect of ghosting on the representations

118. The Defendants rely on the report of Jeffrey Nedas in support of their case that the effect of the ghosting and resulting loss of accreditation would have been that Keyguard was not worth £525,000 at the time of the SPA and was actually worth nothing. According to Mr Nedas, the existence of ghosting:

    a. would (as Mr Davies also identified) likely lead to the cancellation of contracts by clients, with a consequent loss of revenue and potential non-payment of outstanding invoices;

    b. might lead Keyguard to sustain immediate further losses, since it may still be required to pay salaries, overheads, sub-contractors and other non-terminable contracts; and

    c. might also lead to further financial and other consequences, including litigation, the loss of accreditation and criminal prosecution, with significant adverse impact on current and potential future revenue and a consequential impact on the value of a security company.

119. He considered that, in these circumstances, ghosting would have had a material adverse impact on the value of Keyguard disproportionately greater than the sums

fraudulently overcharged and/or the value of contracts immediately lost. As a result, and noting Mr Davies' conclusions that the ghosting was "widespread and intentional", Mr Nedas's view was that the effect of ghosting was to "eradicate its revenue and earnings so that it simply has no value whatsoever".

120. It was submitted on behalf of the Defendants that the ghosted hours artificially inflated the figures for turnover and profit in the financial information provided to the Defendants by falsely suggesting that Keyguard was honestly generating legitimate turnover and making legitimate profit when it was not but, rather, was defrauding its customers on a large scale such that the figures in the accounts did not show a "true and fair view" of the company as they expressly purported to do. Their case was that, whilst those figures may have represented what Keyguard, if honestly run, was entitled under its client contracts to generate by way of turnover and profit, they did not show what it was in fact honestly generating by way of turnover and profit. Nor did they show the potential liabilities to customers in respect of having to repay the proceeds of fraud. Moreover, to the extent that ghosting was employed in order to conceal a shortage of recruiting guards, the accounts gave a misleading impression of Keyguard's actual ability to generate turnover in the future.

121. It was submitted on behalf of the Claimants that Mr Nedas's opinions were over-dogmatic, both in his preliminary observations in his report that it would have been impossible to value Keyguard as at June 2017 without further information, and as to his position that the ghosting detected by Mr Davies would have deprived Keyguard of all value. It was submitted that Mr Nedas was wrong to ignore the fact that Keyguard had an established revenue stream and that provision had been made in the accounts for the cost of providing that revenue stream.

122. The Claimants relied on the expert evidence of Mr Djanogly that the valuation of Keyguard of £525,000 as at 14 June 2017 was correct, if not understated, and that the existence of ghosting would not have had a material and detrimental impact on the valuation of Keyguard. Mr Djanogly's view was that the value of Keyguard was derived from its revenue stream which was not affected by the ghosting. There had been no complaints by customers arising out of ghosting.

123. Mr Djanogly accepted that his first, second and third reports, which predated Mr Davies's report, had been not prepared on the basis that there was "widespread and intentional" ghosting, but, rather on his instructions that there was only one instance of ghosting and that ghosting would have been "far from material" to the valuation of Keyguard. His fourth report was the first to address Mr Davies' findings. There, he asserted that the comments in his earlier reports stood, that is to say that the existence of ghosting as found by Mr Davies would have made no difference to the value of Keyguard as at 14 June 2017. Mr Djanogly sought to argue that because the allegations made in Mr Davies' report concerned facts (i.e. the ghosting) that were hidden at the time, its contents were irrelevant to the valuation. However, he later resiled from that position and accepted that, as a matter of logic, the fact that a defect may be hidden does not mean that it has no impact on the value of an asset. He eventually accepted that whether Mr Davies' conclusions were "unreliable or uncertain" was a matter for the Court and therefore could not be a proper basis on which he could conclude there was no impact on the value of Keyguard.

124. Mr Djanogly confirmed that the basic process of valuation involved taking a figure representing the earnings prospects of a company and then multiplying that by a multiple representing the risk engaged in the business. He accepted that the risk should be assessed on the basis that the business was being run honestly, and that one would not normally value a business on the basis that it was being run fraudulently. He accepted that the evaluation of the multiple in his reports was not premised on the assumption that there was widespread and intentional fraud in Keyguard, because he had only been instructed that there was one instance of ghosting in Keyguard.

125. It was put to Mr Djanogly, on the basis of evidence given by Mr Lawrence, that the instance of a single ghosted hour could have a disproportionate effect on the revenues of the company because customers who might discover ghosting would be likely to terminate their contract with the guarding company immediately. The discovery may also destroy the marketplace opportunities of the company. At first Mr Djanogly appeared to accept these propositions, but he later retreated to the view

that he could not speculate.

126. Both expert accountants focused on the question of the value of Keyguard as at June 2017 rather on the critical question of whether the existence of ghosting falsified the representations contained in the financial information provided to the Defendants. I consider that, as far as the value of Keyguard is concerned, both experts adopted extreme positions and neither was persuasive. I consider that Mr Nedas's view that Keyguard had no value at all because of the risk of clients cancelling contracts or of Keyguard losing its accreditation resulting in the eradication of its business (matters which might have come to light if the Defendants had carried out proper diligence into Keyguard) was unrealistic. Keyguard had in place contracts which were capable of being operated honestly and generating profit and goodwill. When the SIA investigated a complaint that Mr Lawrence had been involved in ghosting in 2021, it did not uphold the complaint. The Defendants' case that Keyguard was a vehicle for a "massive fraud" was overstated.

127. At the other extreme, Mr Djanogly's view that the existence of widespread and intentional ghosting would have made no difference to the value of Keyguard was unsustainable. It does not follow from the fact that a defect in an asset is concealed from a potential buyer that it does not affect the value of the asset or that it can be ignored in presenting a true and fair view of the asset.

128. As to the relevant question of the impact of ghosting on the financial information provided to the Defendants, I am satisfied that it did have a material impact on that information and it that falsified the representations. Someone reading the accounts would naturally assume that the recorded turnover and profits were generated on an honest, non-fraudulent basis. The effect of the ghosting was that Keyguard's turnover and profits were inflated to the extent that turnover and profits recorded in the accounts were generated by ghosted hours and its liabilities were understated to the extent that no account was taken of liabilities to customers who had been overcharged. The turnover, profits and liabilities would have to be correctly stated in order for the accounts to present a true and fair view. If the ghosting had only happened on one or two isolated occasions, it might have had no material impact on

the representations but that was not the case here. Mr Djanogly said in his fourth report that that the total ghosted hours found by Mr Davies came to around 8.6% of the total of 67,993 hours billed in the period, according to the timesheets reviewed by Mr Leeder, a security expert who was instructed by the Defendants earlier in the proceedings. Mr Nedas conceded that the number of ghosted hours found by Mr Davies may have been in the context of Keyguard's overall revenue, "relatively small". I am nevertheless satisfied that the extent of ghosting found by Mr Davies was that Keyguard's revenues, profits and liabilities were substantially misstated, as the Defendants assert in the Defence.

Mr Lawrence's knowledge

129. In order to succeed with their claim, the Defendants must establish that Mr Lawrence knew that the representations made to the Defendants were false or had no real belief in the truth of the representations or was reckless as to the truth of the representations; *Derry v Peek* (1889) 14 App. Cas. 337 at 374.

130. The Defendants submitted that there can be no real doubt that, if there was widespread ghosting at Keyguard prior to the SPA, Mr Lawrence must have known about it and must therefore have known that the representations were untrue. It was common ground that, as a hard-working, hands-on managing director, he was closely involved in all aspects of the business. He was in regular contact with clients. He monitored the company's bank accounts. He worked closely with the employees. He went on site visits every week. If there was an incident in the course of the business's operations where things had gone wrong, he would investigate and deal with it. He had extensive knowledge of the audit and accreditation compliance requirements. He confirmed he was the person within Keyguard who had complete control over the accreditation process and did all of the very substantial work for it. He was the key decision maker in relation to Keyguard's business and had complete knowledge of its practical operation.

131. Mr Lawrence did not attempt to argue that if there was ghosting going on, it was done behind his back. Mr Lawrence's own evidence was that if there was ghosting, he would have known about it:

Q. From everything that we have just seen, all of the work that you were involved in, and indeed these systems, it must be right that if Keyguard had contracts which called thousands of hours more than you were able to supply in guards, you would have known about that immediately? It could not have been the case that you had contracts in place to supply thousands of hours of guards that you did not have you would have known that, would you not?
A. Yes.
Q. And if -- and please note the word "if" because I am not making any accusations yet, Mr. Lawrence; I will, you know that, but I want to be clear at the moment what I am doing --Keyguard's business had been run on the basis of a huge fraud, involving thousands of hours of ghosting, you would have known about it, would you not?
A. Yes.
Q. I think we agree, you used this phrase in a previous bit of this case, if serious ghosting had taken place it would have stood out like a sore thumb. Those are your words.
A. Yes.
Q. Do you stand by that; do you agree with that?
A. Yes.

(Day 1 page 79 – 80)

132. The Defendants also relied on the evidence from its factual witnesses concerning Mr Lawrence's knowledge of ghosting, in particular the evidence from Ms Willis and Mr Grief about Mr Lawrence's comment to Ms Willey in August 2017 concerning ghosting being normal practice at Keyguard, his comment to Mr Warren at the October meeting, that ghosting was normal in the industry and the evidence as to what Mr Berg said in his meetings in August 2017 about Mr Lawrence's involvement in ghosting.

133. In seeking to refute the Defendants' case, the Claimants relied on the evidence of Mr Lawrence, Mr Berg, Mr Bedall, Mr Good, Ms Davies, Ms Houghton and Ms Keegan and on the absence of any documentary evidence that Mr Lawrence knew about ghosting and the absence of customer complaints.

134. Taking into account all the evidence referred to above, in particular evidence of Mr Lawrence's extensive involvement in the running of the business, the evidence of what was said by Mr Berg about Mr Lawrence's involvement at the meetings in August 2017 and what was said by Mr Lawrence to Ms Willis and to Mr Cowell about ghosting being commonplace, I am satisfied that Mr Lawrence was fully aware of the extent of ghosting that was being carried on at Keyguard.

135. As to whether Mr Lawrence was aware that the financial information provided to the Defendants was false, Mr Lawrence stated in his witness statement that he instructed competent advisers to assist with the sale of Keyguard.

> "I didn't participate in the pre-sale negotiations as I was out of my comfort zone, it was precious to me as it was my future so I wanted to make sure I had the best people doing everything because it would be in my best interest. Mark and Adam from ISIS Accounts did the valuation as they said they were experts in their fields. I told them I am not negotiating anything as I have no knowledge legally. As far as I am aware they negotiated the business side and Caroline did the contract negotiations side of it. I stepped back as I believed her to be a good reputable solicitor. "

136. In relation to the accounting information provided, he stated that he believed the documents to be accurate because Keyguard's accountant had put them together

> "She had done our accounts from day one. ISIS mentioned Natalie was a stickler, she was really honest and anything that wasn't quite right, Natalie would raise it. … Our accounts were accurate because we had Bev, our bookkeeper who was very efficient and Natalie who would scrutinise what Bev did."

137. In my judgment, it was not open to Mr Lawrence to distance himself from the falsity of the accounting information provided to the Defendants by asserting that he left matters in the hands of his professional representatives, accountant and bookkeeper. Mr Lawrence was aware of the extensive ghosting practised at Keyguard. Mr Lawrence must have known that, or turned a blind eye to the fact that, because of the ghosting, the accounts were substantially misstated and failed to give a true and fair view of Keyguard's financial position.

Inducement

138. In order to succeed with the claim for rescission of the SPA, Armatus must establish that Messrs Cowell and Warren on its behalf relied on the misrepresentations, that is to say Armatus must prove a causal link between the misrepresentations and its decision to enter into the SPA although the misrepresentations need not be the sole cause of that decision; *Vald. Nielsen Holding A/S v Baldorino [2019] EWHC 1926 (Comm)* at [157].

139. Where a statement is made which is material to the decision whether or not to enter into a contract, there is an inference in fact that it was relied upon unless the representor satisfies the court to the contrary; *Dadourian v. Simms and others* [2009] EWCA Civ 169 (at paragraphs 99 and 101). Mr Lawrence accepted that the purpose of providing the financial information to the Defendants was that it would be relied upon. It was of obvious relevance. Where the misrepresentation was made fraudulently, the presumption is "particularly strong" and, although the inference is rebuttable, rebuttal is "very difficult". *.BV Nederlandse Industrie van Eiprodukten v Rembrandt Enterprises Inc* [2019] 3 WLR 1113 at [43].

140. Once inducement is established, a representee's motives in rescinding a contract are unrelated to the misrepresentation which founds the claim, or the fact that the consequences of the misrepresentation are relatively minor in the context of the contract as a whole, are irrelevant.

141. It was not disputed that the financial information giving rise to the representations was sent to and received by Messrs Cowell and Warren. There are no cogent grounds for disputing that they relied on the representations contained in that information. It was not asserted that they carried out their own due diligence or relied on other information so as to displace reliance on the information provided.

The effect of Clause 20

142. The Claimants contended that the meaning of Clause (20) (set out at paragraph 44

above) was that the parties were giving up any right to rely on any pre-contractual representations, including representations contained in the financial documents, and that the clause was evidence of the fact that that, whatever Messrs Cowell and Warren might now say, they did not in fact rely on any pre-contractual representations.

143. In response, the Defendants contended that at common law, a party cannot exclude or limit any liability he would otherwise be under in contract or in tort by reason of his own fraud or deliberate wrongdoing. A clause in a contract exempting a person from liability for misrepresentations is therefore ineffective to exclude liability for fraudulent misrepresentation. The rationale underpinning the rule is a rule of public policy: and is reflected in the legal rule that fraud is 'a thing apart' and unravels all ('*fraud omnia corrumpit*'): see *HIH Casualty Ltd v Chase Manhattan Bank* [2003] UKHL 6; [2003] 2 Lloyd's Rep. 61 at [15]-[16] (Lord Bingham).

> 15. … For, as Rix LJ observed more than once in his judgment (paragraphs 160, 169), fraud is a thing apart. This is not a mere slogan. It reflects an old legal rule that fraud unravels all: *fraus omnia corrumpit*. It also reflects the practical basis of commercial intercourse. Once fraud is proved, "it vitiates judgments, contracts and all transactions whatsoever": *Lazarus Estates Ltd v Beasley [1956] 1 QB 702* at 712, per Denning LJ. Parties entering into a commercial contract will no doubt recognise and accept the risk of errors and omissions in the preceding negotiations, even negligent errors and omissions. But each party will assume the honesty and good faith of the other; absent such an assumption they would not deal.
>
> 16.. It is clear that the law, on public policy grounds, does not permit a contracting party to exclude liability for his own fraud in inducing the making of the contract.

144. The Defendants argued that the same principle of public policy applies to entire agreement and non-reliance clauses. In *FoodCo LLP v Henry Boot Development Ltd* [2010] EWHC 358 (Ch) at [165]-[167] the parties had included the following clause in their agreement:

"This Agreement constitutes the entire agreement between the parties hereto and the Tenant acknowledges that it is entering into this Agreement on the basis of the terms hereof and not in reliance upon any representation or warranty whatsoever whether written or oral expressed or implied made by or on behalf of [Henry Boot] (save for

written replies given by [Henry Boot's] solicitors to the enquiries raised by the Tenant's solicitors)."

145. Lewison J (as he then was) held as follows:

> 166 The second component of the clause is the non-reliance clause. Precisely what statements are covered by a non-reliance clause is a question of construction of the clause. But this is subject to the important principles that, as a matter of public policy, a contracting party cannot exclude liability for his own fraud; and that if he wishes to exclude liability for the fraud of his agent he must do so in clear and unmistakable terms on the face of the contract: *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* [2003] 2 Lloyd's Rep 61. The clause in the present case contains no clear words acknowledging non-reliance on fraudulent misrepresentations.

146. Counsel for the Claimants sought to argue that the public policy principle did not apply to a case where the parties had deliberately included certain express representations in their contract. Having made the deliberate choice to include certain representations and to omit all others, the parties should be precluded from complaining about the falsity of those other representations even if made fraudulently. There was no cogent basis for this argument. As noted in *Foodco*, clear words are needed to acknowledge non-reliance on fraudulent misrepresentations. Moreover, in *Foodco* itself, the exclusion clause acknowledged that there were certain written representations on which reliance could be placed. It did not follow from this that the clause was effective to exclude liability for other representations made fraudulently.

147. On the basis of the authorities referred to above, I reject Mr Lawrence's case that Armatus is precluded by Clause (20) from seeking to rescind the SPA in reliance on the fraudulent misrepresentations made by Mr Lawrence.

Conclusion in relation to Claim 1

148. For the reasons set out above, I find that the SPA was induced by fraudulent

misrepresentations made to Armatus by Mr Lawrence and that Armatus has validly rescinded the SPA. I therefore dismiss Claim 1.

Claim 2

149. There are 18 pleaded allegations advanced under Claim 2 (several with multiple parts), all of which are alleged instances of breach by Messrs Cowell and Warren of their statutory duties as directors of Keyguard.

150. The unspoken premise of Claim 2 appears to be that the value of Keyguard plummeted between the time of the SPA in June 2017and the sale to Westminster in November 2018 and that the fall in value must have been the result of asset-stripping by Messrs Cowell and Warren. What the actual value of Keyguard was on either of the dates is not an issue that falls to be determined in these proceedings. Keyguard may have been worth more or less than the agreed price under either transaction. But assuming that there was a sharp fall in the value of Keyguard during the time it was managed by Messrs Cowell and Warren, it does not necessarily follow that this was caused by asset stripping or other breach of directorial duty on the part of Messrs Cowell and Warren. The burden is on Keyguard in relation to each head of claim to prove on the facts that the loss claimed resulted from a breach of duty.

151. Keyguard relied, in particular, on the following duties. First, the duty to promote the success of the company pursuant to section 172(1) of the 2006 Act. Counsel for the Claimants drew my attention to the summary of the law by Popplewell J in *Madoff Securities International Limited v Raven and Others [*2013] EWHC 3147 (Comm) at [187] to [194], in particular the following points:

   a. It is well established that a director owes a duty to the company to act in what he honestly considers to be the best interests of the company. This is the core duty of a director. It is a fiduciary duty because it is a duty of loyalty (at [188]).

   b. The predominant interests to which the directors of a solvent company must

have regard are the interests of the shareholders as a whole, present and future (at [188]).

c. The duty is to act in what the director honestly believes, not what the Court believes, to be the interests of the company. The test is a subjective one, but

> "…. where it is clear that the act or omission under challenge resulted in substantial detriment to the company, the director will have a harder task persuading the court that he honestly believed it to be in the company's interest …." (at [190]).

d. It is for the directors themselves to determine the weight to be attached to the list of factors referred to in s.172. The weighing of factors is a commercial decision, which the Court is ill-equipped to take, except in a clear case.

e. A director who has knowledge of the misapplication of company property will be in breach of trust, in breach of duty of reasonable care and skill and in breach of the fiduciary duty to act in good faith in the interests of the company (at [192]).

f. Where a director fails to address his mind to the question whether a transaction is in the interests of the company, he is not without more, liable for the consequences of the transaction. In such circumstances the Court should ask whether an honest and intelligent man in the position of a director of the company concerned could, in all the circumstances, have reasonably believed that the transaction was for the benefit of the company. Whatever the outcome of this analysis should be treated as the director's state of mind (at [194]).

g. The burden of proof in relation to good faith rests upon the person who challenges the directors' assertions that they acted bona fide.

152. Keyguard also relied on the duty to act for proper purposes pursuant to section 171 of the 2006 Act, and the duty to declare an interest in a proposed transaction pursuant to section 177 of the 2006 Act.

153. It was submitted on behalf of Keyguard that (i) the scope of Messrs Warren and Cowell's directorial duties was framed by the obligations in clause 7.3 and Schedule 2 of the Shareholders Agreement, (ii) those directorial duties could not be complied with if any given step was not taken where the written consent of all shareholders, as required by the Shareholders Agreement, was not obtained. I reject this argument on the grounds that, first, as noted above, there was no pleaded case for breaches of the Shareholders' Agreement. Second Messrs Cowell and Warren were not parties to the Shareholders' Agreement and did not owe any duties pursuant to it.

154. The quantum of the claim has changed significantly in the course of the proceedings. The amount claimed was originally c£835,000, increasing by amendment to c.£903,000. By the end of the trial the claim was for a total of £429,244.00 as set out below. A number of the claims were for small amounts well within the small claims track of the County Court.

Paragraph in APoC	**Amount Claimed in APoC**	**Amount Now Claimed**
20.1	£5,000.00	£5,000.00
20.2	£7,682.48	£7,682.48
20.3	£9,678.35	£9,678.35
20.6	£43,930.18	£11,075.56
20.7	£209,129.33	£209,129.33
20.8	£8,741.00	£5,448.37
20.9	£7,331.88	£7,295.81
20.10	£72,097.00	£55,382.00
20.11	£43,308.09	£43,308.09
20.12	£18,332.79	£18,332.79
20.13	£1,048.76	£1,048.76
20.14	£5,429.79	£1,815.20
20.15	£7,415.30	£7,415.30
20.17	£314,271.14	£53,927.77
TOTAL		**£429,244.00**

(1) Payment to Mr Cowell (£5,000)

155. The pleaded allegation was that a payment of £5,000 was wrongly authorised or facilitated from Keyguard to Mr Cowell on 24 September 2018 without justification. In his witness statement Mr Lawrence said that the payment was made "under the administrators of Keyguard's nose" though in his oral evidence Mr Lawrence explained that he was referring to the administrators of Armatus.

156. It was asserted on behalf of Keyguard that at the time of the payment Mr Cowell knew of the administration of Armatus and of his removal as a director of Keyguard. According to a letter from the Claimants' solicitors, the administrators emailed Mr Cowell at 12.43 p.m. on 24 September 2018 to advise him of their appointment and his removal as a director of Keyguard. The payment was made to Mr Cowell at 12:51 on the same day. Mr Cowell's evidence was that he was unaware of the appointment of administrators or that he had been removed as a director until the administrators had turned up later at Keyguard's offices.

157. Mr Cowell's explanation for the payment was that Mr Cowell had advanced a loan of £5,000 to Keyguard on 17 September 2018 from his personal savers account with Barclays to enable Keyguard to meet pressing third party liabilities. This payment was evidenced by Keyguard's Barclays bank statement. The impugned transfer was said to be the repayment of that loan a week later. There was no challenge to the fact that Mr Cowell had loaned this money to Keyguard in the first place.

158. I accept Mr Cowell's explanation for the transfer of £5,000. It was not a breach of directorial duty to cause Keyguard to repay the loan. Moreover I accept the submission on his behalf that, even if Keyguard's allegations as to Mr Cowell's knowledge of his removal as a director were true, no loss would have been suffered. Had the money not been repaid, Keyguard would still have been under a liability to repay it and would have been liable for an action for its recovery by Mr Cowell.

(2) Payment to ADB Accountants (£7,682.48)

159. The pleaded allegation was that between 8 November 2017 and 10 September 2018 Messrs Cowell and Warren wrongly authorised or facilitated Keyguard to deduct the sum of £7,682.48 to pay accountants fees of ADB

Accountants from Keyguard's bank account without justification as there are no records within Keyguard's records that ADB Accountants were instructed by Keyguard and undertook accountancy work on behalf of Keyguard.

160. Mr Lawrence simply asserted in his witness statement there was a payment referred to as "ADB" who were probably Armatus' accountants but "they blocked me from seeing communications so I cannot confirm".

161. His oral evidence was as follows:

> Q. So the reality is that Keyguard has made this claim because you are suspicious about the amount of money that is being paid, and that is really all it goes to?
> A. No, we did not know what it was for because I had never seen an invoice, I had never seen anything. I had never met ADB or Mr Brown. I knew who they were because I had heard them mentioned before, but that was about it, so I do not know what is going on here. Like I said in my first e-mail, I have not got a clue what is going on.
>
> (Day 1 pages 168 – 169)

162. Mr Brown of ADB provided a witness statement exhibiting evidence that ADB was retained on 1 October 2017 to provide accountancy and tax advisory services to Keyguard. Mr Brown set out a table of each invoice of ADB to Keyguard between October 2017 and September 2018 and explained what each one was for, including the additional work performed for every instance where the fee exceeded £300. The total sum of fees was in fact £11,819. In cross-examination, Mr Brown gave a detailed account of the work that he had carried out, including an investigation of ghosting on which he spent 20 hours over two or three days, following which he reported verbally to Mr Cowell and charged £2,600.

163. The tenor of Mr Brown's cross-examination was that Keyguard had paid too much to Mr Brown. I accept the Defendants' submission that the question of how much should have been paid is a matter of commercial judgment and not a matter for the Court to determine. The claim that the payment to ADB was made in breach of Messrs Cowell and Warren's breach of duty was unfounded.

(3) Shogun leasing agreements (£9,678.35)

164. The Claimants' pleaded case was that in November 2017 Messrs Cowell and Warren arranged for leasing agreements for three vehicles (all Mitsubishi pickup trucks) to be entered into by Keyguard in breach of their directorial duties in that the lease agreements were for the benefit of ARSS, Armatus Risks International Limited and Armatus Risks Canine Services Limited, not Keyguard. Mr Lawrence's witness statement read as follows:

> "The new shape Mitsubishi L200 vehicles that Cowell leased without my consent were not used by Keyguard. I understand that Gavin used one of them, and the other two were used on Armatus sites. … They bought them for Armatus but paid for them through Keyguard but we didn't know this until it came out in the administration."

165. In cross-examination, Mr Lawrence admitted that he had supplied his driving licence for the purposes of the leases and that he was aware of the fact the vehicles had been acquired. He then suggested for the first time that the vehicles had been earmarked for hire by Keyguard in relation to a potential contract in or around Silverstone which did not materialise and that the vehicles were not needed and were just used by Armatus though paid for by Keyguard. Mr Lawrence accepted that one of the vehicles was used by Gavin Garrity who did some work for Keyguard but he contended that, if there was any use for the vehicles by Keyguard, the price should have been split fairly. This version of events was not pleaded or set out in any of the Claimants' witness statements.

166. Messrs Cowell and Warren's evidence was that the three vehicles were all properly leased in the name of Keyguard following a discussion with Mr Lawrence in November 2017. It had been planned for two of them to be used at Keyguard's Stanton Cross site and the third to be used by Gavin Garrity, the operations manager. Their evidence was that Mr Lawrence saw the vehicles on delivery and expressed the view that they looked too new to be used on sites so, of the two earmarked for Stanton Cross, one became a pool car and the other used by Natalie Keegan. Ms Keegan's own evidence was that she only used a Mitsubishi pick-up truck on two occasions. Mr Garrity's evidence in cross-examination was that when he was

working for Keyguard he had the use of one of the Mitsubishi trucks.

167. Taking account of all this evidence, Keyguard's case that Messrs Cowell and Warren acted in breach of their directorial duties in relation to the hiring of the Mitsubishi vehicles has not been established. I am satisfied that the leasing agreements were entered into for the benefit of Keyguard and with Mr Lawrence' consent and that some use was made of the vehicles by Keyguard.

(4) Payments to directors: Cowell & Warren (£11,075.56)

168. The pleaded allegation was that Messrs Cowell and Warren wrongly authorised these payments to themselves between November/December 2017 and August/September 2018. Mr Lawrence makes brief mention in his witness statement of the fact that the payments were made.

169. The claim comprised two parts: the majority of the sums claimed were, as Mr Warren explained in his witness statement, in respect of the agreed salaries for himself and Mr Cowell as directors of Keyguard. This portion of the claim was abandoned in the course of the proceedings. Having initially sought to argue unconvincingly in his cross-examination that there was no board resolution to authorise the salaries, Mr Lawrence accepted in cross-examination that it was only fair that the directors be equally remunerated and that this is what had been expressly agreed at the board meeting on 27 November 2017. He conceded that Keyguard's plea that salaries had been wrongly paid was "*a mistake*" for which he apologised.

170. The remainder of the claim related to relation to expenses and was for £10,185.38 in respect of Mr Cowell and £890.18 in respect of Mr Warren.

171. It had been agreed at the meeting on 28 November 2017 that all reasonable business expenses should be covered by Keyguard. Mr Cowell's evidence was that the sums attributed to him were in respect of legitimate business expenses. He stated that his expenses (which he calculated as totalling £12,685.38) would all have been evidenced with receipts sent to Beverley Kidman. Mr Warren explained in his witness

statement that the sum attributable to him in his witness statement was in respect of vehicle repairs which he conceded were expenses that Keyguard should not bear.

172. I am not satisfied on the basis of the evidence before the Court that Mr Cowell's expense claims were unjustified and paid in breach of Messrs Cowell and Warren's directorial duties.

(5) Payments to Armatus Risks Security Services (£144,413.03) and Armatus Risks Canine Services Limited (£64,716.30)

173. The pleaded case is that Messrs Cowell and Warren wrongly authorised these payments to be made on dates in 2017 and 2018 without justification and in breach of their directorial duties.

174. With regard to ARSS, it was not in dispute that at least £202,129.33 (not £144,413.03) was paid to ARSS which broke down into three heads: (i) payments for office expenses, (ii) payments for Natalie Keegan and (iii) payments for sub-contracting costs.

175. Messrs Cowell and Warren extracted a schedule of the ARSS invoices to Keyguard between 14 September 2017 and 21 September 2018 from ARSS's accounting software which showed total payments of £202,129.33. They located 25 of the 82 invoices identified on the schedule. The Claimants did not identify the outstanding ones although, according to the Defendants, the invoices were very likely to be recorded on Keyguard's own accounting software, to which it was said that only the Claimants had access.

176. In relation to office expenses: the evidence of Messrs Cowell and Warren was that there was an agreement that the cost of Keyguard's office space be shared between Keyguard and ARSS. Mr Lawrence's evidence under cross-examination was that he could not remember whether there was such an agreement but he agreed that there would probably have been a discussion about it and if the companies shared an office, it would only be fair to split the cost. He said that he did not even get a desk, an assertion denied by Mr Cowell.

Q. Let me try and clarify if I can that answer, Mr. Lawrence. I think you said you cannot remember whether there was an agreement to share the cost of office space; is that correct?
A. I would guess there was probably a discussion: if we are going to have an office, we will have half, you have half, that is a reasonable thing to discuss
Q. … I think perhaps what you are now agreeing is that was an agreement to share office space. What you are complaining about is the way that that agreement was put into practice; is that fair?
A. I would say there was a discussion, but there is no written agreement.
Q. I did not say there was a written agreement.
A. No, I know.

(Day 2 pages 200 -201)

177. On the footing that there was an agreement to share office expenses, it is not possible to determine, on the basis of the limited documentary evidence before the Court, what the payments related to and whether or not they were justified. I am not satisfied that they were paid in breach of Messrs Cowell and Warren's directorial duties.

178. In relation to the costs of Ms Keegan, Mr Warren's evidence was that there was an oral agreement between Mr Cowell, Mr Warren and Mr Lawrence following their first board meeting on 27 September 2017, by which it was agreed that Ms Keegan's remuneration would be split 50:50 between ARSS and Keyguard. That was not improper, given that Ms Keegan worked for both Armatus and Keyguard, as she confirmed. Under cross-examination, Mr Lawrence could not remember whether or not there was an agreement to split the cost of Ms Keegan:

Q. So you do not dispute Mr. Warren's evidence that Ms. Keegan was paid half by Armatus and half by Keyguard?
A. I do not know.
Q. You do not know?
A. No, I do not know.
Q. So you do not dispute it?
A. I would question it.

…

> Q. What Mr. Warren says is that it was agreed between the three of you, as directors, that because Ms. Keegan was doing work for both Armatus and Keyguard, her salary would be shared between them. Is that correct? Would you agree with that?
> A. I do not remember this. I do not.
>
> (Day 2 page 198 – 199)

179. I am not satisfied, on the basis of this evidence, that payments made in respect of Ms Keegan's salary were without justification in breach of Messrs Cowell and Warren's directorial duties.

180. As to the ARSS payments, in relation to sub-contractor costs charged by ARSS (the most substantial part of this claim), there was no challenge to the authenticity of ARSS's invoices. Mr Lawrence's own evidence was that significant guarding services were in fact provided prior to the SPA.

> Q: I think we would agree that sometimes you needed more guards for sites than were working directly for Keyguard, and that is Why you sometimes contracted with Armatus to supply guards to sites? I am talking now before the SPA still. You agree with me that sometimes Keyguard employed Armatus?
> A. Yes, we did. It was a good way of getting to know each other.
>
> (Day 2 page 60)

181. The fact that Keyguard made substantial use of sub-contract labour from ARSS is also evidenced by an ARSS bank statement to which Mr Lawrence was taken, which showed some £20,000 was paid in two months in 2016 representing many hours of guarding being paid for. Mr Warren and Mr Cowell gave evidence to the effect Keyguard did not have enough staff to sustain its contracts. Mr Cowell referred to the hire of Kodiak guards including to sites other than solar sites, as well as the use of the Monster platform to drive recruitment.

182. It was put to Mr Cowell in cross-examination that the terms under which ARSS was paid damaged Keyguard's cash flow in that the invoices from Armatus required payment within seven days whereas Mr Lawrence's evidence was that Keyguard would not get paid by its client until later on. This was not a pleaded claim and, even if established, would not entitle Keyguard to the repayment of the sums paid to

ARSS.

183. Keyguard's real complaint under this head appeared to that the 50p per hour profit it made from contracting with ARSS was not sufficient. That claim was not pleaded either. It may well have been beneficial to Keyguard to contract on this basis. Had Keyguard not engaged ARSS at all, it would not have generated business or made any profit under the relevant contracts.

184. In relation to the payments to Armatus Risks Canine Services Ltd ("**ARCS**"), payment of the sum of £64,716.30 was admitted. The evidence of Messrs Cowell and Warren was that the payments were properly made in respect of services provided by ARCS to Keyguard, of which Mr Lawrence was aware. They explained that ARCS provided canine guarding services and that an opportunity arose to supply G4S with canine guarding services. ARCS could not exploit the opportunity directly because it did not have a sufficient trading history to pass G4S's credit approval system. Mr Cowell therefore spoke to Mr Lawrence in around August 2017 about the possibility of Keyguard (which did have a sufficient trading record) applying to become an approved supplier to G4S and to supply canine services by sub-contracting the work to ARCS. Mr Lawrence agreed, since Keyguard would earn a modest administration fee, but more importantly, it might lead to lucrative man-guarding work with G4S, a potentially very significant client. Keyguard thereafter completed the G4S accreditation. Mr Cowell believes a contract was agreed between Keyguard and G4S (but has not been disclosed by Keyguard). A Canine Services Service Agreement was formalised between Keyguard and ARCS on 1 December 2017, by which ARCS agreed to provide canine guarding services to Keyguard. Pursuant to those agreements, Keyguard received purchase orders from G4S between December 2017 and September 2018 totalling £39,969.03.

185. On completion of the work, Keyguard invoiced G4S and ARCS invoiced Keyguard for a total of £38,096.14 over the period, evidencing a markup of 50p per hour.

186. In November 2018 after the sale to the Westminster Group, Mr Hughes on behalf of the Westminster Group initially resisted releasing payment to ARCS not on the basis

that the sums were not properly incurred, but on the basis that payment had not yet been received from G4S. He admitted in cross-examination that Keyguard's position was that payment of the invoices was proper:

A. We did pay Armatus, because we would have received the money in for it, yes.
Q. So in other words, you were satisfied that the payments matched, you did make that payment, and so you concluded that that payment that you made, on behalf of Keyguard, was being made properly?
A. Which I believe is 5,000, roughly 5,000 or something like that, from memory….
…
A. We were paid and therefore we paid it.
Q. So why are you trying to claim it back? How is it now wrongful when it was right to make it in November 2018?
A. Well, I think that if this is part of it, then possibly that £5,000 should be excluded, but that does not make any difference.
Q. Just possibly or definitely?
A. Possibly, because I would need to go back and have a look at the actual transactions in our books of account to give you a definitive answer to that.

(Day 3 page 457 – 458)

187. As with the payments to ARSS, it was put in cross-examination that the 60 day payment terms agreed as between Keyguard and G4S and the 14 day term agreed between Keyguard and ARCS, damaged Keyguard's cashflow because ARCS would be paid several weeks before the corresponding sums were received by Keyguard. That was not the pleaded claim and such timing differences are in any event a normal incident of doing business. It was also suggested that the payments were wrongful because the profit made by Keyguard was too small. But again as with the payments to ARCS there was the potential for a bigger payoff in further G4S contracts.

188. I am not satisfied that any of these payments under this head were made in breach of duty by Messrs Cowell and Warren.

(6) Payment of sub-contractor costs

189. The pleaded claim was for £8,741 in respect of sub-contractors' costs which it was alleged were wrongly authorised by Messrs Cowell and Warren. In the course of the trial, this claim was reduced to a claim for £5,448.37 which related to a single invoice dated 7 November 2017 from ARSS to Keyguard in respect of "Wages for sub-contractors".

190. This invoice was challenged on the basis that it did not refer, like other invoices, to the provision of security guards but simply referred to sub-contractors and it was accepted by Mr Warren that Armatus did not supply staff other than security guards. It is not certain who these sub-contractors were. It was alleged by the Defendants that Keyguard had failed to produce records which ought to be available on its accounting software and which would provide a breakdown of the figure.

191. As with a number of other heads of claim in Claim 2, the Court does not have a sufficient evidential basis for concluding that the payment was authorised in breach of Mr Cowell or Mr Warren's directors' duties.

(7) Barclaycard credit card (£7,295.81)

192. The pleaded allegation was that between June 2017 and September 2018, payments were wrongfully authorised by Messrs Cowell and Warren to a Barclaycard credit card in the sum of £7,331.88 in breach of their directorial duties. In the course of the trial, the claim was reduced to £7,295.81 and was limited to three payments, on 8 September 2017, 3 November 2017 and 20 April 2018.

193. Mr Cowell's evidence was that the payments made by him using the Barclaycard credit card were all for proper business expenses, which would have been evidenced with receipts sent to Beverley Kidman.

194. Keyguard does not appear to have requested the relevant statements from Barclaycard so that it was impossible to know what the payments related to. There was no sufficient basis for a conclusion that the payments were made in breach of duty.

(8) Payroll payments (£55,382)

195. The pleaded allegation was that payments were wrongfully made to Gavin Garrity (£49,313); Natalie Riley (£16,715); and Suzanne Brown (£6,069) when they were neither employees of nor providing services to Keyguard.

196. The claim in relation to Ms Riley was dropped in the course of trial. Mr Lawrence had written to Ms Riley at the end of her employment with Keyguard plainly acknowledging the fact of her employment as he acknowledged in his cross-examination. It was unclear why this claim had been persisted in. Mr Lawrence's evidence in cross-examination was as follows:

> Q. It is incorrect to say that Natalie Riley did not work for Keyguard?
> A. Yes, it is, because she did work for Keyguard, but I just did not know it.
> Q. How did that incorrect evidence come to be in your witness statement?
> A. (After a pause) All I can say is that that is a mistake on my part. I did not know that we had employed her. We found her HR file when we managed to get some boxes back from Armatus. I could not turn round to her and say, "I did not employ you so I am not going pay you." The poor girl has no money, I have to honour it.
> Q. So what is the basis then for the claim against Mr. Cowell and Mr. Warren in relation to Ms. Riley? If she worked for Keyguard, how can Keyguard reclaim the money for her?
> A. Exactly, it cannot.
>
> (Day 2 pages 222 -223)

197. With regard to Mr Garrity, the pleaded case was that he was not an employee of and/or did not provide services to Keyguard, and on that basis Keyguard claimed the entirety of the costs of his employment from Armatus.

198. The claim was supported by Mr Lawrence's witness statement which asserted that Mr Garrity "did not work for Keyguard". This assertion appears to have been solely based on the fact that Mr Garrity's employment contract was with Armatus. Under cross-examination, Mr Lawrence resiled from the position that Mr Garrity did no work for Keyguard so that Keyguard's case was unsupported by its own evidence.

> Q. It is wrong to say Garrity did not work for Keyguard?
> A. No, he did some work for Keyguard.

> Q. Thank you. Why do you think you give that wrong evidence in paragraph 107?
> A. I would guess probably because I did not read it carefully enough when I went through the statement.
> Q. Are there other parts of the statement you did not read carefully enough?
> A. Well, I would hope not.
>
> (Day 1 page 162)

199. Mr Garrity's own witness statement said that he worked for both Keyguard and Armatus and predominantly for Keyguard albeit he changed his evidence from stating that he worked "predominantly" for Keyguard to stating that it "was more of a 50/50 split". Mr Cowell's evidence was that Mr Garrity worked for Keyguard as a business development manager; he cited a number of contemporaneous documents evidencing work done by Mr Garrity for Keyguard. Mr Warren gives detailed evidence as to the extensive work undertaken by Mr Garrity for Keyguard. In cross-examination, it was put to Messrs Cowell and Warren that Mr Garrity worked 50% for Keyguard and 50% for Armatus (which they did not accept). That was the pleaded claim.

200. As for Ms Brown: Mr Warren gave evidence as to her employment by Keyguard under a contract of employment which was not before the Court. Her salary was c.£8,000. Her role was to vet staff and carry out background checks. Mr Lawrence's evidence in cross-examination was that he did not know whether she worked for Keyguard or not. His evidence was that he had not located her contract of employment although Mr Warren confirmed in oral evidence that it would have been necessary to have produced Ms Brown's contract in order for Keyguard to pass the ACS audit.

201. In short, there was no sustainable basis for asserting that the payroll payments were made in breach of Messrs Cowell and Warren's directorial duties.

(9) Payments to other individuals (£43,308.09)

202. The pleaded case was that payments were wrongfully authorised by Messrs Cowell and Warren in breach of their fiduciary duties to Scott Steadman (£28,067.15), Ben Hollis (£13,440.94) and Ravi Kumar (£1,800) who were not employees and/or did

not provide services to Keyguard.

203. In cross-examination, Mr Lawrence immediately conceded that each of these individuals worked for Keyguard. He accepted that Mr Steadman did some work for Keyguard, that Mr Hollis also provided services to Keyguard and that he was not in a position to positively assert that Mr Kumar was not providing services to Keyguard. Mr Cowell confirmed that the three individuals worked for both Keyguard and Armatus as did Mr Warren.

204. In his oral evidence, Mr Steadman agreed that he worked for Keyguard as well as Armatus and that he sent invoices to each company as appropriate and was paid by each as appropriate.

205. There was no basis for the claim that these individuals did not work for Keyguard or that the payments to them were authorised in breach of duty by Messrs Cowell and Warren.

(10) Leasing agreements with Shire: Mercedes and Aston Martin (£18,332.79)

206. The pleaded claim was that Mr Warren and Mr Cowell wrongly authorised Keyguard to enter into two leasing agreements with Shire Leasing plc on or around 17 November 2017 in respect of a Mercedes for Mr Warren and an Aston Martin for Mr Cowell which were purchased for the benefit of one or more of the Armatus companies rather than for the benefit of Keyguard, causing a loss to Keyguard of £18,332.79.

207. The Defendants' case was that the leases were properly entered into pursuant to the unanimous agreement of the directors at the board meeting on 28 November 2017 that there would be "parity" between the three directors. Mr Lawrence already had his own vehicle (a Range Rover, which was transferred out of Keyguard at the time of the SPA but which Keyguard had paid for and for which no reimbursement was given – the vehicle value showing as £40,000 in Keyguard's asset register). Although the cars were used for the business of both Keyguard and Armatus, Armatus paid for the insurance costs so it was reasonable for Keyguard to pay the leasing costs. Mr Warren's evidence was that Mr Lawrence would have seen the

vehicles and had access to the bank account from which payments were made.

208. The Defendants contended that, if the entry into the leases would otherwise have amounted to a breach of directors' duties, the action was approved with retrospective effect pursuant to the principle in *In re Duomatic Ltd* [1969] 2 Ch 365. It was asserted that the directors agreed at the meeting on 27 November 2017 that there should be parity between them. Alternatively, the ratification was granted by Messrs Lawrence, Cowell and Warren in their capacity as shareholders of Keyguard.

209. I do not accept the Defendants' contention that the leasing of the cars was agreed to or ratified at the meeting on 27 November 2017. The minutes of that meeting record an agreement that all directors would receive the same salary of £12,500 but there was no mention of parity in relation to cars. The only reference to vehicles indicated that there were to be no company cars:

> 6. All Directors agreed that ALL REASONABLE BUSINESS EXPENESE should be covered by the company and that these were to include Phone, IT equipment, Fuel Private medical. Vehicle repairs could not as this would then constitute a company car and as such the vehicle is not a company car."

210. In these circumstances, I consider that the cars were leased for the personal use of Messrs Cowell and Warren and not for the benefit of Keyguard, in breach of Messrs Cowell and Warren's duties under sections 173 and 177 of the 2006 Act and that Messrs Cowell and Warren are liable to repay the sum of £18,332.79.

(11) Leasing agreement with Shire: Quad bike (£1,048.76)

211. The pleaded case was that Mr Warren and Cowell acted in breach of the directorial duties in authorising Keyguard to enter into a lease of a quad bike with Shire Leasing plc which was not for the benefit of Keyguard but was for the benefit of the Armatus companies. Mr Lawrence's witness statement simply asserted "They also bought a quad bike".

212. Mr Warren's evidence was as follows. In January 2018 Keyguard was bidding for a

guarding contract at Whittlebury Hall, a major campsite at Silverstone. Mr Lawrence suggested to Mr Warren that in anticipation of winning the contract, Keyguard should be prepared and that a quad bike should be hired. Mr Cowell duly made the arrangements for the lease. In the event, Whittlebury Hall decided to remain with their current supplier. Instead of letting the quad bike sit idle, it was decided that it should be used by ARSS, who ran a similar campsite at Silverstone. Mr Warren admitted that in the event the quad bike was only used by Armatus. The contract was eventually novated to Armatus.

213. Mr Lawrence admitted in cross-examination that there was a presentation to the owners of Whittlebury Hall but denied that he approved of a quad bike being purchased before the Whittlebury Hall contract had been secured (or at all) as he considered that quad bikes to be a massive health and safety risk. His evidence was that he knew nothing about the quad bike until the administration of Armatus.

214. It is unclear from the evidence whether Mr Lawrence approved the purchase of the quad bike in anticipation of the Whittlebury Hall contract but even assuming that Mr Lawrence did not, I do not consider that, by authorising the lease in anticipation of winning the Whittlebury Hall contract (which I believe is what they did) Messrs Cowell and Warren were acting in breach of duty. There may have been a commercial misjudgement as to Keyguard's prospects of obtaining the contract but the lease was entered into for the purposes of Keyguard's business. The suggestion put to Mr Cowell in cross-examination that there should have been cross-charges between Keyguard and the Armatus companies was not part of Keyguard's case.

(12) Payments to third parties (£1,815.20)

215. The pleaded case was that Messrs Cowell and Warren wrongly authorised payments to be made five third parties from Keyguard's bank account without justification and in breach of their directorial duties. Two of the claims were abandoned in the course of the trial.

216. The first of the payments (£1,080) was made to Remote Trauma Ltd on 12 September 2018. Mr Warren's evidence was that Keyguard needed to order vehicle trauma kits,

which were first aid kits, to be placed in four vehicles in use at Stanton Cross and other Keyguard sites. This was to meet the recommendations of risk assessments which identified some sites did not have sufficient equipment. Mr Warren exhibited the order confirmation for this sum, generated on 11 September 2018.

217. It was not Keyguard's case was that the kit had been bought for the benefit of Armatus but rather that cheaper kits could have been bought instead. Mr Lawrence's evidence was as follows:

> There is a difference between a trauma kit, which is what you would use in a hostile environment, say, so Mali, for example, where they had contracts, where you look at gunshot wounds, a serious injury, and a first aid kit that you would use if you cut your hand on, say, a building site. One would cost you a huge amount of money because it is a remote location trauma kit. One would cost you £15 from Boots
>
> (Day 2 page 238)

218. Mr Cowell disagreed that a cheap first aid kit would have sufficed. How much to spend on a first aid kit was an issue of commercial judgment for the directors. The complaint that too much was spent is not a valid basis for a claim that Messrs Cowell and Warren acted in breach of duty.

219. The second payment was to Optima Storage Solutions in the amount of, £208.40. Mr Warren's evidence was that he and Mr Cowell decided in August 2018 to rent a small storage container for old ARSS and Keyguard books and records. A contemporaneous email evidenced some of the charges that were to be paid. One month's cost was incurred before the administrators took over Keyguard.

220. Mr Lawrence's evidence in cross-examination was that Keyguard did not have anything that needed storing, that they used collapsible cardboard boxes for storage which would fit on a shelf. It was suggested in cross-examination that there was no reason for Keyguard to have incurred the cost.

221. Again, whether or not it was reasonable to rent a storage container rather than using cardboard boxes for storage is a management decision which the Court is not in a position to second guess. There was no valid basis for the contention that the expense was authorised in breach of duty.

222. The third payment was to Avetta LLC in the amount of £526.80. Avetta provided the

platform on which suppliers become accredited for work with G4S. Keyguard was required to become accredited in order to enter into contracts with G4S. The cost related to the charges payable for that process.

223. In cross-examination, Mr Cowell gave evidence that the value of the Avetta platform for Keyguard was that G4S put up potential work through that platform and that it was through the platform that Keyguard would have picked up more work with G4S. Mr Lawrence's complaint was that the G4S contract was manned by Armatus guards and that Keyguard only made a minimal amount on it but I accept Mr Cowell's evidence that Keyguard itself might have obtained work through the Avetta platform.

224. Taking account of this evidence, I am satisfied that this expense was properly incurred and does not disclose any breach of duty on the part of Messrs Cowell and Warren.

(13) Payments to Moon Computers (£7,415.30)

225. The pleaded allegation was that a payment of £7,415.30 was wrongfully made to Moon Computers Ltd between 30 August 2017 and 25 July 2018.

226. Moon Computers supplied Keyguard with IT support, telephone lines and broadband to the office, equipment and stationery, among other things. Mr Warren exhibited two invoices by way of example, and there were also emails between Moon Computer staff and Keyguard staff over the period – all of which evidence services being provided to Keyguard. None of that evidence was challenged in cross-examination of Mr Cowell or Mr Warren. Mr Lawrence accepted in cross-examination that Moon Computers provided services to Keyguard but complained that the services were too expensive.

227. Again, whether the services were too costly was a commercial decision and not a matter on which the Court can usefully make any determination and not a valid basis for finding that Messrs Cowell and Warren acted in breach of duty.

(14) Payments to HMRC (£53,927)

228. The pleaded allegation was that Messrs Cowell and Warren wrongly authorised payments out of Keyguard between 9 August 2017 and 31 August 2018 in the sum of £314,271.14 to Armatus. The five payments are each described in Keyguard's bank statements as "Bill payment HMRC followed by a reference which was Keyguard's tax ID number. It was said the payments were made at a time when Keyguard owed £220,000 to HMRC for PAYE and VAT.

229. After being urged by the Defendants' solicitors to investigate the matter with HMRC, in October 2022 Keyguard's solicitors informed the Defendants' Solicitors that HMRC had in fact received the bulk of the questioned transfers and that only £53,927.77 was now in issue. This sum comprised five payments made between 14 June and 31 August 2018. According to Mr Lawrence's witness statement, this sum was "missing from the HMRC" though he accepted in cross-examination that all sums due to the HRMC had been paid by Westminster after it acquired Keyguard.

230. This claim, unlike the other heads of Claim 2, was essentially a fraud claim. According to a letter from the Defendants' Solicitors dated 6 May 2020, Keyguard had alleged that the payments amounted to "*clear fraudulent behaviour*". In their closing submissions, the Claimants contended that only Mr Cowell controlled the Keyguard bank account at the material time, that Mr Lawrence would have no reason to label payments to ARSS's account as being payments to HMRC and that this was the perfect ploy to disguise the true nature of the payments; there was no documentary evidence to support Messrs Cowell and Warren's claim that the payments were in respect of invoices issued by ARSS to Keyguard.

231. It was common ground that the five transfers totalling £53,927.77 were made from Keyguard to ARSS's account at Lloyds Bank in Corby with sort code 309226 and account no: 15842560 and that at the time the payments were made, ARSS's account at Lloyds Bank was overdrawn. Each of the payments were paid out shortly after receipt into an ARSS bank account with Barclays.

232. Messrs Warren and Cowell contended that the payments were in respect of services provided by ARSS to Keyguard. In his witness statement, Mr Warren referred to a spreadsheet kept by ARSS which was in the trial bundle recording invoices sent to

Keyguard, against which he was able to identify four of the five transfers. Mr Warren was confident that the remaining invoice (for £10,000) could be located if Keyguard gave full disclosure of invoices in its possession or allowed access to its Sage system. He said that the Defendants were unable to provide evidence of the five invoices themselves because ARSS is in liquidation and despite requests the liquidators have been unable to locate the invoices.

233. I was referred to correspondence in February and March 2023 in which the parties' Solicitors discussed arrangements to allow the Defendants' accounting expert to have access to the Sage data to search for relevant invoices. Issues were raised as to the extent of the proposed search and as to confidentiality. In the event, the Defendants' expert decided that he did not need access to the Sage data. The Defendants' Solicitors subsequently asked for details of the searches carried out by the Claimants on the Sage system. I was told by the Claimants' Counsel that by the time of the trial a search had been carried out of the Sage system by Ms Kidman who had not found any relevant invoices and that an offer had been made to the Defendants' legal representatives to review Ms Kidman's laptop, on which the Sage records were held, which was with her in court, to which the Defendants' response was that if Ms Kidman has looked and not found any invoices there was no point in carrying out a further search but that this offer did not come close to discharging Keyguard's disclosure responsibilities. The Defendants contend that they have been hampered in their ability to put all relevant evidence before the Court because of Keyguard's failure to give proper disclosure.

234. The fact that the payments were labelled HMRC in the Keyguard bank statements when they were not made to HMRC is certainly anomalous and no explanation has been put forward for it. Either the payments were properly made in respect of a Keyguard invoices, albeit with an inaccurate label in the bank statement, or they were made without justification. The fact that four of the five the payments were shown in the Armatus spreadsheet is consistent with them have been properly made, albeit that the relevant invoices have not been found. Given the issues arising in connection with disclosure, I do not consider that it would be right to draw any negative inference from the absence of documentation. The incorrect description in the bank statement is consistent with the Claimants' case that the payments were being

disguised with an intention to mislead but, in itself, I do not consider that this is sufficient to establish that the payments were being made to Armatus without justification and fraudulently.

235. In summary, I am not satisfied that the five payments made to Armatus though labelled as payments to HMRC were made without justification and in breach of the directorial duties owed by Messrs Cowell and Warren to Keyguard.

Conclusion in relation to Claim 2

236. For the reasons set out above, I dismiss all the heads of claim in Claim 2 with the exception of the claim in respect of Mr Warren's expenses (£890.18) and the claim in respect of the car hire (£18,332.79).