Neutral Citation Number: [2026] EWHC 963 (KB)

Case No: KB-2024-002244

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/04/2026

Before:

THE HONOURABLE MR JUSTICE SWEETING

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Between:

LUX FILMS Ltd	**Claimant**
- and –	
(1) Andrew FOWLER **(2) Andrew Fowler Media Ltd**	**Defendants**

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Lucy Bone (instructed by **B P Collins LLP**) for the **Claimant**
The **Defendants** did not appear

Hearing dates: 21st April 2026

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Approved Judgment

This judgment was handed down remotely at 11.30am on 24.04.2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

Mr Justice Sweeting:

Introduction

1. This claim arises out of the breakdown of the relationship between the three directors and shareholders of the Claimant, Lux Films Ltd ("Lux" or "the Claimant"), a small UK media production company specialising in video content. Lux was incorporated in February 2016. There has never been a shareholders' agreement. Lux's three issued shares have always been held in equal proportions by Gareth Lowndes, Mark Woodhead and Andrew Fowler ("AF"). All three had worked together on a freelance basis for a large client, Herbalife, between 2008 and 2016.

2. The Claimant's principal evidence came in the form of witness statements from Mr Woodhead and Mr Lowndes who also both gave oral evidence confirming the contents of their witness statements, and answering some questions posed by the court, but otherwise not adding to the evidence set out in writing. AF's witness statements were before the court, but he did not give evidence in circumstances I shall explain. I allowed an application to refer to them as hearsay evidence and they were relied on in part by the Claimant to the extent that they contained, statements which the Claimant characterised as, admissions or factual materials supporting its case. I accepted the evidence of the Claimant's witnesses on all of the central issues in the case concluding that AF's evidence was not credible, was internally inconsistent and contradicted by contemporaneous material.

3. From incorporation until late 2024, all three shareholders were also statutory directors and then salaried employees of Lux, although none had written contracts of employment. AF contends that the three individuals continued in substance to operate independently as freelancers, becoming employees only for tax purposes. The precise terms of his engagement with Lux are disputed. AF is the sole director and shareholder of the Second Defendant Andrew Fowler Media Ltd ("AFML"), a company which trades as "Rotate Films". AFML now operates in the same market as Lux and provides video production services to commercial clients.

4. Relations between the directors deteriorated in early 2023. In March 2023 AF indicated that he wished to exit the business. Discussions between the parties continued over the ensuing months, including a threat from AF to launch an unfair prejudice petition, but did not result in any agreed exit or restructuring. AF did not dispute that he then began to undertake work independently of Lux through AFML whilst he remained a director, shareholder, and employee of Lux.

5. Lux's case is that, while still occupying those positions, AF acted in breach of his duties to the company. In particular, Lux alleges that AF diverted business opportunities away from Lux to AFML, using confidential information obtained by virtue of his position as director and employee. It is alleged that AFML serviced clients of Lux, advertised for work which Lux could have undertaken, and presented itself to the market in a way which drew on Lux's goodwill, including by using Lux's testimonials with Lux's name replaced. Lux also alleges that AF recruited Lux personnel for AFML and retained exclusive access to Lux's digital "Edit Share", which contains video footage owned by Lux.

6. Lux claims damages and/or an account of profits and/or restitutionary relief for alleged breaches of fiduciary duties, statutory director's duties, contractual and implied duties of good faith and fidelity, misuse of confidential information, and a related unlawful means conspiracy between the Defendants. It also seeks delivery up and destruction of its property and further injunctive relief. Lux alleges that it has suffered loss by way of diverted work, loss of follow-on business, reputational damage, lost management time, and losses arising from AF's resignation at short notice.

7. AF and AFML dispute liability. AF accepts that he owed statutory and fiduciary duties as a director but denies that his conduct was improper or in breach of those duties. He contends that he was excluded from the management of Lux after the relationship broke down, leaving him with little choice but to pursue his own interests through AFML. He further contends that the work undertaken by AFML was work which Lux was unwilling or unable to perform, and he disputes that Lux has suffered the losses alleged. The alleged conspiracy was denied and a point taken that it was unsustainable as a matter of law.

8. The case was listed for a trial of liability only with issues of quantum and final remedy to be considered subsequently. The principal issues for determination therefore include:

   i) the nature and scope of AF's duties to Lux during the relevant period;

   ii) whether AF misused confidential information or diverted corporate opportunities in breach of those duties;

   iii) the extent to which AFML is liable as a knowing recipient or conspirator;

   iv) whether AF's resignation constituted a breach of any obligation as to notice; and

   v) what remedies, if any, should follow for the purpose of a further hearing, including damages, an account of profits and injunctive or restitutionary relief.

Insolvency

9. Shortly before the trial, the Defendants entered into formal insolvency arrangements, AF having initiated both processes. On 18 March 2026 AFML entered voluntary liquidation. On 20 March 2026 a bankruptcy order was made against AF.

10. No advance notice of the impending insolvencies was given to Lux. Until that point there was no indication that AFML was insolvent. Its most recent accounts showed substantial trade debtors, and Lux first learned of the insolvencies on or about 16 March 2026, at a time when trial preparation was substantially complete and significant costs had been incurred.

11. The timing of the insolvencies coincided with a series of adverse procedural developments for the Defendants, including the dismissal of an application to vary expert directions, in relation to forensic accountancy evidence, as an abuse of process and the making of a costs order in favour of Lux in the sum of £33,465.98, payable by 2 March 2026. That costs order has not been complied with. Shortly thereafter the Defendants' solicitors ceased to act, and the Defendants indicated that they would act in person.

12. AF appears to have proceeded on the mistaken assumption that insolvency would result in an automatic stay of these proceedings. As regards AF personally, his bankruptcy does not give rise to an automatic stay, although the court has a discretionary power to impose one. As regards AFML, the liquidation was voluntary, with the consequence that no automatic stay arose. No application for a stay was made, and the proceedings have therefore continued.

13. Following the insolvencies, AF accepted that he could not represent AFML and that conduct of the case lay with the liquidator. He also accepted that proceedings against him personally were not stayed as of right and indicated that conduct of his part of the litigation would pass to the Official Receiver.

14. In practice, however, neither the Official Receiver nor the liquidator has indicated any intention to participate in the proceedings. Trial bundles and case management documents were served on AF, the Official Receiver and the liquidator, but no further evidence or submissions were filed on behalf of either Defendant, nor was any position articulated as to participation at trial. The immediate consequence was that the Defendants ceased to engage with the proceedings and made no appearance at the trial.

15. I considered at the outset of the hearings whether there should, nonetheless, be a stay. In concluding that there should not be I took into account that:

    i) The Defendants' defences had been set out in the pleadings and the witness statements.

    ii) AF had not sought to attend court to give evidence.

    iii) There had been no application by the Official Receiver as trustee in bankruptcy or the liquidator to stay the proceedings.

    iv) There was a clear advantage to the insolvency proceedings if the court resolved the issue of the Defendants' liabilities now.

    v) It was in the interests of justice and in accordance with the overriding objective for the trial to proceed it having been listed and substantial costs having been incurred.

16. I was therefore required to determine liability on the basis of Lux's evidence and the contemporaneous documents, including statements made by AF, pleadings, affidavits, and correspondence.

17. The insolvencies also led to further consideration by the Claimant of remedies and the claims for proprietary and restitutionary relief arising out of the alleged breaches of duty. The Claimant applied to amend to add an express claim for a declaration that any profits made by the Defendants by virtue of breach of fiduciary duty and/or breach of duty of confidence and/or knowing receipt of confidential information were held on constructive trust. That would in general terms be an uncontroversial consequence of the matters relied on by the Claimant if proved. I allowed the application in the terms of the draft Amended Particulars of Claim provided to the court.

Background and Findings

18. The background and my findings of fact are as follows.

19. The parties' respective roles within Lux were broadly delineated: Mr Lowndes focused on filming, Mr Woodhead on directing and production, and AF on video editing. As the business developed, AF became increasingly office based and assumed primary responsibility for Lux's day-to-day administration. This included liaising with clients, managing schedules, coordinating freelancers, overseeing post-production workflows, maintaining access to Lux's digital systems, and dealing with accountants and other external advisers.

20. Lux did not maintain a large permanent workforce. Instead, it operated a flexible model, drawing on a pool of freelancers engaged, as required, for particular projects. The relationships with those freelancers, and the arrangements under which they were engaged, were developed in the course of Lux's business and used repeatedly across projects.

21. As Lux's business developed, it moved beyond an informal, freelance based operation and invested in physical premises, personnel, equipment and training in order to support and expand its commercial activities.

22. In 2019 Lux opened a dedicated office in Frome, where AF lives. This reflected a deliberate decision to establish a stable operational base for the company's work, in particular to support post-production, administration and client liaison. In July 2020 Lux moved to larger office premises in Frome to accommodate its growing workload and staffing needs.

23. Lux also invested in staff. From July 2020 it engaged junior personnel to support the directors' work, initially on a freelance basis. Tillie Mabbutt was recruited as a freelance production assistant and Sammie Fry as a freelance junior video editor. As the business continued to grow, Lux converted those arrangements into permanent employment. With effect from 1 April 2022, both individuals became employees of Lux, with Ms Mabbutt appointed as Production Coordinator and Ms Fry as Video Editor.

24. At the same time, Lux formalised the employment status of its directors. From February 2022, Mr Lowndes, Mr Woodhead and AF became full-time employees of Lux, each receiving a salary and pension contributions. This step was consistent with Lux's evolution into a more structured and established business and reflected an intention that the directors' working time and skills would be devoted primarily to Lux.

25. One issue raised in the proceedings was whether AF was subject to an implied contractual term requiring him to work a 40-hour week for Lux, and whether he breached that obligation by ceasing to devote his working time to Lux while remaining employed and paid. It is convenient to deal with the implication of such a term at this point.

26. As there was no written contract of employment between AF and Lux. Lux therefore relied on terms implied by law and by fact to define the obligations of AF's employment. Lux contended that given that from February 2022 onwards, AF was

employed as a full-time employee, it was an implied term of that employment that he would work a normal full time working week, said to be approximately 40-hours per week in the service of Lux.

27. That contention was advanced as part of Lux's broader case that AF ceased doing substantive work for Lux from around spring 2023; nonetheless remained employed and continued to receive salary and benefits; and instead devoted his working time to AFML and competing activities.

28. I consider thus framed the issue was not whether the court should imply a rigid, express term fixing AF's hours at exactly 40 hours per week as a freestanding contractual obligation but rather, whether AF was obliged, as a full-time employee in a senior role, to devote his working time and energies to Lux's business, and whether his failure to do so amounted to a breach of contract and of the implied duty of fidelity. In that context, reference to a "40-hour week" was used as a proxy for full-time service, rather than as an attempt to impose a mechanistic or clock-based obligation. I would in any event decline to find that there was the necessary implication of a term of such exactitude. For the reasons I shall set out, the case does not turn on the implication of a specific numerical term as to hours. The critical finding is that AF failed to perform the substance of his employment obligations, by withdrawing his labour from Lux and redirecting it to AFML.

29. Lux made significant capital investment in equipment and digital infrastructure. In January 2023 it purchased the "Edit Share" system at a cost of approximately £30,000. This system was central to Lux's operations, providing secure storage and access to raw and edited footage shot at events and forming part of Lux's core intellectual property. The system was maintained at Lux's expense and used across projects for multiple clients.

30. Lux also invested in other office equipment and resources necessary for professional video production and post-production work, including computers and related hardware, which were housed at the Frome office and treated as company property.

31. In addition, Lux invested in training for its directors and staff. In particular, Lux paid for AF to attend the Den Lennie F Stop Academy during 2022. This was a professional development course designed to enhance marketing and business development skills, and it was undertaken as part of AF's role within Lux, for the benefit of the company.

32. These investments in premises, personnel, equipment and training were made from Lux's funds and for Lux's benefit. They formed part of a sustained effort to build the company's capacity, reputation and client offering, and to place it on a more professional and scalable footing.

33. Lux obtained work through a combination of industry contacts, repeat business, recommendations and word of mouth. Over time it developed a client base, including corporate clients in the wellness and events sector. Client relationships were treated as belonging to Lux, even where the initial introduction had been made by one of the directors.

34. The directors did not operate as separate profit centres or independent contractors competing for work. Income generated from client projects was invoiced by Lux, paid

into Lux's accounts and treated as company revenue. The directors were remunerated by modest salaries and, where appropriate, dividends. The focus was on growing a valuable and sustainable business rather than short term gain.

35. Lux's intellectual property, including raw footage, edited content, client materials and project files, was stored centrally using shared digital systems, including the company's "Edit Share".

36. Strategic decisions about the direction of the business, pricing, scope of work and major projects were taken informally between the directors, reflecting the small size of the company and the trust that existed between them. There was no suggestion, prior to the breakdown of relations, that any director was entitled to appropriate Lux's business opportunities for personal use.

37. Since, over time, AF assumed greater responsibility for administrative matters and became more office based, he became the point of contact for much of Lux's dealings with clients and generally managed their relationships. He did so particularly with an important client, doTERRA, from whom he secured business for Lux in 2019.

38. Lux successfully produced events for doTERRA in both 2021 and 2022. In the course of planning the scope of work it could complete for doTERRA's May 2023 convention in Lisbon, a disagreement arose between Lux's directors. All three directors eventually agreed that they could not provide services for the full live event as requested. Mr Lowndes believed that the circumstances of the event would have led Lux to have to compromise on its standards and safety protocols, and so did not wish to undertake the work. The three men did however agree to produce a "highlights" video for doTERRA. AF wanted all three directors to travel to Lisbon for this. The other two directors did not wish to. AF was disappointed that only he attended in person.

39. A central issue revolves around AFML's work for doTERRA, particularly in regard to the 2024 convention. Although Lux was expecting to work with doTERRA again, it was informed that doTERRA was working with another company. That proved to be AFML, in conjunction with a company trading as "Fine Arts". AF's evidence was that the work for doTERRA in 2024 was different from Lux's usual work, because it involved a delegation of creative control to Fine Arts, something he asserts that his fellow Lux directors would not have been comfortable with. AF's case was that he built the relationship with doTERRA and that his fellow directors had no interest in engaging with them. He argues that he was by the latter stages, effectively, excluded from Lux and that there was an explicit or implicit agreement he could pursue business on his own account. He pointed to an agreement with Mr Woodhead in early March 2023, that AF was to focus on doTERRA and Mr Woodhead on another client, Herbalife. Mr Woodhead's evidence as to this is that it was a short-term allocation of resources and capacity within the context of Lux's business and was not intended to be the start of AF working independently for doTERRA or anyone else without Lux. Mr Woodhead said:

> "As a result of the disagreement about who should attend the doTERRA event in Lisbon, Andrew and I had a discussion over the phone about how Lux could service both Herbalife and doTERRA moving forwards. I had a phone call with Andrew in early March 2023 about how we could best achieve this. It was

> clear to me that Andrew no longer had an interest in working with Herbalife. I suggested that in the short term, we divide our resources so that he could focus on the current job for doTERRA and I could focus on servicing Herbalife. Andrew agreed.
>
> I did not say that I did not want to be involved in producing videos for doTERRA. I was simply trying to find a solution where Lux could continue to service both Herbalife and doTERRA. It was never agreed that he would service doTERRA independently of Lux, or that I would have Herbalife as my client. It was all going to be under the Lux umbrella. He would be using the Lux office and Lux equipment when working with doTERRA, and I would also continue to work with Herbalife through Lux. We had enough resources to continue working with both doTERRA and Herbalife. At no point did I say that we should separate as a business or each take a client. I remember clarifying this plan with him three times over the phone. I wanted to make sure that we were both on the same page and that this was going to work for Lux."

40. On 14 June 2024 Lux suspended AF pending investigation of unauthorised competitive activity. Lux subsequently sought undertakings, which were not forthcoming. On 5 July 2024 Lux issued proceedings and applied for interim injunctive relief. Following a contested hearing, the court granted an injunction on 18 July 2024, including orders for delivery up and deletion of Lux's documents, affidavits giving details of competitive activity undertaken since February 2023, and limited "springboard" relief restraining solicitation or dealings for a defined period.

41. In accordance with the injunction, AF provided evidence that AFML had generated in excess of £450,000 plus VAT in gross revenue between February 2023 and September 2024 from work undertaken for a number of businesses, including doTERRA. Shortly thereafter, AF gave seven days' notice of resignation as a director and employee of Lux, effective from 26 September 2024. Lux contends that reasonable notice was six months and that the short notice caused it further loss. AF was both a director and an employee of Lux. There was no express written contract governing termination in either capacity. In those circumstances, the law implies a term that termination must be effected on reasonable notice, the length of which depends on all the circumstances.

42. As a matter of employment law, where no express notice provision exists, the common law implies a requirement of reasonable notice, which may exceed the statutory minimum where the employee holds a senior position, has managerial responsibilities, and is integral to the employer's business. There can be no doubt that all three directors were key players in the Claimant's business and given the division of responsibilities and skills, not readily replaceable.

43. Separately, as a director and fiduciary, AF was under an obligation not to resign in a manner which was calculated to harm the company or to exploit his own prior wrongdoing. While a director is generally free to resign, the manner and timing of resignation may be relevant where it forms part of a course of disloyal conduct.

44. Lux contends that, in those circumstances, a reasonable notice period was six months, and that resignation on one week's notice fell far short of what was required.

45. Lux further relies on the context in which the resignation occurred. AF resigned shortly after complying with the interim injunction and after his competitive activities had been exposed. The resignation was not part of an orderly disengagement, but occurred against a background of conflict, disruption, and ongoing litigation.

46. I agree with Ms Bone's submissions on behalf of the Claimant in this respect and conclude that the appropriate implied notice period is one of 6 months.

47. Lux alleges that AF's failure to give reasonable notice caused it additional loss, including:

    i) loss of management continuity at a critical time;

    ii) loss of opportunity to effect an orderly handover of responsibilities, systems and client relationships;

    iii) additional management time and cost incurred by the remaining directors in stabilising the business; and

    iv) exacerbation of the damage already caused by AF's prior breaches of duty.

48. I noted that the failure to give adequate notice did not appear to be pleaded as an itemised breach of duty in The Particulars of Claim under "Particulars of Breach". Nevertheless, it was evident that it was widely referred to as a breach in other documentation prepared for trial and of which the Defendants were aware. The Defence sets out a positive case on the issue of inadequate notice and responds to the loss pleaded so there can be no doubt that there was a simple slip in the pleading. I have proceeded on the basis that the allegation of breach was before the court without requiring any further formal amendment which would simply have incurred costs for no good purpose.

49. Following the events of 2024 and the provision of information by AF, Lux was able to investigate AF's conduct and to collate the evidence of breach of duty on which it relied at the trial.

Breach of Duty - Findings

50. The evidence establishes that, while remaining a director and employee of Lux, AF made extensive use of Lux's physical, digital, and human resources for purposes unconnected with, and adverse to, Lux's interests.

51. First, AF continued to use Lux's office premises in Frome as the base from which he conducted his activities. He occupied the office on a day-to-day basis, worked from Lux's equipment, and retained possession of that equipment even after relations had deteriorated. There was no evidence that the office ceased to function as Lux's operational base during this period; rather, AF continued to enjoy the benefit of it while pursuing competing interests.

52. Secondly, AF made use of Lux's IT systems and digital infrastructure, including company email accounts, shared drives and cloud-based storage. He retained control of access to those systems and, on occasions, restricted or removed access by Mr Lowndes and Mr Woodhead. In particular, he maintained exclusive control over the Edit Share system.

53. Thirdly, there was clear evidence that AF used Lux's confidential digital assets including footage stored on Edit Share, client contact details, pricing information, templates, and contractual documents in furtherance of work undertaken for AFML. Lux's footage and testimonials were reused in marketing materials for Rotate Films, and Lux's pricing structures and budgets were mirrored in quotations and proposals issued by AFML.

54. Information will be protected as confidential where three requirements are satisfied:

    i) the information has the necessary quality of confidence;

    ii) it is imparted or acquired in circumstances importing an obligation of confidence; and

    iii) it is used without authorisation to the detriment of the confider.

55. These principles are well established and were not in dispute.

56. In the employment and fiduciary context, the law further recognises that confidential information extends beyond formal trade secrets and includes information which, although not secret in isolation, derives its value from collation, context and currency.

57. I find that Lux possessed confidential information which AF acquired and used by virtue of his position as director and employee.

58. That confidential information included, in particular:

    i) client contact details, decision-makers, preferences and pipeline opportunities (including doTERRA and other clients);

    ii) Lux's pricing structures, budgets, tender documents and negotiated commercial terms;

    iii) proposal materials, pitch documents and contractual templates;

    iv) operational and production methodologies developed through Lux's work on major events;

    v) information relating to freelancers and suppliers, including identity, capability, availability and rates; and

    vi) Lux's work product, including raw and edited footage stored on its Edit Share system.

59. Although individual elements of that information might not, taken in isolation, have been secret, the information as a whole derived its value from collation, context and

currency. It was commercially sensitive, not in the public domain, and provided a competitive advantage if used by a rival.

60. The information was generated through Lux's business, acquired by AF solely through his role at Lux, and stored on Lux's systems. It was treated as confidential within the company and subject to restricted access.

61. Its use for the benefit of AFML enabled the diversion of Lux's clients and opportunities and caused detriment to Lux.

62. I therefore find that the information relied upon by Lux had the necessary quality of confidence, was acquired in circumstances importing obligations of confidence, and was misused without authorisation.

63. Fourthly, AF made use of Lux's employees and their working time for non-Lux purposes. Junior employees who were paid by Lux were directed by AF to assist with work which was, in substance, for AFML. They were also drawn into concealing that activity from Mr Lowndes and Mr Woodhead. This included assisting with the preparation of materials, the transfer of information, and the maintenance of parallel workstreams.

64. Fifthly, AF used Lux's relationships with freelancers and suppliers for his own competing purposes. Freelancers who had been identified, engaged and tested through Lux's projects were approached and engaged for AFML work, while AF was still acting as a director and manager of Lux. In doing so, AF drew on Lux's accumulated knowledge of those individuals' skills, availability and suitability, thereby avoiding the time, cost and risk which Lux itself had borne in developing those relationships.

65. Sixthly, AF made use of Lux's goodwill and commercial reputation. He represented to third parties that Rotate Films was a re-branding or continuation of Lux, and he relied on Lux's past work, particularly for major clients, as proof of experience and capability when pitching for AFML work. That use of Lux's reputation was made possible only by his position within Lux and his access to its materials and history.

66. Seventhly, the evidence shows that AF continued to receive salary and benefits from Lux throughout this period, notwithstanding that he had, by his own account, ceased to devote his working time to Lux's business. Lux therefore continued to fund his activities, both directly through remuneration and indirectly through the provision of resources, while deriving no corresponding benefit.

67. Taken together, the evidence demonstrates a sustained course of conduct in which AF exploited Lux's premises, equipment, systems, staff, confidential information, commercial relationships and goodwill in order to advance a competing business. That use of Lux's resources was not incidental or trivial, but central to AFML's ability to secure and perform the work in question.

68. I am satisfied that this conduct amounted to a misuse of Lux's resources and confidential information, carried out without authority, without disclosure, and in circumstances where AF's continuing access to those resources and information depended entirely on his fiduciary and contractual position within Lux. The overall purpose of this conduct was to promote the interests of AFML by the diversion of

business opportunities away from Lux. The way in which it amounted to a breach of the various duties that AF owed to Lux can be illustrated by reference to doTERRA which was the most important single business relationship which Lux had developed.

Fiduciary Duties

69. As a director of Lux, AF owed fiduciary duties of loyalty, including the duties to avoid conflicts of interest and not to make unauthorised profits from his position.

70. Through his role at Lux, AF acquired confidential and commercially sensitive information concerning doTERRA, including client contacts, pricing structures, budgets, production methodologies, contractual templates, crew arrangements and footage from previous events. That information was a corporate asset of Lux. AF's knowledge of it arose solely by reason of his fiduciary position and not as part of his general skill or experience.

71. While still a director, AF used that information to pursue and secure doTERRA business through AFML. He prepared proposals and budgets for AFML which closely reflected Lux's prior work for doTERRA, relied on Lux's accumulated know how, and used Lux's footage and testimonials to market AFML's services.

72. AF did not disclose to Lux that he was exploiting the doTERRA opportunity through AFML, nor did he seek Lux's informed consent. On the contrary, he concealed his activities, restricted the co-directors' access to relevant materials, and represented to third parties that AFML was a continuation or re-branding of Lux.

73. In doing so, AF placed himself in a clear position of conflict and appropriated for his own benefit, through AFML, a maturing corporate opportunity which fell squarely within Lux's line of business. The diversion of the doTERRA business was achieved by the exploitation of information, goodwill and opportunities which AF was bound to use only for Lux's benefit.

74. I therefore conclude that AF acted in breach of his fiduciary duties, including the duty to avoid conflicts of interest and the duty not to make unauthorised profits from his position as director.

Statutory Duties (*Companies Act 2006*)

75. AF was also subject to the statutory duties imposed by the Companies Act 2006, including the duty to promote the success of Lux (section 172), the duty to exercise independent judgment (section 173), and the duty to avoid conflicts of interest (section 175).

76. AF's conduct in diverting the doTERRA business to AFML was incompatible with the promotion of Lux's success. It deprived Lux of a major client relationship and of the opportunity to pitch for, and potentially secure, further work.

77. AF failed to exercise independent judgment in Lux's interests. Instead, his personal interest in establishing and advancing AFML dictated his conduct while he remained in office.

78. AF knowingly placed himself in a situation of direct conflict by exploiting, through AFML, a business opportunity which had come to him by virtue of his role at Lux and which Lux was entitled to consider for itself. He did not declare the nature or extent of his interest in AFML's pursuit of that work, nor did he take steps to manage or avoid the conflict.

79. AF's conduct therefore amounted to breaches of his statutory duties under sections 172, 173 and 175 of the Companies Act 2006.

Employment Duties

80. AF was also employed by Lux and owed an implied contractual duty of good faith and fidelity.

81. In the course of his employment, AF was entrusted with Lux's confidential information and was required to use it solely for Lux's purposes. He was also required not to compete with Lux or to place himself in a position where his interests conflicted with his employer's.

82. AF breached those duties by using Lux's confidential information, working time and resources to secure and perform doTERRA work for AFML while remaining employed and paid by Lux. His conduct involved active competition with Lux during the subsistence of his employment, not merely preparatory steps for future competition.

83. AF further breached his duty of fidelity by concealing his competitive activities, discouraging disclosure to his co-directors, and misrepresenting AFML to clients and others as a continuation or successor of Lux.

84. I therefore conclude that AF was in breach of his contractual and implied duties owed to Lux as an employee.

85. It is clear that AF appreciated that what he was doing was a breach of his various duties. There is direct documentary evidence in which AF acknowledged, in terms, that diverting business away from Lux while he remained a director was improper. In a contemporaneous message referring to the doTERRA convention in Turin on 20 May 2023, AF described his conduct in "taking business away from Lux" as "a bit naughty" in light of his status as a director, albeit adding that it might be "hard to prove".

86. That statement is telling. It reflects an appreciation that his conduct was inconsistent with his obligations to Lux and that its impropriety lay in his continuing office and role. It also reveals an awareness that concealment was necessary to avoid detection. The most plausible inference is that AF understood that he could not lawfully do what he was doing while remaining in office and employed and therefore sought to maintain the benefits of his position while quietly diverting business elsewhere.

87. There are texts from March 2023 from AF where he referred to advice from his accountant to liquidate Lux and spoke of trying to "bag the lot" of Lux's clients as a result.

88. AF described his website for Rotate as "pretty close" on 15 March 2023 in communications with a freelancer and provided that same freelancer with his Rotate

email address, explaining that, given a dispute between him and other directors, he would like to work through "my new company entity". When speaking to another freelancer after an event in May 2024, AF requested that he take down an Instagram post, presumably one which related to the work for doTERRA, with AF stating "I need to be really careful about documented evidence of my business outside of Lux" and then, when asked if general photos of Turin could stay up, stated: "...general Turin is fine. Doesn't prove anything."

89. In relation to Sammie Fry, at that time a permanent Video Editor employed by Lux and a freelancer for Lux prior to that, this collusion started from at least 5 July 2023 when he discussed via messages his wish to negotiate an exit with her, including by saying "If they know we're doing other stuff when your still employed by Lux it could really backfire for us both". AF also advised Ms Fry as to her notice period were she to leave Lux.

90. I was taken to further messages where AF appeared to instruct Ms Fry to use Lux's credit card to pay for work AFML did for their own client and label it as work for doTERRA. He also told her she could take the company iMac and desk for her own use after her employment with Lux ended.

91. In relation to Tillie Mabbutt, a permanent employee of Lux between April 2022 and September 2023 and freelancer for them prior to that, it appears she assisted him to scope the work for the doTERRA Turin Convention in 2024.

92. AF also involved these junior employees in concealing his activities, for example telling Ms Fry to take down certain posts on social media which might point towards competitive work being done. AF deliberately misappropriated Lux's information to use in AFML's new Rotate business. He used Ms Mabbutt to "move everything over" indirectly in a way that would not be traceable to Rotate, commenting in a message at the time in July 2023 that Lux "can't know about the new company yet". He restricted the access of other directors to the "call sheet" for doTERRA's 2023 Lisbon convention. This document, containing detailed information about Lux's shoot, was stored on AF's own Google Drive. AF stated in a message sent on 12 June 2023 that Rotate's website was not listed on any search engines "as I don't want M&G [Mr Woodhead and Mr Lowndes] to discover it. The Claimant's evidence is that even when they did find Rotate's website, its connection to AF was still further concealed.

93. The Defendants produced a brochure advertising Rotate which contained a case study of Rotate's work. What they in fact displayed was Lux's work for doTERRA from 2021 and 2022. The Defendants have also admitted to taking footage from Edit Share and passing it off as Rotate's work on their website.

94. There is little documentary record of how doTERRA was persuaded to hire Rotate rather than continue with Lux. A glimpse is afforded by AF's messages to a friend on 23rd July 2023 in which he states he made a secret site visit to a venue near "the old Fiat factory", where he told doTERRA about his "new biz". The Fiat factory was near Turin, Italy. He claimed here that doTERRA were very much happy to proceed with just him.

95. Further in messages to AJ Bryant on June 12 2023, AF stated it was "time to move things over for next year's planning", meaning (it can be inferred) to move the

doTERRA business to Rotate, which he anticipated "Ash will mention it in Italy". The reasonable inference must be that AF had private discussions with doTERRA, on the Terni trip in June 2023 (on behalf of Lux and paid for by Lux) to develop his connections to doTERRA and deepen his knowledge of their commercial requirements. He then followed this up with a site visit to the venue for the 2024 Bloom Convention in Turin.

96. I am satisfied that AF appreciated that he was acting in breach of his duties to Lux and took active steps to conceal that fact from his fellow directors.

97. That appreciation is demonstrated by:

    i) his own contemporaneous acknowledgments;

    ii) his deliberate concealment of activities;

    iii) his misleading representations to clients and others; and

    iv) his failure to disclose or seek consent.

98. AF's conduct was therefore not inadvertent, mistaken, or the result of mere misunderstanding. It formed part of a knowing and deliberate course of action inconsistent with the duties he owed to Lux.

99. In addition to doTERRA, the evidence establishes that AF diverted a number of other clients and prospective clients from Lux to AFML while he remained a director and employee of Lux.

Yonder

100. Yonder had not been a Lux client before but Lux's evidence was that the relationship started whilst AF was still employed by Lux. He would not have obtained the contact without his position as a director and employee of Lux, and having secured the contract, he must have been using Lux's confidential information and resource in order to pitch and ultimately carry out the work.

The Film Creative

101. AF encountered this client through a professional training course which Lux had paid for him to attend as part of his role within Lux. AFML later carried out work for The Film Creative, relying on connections and credibility acquired through AF's Lux role.

Tale Production Limited

102. AFML undertook work for Tale Production while AF was still a director of Lux. The evidence supports the conclusion that this opportunity arose from AF's position at Lux rather than from any independent AFML activity.

18Sixty

103. AFML carried out work for 18Sixty during the period when AF remained a director of Lux. AF's access to this client derived from his Lux role and involved misuse of Lux's relationships and standing.

Sifted

104. Sifted was an established client of Lux. AF initially contacted Sifted on Lux's behalf and then later approached the same client using AFML, falsely representing that Lux had re-branded into Rotate Films. AFML thereafter carried out work for Sifted.

FCM Meetings and Events

105. AF contacted FCM initially using his Lux email address and in his Lux capacity. He later switched communications to his AFML email address and secured work for AFML which Lux would otherwise have pursued.

Rouleur Limited

106. AFML undertook work for Rouleur using Lux's testimonials and prior work as evidence of experience. AF's ability to secure this client depended on Lux's goodwill and materials.

Light Graphix

107. AFML carried out work for Light Graphix during the period when AF remained a director of Lux. The opportunity arose through AF's Lux role rather than any independent AFML track record.

Tandem Events

108. Tandem Events was a "pipeline" (prospective) client of Lux. AF contacted Tandem representing that Lux had re-branded to Rotate and subsequently secured work for AFML which fell within Lux's existing business pipeline.

Camilla Frances Prints

109. AFML carried out work for this client while AF was still a director of Lux. AF could not have obtained the engagement without misuse of his position and connections at Lux.

WMP Creative Agency

110. AF obtained WMP's contact details from Lux's internal records and AFML subsequently carried out work for that client during AF's tenure as a Lux director.

111. In each of these cases, AF's conduct involved the exploitation of relationships, contacts, goodwill, confidential information or pipeline opportunities which belonged to Lux, and the diversion of work which Lux would otherwise have sought to perform.

112. I am satisfied that these diversions formed part of the same course of conduct as the diversion of the doTERRA business and were achieved through AF's misuse of his position as director and employee of Lux as set out earlier. I am also satisfied that the conduct overall caused obvious loss to Lux because it involved the diversion of work of a type which it had been willing to do and was capable of carrying out for profit. It has also damaged Lux's commercial position giving rise to continuing loss.

AF's case

113. In his pleaded case and evidence AF advanced a number of defences to the allegations of breach of duty. In substance, these may be grouped under the following headings:

    i) that Lux was not operated as a unified business and that the directors were free to pursue their own interests;

    ii) that AF was excluded from the management of Lux following the breakdown of relations in March 2023;

    iii) that the work undertaken by AFML was work which Lux was unwilling or unable to perform;

    iv) that AF's conduct amounted only to permissible preparatory steps for future competition; and

    v) that the information used was not confidential or was part of AF's own skill and experience.

114. I address each in turn.

Freedom to Pursue Personal Interests / Freelance Model

115. AF contended that Lux was, in effect, a loose association of freelancers and that the directors were free to pursue their own interests alongside Lux's business. That contention is not borne out by the evidence.

116. Lux operated as a single corporate enterprise. Client contracts were entered into by Lux, revenue was invoiced and received by Lux, and Lux invested materially in offices, staff, equipment, systems and training. The directors were salaried employees and statutory directors. There was no evidence of any agreement express or implied permitting directors to divert Lux clients or opportunities for their own competing businesses.

117. While the directors were permitted to undertake limited, non-competitive freelance work outside Lux, that latitude did not extend to competition with Lux, solicitation of Lux's clients, or exploitation of Lux's confidential information and goodwill.

Exclusion from Management / Breakdown in Relations

118. AF argued that, following the disagreement in March 2023, he was excluded from the management of Lux and was therefore entitled to pursue his own interests. I reject that contention.

119. The evidence shows that AF remained a director and employee of Lux throughout the relevant period. He continued to control or access Lux's systems, manage employees, liaise with clients and accountants, and occupy Lux's office. He continued to receive a salary and benefits from Lux.

120. A deterioration in relations, or the existence of unresolved exit negotiations, does not release a director or employee from ongoing duties. There was no formal exclusion, no removal from office, and no deprivation of access comparable to the circumstances considered in In *Plus Group Ltd v Pyke* [2002] EWCA Civ 370. AF's duties therefore continued unabated.

Unwillingness or Inability of Lux to Perform Work

121. AF contended that the work undertaken by AFML, including the doTERRA work, was work which Lux was unwilling or unable to perform. That defence is misconceived both legally and factually.

122. As a matter of law, a fiduciary may not appropriate for himself a business opportunity which falls within the company's line of business, regardless of whether the company would ultimately have pursued it. The opportunity must be disclosed to the company, which is entitled to decide for itself.

123. In fact, Lux had a proven track record of delivering precisely the type of work which was diverted, including large scale events for doTERRA and other clients. Lux had not renounced the doTERRA relationship, nor decided that it would no longer pursue such work. On the contrary, the evidence shows that Lux would have wished to pitch for and retain that business, an ambition confirmed in the oral evidence.

Preparatory Steps for Future Competition

124. AF contended that his conduct amounted only to permissible preparatory steps for future competition. That characterisation is, in my view, unsustainable.

125. AF did not merely make arrangements to compete after resignation. While still a director and employee, he actively solicited Lux's clients, performed work through AFML, used Lux's confidential information, staff and resources, and received payment for competing work. That conduct constitutes active competition, not preparation.

126. The law permits preparatory steps only where they do not involve competition, misuse of confidential information, or conflicts of interest. AF's conduct crossed each of those boundaries.

Confidential Information / Skill and Experience

127. AF asserted that the information he used was either not confidential or formed part of his own general skill and experience. I do not accept that submission.

128. The information relied upon, was client contact details, pricing structures, budgets, proposals, contractual templates, production methodologies, crew details and footage all of which was collated, commercially sensitive and stored on Lux's systems. It was treated within Lux as confidential and derived from Lux's investment and work.

129. While AF inevitably acquired experience and skills through his role, the misuse in this case went well beyond the application of general know how. AF used specific information and work product belonging to Lux to secure and perform work for AFML. That constitutes misuse of confidential information.

130. None of the defences advanced by AF, whether taken individually or cumulatively, provides a lawful justification for his conduct.

131. AF's case depends on a false premise: that once relations deteriorated, he was free to act in his own interests while retaining the benefits of office and employment. That premise is inconsistent with both the facts and the law.

132. I therefore reject AF's defences. The breaches of fiduciary duty, statutory duty and employment duty which I have identified from the evidence are not excused or mitigated by any of the matters relied upon by AF.

AFML

133. AFML is not alleged to owe fiduciary, statutory or employment duties directly to Lux. The claims against AFML arise instead from its receipt and exploitation of the fruits of AF's breaches of duty and from its participation in the wrongful conduct. The legal bases of liability may be summarised under three related heads.

Knowing Receipt

134. The primary basis of the claim against AFML is knowing receipt of property and benefits derived from AF's breaches of fiduciary duty.

135. AF, while a director and employee of Lux, misused Lux's confidential information, goodwill and business opportunities, including the doTERRA relationship and other client relationships. The benefits derived from that misuse included client contracts, revenues, and profits earned through AFML.

136. AFML received those benefits. It did so through contracts entered into with clients diverted from Lux and through the use of Lux's confidential information, work product and goodwill in marketing, pitching and delivering services.

137. AFML's knowledge is established through AF, who was its sole director and controlling mind. AF knew that the information and opportunities being used by AFML had been obtained in breach of duties owed to Lux and that Lux had not consented to their exploitation.

138. In those circumstances, it would be unconscionable for AFML to retain the benefits received. AFML is therefore liable as a knowing recipient of property and advantages derived from breaches of fiduciary duty.

Unlawful Means Conspiracy

139. In the alternative, and additionally, Lux advances a claim that AF and AFML acted in combination to injure Lux by unlawful means.

140. AF and AFML acted pursuant to a common design whereby AF would misuse his position, confidential information and access to Lux's resources to divert Lux's clients and business opportunities to AFML.

141. The unlawful means consisted of AF's breaches of fiduciary duty, statutory duty and contractual duty, together with the misuse of confidential information and the deception of clients as to AFML's relationship with Lux.

142. AFML actively participated in that scheme by contracting with diverted clients, invoicing and receiving payment, and holding itself out as the appropriate recipient of work which had previously belonged to Lux.

143. The loss to Lux was the inevitable consequence of the gain to AFML. The combination therefore satisfies the elements of unlawful means conspiracy, notwithstanding that AF controlled AFML.

Liability to Account as a Corporate Vehicle for AF's Breaches

144. The evidence further supports the conclusion that AFML functioned as the corporate vehicle through which AF carried out and profited from his breaches of duty.

145. Equity does not permit a fiduciary to evade liability by interposing a company under his control. Where a company receives profits made by a fiduciary in breach of duty, the company may be required to account in the same manner as the fiduciary himself.

146. AFML's liability is therefore co-extensive with AF's in respect of profits derived from the diverted business, including the doTERRA work and other clients diverted from Lux.

147. AFML advanced a number of defences to the claims brought against it. Those defences are closely aligned with, and dependent upon, the defences raised by AF. For the reasons set out below, I reject them.

148. AFML submitted that it owed no fiduciary, statutory or contractual duties to Lux and could not therefore be liable for breaches of duty.

149. That submission mischaracterises the basis of the claims against AFML. Lux does not allege that AFML itself owed primary fiduciary or employment duties. Rather, AFML's liability is founded on its receipt and exploitation of benefits derived from AF's breaches of duty, and on its participation in the wrongful scheme.

150. The absence of a direct duty owed by AFML to Lux does not preclude liability in knowing receipt or unlawful means conspiracy. This defence therefore fails in law.

151. AFML denied that it received property, benefits or opportunities belonging to Lux in circumstances which make it unconscionable to retain them.

152. I reject that contention. AFML received substantial benefits in the form of diverted client contracts, revenues and profits, including from doTERRA and other clients formerly or prospectively associated with Lux. Those benefits were obtained by the use of Lux's confidential information, work product, goodwill and business opportunities.

153. AFML's knowledge is established through AF, who was its sole director and controlling mind. AF knew that the information and opportunities exploited by AFML had been acquired through breaches of duties owed to Lux and without Lux's consent.

154. In those circumstances, AFML's receipt of the benefits was plainly unconscionable.

155. AFML also relied on the principle of individual corporate identity, pleading that AF's knowledge and conduct could not automatically be attributed to AFML.

156. While the principle of separate corporate personality is well established, it does not assist AFML on the facts of this case. AF was the sole director and shareholder of AFML and its directing mind. The acts complained of were carried out by AF in that capacity for AFML's benefit.

157. Where a company acts through a sole controlling individual who knowingly causes it to receive and exploit benefits derived from breaches of duty, that knowledge is properly attributable to the company. AFML cannot shelter behind corporate form to avoid liability.

158. AFML further denied that it could conspire with AF, relying on the proposition that a sole director and his company cannot form a conspiracy.

159. Lux advances a claim in unlawful means conspiracy against AF and AFML jointly. The central legal issue which was raised in relation to this aspect of the claim is whether, as a matter of law, a sole director and shareholder can conspire with his own company, or whether such a claim is barred on the basis that there cannot be a combination or agreement between legally distinct but effectively single-minded actors.

160. The tort of unlawful means conspiracy requires:

    i) a combination or agreement between two or more persons;

    ii) concerted action pursuant to that combination;

    iii) the use of unlawful means; and

    iv) loss caused to the claimant, with the requisite intention to injure

161. AFML contends that this claim fails at the threshold because AF was its sole director and controlling mind. It submits that there can be no relevant "combination" or "agreement" where the alleged conspirators are, in substance, one and the same person. This argument draws support by analogy from criminal conspiracy, where it has been held that a sole controller and his company cannot conspire because conspiracy requires an agreement between two independent minds (*R v McDonnell* [1996] 1QB 233).

162. The Criminal Law Act 1977 ("the Act") re-codified and rationalised the law of criminal conspiracy. Section 1 creates a statutory offence, replacing the former common law offence in most cases.

163. Section 1(1) provides that a person is guilty of conspiracy if he agrees with one or more other persons that a course of conduct shall be pursued which, if carried out in accordance with their intentions:

(a) will necessarily amount to or involve the commission of a criminal offence;

or

(b) would do so but for the existence of facts which render the commission of the offence impossible.

164. The essence of the offence under the Act is therefore the agreement itself, not the causing of harm or loss. Criminal liability attaches even if the agreed offence is never committed.

165. The statute is concerned with criminal wrongdoing, proof to the criminal standard, and the punishment of culpable agreements. It is not concerned with compensation for loss.

166. Section 2 of the Act creates specific exemptions. Most notably, a person cannot be guilty of criminal conspiracy if the only other parties to the agreement are:

(a) his spouse or civil partner;

(b) a person under the age of criminal responsibility; or

(c) the intended victim of the offence.

167. The Act therefore expressly contemplates that, for criminal conspiracy, the agreement must be between legally distinct persons capable of criminal liability, subject to narrow exemptions. The Act governs criminal conspiracy only. It does not define, codify, or control the tort of conspiracy, which is a distinct civil law cause of action.

168. The legal issue in the present case is whether the same or a similar principle to that found in the criminal law applies to the tort of unlawful means conspiracy or whether a company and its controlling director may be found to have acted in combination for the purposes of civil liability. The point was considered by Nugee LJ in the context of a strike out and summary judgment application in *Raja v McMillan* [2021] EWCA Civ 1103 at [56-59]:

> "I readily accept that the point of law is arguable. The distinctive feature of a conspiracy (whether criminal or civil, and whether a lawful means conspiracy or an unlawful means conspiracy) is the agreement or understanding between the parties: see *Ablyazov* at [9]. It is the combination which, if it is acted on and causes loss, makes the conspiracy actionable: ibid. It is not obvious that there is the requisite combination if all that happens is that a person uses his company to commit an unlawful act. This is the basis of Nield J's decision in *R v McDonnell*: see at 245C-D where he said that where the sole responsible person in the company is the defendant himself, it would not be right to say that there were two persons or two minds, and that if it were otherwise it would offend against the basic concept of a conspiracy, namely an agreement of two or more to do an unlawful act. Although a criminal case, it is not obvious why the same should not be true in a civil conspiracy: see eg *AAH Pharmaceuticals Ltd v Birdi*

> [2011] EWHC 1625 (QB) at [31] where Coulson J described such a radical distinction as in principle unattractive.
>
> [...]
>
> However there are arguments the other way. It is established that a contract can be made between a person and a company of which he is the sole director: *Lee v Lee's Air Farming Ltd* [1961] AC 12; and a contract requires an agreement just as much as a conspiracy does.
>
> There is Irish Supreme Court authority holding that a director can be liable for conspiring with two companies controlled by him: *Taylor v Smyth* [1991] IR 142 (followed by Gloster J in the High Court here, albeit without full argument, in *Barclay Pharmaceuticals* at [229]). There McCarthy J said at 166 that he saw no reason in principle why the mere fact that one individual controls a company should give them both immunity from suit "in the case of an established arrangement for the benefit of both company and individual to the detriment of others." Mr Coppel said that that was distinguishable on the ground that in the present case the arrangement was not for the benefit of both company and individual, but if the question turns on whether Mr McMillan's arrangements benefited him as well as his companies, it seems very doubtful to me that the claim can be struck out: as Popplewell LJ said in argument, it is a difficult proposition to make at this stage of the case that Mr McMillan was not making arrangements for his own benefit.
>
> I have already said enough to show that the point is one of some difficulty. I think that by itself justified the Judge in declining to reach a concluded view and deciding to leave the argument for trial."

169. I note that in the case referred to of *AAH Pharmaceuticals Limited v Birdi* [2011] EWHC 1625 (QB), Coulson J said that he would need to hear further argument on the point before reaching a final view. For myself I prefer to adopt the approach taken by Gloster J in *Barclay Pharmeceuticals v Waypharm* [2012] EWHC 306 (Comm), following the reasoning in the Irish Supreme Court in *Taylor v Smyth* [1991] IR 142, where McCarthy J observed, referring to Nield J's decision in *R v McDonnell* (above):

> "He concluded at p. 246 that, whilst an indictment for common law conspiracy to defraud would lie against a limited company, 'the true position is that a company and a director cannot be convicted of conspiracy when the only human being who is said to have broken the law or intended to do so is the one director, and that is the situation in the present case.' No authority was cited in support of extending this proposition to an action for civil conspiracy. In principle, it would seem invidious, for example, that the assets of a limited company should not be liable to answer for conspiracy where its assets had been

> augmented as a result of the action alleged to constitute the conspiracy. Essentially, it would be permitting to company to lift is corporate veil as and when its suits.
>
> [...]
>
> Apart from authority, in principle, I see no reason why the mere fact that one individual controls the company of limited liability, should give immunity from suit to both that company and that individual in the case of an established arrangement for the benefit of both company and individual to the detriment of others. If such were the case, it would follow that a like arrangement to the advantage of two companies of limited liability, both controlled by the same individual would give an equal immunity from suit to both companies, and so on. I recognise the force of the reasoning by Nield J in *Reg v McDonnell* [supra]. I express no view in regard to his conclusion save to point out the obvious, - it was a criminal case."

170. In my judgment, the criminal law principle does not govern the position in civil conspiracy. The tort is concerned with the practical reality of concerted action by separate legal persons causing harm.

171. Civil conspiracy is conceptually and functionally distinct from criminal conspiracy. Criminal conspiracy criminalises the agreement itself. Civil conspiracy, by contrast, is concerned with the damage caused by concerted action using unlawful means. The focus is therefore on the combination in fact and the resulting injury, not on the policy reasons which underlie the criminalisation of an agreement by individuals to commit an offence whether or not the agreement has been acted upon.

172. The authorities support the proposition that, in civil law, a company and its controlling individual may be capable of conspiring where the company is used as the instrument through which unlawful conduct is carried out. The corporate form cannot be deployed as a shield to defeat liability where it is itself part of the wrongful combination.

173. The decisive question is whether there is evidence of concerted action between two legal persons, even if they are closely connected, rather than whether there are two independent psychological actors. Where a director acts in one capacity to procure unlawful conduct, and in another capacity causes the company to receive and exploit the fruits of that conduct, the requirement of combination is satisfied. In the present case, the evidence supports a clear distinction of capacities and roles.

174. AF, acting in his personal capacity as director and employee of Lux, misused Lux's confidential information, breached his fiduciary and statutory duties, and diverted business opportunities away from Lux.

175. AFML, acting through AF in his capacity as its director, entered into contracts with diverted clients, invoiced for and received payment, and exploited Lux's confidential information, goodwill and work product in the course of its business.

176. These were not merely unilateral acts. They were sequential and interlocking steps in a single scheme, whereby AF's breaches of duty supplied the unlawful means and AFML's conduct realised the gain. The loss to Lux was the inevitable counterpart of that gain.

177. The fact that AF controlled AFML does not negate the existence of a combination. On the contrary, it explains how the combination operated effectively. AF's control ensured that the company acted in concert with him to achieve the unlawful objective.

178. AFML further contended that there was no intention to injure Lux. That submission is unsustainable.

179. In an unlawful means conspiracy, an intention to injure is established where the defendants knew that injury to the claimant was the inevitable consequence of the course of conduct pursued for their own benefit. It is not necessary that harm to the claimant be the predominant purpose.

180. Here, AFML's gain from the diverted business was inseparable from Lux's loss of that same business and opportunity. AFML could not obtain the benefit without Lux being deprived of it. The requisite intention is therefore made out.

181. I conclude that the legal issue raised by AFML, that a sole director and his company cannot conspire together, does not defeat the conspiracy claim as a matter of civil law.

182. Where, as here, a company is used as the vehicle through which unlawful acts are implemented and profits realised, and where those acts cause injury to a third party, the elements of unlawful means conspiracy are capable of being satisfied notwithstanding the unity of control.

183. I therefore conclude that the conspiracy claim against AF and AFML is legally viable and established on the facts of this case.

184. AFML denied that it used confidential information belonging to Lux, contending that any information used was part of AF's general skill, experience or contacts.

185. I reject that contention for the same reasons as in relation to AF. The information exploited by AFML included Lux's client contact details, pricing structures, budgets, proposals, contractual templates, production methodologies, crew arrangements and footage. That information was derived from Lux's investment and work.

186. AFML's use of that information, through AF, went far beyond the application of general know how. It involved the exploitation of specific confidential material belonging to Lux. This defence fails.

187. AFML contended that it was engaged in independent and lawful competition following the breakdown of relations within Lux.

188. That submission cannot be sustained. AFML's business was built, at least in a material part, on the diversion of Lux's clients and opportunities while AF remained a director and employee of Lux. The competition was neither independent nor lawful but was founded on breaches of duty and misuse of confidential information.

189. Finally, AFML disputed that Lux suffered loss as a result of AFML's conduct, contending that Lux would not have obtained the work in any event.

190. That argument is immaterial to liability for knowing receipt and conspiracy. The relevant question is whether AFML received benefits derived from unlawful conduct and whether Lux was thereby deprived of opportunities and business which it was entitled to pursue.

191. In any event, the evidence establishes that Lux had undertaken similar or identical work and would have wished to carry out further such work and retain it.

192. I conclude AFML's defences are largely parasitic on those advanced by AF and depend on the same flawed premises. AFML knowingly received and exploited the proceeds of AF's breaches of duty and participated in the scheme by which Lux was injured. None of the defences advanced by AFML, whether taken individually or cumulatively, provides any answer to that liability. I therefore reject AFML's defences in their entirety.

Overall Conclusion

193. For the reason set out in this judgment I conclude that the Claimant has made out its liability case against the Defendants and is entitled to the relief sought subject to further submissions as to the appropriate order and a further hearing as to quantum in accordance with the extant case management directions.

END