Case No: HQ10X02720

Neutral Citation Number: [2012] EWHC 3626 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/12/2012

Before :

HIS HONOUR JUDGE RICHARD SEYMOUR Q.C.
(sitting as a Judge of the High Court)

- -

Between :

DENNIS KARL HORNER	**Claimant**
- and -	
(1) TRISHA ANASTASIA ALLISON (formerly known as ANASTASIA ST. RAPHAEL)	
(2) ADRIAN ROSS	**Defendants**

- -
- -

Miles Croally (instructed by **Hierons**) for the claimant
The defendants in person

Hearing dates: 22, 23, 24, 25, 26, 30, 31 October, 1, 2, 5, 6, 9, 14, 16, 21, 22, 26, 27 November 2012

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Judgment

His Honour Judge Richard Seymour Q.C. :

Introduction

1. The claimant, Mr. Dennis Horner, is, by qualification, a chartered accountant, although, as I understand it, he has never practised as such. He has actually practised as a management consultant and was, at the time of the events giving rise to this action, one of a number of managing directors of Atos KPMG Consulting Ltd.

2. In that capacity Mr. Horner earned significant amounts of money. In the Income Tax year 2000/2001 Mr. Horner actually paid income tax of £78,737.79, plainly the bulk of it at a marginal rate of 40%. In the following Income Tax year, 2001/2002, the income tax which he paid was even higher, totalling £113,361.50. In those two Income Tax years, therefore, Mr. Horner actually paid income tax totalling £192,099.29.

3. While the detail of the statutory provisions in question are not really material to any issue in this action, by *Finance (No.2) Act 1992 s. 42*, as amended, it was provided, inter alia, that:-

> "*(1) Subject to the following provisions of this section and any other provisions of the Tax Acts, in computing for tax purposes the profits or gains accruing to a person in a relevant period from a trade or business which consists of or includes the exploitation of films, that person shall (on making a claim) be entitled to deduct an amount in respect of any expenditure –*
>
> *(a) which is expenditure to which subsection (2) or (3) below applies, and*
>
> *(b) in respect of which no deduction has been made by virtue of section 40B above and no election has been made under section 40D above.*
>
> *(2) This subsection applies to any expenditure of a revenue nature incurred by the claimant on the production of a film –*
>
> *(a) which was completed in the relevant period to which the claim relates or an earlier relevant period, and*
>
> *(b) the master negative of which or any master tape or master disc of which is a qualifying film, tape or disc.*
>
> *(3) This subsection applies to any expenditure of a revenue nature incurred by the claimant on the acquisition of the master negative of a film or any master tape or master disc of a film where –*
>
> *(a) the film was completed in the relevant period to which the claim relates or an earlier relevant period, and*

(b) the master negative, tape or disc is a qualifying film, tape or disc. "

4. The provisions of *Finance (No.2) Act 1992 s.42* which I have quoted were modified by *Finance (No.2) Act 1997 s.48(1)* so as to substitute, for the original terms of *Finance (No.2) Act 1992 s.42(4)*, this, as amended:-

> "*The amount deducted for a relevant period under subsection (1) above shall not exceed so much of the total expenditure incurred by the claimant on –*
>
> *(a) the production of the film concerned, or*
>
> *(b) the acquisition of the master negative or any master tape or master disc of it,*
>
> *as has not already been deducted by virtue of section 40B or 41 above or this section.*"

5. So far as is presently material, the effect of these provisions was, in 2003, that it was permissible for a person participating in a trade or business which consisted of or included the exploitation of films, to deduct, in computing his or her income assessable to income tax, the amount of any investment of a revenue nature which he or she had made in the production or acquisition of a qualifying film. The practical effect of such entitlement to deduct was to reduce the amount assessable to income tax by the amount of the investment, producing a financial benefit worth the amount of the income tax which would otherwise have been payable on the sum invested.

6. This action was commenced by a claim form issued on 19 July 2010. In it Mr. Horner claimed, principally, damages against the first defendant, Miss Trisha Allison, and the second defendant, Mr. Adrian Ross, in respect of alleged fraudulent misrepresentation. The misrepresentations alleged were in relation to the opportunity to secure a reduction of Mr. Horner's tax liabilities by investing in films. The thrust of the misrepresentations was said to be that Mr. Horner, and others to whom the misrepresentations were said to have been made on the same occasion, could claim refunds on income tax already paid, invest the proceeds of the refunds in films, and recover a guaranteed return on the supposed investment of 20% of the amount of the investment. The apparent benefit to Mr. Horner was that he could recover an amount equal to 20% of the income tax which he had paid in the relevant years. A cynic might have thought that it all looked too good to be true. Someone who had taken that view would have been correct. Mr. Horner participated in the scheme which he said was put to him, and, in the first instance, a tax refund of £168,756.30 was obtained, of which £33,750 was retained by Mr. Horner. However, once the Commissioners of Inland Revenue (*"the Revenue"*) investigated the claim for a refund it came to the conclusion that Mr. Horner had not been entitled to any refund, and he was compelled to repay the refund, together with interest and penalties. The total which he had to repay came to £207,000. He paid that total to the Revenue by three instalments. The first, in the sum of £40,000 was made on 6 March 2006. The other instalments were of £100,000 on 22 July 2006 and of £67,000 on 6 December 2006.

The evidence of Mr. Horner

7. In a witness statement dated 23 November 2011 Mr. Horner gave this account of the circumstances in which he met Miss Allison, at that time using the name Anastasia St. Raphael, and Mr. Ross, and what then happened:-

> "*4. In January 2003, when I was a Management Consultant Partner with Atos KPMG Consulting, at the suggestion of a work colleague, Charles Gill (who, I have since discovered, was paid a commission by Taipan Creative LLP ("Taipan"), an entity formed and controlled by the Defendants, to make the suggestion) I attended a presentation on 13 January 2003 at the Institute of Directors in Pall Mall given by the Defendants who I will refer to as Allison and Ross. Charles also mentioned the presentation to a number of our work colleagues including Barry Cowing.*
>
> *5. I had not previously met either Allison or Ross before. Allison introduced herself at the presentation as Anastasia St. Raphael. She has since changed her name to Trisha Anastasia Allison and she has provided documents during these proceedings to show that Anastasia St. Raphael was not her original name. She has confirmed that over the years she* [has] *been known by 4 different names and has changed both her first name and surname more than once. These changes to her surname have not come about because of marriage. In fact she has given evidence that she did not change her surname to that of her former husband whose surname was Potterton although the Second Defendant* [sic – Miss Allison was in fact the first defendant] *has produced copies of her son's birth certificates and these refer to her as Patricia Catherine Potterton and Catherine Patricia Potterton.*
>
> *6. The presentation was attended by about 15 to 20 people. I believe that Barry Cowing also attended the presentation.*
>
> *7. Allison and Ross distributed some written material. I believe that this was a document headed "A Unique Low Risk High Return Investment Proposition". The written material was collected up at the end of the presentation because we were given the impression that if we were not participating in the scheme that we should not keep the material and that as the regulations were about to change that the information contained in the handout would soon become out of date. This document later came into my possession from HMRC* [H.M. Revenue and Customs, the successor to the Revenue]. *Initially in his response to my claim Ross admitted that this document had been circulated at the presentation but he now seems to be denying that this was the case. Even if this document is not the one that was circulated at the presentation I believe that the*

handout circulated at the presentation was substantially similar and that this might be a later version.

8. Allison claimed that she was a tax specialist involved with film schemes. The gist of the presentation given by her, with the assistance of some power point slides, was that, by virtue of certain statutory tax relief provisions, it was possible to get a tax advantage by participating in certain schemes which invested money in the production of British films. Such schemes were called "film tax shelter schemes". Allison claimed that she and Ross had developed such a scheme which was particularly advantageous. From the way she described their scheme at the presentation, it did sound very advantageous. The key points of the scheme, as the [sic] *she described it at the presentation, can be summarised as follows:*

(1) Under the relevant statutory relief provisions .... the participants in the scheme (whom I shall call "investors") would be entitled to tax refunds of up to the whole amount of income tax paid by them in the last three years, i.e. tax years 2000/1, 2001/2 and 2002/3. Subject to (3) below, such refunds would have to be invested in the scheme in order for the investors to qualify for the tax relief.

(2) The investors would authorise the Defendants (or corporate entities controlled by them) to deal with the Inland Revenue on their behalf in relation to the tax refunds. The investors would also authorise the Inland Revenue to pay any tax refunds to the Defendants (or any corporate vehicle nominated by them) rather than to the investors direct. The Defendants (or their corporate vehicle) would then apply to the Inland Revenue on behalf of the investors for the tax refunds. Once the tax refunds were received, the tax refund money (or whatever was sufficient to achieve the purposes of the scheme) would be invested in the scheme, i.e. would be invested in the development or acquisition of films that qualified for tax relief under the relevant statutory provisions. The tax refund money would constitute the investors investment in the scheme. No other investment in the scheme would be required from the investors.

(3) Once the tax refund had been received by the scheme, the investors could realise a return from the scheme in one of two ways: (i) a share of the profits generated from the sale and distribution of the films produced by the scheme; or (ii) a fixed return of 20% of the tax refund money. If option (ii) was chosen, the 20% fixed return was a guaranteed return: there was no risk of loss.

9. At the end of the presentation both Allison and Ross answered questions about the scheme. Most of the questions were answered by Allison. They both reassured the potential

investors that the scheme was already operating successfully and that it had a proven track record of success, having generated funds for its investors. They said that it was it was [sic] *a legitimate scheme which had been "reviewed" or "looked at" by HMRC and BDO Stoy Hayward. They may have also have* [sic] *used the word "approved" but, if not, they gave the clear impression that the scheme had been approved by HMRC and BDO Stoy Hayward. I specifically recall that they mentioned that they had been in discussions with BDO with a view to "marketing" the scheme to BDO's high net worth individual customers but for some reason this had not been pursued. Allison and Ross informed us that the tax rules would soon be changing and emphasized that if we wanted to get involved that* [sic] *we would have to act quickly. They also said that only a limited number of individuals could participate and that they had other presentations lined up. We were therefore put under pressure to sign up there and then.*

10. ...

11. The presentation lasted about 1 to 2 hours and was a formal presentation and not just a meeting in the bar at the Institute of Directors as suggested by Allison.

12. ...

13. The presentation was superficially impressive and I was convinced by it. Allison and Ross put the attendees of the presentation under pressure to sign up quickly to the scheme, on the basis that: (i) changes to the statutory regime would soon be put in place which would close off the opportunity for this type of scheme; and (ii) there was a cap on the number of people who could participate in the scheme. At the end of the presentation, I told them that I was interested in the scheme but that I wanted time to consider my decision as to whether to participate in it. At Allison and Ross' suggestion, I signed a number of blank forms which they had with them. They told me that, if I notified them that I wished to participate in the scheme, they would fill out the forms and use them to progress my participation in the scheme. I am not completely sure but I think that these forms included: (i) a Companies House form consenting to my becoming a member of a limited liability partnership; (ii) an Inland Revenue form (or forms) consenting to someone (or some corporate entity) representing me in dealings with the Inland Revenue and/or consenting to the payment of any tax refund to a bank account other than one in my name; (iii) a short form partnership tax return. They were not keen for us to take copies of the partnership deeds away with us because they did not want details leaking to competitors with similar schemes. At the presentation it was suggested by Allison and Ross that the scheme would operate through LLPs

specifically set up for this purpose. I am not sure whether the name Taipan was mentioned at the presentation.

14. The day after the presentation, I spoke with Allison on the telephone and told her that I had decided to participate in the scheme. On the same day I then notified both Allison and Ross by e-mail … that: (i) I wished to participate in the scheme in respect of the tax I had paid in tax years 2000/1 and 2001/2; and (ii) that the amount of tax I had paid was £78,737.79 (in 2000/1) and £113,361.50 (in 2001/2). (I think I must have been asked by Allison and Ross to provide the information in (ii).) I also notified them that I wanted the 20% fixed return option rather than the share of the profits option but I cannot remember when I did that. (It is not in the e-mail. It might have been at the meeting or in the telephone conversation the next day with Allison.)

15. I subsequently obtained a copy of the blank form of partnership Deed for Taipan. It is apparent that Anastasia and Adrian had formed Taipan on 22 March 2002 and that the purpose of Taipan was to carry on the business of film production. Under the terms of the partnership deed Ross and Allison were the designated partners. Ross was to be the managing partner and Allison was responsible for creative activities.

16. Allison and Ross must have proceeded with the application for a tax refund on my behalf because, although they did not copy me in or otherwise keep me informed of their actions, in May 2003 I received notification from the Inland Revenue that I was to receive a tax refund of £168,756.30 … in respect of my involvement with Taipan and that this tax refund was to be paid into a Barclays bank account the number of which was given in the Inland Revenue's letter. The Inland Revenue did not specify in whose name the account was held. It was not an account in my name and, indeed, it was not an account of which I had ever heard before. I assumed that it must be an account in the name of Taipan or some other account controlled by Allison and Ross. In fact, I have now ascertained from documents produced by HMRC … that it was an account No.70574112 held by Taipan at Barclays.

17. I have tried to obtain a copy of the application made on my behalf for the tax refund from HMRC but, they have been unable to locate it. HMRC have supplied my solicitors with copies of other applications that they received for tax refunds for Taipan … These applications were submitted in or about April 2003 by a company named A Works TV Ltd. and all the letters were signed off by Allison in her capacity as a Director of A Works TV. I believe that my claim must also have been submitted by A Works TV but, it is clear from correspondence

and documents filed with Companies House … that on 11 April 2003 Allison resigned from A Works TV and assigned all her interest in that company to Ross. Despite having formally resigned as a Director of A Works TV she continued to hold herself out to be a Director of that company and signed a letter dated 12 April 2003 … addressed to HMRC claiming a tax refund payable to Taipan.

18. Shortly after receiving the letter from the Inland Revenue, in early June 2003, I was in contact with Ross. He came to my place of work in Uxbridge and gave me a banker's draft payable to me in the sum of £33,750 … This represented my agreed guaranteed return, being 20% of the £168,756.30 tax refund. Ross required me, as a condition of receiving the £33,750, to sign a letter of resignation from Taipan. I was happy to sign the letter. As far as I was concerned, this was to be the end of my involvement with Taipan.

19. At this time, although I was not aware of it, the Inland Revenue operated a policy known as "process now, check later". This meant that, when they received an application from a taxpayer for a tax refund, they would pay the tax refund without checking whether the taxpayer was entitled to the refund or not. The payment of the refund did not indicate acceptance by the Inland Revenue that the taxpayer was entitled to the refund. The Inland Revenue reserved the right to examine the refund claim at a later date and, if they found then that the taxpayer was not entitled to the refund, they could demand repayment of the refund.

20. I received no communications whatsoever from either Ross or Allison about Taipan and at no time received any minutes of any meetings or other documents as suggested by Mr. Hardy in his witness statements. I was not consulted with regards to any investments made by Taipan. I was not informed that Taipan had ceased to trade in March 2003 or consulted with regards to the disposal of Taipan's assets.

21. Subsequent enquiries also revealed that I had never been registered at Companies House as a member of Taipan. …"

Documentary evidence

8. Various copies of contemporaneous documents adduced in evidence supported the account given by Mr. Horner in the paragraphs of his witness statement which I have quoted. As noted by Mr. Horner, a number of those documents were obtained from the Revenue. One of those was a copy of the document entitled *"A Unique Low Risk High Return Investment Proposition"* (*"the Prospectus"*). The Prospectus was a single page document and was in these terms:-

"***Overview***

The UK Film Industry whilst being a significant revenue producer, is a sector that has traditionally suffered from under investment. The Government, through the Inland Revenue, actively encourages Film industry investment through the legislation set out in the Film Act 2.

The traditional route for encouraging investment into the sector is through the formation of Film Partnerships utilising the Sale and Leaseback mechanism, thereby enabling the investor to defer their tax liability until future years.

An alternative approach is the Co-Production route and this forms the basis of the proposition with A Works TV. The proposition as developed by A Works TV uniquely satisfies the Revenue criteria for tax relief by retaining all aspects of the film and trading risk when these risks are viewed from a Revenue perspective whilst at the same time protecting the tax investor (Tax Co-Producer) to a greater extent than is achievable by the Sale and Leaseback route. This is only possible because matched Industry Co-Producers sourced by A Works TV absorb risk elements which would otherwise be the responsibility of the Tax Co-Producers.

The A Works TV proposition is fundamentally different from the deferral scheme in that the tax investor does not become liable for additional taxation at any future time by participating. A Works TV is a bona fide Film Production & Distribution company whose officers are also qualified and experienced in the areas of Risk Analysis, Tax Mechanisms, Film Finance, Film Sales & Marketing. No other British organisation can provide the same service skills and product package and hence A Works TV is uniquely qualified to offer this proposition.

A Summary of How it Works

- *A series of partnerships will be formed incorporating Tax Co-Producers who wish to reclaim tax paid in previous years.*

- *The Tax Co-Producers will invest into the partnership a sum corresponding in amount to the taxes they have previously suffered. These funds are held in escrow.*

- *A number of suitably qualifying films that will be eligible for tax relief in the year of purchase under the legislative provisions will be purchased by the partnerships.*

- *Matched Industry Co-Producers will join the partnerships creating matched eligible losses, which will subsequently enable the Tax Co-Producers to*

reclaim the amount of taxes they previously suffered without the need to make any additional investment.

- *The partnership will obtain accreditation documentation that meets the legislative requirements for each film thereby quantifying the tax loss available. Only after the film's tax loss eligibility has been quantified is its purchase price released.*

- *Each partnership's year end accounts are prepared and the partnership tax return is submitted to the Inland Revenue on April 6th. Individual repayment claims in respect of previously paid tax certifying each Tax Co-Producer's portion of the partnership losses are submitted to the Revenue. It is Revenue practice to expedite these claims.*

- *A tax relief eligible percentage of the price of films purchased is retained in escrow and part is disbursed to cover all costs including BDO and A Works fees. The rest is utilised by the partnership to provide an investment to Tax Co-Producers.*"

9. While the Prospectus was couched in somewhat obscure terms, it did appear that what was described was not a mechanism derived from or dependent upon the provisions of *Finance (No.2) Act 1992 s.42* as modified by the provisions of *Finance (No.2) Act 1997 s.48*, but a straightforward attempt to transfer to so-called *"Tax Co-Producers"* actual losses incurred by *"Matched Industry Co-Producers"*. However, the Prospectus certainly did share with the account of Mr. Horner in his witness statement the feature that the contribution of *"Tax Co-Producers"* to the operation was simply the claim for a refund of previously paid income tax. A different version of the Prospectus from that which I have quoted was also adduced in evidence. Although the precise wording of the alternative version was not in the same terms as the document which I have quoted, the general thrust of the document was similar. The alternative version bore a date on its face which indicated that it did not exist as at 13 January 2003. It was suggested by Miss Allison that neither version was in existence as at 13 January 2003, but that was contradicted by the evidence of Mr. Ross, to which I shall come.

10. Mr. Ross adduced in evidence what he said was a copy of an e-mail dated 26 January 2003 written by him to Miss Allison, in which he said, *"Here is the lay mans* [sic] *guide. Talk you soon!"*, together with a response from Miss Allison in which she wrote, *"Attached revised overview. I have limited changes purely to the technical aspects, since I assume you know best the language which will sell to them."* The document attached, Mr. Ross contended, was a version of the Prospectus. Miss Allison asserted, in cross-examination, that Mr. Ross had fabricated the documents which he adduced, along with others. The word which Miss Allison used to describe the documents in question was *"inauthentic"*. I had to reach conclusions as to whether or not that was so, in the case of each relevant document. However, on the face of the documents to which I have referred in this paragraph, Miss Allison was aware of the existence of a version of the Prospectus, apparently drafted initially by

Mr. Ross, on or about 26 January 2003, and had revised it by the date of her reply, recorded as 7 February 2000, although, if genuine, the response could have been no earlier than 26 January 2003. In cross-examination Mr. Ross told me that on his computer the date of receipt of the e-mail bearing the date 7 February 2000 was in fact 26 January 2003. The documents to which I have referred plainly did not demonstrate that a version of the Prospectus existed as at 13 January 2003, and rather suggested that it was first created after that date. Nonetheless, if fabricated by Mr. Ross with a view to implicating Miss Allison in the events alleged by Mr. Horner as occurring on 13 January 2003, the problem of the dates indicated that Mr. Ross had gone about the process of fabrication with a fair degree of incompetence. He did put in evidence what he contended were copies of other e-mails written to him by Miss Allison in January 2003 which were in fact dated February 2000. A possible explanation for that discrepancy was that, at the relevant time, the computer used by Miss Allison to send e-mails was set with the incorrect year.

11. Other documents copies of which were provided by the Revenue had been redacted, to a greater or lesser extent competently (some details relating to individuals could be identified), but were said to relate to the activities of Miss Allison and to be copies of documents submitted to the Revenue by her on behalf of other participants in the scheme in which Mr. Horner said that he had become involved. The documents in question fell into one of four categories. The first was completed versions of a standard Revenue form numbered 64-8. That form was headed, *"Authorising your agent"*, and was an authority which a taxpayer could give to an identified person *"to act on my behalf in connection with any matters within the responsibility of the Inland Revenue"*. In one instance the person identified as acting for the taxpayer was Anastasia St. Raphael, but in four other instances the agent was said to be A Works TV Ltd. (*"A Works"*). The second category of document was a completed version of a standard Revenue form entitled *"Partnership (Short)"*. Box 4.79 *"Additional information"* in each such form was completed in manuscript in what appeared to be a similar hand. The precise wording varied from form to form, but the effect of the message in each case was conveyed by this example:-

> "*I wish to reclaim tax under the provisions of the Film Act 2 in respect of losses in film production partnership. I wish to apply the Section 381 provisions to the maximum extent possible, carrying back to the earliest possible year. If there is any remaining entitlement, I wish the section 380 provisions applied to the remainder only. Please complete boxes 4.15 to 4.19 in accordance with the breakdown above.*"

12. The third category of document of which copies were provided by the Revenue were covering letters signed by Miss Allison, as she accepted in cross-examination, in the name of Anastasia St. Raphael. The letters were all addressed to officers of the Revenue. They were on a variety of different letterheads. In one instance the letterhead was that of Angel Enterprise LLP (*"Angel"*). In three other instances the letterhead was that of Taipan Creative LLP (*"Taipan"*). In six cases the letterhead was that of A Works, but there was one letter on the stationery of Anastasia St. Raphael. All of the letters mentioned Taipan and all conveyed the same essential message. The text of that dated 2 April 2003 on the letterhead of Anastasia St. Raphael can be taken as typical:-

"*Re: TAIPAN CREATIVE llp Tax Ref: 754 5942941 Paisley office*

and [redacted] *NINO* [redacted] *UTR* [redacted]

I write to confirm that our above client, [redacted], *wishes to reclaim tax paid by him, as he is entitled to a rebate of tax in accordance with the provisions of the Film Act 2 in respect of his losses in the above film production partnership.*

[Redacted] *wishes to reclaim tax under section 381 provisions to the fullest extent possible, at all rates of tax, carrying back to the earliest permissible year, and should there be any further entitlement, to have that applied to current year in accordance with the section 380 provisions.*

The partnership tax return has been submitted to the Paisley office.

Our authority to act for [redacted] *is enclosed, as is* [redacted] *self assessment short partnership return pages. Please note that* [redacted] *wishes box 4.15 to 4.18 to be completed in accordance with the breakdown above.*

Please pay [redacted] *tax rebate into the Taipan Creative llp account at Barclays Bank, sort code 20 78 98, account number 70574112 in accordance with his signed letter requesting payment to be made as specified, also enclosed.*"

13. The fourth category of document of which copies were provided by the Revenue was letters, mostly in a standard form, signed by someone whose name and/or signature had been redacted. Where the standard form was used the address of the signatory was said to be care of A Works at an address in Glasgow. The addressee was the Revenue and the text of the standard form was:-

"*I hereby authorise you to pay the full tax rebate due to me in respect of film partnership losses suffered by me into the Taipan Creative llp's bank account, full account details as given to you by my authorised agent A Works TV Ltd.*

Bank: Barclays *Branch: Soho Square*

Sort code: 20 78 98 *Account Number: 70574112*

Name in which account held: Taipan Creative llp.

Many thanks for your assistance."

14. There was a degree of ambiguity in the various documents of which copies were provided by the Revenue in the four categories which I have mentioned as to whether

what were described as *"losses"* were said to be actual losses, or allowances of the type for which *Finance (No.2) Act s.42* provided.

15. Documents copies of which were put in evidence and of which Mr. Horner himself held the originals included his e-mail dated 14 January 2003 sent at 10.48 hours to Miss Allison and Mr. Ross. The text was:-

> "*Following our discussions yesterday and this morning I would like to confirm that I would propose to utilise my tax payments for 2000/1 and 2001/2. 2002/3 will depend on the degree of complication with regard to capital gains tax – the liability for 2002/3 I understand will actually be payable on 31 January 2004. We can discuss and agree what to do about this at a later date.*
>
> *My actual tax liability for the other years is as follows:*
>
> *2000/1 £78,737.79*
>
> *2001/2 £113,361.50*
>
> *My tax reference number is* [and the number was then set out]
>
> *My tax district is Livingston, West Lothian*
>
> *My NI number is* [and the number was then set out]
>
> *Hope the rest of day goes well.*"

16. Miss Allison contended that she had not received the e-mail sent by Mr. Horner. It may be that that was so. However, Mr. Ross adduced in evidence a copy of an e-mail which he said he had sent to Miss Allison at 13.07 hours on 18 January 2003 by which he forwarded Mr. Horner's e-mail of 18 January 2003 to Miss Allison *"FYI"*, that is, for your information.

17. By a letter dated 30 May 2003 Mr. Horner was notified by the Revenue as follows:-

> "*Thank you for your recent claim to repayment.*
>
> *A Bank giro credit for £168756.30*
>
> *is being made to your account.*
>
> *Bank Account Name: BARCLAYS*
>
> *Bank Account No: 70574112*
>
> *Bank Sort Code: 207898*
>
> *Details of the repayment have been issued to your agent.*
>
> *If you have any queries please contact this office, quoting the reference shown above.*"

18. Mr. Horner produced a copy of a banker's draft (*"the Draft"*) dated 4 June 2003 issued by Barclays Bank plc (*"Barclays"*) expressed to be payable to him and in the sum of £33,750.

19. The blank form of limited liability partnership deed referred to by Mr. Horner in his witness statement which was put in evidence named as the members of the limited liability partnership Mr. Ross, Anastasia St. Raphael *"and .."* Clause 1 of the deed was in these terms:-

> "*The parties to this Deed ("the Partners") have from the 15th day of March 2002 carried on and shall continue to carry on the business of film production and exploitation in partnership under the terms of this Deed under the name of "Taipan Creative LLP".*"

20. While it may be that Miss Allison and Mr. Ross had carried on business as partners under the name of Taipan from 15 March 2002, it could not be the case that anyone joining them after that date had done so.

21. What the documents to which I have so far referred seemed to demonstrate clearly was that, by reason of something or some things said to him by Miss Allison and/or Mr. Ross, Mr. Horner provided them with signed copies of documents which enabled an application to be made to the Revenue for a refund of income tax paid by Mr. Horner which generated a payment of £168,756.30 by the Revenue into the account (*"the Taipan Current Account"*) maintained by Taipan with Barclays at the branch, it seemed Soho Square, London, with the sort code 20-78-98 and the account number 70574112. Moreover, after, it appeared, that sum was received in the Taipan Current Account, the Draft was presented to Mr. Horner. As a matter of arithmetic 20% of £168,756.30 is £33,751.26, all but £1.26 the amount of the Draft.

22. Statements of the Taipan Current Account showed receipt into the account of the amount of £168,756.30 on 3 June 2003 and a debit to the account of £33,750, described as *"Dennis Horner"*, on 4 June 2003.

23. Which individuals controlled the Taipan Current Account emerged from a letter dated 2 July 2003 to Moni Begum, a business manager at Barclays, written by Miss Allison, in the name Anastasia St. Raphael, on the letterhead of Dragons Lair Productions Ltd. (*"Dragons Lair"*), of which a copy was put in evidence. The letter included these passages:-

> "*As you will be aware, following Adrian's visit, the partnership papers for Taipan Creative llp were signed on 10th June 2003.*
>
> *Adrian and I will both remain signatories on the Taipan Creative llp account for the remainder of its lifetime, but we are currently in the process of winding up that partnership and will close the account when all the monies have been gathered in.*"

24. That letter was one of two of the same date written by Miss Allison to Moni Begum and copies of both were sent to Mr. Ross as attachments to an e-mail to him sent by Miss Allison at 18.10 hours on 2 July 2003, of which a copy was also put in evidence.

25. The dissolution of Taipan was shrouded in obscurity in the various documents which appeared to have something to do with it of which copies were adduced in evidence. A copy of what purported, on its face, to be a deed of dissolution signed by both Miss Allison, in the name of Anastasia St. Raphael, and Mr. Ross, bore, on the backsheet, the date 25 June 2003. However, the recitals to the deed were in these terms:-

> "*WHEREAS*
>
> *1. The parties to this agreement* [only Anastasia St. Raphael and Mr. Ross were named as parties] *have since the 15th March 2002 carried on the business of film production and exploitation in partnership under the name of Taipan Creative LLP on the terms of the Partnership Agreement made between the parties and dated the 15th March 2002.*
>
> *2. The said parties have agreed to dissolve their partnership with effect from the 10th March 2003 on the terms set out hereunder.*"

26. Clause 1 of the deed provided that:-

> "*The said partnership is declared to have been dissolved on the 10th March 2003.*"

27. On the face of the deed, therefore, Taipan never had as members anyone other than Mr. Ross and Miss Allison and had ceased to exist before the amount of the tax refund of Mr. Horner had been received into the Taipan Current Account.

28. The matter became curiouser because a set of draft accounts (*"the Taipan 2003 Accounts"*), prepared by Mr. Andrew Hardy, a chartered accountant qualified in South Africa who was called to give evidence at the trial by Miss Allison, purported to deal with the activities of Taipan in the period 6 April 2002 to 7 March 2003, and a return (*"the Cessation Return"*) was made to the Revenue on behalf of Taipan completed to indicate that the business of Taipan had ceased as at 7 March 2003. In cross-examination Miss Allison accepted that she had completed and signed the Cessation Return. The Taipan 2003 Accounts included a profit and loss account which indicated that in the period to which the account related the turnover of Taipan had been £169,000, which, after administrative expenses, had generated a profit of £22,507. The Taipan 2003 Accounts included, for comparative purposes, equivalent figures for 2002 – presumably the period from 15 March 2002 until 5 April 2002. That showed no turnover, but £13,853 of administrative expenses. The Taipan 2003 Accounts also included a balance sheet. That showed fixed intangible assets of £405,000 as at 5 April 2002 and fixed intangible assets of £3,725,000 as at 7 March 2003. The balance sheet also showed what were described as *"Partner's Capital Accounts"* totalling £3,803,854 created in the period 6 April 2002 to 7 March 2003. A note, Note 5, to the Taipan 2003 Accounts reproduced that figure, but did not explain how it had been calculated. However, Mr. Hardy also produced a balance sheet dated

20 March 2003 which purported to show the position of Taipan as at 7 March 2003. That balance sheet showed a different total for *"Partner's Capital Account"*, £3,828,361. However, it also included a breakdown of which alleged partners were supposed to have contributed what. Mr. Horner was listed as a partner. His contribution was said to be £480,000. That appeared to be a puzzling amount, until one recognised that 40% of £480,000 is £192,000, £99.29 less than the aggregate amount of the actual income tax paid by Mr. Horner in the Income Tax years 2000-2001 and 2001-2002. At the prevailing tax rates, in order to have had to pay income tax of a total of £192,099.29 Mr. Horner had to have earned in the relevant tax years a total of at least £480,248.22. The balance sheet as drawn thus indicated that Mr. Horner had contributed to Taipan an amount which, if he was entitled to deduct it from his actual income in the relevant years in calculating the income tax which was properly due from him, would generate a refund of £192,000. In the Cessation Return the share of the alleged losses of Taipan attributed, in the hand of Miss Allison, to Mr. Horner was £480,000. In a written document (*"the Re-examination"*) which she produced setting out the points which she wished to make by way of re-examination of herself after her cross-examination she said about the entries in the Cessation Return in respect of each partner:-

> "*The Taipan partnership return was properly submitted by D1 in the format required by IR, setting out each individual partner's loss allocation (as required by IR) in the quanta specified by the partnership deed. It would have been improper for D1 when making the partnership tax return to have completed it in any other way.*"

29. Although a form of partnership deed in relation to Taipan was adduced in evidence no version of what was put before me had been completed to show either how much any partner was to contribute to Taipan or how any losses were to be allocated as between partners.

30. That the relationship between the figures of £192,000 and £480,000 was not coincidental was obvious from the account recorded as having been given by Mr. Ross to the solicitors then advising him, Allen & Overy, at a meeting on 29 May 2003 of which Mr. Ross disclosed an attendance note. Mr. Ross and Miss Allison were not only business partners, but also, at one stage, had a personal relationship. The personal relationship appears to have had its difficulties and it may be that the consultation with Allen & Overy took place in the context of personal problems between Mr. Ross and Miss Allison. At all events, according to the attendance note, Mr. Ross wished to be advised as to his position in A Works. For the purposes of obtaining advice, he gave this account of how A Works operated:-

> "*A Works TV uses the co-production route. Investors actually participate as members of the LLP which develops the film. ASM* [apparently intended as a reference to Miss Allison] *came up with the idea originally to use an LLP (she has a background as an investment banker specialising in risk management) and has ensured that an LLP can still be used despite some changes in the tax legislation.*

AR [Mr. Ross] *produced the documents normally included in an "investor's pack" for information. These were:*

- *Inland Revenue ("IR") form authorising A Works TV*
- *Letter for investor to authorise payment of the investors' 100% rebate of tax from the IR direct to A Works TV*
- *Letter for investor authorising the payment of the 100% rebate into the LLP*
- *Letter authorising A Works TV to repay part of the rebate out to the investor*
- *LLP form 288 allowing the investor to join the LLP*
- *Allocation of losses to the IR*
- *LLP deed which gives the terms of business between the investor and LLP*
- *Regulation deed*
- *Partnership tax return*

FInvestors [sic] *therefore 'pay in' their tax recovery arising from the allocation of losses to them and AR and ASR* [Miss Allison] *match this amount with a contribution in-kind (that of the contribution they make to the film).*

Once an investor elects to join the partnership, A Works TV finds a UK film which qualifies under the DCMS criteria. The investor is allocated a tax loss which is 2.5 times the value of their investment. The LLP then claims the tax loss as a rebate from the IR, and 20% of the rebate received is returned to the investor by the LLP buying out the investor's share in the partnership. The other 80% of the rebate received by the LLP from the IR goes towards funding the films involved. An investor may choose to receive a 1% stake in the film rather than their 20% rebate, but this is risky for the investor since many UK films are not commercially very profitable.

A Works TV benefits by getting money to produce films without the need for AR or ASR to put up their own money each time. A Works TV also retains the right to receive a profit from successful films. Investors are able to recover 20% of their tax liabilities in respect of their income. There is a low risk that an investor could seek redress from AR or ASR on the basis that no film has been found for the investor to invest in since no

> *application is made to the IR for an investor's rebate until a suitable film exists.*
>
> *The difficulty for AR is that he has to rely on second-hand knowledge about the company and process provided by ASR. He gave the example that in October 2002 he met with investors and told them that an 8 week turn-around was expected at which 24 of them signed up however most of these investors have still not received their rebate back yet due to delays with tax offices. In future AR believes an optimum number of investors would be 10-12, but he is frustrated by the lack of information he receives from ASR since he feels his professional standards are compromised by not being able to give commitments to investors.*"

31. That account appeared to demonstrate that Mr. Ross and Miss Allison did, indeed, operate in the way in which Mr. Horner alleged. Forms of the type which he said he had been invited to sign in blank were part of the *"investor's pack"*. The contribution which the *"investor"* was invited to make was *"their tax recovery arising from the allocation of losses to them"*, what was allocated being *"a tax loss which is 2.5 times the value of their investment"*. What the *"investor"* got back was *"20% of the rebate received"*. That appears to describe a fairly uncomplicated fraud on the Revenue, with an *"investor"*, through Miss Allison, and possibly Mr. Ross, making an inflated claim for losses sustained in investment in the production of films – 2½ times the amount of his potentially available tax refund – and the proceeds being paid to a vehicle controlled by Miss Allison and Mr. Ross, out of which 20% was paid back to the *"investor"*. The beauty of it, from the perspective of whoever devised it, was that it was largely free of risk to them. If the Revenue accepted without question the claim for refund of tax paid, the loss was sustained by the Revenue. If the Revenue accepted a claim and made a refund, but then disallowed the claim, it would be to the taxpayer, and not to whomever devised the scheme, that the Revenue would look for reimbursement.

32. Mr. Ross's case was that the scheme was devised by Miss Allison and he, Mr. Ross, believed at the time that it was a legitimate scheme. Notwithstanding that it turned out not to be a legitimate scheme, having the belief which he did have, Mr. Ross did not act dishonestly, and was not fraudulent, in making any statements which he did make about the scheme to Mr. Horner or others. It was also true to say that Mr. Ross disputed some of the statements which Mr. Horner alleged had been made at the presentation on 13 January 2003.

33. It was surprising, if Mr. Ross knew that the scheme was dishonest, that he confided frankly in Allen & Overy in how the scheme worked. On the other hand, the Allen & Overy attendance note did include:-

> "*Taipan Creative LLP has been dissolved and made a £2M profit, but AR is uncertain whether accounts were prepared for this. ASR has told AR to take out £250,000 from the Taipan profits in the next three weeks or so to buy a house. He was unclear whether this was on account of profits, or a return of*

capital and was concerned that this might be to the detriment of investors somehow."

34. The Cessation Return was dated 7 March 2003 and signed by Miss Allison in the name of Anastasia St. Raphael. The Cessation Return attributed to each ostensible participant in Taipan a proportion of the losses alleged to have been sustained by Taipan in the period 6 April 2002 to 7 March 2003. The sum attributed to Mr. Horner was a loss of £480,000.

35. It was not in dispute at the trial that in fact a Power Point presentation of sorts had been made on 13 January 2003 and prints of the slides shown were adduced in evidence. The position which Miss Allison adopted in cross-examination concerning the events of 13 January 2003 was that she had not been present, that she had never met Mr. Horner, and consequently she had not made any representations to him. Logically, therefore, she had no position on what had occurred at the meeting on 13 January 2003 beyond that she was not there.

The pleaded case of Mr. Horner

36. The case of Mr. Horner pleaded in the Amended Particulars of Claim as to the representations allegedly made to him, on which it was said that he relied in participating in the scheme to which I have referred, was set out at paragraph 8:-

> "*During the presentation and in order to induce the Claimant to invest in the scheme the Defendants made a number of representations, amongst others that:-*
>
> *(a) the Scheme had been approved by the Inland Revenue (now known as Her Majesty's Revenue & Customs);*
>
> *(b) the Scheme had been approved by BDO Stoy Hayward;*
>
> *(c) the Scheme had a proven track record of success;*
>
> *(d) if the investors chose their 2nd option of investment as referred to at paragraph 7(b) above that they were guaranteed a return on their investment;*
>
> *(e) the First Defendant was a specialist in film tax investment schemes;*
>
> *(f) the tax refunds received would be invested in the development/acquisition of films that qualified for relief pursuant to sections 41 and 42 of the Finance (No.2) Act 1992 and section 48 of the Finance (No.2) Act 1997("the Acts").*
>
> *These representations were repeated by the First Defendant when she answered questions about the Scheme at the meeting. The Claimant will maintain at trial that the Defendants intended the Claimant to act on the representations made by them.* "

37. At paragraph 28 of the Amended Particulars of Claim it was pleaded that:-

> "*The representations made by the Defendants at the meeting on or about 13 January 2003 as set out above were false.*
>
> *PARTICULARS*
>
> *(a) the Scheme had not been approved by the Inland Revenue;*
>
> *(b) the Scheme had not been approved by BDO Stoy Hayward;*
>
> *(c) the Scheme did not have a proven track record as at the time the Inland Revenue paid out on tax refunds claimed but the Inland Revenue had a policy of not investigating those claims until later;*
>
> *(d) the Scheme was high risk;*
>
> *(e) the option 2 payment was to be made out of monies that would have to be repaid to the Inland Revenue;*
>
> *(f) the First Defendant was not a tax expert; and*
>
> *(g) it was the Defendants intention to expend the funds received from the tax rebates on projects whether or not they qualified for relief pursuant to the Acts or not.*"

38. It was common ground at the trial that in fact the scheme had not been approved by the Revenue or by BDO Stoy Hayward. The position of each of Miss Allison and Mr. Ross was that Mr. Horner had never been told that it had been approved by the Revenue or by BDO Stoy Hayward. It was also denied by Miss Allison and Mr. Ross that Miss Allison had ever been presented to Mr. Horner as a specialist in film tax investment schemes. In cross-examination Mr. Horner accepted, I think, that the references to BDO Stoy Hayward at the meeting on 13 January 2003 were somewhat less specific than that it had approved the scheme. Mr. Horner's oral evidence was to the effect that what had been said about BDO Stoy Hayward was that the scheme had been discussed with that firm with a view to the possibility of marketing it to the high net worth clients of the firm.

39. There was a pleaded alternative case in the Amended Particulars of Claim of negligent misrepresentation based upon exactly the same alleged representations as those already set out. In addition, at paragraph 32 of the Amended Particulars of Claim it was pleaded that:-

> "*Further or in the alternative:*
>
> *32.1 The First and/or Second Defendant were trustees of the tax refund received on behalf of the Claimant from the Inland Revenue on 3rd June 2003 because:*
>
> *(1) It was originally envisaged that Taipan would hold such money as* [sic] *trust for the Claimant to use in the appropriate*

manner so as to entitle the Claimant to the tax return claimed; and/or

(2) By the time that the money was received in the Taipan account, Taipan had ceased trading and/or been dissolved; and/or

(3) The First and/or Second Defendant as signatories of the Taipan account were in effective control of the money once it was received into the Taipan account."

40. Those allegations were said to justify the relief sought at paragraph 6A of the prayer, *"The return of the said sum of £135,006.33 plus aforesaid interest to be assessed."* The figure of £135,006.33 was calculated as the amount of the refund of income tax made, £168,756.30, less the amount paid to Mr. Horner, £33,750, the difference of three pence in paragraph 6A being a typographical error. At the trial Mr. Miles Croally, who appeared on behalf of Mr. Horner, put the claim that the sum of £135,006.30 had been held by Miss Allison and Mr. Ross on trust rather differently. In his written skeleton argument he said that the Prospectus:-

"*... bullet points 2 and 5 state: "The Tax Co-Producers will invest into the partnership a sum corresponding in amount to the taxes they have previously suffered. These funds are held in escrow .... The partnership will obtain accreditation documentation that meets the legislative requirements for each film thereby quantifying the tax loss available. Only after the film's tax loss eligibility has been quantified is its purchase price released." It follows from this that the tax refund money obtained on behalf of C by Ds was held by them on trust to apply that money only to the production or acquisition of films which had been certified by the Department of Media Culture and Sports* [sic] *are qualifying* [sic] *for the relevant tax relief and that the money was not to be disbursed except for such legitimate purposes which would validate C's tax refund claim. This is a trust under the principle in* Barclays Bank v. Quistclose Investments Ltd. *[1970] AC 567, as clarified in* Twinsectra Ltd. v. Yardley *[2002] UKHL 12; [2002] 2 AC 164. The tax refund money was entrusted to Ds for a specific purpose, namely investment in such accredited British films as would validate the tax refund claim. The purpose was sufficiently certain to create a trust. The money was not at the free disposal of Ds, it was to be held "in escrow" pending the exercise of the power to expend it in accordance with the stated purpose. It is clear that the money was disbursed by Ds in breach of this trust. They were unable to satisfy the Inland Revenue that any of the money had been spent on any purposes which would validate any part of C's tax refund claim. C will say that, unless the whole tac* [sic] *refund claim scheme was legitimate (which it was not and could not be, for the reasons given in (6) above), none of the money should have been disbursed and any disbursement was a breach of trust, the*

> *money being held on a resulting trust for C. Anyway, the disbursements were in breach of trust because of the breach of the specific requirement only to make a disbursement once the relevant accreditation had been obtained and the eligibility of the relief quantified.*"

41. These alternative ways of claiming a lesser sum than what Mr. Horner contended were his actual losses, the sum of £173,250 (being £207,000 paid to the Revenue, less the £33,750 which Mr. Horner actually received out of the tax refund of £168,756.30) plus amounts of £11,832.25 paid to a firm of accountants called Alliotts and £750 paid to a firm of accountants called C.J. Gardner & Co for assistance in seeking to resolve his difficulties with the Revenue once investigation into his tax refund claim commenced, were prompted by the raising by Miss Allison of a limitation defence. It is convenient, before turning to consider the other points raised by way of defence by Miss Allison and Mr. Ross, to address issues of limitation.

Limitation

42. In the context of the alternative claims in respect of an amount of £135,006.30 Mr. Croally reminded me of the provisions of *Limitation Act 1980 s.21(1)*:-

> "*No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action –*
>
> *(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy, or*
>
> *(b) to recover from the trustee property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.*"

43. The main battleground in relation to limitation, however, centred on *Limitation Act 1980 s.32(1)*, as amended:-

> "*Subject to subsections (3) and (4A) below* [neither of which was actually material], *where in the case of any action for which a period of limitation is prescribed by this Act, either –*
>
> *(a) the action is based upon the fraud of the defendant; or*
>
> *(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or*
>
> *(c) the action is for relief from the consequences of a mistake;*
>
> *the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.*
> *…* "

44. The date upon which the alleged fraudulent misrepresentations were made to Mr. Horner was 13 January 2003. The date upon which the claim form was issued was 19

July 2010. The ordinary period of limitation in the case of tort prescribed by *Limitation Act 1980 s.2* is six years from the date on which the cause of action accrued, so, prima facie, the claims of Mr. Horner based on fraudulent misrepresentation were statute-barred at the date of the issue of the claim form. At paragraph 27A of the Amended Particulars of Claim it was pleaded on behalf of Mr. Horner that:-

> "*The said meeting on 25th August 2004 was the earliest date of discovery by the Claimant of the fraudulent misrepresentations by the First and/or Second Defendants and therefore constitutes the date from which the 6 year period runs under section 32 of the Limitation Act 1980.*"

45. At paragraph 34 of her Amended Defence Miss Allison contended as follows:-

> "*As for paragraph 27A, it is denied. The events recited did not occur as recited. It is not accepted that 25th August 2004 was the 'earliest date of discovery' for the purpose of the definition as the date from which the 6 year period runs under section 32 of the Limitation Act 1980. The First Defendant maintains that the 'earliest date of discovery' was several months before August 25th 2004.*"

46. In her witness statement dated 11 November 2011 Miss Allison asserted that Mr. Horner was aware of the fraud which he alleged no later than about 7 May 2004 when, she said, she wrote a response to a letter dated 30 April 2004 which a Ms Judith Edwards of Messrs. Alliotts wrote to her and which was in these terms:-

> "***MR BARRY COWING***
>
> ***MRS CAROLYN COWING***
>
> ***MR DENNIS HORNER***
>
> ***MR ZAK MARTIN***
>
> ***MR JOHN JONES***
>
> *We act for the above named clients who have discussed with us at length their alleged membership of Angel Enterprise Limited Liability Partnership and/or Angel Enterprise II Limited Liability Partnership.*
>
> *We understand that on or around the time that they had discussions with you in 2003 about participating in the film partnerships that you were promoting, the key representations made by you to them that then induced them to sign documentation to participate in these enterprises with you were:*

- *Their participation would not involve open ended financial commitment and would be limited to the tax rebates that they invested;*

- *The 'vehicle' (as you referred to it as) to invest their tax rebates was tried and tested with no risk to them;*

- *That in your experience as a tax expert it was legitimate for them to obtain the guaranteed payment as an Inland Revenue rebate and would not involve any contention from the Inland Revenue*

However, our clients have since in fact found that:

- *They have been called upon by you in correspondence to make further financial commitments and/or payments for various administrative expenses and have been told by you that their commitment to provide further funds to the partnership(s) is open ended;*

- *They have asked you several times for copies of the documentation that provides full details of the LLPs that they are allegedly participating in. However, they have not received this from you or any satisfactory explanation as to why they cannot be provided with these papers;*

- *Both partnerships are under investigation by the Inland Revenue;*

- *They have noted a number of inconsistencies in respect of when documentation has been signed or dated that do not fall into line with when they apparently were supposed to be actively engaged in the partnerships.*

Our clients consider that they have at all times endeavoured to have the utmost good faith in all their dealings with you. However, the numerous misrepresentations that they have since discovered that were made by you has lead [sic] *them to the conclusion that had accurate representations been made by you in the first place they would not have signed any documentation to take part in either the Angel Enterprise LLP or Angel Enterprise II LLP, nor taken any other steps to become involved in these enterprises. Accordingly, they view their so called memberships of the Angel Enterprise LLP and/or Angel Enterprise II LLP as void and therefore unenforceable in law.*

We await your response within the next seven days."

47. What, ultimately, prompted the instruction of Messrs. Alliotts and the writing of that letter, according to Mr. Horner, was that he had, without his knowledge, been

described as a member of Angel. In that alleged capacity Mr. S.A. Condie, H.M. Inspector of Taxes, had written to him on 19 January 2004. The material parts of the letter were these:-

> "***Angel Enterprise Limited Liability Partnership***
>
> *Thank you for your claim for losses arising from the above partnership for the year ended 5 April 2003.*
>
> *I am writing to tell you that I intend to make some enquiries into this claim. Each year we enquire into some claims to check that they are right, or because we need more information to understand the figures. We want to make sure you pay the right tax, not too little or too much. Either way, I will tell you if I find something wrong.*
>
> *I am copying this letter to your tax adviser, A Works TV Ltd.*"

48. In her written closing submissions Miss Allison accepted that:-

> "*We know that the Claimant's 64-8 was completed as to A Works TV Ltd. because Mr. Condie writes to the Claimant saying so. … Mr. Condie erroneously refers to A Works as Mr. Horner's "tax advisor" but Mr. Horner volunteered in cross examination that he was aware that was an error and regarded A Works as his tax agent merely.*"

49. Mr. Horner, so far as he was aware, he told me, had neither joined Angel nor made a claim for a tax refund by reference to anything done by Angel. However, he was put in contact with others who had received similar letters, and that group instructed Messrs. Alliotts to advise them and to act on their behalf in seeking to deal with the Revenue.

50. By a further letter dated 19 January 2004 Mr. Condie wrote to Mr. Horner, so far as is presently material, as follows:-

> "***Taipan Creative LLP***
>
> *I am writing to tell you that I intend to make enquiries into the 2002-2003 Partnership Return of the Taipan Creative LLP of which you are a member.*
>
> *I will write to the partnership secretary separately to ask for the information I need.*
>
> *Your personal Tax Return may need to be amended to reflect the final figures in the Partnership Tax Returns following the enquiry. Therefore, until the enquiries are completed, your personal tax return for any year that is affected by it will be treated as being under enquiry."*

51. In a letter dated 30 April 2004 Mr. Charles Murphy, H.M. Inspector of Taxes, notified Mr. Horner that he had taken over from Mr. Condie the enquiries concerning both Angel and Taipan, and he extended this invitation:-

> "*To enable me to discuss your involvement in the above partnership and establish the facts, I suggest we have a meeting. This can be arranged at a place and time convenient to you. In this connection, I would be happy to meet with you at your home at any time, at the office of your accountant or any agent you may have or choose to act for you, or at the most convenient local Inland Revenue office. At this meeting a colleague will accompany me and you will be advised in advance of his or her name.*
>
> *I look forward to hearing from yourself or your advisers in the near future to make the necessary arrangements for our proposed meeting.*"

52. No meeting took place. In a letter dated 23 July 2004 written by Mr. Murphy to Mr. Horner concerning Taipan Mr. Murphy said:-

> "*I refer to my letter dated 30th April 2004 and to a subsequent telephone conversation with Judith Edwards of Alliotts Chartered Accountants on 1st June 2004.*
>
> *As the partnership Taipan Creative LLP has failed to provide the documentation and information required to support the entries in the partnership returns and accounts, it is my view that your claim for loss relief in respect of your share in the losses of Taipan Creative LLP is not valid.*
>
> *My records show that the Taipan Creative LLP partnership loss allocated to you on the basis of your earlier tax liabilities was £480,000 and that you received £168,736.30 on 2nd June 2004 as a repayment on the basis of your loss relief claim, which I believe is not now due to you.*
>
> *Pending the conclusion of my investigation, please let me have a payment on account sent to this office within the next 30 days for my attention, being a cheque made payable to "Inland Revenue" for the amount of the repayment received.*
>
> *This payment on account is made without prejudice on the understanding that acceptance of this sum by me will not commit the Board of Inland Revenue to any particular course of action they think might* [be] *appropriate when the case is reported to them.*"

53. It is, I think, clear from the terms of that letter that, at least until it was written, it was the view of the Revenue that it was at least possible that information and documentation to justify the entries in the partnership returns of Taipan might have

been produced. Moreover, Mr. Murphy made plain that his investigation had not been concluded, but the absence of production of information and documents indicated that the claim for a tax refund made in the name of Mr. Horner could not be supported. Things were not looking good from the point of view of Mr. Horner or other participants in Taipan. One of them had already instructed Mr. Colin Gardner of Messrs. C.J. Gardner & Co. to advise him, and, according to the evidence of Mr. Horner, Mr. Gardner suggested that he meet other members of Taipan. How matters proceeded from that point Mr. Gardner, who was called to give evidence on behalf of Mr. Horner, explained in his witness statement:-

> "*6. I attended a meeting with the members of Taipan, including Adrian Ross, the Second Defendant, on 11 August 2004 at the Institute of Directors. It was apparent from this meeting that the members had been induced by the First Defendant, who at the time was known as Anastasia St. Raphael, to become involved in a scheme in which she claimed that tax relief was available in respect of investment in certified British films. At that time tax reliefs were available for investment in British films and it appeared to me that the scheme might be valid if there had been investment in certified British films. I was told that the claims for tax relief had been submitted by Taipan on behalf of the members and that the Inland Revenue had paid out the sums claimed. I had to explain to the members that the tax office did not check the claims before paying out the sums claimed. This was a policy known as "process now, check later". Apart from the Second Defendant, the members were previously unaware that such a policy existed. At this meeting, the Second Defendant presented himself very much as one of the group of the members, sharing their interests and being on their side.*
>
> *7. The members instructed me to act on their behalf and I sent them an e-mail on 13 August 2004 when I confirmed what action was to be taken. At this stage, for the reasons explained above, the objective was to see if the tax refunds could be justified and the Inland Revenue's criticisms of the claims rebutted, if only in part. Adrian was to look at the files with the Inland Revenue to ascertain the position with regards to the applications for certification of films invested in by Taipan. He also agreed to extract what information there was in the files with regards to costs expended on films and let me have details of bank transactions so that I could attempt to compare the information provided with the accounts that had already been prepared. He was also going to let us have details of the information held by the Second Defendant.*
>
> *8. …*
>
> *11. I sent a letter to the Inland Revenue on 18 August 2004 on behalf of the members explaining that I was in the process of reviewing the accounts and records and requesting that the*

members have some further time to respond to their enquiries. I also sent a copy of this letter to the members under cover of an e-mail of the same date in which I summarised what action I had taken.

12. On 25 August 2004 I attended a meeting at the Inland Revenue's offices in Kingsway with the Second Defendant. The meeting was also attended by Michael Armstrong from Mishcon de Reya (representing the Second Defendant) and Charlie Murphy, Chris Orchard and Mrs. Wendy Marrable of the Inland Revenue. A note of the meeting was produced by the Inland Revenue. That note accords with my memory of what was said at the meeting."

54. A copy of the note was adduced in evidence. It ran to some 33 pages. Before coming to the critical conclusions, it is, perhaps, appropriate to notice what was discussed about relevant statutory provisions and contact with the Revenue made by Miss Allison:-

"*21. Ross was asked if he was aware of the conditions that must be met before a claim to relief under Section 42/48 can be made. He said he was not and Orchard was invited to explain in some detail.*

22. Before proceeding, Orchard said he would set the record straight as regards his prior contact with Anastasia St. Raphael. As the specialist in the area of film tax reliefs Orchard was taking some 15 to 20 telephone calls a day round about the time he first spoke to Anastasia St. Raphael in early 2002. In all he had spoken to her on no more than 4 or 5 occasions.

23. It was the practice of the Inland Revenue not to comment on matters not contained in the Statement of Practice at that time. If the query was not mainstream there was a requirement that it be put in writing. He confirmed he had received no written communication from Anastasia St. Raphael.

24. In the conversations he had with Anastasia St. Raphael the areas covered were Section 41 issues surrounding what qualified as preliminary or pre-production expenditure and the submission of the 2001/2002 partnership returns. Partners had been trying to submit claims for repayment prior to 5th April in the year in question and had been told that valid claims could not be made until after the end of the income tax year.

25. In answer to a question by Armstrong, Orchard indicted [sic] *that it was his opinion that he was talking to someone within the film industry who appeared to know what she was talking about. Based on the basic level of the questions put to*

him, she had given Orchard the impression of being a film producer rather than a tax adviser."

55. Those passages of the note which most starkly revealed the problems with supporting the claims, including that of Mr. Horner, were:-

> "*121. In effect for the partners there was no financial risk and no future tax liability having resigned from the partnership.*
>
> *122. Marrable stated that the legislation that allowed sideways relief for losses required partners to be trading with a view to profit. She asked how individual partners could claim loss relief on the basis that they were so trading if they were required to resign as soon as their tax repayment was received? Gardner accepted that this could be a problem.*
>
> *123. …*
>
> *124. Gardner said that he might be able to justify some expenditure although he admitted that not all would be eligible. It had been his intention to try and prepare accounts incorporating transactions that had taken place.*
>
> *125. Marrable said that she did not want him to spend time and money on this because it was unlikely to have any impact, given what had been discussed. Orchard referred Gardner to the appropriate Inland Revenue website. …*
>
> *126. Marrable read from Sections 380/381 ICTA and emphasised the point that as far as the Inland Revenue was concerned the partners had not been investing capital with a view to trading. Leaving aside all of the time limits and other hurdles they had to get over to corroborate the entries in the returns and accounts, it was Marrable's view that relief was not due because there was no evidence of trading with a view to profit. In effect the structure was fundamentally flawed and she was looking at zero allowances being due.*"

56. It was, as it seemed to me, realistic to accept that, following the meeting on 25 August 2004, it was obvious that Mr. Horner had entered into the arrangements which he had with Miss Allison and Mr. Ross in reliance upon statements which, on his case, had been false, and which, if they had been made, had been made dishonestly because they were known to be false by the person making them. The important question was whether that was, or should have been, obvious to Mr. Horner earlier than that, specifically at a point prior to 19 July 2004. The answer, in my judgment, is no.

57. The letter dated 30 April 2004 written by Ms Edwards upon which Miss Allison relied was plainly concerned only with Angel and/or Angel Enterprise II LLP (*"Angel II"*). Mr. Horner had not actually been a member of Angel, no application for a tax refund had ever been made on his behalf in relation to alleged participation in Angel and he had suffered no loss in connection with Angel. It was, indeed, odd that his name had

been linked with Angel and that it had been said that he was a member. Those circumstances perhaps suggested that fraudulent misrepresentations had been made as to involvement of Mr. Horner in Angel. The issue which mattered, however, was when Mr. Horner appreciated, or should have appreciated, that fraudulent misrepresentations had been made to him, on his case, to induce him to become involved in Taipan. Mr. Horner's case was that he had joined Taipan and that he had expected and intended that an application for a tax refund would be made on his behalf in connection with his involvement in Taipan. Consequently allegations that those things had occurred could not have put him on notice of any fraudulent misrepresentations. Notification such as was given to Mr. Horner by Mr. Condie in his letter dated 19 January 2004 that the Revenue was intending to investigate his claim for a tax refund was in very general, and not especially threatening, terms. Of itself the fact of an investigation should not have put it into the mind of Mr. Horner that he had been induced by fraud to participate in Taipan. Mr. Murphy's letter of 30 April 2004 ought, I think, to have indicated to Mr. Horner that there was a serious risk that his claim for a tax refund might not be accepted, because the office from which Mr. Murphy worked identified in his letter was the Special Compliance Office. Nonetheless, the invitation to a meeting was extended in friendly terms. Things only began to look seriously difficult when Mr. Murphy wrote his letter dated 23 July 2004, in which he sought repayment of the amount of the tax refund. However, even then Mr. Murphy made plain in his letter that his investigation was not concluded and that what prompted the request for repayment was the failure of Taipan to provide documentation and information. Sub silentio there was at least the possibility that documentation did exist and information could be provided which would have satisfied Mr. Murphy.

58. Ms Edwards's letter dated 30 April 2004 was, in any event, couched in somewhat hesitant terms. The main focus of complaint seemed to be the demands made by Miss Allison for further contributions from alleged members of Angel or Angel II. Although the letter noted that requests of Miss Allison for the provision of documents had not met with any response, and that the Revenue had commenced investigations, Ms Edwards did not specifically identify any alleged misrepresentation or contend that any misrepresentation had been made deliberately, rather than carelessly. The last sentence of the whole letter rather indicated that what Ms Edwards was seeking to do was to provoke a response from Miss Allison. If Ms Edwards, or her clients, were confident that the indicated position, that membership of Angel or Angel II by any of her clients was unenforceable, was a strong one, no reaction from Miss Allison was required.

59. At paragraphs 5 and 6 of her witness statement dated 11 November 2011 Miss Allison said:-

> "*5. The Claimant is a qualified accountant working in management consultancy, and an intelligent and highly astute business person. At the relevant time I am told that he was a partner in a large professional organisation and he is now managing director of Atos. It seems an appropriate inference that for this Claimant the sec 32* [of Limitation Act 1980] *reasonable diligence requirement was triggered at very latest*

by my letter of 7th May 2004 to Ms Judith Edwards of Alliotts, an accountancy firm retained by the Claimant.

6. The First Defendant's letter of 7th May 2004 was in answer to Ms Edwards' letter to me of 30th April 2004, sent upon the Claimant's instructions. I quote "I am a British Low Budget Film-maker … not a tax expert. I have not made the statements you claim I have made, which seem to me to fly in the face of the legislation governing film partnerships. Since Mr. Denis Horner is a senior partner in one of the UK's largest accountancy firms, it is inconceivable that he could have been induced to enter any commitment by any statement of such a type."

60. A copy of the letter dated 7 May 2004 written by Miss Allison to Ms Edwards was put in evidence. It was in rather strange terms, and written on the letterhead of Angel:-

"*As a matter of courtesy we respond to your letter.*

We regret to say that you have been completely misinformed.

None of the people to whom you refer are to my knowledge members of Angel Enterprise II llp.

Mr. Zak Martin is not a partner in Angel Enterprise llp.

To the best of my knowledge, I have never met or spoken to Mr. Gareth John Jones.

It was and remains our understanding that all our partners had the benefit of financial and in many instances also of legal advice before joining our partnership. To my personal knowledge Mr. & Mrs. Cowing had such benefit.

I am a British Low Budget Film-maker who holds financial risk management qualifications and who formulated a novel approach to film partnership tax benefits which I took pains to check was within Inland Revenue rules; not a tax expert. I have not made the statements you claim I have made, which seem to fly in the face of the legislation governing film partnerships. Since Mr. Denis Horner is a senior partner in one of the UK's largest accountancy firms it is inconceivable that he could have been induced to enter any commitment by any statement of such a type.

If Mr. & Mrs. Cowing, Mr. Horner and Mr. Jones wish their position to be regarded in the same light as if they had not become members, then they should write to the partnership stating that such is their wish, and they will receive a prompt response.

> *We regret that we are unable to respond further to queries from anyone except our members themselves, and we trust that in consequence this correspondence is closed.*"

61. The copy of the letter adduced in evidence was disclosed by Miss Allison. The relevant files of Messrs. Alliotts seem to have been destroyed before the commencement of this action. The quoted terms of the letter dated 7 May 2004 did not appear to have been produced in response to what Ms Edwards's letter of 30 April 2004 actually said. The letter dated 30 April 2004 was written expressly on behalf of five identified clients of Ms Edwards, of whom Mr. Horner was the third named. It was not obviously necessary or appropriate for Miss Allison to comment that *"the statements you claim I have made ... seem to fly in the face of the legislation governing film partnerships"*, as Ms Edwards had not attempted to criticise in her letter in any detail any alleged statements of Miss Allison to which *"the legislation governing film partnerships"* might be relevant. It was wholly obscure why, given the actual clients of Ms Edwards and the nature of their, undifferentiated, complaints, Miss Allison should pick on Mr. Horner as the individual to be named as someone whom it was *"inconceivable that he could have been induced to enter any commitment by any statement of such a type"*. Given the mismatch between what Ms Edwards had said in her letter dated 30 April 2004 and the comments in the letter dated 7 May 2004 upon which Miss Allison sought to rely it did not seem to me that it could sensibly be said that Miss Allison's observations ought reasonably to have interpreted by Ms Edwards as indicating fraud on the part of Miss Allison or to have put her on a line of enquiry which, if pursued with reasonable diligence, would have led to that conclusion. There was in fact no evidence as to what view, if any, Ms Edwards formed of the letter dated 7 May 2004, or of whether she ever showed the letter to Mr. Horner. The furthest that the evidence went was that in a letter dated 14 June 2004 to Mr. Cowing, of which a copy which had been forwarded to Mr. Horner was adduced in evidence, Ms Edwards did refer to a reply of Miss Allison to Ms Edwards's letter to her of 30 April 2004, without identifying specifically the date of the reply or summarising the effect of any part of it.

62. The notations on the version of Ms Edwards's letter dated 14 June 2004 which was forwarded to Mr. Horner indicated that the letter had been forwarded on 11 August 2004. From comments of Ms Edwards in letters to Mr. Horner dated, respectively 22 and 29 July 2004, it appeared that that was likely to be correct. In her letter dated 14 June 2004 to Mr. Cowing Ms Edwards wrote, inter alia:-

> "*I am writing as agreed further to my telephone conversations with you recently which reported on my telephone conversations with Mr. Murphy of the Special Compliance Office of the Inland Revenue. In summary:*
>
> - *Since the Special Compliance Office commenced its investigation which involved initially a random selection of partners of Angel Enterprise LLP they have established a number of factors regarding the LLP that suggest that it was not properly established to conform to the film partnership provisions of tax legislation.*

- *It is his view that the Angel LLP can be attached* [sic] *on various grounds but his overall perception of the partnership is that it is a sham.*

- *Accordingly, his* [sic] *is taking advice from another colleague but is likely to find that interest and/or penalties will be due from all of the individuals who had apparent participation in the LLP.*"

63. Again, the letter was only concerned with Angel and Angel II, and the conclusions of Mr. Murphy appeared to be provisional, and subject to obtaining the views of a colleague, at least on the question of consequences.

64. That Ms Edwards did not think that Mr. Horner had been informed of the views of Mr. Murphy by 22 July 2004 appeared from the terms of her letter to Mr. Horner of that date, which was in these terms:-

> "*I am writing to follow up on the messages that I have left on the voicemail service for your mobile telephone as it has been sometime now since I have heard from you.*
>
> *As you will recall, the Special Complaints* [sic] *Office of the Inland Revenue have decided that they no longer wish to interview you regarding your involvement in Angel Enterprise LLP as they have already interviewed a random sample of other partners. In the light of a conversation that I had with SCO, they intend to pursue repayment of the tax refunds that have been obtained plus interest and penalties from all of the partners of the LLP and are apparently consulting with technical colleagues before formally announcing their determination.*
>
> *When we last spoke about the issue of trying to obtain your tax refund back from Ms St. Raphael, we acknowledged that this would probably need specialist assistance from a firm of solicitors. Accordingly, as agreed, I asked a firm, Edwin Coe for an idea of what their costs could be and they indicated that their hourly rate would vary between £175 - £350. Please let me know how you would like to proceed. In the meantime, as you requested, you remain a partner of Angel Enterprise which could have an impact on the outstanding issues that remain in contention with the Revenue.*
>
> *I look forward to hearing from you as soon as possible.*"

65. It was plain from the terms of the letter that some consideration had been given prior to the date of the letter to Mr. Horner seeking to obtain the amount of his tax refund from Miss Allison, but it appeared that that consideration had proceeded no further than identifying the need for solicitors to advise as to whether that was possible and, if so, on what basis.

66. Ms Edwards did not communicate directly to Mr. Horner the view of Mr. Murphy that Taipan was a sham until she wrote her letter dated 29 July 2004, which included:-

> "*Following on from the Inland Revenue letter of 23 July, as agreed I have spoken to Mr. Murphy of the Special Compliance Office. He has provided me with an outline of his preliminary findings. So far he is of the view that TCL is a sham that does not fall properly within the film scheme rules. However, he will not be concluding his investigation until at least the autumn, after extensive interviews with both Adrian Ross and Anastasia St. Raphael and probes into their personal tax positions (which apparently are linked to the operation of TCL, Angel Enterprise LLP and Angel Enterprise II LLP).*"

67. In an e-mail to, amongst others, Mr. Horner despatched on 29 July 2004 Mr. Gardner commented that:-

> "*4. The fact that the partnership was run fraudulently, or incompetently, is irrelevant to settling an individual's tax affairs. The only recourse for an individual is to sue whomever they consider is responsible for acting in a way that results in their tax liabilities being increased.*"

68. From the copies of contemporaneous documents adduced in evidence that seemed to be the first time the word *"fraudulently"* or a simile was used. Even then the context indicated that Mr. Gardner was recognising fraud as a possibility, along with incompetence, rather than as likely, still less certain.

The cases of the defendants

69. Since, if fraudulent misrepresentations were made to Mr. Horner to induce him to participate in the scheme concerning Taipan, Mr. Horner was not prevented by reason of the operation of *Limitation Act 1980* from pursuing claims for damages, it is appropriate to give attention to the positions of Miss Allison and Mr. Ross from time to time concerning what, if anything, was said by each to Mr. Horner on 13 January 2003, whether what each said was said in the presence of the other, and whether either of them knew that what was said was untrue, or was reckless as to whether or not it was true. As I have already noted, at the trial, in cross-examination, Miss Allison adopted the position that she had not attended the meeting on 13 January 2003, had never met Mr. Horner, and consequently had never been involved in making any representations to him. At earlier stages her position had been somewhat different.

70. The pleaded cases of each of Miss Allison and Mr. Ross as to what had occurred on 13 January 2003 differed. The differences appeared to be significant. Intermittently in the course of this action Miss Allison had had the benefit of legal advice and representation. However, it appeared that she herself had produced her Amended Defence. Mr. Ross seemed to have acted in person throughout.

71. On the question was there a presentation at the Institute of Directors on 13 January 2003 which included a Power Point display and which was attended by Mr. Horner, Mr. Ross admitted that there had been. Miss Allison was more equivocal.

72. In her Amended Defence Miss Allison said about the meeting:-

> "*4. As for paragraph 5* [of the Amended Particulars of Claim], *it is admitted that on or about 13 January 2003 the First Defendant met with the Second Defendant and approximately 10 to 12 other people in the bar at the Institute of Directors. The Claimant is believed to be one of the people she met. This was not a formal presentation but matters which were to become the subject of this claim were discussed. …*
>
> *6. As for paragraph 7 the First Defendant did not give any PowerPoint Presentation (and would not have had the technical skills to do so). The First Defendant was not present at any PowerPoint Presentation given by the Second Defendant and attended by the Claimant. It is admitted that the First Defendant did say on some occasion around early 2003 that she and the second Defendant had formed a film partnership ("the Partnership") which was designed to utilise tax advantages available under the Film Tax Relief Scheme ("the Scheme"). She may have mentioned "the Film Act" but she did not at any time descend to details such as specific Acts or section numbers. She did not say that investors could claim back tax and then invest it in the Partnership. The First Defendant did not purport to have and did not have the necessary taxation and accountancy expertise to explain the Scheme other than in broad terms.*"

73. In his Amended Defence, on the other hand, Mr. Ross said:-

> "*4. I believe it to be true that Mr. Gill invited the claimant to attend a meeting held on or about 13 January 2003 as stated in paragraph 4 of the claim.*
>
> *5. I believe it to be true that the claimant took up Mr. Gill's invitation to attend the meeting held at the Institute of Directors in Pall Mall London as stated in paragraph 5 of the claim. The meeting was chaired by the First Defendant.*
>
> *6. …*
>
> *7. I deny that the Defendants gave a detailed power point presentation as to how "the Scheme" worked as stated in paragraph 7 of the claim. The power point presentation contained four slides which gave an overview of "the Scheme" and the UK Film Industry. …*"

74. Thus, while Miss Allison asserted that there might have been a meeting in the bar of the Institute of Directors on 13 January 2003 which Mr. Horner might have attended, there was no formal presentation, and certainly no use of Power Point, Mr. Ross accepted that there had been a meeting formal enough to have been chaired by Miss

Allison, that Mr. Horner had attended, and that there had been a Power Point display, at least of four slides.

75. Similar contradictions were to be found in the Amended Defences concerning the deployment, or not, of the Prospectus at the meeting.

76. Miss Allison was firm at paragraph 5 of her Amended Defence:-

> "*As for paragraph 6, it is denied that the First Defendant circulated or caused to be circulated any written material. The First Defendant was not aware of the circulation of a document headed* "A Unique Low Risk High Return Investment Proposition" *prior to service of these proceedings on her. To the best of her recollection and belief, no documents were on that occasion given to or signed by any of the people she met. The First Defendant does not recall meeting or speaking to the Claimant on any other occasion.*"

77. The position adopted by Mr. Ross was completely different, and supported the case of Mr. Horner:-

> "*6. I agree that the Defendants circulated written material to the claimant and other attendees at the meeting in relation to ("the scheme") as stated in paragraph 6 of the claim. The development material was headed "A Unique Low Risk High Return Investment Proposition". I agree that the materials were collected in by the Defendants at the end of the meeting as stated in paragraph 6 of the claim. The claimant did not ask for a copy of the written development material. Following the meeting on 13 January 2003, and a telephone discussion between the claimant and the First Defendant, on or around 14 January 2003 the First Defendant received an e-mail from the claimant, copied to the Second Defendant proposing his entry to ("the Scheme"). The First and Second Defendants were acting on the Claimants instructions thereafter.*"

78. Miss Allison and Mr. Ross moved closer together in their respective Amended Defences in relation to the alleged representations pleaded at paragraph 8 of the Amended Particulars of Claim, but still their cases did not precisely coincide.

79. At paragraph 11 of her Amended Defence Miss Allison pleaded:-

> "*As to paragraph 8:*
>
> *(a) It is admitted that the First Defendant told the Claimant that the Revenue, had through Mr. Chris Orchard of the Specialist Film Tax Relief Unit, the tax office designated by the Inland Revenue at the material times as the point of contact for queries and information concerning the Scheme, advised that the Partnership structure was consistent with the requirements of the Scheme. It was not the Revenue's policy to formally*

approve film partnerships in advance and the Claimant was not told that the Revenue had "approved" it;

(b) It is admitted that the Second Defendant in the presence of the First Defendant told some prospective investors including it is believed the Claimant that BBDO Wealth Management arm (with which the Claimant appears to have confused BDO Stoy Hayward) had advised that they were considering using a similar tax shelter for their own clients;

(c) The First Defendant cannot recall and does not admit that it was said by the Second Defendant in her presence that the Scheme had a proven track record of success and denies that she said it herself;

(d) It is denied that the First Defendant, or to the First Defendant's knowledge at the material times, the Second Defendant said that there would be a guaranteed return on investment as alleged in paragraph 8(d) and 7A(b) or at all;

(e) It is denied that the First Defendant, or to the First Defendant's knowledge, the Second Defendant said that she was a specialist in film tax investment schemes;

(f) It is admitted that the First Defendant told the Claimant and other investors that the initial investment ("Subscription") would be used for running the Partnership and the development and creation and acquisition of British films and hence under the correct conditions for tax relief under the Scheme. It is denied that the First Defendant, or to her knowledge the Second Defendant:

(i) Referred to specific statutory provisions; or,

(ii) Said that tax refunds would be invested in this way."

80. Mr. Ross pleaded to the allegations in paragraph 8 of the Amended Particulars of Claim at paragraph 8 of his Amended Defence:-

"*It is denied that the Defendants made a number of representations during the meeting in order to induce the claimants* [sic] *to invest in "the Scheme".*

Specifically that at sub-paragraphs:-

(a) It is denied as stated at paragraph 8(a) that the First Defendant stated that "the Scheme" had been approved by the Inland Revenue. The First Defendant clearly stated at the meeting that it was not Inland Revenue policy to pre-approve Film Investment schemes in accordance with the Film Legislation, and more specifically, that it was standard Inland

Revenue practice to retrospectively examine Film Investment schemes to assess their validity.

(b) It is denied as stated at paragraph 8(b) that it was stated that "the Scheme" had been approved by BDO Stoy Hayward. It was stated at the meeting that "the Scheme" had been technically examined by BDO, and a number of other accounting professionals, and that A Works TV Ltd. were in discussions with BDO Stoy Hayward to rollout "the Scheme" to their clients.

(c) It is denied as stated at paragraph 8(b) [sic] *that it was stated at the meeting that "the Scheme" had a proven track record of success. The Second Defendant had received returns from "the Scheme" of £50,464.90 on the 27th of August 2002, £26,154.70 on the 5th March 2003 and £15,000 on the 19th August 2003. Mr. Gill had received returns of £66,763 in September 2003 and further commissions of £12,846.96 in June 2003.*

(d) It is denied as stated at paragraph 8(d) that it was stated that there was any guarantee of a return on the investment. It was stated at the meeting that the return was dependant on tax paid in previous tax years and further qualifying criteria.

(e) It is denied as stated at paragraph 8(e) that the First Defendant claimed that she was a specialist in film tax investment schemes. The First Defendant stated that she was a qualified Risk Analyst and had used that expertise to develop "the Scheme".

(f) It is denied as stated in paragraph 8(f) that the tax refunds received would be invested in the development/acquisition of films that qualified for relief pursuant to sections 41 and 42 of the Finance (No.2) Act 1992 and section 48 of the Finance (No.2) Act 1997 ("the Acts"). The development/acquisition of qualifying films were the responsibility of the First Defendant as defined in the Taipan Creative LLP partnership agreement.

It is denied that the Second Defendant made any representations as defined in paragraph 8 of the Particulars of Claim. It is denied that the Second Defendant intended the claimants [sic] *to act upon the representations made by the Defendants.*"

81. Thus Mr. Ross accepted that there had been reference at the meeting on 13 January 2003 to BDO Stoy Hayward, notwithstanding the contention of Miss Allison that a different entity with a somewhat similar name was mentioned. While the case of Mr. Ross was that Miss Allison had said that she had developed the scheme described at the meeting using her expertise as a risk analyst, Miss Allison simply denied that she had said that she was a specialist in film tax management schemes.

82. The Amended Defences of Miss Allison and Mr. Ross also dealt, to an extent, with the issue of whether Mr. Horner signed any documents in connection with his involvement with Taipan, and, if so, what and when.

83. Mr. Ross was rather more forthcoming than Miss Allison. His Amended Defence included these admissions:-

> "*10. It is admitted as stated in paragraph 10 of the claim that the claimant was required to sign a number of documents to gain entry to "the Scheme" to enable the partnership Taipan Creative LLP to administer tax refunds.*
>
> *11. It is admitted as stated in paragraph 11 of the claim that the claimant was required to sign a partnership deed to gain entry to "the Scheme" and to enable the partnership Taipan Creative LLP to administer the investment in films. ...*"

84. Miss Allison was more cagey:-

> "*13. As for paragraph 10 it is not admitted that the Defendants asked the Claimant to complete and sign IR Form 64-8. It is denied that the Claimant was asked to sign this form other than after its completion. By signing the form (whether complete or blank) the Claimant was personally certifying to the Revenue that he was entitled to the relief claimed. By signing the Form 64-8 (which was only offered to such investing partners in the Partnership as had elected not to pay a portion of their Subscription immediately upon their date of joining the Partnership) the Claimant held himself out as a partner.*
>
> *14. As for paragraph 11 it is denied that the Claimant signed the Partnership deed at the request of the First Defendant. It is not admitted that he did so at the request of the Second Defendant. ...*"

85. About the allegations of falsity pleaded at paragraph 28 of the Amended Particulars of Claim once more Mr. Ross was more forthcoming than Miss Allison, at paragraph 28 of his Amended Defence:-

> "*... Paragraph 28 is denied as previously stated in Paragraph 8(a) to (f) above. It is denied as stated in paragraph 28 of the amended claim that any representations made by the Defendants, and in particular the Second Defendant, at the meeting on or about 13 January as set out above were false.*
>
> *PARTICULARS*
>
> *(a) The First Defendant categorically stated at the meeting on 13 January 2003 that it was not Inland Revenue policy to pre-approve Film Investment schemes in accordance with the Film Legislation.*

(b) The Scheme had been technically examined by BDO Stoy Hayward and a number of other accounting professionals and that A Works TV Ltd. were in discussions with BDO Stoy Hayward to rollout "the Scheme" to their clients.

(c) The Scheme did have a track record of paying out tax refunds. It was categorically made clear at the meeting that Inland Revenue policy was to retrospectively examine claims.

(d) The First Defendant stated at the meeting that risk was an essential part of the Scheme and a fundamental part of the qualifying criteria.

(e) The option 2 payment was not deemed to be a payment that would have to be repaid to the Inland Revenue.

(f) The First Defendant did not claim to be a tax expert; and

(g) It was not the Defendants' intention to expend the funds received from the tax rebates [on] *non-qualifying projects pursuant to the Acts or not* [sic]."

86. Miss Allison dealt with the allegations of breach laconically at paragraph 35 of her Amended Defence:-

"*(a) the first Defendant repeats what is said in paragraph 11 above in respect of (a) and (b).*

(b) Paragraph (c) is not admitted.

(c) Paragraph (d) is too vague to plead to.

(d) Paragraph (e) is denied for the reasons set out in paragraph 10 above.[that is, that a fixed return was not offered]

(e) Paragraph (f) is admitted to the extent that the First Defendant is not a tax expert.

(f) Paragraph (g) is denied. This was not the First Defendant's intention."

The evidence of the defendants

87. As I have indicated, the evidence of Mr. Horner as to what occurred at the meeting on 13 January 2003 was, to a considerable extent, supported by copies of contemporaneous documents which were adduced in evidence and admissions in the Amended Defence of Mr. Ross. In the light of those documents and admissions the focus at the trial was very much on the accuracy of the evidence of Mr. Horner concerning what was said to him verbally, on his account. His evidence was, of course, of what had been said at a meeting very nearly ten years before the trial. However, it might be thought that he had some reason for recalling what had induced him to become involved in the nightmare which Taipan became for him.

88. The evidence of Miss Allison and that of Mr. Ross was to the effect that they had spoken to other people on other occasions about becoming involved in Taipan, or Angel, or Angel II. It was thus possible that neither of them had any specific recollection of what was said on 13 January 2003, as opposed to on some other occasion, and to persons other than Mr. Horner. It was also possible, however, that the same basic pitch was made to everyone on each occasion.

89. For the purposes of this action Miss Allison made a number of witness statements. The principal witness statement to which reference was made at the trial was that from which I have already quoted, which was actually entitled *"Statement of Case of Trisha Anastasia Allison (formerly Anastasia St.Raphael)".* That witness statement ran to some 99 pages containing 306 paragraphs. From its length it was obvious, as was the fact, that the vast majority of it had little to do with the crucial question what occurred on 13 January 2003. However, it was also a feature of the trial that, in the end, some 23 trial bundles, each containing some 400 pages, were produced. The origin of, I think, 13 of those bundles was the requirement of Miss Allison that they be included in the material available at the trial. Miss Allison's bundles did seem to have been duplicated, because some were prepared for a trial in December 2011 which did not take place because Miss Allison fell ill on the day fixed for the commencement of the trial, but she adduced new bundles with what appeared to be the same material for this trial. Few of the documents included in the bundles requested by Miss Allison were referred to during the trial. A glance at the material included indicated that much of it was quite simply irrelevant to the issues in the trial.

90. I think that it is fair to say that the thrust of Miss Allison's witness statement dated 11 November 2011 was to seek to distance herself from the events of 13 January 2003 and from Mr. Horner. It seemed an unusual step to focus at the beginning of the extremely lengthy witness statement on the issue of limitation.

91. The sort of points which Miss Allison thought it appropriate to make in the witness statement dated 11 November 2011 included:-

> "*9. The statement/s referred to at para 6 above relate to similar allegations in respect of Angel that the Claimant alleges in respect of Taipan. Related emails between the Claimant and Alliotts disclosed by the Claimant make plain that he did not consider himself to be a partner in both partnerships and that he was unsure in which partnership he was a member; although that is contradicted by his letter of instruction to the Second Defendant, as set out at para 71 below. Ms Edwards' emails indicate clearly that the Claimant was being advised in relation to whichever film partnership, Taipan equally to Angel or indeed any other film partnership.*
>
> *…*
>
> *11. If the Claimant were in doubt, then briefly consulting with a tax partner in his workplace; or a conversation with any of the Angel partners who were attending partnership meetings (the Claimant was in email communication with a number of such partners); or a few minutes spent reading the Film Act; would*

have made the position plain as regards the alleged fraudulent misrepresentation, concept and operation.

12. Had the Claimant been in doubt, his reasonable course of action would have been to attempt to obtain clarification of his position as regards Taipan.

13. The Claimant did not to my knowledge make enquiry regarding Taipan.

…

19. The Claimant maintains throughout his claim that the basis of his relationship with Taipan was not Taipan's partnership deed but verbal representations made by the Defendants on 13th January 2003.

20. It would appear that the Claimant in making such assertions is seeking to follow through on Ms Edwards' advice as set out in para 10(iv) above [namely, *"to attempt to assert that he had never been a member of a film partnership"*].

21. Any attempt such as set out in paras 19 and 20 above is not justified however, for the Claimant held himself out as a Taipan partner, as set out at para 24 and para 26 and para 53 below, and elsewhere in this statement of case.

22. The Claimant is and was a partner in a large professional partnership and so must be aware of the duties and responsibilities attendant on partners. He is liable with all Taipan partners, including the First Defendant, for the acts and omissions of Taipan.

…

24. Since the Claimant repeatedly held himself out as a partner in Taipan by his utterances, actions and omissions over a period of around 6 months, both outside the partnership and with his fellow partners; and since he is aware of the terms of the partnership deed; it is hard to follow his contention that he was not governed by the terms of the deed. The contention appears to be that as the Claimant may not have signed the deed (at any rate a signed deed cannot be produced) he did not accept its terms.

…

27. The Claimant as a partner of Taipan is governed by the provisions of the Film Act 2; and had a duty to inform himself prior to acting in any capacity as a Taipan partner of the terms of the Film Act 2 as they affected Taipan.

28. The Claimant's manifest failure to perform the duty stated at para 27 above, as evidenced by almost everything he says in his claim concerning his dealings with the Defendants, was in breach of his duty of care to his fellow partners, including the First Defendant, and evidences negligence in his own affairs.

29. The First Defendant and other bona fide Taipan partners have suffered grievous loss directly and indirectly through the said failures on the part of the Claimant.

30. Had the Claimant read the provisions of the Film Act 2, as was his duty as a Taipan partner, it would have been clear to him the moment that he read the "guarantee" letter provided to him by the Second Defendant which he exhibits, that the said letter flies in the face of those provisions.

...

43. The Claimant says that he was in doubt because the Defendants denied fraud; that is not the meaning of section 32 of the 1980 Limitation Act; and in any case the Claimant was in possession of significant facts unknown to the First Defendant at the material times, to wit that SCO were investigating, and that the Second Defendant had given him a "guarantee" letter.

...

52. ... the Claimant's allegation that a request for a film tax relief rebate was made to HMRC by the Defendants without his knowledge or authority cannot be correct.

53. The request for the Claimant's tax rebate, if made by either Defendant, (and it is not known and has not been demonstrated by the Claimant whether either did so or not) must have been made upon the Claimant's express written instruction with his full knowledge and informed consent;

(i) The Claimant signed an HMRC form 64-8, which expressly gives such authority; and had signed it moreover for the express purpose of authorising such a request to be made to HMRC and not for any other purpose, as set out in more detail at para 186 (viii) to (xi) below. A man with the Claimant's accountancy training and background, and his business experience, could have been in no doubt of the legal effect of such signature.

(ii) By signing the 64-8, which was only offered to partners to whom creatives' loans were made, as set out more fully at para 186 and para 193 below, the Claimant implicitly acknowledged the existence of the loan made to him by the partnership; and held himself out as a partner in Taipan.

(iii) At a later time, it is believed before 3rd April 2003;

a) the Claimant must have signed an express letter of authority stating the amount which he was authorising HMRC to transfer into the Taipan bank account; otherwise HMRC would not have made the transfer;

b) the letter of authority could not have been signed on 13th January 2003, which is the only occasion upon which the Claimant and the First Defendant met (if I did meet him) because the specific sum as stated in the said letter of authority could not have been known on that date;

c) therefore the Claimant's tax rebate was requested both with the Claimant's knowledge and with his authority.

...

59. The monies from HMRC were not received in trust for the Claimant to be held to his order as alleged; they were received, with the Claimant's full authorisation both express and implicit, in repayment to Taipan of the loan made to him by Taipan upon the express condition that any such monies becoming payable to the Claimant be paid to the partnership immediately upon becoming receivable, as repayment of the loan made to the Claimant through the partnership and subscribed by his creative partners upon the Claimant's joining the partnership, and with the balance of his Subscription still subject to call, as set out in detail at para 193 below.

60. To such extent, if any, as such monies were received for the Claimant's benefit and not in repayment of his loan, Taipan had both a right of set off in respect of the loan and a duty to the creative partners to secure repayment to them, by way of such monies, of the investment made available to the partnership by the creative partners for the benefit of the investing partners including the Claimant.

...

73. It seems obvious that the Claimant has no clear recollection of what happened during any of his dealings with the Second Defendant, since

(i) the Claimant cannot remember what documents he signed, or why, or when, or in relation to which partnership, or how the template partnership deed he exhibits came into his hands, or to whom he sent Companies House forms or when or why, or what information he put onto his own tax return

(ii) the Claimant appears to have been in the habit of signing official forms blank

(iii) the Claimant appears to have acquiesced in the Second Defendant's habit of carrying off all documents with him; and

(iv) the Claimant does not appear to have made any attempt to obtain from the Second Defendant either the original documents his own property (such as his original signed partnership deed) or copies of official forms and the like;

(v) that is strangely unbusinesslike conduct in a highly placed management consultant and a partner in a large professional organisation.

...

75. The Claimant's manifest confusion also extends to distinguishing between a Film Act forbidden guaranteed return, never authorised by the partnership although promised by the Second Defendant without the knowledge or consent of the First Defendant to a number of people; and a Film Act permissible financial arrangement such as a Buyout in an unknown future amount, which due to the formula used in the calculation would in normal circumstances usually be a broadly similar sum, but which was in each instance an individual calculation.

...

83. Given, however, that the Claimant states emphatically that he had no intention of entering into a financial commitment of either of the types described at paras 81 and 82 above; and indeed it is alleged by the Claimant that it is evidence of fraud by the Defendants that any suggestion was made to HMRC that he had formed such an intention; and since the money invested by the Claimant was limited to the tax rebate monies sent to the partnership upon his authority (and he alleges that such funds were fraudulently obtained by the Defendants) it appears that the Claimant did not after all come to a meeting intending to invest money.

84. So it would seem that in fact the Claimant had no thought of investing anything whatsoever, and in that case it is hard to see what legitimate purpose the Claimant could have had in personally claiming film tax relief upon an investment that he did not intend to make.

..."

92. There were curious inconsistencies in these points. Miss Allison was anxious to emphasise that Mr. Horner was confused, according to her, that he did not know of which partnership he was a member, that he was not familiar with the provisions of the deed of partnership relating to the partnership of which he was a member, that he could not remember what documents he had signed, or when, or where, and that he was in breach of a duty which he owed to the partnership of which he was a member. However, she appeared to accept that Taipan received from the Revenue the amount of the tax refund apparently due to Mr. Horner (paragraph 59). She asserted that Mr. Horner had signed a Revenue form 64-8 (paragraph 53(i)), and implicitly contended (paragraph 53(ii)) that that form authorised Taipan, or someone acting on behalf of Taipan, to act on behalf of Mr. Horner in dealing with the Revenue. In her written closing submissions Miss Allison in terms accepted that, on the evidence of the letter dated 19 January 2004 written by Mr. Condie, the form 64-8 signed by Mr. Horner authorised A Works to act on his behalf. Miss Allison seemed to accept (paragraph 53(iii)(a)) that Mr. Horner had signed an express letter of authority instructing the Revenue to pay the amount of any tax rebate into an account of Taipan. The only reason she put forward as to why that letter of authority could not have been signed by Mr. Horner on 13 January 2003 (paragraph 53(iii)(b)) was that the figures were not then known, but that did not deal with the assertion of Mr. Horner that he signed relevant documents in blank. Miss Allison apparently accepted that he had in fact done that (paragraph73(ii)). So while Miss Allison contended (paragraph 73(i)) that Mr. Horner could not remember what documents he had signed, she seemed not to dispute that he must have signed, as he contended that he had, a form 64-8 and an authority to the Revenue to pay a tax refund to Taipan. Logically, she had to accept that he must also have signed whatever documents were necessary to be signed in order to enable the person authorised by the form 64-8, A Works, to persuade the Revenue to grant the tax refund which Mr. Horner authorised to be paid to Taipan. It appeared that Miss Allison also accepted that Mr. Horner had signed a partnership deed in relation to Taipan because she contended (paragraph 24) that he was bound by its terms and in the course of cross-examination of Mr. Horner put to him that he would not have been bound if he had not signed the deed. Rather painfully, therefore, one got to the point that Miss Allison accepted, expressly, implicitly, or as a matter of logic from what she did accept expressly, that Mr. Horner had in fact signed all of the documents which he contended that he had probably signed on 13 January 2003. That did not mean, of course, that Mr. Horner had signed all those documents on 13 January 2003, as opposed to on some other occasion or occasions. It also did not mean that the documents which he signed were blank, rather than completed when he signed them. However, the emphasis placed by Miss Allison on Mr. Horner's alleged confusion or defective recollection about matters which she did not, in truth, dispute, did not encourage faith in her credibility.

93. As late as in her Supplementary Skeleton Argument dated 17 October 2012 Miss Allison was seeking to make the point, in paragraph 1:-

> "*The claim alleges that on 13 January 2003 at a formal film partnership tax relief presentation which took place at the Institute of Directors in London (IOD) Mr. Horner signed documents. It is not clear which documents, or why they were signed. ...*"

94. Another feature of her witness statement dated 11 November 2011 which did not encourage confidence in the credibility of her evidence was her assertion (paragraph 59) that Taipan had made a loan to Mr. Horner which he was bound to repay. Not a scrap of evidence was produced to suggest that that was correct, and that Miss Allison knew perfectly well that it was not correct was suggested by the fall-back position explained at paragraph 60 of her witness statement.

95. The observations of Miss Allison at paragraphs 83 and 84 of her witness statement dated 11 November 2011 indicated that she accepted that, if Mr. Horner's account of what had been said to him on 13 January 2003 were correct, the scheme presented was fraudulent. She said that in terms in her Supplementary Skeleton Argument at paragraph 38:-

> "*It is common ground that what Mr. Horner says was the concept of Taipan is a fraudulent concept and what he says was the operation of Taipan could not possibly result in a legitimate partnership film tax relief claim.*"

96. It appeared from what Miss Allison said at paragraph 51 i) of her witness statement dated 11 November 2011 that she was aware in 2003 that the Revenue operated a *"Pay Now Check Later"* policy in relation to claims for tax refunds.

97. Nowhere in Miss Allison's evidence did she seek to assert that she, or Mr. Ross, gave to Mr. Horner at any time a true explanation in detail of a workable legitimate scheme of investment in financing the production of films which would attract the reliefs provided for in *Finance (No.2) Act 1992 ss.41 and 42* or in *Finance (No.2) Act 1997 s.48*. The fullest account which she gave of encountering Mr. Horner or of the events of 13 January 2003 was at paragraphs 87 and 88 of her witness statement dated 11 November 2011:-

> "*87. Thirdly I should like to address the Claimant's allegation that he was induced to enter into what he describes as a fraudulent investment by misrepresentations made by the Defendants who pressured him to decide on the spot;*
>
> *(i) in fact, as he states in his pleading, the Claimant did not enter into any arrangement on 13th January 2003, the date of the alleged misrepresentations.*
>
> *(ii) By an email of 14th January 2003, the Claimant refers to "our conversation yesterday" and to "our discussions yesterday and this morning". He makes no mention of any presentation. He makes no mention of any meeting at all. It is not clear if he spoke to the First Defendant or the Second Defendant or both; or what was said.*
>
> *(iii) The Claimant did not receive a response to his email of 14th January 2003; the inference is that it was sent to incorrect email addresses for the Defendants and bounced back, for by an email of 15th January 2003 Mr. Barry Cowing gives the*

Claimant a correct email address for the Second Defendant only, but no email address for the First Defendant.

(iv) The Claimant resent his email on 15th January 2003 to the Second Defendant only; and shortly thereafter he received a response from the Second Defendant.

(v) During that interval of 2 days the Claimant, who had only to pick up the phone to a work colleague in order to obtain expert tax advice from KPMG specialist tax expert partners, had ample opportunity to obtain professional advice whether he actually did so or not.

(vi) It was the responsibility of the Claimant to take appropriate advice on his own affairs before entering into any financial commitment; and if he failed to do so, that is not in any way due to any act or omission of the First Defendant's.

(vii) The Claimant cannot be properly described as having entered into a financial obligation of whatever nature in reliance upon verbal representations made by the Defendants pressuring him [to] *act at once. There was no pressure from the Defendants. The Claimant sent email of his own volition, twice, and in order to contact the Second Defendant he had to get an email address from a third party; the First Defendant he did not contact, his initial attempt at contact having failed and not being repeated.*

(viii) It does not appear that the Claimant subsequently obtained an operational email address for the First Defendant, for his one later email to me, referenced at para 74(i) above, is sent to the same non-operational address for the First Defendant.

88. As regards the alleged misrepresentations: I do not know whether I have met the Claimant or not. I have seen his photograph on his company's website and I do not recognise it. I have a good memory for faces but it is as likely as not that if I met the Claimant only once and in a group of people that I'd forget him.

(i) The Claimant says that he met the First Defendant at the Institute of Directors (IOD). On 5 or 6 occasions around early 2003 the First Defendant went as the Second Defendant's guest to the IOD to meet people that the Second Defendant said were friends of his who were interested in investing in my films.

(ii) Once or perhaps twice the Defendants met people during the day in the IOD tearoom. Usually we all met up around 7pm in the IOD bar. Typically, the First Defendant chatted with 4 or 5 people over drinks, others would drift into the group, some of

the people I'd been chatting to would drift out, over the course of an evening I'd talk to maybe 10 or 12 people. The Second Defendant sat beside me and introduced people.

(iii) I remember chatting in the IOD bar, and some of the people I met, but not all of them. The Claimant might have been one of them. To the best of my recollection and belief, no papers were given to anyone in my presence at any of those drinks gatherings. Nor was there any detailed discussion of the concept or MO of any of the film partnerships, although at such gatherings I did chat about the tax carrot the government was giving to British film makers, and about how with our films, the carrot was made even tastier by the matched funds which film industry creatives were contributing and not claiming tax relief on.

(iv) The Second Defendant did not give anyone a brochure entitled A Unique Low Risk High Return Investment Proposition *at any time or place when the First Defendant was present. The only authorised brochures the partnerships made were film marketing materials of an entirely different character, used for MIPCOM 2004.*

(v) The Defendants had severed our business interests effective April 2003; and MIPCOM 2004 was around 18 months later. The Second Defendant says in his 4th witness statement that he attended MIPCOM Children's 2004. The Children's event is 2 days before main MIPCOM. The First Defendant did not know that the Second Defendant attended MIPCOM Children's 2004 and I did not attend that event myself.

(vi) The Second Defendant says in his consequentially amended defence that the brochure he has exhibited entitled A Unique Low Risk High Return Investment Proposition *was created for MIPCOM 2004. If so, that was done without the First Defendant's knowledge or authority, even although my name is mentioned in each of the various documents exhibited and said to be* A Unique Low Risk High Return Investment Proposition. *The page that the Claimant exhibits, purportedly from the document which he says he was shown on 13th January 2003 in the First Defendant's presence, is dated 17th November 2010.*

(vii) I cannot see that any valid connection between the various exhibited documents as mentioned above in (iv) to (vi) and the brochure which the Claimant says was shown to him in January 2003 has been established.

(viii) For completeness, since the documents exhibited have been alleged to have some connection with confidential internal working materials which in mid-2002 I sent to BDO for their expert evaluation, I exhibit that document; although to the best

> *of my knowledge the internal discussion document had no connection with the brochure which the Claimant says he was shown; and if any such connection exits* [sic], *then until these proceedings began I did not know of it, nor would I have authorised the circulation of any document exhibited entitled* A Unique Low Risk High Return Investment Proposition *and said to be a brochure shown to the Claimant if I had known of it.*
>
> *(ix) For the record, I did not show the Claimant a brochure entitled* A Unique Low Risk High Return Investment Proposition *or any other brochure nor to the best of my recollection and belief was any such brochure shown to the Claimant in my presence.*"

98. In the witness statement dated 11 November 2011 Miss Allison also made these observations concerning the events of 13 January 2003:-

> "*97. There is nothing put forward by the Claimant which can be regarded as evidencing that the First Defendant made or was complicit in any misrepresentations.*
>
> *…*
>
> *195. The First Defendant met many of the Second Defendant's friends in the bar of the IOD in order to talk to them about the possibility of investing in her films and the Claimant may well have been one of them. But the bar at the IOD is no place to embark upon a detailed description such as given at para 193 above, far too many people were always drifting in and out of the group around our table for anything like that.*"

99. Miss Allison did not, in her witness statement dated 11 November 2011, seek to say when, if not at the meeting on 13 January 2003, Mr. Horner signed in blank the documents which, as I have explained, she appeared to accept he had signed.

100. Although at paragraph 4 of her Amended Defence Miss Allison seemed to admit that she had met Mr. Horner on 13 January 2003, at paragraph 88 of her witness statement dated 11 November 2011 she appeared to be seeking to go back on that, and to introduce an element of uncertainty. Again, at paragraph 11 of her Amended Defence Miss Allison admitted that on 13 January 2003 there had at least been some reference to contact with the Revenue and to an entity with a name having some resemblance to BDO, these points were not covered in her witness statement dated 11 November 2011. What did emerge from that witness statement, however, was the contention that if anything which was false was said at the meeting on 13 January 2003, it was, according to Miss Allison, Mr. Ross who had said it. If the Prospectus had been produced, according to Miss Allison it was Mr. Ross who had produced it and at a time when she was not present.

101. Mr. Ross made two witness statements for the purposes of this action. The first, and longest, was made in the context of an application to strike out the claim on the grounds that it was statute-barred. Perhaps understandably, the witness statement gave

a rather general account of Mr. Ross's involvement with Miss Allison, Taipan, Angel and A Works. It did not condescend upon any real detail concerning the events of 13 January 2003. Those deficiencies were not made good in Mr. Ross's second witness statement. Thus, in advance of the trial, all that was really revealed as to the position of Mr. Ross was what was in the Amended Defence which he had prepared. From that it appeared that he did not dispute what Mr. Horner said about the meeting taking place, a presentation of some sort using Power Point, the circulation of the Prospectus, and at least some sort of reference to the Revenue and to BDO Stoy Hayward. Where he did differ from Mr. Horner was on what had actually been said at the meeting on 13 January 2003.

102. At the trial Mr. Ross made explicit that which seemed to be implicit to an extent in his position: that, if and insofar as anything which was said at the meeting on 13 January 2003 was untrue, he was as much a dupe as the other people attending, because he relied upon the truth of what Miss Allison had told him. There were some fairly powerful pieces of evidence in support of his contention. Perhaps the most impressive was the production by Mr. Ross of the attendance note made by Allen & Overy of the meeting with him on 29 May 2003 when he explained to those whose advice he was seeking what was in fact the fraud. Other than in the context of some criminal prosecution it did not seem very likely that a fraudster would seek legal advice as to his personal rights and liabilities in respect of the operation of the fraud. Again, it was, as it seemed to me, very much a point in Mr. Ross's favour that he attended the meeting with officers of the Revenue on 25 August 2004. If Mr. Ross had appreciated that the scheme involving Taipan was a fraud, going to the meeting with Revenue officers was entering the lion's den. He must have appreciated that the circumstances giving rise to the meeting indicated that the Revenue was very suspicious about Taipan, and thus, if he was seeking to defraud the Revenue, that the prospects of success were slim. It is more probable that a guilty man would simply not have attended. Moreover, unlike Miss Allison, whose position seemed to shift between different documents produced for the purposes of this action, and who was reluctant, it seemed, to admit that which could not sensibly be denied, as I have said, Mr. Ross admitted just about everything except what Mr. Horner said had actually been said on 13 January 2003. A further important point, as it seemed to me, was one made by Mr. Murphy in cross-examination, namely that Mr. Ross had himself made claims for tax refunds on the basis of having entered into the sort of scheme into which Mr. Horner had entered, had received refunds and had been called upon to repay the refunds. He was thus a loser, like Mr. Horner, but in his case his inability to repay the refunds had led to him being adjudicated bankrupt. It could therefore be said that Mr. Ross himself had been defrauded. It was unlikely that he defrauded himself.

103. Mr. Ross adduced in evidence copies of a number of e-mails which he said had been sent to him by Miss Allison in March 2002. In an e-mail dated 26 March 2002 Miss Allison explained a number of mechanisms. One involved *"£10,000 cash (invested by yourself into Taipan)"*. In the context of another Miss Allison spoke of:-

> "*The amount you reclaim in this year's tax will probably be less than previous years, given the difficult work environment which you told me about, but still enough to make up the rest of the needed cash element of production company funding;*"

104. It appeared that Mr. Ross had indeed acted as Miss Allison suggested. The result of the operation of the mechanisms considered in the e-mail dated 26 March 2002 Miss Allison explained in this way:-

> "*So we option a bunch of films and are in a position to approach the Pilots* [in context, apparently people like Mr. Horner] *for tax investment, splitting the reclamations 50-50 with them; and/or the large accountancy/legal firms (who will pay us somewhere between 8% and 15% on purchase price* ie *at best very little less than the Pilots). We then have 2 years to sit back and scoop in the gravy, except of course that we shall plow* [sic] *most of it into our TV station.*"

105. Miss Allison was anxious to emphasise during the trial that the sharing of tax rebates with investors apparently contemplated in the passage quoted in the preceding paragraph was plainly illegal and fatal to any legitimate film tax scheme. However, Miss Allison disputed the authenticity of the e-mail of 26 March 2002.

106. In her written closing submissions Miss Allison stated in terms that:-

> "*It is common ground that what the Claimant says was the concept of Taipan is a fraudulent concept and what he says was the operation of Taipan could not possibly result in a legitimate partnership film tax relief claim.*"

107. As to the merits of the positions adopted by Mr. Ross in relation to what had actually been said at the meeting on 13 January 2003, the evidence indicated some support for those positions. What Mr. Ross remembered being said about Mr. Orchard of the Revenue was what, according to the minutes of the meeting with Revenue officers on 25 August 2004, Mr. Orchard had himself told the meeting concerning his dealings with Miss Allison. Mr. Ross produced in evidence copies of some documents showing contact between Miss Allison and Mr. Chris Mascarenhas of BDO concerning tax proposals devised by A Works. A copy of an e-mail dated 3 July 2002 written by Miss Allison to Mr. Mascarenhas indicated that attached to it was *"a 1 page summary of the concept"*. A copy of that one page summary was also adduced in evidence. It was in these terms:-

> "*Limited liability partnerships are formed, consisting of 2 managing partners (the A Works directors Adrian Ross and Anastasia St. Raphael) and up to 16 tax investors who wish to reclaim tax paid in previous years. The managing partners contribute matched funds enabling full tax reclamation by the investors on a crystalised* [sic] *deferment basis.*
>
> *The partnerships purchase from A Works Film a number of completed British Qualifying films which have not yet been DCMS certified. Alternatively, or in addition, the partnerships fund a number of development packages, which qualify for immediate relief in the year of purchase under the section 41 provisions.*

The managing partners obtain DCMS certification and/or document satisfactorily the development packages and finalise the partnership's year-end accounts on the basis of receipt from the investors of the previously agreed investment. The investors make the investment only after production of all these documents.

Immediately following the investment, the partnership's tax return is submitted. Inland Revenue confirmation of the partnership loss would normally be obtained within one month. The individual partners then present to their self-assessment centres the partnership deed certifying their proportion of that loss and the Revenue's certification of the loss itself and reclaim their previously paid tax accordingly.

The purchase price of the films may be uplifted by 30% from the DCMS certified value of the films, in accordance with section 42 provisions, which allow for a reasonable middleman's profit. AW have established that this is in practice represented by the proposed 30% uplift.

The 30% uplift will be utilised to provide 10% management fees to BDO Stoy Hayward, 10% management fees to A Works Management and the balance held to cover associated costs such as certification audits, specialist insurances, packaging costs, etc.

The investors will be enabled to reclaim tax sufficient to provide an early tax-free gain on the initial investment; the investors' participation in future profits, if any, will be minimal, but to the extent that it exists will be treated for tax purposes identically to their other income."

108. That concept appeared to be similar to what was in the Prospectus, involving the transfer to investors of losses sustained by the co-producers. However, it was not a feature of that concept that those contributing tax refunds were able themselves to receive at once 20%, or some other percentage, of the amount of the refund. As an attachment to an e-mail dated 4 July 2002 Miss Allison sent to Mr. Mascarenhas a document entitled *"How It Works"*. That purported to show a worked example of the intended scheme. What it certainly did show, on its face, was tax being reclaimable at 40% and not at 100%. The matter seemed to proceed a little further, with Miss Allison sending BDO an extended document entitled *"A Works Film Funding Proposals"* running to nine pages on or about 7 August 2002 – Mr. Ross produced a copy of an e-mail which Miss Allison sent to him on that date to which was attached a copy of the extended document described as *"here's what I sent BDO"*. Interestingly the *"Executive Summary"* included in that document began:-

"*The proposal is that BDO should market through their Wealth Management arm a unique low risk high reward film co-production investment tax instrument.*"

109. In cross-examination Miss Allison denied that she would have been involved in drafting or approving any document of the nature of the Prospectus which used words like *"unique"*. When it was suggested to her that she had used words in the *"Executive Summary"* very similar to the title to the Prospectus she sought to suggest that, as the document in question had been produced by Mr. Ross, it was somehow *"tainted"*, without actually going so far, in cross-examination, as to deny that she had written the words in question. However, in the Re-examination Miss Allison did in terms assert that the document in question, *"was not written by me"*, but was created by Mr. Ross. That seemed to be a refinement of her position in cross-examination. Miss Allison went on to comment in the Re-examination:-

> "*D2's marketing version of "the BDO document" may be based upon a draft working document sent to BBDO Wealth Management much earlier by D1, but significantly changed by D2.*"

110. A yet further expanded document, running this time to 15 pages and six appendices, was sent to BDO by Miss Allison as an attachment to an e-mail sent on 3 October 2002. That document included a section entitled *"THE TEAM AT A WORKS TV"*. Under the heading in that section *"WHO'S WHO AT A WORKS"* the person first listed was Miss Allison, under the name Anastasia St. Raphael. The description given about her began:-

> "*In addition to her financial background as a specialist in tax vehicles, acting for clients such as AMEX, GATX, Ladbrokes and Virgin amongst many others …*"

111. When asked about that in cross-examination Miss Allison did not dispute that the document in which it was included was genuine and produced by her, but contended that the words quoted had been added to her text by some third party. That might have been more plausible had not Mr. Mark Weston, a witness called on behalf of Mr. Horner, produced the original of a letter written to him by Miss Allison dated 6 November 2003 which included this sentence:-

> "*I may say without fear of contradiction that in the highly specialist marketplace of film tax shelter there is no-one more highly qualified than myself; indeed I have provided expert consultancy to a Big Five accountancy firm in this very area.*"

112. When asked about that sentence in cross-examination Miss Allison seemed to suggest that the letter was a forgery. She pointed out that the letter had been written on yellow paper, but said that she had never used yellow paper and disliked it. Also the letter bore beneath what looked like her signature her name and qualifications, and she told me that she never put her qualifications after her name. Moreover, according to her, the phraseology of the letter was not hers. This evidence of Miss Allison was contradicted by what Mr. Ross said in his cross-examination, that he remembered the letter being drafted at a meeting in an office in Basinstoke attended by himself, Miss Allison and Mr. Andrew Hardy. The wording of the letter, Mr. Ross said, was that chosen by Miss Allison herself. The letter also included this:-

> "*In specific regard to Inland Revenue procedures, naturally no film scheme can ever obtain advance approval, that is laid down in the legislation, but at every point in the construction of the A Works models I have consulted extensively with the Inland Revenue's Specialist Film Unit and I have maintained contact since with the Head of that unit, the very man who wrote the policy guidelines which form the basis for the investigations your e-mail specifies, and not only has A Works conformed fully with both the spirit and the letter of Revenue requirements in that respect but I have his personal assurance that A Works is, in his definitive opinion, "... doing exactly what the legislation was created to encourage". ...*"

113. It was unclear whether there was any further contact with BDO after the sending of the e-mail dated 3 October 2002 and the attachment thereto.

114. During the period of the involvement of Mr. Gardner in trying to sort out the problems involving the partners in Taipan and the Revenue Miss Allison wrote, as she accepted, a letter dated 17 September 2004 to Mr. Gardner. Attached to her letter was a document entitled *"ANCILLARY POINTS FLAGGED UP ON 17TH SEPTEMBER"*. That document included this paragraph:-

> "*I met Paula Little and Kaled Ibrahim and Denis Horner briefly for a chat over a drink in the bar of the Institute of Directors; it is my understanding that they joined the partnership at some later time when Adrian Ross visited them at their homes, and that they had in the interim received independent advice; Denis Horner is of course himself a noted tax expert.*"

115. It thus appeared that at a time considerably closer to 13 January 2003 than the date of the trial Miss Allison could at least recall having met Mr. Horner. Why she then contended that Mr. Horner, who, as I understood it, had never practised as an accountant, was not merely a *"tax expert"*, but *"notable"* in that capacity, did not emerge in evidence.

Conclusions as to alleged misrepresentations

116. At the commencement of the trial Miss Allison produced a number of documents relating to her medical condition. These included a Certificate of Entitlement to Disability Living Allowance which recorded that she was entitled to such allowance and that her entitlement commenced on 29 October 1992. No medical evidence was adduced to indicate from what condition or conditions Miss Allison suffered which had led the relevant authorities to conclude that she was entitled to Disability Living Allowance, but she did put before me two documents emanating from Thamesmead NHS Health Centre concerning her current situation. One, dated 12 October 2012, mentioned her being hypertensive and the importance of complying with her anti-hypertensive medication. The other, dated 22 October 2012 and signed by Dr. G.A. Oke, said this:-

> "*The above named patient registered with our practice tells me that she will be representing herself in her trial. As you will be aware, she has a diagnosis of hemiplegic migraines and has variable left sided weakness as a result. She is also a known hypertensive patient on treatment.*
>
> *As previously suggested by my colleague Dr. Sasae, I would be most grateful if her trial could be paced (specifically if the hearing could be fixed for alternate days instead of consecutive days) and if she can be offered any appropriate disability service that the court provides.*"

117. In fact it was not possible for the trial to proceed on a regular and predictable basis because the condition of Miss Allison varied from day to day, and often from hour to hour. So it was that hearings took place on days when she said that she felt up to attending and participating, and on each such day only for such hours as she indicated that she considered herself able to be present. Most sitting days were only half days. Some sitting days were separated by non-sitting days of as long as two days, and in two instances also by a weekend, so a break of four days. For these reasons the originally estimated length of the trial, seven to ten days, came to be substantially exceeded. That had a further consequence, which was that the opportunity of Mr. Ross to attend and to participate was inhibited by his circumstances. He lives in Scotland and is dependent upon statutory benefits for an income. In order to participate in the trial at all he had to borrow money from members of his family to allow him to travel to London and to stay in London, but his funds ran out at the end of the second week of the trial, by which time, according to the original estimate, the trial should have finished. Thus Mr. Ross was not present in court while Miss Allison called her evidence, and he had no opportunity to cross-examine her or any of her witnesses. What she said about his role in matters relevant to the issues in this action he therefore had no opportunity to challenge. Mr. Ross did return to the trial at the end for the specific purposes of being cross-examined on his witness statements and making closing submissions. At that stage Miss Allison was not able to attend in person, but she did participate by means of a telephone link, as she did on one other day before the conclusion of the trial.

118. I recognise that it may be that Miss Allison's medical condition had some effect upon her recall of events now almost ten years ago, although I have to say that, when she did feel able to attend court and to participate in the trial, it seemed to me not merely that Miss Allison is very intelligent, but that she is a forceful personality with an impressive command of the voluminous documentation put before me. Unhappily I reached the conclusion that her evidence concerning the events of 13 January 2003 was simply not true. As I have pointed out, she had given various accounts at different times and each of her accounts seemed to be inconsistent with whatever documents survived which appeared to shed light on the matter. The position which Miss Allison adopted at the trial, that she had not attended a meeting on 13 January 2003 at the Institute of Directors and had never met Mr. Horner, just made no sense. There was no possible reason for Mr. Horner to sue her if the two had never met. Certainly Miss Allison did not suggest a reason.

119. I found Mr. Ross to be a straightforward witness who was anxious to assist the court. I am entirely satisfied that the copies of documents which he produced for the purposes

of the trial were genuine copies, and that those documents which Mr. Ross contended had been written by Miss Allison had indeed been written by her. However, on the detail of what was actually said, or not said, at the meeting on 13 January 2003 I did not feel able to accept the evidence of Mr. Ross in preference to that of Mr. Horner, by whom I was very impressed. It would, I think, be unrealistic to expect Mr. Ross to have a detailed recollection of what actually was said on 13 January 2003 for a number of reasons. It was common ground that that was not the only occasion upon which a presentation of some kind was made to prospective investors. Specifically, it was not in dispute that a presentation was made by Miss Allison and Mr. Ross to a group including Mr. Mark Weston in Basingstoke on 14 October 2002. Moreover, subsequently discussions took place between Mr. Ross and a number of others, including Mr. Weston, about the possibility of those others acting as agents to introduce prospective investors. Further, Mr. Ross had himself had discussions with Miss Allison as a result of which he became involved in claiming tax rebates. The question which obviously arose was whether, being party to so many discussions about the same basic matters on so many occasions, Mr. Ross could be confident about what was said at the meeting on 13 January 2003. The matter was further complicated by whatever understanding Mr. Ross had of how the scheme explained at the meeting on 13 January 2003 was supposed to work, as opposed to how it might have been explained at that meeting. In fairness to Mr. Ross, he did not profess, in cross-examination, to have a detailed recollection of the events of 13 January 2003 or to have any deep understanding of the scheme which, he told me, Miss Allison had devised. He did recall the meeting on 13 January 2003, which took place, he said, in a large meeting area on the ground floor of the Institute of Directors building. He remembered that Miss Allison had arrived about twenty minutes after the other people attending. As he recollected, the Power Point presentation was made using a laptop computer. His evidence in cross-examination of what was actually said at the meeting on 13 January 2003 coincided with his pleaded case.

120. In the end it was just obvious that some thing or things had been said to Mr. Horner at the meeting on 13 January 2003 to induce him to become involved in the scheme focused on Taipan and that that thing or those things persuaded the reasonably cautious man I find Mr. Horner to be, to become involved. He heard the pitch only once, so it was inherently likely that he would remember at least the thrust of what he relied upon.

121. Turning to the specific misrepresentations pleaded, I am satisfied that Miss Allison did say on 13 January 2003 that she was a specialist in film tax investment schemes – she said exactly the same in the letter to Mr. Weston dated 6 November 2003 and in the description of herself in the document sent to BDO Stoy Hayward under cover of the e-mail dated 3 October 2002. I reject the suggestions of Miss Allison that the letter dated 6 November 2003 had been fabricated or that the document sent to BDO Stoy Hayward had been altered after she despatched it. Those suggestions were inherently incredible and were contradicted by the evidence of Mr. Ross, which I accept on these points. Mr. Ross may well not have paid attention to what Miss Allison said about her alleged expertise in film tax schemes, as it was Miss Allison who had devised the scheme and who had explained it to him, so he must have considered that Miss Allison was at least a specialist in the particular scheme which was being promoted at the meeting on 13 January 2003.

122. I am also satisfied that Mr. Horner was told that investors had a guaranteed return on their investment of 20%, for that is what came to pass in his case and Mr. Ross accepted that that had been said.

123. I accept the evidence of Mr. Horner that he was told that the scheme had a proven track record of success. From the perspective of Mr. Ross as at 13 January 2003 that contention was true, for he and Mr. Gill had both received tax refunds.

124. I find that Mr. Horner was told that the tax refunds were to be invested in the development or acquisition of films that qualified for relief under the relevant statutory provisions, for otherwise he would not have signed, as he plainly did sign, documents enabling Miss Allison to act on his behalf in procuring a tax refund which was paid into the bank account of Taipan. In cross-examination Mr. Ross supported the evidence of Mr. Horner on this point. I am unpersuaded that the relevant statutory provisions were specifically identified, but that is not material to my conclusion.

125. I am not satisfied that Mr. Horner was told that the scheme in which he was invited to become involved had been approved by BDO Stoy Hayward, but I accept his evidence in cross-examination about what was said about BDO Stoy Hayward. Again what Mr. Horner told me in cross-examination was supported by the evidence of Mr. Ross in cross-examination.

126. I am satisfied that Miss Allison said something at the meeting on 13 January 2003 which conveyed to Mr. Horner that the scheme being promoted had been approved by the Revenue, and that she intended to convey that message. I am entirely confident that Mr. Horner would not have decided to become involved in a tax avoidance scheme the efficacy of which seemed speculative. How exactly the matter was put may have been somewhat ambiguous, for I am certain that if Mr. Ross, who knew that the scheme had not been approved by the Revenue, had interpreted what Miss Allison said as meaning that, he would have been alarmed and would have recalled what she said. Whatever she said thus did not seem untrue to someone who knew the correct position, but was likely to be interpreted by someone who did not have that knowledge in a different sense. It was perhaps something along the lines, *"We have had discussions with the Revenue about the scheme. The Revenue is happy that the scheme complies with the statutory framework."* A form of words along those lines is not far from what Miss Allison admitted at paragraph 11 of her Amended Defence and close to the attitude of the Revenue as asserted by Miss Allison in her letter dated 6 November 2003 to Mr. Weston.

127. As I have already noted, it was not suggested that if, as I have found, Miss Allison said something calculated to create the impression that the scheme centred on Taipan had been approved by the Revenue, that impression was true.

128. I find that what was actually said about BDO Stoy Hayward was true.

129. On the balance of probability I find that it was Mr. Ross who said that the scheme had a proven track record of success, because from his perspective that was true. However, he was applying the wrong criteria in evaluating success. Miss Allison, as she admitted, knew that the policy of the Revenue at that time in relation to claims for tax refunds was to *"Pay now, check later"*. She therefore knew that the representation was not true.

130. I find that the other representations which I have found proved were untrue, to the knowledge of Miss Allison, who either made them or permitted them to be made by Mr. Ross without correction, notwithstanding that she knew that they were untrue, although he did not. I have commented earlier in this judgment on the emphasis placed by Miss Allison at the trial on the point that the offering of a guaranteed return was fatal to a legitimate scheme. She knew perfectly well that she was not a specialist in film tax investment schemes, and also emphasised that point during the trial, despite her so describing herself to Mr. Weston and to BDO Stoy Hayward. What Miss Allison was actually intending to do with the money raised from tax refunds, apart from making a guaranteed return to investors, emerged from how the money was actually spent, which was not on the development or acquisition of qualifying films. Mr. Croally prepared schedules of how the money paid into the Taipan Current Account had in fact been applied, and I am satisfied that his schedules were correct.

131. I accept the evidence of Mr. Ross that he did not act dishonestly on 13 January 2003, and thus is not liable to Mr. Horner for fraudulent misrepresentation. I find, for the reasons which I have explained, that Mr. Ross believed the representations which I have found were actually made were in fact true and that he was not reckless as to whether or not they were true. Mr. Ross, in my judgment, relied, as he contended, on the truth of what Miss Allison said to him in relation to the matters which were the subject of statements on 13 January 2003 which I have found to be untrue.

132. Miss Allison, on the other hand, knew perfectly well that the representations which were made on 13 January 2003 which I have found were untrue were false. I find that she made them, or prompted Mr. Ross to make them, insofar as he did, intending the hearers, including Mr. Horner, to rely upon the representations, which I am satisfied Mr. Horner did. Consequently she is liable to Mr. Horner in deceit.

133. In her submissions Miss Allison drew to my attention the decision of Hamblen J in *Brown v. Innovatorone Plc* [2012] EWHC 1321 (Comm). In that case Hamblen J was concerned with claims said to arise out of the failure of tax schemes in which the claimant had invested. The schemes proved to be ineffective and the claimant had to repay amounts of tax refund to the Revenue. It was alleged on behalf of the claimant, inter alia, that the tax schemes in that case had been designed to defraud those invited to invest. That allegation failed. As Miss Allison put it in her *"Supplementary Skeleton Argument of the First Defendant for trial on 22 October 2011*[sic]*", "The judgement in* Andrew Brown & Otrs v InnovatorOne plc & Otrs *provides full answers re all the allegations made"*. Unhappily for her, that was not the case. The decision of Hamblen J did not amount to the conclusion for which Miss Allison seemed to contend, that a tax scheme which in the event failed was not fraudulent. It was simply a determination on the facts of the case before Hamblen J. The facts of the present case, as I have found them to be, were different, and, for the reasons which I have explained, my conclusion is that Miss Allison is liable in deceit to Mr. Horner.

Damages

134. There was no dispute as to the quantum of damages in the event that Mr. Horner succeeded in his claim in deceit. He was entitled to recover as damages the amount which he had to repay to the Revenue, less the part of the tax refund which was paid to him by Taipan, but plus the contributions which he made to obtaining the services of Messrs. Alliotts and those of Mr. Gardner.

Conclusions

135. In the result there will be judgment for Mr. Horner against Miss Allison in the sum of £185,832.25, calculated as the aggregate amount which Mr. Horner had to pay the Revenue, £207,000, less the sum of £33,750 which was paid to him as 20% of the tax refund received by Taipan, but plus his contribution of £11,832.25 towards the fees of Messrs. Alliotts and his contribution of £750 towards the fees of Mr. Gardner. I will hear argument as to the question of interest on that sum of £185,832.25.

136. The claim against Mr. Ross fails and is dismissed.