Neutral Citation Number: [2025] EWHC 2631 (Ch)

Case No: FL-2022-000014

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
FINANCIAL LIST

Date: 15/10/2025

Before :

LORD JUSTICE MILES

- -

Between :

(1) CREDIT SUISSE VIRTUOSO SICAV-SIF
(In respect of its Sub-Fund, the Credit Suisse (Lux) Supply Chain Finance Fund)
(2) GLAS TRUST CORPORATION LIMITED
(as note trustee for the Fairymead Multi Obligor Programme) — **Claimants**

- and -

(1) SOFTBANK GROUP CORP.
(2) SVF II ABODE (CAYMAN) LIMITED
(3) SCF ABODE (CAYMAN) LIMITED
(4) SVF HABITAT (CAYMAN) LIMITED
(5) SOFTBANK VISION FUND L.P.
(6) SOFTBANK VISION FUND II-2 L.P.
(7) GREENSILL LIMITED
(in liquidation) — **Defendants**

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Sonia Tolaney KC, Nehali Shah, KV Krishnaprasad, Andrew McLeod & Katherine Boucher (instructed by **Freshfields LLP**) for the **Claimants**
Tom Smith KC, Adam Al-Attar KC & Peter Burgess (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **First to Sixth Defendants**
Daniel Lewis (instructed by **Charles Russell Speechlys**) for the **Seventh Defendant**

Hearing dates: 5, 6, 9, 10, 11, 12, 16, 17, 18, 19, 23, 24, 25 June 2025
1, 2, 3, and 4 July 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Miles :

A. INTRODUCTION

1. These proceedings concern a programme of securitised notes originated by companies in the Greensill Group, which carried on the business of supply chain financing. The parent company was the Australian-incorporated Greensill Capital Pty Limited ("GCPL").

2. The first claimant invested through its Credit Suisse (Lux) Supply Chain Finance Fund ("the SCF Subfund") in notes that were originated and administered in England by Greensill Capital (UK) Limited ("GCUK") and issued by Hoffman S.à.r.l. ("Hoffman") through its Compartment MZ under a programme known as the Fairymead Multi-Obligor Programme ("the Fairymead Note Programme").

3. The intended security for the Fairymead Note Programme consisted of certain rights (known as "Participations") granted under a Participation Agreement dated 19 December 2019 ("the Participation Agreement") by a special purpose vehicle, Greensill Limited ("GL"), to GCUK, its immediate parent company. These participation rights were assigned by GCUK to Hoffman and then to Citibank N.A., London Branch ("Citibank") as note trustee for the Fairymead Note Programme ("the Note Trustee"). The Participations related to receivables sold, or purportedly sold, to GL pursuant to a Receivables Purchase Agreement dated 9 December 2019 ("the RPA") by companies in the Katerra Group, a group of construction companies of which the parent was the Cayman-incorporated Katerra Inc. ("the Katerra Group" and "Katerra Cayman").

4. The SCF Subfund holds the beneficial interests in outstanding notes purchased under the Fairymead Note Programme with an aggregate principal face value of c. $440 million ("the Fairymead Notes" or "the Notes"). All of these defaulted when they matured and/or otherwise fell due for payment in March 2021.

5. This claim is made pursuant to section 423 of the Insolvency Act 1986 ("the 1986 Act") by the first claimant or, in the alternative, the second claimant, GLAS Trust Corporation Limited ("GLAS"), the current Note Trustee, on the basis that they are "victims" of certain transactions ("the Impugned Transactions") entered into by GL in connection with an out-of-court restructuring of the Katerra Group which completed on 30 December 2020. The Impugned Transactions comprise a Contribution and Exchange Agreement ("the CEA") and a Share Transfer Agreement ("the TA"), each dated 30 December 2020.

6. The claimants' case is broadly as follows. As a result of the Impugned Transactions, GL was left with effectively no assets. It is now in liquidation. The effect of the Impugned Transactions was to render valueless the intended security for the Fairymead Notes. The First to Sixth Defendants ("the SoftBank Defendants" or "SBDs"), entities within the SoftBank Group, benefited from the Impugned Transactions and were culpably involved in bringing them about. The SoftBank Group was a significant indirect investor in and lender both to the Katerra Group and to the Greensill Group. The claimants seek relief against the SoftBank Defendants in order to restore the position to what it would have been if the Impugned Transactions had not been entered into and to protect the claimants' interests.

7. The SoftBank Defendants deny that the claimants have any entitlement to relief against them under section 423 of the 1986 Act. They contend in outline as follows. The Impugned Transactions were part of a linked set of transactions that were intended to put the Greensill Group in funds to enable the repurchase or repayment of the Fairymead Notes. Pursuant to an arrangement agreed between certain of the SoftBank Defendants and the Greensill Group, in November 2020 the SoftBank Group provided $440 million to the Greensill Group on the understanding that the Greensill Group would use those funds to repay or repurchase the Fairymead Notes. The Greensill Group did not use in fact the funds for the agreed purpose but this was without the SoftBank Defendants' knowledge. They only discovered this some time after 30 December 2020. They contend that the relevant "transaction" for the purposes of section 423 comprises the network of linked transactions; that GL did not have the relevant purpose of prejudicing creditors; that there was no undervalue and that, in any case, they did not materially benefit from the transactions. They also contend that the benefit they derived from the Impugned Transactions is limited to certain shareholdings in the Katerra Group and that these became valueless in June 2021 when the Katerra Group entered bankruptcy; and that this should be reflected in any relief the court might consider ordering.

8. GL, acting by its joint liquidators, takes a mostly neutral position in relation to the claim. The claimants seek no substantive relief against it.

B. UNCONTENTIOUS FACTS

9. It helps to start with the uncontentious facts. This section draws on the helpful document agreed by the parties with some minor amendments.

The claimants

10. The first claimant, Credit Suisse Virtuoso SICAV-SIF ("CSV") is an investment company with independent legal personality incorporated under Luxembourg law. It has an umbrella structure divided into a number of subfunds that hold segregated assets and liabilities. The beneficial interests in the outstanding notes purchased under the Fairymead Note Programme with an aggregate principal face value of $439,999,710, i.e. the Fairymead Notes, are held by the SCF Subfund.

11. CSV was required under Luxembourg law to delegate the management of its subfunds' assets to an Alternative Investment Fund Manager ("AIFM"). CSV's appointed AIFM for the SCF Subfund was originally Credit Suisse Fund Management ("CSFM"). CSFM in turn delegated portfolio management functions in respect of the SCF Subfund to Credit Suisse Asset Management (Schweiz) AG ("CSAM"). CSFM and CSAM were both companies incorporated under Swiss Law.

12. CSFM and CSAM were deregistered from the Commercial Register of the Canton of Zurich on 1 October 2024 and 30 August 2024 respectively. Before their dissolution, UBS Asset Management (Europe) SA ("UBSAME") succeeded to the rights and obligations of CSFM, and UBS Asset Management Switzerland AG ("UBSAM") succeeded to the rights and obligations of CSAM.

13. Between late 2019 and mid-2021 Mr Eric Varvel was the Global Head of Asset Management responsible for Credit Suisse's global Asset Management business.

14. The head of the Swiss and EMEA Asset Management divisions was Mr Michel Degen, who reported to Mr Varvel. Mr Degen's team included Mr Luc Mathys (Head of Asset Management, Fixed Income) and Mr Lukas Haas (Portfolio Manager, CSAM).

15. The Second Claimant, GLAS, is a professional trustee company and the current note trustee for the Fairymead Notes ("the Note Trustee"). GLAS was appointed to that role on 28 February 2023 in place of Citibank, which had acted as the Note Trustee from the first issue of the Fairymead Notes in December 2019. Ms Dupee was a member of the Restructuring Group at Citibank which managed the operations of Citibank as Note Trustee.

The defendants

16. As already noted, the first to sixth defendants are entities in the SoftBank Group, comprising the first defendant ("SBG"), its subsidiaries, affiliates and investment vehicles. At all relevant times, SBG was, through the second to sixth defendants, a significant indirect investor in and lender to both the Katerra Group and the Greensill Group.

17. SBG is a strategic investment holding company publicly listed on the Tokyo Stock Exchange.

18. SBG's stated strategy is "to form a diverse group of companies with outstanding technologies and business models in specific fields", and to encourage those companies "to form synergies to evolve and grow together". SBG's stated aim is to do this through investing in target companies through dedicated special purpose funds and vehicles, which include the second to sixth defendants (together, "the Vision Fund defendants"). The holdings in SBG's investment portfolio include Vision Fund I ("SVF1") and Vision Fund II ("SVF2") (together "the Vision Funds").

19. SVF1 consists of the fifth defendant, SoftBank Vision Fund LP, and its alternative investment vehicles. SVF2 consists of the sixth defendant, SoftBank Vision Fund II-2 LP, and its alternative investment vehicles. SBG was a limited partner in SVF1 along with other limited partners. SBG was the sole limited partner in SVF2. SBG was entitled to a capital return and distribution of gains from SVF1 after the payment out of preferred equity limited partners, and to unrestricted capital return and distribution of gains from SVF2. The general partners of SVF1 and SVF2 (respectively, SVF GP (Jersey) Limited and SVF II GP (Jersey) Limited) were wholly-owned subsidiaries of SBG.

20. The second to fourth defendants are companies incorporated in the Cayman Islands through which the Vision Funds make investments. Specifically: the second defendant, SVF II Abode (Cayman) Limited ("SVF II Abode") is a company through which SVF2 makes investments; the third defendant, SVF Abode (Cayman) Limited ("SVF Abode") is a company through which SVF1 makes investments; the fourth defendant, SVF Habitat (Cayman) Limited ("SVF Habitat") is a company through which SVF1 makes investments.

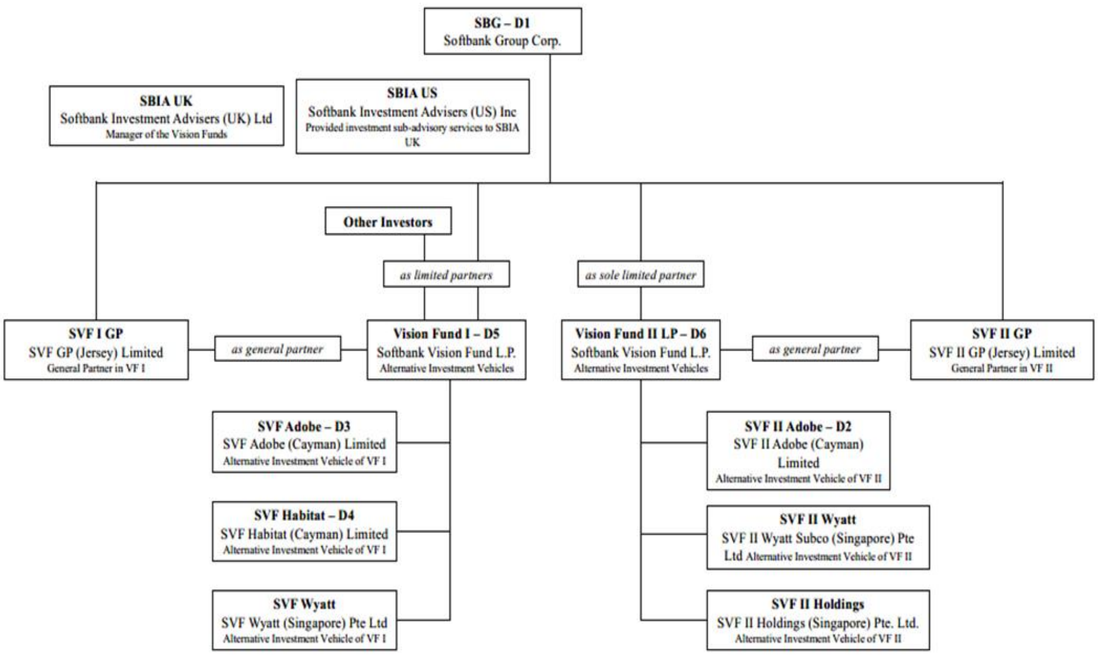
21. SoftBank Investment Advisers (UK) Limited ("SBIA UK") acted during the relevant times as manager of the Vision Funds. SBIA UK was entitled to management and performance fees from both of the Vision Funds. SB Investment Advisers (US) Inc.

("SBIA US") provided investment sub-advisory services to SBIA UK. The two companies are collectively referred to below as "SBIA".

22. During the relevant period, (i) Mr Masayoshi Son was SBG's largest shareholder and also its Chairman and CEO. He continues to occupy those roles. (ii) Mr Rajeev Misra sat on the Board of SBG and acted as an Executive Vice President, and was CEO of SBIA and the Vision Funds. (iii) Mr Son and Mr Misra were identified on the Vision Funds' dedicated websites as constituting their "Leadership". (iv) Mr Saleh Romeih was a Managing Partner at SBIA UK. (v) Mr Son, Mr Romeih and Mr Misra together comprised the SBIA Investment Committee which was required to approve any investments by the Vision Funds. (vi) Mr Colin Fan was a Managing Partner of SBIA reporting to Mr Misra. (vii) Mr Tommy Cheung was the lead Partner at SBIA US for fintech and financial services orientated investments. He reported to Mr Fan. (viiii) Mr Tom Daula was SBIA's Chief Risk Officer. (ix) Ms Hayley Chan was a Vice President working in the SBIA fintech investment team. She reported to Mr Cheung.

23. Mr Son remains SBG's largest shareholder, Chairman and CEO. Mr Misra left his role as CEO of SBIA and the Vision Funds in November 2024 but remains employed by SB Investment Advisers (AD) Limited as a Senior Adviser to the Vision Funds.

24. The relevant entities in the SoftBank Group at the relevant times are shown in the following chart:



The Greensill Group and supply chain funding

25. The seventh defendant, GL, is a company incorporated in England and Wales. It was wholly owned by GCUK, which originated and administered the Fairymead Notes.

26. GCUK (incorporated in England) was itself wholly owned by GCPL, the parent company of the Greensill Group. GCUK functioned as the main operating company

and trading entity for the Greensill Group companies in the UK. It provided financial support and management for the wider Greensill Group.

27. GCUK's account was nominated as the buyer's account for the RPA (see further below).

28. GCUK was placed into administration on 8 March 2021.

29. GCPL was a non-trading holding company which raised debt and equity, including from the SoftBank Group. GCPL was placed into voluntary administration in Australia on 9 March 2021 and entered liquidation on 22 April 2021.

30. Finance was provided to certain entities in the Katerra Group through the GCUK-originated Fairymead Note Programme.

31. The directors of GL at all material times were Mr Alexander Greensill (known as Lex Greensill) and Mr Alastair Eadie (both of whom were also directors of GCUK). According to GL's annual report and financial statements for the year ended 31 December 2019, GL's ultimate controlling party in the opinion of its directors was Mr Greensill. It was common ground that Mr Greensill's knowledge, intentions and purposes are to be imputed to GL.

32. GL operated as a special purpose vehicle, without any employees of its own. It entirely delegated its management and administration to GCUK pursuant to the terms of the Participation Agreement (described further below). GL came to be used solely for the purpose of acting as a counterparty to the Katerra Group to provide finance through the Fairymead Note Programme.

33. GL entered into creditors' voluntary liquidation on 30 July 2021, on the basis that it was unable to pay its liabilities as they fell due and was accordingly insolvent.

34. The Greensill Group was founded by Mr Greensill. It focused on the provision of supply chain financing and related services. GCUK performed a central treasury function for the Greensill Group.

35. The Greensill Group offered corporate groups alternative models to raise working capital and finance their operations. It did so by selling securitised notes to investors such as the SCF Subfund under pre-arranged programmes.

36. In addition GCPL had acquired and operated a German bank, Greensill Bank AG ("Greensill Bank"), which was regulated by the Federal Financial Supervisory Authority in Germany ("BaFin").

The SCF Funds

37. The Supply Chain Finance funds ("the SCF Funds") were a group of funds set up and managed by Credit Suisse to make investments in supply chain finance.

38. The SCF Subfund invested in securitised note issues backed by supply chain receivables originated and issued by GCUK.

The securitised funding arrangements

39. In order to facilitate the issue of securitised notes, GCUK entered into agreements with Hoffman, a private limited company incorporated under Luxembourg law, and Citibank (as Note Trustee).

40. On 21 December 2017:

    i) GCUK, Hoffman and Citibank entered into a Master Assignment Agreement dated 21 December 2017, which operated as an umbrella agreement setting out the terms on which GCUK could sell and assign its right, title and interest in a Payment Obligation (as defined in the Master Assignment Agreement) and all of GCUK's Additional Rights (as defined therein) relating to that Payment Obligation, to Hoffman.

    ii) Hoffman, as Initial Issuer, entered into the Master Trust Deed with Citibank as Note Trustee, originally dated 13 October 2017 and supplemented by a Supplemental Master Trust Deed dated 21 December 2017 ("the Master Trust Deed") (and, as explained below, a Second Supplemental Trust Deed B dated 18 December 2019). The Master Trust Deed set out the terms on which notes would be issued under the Hoffman Note Programme and on which security would be created, by issuing Pricing Supplements in relation to Tranches of notes incorporating Supplemental Trust Deeds.

The SoftBank Defendants' relationships with the Greensill Group

41. SVF1 held a significant economic interest in the Greensill Group through investments in and loans to GCPL.

42. In May 2019, SVF1 invested c. $800 million in GCPL, in the form of (i) Convertible Loan Notes ("CLNs") with a combined principal of c. $527 million, and (ii) the remaining amount in the form of common equity shares. The equity purchase took SVF1's equity ownership of GCPL to 9.9%, being less than the 10% equity ownership which would trigger regulatory consequences regarding equity control of Greensill Bank.

43. SVF1 made further investments in GCPL in September and October 2019 through its investment vehicle SVF Wyatt (Singapore) Pte Ltd ("SVF Wyatt"). These consisted of (a) a CLN with a principal value of c. $180 million issued on or around 23 September 2019 to SVF Wyatt; (b) a conditional Sale and Purchase Agreement ("SPA") dated 18 October 2019 by which SVF Wyatt invested c. $444 million in GCPL in exchange for 186,136 G Class Shares in GCPL, with the transfer of those subject to BaFin approval; (c) a conditional SPA dated 18 October 2019 by which SVF Wyatt invested c. $16 million in GCPL in exchange for 7,152 G Class Shares in GCPL, with the transfer of those shares subject to BaFin approval; and (d) a conditional SPA dated 6 November 2019 by which SVF Wyatt invested c. $30 million in GCPL in exchange for 12,675 G Class Shares in GCPL, with the transfer of those shares subject to BaFin approval.

44. Representatives of SBIA (Mr Cheung, Mr Fan and Ms Chan) attended GCPL Board meetings from time to time as Board observers pursuant to contractual rights granted to do so.

The Credit Enhancement Programme

45. SBG provided a programme of credit support for certain of GCUK's financings of Vision Fund portfolio companies ("the Credit Enhancement Programme" or "CEP").

46. The CEP was operated by the provision of Credit Default Swaps ("CDSs") by SBG in order to underwrite the bankruptcy risk of Vision Fund portfolio companies (subject to the Greensill Group absorbing a shortfall in repayment of GCUK's financing of Vision Fund portfolio companies up to a maximum of $100 million in any year, "the Greensill First Loss").

47. By October 2019, GCUK had agreed a series of CDSs with Cayman Project 2 Limited, a Cayman Islands incorporated special purpose vehicle which was a subsidiary of SBG. These related to facilities made available by GCUK to View, Inc. ("View"), Fair Financial Corp ("Fair"), Guazi Limited ("Guazi") and OYO Hospitality UK Limited ("OYO"), in each of which SVF1 had invested.

48. No written guarantee or CDS was provided by SBG to the Greensill Group in respect of funding provided to the Katerra Group under the RPA, though Mr Greensill stated in emails on 19 December 2019 and 11 October 2020 that Mr Son had given him a personal commitment that a guarantee would be provided by a SoftBank Group entity (see further below).

The Katerra Group companies

49. The Katerra Group was a group of construction companies (and companies providing related products and services) founded in 2015. Katerra Cayman was the parent company of the group. The founder of the Katerra Group was Michael Marks. Mr Marks acted as CEO of the Katerra Group until about May 2020, when he was replaced by Mr Paal Kibsgaard.

50. Katerra Inc. (incorporated in Delaware) ("Katerra Delaware") was the intermediate holding company and parent of the Katerra Group companies in North America. Katerra Delaware was the parent of a group of companies known under the securitisation arrangements as "the Katerra Sellers".

51. On 6 June 2021 Katerra Cayman, Katerra Delaware and 31 affiliate companies (including the Katerra Sellers) filed for bankruptcy protection under Chapter 11 of Title 11 of the US Code in the Bankruptcy Court for the Southern District of Texas.

The SoftBank Defendants' investments in the Katerra Group companies

52. As explained above, Katerra Cayman was one of the Vision Fund portfolio companies, with SVF1 having made several rounds of investment in exchange for equity holdings. By September 2019, SVF Abode had invested c. $1.75 billion in the Katerra Group: (a) in January 2018 SVF Abode made an initial investment to acquire c. $500 million of Series D shares in Katerra Cayman; (b) in August 2018 SVF Abode made a further investment to acquire c. $150 million in Katerra Cayman shares; (c) in December 2018 SVF Abode made a $100 million investment to acquire Katerra Middle East Inc. ("Katerra Middle East") shares; (d) in December 2018 SVF Abode made a further investment to acquire $300 million in Katerra Cayman Series E shares; (e) in March

2019 SVF Abode made a further investment to acquire $200 million in Katerra Cayman shares; in June 2019, SVF Abode made a further investment to acquire $250 million in Katerra Cayman shares; f) in June 2019 SVF Abode made a further investment to acquire $250 million in Katerra Cayman shares; (g) in June 2019 SVF Abode made a further investment of c. $200 million into Katerra Cayman via a convertible promissory note; and (h) in June 2019 SVF Abode made a further investment of $50 million into Katerra Middle East.

2019 discussions about revisions to the Credit Enhancement Programme

53. Around July 2019 SBG and the Greensill Group entered into discussions regarding revisions to the CEP. On 20 August 2019 SBG and the Greensill Group held a meeting at which the CEP was discussed. At that meeting, the parties discussed a "Non-binding indicative term sheet", and a summary document.

54. At a conference hosted by SBIA in September 2019 in California also attended by Mr Marks, the CEO of Katerra, Mr Greensill met Mr Yoshimitsu Goto (then Senior Vice President, CFO and Chief Information Security Officer at SBG), Mr Seiichi Morooka (Head of SBG's CFO Office), and Mr Shintaro Isono (a partner in SBG's global debt capital markets division). An email sent by Mr Greensill to Mr Goto, Mr Morooka and Mr Isono on 23 September 2019 stated that they had discussed "the CEP program and future plans".

55. A draft application for the Credit Committee of GCPL dated 29 September 2019 described the proposed terms of the revised CEP as a joint venture between a SBG special purpose vehicle and GCUK ("the CEP JV").

The Fairymead Note Programme

56. In December 2019 a series of agreements was entered into in order to provide finance to the Katerra Group, through the issue of notes under the Fairymead Note Programme.

57. GL entered into the RPA dated 9 December 2019 with the Katerra Sellers. The RPA provided a framework for the Katerra Sellers to sell, or purportedly sell, Receivables to GL and the terms on which they did so.

58. The definition of "Receivables" included both obligations owing to the Katerra Sellers by Account Debtors ("Actual Receivables" or "ARs"); and expected future amounts intended to become payable as a result of anticipated future sales of goods or services ("Future Receivables or FRs").

59. The RPA included "Collections" in the definition of Purchased Receivables, which referred to cash collections with respect to receivables.

60. The Katerra Sellers and Katerra Cayman provided GL with various different forms of security in respect of the obligations under the RPA. These were essentially cross-guarantees given by Katerra Group companies and Account Control Agreements between GL, various of the Katerra Sellers, and two banks at which those Katerra Sellers held deposit accounts.

61. GL filed UCC-1 financing statements pursuant to the Uniform Civil Code ("UCC", a model act adopted by all US States) in respect of security held by the Katerra Sellers by 12 December 2019. GL's security interest in the Account Security was perfected upon execution and delivery of the Account Control Agreements.

62. The financing provided under the RPA was funded by the issue of notes under the Fairymead Note Programme, originated by GCUK.

63. The relationship between GL and GCUK was set out in the Participation Agreement dated 19 December 2019, under which GL granted GCUK "Participations" in the Receivables under the RPA. These were essentially contractual rights to be paid sums equivalent to the Receivables payable by the Katerra Sellers to GL.

64. GL also granted GCUK security for its obligations under the Participation Agreement in the form of a Security Agreement dated 19 December 2019.

65. GCUK originated notes under the Fairymead Note Programme to fund the obligations under the Participation Agreement and RPA.

66. On 19 December 2019 GCUK notified Hoffman of "the PBB Product Schedule", which stated that it was made pursuant to the Master Assignment Agreement dated 21 December 2017 ("MAA"). The PBB Product Schedule stated that, in respect of any Offer and purchase of Payment Obligations assigned the Product Code "PBB" in the Offer File relating thereto, the MAA would be deemed to be amended, supplemented and modified to the extent set out in Part 2 to the PBB Product Schedule. The Product Code PBB was used in Offer Files from at least 14 September 2020 and in each of the relevant Offer Files as regards the Fairymead Notes.

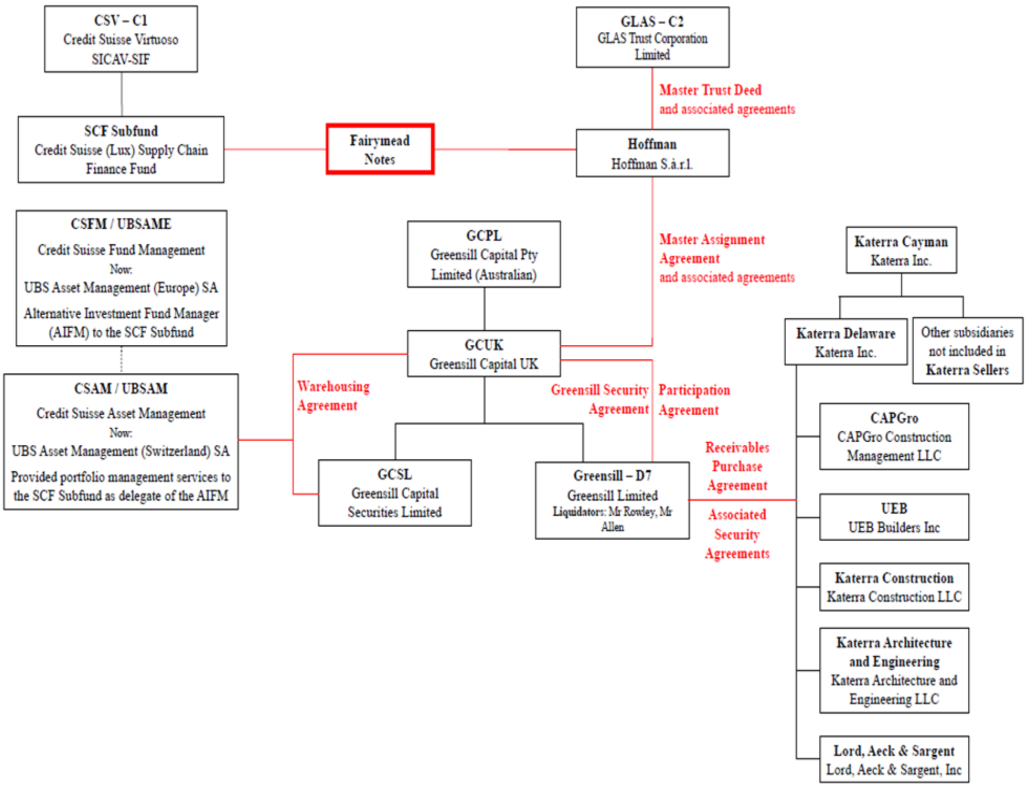
67. The MAA operates as an umbrella agreement setting out the terms on which GCUK could sell and assign its right, title and interest in a Payment Obligation, and all of GCUK's Additional Rights relating to that Payment Obligation, to Hoffman.

68. On 18 December 2019 Hoffman and Citibank entered into the Second Supplemental Trust Deed B to the Master Trust Deed dated 21 December 2017 (together, "the MTD").

69. The MTD contemplated agreement to a "Pricing Supplement" and a "Series Supplement" which would include a Product Annex, Product Specific Conditions and Cash Collection and Allocation Annex. A Series Supplement Number 1 containing a draft form of Pricing Supplement incorporating a draft Supplemental Trust Deed, and a Product Annex containing Project Specific Conditions of the Notes, was also signed on 18 December 2019.

70. The MTD and the Series Supplement Number 1 set out terms on which Hoffman would issue the Fairymead Notes, and on which security might be created and held for the noteholders of the Fairymead Notes by Citibank.

71. The Fairymead Note Programme may be represented as follows:



December 2019: further discussions about the CEP

72. Under a Side Letter agreed between Katerra Cayman, the Katerra Sellers and GL as part of their funding agreements, it was a condition precedent for GL having to fund a request to purchase receivables from a Katerra Seller that SBG or an affiliated entity would provide credit support in the form of a CDS or a guarantee (or other credit support) in form and substance satisfactory to GL (or an affiliate of GL). In the event the documentation for the CEP JV was not signed (see further below).

The issue of notes under the Fairymead Note Programme

73. As contemplated under the MTD, Hoffman issued notes under the Fairymead Note Programme in Tranches together with Pricing Supplements specific to each Tranche, which incorporated Supplemental Trust Deeds. A subsidiary of GCUK distributed notes issued by Hoffman and arranged for them to be issued and placed with Euroclear, the central securities depository.

2020: Financial stress in the Katerra Group

74. In the first quarter of 2020 the Katerra Sellers defaulted on financial covenants in the RPA. GL entered into a First Standstill and Forbearance Agreement with the Katerra Sellers on 30 March 2020.

75. The liabilities held by the Katerra Group, including those under the RPA, meant that the Katerra Group found it difficult to obtain bonding finance for new project starts. This impeded the Katerra Group's ability to secure new business.

76. On 1 June 2020 GL entered into a Second Standstill and Forbearance Agreement with the Katerra Sellers.

SVF1 invested further in Katerra

77. In May 2020 SVF1 provided further funding to Katerra Cayman. SVF1 provided it with an initial $100 million of funding and conditionally agreed to fund another $100 million approximately 45 days later. SVF1 exchanged its 49% ownership stake in Katerra Middle East. for a further $150 million in Series F shares in Katerra Cayman.

Katerra identified improper revenue recognition

78. Also in May 2020 Katerra Cayman identified potential improper revenue recognition practices. An independent committee of Katerra Cayman's Board was formed to investigate. As a result of Katerra Cayman's investigation into improper revenue recognition practices, SVF1 exercised its contractual right to withhold the additional $100 million of financing scheduled for August 2020. The full $100 million sum was ultimately advanced to Katerra Cayman in September 2020.

79. During the investigation into improper revenue recognition practices, the Katerra Group continued to face worsening liquidity. The Katerra Group experienced financial and technical setbacks on legacy construction projects due to re-work issues related to earlier-completed work. These issues were exacerbated by the impact of Covid-19 on the Katerra Group's business, which caused delay, reduced gross margins and increased the cost of labour and materials.

Appointment of new management and restructuring advisors

80. In July 2020 the Katerra Group appointed new management. Despite this Katerra was unable to reduce its heavy operating-cost structure and high rate of cash-burn.

81. In August and September 2020 the Katerra Group engaged restructuring advisors to evaluate its restructuring alternatives. Two independent directors with extensive restructuring experience joined the Board of Directors of Katerra Cayman in September 2020.

Developments concerning the Greensill Group in 2020

82. The Covid-19 pandemic led to a decline of global markets in March 2020. This affected Greensill's liquidity.

83. On 24 March 2020 SBG invested $1.5 billion in the SCF Subfund. An internal SBG Investment Division presentation recorded: "The purpose of the investment was to support the operations of Greensill Capital whose supply chain deals are financed by the Fund".

84. In return for the provision of liquidity, the SCF Subfund and CSFM entered into a side letter agreement with SBG ("the SBG Side Letter"). This provided that the SCF

Subfund should acquire only notes sourced by the Greensill Group's supply chain finance programme while SBG invested in the SCF Subfund.

85. SBG and Mr Greensill had agreed that SBG's investment would be in place until 18 May 2020. However, GCPL requested two extensions to the redemption schedule, first until 22 June 2020 and, later, until July 2020. In exchange for the delayed redemption schedule, SBG requested various shares in GCPL, and GCPL's agreement to sell its corporate jets and to be audited by one of the Big 4 accounting firms.

86. When considering Mr Greensill's second redemption request in June 2020, Mr Misra sent an email to Katsunori Sago (Executive Vice President, SBG), copying Mr Cheung, Mr Fan and others. He stated:

> "Only internal SoftBank - Lex is slippery and prone to lying so the penalty has to be high.
>
> He gives 3% extra stake no matter what the excuse if
>
> - auditor is not upgraded by November, regulator approval or not.
>
> - all the aircraft from the company/bank balance sheet is sold in the next 4 months.
>
> - December quarter end audit is performed by a big 4 audit firm."

87. By 16 July 2020 SBG's investment in CSV was fully redeemed and the SBG Side Letter was terminated.

88. On 6 August 2020 Mr Son emailed Mr Greensill noting that it was necessary for the Greensill Group to reduce their costs:

> "Lex,
>
> I am glad to hear that business is starting to recover. The team has given me an update on the progress you have made in recent months.
>
> I am worried about how market volatility can dramatically affect your business. Liquidity can go away fast and, if it does, you will not be able to fund your customers.
>
> I know you are still growing the company as you expect a strong fourth quarter. But you need to reduce your operating costs in case volatility returns. The markets will be volatile again and your funding is still fragile.
>
> You are a growth guy and so am I, but you need to lean towards discipline after the recent near death experience. There is no need to be so aggressive in the short term until you are sure of liquidity. Give yourself some cushion. Please cut your costs now."

CSAM reduced concentration limits on Greensill Group investments

89. New concentration limits were agreed with the Greensill Group by CSAM as follows.

90. On 3 July 2020 Mr Greensill, Mr Adam Milenkovic (the Chief Risk Officer in Credit Suisse's Asset Management division) and Mr Mathys signed an agreement which provided that exposure to Multi-Obligor programmes in the SCF Subfund should be limited to 5% by 31 December 2020. The agreement also imposed an "Additional Limitation" on SoftBank Vision Fund ("SBVF") -related companies: the total weight would be limited to 7%, with a specific "per program" limit of 3%.

91. On 22 July 2020 Mr Varvel and Mr Philip Wehle (Head of International Wealth Management at Credit Suisse) recorded that it had been discussed with Mr Greensill "to bring the VF backed companies down to 5% by year-end" and that Mr Greensill was "okay by year end".

GCPL planned a capital raise and Initial Public Offering

92. A Credit Suisse presentation dated September 2020 addressed a potential IPO of the Greensill Group. The Greensill Group engaged Credit Suisse's investment banking department to assist with its fundraising efforts.

93. Credit Suisse attended a GCPL Board Meeting on 10 November 2020 to give an update on the debt and equity private placements, "(US$400m debt and US$600m equity)".

94. By December 2020 the primary prospective investor in the Greensill Group's equity raise was TDR Capital. A SBIA Investment Update from about 16 December 2020 recorded:

> "$600M Equity Raise:
>
> • ~$500M in firm orders received from investors, subject to final diligence check; verbal indications on remaining ~$100M continue to progress
>
> • TDR Capital is lead investor, with $350M order (subject to Lex personally investing $25M in the round)
>
> • Other notable investors include: Regal Funds Management, Mastercard and Fidelity (Australia and US)
>
> $400M Debt Raise:
>
> • Currently in negotiations with Carlyle and Albacore for $400M facility
>
> • Latest key terms under negotiation: senior secured credit facility, 3-4 yr tenor, L+500-600 bps margin / 0.75% LIBOR floor / 97 issue price, 1% penny warrants, implying an all-in cost of ~11.4%

> Continue to target first close for both equity and debt transactions before year end; potential for second close in January for equity raise."

95. It is perhaps helpful to record here that the SBDs contended that the need to salvage the Greensill Group's fundraising efforts was the ultimate catalyst for the transactions and arrangements which have given rise to these proceedings. In particular they said that Mr Greensill explained to them that the fundraising was jeopardised by the financial liquidity problems of Katerra and the possibility of further defaults under the RPA. They contended that this led to an agreement to inject $440 million into the Greensill Group and to recapitalise Katerra. They said that the purpose of the $440 million injection was to enable the Greensill Group to redeem or repurchase the Fairymead Notes and thereby internalise to the Greensill Group the risk of a Katerra default. The claimants took issue with this interpretation of events. I shall return to this aspect of the dispute in detail below.

96. On 13 and 14 October 2020 Tom Cheung and Mr Greensill exchanged proposed terms on the proposed investment into the Greensill Group of $440 million, each of which contemplated the repurchase by SBG of the Fairymead Notes at par. In return the Greensill Group would agree to provide warrants for shares in GCPL.

97. On 13 October 2020 Mr Cheung sent an email to Mr Greensill summarising the terms discussed between them as follows (parenthesis in the original):

> "Resolution of the matter
>
> • SBG will purchase all outstanding notes issued by Katerra at par [$440mm notional]
>
> · Related to the March event, Greensill will provide to SBG in the form of penny warrants $105 million in shares at the valuation of Vision Fund's last investment [date]
>
> • Related to the Katerra note purchase, Greensill will provide to SBG in the form of penny warrants $100mm in shares at the valuation of Vision Fund's last investment
>
> · Greensill will sell the private jets prior to IPO, not by December 2020."

98. On 14 October 2020 Mr Greensill sent an email saying:

> "• SGB [sic.] will repurchase all outstanding notes issued by Katerra at par - $440m notional.
>
> · Related to the March CS support, and as currently almost finalized with the lawyers, SBG will be issued 23,823 class A shares and SVF will be granted 15,708 additional class G shares (the latter to insulate SBVF from dilution). These can temporarily be in the form of a mandatory convertible CLN until BaFin approval to convert to equity is received for those

> respective grants. The value of the shares will be set equal to the last SVF investment, which is $2,385.10/share. These are common shares as specified in the constitution.
>
> · Related to the Katerra note repurchase, Greensill will issue to SBG $150m worth of class A shares at the last SVF investment price of $2,385.10/share requiring 62,890 shares allocated to SBG, which, again, can be temporarily in the form of a mandatory convertible CLN.
>
> • All new class A and G shares will be from newly issued common shares at the time of conversion.
>
> • Greensill will sell the private jets prior to the IPO, not by December 2020."

99. At this initial stage the proposal was that SBG would purchase the Notes for $440 million. The proposal later evolved, so that ultimately it was agreed that $440 million would be injected into GCPL.

100. Mr Greensill forwarded the proposal internally on 14 October 2020 at 11.35 am to Jonathan Lane (the group's senior internal lawyer), Sean Hanafin and Chris Bates. Mr Greensill asked Ms Lindsey Sherrill, Chief of Staff, to arrange a call to discuss the proposal.

101. Ms Sherrill responded by email saying, "Please see below comments to Tom's email that outlines what we discussed". The comments included the following with respect to the point above ("SBG will purchase all outstanding notes issued by Katerra at par"): "AGREE. AS SBG WILL KNOW FROM THE KATERRA DOCUMENTS, THE VALUE OF KATERRA AT DEFAULT (OF WHICH WE HAVE SECURITY) IS $190MM."

102. Mr Cheung stated in an internal SBIA email on 27 October 2020 that: "Lex has crafted a CLN structure with embedded Katerra note risk and Greensill equity, so we can purchase as equity instrument (Lex e-mail below, we will work with our legal to validate structure)".

103. On 2 November 2020 Mr Cheung sent Mr Greensill an email saying:

> "this is our understanding of the proposal as it currently stands":
>
> "• SVF(2) will subscribe $440 mm for a CLN on same fundamental terms as the other CLNs, to be closed as soon as practically possible.
>
> • The CLN will convert into a total of 86,713 shares ($206.8m as valued at Oct 2019 round of $2,385.10 per share) comprised of:
>
> • 23,823 shares related to the March SBG-CS support, having a notional value of $56.8m

> • 62,890 shares related to Greensill-SBG CDS first loss and risk assumption on Katerra, worth a notional value of $150m
>
> • Note: SVF(1) will receive further shares equivalent to provide antidilution protection on its position for the issuance of the 23,823 shares noted above.
>
> • Greensill assumes all risk on the Katerra Notes (current notional $440m) and will manage their recoveries. All recoveries will be remitted to accounting for the same to SVF(2)
>
> • SBG to:
>
> o Waive any right to the CS-related award that was contemplated from Greensill to SBG (including the Lex Greensill personal undertakings)
>
> • Greensill to waive SBG liability under the CEP for Katerra loss.
>
> • Greensill will commit to the disposal/sale of its corporate jets prior to the earlier of: its IPO, or December 31, 2021. Lex Greensill will provide a personal undertaking to induce the company to do this. Failing to do so, Lex will transfer personal shares equivalent to 3% of ownership of Greensill to SVF(2) as penalty.
>
> • As we discussed, you have also asked SBG to waive/acknowledge as discharged in full the Softbank CDS first loss by Greensill for the current period (9 Oct 2020 -8 Oct 2021). SBG has proposed that this waiver should not be in effect for loss events related to Fair. In the event of a Fair credit loss, SBG proposes there will be no waiver."

104. An SBIA presentation dated 2 November 2020 stated:

> "Katerra recap needs to be agreed within next 24-48 hours" … "If no agreement, Katerra Board of Directors will be compelled to file for bankruptcy"."

105. On 3 November 2020 Mr Greensill sent Mr Cheung a draft email to go to Mr Son stating that "[t]he following note memorialises what we agreed", by reference to the email from Mr Cheung dated 2 November 2020 with an amendment as regards to the application of the First Loss for Fair:

> "1. The deal terms per Tom Cheung's email below are agreed in full, other than with respect to the application of the First Loss for Fair (meaning there is no First Loss participation for Greensill for any losses on our facilities provided to OYO or View at all up to 8 October 2021).
>
> […]

> 3. In consideration for the above SBG and SBVF2 will ensure the agreements described in Tom Cheung's note below (and as described in this email) are executed and the funds transferred to Greensill on or before Friday 6 November. (This will ensure we do not have a disclosure issue with our incoming equity and debt investors, and, more importantly with our insurers who are covering the Katerra, Fair, View and OYO transactions.)"

106. In an email to Mr Son on 3 November 2020, Mr Greensill said, "Upon confirmation by return from you, Son-san, that these terms are agreed, I will inform the CEO of Katerra that we are prepared to accept such a haircut on the Greensill facility [i.e. the RPA] as I shall be directed by SBVF to take".

107. On 5 November 2020 Mr Jesensky (Head of Portfolio Management, Greensill Group) emailed Mr Garrod and Mr Eadie (also of Greensill) stating:

> "I have previously been advised that we may receive a large sum of money to reduce SB exposure at CSV as indicated in the new Investment Guidelines.
>
> I wanted to check with you if you had any update on this please. It was to be determined what programme we'd reduce the exposure for, but my understanding was this would most likely be Katerra MO programme and SB would purchase the paper in a note format. The technical details were not fully outlined."

108. The investment committee ("IC") of SBIA (comprising Messrs Son, Misra and Romeih), as manager for SVF1, held a meeting by teleconference on 5 November 2020. The IC members recommended and voted to approve SVF1 investing a further $200 million in the Katerra Group (subject to satisfaction of certain conditions), referred to internally as the "Katerra follow-on" investment. At the same meeting, it was recommended that SVF1 decline an investment opportunity into GCPL (by way of a $440m investment in a convertible loan note instrument) in favour of SVF2, SVF1 receiving anti-dilution shares. The minutes stated: "Mr Cheung noted that, for the purpose of insulating Greensill from Katerra's financial distress and in order to address the risk arising from the credit facility to Katerra, … the intention was that Greensill be able to absorb losses from its outstanding U.S. $440 million credit facility to Katerra".

109. At the time of the SVF1 IC approval, SVF1 owned 47.4% of the equity in Katerra Cayman, and held 46.1% of the voting rights. The Katerra follow-on investment would result in SVF1 increasing its equity ownership to 51% and its voting rights to 49.9%.

110. At the time of the SVF1 IC approval, a potential investment was contemplated of $180 million by a "New Money Consortium" led by the Katerra Group's management, in return for 34% of the equity in the Katerra Group. At that stage the total equity investment into Katerra Cayman was therefore anticipated to be $380 million.

111. In this regard, by a letter dated 2 November 2020 with the title "Katerra Inc. – Summary of Terms", the "undersigned Investors" proposed terms and conditions for

the purchase of an interest in, and certain transactions related to, Katerra Cayman. The letter was signed on behalf of Commonwealth Real Estate LP, Katerra Cayman, and SBF Abode (Cayman) Ltd. Paragraph 2 of the letter set out the "Pre-Closing Conditions Precedent", which included at sub-para (iii):

> "Indebtedness of Katerra: Upon and as a condition to closing, except as provided in herein, the indebtedness of Katerra and certain of its subsidiaries to Greensill Limited ("Greensill") under those certain notes, credit agreement, loan documents, all prior agreements and any amendments, modifications, restatements, waivers, extensions, or other agreements related thereto pertaining to the indebtedness, equating approximately four-hundred and forty million dollars ($440,000,000) (the "Greensill Indebtedness"), shall be fully paid, performed and discharged in consideration for no more than one hundred seventy-six million dollars ($176,000,000). In connection therewith, each of Katerra and Greensill (on behalf of itself and its subsidiaries) shall, in each case, release and forever discharge each of Greensill and its affiliates, and its and their respective shareholders, officers, managers, directors, employees, partners and associates, the Investor Releasees, the SVF Releasees and the Katerra Releasees, as applicable, in all domestic and foreign legal jurisdictions from any and all liabilities, claims and demands, actions and causes of action, damages, costs, payments and expenses of every kind, nature or description arising from the Greensill Indebtedness and the Transactions (subject to exceptions to be agreed). Such releases to be entered into in a separate binding agreement by and between the applicable parties thereto."

112. A summary produced by SBIA's risk department stated that the Katerra "Deal Leads" were Mr Jeff Housenbold, Mr Hatim Sukhla and Mr Carpus Tin. The summary was sent by Mr Daula to Messrs Son, Misra and Romeih for the IC meeting of 5 November 2020. The summary included, beside "Use of Proceeds", that, of the total equity investment of $380 million, "$175M to settle GS facility, remainder to support growth of business until positive case flow is achieved." The document further included the following:

> "SVF are to contribute $200m of a $380m round, with ~$176m in proceeds funding an anticipated negotiated paydown of the $440m Greensill facility [sc. the RPA] (upon which the facility shall be considered fully paid/discharged). Other debt obligations are to be similarly restructured."

113. SBIA's memo for SVF2's IC dated 5 November 2020 recommended that SVF2 invest $440m on the terms proposed. It stated that the "Deal Leads" were Mr Cheung and Mr Fan, and the "Deal Team" was Ms Chan and Mr Aman Puri and recorded:

> "In H2 2019, Greensill provided a $440M credit facility to Katerra. In recent weeks, Katerra has come under financial distress and has indicated that it may not be able to satisfy its

> repayment obligations under the credit facility, potentially resulting in a default. In order to avoid potential negative impact on Greensill's financials or franchise, Greensill anticipates using the proceeds of SVF 2's $440M investment to purchase notes that were issued to fund the Katerra facility [sc. the RPA] from external investors and manage this risk internally. In exchange, Greensill is offering an additional 62,890 shares to SVF 2 (notional value of ~$150M at the October 2019 round share price), as well as the right to receive any recoveries Greensill is able to generate on the $440M Katerra facility (through repayments and / or liquidation of collateral)."
>
> […]
>
> "There is urgency to minimize potential negative impact from the Katerra facility [sc. the RPA], as Greensill is currently in the market running an equity and debt fundraising process. Greensill has hired Credit Suisse and Citibank to arrange a pre-IPO funding round, in which Greensill is targeting a -$1 Bn capital raise consisting of a -$600M pre-IPO equity private placement and a -$400M private debt placement."

114. The summary in the document of the "Key Terms" of the $440m CLN included the following:

> "Katerra Proceeds. Greensill may remit any cash proceeds from recoveries on the existing $440M Katerra credit facility to SVF 2. Greensill may accept repayment in an amount less than $440M and extinguish the remaining principal amount, at the direction of SBIA."

115. Under the heading "Use of Proceeds" it stated: "It is anticipated that proceeds will be used to purchase the Katerra notes from external investors and manage the risk internally."

116. The proposal as summarised in the memo was approved by SVF2's IC on 5 November 2020.

Drafts of the $440 million CLN and the Omnibus Deed

117. GCPL held a Board meeting on 29 October 2020 and approved a resolution to enter into the "Proposed transaction" which included entry by GCPL into the "Katerra Agreement" pursuant to which GCPL would (among other things) "release SoftBank from all liability in relation to the Katerra Programme, the …[Katerra Notes] and Credit Enhancement Programme in so far as it relates to the Katerra Notes and/or the Katerra Programme" and "account to the Vision Fund for any amounts recovered in respect of the Katerra Notes".

118. This led to the negotiation of draft legal agreements. This took place between Allen & Overy ("A&O") for the Greensill Group, Morrison and Foerster ("MoFo") for SBG, and White & Case for the Vision Funds.

119. A&O was initially instructed on 28 October 2020 to document an agreement "between SoftBank, the Vision Fund and Greensill". This later became the "Omnibus Deed" but was originally called the "Katerra Agreement".

120. On 4 November 2020 Mr Jamie Funder of A&O emailed Mr Grubb-Sharma of MoFo, saying:

> "On the transfer of the Katerra Notes to SVF, Greensill does not agree this position and is comfortable with the drafting suggested by SVF in the Katerra Agreement. SVF is putting Greensill in funds to the amount of $440m and Greensill will be able to use this to fund the buy back of the CS notes. That is why Greensill has the obligation to remit any funds recovered."

121. On 6 November 2020 Ms Briony Edwards, Legal Director (Corporate Affairs) at the Greensill Group, emailed Mr Grubb-Sharma of MoFo stating:

> "Greensill can reasonably agree to remit any recovered amounts within 21 days. We require this time because unwinding defaulted or cancelling existing notes requires unique actions by Clearstream, the Note Issuer SPV and by Citibank in its capacity as Security Trustee and Issuer - this will certainly take more than 3 days. Given the severe consequences of a breach (i.e. the first loss protection falls away) we need to build in a longer period of time. The loss of this protection would be cataclysmic for Greensill.
>
> Any recoveries will rest in the segregated Katerra Collection Account - which is the way the Greensill process works."

The 10 November 2020 agreements

122. On 10 November 2020 a number of agreements were entered into.

123. First, the $440m CLN, by which SVF II Wyatt Subco (Singapore) Pte. Ltd. ("SVF II Wyatt"), an investment vehicle of SVF2, subscribed to $440 million in convertible loan notes issued by GCPL.

124. Second, the Omnibus Deed between GCPL, GCUK, SBG, Mr Greensill and SVF II Holdings (Singapore) Pte. Ltd. ("SVF II Holdings"), an investment vehicle of SVF2.

125. Third, the SBIA Undertaking between SBIA UK and SBG.

126. Fourth, the Sale and Purchase Deed dated 10 November 2020 ("the LG Fair Loss SPA") under which GCPL (as trustee for the Lex Greensill family trust and as seller) sold to SBG, as purchaser, shares in GCPL. An amended and restated LG Fair Loss SPA dated 8 December 2020 was entered into whereby SBG agreed to a longer timeframe for absorbing the additional $50 million first loss and extended the crystallisation date to 15 May 2021.

127. Fifth, the Amendment Deed dated 10 November 2020 between GCPL and SVF Wyatt which amended the strike price of shares due to SVF Wyatt under a convertible loan

note issued by GCPL in September 2019 to $1,974.75 from $2,385.10. Recital (C) to the Amendment Deed recorded that this amendment was made "In consideration for [SBG] … agreeing to submit redemption requests on a delayed timetable in relation to its US$1,500,000,000 investment in [the Subfund]".

128. Sixth, the Letter of Undertaking under which GCPL and Mr Greensill agreed that GCPL would sell its corporate jets, failing which SVF2 would receive shares in GCPL.

The $440m CLN

129. The "BACKGROUND" section to the $440m CLN recorded that GCPL had "created US$440,000,000.00 of unsecured convertible Loan Notes".

130. Paragraph 3(c) of the Conditions to the notes at Schedule 2 to the $440m CLN provided that "On the Conversion Date, the Loan Notes shall be converted into 86,713 new F shares in the capital of [GCPL]". The conversion was subject to the "German Regulatory Condition" set out in paragraph 3(b).

The Omnibus Deed

131. The Omnibus Deed was concluded between GCPL (referred to as "Greensill" in the agreement), GCUK (referred to as "Greensill UK"), SBG, Mr Greensill and SVF II Holdings (defined as "Vision Fund II"). It recited inter alia:

> "(C) On or around the date of this Deed, a subsidiary of the Vision Fund II, SVF II Wyatt Subco (Singapore) Pte. Ltd., subscribed for US$440,000,000 in return for the issue of convertible loan notes which on conversion convert into 86,713 shares in Greensill (SVF II Loan Note). As part of the consideration provided by Greensill in respect of the SVF II Loan Note, Greensill will assume any and all losses in respect of the Katerra Notes and the Katerra Programme (each as defined below); and
>
> (D) In connection with Greensill assuming any and all losses in respect of the Katerra Notes and the Katerra Programme, SoftBank agreed to conditionally waive CDS Greensill First Loss 2020 – 2021 (as defined below) on the terms set out in this Deed and Lex Greensill agreed to enter into a sale and purchase deed with SoftBank on or around the date of this Deed (SPA) with respect to the sale and purchase of certain shares in Greensill."

132. Clause 2.1 provided that Mr Greensill, GCPL and GCUK agreed to release any claims against "SoftBank [defined as SBG], Vision Fund II, SVF Wyatt (Singapore) Limited and SB Investment Advisers (UK) Limited and each of their Related Parties" from obligations relating to:

> "(a) the Katerra Programme;

> (b) the Katerra Notes;
>
> (c) any credit default swap, guarantee or other credit enhancement in respect of or otherwise in so far as it relates to the Katerra Programme (or the failure by any of the Releasees to provide any such credit default swap, guarantee or other credit enhancement);
>
> (d) the contemplated joint venture between SoftBank and Greensill UK, occasionally referred to as Credition Global Limited, which SoftBank and Greensill UK discussed forming for the purpose of providing guarantees to Greensill UK and/or its affiliates in respect of financing transactions between, on the one hand, Greensill UK and its affiliates, and on the other hand, portfolio companies in which SoftBank and its affiliates are invested, including its formation or any of its contemplated activities".

133. Clause 4.2 addressed GCUK's liability to pay the "CDS Greensill First Loss 2020-2021", defined under clause 1.1(a) as the "annual first loss of US$100,000,000 payable by [GCUK] under the terms of Credit Enhancement Programme on or prior to 8 October 2021". It provided that: "[SBG] acknowledges and agrees that any amount payable by Greensill UK in relation to CDS Greensill First Loss 2020-2021 is hereby waived".

134. "Katerra Notes" was defined as "the notes issued by Hoffman S.a r.L, compartment MZ (which are backed by payment obligations originated under the Katerra Programme)".

135. "Katerra Programme" was defined as "the receivables financing programme provided by Greensill Limited as buyer and amongst others, Katerra Inc. as a seller under a receivables purchase agreement dated 9 December 2019 (as amended, restated and or updated from time to time)", i.e. the RPA.

136. Clause 2.4 provided that:

> "The Releasors shall acknowledge that [GCPL] has and shall bear sole liability and responsibility for any and all actual or threatened losses, costs or damages (howsoever arising) incurred by Greensill or any of its Related Parties (including, for the avoidance of any doubt but without limitation, Lex Greensill) arising out of, in connection with or relating in any way to the Katerra Programme, the Katerra Notes or any of the Released Claims."

137. Clause 3 provided that:

> "[GCPL] and [GCUK] shall and shall procure that each other Greensill Group Company shall:

> (a) account to the Vision Fund II or any subsidiary, affiliate or third party nominated by the Vision Fund II for any amounts recovered in respect of the Katerra Notes and/or Katerra Programme and promptly following receipt remit such amounts in immediately available funds to the Vision Fund II (or to such person nominated by Vision Fund II);
>
> (b) use its best endeavours to recover any amounts to which it or any Greensill Group Company is entitled to under the Katerra Notes and/or Katerra Programme;
>
> (c) recover under the Katerra Notes and/or Katerra Programme at least US$176,000,000 in the aggregate by 31 December 2020 and remit such aggregate amount to Vision Fund II (or to such person nominated by Vision Fund II) in immediately available funds by no later than 31 December 2020; and
>
> (d) promptly provide such documentation and information as SoftBank may reasonably request from time to time to monitor the performance of Greensill's and Greensill UK's obligations under this Clause 3".

138. Clause 11.1 provided that:

> "The Parties agree: (a) to keep this Deed, the existence of this Deed and the transactions contemplated by this Deed confidential".

The SBIA Undertaking

139. The SBIA Undertaking, in paragraphs A to D, referred to the Omnibus Deed, the $440 million CLN, the "Katerra Facility" (i.e. the RPA) and the conditional First Loss Waiver under the Omnibus Deed. Paragraph E provided:

> "In consideration for the First Loss Waiver granted by SBG and the entry into of the SVF II CLN by SVF II Subco, SBIA in its capacity as manager of SVF covenants to each of SBG and SVF II that it shall use its best efforts to procure that (i) Katerra Inc repays at least $176,000,000 in respect of the Katerra Facility to Greensill [defined as GCPL]; and (ii) [GCPL] or a member of the Greensill Group remits the entirety of the amounts recovered in immediately available funds to, or at the direction of, SVF II prior to 31 December 2020."

Use of the $440 million proceeds of the CLN

140. The $440 million paid pursuant to the $440m CLN with GCPL was paid into GCUK's general account on or around 10 November 2020.

141. GCPL did not use the $440 million to repurchase or redeem the Fairymead Notes. On 18 November 2020 Ms Sally Singer (Distribution team, Greensill Group Middle Office) sent an email to Mr Jesensky which stated:

> "we [Greensill] have cash from SB to repurchase Katerra, that cash is being used for other stuff, we will get another instalment from somewhere else, but that is paying off CS loan and other stuff".

142. On 27 November 2020 Mr Rob Sumara (Finance Partner, Greensill Group) sent an email to Mr Steve McElroy (Finance Team, Greensill Group) which stated: "seem to have gone through all the $440m intended for Katerra having only paid $70m toward it".

143. A&O (counsel to the Greensill Group) gave a later summary of the use of the $440m in an email in April 2021 as follows:

> "$250m was paid to GB to hold against collateral against re GFG positions. The balance was used in a combination of (i) transient "asset purchase liquidity" e.g. $70m was used on 25 Nov 20 to purchase assets on GCUK's B/S until 16 Dec 20 when the money was returned via sales and maturities of the assets, and (ii) "operational liquidity" for GCUK to fund monthly opex $35 million pcm) until administration on 12 Mar 21."

Further developments in November 2020 concerning the Katerra Group

144. On 12 November 2020 Greensill entered into a Third Standstill and Forbearance Agreement with the Katerra Sellers.

145. Later in November 2020 the New Money Consortium withdrew. On 18 November 2020 Mr Housenbold emailed Mr Misra, Mr Romeih and others stating:

> "Not good news - Just off the phone with the new money consortium and a subsequent board meeting. The new investors did a typical private equity play and dramatically changed the deal for the worse. Management plus Kirkland & Ellis + Alvarez & Marsal + my team are going to take the next 24 hours to identify the options, conduct a cost/benefit analysis and then I will make a recommendation".

146. On 22 November 2020 Mr Romeih advised the other limited partners in SVF1 (the Kingdom of Saudi Arabia's Public Investment Fund ("PIF"), and the Emirate of Abu Dhabi's Mubadala) that the "new money consortium has fallen through" but that SBIA had an alternative solution which it would share "ASAP" on a Zoom call organised for 1.00 pm that day.

147. SBIA's Mr Hatim Sukhla summarised the proposed amended deal structure in his email of 22 November 2020:

> "Two days ago the new investor consortium walked away from the contemplated transaction (as a reminder they had committed a $180M investment alongside SVF1's $200M that was approved by IC on Nov. 5th).
>
> …
>
> The new deal structure we are contemplating is largely identical to the original deal, except with SVF2 investing $180M instead of the new investor consortium, alongside SVF1's $200M."

148. Mr Sukhla noted that "we … will imminently require new functional approvals, IAB consent and IC approvals" for the planned investment.

149. On 21 November 2020 Mr Cheung sent an email to Mr Misra, Mr Romeih, Mr Fan and others updating them on the proposed investment by SVF2, and indicating that discussions had taken place with Mr Greensill regarding an equity contribution from GCPL to "sweeten the deal".

150. On 23 November 2020 Mr Greensill and Mr Romeih of SBIA exchanged a series of WhatsApp messages. Mr Greensill stated that "Tom Cheung indicated that Masa [Son] and Rajeev [Misra] have reached agreement". They arranged a Zoom call to discuss. Mr Greensill asked: "Saleh, are we approved to engage with Katerra re a 100% write off? Their legal team is chasing us?". Mr Romeih replied: "No. Not yet. Let me revert please."

151. On the same day Mr Romeih had discussions on WhatsApp with Mr Faisal Rehman of SBIA. Mr Romeih asked Mr Rehman, "How do you see the Greensill structure?". Mr Rehman replied:

> "Amend original CLN Only amendment is to add more warrants (from the 180m new deal). No other change. That gets executed between V2 and G.
>
> K&G enter into a separate debt settlement deed which effectively settles G 's claim over K @ 40c in full and final settlement of the $440m.
>
> K and V1 and K and V2 enter into two separate shareholder agreements / subscription agreements for 200m and 180m respective and for 51% and 34% ownership respectively.
>
> V1 and V2 Fund K and K gives 176 to G and G gives 176 to V2.
>
> At G's end, they take the 440 originally given to them by V2 to buy out the note from CS fund at par.
>
> All of the above will occur contemporaneously."

152. Notes of a "Senior group call" on 27 November 2020 included, "SVF 2 buy note from Greensill, then between SVF 2 and K to handle forgiveness of warrant for 5%".

153. A spreadsheet disclosed by the SBDs dated 25 November 2020 referred to a "change in structure" and stated:

> "concern with fraudulent conveyance – can claw stuff back from greensill; did you benefit greensill vs all other lenders
>
> when we put in 380
>
> and take 175 out of K and into G
>
> if K goes bk
>
> under US regulations, bankruptcy court can go back 2 years
>
> SVF1 invest 200 into K
>
> SVF 2 invest nothing into K
>
> SVF 2 just amends CLN to wipe out 176
>
> in exchange for that greensill issues 54505
>
> kept 2 transactions separate
>
> left with problem, SVF 2 now not getting equity in K
>
> effectively all warrants in svf 2
>
> if greensill is forgiving loan
>
> if svf 2 is forgiving loan
>
> why not svf 2 buyout k loan via greensill from CS fund outright
>
> then forgives loan from K
>
> then gets equity from K
>
> without putting money into K
>
> if clawback just that of equity".

154. It was common ground that the risk referred to concerned the potential application of clawback provisions under US bankruptcy law in the event of a bankruptcy of the Katerra Group.

155. Mr Wheeler of SBIA set out the proposed revised steps in an email of 29 November 2020 to Mr Greensill, Mr Lane and Ms Edwards of the Greensill Group:

> "· CLN Amendment. Greensill agrees to amend existing US$440M convertible loan note (CLN) with SVF II to increase the number of shares into which the CLN is convertible into. The

amended CLN will be convertible into an aggregate of [141.218] F class shares.

· Cancellation of Obligation to Repay $176m SVF II agrees to cancel Greensill's obligation to repay US$176M of any proceeds acquired from the Katerra facility [i.e. the RPA].

· Cancellation of Katerra Facility Greensill agrees to forgive and terminate existing US$440M existing loan facility with Katerra.

· Issuance and Transfer of Katerra Warrants. Katerra agrees to issue to Greensill, warrants exercisable for a number of shares equal to 5% of the fully-diluted ownership in Katerra and Greensill agrees to transfer such warrants to SVF II."

156. Mr Lane replied to Mr Wheeler by email on the same day:

> "All of that fits with our previous understanding of the deal, save the last Katerra equity issuance which we only leaned about on yesterday's call.
>
> I don't think we have any objection in principle of this pass through of the 5%, but clearly we need to get our external counsel engaged to understand fraudulent conveyance risk and also our finance/tax team to assess for accounting/tax hair."

157. The proposed further equity acquisitions in the Katerra Group required approval under the U.S. Hart-Scott-Rodino Antitrust Improvements Act (known as "the HSR Act", or "HSR Approval").

SVF1's bridge loan to the Katerra Group

158. In an email from Mr Sukhla of SBIA to Mr Krishna Shivram (Chief Financial Officer of the Katerra Group) on 25 November 2020 Mr Sukhla explained:

> "Krishna – we have learned from counsel that the FTC is backed up on HSR filings, and even with early termination requested (typically clears in ~15 days), it will likely require the full 30-day waiting period before we have clearance to fund/close (i.e. end of year). Given that, wanted to get your input on the bridge sizing need; please let us know your thoughts. …"

159. In reply to Mr Sukhla on 25 November 2020, Mr Shivram stated:

> "The sizing of the bridge is still the same ie $25m which will take us to Dec 11, while preserving our ability to make an orderly filing without DIP financing if needed. As the contemplated HSR process is likely to push closing towards the end of the year, we will need an additional $25m on Dec 14th to take us to year end while still preserving the ability to make an orderly filing without DIP financing. So, in summary we need 2 tranches of funding: $25m by Monday 11/30 and another $25m by Monday

> 12/14. Any shortfall in this funding will expose us to an uncontrolled filing in the event we cannot close the funding and cannot be supported by management."

("DIP financing" refers to the financing of a bankrupt debtor in possession in a bankruptcy under Chapter 11 of the US Bankruptcy Code.)

160. Mr Sukhla replied to Mr Shivram the same day. He explained that it had been discussed that "a bridge loan provided by SB would need to be backed by company assets" and said:

> "Thanks for the update, Krishna. I'm surprised to hear that the collateral issue is news as I believe Jeffrey Housenbold mentioned several times on recent calls that a bridge loan provided by SB would need to be backed by company assets; unfortunately we are unable to fund this on an unsecured basis".
>
> "I have raised the CLT factory lien issue to senior leadership at SB, who have committed to discuss directly with Lex once we have secured IC approval for the larger transaction (hopefully in the next day or so). Will keep you all posted as soon as that happens, but what would be helpful in the interim (we have asked Weil to work with K&E on this), is to get a precise list of steps, documents, approvals, etc. that will be required for Greensill to release its lien on the CLT factory in a timely manner. It would be great if we can serve this up to Lex & his team to streamline as efficiently as possible."

161. Mr Shivram responded on 25 November 2020 with a suggested order of events:

> "1. Work with Greensill to get the CLT lien released. This has to happen very quickly to provide you with the collateral you need.
>
> 2. Fund the first bridge.
>
> 3. Get IC approval for the deal.
>
> 4. Immediately file for HSR clearance (to start the 30 day clock)
>
> 5. Fund the second bridge; get clearance from Wolff on the releases etc
>
> 6. Close and fund once HSR approval is received."

162. On 28 November 2020 a message sent from Mr Carpus Tin to Mr Sukhla (both of SBIA) set out a timeline for the immediate bridge loan and the subsequent restructuring of the Katerra Group's debt:

> "Immediate
>
> • Greensill waives covenant for Katerra to pledge

> • SVF accepts 2nd lien on CLT factory and funds bridge loan on Monday
>
> Medium Term (TBD)
>
> • Greensill to release security interest of CLT collateral
>
> • SVF / Katerra to perfect CLT collateral
>
> 2-3 weeks
>
> • Greensill will cancel the $440M facility
>
> • Katerra will issue warrant of 5% FDSO to Greensill
>
> • Greensill will then give the warrants to SVF 2."

163. On the same day, 28 November 2020, the proposed plan was shared with the Greensill Group. An email from Mr Norman Ho (Vice President, Legal, SBIA) to Mr Lane, Group Counsel for the Greensill Group, recorded:

> "As you are aware, we are sprinting on the Katerra side of things to get funding into Katerra by way of a secured note. The main asset that we would like to secure against is Katerra's CLT facility, which has been pledged by Katerra to Greensill in connection with the Greensill-Katerra facility. On today's call, the principals confirmed that Greensill would be ready to assist and release its security interest on the CLT facility in connection with SVF's funding into Katerra.
>
> To that end, we plan on communicating the same to Katerra's counsel (K&E) who would then reach out to Greensill to start coordinating. The goal is for us to fund on Monday which is aggressive but being driven by Katerra's current cash position. Please let us know if you have any concerns with this approach or if there are particular individuals in addition to yourselves that we should have K&E include on the outreach."

164. On 1 December 2020 three agreements were executed:

i) The Katerra Bridge Note, which provided that Katerra Cayman "hereby promises to pay to the order of [SVF Abode] or its registered assigns … the principal sum of Twenty-Five Million Dollars ($25,000,000)". Under clause 2.1, the principal of the Note fell due on the Maturity Date, defined under clause 1 as 6 June 2021 or earlier Event of Default. Under clause 6.4, Katerra Cayman and SVF Abode agreed that the provision of the Note and other Financing Documents would create an "enforceable security interest in and Lien upon the Collateral". The Collateral was defined under clause 1 as holding the meaning determined in the "Security Agreement", which was in turn defined under clause 1 as the "Security and Guaranty Agreement" of even date between the parties to the Katerra Bridge Note.

ii) The Katerra Bridge Security Agreement, being the Security and Guaranty Agreement referred to in the Katerra Bridge Note. The Katerra Bridge Security Agreement was signed on behalf of SVF Abode (as the Secured Party) and Katerra Cayman, together with other parties as "Grantors": each of the Katerra Sellers either signed the Katerra Bridge Security Agreement as Grantors, or provision was made for them to accede to it by joinder within 5 business days. The security expressly excluded the Collection Accounts as defined in the RPA, and Purchased Receivables as defined in the RPA.

iii) The Security Release Agreement, between GL and the Katerra Sellers, by which GL agreed to release "all liens on all assets of the Sellers created or existing under the [RPA] or any related documents or instruments (other than liens on the Purchased Receivables, including as described in those certain UCC-1 filings made in connection with the perfection thereto)", and to "file or execute documentation requested by any of the Sellers to evidence such release upon request".

SVF1's, SVF2's and the Greensill Group's approvals following the withdrawal of the New Money Consortium

165. An email on 1 December 2020 from Ms Cristina Manandhar of SBIA to Mr Magata Yoshimasa of SBG stated that "Rajeev and Saleh provided their approvals yesterday" to "the Greensill update".

166. On 1 December 2020 Ms Amanda Sanchez-Barry of SBIA stated in an internal email that Mr Masayoshi Son "recused himself from the Greensill SVF 2 reapproval vote (in addition to the SVF 1 pass recommendation) and Saleh and Rajeev thought this was more appropriate".

167. As for Greensill, an email from Mr Lane on 3 December 2020 stated that the following day there would be a GCPL Board meeting to discuss "a single agenda item: Katerra and the issue of related shareholder resolutions to effectuate the extra equity issuance."

168. SBIA's Tom Cheung and Hayley Chan were invited by the Greensill Group's Jonathan Lane on 3 December 2020 to recuse themselves from that meeting, and they did so.

169. GCPL's Board meeting on 4 December 2020 approved the variation to the Omnibus Deed to remove the obligation to recover and remit $176 million from the Fairymead Notes and/or the Katerra Programme. It so resolved "having regard to the overall benefit the Company would derive".

170. The Greensill Group's presentation of "Key Credit Exposures" for the month-end November 2020 dated 27 December 2020, which Thomas Daula of SBIA emailed to himself on 29 December 2020, reported that "In December, we … expect to exit or materially reduce our position in … Katerra within 1Q." It continued: "We have agreed to maintain the facility at its current outstandings of USD440mm. We have agreed with Softbank a solution whereby Greensill has the ability to exit from this position without loss. Until that restructuring is effected, we will continue to fund the company up to this amount as receivables come due once a month. Katerra has sufficient liquidity to maintain operations into 2021."

Documenting the agreements

171. On 28 November 2020 a draft Amended Omnibus Deed and draft Amended $440m CLN were circulated by Ms Edwards to Mr Cheung and others at SBIA. She explained the "key changes reflected in the documents":

> "Amended and Restated Omnibus Deed
>
> • Removal of reference to the value of Vision Fund II CLN. We do not wish to attribute a benefit to the grant of additional shares to any one single event. This would require Greensill to have to value such event which could have P&L consequences.
>
> • Deletion of Greensill's obligation to repay USD 176m and the inclusion of general language to make recoveries for amounts received pursuant to the Katerra programme to the extent any are received."

172. On 3 December 2020 Ms Edwards emailed Ms Chan and others at SBIA in an email with the subject "Katerra settlement", stating "[f]urther to our call last night, I can confirm that we have circled round internally and there are no issues with a delay to entering into the debt settlement arrangement".

173. On 4 December 2020 Mr Tin emailed Mr Housenbold in an email with the subject "Katerra – Board consent (SB Bridge financing)" stating under the heading "Transaction steps" that: "Wolff will be able to get the releases and MFN amendment done by December 15, after which HSR is the remaining gating item".

174. On 12 December 2020 Katerra, SVF Abode (Cayman) Ltd and Wolff Principal Holdings LP signed a "Summary of Indicative Terms for Settlement of Claims" which contemplated "[a] single instrument executed by each of the Parties, waiving and amending applicable provisions in each of the…prime construction contracts for each of the Active Projects and Completed Projects, as amended from time to time". The "Conditions Precedent" included:

> "To include contemporaneous investment by SVF Abode (Cayman) Limited ("SVF") of $175 million in cash and the extinguishment of $25 million of indebtedness of Katerra Inc. ('Katerra') owed to SVF under the Promissory Note, dated December 1, 2020, issued by Katerra to SVF in exchange for a new class of preferred shares, the conversion of all preferred shares outstanding as of the date hereof into common shares, the extinguishment of $440 million principal amount of indebtedness of Katerra and certain of its subsidiaries owed to Greensill Limited in exchange for preferred shares being issued to Greensill Limited that are the same as those being issued to SVF and equal to [5% of the fully-diluted equity], and an aggregate of 5% of the fully-diluted equity will be made available to certain existing investors in Katerra…who will provide a release and enter into customary shareholder arrangements, with the specific security, shareholder

> arrangements, identity and eligibility of the Existing Investors to be agreed among Katerra, SVF, Wolff Principal Holdings, LP and controlled affiliates ("Wolff")."

175. On 15 December 2020 a draft of the CEA was sent by email by Mr Brendan Franich, General Counsel at the Katerra Group, to the Greensill Group's internal lawyers, Mr Chuck Bronowski and Ms Mireia Just, copying in lawyers at Kirkland & Ellis.

176. Mr Franich sent an email on 22 December "checking back on this one and by way of update", attaching the draft CEA and stating:

> "Katerra received HSR clearance, and so we should be set to close as early as this Thursday (but more likely early next week). Would you let us know if you have any comments or concerns on the attached document? And otherwise, could we discuss logistics on Greensill's execution and delivery of the attached - ideally, we would get your signature page in the next day and hold it in escrow, subject to automatic release on the closing with SoftBank."

Signing of the CEA and TA and placing them in escrow

177. The Greensill Group's Mr Bronowski provided the signature pages to the CEA and the TA, signed by Mr Lane, on 24 December 2020, requesting that they be held "in escrow pending our release". SBIA's Mr Wheeler signed the TA on the same day for a sub-fund of SVF2.

Further agreements executed in December 2020

178. On 23 December 2020 SVF II Wyatt, SVF Wyatt and GCPL entered into an "Amendment Deed", being the Amended $440m CLN.

179. The recitals to the Amended $440m CLN recorded that on 10 November 2020, GCPL had entered into the $440m CLN, and the Amendment Deed with SVF Wyatt (defined in the Amended $440m CLN as "Vision Fund I").

180. Clause 2 provided:

> "On and from the date of this Deed, paragraph (c) of Condition 3 of Schedule 2 of the November 2020 Convertible Loan Note Instrument shall be modified by deleting the words "86,713 new F Shares" and replacing them with the words "141,218 new F Class Shares".

181. Clause 3 related to the Amendment Deed between GCPL and SVF Wyatt which had provided for an increase in the strike price of shares due to SVF Wyatt under a convertible loan note issued by GCPL in September 2019. Clause 3 provided for the amendment to Recital (C) of the Amendment Deed.

182. On 23 December 2020 the Amended Omnibus Deed was entered into by GCPL, GCUK, SBG, Mr Greensill and SVF II Holdings.

183. Recital (B) to the Amended Omnibus recorded that the parties had agreed to amend the Omnibus Deed entered into on 10 November 2020.

184. Under clause 2, the amendment to the Omnibus Deed was set out in Schedule 1, which contained an amended and re-stated copy of the Omnibus Deed.

185. The Amended Omnibus Deed included a change to clause 3, which now provided that:

> "To the extent a Greensill Group Company, after 10 November 2020: (i) recovers any amounts to which it or any other Greensill Group Company is entitled under the Katerra Programme from any other party other than SoftBank Vision Fund LP, Vision Fund II or SoftBank; or (ii) receives as consideration any equity interest or instruments convertible into an equity interest in Katerra Inc., Greensill and Greensill UK shall procure that such Greensill Group Company promptly remits any such amounts, equity interest or instruments convertible into an equity interest to Vision Fund II."

The CEA

186. On 30 December 2020 GL, Katerra Cayman, Katerra Delaware and the rest of the Katerra Sellers entered into the Contribution and Exchange Agreement, or CEA.

187. The CEA provided for GL to release its indebtedness to Katerra Delaware under the RPA and other Transaction Documents as defined under the RPA (the "Greensill Indebtedness"), in exchange for 762,144 shares in Katerra Cayman.

188. Under clause 1, GL contributed the Greensill Indebtedness to Katerra Cayman in exchange for "the Consideration":

> "First Contribution and Consideration. Greensill hereby contributes, transfers, assigns and delivers to the capital of [Katerra Cayman], and [Katerra Cayman] hereby accepts, assumes and receives from Greensill, the Greensill Indebtedness. In exchange for the Contribution, [Katerra Cayman] hereby agrees to provide the Consideration."

189. The recitals provided that the "Consideration" was that set out in Exhibit A, being "762,144.0 shares of the Series A Preferred Stock of [Katerra Cayman]."

190. Clause 2 provided:

> "Second Contribution. Immediately upon completion of the First Contribution, [Katerra Cayman] shall contribute, transfer, assign and deliver to the capital of Katerra Delaware, and Katerra Delaware hereby accepts, assumes and receives from [Katerra Cayman], the Greensill Indebtedness."

191. Clause 3 provided:

> “(a) the aggregate amount of the Facility Obligations (as defined in the Receivables Purchase Agreement) and all other monetary obligations under the Greensill Finance Documents shall be deemed indefeasibly paid and discharged in full;
>
> (b) all commitments to extend credit to the Company, Katerra Delaware and each Seller under the Greensill Finance Documents shall be automatically terminated;
>
> (c) all other obligations of Greensill, the Company, Katerra Delaware, each Seller and its respective subsidiaries and affiliates under the Greensill Finance Documents or any other documents between the parties shall be indefeasibly released, discharged and terminated in full and have no further force or effect; and
>
> (d) each of the Greensill Finance Documents and any other documents between the parties shall be automatically cancelled, terminated and of no further force or effect.”

192. Clause 7 provided:

> “Security. Upon, and effective as of, the time of receipt by Greensill of the Consideration in the manner described above (such time being referred to as the “Effective Time”) and not withstanding anything in the Greensill Finance Documents to the contrary:
>
> > (a) Greensill will promptly deliver any possessory Security (as defined below) held by it to the Company (or such other person specified by the Company in writing); and
> >
> > (b) all guarantees, security interests, mortgages, pledges and other liens granted to or held by Greensill as security for the obligations under the Greensill Finance Documents (any and all such guarantees, security interests, mortgages, pledges and other liens granted by the Company, Katerra Delaware, each Seller or any of its or their respective subsidiaries and affiliates in favor of Greensill, collectively, the “Security”) shall be automatically, and without the need for any further action or approval, forever satisfied, released and discharged. …”

193. Clause 8(a) provided that GL (on behalf of itself and its affiliates, together the “Greensill Releasors”) released and discharged all claims which they “ever had, now has, or which any successor or assign of such Greensill Releasor hereafter can, shall, or may have” against Katerra Cayman, Katerra Delaware and their affiliates from all claims, save for limited exceptions.

194. Clause 9(e) provided that "as of the date hereof, Greensill shall have no further commitment or obligation to fund or purchase any Receivables under the [RPA]".

The TA

195. On 30 December 2020 GL and SVF II Abode entered into the TA. By this GL agreed to transfer the 762,144 shares in Katerra Cayman it had received under the CEA to SVF II Abode.

196. The Recitals to the TA recorded that GL had received 762,144 Series A Preferred Shares in Katerra Cayman under the CEA also concluded on 30 December 2020.

197. Clause 1 of the TA provided for the transfer of the Katerra Cayman shares held by GL to SVF II Abode (defined as "SVF II"):

> "Transfer of Shares. Effective immediately upon receipt thereof, Greensill hereby transfers, assigns and delivers to SVF II, and SVF II hereby accepts from Greensill, the Shares (the "Transfer"). Greensill acknowledges that from and after the completion of the Transfer on the Effective Date, Greensill no longer owns any Shares and, with respect to any such Shares that it held prior to the Effective Date, Greensill no longer has any rights whatsoever, as a shareholder of the Company or otherwise".

Further investments in Katerra Cayman by SVF1

198. On 29 December 2020 SVF1 made a further investment in Katerra Cayman through its investment vehicle, SVF Abode, under a Warrant Exercise and Conversion Notice, "the SVF Abode Warrant".

199. The SVF Abode Warrant referred to:

i) The "Promissory Notes", defined in the recitals as two convertible promissory notes, dated as of 26 June 2019 (amended on 11 May 2020) and 24 August 2020, with principal amounts of $200 million and $100 million respectively.

ii) A "Warrant", defined as a Warrant to Purchase Ordinary Shares issued on 11 May 2020. This document:

a) Was executed in favour of SVF Abode by Katerra Cayman; and

b) Provided that SVF Abode may "exercise this Warrant … for up to 61,334,642 Ordinary Shares" (under clause 2.1), with payment for the Warrant shares upon exercise to be capable of being paid, among other ways, by "cancellation of indebtedness of [Katerra Cayman]" to SVF Abode (under clause 2.2(c)).

200. The SVF Abode Warrant provided for a subscription to 61,334,642 Ordinary Shares in Katerra Cayman, in exchange for a reduction in the principal amount due under the Promissory Note dated 26 June 2019 of $613,346.42.

201. Clause 1(a) provided:

> "Exercise. In accordance with Section 2.1 of the Warrant, Holder hereby delivers to the Company the executed subscription form attached hereto as Exhibit A, pursuant to which Holder elects to purchase 61,334,642 Ordinary Shares (as defined in the Warrant) in exchange for the surrender of the Warrant (the "Warrant Exercise"), and contingent upon the issuance of such Ordinary Shares, Holder hereby surrenders the Warrant".

202. "Ordinary Shares" were defined in the recitals to the Warrant as shares in Katerra Cayman.

203. Clause 1(b) provided for Payment under clause 2.2(c) of the Warrant to be "through the reduction in the principal amount of the 2019 Promissory Note in the amount of $613,346.42".

204. There was provision for the conversion of the remaining amount due under the Promissory Notes, stated to be $330,515,803.23, to 101,360,341 Series F-2A Preferred Shares in Katerra Cayman, under clause 2(a):

> "Conversion Notice. Pursuant to Section 6.1 of the 2019 Promissory Note and Section 7.1 of the 2020 Promissory Note, Holder [SVF Abode] hereby exercises its conversion right as to each of the Promissory Notes and elects to convert the amount due under the Promissory Notes, equal to a total of $330,515,803.23 (the "Payoff Amount"), in exchange for 101,360,341 shares of the Company's [Katerra Cayman's] Series F-2A Preferred Shares, par value $0.0001 per share, to be issued to Holder (the "Conversion")."

205. The SVF Abode Warrant also provided:

> "… the transactions contemplated by this Letter Agreement shall be effective as of the date hereof; provided that should the Transaction (as defined in the LOI) not occur within five (5) days from the date thereof, this Letter Agreement and the transactions contemplated hereby shall be void and ineffective".

206. The "Transaction" was defined in the "LOI" (being the letter of intent dated 30 November 2020) as "the purchase of a majority interest in [Katerra Cayman]".

The Preferred Share Purchase Agreement

207. On 30 December 2020 SVF1 made a c. $200 million investment in Katerra Cayman through its investment vehicle, SVF Abode, under the Preferred Share Purchase Agreement ("PSPA").

208. Pursuant to the PSPA, SVF Abode subscribed for 11,416,921 Series A Preferred Shares in Katerra Cayman exchange for $174,922,250 in cash, and $25,000,000 by

way of a contribution to Katerra Cayman of the indebtedness owed to SVF Abode under the Katerra Bridge Note.

209. Clause 1.1(b) of the PSPA provided:

> "the Purchaser [SVF Abode] agrees to purchase at the Closing, and the Company [Katerra Cayman] agrees to sell and issue to the Purchaser [SVF Abode] an aggregate of 11,416,921 Series A Preferred Shares, US$0.0001 par value per share (the "Series A Preferred Shares" or the "Shares") for the aggregate purchase price of (i) US$174,922,250 in cash and (ii) US$25,000,000 in the form of the contribution to the Company [Katerra Cayman] of the indebtedness subject to that certain Promissory Note, dated December 1, 2020, issued by the Company [Katerra Cayman] to the Purchaser [SVF Abode] (the items in (i) and (ii), the "Purchase Price")".

210. Clause 4 provided that "[o]n or before the Closing the Company shall complete or cause to be completed the following transactions". These included, at clause 4.11, the delivery of the CEA.

The SVF Habitat Share Subscription

211. Also on 30 December 2020 SVF1 made a further investment of $77,750 in Katerra Cayman by its investment vehicle SVF Habitat. On that date, SVF Habitat and Katerra Cayman entered into an Ordinary Share Subscription Agreement, the SVF Habitat Share Subscription. Clause 1 provided:

> "Subscription. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby issues and sells to, and the Purchaser hereby purchases, 7,775 Class C Ordinary Shares of the Seller, par value $10 ("Class C Ordinary Shares"), for the sum of $77,750 (the "Subscription")."

The Vision Funds' stake in the Katerra Group

212. The effect of the various agreements entered into in December 2020 was that the investment vehicles of the Vision Fund Defendants owned close to 100% of the issued equity in Katerra Cayman. By 6 July 2021 99.6% of Katerra Cayman's equity (Series A Preferred shares) was held by the Second to Fourth Defendants as investment vehicles for the Vision Funds, as follows:

i) SVF Abode held 11,420,798 Series A Preferred shares, amounting to 93.65% ownership;

ii) SVF II Abode held 762,144 Series A Preferred shares, amounting to 6.25% ownership; and

iii) SVF Habitat held 7,775 Series A Preferred shares, amounting to 0.06% ownership.

November to December 2020: developments concerning the Fairymead Note Programme

213. On 24 November 2020 Mr Greensill agreed with Mr Degen that the Greensill Group would buy back $70 million of notes in the Fairymead Note Programme due to mature on 15 December 2020.

214. This was settled on 25 November 2020. These trades were booked as secondary trades, with the trade date on 24 November 2020 and settlement on 25 November 2020.

215. There was also a transaction for the buyback and re-issue of the Fairymead Notes. An email from Ms Just to Mr Lane of 4 December 2020 stated:

> "As mentioned earlier today, we spoke to Katerra's CFO:
>
> 1. They do want to sell receivables on the 15th of December. They believe they will have sufficient AR volume to do a full roll and have requested that we shorten the buffer period to 0, so all the receivables become due on the 15th of January
>
> a. They added that our facility should be terminated before the 15th of January
>
> 2. They explained that in addition to the USD50mm note (for which we released our real estate security this past weekend), Softbank is going to inject USD150mm of equity into Katerra by the end of December
>
> a. The timing of this injection is what is driving their willingness to roll receivables until January
>
> 3. We asked what's the status of the pay off and whether Kirkland/Katerra would be sending a revised pay off letter (we didn't mention any %, and instead asked to see what they said). They didn't mention any specific % on the call and said they were due to speak to Softbank counsel to gather information later today
>
> a. Right now we just got the attached email from the CFO saying that Kirkland/Katerra will not be sending us any pay off letter?? and that the termination will be handled entirely between Greensill and Softbank…. ??? I don't think this makes sense at all. For a termination to occur, we need both parties of the agreement, lender and borrower to sign the termination letter particularly if it is committed."

216. An email sent from Ms Just to Mr Bronowski and others on the Greensill Group "Watchlist Committee" on 17 December 2020 sought approval for a portion of existing maturity dates in "the Katerra facility" (i.e. the RPA). It stated:

> "Katerra is in the process of restructuring and this exercise is likely to be finalized in early 01 2021. For conservative

> measures, Greensill and the company would prefer that the notes maturing in January and February next year are pushed to March.
>
> There are currently 70 notes maturing in January and February for an aggregate maturity amount of USD363mm (see spreadsheet attached). We request approval to extinguish those notes and issue a new set of notes that mature on 15-Mar-2021. In order to do this, Katerra would submit a request to update the buffer period of the related purchased receivables. The outstanding facility amount will remain unchanged. We are in coordination with Trading, Operations and Legal, and the plan is to bring this to completion before 31-December-2020."

217. Ms Just asked Mr Jenesky to agree this proposal with CSAM by email on the same day:

> "Ivan - Katerra is asking to amend the buffer. You need to tell CS this is really operational. If we could change existing notes, we would. But we cant. So we need to cancel and reissue. There is no exposure increase other than intraday."

218. On 18 December 2020 GL entered into two Side Letters with Katerra Delaware, amending and restating the "Buffer Period" applicable to specific Purchased Receivables.

219. On 22 December 2020 68 outstanding notes with an aggregate value of approximately $363 million were redeemed early and replaced by new notes with longer maturity dates. This was a consequence of the modifications agreed between the Greensill Group and Katerra Delaware to the "Buffer Period" applicable to the Purchased Receivables. It also meant that the Greensill Group recovered the $70 million it had used to fund the repurchase of Fairymead Notes in November 2020. The effect was that the SCF Subfund held a beneficial interest in notes with an aggregate value of $439,999,710, with the primary maturity date being 15 March 2021 and the balance maturing on 17 May 2021.

December 2020 – March 2021: Financial position of the Greensill Group

220. On about 8 December 2020 Mr Greensill was contacted by BaFin, which expressed the view that the Greensill Group should accelerate the reduction of its exposure to a group of companies known as GFG (associated with the Gupta family). Minutes of a GCPL meeting of 31 December 2020 recorded that:

> "on 8 December 2020 BaFin had communicated that it required an acceleration of the reduction in exposure to the GFG group in a manner, which in the group's view, was not sustainable. In summary, for every $100 of GFG receivables due to be rolled over BaFin required that only $25 be rolled over (i.e. a 75% reduction in exposure)."

221. As noted above, TDR Capital had been leading the investors who had expressed indicative interest in the proposed IPO of the Greensill Group. The 31 December 2020 GCPL Board minutes recorded that:

> "LG further explained that he had spoken to the head of bank supervision at BaFin on 15 December 2020. [He had explained that the request for further acceleration of the GFG exposure had had to be disclosed to equity investors and the uncertainty meant that TDR, which was planning to provide $350m of equity and to bring along another investor which would provide £150m of debt and $50m of equity, would not proceed with the investment.] …
>
> LG said that he had found out the impact of the BaFin discussions on TDR's investment on 23 December and had immediately contacted Softbank (as a significant current shareholder) to discuss whether it would be prepared to provide a bridge facility …
>
> LG explained that he had also had further conversations with TDR. TDR had said that it could consider investing in the group at a lower valuation provided the position with BaFin had been clarified. LG had considered that this was a viable proposition and proposed to have further discussions with TDR and SoftBank on Monday and Tuesday next week."

222. On 23 December 2020 Mr Greensill enquired of Mr Misra whether the Vision Funds might be prepared to agree a bridge facility of $1.5 billion.

223. An SBIA document entitled "Greensill Update – 27 Dec 2020", stated that "German regulator BaFin has mandated that Greensill Bank (GB) reduce its concentrated exposure to GFG Alliance of $2.05bn down to US$600M by 31 Dec 2020". It further stated that: "Bridge facility US$1.5B proceeds to be used to effectively "cash secure" exposure to GFG Alliance at Greensill Bank until GFG can repay the principal outstanding under the notes" and "US$628 is needed immediately to comply with BaFin's mandate".

224. As already noted, on 31 December 2020 there was a Board meeting of GCPL. SBIA's representatives attended as observers of the GCPL Board. The minutes stated that:

> "… LG had been informed this morning that Softbank was not prepared to provide a bridge facility. It was, however, prepared to consider making a further equity investment of up to $250m provided it was alongside investments from other parties. In explaining its decision, Softbank had noted that it had provided support on a number of previous occasions. Softbank had also noted that its investment was made solely through the SoftBank Vision Fund and if it was to cross a 50% threshold in terms of equity ownership it would need to consolidate Greensill Bank AG, which was a red line."

225. Ms Katrina Buckley, A&O's Head of European Insolvency and Restructuring, and Ms Chris Laverty, of Grant Thornton, attended the 31 December 2020 GCPL Board meeting. The 31 December 2020 GCPL Board minutes stated that:

> "5.2 The directors noted and carefully considered the following matters and material for the Company:
>
> (a) The most recent annual financial report as audited by the Company's auditors;
>
> (b) The most recent half-year financial report;
>
> (c) The most recent monthly management accounts;
>
> (d) The most recent … month cash-flow report for the Company;
>
> (e) The report from management of the Company confirming that (i) there are no outstanding overdue money judgments or letters of demand against the Company, and (ii) there are no material creditors of the Company whose debts are outside of normal trading terms;
>
> (f) The Company and its English subsidiary, GCUK, are conducting capital raising in order to further fund the business activities of the Company and its subsidiaries as referred to in an earlier part of the meeting.
>
> 5.3 Having had regard to the above matters and material including the verbal update provided by NG as to the Company and the group's financial position, it was resolved that in the view of the directors the Company is presently solvent, and that for the Company to continue to trade (and incur debts) in accordance with the cash-flow forecast set out above, it will not become insolvent. ….
>
> 5.4 The directors further noted that negotiations with government authorities in relation to the conduct of the business of the Company's German subsidiary, Greensill Bank AG, were ongoing, and that those negotiations were potentially adverse to the trading position of Greensill Bank AG and to the capital raising set out above.
>
> 5.5 Having regard to the matters in paragraph 5.4, it was resolved that, while the directors do not presently consider or suspect that the Company is or may become insolvent, out of prudence the directors recognise a risk that it could be reasonably suspected that the Company may become insolvent in the future, if the matters in paragraph 5.4 do not resolve favourably for the Company and its subsidiaries.
>
> […]

> 6.3 It was resolved that, noting the resolution in paragraph 5.5 above, the Company would immediately commence development (and then implementation) of a plan for the restructuring of the Company to improve its financial position (Restructuring Plan).
>
> 6.4 The directors noted that proceeding with the capital raising and negotiation with government authorities set out in Section 3 was an initial step in the Restructuring Plan.
>
> 6.5 It was resolved that the Company would appoint partners of Grant Thornton in the UK and Australia with expertise in restructuring and turnaround to advise the Company and its directors in relation to the development and implementation of the Restructuring and any required contingency planning. It was also resolved that the Company would confirm the appoint Allen & Overy LLP."

226. On 5 January 2021 Mr Greensill emailed the Board of directors of GCPL, including Mr Tom Cheung and Ms Chan as Board observers, explaining BaFin's requirements for a reduction of the GFG exposure.

227. On 5 January 2021 BaFin also blocked withdrawals by the Greensill Group from Greensill Bank. This affected the $250 million deposited with Greensill Bank in November 2020 from the $440 million provided under the CLNs on about 10 November 2020.

228. On 7 January 2021 there was a further meeting of the Board of GCPL, which the Chairman explained was to "update the board on the discussions with BaFin, the fund raising process and liquidity position of the Company …". The minutes recorded:

> "LG noted that a seller concentration reduction plan had now been agreed with BaFin. He noted that the plan reflects the plan previously agreed with the German Deposit Protection Fund in October 2020, save for two additional items: to a reduction in exposure from $4600m down to 5300m by 30 Sept 2021, and then a further reduction to nil exposure by 31 Dec 2021. LG also confirmed that it was agreed that an exposure reduction would also be made when the equity raise closes, and noted that in this regard BaFin requested that it be provided with confirmations directly from equity investors relating to the equity funding."

229. At para 4.3, the minutes noted that Mr Greensill updated the Board on the implementation of CS concentration limits and that "[t]he consequence of the implementation of this guidance is that the CS SCF fund was no longer purchasing GFG and Softbank portfolio company assets, which has a potential impact on the liquidity of" GCUK. At para 4.4, the minutes noted:

> "LG went on to note that CS had, immediately prior to this meeting, accepted the proposal put forward by LG to relax the implementation of CS's guidance, save for a couple of points.

LG noted that CS had agreed to suspend its new rules until the end of March. In respect of SoftBank portfolio company assets. LG noted that by this time the assets on programs with ceased funding would have amortised down to zero. In relation to GFG assets, CS had not been buying these assets from the Greensill group this week, but CS has agreed to recommence purchasing GFG assets from tomorrow…. He noted, however, that CS's conditions were as follows: by the end of January a reduction of $100m in GFG assets was required from the level today, which equates to an aggregate reduction of $200m for January. The GFG seller concentration limit would be required to be reduced to 9% by end of March…. By 30 June 2021, the GFG seller concentration limit would be required to be reduced to 5%. Additionally, when the Company's equity raised closes, the Company would be required to buy back $150m of SoftBank portfolio company assets. Finally, the Company would be required to grant CS a 12 month option to buy $150m shares in the Company at the same valuation as applies for the equity raise. LG expressed his view that it is unlikely that the Company would achieve a better deal with CS and that the Company should therefore accept CS's proposal. LG added that CS were due to speak to Finma tomorrow and therefore any objections should be raised now."

230. On the fundraising process, Mr Greensill updated the Board as follows:

"4.9 LG went on to provide an update on discussions with TDR. He noted that, while TDR expressed a positive view of the Company's business model, they were not comfortable with the level of exposure to the SoftBank Vision Fund (SVF) and GFG not from a credit perspective, but due to liquidity risks arising from these concentrations. TDR were concerned that there could be a run on the CS funds or the possibility that BaFin may change its position and potentially impose new or different requirements that would cause an unanticipated liquidity shock. As a result, TDR viewed the risk of investment as too high for the amount that was requested to be invested. TDR confirmed that, if they were to invest, they would require some form of liquidity protection for the group covering these two exposures. LG noted that this would need to be a significant facility, and that, while numbers weren't discussed. his estimate was around $2bn. Given the required size, LG noted that his view was that only SVF would have the funds to provide such a liquidity facility.

[…]

4.10 LG went on to note that, following the discussions with TDR, he has had two conversations with Rajeev Misra (RM) of SVF, who indicated that the Company should prepare a proposal which quantifies the size of the liquidity facility and related exposures so that SVF could evaluate the proposal. LG noted that

> one beneficial element of this proposal was that the facility would be provided contemporaneously with the equity raise, resulting in a lower probability of a substantial call on the facility being made. LG observed that, even though the prospect of a credit facility from SVF would mean TDR would potentially be more interested in investing, if that liquidity facility is in place then there would be less of a need to raise the quantum of equity previously sought. A smaller equity round would therefore be possible. LG noted that CS (in its capacity as advisors in respect of the equity raise) are confident in interest from additional investors for a quantum of between $250m - $300m at the value the Company had originally been targeting. LG noted that his family holdings would also participate, as would certain other significant non-institutional shareholders, based on recent conversations he has had.
>
> 4.11 On this basis, LG noted that the Company could still achieve a $600m equity raise with the support of the liquidity facility, which would cover insured SoftBank and GFG assets. LG was careful to note, however, that this was not an agreed deal, and that AE and NG were putting together a revised sources and uses plan that would take into account the smaller equity raise and the liquidity facility.
>
> 4.13. The chairman thanked LG for the update and noted that, based on the information that had been presented to the directors, it appeared there was still a reasonable prospect that the Company could avoid an insolvent administration or liquidation, but that it was also a realistic concern that the Company may not."

231. On 8 January 2021 Mr Cheung emailed Mr Misra, stating:

> "I spoke to Lex, he said he spoke with you regarding the feedback from TDR. He said you signalled you were amenable to considering us (SVF2) providing a solution here.
>
> Tom Daula and I also spoke (and I briefed Colin). Our understanding is the following:
>
> • TDR has expressed interest in continuing to invest in size ($1-1.5bb) if "liquidity risk of exogenous shock" on the SVF portco and GFG exposures is boxed (valuation still TBD)
>
> • In comparison to the December proposal which was turned down, two significant conditions seem to have changed
>
> o BaFin has provided more concrete guidance with regard to the risk selldown plan and is acting more rationally

o TDR may provide a large equity check (~$1.5bb) sitting under our new proposed liquidity facility

• A feasible solution to consider is SVF2 provides a 'liquidity facility' which could warehouse GFG or SVF risk if an exogenous shock occurred (e.g. Greensill misses its selldown plan agreed with BaFin) … ".

232. On 12 January 2021 Mr Greensill sent Cantor Fitzgerald a business update for the Greensill Group, saying, "Please find attached the presentation we discussed. I look forward to continuing our discussion." That business update included: "Katerra: $440m outstanding to be reduced to nil by 31 March 2021".

233. On 26 January 2021 there was another meeting of the GCPL Board. Ms Chan of SBIA attended as an observer. Her notes stated, under the heading "Lex update":

> "Softbank - Rajeev called this PM, concerned that we're considering drastic options; walked through BaFin correspondence, his view / reaction was he will join Lex in meeting with Roseler next Monday to affirm SB support, that SB will help w GFG reduction plan, but Rajeev view is we need 6 months; challenge for board is we need to make decision in short run, a firm consideration of support from SB would be very important; Rajeev to revert …
>
> TDR – reaffirmed they are keen to work with us, provided we can get them comfortable with GFG related assets that we have a resolution plan for those …".

234. Her notes also stated, under the heading "Katerra":

- "Timing of repayment of Katerra, all held by CS Virtuoso
  - $400M maturing in March
  - $40M maturing in May
  - But Greensill needs to pay full $440M by end of March
- Cash will not be at GCUK unless we have solved GFG problem at GB
- It's a cash requirement at the end of May
- If Greensill is no longer going concern, CS can still make a claim under GB insurance policy, we would need to pay $100M under the deductible, TBCC effectively would be another creditor to GCUK".

235. A slide deck for the 26 January 2021 Board meeting noted, under the heading "Must Haves Q1 2021":

"KEY GCUK OUTFLOWS

• February (Month End)

• USD 140m (CS bridge loan repayment)

• USD 125m (Insurance collateral)

• March (Mid Month)

• USD 400m (Katerra repurchase)

• March (Month End)

• USD 40m (Katerra balance)".

236. On 27 January 2021 there was a further meeting of the GCPL Board. Ms Chan of SBIA again attended as an observer. Her notes stated, under the heading "Lex update":

> "Rajeev: spoke two hours ago; they are reconsidering being helpful in the short term, expecting some color on that in next 24 hours; Rajeev was clear provided our plan will get us to the finish line, he believes SB will be able to support Greensill in the near term".

237. Also on 27 January 2021 Mr Daula, SBIA's Chief Risk Officer, and Sugeet Madan attended a Zoom meeting with Divya Eapen, the Chief Risk Officer of the Greensill Group. Mr Daula's notes included:

> "Katerra $440M funds?
>
> Was intended to repay the Katerra notes placed in CS Virtuoso.
>
> DE - a portion is used as cash collateral at Greensill Bank. (This was placed at year-end 2020) and a portion used at GCUK to buy Liberty notes that could not be sold.
>
> Key point is that there is no obligation any more between Katerra and Greensill, so skeptical on how the proceeds were not used to repay outstanding notes at CS Virtuoso.
>
> Legal counsel and Lex believe that GCUK have the ability to use the cash between now and maturity of the notes in CS Virtuoso.
>
> TD - the Katerra loan was extinguished, so how can there be insurance? Therefore how can this paper still be in Virtuoso? Greensill has no claim against Katerra.
>
> Repayment to Virtuoso is $400M due 15-Mar and $40M due 17May. However, DE believes CS will ask for the full $440M repayment by 31Mar.

> Use of the $440M is as follows:
>
> > $30M insured notes (A/R from Liberty Commodities) not sold or placed in Greensill Bank
> >
> > $110M other Liberty A/R assets (Rehbein and Seaview)
> >
> > $250M placed as cash collateral in Greensill Bank (a year-end 2020)
> >
> > $80M cash balance at GCUK (unrestricted)".

238. A note from an update call between Mr Daula and Sugeet Madan of SBIA and SBG personnel on 29 January 2021 included the following:

> "Don't use $440m raised in CLN (from Tom Daula's team) to buy Katerra Note back. Asked Greensill whether it is acceptable, said "Katerra Note The deadline is March 2021 (S400m) No need to buy back.""

239. On 29 January 2021 Mr Greensill emailed Mr Misra, Mr Cheung and Mr Daula saying:

> "Credit Suisse has agreed to drop their 31 January reduction requirements for Vision Fund and GFG exposures (and to increase the available GFG limit, which will free up c. $125mm of operating cash for Greensill — as we will sell them assets from our inventory) — which will enable us to continue trading with them from Monday 1 February.
>
> The sole condition to this is that we arrange for the View Glass notes ($270mm notional) to be repurchased and settle by Friday 5 February.
>
> Our urgent and humble request is that Softbank agree to repurchase these View Glass notes. (Credit Suisse will only recommence trading with us when they have an indication of your intent to do so.)
>
> As you know, View Glass position is fully covered by the Softbank-Greensill CDS and these notes are required to be repurchased by View Glass upon closing of their SPAC (which will be in 4-6 weeks) – so the liquidity impact on Softbank would be short.
>
> Given Credit Suisse's daily execution support is mission critical – and this immediately unlocks $125mm of additional working capital for the Greensill operating company – so it is of enormous value and needed immediately for our directors to be comfortable continuing to trade".

240. On the same day Mr Misra forwarded Mr Greensill's email to Mr Cheung and Mr Daula of SBIA and Mr Goto of SBG, saying: "We should do this". Mr Cheung responded in chain, saying: "… we think this is a prudent step to alleviate the liquidity pressure from CS, as this is essentially cash collateralizing risk that is already owned due to the CDS issued by SBG".

241. On 4 February 2021 Mr Goto emailed Mr Romeih of SBIA, stating:

> "Masa [Son] and Rajeev [Misra] concluded that SBG/SVF2 should NOT do anything related to this issue on the call which you were on a few days back. If you would like to save Greensill or give time to Greensill, SVF 1 should purchase those notes from CS. We heard from Rajeev that Greensill is in a serious liquidity situation which would be unlikely to be resolved. Therefore, SBG/SVF2 should not take any incremental risk. Greensill has asked for too much to SBG. They have to negotiate with CS, not SBG/SVF2."

242. Later that day Mr Romeih responded to Mr Goto, saying:

> "We have just been informed that the chairman, head of BoD risk committee and head of BoD audit committee have resigned. That is not public and we do not know the reasons yet, but it is an alarming development to say the least. Given your stance and the above development, we have paused on this transaction."

243. On 24 February 2021 Mr Greensill emailed Mr Cheung, Ms Chan and Mr Daula of SBIA, saying:

> "Credit Suisse have just sketched out a plan that they plan to take to their board for in-principle support tomorrow. It is a complete solution that sees them provide a committed underwrite of the entire GFG book for us."

244. On 26 February 2021 Mr Greensill emailed Mr Misra, copying Mr Romeih, Mr Cheung, Mr Daula and Ms Johnson of SBIA and Mr Varvel and Ms Warner of Credit Suisse, saying:

> "Saleh just informed me that the SoftBank Vision Fund 2 Investment Committee today declined the proposed co-purchase of $300mm of insured GFG paper (where CS was looking to take $150mm and SBVF2 a further $150mm). (CS was also planning to purchase a further $150mm of Vodafone SCF paper from us as well.)
>
> You won't be surprised that both Credit Suisse and I are very disappointed by that decision as it undermines the necessary partnership approach which CS needs to see in order to support the planned refinancing of the GFG paper."

Discussions between Greensill and CSAM in December 2020 about exposure limits

245. Following the buy-back of $70 million in Fairymead Notes in November 2020, discussions continued between CSAM and the Greensill Group regarding compliance with the exposure limits.

246. On 11 December 2020 Mr Jesensky sent Mr Greensill an update following a call with "CS". Mr Jesensky said: "We had a call with CS re legal DD and the way forward, at the end Luc enquired about the SB limits and the urgency to reduce them". Mr Jesensky said:

> "In order to achieve 3% per programme and overall 5% SB sponsor limit we need to:
>
> - Zero out Katerra as planned".

247. However, later the same day, Mr Greensill responded to Mr Jenesky saying: "As I discussed with Michel, Katerra should be excluded from the calculation - because CS didn't report it as part of the exposure to the regulator because it is a MO *[sc. multi-obligor]* programme".

248. Later in December 2020 Mr Haas of CSAM emphasised the need for CSAM to comply with the agreed 5% limit on the exposure limit with the Greensill Group directly.

249. An email from Mr Haas to Mr Jesensky on 21 December 2020 stated:

> "We need to stick to the 5% limit for single as well as multi obligor programmes as agreed between Lex and CS senior management earlier this year. There is absolutly [sic] no room to deviate from that.
>
> What we offered to you is to grow the IG Lux fund to USD 300m helping to bring down existing limits subject to your commitment to use the cash and so making sure we stick to the target return.
>
> Seems to be you are not in a position to absorb the extra cash. Based on the list you sent you are not in a position to do meaning we will not actively grow the fund".

250. On 25 December 2020 Mr Degen forwarded an email Mr Varvel had sent him to Mr Greensill, which enquired "Are we going to be ok at our 5% target by year end?". Mr Varvel said to Mr Greensill "See below? Next week we have to get the rest done… it's really absolutely key for us….".

251. Mr Greensill responded the same day: "Yep we are all over this and expect to close our capital raise next week - which will ensure we can hit the agreed targets".

252. A call was organised between Mr Greensill and Mr Degen and Mr Mathys of CSAM for 29 December 2020.

253. Mr Mathys responded to Mr Greensill's email regarding the exposure targets on 25 December 2020 requesting "lets briefly speak next Monday".

254. Following emails to arrange a time, Mr Degen emphasised the urgency of agreeing a trade to reduce exposure on 28 December 2020, the day before the scheduled call.

255. Mr Greensill replied the same day, noting "That is clear, Michel".

256. On 29 December 2020 Mr Haas (CSAM) sent an email to Mr Jesensky (Greensill Group) with the subject line "Limits". Mr Haas noted that Mr Greensill had agreed with Mr Mathys that "Katerra … will go out of the fund":

> "Before celebrating new year's eve we have to fix a few more things: […]
>
> VF
>
> - Lex informed Luc that Katerra MO and View will go out of the fund".

257. Mr Jesensky forwarded Mr Haas's email of 29 December 2020 to Mr Greensill on the same day. Mr Greensill replied: "I will call you to discuss". Ahead of the call, Mr Jesensky provided an update to Mr Greensill, stating:

> "I spoke to Lukas just now as part of my update call and informed him that we are actioning all the points he addressed and that you will communicate with L & M […]
>
> His understanding is that we will move [redacted]/Katerra out tomorrow but I said that we have not been made aware (I know we won't move it out until March)."

258. At 11:13 pm on 29 December 2020 Ms Eapen sent an email to herself and a Greensill Group mailing list with the subject "Katerra", which stated:

> "When we have funds, we need to buy back each note and settle CS. Where is the 370m coming from?
>
> 50 [redacted] + 10 [redacted] reduces to 310."

259. Mr Haas sent a further email to Mr Jesensky on 30 December 2020 which said:

> "Given it looks like no further secondary trades are planned is my understanding correct that there will be no action on Katerra MO (Fairymead), View and GFG companies? If this is the case please note that the funds will be in breach with the agreement signed earlier this year."

The 31 Dec/14 Jan Fairymead Trade – "the Secondary Trade"

260. On 31 December 2020 the Greensill Group arranged a trade with CSV of the entire outstanding balance of the Fairymead Notes ("the Secondary Trade"). This involved the purchase of all the outstanding Fairymead Notes, the total notional value of which was $439,999,710, by GCUK (via Greensill Bank) from CSV, with a trade date of 31 December 2020 and a settlement date of 14 January 2021. The Secondary Trade was

booked on 31 December 2020, i.e. details of the trade were sent by the Greensill Group to Greensill Bank and to CSAM.

261. On 30 December 2020 at 12:59pm, Andrew McKnight (Greensill Group) emailed Greensill Middle Office Support saying:

> "Hi Zara, team,
>
> As discussed please find attached a secondary request to move all [redacted] Fairymead assets from CS Virtuoso on the 31/12/20 to GCUK via GB settling the 15/01/21. Zara agree that we have 45 [redacted] ISINs and 83 Fairymead ISIN's to repurchase."

262. The attached Excel spreadsheet listed 83 ISINs for the Fairymead Note Programme, the notional total of which was $439,999,710. The spreadsheet noted that the trades were to be from "CSV" "Via" "GB" (i.e. Greensill Bank) to GCUK, all with trade dates of 31 December 2020 and settlement dates of 15 January 2021.

263. On 30 December 2020 at 5:01pm, Mr Greensill internally emailed Mr Jesensky and others referring to trading notes and loading them the next day.

264. At 6:19pm, Mr Jesensky emailed internally Mr Greensill and others stating:

> "Thank you for your time earlier, just to summarise the latest:
>
> * [redacted] Katerra - 128 ISINs trade date 31st of Dec and settlement date 14th of Jan booked and the files will be sent tomorrow at 7am to CS
>
> [redacted]
>
> we can agree with you what we do with the SB[redacted] assets post repurchase to manage TMF".

265. After a question from Mr Greensill, Mr Jesensky responded: "I confirm that is correct, there is no ISIN that matures or has an instalment which matures before 15th of Jan, the earliest is 20th of Jan", to which Mr Greensill responded, "We are agreed then".

266. On 31 December 2020 at 7:02am, Ms Stacey Ellams (Greensill Group) sent two "Secondary Trade Reports" with settlement dates of 14 January 2021 to Greensill Bank. The Secondary Trade Report relating to the Fairymead Note Programme sets out 83 ISINs with a notional total of $439,999,710, to be made from "Virtuoso" to Greensill Bank, with a trade date of 31 December 2020 and a settlement date of 14 January 2021. The additional Secondary Trade Report attached to the email is marked as not responsive.

267. On 31 December 2020 secondary trades of Vision Fund companies (Katerra and View) involving 128 ISINs were sent by Mr Jesensky (Greensill Group) to CSAM, with a trade date on 31 December 2020 and a settlement date of 14 January 2021 the Secondary Trade. The trade was for the full outstanding total of the Fairymead Notes.

Publicity about the restructuring of the Katerra Group's debts

268. On 30 December 2020 the following information was reported in an article in the Wall Street Journal ("the 30 Dec WSJ Article") and in a Dow Jones update ("the DJ Update"):

> "SoftBank Group Corp. has agreed to invest $200 million more to bail out Katerra, a construction startup that ran into financial problems as it tried to shake up the building industry.
>
> Katerra's shareholders on Wednesday voted to approve the new investment on top of the roughly $2 billion SoftBank has already invested. Under the plan, the Japanese investment firm's stake in Katerra will grow to give it a majority stake, while other investors will see their stakes severely diluted, according to people familiar with the matter.
>
> SoftBank's new investment will enable Katerra to avoid having to seek bankruptcy protection, according to Katerra's chief executive, Paal Kibsgaard. The company needed SoftBank's latest investment "to continue as a going concern," he said in a notice to shareholders about Wednesday's meeting.
>
> As part of the funding package, SoftBank-backed financial-services firm Greensill Capital agreed to cancel around $435 million in debt owed by Katerra in exchange for a roughly 5% stake in the company, Mr. Kibsgaard said in an interview Wednesday".

269. On 30 December 2020 Mr James Doran (Greensill Group) emailed Mr Greensill regarding communications from the Wall Street Journal about the 30 Dec WSJ Article.

270. In response, Mr Greensill said, "No comment from us" and "we will receive 100 cents in the dollar from softbank on this - so no loss for us or our investors…FYI, this position is held by CS - and they are aware".

271. The DJ Update was forwarded by Mr Degen to Mr Greensill that evening.

272. Mr Degen asked Mr Greensill: "Not new for you... means you swap in to eq after the buy back I assume...?". Mr Greensill replied: "Correct, Michel. Warmest regards, Lex".

273. On 31 December 2020 Mr Mathys asked Mr Greensill for further clarification as to the information that could be shared with investors following the reported restructuring. Mr Greensill replied suggesting some wording:

> "The Katerra multi-obligor receivables programme is 100% covered by insurances. All securities under this programme will therefore pay out in full within the next 90 days. There will be no performance impact".

274. Mr Mathys responded as follows:

> "Good Morning Lex,
>
> This will not work.....this looks like an non payment / default.
>
> We sold this program back to GS with settlement 14.1…
>
> We should say that the program will be either paid back or undo for the fund next two weeks".

275. At 12:48pm Mr Mathys sent Mr Degen with subject line "vorschlag" (suggestion):

> "Up to December 31, we have executed additional sell orders in notes related to Vision Fund in order to bring the remaining exposure in line with the agreed internal investment guidelines. All notes from View as well as the entire Katerra multi-obligor program were sold (after transfer of the Katerra notes, the program will be cancelled by Greensill thereafter in exchange for an equity stake in the company). As required by Greensill, value date of the transactions is January 14th".

276. Mr Degen replied to Mr Mathys at 12:49pm saying "Ich mache Vorschlag…" (I make a suggestion).

> "The fund does not have credit exposure to Katerra. As a multiobligor receivables programme the credit risk is on multiple customers of Katerra. In any event, the program is 100% insured.
>
> The notes maturing March 31, 2021 sold back to Greensill. The requested settlement date by Greensill has been January 14, 2021. There will be no performance impact."

277. Mr Mathys then sent an email with subject line "Update SCF – VF" to Mr Degen at 1:54pm, containing the wording set out in both his email of 12:48pm and Mr Degen's email of 12:49pm:

> "Up to December 31, we have executed additional sell orders in notes related to Vision Fund companies in order to bring the remaining exposure in line with the agreed internal investment guidelines. All notes from View as well as the notes from Katerra multi-obligor program maturing in March and May 2021 were sold back to Greensill. As required by Greensill, the settlement date of the Katerra notes is January 14th.
>
> After transfer of the Katerra notes, the program will be cancelled by Greensill. The fund did not have credit exposure to Katerra. As a multi obligor receivables program the credit risk is on multiple customers of Katerra. In any event, the program is 100% insured. There will be no performance impact. A detailed update of all exposures - which shall be in line with the new internal guidelines - will be provided in couple of days."

278. In an email to Mr Varvel on 4 January 2021, Mr Greensill said:

> "Katerra has been restructured, however the fund does not have credit exposure to Katerra. As a multi-obligor receivables programme the credit risk is on multiple customers of Katerra. These notes all run off within the next 90 days and the programme is 100% insured. There will be no performance impact on the SCF Fund".

The cancellation of the Secondary Trade

279. On 3 January 2021 at 7:28 pm, Mr Greensill sent an email to Shane Galligan at CSAM which included the following:

> "- SoftBank Vision Fund Companies
>
> o The concentration as at 31 December exceeded the year end target — although we have reduced by more than $300mm in the past 30 days;
>
> o This target will be met simply through the amortisation of the [redacted] and Katerra programmes over the next 90 days. [redacted] Katerra has been restructured, but is 100% covered by our insurances and will be paid in full on or before 31 March 2021.);
> o REQUEST
>
> ■ No further purchases of SCF assets from Vision Fund companies until the concentration target is met; and
>
> ■ All Katerra notes will be repurchased early upon closing of the abovementioned [redacted]ed equity raise. (January 2021)."

280. On 4 January 2021 Mr Greensill set out in an email to Eric Varvel copying Michel Degen with a different proposal, which he acknowledged was also "counter to the agreement struck in the summer of 2020" (i.e. the reduction in the CS SCF's exposure to SoftBank companies):

> "As you are aware, of the dozens of customers in the SCF Funds, we have been able to bring all but two into line with the concentration limits agreed in Summer 2020. Clearly COVID, which has not panned out as we all reasonably anticipated back in the summer, has had a material impact on our ability to either refinance or distribute some of our programmes' notes to other investors.
>
> As you are no doubt aware, we are presently concluding a significant strategic equity raise, in excess of USD$1.5bn, which we and our advisors, Credit Suisse and Citi, intended to close before 31 December. We had planned to use some of these proceeds on a short-term basis to buy back assets in excess of the concentration limits from the SCF Funds pending onward sale to other investors or held to maturity.

Given the Christmas period, the close has run into January but, on Friday night, the lead investor received in-principle Investment Committee approval to proceed - which is obviously extremely good news. However, there are two conditions on that approval which impacts the Supply Chain Finance Funds and we would be grateful if Credit Suisse would urgently consider same, such that we can promptly proceed to close.

SoftBank Vision Fund Companies

• Outline

○ The concentration as at 31 December exceeded the year-end target – although we have repurchased more than $300mm in the past 30 days;

○ This target will be met simply through the amortisation of the View Glass ($276mm outstanding) and Katerra ($440mm) programmes over the next 90 days:

▪ View has gone public via a SPAC and all notes will be repaid in March. The SPAC triggers the change of control clause on our programme and the notes will be repaid from the proceeds at closing in March 2021. In the interim, the position remains 100% insured; and

▪ Katerra has been restructured, however the fund does not have credit exposure to Katerra. As a multi-obligor receivables programme the credit risk is on multiple customers of Katerra. These notes all run off within the next 90 days and the programme is 100% insured. There will be no performance impact on the SCF Fund.

• Requirement

○ Equity raise cannot close if Greensill is seen as being in "breach" of any SCF Fund rules.

• Proposal

○ No further purchases of SCF assets from Vision Fund companies until the concentration target is met (which will therefore be achieved within 90 days); and

○ All Katerra notes will be repurchased by us early upon closing of the Greensill equity raise, which is expected to complete in January 2021;

GFG

• Outline

o The concentration as at 31 December exceeded the year-end target;

o All assets are 100% insured;

• Requirement

o Equity raise cannot close if Greensill is seen as being in "breach" of any SCF Fund rules;

o A reduction plan for GFG needs to be agreed with the BaFin re Greensill Bank AG. Over the weekend, the BaFin has agreed to lock in a reduction plan with us on a conference call scheduled for tomorrow (Tuesday) afternoon. The BaFin will not agree to a plan that sees the SCF Funds "prioritised" in their GFG reduction vs. Greensill Bank. To that end, we propose to "match" the proportionate reductions of the SCF Funds with those reductions agreed with the BaFin.

• Proposal

o In line with our BaFin plan, we would therefore also propose the following modified amortisations (which would bring the fund into line with the concentration target by 30 June 2021):

■ $200mm - January 2021 - at closing of the Greensill equity raise;

■ $100mm - 31 March 2021; and

■ $150mm - 30 June 2021.

o We are very confident that the March and June reductions can be achieved, given the multiple options are that being actively progressed:

■ Within the EU, GFG is eligible for more than EUR700mm in government guaranteed COVID loans and Greensill is presently executing these and they will all close in Hl 2021;

■ The GFG notes (and their embedded insurance) are being rated. Once the ratings are completed in February we will be able to sell same to our regular fixed income investors (who today only buy rated notes or from rated counterparties and do not benefit from insurance) and tender some of the securities to the ECB under the Pandemic Emergency Purchase Program (PEPP);

■ Convert several of our existing multi-obligor receivable programmes into traditional securitisations, which we will sell to the 51 banks who today buy such securities from us; and

> ■ GFG have initiated the IPO of their highly profitable, 100% owned, Australian subsidiary, LibertyOneSteel, which should achieve an EV in excess of USD$2bn and generate material liquidity for the group. We are very aware that these two proposals are counter to the agreement struck in the summer of 2020 – but trust you will understand that the world is not today what we all reasonably expected it to be then. What we have tabled is the best we can do and, if these two proposals are approved by Credit Suisse, then we will provide a board minute from Greensill Capital confirming formalisation of same.
>
> Given the time sensitivity of this, your speedy response would be sincerely appreciated so that we can finalise our discussions with BaFin and the closing of our milestone equity round."

281. Mr Varvel responded the same day as follows:

> "Lex I really believe the right way to approach this for both of us is to complete the trades that have been confirmed. This will keep us both on-side with our Board, Finma (as we have committed to both as you know) and the market overall.
>
> I believe the Lex Greensill, and the Greensill corporate, relationship, is important to CS and a proper commercial request through Helman should be put forward.
>
> I have spoken to Lara and Helman and expected this direction and a call tomorrow with Thomas Gottstein to discuss... Again, I do not believe breaking confirmed trades is the right direction."

282. Mr Greensill responded to Mr Varvel later on the evening of 4 January 2021:

> "I agree with your perspective that this is a broader relationship matter — and have brought the ask to the attention of Helman. Hopefully your fellow members of the group management board will be able to consider our proposal promptly.
>
> Separately, we have checked and there are no matched and confirmed trades in the clearing systems between Credit Suisse and Greensill that are unsettled as of this evening. Therefore, thankfully, there are no trades that would need to be broken if your group management board were to approve what is outlined in my email below.
>
> We hugely value the partnership that has been forged between CSAM and Greensill — and post this capital raise, see us collectively creating still more value with our joint market-leading franchise — delivering financing to the world's supply chains."

283. On 5 January 2021, at 7:29am, Mr Degen sent an email to Mr Varvel:

> "I think there are following options...
>
> " A) He gets liquidity from CS or SB / or combination - incl. himself - trades settle - 11.1 and 14.1 - he repays asap after capital increase"
>
> B) We tell FINMA - we need an extension of 3 months - to execute for various reasons - we reduced already VF related to about 15% ..btw. FINMA asked about VF only... it s not a credit issue - we are in line with prospectus and current guidelines - funds are growing - but we cannot accept anything longer than March31, 2021
>
> - his Gupta amortization proposal does not work - we should reject
>
> Both options shall be approved by Lara / Thomas."

284. The people referred to in the last line were Lara Warner, Credit Suisse's Head of Risk and Thomas Gottstein, its CEO.

285. On 5 January 2021 at 9:22am Mr Varvel emailed Mr Degen, saying:

> "I spoke to Lex. He maintains that the trades with us bringing us down from 15% to 5% were put in the market by us but now accepted by his team. He claims he has confirmed this with his legal counsel. I told him I have heard differently.
>
> He realizes that this puts us in a difficult position but he needs/wants support. I told him we are all very bruised and his request should not be a pullback from commitments to CSAM but rather should be a new transaction.
>
> He continue to push for 3 more months...
>
> Question — what percentage was vision fund paper when we made the commitment — in other words, how much have we reduced if these trade don't close and we have 15%?
>
> Also — I think in 3 months these trades naturally roll off anyway and we will be at 5%?
>
> Are we currently in line (at 15%) with what we have told our investors in terms of guild lines?
>
> Lex doing this really puts us in a difficult position... I plan to talk to Thomas [Gottstein] tonight and see what he thinks."

286. At about the same time (at 09:39am), Mr Varvel also emailed Mr Helman Sitohang of Credit Suisse:

> "Helman — I just spoke again to Lex. Does it make sense for you, Thomas, Lara and I to discuss?
>
> I cannot unilaterally agree anything/or break commitments without Thomas's agreement (and I do believe we have confirmed trades with Lex) — further — even if Thomas is ok, I believe there will be some negative FINMA and Board Blowback to be considered against sizable commercial considerations of losing Lex as an important client.
>
> As you and I both know — sometimes when there is a crisis there is an opportunity...
>
> Lex wants our view by tomorrow sometime. I am headed to Ny now from Paris. Can you set up a call to discuss?
>
> Always something!"

287. Mr Degen forwarded to Mr Varvel the email from Mr Jesensky (Greensill Group) on 31 December 2020 referring to the Secondary Trade that were sent across by the Greensill Group, to which Mr Varvel asked "So he is breaking the trades? Is he suggesting he is not breaking the trades for some technical reason?".

288. Mr Degen responded:

> "Sure.. just because they did not instruct the trades.. does not mean we did not agree…we have various mails …
>
> Assume he does not pay.. we are still long and it will take time to mature the trades….. we are not in a better situation.. as we have to tell FINMA anyway that we need some more time…"

289. Mr Degen commented in capital letters on Mr Varvel's previous email recording his conversation with Mr Greensill:

> "I spoke to Lex. He maintains that the trades with us bringing us down from 15% to 5% were put in the market by us but now accepted by his team. He claims he has confirmed this with his legal counsel. I told him I have heard differently. – THIS IS NOT TRUE – SENT YOU THE MAIL- THEY (MIDDLE OFFICE OF GREENSILL) JUST DID NOT INSTRUCT THE TRADES".

290. Mr Degen forwarded this email to Mr Greensill (without copying anyone else) saying "Not really correct what you are saying.. we agreed on these trades – your team just did not instruct… !". Mr Degen forwarded this exchange to Mr Varvel.

291. In an email to Mr Degen on 5 January 2021 Mr Varvel referred to an upcoming call with Thomas Gottstein in which he was planning to explain the "natural roll off schedule (Over the next 3 months) of the positions Greensill is suppose [sic] to purchase but is suggesting they do not".

292. On 5 January 2021 Mr Mathys said in an email to Mr Degen:

> "As we have already traded the securities on 31.12., they are not in Aladdin anymore. What we do not is taking fund accounting data and get the maturities out. However, installment payments will therefore not be included.
>
> These trades have to go through, we have talked to clients about the new guidelines as per end of the year, especially the biggest client in the fund. I do not see how to explain to client in a credible way. Lex always told us that all trades done per end of the year."

293. On 7 January 2021 Mr Degen sent an email to Mr Greensill informing him of CSV's response to his proposals:

> "The following has been discussed and agreed with our CEO and EXB and needs your confirmation latest by tomorrow 10am CET - before we inform FIN MA about the extension of the new guideline validation until March 31, 2021.
>
> Vision Fund related transactions […]
>
> - Katerra (Multi obligor program of 438mn) — Notes mature on March 15, 31 2021 or latest be bought back by GS by March 31, 2021 (settlement day) - maturities before March 31, 2021 will not be rolled over
>
> - VF related notes needs to be below <= 5% as of March 31, 2021— per each SCF fund".

294. Mr Greensill responded to Mr Degen later on the evening of 7 January 2021, noting "Thank you. We accept those terms".

295. On 8 January 2021 there was a call between CSAM (Lara Warner, Eric Varvel, Beat Sigrist) and FINMA (Simon Brönnimann, Marc Ribes). It took place between 16:00 and 16:30 and there is a note of it circulated amongst CSAM by Beat Sigrist on 11 January 2021:

> "Key discussion points
>
> LW and EV proactively informed FINMA about the concentration risk situation in relation to the SoftBank Vision Fund sponsored papers.
>
> The concentration risk of CS was reduced to 16% by year end, but the internal target of 5% set by the Group CEO was not met.
>
> It was noted that no regulatory breach was associated with this internal guideline breach. The internal target of 5% was also not communicated to the public.

> Very late in the process, Greensill flagged that they need additional time to complete the intended transaction which led to the internal target breach. This was a surprise to CS and FINMA was provided with the explanation given to CS by Greensill.
>
> CS clearly expressed their disappointment to Greensill and put severe pressure on them to complete the transaction, which will be documented.
>
> The Bank's following action plan was discussed between T. Gottstein, H. Sitohang, L. Warner and E. Varvel. In case Greensill is unable to complete the transaction, AM has put a plan in place that can be executed unilaterally and without any market disruptions. Greensill has been informed that CS will not re-new their programs (assuming Greensill does not do anything) and will run down the respective funds. The notes of two investors will not be renewed in March (i.e. run off) and the investors will be informed by CS. Hence, the run-off exposure is targeted to be 7 % by mid-March and AM has been asked to run down another 2 % in the next three months.
>
> CS noted that the preferred option is that Greensill solves the issue and at current, CS does not have any reasons to believe that Greensill won't live up to their commitments. However, as Greensill did not perform, the two-pronged approach has been agreed."

296. Mr Greensill and Mr Haas confirmed separately in internal correspondence on 11 January 2021 that the Secondary Trade should be cancelled. The cancellation was confirmed by Greensill Middle Office on 12 January 2021.

March – June 2021: Default on the Fairymead Notes and bankruptcy of the Greensill Group and Katerra Group

297. As already explained, the key entities within the Greensill Group entered into insolvency processes in early March 2021. GCUK entered into administration on 8 March 2021. GCPL entered into voluntary administration in Australia on 9 March 2021.

298. The Fairymead Notes all defaulted on maturity in March and May 2021.

299. On 6 June 2021 Katerra Cayman, Katerra Delaware and 31 affiliate companies (including the Katerra Sellers) filed for bankruptcy protection under Chapter 11 of Title 11 of the United States Code in the Bankruptcy Court for the Southern District of Texas.

C. WITNESSES

300. My assessment of the factual witness evidence has been guided by the well-known observations about the malleability of memory and the need to test what is said against the uncontested facts, the documentary record and the inherent probabilities. The

principal events took place more than four years ago and witnesses' memories of their earlier states of mind are particularly susceptible to distortion.

301. The claimants called one witness, Mr Varvel. As already noted, he was the Global Head of Credit Suisse's global Asset Management business at CSAM. Mr Varvel had relatively limited contact with Mr Greensill. Mr Degen was more involved day to day in dealing with him. This came across vividly in the course of Mr Varvel's cross-examination. He occupied a senior managerial position and was more concerned with that than the details of the transactions with Mr Greensill. In giving evidence Mr Varvel was at times inclined to maintain a stance, rather than engaging fully with the questions. Some of his answers involved a change in his recollection as set out in his witness statement, including about the date when he became aware of the Secondary Trade. He also gave some unconvincing answers about his role in issuing a disciplinary letter to Mr Degen and Mr Mathys in July 2020. For these reasons I decided I must approach his evidence with a degree of caution. I did not however think that anything he said was deliberately misleading.

302. The SBDs called Mr Cheung and Mr Romeih. Mr Cheung was a Partner at SBIA. He had considerable financial experience at the time of the transactions. He is no longer employed by SoftBank. He was a careful and straightforward witness and I concluded that he would have been a conscientious and diligent employee. He was in day-to-day charge of SBIA's investment in Greensill. He engaged fully with the questions posed and generally gave simple and concise answers. I am satisfied that he was an honest, reliable witness, able to give helpful evidence.

303. Mr Romeih was senior to Mr Cheung in the organisation. As already explained, he was a Managing Partner at SBIA UK and a member of the SBIA Investment Committee. He was number two at SBIA. He was less involved than Mr Cheung in the dealings with Mr Greensill until about December 2020. He was involved in IC meetings concerning over 300 companies in multiple rounds and was unable to recall as much detail as Mr Cheung about the relevant events. In his evidence he often answered by emphasising the procedural aspects of the transactions, being concerned with issues such as lines of authority and information walls. I generally gained the impression that he had had less of a grasp of the details of the transactions than Mr Cheung at the relevant times, and that his memory was less reliable. It appeared to me however that he was doing his best to assist the court.

304. Mr Greensill also gave evidence. He was interviewed by the liquidators of GL on 8 December 2021 ("the LG transcript"). The SBDs served a Civil Evidence Act ("CEA") notice in respect of the transcript. The claimants belatedly applied to cross-examine Mr Greensill on it. At the hearing of their application it emerged that the claimants might wish to rely on parts of the transcript. The court ruled that, if they did wish to rely on any parts of it, the claimants should themselves serve an appropriate CEA notice and, if they did, the SBDs would also have the right to cross-examine Mr Greensill. In the event, the claimants did serve such a notice. At the trial he was therefore cross-examined by both parties.

305. I address the evidence of Mr Greensill in detail below, and I confine myself to some brief general remarks at this stage. Mr Greensill explained that he had not had the trial bundles and had not had a recent opportunity to review the documents in the case. This may have affected the accuracy of some of his recollection. He is clearly a very

intelligent man and he engaged carefully with counsel's questions. I considered, however, that I needed to approach some of his evidence with a degree of caution. First, as is well-established, a person's interest in presenting himself in a good light can influence the reliability of his memory. This is particularly so with evidence about historical states of mind. It seemed to me that his evidence concerning the events of late December 2020 involved a reconstructed narrative which showed him in the best possible light. Second, some of the contemporaneous documents which Mr Greensill wrote, and in particular the email exchange with Mr Degen immediately after the 30 December WSJ article, contained untruthful statements. Mr Greensill was unable properly to explain those exchanges when shown them in cross-examination. Indeed he appeared to be embarrassed by them. The same was true of an email exchange with Mr Varvel. It appeared to me that in some of these documents Mr Greensill had an inclination to say things that helped his position at the specific moment, in the hope that improving circumstances would give him a way out. Third, there were parts of his evidence which I concluded were at odds with the documentary record. I was unable for example to accept his evidence about a call he said he had on a Sunday night with SoftBank. I also found that his evidence that the SBDs had imposed a "cone" of silence requiring him to keep the CEA secret from the Credit Suisse team dealing with the Fairymead Programme unconvincing. I concluded that I needed to be cautious about some of his evidence.

306. Both parties, as is now standard in trials, invited the court to draw adverse inferences from the absence of witnesses. The principles are well-known (see *Efobi v Royal Mail Group Ltd* [2021] UKSC 33) and I will not recite them out here.

307. The claimants complained in particular about the absence of Mr Son and Mr Misra. They submitted that the documentary record showed that both of them were heavily involved in the discussions with Mr Greensill and in the approval of the decisions concerning the various transactions in issue. They said that there was no adequate explanation for their absence. The claimants sought adverse inferences to be drawn about the SBDs' failure to obtain any commitment about the use of the $440 million; the SBDs' purpose in entering into the Impugned Transactions; the benefits to the SBDs; and their knowledge as to whether the Fairymead Notes had or had not been purchased or redeemed. I have concluded that the claimants have not established that either Mr Son or Mr Misra could have given evidence on these issues which could materially have changed the picture given by the totality of the evidence which is before the Court. I address this further below.

308. The SBDs complained about the absence of Mr Degen and invited the Court to draw adverse inferences. Mr Degen is no longer employed by Credit Suisse (or its successor companies). Indeed it appears that his employment was terminated as a consequence of the losses suffered by CSAM from the collapse of the Greensill Group. The principal issue on which the SBDs sought an adverse inference was the knowledge of CSV about the cancellation of the RPA at the time of the Secondary Trade and/or its cancellation. I do not consider that it would be appropriate to draw such an inference. Mr Degen is no longer employed by Credit Suisse and there is no reason to expect Credit Suisse to call him.

309. There was expert evidence of US law. The claimants called Professor Steven Schwarcz, an academic specialising in secured transactions and bankruptcy law. He has served as a tenured professor at Duke Law School for almost three decades and

has published in the relevant areas. Before joining Duke University, he served for more than a decade as a partner in the New York offices of leading US firms. He was able to give clear, detailed explanations of the relevant principles of NY and US bankruptcy law relevant to the agreed expert questions. He was a careful witness who was properly engaged in the process and understood his duties to the court. He engaged with questions of principle and hypothetical issues.

310. The SBDs called Professor Eric Schaffer. He is a former practising insolvency lawyer who retired from full-time practice as a partner in Reed Smith in 2020 and, since 2019, has held a part-time teaching-only position at Pittsburgh Law School. He has not published papers on the relevant issues. He too carefully engaged with the questions and understood his duty to assist the court. He appeared to me less able than Professor Schwarcz to address hypothetical questions.

311. I was satisfied that both experts did their sincere best to assist the court. They also helpfully identified areas of agreement. I shall address the details of their reasoning when resolving the remaining areas of disputes.

312. There was also expert valuation evidence. On valuation, the claimants called Mr Marc Brown. The SBDs called Mr James Farrell and Mr Terence Mark.

313. Mr Brown and Mr Farrell both had some relevant experience and expertise, though in different ways. Mr Brown has had significantly more experience of bankruptcies than Mr Farrell. Mr Farrell has had far more experience of the operations of construction businesses than Mr Brown. I have taken account of these different ranges of experience in my assessment of their evidence.

314. I concluded that Mr Brown was often inclined to act as an advocate for the claimants and appeared unwilling to engage constructively with questions properly posed in cross-examination. At times he stubbornly maintained his position and appeared to regard his main function as avoiding giving anything away that might affect the claimants' case. He also appeared defensive when challenged about his evidence. It appeared to me that he saw his role as being to bolster the claimants' position and I have concluded that he was not always aware of his paramount duty to assist the Court. I give two examples here. First, there was a critical assumption in his first report that Katerra would have carried on business as a going concern if the CEA had not been entered into. This was not identified or spelt out. When asked about this he referred to a brief, cryptic, footnote which did not identify his assumption with the required clarity. Nor did his first report seek to justify the assumption. Second, he gave evidence that a reduction of the debt of a company by $440 million would always be matched by an increase of $440 million in the value of the equity in the company. When he was asked about possible cases where the assets and liabilities of the company meant that the reduction in debt would not be reflected in a corresponding increase in the value of the equity, instead of engaging properly with the question, he responded by reverting to examples where his argument would hold good. More generally he was disinclined to engage properly with counsel's questions. I concluded that I should approach the evidence of Mr Brown with caution. Ultimately, however, the weight to be given to his evidence depended primarily on the cogency of his reasoning. I return to this below.

315. I have concluded that Mr Farrell was seeking to do his best to assist the Court. He willingly conceded points and accepted that there were shortcomings in some of his analysis. He was however prepared to engage with the forensic process, and to explain his reasoning and elaborate where appropriate. His reports were clear in stating the assumptions he had made. On the other hand, in some important aspects of his evidence Mr Farrell resorted to "feel" or intuition, rather than grounding his conclusions in empirical data or verifiable experience. This limited the utility of some of his reasoning. I return to this concern about the cogency of his evidence below.

316. Mr Mark gave evidence about the amount that a hypothetical purchaser of the Fairymead Notes would have required. He has extensive experience in relation to dealings in asset backed securities. As the case progressed it emerged that his evidence was of negligible relevance to the issues before me that have to be decided. Although the claimants referred to the value of the Fairymead Notes in their pleaded case the parties agreed that the potentially relevant issues for the purposes of section 423 were the value of the rights released by GL under the RPA, and the prejudice suffered by the claimants. It is not necessary for the resolution of these issues to determine the value of the Fairymead Notes themselves. I shall therefore not lengthen this judgment by saying any more about Mr Mark's evidence.

D. FINDINGS ON CONTESTED FACTUAL AND EXPERT ISSUES

317. In this section I shall resolve some contested factual and expert issues. It helps to do this at this stage, as some of them are relevant to more than one element of the claims. I shall address them under a number of headings:

i) The Greensill Group's liquidity issues in December 2020 and the attempts to obtain a bridging loan.

ii) What was the SBDs' understanding about the intended use of the $440 million raised by GCPL under the CLNs?

iii) What did Credit Suisse know about the cancellation of the RPA at the date of the Secondary Trade or its cancellation?

iv) Over which assets of the Katerra Sellers did GL have effective security under US law?

v) What was the value of GL's rights under the RPA at the date of the CEA?

The Greensill Group's liquidity issues in December 2020 and the attempts to obtain a bridging loan

318. Much of the relevant history is addressed in Section B above but I make some further findings here.

319. From at least July 2020 BaFin required the Greensill Group to reduce its exposure to GFG. Representatives of SBIA were aware of these requirements, as shown in internal emails from August and October 2020.

320. On 8 December 2020 BaFin required an acceleration of the reduction in exposure to the GFG group in a manner that was not considered by GCPL to be sustainable. Mr Greensill recognised that this would cause significant disruption.

321. By 18 December 2020 the Greensill Group was unable to settle an intra-day trade concerning notes in the Fairymead Note Programme. Mr Greensill accepted that the group did not have liquidity to settle this trade.

322. GCPL disclosed the BaFin requirements to the prospective investors in its capital raising programme. On 23 December 2020 TDR and other planned investors told Mr Greensill that they were no longer willing to commit funds to GCPL, at least on the then proposed terms.

323. Mr Greensill immediately contacted SoftBank to discuss whether SoftBank would be prepared to provide a bridge facility of $1.5 billion. Mr Greensill spoke to Mr Misra.

324. The minutes for the board meeting on 31 December 2020 stated that:

> "LG has been informed his morning that Softbank was not prepared to provide a bridge facility. It was, however, prepared to consider making a further equity investment of up to $250m provided it was alongside investments from other parties".

325. During his evidence Mr Greensill confirmed that this accurately recorded what had happened. However, his evidence was not entirely consistent. Mr Greensill had said in the LG transcript that he had many calls with SoftBank in the period up to 29 December 2020 when he learnt that SoftBank would not be able to advance the loan and that this had resulted in him asking A&O for recommendations for insolvency practitioners.

326. For his part, Mr Cheung described in his evidence a call from Mr Greensill on Christmas Day 2020 about the BaFin requirements and the position of TDR. Mr Cheung understood at that stage that Mr Misra was thinking about making a loan. Both Mr Cheung and Mr Greensill said in evidence that the funding had to be there by 31 December 2020. Mr Greensill also spoke to Mr Misra on Christmas Day concerning the $1.5bn bridge. Mr Cheung said that he understood that the loan was not something Mr Misra supported.

327. On 26 December 2020 Mr Cheung sent an email to Mr Misra saying that he had delivered the message that this was not something SoftBank supported. He gave evidence that he did not understand the position to change after the Boxing Day call and that he did not ever communicate that they would provide the $1.5 billion loan. Mr Cheung also said that Mr Misra was considering something smaller.

328. There was another message from Mr Greensill to Mr Misra on 26 December asking for an urgent call "as the alternate next steps have consequences that you and I need to discuss". At one point in his evidence Mr Greensill accepted that it seemed that SoftBank had said by this point that it would not provide the loan he had sought. Mr Greensill also asked to speak to Mr Son on 26 December.

329. Mr Greensill also gave evidence, however, that nothing had been settled as he was still reaching out to try to contact Mr Misra and he also said that he thought he probably spoke to Mr Misra on the morning of 31 December 2020 when he was told that SoftBank was not going to proceed with the bridge. He said at another point in his evidence that it is likely that the minutes of 31 December 2020 which recorded that SoftBank had that morning refused the bridge loan were accurate.

330. On the other hand, at other stages in his evidence he said that he did not know the date on which Mr Misra communicated the negative decision and said that it was a blur. He also said at one point that it was Mr Cheung who had delivered the news, rather than Mr Misra. He also reiterated that he had formed the view on his birthday of 29 December 2020 that it was time to call in insolvency advisers. He called it the worst birthday of his life.

331. It is not surprising that Mr Greensill was unable to give entirely consistent or clear evidence about these matters. Taking the evidence as a whole, I find as follows. Mr Greensill sought a bridging facility of $1.5 billion from SoftBank on 23 December 2020. By 26 December 2020 he had had at best a lukewarm response, albeit it seems probable that he thought the door was not completely shut and that there was the possibility of a different amount being offered. Mr Greensill continued to seek to contact Mr Misra and Mr Son until the end of the month, which suggests that he still hoped to arrange a substantial bridging loan. By 29 December 2020 no such loan had been arranged and Mr Greensill and the other directors decided that they should seek the advice of insolvency practitioners. That was consistent with Mr Greensill continuing to seek to persuade SoftBank to advance a bridging loan. I conclude that is more likely than not that he was only given a firm refusal on the morning of 31 December 2020, as recorded in the board minutes of GCPL. That is the best evidence of the timing of the refusal and it was not suggested by the claimants in their cross-examination of Mr Greensill that he had lied to the Board of GCPL in making that statement.

What was the SBDs' understanding about the intended use of the $440 million raised by GCPL under the CLNs?

332. The SBDs contended that there was an agreement or understanding between the Vision Funds and Mr Greensill on behalf of the Greensill companies that the $440 million injected into GCPL under the CLNs would be used to redeem or purchase the Fairymead Notes.

333. There was debate at the trial as to whether the SBDs' case was properly pleaded or whether it had shifted. The claimants contended specifically that the SBDs had changed their case as to whether the Greensill companies had to use the same funds (i.e. the very $440 million advanced on 10 November 2020) for this purpose; about the natural persons said to have made this agreement or arrangement; and about the timing and terms of any obligation on the Greensill companies (or understanding) to redeem or acquire the Notes.

334. In my judgment the case advanced by the SBDs is sufficiently clearly pleaded. The pleaded case is the amount of $440 million provided under the CLN and paid to GCUK on 10 November would provide the Greensill companies with liquidity to repurchase or repay the Fairymead Notes. This was said to be agreed between Mr

Romeih and Mr Cheung on the one side and Mr Greensill on the other side. The SBDs confirmed during their opening oral submissions that they were not alleging that the Greensill companies had to use the self-same $440 million for the alleged purpose; and that they did not make any allegation about the precise date by which, or means by which, the repurchase or redemption had to occur. They did however maintain that Mr Greensill had agreed that the $440 million would be used for the purpose of acquiring or redeeming the Fairymead Notes. They also alleged that the SBDs understood that GL could not lawfully have released the obligations under the RPA without securing the repayment of redemption of the Fairymead Notes. They contended that this was understood by the SBD representatives. They did not however advance a positive case that Mr Greensill shared this understanding. I reject the claimants' argument that the case was not sufficiently pleaded.

335. I shall address in due course a legal issue of what constitutes the relevant "transaction" for the purposes of the claim under section 423. However at this stage I am concerned with the factual issue of what was understood by the SBDs on the one side and Mr Greensill on the other; and whether there was an agreement or arrangement about this, in the sense of a common understanding. In the following passages, for ease of reading, I shall sometimes refer to the various groups of companies as "Katerra", "Greensill" and "SoftBank" when there is no need to distinguish between the various entities constituting those groups.

336. A helpful starting point for approaching the factual findings about these issues is to determine the catalyst for the $440 million injection. The evidence of Mr Cheung was in essence that the catalyst for the various negotiations which led to the $440 million investment was a call from Mr Greensill in October 2020. As the chronology set out in section B shows, by that date the Greensill Group was engaged in seeking to arrange pre-IPO funding, based on a much higher valuation than the valuation at which SVF1 had made its investments. Mr Cheung said in evidence that Mr Greensill explained to him that the financial problems facing Katerra put the pre-IPO fundraising at risk. If Katerra went into bankruptcy, the default would jeopardise the investment of the Credit Suisse SCF funds, which represented Greensill's main source of liquidity. That would put the entire fundraising exercise at risk. Mr Greensill therefore wished to find a way to remove the Katerra default risk. In his evidence Mr Cheung described this as a bomb that needed to be defused.

337. The claimants, by contrast, contended in broad terms that the catalyst for the negotiations which led to the agreements of November 2020 (including the CLNs) was quite different. They argued that the documents showed that Mr Greensill had been contending for many months that Mr Son had orally agreed that SBG would provide credit support in respect of the Katerra funding, as part of the CEP (as summarised in section B above). The Greensill companies contended in these emails that they had relied on Mr Son's representations that SBG would provide such credit support and that they were now obliged to provide it. The claimants said that it was essentially this dispute that led to the November 2020 agreements, including the Omnibus Deed. They noted in support of this contention that the Omnibus Deed expressly released SBG from any liabilities relating to credit support in relation to Katerra.

338. More specifically, the claimants submitted that the discussions that had taken place in December 2019 about the CEP concerning the Katerra Group were key to

understanding the events of Autumn 2020. Several documents dated between 12-18 December 2019 referred to SBG's and the Greensill Group's efforts to set up the joint venture and provide a guarantee in advance of Katerra being funded. Mr Greensill sent an internal email recording his understanding that Mr Son had given him his personal commitment to issue the guarantee. Mr Cheung accepted in evidence that Mr Greensill had said that he believed that Mr Son had given this commitment. This was reflected in the arrangements between Katerra and GL: it was indeed a condition precedent for the requirement on GL to provide funding under the RPA that SBG or an affiliated company would provide credit support to GL.

339. There were further discussions between SBG and the Greensill Group during 2020 about formalising the CEP joint venture. Mr Greensill gave evidence that this dragged on and SBG stopped engaging with him about it.

340. Mr Cheung said in evidence - and I find - that there was a difference of view between the Greensill Group and SBG as to whether SBG had committed to providing credit support in respect of the Katerra facility. Mr Greensill contended that Mr Son had made a firm commitment. SBG contended that there was no binding agreement about the CEP.

341. Mr Greensill accepted in evidence that there was no written agreement and explained in his evidence that the Greensill Group was naturally advancing the strongest position it could in the continuing negotiations over the CEP.

342. In an email of 14 September 2020 to Mr Misra, Mr Greensill said that Greensill had been funding Katerra on the understanding that it was part of the CEP, and he listed a number of documents which he said demonstrated this. Mr Greensill gave evidence that it seemed reasonable to conclude that he spoke to Mr Misra in September 2020, at about the time of this email, and that Mr Misra told Mr Greensill about SBD's awareness of Katerra's problems.

343. Mr Greensill also explained that he was anxious about Katerra's financial position in October, particularly given the unresolved issue of the CEP.

344. On 30 September 2022 Mr Greensill sent a message to Mr Cheung saying, "We could ramp up the Katerra Facility and SBG could buy the increased amount – very quick and elegant". Mr Greensill accepted in evidence that by this time he was aware of financial issues within Katerra and that he was starting to consider proposals for a solution. Mr Cheung agreed that by this stage he and Mr Greensill had probably been discussing Katerra.

345. On 2 October 2020 SBG informed Greensill that it was terminating the process for establishing the JV for the CEP. This was naturally treated as very unwelcome news within the Greensill Group. Mr Greensill emailed Mr Son on 11 October 2020 in terms similar to his email of 14 September 2020, but with a section called "Legal Position Summarised".

346. Separately, from September 2020, the Greensill group was engaged in the pre-IPO fundraising process managed by Credit Suisse. The documents show that the Credit Suisse investment banking department was hoping to make $40-50 million fees from the fundraising over the next 12-18 months.

347. As already explained in section B above, Katerra had experienced financial problems throughout 2020. It had breached various covenants in the RPA, requiring standstill agreements on 30 March 2020 and 1 June 2020 (and again on 12 November 2020). Mr Greensill accepted in his evidence that he knew about this. As also explained above, in May 2020 Katerra replaced Mr Marks with Mr Kibsgaard as its CEO.

348. In early September 2020 Katerra's financial position worsened further and it requested further forbearance from Greensill or an amendment to the covenants. SBIA was kept updated. Mr Greensill accepted in evidence that he was considering making proposals to SoftBank to deal with the risk. He accepted that by October 2020 he was becoming anxious about Katerra's financial position. He was also in communication with Mr Marks, who remained a shareholder in Katerra, about a potential bankruptcy and solutions to avoid it. He indeed told Mr Marks on 9 October 2020 that he was speaking to Mr Misra about this topic.

349. Mr Cheung said in evidence (and I find) that in early October 2020 he had a series of telephone calls from Mr Greensill and Mr Misra concerning the fact that Katerra was having financial problems and might enter into bankruptcy. Mr Greensill said in those discussions that if Katerra went bankrupt Greensill would be significantly exposed.

350. Mr Greensill said in evidence that he thought at the time that if Credit Suisse suffered a loss on the Fairymead Notes and gated the SCF funds it would probably be a company-ending event for Greensill, since the SCF funds were the principal source of liquidity. He gave evidence that the SCF funds had provided over $10 billion of funding. I find that Mr Greensill thought at that time that a default on the Fairymead Notes would have been existential for Greensill.

351. SBIA shared this view. An internal presentation of 2 November 2020 referring to the "Greensill/Katerra Transaction" explained that Katerra required recapitalisation in order to preserve going concern status. The recapitalisation comprised two aspects: (a) a new equity injection of $380 million, with SVF's share being $200 million and new investors contributing $180 million; and (b) "new equity" being used to restructure the $440 million Katerra indebtedness at "40% of par". The document also referred to a loss on the Katerra debt as having significant adverse consequences for SVF1's investment in Greensill, including that it would "derail" Greensill's current funding round, which was expected to be 68% up in value on the last round. It would also adversely impact "Greensill's institutional funding access going forward - Katerra exposure held within a CS Fund". The link was therefore made to the liquidity being provided by the SCF funds more generally. The document also explained a proposal under which SVF2 would purchase 100% of the economic interest in the $440 million Katerra debt. It also stated that the recapitalisation of Katerra needed to be agreed within the next 24-48 hours and that if there was no agreement the Katerra Board would have to file for bankruptcy. It said that otherwise the "knock-on impact on Greensill, particularly on its funding sources, will be very significant."

352. Mr Cheung gave evidence that the threat to Greensill's funding process from a Katerra bankruptcy set off a fire alarm. In his view this was a bomb that was going to detonate. He explained that SVF1 would stand to benefit very significantly from the proposed funding round (which would place a much higher valuation on Greensill) and that this would be lost if Katerra went down. I accept his evidence in this regard.

353. Mr Romeih gave similar evidence (which I accept) about a conversation he had with Mr Greensill in about October 2020 in which Mr Greensill said that he needed assistance in maintaining the pre-IPO process.

354. On 11 October 2020 Mr Greensill asked SBG to solve the problem posed by a potential Katerra default by purchasing the Fairymead Notes. A presentation was prepared within Greensill, and it was pitched by Mr Greensill in a call with Mr Son on 11 October 2020.

355. One of the slides in that presentation summarised a proposal under which SBG would purchase the Katerra Notes for $440 million. It also suggested that in the event that there was no transaction, SVF1 stood to lose $1.45 billion as a 50% write down on its equity investments in Greensill. Mr Greensill explained in evidence (and I find) that the presentation reflected his belief that a failure to perform would be company-ending for Greensill.

356. The negotiations with the SBDs ensued after this presentation. Some of the communications have been referred to in section B above. Mr Greensill gave evidence that SoftBank "strong-armed" him or that it was holding a gun to his head. He also explained (and I find) that in saying this he was referring to the terms of the proposed transaction, including SoftBank's insistence on the provision of a personal guarantee and the sale of private aircraft.

357. The claimants contended that Mr Greensill's evidence that he was strong-armed showed that the SBDs procured and directed the Greensill companies to enter the various transactions. I reject that conclusion. I find that it was Mr Greensill who sought to persuade SBDs to inject the $440 million to prevent a potentially disastrous default under the RPA, and that he did this in order to salvage the proposed Greensill fund-raising. This conclusion is supported by Mr Greensill's evidence that the SBDs were ultimately persuaded to introduce the $440 million of new equity, and that it was the terms and conditions that were imposed by SoftBank as the price for this investment that Mr Greensill found to be painful.

358. I am unable to accept Mr Greensill's evidence that SoftBank unexpectedly rang him on a Sunday evening at around this time and presented him with terms he was required to take or leave. The documents show that the initial idea of SBG buying the Notes for $440 million came from Mr Greensill. The documents also show that there were then further negotiations about the structure of the deal; and that its terms evolved over time. There was no take-it-or-leave-it moment. Indeed the structure of the deal was partly developed through a process of negotiation between the external lawyers. I accept the evidence of Mr Romeih that while SBIA helped to co-ordinate the November agreements, they did not have the ability to impose them or direct Greensill to do anything. The agreements were the result of commercial negotiations.

359. As already mentioned, the claimants contended that the essential catalyst for the negotiations which led to the agreements of November 2020 (including the investment of $440 million for the CLNs) was Mr Greensill's contention that Mr Son had orally agreed that SBG would provide credit support in respect of the Katerra funding, as part of the CEP. It is correct that the negotiating documents and the final forms of the agreements entered into in November 2020 show that the settlement of the CEP dispute was one of the components of the November transactions. The dispute

concerning the CEP clearly played a part. Numerous emails in the period leading up to the Omnibus Deed refer to the dispute about the CEP, and the Omnibus Deed addressed aspects of the CEP in terms. Moreover, it was natural that the Greensill side should emphasise its position that there was a binding commitment about the CEP concerning Katerra. This was a way of seeking to negotiate the best terms.

360. On the other hand, the troubling financial circumstances played a more important part. Katerra appeared to be to close to bankruptcy and its collapse would imperil the pre-IPO funding. It would also probably lead to the general withdrawal of liquidity from the Credit Suisse supply credit finance funds, which would threaten Greensill's very existence. I accept the evidence of Mr Cheung that from the SoftBank perspective these latter concerns created an urgent need to find a solution to the Greensill exposure to Katerra.

361. This sense of urgency about the GCPL fundraising exercise is shown, for instance, in a message from Mr Greensill to Ms Chan on 6 November 2020 where he said that Mr Son had "to tell people to get it [the finalisation of the agreements] done today. Else it puts our capital raise at risk". Mr Greensill continued to press for the deal to be done as urgently as possible.

362. For these reasons, I accept the evidence of Mr Cheung that while the dispute about the CEP played a part, it was the threat to the fundraising that was the spur for the Greensill's proposal that SBG should inject $440 million for the purpose of acquiring the Fairymead Notes. As noted, I accept his evidence that it was the potentially disastrous consequences of a Katerra default that principally generated the need for a transaction. I also note that the parties saw the need for a very urgent solution because of the immediate risk of a Katerra bankruptcy if the company was not restructured, and the knock-on impact of that on Greensill's fundraising efforts. I also accept the evidence of Mr Romeih that the CEP was not mentioned in his conversations with Mr Greensill about the potential Katerra default.

363. I therefore find that, as part of the negotiations, the parties did compromise their continuing dispute about the CEP, but that the negotiations were primarily driven by the pressing need to rescue Katerra from collapse and to salvage the Greensill fundraising; and that this required Katerra's indebtedness under the RPA to be addressed.

364. The documents set out in Section B show how the negotiations developed from the initial proposal for SBG (and then SVF1 or SVF2) to acquire the Fairymead Notes for $440 million into a transaction under which the SBDs would inject $440 million into GCPL under the CLNs.

365. As they developed in the period until 10 November 2020, the proposed transactions had two main elements: first, the restructuring of Katerra's balance sheet by injecting equity and removing or reducing the indebtedness under the RPA and, second, by injecting the sum of $440 million to ensure that the SCF Subfund would not suffer any impairment in respect of the RPA. These dual purposes of the November transactions were explained in the oral evidence of Mr Cheung, Mr Romeih and Mr Greensill.

366. I find that, though the structure of the transactions changed, SBIA and the SBDs continued to understand that the sum of $440 million to be injected under the CLNs by Greensill would be used to repurchase the outstanding Notes from the SCF Subfund and that this would shift the liabilities under the Notes to Greensill's balance sheet. The parties referred to this process in a number of communications in terms of Greensill "assuming" or "internalising" the risk of the indebtedness. Examples are given above at paragraphs [103] (2 November 2020) and [106] and [113] (both 5 November 2020). In an email of 27 October 2020 Mr Cheung explained to Mr Misra that Mr Greensill had "crafted a CLN structure with embedded Katerra note risk and Greensill equity". In another email of 2 November 2020 Mr Greensill referred to the agreement they had discussed which included a subscription by SVF2 of $440 million for CLNs and then said "Greensill assumes all risk on the Katerra Notes (current notional $440 million) and manage their recoveries. All recoveries will be remitted to accounting for the same to SVF(2)".

367. As to the Katerra side of the transaction, the letter of intent dated 2 November 2020 from the New Money Consortium (para [110] above) contained an express condition precent to the investment of $180 million that the indebtedness under the RPA would be compromised for no more than $176 million. The evidence suggested that Mr Greensill did not see the letter itself. However I find that he was kept updated on the substance of this aspect of the proposals. Ms Chan's notes refer to keeping him updated and when the New Money Consortium dropped out Mr Romeih called to give him a heads up.

368. As explained in section B above, the lawyers were sent the commercial terms and they then negotiated the documents. Mr Funder's email of 4 November 2020 is set out at para [120] above. He said that,

> "SVF is putting Greensill in funds to the amount of $440m and Greensill will be able to use this to fund the buy back of the CS notes. That is why Greensill has the obligation to remit any funds recovered."

369. This email supports the conclusion that the parties understood that one of the Greensill companies would use the $440 million injection to buy the Fairymead Notes and take the risk onto its own balance sheet.

370. The way that the $176 million payment by Katerra to Greensill was to be funded was explained in an SBIA Risk Dept Summary dated 4 November 2020. This stated:

> "SVF are to contribute $200m of a $380m round, with ~$176m in proceeds funding an anticipated negotiated paydown of the $440m Greensill facility (upon which the facility shall be considered fully paid/discharged). Other debt obligations are to be similarly restructured."

371. As noted in section B, the transactions in their then form were approved in principle by the relevant SBDs on 5 November 2020. The Katerra investment of $200 million was approved by the IC for SVF1 that day on the basis of an investment memorandum. The Greensill $440 million CLN was approved by the IC for SVF2 the same day on

the basis of a second memo. SBG, as the sole LP in SVF2, was also presented with a memorandum of the same date. The latter document stated:

> "By purchasing the Katerra Notes from the CS Fund, Greensill will be able to internally manage (a) all risks relating to the Katerra Facility including repayment and default risks and (b) recoveries from the Katerra Facility. All recoveries will be remitted to SVF2."

372. Each of the three IC memoranda stated under the heading "Use of Proceeds" that:

> "It is anticipated that proceeds will be used to purchase the Katerra notes from external investors and manage the risk internally".

373. Mr Romeih explained that these documents would have been provided to the lawyers to draft the transaction documents.

374. There is further contemporaneous evidence that the SBDs understood that the proceeds of the CLNs would be applied to acquire the Fairymead Notes. On 19 November 2020 the interlinked elements of the transactions were summarised by an SBIA partner for the benefit of SBG's CFO. Slide 10 referred to the current balance on the RPA as $440 million and stated that Greensill agreed to a 40% payment of $176 million. Next to a box representing Greensill the text stated:

> "Use $440m to re-purchase notes (at par) currently held by external investors with exposure to Katerra facility (Greensill will take on full risk)"

375. I find that the SBDs and SBIA used the language of Greensill "managing the risks" internally or "taking on the risk" (and like phrases) as a way of referring to Greensill buying or redeeming the Fairymead Notes – thereby removing that risk from the Noteholders. I find, based on the documents just mentioned, that the SBDs and SBIA believed when they approved the November 2020 agreements that the $440 million would be used to buy or redeem the Notes.

376. As explained in section B, various documents were executed on 10 November 2020 including the CLNs and the Omnibus Deed. The CLN payment of $440 million was made that day.

377. I find that the SBDs and SBIA's understanding that one of the Greensill group companies would buy back the Fairymead Notes using the $440 million was also reflected in the terms of the recitals and clause 3 of the Omnibus Deed (see paras [131] and [137] above). The reference in the recital to Greensill assuming the losses reflects the parties' understanding that Greensill would take the Notes onto its own balance sheet. (As already mentioned, similar language, of "assuming" losses or risks, appears in a number of the internal SBIA documents in which the transactions were explained.) Clause 3 of the Omnibus Deed indeed presupposes that a company in the Greensill Group would become the owner of the Notes: it would not have been possible for a Greensill company to account to SVF2 for recoveries under the Katerra Programme (i.e. the RPA) if the Notes remained with the Noteholders.

378. I find that the SBDs and SBIA understood the existing securitisation structure, and that under that structure, GL could not have extracted the proceeds of the RPA. The end date of the obligation under clause 3 was 31 December 2020.

379. As explained in section B above, on 18 November 2020 the New Money Consortium dropped out. I find that this was an unwelcome development for the SBDs. It required amendments to be made to the deal. On 23 November 2020 Mr Greensill checked with Mr Romeih about whether Greensill could liaise with Katerra about the writing off of the RPA (see para [149] above). Mr Romeih explained that further authorisation would be required before this could happen. The claimants submitted that this showed that the SBDs were procuring Mr Greensill to do their bidding, and that the SBDs unilaterally imposed the transactions on Greensill. I do not accept that submission. Rather, the change was unwelcome for the SBDs as they would potentially have to inject more cash to effect the recapitalisation. Mr Romeih was simply saying that the write-off of the RPA could not occur until the funding gap had been resolved.

380. The funding gap was, as explained above, ultimately filled by SVF2 agreeing to forgo the recovery of $176 million, in return for equity in Katerra. The terms of the CLNs were also amended, so that the stake in GCLP would be increased. Mr Cheung explained, and I accept, that it was important for SVF2 to receive consideration for the additional $176 million.

381. The revised commercial deal was agreed between the parties by 29 November 2020 (see the emails set out at [155] to [156] above). An updated SBIA memo for SVF2 explained that the use of the proceeds remained "to purchase the Katerra notes from external investors and manage the risk internally". This is consistent with the earlier memos concerning the original structure. This was also referred to in the minutes of an Investment Committee meeting on 3 December 2020.

382. The proposed investment by SVF2 was approved by Mr Romeih and Mr Misra on 30 November 2020 with Mr Son recusing himself. The SVF1 investment committee did not vote on the revised proposal as this was not needed.

383. After the email exchange of 29 November 2020 confirming the commercial terms of the revised deal, the lawyers for the parties again got down to work on negotiating the terms of the legal agreements. Mr Cheung and Mr Romeih accepted that they probably did not read the terms of the formal agreements.

384. On 1 December 2020 Mr Funder of A&O emailed Mr Grubb-Sharma of MoFo to communicate that there had been some changes to the commercial terms agreed in the Omnibus Deed, and attached a draft amended and restated Omnibus Deed.

385. On 4 December 2020 the Board of GCPL approved the entry of the Amended Omnibus Deed and the Amended CLN and any other documents completed by or ancillary to those documents. There were no material changes to the terms of these agreements between 4 December 2020 and their execution on 23 December 2020.

386. On 9 December 2020 a draft of the CEA was sent by Katerra's lawyers, K&E, to the other lawyers acting on the transaction.

387. On 11 December 2020 Greensill provided the signature pages of Mr Greensill, GCUK and GCPL to the Amended Omnibus Deed to be held in escrow. These were to be held by A&O to be released once SBIA had given its consent to release the Vision Funds' signature pages.

388. On 12 December 2020 Katerra, Greensill, SBIA, and Wolff concluded the agreement of indicative terms as to the settlement between Katerra and Wolff. One of the conditions precedent was the extinguishment of the RPA and the investment of $200 million by SVF1.

389. On 22 December 2020 HSR approval was given for the investment by SVF1 into Katerra.

390. On 23 December 2020 SBIA provided its consent to the release of its signature pages on the Amended Omnibus Deed and the Amended CLN.

391. On 24 December 2020 Greensill sent K&E the signature pages of the CEA and the TA, signed by Mr Lane, to be held in escrow.

392. On 29 December 2020 Greensill confirmed that its signature pages could be released on simultaneous release of the counterparties' signatures.

393. On 30 December 2020 a "Katerra closing call" took place. After this Weil sent K&E and others a pack of documents, which included executed versions of the PSPA and the TA. Later the same day K&E sent Greensill an update stating that the transaction had successfully closed that morning and attaching a copy of the executed CEA.

394. There are several indicators in the evidence that the SBDs and Mr Greensill believed that the injection of $440 million was part of a broader commercial transaction. First, the SBD documents consistently referred to "the Greensill/Katerra Transaction" and the internal SBIA documents set out the various elements of the transactions together.

395. Second, Mr Greensill repeatedly referred in his evidence to the overall or broader transaction or overall deal.

396. Third, both Mr Romeih and Mr Cheung gave evidence that closing out the RPA was part of an overall transaction. Mr Cheung explained that this was reflected in clause 3 of the Omnibus Deed.

397. In my judgment, notwithstanding the changes to the commercial deal after the withdrawal of the New Money Consortium, the SBDs continued to believe that the Greensill companies would use the $440 million injection to buy the Fairymead Notes. Mr Cheung, in particular, understood the securitisation structure and believed throughout that the Greensill companies would have to take control of the Notes before GL would be in a position to compromise the RPA. Mr Cheung gave evidence, which I accept, that the $440 million was going to go into Greensill for the Note repurchase. Mr Romeih said (and I accept) that he never thought that the capital they put into Greensill (the $440 million) would be used for any purpose other than buying the Notes, since the whole point of the arrangement was to enable Mr Greensill to resolve the Katerra bankruptcy risk.

398. I also accept Mr Cheung's evidence that he and others at SBIA understood that the $440 million investment on 10 November 2020 would not have occurred unless they had understood that the Greensill group required the funds in order to buy the Fairymead Notes and thereby internalise the risks under the RPA.

399. Mr Cheung explained in evidence (and I accept) that the commercial decision to inject the funds was taken in order to protect SVF1's existing investment in Greensill against the damage that would be inflicted on the pre-IPO fundraising by a bankruptcy of Katerra and the consequent termination of Greensill's main source of liquidity.

400. Mr Cheung accepted that the SBDs did not inject the $440 million from a sense of duty to the Noteholders. But that evidence is consistent with his evidence that the catalyst for $440 million investment was the need to protect Greensill's fundraising - and that the SBDs would not have made that investment unless they had understood that Greensill would acquire the Notes.

401. As to this, Mr Cheung gave evidence that he understood that Mr Greensill would take the necessary steps to execute the repurchase of the Notes and proceed with the fundraising while ensuring that Greensill complied with its obligations to SoftBank, Credit Suisse and Katerra. The obligations to Credit Suisse included the obligation not to collapse the securitisation while the Notes remained outstanding. He said that in the discussions that took place during December 2020 he did not contemplate whether the Notes had actually been repurchased. Mr Cheung also said (in paragraph 93 of his witness statement) that he believed that repurchasing the Notes was a necessary condition precedent to GL forgiving the Katerra lending line. I accept this evidence. I find that Mr Cheung believed that the repurchase of the Notes had to occur before GL could forgive the RPA debt.

402. For his part, Mr Greensill gave evidence that it was the understanding of all the parties that the $440 million would be used at some stage to repay the Noteholders. He said that this was the intention from the very beginning.

403. I find that Mr Greensill communicated to the SBG and SBIA that he intended to use the $440 million to redeem or purchase the Fairymead Notes at the time when the transactions were first agreed with the SBDs in early November 2020 and that he never told them anything else as the deal changed in late November/early December 2020.

404. The claimants advanced a number of reasons for submitting that the SBDs and Mr Greensill did not have this understanding about the purposes of the $440 million injection.

405. The claimants' first reason was the absence of any express agreement requiring the use of the $440 million for the specific purposes of repaying or redeeming the Notes. They pointed out that there was no "use of proceeds" clause. This is correct, but of limited weight. Mr Cheung convincingly explained that Mr Greensill had come to SoftBank seeking funds to enable him to remove the risk of a default on the Katerra facility, as it would seriously damage the pre-IPO funding efforts. Mr Greensill wanted to neutralise the risk. That could have been achieved by the SBDs buying the Notes themselves or by Greensill doing so. The first of these routes was considered initially but was then rejected. The second route, of internalising or adopting the risk, was then pursued. Mr Cheung said in evidence (and I find) that that he understood that

the second route required the Notes to be bought by Greensill, as otherwise the RPA could not properly have been cancelled.

406. I have concluded, having heard Mr Cheung's evidence in the light of the surrounding documents, that since Mr Greensill had sought $440 million for this very purpose and had stressed its urgency, it did not occur to Mr Cheung that Mr Greensill would not ensure that this had not carried into effect. Mr Cheung also explained that, in his experience, use of proceeds clauses were rarely used in structured finance deals. Indeed, the one example of such a clause the claimants were able to identify required only that the proceeds of an advance be used for general corporate purposes. The inclusion of a clause of that kind would have made no difference to the outcome in the present case.

407. The claimants also submitted that Mr Greensill said in evidence, and the SBD witnesses agreed, that the $440 million itself was fungible. This point is essentially an elaboration of the first. Mr Cheung and Mr Romeih did not suggest in their evidence that they thought that the self-same funds as were paid over on 10 November 2020 were going to be used to purchase or redeem the Fairymead Notes. Their evidence was however that this was the purpose of Mr Greensill asking the money and that they therefore thought that it would be used for that purpose.

408. The claimants also contended that there was no agreement about a mechanism for or timing of any purchase or redemption. Again there is only limited weight in this point. I find that the SBDs left it to the Greensill companies to decide on the manner and timing of the purchase or redemption. The technicalities were a matter for Greensill. However I am satisfied from the evidence of Mr Cheung and Mr Romeih that they understood from Mr Greensill that the situation was urgent and that they believed that it was necessary for such purchase/redemption to have taken place before the release of the RPA. As Mr Cheung put it in evidence, that was part of the chain. I also accept the evidence of Mr Cheung that he believed from the 30 Dec WSJ Article that Greensill must have bought in the Fairymead Notes, as otherwise they would not have been able to compromise the RPA.

409. The claimants' next point was that the SBDs knew on about 2 December 2020 that the Fairymead Notes remained outstanding and they did not complain. That is correct. However I accept the evidence of Mr Cheung that the SBDs understood that Mr Greensill had been seeking the amount of $440 million in order to defuse the potentially disastrous impact of a Katerra bankruptcy, and that they understood that the only way the debt under the RPA could properly be released was if Greensill had acquired the Notes by the date of the release. As Mr Cheung put it in evidence the $440 million completed the chain, meaning that it allowed Greensill to compromise the RPA. It was his evidence that he understood that the risk had to be taken onto Greensill's balance sheet before the release of the RPA could happen. I also accept the evidence of Mr Cheung that once the payment of $440 million had been made he thought that the immediate problem had been addressed – the bomb had been defused – and that Katerra's financial issues no longer posed a threat to Greensill's pre-IPO fundraising. He said, and I accept, that after the $440 million liquidity was introduced into Greensill his focus was on Greensill's fundraising efforts and that he paid little attention to the details of the legal agreements.

410. The claimants also relied on what they said was the muted reaction of the SBDs when they discovered in January 2020 that the Notes had not been purchased or redeemed. As to this, I accept the explanations given by the SBDs witnesses. Mr Cheung in particular explained that he was concentrating on Mr Greensill's demands for even more money. Having agreed the $440 million injection from the SBDs, in late December 2020 Mr Greensill was seeking yet further funding. The impression I took from his evidence was that from late December 2020 onwards Mr Cheung was becoming exasperated by Mr Greensill's continuing attempts to raise more money from SoftBank entities. I also accept his evidence that his main concern in this period was Greensill's continuing efforts to promote its fundraising, and that from his point of view the Fairymead Note issue had been addressed through the $440 million injection. He simply did not think about this aspect very much after the investment was made. I also accept Mr Cheung's evidence that when he discovered in January 2021 that Greensill had not completed the acquisition of the Fairymead Notes he assumed that there must have been some arrangements with the Credit Suisse funds for deferred completion of the acquisition of the Notes.

411. As to the claimants' submissions that the $440 million investment was essentially the price paid to compromise the dispute with SBG about the CEP in relation to Katerra, I have already found that while that dispute was part of the background to the negotiation of the November 2020 transactions - and was, indeed, expressly compromised in the Omnibus Deed - the principal catalyst for the injection of $440 million was the perceived need to remove the risk to the pre-IPO funding from a Katerra default. I accept the evidence of Mr Cheung and Mr Romeih that Mr Greensill approached them in October 2020 explaining that the financial issues at Katerra were jeopardising the pre-IPO fund-raising and that Greensill had an urgent need for $440 million in order to repurchase or redeem the Fairymead Notes and remove that risk. This was the essential catalyst for the series of transactions.

412. The claimants also contended that Mr Greensill sought the permission of the SBDs to disclose the existence of the Omnibus Deed to Credit Suisse and that the SBDs had refused such permission. The claimants contended, relying on some evidence of Mr Greensill, that the SBDs imposed a "cone of silence" on him, preventing him from telling CS about the transactions. The claimants argued that this undermined the evidence of the SBDs that they understood that the SBDs would apply the $440 million in acquiring the Fairymead Notes. As to this, the cross-examination of Mr Cheung proceeded on the basis that the SBDs had not given consent for the disclosure of the Omnibus Deed to CS in the context of the fundraising. The claimants did not squarely suggest to either Mr Cheung or Mr Romeih (who gave evidence second) that the SBDs had prevented Mr Greensill from disclosing the nature of the arrangements concerning the $440 million from the separate Credit Suisse team dealing with the Fairymead Notes. The cross-examination therefore did not squarely raise the case advanced in closing to the effect that the SBDs had refused to allow Mr Greensill to discuss the Omnibus Deed with the representatives of the Credit Suisse funds. Moreover, in their evidence Mr Cheung and Mr Romeih said (and I accept) that they were unaware of any confidentiality terms concerning the RPA and that there were no discussions with Mr Greensill about this. Furthermore, the references in the contemporaneous documents to Greensill seeking permission to disclose the Omnibus Deed relate to disclosure to CS in the context of the fundraising. There was no evidence that Mr Greensill had asked for permission to discuss any of the agreements

with Credit Suisse in the context of the Fairymead Notes structure. I have concluded that the contemporaneous documents show that such discussions as there were to disclosure of the Omnibus Deed related only to disclosure in the context of the fundraising efforts.

413. In reaching these conclusions I have given careful consideration to the claimants' submissions that an adverse inference should be drawn from the failure of the SBDs to call Mr Son and Mr Misra.

414. In this regard, Mr Greensill gave evidence, which I accept, that Mr Son was the principal decision maker at SBG. The documents generally show that Mr Misra was heavily involved in the transactions. The documentary evidence also shows that Mr Greensill had direct access to Mr Son and Mr Misra. However the current question is whether the court should draw an adverse inference from their absence as witnesses. The claimants sought an adverse inference concerning their allegation about the waiver of confidentiality in the Omnibus Deed. They contended that Mr Cheung and Mr Romeih were not involved in the discussions concerning waiver of the confidentiality obligations in the Omnibus Deed. However, as just explained, the documents establish that the Greensill companies only sought a waiver of these obligations in order to make disclosures to potential investors in Greensill under the pre-IPO fundraising. There is nothing in the documents to show that Mr Greensill sought permission from any SoftBank entity to discuss the CEA or TA with the claimants.

415. Rather, I find that Mr Greensill took a calculated risk not to tell the claimants what was going on because he hoped to be able to raise funding by one means or another to satisfy the claimants' claims. I do not therefore consider that the claimants have established a case for the SBDs to answer in this regard. I also note that there was no pleaded case that Mr Greensill asked the SBDs for permission to discuss the CEA or TA with the claimants or that the SBDs refused to give permission. The only pleaded case was in relation to the Omnibus Deed and the discussions about that were in relation to the pre-IPO fundraising. It is not appropriate to draw any adverse inferences on this issue from the absence of Mr Son or Mr Misra.

416. The claimants also invited the court to draw, from the absence of Mr Son and Mr Misra as witnesses, an adverse inference about the SBDs' understanding of the purposes of Mr Greensill in causing GL to enter the CEA and TA and their knowledge or failure to satisfy themselves as to whether the Fairymead Notes had been repaid. I do not consider this would be appropriate. There was ample evidence before the court on this issue on the basis of which I am able to reach factual conclusions. Mr Cheung and Mr Romeih were able to give evidence about their understanding of the transactions. They were involved in the details. There was also the documentary record set out in detail above. The pleaded case about knowledge was that all of Mr Cheung, Mr Son and Mr Misra had the relevant knowledge. I consider in all the circumstances that the SBDs were justified in calling Mr Cheung and Mr Romeih as witnesses and do not consider that I should draw adverse inferences from the absence of others.

417. Drawing the threads together, I find that the SBDs understood that the Greensill companies would use the $440 million injected under the CLNs for the purposes of redeeming or purchasing the Fairymead Notes and that, had they not understood that

to have been the purpose for the payment, the SBDs would not have injected the $440 million into GCPL. From the outset Mr Greensill explained to them that this was why he was seeking the money and this was their consistent understanding, as reflected in the documents.

418. I also find that the SBDs believed that the repurchase or redemption of the Notes must have happened by the time of the CEA and the TA as they believed that Greensill would not otherwise have been able to compromise the RPA. Mr Cheung's evidence to this effect was not challenged.

419. My findings as to Mr Greensill's understanding are these. He thought that there were two preconditions to buying back the Fairymead Notes. The first was that the need for HSR approval, which was itself a precondition to the recapitalisation of Katerra by SVF1. The second was that the injection of $380 million into Katerra had to occur so that Katerra had the resources to pay the $176 million to GL for onward transmission. It appears therefore that Mr Greensill did not necessarily anticipate applying the amounts of $440 million to buy or redeem the Fairymead Notes until after the recapitalisation had been consummated. Indeed the SBDs did not advance a positive case at the trial that Mr Greensill shared their understanding that the Notes would have to be repaid before the security was released. Their position was that Mr Greensill did not apply his mind on 30 December 2020 to whether he was acting in accordance with the alleged understanding.

420. In my judgment, the fact that Mr Greensill thought this was not inconsistent with my conclusion that the SBDs thought that once the payment of $440 million had been made the Greensill companies would promptly buy or redeem the Notes in order to internalise the risk. The SBDs did not believe it was necessary to agree a mechanism or final date for this (though the Omnibus Deed referred to 31 December 2020) because they understood it was urgent. As already explained, the evidence of Mr Cheung (which I accept) was that he understood that Greensill had to acquire the Notes (or otherwise secure the position of the Noteholders) before GL could properly release the RPA.

421. Hence I find that the parties did not share the same understanding about the arrangements. The SBDs thought that the Greensill group urgently required the money to enable them to internalise the risk from the Fairymead Notes. They thought that Mr Greensill would promptly use the money for that purpose and did not consider that it had to await the other steps. They also thought that the acquisition of the Notes had to occur before the RPA could be released. Mr Greensill appears to have regarded the injection of funds as improving the group's position and providing him with the necessary liquidity to buy in the Notes once the recapitalisation of Katerra had occurred.

What did CS know about the cancellation of the RPA or any arrangements concerning the $440 million at the date of the Secondary Trade or its cancellation?

422. On the pleadings it is common ground that the Secondary Trade was entered into on 31 December 2020 and cancelled on 7 January 2021. The evidence showed that the trade was orally agreed by Mr Greensill and Mr Degen at 10.30am on 30 December 2020.

423. The SBDs submitted that by 31 December 2020 Credit Suisse knew about the cancellation of the RPA at about the time it happened. They relied on Mr Greensill's evidence and the terms of the WSJ article of 30 December 2020 which stated that "Greensill Capital agreed to cancel around $435 million in debt owed by Katerra in exchange for a roughly 5% stake in the company".

424. For the following reasons, I find that Credit Suisse was not aware of the cancellation of the RPA either at the date of the Secondary Trade or its cancellation on 7 January 2021.

425. As noted in [271] above, on 30 December 2020 Mr Degen referred to the news article and asked Mr Greensill: "Not new for you... means you swap in to eq after the buy back I assume...?" Mr Greensill replied noting: "Correct, Michel. Warmest regards, Lex". In my judgment Mr Greensill's message was opportunistic and misleading. Mr Degen's email showed Mr Greensill that Mr Degen did not believe the debt could already have been released. The Fairymead Notes remained outstanding, though Mr Degen had agreed with Mr Greensill by then that they would be bought by one of the Greensill companies. Mr Degen therefore assumed that the exchange (and therefore the cancellation) would take place once the Secondary Trade had settled. Instead of explaining that the RPA had already been cancelled by the CEA, Mr Greensill agreed with Mr Degen's message. Mr Greensill was unable to explain this at all convincingly in evidence, falling back on saying that he had written it in the early hours when he was not at his best. That was to my mind a tacit acceptance that the email was misleading.

426. That this was Mr Degen's contemporary understanding of the position is supported by the email from Mr Mathys to Mr Degen timed at 12:48pm on 31 December 2020. Under the subject line "vorschlag" (suggestion), he said,

> "Up to December 31, we have executed additional sell orders in notes related to Vision Fund in order to bring the remaining exposure in line with the agreed internal investment guidelines. All notes from View as well as the entire Katerra multi-obligor program were sold (after transfer of the Katerra notes, the program will be cancelled by Greensill thereafter in exchange for an equity stake in the company). As required by Greensill, value date of the transactions is January 14th".

427. This email again refers to the cancellation of the programme in exchange for the equity stake to take place after the transfer of the Notes to Greensill. This is consistent with Mr Degen's email of 30 December 2020.

428. In his email to Mr Varvel on 4 January 2021, Mr Greensill said:

> "Katerra has been restructured, however the fund does not have credit exposure to Katerra. As a multi-obligor receivables programme the credit risk is on multiple customers of Katerra. These notes all run off within the next 90 days and the programme is 100% insured. There will be no performance impact on the SCF Fund".

429. Mr Greensill did not explain in this message that the RPA had already been released (so that there was no longer anything backing the Fairymead Notes). In my judgment this email too was misleading. It gave the impression that the Notes continued to be backed by receivables.

430. Mr Greensill's initial evidence was that this sentence contained a typo and that it should have said the credit risk "was" on multiple customers of Katerra. That was simply not credible. The purpose of the wording of the passage was to reassure the claimants about the security for the Notes. To tell the claimants that the credit risk had been, but was no longer, placed on multiple customers would have given investors no assurance at all. On the contrary, under questioning by the SBDs Mr Greensill gave different evidence, accepting the suggestion that the wording emanated from Mr Degen. That did not however adequately explain why Mr Greensill was willing to confirm it.

431. Mr Greensill's answers about this email (including his change of position) led me to view some of his evidence as opportunistic and has bolstered my view that I should take a cautious view of his evidence more generally.

432. The SBDs relied on email exchanges showing that Credit Suisse was involved in drafting some of the wording of this email, and in particular the reference to the credit risk. But in my judgment this point led nowhere. Mr Greensill knew the true position and the content of the email was misleading. Indeed in my view the prior exchanges with Credit Suisse about the contents of this email support the conclusion that Credit Suisse was unaware that the RPA had already been released; the premise of the email was that there were still assets backing the Notes, hence the reference to "credit risk". It is most unlikely that Credit Suisse, which wanted to be able to disclose this information to its own investors, would have originated language which it knew to be false.

433. As explained in section B above, on 5 January 2021 Mr Greensill approached Credit Suisse to suggest the cancellation of the Secondary Trade. Instead it was agreed that the remaining Fairymead Notes would be redeemed over a longer period. In his communications with Credit Suisse he did not refer to the CEA or the release of the RPA. It appears to me inherently improbable that Credit Suisse would have been prepared to reach this agreement had it known that the RPA had already been released and that the Notes had no backing.

434. The SBDs also relied on an email of 14 January 2021 in which Ms Warner asked Mr Varvel to provide more color on exactly how "…our $440M in the Virtuoso fund relates to the "forgiven debt" from Greensill and the $200M infusion by Softbank Vision fund in December". The SBDs submitted that this showed that the highest levels in Credit Suisse were aware of the release of the debt under the RPA. I do not accept this. The use of inverted commas around the phrase "forgiven debt" shows to my mind that Ms Warner was unsure of the position. It has also to be read in the context of the earlier emails from Mr Greensill which had given the impression that the equity-debt exchange would happen once the Fairymead Notes had been repurchased. It is inherently highly improbable that Credit Suisse's internal communications would have been as relaxed as this if they had understood that the assets backing the Notes had already been released.

435. The SBDs also relied on an email of 9 March 2021 which, they submitted, showed Ms Warner said that she was told by Mr Greensill about the release of the debt and the receipt of the $440 million. They invited me to reach the conclusion that Mr Greensill had told her those things in late 2020. As to this, Mr Warner referred in the email to the press reports in December 2020 (i.e. the 30 December 2020 article). She then explained that Mr Greensill had told her that he had received the $440 million (she actually referred to $435 million but that does not matter) in November 2020 and that it should have made its way to Credit Suisse's account when the receivables became due in March 2021. The bankruptcy had supervened and the funds were trapped. The email did not however say when Mr Greensill had told Ms Warner. On the balance of probabilities I find that Mr Greensill told Ms Warner about his arrangements with SoftBank after Greensill entered insolvency. There is nothing in the documentary record to suggest that she was aware of the release of the RPA or any arrangements concerning the $440 million injection before then.

Over which assets of the Katerra Sellers did GL have effective security under US law?

436. By the time of the trial, the only area of disputed US law expert evidence concerned a specific category of future receivables ("FRs").

437. The parties divided the FRs into three categories. Type 1 FRs were those where Katerra had undertaken the relevant work or services but had not invoiced or billed for it. Type 2 FRs were where there was an existing contract between Katerra and a customer, but the relevant work or services had not yet been performed. Type 3 FRs were where there was no existing contract between Katerra and a customer but it was hoped that such a contract would be entered. The FRs covered by the RPA included each of these three types. For completeness, Actual Receivables (or "ARs") are those already invoiced or billed by the Katerra Sellers.

438. The parties agreed that the RPA gave GL an effective security interest over ARs and Type 1 FRs, and that it gave no such interest in Type 3 FRs. The remaining area of debate therefore concerned Type 2 FRs.

439. The SBDs contended (a) that any security interest over Type 2 FRs under the RPA did not "attach" under NY UCC §9-203 at the point when the Katerra Sellers had entered into the underlying contracts but only when the Katerra Sellers' right to payment arose; and (b), in any event, that rights to payment for Type 2 FRs did not constitute "proceeds" of the underlying contract from which they arose for the purposes of US Bankruptcy Code ("Code") §522(b)(1).

440. As to the first issue, under NY UCC §9-203(a) a security interest "attaches to collateral when it becomes enforceable against the debtor with respect to the collateral". For this purpose, "collateral" means "the property subject to a security interest": NY UCC §9-102(12). As Professor Schaffer accepted, Type 2 FRs can in principle be "collateral" if the other requirements of §9-203 are met.

441. Enforceability for the purposes of §9-203 is governed by §9-203(b). The experts agreed that the only requirement in issue in relation to Type 2 FRs was whether a debtor "has rights in the collateral or the power to transfer rights" under §9-203(b)(2), which is governed by NY common law.

442. Both experts accepted that the Restatement (Second) of Contracts ("the Restatement") could reasonably be regarded as an authoritative source for these purposes.

443. Professor Schwarcz explained in his first report that under the Restatement §321 the assignment of a right to a future payment expected to arise under an existing contract takes effect as at the date of the entry into the underlying contract. He also said that Illustration 1 of Restatement §321(1) shows that such an assignment is both effective and not defeated by the assignor's bankruptcy even if the work generating the right to payment is carried out during the bankruptcy.

444. Professor Schaffer explained that he had not considered §321 in preparing his first report, but accepted that Illustration 1 was "consistent with" the terms of §321(1) (as is perhaps obvious).

445. In the event, it emerged that Professor Schaffer's objection to any reliance on §321(1) was derived from his own interpretation of the RPA. His view was that under the RPA there was no assignment of Type 2 FRs and that it covered only ARs and Type 1 FRs.

446. The experts agreed that the interpretation of the RPA is an objective exercise, and the experts did not identify any principles that are materially different from the familiar English law ones concerning commercial contracts.

447. On the issue of interpretation of the RPA:

i) I accept the views of Professor Schwarcz that the RPA's definition of "Receivables" (on which the definition of "Purchased Receivables" depends) is very broad and includes (among other things) the generic term "contract rights" which is capable of including the underlying contract between a Katerra Seller and its obligor. The RPA contains nothing to suggest only ARs and Type 1 FRs were capable of being the subject of a Request under the RPA.

ii) I reject the SBDs' argument, relying on the second sentence of clause 1(a) of the RPA. In my opinion, the purpose of that sentence is to explain how FRs are transformed into ARs pursuant to a Request under the RPA without the need for any further action. It deems the actual payment obligation arising from a FR to be, or form part of, the Receivable that has already been transferred following the making and acceptance of a Request. I also consider that the opening words "[i]n addition" in the second sentence are inconsistent with the restrictive reading advanced by the SBDs.

iii) In my judgment, on the proper interpretation of the RPA, Type 2 FRs were validly transferred by Katerra Sellers to GL.

448. I also prefer the analysis advanced by Professor Schwarcz that a right to payment under an existing contract and which is contingent on work or services being performed is capable of being immediately and enforceably assigned before such performance has actually taken place.

449. On this basis, I find that GL obtained an enforceable security interest in the Type 2 FRs at the date of formation of the Katerra Sellers' underlying contract with its

obligors. GL thereby acquired a valid and effective security interest in Type 2 FRs with effect from the same date.

450. As to the second issue, the issue is whether under Code §552 GL had a perfected security interest in Type 2 FRs. As to this I accept Professor Schwarcz's view that GL's security interest would not have been cut off by a Katerra bankruptcy because GL had acquired pre-petition property (i.e. the contractual rights expected to arise under the underlying contracts between the Katerra Sellers and their obligors). It was therefore not property acquired after bankruptcy within the US Bankruptcy Code §552(a). It follows that under Code §552(a) a bankruptcy would not have affected the security. I did not consider that Professor Schaffer had any real answer to Professor Schwarcz's analysis.

451. I also accept the claimants' alternative argument based on §552(b). Where an immediate payment obligation in respect of Type 2 FRs arises post-petition, that obligation would constitute "proceeds" of the Type 2 FRs for the purposes of the additional exception in Code §552(b)(1). As Professor Schaffer accepted, the question under this provision is whether a right to payment arising post-petition may be considered the "proceeds" of rights assigned pre-petition. He also accepted that this involves a fact-specific enquiry dependent on the terms of the security arrangements. The US federal courts have not alighted on a single test to determine whether such rights are "proceeds" under Code §552(b1). Furthermore, I conclude that there is also no rule or principle that payments received in connection with work undertaken post-petition are incapable of being "proceeds" of rights assigned pre-petition.

452. I prefer the views of Professor Schwarcz that the case law establishes that rights to payment arising from post-petition work can constitute "proceeds" of pre-petition collateral.

453. In my view, Professor Schaffer's contrary opinion ultimately turned to his taking the narrower interpretation of the RPA, to the effect that "Purchased Receivables" under the RPA could not include Type 2 FRs, not on the meaning or operation of Code §552(b)(1). As explained above, however, I reject Professor Schaffer's narrowly drawn interpretation of the RPA.

454. I find that the RPA contained a broad definition of "proceeds" which was wide enough to capture the proceeds of "rights arising out of [the] collateral" as defined in UCC §9-102.

455. For these reasons I accept the submissions of the claimants that GL had security over Type 2 FRs under the RPA which would have been valid and effective in a bankruptcy of Katerra.

What was the value of the security under the RPA as at 30 December 2020?

456. The value of the Purchased Receivables as at 30 December 2020 depends on a number of variables, including the actual make up of those receivables, the risk of Katerra entering into a bankruptcy, and the impact that would have had on recoveries.

457. Before turning to the parties' positions, it helps to refer to some relevant concepts. Under the US Bankruptcy Code a corporate bankruptcy may fall under Chapter 7 or

Chapter 11. Chapter 7 is a form of liquidation. Chapter 11 bankruptcies take various forms, including what the experts called a "going concern" bankruptcy, where the company continues to trade as a debtor in possession ("DiP") and may ultimately emerge from bankruptcy, or "an orderly wind down" where there is more protection than under Chapter 7, but the company ceases to trade. Both types of Chapter 11 bankruptcy will involve DiP funding, which is typically a form of super-secured lending.

458. The claimants' position in their pleadings was that the value of the receivables over which GL had security as at 30 December 2020 was $440 million.

459. The claimants' position in their closing submissions was that:

i) The face value of the Purchased Receivables was $330 million of ARs, $22 million of Type 1 FRs, and $216 million of Type 2 FRs.

ii) There was a 20% risk of a Katerra bankruptcy as of 30 December 2020. Such a bankruptcy would have been a structured Chapter 11 bankruptcy, but it was not suggested it would have been a "going concern" bankruptcy.

iii) In such a bankruptcy the expected rate of recovery in respect of Actual and Type 1 FRs would have been 50%. The claimants accept that there would have been no recoveries on Type 2 Receivables on the assumption of Katerra going bankrupt.

iv) The value of the receivables should be calculated as follows:

a) An 80% weighting is to be given to 100% recovery of all receivables, on the assumption that Katerra would have remained a going concern: 0.8 x $440 million = $352 million.

b) A 20% weighting is to be given to 50% recovery of Actual and Type 1 Future Receivables on the assumption that Katerra would have entered bankruptcy: 0.2 x (0.5 x ($330 million + $22 million) = $35.2 million).

c) a) + b) = $387.2 million.

460. This case was not set out in the pleadings. There was just a general pleading that the value of the receivables was $440 million or such amount as the court may determine.

461. The SBDs' position in closing was in summary as follows:

i) The court should conduct the valuation of the Purchased Receivables on the basis that if the CEA and TA had not been entered the PSPA would not have been entered. Hence the relevant counterfactual exercise requires one to assume that none of the agreements would have been entered.

ii) In the absence of the CEA and the PSPA, Katerra would have entered a Chapter 11 wind-down bankruptcy (or a Chapter 7 liquidation).

iii) In such a bankruptcy, the expected rate of recovery in respect of Actual and Type 1 FR would have been 10%-15%. The recovery on Type 2 FRs would have been nil.

iv) The correct face value of the Purchased Receivables as at 30 December 2020 was $250m of ARs, $5.6 million of Type 1 FRs and $29 million of Collections.

v) Applying the rate of 10%-15%, the expected value of the receivables was as follows:

a) $25 million to $37.5 million of ARs.

b) $0.6 million to $0.8 million of Type 1 FRs.

c) $29 million of Collections.

d) Total: $54.6 million to $67.3 million.

462. The first question is whether Katerra would have gone into bankruptcy absent the CEA and TA.

463. I find as a fact that had the CEA not been entered into the PSPA would not have been entered into either. The PSPA expressly referred to the execution of the CEA agreements as a closing condition, and the execution of the PSPA took place as part of the same closing process. Moreover the PSPA and the CEA were two elements of an overall restructuring of the balance sheet and capital base of Katerra. The purpose of the two transactions was to save Katerra from bankruptcy. This was indeed explained by Katerra's CEO to journalists: see the WSJ article of 30 December 2020.

464. I reject the claimants' submissions that in assessing the risks of bankruptcy and valuing the receivables the court should proceed on the basis that the PSPA would have been entered into even if the CEA had not been entered.

465. Their first submission was that the PSPA should not be included as an element of the "transaction" they have pleaded for the purposes of the claim under section 423. Since any order to be made under section 423(2) is designed to restore "the position to what it would have been if the transaction had not been entered into" only the CEA and the TA need be disregarded in the relevant hypothesis.

466. I shall assess this submission on the assumption that the relevant "transaction" comprises the (combined) CEA and TA (an assumption I shall rule on below). Even making this assumption I am unable to accept the claimants' submission. The hypothesis required by section 423(2) requires one to identify the position that would have occurred had the transaction not been entered into. The identification of this counterfactual state of affairs is a question of fact. I have found that if there had been no CEA there would also have been no PSPA. The claimants' argument conflates the identification of "the transaction" with the separate (counterfactual) question of what the position would have been had the transaction not occurred.

467. The claimants' second argument was that the PSPA was not a condition precedent of the CEA. That is so, but the PSPA was expressly contingent on the CEA being entered into. They were part of the recapitalisation of Katerra.

468. The claimants' third argument was that SoftBank may still have considered investing in Katerra if the CEA had not been entered into. There was no evidential basis for that contention. The internal SBG and SBIA documents point the other way. The injection of $200 million was part of the Katerra recapitalisation and the two transactions were closely interconnected. I do not consider that is an argument which had any realistic basis in the evidence.

469. This leads to the question of what would have happened had the CEA and the PSPA not occurred. In my judgment it is clear beyond doubt that Katerra would have entered bankruptcy at the end of December 2020 or in early January 2021. Katerra was in serious, indeed perilous, financial difficulties during the second half of 2020. At several stages during that period the threat of bankruptcy was imminent. A rescue was required. Katerra itself announced on 30 December 2020 that the injection of $200 million and the cancellation of the Katerra debt had allowed it to avoid bankruptcy. I am in no doubt that, had the restructuring not occurred, the directors would immediately have filed for bankruptcy.

470. I reject the claimants' further arguments that, absent the CEA, Katerra would have continued as a going concern. Their first argument was that the SBDs continued to support Katerra after 30 December 2020 and that this shows that the SBDs considered Katerra to be a going concern. These historical events, however, took place in a real world, where both the CEA and the PSPA were entered, that is, one in which Katerra had been restructured and recapitalised. The fact that SoftBank continued to support the restructured Katerra tells one nothing of the hypothetical world in which the restructuring is assumed not to have happened.

471. The claimants next relied on contemporaneous valuations which posited lower probabilities of bankruptcy. On 6 January 2021 Duff & Phelps assumed a 20% probability of Katerra going into bankruptcy. On 1 April 2021 Houlihan Lokey assumed that Katerra was a going concern on the basis of SoftBank's continued support. On 11 January 2021 SoftBank assumed a 50% probability of liquidation but expressed confidence in Katerra's new CEO Paal Kibsgaard to solve Katerra's liquidity issues and to reach cashflow breakeven in Q4 2022. However each of these valuations and reports were made in the real world, in which both the cancellation of the $440 million owed under the RPA and the injection of $200 million under the PSPA happened. As already explained, they are uninformative in the hypothetical world in which it is assumed that neither occurred.

472. For these reasons, there is no warrant for the probabilistic approach advanced by the claimants in their closing submissions. The 20% and 50% figures are based on the documents referred to in the paragraph immediately above. These real world events do not assist in conducting the exercise the court must conduct, which is to consider, counterfactually, what the position would have been had the CEA not been entered into. As explained above I find that there is no realistic doubt that Katerra would not have continued as a going concern. It would have entered bankruptcy in December 2020 or early January 2021.

473. I find as a fact that such a bankruptcy would have been commenced under Chapter 11. It would probably have been an orderly wind down rather than a going concern bankruptcy. There was no evidence before the court to support the latter possibility and the claimants did not argue for it in their closing submissions. A going concern

bankruptcy would probably have required far more substantial DiP funding than an orderly wind down and there was no evidence before the court that such DiP funding would have been available.

474. It is convenient to note at this point that the first expert report of Mr Brown, which addressed the valuation of the receivables, proceeded on the unarticulated assumption that Katerra would have continued after 30 December 2020 as a going concern. Mr Brown accepted in oral evidence that his going concern assumption was based on the $200 million received by Katerra under the PSPA. Mr Brown ultimately accepted that, absent financing at the end of December 2020, Katerra would have entered bankruptcy.

475. The court's guidance for experts requires them to explain significant assumptions. Mr Brown did not do so. He appears to have reached his opinion on the basis that, since he was instructed to reach an opinion on the basis that the CEA and TA should be disregarded in the counterfactual, he should assume that the PSPA should not be disregarded. In other words he appears to have thought that he was required to assume that the PSPA would have been entered into even if the CEA had not. In his first report he did not explore the reality or reasonableness of this assumption. He did not comment on it. In my judgment his approach fell below the standards to be expected of an independent expert. When approaching the valuation of the receivables on the counterfactual assumption that there was no CEA, it was self-evidently relevant to ask, first, whether the PSPA would have been entered into, and, secondly, what would have happened if the PSPA had not been entered into.

476. I turn next to the probable rate of recovery of receivables in the event of a Katerra bankruptcy. It was common ground in closing submissions that the rate of recovery in a Katerra bankruptcy falls to be calculated by reference to a structured, wind-down, Chapter 11 bankruptcy.

477. The expert witnesses took different approaches to this question. Mr Brown produced an analysis of anticipated liquidation recoveries in 14 bankruptcies, which he contended were comparable to Katerra. The anticipated recoveries were in almost all cases given as a "low" estimate and a "high" estimate. These produced an average (mean) range of 37% (low) to 50% (high).

478. Mr Farrell took a different approach. He explained how a bankruptcy of Katerra would have been likely to affect the recoverability of receivables. He said that debtors would have been likely to contend that, by failing to perform its obligations, Katerra had caused them losses, which they would have been likely to seek to set off against the receivables. Katerra's customers would have stopped paying amounts due. More specifically:

i) Mr Farrell explained that the trustee-in-bankruptcy would have rejected loss-making contracts including those relating to Purchased Receivables, and that customers would have cancelled their contracts with Katerra.

ii) There would have been little to no recovery of the relevant receivables because customers would have suffered damages exceeding the amounts owed to Katerra.

iii) Surety bonds would have provided no additional value to Katerra's receivables as most surety bonds were in relation to loss-making contracts, and therefore liable to be terminated by joint stipulation; and only 13% of the Purchased Receivables were covered by surety bonds.

iv) His view was that, taking account of all these difficulties and obstacles, recovery rates would have been in the order of 10-15% for both ARs and Type 1 FRs.

479. The SBDs also relied on the actual course of Katerra's bankruptcy (which commenced in June 2021). They contended that the actual bankruptcy experienced comparatively low recoveries. I shall return to this below.

480. I turn to my assessment of the competing expert evidence.

481. As already noted, Mr Brown analysed the estimated high and low rate of recoveries in 14 sample bankruptcies. These were derived from estimates that were produced at the time of the relevant bankruptcy proceedings. In Chapter 11 bankruptcies there is a requirement to show that the outcome will be at least as good as would occur in Chapter 7 liquidation, and therefore, at an early stage in the Chapter 11 proceedings, estimates are given of expected recoveries in such a liquidation. Mr Brown's analysis was derived from public filings containing these estimates.

482. The SBDs challenged Mr Brown's analysis of comparable bankruptcies on a number of grounds. They contended as follows.

483. First, the range of expected recoveries set out in the table of sample bankruptcies is very wide. In the 14 comparable bankruptcies, the range of estimated recoveries is from 0% (the lower bound for Gramercy) to 100% (for Welded Construction). This itself casts doubt on the statistical utility of the exercise. Moreover the calculation is based on only 14 sample bankruptcies. There have been at least tens of thousands of other construction bankruptcies in the period covered by the sample. Mr Brown does not apply any statistical methods to test the reliability of his approach.

484. Second, the method is statistically susceptible to outliers. A small debt with a high recovery rate disproportionately alters the average recovery rate. There are several outliers which distort the average recovery rate. These are Welded Construction, TNT, Unitek, McDermott and Dixie Electric.

485. Third, the analysis included companies which Mr Brown accepted were "less comparable". The bankruptcies which Mr Brown accepted in evidence were "more comparable" to Katerra were IES, Carpenter, Blanton, Maquire, KPH, CBC and RCR. The average recovery rate of those companies was 33% (low) to 44% (high).

486. Fourth, the even the "more comparable" companies were generally much smaller than Katerra. Other than IES, all the "more comparable" companies were owed between \$3 million and \$7 million of accounts receivables. They are therefore poor comparators.

487. Fifth, the analysis included subcontractors as well as general contractors. IES, Carpenter, RCR and CBC were subcontractors. Mr Brown accepted that it was plausible that subcontractors would probably be engaged on shorter term contracts,

and would probably be subject to lower damages claims for non-performance. Katerra was a general contractor.

488. Sixth, even the general contractors are not good comparators. Blanton, Maquire and KPH are the "more comparable" general contractors in Mr Brown's opinion. None was comparable to Katerra, which was heavily loss-making and built modular products in its factories.

489. The claimants supported Mr Brown's comparative approach and took issue with each of the criticisms. They submitted that the correct rate of recoveries of ARs and Type 1 FRs was 50%. This was at the top of a range of 37% to 50% advanced by Mr Brown in his expert evidence. They argued for the higher end because Mr Brown's estimate was prepared with reference to expected outcomes in Chapter 7 liquidations, which typically allow for lower recoveries than Chapter 11 bankruptcies.

490. The claimants submitted that Mr Brown's evidence was to be preferred to that of Mr Farrell for a number of other reasons.

491. They argued, first, that Mr Brown had greater experience of bankruptcies. While Mr Farrell has experience in the construction industry he has little experience in relation to construction bankruptcy.

492. Second, Mr Farrell did not explain in his reports whether his proposed range of 10-15% was based on evidence of comparable bankruptcies and did not indeed identify any specific cases from which any experience he had was derived.

493. They argued, third, that as a matter of methodology Mr Brown's comparative analysis was a more secure empirical basis for assessing the likely recoveries.

494. In support of Mr Farrell's approach, the SBDs submitted that Mr Farrell had extensive experience of the construction industry and had identified, by reference to Katerra's specific business and contracts, the practical reasons why Katerra's customers would have ceased to pay and recoveries would have been very low. These have been summarised in [478] above.

495. They also relied on what occurred in the actual bankruptcy of Katerra, the Chapter 11 filing which took place on 6 June 2021.

496. This is a convenient point at which to resolve a dispute between the parties as to whether the evidence about Katerra's actual bankruptcy is admissible and (if so) helpful.

497. The SBDs contended, first, that when considering the counterfactual it is appropriate to have regard to what actually occurred, provided that intervening events do not make a material difference: see *Assetco plc v Grant Thornton UK* LLP [2021] Bus LR at [210]; and the discussion at [603] to [604] below. Second, there are no such intervening events in the present case. The obvious possible intervening event is Greensill's own bankruptcy, which caused concern among bond insurers. However, if the CEA and PSPA had not occurred, then Katerra would still have encountered liquidity issues, being burdened by the $440 million RPA debt. This would have caused the same concern among bond insurers.

498. The SBDs also contended that ARs are earned amounts and not dependent on future performance. Therefore, although the reasons for bankruptcy in June 2021 may have differed from those in December 2020, those reasons would have had no bearing on the recovery of ARs.

499. The claimants submitted that, while in appropriate cases the court may have regard to subsequent events where the value of an asset at the valuation date is uncertain, it cannot do so where there has been a material change in the circumstances such that the later event throws no helpful light on the position as at the earlier date. Here the documents filed in the Katerra bankruptcy itself show that the intervening bankruptcy of Greensill was a major and material factor leading to the bankruptcy of Katerra.

500. On this issue, I have concluded that the fact that Katerra went into bankruptcy in June 2021 does not assist in assessing the question whether Katerra would have gone into bankruptcy in December 2020 if the CEA had not been entered into. I accept the claimants' submission that the intervening bankruptcy of Greensill materially damaged the business and prospects of Katerra as third parties (including bonding companies) were more reluctant to do business with a company so closely associated with Greensill. I have indeed reached the clear conclusion that Katerra would have entered bankruptcy without being influenced by the evidence that it actually went into bankruptcy in June 2021.

501. On the other hand, it appears to me that what happened in respect of the recovery of receivables in the actual bankruptcy of Katerra is capable of throwing some helpful light on the counterfactual exercise of determining what would have been recovered in a notional bankruptcy assumed to have commenced some months earlier. Given the common ground that the notional bankruptcy would have been a wind-down bankruptcy, rather than a going concern bankruptcy, there is no reason to suppose that the level of recoveries in the notional bankruptcy would have been materially different from that in the actual one. In this regard, I find that there is no reason for concluding that, in the actual bankruptcy, the intervening collapse of Greensill materially affected the level of recoveries (see further below).

502. The SBDs drew attention to the following features of the actual bankruptcy of Katerra.

503. First, while Katerra's revenue for 2020 averaged $145 million per month, in the first three months after bankruptcy it was $20.4 million, $12.1 million, and $12.4 million respectively. The SBDs contended that this supports Mr Farrell's opinion that in a bankruptcy customers would have ceased paying to a material extent.

504. Second, from June to August 2021 accounts receivables decreased from $332 million to $272 million, and those 90 days overdue increased from $28 million to $95 million. In the same period, aggregate operating receipts amounted to c. $14 million, which implies that the decrease was not due to collections. The SBDs contended that this supports the view that Katerra was facing claims for damages from customers which eroded the value of receivables.

505. Third, the expected plan distributions predicted a distribution to unsecured creditors of $38 million to $75 million, with prior payment of $5 million of secured claims and $11 million-18 million of priority claims. So far, the actual realisations have been $80.345 million, which includes $45.31 million paid in fees, $2.2 million of

administrative claims, and $9.9 million of priority claims. There has been no payment to unsecured creditors. These low rates of recovery support Mr Farrell's views.

506. As to Mr Farrell's reliance on the rates of recovery from Katerra's actual bankruptcy, the claimants submitted that this exercise is not useful for several reasons.

507. First, the bankruptcy is ongoing and has not yet completed, so it is not known what the overall recovery will be.

508. Second, Greensill's intervening bankruptcy had an adverse influence on Katerra's rates of recovery in its bankruptcy.

509. Third, even if a comparison is properly to be made even in the actual bankruptcy, Katerra's expected recovery on 1 September 2021 was $54.1 million to $98 million in respect of accounts receivable of $272.72 million, which is a rate of recovery of 20% to 36%. This is higher than Mr Farrell's estimated rate.

510. I come to set out my conclusions about the probable level of recoveries in the counterfactual bankruptcy of Katerra.

511. In my judgment, while the evidence of both experts was of some assistance, each had serious shortcomings.

512. As to Mr Brown's analysis, I consider there is real force in several of the criticisms levelled by the SBDs.

513. First, I had serious reservations about the statistical reliability of the analysis. The numbers exhibit an extremely wide spread of expected recoveries (in both the low and high cases) from 0% to 100%. Mr Brown has not carried out any analysis of their distribution to determine whether the mean is a reliable measure of the central case. Moreover in a number of cases the high expected recovery is the same as the low expected recovery, but this is not explained.

514. In addition the sample size of 14 is small when compared to the much larger body of construction bankruptcies during the period covered by his list. Mr Brown's evidence did not to my mind adequately provide a principled basis for the selection of the 14 comparables.

515. Second, Mr Brown has not applied a weighting to the average. This means that a small debt with a high recovery rate has a large impact. For instance, if the 100% recovery for Welded Construction's $600,000 debt is excluded, the re-calculated average recovery rate falls to 32%-46%.

516. Third, as already noted, Mr Brown accepted in his evidence that seven of the companies were "less comparable" companies. The more comparable ones were IES, Carpenter, Blanton, Maguire, KPH, CBC and RCR. The average recovery rate of those companies is 33%-44%.

517. Fourth, most of the companies were much smaller than Katerra and they were likely to have less complicated contractual arrangements. Other than IES (with receivables of $135 million) Mr Brown's "more comparable" companies were owed between $3

million and $7 million of accounts receivables. I consider that this casts doubt on their usefulness as comparators.

518. Fifth, I had real doubts about the inclusion of subcontractors as well as general contractors as comparators. Of the “more comparable” companies, IES, Carpenter, RCR and CBC were subcontractors. Mr Brown accepted that it was plausible that subcontractors would probably be engaged on shorter term contracts and would probably be subject to lower damages claims for non-performance. The average recovery rate for the subcontractors IES, Carpenter and RCR is 45% to 63%, whereas for Blanton, Maguire and KPH (the general contractors within the “more comparable” group) it is 30% to 36%. Katerra was a general contractor.

519. Sixth, I consider that even among the general contractors there are real questions over comparability. None of Blanton, Maguire and KPH are readily comparable to Katerra. Katerra was a very large company which sought to apply technology to construction. A large part of its business was the production of modular products in its factories, which it then installed. By contrast Blanton was a small local builder which owed only $6.3 million. KPH was a small general contractor which entered bankruptcy due to litigation over a hotel development. Its receivables were $4.5 million. Maguire served federal, state and municipal governments, which are likely to be less risky than private counterparties, and their recovery estimates assumed 75% to 95% project completion. Its receivables were $4.7 million. None are comparable to Katerra in nature of business, types of customers or scale of receivables.

520. Seventh, there are a number of outliers which tend to distort the average recovery rate. Specifically:

i) Welded Construction. Its 100% recovery rate was based on special completion agreements (entered into with its customers). Its 100% recovery rate also ignores debt write-offs of $120 million pre-plan.

ii) TNT was a crane hire company. Its revenue was derived from the hire of plant. Its hire periods were likely to be completed pre-bankruptcy or earned per diem. It was also able to exercise possessory rights to retrieve its property and to compel payment. Its claims for debts were less likely to be subject to set-offs. That may explain its high recovery rate of 61% to 82%.

iii) Unitek was a specialist telecoms network engineer whose business was 2/3 equipment installation and 1/3 network engineering and construction. Its high recovery rate of 48% - 68% was probably driven by its telecommunications client base and the fact that its equipment installation business was more akin to the work of a subcontractor.

iv) McDermott and Dixie Electric were both energy companies. Katerra did not operate in the energy sector. Moreover McDermott’s recovery rate should be adjusted from 16%-32% to 9%-23% when its rates for accounts receivable and “contracts in progress” are averaged, as it appeared to me they should be.

521. For these reasons I concluded that Mr Brown’s comparables analysis must be approached with a considerable degree of caution.

522. The SBDs accepted that, if a comparative approach is to be used, IES was probably the closest comparator for Katerra. Mr Brown said in evidence that it was the closest to Katerra. In its bankruptcy IES had an expected recovery rate on accounts receivable of 22% (low) to 35% (high). The SBDs submitted that, if the comparable approach is appropriate at all, the lower end of the range should be taken, since IES was an electrical subcontractor, not a general construction contractor.

523. On the other hand, I also had serious reservations about Mr Farrell's conclusions. I was able to accept much of his evidence about the general problems a trustee in bankruptcy would have met with in collecting receivables. These included the fact that customers of Katerra would have terminated contracts for non-performance and would have brought claims for damages. In this regard it is relevant that a major part of Katerra's business involved the manufacture and installation of modular products and that customers would face difficulties in accessing substitute performance from other contractors to complete unfinished projects. There is no doubt force in each of these general considerations.

524. However, Mr Farrell's recovery range of 10-15% was not derived from empirical data or experience. Mr Farrell did not base this range on any identified comparable bankruptcies which could be scrutinised by the claimants or the court. Though Mr Farrell has considerable experience of the construction industry, his personal experience of bankruptcy is limited. It appeared to me that his range was based more on feel or educated instinct rather than comparable empirical experience.

525. I also take into account my general observations about the expert witnesses. As recorded above, I concluded that Mr Brown was inclined to act as an advocate for the claimants and appeared unwilling to engage constructively with questions properly posed in cross-examination. In some of his answers about his analysis of the comparative recoveries of receivables it appeared to me that he was seeking to downplay the differences between Katerra and his selected comparables.

526. I have concluded that Mr Farrell sought to assist the court but, as explained above, I had concerns about his limited experience of bankruptcies and the extent to which his general points about the problems in making recoveries in a bankruptcy could be translated into an evidence-based anticipated rate of recovery.

527. I have also decided that it is appropriate to take into account the experience of the actual recoveries during the actual bankruptcy of Katerra. That experience suggests that recoveries were likely to have been comparatively low. However, it is also correct to note that the Katerra bankruptcy is not complete and that, accordingly, the overall rate of recovery is not yet known.

528. For these reasons, the expert evidence on both sides was less helpful than might have been hoped or expected. However, the assessment of what would have happened in the counterfactual can rarely be precisely estimated and the court's task is to do the best it can with the available material. I have concluded that the appropriate rate of recovery to apply is 22%, which falls at the lower end of the anticipated recovery range for IES, the closest comparable about which there was evidence before the court. In reaching this conclusion I have given some weight to the actual experience in the Katerra bankruptcy, which tends to support a lower rate. I have also given some weight to Mr Farrell's evidence about the difficulties that would be faced by the trustee in

bankruptcy of Katerra in making recoveries. I have also given weight to the material differences between Katerra and IES, including that IES was an electrical subcontractor, not a general contractor.

529. The rate of 22% applies to both ARs and Type 1 FRs. As already explained, it was common ground that the recovery rate for Type 2 FRs is nil.

530. The next issue is the value of ARs as at 30 December 2020.

531. It was common ground that the face value of the ARs in the 22 December 2020 Purchase Request File was $330 million.

532. The claimants contended that that was the correct figure to take for ARs. They said that some amounts may have been collected by Katerra between 22 December and 30 December 2020 but contended that they would have had effective security over such collections.

533. The SBDs, supported by the evidence of Mr Farrell, approached the value of the ARs differently.

534. Mr Farrell adopted two approaches. The first was to consider the consolidated balance sheet for Katerra dated 31 December 2020, which gave a figure of $408 million for ARs and $85.9 million for Type 1 FRs. Mr Brown accepted that the balance sheet was potentially an appropriate basis for analysis.

535. Mr Farrell then deducted from the balance sheet figures the value of non-US receivables and US retainage (being sums for work done by Katerra withheld by Katerra's US customers until performance of the whole contract). This was because such receivables were not included within the definition of the Purchased Receivables under the RPA.

536. Mr Farrell's calculations for non-US Receivables and US retainage were based on a document called the December Go-Forward Plan. The Go-Forward Plan recorded non-US receivables as 10.53% of the total accounts receivable figure and US retainage as 28.32% of the total accounts receivable figure. Applying these percentages to the total of $408 million in the 31 December 2020 balance sheet, the totals to be deducted are $43 million and $115 million respectively.

537. The claimants took issue with these figures. Specifically, Mr Brown gave evidence that typical retainage under a construction contact is significantly lower than 28% and is normally no more than 10-15%.

538. On Mr Farrell's approach, with these deductions made, eligible ARs would have been $250 million.

539. Mr Farrell also considered a second approach, which he described as a cross-check for the first. The second method started with the 22 December 2020 Purchase Request File, which (as already noted) listed $330 million of ARs. Mr Farrell then examined the available underlying documentation relating to the Receivables listed in the 22 December 2020 Purchase Request File. He identified two categories of deductions

which he said fell to be made from the headline ARs figure: (a) duplicate ARs and (b) already paid ARs.

540. As to (a) duplicate ARs, Mr Farrell explained that, in respect of several Payment Applications, there were other Payment Applications relating to the same work and projects (generally including the same project names, project numbers and payment application numbers). In total some $11,897,730 worth of ARs were duplicated by further ARs. These figures are calculated from documentation relating to 87% of the ARs, as documents were not available for the remaining 13%. Mr Farrell grossed up the $11.9 million figure to give a figure for duplicate ARs of $13.8 million.

541. As to (b), payments already made, Mr Farrell identified documents showing that several Payment Applications underlying the ARs in the 22 December 2020 Purchase Request File had already been paid. In total Mr Farrell identified Payment Applications totalling $74,264,602 where the documents appeared to show that the Receivable had been paid. Again the documents covered only 87% of the ARs. Mr Farrell grossed this up to give a figure for amounts already paid (and which would therefore potentially amount to Collections) of $85.8 million.

542. To give an example of (b), the 22 December 2020 Purchase Request File included an amount of approximately $5.6 million due from Lennar Multifamily Communities, LLC. However Payment Application #16 dated 30 September 2020 included a document called “Unconditional Lien Waiver” stating that Katerra had received $5,557,122.78 in respect of “Requisition 16”. The amount therefore appears to have been paid before 30 September 2020 (but not remitted to Greensill on any later settlement date (in contravention of the RPA)).

543. When the duplicates amount of $13.8 million and already paid amount of $85.8 million are deducted from the $330 million of ARs in the 22 December 2020 Purchase Request File, the resultant figure is $230 million. Mr Farrell said that this second approach therefore provided support for his first approach, which had led to the conclusion that there were $250 million of ARs as at 30 December 2020.

544. Mr Farrell also explained that the Collections amount had to be reduced to $29 million, since $214.9 million of Katerra’s total cash of $243.9 million as at 30 December 2020 was in a general Katerra Wells Fargo bank account over which Greensill had no security. While this may have been a breach of the RPA, in a bankruptcy of Katerra, Greensill would only have been able to recover from accounts over which it had security.

545. The SBDs accepted that the $230 million produced by Mr Farrell’s second approach may be an underestimate on two grounds: (i) some Future Receivables listed in the 22 December 2020 Purchase Request File might have become ARs by 30 December 2020, and (ii) the extrapolation from the documented 87% of cases is not a completely reliable process. They contended however that it provided corroboration for the $250 million figure produced by Mr Farrell’s first approach.

546. The SBDs therefore submitted that the correct value of the ARs as of 30 December 2020 was $250 million, and that Greensill also had security over Collections of $29 million.

547. The claimants challenged the approach adopted by Mr Farrell.

548. They submitted, first, that insofar as Mr Farrell's valuation was based on the draft unaudited 31 December 2020 Katerra balance sheet and the Go-Forward Plan, it was flawed, including for the following reasons:

i) Mr Farrell did not have access to Katerra's cash receipt journals and bank statements. He therefore could not verify his estimates of non-US receivables and US retainage against actual figures or documents.

ii) Mr Farrell's own evidence was that retainage is usually "between 10% and 20%". Mr Farrell's figure for Katerra's US retainage was 28.32% of accounts receivable. This suggests Mr Farrell's figure was significantly too high.

iii) Mr Farrell's value of US retainage was based on forecasts in the Go-Forward Plan, which were calculated by adding 1% of monthly revenue to the forecast retainage from the previous month. That is not likely to be a reliable basis for calculating US retainage.

549. Insofar as Mr Farrell's valuation was based on his secondary method, it was also wrong, for the following reasons:

i) Mr Farrell's conclusion that there were duplicate invoices is not reliable as he has not had access to Katerra's actual financial records. Mr Farrell's approach indeed amounts to accusing Katerra of wrongdoing.

ii) Mr Farrell's conclusion that Katerra had already collected $85.8 million of the receivables in the Purchase Request File is not reliable since he has not had access to Katerra's actual financial records. Again Mr Farrell is implicitly alleging wrongdoing against Katerra.

iii) Mr Farrell's conclusions in respect of duplicate invoices and Katerra collections were extrapolated from his analysis of 87% of the underlying documents. The claimants contended that that 87% was not a representative sample.

550. As to Mr Farrell's approach to Collections, the claimants note that he reduces his valuation of the collected receivables from $85.8 million to $29 million for two reasons: (a) of the $243.9 million of cash on Katerra's 31 December 2020 balance sheet, $175 million was attributable to the PSPA; (b) of the $243.9 million, $214.9 million was held in a Wells Fargo account over which GL did not hold Account Security. The claimants contended that this approach was wrong for three reasons:

i) After receiving the $200 million under the PSPA on 30 December 2020 but before the 31 December 2020 Balance Sheet, Katerra may have used cash to discharge liabilities on 30 and 31 December 2020. For instance the Wells Fargo account records a $10 million payment on 30 December 2020.

ii) Contemporaneous documents suggest that Katerra did not have separate accounts for the Greensill facility. There is therefore no reason to exclude from the valuation of Collections either cash received by Katerra under the RPA or cash held in the Wells Fargo account over which Greensill Ltd did not have Account Security.

iii) Mr Farrell's valuation implies that Katerra has wrongfully dissipated certain receivables. That is not justified.

551. I come to my conclusions about the amount of the ARs.

552. Overall it appears to me that, while it suffers from imperfections, Mr Farrell's approach was to be preferred. My reasons follow.

553. First, the ultimate question is the value of the ARs as at 30 December 2020 and the consolidated balance sheet for 31 December 2020 is the closest dated reference document.

554. Second, the claimants did not seriously challenge his adjustment to the balance sheet figures for non-US work.

555. As for the figures for retentions, there was some force in their point that the figures appear higher than that usually found in construction contracts, but its force is somewhat tempered by the observation that the retention percentage tends to increase as contracts approach completion. There is also some force in the claimants' contention that the way in which the figure for retention was calculated was mechanical (being the product of a formula in a spreadsheet). But that was nonetheless a figure calculated by Katerra and I do not think that it can readily be dismissed. As to the apparently high level of retentions compared to other construction contracts, I accept Mr Farrell's evidence that while typical retainage under such contracts is 10%-20%, the percentage of retainage against ARs tended to rise as projects approach completion.

556. Third, I considered there was force in Mr Farrell's opinion that the Purchase Request File was unreliable in relation to at least some duplicates and amounts already received by Katerra. The examples given by Mr Farrell showed persuasively that there was duplication and prior collections of amounts included in the File.

557. Fourth, Mr Farrell's approach involved the two approaches described above. The second was a cross-check for the first. The resultant numbers were reasonably close. The claimants' criticisms of the second method had some force and Mr Farrell accepted that the second method was imperfect. Specifically Mr Farrell accepted that he has not had access to some categories of underlying documents, which might throw more light on the position. He also accepted that he had extrapolated from a sample. He said that extrapolation was a standard method in accounting and financial analysis, but accepted it was not perfect. Taking account of the imperfections in the method, I concluded that the secondary method gave some support as a cross-check for Mr Farrell's first approach.

558. Fifth, I do not consider that Mr Farrell's approach to the reliability of the Purchase Request File involves the conclusion that Katerra was engaged in deliberate wrongdoing. There may be a number of explanations of duplication of invoices and the inclusion of amounts already paid. These include accounting and billing errors. Katerra was a group made up of several business units and it is possible that there

were internal reporting errors. In any event, the evidence showed that Katerra banked amounts received from customers into general bank accounts over which GL had no security. It appears therefore that Katerra in fact conducted its business contrary to the terms of the RPA.

559. Sixth, I return to Mr Brown's general approach as an expert witness. I have explained that I was not always confident that he was seeking to assist the court. It appeared to me that he tended to see his role as advancing the claimants' case. While he was highly critical of Mr Farrell's approach he did not appear to me adequately to address the shortcomings in the Purchase Request File or justify its use as the source of the figures for ARs. By contrast, I concluded that Mr Farrell was doing the best he could to assist the court. He recognised the limitations of the available evidence and the shortcomings of some aspects of his approaches. Nonetheless the two approaches he took were a reasonable attempt to address the valuation issue.

560. For these reasons, having weighed all the evidence of both experts, I consider that the appropriate figure to take for the face value of the ARs as at 30 December 2020 is $250 million.

561. As to the question of the extent of the security held by GL over amounts already collected, I prefer the analysis advanced by Mr Farrell. The documents showed that Katerra was paying amounts into general banking accounts over which GL held no security. This was a breach of the RPA. Mr Farrell's approach, which took the 31 December 2020 balance sheet as one of the reference points, was potentially imperfect in that there could have been payments made between 30 December (when $175 million was received under the PSPA) and 31 December 2020. Nonetheless it appears to me that his approach was reasonable and was the best that could be done with the available information. Hence there were secured collections as at 30 December 2020 of $29 million.

562. As to the face value of the FRs as at 30 December 2020, the claimants' position is that Type 1 FRs were worth $22 million, and Type 2 FRs were worth $216 million. They base this on the fact that Katerra's balance sheet as at 31 December 2020 recorded "costs and estimated earnings in excess of billings" of $85.9 million. Using the October Go-Forward Plan, this would have comprised non-US Type 1 FRs (or underbillings) of $64 million. Therefore the value of eligible Type 1 FRs was $22 million. There is no evidence that Katerra sold Type 3 FRs. Hence the remaining $216 million of FRs in the 22 December 2020 Purchase Request File must be Type 2 FRs.

563. The SBDs' position is that Katerra Type 1 FRs were worth $5.6 million. They contended that the most reliable approach is to take the FRs contained in the 22 December 2020 Purchase Request File (which reflected the position on 15 December 2020) and to consider what quantity of those FRs were likely to have been converted to Type 1 FRs by reason of work done between 15 December and 30 December 2020. Mr Farrell's approach was as follows:

i) For each customer associated with FRs, he identified any projects where invoices had previously been issued and were included as ARs.

ii) He took an average of amounts billed in respect of each of the identified projects for the final five months of 2020.

iii) He identified the date on which the December 2020 invoice was issued for each identified project, by looking at the typical billing date for that project.

iv) In respect of each such identified project he pro-rated the average monthly bill by the number of days between the billing date and 31 December 2020, to calculate the amount of work which had been done but not billed.

564. The SBDs noted that the claimants' figure of \$22 million, which is derived from the October Go-Forward Plan, draws on forecasted "costs and earnings in excess of billings" which include amounts relating to all 199 Katerra customers, while only 13 customers were included in FRs. The SBDs submitted that the claimants' approach, which asks what work was done subsequent to the November 2020 billing date but before 15 December 2020, involves the wrong question.

565. The claimants made a number of criticisms of Mr Farrell's methodology for valuing Type 1 FRs:

i) Mr Farrell had only considered projects where invoices had already been issued and included as ARs. He therefore excluded Type 1 Future Receivables pursuant to an existing contract in relation to which no bill had yet been issued.

ii) Mr Farrell had assumed that average monthly billing over July to November 2020 accurately predicts the work done and to be billed in December 2020. However, there is no basis for this assumption, since there is often substantial variation in billing amounts between months.

iii) Mr Farrell's approach is internally inconsistent as it sometimes treats the end of the month as 30 December and sometimes as 31 December 2020. Mr Farrell also failed to identify any projects corresponding to eight of the Net Payment Amounts.

iv) The valuation experts were seeking to estimate the amount of the receivables listed in the 22 December 2020 Purchase File Request. The receivables in that Purchase File Requested reflected the receivables added or removed on 15 December 2020. Mr Farrell should, according to his own methods, have sought to calculate unbilled work performed between the last billing date before 15 December and 31 December 2020, not unbilled work performed between 15 December 2020 and the end of the year. If that adjustment were to be performed, then his estimate of Type 1 FRs increases to \$26.3 million, closer to Mr Brown's valuation (\$22 million).

566. I come to my conclusions about Type 1 FRs.

567. In my judgment, the claimants are right to say that if the exercise is to value which of the totals for "Future Receivables" in the 22 December 2020 Purchase Request File fall within Type 1, the correct question, in respect of each project, is how much work had been done in the period between the most recent prior billing date and 15 December 2020. That is because the receivable is only an AR once invoiced. Hence the ARs in the Purchase Request File are those which had been invoiced by the most recent billing date before 15 December 2020. Therefore the Type 1 FRs in the

Purchase Request File were those classified as FRs in the Purchase Request File, but in respect of which work had been done up to the 15 December 2020.

568. That is correct so far as it goes. But the ultimate goal of the exercise is to value which Future Receivables listed in the Purchase Request File had become Type 1 FRs by 30 December 2020. That exercise would include any Future Receivables in respect of which work was done after 15 December 2020 (as well as where work was done before then). If the billing date fell before 30 December 2020 they would have become ARs by that date and reported in "Accounts Receivable" in the 31 December 2020 Katerra balance sheet. In order to conduct that exercise, Mr Farrell had sought to calculate the ARs on the basis of the 31 December 2020 balance sheet, and then calculate the value of Type 1 FRs by that date.

569. There is, however, in my judgment considerable force in the claimants' submission that Mr Farrell's methodology may have resulted in his disregarding possible Type 1 FRs which relate to contracts under which no invoices had been sent out. However there is an evidential gap in this regard.

570. It may also be the case that Mr Farrell has underestimated Type 1 FRs by taking the end of the month in some cases to be 30 December 2020 rather than 31 December 2020. Mr Farrell did not adequately explain the inconsistent approach he had taken in this regard.

571. There are other potential flaws in Mr Farrell's methodology for estimating the amount of work that would have happened in the relevant periods. He has extrapolated from earlier periods. But, as the claimants submitted, the previous experience did not support the view that work was carried out at a consistent rate. Again it appears to me that substantial adjustments would need to be made Mr Farrell's conclusions to reflect the risks of underestimation of the Type 1 FRs.

572. I have concluded overall that the value of the Type 1 FRs should be generally based on the approach of Mr Farrell, which I prefer to that of Mr Brown. However in order to guard against the risks of underestimation in Mr Farrell's approach, as identified by the claimants, it seems to me appropriate to make significant upward adjustments. Doing the best I can I have concluded that the appropriate figure for Type 1 FRs, including such adjustments, is $10 million.

573. To summarise, I have concluded that as at 30 December 2020 there were ARs with a face value of $250 million and Type 1 FRs with a face value of $10 million. The 22% recovery rate gives a value for the $57.2 million ($260m x 0.22). In addition there were secured collections of $29 million. The total value of GL's rights as at 30 December 2020 was therefore $86.2 million.

E. SECTION 423 OF THE INSOLVENCY ACT 1986

The statutory provisions

574. Sections 423 to 425 provide as follows:

> "**423 Transactions defrauding creditors**

(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

(b) he enters into a transaction with the other in consideration of marriage or the formation of a civil partnership; or

(c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—

(a) restoring the position to what it would have been if the transaction had not been entered into, and

(b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In this section "the court" means the High Court or –

(a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;

(b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up.

(5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as "the debtor".

424 Those who may apply for an order under s. 423

(1) An application for an order under section 423 shall not be made in relation to a transaction except—

(a) in a case where the debtor has been made bankrupt or is a body corporate which is being wound up or is in administration, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the court) by a victim of the transaction;

(b) in a case where the victim of the transaction is bound by a voluntary arrangement approved under Part I or Part VIII of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or

(c) in any other case, by a victim of the transaction.

(2) An application made under of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

425 Provision which may be made by order under s. 423.

(1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—

(a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;

(b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of the money so transferred;

(c) release or discharge (in whole or in part) any security given by the debtor;

(d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

> (2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—
>
> (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
>
> (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
>
> (3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.
>
> (4) In this section "security" means any mortgage, charge, lien or other security."

Approach to the construction of section 423

575. As with any exercise of statutory construction, the provision is to be construed giving effect to the words used, having regard to the statute as a whole, and the purpose of the provision: see *Bilta (UK) Ltd v Tradition Services Ltd* [2025] UKSC 18 at [20].

576. In *El-Husseiny v Invest Bank PSC* [2025] UKSC at [64], the Supreme Court identified the purpose of the provisions as being to set aside or provide other redress in cases where there have been transactions at an undervalue which have prejudiced creditors.

The transaction

577. By section 436(1) the term "transaction" includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

578. There was some common ground:

i) The term "transaction" embraces a potentially wide range of possibilities.

ii) The identification of the relevant transaction will in each case turn on its own facts: *Feakins v Department for Environment Food and Rural Affairs* [2005] EWCA 1513 at [78] per Jonathan Parker LJ.

iii) Agreements that are indissolubly bound up as part of the same transaction may be treated as a single transaction: *Delaney v Chen* [2010] EWHC 6 (Ch) at [10], affirmed on appeal at [2010] EWCA Civ 1455.

iv) The "transaction" must be something that the "debtor" has "entered into", in the sense of "the taking of some step or act of participation by the company": *Re Ovenden Colbert Printers Ltd* [2015] BCC 615 at [32] per Kitchin LJ.

v) There is no requirement under section 423(1) for a transaction within the meaning of the provision to involve a disposal of property belonging to the "debtor"; the release of debt owed to the debtor may fall within section 423(1) even though it involves no transfer of property: *El-Husseiny* at [60].

vi) The cases about section 238 of the 1986 Act, elements of which are materially identical in wording, are a helpful guide to the construction of section 423: *El Husseiny* at [63].

579. The claimants submitted that the relevant transaction falls to be identified by reference to the person or persons with whom the debtor entered into it, such that only the elements of the transaction between that person (or those persons) and the debtor may be taken into account: *Phillips v Brewin Dolphin Lawrie Ltd* [1999] 1 WLR 2052 (*"Phillips CA"*) at 2060-2061 per Morritt LJ; and *Feakins v Department for Environment Food and Rural Affairs* [2007] BCC 54 ("*Feakins*") at [41]-[47] per Jonathan Parker LJ.

580. The SBDs submitted that *Phillips CA* had to be approached in the light of the decision of the House of Lords in that case ([2001] 1 WLR 143 ("*Phillips HL"*)). Lord Scott held that the answer to the case was provided not by identifying the transaction, but by identifying the consideration for the transaction.

581. The SBDs submitted that the court does not look at an impugned transaction in isolation; it is necessary for the court to look at the surrounding circumstances, taking into account reality and common sense: *Agricultural Mortgage Corp plc v Woodward* [1995] 1 BCLC 1, 11d-f (Sir Christopher Slade).

582. The SBDs also submitted that a contract between B and C may be treated as part of a transaction entered into by A even though A is not party to the contract between B and C. The example they gave was where A contracted with B (its debtor) to pay C, a creditor of A, such payments being treated by C as discharging A's debts to it: see e.g. *Re Emanuel* (No 14) Pty Ltd (1997) 147 ALR 281, a decision of the Federal Court of Australia. In that case the court held that there was a transaction between A and C despite the lack of a direct contract between them. The SBDs submitted that, by parity of reasoning, a debtor may be treated as party to a transaction constituted by a contract to which he is not a party as a matter of contract law. Indeed they contended more broadly that a dealing may form part of a transaction even where it does not involve or require the participation of the debtor.

583. The resolution of these differences requires a closer examination of some of the cases.

584. In *Phillips* the plaintiff company, C, sold its stockbroking business to the first defendant, B. For B's commercial reasons, the relevant parts of the business, including the goodwill, were transferred to S, a subsidiary of C, before the sale. The hive-down excluded certain assets, including the office premises and computer equipment used by C. By a share sale agreement dated 10 November 1989, C sold the shares in S to B for £1. Under a separate sublease agreement of the same date, C let the computer equipment used in the business to B's parent company, P, for four years at an annual rent of £312,500. C also agreed that it would perform all obligations under the headleases under which it held the computer equipment. Two months later the owners of the computer equipment terminated C's headleases for breach of a covenant against

subletting and P claimed it was discharged from further performance of the sublease agreement. This was before any of the payments of rent were made under the sublease. C was then wound up. The liquidator of C applied under section 238 of the 1986 Act for a declaration that the share sale was a transaction at an undervalue. The judge held that payments made under the lease were not to be treated as the consideration for the transfer of the shares and the share sale agreement was therefore a transaction at an undervalue. He ordered B to pay the amount of the undervalue.

585. The Court of Appeal dismissed the appeal. It held that the relevant transaction had to be identified by reference to the person with whom it was entered into and only those elements of the transaction between the company and that person could be taken into account. There were two separate, though linked, transactions. These could not be the same transaction for the purposes of section 238 since the company had entered into them with two different parties. The payments under the lease could not be recharacterised as consideration for the shares; and accordingly the only consideration for the shares was that paid under the share sale agreement.

586. At page 2058F Morritt LJ recorded that the judge had held that the agreements were linked in the sense that it was never contemplated that one would be entered into without the other. At 2060 he said,

> "It is true that the word "transaction" is very widely defined. It is also true, as submitted by counsel for Brewin Dolphin, that, given the purposes of ss. 238, 339 and 423 to which it applies, the court should not strain to narrow the definition by judicial decision. However, the word "transaction" is to be construed and applied as part of s. 238 as a whole. Other parts of the section indicate some of the limits involved. First, the transaction must be identified by reference to the person (or persons, for the singular must include the plural) with whom the company entered into it. Only the elements of the transaction between the company and that person may be taken into account. Thus, without more, a contract between the company, A, and B cannot be part of a transaction entered into by the Company, A, with C. I introduce the caveat "without more" to guard against cases where the transaction is artificially divided."

587. The House of Lords affirmed the decision of the courts below, but on different grounds. They held that the issue was not the transaction but the consideration for the transaction entered into by the company, which was itself a question of fact. It was irrelevant by whom the consideration was provided and it could include the value of a collateral agreement entered into by the company with a third party. The consideration for the shares included the value of the benefit of the sublease under which £1.25 million would be paid over four years. However, in assessing the value of the sublease agreement the court was entitled to give precedence to reality over speculation and have regard to subsequent events; since the sublease was entered in breach of covenant and B had decided not to use the equipment, that agreement was precarious and speculative from the outset; and that the value of the subleases was properly to be assessed at nil.

588. The SBDs submitted before me that the decision of the House of Lords cast doubt on Morritt LJ's guidance about the identification of the transaction for the purposes of the statute. I do not agree. As Jonathan Parker LJ explained in para [46] of *Feakins*, Lord Scott treated the relevant "transaction" as being the share sale agreement. He held however that, on the judge's findings, the payments to be made under the sublease constituted consideration for the shares.

589. In my judgment, the passage from *Phillips CA* set out in para [585] above continues to provide helpful guidance about the meaning of "transaction". It will be noted that in that passage Morritt LJ used the qualifier "without more", to guard against cases where the transaction is artificially divided.

590. However, the passage should is no more than guidance and it is no substitute for the words of the statute. The position is in my judgment well expressed by McPherson and Keay on the Law of Company Liquidation (5th edn) at [11-030]: "as indicated by the quote taken from Morritt LJ's judgment above, the courts are likely to be reluctant to view a number of contracts involving different parties as constituting a single transaction".

591. Moreover, as Jonathan Parker LJ pointed out in *Feakins* at [78], the identification of the relevant transaction is fact-specific and, while in some cases it may be appropriate to treat a single step in a series of linked dealings as the relevant transaction, in others it may not.

592. I also note that in para [76] of *Feakins* Jonathan Parker LJ explained that in construing the term "transaction" the court should have regard to the statutory objective of remedying the avoidance of debts.

593. As to *Re Emanuel*, the SBDs say that it shows that a person may enter a transaction even where it is not a party to each element of an overall transaction. I note the following points. First, that proposition, so far as it goes, is uncontroversial and is consistent with other cases, including *Feakins*. Second, properly analysed, it seems to me that *Re Emanuel* is of little assistance. The essential facts have been described in para [581] above. The court held that A had initiated the series of dealings which led to its debts to C being discharged. The overall arrangement in question was one to which all of A, B and C were parties, as A had to accept that payments by B to C would discharge B's debts to A and C had to accept that payments from B would discharge A's debts to C. It is easy to see why A, which initiated the dealings, was treated as entering into the wider transaction even if was not strictly a contracting party. Indeed the court confined its conclusions to a situation where "there was a course of dealings initiated by the debtor for the purpose of and having the effect of extinguishing the debt."

594. The claimants also relied on the case of *National Westminster Bank v Jones* [2001] 1 BCLC 98. In that case two farmers carried on a farming business as partners. They granted the claimant bank a mortgage over their land and other assets in respect of borrowings. They fell into financial difficulties and the bank demanded repayment. In order to protect the assets they formed a company and granted it an agricultural tenancy of the land at full market rent and sold to it the other farming assets. Neuberger J held that the tenancy and sale agreements were transactions at an undervalue for the purposes of section 423 notwithstanding that the defendant's overall asset position

was not reduced and that their creditors as a whole were not prejudiced because the bank as the intended victim of the transaction was prejudiced. The defendants contended that the tenancy and sale agreements should be considered as part of a wider set of steps or transactions including the acquisition of the company.

595. Neuberger J rejected this argument. At para [72] he said the acquisition of the company could not be said to be "part of the 'transaction' under consideration in the present case….not least because it was entered into between the defendants and third parties and related to the company as the subject matter of that transaction, whereas the transaction or transactions under attack in the present case consist of the tenancy and the sale agreements entered into between the defendants and the company itself."

596. The Court of Appeal (at [2001] EWCA Civ 1541) upheld this decision on the basis that it was the sale and the tenancy which had been entered into by the defendants for the purposes of putting assets beyond the reach of the bank, and they were therefore the relevant transactions to be considered (see para [26]).

597. I agree with the claimants that this decision supports their submission that, without more, a contract between parties other than the debtor may well be seen as falling outside the relevant transaction.

598. It also appears from the decision of the Court of Appeal that in identifying the "transaction" it may be material to consider the purposes of the debtor in entering into it. Where it is found the purpose is to put assets beyond the reach of a creditor or creditors, this may affect the court's view of the scope of the transaction. Hence the exercise of identifying the relevant transaction is not entirely independent of the purposes of the debtor in entering into it. This is an application of the general principle that the statute is to be construed and applied having regard to its purpose.

599. To summarise, the case law establishes these points:

i) When identifying a "transaction" for the purposes of s. 423 the court will give effect to the statutory purpose of giving relief against debtors seeking to avoid or prejudice their creditors.

ii) A "transaction" may include the release by the debtor of a debt.

iii) The term "transaction" is a broad one which extends to arrangements and is therefore not limited to legally binding contracts.

iv) It is possible for a transaction to comprise or include arrangements which are not legally binding contracts to which the debtor is a party.

v) The court must take a common sense view of what is comprised in a transaction and should have regard to the statutory purpose of preventing the avoidance of debts.

vi) The fact that a series of steps may be interlinked, even in the strong sense that one step would not have happened without the other(s), does not mean that the entire series necessarily constitutes a single transaction for the purposes of section 423.

vii) Indeed, the courts are likely to be reluctant to view a number of contracts involving different parties as constituting a single transaction unless the contracts have been artificially divided.

viii) The statutory phrase "a person enters a transaction" is a composite one. There must be a transaction and the relevant person must have entered into it.

ix) In deciding whether the transaction includes a step said to comprise part of a wider transaction, it is material to consider the subject matter of the step, the parties to the relevant step and to the other elements of the alleged transaction, and whether there has been an artificial division of an overall transaction into (apparently) separate parts.

x) The purposes of the debtor in entering into a particular step may be relevant to whether it constitutes part of the relevant transaction for the purposes of the statute.

Undervalue

600. Under section 423(1), a transaction is entered into at an undervalue where it is made on terms that provide for the "debtor" to receive no consideration (see section 423(1)(a)) or for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the "debtor" (see section 423(1)(c)).

601. Millett J held in *Re MC Bacon* [1990] BCLC 324 at 340 that the question of undervalue:

> "requires a comparison to be made between the value obtained by the company for the transaction and the value of consideration provided by the company. Both values must be measurable in money or money's worth and both must be considered from the company's point of view."

602. This passage was approved by the Court of Appeal in *Agricultural Mortgage Corp v Woodward* [1995] 1 BCLC 1 at pages 5-6.

603. The value of the consideration is to be assessed objectively at the date of the transaction: *Phillips HL*, at [26].

604. If at that date the value of the consideration is dependent on the occurrence or non-occurrence of some event and that event occurs before the assessment of value has been completed then the valuer may have regard to it: *Phillips HL*, [26]; *Reid v Ramlort* [2002] EWHC 2416 (Ch) at [17].

605. In *Stanley v TMK Finance Ltd* [2010] EWHC 3349 (Ch), David Richards J said:

> "14. The decision of the House of Lords [in *Phillips HL*] establishes that, in appropriate circumstances, regard may be had to subsequent events, but it was in the context of attributing value to a covenant which was, on the facts known at the date of the transaction, precarious. I would agree with the comments of

Professor Goode in *Principles of Corporate Insolvency Law* (3rd ed.) at para 11-31:

> "Lord Scott's speech has generated much debate on the use of hindsight to determine a value at the time of the transaction. But it seems clear that Lord Scott was not in truth applying a hindsight test; rather he was relying on evidence of subsequent events to show that from the outset the covenant under the sub-lease was so precarious and its value so speculative that even at the time it was entered into a bank or finance house with knowledge of the surrounding circumstances would not have attributed any value to the sub-lease covenant."

606. The valuer is required to take account of all other matters relevant to the determination of value as at the date of the transaction: *Phillips HL* at [26]; *Reid* at [17]. But, while it is preferable if precise values of the consideration involved in the transaction can be established, it is not necessary for exact monetary values to be assigned to the outgoing and incoming consideration that constitute the impugned transaction (so that a range of values may be applied). The critical issue is whether the company received significantly less than what it gave: *Reid* [104].

607. Value is to be determined objectively by reference to what the "debtor" receives and not what the counterparty gives up: *Delaney v Chen* [2011] EWCA Civ 1455 per Lord Neuberger MR.

608. I also consider that the fact that a party to the relevant transaction provides consideration to a third party should be disregarded in determining the value received by the "debtor" save to the extent that receipt by the third party enures to the benefit of the "debtor": see *Re Whitestar Management Ltd* [2018] EWHC 743 (Ch) at [79] per HHJ Hodge QC (sitting as a High Court judge). The SBDs took issue with this proposition. They submitted that *Phillips HL* at [20] shows that factually linked transactions can, taken together, supply the consideration for the transaction. However that case did not address receipt by a third party and I agree with HHJ Hodge's formulation.

Purpose

609. Under section 423(3), the relevant "transaction" must have been entered into by the "debtor" for the purpose of either: (1) putting assets beyond the reach of a person who is making or may at some time make a claim against it; or (2) otherwise prejudicing the interests of such a person in relation to the claim which it is making or may make (the "relevant purpose").

610. The burden of proving that the debtor acted for the statutory purpose is upon the claimant: *Inland Revenue v Hashmi* [2002] EWCA Civ 981, at [22] (Arden LJ).

611. Whether the debtor had the statutory purpose is essentially a question of fact for which the judge must make primary findings of fact: *BTI 2014 LLC v Sequana SA* [2019] EWCA Civ 112 ("*Sequana CA*"), [66] (David Richards LJ).

612. The improper purpose need not be the sole or dominant purpose of the transaction; if the transaction was entered into by the debtor for the improper purpose, as well as for one or more other purposes, the transaction will still fall within section 423(3) of the 1986 Act: *JSC BTA Bank v Ablyazov* [2018] EWCA Civ 1176 at [13]-[14] per Leggatt LJ.

613. The assessment of "purpose" requires determining the "subjective state of mind" to be attributed to the "debtor": *El-Husseiny* at [28].

614. A helpful test is to ask, "what did he [the debtor] aim to achieve?": *Sequana CA* at [66].

615. It is not enough to show that a transaction had the consequence (even if foreseeable or foreseen) of putting assets beyond the reach of creditors or otherwise prejudicing their interests or where that result was simply a by-product of the transaction. Something more is needed: see [15] to [16] of *Ablyazov*:

> "15. Arden LJ made this very point in the *Hashmi* case when she said (at para 23) that "there is no epithet in the section and thus no warrant for reading one in". When later in her judgment she referred (at para 25) to a "real substantial" purpose, it is apparent from the context that the reason for using those adjectives at that point was to underline the distinction between a purpose and a consequence of the relevant transaction. As Arden LJ emphasised, it is not enough to bring a transaction at an undervalue within section 423 that the transaction had the consequence of putting assets of the debtor beyond the reach of creditors. That is so even if the consequence was foreseeable or was actually foreseen by the debtor at the time of entering into the transaction. Evidence that the debtor believed that the transaction would result in putting assets beyond the reach of creditors may support an inference that the transaction was entered into for the purpose of doing so, but the two things are not the same. To illustrate the distinction using a less homely example than that given by Arden LJ, a commander may order a missile strike on a military target knowing that it will almost certainly cause some civilian casualties. But this does not mean that the missile strike is being carried out for the purpose of causing such casualties.
>
> 16. When judging a person's intentions, we are generally more inclined to accept that an action was not done for the purpose of bringing about a particular consequence, even if the consequence was foreseen, if there is reason to believe that the consequence was something which the actor wished to avoid or at least had no wish to bring about. Hence, in the example just given, where the missile strike had a clear strategic purpose, we may readily accept that it was not ordered for the purpose of causing civilian casualties – particularly if, for example, there is evidence that the commander gave anxious consideration to how many civilians were likely to be in the target area and planned

> the strike for a time when the number was expected to be low. By contrast, a consequence is more likely to be perceived as positively intended if there is reason to think that it is something which the actor desired. Thus, evidence that a person who has entered into a transaction at an undervalue foresaw that the result would be to put assets out of reach of creditors and desired that result might lead the court to infer that the transaction was entered into for that purpose. But such a conclusion is not a logical or legal necessity. It is a judgment which has to be based on an evaluation of all the relevant facts of the particular case."

616. It is not necessary for the claimant to demonstrate that the transfer would not have been made but for the improper purpose: *Akhmedova v Akhmedov* [2021] 4 WLR 88 at [81]. It is possible for a person genuinely to desire to benefit a third party but also to act with the prohibited purpose: *ibid* at [82]. On the other hand the relevant outcome or consequence must be "positively intended": see *Ablyazov* at [17]

617. It is not necessary to show that the relevant transaction was entered into for the purpose of prejudicing the particular person now bringing the claim: *Fortress Value Recovery Fund I LLC v Blue Skye Special Opportunities Fund LP* [2013] 1 All ER (Comm) 973 at [108]-[111]. Nor is it necessary for the debtor to know the identity of any or all actual or potential creditors who may be prejudiced by the impugned transaction, although the debtor's knowledge of the presence of a particular creditor or potential creditor may shed light on its purpose in entering into the transaction: *Malik v Messalti* [2025] BPIR 91 at [64].

618. The claimants submitted that a person is generally assumed to intend the consequences of his acts, and referred to *Swift Advances v Ahmed* [2015] EWHC 3265 (Ch) and *Pena v Coyne* [2004] EWHC 2684 (Ch) at [126]. It appears to me that the proper approach, exemplified by those cases, is that the court is required to assess all of the evidence, find the primary facts, and determine, by a process of inference, whether the relevant person has the necessary subjective state of mind. The relevant facts from which inferences may be drawn may include the transaction's obvious or self-evident consequences. However, the terms of the statute and the cases referred to above show it is not enough simply to allege and prove that the transaction had the relevant prejudicial consequences.

Victim

619. Under section 423(5), a "victim of a transaction" for the purposes of section 423 means a person "who is, or is capable of being, prejudiced by it". The term is to be given a broad meaning: *Gordian Holdings Ltd v Sofroniou* [2021] BPIR 808 at [16(2)]. It can include a person who was not in the compass of the improper purpose when the impugned transaction was entered into and a person about whom the debtor was unaware at that point: *ibid* at [16(3)].

620. There is no requirement that a "victim" must be in a debtor/creditor relationship with the "debtor": *Clydesdale Financial Services Ltd v Smailes* [2011] 2 BCLC 405 at [73].

621. It is also unnecessary to identify any claim against the "debtor" itself or to demonstrate that the transaction sought to be impugned was entered into in order to prejudice the

particular person bringing the claim: *4Eng Ltd v Harper* [2010] 1 BCLC 176 ("*4Eng*") at [22] per Sales J.

Relief

622. Where a party establishes that it is a "victim" and that the other elements required to engage section 423 are met, the court may make such order as it thinks fit for restoring the position to what it would have been if the impugned transaction had not been entered into and to protect the interests of victims of the impugned transaction.

623. Section 425 contains a non-exhaustive list of orders that the court may think fit to make under section 423. It also contains certain express limitations on the orders that may be made.

624. Any order made must seek, so far as practicable, both to restore the position to what it would have been if the transaction had not been entered into and to protect the interests of the victims of it. The first question must be what assets have been lost to the debtor: *Chohan v Saggar* [1994] BCC 134 at 14.

625. In *Reid v Ramlort* [2005] 1 BCLC 331 Jonathan Parker LJ at [125] said that in considering the appropriate remedy the court should not start from any a priori position. The task for the court is to fashion the most appropriate remedy with a view to the statutory formula in subsection 423(2). This may involve reversing the transaction in some cases, but not in others; it may take the form of an order for compensation, in others it may not.

626. At [126] Jonathan Parker LJ said that in deciding how to exercise the statutory discretion as to remedy the court must inevitably have regard to subsequent events, and to the facts as they are at the date of the order.

627. It was common ground that the Court's power under these provisions permits "flexibility in fashioning relief which is carefully tailored to the justice of the particular case" and "hard and fast rules for the application of these provisions" should be deprecated: *4Eng* at [16] per Sales J.

628. It was also common ground in the opening submissions at trial that the formulation of the appropriate relief should take into account the mental state of the defendant and the degree of their involvement in and knowledge of the improper purpose pursued by "debtor" through the impugned transaction: *4Eng* at [13], [14], [69], and [72].

629. Despite earlier agreeing this as common ground, the claimants submitted in their written closing that the statutory language does not require the consideration of the mental state of a defendant or their degree of involvement or their purpose in entering a transaction. This is correct so far as the statutory wording goes, and Sales J did not suggest otherwise in *4Eng*. Nor did he suggest that any particular state of mind or involvement of the defendant was a trigger for relief. All he said was that these matters were likely to be relevant to the appropriate relief. I consider that this is correct. I also note that in *Sequana* ([2017] EWHC 211 (Ch) at [25]), Rose J expressly applied Sales J's guidance that the state of mind and culpability of the defendant are potentially relevant to the appropriate relief.

630. The SBDs submitted that in fashioning the appropriate relief the court may take account of events occurring after the relevant transaction. The claimants contended that the relief should be determined by reference to the position at the time of the transaction.

631. On this issue, in my judgment the authorities support the SBDs' position.

632. As already noted, *Reid v Ramlort* at [126] shows that in deciding how to exercise the statutory discretion as to remedy, the court may have regard to subsequent events, and to the facts as they are at the date of the order.

633. In *4Eng* Sales J explained that the appropriate relief may be shaped by reference to post-transaction events. At [13] he said, "the making of an order under s. 423(2) and s. 425 necessarily requires some further balancing of the interests of the transferor's creditors and of the transferee to be determined by the court, since by the time the court has to take action events will have moved on from the transfer and the balance of the equities between creditors and transferee may well have been affected by changes in circumstances over time." In [14] he gave some examples. These included the case where a blameless transferee of an asset had simply held on to it while its value fluctuated. Sales J concluded that in such a case the appropriate order might be (he said ordinarily would be) to transfer it to the creditors or the transferor. Another was where the transferee had taken property with knowledge of the relevant purpose and had then sought to further the fraudulent design by lying to the transferor's creditors. In such a case it might be appropriate to make orders to cover any falls in the value of the asset since the transfer.

634. Other examples may be given. Suppose that the transaction at an undervalue consisted of the transfer of a boat or other chattel to another person. If the recipient had kept the boat until the trial, the court might well decide to require the transfer of the boat back to the debtor. But suppose that before the trial the boat was destroyed by a lightening strike or in a storm. It is hard to see why the court should make an order for payment equal to the value of the boat at the time of the transfer, or indeed its destruction, at least in the case of a person who did not share the statutory purpose at the time of the transaction. At any rate, in my judgment, these subsequent events are at least potentially relevant to the appropriate relief and there can be no bright-line rule that they must be ignored.

635. Another example where post-transaction events might be material, not given by Sales J, is where an innocent transferee of an asset has improved the asset. It appears to me likely that in such a case the court's order for relief may well seek to reflect any value attributable to the improvement. That would require an assessment of events after the date of the transaction.

636. The *Sequana* case provides further support for the court considering events between the transaction date and the trial. The trial judge, Rose J, who had found that a dividend declared by a debtor company was a transaction at an undervalue, considered the relevance of later transactions when deciding on the appropriate relief. In broad terms, the defendants argued that subsequent dealings had reduced the claimants' claims against the debtor company and that these should be reflected in the remedy. Rose J (at [2017] EWHC 211 (Ch)) and the Court of Appeal (at [2019] EWCA Civ 112) rejected that argument on the basis that the subsequent dealings had been influenced

by the existence of the impugned transactions themselves and that, on the facts, it would not be just to the claimants to take them into account. This conclusion turned on the judge's findings of fact. Neither the judge nor the Court of Appeal considered that post-transaction events were legally irrelevant. On the contrary, they carefully considered the impact of such events on the appropriate relief. More generally neither court cast any doubt on the principles stated by Sales J in *4Eng*. The claimants were therefore mistaken in the present case in suggesting that *Sequana* supports the view that relief is to be assessed by reference to the position as at the date of the transaction.

637. I also reject the claimants' submission that the wording of the section requires the court to determine the appropriate relief by reference to the position as at the date of the transaction. The claimants submitted that the answer was to be found in the use of the past tense in section 425(1)(d) ("in respect of benefits received from the debtor"). But this wording does not temporally restrict the facts or events which may be relevant to the assessment of relief; it simply states that the power to order the payment arises "in respect of such benefits" as have been received. That wording would include any time before the court makes an order.

638. There is indeed a contrast between some other elements of section 423, which require matters to be assessed as at the date of the transaction, and the question of relief. It is clear, for instance, that the comparison of value for the purposes of section 423(1)(c) must happen at a single date, being the date of entry into the transaction. Again the purpose of the debtor is naturally to be assessed at the date of the transaction. The same is not true of subsection (2) which refers to the court making such order as it thinks fit for restoring the position and protecting the interests of creditors. The orders that may be made under section 425 also to my mind envisage taking account of post-transaction events or circumstances.

639. As the SBDs observed, this approach analogous to the approach to equitable compensation established by the House of Lords in *Target Holdings v Redferns* [1996] 1 AC 421. In assessing equitable compensation the court does not stop the clock at the date of the transaction, but takes account of the circumstances occurring until trial. Hindsight and common sense are to be used. This case was of course concerned with equitable compensation for breach of trust, but it illustrates that in determining equitable remedies hindsight and knowledge of the actual circumstances may properly to be taken into account. It appears to me that there is some resemblance between that jurisdiction and the broad discretionary jurisdiction under section 423(2) to make appropriate restorative and protective orders.

640. I conclude that the cases, including *4Eng* and *Sequana*, establish that in shaping relief the court may properly have regard to post-transaction events.

641. Returning to other aspects of the jurisdiction to grant relief, no test of causation is applicable, such that it is unnecessary to ask whether entry into the impugned transaction itself caused the prejudice suffered by the victims of the transaction: *Gordian Holdings Ltd* at [16(2)] and [20].

642. The SBDs contended that in shaping relief the court could have regard to the conduct of the claimants, by way of analogy with the principles concerning contributory negligence. They cited no authority for this proposition and I do not think that the principles of contributory negligence have any application in this context. The basis

for relief under the section is that a debtor has put assets beyond the reach of his creditors or has otherwise prejudiced them for the relevant purpose, without obtaining value, and the purpose of the relief is restorative and protective. Moreover the proceeding is a collective one. The claim is not based on negligence or statutory or other tort and does not engage the principles concerning the award of damages; it is concerned with restoration and the protection of a debtor's creditors. I do not consider that the principles of contributory negligence have any application.

643. Where the transaction is made up of more than one component, the power under section 423(2) may be exercised by setting aside one component of the transaction and not the other or others of them: *Chohan v Saggar* [1994] BCC 134 at 140 per Nourse LJ.

644. In shaping relief, it is likely to be highly material to consider the extent to which a particular defendant has benefited. In this regard, the statutory jurisdiction is expressly restorative and protective. The most obvious form of restoration is the return of property or other benefits obtained from the transaction by a given defendant.

645. There was a dispute between the parties as to whether the court may order a person who has received no property or benefit from the debtor or from the transaction to make a payment to the debtor or the victims of the transaction. The claimants were not able to identify any authority where such an order has been made. They referred to *Integral Petroleum SA v Petrogat FZE* [2023] EWHC 44 (Comm). However in that case the trial judge, David Edwards KC sitting as a Deputy High Court Judge, inferred that the relevant defendants (who were the shareholders in a recipient company) had in fact received some benefits. Mr Edwards said at [110] that, while there was no jurisdictional bar, when it came to the exercise of its discretion the court would ordinarily refuse to make an order against a party who had received no benefit from the transaction, even where the person had directed or facilitated the transaction. He said that to make such an order in such a case would be inconsistent with the restorative nature of the jurisdiction. I agree. In my judgment it would be very unusual for the court to make an order against a defendant who had received no benefit from or as a result of the transaction.

646. The SBDs referred to *Re Oxford Pharmaceuticals Ltd; Wilson v Masters International Ltd* [2009] EWHC 1753 (Ch), [83]-[85] (Mark Cawson QC). That was a case concerning preferences under s. 239 of the 1986 Act, rather than section 238, and it is therefore of limited value.

647. The claimants also contended, based on the decision of Mr Edwards in *Integral* that even if ordinarily it was necessary to establish that the defendant had received some benefits from the debtor or the transaction, the relief need not be precisely limited to the amount of those benefits. However as I read the decision, the judge decided that the relevant defendants had, between them, received the amount of the benefits received by the company of which they were the shareholders.

648. Be that as it may, as the claimants accepted, the extent of any property or benefits obtained by the defendant from the debtor or from the relevant transaction is likely to be a material factor for the court to take into account when deciding what, if any, relief should be granted.

649. In overall summary, it appears to me that the right approach, following *4Eng*, is to take account of all the circumstances, including the extent to which the defendant has received property or benefits from the debtor or the transaction, the involvement of the defendant in the transaction, and the state of mind and culpability of the defendant, both at the time of the transaction and later, with a view to furthering the statutory purposes of asset restoration and creditor protection.

650. In *Sequana* Rose J explained at [24] that there are some circumstances in which the court may properly decide that it is not appropriate for there to be any remedy imposed, but that this would only be in an exceptional case. Rose J also explained at [25] that the relief falls to be determined having regard to the purposes of section 423.

F. DETERMINATION OF THE ELEMENTS OF THE CLAIM

The relevant transaction(s)

651. The first issue is the identification of the transaction or transactions. The claimants allege that the CEA and the TA taken together constitute the relevant transaction for the purposes of the claim under section 423.

652. The claimants relied on the following features:

i) The agreements were negotiated and executed contemporaneously. They were intended to form a single transaction.

ii) The terms of the two agreements operated together. The CEA effected the release of GL's rights under the RPA in exchange for the Katerra Shares. The TA provided for the immediate transfer of the Katerra Shares to SVF2. The two agreements were therefore expressly interlinked.

iii) Mr Greensill explained in evidence that there was never a point where the Katerra Shares were going to stop with GL.

653. The SBDs did not seek to suggest that these two agreements should not be treated as single transaction. However they alleged that the relevant transaction, which they called the "Greensill/Katerra Transaction", comprised fifteen agreements or arrangements, including the understanding that the Greensill Group would apply the \$440 million injected under the CLNs in purchasing or redeeming the Fairymead Notes. These fifteen agreements or arrangements were entered into in November and December 2020. They included (a) the Omnibus Deed between GPCL, GCUK, SBG, Mr Greensill and SVF II Holdings dated 10 November 2020; (b) the \$440 million CLN between SVF II Wyatt and GCPL dated 10 November 2020; (c) various ancillary agreements entered on 10 November 2020; (d) the Secured Promissory Note between Katerra Inc. and SVF Abode dated 1 December 2020; (e) the Amendment Deed dated 8 December 2020 between LG Trustee, Mr Greensill and SBG; (f) the Amended Omnibus Deed dated 23 December 2020; (g) the Amended CLN dated 23 December 2020 between SVF II Wyatt and GCPL; (h) the CEA between GL, Katerra Cayman and Katerra Delaware dated 30 December 2020; (i) the TA between SVF Abode and GL; (j) the PSPA dated 30 December 2020 between SVF Abode and Katerra Cayman; and (k) the parties' understanding that the Greensill Group would apply the \$440 million injected under the CLNs in purchasing or redeeming the Fairymead Notes.

654. The SBDs relied on a number of features of the history in support of their contention that there was a single transaction made up of these various agreements and understandings.

655. The claimants disputed this analysis. They contended first that the various transactions identified by the SBDs were not linked factually.

656. I have already found as a fact that the various agreements that took place between November and December 2020 were seen by the SBDs and Mr Greensill as part of an overall package, having various purposes. They evolved over time (and some were superseded by others), but the genesis and essential purpose of the package was to address the potentially disastrous consequences of Katerra going into bankruptcy. That was a real and immediate possibility unless it was recapitalised. The threat was amplified by the concern that the Credit Suisse SCF funds, the chief provider of liquidity for Greensill, would probably withdraw their support if any particular Vision Fund portfolio company collapsed. I have found that the commercial genesis of the suite of agreements was the realisation that a Katerra collapse would undermine GCPL's pre-IPO fundraising. That would seriously have damaged the interests of the SBDs and Greensill. I have also found that the package of measures that was put in place was designed to address these risks. As explained above, in broad terms this involved injecting $440 million, as the amount of money representing the outstanding amount of the Fairymead Notes into Greensill to enable it to buy or redeem them and thereby internalising the risk; and restructuring Katerra's balance sheet and capital by a combination of fresh equity and the compromise of its liabilities. There were changes in the deal after the New Money Consortium dropped out. I have earlier set out my findings that these aspects of the commercial deal were negotiated and were seen by the SBDs and Greensill as a package or suite of agreements.

657. In reaching this conclusion, I have considered a number of submissions to the contrary advanced by the claimants.

658. First, the claimants submitted that the Greensill Group was not involved in SoftBank's discussions with Katerra about its recapitalisation and Katerra was not involved in the discussions between SoftBank and the Greensill Group. This may be so, but it does not follow that the various agreements should not be considered to be factually linked in the sense that the SBDs would not have entered into any of the agreements relating to the relevant phase of the negotiations unless they had anticipated that the other agreements relating to that phase would also be executed. I find that they were inter-linked in that sense.

659. Second, the claimants observed that the agreements were between different corporate groups. The answer to this point is essentially the same as to the first. I find that the SBDs would not have entered into the various agreements (relating to the same phase of negotiations) unless they had anticipated that each of the other agreements relevant to that phase would be executed.

660. Third, the claimants pointed out that the Omnibus Deed assumed that the New Money Consortium would inject $176 million into Katerra; but there was no certainty that that would happen as at 10 November 2020. That is so, but it does not follow that the various agreements were not considered to be linked by the SBDs and Mr Greensill in the above sense.

661. Fourth, the claimants submitted that Mr Romeih said in evidence that the Katerra and Greensill transactions were not predicated on one another. The passage they relied on consisted of one answer which was not easy to follow. The question he was asked related to the position as at 5 November 2020 and was essentially whether the Vision Fund would not have been investing $200 million into Katerra unless it had expected to receive a recovery. It appeared to me that the "recovery" in the question meant a recovery in the future from the shareholding (presumably as a dividend). Mr Romeih appears to have understood that the question was concerned instead with the $176 million that was to be accounted for under the deal as understood at that time. He explained that the $176 million was the recovery that SVF2 would receive in connection with the injection of the $440 million into Greensill. He said that this was separate from the injection of $200 million into Katerra, which he said was to keep it as a going concern. He then said that while they were concurrent transactions one was not predicated on the other. He appeared to be referring to the two expected injections (of $200 million and $176 million), and the relationship between them and the payment of $176 million. At other parts of his evidence he made it clear that he thought of the various arrangements with the Greensill companies as a rescue package. He was not seriously challenged about this. I do not think that the single answer which the claimants now seek to focus on bears anything like the weight they sought to give it. I do not consider that Mr Romeih intended to say that the CEA and TA were entirely independent of the injection of $440 million.

662. Moreover, his answer has to be seen in the light of the large amount of contemporaneous documentation summarised earlier in this judgment which shows that the SBDs were considering the various transactions as part of a broader package. Indeed, those documents referred to "the Greensill/Katerra transaction".

663. Fifth, the claimants noted that within SBIA there were two internal workstreams, with the deal teams having a Chinese Wall between them. That may be so, but again it does not run counter to the conclusion that the various documents constitute an overall rescue package in the sense described above.

664. Sixth, the claimants submitted that the terms changed after 18 November 2020 when the New Money Consortium walked away. There had to be a new phase of negotiations and a further round of approvals. The arrangements had to be re-worked. Indeed the proposal that 5% of the equity in Katerra would be transferred to SVF2 via GL only arose as part of the re-cut deal. Again these points are correct in point of fact, but they do not to my mind affect the conclusion that the SBDs would not have entered into the CEA and TA otherwise than as part of the wider rescue package made up of interrelated agreements. What it shows is that the arrangements evolved.

665. For these reasons, I conclude that the SBDs would not have entered into the various transactions listed above (as at each phase of the negotiations – i.e., pre- and post- 18 November 2020) unless they had anticipated that all the remaining transactions for that phase would be entered into.

666. Moreover, for the reasons given above, I have specifically found that the PSPA would not have been entered into unless the CEA had been entered into.

667. However, as the claimants submitted and as the earlier summary of the relevant principles shows, the identification of the "transaction" for the purposes of the claim

under section 423 is not determined merely by the factual question whether the agreements were negotiated or entered as linked dealings.

668. I have concluded that the claimants' position is to be preferred. The relevant "transaction" for the purposes of the claim is limited to the Impugned Transactions and does not include the various other agreements or understandings pleaded by the SBDs. My reasons for this conclusion follow.

669. First, the Impugned Transactions were the only agreements to which GL was a party or under which it acquired any rights or liabilities. There was no suggestion that the transactions were artificially divided. Moreover, even leaving aside the position of GL, the parties to the various agreements varied, some involving Katerra and others not, with some (but not all) involving the SBDs.

670. Based on the case law summarised above, the court will not generally treat agreements to which the debtor is not a party as part of a single transaction for the purposes of section 423. The fact that the agreements may have been conceived or negotiated as part of an overall package is not sufficient for them to constitute a single transaction (see e.g. *Phillips CA*, *National Westminster v Jones*).

671. Second, the agreements were entered into over a period of some two months. Some of the later agreements superseded earlier ones (e.g. the Amended Omnibus Deed and the Amended CLN). This makes it still harder to treat the later ones as part of the same "transaction" as the agreements they replaced.

672. Third, the various agreements had different purposes. Some of the agreements were concerned with making an investment into Greensill group companies. Others were concerned with making investments into Katerra. The CEA was concerned with the release of the debts and obligations of Katerra under the RPA.

673. Fourth, it was common ground that section 423 requires that the relevant transaction must be "entered into" by the debtor company. GL did not enter any of the agreements other than the Impugned Transactions.

674. The SBDs submitted that GL can nevertheless be treated as entering the Greensill/Katerra Transaction by entering the CEA and TA. I am unable to accept this. There may be cases (e.g. *Feakins*) where a party who has instigated or arranged or procured others to enter into agreements or arrangements is held to have entered into such agreements or arrangements, while not being a party to them. However, in the present case GL did not instigate, arrange, or procure the other agreements. On the contrary, its only role in relation to the agreements was at the end of December 2020, when it entered the final agreements. I am therefore not satisfied that GL "entered into" any agreements or arrangements other than those to which it was party.

675. Fifth, the cases show that when considering the scope of the transaction under section 423 the court must have regard to the purposes of the section. This requires the court to consider which arrangements were capable of causing prejudice to victims. In this regard, it is important in my judgment to bear in mind that GL was a special purpose vehicle whose only function was to facilitate the Fairymead Note programme. The securitisation structure (with the various assignments) was set up to ensure that the Noteholders would be protected in the event of insolvency of the Greensill group. GL

was not therefore a normal trading company within the Greensill group. Moreover the only class of potential victims of its dealings were the Fairymead Noteholders; and the only obvious way in which it could cause them prejudice was by varying or releasing the terms of the RPA. In my judgment, the case of *National Westminster v Jones* shows that the court should properly focus on the particular transactions alleged to have been entered into for the relevant purpose, as this tends to promote the purposes of the statute.

676. I therefore conclude that the CEA and the TA together constitute the relevant "transaction" for the purposes of these proceedings. The various other agreements or understandings identified by the SBDs cannot properly be seen as a single transaction for the purposes of the claim. They had different parties. Some concerned relations between the SoftBank Group and the Greensill Group and Mr Greensill himself. Some elements were also concerned with the historical dealings between those groups, including the settlement of the dispute about the CEP and the arrangements in June 2020 when the SBG had injected $1.5 billion into the Credit Suisse funds. At least one of the arrangements was between parties within the SoftBank Group itself.

Undervalue

677. The claimants contended that the transaction was at an undervalue.

678. Their case is that, by entering the CEA, GL gave up its rights against Katerra under the RPA. The value of this included the realisable value of the Purchased Receivables as at 30 December 2020. The only consideration given to GL by Katerra under the CEA was the Katerra Shares issued to GL. But that was not consideration to GL since GL immediately transferred those shares under the TA to SVF2. In any event the agreed value of such shares, $11.3 million, was significantly less on either side's case than the value of what GL gave up.

679. I have addressed this issue above and concluded that the value of the Purchased Receivables and secured collections was $86.2 million as at 30 December 2020 (see [572] above).

680. The SBDs' case about undervalue was two-fold. First, they contended that the release of the obligations under the RPA had the consequence (by reason of the terms of the Participation Agreement) that GL was released from any obligations to pay equivalent amounts to GCUK. Hence the release of Katerra's RPA obligations effected by the CEA had no impact on GL's net position. This was called the "pass-through point".

681. Second, they contended that the relevant transaction was a body of arrangements constituting the "the Greensill/Katerra Transaction" and that under that broader transaction GL received valuable consideration.

682. It is convenient to start with the second point as I have already determined that the transaction for the purposes of the claim is the CEA and the TA taken together. Hence the SBDs' case about consideration under the wider Greensill/Katerra Transaction does not arise. But in case I am wrong about the scope of the transaction, I should address it. For the reasons given below I am unable to accept the SBD's case.

683. First, as already explained, consideration is to be assessed objectively by reference to what the debtor receives and it must enure to the benefit of the debtor. It must also be capable of being measured in money or money's worth.

684. Second, even on the wider view of the scope of the transaction advanced by the SBDs, the payment of $440 million under the CLN was not a payment to GL and it did not enure to its benefit.

685. There may be some cases where a payment to one company in a corporate group may be said to benefit other members of the group (for instance by enabling them to provide liquidity or support to one another). However, the court would require evidence of the value of such benefits. There was no such evidence here.

686. Moreover, as already noted, GL was an SPV, designed exclusively to function as part of the securitisation structure underlying the Fairymead Note Programme. It had no employees and no assets or liabilities other than those arising in connection with that note programme. The securitisation structure of which GL was part was designed to be isolated from the Greensill Group in the event of insolvency.

687. Third, I am unable to accept the argument of the SBDs that the alleged arrangement that the $440 million payment to the Greensill Group would be used to buy or redeem the Fairymead Notes itself constituted consideration to GL. In my judgment, even if a Greensill company had bought the Notes, that would merely have changed the identity of the Noteholders. As to a possible redemption of the Notes, unless and until that actually happened, GL would have derived no benefit from the arrangement. There was no contractual obligation owed to it by another Greensill company as to the use of the proceeds, so it was not able legally to require the redemption to take place.

688. The SBDs also submitted that GL received a benefit from the payment of the $440 million to GCUK. They said that the payment somehow enabled GL to repay the Notes and therefore reduce or avoid liabilities under the Fairymead Notes. However, the $440 million was received by GCUK on behalf of GCPL. GL did not receive it and did not have any legal right to receive it. I consider that GL received no benefit from the payment itself. Moreover, the $440 million was provided before GL itself entered into the CEA and none of the $440 million had been used by then. The issue of undervalue is an objective one. Looking at things objectively, GL received nothing in money or money's worth for giving up its rights under the RPA.

689. In short, value to the debtor has to be assessed objectively from the debtor's perspective and there was no evidence that GL obtained value in money or money's worth from the payment of $440 million to GCUK or GCPL under the CLN.

690. I turn to the pass-through point. This falls to be addressed on the basis of the conclusion I have reached that the transaction consists of the combined CEA and TA. The pass-through point had the following essential steps:

i) Under the terms of the Participation Agreement, GCUK held participation rights. These were personal obligations on GL to pay amounts equivalent to the amounts received by GL pursuant to the RPA.

ii) The release of the RPA relieved GL of its obligation to make payments in respect of the participations.

iii) So GL was in no worse position by reason of the release of the RPA. The release was therefore not at an undervalue.

691. I am unable to accept this contention for the following reasons.

692. First, as already explained the issue under section 423 requires a comparison to be made between the value obtained by the debtor for the transaction and the value of consideration provided by the debtor. The issue is not whether the debtor was left worse off.

693. The attempt to reframe the issue in this way is not supported by the statutory wording. Moreover it would be at odds with that purpose, which is to protect the victims of debtor companies from prejudicial transactions. Here, the SBDs accept that GL operated as an SPV, functioning as part of the Fairymead Note Programme. The efficacy of the structure depended on GL acting as a form of conduit. By giving up its rights against Katerra under the RPA, GL gave up valuable assets, being its rights over the Purchased Receivables and related security. Expressed in the terms of section 423, GL provided consideration under the transaction equal to the value (in money or money's worth) of the assets released. This transaction was potentially prejudicial to the claimants (who are victims for this purpose) as it cut off, at source, valuable rights over which they would otherwise have been able to exercise security.

694. Hence, applying the first side of the comparison required by the section, by releasing its claims under the RPA the debtor, GL, provided consideration to Katerra.

695. The other side of the comparison requires one to ask what consideration the debtor has obtained, in money or money's worth. In my judgment, GL cannot be said to have received consideration in money or money's worth by reason of not having to pay participation amounts to GCUK equivalent to the amounts it would have received had the RPA not been released. In my judgment that is not consideration obtained by GL as a result of the transaction. It is simply the consequence of the existing terms of the Participation Agreement, which (in broad terms) only required GL to pass on what it received. The CEA did not operate as a variation or release of the terms of the Participation Agreement; the only difference it brought about was that (as a matter of fact) there would be no incoming sums requiring an outgoing payment pursuant to the Participation Agreement. GL was required both before and after the transaction to comply with the terms of that agreement. In my judgment, while the release of Katerra's obligations under the RPA may have had the consequence that there would be no further amounts for GL to have to pay as Participation Obligations, that consequence cannot be regarded as consideration obtained by GL.

696. In short, under the CEA, GL gave up substantial assets under the RPA, the value of which would otherwise have passed to the victims of the transaction.

697. In reaching this conclusion I have also been guided by the consideration that it would undermine the statutory purpose of section 423 to conclude that GL obtained "valuable consideration" under the transaction.

698. There is a second, independent, reason for rejecting the SBDs' pass-through point. GL owed an obligation under clause 8.1(C) of the Participation Agreement to Participation Holders (which include the Note Trustee, Hoffman and GCUK) that it would:

> "not agree or permit any amendment, modification, waiver, variation or novation, or with respect to any Participated Payment Obligation or any Transaction Document without the prior written consent of the Participation Holder".

699. It was common ground that no such prior written consent was given.

700. The claimants submitted that any benefit alleged to have been received by GL (from not having to pay the Participation Obligations) would have been offset by a liability for breach of clause 8.1(C). The claimants said that GL therefore received no such benefit.

701. The SBDs answered this argument by an amendment to their Defence, made in April 2025. They contended that upon entering the CEA to cancel the RPA, GL acquired a right under clause 7 of the Participation Agreement against GCUK to be indemnified against any cost, loss, liability or expenses incurred by GL in connection with any claim against GL regarding the entry into the CEA and cancellation of the RPA, including any claim for breach of clause 8.1(C) of the Participation Agreement. As a result any liability of GL to GCUK and/or the Note Trustee would be subject to set off against GL's indemnity against GCUK.

702. Clause 7 provides that:

> "[GCUK] hereby agrees to indemnify [GL] against any cost, loss, liability, or expense incurred by [GL] in connection with any claim made against [GL] (i) in its role as grantor of a Participation, (ii) under or in connection with the Transaction Documents or (ii) [sic] otherwise in connection with Clause 8.3 (Cooperation). For the avoidance of doubt, [GCUK]'s obligations under this Clause 7 shall continue to apply notwithstanding the transfer, assignment and/or novation of any corresponding Participation (or portion thereof) by [GCUK] to any third party."

703. I am unable to accept the SBDs' case based on clause 7. I agree with the claimants that the indemnity under clause 7 would not be engaged by a breach by GL of its obligations under clause 8.1(C) owed to GCUK.

704. As *Lewison on the Interpretation of Contracts* (8th edn.) states at para 12.142, it is inherently improbable that one party to a contract would wish to absolve the other from liability for breach of contract. An indemnity clause falls to be interpreted in the context of the network of rights and obligations contained in the contract as a whole.

705. In my judgment, the SBDs' reading of clause 7 would negate the protection provided by the undertakings in clause 8, including that in 8.1(C). The undertaking in clause 8.1(C) was given in order to protect the integrity of the securitisation structure. It

seems to me that clear words would be required before a reasonable reader could conclude that clause 7 would allow GL to claim indemnification from GCUK in respect of a breach of the contractual obligations it owed to GCUK under clause 8.1(C). There are no such clear words.

706. Moreover, clause 7 is capable of being given abundant context by covering liabilities of GL to third parties.

707. The consequence of the SBDs' interpretation of clause 7 is that it would operate as a form of exclusion clause, but there is nothing in the wording to suggest that that was the intention. In my judgment, if that had been the intention, the parties would have used one of the well-known techniques of excluding or limiting liability.

708. In addition, the Participation Agreement is an element in the securitisation structure designed to protect the Noteholders (as the parties economically interested) and it is accordingly expressed to be for the benefit of third party Participation Holders (see clause 1.3). It would go entirely against the grain of the agreement if their rights (which include the crucial protections given by clause 8.1) were to be treated as defeated by clause 7, which places indemnity obligations under GCUK.

709. For these reasons, I agree with the claimants that any putative benefit to GL from being factually relieved of its obligations to pay Participation Obligations would have been off-set by a liability of GL to GCUK under clause 8.1(C) of the Participation Agreement.

710. I therefore conclude that the transaction was at an undervalue.

Purpose

711. It was common ground that Mr Greensill's knowledge, intention and purpose are to be attributed to GL. Mr Greensill accepted in evidence that he authorised GL to enter the CEA and the TA.

712. The claimants' case about the relevant purpose may be summarised as follows. First, Mr Greensill knew that GL held rights against Katerra in respect of the underlying receivables and security; that the rights GL had under the RPA and related security were its only assets; that the Noteholders had the ultimate economic interest and the ultimate source of value under the securitisation structure was the receivables; that the CEA released all the rights and security of GL under the RPA; and that this changed the rights of the ultimate creditors from secured to unsecured.

713. Second, Mr Greensill admitted that the effect of the CEA was to forgive the debt owed by Katerra to Greensill and that in order to forgive the debt GL had to put assets out of the reach of creditors.

714. Third, Mr Greensill admitted that he had the relevant purpose. They relied on several passages in his evidence, culminating in this exchange:

> "Q. Well I completely understand that as of November you say that you were trying to do that. But by December, you obviously are in communication, as we have seen, with Credit Suisse over

> the concerns about reducing their exposure and so on. And so, at that point, you don't tell them what's happening, you just carry on?
> A. Yes.
> Q. And you know, therefore, the purpose of the agreement [the CEA] is to put those assets – as you say, to put the receivables and the security to be discharged so it means that it's out of the reach of Credit Suisse, but you still don't tell them?
> A. That's right, I don't. That has been my evidence all along."

715. They also submitted that Mr Greensill accepted that the transaction clearly prejudiced the creditors to the extent that they no longer had access to the assets and that this was not what they bargained for. They relied too on passages in his evidence where he accepted that he had not sought consent from Credit Suisse despite Mr Lane having advised him to do this.

716. Fourth, the court should draw the appropriate inference from the obvious effect of the CEA and TA, which was to remove assets from GL's creditors or otherwise prejudice their interests, by removing the source of the assets from which they were to be paid and doing so without their consent. These consequences were not only obvious but they were intended by GL.

717. Fifth, Mr Greensill gave evidence that he was "between a rock and a hard place". The rock was giving up the rights under the RPA without the consent of Credit Suisse. The hard place was the need to obtain the continued support of the SoftBank Group.

718. The SBDs submitted, in summary, that Mr Greensill's essential purpose was to seek to further the interests of the Greensill Group and that he had no wish or desire to damage the interests of the Fairymead Noteholders. Indeed, he appreciated that damaging their interests would very probably lead to the withdrawal from the Greensill Group of its principal source of liquidity. They also submitted that his state of mind was to be assessed when the decision was taken to enter the various transactions and that the latest date on which he made any active decision was 3 December 2020. They also submitted that on 30 December 2020 he was bound to approve the execution of the CEA and TA. The SBDs also cautioned against the conflation of the outcome of the transactions with Mr Greensill's purposes in entering into them.

719. The issue is GL's (as the debtor's) purpose in entering into the transaction. As I have said, it is common ground that Mr Greensill's state of mind falls to be attributed to GL. The inquiry concerns his intentions or aims in authorising GL to enter the CEA and the TA. It does not, however, follow that his state of mind in relation to the other dealings involving the SBDs and Katerra is not relevant to the factual issue of his aims in causing GL to enter the Impugned Transactions.

720. In my judgment, it is helpful to start by considering what Mr Greensill knew about the purpose and functions of GL. He knew that GL was a special purpose vehicle set up and operated as part of the securitisation structure under which the SCF Subfund had the economic interest. GL was a link in the securitisation chain under which (in commercial terms) resources deriving from the SCF Subfund would be advanced to Katerra and payments made by Katerra would be paid back to the SCF Subfund.

Katerra was a secured borrower from GL and GL owed obligations to pay amounts (participations) equal to receipts from Katerra to GCUK which was in turn required to pay the amounts on to other entities in the chain. The obligations of GL to GCUK were assigned to Hoffman so that in any insolvency of the Greensill Group those obligations would fall outside GL's insolvency estate. Hence GL was insolvency remote. GL did not have any assets other than its claims against Katerra. It did not have any employees. Its only function was as a link in the securitisation chain.

721. Mr Greensill, a trained solicitor, appreciated all these facts about the functions of GL.

722. Mr Greensill also understood that the CEA would break the securitisation chain. He accepted in evidence that Mr Lane had told him at the time that by writing off the debt GL was effectively killing off the assets that underpinned the Notes, and that was effectively an asset held by CSV. Mr Lane told him that he could not kill the asset without speaking to the person who owned it beneficially. Mr Greensill said in evidence that this conversation had occurred after the $440 million had been received.

723. Mr Greensill also accepted in oral evidence that he understood that by releasing the claims of GL against Katerra under the RPA he was shifting CSV's credit risk from its (indirect) claims against the Katerra receivables to its claims against companies in the Greensill Group.

724. As noted above, the SBDs submitted that Mr Greensill's state of mind was properly to be assessed by reference to the dates when he decided that GL should enter into the CEA and TA. They observed that the history had several phases. First, there were discussions in late October. These led to the original commercial agreement on about 2 November 2020. The parties agreed that the lawyers should draft the agreements to give effect to the commercial deal. The documents were executed on 10 November 2020. The second phase started on about 18 November 2020 when the New Money Consortium dropped out. That phase culminated on 4 December 2020, when the GCPL Board met and approved the revised arrangements. At that meeting the Board of GCPL authorised the new arrangements by entry into the Amended Omnibus Deed and the Amended CLN, and any other document contemplated by or ancillary to those documents. Thereafter the lawyers worked on new draft documents and these were ultimately executed on a number of dates, including on 23 December 2020 for the Amended Omnibus Deed and Amended CLN, and culminating with the CEA and TA (and indeed the PSPA) on 30 December 2020.

725. The SBDs submitted that, on the evidence, the meeting of 4 December 2020 was the last date on which Mr Greensill made a decision about the various transactions (including the Impugned Transactions). After that date there was a process of drafting and finalisation of the agreements, but Mr Greensill's understanding of the purposes of the various agreements did not materially change. They relied on Mr Greensill's evidence to the effect that the decision was made much earlier than 30 December 2020. They also relied on the documents to show that Mr Greensill was not involved in considering or commented on the detailed terms of the transactions after the 4 December 2020 meeting.

726. The SBDs therefore submitted that since the focus of the inquiry was Mr Greensill's aims when he decided to enter the transactions, the inquiry should essentially be concerned with Mr Greensill's purposes and aims in the period up to 4 December

2020. They submitted that during that period before 4 December 2020 the financial position, including the liquidity, of the Greensill Group, remained reasonably healthy. Although Mr Greensill had apparently decided not to use the $440 million injection to buy back or redeem the Fairymead Notes immediately, he intended to do one or other of those things once the Katerra recapitalisation closed. In early December 2020 he believed that the Greensill Group would have sufficient liquid funds to achieve that once the recapitalisation had occurred. He had caused $250 million of the money to be placed in Greensill Bank, effectively as a deposit. The group was well advanced in its pre-IPO fundraising efforts, and Mr Greensill expected substantial further funds to flow into the group.

727. The SBDs contended in short that when he decided on 4 December 2020 to cause his companies to enter the various transactions he intended that the SCF Subfund would be held whole by the purchase or redemption in full of the Fairymead Notes. Mr Greensill consistently explained in his evidence that that was the purpose of the $440 million injection by SVF2 and at the latest actual decision date, 4 December 2020, he had every reason for thinking a Greensill company was in a position to complete the purchase or redemption. In those circumstances, far from having the relevant purpose, by causing GL to be a party to the CEA and the TA, Mr Greensill aimed and, indeed, positively intended to place the claimants into a better position than they would otherwise have been in.

728. I am unable to accept this analysis for several reasons.

729. First, on a plain reading section 423 requires the debtor's purpose to be ascertained at the date on which the transaction is entered into.

730. Second, Mr Greensill accepted in his evidence that he authorised GL to enter into the CEA and TA on 30 December 2020.

731. Third, the CEA and TA only came into existence after 4 December 2020. There were drafts of the Amended Omnibus Deed and Amended CLN in existence at that time but there was no draft of the CEA or TA. Moreover the 4 December 2020 meeting was a meeting of GCPL, not of GL. Further thought must have been given to the terms of the CEA and the TA after the 4 December 2020 meeting, and Mr Greensill accepted in his evidence that he was the person who authorised GL to enter into these further agreements. I find that he was aware of their terms at the time they were entered into.

732. Fourth, the financial position of the Greensill Group changed materially in the course of December 2020. Among other things, as already explained:

i) On 8 December 2020 BaFin required the Greensill Group to accelerate the reduction of its exposure to GFG. An internal SBIA document recorded that BaFin had required Greensill Bank to reduce its exposure from c. $2 billion to $600 million by 31 December 2020.

ii) By 23 December 2020 TDR, the lead investor, had indicated that it would not proceed with its existing planned investment in the pre-IPO fundraising. TDR had said that it would consider investing in the group at a lower valuation provided that the position with BaFin concerning GFG was clarified.

iii) On learning of that, Mr Greensill immediately contacted SoftBank to seek a bridge facility of $1.5 billion.

iv) Mr Greensill reported to the Board of GCPL on 31 December 2020 that he had been told that morning that SoftBank was not prepared to provide a bridge facility, but that it was prepared to consider making a further equity investment of up to $250 million provided it was alongside investments from other parties. I have found that it was on 31 December 2020 that Mr Misra finally stated that the loan would not be made.

733. Mr Greensill accepted in his evidence that the position at the end of December 2020 was materially different from the position in early November 2020. He referred to the business as being in peril by the end of December 2020.

734. He also said in his evidence that at the date when he agreed the Secondary Trade with Credit Suisse, which he put at 31 December 2020, the Greensill Group did not have sufficient liquid assets to complete the transaction at once. He said in evidence that he explained this to Mr Degen and that he agreed with Mr Degen that the Secondary Trade would take place on a best endeavours basis. I am unable to accept that he actually agreed those things with Mr Degen. The documents exchanged at the time do not contain any trace of an understanding that the trade was only to be on a best endeavours basis. Specifically, Mr Greensill's email of 4 January 2021 explained that the close of the equity raise (the IPO process) had run into January 2021 and therefore asked to renegotiate the position by cancelling the Secondary Trade. There would have been no need for that proposal if the deal had only been to use best efforts or endeavours.

735. But for present purposes what matters is Mr Greensill gave evidence that Greensill was not in a financial position on 31 December 2020 to carry out the purchase of the Fairymead Notes.

736. On the previous day, 30 December 2020, there was, at best, some possibility that SoftBank might be prepared to advance the bridging loan, but this was speculative at best. Without that loan, there was no realistic prospect that the Greensill Group could carry out the buy-back or redemption.

737. In my judgment the serious deterioration in the financial position of the Greensill Group in the course of December 2020 has a material bearing on the assessment of Mr Greensill's state of mind as at the date of the transactions of 30 December 2020. By that date Mr Greensill no longer believed that the Greensill Group had sufficient liquid funds to buy or redeem the Fairymead Notes in full. At most there was a chance or hope of obtaining the bridging loan, but that was speculative.

738. It follows that on 30 December 2020 the claimants' interests under the Fairymead Note Programme could not have been "internalised" or "adopted" by an immediate purchase or redemption from the Greensill Group's own resources.

739. Mr Greensill therefore understood that by releasing Katerra from its liabilities under the RPA, GL was cutting off the originating link in the securitisation chain and was transforming the SCF Subfund from being (effectively) a secured creditor of Katerra to being an unsecured creditor of the Greensill Group. In my judgment, it is necessary,

when assessing the purposes of Mr Greensill at the date when GL entered into the transactions, to do so in the light of his knowledge and understanding of the Greensill Group's financial position at that date.

740. Mr Greensill evidence to the effect that he was seeking to protect the position of the Noteholders (by holding them harmless) and indeed improving their position (as they would not recover fully in a Katerra bankruptcy) all appeared to me to assume that the Greensill Group had sufficient liquid assets to buy or redeem the Fairymead Notes in full. His evidence was to the effect that writing off the RPA was justified because the Noteholders were always going to be repaid in full, from the $440 million funding provided by SVF2.

741. But once, in light of the various events that occurred in December 2020, the Greensill Group lost the ability (the liquidity) to buy or redeem the Fairymead Notes, that justification was no longer available. As Mr Lane put it, the effect of the CEA was to kill off the rights of the Noteholders and Mr Greensill knew that the CEA would do that. He knew that the effect of the CEA was that the Noteholders were left with no more than an unsecured claim against GCUK. GCUK's ability to meet that claim depended on the outcome of the then speculative prospects of a bridging loan from SoftBank or a revised investment proposal from TDR.

742. In my judgment, the financial predicament of the Greensill Group in late December 2020 assists in explaining Mr Greensill's motives when authorising GL to enter the CEA and TA. By 30 December 2020 there had already been a series of transactions, including the Amended Omnibus Deed and the Amended CLN. Mr Greensill knew that the CEA and TA were further steps that were to be entered into. He knew that it was important for the SBDs that the remaining transactions (which essentially effected the recapitalisation of Katerra) should complete. BaFin's requirements for rapid action, communicated on 8 December 2020, followed by TDR's decision of 23 December 2020 to withdraw its existing investment proposal, had placed the Greensill Group in need of a huge injection of liquidity. This explains why Mr Greensill approached SoftBank for a $1.5 billion loan. As at 30 December 2020, Mr Greensill was doing all he could to persuade SoftBank to make this advance. He needed to proceed with the CEA and the TA to keep SoftBank happy even those agreements would prejudice the rights or interests of the SCF Subfund and the Noteholders. He had an immediate and pressing need to find a large injection of liquidity to deal with the requirements imposed by BaFin. That was required to keep the Greensill Group alive.

743. I also find that Mr Greensill benefited or suffered from the optimism of many founders of successful businesses. He probably thought that there still was a reasonable chance on 30 December 2020 that he would be able to persuade SoftBank to advance the funds or that TDR would come back with a different investment proposal. I find that at least part of Mr Greensill's thinking in entering the CEA and TA was that he would have stood a real chance of being able to find a way of raising the funds to pay everyone off in the end. But he also knew by authorising the CEA, the rights and interests of the SCF Subfund would be prejudiced in the sense that their secured claims against Katerra would be replaced by an uncertain unsecured claim against the Greensill Group, which was itself in financial difficulties.

744. I also take into account the need, when considering the relevant purpose of the debtor, to focus on the position of the creditors of the debtor. I agree with the submission of the claimants that from the perspective of Mr Greensill the obvious consequence of the CEA was to remove the entirety of the security backing the Notes. Mr Greensill was a solicitor and he clearly understood the effect of the CEA. He accepted in evidence that the effect of the CEA was to remove the rights for which the claimants had bargained. He also accepted that he had done this without seeking the claimants' consent. He also accepted that he understood that GL was a special purpose vehicle created for the purposes of the Fairymead Note Programme and that its only assets were its rights under the RPA. He did not contest the suggestions made to him in cross-examination that the CEA prejudiced the claimants by removing their rights. In my judgment this was powerful material from which to draw the inference, absent some countervailing reason or explanation, that Mr Greensill had the relevant purpose.

745. As I understood his evidence, the additional reasons he gave were first that he considered himself bound to enter the Impugned Transactions, and, second, that he thought it in the interests of the claimants for him to be able to continue making efforts to raise the resources to be able to pay off the Notes. As at the transaction date, 30 December 2020, this included seeking to raise money from the SoftBank Group.

746. I was unpersuaded by Mr Greensill's evidence where he sought to justify entry into the CEA and TA on the basis that he considered that GL was already contractually bound to do so. First, GL was not a party to any earlier agreement which required it to enter the CEA. Second, Mr Greensill accepted in some answers in the LG transcript that he knew that GL was not bound to enter the CEA or TA. Third, some of his answers referred to being bound by the Omnibus Deed. But that agreement was superseded by the Amended Omnibus Deed. Neither agreement placed any obligation on GL to enter the CEA or TA.

747. I was also unable to accept Mr Greensill's suggestion that it was in the best interests of the claimants for GL to enter the CEA in order that the Greensill Group could continue to raise resources for at least two reasons. First, I have already explained that by 30 December 2020 the prospects of the Greensill Group being able to buy back or redeem the Fairymead Notes had become speculative. Second, this was, in my judgment, an attempt to explain the means used by reference to the end being pursued. The CEA and TA, which were prejudicial to the claimants (unless the Notes had been redeemed or bought-in or there had been some other arrangement to secure that result), was a means to raising further resources.

748. In this regard, Mr Greensill said in some of his answers that the CEA and TA were part of a package of agreements under which the Greensill Group had raised the $440 million. That might have been a material answer had the funds indeed been used at an earlier stage to acquire the Fairymead Notes (as had been anticipated by SBDs). But by the date of the CEA and TA the money had not been used for that purpose.

749. Indeed, Mr Greensill's own evidence was that the Greensill companies were not in a position to buy-back the Notes on 31 December 2020 when they entered the trade. As already explained, it is necessary to assess the issue of GL's purpose at the date when the transactions were entered into. Mr Greensill cannot have believed that the earlier injection of $440 million, which had been used for other purposes and was not available, justified GL in entering into the CEA and TA or in any way protected the

interests of the claimants (who had not in fact been protected by the use of the $440 million).

750. In this regard, proper regard must again be had to the special purposes and functions of GL. As explained above, it functioned as a chain in a securitisation structure, under which the ultimate economic interest was in the claimants. It was deliberately structurally isolated from the Greensill Group – so that in the event of insolvency, the claimants would be able to claim via the secured lending to Katerra without being affected by the creditors of other Greensill companies. GL was not therefore an ordinary trading entity in the wider Greensill Group. The special status is material when it comes to the assessment of Mr Greensill's state of mind. Some of the answers Mr Greensill gave to explain the rationale for the CEA and TA were ultimately about promoting the financial health of the Greensill Group companies, which he said was in the interests of all creditors including the SCF Subfund.

751. But, as explained above, he appreciated the special status of GL and understood that it was not akin to the trading entities in the group. This understanding was brought home to him by the conversation in which Mr Lane said that writing off the RPA was a way of killing Credit Suisse's beneficial interests. In short, even if Mr Greensill was thinking of the wider Greensill Group and his creditors, he also knew at the time that the CEA had the effect of cutting the securitisation chain under which the specific interests of the claimants arose.

752. In assessing Mr Greensill's state of mind, it is also material that, as I have found, he misled Credit Suisse about the position. The exchange with Mr Degen on 30 December 2020 was opportunistic and misleading (see [424] above). Mr Greensill gave the impression that the release of the RPA would only happen after the buy back of the Fairymead Notes. Subsequent emails from Mr Greensill gave a similarly misleading impression. This evidence led to me to treat some of Mr Greensill's evidence about his intentions in entering into the CEA and TA with considerable caution.

753. But this evidence has further significance. It shows that by 30 December 2020 Mr Greensill was willing to take considerable risks to try to keep the Greensill Group alive. He was prepared to mislead Credit Suisse in the hope that he would be able to raise liquidity from SoftBank or the pre-IPO fundraising which would enable him to find a way of buying in or redeeming the Fairymead Notes, even though there was an obvious risk that the truth would emerge.

754. I also find that Mr Greensill's concealment of what had actually happened supports the inference that Mr Greensill knew that Credit Suisse would not have consented to the CEA, and he knew that that it would not have consented because its interests as a securitised creditor were prejudiced by the transaction.

755. In this regard, I was unable to accept the evidence of Mr Greensill that he was confident that Credit Suisse would have consented to the release of the RPA, as it was in the interests of the fund. His evidence is undermined by the steps he actually took to conceal the true position from Credit Suisse.

756. Mr Greensill said in evidence that he wanted to tell Credit Suisse about the release of the RPA but was prevented from doing so by the SBDs, who insisted on the

confidentiality provisions in the Omnibus Deed. I do not accept that. There are several reasons for this conclusion. First, there is nothing in the documents to show that Mr Greensill sought such consent. The documents in which consent was sought concerned disclosure of the terms of the Omnibus Deed to Credit Suisse in relation to its pre-IPO fundraising activities. Second, the SBD witnesses were cross-examined on this same limited basis (see above) and they were not squarely confronted with a wider case. Third, Mr Greensill accepted the evidence of Mr Lane about their killing the securitised rights of the SCF Subfund. Mr Lane said to Mr Greensill that he could not do this without informing Credit Suisse as the beneficiary. In Mr Lane's evidence to the liquidators about the conversation there was no suggestion that Mr Greensill had said that he wanted to speak to Credit Suisse but was prevented from doing so. Rather, Mr Greensill said that the money would be deposited in Greensill Bank but would in due course be used to repay the Notes. Mr Lane did not give evidence that Mr Greensill wanted to tell Credit Suisse but was prevented from doing so by SoftBank.

757. Drawing the threads together, I return to the question whether GL, through Mr Greensill, had a relevant purpose in entering into the CEA and TA on 30 December 2020. I have concluded that GL did have that purpose. The CEA had only one function, which was to release the RPA. That brought down the securitisation structure, and wrote off GL's only asset. It thereby prejudiced the interest of the claimants. The claimants lost their interests under the securitisation structure and were left with an unsecured claim against the Greensill companies. Mr Greensill knew that those companies lacked the existing resources to meet the claimants' claims. Mr Greensill knew that the whole purpose of the CEA was to release the RPA. He knew that that was necessary as part of the refinancing and recapitalisation of Katerra. In my judgment, he caused GL to enter the transactions on 30 December 2020 with the purpose of releasing the only asset of GL. He had to do that in order to keep SoftBank on side. That was because he was seeking a loan of $1.5 billion from SoftBank in order to deal with the demands of BaFin concerning Greensill Bank. Mr Greensill knew that Credit Suisse would not consent to the release of the RPA. That is why he did not ask for its consent. He then concealed the position from Credit Suisse in the hope that his continuing efforts to raise money from SoftBank, TDR and others would work out.

758. This conclusion is not to conflate consequences with purpose. The consequences or effects of a transaction are part of the material from which the court may draw inferences. The sole and obvious consequence of the CEA was to release the RPA and, given Mr Greensill's understanding of the role of the RPA in the securitisation structure, he knew that by giving up the RPA, that structure would be brought down to the prejudice of the claimants. Giving up those rights was necessary because the recapitalisation of Katerra would not otherwise have occurred. In circumstances where the Greensill Group did not have available resources to pay off the Notes in full, and did not put in place an alternative means of achieving that, the intended effect of the CEA cannot be regarded as a mere consequence. The position would doubtless have been different if, simultaneously with the CEA, the Greensill companies had effected a secured (i.e. asset-backed) transaction to pay off the Fairymead Notes. But absent such a transaction, the purpose of what was done was to remove assets from the reach of the claimants or otherwise prejudice them.

759. I accept that Mr Greensill did not positively wish to prejudice the creditors of GL. On the contrary, he positively wanted to find a way if possible to hold them whole. That was indeed why he approached the SBDs in October 2020 and the reason why the SBDs invested $440 million into GCPL on 10 November 2020. Mr Greensill's reasons for wanting to fully pay the Fairymead Notes indeed extended beyond the Fairymead Programme. The Credit Suisse funds were, overall, an essential source of liquidity for the Greensill group and a default on the Fairymead Notes would be likely to lead to a wider withdrawal of funding. Mr Greensill wanted if possible to pay the claimants in full and he would clearly have preferred not to prejudice them.

760. I am nonetheless satisfied that his aim or intention in entering the CEA was to prejudice their interest. The concepts of means and ends are material here. As explained by Lords Hoffmann and Nicholls in *OBG Ltd v Allan* [2007] UKHL 21, a person who intends to bring about an end also intends the means used to achieve that end. It may be that Mr Greensill's ultimate end was to keep the Greensill Group afloat by raising further investments (including potential bridge finance from SoftBank and equity funding from TDR and others); and he intended also to use such further investments ultimately to repay the Fairymead Noteholders. But, as Mr Greensill knew, the CEA was a necessary means to achieve that end. He also knew that its entire purpose was to write off the RPA and enable Katerra to recapitalise. At that date Mr Greensill was trying to persuade SoftBank to prop up his companies and those efforts would have been ruined if GL had not completed the CEA and TA.

761. In any event, the claimants do not have to establish that the relevant purpose was the only or even the dominant purpose of Mr Greensill in authorising the CEA and TA on behalf of GL. I am satisfied that at least one of his purposes was to bring about precisely what the CEA and TA achieved namely the outright termination of the only assets that secured the rights of the claimants under the securitisation structure, which was prejudicial to their claims.

762. For completeness, I do not find that Mr Greensill actually admitted in evidence that he had the relevant purpose when authorising the CEA and TA. He said different things at different times. I have set out the passage most relied on in para [713] above. However, the first question was about Mr Greensill not informing Credit Suisse about the CEA. The second question rolled up two points: the purpose of the CEA and not telling Credit Suisse about it. Mr Greensill's answer concerned the second point – "That's right, I don't" is an answer to the question "but you still don't tell them?" The reason he said that it had been his evidence all along was that he had accepted throughout that he had not told Credit Suisse. Nor did I conclude that he admitted the relevant purpose in the other passages relied on by the claimants.

763. However, the exercise for the court is to assess the totality of the evidence and draw the appropriate inferences. I have concluded that GL had the relevant purpose in entering the Impugned Transactions.

Victim

764. This element was not separately in issue.

Relief

765. The legal principles are set out in paras [622] to [649] above.

766. The claimants in closing submitted that "in circumstances where the SBDs received benefits from the transactions (s425(1)(d)) through the write off of the $440 million debt and the receipt of the Katerra Shares, the just order is to require them to make payment to the [claimants] as envisaged under the statute." They also contended that the SBDs were the cause as well as the beneficiaries of the transaction: in their pleading they contended that the SBDs had orchestrated the transaction in order to obtain Katerra free of debt.

767. It is helpful to start by considering the benefits obtained by the SBDs from the transaction. The claimants submitted that the CEA and TA provided the SBDs with benefits through the release of the debt under the RPA, and the receipt of the Katerra Shares by SVF II Abode. The CEA and TA enabled the SBDs to achieve a dominant equity position in the Katerra Group and the release of $440 million by the CEA strengthened the balance sheet of each of the Katerra companies, thereby improving their value to the Vision Funds. This in turn benefited SBG through its 100% ownership of SVF2 and its 33.6% investment in SVF1.

768. The pleaded case in the Re-Amended Particulars of Claim was that SVF2 received the Katerra Shares with "a value of US$11.3 million, alternatively US$14.4 million (or such other amount at the Court considers fit)."

769. As to the value of the c. 11.4 million shares in Katerra transferred to SVF1 under the PSPA, the claimants pleaded at para 80.8.2 of the RAPOC that given that they were acquired by SVF1 for $200 million (under the PSPA), a fair value for Katerra Shares (i.e. the 760,000 odd received by SVF2) would be $13.3 million odd; this however fell to be discounted to c. $11.3 million to reflect a minority discount and the fact that there was to be dilution under a Management Incentive Plan.

770. Hence on the pleadings the claimants did not advance a case that the value of the 11.4 million shares transferred to SVF1 under the PSPA for $200 million represented other than a fair value for those shares.

771. As for the valuation evidence, Mr Brown placed a value on the Katerra Shares at $14.4 million based on a discounted cashflow ("DCF"). Mr Farrell valued them at $11.3 million. Mr Farrell placed considerable weight on the PSPA as giving a contemporaneous statement of the value. He said that there was no reason to look beyond to demonstrate their value.

772. There was negligible cross-examination of the experts on this aspect of the case. I consider that Mr Farrell's position is to be preferred. The PSPA constitutes directly contemporaneous evidence of value. The claimants did not take issue with this value in their pleading. Mr Brown accepted that the PSPA was a source of evidence for the valuation of the shares. He did not explain in his reports why his own DCF should be preferred to the valuation evidence provided by the contemporary PSPA. DCF valuations are necessarily subjective and dependent on numerous highly sensitive assumptions. And Mr Brown did not suggest that the PSPA did not represent an arm's length valuation.

773. Despite the pleadings and their own expert evidence, the claimants sought to contend in closing that the value of the 760,000 odd shares obtained by SVF2 was $21 million. I do not accept that it was open to them to do that in light of the pleadings, their own expert evidence, and the lack of challenge to the evidence of Mr Farrell that the PSPA was the best evidence of value of the shares in Katerra Cayman as at 30 December 2020.

774. The claimants also contended in closing that the SBDs obtained a total benefit of $420 million. They based this on an internal SBIA presentation dated 11 January 2021 for the quarter ended 30 December 2020, which showed that the Vision Funds valued the 5% Katerra Shares at $21 million as their fair value. The claimants said that this implied a total value of $420 million for the shares in Katerra and that the shares had this value as a result of the writing off of the debt of $440 million.

775. I do not accept that it was open to the claimants to run this case in closing. In light of the pleadings, it is not open to the claimants to contend for a value greater than $11.3 million for the Katerra Shares. Moreover, the only intelligible pleaded case about the value of the 11.4 million shares issued to SVF1 was that $200 million represented a fair value. I also note, in any case, that the internal SBIA valuation dated 11 January 2021 did not value SVF1's stake at $440 million. Rather it valued it at $317 million.

776. I find on the basis of Mr Farrell's evidence and the claimants' own pleadings that the value of the 11.4 million shares obtained by SVF1 under the PSPA was the $200 million price contained in that agreement.

777. The SBDs contended that the claimants had ignored the fact that SVF1 had to pay $200 million under the PSPA to acquire shares with a value of $200 million. In other words, the value of any benefit they obtained was matched by the amount they paid to acquire it.

778. The SBDs also observed that the claimants' case ignored the fact that as part of the series of transactions on 30 December 2020 SVF1's pre-existing shareholding in Katerra was written down effectively to nil (through dilution) so that the remaining entire value resided in the new shares issued by Katerra under the PSPA and the CEA.

779. As to this the SBDs submitted that:

i) The recitals to the PSPA stated that the overall transaction included a conversion and reverse share split which had the effect of reducing SVF1's pre-existing $1.95 billion equity investment in Katerra to less than 0.1% of the recapitalisation value.

ii) While SVF1 acquired new equity (the 11.4 million shares) under the PSPA this was in return for the $200 million new cash injection. (The effect of the share subscription under the PSPA was that SVF Abode held 93.65% of the equity in Katerra. It was intended that this stake would reduce to about 75% following the issue of new equity under a management incentive plan. For the same reason the stake transferred to SVF2 under the TA was 6.25% but was expected to reduce to 5% eventually. The additional equity was not issued before Katerra's bankruptcy.)

iii) Hence the CEA did not benefit SVF1 by increasing in the value of its existing equity stake. That stake was diluted effectively to zero. Though SVF1 received new equity under the PSPA it paid $200 million for it.

780. The SBDs contended that the claimants had ignored another element of the 30 December 2020 transactions, by which SVF1 released debts of $300 million owed to it by Katerra. This was another element of the restructuring of Katerra's balance sheet effected on 30 December 2020. The claimants did not take issue with this point.

781. The SBDs also contended that the benefits received by SVF2 as transferees of the 760,000 odd shares under the TA have to be seen in the light of the payment of $200 million made by SVF1 and the release of SVF1's promissory notes of $300 million. The claimants disputed this and contended that the benefits obtained by SVF1 and SVF2 had to be considered separately.

782. The conclusions I reach on the benefits received by the SBDs from the Impugned Transactions on 30 December 2020 are as follows:

i) SVF2 received the block of 760,000 Katerra shares, worth some $11.3 million. While there is some force in the SBDs' contention that the value of these shares depended on the injection of $200 million and the release of the debt by SVF1, I consider that when considering relief the court should consider the benefits received by SVF2 taken on its own. SVF2 did not make any contribution for the shares.

ii) SVF1 received a block of 11.4 million Katerra shares under the PSPA. I find that these had a value of $200 million. That matched the amount SVF1 paid for them. SVF1 in fact contributed more than that, since it also agreed to write off $300 million in debt as part of the recapitalisation of Katerra.

iii) Moreover, SVF1 received no benefits from the CEA in relation to its pre-existing investments of $1.95 billion in Katerra as these were effectively diluted to zero as part of the recapitalisation of Katerra. SVF1 therefore obtained no benefit in respect of that pre-existing stake by reason of the Impugned Transaction.

783. The claimants contended that SVF1 received a benefit from or by reason of the CEA, as Katerra's liabilities to GL under the RPA were released. As a shareholder SVF1 therefore held an interest in a company which was $440 million better off than it would otherwise have been. However, as just noted, SVF1's pre-existing stake was diluted to zero and SVF1 paid full value for the further stake it received on 30 December 2020 under the PSPA. Hence I am unable to accept that SVF1 received a material benefit from or by reason of the Impugned Transactions.

784. As already explained, the claimants contended that, in shaping the appropriate relief, the court should also take account of the culpability of the SBDs. The claimants contended, in summary, that the SBDs actions were central to the restructuring that led to the Impugned Transactions. The SBDs indeed drove the transactions and their terms in order to protect their investments in Greensill and Katerra. As Mr Greensill explained in his evidence, it was the SBDs who directed the writing-off of the RPA liabilities under the CEA, and the TA.

785. The claimants contended that they did not need to advance any case of dishonesty against the SBDs. They said that dishonesty is not a necessary element of the cause of action and that they did not have to show that the SBDs knew that GL had the relevant improper purpose, let alone that they shared it.

786. The claimants nevertheless invited the court to conclude as a matter of fact that the SDBs were aware that Mr Greensill had the improper purpose. As to this they contended that:

i) The SBDs participated in the Impugned Transactions actually knowing that the Fairymead Notes had not been repaid or at least having failed to satisfy themselves that they had, despite having the opportunity to do so.

ii) For their part, the claimants were unaware of the Impugned Transactions.

iii) SBG refused to allow Mr Greensill to inform the claimants about the Omnibus Deed or the Impugned Transactions and this was why Mr Greensill did not seek consent from the claimants. The SBDs were thus instrumental by preventing Mr Greensill telling the claimants about the transactions and robbing them of their contractual right to decide whether to consent.

iv) Putting it at its lowest, the SBDs exposed the claimants to the risk that the Impugned Transactions might complete without the Fairymead Notes having been acquired or repaid.

v) The SBDs' own evidence was that the $440 million was paid with no express requirements as to its use, and no agreed deadline for the repayment of the Fairymead Notes. Hence, the SBDs' reliance on that payment carries no weight.

vi) By 30 December 2020 the SBDs knew of the precarious state of the Greensill Group's financial position and its liquidity difficulties. Yet the SBDs allowed the transactions to complete that day without first satisfying themselves that the Fairymead Notes had been repaid or otherwise secured by Greensill. They did so knowing that it would be unlawful for the RPA to be released without the repayment or purchase of the Notes.

vii) By entering the Impugned Transactions, the SBDs had shored up their own commercial position even if that was at the expense of the creditors of GL.

787. My conclusions in relation to these submissions are as follows. First, the SBDs of course participated in the Impugned Transactions, and they acted in their own commercial interests. As detailed above, the Impugned Transactions were part of a series of factually linked agreements which were entered into by various entities in the Greensill Group, the SoftBank Group and the Katerra Group. There were extensive negotiations running from October to December 2020. The commercial and legal terms of the transactions evolved. A key aim of the various agreements was to restructure and recapitalise Katerra so as to stave off bankruptcy. A broader aim was to ensure that the pre-IPO fundraising being undertaken by Greensill would not be derailed. The SBDs had extensive investments in both the Greensill and Katerra Groups and they wished to protect and, indeed, salvage their positions. Mr Cheung readily accepted that the steps taken by the SBDs from October 2020 onwards were

designed to serve the commercial interests of the SBDs. That is to be expected. They had a keen interest in the outcome.

788. Second, as to the claimants' contention that the SBDs were driving the transactions, the metaphor requires careful analysis. The SBDs were certainly anxious to seek to the bring about the series of agreements detailed above, as they considered these were needed to protect their investments. Katerra needed to be restructured and recapitalised if it was to survive. This involved new money (ultimately provided under the PSPA) and the removal of debt from its balance sheet (the release of the RPA liabilities via the CEA, and the write off of $300 million of promissory notes). Each of Greensill, Katerra and SoftBank employed lawyers to structure the deals and their commercial teams were liaising to seek to consummate them. These were commercial transactions, and each of the three parties may be considered to have been "driving" their parts of them to obtain a commercially favourable outcome. I do not consider there is any basis for suggesting that SoftBank orchestrated the transactions if by that there is a suggestion that SoftBank imposed the terms through commercial coercion or control. The claimants' sought to rely on Mr Greensill's evidence that the SBDs had imposed very tough terms on him. However that evidence was concerned with the personal obligations Mr Greensill had had to concede relating to private jets and a personal guarantee.

789. The claimants also relied on evidence about the SBDs having a substantial level of influence over both Greensill and Katerra. SVF1 was by 2020 a very substantial investor in both Greensill and Katerra. It had the right to appoint observers at Board meetings of GCPL and Mr Cheung and others attended such meetings. Mr Romeih accepted that SVF1 had a degree of influence over Katerra. The minutes of a meeting of the SVF1 Investment Committee on 14 April 2020 indeed said that the Fund was driving the major decisions of Katerra. However, ultimately the evidence shows that in November and December 2020 each of the three groups was negotiating the commercial and legal terms of the transactions with a view to its own commercial interests. No doubt SVF1 had a position of considerable influence as a key investor in Katerra. But the documents read as a whole show that the terms of the transactions represented the outcome of trilateral commercial negotiations involving external lawyers. I do not consider that the SBDs were in a position unilaterally to impose terms on either the Greensill Group or the Katerra Group.

790. The claimants also relied on the email dated 3 November 2020 (see [106] above) in which Mr Greensill recorded that on confirmation from Mr Son that the terms were agreed, he would inform the CEO of Katerra that they were prepared to accept such haircut on the Greensill facility as the SVFs should direct. The claimants contended that this showed that the SBDs were driving the deal. However, I find that this message represented the outcome of the relatively complex commercial negotiation that had taken place up to that stage. The deal at that stage involved the New Money Consortium investing in Katerra and an amount closely similar to that amount being received by and accounted for by GL to SVF2. That was part of the overall deal for the injection of $440 million. The amount that had to be paid, the $176 million, was part of the overall negotiated commercial package. From the perspective of Mr Greensill the amount did not really matter as it was to be passed on to SVF2. However, it was the outcome of the overall commercial package that had been negotiated at that

stage (including with the New Money Consortium). It was not an arbitrary number simply imposed on GL.

791. It was also in this context that Mr Greensill referred in his evidence to SoftBank having their pound of flesh. But, as already explained, that was about the terms required of the Greensill Group and on Mr Greensill personally, which Mr Greensill regarded as a tough bargain. In an email to his team dated 3 November 2020 he described the terms as painful.

792. The claimants relied on Mr Greensill's evidence that there was a call on an unidentified Sunday night where he was presented by the SBDs with terms that he was required to accept. I do not accept that evidence. The documents revealed there was no realistic candidate for such a call, at least in anything like the stark take-it-or-leave it terms suggested by Mr Greensill. Mr Greensill appeared to suggest that the call was at a fairly early stage in the process. The claimants by contrast suggested that it was at about the time of the message dated 23 November between Mr Greensill and Mr Romeih in which Mr Romeih said that he could lay out the various pieces that will need to be completed near-contemporaneously. That was after the New Money Consortium dropped out. The message said no more than that there would have to be package of agreements. That was hardly surprising.

793. More generally, the documents detailed above show that there was a continuing negotiation from October 2020 onwards. Mr Greensill did think at times that he was being required personally to give up a pound of flesh, but I do not accept that he was compelled to enter the transactions as a pre-ordained scheme imposed on him by the SBDs. Indeed, some of the documents show that the SBDs were reluctant or frustrated participants. This was particularly the case after the withdrawal of the New Money Consortium which resulted in the Vision Funds making a greater overall economic commitment. As explained above, the SBDs were doubtless negotiating to protect their own commercial interests. So was Mr Greensill on behalf of his group of companies. I do not accept the claimants' submission that SBDs unilaterally imposed terms on Greensill. Nor do I think that the SBDs can be said to have orchestrated an improper transaction at an undervalue.

794. Third, I have also found as a fact that the SBDs did not know that the Fairymead Notes had not been repaid at the date of the CEA and TA. On the contrary, I have concluded that the SBDs positively believed that Mr Greensill must already have bought back or redeemed the Notes or entered a transaction whereby the Noteholders would be fully secured, as they did not think he would otherwise have been able to release the RPA. The SBDs thought that Mr Greensill had an urgent need in October 2020 to address the Katerra crisis and this is why he had sought the $440 million (the face value of the outstanding Notes). I find that they believed by the end of December 2020 that he had used the money for the purpose for which he had asked for it. I do not consider that the SBDs were culpable for failing to inquire whether he had done so. They reasonably assumed that the money had been used for the purpose for which it had been sought.

795. I do not accept either that the SBDs knowingly exposed the claimants to the risk that the Impugned Transactions might complete without the Fairymead Notes having been acquired or repaid. The SBDs agreed to a linked series of agreements which were designed to salvage Katerra from bankruptcy and protect the pre-IPO fundraising of Greensill. This was to be done by (among other things) injecting the amount of $440

million (the face value of the Fairymead Notes) in the clear expectation that it would be used for that purpose. That was why Mr Greensill had asked for the injection, and the documents show that that was what the SBDs expected would happen. The documents (in the parties' jargon) referred to this as "internalising the risk". I have already explained that the SBDs indeed thought that this had to happen before Katerra's debts under the RPA could be compromised. I find that it did not occur to the SBDs to suppose that Mr Greensill had not entered into a secure arrangement to internalise the risk attaching to the Notes. The SBDs thought, and had reasonable grounds for thinking, that the claimants indeed would be held whole (i.e. that the risk was transferred to Greensill).

796. I reach this conclusion notwithstanding that there were no contractual requirements about the use of the $440 million. As I have explained, as the SBDs saw things, Mr Greensill had come to them seeking $440 million for a quite specific purpose. The amount to be injected was the face value of the Fairymead Notes. He needed the money in order to buy or redeem the Notes. The money was paid. That there were no terms as to the mechanism or timing for its use does not mean that the SBDs did not understand that the money would be used for the purpose for which it was sought. In any event, as already noted, I accept the evidence of the SBDs that they thought that Mr Greensill must have addressed the purchase of the Notes by 30 December 2020 as otherwise the RPA could not be compromised.

797. Fourth, I have also found as a fact that the claimants were unaware of the Impugned Transactions. As explained above, Mr Lane told Mr Greensill that he could not kill off the rights of the claimants without their consent. Mr Greensill decided to go ahead without telling them. The claimants invited the court to conclude that the SBDs refused to allow Mr Greensill to inform the claimants about the Omnibus Deed or the Impugned Transactions and this was why Mr Greensill did not seek consent from the claimants. I have rejected that submission. As already explained, the discussions between the Greensill companies and the SBDs concerned disclosure of the Omnibus Deed to potential pre-IPO investors. I have rejected the suggestion made in Mr Greensill's evidence that he was prevented by the SBDs from disclosing the Impugned Transactions to the claimants. That did not happen. Instead Mr Greensill hoped that he could keep the show on the road by entering the Impugned Transactions and then finding additional money to pay off the claimants. I therefore reject the claimants' submissions that the SBDs were instrumental by preventing Mr Greensill from telling the claimants about the transactions and in robbing them of their contractual right to decide whether to consent.

798. Fifth, I find that by 30 December 2020 the SBDs knew about the Greensill Group's liquidity difficulties. I find that the SBDs did not however believe that these problems placed Greensill on the verge of insolvency. Mr Greensill was seeking to raise further funds from SoftBank and other investors and there was nothing to suggest to the SBDs that the Greensill Group was insolvent or on the verge of insolvency. In any event, as just explained, the SBDs thought that Mr Greensill must already have arranged the repayment or redemption of the Fairymead Notes. They thought that it would be unlawful for the RPA to be released without the repayment or purchase of the Notes.

799. For these reasons I also reject the claimants' (conclusory) contention that the SBDs sought to shore up their own position even if that was at the expense of the creditors of GL. On the contrary, I repeat that I am satisfied that the SBDs believed (and had

reasonable grounds to believe) that the $440 million they had injected to enable the risk on the Fairymead Notes to be internalised (i.e. removed from the claimants) had been used for the purpose for which it had been sought.

800. I conclude that the SBDs did not know that Mr Greensill and his companies had not used the $440 million of liquidity provided by SVF2 under the CLNs to acquire or redeem the Fairymead Notes at the date of the CEA and TA, or to make an arrangement which would secure this outcome. On the contrary, I find that they believed and had reasonable grounds to believe that by that date he had taken steps to secure the position of the claimants in full. Hence the SBDs did not know or have grounds to suspect that GL had the relevant purpose when entering those transactions.

801. In reaching this conclusion I have considered the claimants' reliance on various statements made by individuals within the SoftBank Group about Mr Greensill's representations. The claimants relied on these to support a submission that the SBDs did not trust him and, therefore, that they had good reason to be sceptical about the use he would make of the $440 million.

802. Specifically, in the email dated 13 June 2020 (in connection with Mr Greensill's request for an extension of the redemption of the $1.5 billion invested by SBG into the CSV Subfund) Mr Misra said, "Lex is slippery and prone to lying so the penalty has to be high." In a second email of the same date Mr Misra sent an email to Mr Son, saying of a statement by Mr Greensill, that "the regulator approval is a lie. We need EY to ASAP go in and audit his financials. If not we sue him and David Cameron for securities fraud."

803. These first of these emails was written in response to Mr Greensill's repeated requests for extensions in relation to the redemption of the $1.5 billion injection made by SBG. The comments had to be seen in that context. I find that Mr Misra was frustrated to the point of exasperation. This was some months before the arrangements which form the subject matter of these proceedings. I do not consider (taking the evidence as a whole) that there was a consistent or settled view within the SoftBank Group that Mr Greensill was not to be trusted. Comments of this kind are often made in particular moments of annoyance or irritation. Mr Cheung, who dealt with Mr Greensill in relation to the subsequent injection of $440 million, thought of Mr Greensill as a "happy founder," and saw him as optimistic and visionary. Moreover it was not suggested to Mr Cheung that any mistrust expressed by Mr Misra in the first email caused the SBDs to doubt that the $440 million injection would be used for the purpose anticipated by the SBDs of buying-in or redeeming the Fairymead Notes. The second email was not put to Mr Cheung in evidence. What was suggested to Mr Cheung and Mr Romeih was that by November 2020 Mr Son and others in SBG thought that where something was to be agreed with Mr Greensill it had to be included in the contract as clearly as possible because he could not otherwise be trusted to do what he had said he would do. But that is different the submission that Mr Son or others in SBG thought that Mr Greensill was dishonest. Nor was it suggested by the claimants in their cross-examination of Mr Greensill that he had been dishonest in the events of June 2020.

804. The claimants also relied on the email from Mr Son to Mr Greensill dated 6 August 2020 (see para [88] above) after the redemption of SBG's investment in the SCF Subfund saying "you need to lead towards discipline after the recent near death

experience. There is no need to be so aggressive in the short term until you are sure of liquidity." This was a suggestion that he temper his aggression. It did not suggest that he was generally not to be trusted.

805. For these various reasons, I reject the claimants' case that the SBDs orchestrated the Impugned Transactions with a view to obtaining a majority stake in the Katerra group free of the RPA indebtedness. The reality is that there was a series of negotiations and agreements over more than three months under which the SBDs had the aims of salvaging Greensill's fundraising efforts and recapitalising Katerra. The Impugned Transactions were steps in these processes, but the SBDs did not orchestrate the transactions in order to obtain Katerra shares free of debt.

806. The SBDs submitted that in shaping any relief the court should also have regard to the fact that their shareholdings in Katerra were cancelled in the subsequent bankruptcy of Katerra. They said that this is equivalent to the recipient of a benefit under a transaction obtaining property which loses value after the transaction date. They relied on the authorities referred to in paras [631] *et seq*. above, which show that, in shaping relief, the court may have regard to post- transaction events. They submitted that (in addition to the other points addressed above) there could be no proper basis here for granting monetary relief by reference to the value the Katerra Shares may have had at earlier dates.

807. The claimants contended that as a matter of law and standard valuation practice the benefits to the SBDs were to be assessed at the date on which they were acquired and that later events were irrelevant. They relied on the cases of *Stanley v TMK Finance* and *Phillips HL*. In my judgment that submission conflates two separate issues. The first is the value of the benefit received by relevant defendants. The second is what relief (if any) the court is to order against such defendants. As to that the authorities discussed in paras [631] *et seq*. above establish that relief may properly be shaped in the light of post-transaction events. This also accords with principle. Were it otherwise the court would not, for example, be able to take account of subsequent dealings with assets transferred under the relevant transaction or, indeed, improvements carried out by transferees to property they have received.

808. For the same reasons, principles of valuation practice cannot control the court's broad discretion as to the appropriate relief to grant in the light of all the circumstances, which may properly include events after the transaction date.

809. Drawing the threads together, I have reached the conclusion that there should be no order against the SBDs. It may assist if I summarise the principal reasons.

810. First, for the reasons given above, the SBDs did not know or suspect that the CEA and TA were being entered into by GL for the purpose of prejudicing the claimants. The SBDs believed in good faith that the $440 million injection of liquidity would be used to pay the Fairymead Noteholders and internalise the debt. They thought that Mr Greensill must have arranged this before the CEA and the TA were completed. They did not share in the improper purpose of GL, nor did they know of it. I have also found that the SBDs did not orchestrate the transactions. They were parties to commercially negotiated agreements.

811. Second, SVF2 received the Katerra Shares worth $11.3 million under the TA. That was a benefit arising from or by reason of the Impugned Transactions.

812. Third, SVF1 received a block of shares under the PSPA. It received no benefit in relation to its pre-transaction investment in Katerra, which was diluted down to nothing. Under the PSPA SVF1 received new equity in Katerra worth $200 million in return for a cash payment of $200 million. Any benefits received by SVF1 were at least matched by the amounts it paid for them. (I say "at least" because it also gave up $300 million of debt as part of the recapitalisation of Katerra.) In my judgment it would not be appropriate in the exercise of the court's restorative jurisdiction to make an order against SVF1 in respect of its pre-existing investment in Katerra as this was written off as part of the recapitalisation. SVF1 therefore received no benefit in respect of that investment. As to the new equity received by SVF1 under the PSPA, I do not consider that the court should order any relief in the exercise of the court's restorative jurisdiction in respect of any value received on 30 December 2020, since SVF1 paid in full for those shares as part of the transaction under which it obtained them. The fact that SVF1 received no relevant benefits from or by reason of the Impugned Transactions would have led me to decline to order relief against it.

813. Fourth, it follows that I would only have been prepared to award relief in respect of the Katerra Shares received by SVF2, capped at $11.3 million.

814. Fifth, in any event, Katerra entered bankruptcy in June 2021 and the shares were cancelled. I do not consider that it would be appropriate in these circumstances to order any of the SBDs to make a payment in respect of the value of the shares at an earlier date. Had the SBDs continued to hold Katerra shares and had they continued to have value it might well have been appropriate to make a transfer or monetary payment order in respect of the block of shares held by SVF2: see, for instance, *4Eng* at [14(2)]. But, for present purposes, the conclusion I have reached is that it would be inappropriate, where the Vision Funds simply held the shares until they lost their value, to require them to make any payment based on a value the shares may have had on earlier dates. As *4Eng* shows, it is hard to see why a transferee (or other beneficiary under a transaction) who has no knowledge of the debtor's wrongful purpose should be required to protect victims against fluctuations in the value of the assets thereafter. That would be to require such persons to become guarantors against market fluctuations. It appears to me that the bankruptcy of Katerra is an extreme case of a market fluctuation of the kind described in *4Eng*.

815. This point would also have applied in respect of the shares received by SVF1 had I concluded (contrary to the above) that SVF1 had received a benefit from or by reason of the Impugned Transactions in December 2020.

816. For these reasons, I do not consider that the court should make any order for relief against the SBDs.

817. It might be suggested that the court should not decline to award a remedy where it has found there to be a transaction at an undervalue. Indeed, as already explained, the court said in *Sequana* that it is likely to be an exceptional case where relief will not be ordered. There are a number of reasons why on the particular facts of this case an order against these particular defendants would not be appropriate under the court's restorative jurisdiction.

818. First, the transaction at an undervalue in this case is not the usual one of a transfer of an asset by a debtor for no or inadequate consideration. The prejudice to the victims arising from the transaction at an undervalue in this case is the release by GL of the debt and related security under the RPA. The obvious and indeed primary remedy in such a case would have been an order for the reinstatement of the debt and related security. In the case of a solvent debtor this would be straightforward. The bankruptcy of Katerra means such an order would have been pointless. But the fact remains that the obvious order the court would make to reverse the effects of a debt-release transaction falling within section 423 is not practically available. It appears to me that the cases stating that it will only be in an exceptional case that relief will not be ordered have been concerned with the usual, straightforward, case of a transfer by the debtor of its assets to another party. This is not such a case.

819. Second, decisions under section 423 are highly fact-specific. I have considered the benefits alleged to have been received by SVF1 and SVF2, their states of mind and culpability, and the fact that there was a supervening bankruptcy of Katerra. As explained above, had it not been for the bankruptcy of Katerra, some form of transfer or payment order might have been appropriate against SVF2. But the supervening bankruptcy of Katerra amounts, on the analogy of market fluctuations, to the extreme case of the value of an asset falling to nil. Such cases, where the value of an asset transferred as part of a transaction at an undervalue falls to nothing through no fault or action of the transferee, are likely to be unusual.

820. In the light of my earlier conclusions there is no independent basis for seeking relief against SBG.

821. It is also unnecessary to consider the SBDs' contention that any relief awarded by the court should take account of the fault of the claimants. However I shall very briefly state my conclusions.

822. As already explained, in my judgment the defence of contributory negligence does not apply to sections 423 or 425. There is no requirement of causation and the jurisdiction is restorative, rather than being concerned with damage for a statutory tort. Moreover a claim under section 423 does not require a finding of negligence or fault on the part of the defendant. That is not the nature of the claim.

823. In any case, the defence would have failed on the facts. The SBDs' pleaded case was that the claimants caused or contributed to their own losses by agreeing to the cancellation of the Secondary Trade. However, I have found that the Greensill Group lacked the necessary resources to perform the Secondary Trade either as at 31 December 2020 when it was entered or when it was cancelled or indeed on 14 January 2021, the settlement date. Mr Greensill accepted that there were insufficient resources as at 31 December 2020. He said indeed that he agreed with Mr Degen that the trade should be on a best efforts basis for this reason. I do not accept that part of his evidence but it shows vividly that he knew that Greensill did not have the wherewithal to settle the Secondary Trade. There was no significant improvement in the fortunes of the Greensill Group between then and the date of the cancellation of the trade, or 14 January 2021. Hence the cancellation of the trade did not worsen the position of the claimants.

824. Moreover, the claimants were not negligent or at fault. I have found that Mr Greensill's communications concealed the true position from them. He informed the claimants that the release of the RPA would take effect on the buy-back and I find that they acted on that understanding. I reject the SBDs' case that the claimants were aware of the release of the RPA at the time when they agreed the cancellation of the Secondary Trade.

825. I would therefore not have made any adjustment by relation to the conduct of the claimants in the period after the date of the transactions.

G. CONCLUSION

826. The claim is dismissed.