Neutral Citation Number: [2019] EWHC 843 (QB)

Case No: HQ15X04315, HQ17X01156, HQ17X03427

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2019

**Before** :

**THE HON. MR JUSTICE LANE**

**Between :**

**(1) NERIJUS ANTUZIS AND OTHERS**
**(2) TOMAS NECAJUS**
**(3) PRANAS STRIBYLYS**

**Claimants**

**-and-**

**(1) DJ HOUGHTON CATCHING SERVICES LTD**
**(2) JACQUELINE JUDGE**
**(3) DARRELL HOUGHTON**
**(4) THE GANGMASTERS LICENSING AUTHORITY**

**Defendants**

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**John Hendy QC, Harry Lambert** (instructed by **Leigh Day Solicitors**) for the **Claimants**
**Andrew Allen, Mark Greaves** (instructed by **Brett Wilson Solicitors**) for the **Defendants**

Hearing dates: 19, 20, 21, 22 February 2019

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# Approved Judgment

**Judgment Approved by the court for handing down.**

**MR JUSTICE LANE :**

## *A. INTRODUCTION*

1. These proceedings concern an application for summary judgment and the trial of a preliminary issue. The claimants are nationals of Lithuania, who contend that they were employed by the first defendant (D1) in an exploitative manner, commonly working extremely long hours and being paid less than the statutory minimum prescribed by the Agricultural Wages Act and the Orders made under it. The claimants were employed at various farms to catch chickens, which were then transported for slaughter and subsequent human consumption.

2. The claimants further contend that they were frequently not paid the sums which were recorded as being due to them on their respective pay slips, which had in any event been calculated on a fictional basis. Payments were often withheld as a form of punishment for alleged transgressions. D1 made no attempt to pay the claimants holiday pay, to which they were entitled, or to pay overtime at the prescribed rates. Nor was a claimant permitted to take absence on account of bereavement.

3. Deductions were also, the claimants say, unlawfully made in respect of so-called employment fees and for rent, in respect of premises at which the claimants were effectively required to reside, with the rent being in excess of the maximum permitted under the legislation.

## *B. THE ORDER OF 8 AUGUST 2018*

4. On 8 August 2018, Master Yoxall ordered there to be a trial of a preliminary issue; namely whether the second and third defendants (hereafter D2 and D3) are personally, jointly and/or severally liable to the claimants for the D1's breaches of contract. The order stated that "for the avoidance of doubt reference to claims under 'breaches of contract' includes any related claims under statute or statutory instrument". The present proceedings do not involve the fourth defendant.

5. So far as concerned summary judgment, the order envisaged that the application for this would be heard immediately after the trial of the preliminary issue. The summary judgment application relates to:-

    i) paragraphs 74-75 of the generic particulars of claim;

    ii) paragraphs 19, 26-28 and 55 of the generic defence;

    iii) paragraphs 17-19 of the individual defences in the cases of Vygantas Bucyms and Edmundas Mikiulkevicius;

    iv) any other paragraphs identified in the application notice.

6. The claimants categorise the breaches covered by the application for summary judgment as "breaches of express or implied terms of the contracts of employment of the claimants. These breaches arose by reason of unpaid wages, unlawful deductions and fees, and lack of holiday pay". Certain of these breaches are said to be admitted by D1.

## *C. APPROACH TO SUMMARY JUDGMENT AND PRELIMINARY ISSUE*

7. In determining the application for summary judgment, I apply the test set out in CPR 24.2. So far as relevant, this provides for such judgment where the court:-

> "a) … considers that:
>
> (i) the claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) the defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at trial".

8. What CPR 24.2 means in practice was described by Lord Woolf MR in Swain v Hillman [2001] 1ALL ER 91 as follows:-

> "The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success …they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."

9. I shall explain later the approach I adopt to the preliminary issue. In essence, however, it involves applying the so-called rule in Said v Butt [1920] [3] KB 497, in which it was held that a director of a company is not liable for inducing breach of contract by that company, if the director is acting *bona fide* within the scope of his authority.

## *D. EMPLOYMENT LEGISLATION REGARDING AGRICULTURAL WORKERS*

10. It is necessary to look in some detail at the Agricultural Wages Act 1948 and the Orders (hereafter AWOs) made under it. Until its abolition in 2013, after the events with which we are concerned, the Agricultural Wages Board, established by the 1948 Act, fixed minimum rates of wages for workers employed in agriculture and directed that any such workers should be entitled to be allowed employees' holidays of such duration as might be specified in such a direction. Section 3(2) empowered the Board to fix minimum rates for time work and piece work and, importantly for our purpose, to fix minimum rates for time-work, to apply in the case of workers employed on piece work, for the purpose of securing for such workers a minimum rate of remuneration on a time-work basis.

11. Section 4 provided that if an employer failed to pay a worker wages at a rate not less than the minimum rate fixed by the AWO, or to pay a worker relevant holiday pay, the employer was to be liable on summary conviction to a fine.

12. Section 4 further provided that in any proceedings against an employer under section 4(1), the court "shall, whether there is a conviction or not, order the employer to pay in addition to the fine, if any, such sum as may be found by the court to represent the difference between the amount which ought at the minimum rate, applicable, to have been paid to the worker by way of wages during the period of six months immediately preceding the date on which the information was laid or the complaint was served, and the amount actually paid to him". The powers for the recovery of sums due were stated by section 4(4) not to be in derogation of any right of the worker to recover such sums by civil proceedings.

13. Following the enactment of the National Minimum Wage Act 1998, section 3A was inserted into the 1948 Act. This provided for the enforcement provisions of the 1988 Act to have effect for the purposes of enforcing the 1948 Act, including the entitlement to be paid the minimum agricultural wage. Of particular significance is section 17 of the 1998 Act. This provides that, where a worker who qualifies for the minimum wage is remunerated at less than that minimum, the worker shall be taken to be entitled under his contract to be paid as an additional remuneration in respect of the period in question, an amount equal to the difference between the relevant remuneration received and the relevant remuneration which a worker would have received had he been paid the minimum wage. Thus, the entitlement to be paid the minimum wage is a term of the contract between the worker and the employer.

14. At all material times, the claimants enjoyed the benefit of AWOs. For our purposes, apart from the actual amount of the minimum wage (which changed each October), the relevant provisions of the AWOs were in essence the same.

15. For present purposes, it is helpful to concentrate on the Agricultural Wages (England and Wales) Order 2012. Article 1(2) provided that the Order applies to every worker employed in agriculture in England and Wales. Article 2 contains a number of definitions, including the following:-

> "Guaranteed overtime" means overtime which a worker is obliged to work under their contract of employment and in respect of which the worker's employer guarantees payment to the worker, whether or not there is work for the worker to do;
>
> …
>
> "night work means work (apart from overtime hours) undertaken by a worker between 7 p.m. one evening and 6 a.m. the following morning, but excluding the first two hours of work that a worker does in that period;
>
> …
>
> "on-call" means an arrangement whereby a worker who is not at work agrees with their employer to be contactable by an agreed method and

> able to reach the place where they may be required to work within an agreed time;
>
> …
>
> "other overtime" means overtime (other than guaranteed overtime) worked by a worker under their contract of employment;
>
> "sickness absence" means the absence of a worker from work due to the worker's incapacity by reason of:
>
> (a) any illness suffered by the worker;
>
> …
>
> (c) an injury that occurs to the worker at the worker's place of work;
>
> …
>
> "worker" means a worker employed in agriculture;
>
> "working time" means:
>
> (a) any period during which the worker is working at their employer's disposal and carrying out their employer's activities or duties;
>
> (b) any period during which the worker is receiving relevant training; and
>
> (c) any additional period which the worker and employer agree shall be treated as working time."

16. Part 2 of the Order set out various grades of workers. The claimants fall within the definition of "standard worker – Grade 2", contained in Article 5.

17. Part 3 dealt with minimum rates of pay. Article 17 required the worker to be paid no less than the minimum rate of pay as set out in the Order for their grade or category:

> "(a) when they are working; or
>
> (b) (other than a worker who has a contract of employment which provides for payment at piece rates) when they are available at or near their place of work for the purpose of working and when they are required to be available for such work…"

18. Article 17 provided that, subject to certain exceptions, a worker is to paid no less than the minimum rate of pay for their grade or category when, for the purposes of their duties, they are travelling. It is common ground that when the claimants were travelling

to and from the farms where they were required to catch chickens, they were entitled to be paid travelling time.

19. Article 21 provided that where the worker was paid at piece rates, the wages for each hour worked must not be less than the hourly minimum rate of pay applicable to their grade or category.

20. Article 22 provided for the payment of a "minimum overtime rate" where the worker works more than 8 hours a day for the same employer or works any hours beyond the working hours of their contract of employment. The overtime rate is also required where:-

> (e) in any week (starting from midnight on a Sunday) [the worker] works for more than 39 hours with the same employer, but in calculating those hours for the purposes of this sub-paragraph, account shall be taken only of those hours worked that do not qualify for payment of overtime by virtue of the provisions set out in sub-paragraphs (a) to (d)."

21. Article 31 provided that where certain accommodation is provided for the worker, the employer can deduct a specified sum from the workers minimum wage payable under the Order.

22. Article 33 provided for an on-call allowance, whilst article 34 provided for a night work supplement. Article 44 entitled a worker to a rest break on not less than 30 minutes in respect of a period of 5 and a half hours, unless the worker and the employer agree otherwise.

23. Part 10 of the Order provided for annual leave and for holiday pay. Article 54 provided for bereavement leave.

24. Part 11 of the Order provided for an entitlement to agricultural sick pay.

25. The Working Time Regulations 1998 (hereafter WTR) are also applicable to the contracts of employment of the claimants. They provided for maximum working time (including overtime) for a worker of 48 hours per seven days. Regulation IV (of the WTR) required an employer to take "all reasonable steps, in keeping with the need to protect the health and safety of workers to ensure that the limits specified in Regulation 4(1) is complied with in the case of each worker employed, in relation to whom the provision applies".

26. The WTR required any derogation from maximum hours to be agreed in writing by the worker and the employer. The employer must, in any event, maintain records that, amongst other matters, specify the number of hours worked by the worker.

27. Regulation 35 of the WTR provided that any provision in an agreement, whether a contract of employment or not, is void, insofar as it purports to exclude or limits the operation of the WTR.

## *E. REGULATION OF GANGMASTERS*

28. It is common ground that the claimants were employed by D1 in circumstances that meant the claimants' employment was subject to the regulatory regime of the Gangmasters (Licensing) Act 2004 and the Rules made under it. The regulatory authority for this purpose was at all material times known as the Gangmasters Licensing Authority (hereafter GLA).

29. Section 4 provides that a person is a Gangmaster if he supplies a worker to do work to which the Act applies for another person; and it does not matter whether the work is done under the control of the Gangmaster or another person.

30. As I have mentioned earlier, the claimants were employed by D1 to catch chickens on various farms. The live chickens would then be transported for slaughter and processing. D1 was paid by the relevant food processing company in respect of the work done by the claimants.

31. Section 6 of the 2004 Act prohibits a person from acting as a Gangmaster except under the authority of a licence. D1 lost its licence in 2012, as a result of matters to which I shall turn in due course.

32. The 2004 Act creates a number of offences, including being in possession of false documents. An offence is also committed by a person who makes materially false statements to an enforcement or compliance officer.

33. Section 20 applies the Act to bodies corporate. If an offence committed by the body corporate is shown to have been committed with the consent or connivance of an officer of that body or to be attributable to any neglect on that person's part, the officer as well as the body corporate is guilty of the offence (section 20).

34. The Gangmaster (Licensing Conditions) Rules 2009 make detailed provision for the licensing scheme established by the 2004 Act. Rule 7 provides that any contravention or failure to comply with the Rules or with the conditions is, so far as it causes damage, actionable. Paragraph 4 of Schedule 1 imposes upon a licence holder the obligation, at all times, to act "in a fit and proper manner". Where the licence holder is the body corporate, that obligation extends to "every director, manager, secretary or other similar officer".

35. Paragraph 3 of Schedule 1 defines "work-finding services" and paragraph 7 prohibits the licence holder from charging a fee to a worker for any work finding services.

36. Paragraph 13 states the licence holder must not withhold or threaten to withhold the whole or any part of any payment due to the worker on certain specified grounds. These include "any matter within the control of the licence holder".

37. The GLA's Licensing Standards (April 2009) explain, amongst other things, how the licensing system operates and, in particular, how compliance with the regime is assessed. An inspection by the GLA will test relevant licensing standards, resulting in an overall score. The scoring system determines whether an applicant or licence holder has passed or failed an inspection. A fail score for inspection is 30 points. Standards

designated as "critical" are worth 30 points. With one exception, all other standards are worth 8 points.

38. During an inspection, an applicant or licence holder may be asked details of any current contracts with labour users. The GLA may also interview a sample of workers under those contracts.

39. Where no issues are identified, a licence will be granted (to applicants) and there will be no change for existing licence holders. Where an inspection score is below 30 points, additional licence conditions will be attached to the licence. If the inspection score is 30 points or above, the application will be refused or the licence revoked.

40. At this point, it is relevant to note that the GLA's inspection of D1 in 2012 resulted in a score of 266 points, which accordingly led to the revocation of its licence.

41. In respect of the so-called "fit and proper test", the Licensing Standards document emphasises the seriousness of a person not being candid and truthful in all their dealings with any regulatory body and the necessity of compliance with other legal, regulatory and professional requirements and standards. Failure against this standard "may lead to a licence being revoked with immediate effect".

42. Licensing standard 2 describes as "critical" the payment to a worker of at least the national minimum wage or, if applicable, the minimum set by the appropriate AWO.

## *F. COMPANIES ACT 2006*

43. The final statutory scheme which is necessary to mention is that contained in the Companies Act 2006. Section 172 (duty to promote the success of the company), so far as relevant, provides as follows:-

> "(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to -
>
> (a) the likely consequences of any decision in the long term,
>
> (b) the interests of the company's employees,
>
> …
>
> (d) the impact of the company's operations on the community and the environment,
>
> (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
>
> …"

44. Section 174 (Duty to exercise reasonable care, skill and diligence) provides:-

> "(1) A director of a company must exercise reasonable care, skill and diligence.
>
> (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—
>
> (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
>
> (b) the general knowledge, skill and experience that the director has."

## *G. PROCEEDINGS BEFORE SUPPERSTONE J*

45. This is not the first time that D1, D2 and D3 have faced proceedings brought by Lithuanian former employees engaged in chicken catching. In Galdikas and others, the DJ Houghton Catching Services Ltd and Others, [2016] [EWHC] (QB), Supperstone J entered summary judgment in respect of the claimants in those proceedings in respect of "the Houghton Defendants" (see below) for failure to pay the claimants in their work in accordance with the terms of the relevant AWO; for breach of condition 7 (prohibition on charging fees) and condition 13 (deductions from wages) of the 2009 Rules as well as the standards 4.3 and 6.3 of the Rules, relating to lack of facilities to wash, rest, eat and drink.

46. Supperstone J referred to D1, D2 and D3 as "the Houghton Defendants". In his judgment:-

> "The Houghton Defendants accept that the Second and Third Defendants [here, D2 and D3] were jointly responsible for the First Defendant."

47. As can be seen from the terms of the preliminary issue to be decided in this case, D2 and D3 have made no such concession in respect of the present claimants. According to D2 and D3, the concession they made to Supperstone J was wrongly made and they are, in any event, not bound by it in the present proceedings.

48. The present proceedings were on foot at the time of Supperstone J's judgment. Indeed, application 3 made to Supperstone J was the application of D1, D2 and D3 to set aside a stay of the present proceedings (described as "the Antuzis proceedings"), which had been ordered by Master Fontaine on 9 February 2016. Amongst the submissions made by D1, D2, and D3 in support of lifting the stay were that it would be less costly to consider the 16 claimants in both sets of proceedings at the same time and that any findings of fact made in the Galdikas proceedings would not be binding upon the Antuzis claimants.

49. Mr Hendy QC, who appeared for the Galdikas claimants, described the situation as "being akin to group litigation where it makes good sense for a few claims raising

generic issues to be determined first". The two sets of claims were "plainly broadly the same".

50. Having regard to the overriding objective and in particular to proportionality and cost, Supperstone J decided that the stay should not be lifted.

## *H. PROCEDURAL MATTERS*

51. At the commencement of the hearing before me on 19 February, D1, D2 and D3 objected to the introduction into evidence of certain documentation, set out in the lever-arch files prepared by the claimants. Having heard submissions, I dismissed the objection. Leaving aside the issue of a hearsay notice, which was not pursued with any vigour by Mr Allen, and which, in any event, lacked merit, I considered that the great majority of the material objected to had in fact been disclosed in connection with the Galdikas proceedings. I was referred in this regard to a letter dated 21 April 2017 from the previous solicitors for D1, D2 and D3, giving "formal consent to use the disclosure documents in the Galdikas proceedings in the current claim". I did not consider there to be any merit in the submission that the fact the present proceedings concerned a preliminary issue and summary judgment meant that these proceedings were not to be regarded as part of the proceedings referred to in that letter. I found the fact that D1, D2 and D3 had seen fit to change solicitors on several occasions ought not in fairness to impact adversely on the ability of the claimants to rely upon the relevant material.

52. In any event, I indicated that I would remain alive to any "fairness" issue which might arise in the course of the proceedings, insofar as it touched upon the relevant material. In the event, no such issue arose.

## *I. THE EVIDENCE AND ITS ASSESSMENT*

53. The oral evidence was extensive. For the claimants, I heard from Tadas Balciauskas, Robertas Urbonas and Antanas Urnikis, each with the assistance of interpreters in the Lithuanian language. For the defendants, I heard from Samantha Shanks, Darrell Houghton (D3) and Jacqueline Judge (D2). A synopsis of the evidence is set out in the Appendix to this judgment.

54. I turn to assess the evidence. Each of the three claimants who gave oral evidence did so in a calm and measured fashion. Despite skilful cross-examination by Mr Allen, they did not resile in any material respect from their witness statements. It was plain that each was doing his best to assist the court. Thus, when it was put to Mr Urbonas that it was correct that supervisors worked with team members, and they all engaged in catching, he acknowledged that this did happen. He also accepted that if the hours worked shown on one of the payslips were true, that would not be a bad week's pay; but pointed out that the payslip had actually under-recorded by very many hours. Each of the claimants avoided straying into the realm of speculation.

55. Although the evidence of the three claimants was in accord on many issues, items of detail varied. Far from undermining their credibility, I consider this underscores the fact that each of them was telling the truth.

56. I do not consider anything turns on the absence of text message or similar evidence to show that the witnesses did not at the time complain to friends or relatives in Lithuania. I accept there may have been an element of pride involved. What is far more telling, I find, is that when the claimants attempted to complain to Jackie Judge, the consistent evidence was that she was not only unmoved, but would take action designed to punish those concerned or, frequently, the entire household. So, when Mr Balciauskas and his colleagues refused to work, they were evicted from their premises.

57. I do not consider it damaging at all to the credibility of the claimants' witnesses that none was able to identify specific weeks when particular malpractice occurred. It was not their legal responsibility to keep relevant records. It does not lie in the mouth of the defendants to say, in these circumstances, that the claimants' lack of specificity should count against them: see Carol Keefe v The Isle of Man Steam Packet Company Ltd [2010] EWCA Civ 68.

58. The claimants' evidence was also overwhelmingly demonstrative of the use made by D2 and D3 of the manifestly unsavoury and generally problematic individual known as Edikas Mankevicius (hereafter Edikas). The claimants' evidence shows that Edikas was used by the defendants as an enforcer, to ensure that chicken catchers followed what I have concluded was the gruelling and exploitative work regime that was being imposed upon them by the defendants.

59. In making my findings, I am aware that the defendants point to a small number of individuals, including one Kalinkinas, who provided written testimony to the effect that there were no problems regarding D2 and D3. They did not give oral evidence. Their circumstances and motivation are unclear, save that Kalinkinas was a supervisor, a class of worker who, I am satisfied, was treated better by D2 and D3 than were chicken catchers. I have borne in mind whether a judge, who did hear these individuals, as well as the three claimants who gave evidence before me, would be likely to find that their testimony undermined that of the claimants. I do not consider it would. The claimants' witnesses spoke to their own experience, as chicken catchers, and that of their colleagues who did the same work. Viewing the evidence before me as a whole, and in the light of my firm conclusions regarding the evidence of D2 and D3, to which I shall shortly turn, it is in my view fanciful to suggest that any oral evidence from these individuals would materially affect the outcome.

60. I also bear in mind that certain of the claimants worked for significant periods for D1 and that some returned to do so, after periods elsewhere. That is, however, an indication of the extent to which the claimants needed to earn money. The fact that they were prepared to work in circumstances where they may have been unaware of their rights under English law does not detract from their credibility.

61. I turn to the defendants' witnesses. I found Samantha Shanks, overall, to be a witness of truth. She did not seek to escape from the obvious difficulties in which she was placed. She candidly accepted, on several occasions, that the calculations she applied to arrive at the number of hours that a chicken catcher had worked were not merely notional but entirely fictional. I accept what she said in her written statement that D2

had told her it was impossible to ascertain the hours of the chicken catchers. The fact that what D2 said was untrue in theory does not affect my finding that this is what Ms Shanks was told by D2. As it happens, what D2 said was true as a matter of fact because no records were kept of such hours by D2 or D3.

62. Ms Shanks' evidence does not begin to show that she considered, or ought to have considered, that the hours given to her in respect of the drivers could be used accurately to calculate the hours worked by chicken catchers during a particular week. As the evidence as a whole shows, merely using the drivers' hours would not necessarily produce reliable figures. In that regard, what D2 is recorded as saying in paragraph 12 of Ms Shanks' statement is correct; namely, that "it was very difficult to keep track of who was working".

63. I agree with the claimants that, in one respect, Ms Shanks' witness statement is not right. At paragraph 13, she said that D2 never instructed her to calculate the chicken catchers' hours in any particular way. It is fair to say that that statement is, to some extent, qualified in paragraph 13, because Ms Shanks went on to say that "we did discuss how we would calculate the notional hourly rate and adopted that method". In the event, however, Ms Shanks agreed unequivocally under cross-examination that D2 did, in fact, tell her to do things that way. Although she resiled from this in re-examination, I consider what she said in cross-examination is more likely to represent the truth. Ms Shanks would have had no reason of her own to devise such a system. Her evidence is, in any event, clear that D2 was fully aware of what was going on.

64. Ms Shanks was frank that she did not know the times of day that workers worked, or whether they had worked sufficiently to qualify for the overtime rate. She was also adamant that catchers were not paid for travel time.

65. I regret I found Darryl Houghton (D3) to be a thoroughly unsatisfactory witness. I accept that, in certain very limited respects, he gave reliable evidence. He said that profits of less than £2000 from D1 would be "absolute nonsense", which was subsequently demonstrated to be the case, when the figure in question was identified as relating to a balance sheet, rather than to profits earned in a financial year. I also accept that he and D2 would, on occasions, make payments from their personal account that were intended to facilitate the cash flow problems faced by D1. That, however, is the extent of my positive findings from D3's evidence.

66. It is manifest, in my view, that D3 was, at least from July 2007, fully aware of the requirement to pay employees at the minimum rate required under the AWO and, generally, as to the legal obligations of a Gangmaster. He knew, in all likelihood before 2009, that charging work-finding or employment fees would be classed by the GLA as a failure of a critical nature, so far as licensing was concerned. He was aware, at least from 2007, that proper records of hours worked had to be kept by a Gangmaster in respect of chicken catchers. He knew from 2007 that there needed to be a record of annual leave and a record of payments of annual leave. All of this emerges from the effective cross-examination of Mr Hendy, as seen in the synopsis.

67. D3's awareness of these legal obligations and the consequences of breaching them are underscored by the decision to employ Mr Godfrey to assist with regulatory compliance. D3's evidence about what he did with the "guidance" and "tools" provided by Mr Godfrey, was however, entirely unsatisfactory.

68. Mr Allen asked me to place limited weight on the GLA inspection reports, which D2 and D3 said they had not seen until the hearing, or very shortly beforehand. This included the draft report of Mr Moorhen. These documents had, however, been disclosed to the solicitors for D2 and D3, much earlier. Be that as it may, the evidence given by D3, in cross-examination, demonstrates clearly that he was aware of the relevant responsibilities of a Gangmaster. That is so, even if one places only limited weight on the details of the reports.

69. I agree with Mr Hendy that the credibility of D3 was undermined by his contention, in respect of a particular payslip, that the hours recorded on it were the actual hours worked by the chicken catcher concerned. It is, frankly, nonsense to believe that, given the fictional basis of the calculation, the hours on the payslip could, in fact, represent reality. They could do so only as a result of unbelievable coincidence.

70. Here and elsewhere, as can be seen from the synopsis of the evidence, D3 was exposed as someone who is prepared to say anything at all which he thinks might serve his purpose. This is further demonstrated by the blatant contradictions between his more recent evidence and his appeal witness statement relating to the GLA licence revocation. It is also demonstrated by his change of tack as to when he was obtaining workers through the auspices of Edikas. The suggestion that, since the GLA's inception, he had used Edikas only for translating purposes is, in particular, an obvious untruth.

71. D3 denied that workers stayed out on duty overnight, except on one particular occasion when health and safety issues were said to have intervened. But that was plainly not the position in truth, as D3 effectively accepted in cross-examination. D3's evidence about whether travel time was paid was likewise, totally bizarre.

72. A common thread running through the evidence of D2 and D3, not just in these proceedings but in the regulatory appeals, is that they seek to deflect criticism of their activities by blaming professionals whom they have employed. Ms Shanks is a prime victim; but an analysis of her evidence, taken in the round with that of D2 and D3, shows the abject failure of this attempt to shift blame. The GLA noted as much in their reply to the notice and grounds of appeal against the 2012 licence revocation. Their assessment was entirely right. When this was put to D3 in cross-examination, his response was depressingly characteristic: he complained that his counsel had been two hours' late arriving at the appeal hearing.

73. So far as concerns the visit of Mr Moorhen to D3, the overwhelming likelihood is that he was shown documentation relating to a driver who, it is common ground, generally had their hours properly recorded; or he was shown some of the materials Mr Godfrey had urged D3 to use; or it was a combination of both. The reality of the matter is, I find, is that Mr Moorhen was not given a correct picture of what was, in reality, happening in D1's business. That finds support from the fact that another officer of the GLA was plainly sceptical about Mr Moorhen's draft report, as can be seen from the comments annotated upon it.

74. Both D2 and D3 sought to emphasise that Mr Moorhen had spent time with Ms Shanks. That visit is recorded in paragraph 4 of Ms Shanks' statement. She describes it as not being a long one. Ms Shanks says that she explained the method of calculation of the

payslips to Mr Moorhen and that "he seemed to be satisfied with the way I had arrived at those figures".

75. D3, however, clearly knew that the figures were fictional. He also knew, which Mr Moorhen would not have known, that the hours recorded were a gross underestimation of the hours actually worked by the chicken catchers, as the claimants' evidence reveals. Given his understanding of the regulatory regime, therefore, D3 cannot rationally have assumed that a lack of any action on the part of the GLA, following Mr Moorhen's visit, meant that D1 was complying with its legal financial obligations, as regards the claimants. Rather, I find that D3 believed that, at least for a while, he and D2 had succeeded in escaping the regulatory consequences of their actions. In common parlance, they had, for the moment, "got away with it".

76. Jackie Judge (D2) was also a thoroughly unsatisfactory witness. In oral evidence, she adopted the absurd position (not reflected anywhere else in the evidence - including her own) that chicken catchers would ask her, apparently unprompted, to deduct between £250 and £350 from their wages, at the rate of £50 a week, as an employment fee for Edikas. Her explanation that, as a woman, she did what she was told is entirely inconsistent with the rest of the evidence and with the impression she gave in the witness box. It is, I find, nonsense.

77. Both D2 and D3 were at pains to say that D1 had not been put out of business, as a result of the raid and subsequent events. D2, however, disclosed how exiguous D1's operations now are, compared with previously. She said they comprised D3 driving a minibus, although she said even this was not anticipated to last much longer.

78. As I found with D3, D2 cannot rationally have assumed that the GLA had sanctioned the approach of D1 to the payments etc to wages; or have honestly believed that what was being done by them to the chicken catchers was morally or legally sound. As the claimants point out, this excuse was run before Judge Sage in the 2012 appeal. Judge Sage identified, in her decision, serious issues regarding the honesty of D2 and D3. Regrettably, nothing at all has changed.

79. D2's attempt to defend her conduct on the basis that the chicken-catching industry in general pays at piece work rates took her case nowhere. It is not being suggested, still less shown, that others in the industry operated a system of fictional hours, albeit that piecework applied.

80. D2 was seriously evasive in her evidence relating to messages such as "speak Edikas", written on payslips. Throughout the years of civil and regulatory litigation that preceded this hearing, D1, D2 and D3 have not asserted, as far as I can see, that this was not D2's handwriting. In any event, the overwhelming inference is that it was her writing or that of her relatives who were doing her bidding. The suggestion that the messages had to do with Edikas' own affairs, rather than anything to do with D1, D2 and D3, is refuted by the evidence of the claimants, which I find credible.

81. So far as accommodation is concerned, I find the evidence of the claimants represents reality; namely that, as a general matter, chicken catchers recruited for D1 were, in effect, required to live in particular accommodation. A chicken catcher, as opposed to a supervisor, effectively had no choice in the matter. If he was to get regular work, he had to live in one of D2 or D3's properties or one of the properties of Edikas

82. D2's claim in oral evidence that she had, at best, only a limited say over where the chicken catchers worked, is inconsistent with the pleaded defence and with the text message evidence; as well as being totally at odds with the credible evidence of the claimants.

83. As with D3, D2's evidence about deductions from wages was chronologically inconsistent. D2 also had no satisfactory explanation for the terms of the text message sent to Edikas in 2012, at a time when she asserted she was not on good terms with him. Whilst I accept, as the claimants confirmed, that difficulties arose in the relationship between Edikas and D2 and D3, it is plain that the economic aims of D2 and D3 meant their business relationship with Edikas nevertheless continued.

## *J. SUMMARY JUDGMENT*

84. As is apparent, the terms of Master Yoxall's order and the way in which the case has been presented on both sides mean that I have examined a good deal of oral and documentary evidence. To that extent, it would be wrong to deny that there has been some form of trial in respect of the summary judgment issues. I nevertheless keep firmly in mind the fact that, for the purposes of this part of my judgment, I am not merely deciding whose evidence I prefer but considering whether, by reference to that evidence and having regard to my findings in respect of it, D1 has a realistic as opposed to a fanciful prospect of succeeding in its defence to those elements of the claimants' case that are within the ambit of the summary judgment. In other words, I must consider what a hypothetical judge might conclude on the basis of all the evidence before him or her, which may not be the same as is before me.

### *(1) Underpayment of AWO rates*

85. D1 accepts that there was a failure to pay claimants' Vygantas Bucyms and Edmundas Mikiulkevicius in accordance with the AWO minimum for each specific hour, which may have led to an underpayment in respect of the pay reference period of a week. All other claimants, are however, put to proof of the matter, says Mr Allen. None of the other claimants has specified any particular week when he worked a specific number of hours and was not paid for them at the AWO rates.

86. The evidence, is however, simply overwhelming that D2 and D3 were operating D1 at all material times in a deliberate and systematic manner, whereby chicken catchers were working massively more than the hours recorded on the payslips. If this was not so, then there would have been no need to engage in the fictional exercise which D2 and D3 required of Ms Shanks. That exercise was necessary because (contrary to the assertion that such a thing was impossible) no records were being kept by D2 and D3 of the hours worked by chicken catchers. The reason why no records were being kept was because D2 and D3's *modus operandi* involved a flagrant disregard of the AWO requirements as to the minimum pay. The admission (despite D3's unsuccessful equivocation in oral evidence) that travelling time was not paid further supports this conclusion, as does the evidence that chicken catchers would often complete shifts with more than one driver per week, frequently being home only for very short periods between shifts or sometimes switching from one bus to another whilst still out on duty.

87. I have taken account of the point made by Mr Greaves, in closing submissions, that Ms Shanks had, in fact, generally over-estimated the number of hours that could be classified as night work. This does not, however, begin to overcome the difficulties for D1 in this regard. Given the sheer scale of the evidence relating to enormously long working weeks, it is highly unlikely that this modest error in favour of the chicken catchers will have a material bearing on this aspect of the claims.

88. It also has to be borne in mind that the evidence shows overwhelmingly that there was complete disregard for entitlement to overtime, to which the claimants would have been almost universally and consistently entitled, given the numbers of hours being worked.

89. Given the enormous problems regarding the credibility of D2 and D3, as discussed above, it cannot, I find, rationally be contended that their evidence regarding chicken catchers being "on call" could be preferred to that of the claimants. The claimants' witnesses gave consistent and compelling evidence of being regularly required to depart, on very little notice, to the point that one at least felt he could not afford to leave the premises even to go to the shops.

90. Overall, I am in no doubt that there is no realistic prospect of the defendants succeeding at trial in relation to these matters. I agree with the claimants that judgment should be entered for each of the items, with quantification of loss to be determined at an assessment of damages hearing.

***(2) Employment or work-finding fees***

91. For the reasons I have given, the evidence of D2 and D3 on this issue is, likewise, hopeless. There was a systematic process of withholding money at £50 a week up to a maximum of £250 or £350, which continued until 2012. Occasionally, a returning worker would not be required to pay a further employment fee; but that was the exception, rather than the rule.

92. D1 accepts that Mr Balciauskas and Mr Urbonas have given evidence upon which the court "is likely to conclude that they have come up to proof". As I have said, I consider that the evidence goes much further and that what Mr Balciauskas and Mr Urbonas said demonstrates to a very high degree of likelihood, that the other claimants also suffered these illegal deductions from their wages.

93. I reject the submission that there may be a real issue regarding whether certain payments were made directly to Edikas, the "untangling" of which would be a matter for trial. The evidence points categorically to deductions being made from cheques made out by D2, in order to pay Edikas. The submission that no other claimant has provided a payslip evidencing an employment fee founders on the fact that no proper records were kept by D1, D2 and D3, contrary to D1's legal obligations.

94. The sheer extent of the systematic abuse under this heading is demonstrated by the evidence of Ms Shanks regarding the average number of new workers each week, which correlates strongly with the payments made to Edikas. The explanation given by D2 for these payments I find no more believable than did Judge Sage.

95. In conclusion, judgment is entered for the claimants in respect of these matters with quantification of loss to be determined at an assessment of damages hearing.

***(3) Accommodation Fees***

96. Here again, the inconsistent and contradictory evidence of D2 and D3 stands in stark contrast to the evidence of the claimants. There is no reasonable prospect of D1 succeeding in showing that accommodation fees of £40 a week were not deducted, on a wholesale basis, from wages due to the chicken catchers. I agree with Mr Hendy that the fact the catchers may have been required to give D2 money for rent in cash cannot enable D1 to escape the legislative prohibition on taking rent beyond the legislative minimum. In any event, the documentary evidence shows multiple wage slips, bearing the £40 deduction, for periods both before and after 2010.

97. The belated assertion of D2, in oral evidence, that part of the £40 related to an element of council tax and water rates, is not credible. It is not supported by any documentary evidence to which my attention has been drawn. Be that as it may, I agree with Mr Hendy that the charge, overall, remains one for accommodation and, as such, subject to the legislative restriction.

98. I agree with Mr Allen that the maximum that can be charged for accommodation is not free-standing but relates to the minimum rate of pay. In other words, a person who is paid only the national minimum rate for a particular week cannot be charged more than the specified sum of £33.74 (for 2012; slightly less in previous years). The issue, therefore, for the purposes of summary judgment is whether there is a realistic possibility of D1 demonstrating that particular deductions were not unlawful because, for the weeks in question, the worker was, in fact, earning above the minimum wage.

99. It is therefore apparent that this issue is directly connected with the head of claim relating to the underpayment of AWA minimum rates of pay. In view of my conclusions on that matter, D1 cannot resist summary judgment relating to the deductions for accommodation. In the light of the strength of the evidence showing a systemic practice of requiring chicken catchers to work below the minimum rates, there is no real prospect of D1 being able successfully to show that the £40 deductions were lawful.

100. Judgment will be entered for the claimants, with quantification of loss to be determined at an assessment of damages hearing.

***(4) Unpaid Wages***

101. I agree with Mr Allen that D1 could not be expected to make good any arrears in pay, at the end of a period of employment, if the worker concerned left no forwarding address. I also accept, as I have earlier indicated, the evidence of D2 and D3 that they would sometimes draw on personal finances for the purposes of paying wages.

102. None of this, however, comes close to addressing the real mischief, compellingly articulated in the claimants' evidence and not credibly rebutted, that D2 and D3 operated a system of withholding wages for entirely invalid reasons. There is strong and consistent evidence from the claimants that wages were withheld as a form of punishment for alleged transgressions, such as holding parties and drinking alcohol. The witnesses gave evidence that recourse to borrowing was necessary, as a result of them not being paid. Mr Balciauskas identified a second reason in cross-examination; namely, that wages were withheld as a form of leverage. This chimes with the GLA's

view that "the systematic and persistent withholding of wages [was] a way to trap workers and leave them little or no option but to remain… in the hope that they would receive pay in the future".

103. In this regard, the messages on payslips, telling the recipient to speak to or otherwise contact Edikas, can be seen as the way in which D2 attempted to stifle any complaints in this regard. The evidence strongly demonstrates that Edikas was an unsavoury individual who, as I have indicated, served D2's and D3's purposes, albeit that their relationship with him was not without its own difficulties.

***(5) Holiday Pay***

104. In the light of the sheer strength of the evidence, the submission on behalf of D1, in closing, that it is denied D1, D2 and D3 failed to allow workers to take any holidays or failed to pay for holidays taken, is entirely devoid of merit. Both here and elsewhere and elsewhere, there is somewhat desperate attempt on behalf of D1, D2 and D3 to pray in aid of the written evidence of Mr Kalinkinas, who stated that he would always take his full holiday allowance four weeks a year, which finds support in the evidence of Ms Shanks.

105. The obvious problem with this, however, is that Mr Kalinkinas was at all material times a supervisor. The unshakeable evidence of the claimants was that supervisors, although they did engage from time to time in catching chickens, were treated by D2 and D3 in very different way from the other chicken catchers. The same point applies, with even more force, to the drivers of the minibuses. In short, the regime operated by D2 and D3 drew a very clear distinction between those categories of employees and the claimants.

106. There is, moreover, a complete lack of documentary evidence to show that holiday pay was provided to chicken catchers. Indeed, there is no credible evidence to show that the claimants were ever told about an entitlement to holiday pay.

107. Judgment will be entered for the claimants in respect of this item, with quantification of loss to be determined at an assessment to damages hearing.

## *K. PRELIMINARY ISSUE*

108. The general principle is that directors of a company will be liable for the torts of the company, committed at their direction.

109. In Rainham Chemical Works v Belvedere Fish Guano Company Ltd [1921] AC 465, Lord Buckmaster held:-

> "If the company was really trading independently on its own account, the fact that it was directed by Messrs Feldman and Partridge would not render them responsible for its tortious acts unless, indeed, they were acts expressly directed by them. If … those in control expressly directed that a wrongful thing can be done, the individuals as well as the company are responsible for the consequences**."** (467).

110. A somewhat different position obtains, however, where the unlawful act is procuring a breach of contract. In Said v Butt [1920] 3 KB 497, the plaintiff procured a theatre ticket, which was not in his name, knowing that if his true identity had been known, he would have been refused admission, owing to a dispute between him and the theatre company. McCardie J held that non-disclosure of the fact that the ticket was bought for the plaintiff prevented the sale of the ticket from constituting of contract, the identity of the plaintiff being a material element in its formation. For that reason the action failed.

111. However, McCardie J made these *obiter* observations:-

> "But the servant who causes a breach of his master's contract with a third person seems to stand in a wholly different position. He is not a stranger. He is the alter ego of his master. His acts are in law, the acts of his employer. In such a case it is the master himself, by his agent, breaking the contract he has made, and in my view the action against the agent… must therefore fail just as it would fail if brought against the master himself for wrongly procuring a breach of his own contract ….
>
> I hold that if a servant acting bona fide within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not become liable to an action of tort at the suit of the person who contract has thereby been broken. I abstain from expressing any opinion as to the law which may apply if a servant, acting as an entire stranger, wholly outside the range of his powers, procures his master to wrongfully break a contract with a third person."

112. The so-called rule in Said v Butt has been the subject of considerable judicial and academic scrutiny, in the years that followed.

113. A useful recent analysis of Said v Butt is to be found in the judgment of the Court of Appeal of Singapore in Arthaputra and others v St Microelectronics Asia Pacific Pte Ltd and others [2018] SGCA 17. In the judgment of Steven Chong JA, we find the following:-

> "54 McCardie J's statement in *Said v Butt* was made *obiter* as he had already found that there was no contract between the plaintiff and the theatre. Nevertheless, the *Said v Butt* principle has been consistently endorsed and applied in the United Kingdom and other jurisdictions such as Australia and Canada (see the High Court of Australia's decision in *O'Brien v Dawson* (1942) 66 CLR 18 ("*O'Brien v Dawson*") at 34 and the Newfoundland Court of Appeal's decision in *Imperial Oil Ltd v C&G Holdings Ltd* (1989) 62 DLR (4th) 261 ("*Imperial Oil*") at 266). The principle has also been applied by our courts in *Chong Hon Kuan, Nagase* (at [8]–[9]), and more recently in *M+W Singapore Pte Ltd v Leow Tet Sin and another* [2015] 2 SLR 271 ("*M+W Singapore*") (at[93]–[97]). Although *Said v Butt* concerned the tort of inducement of breach of contract, which was the applicable tort in that case, its application has been extended to other torts involving a company's breach of contract, such as unlawful means conspiracy where the unlawful means pertains to the contractual breach: see *O'Brien v Dawson* at [58] below.

55 However, there has thus far been no detailed analysis by the courts of what precisely the principle entails, in particular what it means to act "*bona fide* within the scope of [the director's] authority". Previous decisions of our courts have interpreted the *Said v Butt* principle to comprise two conjunctive requirements namely: (a) acting *bona fide*; and (b) acting within the scope of the director's authority, and to apply only to "protect persons in authority within corporate entities who genuinely and honestly endeavoured to act in the company's best interests": see *Chong Hon Kuan* at [49] and *Nagase* at [9]. Thus in *Nagase*, where the company's director, through the company, fraudulently overcharged the plaintiff, the director was held not to be entitled to the protection of the principle.

56 Conversely, a director who acts in good faith and within his authority would be immune from tortious liability, notwithstanding that he may have been genuinely mistaken as to the company's contractual obligations or even that he had the predominant intention of causing loss to another. An example of the former is the case of *Ng Joo Soon (alias Nga Ju Soon) v Dovechem Holdings Pte Ltd and another suit* [2011] 2 SLR 1155 ("*Ng Joo Soon*"), where the plaintiff sued the company's directors in the tort of inducement of breach of contract and in conspiracy for the wrongful breach of the company's obligation to pay the plaintiff certain sums under a contract. Philip Pillai J held (at [77]) that the directors were immune from such liability as they had acted within their authority and in good faith, and it thus did not matter that they had been mistaken as to the company's contractual obligations. For the latter, Woo Bih Li J opined in *Chong Hon Kuan* (at [46] and [48]) that the requirement of a predominant intention to injure was an essential requirement for lawful means conspiracy. If such an allegation could deprive a defendant of the protection of the *Said v Butt* principle, such a principle would become emasculated. Something more was thus needed, although it was not necessary for Woo J to consider what that was.

57 A brief examination of the application of the *Said v Butt* principle in other jurisdictions also reveals scant authority on its precise scope. In the United Kingdom, the principle has been consistently endorsed by the courts but without much judicial exploration: see *Scammell G & Nephew Ltd v Hurley* [1929] 1 KB 419 at 443 and 449, and *DC Thomson & Co Ltd v Deakin and others* [1952] Ch 646 at 680–681. Of particular significance is the decision in *Ridgeway Maritime Inc v Beulah Wings Ltd and Dr Tunji Braithwaite (The "Leon")* [1991] 2 Lloyd's Rep 611 ("*The Leon*"), where Waller J investigated the limitations of a director's liability for his company's breach of contract, in particular the definition of *bona fide*. He stated (at 624 col 2–625 col 1): There certainly are well known circumstances in which an employee may be liable for inducing a breach of contract where the employee is himself acting unlawfully including in breach of his own contract with his employer. … I find the words "bona fide", if they are meant to add anything to acting unlawfully, quite difficult in this context. Do they contemplate that an individual who knows that what he is doing will lead to the company being in breach of contract being somebody not acting bona fide? Or do the words bona fide relate to the relationship of the individual with the company i.e. if he is seeking to force the company to do something contrary to its own interests? If the

latter, I am not satisfied that *without the action of the employee also being a breach of contract or legal duty to the employer*, it could found an action for tort for inducing a breach. [emphasis added] Waller J thus acknowledged that an employee could be liable in tort for procuring his employer to breach the latter's contract with a third party, *provided* that the act of inducement was in breach of the employee's own contract with or legal duty owed towards his employer.

58 In Australia, the *Said v Butt* principle was approved by the High Court of Australia in *O'Brien v Dawson* but without specifically addressing the *bona fides* requirement, *ie*, that directors who exercise their functions as directors and act within their authority are immune from the tort of inducing the breach of contract. The plaintiffs in *O'Brien v Dawson* sued a company and two of its directors for conspiracy to injure the plaintiffs when the defendants ejected the plaintiffs from certain theatres, even though the plaintiff had been occupying the theatres pursuant to an agreement with the company. The court held that the directors could not be held personally liable either for conspiracy with the company or for procuring the company to breach its contract because a director acting within the scope of his authority in the exercise of his functions acted in the capacity of and *as* the company, and not himself. The company should thus be properly liable for such acts, and not its directors.

59 The uncertainty of the scope of the principle, in particular whether it protects directors ordinarily acting within their authority but not in good faith or in the best interests of the company, was recently canvassed by the Supreme Court of Western Australia in *Knights Capital Group Ltd v Bajada and Associates Pty Ltd* [2016] WASC 69. The plaintiff sued the company's directors for inducing the company to wrongfully repudiate a management agreement with the plaintiff. The defendant-directors applied under O 16 r 1 of the Rules of the Supreme Court 1971 (WA) for summary judgment on the basis that they had a good defence on the merits, namely that they had acted within their authority in taking the decision to terminate the management agreement and were entitled to immunity on the basis of the principle in *O'Brien v Dawson*. The plaintiff argued that the defendant-directors were not entitled to immunity because their conduct, although ordinarily within their authority as the company's directors, was not engaged in good faith or in the best interests of the company, and their conduct was thus an exception to the *Said v Butt* rule.

Pritchard J, in considering the plaintiff's argument, stated (at [80]–[81]) that the scope of the rule in *Said v Butt* remained "largely unexplored" and that the rule did not sit comfortably with the body of law recognising that a director may be personally liable for procuring other wrongs by the company. However, as there was no evidence to suggest that the directors had not acted in the best interests of the company, summary judgment was granted in favour of the defendant directors and the case did not progress any further. This case is however useful in demonstrating, first, that the scope of the principle in *Said v Butt* should be more clearly demarcated, and second, that there is a question as to the consistency of the *Said v Butt* principle with the other body of law which provides that a director is generally

liable for other torts he has procured the company to commit (we address the latter at [74]–[79] below).

60 In Canada, the *Said v Butt* principle was approved by the Newfoundland Court of Appeal in *Imperial Oil*. The court interpreted the principle to mean that a director was immune when he acted *bona fide* within the scope of his authority in the best interests of the company. However, even when the director was not so acting, he would only be personally liable if the circumstances *additionally* showed that his dominant concern was on depriving the third party of its contractual benefits. Marshall JA reasoned that the director's duty to act *bona fide* was owed to his company and was of no concern to third parties. To require directors to justify their corporate actions to third parties such that they would obtain immunity from suit would "extend the concept of piercing the corporate veil beyond the limits prescribed by law" (at 266). Thus, even where a director was not acting *bona fide*, the additional factor of a dominant purpose to deprive the plaintiff of its contractual benefits was required.

61 The Ontario Court of Appeal in *ADGA Systems International Ltd v Valcom Ltd* [1999] OJ No 27 ("*ADGA Systems*")44 similarly approved the *Said v Butt* principle as an exception to the general rule that directors are personally liable for their tortious conduct even though their conduct may be *bona fide* in the best interests of the company. But Carthy JA held (at [43]) that the exception did not apply in that particular case. The plaintiff and defendant were competitors. The plaintiff held a contract with the Canadian prison services for technical support and maintenance of security systems, which was expiring, and fresh tenders were called. The defendant company's sole director and senior employees convinced the plaintiff's employees to permit their names to be used in the defendant's tender documents (such that the defendant could show that they had technicians with the requisite experience) and to work for the defendant if the defendant won the tender. The plaintiffs sued the defendant company's director and senior employees for inducing a breach of contract and breach of fiduciary duties between the plaintiff and its employees. Carthy JA noted that the *Said v Butt* exception applied to exempt only directors acting *bona fide* within the scope of their authority from personal liability for the tort of inducement of breach of contract. In that case, the plaintiff's claim was premised on the inducement of breach of fiduciary duties and not inducement of the breach of contract (at [4]). The *Said v Butt* principle also did not apply to protect the defendant-directors because the defendant-directors were not causing a breach of a contract between their company and the plaintiff, but between the plaintiff and its employees. The plaintiff there had no contractual relationship with any of the defendants. The defendants' appeal to the Supreme Court of Canada was refused.

62 Having reviewed the authorities, we find that the scope of the *Said v Butt* principle should be more clearly demarcated and defined to provide certainty for directors in the performance of their duties. In our judgment, the *Said v Butt* principle should be interpreted to exempt directors from personal liability for the contractual breaches of their company (whether through the tort of inducement of breach of contract or unlawful means conspiracy) if their acts, in their capacity as

> directors, are not in themselves in breach of any fiduciary or other personal legal duties owed to the company."

114. The conclusion of Waller J in The Leon, cited in paragraph 57 of the judgment, points towards the conclusion I draw: namely, that it is the officer's conduct and intention in relation to his duties towards the company - not towards the third party - that provide the focus of the "bona fide" enquiry to be undertaken pursuant to the rule in Said v Butt.

115. This does not, however, mean that the nature of the breach of contract which occurs between the company and the third party is irrelevant. On the contrary, the nature of the breach, and its consequences, may directly inform whether the officer of the company has breached his or her duties towards the company.

116. In the present case, Mr Hendy drew particular attention to the fact that the breaches of contract which were committed by D1, as I have found in the summary judgment, also involved breaches of statutory duties. The requirements to pay the minimum wage under the AWO and not to make various deductions, as set out in the summary judgment above, did not arise as a result of arms-length agreements struck between the claimants and D1. They were statutorily imposed by Parliament in order to protect vulnerable workers from exploitative employers.

117. Mr Allen made the valid observation that merely procuring a breach of contract of this kind cannot be the touchstone for deciding if the director is liable. If it were, then directors would, in the employment field, regularly face personal liability because many aspects of employment contracts have a statutory element. Such a conclusion, he said, cannot be right.

118. I agree. However, Mr Hendy's submission cannot be so easily circumvented. As we have seen, section 172 of the Companies Act imposes important duties on directors to act in good faith so as to promote the success of the company and, in so doing, to have regard to matters such as "the likely consequences of any decision in the long term: the interests of the company's employees; the impact of the company's operations on the community; and the desirability of the company maintaining a reputation for high standards of business conduct". Section 174 of the same Act imposes a duty on the directive to exercise reasonable care, skill and diligence.

119. The nature of the breach of contract is directly relevant to the determination of whether, in a particular case, a director has complied with section 172, as regards his or her duty to the company and the ultimate question whether inducing the breach is actionable against the director.

120. There is, plainly, a world of difference between, on the one hand, a director consciously and deliberately causing a company to breach its contract with a supplier, by not paying the supplier on time because, unusually, the company has encountered cash flow difficulties, and, on the other hand, a director of a restaurant company who decides the company should supply customers of the chain with burgers made of horse meat instead of beef, on the basis that horse meat is cheaper. In the second example, the resulting scandal, when the director's actions come to light, would be, at the very least, likely to inflict severe reputational damage on the company, from which it might take years to recover, if it recovered at all.

121. In this example, the fact that supplying horse meat is likely to violate food and trading standards legislation is plainly relevant because it is society's disapproval of acting in this manner that gives rise to the statutory duty and the breach of that duty is therefore indicative of societal disapproval of what the director has caused the company to do and the resulting reputational damage to the company.

122. Accordingly, as a general matter, the fact that the breach of contract has such a statutory element may point to there being a failure on the part of the director to comply with his or her duties to the company and, by extension, to the director's liability to a third party for inducing the breach of contract. Whether such a breach has these effects will, however, depend on the circumstances of the particular case.

123. In the present case, D1 is one hundred per cent owned by D3. D2 is accepted by Mr Allen and Mr Greaves to have "a comparable common law fiduciary duty to act bona fide in what she considers is in the interest of the company, given that D2 is its company secretary." That must, with respect, be right.

124. I do not consider there is any issue about whether D2 and D3 were acting within the scope of their authority, in terms of the company's articles of association and the company's tables (A to F Regulations). They clearly were. On the other hand, it is I find beyond doubt that D2 and D3 acted in breach of sections 172 and 174. What they did was not in the best interests of the company or its employees. On the contrary, as I shall explain, they wrecked its reputation in the eyes of the community.

125. The question for the purposes of the application of Said v Butt is, thus, whether D2 and D3 were acting *bona fide*, vis a vis D1. For reasons that will already be apparent, I find that they were not. In the light of the evidence, I find that neither D2 nor D3 honestly believed (i) that they were paying chicken catchers the minimum wage; (ii) that they were paying required overtime and holiday pay; and (iii) that they were entitled to withhold payments of the kinds I have described.

126. On the contrary, the inescapable conclusion is that D2 and D3 knew that they were completely unable as a matter of law to act in this way on behalf of D1. Their attempts to blame others have been exposed as a sham. Their claim not to have realised that anything significant was amiss in the light of the successful 2007 and 2010 GLA inspections is entirely false. Their efforts to rely upon the statements of individuals, who asserted all was well, has come to nothing. The credible evidence of the claimants shows how the academic team from Bristol University had the wool pulled over its eyes, so far as the true position of chicken catchers was concerned. The same is true of Mr Moorhen.

127. D2 and D3 did all these things because they were concerned to maximise the profits of D1, which they – and only they – enjoyed. But, just as in the restaurant example, the desire to maximise profits has had catastrophic consequences for D1. When the malpractices finally came to light, D1's fortunes dramatically declined. Far from having a reputation for high standards for business conduct, D1 stands exposed as a pariah.

128. Before the exposure of D1, D2 and D3's activities were manifestly not in interests of the company's employees, so far as the chicken catchers were concerned. Following

exposure, their activities can be seen not to have been in the interests of any of the employees, since there are no longer any supervisors or drivers.

129. That is not, in fact, quite right, if one accepts D2's evidence that D3 drives a minibus under the auspices of D1. This exiguous activity of D1 cannot, however, rationally be said to be in any way comparable with the previous state of the company, which, before the malpractices of D2 and D3 came to light, was the biggest chicken-catching operator in the south of England.

130. In short, D2 and D3 were not acting *bona fide* vis-à-vis D1. It is, accordingly, necessary to turn to OBG Ltd and Another v Allan and others [2007] UKHL 21 in order of determine whether D2 and/or D3, acting in their own right, are liable for inducing breach of contract.

131. For our purposes, the following passage of the judgment of Lord Hoffman is relevant:-

> "39. To be liable for inducing breach of contract, you must know that you are inducing a breach of contract. It is not enough that you know that you are procuring an act which, as a matter of law or construction of the contract, is a breach. You must actually realize that it will have this effect. Nor does it matter that you ought reasonably to have done so. This proposition is most strikingly illustrated by the decision of this House in *British Industrial Plastics Ltd v Ferguson* [1940] 1 All ER 479, in which the plaintiff's former employee offered the defendant information about one of the plaintiff's secret processes which he, as an employee, had invented. The defendant knew that the employee had a contractual obligation not to reveal trade secrets but held the eccentric opinion that if the process was patentable, it would be the exclusive property of the employee. He took the information in the honest belief that the employee would not be in breach of contract. In the Court of Appeal McKinnon LJ observed tartly ([1938] 4 All ER 504, 513) that in accepting this evidence the judge had "vindicated [his] honesty…at the expense of his intelligence" but he and the House of Lords agreed that he could not be held liable for inducing a breach of contract.
>
> 40. The question of what counts as knowledge for the purposes of liability for inducing a breach of contract has also been the subject of a consistent line of decisions. In *Emerald Construction Co Ltd v Lowthian* [1966] 1 WLR 691, union officials threatened a building contractor with a strike unless he terminated a sub-contract for the supply of labour. The defendants obviously knew that there was a contract - they wanted it terminated - but the court found that they did not know its terms and, in particular, how soon it could be terminated. Lord Denning MR said (at pp; 700-701)
>
> > "Even if they did not know the actual terms of the contract, but had the means of knowledge - which they deliberately disregarded - that would be enough. Like the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated, heedless of its terms, regardless whether it was terminated by breach or not, they would do wrong. For it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, indifferent whether it is a breach or not."

41. This statement of the law has since been followed in many cases and, so far as I am aware, has not given rise to any difficulty. It is in accordance with the general principle of law that a conscious decision not to inquire into the existence of a fact is in many cases treated as equivalent to knowledge of that fact (see *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469). It is not the same as negligence or even gross negligence: in *British Industrial Plastics Ltd v Ferguson* [1940] 1 All ER 479, for example, Mr Ferguson did not deliberately abstain from inquiry into whether disclosure of the secret process would be a breach of contract. He negligently made the wrong inquiry, but that is an altogether different state of mind.

42. The next question is what counts as an intention to procure a breach of contract. It is necessary for this purpose to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach. Mr Gye would very likely have preferred to be able to obtain Miss Wagner's services without her having to break her contract. But that did not matter. Again, people seldom knowingly cause loss by unlawful means out of simple disinterested malice. It is usually to achieve the further end of securing an economic advantage to themselves. As I said earlier, the Dunlop employees who took off the tyres in *GWK Ltd v Dunlop Rubber Co Ltd* (1926) 42 TLR 376 intended to advance the interests of the Dunlop company.

43. On the other hand, if the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence, then in my opinion it cannot for this purpose be said to have been intended. That, I think, is what judges and writers mean when they say that the claimant must have been "targeted" or "aimed at". In my opinion the majority of the Court of Appeal was wrong to have allowed the action in *Millar v Bassey* [1994] EMLR 44 to proceed. Miss Bassey had broken her contract to perform for the recording company and it was a foreseeable consequence that the recording company would have to break its contracts with the accompanying musicians, but those breaches of contract were neither an end desired by Miss Bassey nor a means of achieving that end.

44. Finally, what counts as a breach of contract? In *Torquay Hotel Co Ltd v Cousins* [1969] 2 Ch 106, 138 Lord Denning said that there could be liability for preventing or hindering performance of the contract on the same principle as liability for procuring a breach. This dictum was approved by Lord Diplock in *Merkur Island Shipping Corporation* [1983] 2 AC 570, 607-608. One could therefore have liability for interference with contractual relations even though the contracting party committed no breach. But these remarks were made in the context of the unified theory which treated procuring a breach as part of the same tort as causing loss by unlawful means. If the torts are to be separated, then I think that one cannot be liable for inducing a breach unless there has been a breach. No secondary liability without primary liability. Cases in which interference with contractual relations have been treated as coming within the *Lumley v Gye* tort

(like *Dimbleby & Sons v National Union of Journalists* [1984] 1 WLR 67 and 427) are really cases of causing loss by unlawful means.

132. I have no hesitation in finding that both D2 and D3 satisfy the requirements laid out by Lord Hoffmann. I am in no doubt whatsoever, having heard the evidence, that both of them "actually realised" that what they were doing involved causing D1 to breach its contractual obligations towards the claimants. What they did was the means to an end. There is no iota of credible evidence that either D2 or D3 possessed an honest belief that what they were doing would not involve such a breach. On the contrary, the evidence is overwhelmingly to the contrary. At all material times, each knew exactly what he or she was doing. The breaches they occasioned were central to D1's *modus operandi*.

133. Judgment in the preliminary issue will be entered in favour of the claimants. D2 and D3 are jointly and severally liable to the claimants for inducing the breaches of contract of D1.

## *L. FINAL MATTERS*

134. I invite counsel to prepare a draft order that reflects my decisions on summary judgment and the preliminary issue.

135. I wish to record my gratitude to Messrs Hendy QC, Lambert, Allen and Greaves, and those professionally instructing them, for the high quality of their submissions and the presentation of the materials. Neither Mr Houghton nor Ms Judge should be heard to say that they could have been more ably represented for, in truth, they could not.

## APPENDIX

## SYNOPSIS OF THE EVIDENCE

### *CLAIMANTS*

1. For the claimants, I heard evidence from Tadas Balciauskas, Robertas Urbonas and Antanas Urnikis, each with the assistance of interpreters in the Lithuanian language.

### *Tadas Balciauskas*

2. Mr Balciauskas answered an advertisement in a local newspaper in Lithuania, which had described a job on a farm in the United Kingdom. It did not say that the job involved catching chickens and there was no mention of an employment fee. Although initially told that his job would be working in the fields, upon arrival he was informed that plans had changed. He was taken to premises known as 57 Calder Road, Maidstone, Kent. This would have been at the end of November 2009.

3. The accommodation was "really horrible". Around 11 people were living in the house, including Mr Galdikas, the first claimant in the Galdikas proceedings.

4. The witness believed that the house was owned by Jackie Judge (D2). Some of the premises in which employees stayed were owned by Ms Judge and others by a Lithuanian national, Edikas Mankevicius. The witness said that he never signed a contract of employment and did not know what his employment rights were. Nobody explained anything to him whatsoever. There was no training or protective clothing provided.

5. Normal patterns of work involved starting on Sunday at 12 noon or 1pm. The working week usually ended upon return from the last farm to be visited on Friday, around 8pm to midnight. The witness's team would almost always go to two farms or more during a particular shift. Sometimes Jackie Judge would call and say the team would have to go to a third farm.

6. The work could involve three or four farms in one go and being away for two nights. Normally, the team would be away for around one and a half days and then back for only a short time before having to go out again. Sometimes the time at home would be just one or two hours, sometimes less than an hour.

7. When away overnight, the witness said that he and his colleagues had to sleep on the bus as no accommodation was provided. The team was not allowed to wake up the driver, if he fell asleep, and so the team had to sleep where the chickens were.

8. The worst week the witness could remember involved leaving on Sunday, returning on Wednesday night, spending 20 minutes at home and then leaving again until 8am on Saturday morning. The witness thought that one of the farms visited on this occasion was in Nottinghamshire.

9. Sometimes Jackie Judge would call the driver or supervisor to say the team had to hurry up because another farm was waiting or because lorries needed to leave. She knew where the team was because she kept in contact with the drivers and the farms.

10. If Jackie Judge were told by any of the catchers that they could not go out again because they were exhausted, she would say "speak to Edikas". The witness said that this was Ms Judge's way of stopping them from complaining, as Edikas would threaten them and say that they would lose their jobs and would not get paid that week.

11. I note here that the significance of Edikas was stressed by each of the witnesses.

12. Mr Balciauskas said that more than once he texted Ms Judge to say that he was unable to work and she would text back, either saying he had to or that he had to speak to Edikas. The witness would also text Ms Judge not only on his own behalf but also in relation to other colleagues who had difficulties. Her reaction was to say "speak to Edikas". In this way, psychological pressure was put on the workers not to complain.

13. The witness was never told that he had to be paid a minimum hourly rate. He believed he was paid purely by reference to the number of chickens caught. The payslips provided were known by the workers not to be the way in which they were actually paid.

14. The witness did not receive pay for the first week that he worked. He said that this was normal. After two weeks he got a payslip with the full amount in print but markings in pen saying "£40" and "£50" indicating that £90 had been deducted. This could be seen on exhibited payslips. Sometimes, however, the cheque would be less than the payslip without there being any indication as to why. The £40 and £50 deductions were respectively for rent and for Edikas and the £50 would continue until £250 had been paid to Edikas.

15. After the £250 had been deducted, the witness found that a further £50 had been taken. This happened to him and others. It was, however, impossible to know from the system being operated whether Jackie Judge ever paid back the missing £50.

16. On subsequent occasions when the witness paid an employment fee, it was set at £350. This arose because he went back to Lithuania owing to the illness of his mother and was deemed to be "re-employed" upon each return. On one occasion the witness said that he was "thrown out by Edikas" and had to pay the fee again in order to return.

17. Until 2010, rent was always deducted from the workers' cheques. But at some point Edikas began collecting the rent in cash for his houses and Jackie Judge collected the rent for hers. The witness thought this might have been due to Jackie and Edikas falling out because they became "less friendly and speaking less".

18. On occasions, the witness and colleagues would simply not get paid at all. This happened to the witness "fairly frequently, at least once every one or two months".

19. If Ms Judge saw anything that she did not like "she would send for Edikas". This arose, for example, after a party held at 57 Calder Road. Cheques would be withheld for punishment.

20. In 2010, the witness and colleagues refused to leave the accommodation until they were paid. This resulted in Edikas bringing round "two bouncers" who threatened the workers.

21. Although the witness ultimately left the property, he was compelled to live in a tent for around six to eight weeks after which he became desperate and sought to return to work for D1.

22. No-one explained to the witness that he was entitled to holidays or holiday pay. When the witness's mother died, Ms Judge did not let him go to the funeral, saying that he could take only one day, which would not allow him to reach Lithuania and return.

23. The witness said that he and his colleagues did not receive any pay if they were sick. In 2012 when he hit his forehead at work, Ms Judge said to a driver who was with the witness that he could not go to hospital.

24. In 2012, after the arrest of D2 and D3 as a result of a police investigation into the business, the witness went to see Ms Judge to ask for his money. He was paid two weeks' wages.

25. The witness was asked by Mr Hendy about a Mr Kalinkinas, who had said that there were, in effect, no material problems with D1, D2 and D3. The witness said that he knew this person as a supervisor, who could choose where he worked.

26. The witness was asked why there was no evidence in the form of, for example, telephone text messages, of him complaining to friends and family in Lithuania about his working environment in the United Kingdom. The appellant said that he was somewhat embarrassed and ashamed and was afraid that people would mock him. It transpired that the text message print-outs, contained in the documentary materials, involving the witness and Ms Judge, were taken from the latter's telephone.

27. So far as the accommodation was concerned, the witness said that if he had attempted to rent somewhere else, he would have been given less work by D1. Only supervisors were allowed to live elsewhere. If he could have rented somewhere else, outside the control of those concerned, he would have done so.

28. The witness denied that Ms Judge's instruction to "speak Edikas" merely related to issues concerning properties controlled by Edikas, in which workers lived. The witness confirmed the information in his statement regarding patterns of work. He considered that on average daily travel took about three to three and half hours. The witness disagreed with the suggestion that he did not work for more than 39 hours a week. It was true that he often had only one hour's rest before having to start again and it was also true that on one occasion he visited nine farms consecutively.

29. The witness said he had no incentive to lie. It was put to him that he was, in fact, standing to gain from bringing the claim. He said that he had initially been prepared to testify on behalf of others, before becoming a claimant in the proceedings.

30. It was an unwritten rule that workers had to be "on call"; otherwise, Edikas would tell Jackie Judge to withhold a cheque.

31. The witness was asked why he could not refer to specific weeks when he had not been paid or other difficulties had arisen.

32. The witness was asked about a draft inspection report prepared by Colin Moorhen of the GLA in November 2009. This suggested that there were no problems with D1. The witness said that this was the first time he had heard about the draft report. He had his doubts whether Mr Moorhen had spoken to the "ordinary workers".

33. The witness was also asked about a letter from academics in the University of Bristol (9 October 2012), addressed to "Whom it may concern". This was a character reference for D3. It described D3's help in a study that had been conducted in relation to poultry catching. Amongst the statements made in the letter was that "Mr Houghton's teams did the work more carefully and to a higher standard than other similar teams" and that the writers had been "allowed… full access to his workers at all times". The witness said that it is possible that the workers interacted in this manner with the academics because they were afraid that otherwise they would have their pay withheld. The witness said that if the researchers had worked alongside him and his colleagues in normal circumstances, they "would have collapsed quite quickly".

34. The witness said he was not mistaken about Mr Kalinkinas being a supervisor. Asked what he thought of Mr Kalinkinas obtaining four weeks holiday, the witness said that he was very pleased for him.

***Robertas Urbonas***

35. Robertas Urbonas, on arrival in the United Kingdom, was told that he would be catching chickens. He was taken to an address known as 20 Beaumont Road, Maidstone. The witness said that workers received no choice where they lived and were just moved around as the employers wanted.

36. Working arrangements, according to the witness, were like those described by Mr Balciauskas. Drivers would often refuse to let the workers stop for a break, and so the workers would have to urinate into plastic bottles. Jackie Judge "organised all of the work we did".

37. The working week would normally last from Sunday through to Friday and teams would frequently not return home until they had been to three or four farms. Very rarely was only one farm visited during a shift. Time at home might last only 15 minutes before going out again. Occasionally the team would get stopped on the way home and would have to go in another minivan to another farm.

38. The witness said that he was working and travelling for around 100 hours per week on average. Every day there would be pressure to work faster.

39. The witness gave similar evidence regarding the failure to pay a minimum wage; charging for work finding fees; unlawful deductions for rent; and withholding of wages. An exhibited pay slip showed £90 deduction, including £50 which Jackie Judge said was for Edikas. The witness was not paid for holidays and, during his two weeks away in Lithuania, he had to keep paying rent. He was not, however, required to pay the employment fee again, following his return. On a second occasion, however, when the witness went for three weeks, he was required to pay £300 in order to be employed again. He did not receive holiday pay.

40. Jackie Judge would come to check on the workers and 20 Beaumont Road, even though that was Edikas' house. On one occasion, when she saw several workers drinking from cans of beer in the kitchen, she said there would be no cheques. She said the same when she saw the house was untidy. In addition, Edikas would normally find a reason each time he came round to say that someone would not be getting a cheque for a particular week.

41. The witness said that in late 2010 or early 2011, Jackie Judge and Edikas had had an argument over money and there had been no work for the workers for two weeks.

42. The witness said that he believed Jackie Judge would use Edikas to keep the workers under control because she would say "call Edikas" when people complained to her and he would then threaten to throw them out.

43. On one occasion, D3 told the witness and others that if there was an inspection on the farm, they had to carry two chickens in each hand and not four, which was what they normally did, and that they had to carry them by two legs, and not one. That was what they did every time there was an inspection on the farm.

44. When the witness began work for D1, he weighed 100 kilos. When he left, he weighed 67. He attributed this to having "no rest or proper food".

45. Under cross-examination, the witness was asked about an exhibited pay slip which showed gross pay of £449.66. He was asked whether such a sum was fair pay for a week. The witness said, in fact, he had worked many more hours than those stated on the pay slip. He considered that 50 hours were missing from it.

46. The witness accepted that he did not have evidence of problems relating to any specific week that he had worked for D1. He confirmed that there were occasions when the team had only been allowed 15 minutes at home; that shifts were not time limited; that he was often not paid the sum indicated on the pay slips; that cheques were withheld "more than once"; that he did not know his rights about sickness and holiday pay; and that he was told where he was to live.

47. In re-examination, the witness said that the deduction of £40, marked on the pay slip, represented rent and £50 was for an employment fee.

***Antanas Urnikis***

48. Antanas Urnikis gave evidence along broadly similar lines. He estimated that he spent only about two hours a day at home on average during the week, if, that is, he returned each home each day. He felt he could not even go to the shops because if a text came from Jackie Judge when he was out, telling him that he was needed, then he would not be paid for the whole week. Although he always made sure he was at home, others told him that such a thing had happened to them.

49. Jackie Judge was responsible for paying the workers. When he arrived he was told by others that he was expected to pay an employment fee, which he observed was deducted from his pay at the rate of £50 a week. £40 was deducted for rent. He did not remember ever paying this in cash.

50. Regarding withholding of wages, the witness said that on one occasion, the floor of a particular farm was rotten and collapsed. Some chickens fell through the gap and died. Because of this the whole house was not paid. Cheques were withheld from him on other occasions, for reasons that he could not now exactly recall.

51. On one occasion, however, Edikas thought that the witness was drunk so Jackie Judge did not give him a cheque for that week.

52. On another occasion, after non-payment, the witness and two others sent a text to Jackie Judge asking for the money they were owed. They used *Google Translate* for this purpose. No reply was received by Jackie Judge but, later, Edikas called and told them to get out. When the group replied that they would not leave until they were paid money, Edikas sent bouncers round. The group went to the Citizens Advice Bureau, who advised them to send a text message to Jackie Judge. They did so and she then paid some of the money but not all of it. All four subsequently decided to leave.

53. Cross-examined, the witness was asked about the lack of evidence that he had protested about conditions. He said that there was no-one there to do anything about it. He had sent messages to his family and they had sent him money. He had no evidence that at this point to show that the text messages to this effect had been sent.

54. The witness did not resile under cross-examination from the rest of his evidence.

***DEFENDANTS***

55. For the defendants, oral evidence was given by Samantha Shanks, Darrell Houghton, (D3) and Jacqueline Judge (D2).

***Samantha Shanks***

56. Ms Shanks began work with Perrys Accountants Limited in 1998, first as a Personal Assistant and later moving into payroll activities. The new owners of Perrys established a company called AMR Bookkeeping Solutions Ltd to carry out payroll services. Ms Shanks is now the payroll manager for that company. She acts mainly for small and medium sized clients, over 500 in total. The software system she uses is known as SAGE.

57. In 2007, D1, which was already a client of Perrys, instructed AMR Bookkeeping Solutions to do its payroll on a weekly basis. Ms Shanks believes that this was because the GLA required D1 to issue "proper pay slips from that point in time". In this regard, Ms Shanks received instructions from Jackie Judge.

58. In 2007, D1 had approximately 21 employees on its payroll and at its peak in November 2008, during certain weeks there were about fifty employees on the payroll. By January 2009 this had reduced to about thirty. There were different numbers every week and not every employee worked every week or every day. If a worker did not work for a particular week there would be no entry for them on the SAGE system and so no pay or payslip.

59. From 2007, Jackie Judge would fax the witness a sheet of paper showing the total number of chickens caught by each employee. This was a handwritten note written either by Ms Judge or one of the supervisors. It would show the number of brown chickens, white chickens and occasionally cocks caught by the teams. Catchers were paid £3 per thousand brown chickens and £4 per thousand white chickens caught. The figures related to the teams as a whole rather than individual catchers. Thus, if the team caught 10,000 brown chickens, each member of the team would receive £30 for that catch.

60. According to the witness, in April 2008 Ms Judge had a meeting with the GLA and was told that D1 needed to report employees' wages by reference to hours worked in order to comply with minimum wage regulations. The payslips were, therefore, changed. The witness says:-

> "The calculation was done in exactly the same way but the total weekly wage earned by a catcher was then divided by the relevant minimum wage in order to give us a notional number of hours worked for the purpose of payslip."

61. When the total wages for chickens caught were divided by the minimum wage, in order to work out the number of hours worked, Ms Shanks applied the agricultural minimum wage, as found on the HMRC website for Grade 2 workers. She always used the night rate because she knew most catching was done at night. She never applied an overtime rate.

62. Ms Shanks's statement continues as follows:-

> "12. As far as I was concerned, the catchers were paid piece rates so the money they were receiving was just the same. It was merely a different way of reporting it. When we had worked out the notional

> number of hours worked, I applied the night rate to the first 50 hours and the day rate thereafter. There was no particular reason for this, other than the fact that they were worked 5 nights per week and probably didn't work any more than 10 hours per night. I didn't actually know how many hours a week they worked. Jackie said it was impossible to log the hours of work. She said it was very difficult to keep track of who was working.
>
> "13. Jackie never instructed me to do it in any particular way, although we did discuss how we could calculate the notional hourly rate and adopted that method.
>
> 14. In September, the GLA inspected the payroll records to check that all was in order. Colin Moorhen was the representative from the GLA who sat with me and went through the records. It wasn't a long visit. He asked me to explain how I calculated wages, which I did in the same way I explained above. He could see that hours were being reported on the payslip. He seemed to be satisfied by the way I had arrived at those figures. He said he would go away and write up a report. However, neither Jackie nor I ever received a report or any feedback. I don't know if the report was ever drafted."

63. Ms Shanks's statement confirms that catchers were not paid for time spent travelling and that Ms Shanks "never knew anything about it until this case started. The GLA never mentioned it when it came to inspect our records. It was not something I ever thought about".

64. Ms Shanks also calculated the wages for D1's drivers. She believed that those drivers submitted time sheets to Jackie Judge who then sent Ms Shanks sheets showing the hours spent driving and the hours spent waiting while the catchers were working. It was "much easier to calculate the drivers' wages. They were paid different rates for driving and waiting."

65. Information relating to statutory sick pay was sent through to Ms Shanks, but only for drivers. The catchers never received sick pay. The witness did not know whether that was because D1 did not pay it or because the catchers were never sick.

66. Ms Shanks said that she did not keep holiday records for D1. Although it was a service offered to clients, many did not ask for it. She remembered paying the holiday pay, but there was not much of this.

67. The witness was aware that Jackie Judge paid wages to her employees by cheque. She had discussed with Ms Judge the possibility of paying via BACS but the idea was not taken up by D1: "I can't remember why."

68. Ms Shanks said she never saw the cheques that Jackie Judge issued to the workers. The only cheques she saw were payments in respect of PAYE.

69. Jackie Judge asked Ms Shanks to issue P45s on termination of employment. At one point a note was put on the payslips asking employees to send a forwarding address.

70. Cross examined, Ms Shanks said that she believed one or two new names of workers were provided each week. That would amount to 50-100 new workers each year.

71. Ms Shanks agreed that the calculation she had described, generating a notional number of hours worked by a worker in a particular week, was fictional. She had been told to do this by Jackie

Judge. She confirmed that she had never been told about or calculated travel time or on-call time.

72. So far as drivers were concerned, the witness said that she did not need to employ a fictional calculation, owing to the evidence that had been supplied. What she had been given was the amount of driving and waiting time but not times of day, even though this had been recorded by Ms Judge. She could not remember if drivers were paid at grade 2 under the AWO. She reiterated that she had not been given the time sheets that drivers had completed and sent to Jackie Judge.

73. Ms Shanks said that she did not recall whether supervisors had been paid the same as catchers.

74. Ms Shanks would have assigned a worker a temporary national insurance number, using their date of birth or a notional date, if no date of birth was given.

75. In re-examination, the witness was asked about an apparent contradiction in her evidence as to whether Jackie Judge had or had not told the witness to apply the calculation of time regarding workers that she had described in her statement. The witness said that her statement was correct.

***Darrell Houghton***

76. Darrell Houghton said he had been engaged in the business of catching chickens from the age of 23. Around the time that he had met Jackie Judge, he started operating as a sole trader, DJ Houghton, contracting with local workers on a self-employed basis. In 1998 he began employing local workers on a PAYE contract. Jackie Judge completed the payroll for them, assisted by the accountant at Perrys.

77. Following the establishment of the GLA in 2005, several contractors, including DJ Houghton, had their licences revoked. This led the witness to engage the consultancy services of Mr Godfrey to help him with the necessary documentation and to reach the requisite operational standards. The witness was also advised to establish a company and employ a professional payroll manager.

78. D1 was incorporated on 21 May 2007. The witness is the sole director and Ms Judge is the company secretary. The witness owns the entire issued share capital of the company.

79. Jackie Judge was the primary contact with the payroll manager, Samantha Shanks. It was his understanding that the company was compliant with GLA requirements.

80. Owing to cash flow issues, Mr Houghton and Jackie Judge would on occasion have to use money from their own personal accounts in order to pay workers' wages. Mr Kalinkinas had always been a supervisor for D1, although he would catch chickens as well. The witness did not consider that supervisors worked less hard than catchers.

81. The witness considered that the claimants' claims were "completely contrived". Supervisors would be paid an additional fee.

82. The witness was asked about the draft GLA report compiled by Mr Moorhen. The witness said that he had seen it for the first time that morning and that he had been looking for this for over six years. Mr Moorhen had spent a few days with D1 including one day with the men and one day with the accountants. The worker interviews had revealed no issues. Mr Moorhen had taken a selection of contracts and employment from the witness's filing cabinet and had gone to see these people next day.

83. Prior to the police and GLA raid on D1 in 2012, the witness said that problems had been experienced regarding workers claiming not to have received cheques. Workers would let him down and disappear for periods of time before returning and again looking for work. For these reasons, the witness had asked Mr Godfrey to assist. He wanted the contracts to "be even more binding".

84. In cross-examination, Mr Houghton said that fifteen or sixteen workers had wanted to return to work with him when he had got his licence back. The company had, at one time, been the largest chicken catching business in the south of England.

85. The witness agreed that by 2011, turnover was in the region of £1.1m. He did not, however, agree that profit would have been in the region of £650,000.

86. Workers occupying accommodation controlled by the witness or Ms Judge were charged £40. He had no idea about the charges imposed by Edikas in respect of the latter's properties. Deductions were, in any event, made with the permission of the worker concerned. After 2010, the workers paid rent themselves.

87. The witness was asked about a balance sheet, showing a profit of £2,941. He said he had taken the matter up with the accountant and that it was "nonsense". He wanted to know, how, if that was so, he had paid £30-£40,000 in tax. Asked about the figure of £81,037 for payment of dividends to him from D1, the witness said at first that this was incorrect and then said: "if it was, it was".

88. Asked whether all the payroll figures were fictional, the witness said that everything had been done through a professional accountant. It was put to Mr Houghton that for every £1 that was not, in fact, paid to workers, that was a pound that was available to him and Ms Judge. The witness disagreed and said that one should speak to his accountants.

89. It was put to him that in 2007, the business had been imperilled after the licence of the GLA was revoked. The witness said that in order to avoid a repetition, he had engaged a professional. He did not consider it obvious that if the licencing conditions were again violated, he would again lose his licence. He then said that this would be so.

90. The witness considered it was correct that a director of a company should promote the success of the business and had to have regard to the consequences of his decisions. He said he did have regard to the interests of D1's employees and the impact on the community.

91. He considered that the impact of the AWO had previously been a "grey area". He had thought that they were in a service industry. Subsequently, however, he had become aware that the AWO applied. He noted that this was recorded in the contract of employment of Mr Galdikas. He also understood about the Working Time Directive, bereavement leave and statutory sick pay.

92. He had known about the minimum wage and about there being a limit to the amount that could be deducted for accommodation. So far as the job finding fee was concerned, he had known about this after 2010 and might have known about it before. He was aware one could not deduct money for accommodation and that would take the worker below the minimum wage.

93. Mr Houghton also accepted that he needed to record start and finish and break times. That was done in respect of the drivers. He also accepted that it was necessary to do so for workers, even though they were paid piece work. He said that all of this must have been done at the time of the GLA audit in 2010; otherwise the report would not have been positive.

94. In 2007, when the GLA revoked D1 licence, the witness said he was not present at the time of the inspection. He accepted, however, that no formal payroll system was in place at the time. He had paid a professional auditor to put things right.

95. Asked how a professional accountant could recall workers' hours, he said that this would have been possible by reference to the information relating to drivers.

96. Asked if accommodation deductions had been greater than £29.05, Mr Houghton said that the extra was to cover gas and electricity.

97. The witness was sure that there were chicken catchers who took holidays. There had been holiday pay and a system for this. He did not, however, have any idea what system was used to record these matters. Workers would just disappear for a few months and this made him fed up.

98. In 2010, a lady had been engaged for the purpose of rewriting the contracts of employment, in order to deal with the fact that people would just leave.

99. Mr Houghton was asked about the appealed decision and summary statement of reasons of the appointed person (Employment Judge Sage) of October 2007. This related to the appeal by DJ Houghton against the revocation of the firm's licence by the GLA. The witness said he had never seen this appeal decision before, although it was put to him that it had been disclosed as part of the Galdikas litigation disclosure exercise.

100. Although the appeal referred to "immediate action being taken" to put in place contracts of employment and payroll, the appointed person noted at paragraph 4 that no documentary or witness statement evidence had been produced to corroborate this. Paragraph 5 noted there was no evidence that the appellant's livelihood would be affected by revocation, given that the business had applied for a new licence and the inspection for that was due to take place in October 2007. The matter was, therefore, "very much in the hands of the appellant and, they can protect their livelihood by complying with their legal requirements."

101. The witness said he did not consider his livelihood was on the line because others had had their licenses revoked also around this time. He then said that he did in fact know his business would be on the line unless things were put right.

102. Mr Houghton was taken to the GLA's reply to the notice and grounds of appeal, in respect of the appeal brought by D1 against the revocation of its licence in October 2012. This noted that D1 claimed the GLA approved the operation of their payroll. However:-

> "The GLA would not approve this method and it does not comply with the basic legal requirement. During the application inspection Mr Godfrey provided DJ Houghton with a timesheet which made provisions of a recording start and finish times and rest breaks. As can be seen from the appellant's records this time sheet was not used."

103. The witness stated that he had said all he had to say on this subject. The driver records helped to make available the information relating to hours worked by chicken catchers and thought this was the easiest way of doing so.

104. It was put to the witness that he showed contempt for the law and for his workers. Mr Houghton denied this.

105. Mr Houghton was asked about the inspection of 16 October 2007, shortly after the dismissal of the appeal against the 2007 licence revocation. The inspection noted that D1 "has had extensive

guidance from Mr Terence Godfrey and has very clear systems and processes now detailed". The witness said that the timesheets provided by Mr Godfrey were used for the drivers. They should also have been used for the catchers and, as far as he knew, they had been used. He had paid an accountant to do PAYE and if there had been a mistake, it should have been flagged up.

106. It was put to the witness that Ms Shanks had said that Jackie Judge had told her that it was impossible to give information relating to hours work by the chicken catchers. Mr Houghton had just said the opposite. Mr Houghton replied that Ms Shanks had been told to flag up the hours of the chicken catchers. Asked if Miss Judge was therefore misleading Ms Shanks, the witness said Miss Shanks should have flagged it up with the GLA. The driver data could be used to note start and finish times. As far as he and Jackie Judge were concerned, relevant information had been provided to Miss Shanks.

107. It was put to the witness that Miss Shanks said that she never knew the hours that the catchers worked or the times involved. The witness replied that Ms Shanks had given the catchers the higher night rates. Asked if it was not right that accountants could only work with what they were given, the witness said that he believed that they had what was appropriate at the time.

108. In the October 2007 inspection document, it was recorded that the applicant had not withheld or threatened to withhold payment to any worker. It was put to the witness that this was untrue. Mr Houghton said that he had not withheld payments. He knew nothing about Edikas, although he would sometimes ask the workers' permission to take rent. The witness knew nothing about cheques not always matching the respective payslips. Sometimes there would be a deduction for rent, if there were permission.

109. Mr Houghton agreed that £40 was withheld for rent every week. He had no recollection of job finding fees being sought after 2010.

110. Returning to the 2007 Inspection Report, it was put to Mr Houghton that 2.10 was also false, in recording a pass in respect of evidence that workers had been provided with itemised and accurate pay slips for each pay period. The witness replied that the GLA had been happy, although he had not been present on this occasion and had not given any information on this.

111. At 5.3 of the Inspection Report, relating to the keeping of accurate records of days and hours worked, the Inspector had noted "all evidence during worker interviews. Timesheets all evidenced". Mr Houghton replied that "if she saw it, she saw it".

112. Mr Houghton was taken to the record of proceedings, prepared by Leigh Day and Co., regarding the appeal by D1 against the 2012 revocation. At bundle page 128, Mr Houghton was recorded as saying: "we will also have timesheets for when they start to when they finish work. At the time there were catching sheets and the minibus drivers had timesheets". The witness confirmed this.

113. Mr Houghton was asked about the intelligence tasking report of 23 November 2009, prepared by Mr Moorhen, regarding intelligence that a Lithuanian chicken catcher had been beaten up and not paid his final wages following a decision to leave the accommodation provided by the employer. Mr Houghton said he had no idea who this was. Whilst he agreed that workers who left were not paid their final wages, he said that would be the case if no forwarding address was left, despite the fact that this had been requested.

114. Asked about information indicating that "Jackie" told the workers they would have to stay at the house if they wanted to work, Mr Houghton said that was not true. Jackie Judge's mobile number had, however, been correctly recorded in the intelligence report in relation to this matter.

115. As for the intelligence regarding workers being told to sleep on the bus, Mr Houghton said that no-one was told to do this. There were not many occasions when workers were expected to be away for more than 24 hours. A trip to Wales would not take five hours, he considered.

116. Mr Houghton was asked again about the Moorhen draft report. It was put to him that marginal comments, to be seen on the document, were by an officer of the GLA who was concerned about aspects of the draft, and that was why there was almost a year between the inspection and the submission of the document. Mr Houghton was asked why the Moorhen draft did not refer to the earlier revocation of the GLA licence. Mr Houghton replied that he had told Mr Moorhen about that. Asked whether he had shown drivers' timesheets to Mr Moorhen, Mr Houghton replied that they had shown him what he required on that day and that he and Ms Judge had "pointed out that that was when the catchers were out".

117. Mr Houghton agreed it was correct that Mr Moorhen must have assumed that one could estimate the actual hourly rate for catchers so as to ensure that this was not below the minimum wage. Asked again if the hourly rate was not fictitious, Mr Houghton replied that they paid the accountant and that if there was a problem, she should have flagged it. When it was put to Mr Houghton that Mr Moorhen did not know that the catchers' hours were a fiction, he replied that "we are doing it correctly". He denied that things had been made up in order to deceive the inspector into thinking that these were the actual hours that catchers worked.

118. A particular pay slip relating to Mr Balciauskas was examined. This was dated 6 January 2010 and showed him working 21.69 hours in the week. It was put again that Ms Shanks had said that this figure would have been fictional. Mr Houghton replied that she should have flagged this up. If the worker in question had missed two or three days, then that would account for the low number of hours. It was put to him that he was saying, therefore, that these were the actual number of hours worked by Mr Balciauskas and that he was lying to the court. Mr Houghton denied this. He accepted that some hours were notional but not that all of the hours were. Ms Shanks "had knowledge as far as I am concerned".

119. Mr Houghton said that he stopped paying Edikas employment fees in 2010. He then said that there were people still coming to D1 from Lithuania in 2012 and that they were coming through Edikas but no money was changing hands. It was not a lie that they were not paying Edikas after 2010.

120. Mr Houghton was asked about a passage in the letter from the GLA to him dated 29 October 2012 which reads as follows:-

> "Workers have told the GLA that they often have to travel considerable distances for work which requires them to stay away from home. Workers say that they have to sleep in the bus used for transport. You told the GLA inspectors during the inspection that you used to provide overnight accommodation. However, you no longer do so because workers used to get drunk and treat it as a holiday. You also stated that keeping workers on the minibus in between jobs was the best way to "keep control of them"."

121. Mr Houghton denied saying that he did this in order to keep control of the workers.

122. He was also taken to a later passage in the same letter which recorded him as saying that accommodation had been owned by Ms Judge and Edikas, whereas checks with the Land Registry showed that Mr Houghton was the joint owner of 9 Penenden Street and 57 Calder Road. He did not know why the GLA thought he had denied being the joint owner of Penenden Street. He did not know why they had written this.

123. The witness denied that he was not being candid. He denied that his conduct had effectively destroyed D1. He denied that he had been influenced by Edikas, who was described by the GLA as not being a fit and proper person. He said he did not have a solicitor present when all this was done.

124. Asked if a score of 266 when a score of 30 or more amounted to failure was not an amazing level of failure, Mr Houghton said it was. They considered appealing but decided it was better not to waste time. It was pointed out to him that he had, in fact, lodged an appeal. He was taken to the appeal statement. There, Mr Houghton asserted that neither he or Ms Judge had made deductions from workers' pay slips. It was put to him that this was false. He said, as far he knew, they had not deducted money from the payslips, they were not doing so "at the time".

125. In the same document, Mr Houghton submitted that "prior to the creation of the GLA [Edikas] did supply us with workers. Since this sector has become regulated however I have only used [Edikas] for translating". It was put to him that this was also untrue. Mr Houghton replied that at the time Edikas was "hardly ever here", having houses in France and Tenerife. His purpose had not been to deceive. In the same document, Mr Houghton did not accept "ever withholding wages or paying less than the stated amount on the payslips". He said this was true and that they had never withheld wages and made deductions at the time of the revocation.

126. Mr Houghton reiterated that the formula upon which payment for workers had been calculated had been agreed with the GLA. Mr Moorhen had been shown the system. It was put to him that he had been shown something that had not in fact been put into effect. Mr Houghton replied that he had been shown what he required.

127. In the appeal statement, Mr Houghton denied that workers slept in the buses provided and that "we never went away for days at a time". There had been only "ever one time in which we the workers stayed away and this was on the basis of health and safety". Mr Houghton denied that all this was "fantasy".

128. It was put to Mr Houghton that the correct reaction to all this was that of the GLA in its reply to the Notice and Grounds of Appeal:-

> "129. Throughout the Notice and Grounds of Appeal, DJ Houghton apportions blame for all their failings to various parties, namely, their accountants, the workers, the GLA and [Edikas]. Where they cannot apportion blame they do not respond."

129. Mr Houghton denied that this was a fair assessment. He said that on the day of the hearing his counsel had turned up two hours late.

130. As for travel time, Mr Houghton said that he agreed that workers were not paid "to GLA standards" that he "begged to differ" that they were not paid at all for this element. He said that he "can't see any problem".

131. So far as employment fees were concerned, Mr Houghton denied that Ms Shanks was correct in saying that one or two workers a week, had, on average, joined D1. When it was put to him that such a figure would, in fact, amount to around the sum of approximately £100,000, which Mr Houghton said had been paid to Edikas, Mr Houghton said this figure amounted to unjustifiable demands made by Edikas.

132. Mr Houghton was taken back to the record of the appeal hearing prepared by the claimants' solicitors. This had been sent to the solicitors for D1, D2 and D3 but the claimants' solicitors had not received a response from them.

133. Mr Houghton was asked about this question and answer:-

> "RL: What about the amounts on the cheques being less than on the payslips?"
>
> DH: No idea. I only knew about what came through on payroll".

134. Mr Houghton said that he would say the same today. As for Edikas, Mr Houghton was recorded as saying at the hearing that he "is no part of my business, never has been". Asked if that were not untrue, Mr Houghton that Edikas had never been part of his business.

135. Mr Houghton was also asked about this:-

> "RL: The GLA found that workers were suffering. Do you not think it was your responsibility as a Gangmaster to stop that and do everything to prevent it?
>
> DH: If I knew it was going on in the workplace or in my properties, then Yes.
>
> RL: Are you saying you were completely ignorant?
>
> DH: Yes. In hindsight, it wouldn't happen again. There would be more help. JJ and I were by ourselves. If I didn't make sure that this never happened again then I would be a fool."

136. Mr Houghton confirmed that is what he had said. It had been said to the same judge (Employment Judge Sage) who had conducted the appeal against Mr Houghton's 2007 revocation.

137. The witness said he had paid what he believed to be travelling time. It was put to him that he had said to Employment Judge Sage that he did not pay travelling time. He replied that he now realised that he was wrong. It was put to him that in his defence he admitted the travelling time was not paid. Mr Houghton replied that at the time it was a "grey area".

138. Re-examined, Mr Houghton was taken to a passage in the record of the appeal hearing where he said:-

> "I asked Perry's to do my payroll from 2007. There was an inspection in 2010. No-one ever told me that they were doing it wrong. Had they done so, we would have fixed it. We gave Perry's the bird numbers and the drivers' hours and she made up the time if necessary, or she didn't. I left it to Perry's. We all know in hindsight that they didn't do a very good job. I have been to a new accountant."

139. Mr Houghton was forced to agree that this issue was not a new one. He had not been present at the July 2007 inspection but had been for the October 2007 assessment. He thought everything had been put in place correctly.

***Jacqueline Judge***

140. Ms Judge said in her statement that it "is possible that mistakes were made" regarding the payroll. She "had no idea how these men [Lithuanians supplied by Edikas] came into the country and nor did I have any part to play in it".

141. All employers were properly trained and worked in safe environments.

142. Edikas asked Ms Judge to deduct rent from wages but these deductions were made with the agreement of the workers and she had no reason to believe the arrangement was not lawful. She and Mr Houghton were "not present in the homes rented to workers and had no idea what went on there". Edikas was "entirely independent of the company" and was "not 'our enforcer' and if he was responsible for the mistreatment of workers then we were not a party to this".

143. It was her understanding and that of Mr Houghton that they "were compliant with GLA Regulations and that the method used by [Ms Shanks] had been approved by the GLA".

144. As for holiday pay, when a worker wanted to go on holiday "he would inform Darryl or I and then I would inform [Ms Shanks] the length of time that was due to be taken as holiday pay. Nobody was ever refused holiday and that is preposterous to suggest otherwise".

145. Ms Judge confirmed that on occasion she would use her personal account to pay workers' wages, as a means of managing cash flow. No employment fee had been charged after 2010.

146. She and Mr Houghton had been told not to attend the hearing before Supperstone J.

147. She did not recall telling any worker that they were not allowed to say anything to anyone, in connection with an inspection. She would never stop anyone going to a parent's funeral. She had not been told that the worker's mother had died.

148. Contrary to the suggestion of the claimants, D1 was still in business. Its business comprised Mr Houghton driving a mini-bus, although that would not last for much longer.

149. Cross-examined, Ms Judge said she was aware of the obligation in Schedule 1 to the AWO 2009 to act in a fit and proper manner.

150. Ms Judge said that she had not previously seen the inspection report of 16 October 2007. She did not think she had been present at that inspection. At that time, a work-finding fee was taken if they were asked to do so. Workers would ask her to deduct the employment fee.

151. When this point was probed, the witness replied "I am just a woman. I do what I am told. I am not making this up".

152. She confirmed that a catcher would text her and ask her to deduct £350 from his wages at the rate of £50 a week. She did not have text evidence about this as they had changed lawyers on more than one occasion. She would give the deductions to Edikas. She denied that this evidence about workers asking her to make such deductions was an invention. She could not really remember whether she had ever said this before.

153. Ms Judge confirmed that she was present at the time Mr Moorhen made the inspection visiting in 2010. She was also present in October 2012 when police raided her home.

154. She had not paid an employment fee to Edikas since 2010. What she said at the time of the 2012 raid had to be judged in light of the fact that she was under great emotional strain, owing to the circumstances.

155. Ms Judge denied that workers were frightened of Edikas. On the contrary, they used to drink and otherwise socialise with him.

156. Asked about the method of calculating chicken catchers' hours, Ms Judge said that all the industry did it this way. Ms Shanks had been paid "a considerable amount of money" in order to do the job. Ms Judge did not know that the hours were fictional. Ms Shanks should have sought guidance. Ms Judge had not told Ms Shanks to do it in this particular way.

157. Asked if it was possible for Ms Shanks to know the hours including overtime, Ms Judge said that Ms Shanks had a good knowledge of chicken-catching systems and she was "the paid person". When it was put to her that no-one could know from the information supplied about worker's hours, Ms Judge said that she could not answer that. She provided Ms Shanks with the information she thought she required. She denied that they were false hours provided in order to deceive the GLA. Asked about the £50 deductions from pay slips, Ms Judge said that one would need to see seven consecutive pay slips deducting such a sum in order to show that this was an employment fee. When it was put to her that even a single £50 deduction would be illegal, she said that we "don't touch anyone's money".

158. The witness said that they thought they did pay for travel and that this would have been dealt with by Ms Shanks' SAGE system. It was put to her that the written defence said that travel was not paid for. Ms Judge replied that she thought it had been paid but that everyone else thinks differently.

159. The witness denied that she was making her evidence up as she went along.

160. Asked about written comments on certain payslips indicating that a recipient should talk or speak to Edikas, she said that it could have been her handwriting but she was not sure. They had gone to the police about Edikas in 2011.

161. Ms Judge disagreed with Ms Shanks' evidence that one or two workers each week entered the payroll. In paragraph 13 of her statement, Ms Judge had, however, acknowledged that the "nature of the work is such that there is a high turnover of workers".

162. Asked about catchers not being away for a long time, as Mr Houghton had said, Ms Judge said that she was not the only one who sent them. Noble Foods told them which farms the chicken catchers were to visit.

163. Ms Judge said she could not say how the workers would sleep as she did not travel with them in the minibus. Asked about the timings recorded on the drivers' sheets, Ms Judge said that the catchers might have been in different minibuses. She denied that the records of long hours worked by drivers necessarily related to catchers.

164. Ms Judge denied that she and Mr Houghton had been responsible for a "super-exploitative business". She said that no-one had interviewed the drivers. She had done what the GLA had required. She had provided Ms Shanks with what she thought was necessary.

165. Asked if Mr Moorhen had been given a misleading impression about there being accurate figures for hours worked by catchers, she said that this was what he saw and that there was an intention to pay the chicken catchers for the hours they worked.

166. She denied telling Ms Shanks that it was impossible to calculate chicken catchers' hours. She thought Ms Shanks might have been scared. She also said that she had not read Ms Shanks's statement properly beforehand.

167. Asked about handwritten figures on payslips relating to deductions, Ms Judge questioned how it could be known that it was her handwriting on the slips. It could have been hers or her sister's or her daughter's. In any event, the worker concerned would have given his approval to the deduction.

168. The words on one of the documents "speak Edikas" were not in her handwriting. She considered that the message could be something to do with Edikas' property. On the payslip for M Prokopas dated 11 December 2009, the word "Eddie" was not her writing. On the payslip relating to R. Tamosaitis dated 27 January 2012, the figures of 50 and 40 and a total of 90, could not, she said, be guaranteed to be in her handwriting.

169. Ms Judge was asked about GLA letter to Mr Houghton of 29 October 2012 where it is recorded that "the only deduction shown for PAYE and National Insurance. During the inspection of DJ Houghton, Jacqueline Judge denied any other deductions had been made from wages". She said that deductions were made with worker's consent.

170. Asked about Mr Houghton's appeal statement where, in paragraph 9, he said that he did "not accept ever withholding wages or paying less than the stated amount on payslips", Ms Judge said that this was not untrue and deductions had been made with their consent. At the November 2015 appeal hearing, Ms Judge said that Leigh Day had been present "scaring me to death". In the record of the hearing, when asked when Ms Judge stopped paying Edikas for workers, she had said "I'd say from when the licence finished (5 October 2012) or six months before that". Ms Judge denied that this was correct. She paid him for this until 2010; and maybe afterwards, but with their consent.

171. Any payments to Edikas after 2010 were more about exploitation and rent. The police now recognised that Edikas had exploited her and Mr Houghton. Asked whether some of the £98,000 paid to Edikas represented work-finding fees, she replied that it was not necessarily so.

172. Ms Judge was asked about the printout from the text of her telephone for 23 May 2012 to "Eddie" stating "Antanas hasn't come to work" and another text sent on 24 May 2012 stating "Antanas is at work my other driver picked up wrong people xxx English for u". Ms Judge denied that these messages indicated that she was, at the time, on good terms with Edikas. The use of xxx did not mean anything.

173. Ms Judge was asked about the reserved judgment of Employment Judge Sage which followed the hearing in November 2015. At paragraph 24, Judge Sage recorded that Ms Judge told the Tribunal "she stopped paying [Edikas] from workers' pay in 2012". Ms Judge replied that she would have said it was 2010.

174. At paragraph 25 of the judgment, Judge Sage concluded that Ms Judge's evidence to the Tribunal "lacked credibility and at times her answers were evasive. Her inability to display why there was a disparity between the payslips and the amounts written on the pay cheques reflected the wholly unsatisfactory state of her evidence."

175. Ms Judge replied that everyone was saying that she was not a fit and proper person and that she had been destroyed. Everyone had intimidated her and Mr Houghton.

176. In re-examination, Ms Judge said that on the payslip for R Nemkevicius dated 1 April 2011 the words "Eddie will collect all rent" were those of her sister. The £40 included an element to cover council tax and water rates.