Neutral Citation Number: [2026] EWHC 30 (Ch)

Case No: BL-2023-001306

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

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

Date: 12 January 2026

Before:

SAIRA SALIMI
(sitting as a Deputy High Court Judge)

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Between:

Grosvenor Property Developers Limited (In Liquidation)	**Claimant**
- and –	
Portner Law Limited	**Defendant**

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- -

Rory Brown and **Andrew Shipley** (instructed by gunnercooke llp) for the **Claimant**
Isabel Barter (instructed by Mills & Reeve) for the **Defendant**

Hearing date: 17 December 2025

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APPROVED JUDGMENT

SAIRA SALIMI :

1. This judgment follows my decision in the trial of liability in this matter in September this year.

2. Late in the proceedings, the Defendant raised a point on the extent of double recovery from multiple defendants by the joint liquidators. There was relatively little evidence before me at trial, and I determined that the question of double recovery should be dealt with as a consequential matter in this case.

3. The joint liquidators are seeking £2,186,938 from the Claimant following my determination on liability (allowing for a figure for sums already recovered from other claimants of £242,459.74). The Defendant ambitiously seeks to argue that there is in fact a surplus and the Claimant is not entitled to any recovery of damages from it as there has been full recovery from other defendants.

4. This litigation stemmed from a complex multi-layered fraud, and the joint liquidators of the Claimant ("the Joint Liquidators") have brought legal proceedings against a number of defendants (including the fraudsters themselves). In total they have recovered approximately £10.5 million, but of course the cost of recovery has been high given the number and extent of legal proceedings that have had to take place, in addition to the work of the Joint Liquidators.

5. The Claimant has filed a witness statement by Russell Herbert, a member of the team overseeing the liquidation of the Claimant, setting out the Joint Liquidators' calculations of the position as to double recovery. The table below is adapted from his witness statement as an indication of the settlements reached

with other defendants and the extent to which the funds recovered overlapped with those which passed through the Defendant's client account, noting that the Defendant does not accept all his calculations or conclusions. Mr Herbert's statement was not agreed, but was admitted on the basis that there was no requirement to cross-examine him and the counter-arguments could be made in submissions.

Recovery from other defendants	**Of which would be double recovery against Portner Law**	**Reduced value of Portner Law claim from £2,399,000**
Kajaine £5,000	£0	
GPBSA £2,500,000	£214,061.38	£2,184,938.62
ltish and Tejal Popat £27,000	£0	
Earlcloud £220,000	£0	
Kennedys £6,500,000	£0	
Singhania & Co £28,615.86	£28,398.36	£2,156,540.26
Sub-total	£242,459.74	£2,156,540.26
Interest on Portner Law claim		£700,964.21

Total		£2,857,504.47

6. There was a large measure of agreement on the legal framework within which I must make my decision. Ms Barter helpfully outlined the tests to be applied following *FM Capital Partners Ltd v Marino* [2021] QB 1 and *Kea Investments Ltd v Eric John Watson* [2023] EWHC 1830 (Ch) in her skeleton argument, and as the Claimant's counsel agreed with it as a summary of the law I reproduce it here.

> "In summary, the principles the Court needs to apply appear to be these:
> i) Was any part of the claim against which recovery was purportedly made *"obviously unsustainable"*? If so, C is prevented for apportioning that part of the recovery in such a way so as not to give credit for it against D;
> ii) For any remaining *sustainable* claims, on what basis have the claims been allocated and do they overlap with C's claim against D, such that credit must be given?"

7. It is common ground that the Claimant is free to allocate payment to whatever debt or debts it chooses. Unless a part of a claim was "obviously unsustainable" I should not interfere: I am not in a position of a trial judge in relation to the earlier claims and cannot make meaningful decisions about what would have happened had a settled case gone to trial. I am also mindful that, as Mr Brown submitted, the court should seek to encourage parties to settle claims at an early stage rather than pursuing them to a hearing, and it creates a great disincentive to settle if a subsequent trial judge can reopen and pick over a settlement agreement.

8. As I noted in my earlier judgment, the question of double recovery was raised at a late stage in this claim. The Defendant's solicitors wrote to the Claimant's

solicitors on 31 October 2023 to ask for details of payments made by way of settlement. The Claimant's solicitors replied on 3 November 2023 and said "We presume that your requests seek to ensure that the quantum of any payment made to our clients in settlement of their claim does not represent a double recovery. Please confirm." No response was received to that letter, and the point was not raised again until the amended Defence was filed on 6 May 2025. The Claimant subsequently provided particulars in relation to double recovery in its reply to the Defendant's Part 18 request on 9 June 2025.

9. The Defendant takes issue with the sums claimed, interest and costs in relation to two of the settled claims in the table above, namely those with GPBSA Limited and Kennedys. It argues that the sums claimed are, in part, "obviously unsustainable" and challenges the sums allocated to interest and costs.

10. The Defendant also asserts that the Claimant behaved improperly in not providing copies of the settlement agreements at the stage of the disclosure exercise, and that they were required to do so in accordance with the requirements of extended disclosure under PD57AD. I cannot accept that argument. Paragraph 2.7 of that practice direction requires the disclosure of "adverse" documents, and specifies that a document is adverse "if it or any information it contains contradicts or materially damages the disclosing party's contention or version of events on an issue in dispute, or supports the contention or version of events of an opposing party on an issue in dispute, whether or not that issue is one of the agreed Issues for Disclosure." Earlier settlement agreements with other parties could not have affected any of the issues in dispute between the Claimant and the Defendant, only the sum which could

eventually be claimed. I therefore cannot accept the Defendant's submission on this point: I do not think the Claimant can be criticised for not disclosing the settlement agreements as part of the disclosure exercise in this litigation.

The GPBSA settlement

11. The Claimant's case (as slightly modified by a correction in the original arithmetic, set out in Mr Herbert's statement) is that its claim against GPBSA in knowing receipt was in the sum of £3,099,349.01, plus interest (compounded annually) at 8%.

12. That sum is made up of the following amounts:

    i) £2 million from Dare to Invest Limited (which is the figure also claimed from the Defendant as it came via the Defendant's client account);

    ii) £725,000 from Sanjiv Varma's personal account in the United Arab Emirates, paid to Kennedys;

    iii) £265,000 from the same account to Boodle Hatfield;

    iv) £109,349.01 paid, in a number of smaller payments, from Siddhant Varma's account, Sanjiv Varma's UAE account, or the Casa Investments Ltd account.

13. The Defendant argues that £1,099,349.01 of that sum is "obviously unsustainable", because the only amount referred to in the Joint Liquidators' public reports in relation to the Charles Street property (acquired by GPBSA) was a reference to "£2,000,000…diverted and used to purchase a property in

Mayfair". The Defendant also argues that the figure of £2 million is that referred to in earlier judgments by ICC Judge Prentis and by HHJ Johns KC.

14. The Defendant also challenges whether the payments from the Casa account were in fact payments of money originating from the Claimant.

15. This can be dealt with very briefly: all the references cited by the Defendant are to funds used to **purchase** the Charles Street property. The funds over and above the £2 million were used to carry out substantial works to the property after purchase. Mr Herbert's statement has annexed a statement showing multiple payments to entities which are clearly suppliers of building materials and related undertakings. The Joint Liquidators' published reports do not detail every claim in respect of the funds traced but are high-level periodic reports to creditors. I therefore cannot find that any element of the original GPBSA claim is "obviously unsustainable".

16. The Defendant also seeks to rely on findings of fact by judges in earlier cases in relation to sums that were owing and the extent to which funds paid out from Casa Investments Limited were traceable back to the Claimant's funds. The Claimant submits that those judgments are inadmissible as evidence for or against the Defendant as a matter of law, as the Defendant was a stranger to the previous suit (*Phipson on Evidence,* 43-03, 43-25). I accept that submission. In the absence of the material from those earlier judgments, which in any event did not relate to the claims as against GPBSA or Kennedys, the Defendant has no basis for arguing that the claim is unsustainable in the absence of those funds.

17. I therefore cannot find that any part of the claim over and above the figure of £2 million is "obviously unsustainable".

18. The Claimant entered into a settlement agreement with GPBSA on 23 February 2021 for £2,500,000 plus interest, before any legal proceedings were issued. The Joint Liquidators apportioned £263,833 (plus VAT) of that sum to costs, being their solicitors' estimate of the proportion of the overall costs referable to the GPBSA claim. Mr Herbert explained that "*a full apportionment to interest of £776,005.77 was also made, such that £1,092,605,37 was apportioned before any apportionment to principal. Taking account of the matters set out at paragraph 21 above, which reduces both principal and interest, and interest from 24 September 2020 to the settlement date of 23 February 2021, a full apportionment to interest should properly be £869,990,01. Accordingly apportionment on the basis of the principles we apply apportioned £1,186,589.61 before any apportionment to principal. There was £1,313,410.39 left over to apply to the principal sum of £3,099,349,01, leaving £1,785,938.62 outstanding. That money was apportioned in priority to the sum that did not overlap with the claim to the £2 million, in order, consistently with the JLs' obligations, to maximise the prospects of the best recovery for the Company's creditors*."

19. The sum that did not overlap was the sum of items (ii) to (iv) in paragraph 12 above, namely £1,099,349.01. Once the sum of £1,313,410.39 is applied to that, the balance of £214,061.38 is available to be set against the £2,000,000 which was also claimed from the Defendant.

20. The interest payable by GPBSA is specified in the settlement agreement as 8%, compounded annually. In oral submissions Ms Barter submitted that the rate of interest is excessive. I cannot agree with that submission: it is the rate payable

on judgment debts, and was at the date of the settlement. It is relatively high compared with base rate at the date of the settlement, but there would be no basis for me to interfere in it: it cannot be said to be "obviously unsustainable". The Joint Liquidators also have a basis for payment of compound interest, as GPBSA's sole director at the time when it received misappropriated funds was Mr Varma, the architect of the fraud. Compound interest is available as a matter of law in a claim based on the liability of defaulting fiduciaries, and this is not disputed by the Defendant. I therefore see no basis on which I could take a view that that aspect of the settled claim is "obviously unsustainable".

21. The Defendant submits that, following *FM Capital Partners*, there should be a reduction in the costs figure payable under the GPBSA to reflect the likely effects of assessment. The Claimant argues that, in this case, costs would have been sought on the indemnity basis if the case had gone to trial, and therefore credit for the full amount is justified. I am unable to reopen the matter and make a sensible assessment of whether indemnity costs would have been payable, without engaging in an exercise of a kind that the case law clearly shows would be impermissible and unwise, and I accept the Defendant's submission that the costs should be reduced to 70% of the total, resulting in a figure of £184,683. This will increase the credit to be given to the Defendant by £79,150.

22. Subject to that point, I can see no basis to disturb the calculation made by the Joint Liquidators in this case. The Defendant argues that the Claimant is precluded from reducing the credit from the £270,570.62 originally pleaded in the Claimant's Reply to the Defendant's Part 18 request as no application was

made to amend that pleading. The Defendant does not plead any case law or academic authority in support of that argument, but makes it as a bare assertion. I accept that it is unfortunate that the calculation has changed, but note that the Claimant had a short space of time to provide the information and the matter was raised very late, and there are other aspects of the calculation carried out by Mr Herbert that have altered in the Defendant's favour.

The Kennedys settlement

23. The Claimant's claim against Kennedys was initially in the sum of approximately £13.2 million, made up of £6,626,580.91 of direct losses to the Claimant, £2,522,667.60 of interest and £7,075,518.53 of costs of mitigation. It was settled, after the issue of proceedings and initial exchange of statements of case but before the CCMC, for £6.5 million. The Claimant's calculations show no overlap between the sums claimed from Kennedys and the sums claimed from the Defendant, although there was overlap with the sums recovered from Kajaine, Earlcloud and Popats.

24. Legal costs were paid separately in this case and did not form part of the settlement sum, so there is no question in relation to this settlement of a reduction in the allocation to legal fees.

25. The Defendant attempts to make something of the lack of a reference in the settlement agreement to other recoveries by the Claimant. However, the claim against Kennedys did proceed as far as exchange of statements of case before settlement, and in the Claimant's Reply to Kennedys' Defence, the Claimant confirmed that it had made recoveries of £505,000 in the liquidation.

26. The Defendant argues that a very substantial part of the settlement sum paid by Kennedys is "obviously unsustainable" in so far as it related to the principal sum, because £4.92 million was repaid to the Claimant's bank account, and Kennedys could not have been criticised for that. The Claimant points out correctly that Kennedys had actual notice at that time that the company was under the effective control of Sanjiv Varma, who was not a director and was fraudulently misappropriating company funds. The Defendant does not challenge that as a matter of fact. This point does not come close to showing that the settlement reached was "obviously unsustainable". I also note the Claimant's point that Kennedys had expert legal advice at the time of the settlement, and it would be surprising if they had agreed to pay such a large sum in circumstances where they would have been likely to succeed at trial, or potentially even strike out the claim.

27. The Defendant also argues that the sum for costs of mitigation is unparticularised as between the Joint Liquidators' own costs, costs of the conditional fee agreement and other costs and is excessive. I do not think this point has any prospects of success. It is perfectly possible that the figure for costs is somewhat on the high side, but it manifestly cannot be zero. The Joint Liquidators' costs are not for me to assess but can be challenged if necessary by the creditors in the liquidation.

28. In any event, I do not think the Defendant has any prospect of success in arguing that the allocation can be challenged in such a way that it would reduce the sum for which it is liable, and therefore I need not enter into a detailed exercise of considering what costs might or might not be allowable. The original claim was

for £13.2 million. Mr Herbert describes that as "at its highest", fairly acknowledging that had the claim proceeded to trial the sum claimed might have been somewhat lower. Given my finding that the claim for the funds repaid to the Claimant's bank account was not "obviously unsustainable" and the plain fact that there would have been some costs and interest to which the payment could be allocated (even accepting that the figures for those may be somewhat on the high side), the Defendant cannot possibly succeed in reducing it far enough to reduce the sum that it is liable to pay to the claimant.

Singhania & Co

29. The other claim in respect of which the Claimants acknowledges that there is double recovery is that against Singhania & Co. In that case the Defendant does not challenge the allocation to costs and the Claimant's figures are accepted.

Conclusion

30. It is disappointing that it was impossible for the parties to reach agreement on this and that a further hearing was required to consider the matter of double recovery, potentially reducing the funds available to pay creditors in the liquidation. The Defendant has pursued a number of weak arguments and thereby increased the costs of this case to the Joint Liquidators (which in turn potentially reduces the sums payable to the creditors in the liquidation).

31. Subject to the modest adjustment resulting from the reduction in the allocation to legal costs of the GPBSA settlement, explained at paragraph 21 above, I am satisfied that the Claimant has given appropriate credit for recoveries made in

other proceedings. Judgment is accordingly to be entered for the Claimant in the sum of £2,107,788 plus interest and costs.