Neutral Citation Number: [2023] EWHC 648 (Ch)

Case No: CR-2020-002887

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

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

Date: 23/03/2023

IN THE MATTER OF B & S PARTNERSHIP LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

Before :

ICC JUDGE MULLEN

- -

Between :

ZAHIR AZIZ	**Claimant**
- and -	
(1) B & S PARTNERSHIP LIMITED	
(2) RIAZ AHMAD	
(3) MOHAMMED AMIR SALIM	
(4) BHANDARI AND CO LTD	
(5) SANITA BHANDARI	**Defendants**

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Mr Michael Hartman and **Mr Graeme Kirk** (direct access) for the **Claimant**
The First Defendant was not represented
Mr Sam O'Leary (instructed by **Ozon Solicitors**) for the **Second** and **Third Defendants**
The Fourth Defendant was not represented
The Fifth Defendant appeared in person

Hearing dates: 12th 13th 14th and 17th October 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23rd March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ICC JUDGE MULLEN

ICC Judge Mullen :

1. On 26th June 2020 the claimant, Mr Zahir Aziz, ("Mr Aziz") issued a claim form seeking an order under section 125 of the Companies Act 2006 ("CA 2006") rectifying the register of members of B & S Partnership Ltd ("B & S" or "the Company") by striking out the name of one of Mr Riaz Ahmad ("Mr Ahmad") or Mr Mohammed Salim as the holder of one issued share and inserting the name of Mr Aziz instead. It named only B & S as the defendant. It is tolerably clear that the reference to "Mohammed Salim" is a reference to Mr Amir Mohammed Salim ("Mr Salim junior"), as he was at that time registered as the holder of two of the four issued shares in the Company. The other two are registered in the name of his uncle, Mr Ahmad. Mr Salim junior's father, Mr Mohammed Salim ("Mr Salim senior"), who is the brother of Mr Ahmad, is not a party to the case. He was a shareholder until January 2020, when he transferred his share to his son.

2. The claim form was not in a prescribed form but it is relatively clear that it was intended to be a Part 8 claim. By the order of ICC Judge Jones, dated 20th August 2020, Mr Ahmad and Mr Salim junior were joined as the second and third defendants and it was directed that the claim proceed as a Part 7 claim. The judge ordered the filing and service of points of claim, defence and reply and directed that the disclosure regime set out in what was then Practice Direction 51U should apply.

3. Points of claim were filed on 4th September 2020, points of defence were filed on 12th October 2020 and points of reply were filed on 26th October 2020. Mr Aziz also made applications, dated 18th August 2020 and 24th November 2020, for orders for disclosure, including against non-parties, being Bhandari & Co Limited ("Bhandari & Co") and Mrs Sanita Bhandari ("Mrs Bhandari"). They had previously been registered as holders of shares in the Company. On 26th March 2021, Deputy ICC Judge Schaffer directed that Bhandari & Co and Mrs Bhandari be added as the fourth and fifth defendants and gave permission to Mr Aziz to amend his points of claim. He dismissed the disclosure applications. The costs of those applications were subsequently directed to be costs in the case.

4. I gave directions to trial on 1st November 2021. ICC Judge Jones granted permission for Mr Aziz to re-amend his points of claim on 12th April 2022 to add further causes of action and gave consequential directions. One of these was to adjourn Mr Aziz's application to adduce handwriting evidence generally, with liberty for him to apply to restore it. I shall explain what the causes of action ultimately were after concluding the procedural history and the broad factual background to the case.

5. The matter came back before me for the pre-trial review on 12th September 2022. By that hearing, Bhandari & Co had been dissolved, on 17th May 2022, pursuant to an application filed on 22nd February 2022. At that hearing I gave permission for Mr Aziz to serve a witness summons on a Mr Tariq Mahmood as to his attendance at Mr Aziz's office in January 2019 and I set aside a witness summons in respect of Mr Eric Dean for the reasons that I gave at the time. In short, the witness summaries were served far too late and there was a real risk that the examination and cross-examination of those witnesses would jeopardise the trial timetable. I was persuaded that I should allow limited evidence from Mr Mahmood, and that the court could sit early to accommodate this. I considered that the witness summary prepared for him, which I was told had not

been served on him, to be leading and directed the preparation of a neutrally-expressed version.

6. The trial took place over four days. Mr Michael Hartman and Mr Graeme Kirk of counsel represented Mr Aziz, with Mr Hartman taking the lead on submissions of law and Mr Kirk cross-examining the witnesses and also addressing me on the evidence. Mr Sam O'Leary of counsel represented Mr Ahmad and Mr Salim. Mrs Bhandari appeared in person. Counsel prepared very full opening and closing written submissions in addition to their oral arguments. Mrs Bhandari also addressed me, asked questions of witnesses and prepared a helpful closing note. Counsel had also prepared an agreed list of issues and separate chronologies.

7. Mr O'Leary initially raised the question of whether the revised witness summary served on Mr Mahmood strayed beyond the limited scope that I had directed at the pre-trial review such that I should exclude his evidence. Despite those criticisms it seemed to me that it was appropriate to hear from Mr Mahmood and give his evidence such weight as was appropriate.

Background

8. Mr Aziz is a property investor and a former solicitor. He was struck off the Roll of Solicitors on 16th January 2007 following findings of the Solicitors' Disciplinary Tribunal, which included findings of dishonesty. He was, prior to that, a partner in the firm of Aziz Saunders Solicitors, whose offices were in Hilton House, 26-28 Hilton Street, Manchester M1 2EH ("Hilton House"). He also has had a number of other companies through which he ran his various other commercial interests. These included:

    i) Kingsmeade Estates Limited ("Kingsmeade");

    ii) Jennings Homes Development (UK) Limited ("Jennings Homes");

    iii) Frankie Goes to Bollywood Leisure Limited ("Frankie");

    iv) Jennings Homes (Manchester) Limited ("Jennings Manchester");

    v) The Italian Cuisine (UK) Limited ("Italian Cuisine")

    vi) Genesis 100 Limited ("Genesis 100").

    vii) Crescent Homes Limited ("Crescent Homes").

9. Also working in Hilton House was Mr Vinod Bhandari, who practised as an accountant via his company, Bhandari & Co. Mr Bhandari's wife, Mrs Bhandari worked as an accounts clerk in that company. Mr Bhandari advised Mr Aziz on his financial affairs, including in relation to the companies that I have listed above. Mr Salim senior, under the name "M. Salim & Co", and Mr Ahmad, who practised as "Riaz Ahmad & Co" worked in Hilton House too. Both Mr Salim senior and Mr Ahmad practised as accountants.

10. Mr Salim senior and Mr Ahmad say that, in 2001, they took the view that parking facilities and the quality of the offices at Hilton House were inadequate and identified

a property called Lord House, 51 Lord Street, Cheetham Hill Manchester M3 1HE ("Lord House") that was for sale. They say that it was agreed between the four occupants of Hilton House that they would acquire Lord House, though when this was agreed and who had initially driven the process is in dispute. Mr Aziz's position is that it was he, Mr Bhandari on behalf of his company and Mr Salim who initially agreed to acquire the property using the Company, occupying space in it and contributing to it equally. They were to have a share each in B & S. It was only in 2002 that Mr Ahmad joined them. Mr Salim and Mr Ahmad say that they were the driving force behind the acquisition and that, having instructed Mr Aziz to carry out the conveyancing, Mr Aziz proposed that he and Mr Bhandari join in with the purchase and it was agreed that they would each contribute £10,000 initially, bear costs equally thereafter and move their practices into the building. They would each pay rent in order to cover the mortgage and maintenance costs.

11. It is not in dispute that the acquisition was funded in part by a mortgage loan of £125,000 and the Company took a transfer of Lord House on 7th November 2001. Renovation works took some time to complete and Mr Salim and Bhandari & Co moved into the property in the first part of 2003, with Mr Ahmad moving in later that year. Nor is it in dispute that Mr Aziz did not move into the property at all. Unoccupied parts of the property were let to third parties, including Mr Eric Dean. Mr Aziz does however contend that he contributed his share of the acquisition costs. Mr Salim and Mr Ahmad say that he did not. Bhandari & Co acted as the accountants to the Company and Mrs Bhandari says that she has no record of a contribution being made by Mr Aziz, though she is unable to say positively that he did not make any contribution, as the records are no longer extant.

12. The Company had been incorporated on 17th August 2000. Mrs Bhandari was its sole director and holder of the single issued share, while Bhandari & Co was the company secretary. Its articles of association provide, at article 9, for a restriction on the transfer of shares as follows:

> "A member desiring to transfer shares otherwise than to a person who is already a member of the Company shall give notice in writing of such intention to the Directors of the Company giving particulars of the share in question. The directors as agents for the member giving such notice may dispose of such shares or any of them to members of the Company at a price to be agreed between the transferor and the Directors, or failing agreement, at a price fixed by the Auditors of the Company as the fair value thereof. If within twenty eight days from the date of the said notice the Directors are unable to find a member or members willing to purchase all such shares, the transferor may dispose of so many of such shares as shall remain undisposed of in any manner he may think fit within three months from the date of the said notice. Where the Company has no auditor an individual or body eligible for appointment as an auditor as per the Companies Act shall be chosen to fix the price."

Mr Salim senior and Mr Aziz were appointed as directors on 22nd October 2001. One share each was allotted to Mr Aziz, Mr Salim senior and Mr Ahmad by 17th August

2002, according to the annual return made up to that date, and Mr Ahmad was appointed as a director on 12th September 2002. Mrs Bhandari continued to be a shareholder.

13. The shareholdings remained the same until 2009. The annual return for the year ending 17th August 2009 no longer shows Mr Aziz as a shareholder. In his place is Bhandari & Co. He remained listed as a director at Companies House, however, until 11th July 2014, when notice of the termination of his appointment on 1st June 2014 was filed. By the end of the next financial period on 17th August 2015, Mr Bhandari is shown as the holder of the share in place of Bhandari & Co. Mr Bhandari sadly died in December 2016 and the share registered in his name was in due course registered in the name of Mrs Bhandari.

14. Between acquisition of the property and the transfer of the share to Bhandari & Co, Mr Aziz was undergoing something of an unsettling time. It is evident from his correspondence with Mr Bhandari, who acted as his accountant, that he was concerned about his financial position following his striking off the Roll of Solicitors. A creditor's bankruptcy petition was presented in respect of him on 11th December 2008 and a bankruptcy order made on 19th May 2009 according to a notice in the London Gazette. What happened thereafter is not entirely clear. The order may have been annulled, the petition restored for hearing and a further bankruptcy order made because I have in evidence the order of His Honour Judge Pelling QC, sitting as judge of the High Court, dated 2nd September 2010, annulling a bankruptcy order made in the County Court at Stockport on 11th February 2010. The case number is the same as that which appeared in the Gazette so it appears to be the same petition. The order does not dismiss the petition expressly but provides for the vacation of the registration of the petition as a pending action, which suggests that it was regarded as having been dismissed. In any event is not suggested that Mr Aziz is or has been subject to a bankruptcy order that has not been annulled, or that he is subject to a petition, so as to affect his entitlement to claim rectification or the other relief sought in this claim.

15. Mr Aziz says that, in about January 2019, a mutual friend of his and of Mr Salim senior, Mr Mahmood, came to see him with a message from Mr Salim senior. Mr Mahmood told him that Mr Salim senior was very upset with him as he had sold his share to Mrs Bhandari. This was the first he had heard of it and he immediately telephoned Mr Salim senior who expressed "in animated terms" that he had learnt of this during an angry exchange with Mrs Bhandari during which she had told him that she had bought Mr Aziz's share so that she was now the 50% shareholder in the Company. This was, Mr Aziz says, the first time it had been suggested to him that he was no longer a shareholder in the Company. Having immediately asked his new accountant, Mr Habib Mortazavi, to check Companies House, he found that he had been removed as a shareholder by August 2009 and his share had been transferred to Bhandari & Co. He relies also on what he describes as similar fact evidence in relation to Genesis 100 and Crescent Homes. He says that he knew nothing about these transfers either.

16. The position of Mr Salim senior is that there was no such conversation in 2019. He had known that Mr Aziz had transferred his share to Bhandari & Co in 2009. He is supported in that by Mr Salim junior and Mr Ahmad. Moreover, in March 2021, Mrs Bhandari says that she discovered the transfer, apparently signed by Mr Aziz, transferring his share to Bhandari & Co. This was found among her husband's personal papers when she was moving house.

17. Nor is that the only document indicating an intention to deal with Mr Aziz's share. Also in evidence are some documents that appear to show an intention that Mr Aziz would transfer his shares to Mr Dean in 2007 for £70,000, which was to be paid, not to Mr Aziz, but to Bhandari & Co ("the Dean Transaction Documents"). These documents are somewhat confusing, as I shall explain later. Mr Aziz's position is that he knew nothing about them. The defendants' position is that what these documents suggest is that Mr Aziz was indebted to Mr Bhandari, and this payment was to discharge that debt. The transaction did not take place and whatever liability existed was later discharged by the transfer in 2009.

18. Mrs Bhandari sold the two shares then registered in her name to Mr Salim junior and Mr Ahmad on 17th January 2020. A valuation of Lord House was obtained which assessed its value at £365,000, with equity of about £345,600. Mr Salim and Mr Ahmad offered her £115,200, or £57,600 per share. £5,000 was paid by way of deposit on 10th January 2020 but the balance remains outstanding, on Mrs Bhandari's case because a loan was to be raised to pay the balance and the coronavirus pandemic, and this dispute, intervened. Mr Salim has also acquired his father's share, with the result that he and Mr Ahmad are now shown as equal shareholders in the Company. Mrs Bhandari ceased to be a director of the Company on 17th January 2020.

The relief sought

19. That sets out sufficient background to explain why Mr Aziz seeks the relief that he now claims. The re-amended particulars of claim seek, in summary:

    i) Rectification of the register of members pursuant to section 125 CA 2006, with damages in the alternative;

    ii) Damages against Mrs Bhandari for breach of fiduciary duty and, further or alternatively, "unlawful interference" in the proprietary interest of Mr Aziz in the share by causing or being a party to the transfer to Bhandari & Co in 2009 and further "unlawful interference" in the transfer of the share into her own name and subsequent transfer to either of Mr Salim or Mr Ahmad;

    iii) Damages against Mr Salim and Mr Ahmad for "unlawful interference" with the rights of Mr Aziz in the share in purchasing the same in 2020 with the intention of causing harm to Mr Aziz.

    iv) Damages against Mr Salim, Mr Ahmad and Mrs Bhandari for unlawful means conspiracy and, in the case of Mr Salim and Mr Ahmad, conspiracy to cause harm, in entering into the sale and purchase of the share in 2020.

    It has to be said that these matters are diffusely pleaded but it seems to be accepted that those are the claims as put in the re-amended points of claim. They are very helpfully distilled in the list of issues.

20. Mr Salim, Mr Ahmad and Mrs Bhandari deny any liability on the basis that they contend that Mr Aziz voluntarily transferred his share to Bhandari & Co. Even if that is not right, they say that certain of the causes of action are statute-barred or barred by laches.

Legal principles

Rectification of the register of members

21. The claim began life as a claim for rectification of the register of members and the case ultimately turns on whether the transfer of the share in 2009 was proper or not. Section 125 CA 2006 provides:

> "(1) If—
>
> (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
>
> (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,
>
> the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
>
> (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
>
> (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.
>
> (4) In the case of a company required by this Act to send a list of its members to the registrar of companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the registrar.

22. It is argued on behalf of Mr Salim junior and Mr Ahmad that the claim is time-barred by reason of section 128(1) CA 2006, which provides as follows:

> "(1) Liability incurred by a company–
>
> (a) from the making or deletion of an entry in the register of members, or
>
> (b) from a failure to make or delete any such entry,
>
> is not enforceable more than ten years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred."

23. On the basis that the Aziz share was transferred by 17th August 2009 it is argued that the claim became time-barred 10 years later. In view of my conclusions on the facts that I set out below it is not necessary for me to decide the point but it seems to me that it is not obvious that section 128(1) CA 2006 is directed to restricting the time in which an application for rectification may be made. The words "liability" "incurred" and "enforceable" seem to me to sit more easily with a claim for losses arising from a mistaken or improper entry or deletion, or failure to rectify it, rather than an application for an order that the register be rectified to reflect to true position. One can see that an error in a register of members might not be discovered for some time and, given that a company has a statutory obligation under section 113 CA 2006 to maintain a register of its members and that register is to be prima facie evidence of the matters directed or authorised to be set out in it under section 127 CA 2006, it would be contrary to the policy of the Act if it were impossible for a register to be corrected to show the true position, even if a damages claim were time-barred. It is true to say that "liability" is defined in both section 463 and section 1270 CA 2006 to include

> "a reference to another person being entitled as against him to be granted any civil remedy or to rescind or repudiate an agreement"

but those sections are in another context, in which the definition serves to limit liability for false and misleading statements. Section 128 includes no such definition.

24. It is clear however that the remedy is discretionary and can be barred by delay. In *In re Sussex Brick Company* [1904] 1 Ch. 598, 606, Vaughan LJ said:

> "I do not mean for a moment to suggest that any one is entitled to such an order *ex debito iustitiæ*; it is a matter in the discretion of the judge, and there might be cases in which the judge, although he considered such an order essential to completely establishing the rights of the applicant, might refuse to do so because he thought it would work injustice to other members of the company. If I thought here that such an order would work injustice to other persons, especially to persons who are not in any way bound by the mistake of the company, I should feel considerable hesitation in making the order; but in the present case there is no evidence before us that any injustice will be caused at all."

25. In *Re ISIS Factors Plc; Dulai v ISIS Factors Plc* [2003] EWHC 1653 (Ch) the claimant had delayed pursuing a remedy for seven years. Blackburne J said, referring to the predecessor to section 125:

> "89. In the circumstances of a case such as this — I do not need to consider what the position would be in other circumstances — I am of the view that the discretion conferred on the court by the section is no different from the court's discretion whether or not to decree specific performance of the agreement to allot.
>
> […]

> 96. By sitting back and doing nothing for seven years until the day arrived, if it ever should, when it suited him to enforce his rights, Mr Dulai was failing to display the need for promptitude which is ordinarily a requirement of someone seeking the grant in his favour of the court's discretion. That is certainly the case where specific performance is claimed. It is difficult to see why the position should be different merely because the claim is for relief under section 359. Delay of this length would without more have led me to refuse relief."

26. He also noted:

> "105. Given these circumstances I am of the view that rectification […] (whether in exercise of the court's discretion under section 359(2) or as part of the working out of a decree of specific performance) would be to the manifest prejudice of LSB which purchased that control in ignorance of Mr Dulai's claims and on the footing that it was acquiring the whole of that company's issued share capital. On that further ground, therefore, I would have declined to grant the relief claimed."

Breach of pre-emption rights

27. I have recited the relevant article above. Mr Hartman referred me to the case of *Hunter v Hunter* [1936] AC 222, conveniently summarised at paragraph 21 of the judgment of Mr Kevin Garnett QC, sitting as a deputy High Court judge, in *Cottrell v King* [2004] EWHC 397 (Ch) as follows:

> "…the articles of the company provided that no member should be entitled to transfer any shares otherwise than in accordance with provisions of the articles, which required the member to give a notice to the company secretary amounting to an offer to sell to the other shareholders. One shareholder had charged his shares to a bank and then, pursuant to the charge, had transferred the shares to nominees who in turn had sold the shares on, each transferee in turn being registered as shareholder. The bank had been clearly warned by the shareholder that any transfer would be of no effect because of the articles of the company. Another shareholder brought proceedings to have the register rectified and the name of the original shareholder restored. This claim succeeded at trial on the basis that the articles prohibited a transfer otherwise than in accordance with the articles. This decision was upheld by the Court of Appeal, the transfer and registrations being treated as inoperative."

28. Mr O'Leary submitted that articles restricting the right to transfer shares are to be construed narrowly. In *Re Coroin Ltd* [2013] EWCA Civ 781 Arden LJ, as she then was, at paragraph 65, referred to *Re Smith and Fawcett Ltd* [1942] 1 Ch 304 and *Greenhalgh v Mallard* (1943) 2 All ER 234. In the first of those cases, Lord Greene MR had said:

> "[When using their power under the articles to reject a share transfer, the directors] must have regard to those considerations, and those considerations only, which the articles on their true construction permit them to take into consideration, and in construing the relevant provisions in the articles it is to be borne in mind that one of the normal rights of a shareholder is the right to deal freely with his property and to transfer it to whomsoever he pleases. When it is said, as it has been said more than once, that regard must be had to this last consideration, it means, I apprehend, nothing more than that the shareholder has such a *prima facie* right, and that right is not to be cut down by uncertain language or doubtful implications. The right, if it is to be cut down, must be cut down with satisfactory clarity. It certainly does not mean that articles, if appropriately framed, cannot be allowed to cut down the right of transfer to any extent which the articles on their true construction permit."

29. Registration as a member is effective to confer the status of a member on a person who has agreed to become a member of the company pursuant to section 112 CA 2006 (*Coroin*, paragraph 89). In *Coroin,* the articles included a provision that no share or interest could be transferred, sold or otherwise disposed of otherwise in accordance with clause 6, which contained pre-emption rights. Arden LJ noted that any transfer of a share in breach of clause 6 would be annulled by the operation of clause 6.17. It might be noted that there was a similarly explicit prohibition in *Hunter*. Mr O'Leary submits that this is not the case here. It is not suggested that the articles of B & S contain such a clear provision preventing title from passing. Thus, even if the share had been held on trust for Mr Aziz, there was nothing to prevent good title being passed to Mrs Bhandari and from Mrs Bhandari to Mr Ahmad or Mr Salim junior in January 2020. If that is not right, he submits that the transfer to Bhandari & Co is nonetheless valid by reason of the principle in *Re Duomatic Ltd* [1969] 2 Ch. 365. If Mr Aziz was content to transfer the share to Bhandari & Co in breach of the Article 9 restriction in 2009, and this was done with the unanimous consent of the other shareholders, article 9 was waived for the purposes of the transfer.

30. These are fact sensitive questions so I shall leave further discussion until I have set out my conclusions on the evidence. The same applies to those causes of action that I discuss below.

Causing harm by unlawful means

31. The elements of the tort of causing loss by unlawful means are as follows. First, there must be an intention to cause loss to the claimant. In *OBG v Allan* [2007] UKHL 21, at paragraph 62, Lord Hoffmann explained:

> "…. In the unlawful means tort, there must be an intention to cause loss. The ends which must have been intended are different. *South Wales Miners' Federation v Glamorgan Coal Co Ltd* [1905] AC 239 shows that one may intend to procure a breach of contract without intending to cause loss. Likewise, one may intend to cause loss without intending to procure a breach of contract. But the concept of intention is in both cases the same.

> In both cases it is necessary to distinguish between ends, means and consequences. One intends to cause loss even though it is the means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions."

The intention to cause harm need not be the dominant purpose, but the act must in some sense be directed against or intended to harm the claimant.

32. Secondly, "unlawful means" is construed narrowly. In *OBG* at paragraph 49 Lord Hoffmann said:

> "… subject to one qualification, acts against a third party count as unlawful means only if they are actionable by that third party. The qualification is that they will also be unlawful means if the only reason why they are not actionable is because the third party has suffered no loss."

Lord Nicholls approved a wider interpretation, but Lady Hale and Lord Brown agreed with the narrower approach adopted by Lord Hoffmann.

33. Thirdly, the unlawful means must have interfered with a third party's freedom to deal with the Claimant. Again, Lord Hoffmann summarised the principle in *OBG* at paragraph 51 as follows:

> "Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant."

34. Mr Hartman also referred me to *Secretary of State for Health v Servier Laboratoires* [2021] UKSC 24 but I do not understand him to suggest that the above is not a correct summary of the principles.

35. Mr O'Leary says that there was plainly no intention on the part of Mr Salim or Mr Ahmad, or indeed Mrs Bhandari, to cause loss to Mr Aziz. They have not interfered with any third party's dealing with Mr Aziz and no such interference is pleaded. There is no unlawfulness in Mr Salim or Mr Ahmad entering into a contract with Mrs Bhandari, notwithstanding that they are withholding payment from her, apparently pending the resolution of this dispute.

Conspiracy to injure by unlawful means

36. This tort requires a conspiracy or combination between two or more person to cause harm by unlawful means, being a tort or other actionable wrong. In *JSC BTA Bank v Ablyazov (No.14)* [2018] UKSC 19 Lords Sumption and Lloyd-Jones JJSC suggested that a "constructive intent" can be sufficient, so that this element of the tort may be made out where the conspirators have directed their unlawful conduct at the claimant

and ought to have known that this would be likely to cause injury to the claimant. Similarly, the range of unlawful means that may be relied upon is wider. Some wrongdoing such as a tort, crime, breach of contract or breach of fiduciary duty is required and it must also be established that the unlawful means must be sufficiently directed against the claimant. The unlawful act must also be the means by which harm is caused to the claimant. There is however uncertainty as to whether a defendant must be shown to have acted unlawfully. Mr Hartman also referred me to the judgment of Cockerill J *in FM Capital v Marino* [2018] EWHC 1768 (Comm) at paragraph 94, in which she notes that intent can be inferred, and will often need to be, from the primary facts.

37. Again, Mr O'Leary submits that that cannot be made out in this case. There was no intention to injure on the part of Mr Salim, Mr Ahmad or Mrs Bhandari and the agreement to transfer the shares in January 2020 was perfectly lawful.

Conspiracy to injure

38. This tort does not depend on there being an unlawful act by the defendant, but the defendant must act with the predominant purpose of injuring the claimant. In *JSC BTA Bank v Ablyazov (No.14)* [2018] UKSC 19 Lord Sumption said at paragraph 10:

> "A person has a right to advance his own interests by lawful means even if the foreseeable consequence is to damage the interests of others. The existence of that right affords a just cause or excuse. Where, on the other hand, he seeks to advance his interests by unlawful means he has no such right. The position is the same where the means used are lawful but the predominant intention of the defendant was to injure the claimant rather than to further some legitimate interest of his own. This is because in that case it cannot be an answer to say that he was simply exercising a legal right. He had no interest recognised by the law in exercising his legal right for the predominant purpose not of advancing his own interests but of injuring the claimant."

Breach of fiduciary duty

39. Insofar as any of the foregoing causes of action requires an unlawful act, and that unlawful act is alleged to consist of a breach of fiduciary duty, Mr O'Leary says that this cannot succeed. There can be no breach of fiduciary duty on the part of Mrs Bhandari or the other defendants. Directors do not owe duties to individual shareholders (see *Percival v Wright* [1902] 2 Ch 421 *per* Swinfen Eady J) and individual shareholders do not owe duties to each other.

The witnesses

40. Having set out the legal tests, I shall now turn to the facts, starting with my impression of the witnesses.

Mr Aziz

41. I have no hesitation in dismissing the evidence of Mr Aziz, save where it is supported by independent corroborative evidence or otherwise inherently credible. I do not do so because of his record of dishonesty in his profession that led to his striking off and his various earlier appearances before the Solicitors' Disciplinary Tribunal. It is trite to say that a person can be dishonest about one matter and yet tell the truth about another. Here, however, his account of the purchase and occupation of Lord House has been inconsistent. To give one example, his first witness statement said that he moved into Lord House. It is not in issue that he did not. This is explained away as an error but it is a strikingly fundamental error to make and at least shows a troubling lack of attention to detail. This lack of attention, or forgetfulness, is also evident in his correspondence with Mr Bhandari, in which he asks Mr Bhandari to make changes to the company records, apparently having forgotten that he had previously given instructions for this.

42. More troublingly still, Mr Aziz does not scruple to seek to falsify records by backdating them and asking others to lie on his behalf. His account as sent out in his pleadings and written evidence is also plainly contradicted by the contemporaneous documents. By way of example, as I shall explain, he relied upon the transfer of his shareholding in Genesis 100 and Crescent Homes as similar fact evidence, showing that Mr Bhandari had transferred shares without his consent and he had not discovered this until after 2019. The evidence shows that not only did Mr Aziz know about the transfer of the share in Genesis 100 in 2010, but that his counsel, Mr Hartman, had been copied into the correspondence about it. This had expressly been drawn to his attention by Addleshaw Goddard on behalf of the Royal Bank of Scotland. It is simply not credible that a legally-trained individual such as Mr Aziz, who was so assiduous in seeking to protect his interests when faced with the threat of creditor action, would fail to notice this. His account of the circumstances in which he became aware of the transfer of the share in the Company in 2019 is not supported by his own witnesses and the contemporaneous documents are inconsistent with regarding himself as the owner of a share in the Company.

Mr Salim junior

43. Mr Salim junior's involvement in the purchase of the property in 2001 and the transfer of the share in 2009 was limited. He corroborated his father's evidence that the share transfer from Mr Aziz to Bhandari & Co had been known in 2009. He has now taken over his father's business. He was a straightforward witness and, in my judgment, honest. I accept that he was telling the truth as he recalled it.

Mr Ahmad

44. Mr O'Leary stressed Mr Ahmad's status as an upstanding member of the community in Oldham. He was formerly the Mayor of Oldham, the chair of the local NHS trust and a magistrate. He was appointed an OBE for his services to local government, the administration of justice, and to the community in Oldham. Laudable though that it is, I place limited weight on his evident service to the community and focus instead on the transactions that I have to consider and the evidence that I have before me. My impression of Mr Ahmad was that he was a little defensive, and perhaps concerned about saying the wrong thing, possibly as a result of his limited involvement in the

purchase and subsequent dealings with the share, which he was content to leave to his elder brother.

45. I accept the truth of his evidence, however. He had limited involvement in the significant events and accepted the limitations of his recollection. His work for the community is consistent with his description of having "about fifteen jobs" at the relevant times and the limit to which he could be involved in the detail of the transaction. This is also the reason why he did not move into Lord House until after his brother and Bhandari & Co. He struck me as an honest witness who was seeking to assist the court.

Mrs Bhandari

46. Mrs Bhandari found giving evidence and making submissions emotionally difficult and evidently was unhappy about some of the allegations about her husband, to which I will turn below. She was nonetheless a compelling witness and I accept that she was telling the truth as she recalled it. Mrs Bhandari explained that she was employed in her husband's business but was not a qualified accountant. She carried out general office duties, dealing with files and carrying out filings at Companies House as instructed by her husband. She evidently had good recall of events and was on top of detail. I accept her evidence, in particular with regard to the circumstances in which she came to discover the 2009 stock transfer form when going through her late husband's personal documents. I should say that there was an issue that was put to her as to whether she had withheld documents on the basis that Mr Aziz owed fees to Bhandari & Co. Mr Kirk very properly drew my attention following Mrs Bhandari's cross-examination to correspondence from the solicitors then acting for her which confirms that disclosure had been provided in accordance with the disclosure order. I have no reason to think that it has not.

Mr Mahmood

47. Mr Mahmood was the subject of a witness summons. I have explained the concerns that I had at the pre-trial review about the somewhat tendentious way in which the issues that he was to be asked about were put in the witness summary as originally drafted. The questions asked of him strayed outside those issues but, in any event, he did not support Mr Aziz's version of events. He was rather vague but his account of his visit to Mr Aziz at which the sale of the share was discussed was not that he was sent by Mr Salim senior on discovery of the registration of the share in Mrs Bhandari's name. He said that he had heard that Mr Aziz had sold his share to Mr Bhandari and he had asked Mr Aziz about it at one of their regular meetings, rather than Mr Salim senior dispatching him to confront Mr Aziz about it. He could not remember when it was. Certainly it does not seem to have been an event that stuck in his mind for any particular reason, such as an immediate phone call to Mr Salim senior, or an anxious meeting with Mr Mortazavi at which Mr Aziz had expressed disbelief that his share had been transferred and had to be calmed down. Mr Mahmood's evidence is of significance because it is untainted by prior involvement in the case or professional connection with the parties. It seems to me that he was giving a spontaneous account of a visit to Mr Aziz at which the share was discussed, but one that is at odds with Mr Aziz's account and that gives me no confidence that it took place in 2019.

Mr Habib Mortazavi

48. Mr Mortazavi's evidence was of limited assistance. His witness statement failed to confirm Mr Aziz's account of telephoning Mr Salim senior, for a second time, in Mr Mortazavi's presence in January 2019. His account was that he had been asked to carry out company searches by Mr Aziz in January 2019 and he had met with him and Mr Mahmood, apparently just after Mr Mahmood had told Mr Aziz of the transfer. Mr Aziz was upset and, when the position was confirmed, kept repeating that it was impossible. There is little weight I can give to this. While it might be that Mr Aziz gave the impression of being upset to Mr Mortazavi in 2019, it tells me relatively little about Mr Aziz's actual state of knowledge beforehand, and in particular in 2009.

Mr Salim senior

49. Mr Salim senior was a little vague and unfocused at times and sometimes did not seem to understand the question. On the key points, however, I am satisfied that he had good recall of events. He told me that he had identified Lord House as a potential new site for the businesses and was adamant that Mr Aziz had not contributed a penny to the purchase. He explained that he was content for Mr Dean to buy into the company and to occupy the vacant space. The approach that he and his fellow shareholders appear to have taken was that the share issued to Mr Aziz was really a nullity, Mr Aziz having not abided by the agreement to contribute to the purchase of the property or to move into it and pay rent. Mr Salim senior described Mr Aziz's share as a "dummy" share. It was retained as a "voting share" to balance out the voting power of Mr Ahmad and Mr Bhandari.

50. His evidence served to shed a great deal of light on the Dean Transaction Documents. His evidence was that the matter was being dealt with by Mr Bhandari and that the money from Mr Dean was in fact going to be paid into the Company. He was happy for the money to be coming "from the right place". In essence, the contemplated transfer from Mr Aziz to Mr Dean was to put right a situation in which it was felt that Mr Aziz should not have been issued with a share in the first place and to make use of this "dummy share" rather than cancel it and allot a new share to Mr Dean.

51. It has to be acknowledged that his account of this was not given in his witness statement and there were other inconsistencies, for example in his attitude to the transfer in 2009 as expressed in his witness statement and in his oral evidence. While I am troubled by this, I consider that this is likely to have been occasioned by the lack of focus that Mr Salim senior occasionally exhibited in oral evidence rather than a lack of candour or dishonest invention. Indeed, his account does provide a credible explanation of the purpose behind the Dean Transaction Documents, which, as I shall explain below, I am satisfied were documents that were created in 2007 with the intention, at least on the part of Mr Aziz, Mr Bhandari and Mr Dean, of transferring Mr Aziz's share to Mr Dean.

52. Mr Salim senior had a gentle manner and did not strike me as a particularly assertive or domineering individual. I accept that he was inclined to leave matters to Mr Bhandari and to allow Mr Aziz's share to be used to give comfort to Mr Bhandari that Mr Salim senior and his brother, Mr Ahmad, did not have a majority shareholding.

Other evidential matters

53. All the witnesses were faced with the difficulty of recalling events dating back over 20 years and there are inconsistencies in all of them. Mr Bhandari's death means that I

was unable to hear from one of the key witnesses to shed light on the Dean Transaction Documents and the amendments made to the shareholdings of various of Mr Aziz's companies.

54. His honesty was called into question by Mr Aziz. In his second witness statement, dated 10th August 2020, Mr Aziz refers to acting for Mr Bhandari in about 2003:

> "in a prosecution when he eventually pleaded guilty to mortgage fraud and received a suspended prison sentence"

In his witness statement for trial, dated 21st January 2022, however, he refers to acting for Mr Bhandari in 2001:

> "when he was convicted of involvement in preparing false accounts to assist his nephew to obtain loans on behalf of clients and given a suspended sentence. He was not disbarred."

He further refers to Mr Bhandari entering into an IVA in 2010.

55. I do not have any details of the alleged conviction or guilty plea or the circumstances in which this came about. Entry into an IVA is not evidence of dishonesty and indeed I note that the supervisor of the IVA in a report dated 11th August 2016 says that Mr Bhandari:

> "conducted the arrangement in an exemplary fashion to date and deserves considerable credit in that regard, The debtor's conduct throughout the past twelve months clearly evidences their commitment to the IVA and I would take this opportunity to congratulate them on the progress they have made and thank them for their efforts."

Mr Bhandari is not here to answer these allegations, and Mr Aziz, despite acting for him in the criminal case, was evidently content to continue to instruct him for more than a decade thereafter. I bear in mind that there may have been discreditable incidents in which he was involved prior to 2003 but I give them limited weight in the circumstances.

The acquisition of Lord House

56. Mr Aziz's case has developed over time. His statement in support of the claim form, dated 24th June 2020 and amended on 6th July 2020, says that the decision to purchase the property was taken follows:

> "together we decided to purchase Lord House, the office block from which each of us carried out our practices and/or business and so to earn profit. Mr Bhandari advised that the Defendant should be used as the vehicle for the arrangement between us as contributors, which we put into effect in or about 2002.
>
> …

> Soon after our purchase of Lord House, all of the members occupied it for purposes of their practices and businesses. The rest of the property was rented out to other parties from which rental income was generated"

(emphasis added). The statement that they all occupied Lord House is accepted to be untrue and an error though, as I have said, it is a remarkable one. I cannot see how a person who did not occupy the property in any way in the 20 years since it was purchased could inadvertently say that he did in such an important document as a witness statement supporting a claim.

57. A further development of his case is as to how the purchase was funded. The same witness statement says that the purchase was funded as follows:

> "The purchase was made by the advance of capital made in equal sums by me, Mr Bhandari, and the brothers, Mohammed Salim and Riaz Ahmad, to each of whom 1 (un-numbered) share of 100 of the Ordinary Shares in the Company was issued"

There is no mention of a mortgage, the purchase price or any particulars of when and how Mr Aziz made his contribution.

58. At this stage only the company had been named as a defendant. Mr Salim senior made a witness statement in response, dated 3rd August 2020, in which he referred to the purchase price of £150,000, the mortgage, the particulars of which were exhibited to Mr Aziz's statement and, at paragraph 8(4), the agreement to pay £10,000 each towards initial refurbishment costs and immediate post-purchase running costs. He records that he paid £10,000 towards the purchase costs. He noted that Mr Aziz had not provided any evidence of payment of his contribution.

59. Mr Aziz's witness statement in reply to the Company's evidence, dated 10th August 2020, is:

> "I paid my contribution to the purchase of Lord House and each of us received 1 issued share in the Defendant as equal contributors."

He does not say what that contribution was and expressly denies that there was an agreement to pay £10,000 toward refurbishment costs:

> "I agree with the statements of Messrs Salim & Ahmed, as adopted by Mrs Bhandari, that there were terms of our agreement for the purchase of Lord House but only to the extent they are set out at paragraph 8 sub paragraphs 1 to 3 of page 3 of the witness statement of Mr Salim. Those terms are agreed by me. Accordingly, each of the 4 original subscribers to the purchase, the subscribers, were entitled to and received 1 issued share representing equal shares in return for our equal contributions to the purchase."

The points of claim of 4th September 2020 at paragraph 7 refer to the existence of a mortgage:

> "The purchase price was about £150,000 which was funded by a mortgage and balance of about £40,000 as deposit and other disbursements being paid by the contributors. Upon the contributors having paid their equal share to the deposit sum, each said 1 share was duly issued"

The re-amended points of claim of 25th March refine this further as follows:

> "The purchase price was about £150,000 which was funded by a ~~mortgage~~ secured loan from the NatWest Bank of about £125,000 and the balance of about £25,000 being paid by the contributors as a deposit along with other disbursements. Upon the contributors having paid their equal share to the deposit sum, each said 1 share was duly issued…"

I represent the green re-amended text by underlining in the above quotation.

60. By 21st January 2022, the date of Mr Aziz's statement for trial, he asserts affirmatively at paragraph 13 that he recalls there was an agreement that:

> "each of us should contribute a sum of about £10,000 to cover the costs of the deposit on the purchase and towards any initial expenses of the move."

He maintains that, since ceasing practice as a result of his striking off, he has been unable to recover the conveyancing file in respect of Lord House. He has not produced any evidence that he contributed to the purchase price of Lord House in any way and it is difficult to avoid the conclusion that he has added detail to his account in response to the evidence of the defendants.

61. He accepted, when shown a table in which Mr Bhandari appears to have annotated who had been responsible for expenses, that he had not made contributions to the repair of the building. It is also accepted that he made no contributions thereafter.

62. Mr Salim senior was adamant and spontaneous in denying that Mr Aziz had been involved in buying Lord House at the outset. He said the seller was pressing to complete and Mr Aziz proposed that he and Mr Bhandari also move and become involved in the purchase. He said that he didn't have a problem with this and that was the point at which Mr Aziz got involved.

63. He denied that the "B" and the "S" in the Company's name stood for "Bhandari and Salim", indicating that it was a special purpose vehicle that contemplated Mr Bhandari's involvement, and by extension, Mr Aziz's involvement from the outset. He said that this was a company that had been incorporated by Mr Bhandari to "service his own clients". Mr Salim senior was challenged as to this on the basis that Bhandari & Co itself had been incorporated for the purposes of Mr Bhandari's business. I infer that Mr Salim senior meant that it was an off-the-shelf company that could be used for Mr Bhandari's clients. I accept this. It was incorporated on 17th August 2000, more than a

year before the purchase of Lord House, and adopts an old-style "torrential" statement of its objects as a general commercial company, listing almost every conceivable form of trade and profession. There is nothing to suggest that it was incorporated as a special purpose vehicle for the purposes of the acquisition of the property and I give no weight to the use of the initials in its name.

64. Mr Salim senior's evidence has been broadly consistent on what was agreed. In paragraph 10 of his trial witness statement he said as follows:

> "Following the Claimant's proposal as aforesaid, I discussed matters with him and I recall orally agreeing with him to purchase Lord House jointly with myself, Mr Ahmad, Mr Bhandari and the Claimant. The Claimant negotiated on behalf of Mr Bhandari. I did not meet with Mr Bhandari at the time. The Claimant, who was my solicitor, did not advise me to record the terms of the agreement in writing. However, the following were the express terms of the oral agreement between the four parties ('the Agreement'):
>
> (1) The purchase price would be funded by a mortgage.
>
> (2) Lord House would be registered in the name of the Defendant as specific purpose vehicle and the shareholdings would be distributed equally between the four parties.
>
> (3) The company will operate its own bank account and the books and accounts would be managed by Bhandari & Co Limited.
>
> (4) Each party would pay the sum of £10,000 towards the cost of renovating Lord House and the immediate post purchase running costs.
>
> (5) The four businesses named in paragraph 5 above would occupy Lord House and would pay rent in order to cover the mortgage and running / maintenance cost of the building."

He recalled this being agreed orally by telephone call. Mr Salim senior himself was upstairs at Hilton House and Mr Aziz was downstairs. It is in my view entirely understandable that this arrangement should have been agreed in a relatively informal way given that the parties were all occupying the same building.

65. He has put in evidence his building society cash book that shows a payment of £10,000 on 23rd October 2001, which he says represented an early payment of his agreed contribution which was used as a deposit. There is a further payment out from his business account by cheque dated 17th July 2002, again in the sum of £10,000 which he suggested represented his brother's share. He said that this might have represented his brother's share or he might have been asked by Mr Bhandari to pay for something. He said that Mr Bhandari was "controlling the whole show". He was clear that the shortfall between the mortgage and the purchase price came from the other parties but that Mr Aziz did not contribute. He said that he was not worried about this. The original plan

had been to buy the building himself and even if Mr Bhandari too had not joined in with the purchase, it would still have been okay.

66. Mr Ahmad accepted that it was his brother, Mr Salim senior, who dealt with the paperwork in connection with the acquisition of Lord House, though they had found it together. He said he was busy, having about fifteen different jobs at the time. He did not personally deal with the proposal that Lord House would be bought by him, his brother, Mr Bhandari and Mr Aziz. He understood that Mr Aziz was to move in, though he accepted that he never said it to him directly. Mr Ahmad said that he made his own contribution from the sale of his house and he had not seen evidence of a contribution from Mr Aziz.

67. Mr Salim senior's building society account shows that a cheque for £10,000 was paid on 23rd October 2001. He was appointed as a director on the previous day, as was Mr Aziz. Mr Ahmad was not appointed until nearly a year later. It was suggested that the implication of this was that members were appointed as directors on payment of their contribution. Mr Ahmad explained the fact that he was not appointed until later on the basis that "they probably couldn't get hold of me". Although Mr Salim, Mr Ahmad and Mr Bhandari were working in the same building it does not of course follow that the appointment forms were readily to hand when they ran into each other. I accept that Mr Ahmad was a man with a number of responsibilities and there was no imperative for him to be appointed as a director, given that his elder brother, who had principal responsibility for dealing with the transaction, had been appointed as a director.

68. Mrs Bhandari confirmed Mr Salim senior's account of the acquisition of Lord House. She said this in her statement:

> "I have not been able to trace from the information available to me that the Claimant paid the initial investment of £10,000 to the Company. He did not pay rent nor made any contribution towards the maintenance or upkeep of Lord House. I would know if he did because at all material times, I had control over the Company bank account and its books and records. I confirm that the Claimant was not a signatory to the bank account nor was he ever involved in the affairs of the Company. Further, I confirm that neither he nor his businesses ever occupied Lord House. I wish to point out that Lord House is registered office for some of the Claimant's various companies. This due to the Claimant's relationship with Bhandari & Co Limited acting as his accountant."

She confirmed that these were her words. She fairly accepted that she could not say affirmatively that Mr Aziz did not contribute, just that she had been unable to find any record of it. She said that she had given him the benefit of the doubt and that he might have contributed to conveyancing costs. She explained that she only retained documents for up to six years.

69. She did not know how the balance of the purchase price was made up. She explained that things were run on the basis of a "gentleman's agreement" and Mr Salim senior or Mr Bhandari would make up any shortfalls. This accords with Mr Bhandari's annotated statement of expenses covered by the members of the Company in relation to

refurbishment works, which suggest an ad hoc sharing of expenses. She did not know if Mr Aziz was ever asked for a contribution or informed of rental payments.

70. I am satisfied that Mr Aziz did not contribute to the purchase price of Lord House. He has produced no evidence of his contribution and has been inconsistent as to what he understood the arrangement to be, finessing his case in response to the defendants' evidence. I am satisfied that this is because, whatever might have been the intention at the outset, he decided not to participate in the purchase and had little knowledge of it. He paid no rent, made no contributions to refurbishments thereafter and seems to have taken no interest in the property, or indeed the Company, as I shall explain. Mr Salim junior's unchallenged evidence was that he did not even come to the "ribbon cutting" when the refurbished property was formally opened.

71. I do not accept that he must have contributed to purchase price because of the shortfall between the mortgage of £125,000 and the purchase price of £150,000, stamp duty and refurbishment costs. Stamp duty at that time was minimal, Mr Salim senior had undoubtedly paid £10,000 and the allocation of refurbishment costs are accounted for. It would be entirely unremarkable for the other company members to have been able to cover the remaining £15,000, stamp duty and other expenses attributable to acquisition.

72. It is of course nonetheless the case that Mr Aziz was in fact allotted a share and appointed as a director. His appointment as a director took place before the sale of Lord House completed. It does not, in my judgment, signify that he had made any contribution to the acquisition of Lord House. It is not clear on what date before 17th August 2002 the share was allotted. Nonetheless, he received a share and how that share was treated, and what happened to it, is a matter to which I will now turn.

The Dean Transaction Documents

73. In 2007 a number of documents were produced which appear to show an intended transfer of Mr Aziz's share to a Mr Dean, who had a jewellery business and was known to the parties. These are –

    i) A letter from Mr Aziz, dated 1st February 2007, addressed to the secretary of the Company notifying the Company that he wished to transfer his share in the Company to Mr Dean for a consideration of £70,000.

    ii) A draft sale and purchase agreement bearing the year 2007 made between Mr Dean as buyer and Mr Aziz as seller. It provides for the sale of Mr Aziz's share for £70,000.

    iii) A draft option agreement between Mr Dean, Mr Salim senior, Mr Ahmad, Mrs Bhandari and the Company, providing an option for Mr Dean to require the sale of his shares for £80,000 or a price to be determined in accordance with the agreement.

    iv) A minute of an extraordinary general meeting approving the transfer of the share to Mr Dean, accepting the resignation of Mr Aziz as director and approving the appointment of Mr Dean as a director. It appears to have been signed by Mr Dean as chairman of the meeting.

v) A letter dated 31st May 2007 from Mr Aziz to Mr Dean authorising the £70,000 purchase price to be paid to Mr Bhandari.

vi) An undated stock transfer form signed by Mr Aziz for the transfer of his share to Mr Dean, recording consideration of £70,000.

These documents appear to be contemporaneous with the date they bear. Some were evidently faxed, as they bear the fax number of a firm of solicitors called Dwyers and the date 10th July 2007. Dwyers seem to have acted for Mr Dean as there is a letter from them to the Company on 18th August 2005 in connection with a proposed grant of lease of the ground floor of Lord House.

74. Mr Aziz's position as set out in his re-amended particulars of claim is that he did not know how "images" of his signature appeared on two of these documents. The originals that were shown to Mr Aziz and to me. They appear, superficially, to bear original signatures. There is a slight imprint on the reverse suggesting the pressure of a pen rather than electronic reproductions but no expert evidence has been adduced as to the signature. It is however notable that letters of 1st February 2007 and 31st May 2007 show his signature positioned to the right of his typed name, rather than above it. That is the way a number of letters from him in this dispute, indisputably signed by Mr Aziz, have also been signed. Mr Aziz has produced no evidence to show that this signature is not written in ink, rather than being an "image" or that it is a simulation of his signature.

75. Mr Aziz noted that the documents that gave his address incorrectly stated his postcode, but, given that his address was also incorrectly stated in one of his own witness statements, I am not satisfied that there is anything sinister about this. It may be that the documents were produced by Dwyers and they simply got this information wrong. Nor is it unusual for purely formal minutes to be prepared in advance.

76. The reasons for the creation of these documents is however not at all clear. Mrs Bhandari's written evidence was that she recalled the transaction:

> "I do recall the resolution referenced in paragraph 17(4) of Salim Statement. I note my husband signed the document and also Mr Dean. My recollection is that the Claimant had agreed to transfer the share registered in his name to Mr Dean and signed the stock transfer form accordingly. I should clarify that Mr Dean was a tenant at Lord House at the material time. I do believe that Mr Salim and Mr Ahmad are both correct when they says that they did not attend the board meeting referenced in the resolution."

Her written evidence also says that the payment was to be made to Mr Bhandari in satisfaction of a debt, though she also referred to protecting the share from bankruptcy. She recalled that the valuation of Lord House in 2005 had been £285,000 and that £70,000 represented roughly a quarter but said that she did not get involved. The reason that the debt had accrued, she said, was that her husband was always trying to help people out and getting himself into debt as a result. She had disposed of his credit card statements about a year after probate was granted, though her witness statement said as follows:

> "From my recollection the first time I became aware of any debts owed to my late husband by Mr Aziz was around February 2017. This was after my husband had passed away and I was looking through my husband's credit card statements when probate was being completed and I saw a few large payments out relating to Mr Aziz. I no longer have the statements as do not know where these statements are having already looked around for them. I spoke to family and friends and clients of Bhandari & Co Limited who seemed to be of the understanding that Mr Aziz owed my late husband money."

77. It was put to Mr Aziz that he owed a debt to Mr Bhandari and was facing bankruptcy, which he denied. He was taken to a cheque in which Mr Bhandari is shown to have made a payment of £5,000 to Jennings Manchester on 29th July 2008 and an email that is undated in which Mr Aziz asks Mr Bhandari to "raise £15k for a few weeks", which he will be repaid on completion. Again, on 13th January 2010 he emailed Mr Bhandari asking him to address a matter so that he could reclaim VAT and "pay you some fees etc". Mr Aziz said that he might have owed Mr Bhandari a few hundred pounds rather than a lot of money. These indications of monies being owed to Mr Bhandari do of course post-date the Dean Transaction Documents but they support, to an extent, the proposition that Mr Bhandari made monies available to Mr Aziz that Mr Aziz was liable to repay, or that he owed provisional fees. They also follow Mr Aziz's striking off as a solicitor, which Mr Aziz accepted was an occasion for concern. I shall discuss Mr Aziz's subsequent money troubles below.

78. Mr Ahmad said that he recalled the proposed transaction with Mr Dean. He and Mr Dean occupied the same part of the building and he had discussed with Mr Dean his proposal to buy part of the building. He said that he would have objected to Mr Dean being given a share and, in the event, there was no approval of the share being transferred.

79. In relation to Mr Dean, Mr Salim senior's position is the most instructive. He understood that Mr Dean was seeking to buy a share "from us". The transaction didn't proceed but Mr Salim senior was content with it because the money was "coming into the company – it was coming to the right place." He said that the agreement was that Mr Dean would be paying the company, not Mr Aziz. As the transaction would cause money to "come into the partnership" his somewhat unorthodox approach was that Mr Aziz's "dummy share" would be turned into a "real" share.

Mr Aziz's attempts to divest himself of assets after 2007

80. Mr Aziz accepted that he understood that his striking off as a solicitor in January 2007 would have financial consequences. He said that he had two property companies and put his energy into them, but it was not a "dark time financially". By 2008 however, he was anxious to protect his financial position. On 18th October 2008, he emailed Mr Bhandari as follows:

> "I have received a letter from Companies House stating that they are going to strike off this company. They need form 363 for 2008. Can we file dormant accounts as it still has not traded.

> Also, I need to know whether I can place all shareholdings for all companies in the name of Mary in case anything happens to me. URGENT!!!!"

Mr Aziz said that he was panicking at this point.

81. Mr Bhandari responded on 20 October 2008:

> "We cannot file dormant accounts for the Company in view of what happended [sic] last time with the brewery and also need alll [sic] your invoices to claim back the vat.
>
> Please come in tomorrow and we can sit down and sort matters out.
>
> Need to set aside a copule [sic] of hours to make sure we get the strategy right."

Mr Aziz accepted that this "strategy" was to consider the event of his bankruptcy and that he had numerous conversations with Mr Bhandari. He accepted that Mr Bhandari thought that more had to be done than a simple transfer to Mr Aziz's wife. He denied however that it was part of this strategy to transfer his share in the Company to Mr Bhandari or that he owed him substantial amounts of money.

82. On 17th December 2009, Mr Aziz emailed Mr Bhandari and said, among other things:

> "Anyway please can you ensure that Mary is a director of Kingsmeade and that she has 100% shareholding and backdate it 2 or 3 years if you can. Very important in case I go bankrupt."

In fact, Mr Aziz's wife was already the shareholder, the shares apparently having transferred to her in 2008 according to the annual return filed on 8th April 2009. Mr Aziz appears to have forgotten this.

83. Mr Aziz continued to ask Mr Bhandari to prepare backdated forms showing that his wife was the holder of the shares in his various companies. On 21st April 2010 he emailed Mr Bhandari:

> "As I am bankrupt the bank want me to resign and another director appointed for Jennings Homes Mcr Ltd and Genesis. Can you please go on temporary basis. Please get forms ready and ensure all shares in Mary's name backdated a few years if necessary. Urgent. Must give Bank assurance it is done."

84. On 30th June 2010 he emailed Mr Bhandari about "Jennings":

> "Dear Vin,
>
> Please can you do a search on the company. Am I a director? If not when did I resign? When did Mary become a director? Please can you let me as soon as possible."

85. On 4th October 2010 he emailed Mr Bhandari. The original is entirely in upper case lettering but for ease of reading I have reproduced it in upper and lower case:

> "Vin, just working late. Going to Land Reg in few hours to register cautions on my properties. RBS have sent in receivers on all my properties. My barrister says I have a good case against the bank. I need you to put me on as director of Jennings Homes (MCR) Limited. Do this as soon as you get into office as I have to say to Land Reg that I am a officer of the company. Keep Mary on also. Urgent. Will see you tonight at Handforth. God bless you."

86. Mr Aziz's readiness to procure the creation of false documents continued in 2012. On 8th March 2012 he emailed Mr Bhandari and referred to a winding up petition in respect of Jennings Homes. He said:

> "I asked your son to do me a statement to say that he did not receive the petition and he refused."

Mr Bhandari replied as follows. For ease of reading I reproduce it as it is without highlighting individual errors:

> "As I hqave stated to you on numerous occassions I cannot make up your accounts for your Companies each year based upon fiction and fictious figures conjured out of nowhere.
>
> I have given you lists of various bank statement and bills and receipts required to prapare the accounts in time for submission and thse have never forthcomomg ether from yourself or John .
>
> I hope you come in today and we can sit down and discuss exactly what is required now and in future to bring your affairs up to date and keep yopu on the straight and narrow in the future.
>
> The problems will not go away by burying your head in the sand.
>
> We need proper paperwork and full explanation of the source of finance and expenditure to justify to HMRC the financial statements submitted, otherwise we are inviting in depth investigations and reprucussions."

87. Later that year, in September, Mr Aziz asked Mr Bhandari to set up a new company and made various requests for him to make changes to directorships, including checking to see who the directors of Kingsmeade were. On 5th December 2012 he asked to be appointed as a director of Frankie, again asking Mr Bhandari to backdate the appointment.

88. All of this tends to show that Mr Aziz was, from about 2008, seeking to divest himself of his shareholdings to protect himself from creditor action. He does not appear to have expressed any specific concern about his shareholding in the Company. Strikingly, in an email to Mr Bhandari dated 31st December 2012 he said:

> "Vin,
>
> I am in trouble and I do not understand it. The IR want £27k from Kingsmeade. I do not know how I can pay it. You do the accounts. The company collects rent and it all goes to the bank. Last year the company did not pay the bank as the property was empty for a long time and the account was overdrawn. The previous year the same as it was empty. The company has no reserves. The property has depreciated to the extent that it is now worth about £600k but owes over £850k as the bank have added a fee of £150k in order to restructure the loan. I simply do not have the funds to pay £27k. I can't afford to let the company go as this is the last property I own and when I bought it I put money into it. I spent almost £40k on it to get it into a lettable standard and it now has excellent tenants and if they stay then long term I can make it work.
>
> Please can you explain what I do as how can the company owe £27k when it has never made a profit and I have put my own money into it to allow the company to survive. Can we do anything to resolve this situation. You know the company has no money and has never made any profit."

His particular concern is that this was a company that owned property, in which Mr Aziz had invested money and which he thought he could turn to account. Were B & S similarly a company in which Mr Aziz believed himself to have an interest, which held property and to which Mr Aziz had contributed, it is striking that he said nothing about it. He said that he had not contributed hundreds of thousands of pounds to B & S and so did not regard it in the same way.

89. Similarly, on 14th July 2014, Mr Aziz emailed Mr Bhandari again:

> "Dear Vin,
>
> I have been served with a bankruptcy by Lancashire Mortgages for 7m on various properties and amount to what they say are shortfalls. Please can you ensure I am not a director of Kingsmeade Estates and that I have no shareholdings in it or any other trading company. This is important as if I am made bankrupt I do not want to mention Kingsmeade as that is the only company with any assets."

Again, Mr Aziz seems to have regarded Kingsmeade as the only company in which he had an interest that had any assets. That is not consistent with him believing himself to have an interest in B & S.

90. Mr Aziz notes that he does not ask for his shareholdings to be transferred to Mr Bhandari, but to his wife. The shares appear to have devolved as follows. In four cases his shares were transferred to his wife –

i) Mr Aziz's two shares in Kingsmeade were transferred to his wife by 26th February 2008, according to the Annual Return filed with Companies House on 1st October 2008.

ii) Mr Aziz's one share in Jennings Homes was transferred to his wife by 6th July 2008, according to the Annual Return filed with Companies House on 2nd December 2009.

iii) Mr Aziz's one share in Frankie was transferred to his wife by 3rd September 2007, according to the Annual Return filed with Companies House on 15th December 2008.

iv) Mr Aziz's 52 shares in Jennings Manchester were transferred to his wife by 3rd September 2008, according to the Annual Return filed with Companies House on 1st October 2008.

91. In four others, in which Mr Bhandari or his associates already had an interest, the share was transferred to Mr Bhandari or an associate –

i) On 21st February 2007, Mr Aziz subscribed for one share in Italian Cuisine. The return filed on 5th August 2008 shows Mr Bhandari as the sole shareholder as of 5 March 2008.

ii) Mr Aziz's one share in Genesis 100 was transferred to Mr Bhandari by 8th May 2009 according to the Annual Return filed at Companies House on 17th July 2009.

iii) Mr Aziz's one share in Crescent Homes was transferred to Mr Bhandari's son, Mr Bharat Kumar Bhandari, by 10th January 2010, according to the Annual Return filed with Companies House on 22nd February 2010. He remained the company secretary.

iv) The share in the Company that was registered in Mr Aziz's name was transferred to Bhandari & Co Limited by 17th August 2009, according to the Annual Return filed with Companies House on 9th September 2009.

92. Mr Aziz relies upon the transfer in Genesis 100 as showing that Mr Bhandari had sought to deprive him of his shares without his knowledge. In his statement of 10th August 2020 at paragraph 14 he says:

> "I am now informed that Bhandari transferred the sole share in Genesis 100 Ltd from my name to Mr Bhandari or his company. There will be no authentic evidence of any such agreement."

And again at paragraph 35:

> "Mr Amir Salim refers to the Genesis 100 Ltd company and the transfer of my 1 Share to Mr Bhandari. I never agreed to a transfer of my 1 Share and I knew nothing of that transfer until being informed of it now by Mr Amir Salim."

He repeats this allegation in his trial witness statement of 21st January 2021 at paragraph 31:

> "After learning of the transfer of my B&S share I then discovered for the first time from the records at Companies House that my shares in Genesis 100 Ltd, and Crescent Homes Ltd had also been transferred."

93. At paragraph 57 he seeks to rely on his 2010 emails to suggest that he did not know that these shares had already been transferred:

> "My emails, of 2010 onwards asking Vinod to transfer my shares to protect my assets demonstrate that I did not know that Vinod Bhandari and/or Sanita Bhandari had already transferred title to my share in Genesis. The same would have applied to Crescent Homes and B&S Properties Ltd. I did not know that my entire entitlement in any of those companies had been transferred to other persons or parties associated with Vinod Bhandari until after I was notified in January 2019 by Tariq Mahmood of the transfer of my B&S share."

This, however, cannot be right. On 13th December 2010 Mr Aziz forwarded to Mr Bhandari an email headed "FW: Jennings Homes (Manchester) Limited, Genesis 100 Limited and personal borrowing". Mr Aziz said to Mr Bhandari:

> "Please can you put me on as Dirrector [sic] of Genesis immed. Thanks"

The forwarded email had been sent to Jennings Homes' email address and also to Mr Hartman, Mr Aziz's direct access counsel in these proceedings, from a Miss McMahon, a partner at Addleshaw Goddard LLP, a firm of solicitors. It said:

> "Thank you for meeting with the Bank and this firm on Thursday last week. We are discussing your proposals with our client.
>
> During our meeting you confirmed that you and your wife are the shareholders of both Jennings Homes (Manchester) Limited ('Jennings') and Genesis 100 Limited ('Genesis'). However, Companies House records indicate that the shareholdings and directorships are as follows:
>
> Jennings: sole shareholder Mrs Jennings-Aziz; directors, you and Mrs Jennings-Aziz
>
> Genesis: sole shareholder Vinod Kumar Bhandari; sole director Mrs Jennings-Aziz
>
> Please would you clarify the position. Has there been a transfer of shares to you? If so please would you let us have a copy of the stock transfer form and register of members to confirm the same Have you been appointed a director of Genesis? If not have you

> been authorised by Genesis to put forward the proposal you made on Thursday?
>
> Your early clarification would be appreciated."

Mr Aziz said that he didn't notice this but I cannot accept that account. He draws Mr Bhandari's attention to the position with Genesis 100 when forwarding Miss McMahon's email to him.

94. If there were any doubt about this, Mr Aziz replied to Miss McMahon a little latter that day, again copying in Mr Hartman. He said:

> "Thank you for your email of today's date. I am so authorised to make proposals on behalf of both Jennings and Genesis 100 Ltd. I have today instructed my accountant to appoint me as director of this company also. I'm sure I asked him to do this at the time he dealt with my reappointment on Jennings. Yes I have full authority from Mary"

Miss McMahon replied:

> "Please would you confirm the shareholder position. Are you and your wife the shareholders of both companies or is the shareholding as indicated by Companies House?"

The suggestion that Mr Aziz was unaware of the transfer of the share in Genesis 100 is simply untenable. His attention was specifically drawn to Genesis 100, he asked Mr Bhandari to show that he was a director of the company and Miss McMahon asked him to confirm the shareholder position. He appears to have expressed no surprise or shock, and he did not demand an explanation from Mr Bhandari. It is similarly inconsistent with a fraudulent transfer of Crescent Homes, as Mr O'Leary noted, that Mr Aziz should have been left as company secretary.

95. For the sake of completeness I should mention one further email from Mr Aziz to Mr Bhandari, not long before the latter's death. On 4th April 2016 he wrote:

> "Vin.
>
> I need your help. The HSBC arc being Bastards and are closing my account as I failed to respond to them with ID details. It is my fault but I did not think they would do this as my complaint is being dealt with.
>
> I am thinking that if you can back date a letter to June 2015 I will argue that you did send the details and its their fault. You can see their letter of the 20th June to which i did not respond. Its urgent as this is the way they will call in the loan??

He then proposed the text of a letter. Once again, his first instinct is to falsify a document.

96. Mr O'Leary characterised these exchanges as evidencing Mr Aziz's willingness to lie and to seek to hide his assets. I agree. Mr Aziz was rattled by the prospect of creditor action against him. He adopted something of a scattergun approach in his emails evidently sent in haste to Mr Bhandari and it may well be that not all of them are in evidence. Mr Bhandari's response to Mr Aziz's request to put all of his shareholdings in his wife's name was to suggest a meeting to "get the right strategy". It seems to me likely that that strategy was to divide up the shareholdings between Mr Aziz's wife and Mr Bhandari or his associates.

97. Mr Aziz did not mention the Company in these emails. He said that this was simply because he had not invested hundreds of thousands in it. He had simply overlooked it. I do not accept that. He was concerned as to the position of Kingsmeade because it was the only company that had assets in which he had an interest. I am satisfied that had he believed himself to have an interest in B & S, which also held an asset of substantial value, he would have referred to it in correspondence.

The transfer of the share to Bhandari & Co in 2009

98. The signed stock transfer in favour of Bhandari & Co seems to bear Mr Aziz's signature and he has adduced no evidence to suggest that it is a simulation. His witness statement of 19th March 2021 sets out how it might be that he came to sign this document without his knowledge:

> "3. Some of what I say will overlap with earlier evidence. Almost all of it relates to matters which took place between 20 and 11 years ago. As I explained from the start of these proceedings I have had no intention to rely on my credibility and so I have since the 6 June 2020 been asking Sanita Bhandari and the defendants to produce all company records and other disclosure of documents relating to how my share came to be transferred to Bhandari &Co Ltd in September 2009 as well as asking the same of my resignation as director.
>
> 4. The only evidence I give here without documentation in support is to say that in the 25 years of more that my friend Mr Bhandari acted as my accountant for numerous of my companies, about 10 or more, I met with him almost daily. I signed hundreds if not thousands of documents he placed in front of me which I believed related to me or my companies or companies or in which I had an interest. Mrs Bhandari will have or should have retained those documents in the respective company records for the companies including Crescent Homes and Genesis."

99. Mr Aziz was challenged by Mr O'Leary on his evidence that he met Mr Bhandari "daily" and signed "hundreds, if not thousands" of documents put in front of him. In his statement for trial dated 21st January 2022, he said:

> "Because of my friendship with Vinod Bhandari as well as his role in dealing with administration and accounts of my property companies, I used to visit Vinod Bhandari as often as 4 times a

> month at his office as well as meeting him socially outside of his office. His family recognised our friendship and when he died on 14 December 2016, Sanita Bhandari phoned me with the bad news when I was driving my car on the way back from Preston."

The suggestion that they would visit Mr Bhandari's offices as often as four times a month, as well as meet him socially, is a rather different picture to that of daily meetings and the signing of perhaps thousands of documents painted in his earlier statement. Mr Aziz said that this had not been a literal account. It is not a literal account in the sense that it is untrue. It is another example of Mr Aziz's willingness to give the account that suits him from time to time. It is notable that this statement, prepared after the discovery of the signed stock transfer form, introduces in terms the allegation that Mr Aziz placed large numbers of blank stock transfer documents in front of him for signature. This is again an example of Mr Aziz finessing his case in response to the available evidence. I reject his account. The contemporaneous evidence is that Mr Aziz would direct Mr Bhandari to deal with his shareholdings and ask him to write letters, rather than passively signing whatever he was told to sign. Indeed, Mr Aziz accepted that he would read the documents given to him.

100. Mr Salim senior's evidence is that he was aware of the transfer to Mr Bhandari in 2009. He says in his statement:

> "15… I confirm that neither the Claimant's business nor the Claimant himself or any business connected with him ever paid any rent in respect of Lord House or any other contribution towards its maintenance or upkeep. Again, this was in breach of the Agreement.
>
> 16. I recall that in 2009, although I cannot presently confirm the precise date, Mr Bhandari mentioned to me that he had an 'agreement' with the Claimant that he would transfer the 1 ordinary share then registered in the Claimant's name to Mr Bhandari and that the share had been transferred to Mr Bhandari accordingly. Mr Bhandari informed me that the Claimant was indebted to him hence the transfer of the share. I was dissatisfied with this proportion as both Mr Bhandari and I well knew at the time that the Claimant had breached the Agreement and was not entitled to any share in the Company. Mr Bhandari was also well aware of the matters set out in paragraph 15 above. I felt that the share registered in his name should be distributed back to Mr Bhandari, Mr Ahmad and I equally.
>
> 17. Following the conversation with Mr Bhandari, I made contact with the Claimant and made it clear I objected to the transfer. I requested to meet with Mr Bhandari and the Claimant on multiple occasions in order to discuss the position. I wanted the Claimant to explain the precise nature of his agreement with Mr Bhandari. I saw the Claimant in person at Mr Bhandari's office several times in 2009 and regularly thereafter almost on annual basis. I raised with him specifically the transfer to Mr

> Bhandari. He was evasive in that he refused to explain the position. I did not obtain legal advice at the time."

101. In his oral evidence he said that he did not go into Mr Bhandari's or Mr Aziz's financial affairs or discuss what the debt that he understood existed between them was. He was happy to continue the relationship with Mr Bhandari as it was and Mr Bhandari was keen to keep the voting rights attached to the share. Its only purpose was to prevent Mr Bhandari from being outvoted.

102. He was adamant that he knew of the transfer to Mr Bhandari in 2009, not 2019, and that the suggestion that it was only in 2019 that he became aware of it was completely false. He had not said to Mr Mahmood that he had discovered that the share had been transferred by Mr Aziz in 2019 and had no conversation with Mr Aziz in 2019.

103. Mr Salim junior's evidence was that his father had told him of a discussion regarding the transfer of the shares in 2009. He said that he didn't know the detail, but the only explanation was that Mr Bhandari was owed a debt, or something like that. Mr Ahmad did not know what the debt was and said that he had been upset as he thought that the other shareholders had first refusal. He had not spoken to Mr Aziz about it as he hardly saw him. He had let his brother sort matters out.

The alleged meeting in January 2019

104. Mr Mahmood did not support Mr Aziz's account of this meeting. He did not accept that he had been sent by Mr Salim to convey any particular message to Mr Aziz. He said that he went to see Mr Aziz all the time for a cup of tea and this occasion was nothing special. He said that Mr Salim was his own accountant and had said to him words to the effect of "your friend sold the share to Mr Bhandari". When he saw Mr Aziz he asked "why did you sell to Mr Bhandari and not to Mr Salim?" the response to which was "I don't know". He did not recall anyone else being present and could not remember when the meeting might have happened. He made no mention of Mr Mortazavi's presence. Mr Mortazavi did not mention having heard any telephone call to Mr Salim senior.

105. This is not in accordance with the account that Mr Aziz now gives. Nor is it in accordance with Mr Hartman's letter to Mrs Bhandari, dated 13th June 2020, which states that he has been instructed to make initial inquiries in relation to the transfer of the share and says:

> "Early in 2019, Mr Ahmad and Mr Salim informed Mr Aziz that to their surprise, during a heated conversation with you, Mrs Sanita Bhandari, you stated that your shareholding in B&S was equal to theirs. Mr Aziz was asked by them how this could be when, on any such transfer, they were entitled as directors to be informed of the transfer to a third party and, before such transfer, for the share to be valued and offered to them as well as any other member.
>
> Mr Aziz was utterly shaken by the news of the transfer as he knew nothing of any such transfer. Mr Aziz found it even more extraordinary because he had never agreed to a transfer, (nor was

> he aware of his removal as director until 12 June 2020), and he pointed out that he had received no payment for the transfer, which must be a significant proportion of the current value of the property."

The story that Mr Aziz now tells does not involve Mr Ahmad at all in this revelation. It was not suggested that Mr Hartman's letter did not accurately reflect his instructions.

106. Extraordinarily, given Mr Aziz's apparent shock at an act of gross dishonesty on the part of Mr Bhandari, he does not seem to have taken immediate legal action, or to have written to the Company or its shareholders to protest. By contrast, he and his wife continued to write to Mrs Bhandari to instruct her on matters concerning what Mr Aziz described as his wife's businesses as late as 2020. Once again I am unable to take his evidence on this conversation at face value. I reject it.

Sale of the shares to Mr Salim junior and Mr Ahmad in January 2020

107. Mr Salim junior accepted that there had always been four shares. He was asked why, when calculating the price to be paid for one of Mrs Bhandari's shares, he had taken the value of the business and divided by three, rather than four. He explained that the continued existence of the share allotted to Mr Aziz was "bad housekeeping" as he had never contributed, so it was agreed that the shares would be valued as if there had been three. He said that the share had no value as Mr Aziz had nothing to do with Lord House.

108. Mrs Bhandari herself did not see the share as valueless or as something that did not really exist. She said that she was not happy to have been offered a third rather than half of the value of the shares but that she had had enough of running the business, moving house and had suffered with her mental health. She needed the money when she sold her house and was in a dire financial position.

109. Mr Ahmad said that he was aware of the negotiations to purchase a share from Mrs Bhandari but was not involved in determining how the price was determined. He denied that it was an attempt to put the share further out of reach of Mr Aziz. Tellingly he too said that the share was not really a share because "you couldn't have something for nothing" and Mr Aziz could not have had the rights associated with it. This view of the share as not really existing was a view similarly expressed by Mr Salim senior.

110. I am satisfied that this transaction was entered into without notice of Mr Aziz's claims. I do not accept that Mr Aziz had telephoned Mr Salim in 2019 and it is evident from the opening words of Mr Hartman's letter of 13th June 2020 that the initial inquiries in relation to this share were instituted some months after the transaction was agreed. There is nothing to suggest that, even on the assumption that that Mr Bhandari had somehow procured Mr Aziz's signature on the stock transfer form by underhand means, Mr Salim junior, Mr Ahmad or Mrs Bhandari knew of this or any reason that they should have suspected it.

111. I reject the allegation that Mr Salim senior, Mr Salim junior, Mr Ahmad or Mrs Bhandari had notice of Mr Aziz's claim at the time of the sale of her shares in January 2020. Mrs Bhandari has only been paid £5,000 of the consideration due to her but I accept that the reason for this is that Mrs Bhandari had been content to wait for the

balance of payment when the Company had arranged a loan and that matters were overtaken first by the coronavirus pandemic and then this dispute. She has been kept out of her money as a result. There is evidence that Mr Salim junior was seeking to procure a loan in January 2020 in which the proposed sale is referenced, although at a lower price than ultimately agreed. The failure to pay her is not indicative of the transaction being an artificial attempt to place the share beyond the reach of Mr Aziz.

Discussion

112. I am satisfied that Mr Aziz voluntarily transferred his share to Bhandari & Co in 2009. There is a stock transfer to that effect, the signature on which Mr Aziz does not seriously challenge. He has had the opportunity to adduce handwriting evidence and has not done so. The suggestion that this could simply have been a form put under his nose for signature is not credible. It is abundantly clear that he was seeking to divest himself of shareholdings when he was concerned as to the potential for bankruptcy from 2008. He did not refer to the Company in the extant correspondence and he appears to have regarded Kingsmeade as the only company with any value. I do not accept that this was simply because it was the only company in which he had made a substantial investment. If he had truly believed that he had a beneficial entitlement to a share in the Company and thus a quarter of its assets, I am satisfied that he would have referred to this. I am satisfied that he, like Mr Salim senior and Mr Ahmad, regarded his share as being something to which he was not truly entitled because the agreement that he would contribute to and move into Lord House did not eventuate.

113. The evidence of Mr Salim senior, and Mr Ahmad and indeed Mr Salim junior shows something of a disconnect between the legal reality and how they decided to treat the share. This is perhaps surprising given that they are accountants but it is tolerably clear that that they were not focused on what they evidently considered to be legal niceties. To their minds the share did not really exist or was no more than a "dummy" share. Here again Mr Salim senior's evidence, which I accept, is instructive. His explanation as to why something was not done about the share if Mr Aziz did not contribute was, he said, that they were happy to leave it in place because it "had no value" and because Mr Bhandari wanted to hold it so that his fellow shareholders couldn't "throw him out". He was content to do so to keep Mr Bhandari happy, and contributions were made between the three of them: Mr Bhandari, Mr Ahmad and Mr Salim senior. Mr Salim senior said "we all knew that the fourth share wasn't taken up" and "in the real situation there were three shares". He said that "from my side Mr Aziz didn't exist". This is consistent with the offer made to Mrs Bhandari for her shares, which included the Aziz share, in January 2020. This account is not inconsistent with the disgruntlement expressed in Mr Salim senior's witness statement that the share had not been transferred to the three remaining shareholders. The impression that I had from Mr Salim senior is that, ultimately, he was content not to rock the boat on the basis that the underlying agreement between the shareholders was understood.

114. I am satisfied that there was an agreement that Lord House was to be acquired on the basis that the four proposed parties would contribute to the cost of acquisition, move their businesses into the property and pay rent. The allotment of the share to each of them, or their associate, was intended to be conditional on that. Though the share was in fact issued, Mr Aziz did not proceed with the agreement at all and he had nothing further to do with the Company or the property. The others were content to proceed without him. As between Mr Aziz, Mr Salim senior, Mr Ahmad and Mr Bhandari the

share was regarded as a nullity and was simply retained to dilute Mr Salim senior and Mr Ahmad's voting rights.

115. It was, as Mr Salim junior said, "bad housekeeping", but an opportunity to use the "dummy" share arose when Mr Dean showed interest in buying in to the Company. Somewhat ineptly prepared documents were created and it is not clear that the transaction would have met the approval of all the shareholders but it is relatively clear that Mr Aziz signed documents to seek to give effect to it and laid no claim to the money that that Mr Dean was proposing to pay, which were approximately a quarter of the value of Lord House. Instead it was to be paid to Bhandari & Co, the Company's accountant, which is consistent with Mr Salim senior's belief that money was "coming into the partnership". It is entirely possible that the monies included some element of debt due from Mr Aziz to Bhandari & Co, and this may be the cause of the initial speculation that the purchase monies were to discharge a substantial liability to Bhandari & Co, but I am satisfied on the balance of probabilities that the sale of the share by Mr Aziz and payment to Bhandari & Co was simply a convenient way of arranging for Mr Dean to buy into the Company and have a share given to him. It killed two birds with one stone. The consideration of £70,000 is not evidence that Mr Aziz was regarded as being entitled to £70,000 as the value of his share. That was new money that Mr Dean was to invest in the Company.

116. As between the shareholders the allotment of the share was regarded as a nullity and it is hardly surprising that an attempt should have been made to regularise the position at a time that Mr Aziz was facing bankruptcy in 2009. I am satisfied that he transferred the share in 2009, the nominal consideration reflecting the value the parties placed upon it. Unlike the abortive transaction with Mr Dean, no new money was to come into the company and so it was transferred at its face value. I infer that the directorship was simply overlooked at the time, given the absence of any participation in the Company on the part of Mr Aziz, and was therefore not terminated until 2014.

117. I am satisfied that Mr Aziz willingly transferred the share to Bhandari & Co in 2009. In my judgment, the transfer was not a transfer to Bhandari & Co to hold on trust for Mr Aziz. It was no doubt prompted by the risk of his bankruptcy but was a tidying up exercise rather than an attempt to conceal an asset. None of the parties regarded him as entitled to it.

118. I reject Mr Aziz's unconvincing account of the "discovery" of the transfer in 2019. It is at odds with the preponderance of the available evidence. I do not accept that Mr Salim only became aware that Mr Aziz had parted with the share in 2019 and dispatched Mr Mahmood to question him about. I similarly reject the allegation that Mr Aziz spoke to Mr Salim senior in or around January 2019. It follows that Mr Aziz is not entitled to rectification of the register.

119. In any event, I would in my discretion decline to order rectification on the basis of delay. As noted by Blackburne J in *Re ISIS Factors plc* "promptitude… is ordinarily a requirement of someone seeking the grant in his favour of the court's discretion". Even if Mr Aziz were telling the truth about when he discovered the transfer of the share in the Company, and did not transfer it of his own volution in 2009, at the very least he was put on notice by the email in connection with Genesis 100 in 2010 that a share belonging to him had been transferred to Mr Bhandari. He took no steps to check the position in respect of his other companies and did not issue proceedings in respect of B

& S until a decade later. Still further, he had failed to comply with his part of the agreement in relation to the acquisition of the share in any way. He did not contribute to the purchase of Lord House, he did not move in, he did not pay rent and he did not contribute to the renovations. He cannot in these circumstances seek to enforce rights when he has not done any of the things upon which the allotment of the share was predicated. Compensation for the loss of the share, were Mr Aziz otherwise entitled to it, is time-barred by reason of section 128 CA 2006 and I would in any event decline to grant it as a matter of discretion for the reasons I have already given.

120. Article 9 does not assist Mr Aziz. A transfer in breach of article 9 was acquiesced in by Mr Aziz and has been consented to by all the other shareholders. That overrides the article in accordance with the principles in *Re Duomatic*. Even if that were not so, article 9 does not prevent the passing of both legal and equitable title to a person registered as a shareholder in breach of its terms. It does not contain the absolute bar on transfer of good title that was present in *Hunter* and in *Re Coroin* and bona fide third parties have now acquired title for value from the registered member without notice of Mr Aziz's claim. Even had that not been so, in circumstances where Mr Aziz is seeking to rely on his own breach of the articles of association to undo a transaction he willingly entered into more than a decade before he commenced proceedings, I would have declined to order rectification as a matter of discretion.

121. It similarly follows that Mr Aziz's other causes of action must fail too –

i) In relation to the tort of causing harm by unlawful means, there has been no unlawful interference with a third party's freedom to deal with Mr Aziz and none is pleaded. The entry into the contract of sale with Mrs Bhandari in January 2020 was not unlawful, and no reason for it to be regarded as so is alleged. I have accepted that Mr Salim junior and Mr Ahmad, and indeed Mrs Bhandari, were not aware of any alleged wrongdoing on the part of Mr Bhandari, or Mr Aziz's claims. I can see no intention to harm Mr Aziz at all.

ii) In relation to the tort of conspiracy to injure by unlawful means, the highest it appears to be put is that the sale to Mrs Bhandari was below market price and had not been paid in full. It is impossible to see that it was unlawful, that it was intended to cause harm to Mr Aziz or that Mr Salim junior and Mr Ahmad, or indeed that Mrs Bhandari ought to have known that it would be likely to do so. On the basis that I have accepted that Mr Salim junior and Mr Ahmad, and indeed Mrs Bhandari, were not aware of a claim to the share at the time, there can have been no conspiracy at all.

iii) The tort of conspiracy to injure by lawful means requires the predominant purpose of causing injury to the claimant. None is alleged. The transaction in 2020 was a sale for value validly entered into between Mr Salim junior, Mr Ahmad and Mrs Bhandari in their own interests.

iv) There can be no claim based on breach of fiduciary duty here. Mr Salim junior, Mr Ahmad and Mrs Bhandari, as directors, owed no duty as such to Mr Aziz personally and nor was any such duty owed as between them as shareholders.

v) Even if it could be said that there was a claim against Mrs Bhandari based on the registration of the transfer in 2009, which there cannot as there is no reason

> at all to think that she was involved in the transfer or the registration in a way that was improper, such a claim is time-barred by reason of sections 2 and 21(3) of the Limitation Act 1980, which provide that a claim in tort or for breach of fiduciary duty must be brought within six years of the accrual of the cause of action. The conditions for the postponement of the running of the limitation period under section 32 of that Act cannot apply. No fraud is alleged on the part of Ms Bhandari (and I am satisfied there was none) and a plea of deliberate concealment cannot succeed given that the share ownership was a matter of public record and could be seen on the records maintained at Companies House. Given the correspondence in 2010 in relation to the shareholding in Genesis 100, that is the point at which Mr Aziz should have been alive to the fact that his shareholdings had, on his own case, been transferred without his knowledge. It would have been the work of a moment to check the Companies House website to establish what the position was in relation to his other companies.

There is nothing in any of the economic torts alleged against the defendants.

Disposition

122. In the result I dismiss the claim in its entirety. I will list a short consequentials hearing to deal with remaining matters if they cannot be agreed.