

BETWEEN:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

- and -

- (1) MICHAEL ANDREW THOMSON
(2) SIMON HUME-KENDALL
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
(10) HELEN HUME-KENDALL

Defendants

Transcript of proceedings made to the court on

Day 1 - Monday, 19 February 2024

The claimants are represented by Mr Stephen Robins KC, Mr Andrew Shaw & Mr Philip Judd

Michael Andrew Thompson (D1) appears in person

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) are represented by Mr Warwick KC & Mr Russell

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry

Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

(10.30 am)

Housekeeping

MR ROBINS: My Lord, I appear with Mr Shaw and Mr Judd on behalf of the claimants. My learned friends Mr Mayes KC and Mr Bowles and Mr Bithell appear on behalf of the first defendant, Mr Thomson. My learned friends Mr Warwick KC and Mr Russell appear on behalf of the second and tenth defendants, Mr and Mrs Hume-Kendall. My learned friends Mr Ledgister and Mr Curry appear on behalf of the fifth and sixth defendants, Mr Careless and Surge Financial Limited. The eighth defendant, Mr Sedgwick, appears in person by videolink, in accordance with the order that your Lordship made at the PTR. Those are the appearances, as far as I'm aware.

As to the nonappearances, my Lord will recall that the claimants have settled with the third defendant, Mr Barker, who is, therefore, not represented. The fourth defendant, Mr Golding, is unrepresented for a different reason: he has been debarred from defending the claim against him.

The seventh and ninth defendants, Mr Russell-Murphy and his company, Grosvenor Park Intelligence Investments Limited, are also unrepresented. They ceased to participate in the proceedings voluntarily, after giving disclosure, and did not file or serve any witness statements or opening written submissions and are not expected to participate in the trial.

My Lord, before I begin my opening submissions, there are five housekeeping matters that I should raise.

MR JUSTICE MILES: I did have a message, Mr Robins, that I think Mr Mayes wanted to say something right at the outset.

MR ROBINS: I'm afraid I haven't had any message --

MR MAYES: Yes, indeed, and it may affect my learned friend's housekeeping.

MR JUSTICE MILES: You weren't aware of that?

MR ROBINS: Not at all. We have had no communications from him or his instructing solicitors, which does, obviously, surprise me.

MR JUSTICE MILES: Don't worry. Let's see what Mr Mayes has to say. Mr Mayes?

MR MAYES: May it please your Lordship, I appear together with my learned friends Mr Bowles and Mr Bithell. We were instructed as counsel on 8 January, and your Lordship will have seen our written submissions in opening which we filed on the 15th.

MR JUSTICE MILES: Yes.

MR MAYES: Having considered our position under the code of conduct, and with the benefit of guidance from the Bar Standards Board, we are here this morning as a matter of courtesy to the court to inform you that we have withdrawn from the case.

It is important that we should spell out that our withdrawal is not caused because we are embarrassed by any instructions from Mr Thomson. We are not. We accepted our instructions six weeks ago on quite specific terms as to the time when payment would be made to us of our fees.

Your Lordship knows of arrangements approved by you and consented to by the administrators for the payment of legal fees out of the value of the first defendant's property, which is subject to a

freezing order. For all the best efforts of our instructing solicitors, it has not been possible to turn that into a release of cash to pay solicitors' and counsel's fees, and, in the circumstances, with regret, we have to inform you that counsel have withdrawn.

MR JUSTICE MILES: Right. Where does that leave things as regards Mr Thomson?

MR MAYES: Mr Thomson is listening by video and has been informed of this. Our instructing solicitor, Richard Slade & Co, is here by Mr Slade and I anticipate that he will, at some point, maybe today, maybe later, be making an application in relation to such matters.

MR JUSTICE MILES: Of a similar kind, do you mean?

MR MAYES: Related to that. But we are not part of that.

MR SLADE: My Lord, if I may, I hope to have a solution for everybody and an application for your Lordship to determine this afternoon. I will say no more about it at this moment. But I will leave the court shortly to work on that and come back, hopefully, with an application prepared for your Lordship by 2 o'clock. It is just a portrayal of the nature of that, I hope it will not be an application to adjourn the trial.

MR JUSTICE MILES: Mr Mayes, I'm not going to obviously ask you about any privileged material or anything of that kind, but, just as regards your client, Mr Thomson, is there anything more you want to say about what his position is now, or do you not want to say anything more about that?

MR MAYES: My Lord, I can't go further in relation to his health than is set out in our written submissions at paragraphs 9 to 11.

MR JUSTICE MILES: What about his position in the trial, as it were, without representation?

MR MAYES: Mr Slade is hopeful, subject to his application this afternoon, that he may be represented. But that's not going to become clear until -- I know that Mr Slade has been working very hard on this. He is not in a position to make that application this morning.

MR JUSTICE MILES: Mr Slade, back to you, is it appropriate, in the circumstances -- you're still on the record, so you're still representing Mr Thomson. Is it appropriate for me to hear from Mr Thomson or would your position be that I should wait and hear from you later?

MR SLADE: The latter, my Lord. I hope that the application I intend making at 2 o'clock, if your Lordship finds that convenient, will deal with all of these matters and solve the problem.

MR JUSTICE MILES: Right. Well, I will take that course, in that case.

MR SLADE: I'm grateful.

MR JUSTICE MILES: Obviously, this is something that's come as a surprise to everyone, including, no doubt, the claimants. So, if there is to be an application at 2 o'clock, it may be that there is a question about whether they need more time to consider anything, and so on. But I think we will cross that bridge when we come to it.

MR SLADE: Of course, my Lord. I will circulate the application as soon as it is ready and consult as to whether 2 o'clock would be too soon. Maybe we should come back tomorrow and deal with it first thing tomorrow morning, but we will get a message to your Lordship.

MR JUSTICE MILES: Mr Mayes, back to you. Have you said what you have to say?

MR MAYES: I have said everything that I can properly now say.

MR JUSTICE MILES: Are you going to leave court?

MR MAYES: With your Lordship's permission. I'm much obliged.

MR JUSTICE MILES: Thank you.

MR ROBINS: My Lord, the five housekeeping points that I would like to mention are as follows. First, I would just like to check that your Lordship has access to the trial bundle and the live transcript, and that the screens for the electronic presentation of evidence are working.

MR JUSTICE MILES: I'm looking at LiveNote now. I don't know about whether -- my screen is blank, but I'm assuming that it is working. There we are. It is working.

MR ROBINS: Fantastic. Secondly, and I say this really for the benefit of any members of the press in attendance, your Lordship has previously made orders to preserve the confidentiality of personal data relating to bondholders and employees of Surge Group Limited and Aston Beckworth Limited. I mention that merely to say that any journalist who is unsure as to the terms of those orders is invited to make enquiries of my instructing solicitors Mishcon de Reya, who will provide them with copies of the relevant orders.

Thirdly, my Lord, the trial timetable. At the pre-trial review on 20 November last year, your Lordship fixed the trial timetable. The current version of that is in the trial bundle at <A1/11>, if we could have that up on the screens, please. My Lord will see that it has been updated as to the dates. So, after the two weeks of pre-reading, we are now week 3 on Monday, February. Obviously, we will keep that up to date, insofar as we need to make any changes to it along the way.

Fourthly, your Lordship, I hope, has received the claimant's application for permission for Simon Watson, an expert witness, to give evidence remotely by videolink. That's at <P4/1>, page 1. No-one objects to that. I don't think I need to address your Lordship on it orally. We invite your Lordship to deal with it on the papers. The draft order is at <P4/4>, page 1.

MR JUSTICE MILES: I will just say now, I have considered that application and, in the light of the nature of the evidence and the fact that none of the defendants has objected, I will make that order.

MR ROBINS: I'm very grateful. Fifthly, we received an application from Crowell & Moring on behalf of the second and tenth defendants at 4.46 pm on Friday. In summary, they seek a further variation of the proprietary injunction (a) to permit the release of funds on an incremental basis, as and when security over each asset is perfected, instead of having to wait until everything has been put in place before anything is released; and (b) to permit an alternative arrangement for the provision of security to the claimants in respect of Mrs Hume-Kendall's pension. Crowell & Moring have suggested that your Lordship should deal with that application at the outset this morning, but, my Lord, that's not going to be an efficient use of court time because we don't think that there is ultimately going to be anything for your Lordship to decide. In principle, the claimants are content to agree to a release of funds up to the value of the security when perfected and the claimants also have no difficulty with the idea of an appropriate alternative arrangement regarding the pension, provided, of course, that their position is not prejudiced.

In practice, of course, any new arrangement in respect of the pension is dependent on the SFO's consent and, as far as we are aware, the SFO has not yet consented to the proposed new arrangement, and that's a further reason why there is no real urgency to their application.

Over the weekend, we -- I say "we", I really mean my instructing solicitors and Mr Shaw -- have worked on a further draft of the order, which my instructing solicitors provided to Crowell & Moring about an hour and five minutes ago, and which we would like an opportunity to discuss with them. In summary, although I don't need to go into the detail at this point, we are proposing a number of drafting changes, because we don't think that their wording actually achieves what it is intended to achieve.

It is rather unfortunate that Crowell & Moring waited until 4.46 on Friday before providing their suggested form of order. I think, if they had done so earlier, then even this brief explanation would have been avoided by discussion between the parties without taking up any court time. So, we would therefore ask your Lordship not to deal with their application now and, instead, to provide the parties with an opportunity to discuss our proposed changes and to reach agreement as to the wording of the order.

In the event of there being no agreement, we would of course update your Lordship and perhaps we could deal with the matter either at the end of the day today or first thing tomorrow or, at the very latest, perhaps on Friday this week.

I would say, the other parties certainly don't need to be present for that, and so, at the moment, I don't propose to say anything further on that. Before I start my oral opening submissions, I just pause to see if my learned friend Mr Warwick wants to address your Lordship on that?

MR WARWICK: If I may, my Lord. May I explain myself to some extent, my Lord. I mean no discourtesy by my manner of dress this morning. My clerks made some enquiries and were told it was an unrobed trial. That explains that, so, please, no discourtesy is intended.

My Lord, on the question of the timing of the hearing of the application, I'm afraid it must be heard now. The reason for that is self-evident from the response of my learned friend's instructing solicitors, which show that there are significant differences between the parties, and it is because of those differences that this application has been made. I received a draft order with some amendments on it, and some explanations in a covering email at 9.59 this morning. I think the right thing, my Lord, would be to address this now, and the reason why is because, for reasons just seen, my Lord, it does affect, potentially, the extent to which the second and tenth defendants can be represented. There has been a period of time, as your Lordship may have seen, if my Lord has had a chance to see the evidence in support of this application at all, in which this has been negotiated. I'm afraid it is dragging, and this is the moment for it to be crystallised by modest amendment.

MR JUSTICE MILES: Mr Warwick, before you go on, I would rather not deal with it, if it can be dealt with by agreement. I quite understand that, from your client's point of view, it is a matter of urgency, for the reasons that you have given. But is there any real reason why it should not be dealt with, if necessary, tomorrow morning, once the parties have had one more day to consider the position and seek to reach agreement?

MR WARWICK: I will briefly take instructions, my Lord. The point of difference between the parties, though, is whether an alternative arrangement involving a trust will suffice, and one suspects that, because that has been dug in on, for want of a better expression, this may just need to be resolved by the court. But I will, for a moment --

MR JUSTICE MILES: As I say, if there is a difficult question of principle, it could take some time. I don't want to spend time on it if it can be avoided. There has been, clearly -- this has been back and forth,

clearly, over some period. I'm asking whether leaving it for another 24 hours is really going to prejudice your client?

MR WARWICK: Tomorrow morning, my Lord.

MR JUSTICE MILES: Right. Then I will urge the parties to seek to resolve the differences between them in the course of today. So we will deal with that, if it is necessary to deal with it, tomorrow morning.

MR WARWICK: Most grateful.

MR JUSTICE MILES: Thank you, Mr Warwick.

MR ROBINS: Subject to any points your Lordship would wish to raise at this juncture, I now propose to start my opening submissions.

Opening submissions by **MR ROBINS**

MR ROBINS: My Lord knows the background to these proceedings, having been the docketed judge for the last three years or so. The first defendant, Mr Thomson, was a director of the first claimant, LCF. LCF raised money by issuing bonds to members of the public. LCF's marketing materials, including information memorandum and brochures, said there was a shortage of loan finance for businesses in the United Kingdom as a result of the continuing impact of the credit crunch. LCF said in those marketing materials that it would conduct extensive due diligence on prospective borrowers to ensure that they would be able to pay interest on loans and repay the principal amounts of those loans on maturity, that the loans were fully secured over assets of the borrowers with values materially in excess of the amounts of the loans, and that an investment in the bonds was a secured investment which was capable of generating high returns.

In total, LCF sold 16,706 bonds to 11,625 members of the public, raising a total of over £237 million. At this juncture, if I could just take your Lordship to a document, could we bring up, please, <MDR00166711>. My Lord will see this is an email from Katie Maddock of LCF to Graham Reid of Lewis Silkin, copying others, including the first defendant, Mr Thomson, attaching an updated table.

If we could look at the table, please, that's going to be <MDR00166712>. It is quite a convenient place to find the detail. It is a table of the bond issues of LCF as at the date of that email. My Lord will see there are different column headings, the first sets out the bond issue, the second the date of issue, the third the term, and my Lord will see that some bonds are shorter than others. The series 3 bonds are one-year bonds. Then the interest payable for the series 3 is 3.9 per cent per annum for that one-year term. The amount of the bonds issued, the amount of the bonds outstanding and the repayment date. So, my Lord can see that the longer-term bonds, generally speaking, had higher interest rates.

Over the page, we see the other series. Series 7, for example, 3 years at 8 per cent. At the bottom, series 11 is a five-year bond at 8.95 per cent, and then, over the page, we see, again, for example, series 3 ISA is a five-year bond at 8.95 per cent. Both of those five-year products were issued, or began to be issued, fairly late in the chronology, at the beginning of June 2018. The bonds in issue before then were generally one to three years, with the interest rates of between 3.9 and 8 per cent per annum.

So, as I said, by issuing these bonds, LCF raised a total of over £237 million.

LCF paid almost 60 per cent of that money, some £136 million in total, to the first to tenth defendants. The total figures are as set out in the re-re-amended particulars of claim, if we could have those up, please. It is in the trial bundle at <B1/2>, page 4. My Lord will see that the first defendant, Mr Thomson, received almost £5.3 million. The second and tenth defendants, Mr and Mrs Hume-Kendall, received almost £24.3 million. The third defendant, Mr Barker, received around £5 million. The fourth defendant, Mr Golding, received over £42.8 million. The sixth defendant, Surge, received over £60.8 million and paid in excess of £8.5 million of that money to the fifth defendant, Mr Careless. The seventh defendant received just under a quarter of a million pounds from Surge and his company, the ninth defendant, Grosvenor Park, received over £2.3 million from Surge. Finally, the eighth defendant, Mr Sedgwick, received just over half a million pounds. My Lord, those are the total amounts for each defendant. The individual payments which make up those totals are set out in schedule 2 of the neutral statement of uncontested facts, which is, in total, 534 pages of tables setting out the dates and amounts. It is not particularly digestible in that format, so we have used that data to prepare some graphs, purely by way of illustration.

If we could have up first, please, <A3/7>. This is a table of the money paid by members of the public to LCF. My Lord will see that the blue vertical bars are the monthly receipts. Those fit with the scale on the left-hand side, "Monthly amount". My Lord will see that there was a very low level of bond sales from the beginning of LCF when it was known as SAFE, until the summer of 2015 when SAFE was rebranded as LCF and Surge came on board to start selling the bonds. My Lord will see there is an immediate impact of Surge's bond sales operation, the blue vertical lines get a bit higher.

After a Christmas lull in December 2016, we then see the effect of BSR, the Best Savings Rate website that was set up by Mr Careless. The total monthly takings increase notably.

The ISA bond was launched by LCF at the start of December 2017, and the effect of that may be seen in the higher bars for April to July 2018. It is clearly a popular investment product and members of the public buy ISA bonds in considerable numbers.

It falls back a bit towards the end of that year, but it is still over £10 million a month in October and November 2018.

The green line, my Lord will have seen, is the cumulative amount. That goes with the scale on the right-hand side of the page. So, that's the money into LCF.

If we could look, please, at <A3/16>, this is the money received by the first, second, third, fourth and tenth defendants over the period identified. Again, the vertical bars show the monies received by the first to fourth and tenth defendants collectively from LCF. The colour coding shows which entity the money was routed through. We can ignore that for present purposes. It is simply the height of the vertical bars that is relevant at this stage of the analysis. What is immediately striking is that, in fairly broad terms, it resembles the bar chart of payments by bondholders to LCF, in that, as LCF's monthly takings increased, so the payments to the first to fourth and tenth defendants increased.

But that's, of course, what you would expect to see in the case of Surge Financial, which received a fixed percentage of bondholder monies. As my Lord knows, Surge Financial received commission equal to 25 per cent of new bondholder investments until the beginning of June 2018. Then, from the beginning of June 2018 onwards, Surge received 22.5 per cent of bondholder monies for the five-year bonds, series 11 and series 3 ISA, which, as I said, were launched at the beginning of June 2018, and 25 per cent for everything else. But it was a fixed percentage for Surge Financial throughout the entire period. You would therefore expect the Surge Financial chart to look like this, but it is striking to see that the payments to the first to fourth and tenth defendants follow the same pattern.

There is even, my Lord will see, the same peak in monthly payments towards the right-hand side that we saw on the LCF graph following the launch of the ISA. The other point to note, while we are here, is that there are payments to the first to fourth and tenth defendants every month of the period, with only one or two exceptions. There is an almost unbroken flow of payments from LCF to them over this period, and we will see that in more detail later.

But just to assure your Lordship that this is not an artifact of data aggregation, it is not a product of the fact that we are looking at these five individuals collectively, we have broken out the payments further. So, if we could go, please, to <A3/12>, my Lord will see the bar charts for the fourth defendant alone. It says "Spencer Golding (D4) and HFEC", Home Farm Equestrian Centre, was the fourth defendant's business as a sole trader. So it is him as an individual. My Lord will see that the two points that I was just making hold good for this also. First, as more money comes into LCF, so more money finds its way to him, including the peak on the right-hand side of the graph, and, secondly, there is an almost unbroken -- well, there is an unbroken flow. There's two months after it really gets going with slightly lower receipts. But, as a general rule, something is paid to him every month.

We have also got graphs for Mr and Mrs Hume-Kendall, if we could have a look, please, at <A3/10>. My Lord will see the same broad pattern, including the peak on the right. Mr Thomson is at <A3/9>, and, again, we can ignore the colour coding. That's just setting out the intermediate entity through which the money was routed. The height of the bars is what's important for present purposes.

<A3/11> is Mr Barker. Again, the same pattern: as more money becomes available in LCF, so more money is paid out to him.

We have also got graphs for the other defendants, but I don't think I need to take your Lordship to them right now.

As my Lord knows, LCF represented to the public that it carried on business as a provider of loans to small- and medium-sized enterprises; later, it said to UK businesses. In reality, most of the borrowers couldn't really be said to be carrying on any business at all. They were not carrying on any revenue-generating activities and they did not have assets of anywhere near sufficient value to repay the loans.

The assets which those borrowers have purported to charge in LCF's favour, which were said to be worth significantly more than the loans, were, in fact, valueless or were worth only a small fraction of the pretended value. As a consequence, the only way LCF could ever hope to repay existing bondholders was by attracting new bondholders.

Every single redemption and interest payment by LCF to existing bondholders had to be, as a matter of necessity, funded by monies paid to LCF by new bondholders. In other words, it was a Ponzi scheme. The borrowing companies were, and are, unable to repay the loans to LCF. Many of them have gone into administration. It is the claimant's case that the loans to the various borrower companies were used as a means for funnelling monies raised from bondholders to the first to tenth defendants. Every single borrowing company was connected with the first, second, third and fourth defendants, and the loans were part of the apparatus for funnelling monies from bondholders to those four individuals.

My Lord, a large part of the money that was paid to the first to fourth and tenth defendants was extracted from LCF on the basis that LCF's borrowers owned four tourism development properties. First, land in the Dominican Republic, known as The Hill, or Atlantic Hills or El Cupey.

Secondly, land in the Dominican Republic known as The Beach or Magante or Playa Magante.

Thirdly, a partly-built resort/development in Cape Verde known as Paradise Beach.

And, fourthly, a lodge park near Bodmin in Cornwall known as Lakeview, later known as Waterside. The second defendant, Mr Hume-Kendall, related that those assets were very valuable indeed. If we could bring up, please, <MDR00029049>, my Lord will see a letter of representation from the London Group Plc dated 20 January 2016. If we could just look briefly at the second page, please, my Lord will see that it is signed by Mr Hume-Kendall, as a director, on behalf of the board of London Group Limited.

If we could go back to the first page, please, my Lord will see that this is a letter of representation to the auditors of London Group, and, as directors, they are making representations, including, number one, acknowledging as directors their responsibilities under the Companies Act. Then in paragraph 5, the letter says:

"We consider that the fair market value of the group's development sites as at 5 October 2015 were as follows:

"Lakeview Country Club £12.4 million.

"Paradise Beach Resort, Cape Verde £29 million. "Land at El Cupey in the Dominican Republic £12 million."

Could we also look, please, at <D2D10-00020177>. This is a letter signed by Mr Hume-Kendall. My Lord will see it's dated at the top 29 April 2016. At the bottom, it's dated 17 August 2016. The date at the bottom is the correct one. We will see it in more context later. The point, for present purposes, is merely to illustrate the values that were placed on the so-called assets for various purposes.

This is a letter to London Capital & Finance Plc which says that Leisure & Tourism Developments Plc certified the value of security pledged against loans taken from London Capital & Finance to be a sum in excess of £46.7 million as at 29 April 2016. The security assets are said to be the Atlantic Hills site, which is what we call The Hill. The total site's current valuation is given in dollars first as a sum in excess of \$25.9 million, the sterling equivalent is a sum in excess of £19.7 million. The Magante site, that's "The Beach", in bold it says "Total site current valuation \$25.63 million (£19.5 million)". Waterside Village, that's Lakeview, current site valuation £17.5 million, less outstanding liabilities of £10 million, total site valuation £7.5 million. Paradise Beach is obviously not mentioned in this letter.

To give your Lordship one more example from Mr Hume-Kendall, perhaps we could look at <D8-0008779>. We need to go to page 2 of the document. This is another backdated letter. It says at the top 20 December 2016. We will see, when we look at it in context, that it was signed on 16 January 2017. My Lord will see it is signed by Mr Hume-Kendall. It refers to the loan facility and it says that he set out the current values of the company's portfolio of assets. Waterside, £17.5 million. El Cupey, £30 million. Magante, £14 million.

Of course, those figures are notably different from the figures that we were just looking at in the letter signed only a few months earlier. But those are some illustrations of the values placed by Mr Hume-Kendall on these assets for purposes connected with borrowing from LCF.

We can also see Mr Thomson doing a very similar exercise. If we could bring up, please, <MDR00077856>, this is a security -- can we see it in the native form, please. It is a security valuation spreadsheet prepared by Mr Thomson. Again, we will look at it in more detail later. It says at the top

left "London Capital & Finance Plc. Borrower security assets valuation. 6 March 2017". My Lord will see that the first thing we see, in rows 6 to 14, are the constituent parts of Lakeview, which is known by this point as Waterside, Cornwall. If you add up the total figures for those constituent parts in column E, they come to £16.25 million. Row 16 has the land at Playa Magante, which is The Beach, and Mr Thomson's put a value in column E in the sum of £37.95 million. In row 18, we have El Cupey, The Hill, and that's gone in at £19.35 million. Row 20 is the Paradise Beach resort in Cape Verde, and Mr Thomson has put that in, my Lord will see, in column D, it is a euro figure of 40.55 million euros. The sterling equivalent in column E is given as a sum a little over £35 million. So, the total for those elements is in excess of £108 million, almost half of the total value of the assets over which LCF is said to have security, which my Lord will see in cell E20, £221.8 million-odd. Almost half of that total is attributed to Lakeview, The Beach, The Hill and Paradise Beach. As we will see in due course, these calculations by Mr Thomson are what lay behind the advertisements placed by LCF in the Times, the Telegraph and the Financial Times saying that LCF had security over assets worth more than £215 million. If we could bring up, please, <MDR00085807>. My Lord will see the advert, fixed interest corporate bonds up to 8 per cent. There are three black circles below that. In the left-hand circle it says "Value of security + £215 million as of 4/4/2017". We have actually got an example of that appearing in one of the newspapers, if we could bring it up, please, at <D7D9-0009136>. There we are, in the Times, 3 May 2017.

The reality, my Lord, was very different. Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick all knew the truth about these so-called assets, as your Lordship will see in due course. We will deal first, my Lord, with The Hill and The Beach. During that process, we will look at the Sanctuary Investment Scheme and El Cupey Limited, which are important for establishing knowledge of the true value of the assets on the part of various defendants. Then we will look at the contract to acquire the property in Cape Verde, known as Paradise Beach, and then the Lakeview resort in Cornwall.

If we start, my Lord, with The Hill. The Hill is located about 20 miles from the north coast of the Dominican Republic, near a small village called Cupey. This hill is divided into various plots of land in different ownership. One of them is a plot of 1.3 million square metres of undeveloped hillside scrubland. It is entirely undeveloped, as we will see. It is described in one of the documents as "land in a weed state". One gets a bit of a flavour of the state of the site from a translation of an inspection report from 2018 which we find at <MDR00180289>. My Lord will see it is a translation of an act of checking or an act of verification prepared by someone who visited the site. If we can go to page 2, please, after "THERE IS NOT", my Lord will see:

"THERE IS NOT built, neither has been started, the construction of any project of homes, apartments or rooms ... That the indicated land in his most extent looks abandoned and mainly used for grazing beef cattle and we even saw animals within the plot at the moment of our visit. The plot has been divided by a front wall and wires of spikes in the rest of the boundaries for that purposes; ... that in this plot the only infrastructures that exist consist of a water trough for cattle built in blocks of cement, a warehouse built in wood and sheets of zinc, a latrine and, in addition, the start of conditioning of some streets, which are covered of sand o caliche ..."

There are some photos in black and white, if we can go to page 5, please. It helps to get a feel of what this property was like. My Lord will see some photos of the site. If we can go to page 6, please, there are some more. And then page 7. My Lord will see it is an undeveloped scrubland with some rubble on the site., please. My Lord will see at the bottom of that page, just in the distance, there is some sort of wall-like structure in the background. Then, at page 9, we see at the bottom there's the

corrugated tin structure. I'm not sure if that's the latrine or something else. Then the next page, please. There's a water trough at the bottom. What page is this, please? There's a closeup picture of the wall structure at the bottom of page 10. Is this 11 now? Can we look at page 12, please. And then page 13. So my Lord sees the photos accord with the description. Can we look also, please, at <MDR00116085>, and go to page 2. These are photos from May 2017. We get a bit of a better look at the wall structure. And then, over the next page, there's a partly-built construction at the top that's part of the land. The photo at the bottom is the town hall in Puerto Plata 20 miles away. That's not relevant for our purposes.

Then can we go to the expert report in the trial bundle at <D1/2>, page 9. My Lord will see Mr Watson has provided a helpful description of the property. He says it is located in El Cupey in the Municipality and Province of Puerto Plata in the north of the Dominican Republic. It is located approximately 20 miles by road south-west of Puerto Plata and approximately 15 miles north-west of the Las Americas International Airport. The subject site is approximately 2 miles by road west of the town of El Cupey and approximately 10 miles west of the Puerto Plata - Sousa highway. Access to the site is possible through El Corozo-El Cupey, an unpaved rocky road which connects the Navarrete-Puerto Plata highway, connecting the area with the rest of the Puerto Plata Province. The area is generally rural in nature with agricultural use predominant and with mountain views. If we look at the map below, my Lord will see it is an area inland, not a coastal property. Then over the page, please, there is an aerial photo of The Hill with the plot in question shaded in a brown colour. My Lord will see the description at the top, it is 337 acres of undeveloped land, sort of 1.3 million square metres. It has a fairly irregular, linear shape with a maximum length of approximately 1.85 miles and a maximum width of approximately 0.5 miles. It says:

"The overall property is bounded to the north by vacant land and the Isabel de Torres National Park, to the east by undeveloped land, to the west by undeveloped land and a secondary road and to the south by the access road and the Finca Cocco Redondo Core." So, that's the property known as The Hill. We have also got the contract by which it was purchased by Inversiones. It is not perhaps quite as straightforward as you might imagine. We start with <MDR00005357>. This is a sale contract between Parque Residencial Ecologico Sun Raise SRL and Inversiones 51588 SRL. At the bottom of page 1, my Lord will see that the object of the sale is a piece of land located within the circumference of parcel number 47 of the Land Registry district number 12 for the Municipality and Province of Puerto Plata. At the top of page 2, it says a surface area of some 1.499 million square metres. But then the paragraph below that reveals that the above described piece of land is undergoing a boundary survey, "deslinde", which has been assigned a cadastral designation with a surface area of - - and it's the figure of just over 1.3 million square metres. So that's the accurate value. It was thought to have a size of a little under 1.5 million square metres, but, in fact, on the boundary survey, it's discovered to be slightly smaller. That's the object of the sale. My Lord will see in article 3, if we can scroll down, please, the selling price in this contract is an amount given in Dominican pesos, 5 million Dominican pesos. At that point, there were 61 pesos to the pound. So, this works out as £82,000 which is, for a long while, what we had understood the purchase price to be, but, as I said, it is a little bit more complicated than that because there is another English language document, <MDR00005359>. This is a counter letter, or side letter, and it says in the third recital: "WHEREAS (III): In spite of the data contained in the aforementioned contract, the real agreement between the parties with regard to the selling price and the form of payment, as well as the rest of the conditions, warranties as well as all other obligations agreed upon between the parties with regards to the purchase of the property, with the exception of the object of the mentioned purchase contract, is the

one set forth in the reciprocal purchase/sales promise signed between the parties on this same day ... which contains their true intentions."

Then we find that reciprocal purchase/sales promise at <MDR00005360>. This is the real agreement between Parque Residencial Ecologica Sun Raise and Inversiones 51588. The real price, as my Lord will see in article 4, a sterling amount, £708,752. It is payable in instalments.

If we could look back at the document, please, and look at the next page, page 3, we will see the rest of the instalments set out.

The fifth and last payment, in E, the sum of just over £88,000, wasn't paid, but we see from the documents that all the other instalments were paid, so the real price for this plot of land seems to have been £708,000. Most of that was paid. The final instalment wasn't paid.

The Beach is a rather different proposition because, at the outset, what you have is 38 adjoining parcels of land in separate ownership. For The Beach, there are multiple owners. We will see that in a moment. It is thought at the outset it seems to have amounted to 241,000 square metres, although there's considerable doubt about the accuracy of that. If we could look, please, at <D1/1>, page 30, we have got some photos from the expert, Mr Watson. First, the access road. At the bottom, the access road and a cow. Then the next page, <D1/1>, page 31, please. There's the interior of the subject property. So, again, undeveloped grazing land with, we can see at the bottom, barbed wire. The next page, <D1/1>, page 32, we can see another cow at the top. My Lord can see, again, undeveloped land. As I said, numerous contiguous parcels in separate ownership.

The contract for the purchase of the Beach is at <MDR00005290>. On pages 1 to 5, if we could look at each of those in turn, we see the owners of the various parcels, various individuals. Maybe we can look at page 3, please. And page 4. And then page 5. So, those are all the vendors.

The preamble records that they own the various parcels. Then, over pages 6 to 13, we have article 1, which is the sale of the various parcels. Perhaps we can take as an example, at the top of page 13, number 35, which is one of the many parcels. This is a parcel of land within parcel number 11 of the Land Registry district number 5 of the municipality of Gaspar Hernandez with a surface area of 6,241.02 square metres, in accordance with the attached provisional survey. So, various parcels of land. On page 14, please, we have article 3, which is the total price for those payments:

"The parties have agreed that the price of this sale amounts to US\$3,527,311.78 payable in US dollars ..." Then if we could just see below that, please, there are a number of instalments, five instalments, that are set out.

So, the purchaser under this contract is a company called Tenedora. It entered into this contract on 22 August 2012. But it didn't proceed to completion immediately. It didn't proceed to completion for some time.

The contract remained unperformed. It seems to have got rather stale. What we see happening much later in the chronology is that Tenedora renegotiates with various vendors and acquires some of these parcels of land in late 2017, and then they're registered in Tenedora's name in late -- sorry, various dates in 2018 and 2019.

If I could take your Lordship, for example, to <MDR00222792>. We have got a translation of this, which we can look at in a moment. It is a document from the register of titles of the Dominican Republic. I don't know if we can zoom into the top right, but we can just about make out that it's the 6,241.02 square metres in Gaspar Hernandez that we looked at a moment ago. I believe there's a

translation associated with this document in the trial bundle, and a translator's certificate. It would be helpful if we could bring up the translation, please, which is the next document, I'm told. We will find it. We will come back to it. What it reveals in the translation is that -- perhaps we can go back to the document we were looking at a moment ago, <MDR00222792>. It refers to the contract -- can we zoom in to the text in the middle of the page, please. Somewhere around the seventh line, we will see it in the translation, it refers to the contract of 29 September 2017, and then the next line says it was registered on 12 October 2018. We have got similar documents for various other parcels. Ultimately, Tenedora acquired some of the parcels within The Beach and a rather confused situation emerged. Some parcels had been acquired by Tenedora but not paid for in full; some parcels had been paid for in part but not acquired; some parcels had been paid for in full but not acquired.

What you end up with is a patchwork of parcels -- not any sort of contiguous plot, but a diverse patchwork of parcels -- some of which have been acquired and some of which remain in separate ownership, and there is a spreadsheet that it would be helpful to look at at this juncture, which is <MDR_POST_00001615>. We need to see it in the native format. It is a spreadsheet that was prepared by, or with the assistance of, the lawyers in the Dominican Republic retained by the administrators. If we can scroll right up to the top, please, the first batch of titles in rows 7 to 18 are those titles which have been acquired by Tenedora by the commencement of the administration. My Lord will see towards the right, generally speaking, Tenedora had not yet paid in full for those parcels. They had acquired the title, it had been registered in Tenedora's name, but it hadn't paid for them yet.

Down in the middle of the page, in the next batch, are the parcels which remained in the ownership of third parties. That's between rows 27 and 46. On the right, my Lord will see that Tenedora had paid some money towards those parcels but hadn't acquired them -- they hadn't been registered in Tenedora's name yet. Towards the bottom, a bit further down, we see, starting in row 64, another batch where Tenedora has paid in full and has either acquired the properties by way of registration -- we see those in rows 64 to 69 -- or in the remaining rows, notwithstanding the fact that Tenedora has paid in full, the properties or parcels continued to be registered in the name of third parties. So, as I say, it became quite a confusing patchwork picture.

But, for present purposes, the reality is far simpler, because during 2012, 2013, 2014, 2015, 2016 and most of 2017, Tenedora didn't own any parcels of land within The Beach. It just had a right under an unperformed contract to acquire them for instalments totalling just over \$3.5 million, which at that time I should mention is a sum in sterling of just over £2.2 million.

So, those are the two properties The Hill and The Beach. The main takeaway is The Hill was acquired, The Beach wasn't acquired. There was simply a contractual right to acquire it.

These two properties, as my Lord has seen, were, in the case of The Hill, acquired, or, in the case of the Beach, to be acquired, by two companies, Inversiones and Tenedora. We can see those in a structure chart. Perhaps, first of all, we can bring up the covering email, <D7D9-0000293>. It is an email from Mr Thomson to Mr Russell-Murphy sent on 5 June 2013. It provides -- in the subject we see what he describes as "Sanctuary info" towards the top of the page. There are various attachments. One of which is something described as Sanctuary Tree 5 May 2013. That's the structure chart that we find at <D7D9-0000298>. Again, it is something we need to open in native form. Obviously, it is headed "Sanctuary Tree". There are three individuals mentioned towards the top of the page: Ryan Golding, who is Spencer Golding's brother, Mark Ingham and Andy Woodcock. My Lord will see that Ryan Golding, through a company called Bawden Enterprises SA, owns 20 per

cent of Sanctuary International Resorts Limited incorporated in the Bahamas; Mark Ingham owns 40 per cent; and Andrew Woodcock owns 40 per cent.

Then, Sanctuary International Resorts Limited has, on the left-hand side, a 100 per cent-owned subsidiary called Sanctuary International PCC Limited incorporated in Guernsey, and that owned 99 per cent of Inversiones 51588 SRL, it says "Note 3". The other 1 per cent is owned by Ryan Golding.

In the middle of the page, Sanctuary International Resorts Limited also owns 99 per cent of Tenedora SRL, that's Tenedora 58520, the company that had entered into the contract to acquire The Beach. And Mr Woodcock owns the remaining 1 per cent.

Then on the right-hand side, we don't need to worry about that for present purposes, there's another Tenedora subsidiary with a different number, 98540, that's a dormant company. If we can scroll down a little bit further, we see Inversiones itself has a subsidiary, Sanctuary International Resorts Limited incorporated in the Cayman Islands. At the bottom of the page, there are some notes. The first one mentions the contract for the acquisition of The Beach and it says "Payable under the contract remains US\$3.412 million". It seems by this point something had been paid. Then, as I mentioned, note 2, Tenedora 98540 is dormant. Then note 3:

"Inversiones SRL is the registered owner of [1.363 million] square metres of land in El Cupey known as 'The Hill'."

That is the position in respect of the ownership of Sanctuary International Resorts at this point. We see it is Ryan Golding, Mark Ingham and Andy Woodcock. If we can look at <D2D10-00007425>, it is a document relating to the incorporation of the company which confirms, next to the word "Shareholders", that there are 80 shares in total. So, the numbers that we saw of 20 per cent Ryan Golding, 40 per cent Mark Ingham and 40 per cent Andy Woodcock are, in fact, rather different because they have to be transposed into the fact that there are only 80 shares in issue.

There's a further Sanctuary structure chart at <D8-0000044>. Again, at the top, this shows the shareholders of SIR as Mark Ingham and Andy Woodcock and Bawden Limited, which is the Ryan Golding company. They own Sanctuary International Resorts Limited incorporated in the Bahamas which owns, on the left, Sanctuary International PCC Limited incorporated in Guernsey. There is the non-trading Tenedora in the middle, which we don't need to worry about, and on the right, Tenedora 98520 incorporated in the Dominican Republic which, as my Lord will see on the bottom, has five options to purchase some land which expire on 24 August 2013. They were never exercised, so we don't need to worry about those. Then, on the right, the contract for the purchase of 241,000 square metres of land at Magante with the balance to pay in excess of \$3.4 million. On the left, we see Inversiones 51588 SRL incorporated in the Dominican Republic. It owns the 1.3 million square metres of land at El Cupey and it says that the outstanding balance, the final instalment, at this point, is a sum of just over £76,000. So, that's the structure of the Sanctuary Group. It sold villas --

MR JUSTICE MILES: Just before you go on, Mr Robins, have you discussed with the transcript writer a question of breaks?

MR ROBINS: I haven't. But I'm very happy to have a break.

MR JUSTICE MILES: We will take a five-minute break now. (11.53 am)

(A short break)

(11.59 am)

MR ROBINS: My Lord, what the Sanctuary Group did was to sell villas on The Hill off plan. In other words, before any construction work had started. The selling entity was the Sanctuary International Resorts entity which, we saw on those structure charts, was the subsidiary of Sanctuary PCC -- if not on this chart -- it was on the previous one. We don't need to go back to it. It was called initially Royal Sunrise. It changed its name to Sanctuary International Resorts. It's incorporated in the Cayman Islands.

We can look at a typical offplan sales contract at <D2D10-00005324>. Obviously, the parties are Sanctuary International Resorts Limited, that's the Cayman company, and Lewis and Hannah Adamson. It is a sale agreement for the sale of offplan property. If we can look at page 3, please, we will see the particulars. The seller is Sanctuary International Resorts Limited, a company created in the Cayman Islands. The purchasers are Mr and Mrs Adamson of West Lothian. The property ID is given. And then the purchase price at the bottom of the page in this example is just under £110,000. There is no reservation fee on this one. If we can look at the next page, please, there is a deposit, however, payable within 45 days. It is 30 per cent of the purchase price. Most of them are 30 per cent or some are under 30 per cent. It is an amount of just under £33,000. It says the deposit is payable within 45 days. There is a target completion date for the first phase said to be 1 June 2016, and then, on page 11, please, we need to look at the bottom of the page, it is an important feature of these offplan sale contracts. Clause 13, "Guaranteed buy-back":

"The seller guarantees to the buyer that once the phase one properties have been constructed, the seller will write and offer 120 per cent of the deposit price to buy back the property. Acceptance must be made in writing by the buyer to the seller within one calendar month ..."

So Sanctuary is taking deposits, saying, "We are going to build these villas. When we have finished phase 1 of construction, if you change your mind, you don't have to proceed to pay the balance and acquire the property, you can exercise, instead your buyback option at which point we will repay you 120 per cent of your deposit". So, essentially, I suppose one might view that as a form of compound interest. It is being said, "If you give us a deposit now, we will pay you more than you paid us at the end of the term". If that didn't make it attractive enough, there were associated agreements between Sanctuary and the investors to pay interest on their deposits in the meantime. There's an example at <D2D10-00005115>. We have got a number of examples in the disclosure. This is an agreement for Mr ***** and Ms *****.

If we look at page 3, the recitals explain that the buyer and the seller have entered into the sale and purchase agreement. There is no reservation fee in this one either. But in (C) the buyer is to pay a deposit of 30 per cent and then (D):

"To assist the buyer in the purchase of the property, [Sanctuary] has agreed to pay an amount equal to six per cent per annum of (i) the deposit ... This will be paid annually or monthly in advance from the date of this agreement or until completion whichever is sooner."

So the investors could elect to have their interest monthly or they can have it annually. But, as well as having the guaranteed buyback option by which they could recover 120 per cent of their deposit if they elected not to proceed with the purchase, they would get 6 per cent per annum on their deposit in the meantime. We have got numerous examples in disclosure. Sometimes Sanctuary agreed to pay a fixed rate of return, like the 6 per cent in this contract. In other examples, where the client was mortgaging their existing home to fund the deposit payment, Sanctuary was agreeing to indemnify the investor in respect of the mortgage interest which they were incurring under that mortgage finance to raise the deposit money.

We have numerous examples in disclosure of letters from Sanctuary to investors explaining how much it will be paying them by way of interest on the deposit. If we look at <MDR00010653>, please. We have got a batch of them in a single PDF. The first one is to Mr ***** and Ms ***** , whose contracts we were just looking at. It is a letter dated 21 December 2012. It says in the middle that they are looking for confirmation of the following details for future repayment, and it has the details of Mr *****'s bank account number and sort code and the amount is 6 per cent per annum of the deposit for three years in an annual sum or monthly sum. The next payment is due on 1 December 2013: "These bank details will be used for your remaining payments. If at any point your details change and you wish to receive payment to an alternative account, please contact us ... Please note that you have already received the first payment ... which was deducted from your deposit amount."

There are other examples, if we can just look at them briefly, on page 2, page 3. Each investor seemed to get a letter in the same form explaining how much they would receive on their deposits in the interim, pending completion of phase 1 of the development. While we are here, perhaps we could just notice the bottom of the page. After the registered office address, my Lord will see Sanctuary is based in a winery in Lamberhurst Vineyard in Lamberhurst, Kent. If we could look at <MDR00009816>, there is a helpful example of the interest calculations which were undertaken on behalf of Sanctuary to identify the monthly amounts payable to each investor. These are just a few of them. In red, on the left, are the plot numbers of the land, so 140, the client is *****; 141, it is *****; the last one on this sheet, 150, is *****. It shows the deposits, the reservation fee in cases where that was paid, the interest that is then payable to the investor and, towards the right, the white column identifies whether the payment has been made and, if so, when, and it identifies the sales office and the deal date. So Sanctuary takes in these deposits. It agrees to pay interest to the investors in the meantime. It agrees to pay 120 per cent of the deposits at the completion of phase 1 if the buyback option is exercised. In the end, Sanctuary took deposits from a total of around 289 investors and agreed to pay interest to them.

We have seen that Mark Ingham was involved in Sanctuary. He was one of the owners. The third defendant, Mr Barker, was also involved. If we could look at <MDR00010061>, please. My Lord will see Mr Ingham asking Lucy Sparks of Ecoresorts Sales to put a letter on Sanctuary Resorts paper and sign as customer care. The letter is the next document, <MDR00010062>. There seems to have been some sort of dispute between Sanctuary and a rival operation called Harlequin. The implication seems to have been that Harlequin suspected Sanctuary of poaching its clients. But the relevant part, for present purposes, is where he asks for contact details from an individual at Harlequin for future communication on this matter to be provided -- this is the end of the third paragraph -- to the MD of Ecoresorts at the following address, and it is Mr Barker. The address given, if we can just see that briefly, is Ecoresorts Sales Limited, 3A Speldhurst Place, Speldhurst Road, Tunbridge Wells. So, Mr Barker is involved in the capacity of managing director of Ecoresorts Sales Limited. We see that again at <MDR00009806>, where there's an email about client expenses, and Mr Barker is one of the people who is copied in the cc line, Andy Woodcock at Sanctuary Resorts, "Elten Barker@*****.co.uk". At this point in the story, Mr Barker is working for Ecoresorts Sales, which, as the name implies, is a sales agent for the sale of these unbuilt villas off plan. Sanctuary paid commissions to Ecoresorts. We have an example at <MDR00010006>. There's an invoice from Ecoresorts Sales Limited to Sanctuary Resorts at the winery, Lamberhurst Vineyard, in a total sum of £20,000, described as "commission on completion". There are numerous other examples.

There is evidence to suggest that the commission was the lesser of 6 per cent of the purchase price or 20 per cent of the deposit. If we could look, please, at <MDR00009957>, there's a sales invoice, and, at the bottom of the page, the text says:

"Commission is payable to Sanctuary Ecoresorts Limited at 6 per cent of the purchase price or 20 per cent of the client deposit whichever is the lower amount."

That's also in the table under commission rate there of 6 per cent purchase price or 20 per cent deposit. In practice, because the deposits seem to have been 30 per cent or lower, the commission payable was 20 per cent of the deposit. If you brought some money in, you could take 20 per cent of it as your commission. The seventh defendant, Mr Russell-Murphy, was also involved. He sent invoices to Ecoresorts. We have got one, for example, at <MDR00010989>. It is an invoice from Mr Russell-Murphy to Ecoresorts Sales Limited in the sum of £6,000 for professional fees. We know that Sanctuary made payments to him, for example, <D2D10-00005258> at page 3, please.

This is a Sanctuary bank statement -- we can go back to page 1. A Sanctuary Resorts Limited bank statement. Then page 3, please, the penultimate line is £6,000 to Mr Russell-Murphy.

We have got evidence as well of Mr Russell-Murphy dealing with investors. For example, at <D7D9-0000056>. He is a director of Grosvenor Park Intelligent Investments and asking an investor called ***** to be patient. He says:

"... I am in talks with Mark Ingham, the CEO of the Sanctuary and I am waiting for an email confirmation of when the settlement will be made to you." Mr ***** is a bit unhappy with the fact that he has paid his money and nothing seems to be happening. He wants it back and Mr Russell-Murphy is, essentially, fobbing him off. The reason investors like Mr ***** weren't very happy is because the villas weren't built. Nothing happened on the site. And there is evidence of the unhappiness felt by investors being expressed by them to Sanctuary's representatives. Mark Ingham prepared a script for the sales people to use. If we look at <MDR00010499>, he's sending the script to Lucy, the subject is "Script for follow-up calls", the attachment is "Client script":

"Can you please forward to Keith -- he should call me before he uses it."

The script itself is <MDR00010500>. On page 1, the script anticipates at 2(a)(iii) that an investor might be angry -- it is highlighted in turquoise -- and "just want to know when it's going to be finished and I will get my money back". The suggested response is: "I'm sorry I don't have that information but I can get one of my senior managers to phone you back and give you a full update."

On page 5, there seems to be concern that clients may have received a letter with a warning about Ecoresorts development and they might ask what it's about. They might say they are worried, why are they warning us, is there something wrong with the development? The suggested response is: "I have heard about this letter from another client. I believe the FSA are a regulatory body that monitors certain investments and financial transactions such as mortgages. They do not regulate property transactions. The FSA are being closed down next year and they seem to be writing to people who have taken out a mortgage to fund a property transaction to inform them that they can still complain if they have been missold a mortgage." Ultimately, Sanctuary ran out of money. It got to the point where it couldn't pay interest to the investors. The monthly sums stopped being paid. We see some evidence of that in a moment. It is at that juncture that Mr Hume-Kendall appears on the scene in connection with Sanctuary.

If we could look, please, at <D8-0000097>. It is a helpful note drafted by Mr Sedgwick:

"Memorandum produced for the directors of Sustinere Group Plc with regard to the actions taken to rescue the buyers of properties marked by Sanctuary Resorts." It explains in paragraph 1 that Mr Hume-Kendall was aware of Sanctuary Resorts some time ago when they were tenants of Lamberhurst Vineyard. At the time, they appeared to be well funded and they always paid their rent on time. Mr Hume-Kendall understood that the company was owned by Ryan Golding:

"2. In 2012 he heard that Ryan Golding has sold SR and that the new owners were Andy Woodcock and Mark Ingham. At the beginning of 2013 it became apparent that SR was suffering cash flow problems as for the first time the rent was not paid when due. Mr Hume-Kendall also heard from Ryan Golding that SR had not paid him the deferred consideration that was due to him.

"3. In about April 2013, Mr Hume-Kendall was asked to look at Sanctuary Resorts with a view to creating a rescue package for the investors who had contracted to buy properties from them and who would lose everything if the rescue was not successful.

"4. The directors of Sustinere were interested in trying to put together a rescue package and accordingly the restructuring department of Moore Stephens were instructed to investigate the situation and advise as to the ways forward. They spent a few weeks carrying out their due diligence and other investigations. The directors also instructed their solicitors Buss Murton Law LLP [Mr Sedgwick's firm] to investigate the ownership of the land in the Dominican Republic and the corporate structure behind it.

"5. Moore Stephens advised by letter suggesting that each of the buyers of plots at Sanctuary be contacted and advised of the problems which they faced, namely, that they had contracted with a company that did not own the land and that the companies which did own the land were effectively insolvent and so unable to move the development forward, the net result of which would leave each of the buyers with nothing but a claim against a worthless company registered in the Cayman Islands."

The company mentioned at the top of the page, Sustinere Group Plc, is company number 02207817. From 21 September 2012 to 26 March 2013, it was known as the South-eastern County's Finance House Limited. It then became Sustinere Group Limited and then converted to a Plc. The directors were Mr Thomson and Mr Hume-Kendall.

The next thing we see in the narrative is that Mr Thomson and Mr Hume-Kendall were arranging for Mr Sedgwick to make payments ultimately by Sustinere Plc to Sanctuary in order to try to prevent it from becoming cash flow insolvent. We have got an example at <MDR00012700>. Mr Sedgwick is instructing someone in accounts to do what they have suggested there and transfer £15,000 from Lakeview to Sustinere Group Plc as a loan:

"Then please do a CHAPS payment from Sustinere Group Plc to Sanctuary Resorts Limited in the sum of £15,000." And he gives the bank details. So, Sustinere Plc is tiding Sanctuary over and providing it with some cash to prevent it from going into insolvency proceedings. Sanctuary then sends out letters to the investors. There's an example at <D2D10-00005329>. There are many more in the parties' disclosure. It says -- it is to Mr and Mrs ***** of Crawley:

"This letter relates to your property investment in the Dominican Republic. In order to maintain progress in the best way for you as a stakeholder, we have decided to take on a new corporate investor and we are in the final stages of negotiating this partnership. "The new corporate investor is a regulated UK Plc formed some 35 years ago, its directors and managers have all previously held senior positions in some of the UK's largest firms and have a wealth of experience in the leisure and

investment sectors. We are currently still bound by a non-disclosure agreement as part of the process so cannot yet give you full details ... "As part of this negotiation, Moore Stephens LLP (11th largest accountant in the UK) and one of the UK's oldest and respected law firms, Buss Murton LLP, have been engaged to carry out comprehensive due diligence on all aspects of the project, to include land title, planning and the investors security.

"This due diligence has highlighted some excellent opportunities to improve client security and offer enhanced client profitability. To explain these opportunities and provide information about the impact of recent regulatory changes to the market and the project, we are holding a series of stakeholder meetings in conjunction with our proposed investor. "The meetings will be held at select regional venues across the country and you will be contacted in the near future to invite you to attend one of these meetings at the location most convenient for you."

Those meetings around the country are what Mr Hume-Kendall described as "the roadshow for Sanctuary investors". If we could look, please, at <MDR00012942>, it's an email exchange between Mr Sedgwick and Mr Hume-Kendall. The second email down, dated 12 June 2013, just a bit up, here we are: "Hope you're having a great time -- could we make it Monday? Been on roadshow meeting Sanctuary investors who are delighted with the proposal of security through a trust. Have [seen] 100 odd so far and 98 want to proceed."

The roadshow meetings were held in a series of hotels around the country. I don't think we need to go into the detail. But Mr Hume-Kendall attended numerous meetings with Sanctuary investors to set out the proposed deal. That deal is set out in a document <D2D10-00005357>, a letter from Sanctuary International Resorts to one of the investors, Mr ***** of Stockport, and it says:

"We are pleased to have had the opportunity to meet with you last week in Manchester during our presentations and would like to thank you for taking the time to attend. As promised, we are writing to follow up on the opportunity of increased security and returns that you were presented with on the day. The contents of this letter have been reviewed and agreed with Sustinere Group Plc, but for the sake of good order and consistent lines of communication, it is being sent from the Sanctuary.

"The purpose of the presentation was to introduce you to Sustinere Group Plc a potential investor and partner in Sanctuary International Resorts. We advised you of the findings of their due diligence process and informed you of the recommendations that they require to be implemented, before they will proceed with the purchase of an interest in Sanctuary International Resorts.

"Sustinere requested that there should be no further sales of units on the land at Puerto Plata 'The Hill'. This, as we reported, has been done.

"Furthermore, in accordance with Sustinere advisors' recommendations, SIR has agreed (subject to contract) to offer you a variation in your contract which provides you with much greater security, offers you an enhanced return on capital and secures you the right to complete the purchase of your property on a 'Beach' property rather than the 'Hill' (without losing your security over the 'Hill')."

On the next page:

"These enhancements will be offered as a deed of variation to your present contract and can be summarised as follows:

"Firstly, that you should have the benefit of security for your investment through a UK trust which would hold security over the freehold land at The Hill to your benefit as an investor.

"Secondly that due to the increase in the value of the property during the period since you took out your option in the Dominican Republic generally and The Hill land specifically, your contract should be varied to offer an increased return on your original deposit from 20 per cent to 50 per cent."

That's the buyback option. If you didn't want to complete, you could get back 120 per cent; that's going to be varied so as to provide for a return of 150 per cent of the deposit:

"Thirdly, that you should be offered the opportunity to have a formal option agreement to transfer your existing option, allowing you the right (but not the obligation) to complete your purchase on a similar unit on the 'Beach' property at Magante, at no extra cost to yourselves.

"To agree the above improvements in your contract, the SIR is requesting an increase of 6 per cent on the deposit from the 30.08 per cent you have already paid to 36.08 per cent, please note the enhanced returns are given on this higher deposit amount.

"If you decide you wish to review a deed of variation to your contract which includes these improvements, then our solicitors will confirm the details set out above in a letter to you together with the deed of variation relevant to your existing contract.

"Should you decide to proceed with this opportunity, any funds received from you in respect of the increased deposit will be paid into an escrow account to be held by the solicitors with an undertaking not to release them until satisfactory security over the Hill land is in place and Sustinere's agreement to proceed with their investment has become unconditional. If these conditions are not met within 30 days, then your funds in the escrow account will be returned to you together with any interest that may have accrued during the period."

So the deal being put was, if you paid a little bit more, an extra 6 per cent, then we will up your buyback from 120 to 150 per cent of the deposit, we will give you security over the land, and you can also transfer your villa, which hadn't been built yet, from The Hill to The Beach.

If we look at <D2D10-00005361>, we see an email from Mr Sedgwick, dated 28 June 2013, to Mr Hume-Kendall and Mr Thomson and Mr Visintin, copied to Mark Ingham. At the top of the page, it's forwarded to *****@gmail.com, that's Mr Golding's -- Spencer Golding's email address. Mr Hume-Kendall is asking Mr Golding to cast his eyes over it and comment. The email itself is Mr Sedgwick's understanding of the proposal to the Sanctuary investors: "Further to my meeting with you and Mark this morning I confirm that intention is that I should prepare an agreement between Sanctuary PCC Limited (as the ultimate owner of Inversiones 51588 SRL) the trustees and each of the investors whereby it is agreed as follows:

"1. The investor will pay such sum as increases the amount of the deposit paid to 36 per cent of the purchase price.

"2. Sanctuary PCC Limited will guarantee the performance of by Sanctuary International Resorts Limited ... in respect of the sale.

"3. The trustees confirm that they have registered a charge against the property known as the Hill which charge can be exercised in the event that the seller has not commenced the development within 24-months ..." Then it says:

"The charge will provide when executed the trustees shall be entitled to sell the property and to use the net proceeds of sale after deduction of their reasonable costs to pay:

"a. To each investor up to 150 per cent of the deposit they have paid or if the amount is insufficient to pay that in full to divide the net proceeds pro rata [among them]."

And 5 is the side letter in respect of the option to swap the purchase of a Hill property for a Beach property.

So we see from that he's involved in formulating the proposal. It is put to the investors. If we look at <MDR00013607>, from page 2 onwards we see the forms that the investors sent back. Here is one from Mr and Mrs *****. They wish to proceed with the full security option and they also wish to be considered as a trustee. Some investors obviously responded to say they didn't want to proceed with the full security option but, as we will see, the overwhelming majority of them thought it was a good deal. They had to pay an additional 6 per cent, but their rights were upgraded. If they decided, ultimately, not to proceed with the purchase, they would get back 150 per cent of their deposit rather than 120 per cent, they were told they would have full security over The Hill in the meantime and, importantly, and we will see this in a moment, it was said that this proposal would enable Sanctuary to restart the payment of the monthly interest payments to the Sanctuary investors which had been suspended due to Sanctuary's insolvency.

So investors sent back forms like this. The investors who said yes were written to again. There is a typical letter at <D2D10-00005592>. A letter from Sanctuary this time to Dr and Mrs **** of Hartlepool. It thanks them for responding in the affirmative to the presentation proposal and says the solicitors are now in the process of drawing up the necessary documentation for signature:

"You have indicated in our follow-up letter that you wish to take the opportunity to securitise ..." A slightly odd use of term, but I think "take security" is what's intended:

"... your position on the Hill which will deliver to you the following benefits:

"1. Security over your investment delivered through membership of a UK trust which will have full security over the Hill (El Cupey). Elected clients will be part of the ongoing trust management.

"2. An increase from your existing 120 per cent to a 150 per cent resale opportunity.

"3. An option to upgrade your current property location from the Hill to the Beach ... for a similar property type at no extra cost ...

"4. A new agreement prepared by Buss Murton, a 300-year-old UK law firm, confirming these benefits, will be provided for your review and signature. "To proceed with your securitisation you have agreed to pay the sum of £5,877.00 to Buss Murton's client escrow account ..."

At the bottom of the page are the bank details for Buss Murton's account. So, that letter was sent out to various investors telling them how much they needed to pay and where they should pay it. Those additional deposits were duly made to Buss Murton. If we look, for example, at <MDR00013330>, there is an email from Mr Sedgwick sent on 3 July 2013 to Mr Hume-Kendall and Mr Thomson, copied to others, including Michael Peacock Clint Redman and Murray Baker:

"In addition to the forms received this morning I also received a cheque for £17,982.12 from Mr ***** (no form with it) and a bank credit from ***** for £4,768.20.

"I have also got a cheque for £12,357 from ***** as previously advised. I have not banked either cheque yet."

The subject, my Lord sees, "Sanctuary Responses", so these are Sanctuary clients paying their deposits. We can also see that in <MDR00013555>, which is an extract from the Buss Murton ledger. We can see at the top the payments that come in to Sanctuary's client account from Sustinere Group, which I mentioned earlier. There's a 30,000 payment and then two 15,000 payments. Then the deposits from the investors, the additional deposits from Ms *****, Mr *****, Mr *****, et cetera. So the money starts coming in to Buss Murton. We can also see that at <D2D10-00005730>. If we go to page 2, the bottom email on page 2 shows Mr Woodcock is attaching today's update. He says 172 clients at this point have paid just under £1.5 million. 63 clients have said no. 38 clients have promised to pay and nine clients have not made their minds up yet: "Come on guys, one last big push to get these last 38 clients who have promised to pay and the 9 clients who have not decided yet."

On the previous page, we see the email from Mr Hume-Kendall, at the bottom, to Mr Woodcock, saying he is "mildly and possibly overly concerned that the 9 undecideds have been stuck for a fair while", and he wants to discuss. Then if we go back to see if there is anything significant. Just further discussion. At the top of the page, Mr Hume-Kendall says that, as discussed, he personally feels that the "8 remaining undecideds and especially the 63 Nos should be carefully nurtured into the best security position we can offer them".

So the security position he's referring to is the trust which was set up and involved a company called El Cupey Limited. Mr Thomson and Mr Hume-Kendall were the initial directors. There was a single share in El Cupey Limited which was held by Buss Murton (Nominees) Limited. The intention was that Inversiones, the Dominican Republic company, would continue to own The Hill and the shares in Inversiones would continue to be registered in the name of Sanctuary, but Sanctuary would hold the shares in Inversiones on trust for El Cupey Limited and Buss Murton (Nominees) Limited would hold the single share in El Cupey Limited on trust for the Sanctuary investors.

We can see that in a couple of documents. First, the El Cupey trust deed, which is at <MDR00014026>. If we look first at page 3 to see who signed it, it is signed at the bottom by Mr Thomson on behalf of El Cupey Limited and his signature is witnessed by Mr Sedgwick. If we go back, please, to page 1, my Lord will see that the document is described as a declaration of trust made on 30 July 2013 between Sanctuary International PCC Limited and El Cupey Limited.

Then, in the recital, it says at A:

"The trustee has agreed to sell to the beneficiary the shares specified in the schedule ('the Shares').
"B. Until the sale of the shares to the beneficiary has been completed the trustee has agreed to execute this declaration of trust to confirm that it holds the shares solely as bare trustee for the beneficiary [El Cupey Limited]."

The declaration of trust is in clause 1. The schedule is just before the signature panel on page 3. It is all the shares registered in the name of the trustee in Inversiones 51588 SRL, a company incorporated in the Dominican Republic. It is 99 per cent of the issued shares, as we saw on the schedule previously. As I say, Inversiones will continue to own The Hill. Sanctuary would continue to hold registered title to the shares in Inversiones. But it would hold the beneficial interest in those shares on trust for El Cupey Limited and then El Cupey Limited itself would be owned by Buss Murton (Nominees) on trust for the Sanctuary investors. We haven't seen any trust deed whereby Buss Murton (Nominees) agreed to hold the share in El Cupey Limited on trust for the investors, but it is clear from other documents -- for example, <D2D10-00035753>. It is an email from Mr Sedgwick to Alex Lee of Buss Murton, dated 13 October 2017. He says:

"Further to my last email Michael has reminded me that Buss Murton Nominees are the shareholder of El Cupey Limited which it holds on trust for the investors."

So that was the intended security structure and, as my Lord has seen, the deed of trust was executed. The shares in Inversiones, which owned The Hill, were held on trust ultimately for the Sanctuary investors to give them security for the money that they had paid.

MR JUSTICE MILES: Was that all of the investors or the ones who had said yes?

MR ROBINS: It is the ones who had said yes.

MR JUSTICE MILES: How do we know that?

MR ROBINS: I will have to come back to you on that, but I think that's right. I'm afraid I don't have a reference to hand. So I will come back on that. The new contracts were put in place. There is a letter at <D2D10-00005738>, again from Sanctuary to investors, this time Mr and Mrs ***** of Welwyn Garden City. It says:

"We are delighted to provide you with a brief update on the progress of securitisation of your property purchase in the Dominican Republic at El Cupey (the Hill).

"UPDATE

"1. Over 80 per cent of all buyers have committed to participate in the improved security and enhanced buyback opportunity on their properties at El Cupey. We are pleased to confirm that Sustinere Group Plc is now fully engaged.

"2. El Cupey Limited ... has been formed by Buss Murton LLP Solicitors who hold the shares in their nominee account [this answers my Lord's question] with control of the Hill held in trust for the benefit of the participating buyers and now own 99 per cent of the issued shares in Inversiones (which has title to the Hill). As a result ECL now has control over the Hill for your security."

Then it says Sustinere has nominated directors: "4. A new agreement confirming your security and enhanced benefits has been drafted and is currently in final legal review by Buss Murton LLP and Howard KennedyFsi and will be issued to you for your review and signature ... Your existing contracts with Sanctuary International Resorts (Cayman) will be replaced by the new agreement.

"5. You continue to have the right to buy the property on the Hill. You also retain the buyback option and the right to receive an enhanced buyback as agreed with you subject to the level of your participation. "6. In addition to the above, Sanctuary PCC will grant you an option to transfer your aforementioned rights to the land at Playa Magnate (The Beach) in the Dominican Republic on the same terms as your current contract.

"7. Client repayments will recommence week commencing 19/8/2013 and each buyer will be contacted individually in respect of their ongoing repayments." As I said, it was part of this scheme, to entice people to provide the additional deposits, that they would start getting their monthly interest payments again, which had been suspended due to Sanctuary's insolvency.

There is a letter from Buss Murton at <D2D10-00005798> which is an example of the letters sent by Buss Murton to the participating Sanctuary investors. It is a letter to Mr and Mrs ***** of Waterlooville in Hampshire. It is from or signed by -- to be signed by Mr Sedgwick, consultant solicitor. It says he's "acting for the various companies involved in ensuring that you are able to proceed with your prospective purchase of the property in the Dominican Republic". He is pleased to

enclose two copies of the new agreement confirming property purchase and the new security arrangements:

"Hopefully you will be familiar with the style of the new agreement as it is an amended version of your original sales agreement ... I have taken the opportunity to highlight for quick reference the parts of the contract that address your improved security, buy back position and option to exchange your property location to the Beach ...

"The enclosed contract confirms the following: "1. That your original sales and or finance agreements with Sanctuary International Resort (Cayman) are now replaced with a new contract (enclosed) with Inversiones 51588 SRL the Dominican Republic company owning The Hill ...

"2. That Buss Murton LLP have provided an escrow facility into which you have paid your additional deposit.

"3. Your ongoing payment arrangement details (9.2, page 4).

"4. You continue to have the right to buy the property on the Hill. You also retain the buy back option and the right to receive an enhanced buyback as agreed with you.

"5. Your buy back entitlement is identified at Clause 5, page 12 and is determined by the amount of the additional deposit paid.

"6. The new security and the trust arrangements are identified at clause 19, page 18 and explain that: "a. El Cupey Limited (The Trust) has been incorporated to manage and protect the interests of the buyers.

"b. The trust now holds the shares in the company owning the Hill for the benefit of the buyers that have paid the additional deposit."

Again, I think that answers your Lordship's question:

"c. On receipt of full planning or after 24 months whichever is the sooner, the trust has the right to determine whether the project should continue with the development or take another action ...", et cetera. The contract itself is also in disclosure. We have an example at <MDR00065292>. Page 1 identifies the parties, El Cupey Limited, Inversiones 51588 SRL, Sanctuary International Resort Limited, and in this case Mr and Mrs ***** for the sale of offplan property. On page 3 we have the parties, including Mr and Mrs ***** , St Asaph in Denbighshire, and it gives the property details at the bottom of the page: a deluxe suite, ground floor, and then on the next page, page 4, special conditions -- sorry, at the top of the page, let's deal with that first, purchase price and fees. The purchase price is set out. The original deposit is set out. Again, the original deposit was a sum lower than 30 per cent, as I mentioned earlier. It generally doesn't seem to have been greater, or much greater, than that. The additional deposit, 6 per cent, so they were paying an extra £6,597. The total deposit was therefore £36,597. And the final payment they would have to pay on completion is also identified. Then, at the bottom of the page, the special conditions. 9.1: "The buyer has made additional deposit payments to Buss Murton ... instructed in the payment schedule ... the escrow agent will only distribute the escrow funds to the seller or such other company or companies in accordance with the instructions of the trust." And 9.2 is the deferred deposit rebate: "The seller will pay a return of deposit capital ... to the buyer equal to 12.26 per cent per annum of the deposit paid. Payments will be made monthly in arrears. These payments will continue monthly, and for a minimum of 13 months until completion of the sale or termination of this contract whichever is

sooner. For the avoidance of doubt these capital returns represent a discount paid by a phased rebate against the deposit paid by the buyer."

It seems to be a way of describing the monthly interest payments.

Then, over the page, there are some recitals: "A. The buyer and SIR (Cayman) entered into a sale agreement and/or a finance agreement pursuant to which the buyer agreed to buy and SIR (Cayman) agreed to sell the property ... In consideration of the buyer entering into this agreement, the original contracts are treated as discharged and replaced by this agreement ... "B. Sustinere has agreed to assist in the development ... to ensure that the seller grants the security.

"C. In consideration of the buyer paying the additional deposit the buyer shall be entitled to receive the enhanced payment and the security. "D. To protect the interests of the buyer and the other buyers of the plots of land at the Hill the trust shall hold the shares on trust for the buyer and other buyers as security for the performance by the seller of its obligations under this agreement ... "F. The trust agrees to procure that the Beach option is granted to the buyer and to ensure that the planning fund reserve to be provided out of the additional deposits paid by the buyer and the other buyers."

Then I think the only -- well, I suppose we should look at page 12, clause 5, because that's something that's mentioned in Mr Sedgwick's covering letter to the investors: that's the buyback option:

"The seller undertakes to the buyer that once the phase one properties have been constructed, the seller will offer 150 per cent of the total deposit price less all amounts repaid to the buyer as part of this contract and previous agreements for the purchase of the property.", clause 19, another one mentioned by Mr Sedgwick in the covering letter. This is the trust/security, explaining the security that was constituted. And then finally, page 20, my Lord will see that the variation agreement is signed on behalf of the trust, about halfway down, by Mr Hume-Kendall, and on behalf of Sanctuary International Resorts Cayman by Mr Thomson.

So, that was what was done. The deposits were collected, the new contracts were executed. As to how much was collected by way of additional deposits, we can find that in <MDR00116025>. It is a document drafted by Paul Sayers, "El Cupey Report for London Group 20 June 2017, 'The Way Forward'". On the left-hand side in the first paragraph under the heading "Background information" he says:

"The El Cupey 'investors' are 289 private clients, all residing in the UK, who have purchased a property option contract with Inversiones 51588 SRL, the owner of the El Cupey property near Puerto Plata in Dominican Republic. These El Cupey 'investors' are represented by a trust company, El Cupey Limited, registered in the UK which has six of these 'investors' on their board of directors."

Dropping down to the last two paragraphs on that page:

"The sums invested by these El Cupey 'investors' amounted to £14,386,247 over the years 2011, 2012 and early 2013 plus £2,401,760 to provide security at a later date.

"The monthly sums due to these El Cupey 'investors' of £88,640.66 per their original and revised contracts has been reduced to £30,000 per month with effect from 17 June 2016."

So during 2013, 2014, 2015 and the first half of 2016, the monthly liability to the El Cupey investors was -- let's call it £88,000 a month. But then, with effect from the middle of June 2016, that was reduced to £30,000. But, for the period we are looking at, it's £88,000 a month. There's a contractual

liability on completion, as a result of the buyback option. If we stay with the same page of the same document, around the middle of the page, it says:

"The contractual liability of Inversiones 51588 SRL to these El Cupey investors is currently £27,282,386 but this is only due once each of the reserved 289 properties is built and then sold assuming the property option is not taken up and the buyback is preferred." So that's if all of them say, "We don't actually want to proceed. We would just like our uplifted deposits back". Then the total amount to be paid is just under £27.3 million:

"The individual El Cupey investors have 30 days from notification of completion of their property to exercise their buy back in writing and their funds are due within 90 days from receipt of this notification."

MR JUSTICE MILES: On that document, it may not matter, this point, but when I asked you about whether the trust arrangements are for the benefit of all the investors or only the ones who put in the money, the first paragraph suggests it's for everybody, but it may be it is not an important point.

MR ROBINS: We will look into it. The documents we were looking at a moment ago suggested it was just for the participating --

MR JUSTICE MILES: I saw that. But this one rather suggests that at least the author of this document thought the trust arrangements covered all 289, which I understood, from the numbers you gave me earlier on, to be the entire body of investors, including those who then decided not to go with the additional security.

MR ROBINS: Yes. It may be that such an overwhelming number of the 289 did agree to participate to provide the additional deposits that it was broadly the same whichever way you --

MR JUSTICE MILES: There seems to be about 60-odd people who weren't prepared to do that.

MR ROBINS: Yes, according to that document we saw earlier. But that may have changed. Let's have a look at the next document before we rise for the short adjournment.

MR JUSTICE MILES: It may not be an important document. It is just a query I had.

MR ROBINS: I would like to see if the next document casts any light. It is <D2D10-00006946>. It is a spreadsheet of the Sanctuary investors. There are 285 of them in this spreadsheet, and the column headings show the deal number, surname, the plot price, the total deposit, the final payment with buyback bonus, it says "To complete", so it seems to be the amount they would need to complete the purchase, and then "Owed; buy back", is the amount that would be owed if the buyback option were to be exercised. The monthly total is the monthly amount of interest payable by Sanctuary to the investors. I think the reason it says "Monthly Equiv." at the top is because my Lord saw some of them elected to have the interest paid annually rather than monthly, so, where that is the case, it is divided by 12.

If we go down to page 10, please, right at the bottom of the spreadsheet, we see, after the reference to Mr and Mrs ******, there are the numbers in the bold boxes. The first is £49.094 million. That's the plot price total. The deposit total is the next figure, the £16.68 million. That includes the additional deposits. The "To complete" figure is £25.496 million. It seems, looking at this, that they are credited with the uplifted deposit amount if they elect to complete. So, whether you elect to complete or elect to exercise your buyback option, you get credited with the uplifted deposit

amount. It seems to be saying -- we saw at the top it said "To complete" -- if all the investors elect to complete, the total sum payable by the investors is going to be £25.496 million.

Then "Owed; Buy Back" is, if all the investors elect to exercise their buyback option instead, the total amount owed to them is £23,598,718.39. Then the monthly total interest is the £88,000, as we have seen. It is a slightly different figure in this one than it was in the document we just looked at, but that might be explained by the fact there's only 285 Sanctuary clients in this spreadsheet. Either way, I'm not sure anything turns on that. It is about £88,000 that is payable per month to the Sanctuary investors once these additional deposits have been taken and the monthly payments restart.

I see the time. It would be a convenient moment, subject to your Lordship.

MR JUSTICE MILES: We will come back at 2.00 pm. (1.00 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: My Lord, before the short adjournment, we were looking at the position in respect of the Sanctuary Investment Scheme, and my Lord saw that the company Sanctuary International Resorts Limited was owned originally by Ryan Golding, Mark Ingham and Andy Woodcock, and that Ryan Golding held his interest through a company called Bawden Investments. That position changed after the involvement of Mr Hume-Kendall and Mr Thomson. If we could look, please, at <D7D9-0000210>. This is an email from Mr Russell-Murphy to Mr Simon Whittley of Highgrove Securities and a gentleman called Andrew Meikle, who we will see more of later:

"Dear Simon and Andrew.

"I have arranged for Mark Ingham and Andy Thompson, the owners of the Sanctuary Dominican Republic to meet you at 2 pm next Thursday."

By this point in May 2013, Mr Thomson was being described as one of the owners of the Sanctuary Dominican Republic. We certainly see that by the next month some shares were transferred to him. If we could look at <D2D10-00007428>, please.

MR JUSTICE MILES: I'm so sorry, can you just go back to that? That's Mr Thomson and Mr Ingham. Yes.

MR ROBINS: The next document was <D2D10-00007428>. This is a Sanctuary International Resorts Limited resolution of the sole director. It's not a signed copy, nobody has disclosed a signed copy. My Lord will see that the resolution is in the following terms. It is for share certificates 1 and 2 to be cancelled and for a transfer of shares to Mr Thomson to be approved and it is 30 shares from Sovereign Investments Limited to Michael Andrew Thomson. My Lord will recall we saw earlier there were 80 shares. The new certificates are set out at the bottom of the page. Mr Thomson is to have 30 of the 80 and the remaining 50 will be registered in the name of Sovereign Investments Limited.

Then, at <D2D10-00007429>, we see the share certificate in respect of those 30 shares. So, at that point, Mr Thomson has got 30 out of 80. He then gets a further 25 shares at <D2D10-00007423>. This is 31 December 2013. This one is signed by Mr Woodcock. It is a further 25 shares being transferred to Michael Andrew Thomson. So, by this point, he's got 55 of the 80 shares. Then we see the position a few months later, <D2D10-00006709>. It is a report prepared by a firm of accountants, and my Lord will see the date on the front, 3 April 2014. On page 5, there is a structure chart. My Lord will see, on the right-hand side of the page, Andy Thomson appears above Sanctuary PCC

(Guernsey), which is the holding company of Inversiones and Tenedora. My Lord will see Andy Thomson has 5 per cent himself, but the other 95 per cent, just to the left of that, is beneficial ownership. It says legal ownership resides with Andy Thomson. At that point, he's got 100 per cent of Sanctuary PCC but he only owns 5 per cent beneficially. The other 95 per cent is held on trust. 71.25 per cent we see, again, to the left, "Bare Trusts", it says: "... beneficial ownership. Legal ownership resides with Andy Thomson."

To the left of that, Helen Hume-Kendall, 23.75 per cent. So, somehow, over that period, Mr Thomson has gone from holding 30 shares in Sanctuary to owning all 100 per cent, but he owns 95 per cent in trust for Mrs Hume-Kendall and for -- well, it is ultimately for Spencer Golding and family under the bare trusts.

If we could look, please, at what Mr Thomson says about that in his trial witness statement, it is bundle <C2/1>, page 6, at paragraph 18. He says: "During this period, LCCL also acquired rights in two properties in the Dominican Republic known respectively as 'The Hill' and 'The Beach'. Those properties were held in a company called Sanctuary International PCC which was brought into the group." Three lines down, he says:

"I was involved in the planning and financing of this project but whereas, in relation to Lakeview, I conducted negotiations with the disenfranchised investors, on this occasion Simon did that and took a 'roadshow' up and down the country, presenting our plans. I never knew the terms on which the properties were acquired save that I believe, in general terms, that no money changed hands."

Although he refers there to "the properties", I think he must be referring to the acquisition of the shares in Sanctuary because the rights in respect of the properties didn't move. The Hill continued to be owned by Inversiones, and the contract to acquire the various parcels of land known as "The Beach" continued to be held by Tenedora. The legal title to the shares in Inversiones and Tenedora continued to be held by Sanctuary.

What was acquired was the share capital of Sanctuary. Mr Thomson says he believes no money changed hands. So, the ultimate beneficial ownership of the Sanctuary Group had been with Ryan Golding, Mark Ingham and Andy Woodcock, but by early 2014, it is Spencer Golding and family, Helen Hume-Kendall and Mr Thomson. What Mr Thomson seems to be saying is that no payment was made.

That makes sense because, as my Lord has seen, Inversiones owned The Hill but the shares in Inversiones were held on trust for El Cupey which was owned by Buss Murton on trust for the Sanctuary investors and Tenedora didn't actually own anything yet. It had a contract to acquire the various parcels which comprised The Beach for \$3.5 million, but it hadn't actually acquired any of that land yet. The next point to address is the question of what happened to the additional deposits, the £2.4 million, that were raised from the Sanctuary investors following Mr Hume-Kendall's roadshow. If we could bring up, please, <MDR00013555>, we saw this earlier. It is an extract from the Buss Murton client account for Sanctuary with the loans, at the beginning, from Sustinere to keep Sanctuary from insolvency. The first of the additional deposits coming in from Ms ***** , Mr ***** , Mr ***** , and so on.

There is a more extensive version of this at <MDR00194997>, which is an Excel document, so we need to look at it in native format. My Lord can see it begins with exactly the same entries, the loans from Sustinere and then those initial additional deposits from ***** , ***** , ***** .

The deposits from the Sanctuary investors continued to come in after that, in column H, the credits, to the account, and my Lord will see in column D the surnames of the various Sanctuary investors.

If we scroll down to row 82, my Lord will see that £150,000 of the additional deposit money is paid to Mr Hume-Kendall's company LV Management, with the description "Money due". After that, some more deposits come in from the Sanctuary investors. If we can go down to row 109, please, my Lord will see, after those deposits, there's another £20,000 to Mr Hume-Kendall's company, LV Management, with the narrative "Cash for Dominican expenses". Then, after some more additional deposits, in row 131, there is a payment of £20,000 to Mr Hume-Kendall's LV Management, and in row 148, after yet further additional deposits, there's a payment of £80,000 to LV Management.

If we can go down a bit further, right to row 157, after some final additional deposits, there's a transfer in cell G157 in the sum of £957,945.01 from one client account of Buss Murton to another client account of Buss Murton. We see where that goes in another spreadsheet, <D2D10-00049660>. Again, it is one we need to open in native format. This is the balance of the additional deposits after the payments that we have seen to LV Management being moved from one Buss Murton client account to another. We see that money come in as credit in cell H2. It is precisely the same sum coming in. Then, after that, there are some more additional deposits that are made into this client account from the Sanctuary investors whose names appear in column D. Then in row 31, my Lord will see that £100,000 of that is transferred to Mr Hume-Kendall's company LV Management as "Money due". There are then some more additional deposits, and then, in row 42, we see £600,000 being paid to Mr Thomson's company, One Monday Limited, with a narrative "Further dev of site in DR". If we can scroll down a little bit further, please, there are some more additional deposits. Then cell G47, there's £503,151.99 of the additional deposit money that goes out to Mr Thomson's company, One Monday Limited. Then, in row 58, after some more additional deposits, there's £53,182.05 goes out to One Monday. After some more additional deposits in row 74, we have another £46,615.36 goes to One Monday. Some money also being paid to Lakeview Operations Limited. Then, in row 99, after yet further additional deposits, there is a sum of £26,252.42 that goes out to One Monday.

MR JUSTICE MILES: Sorry, which one was that?

MR ROBINS: Row 99. Sorry, I think I read out the wrong number. It is £35,357.86. So that goes to One Monday. As regards One Monday's bank account, we have, in disclosure, the bank statement in what's known as CSV format, which is a spreadsheet format. If we can look at that, that's at <D2D10-00008623>. I should mention, my Lord, there are some instances in disclosure where we have an incomplete record of bank statements. There are a few gaps in some instances. There are other instances where we have them only in the CSV format. We will need, if you could, please, to widen the columns in order to see the various entries.

MR JUSTICE MILES: What was that last spreadsheet we were looking at? When was that prepared? Is that a forensic document?

MR ROBINS: No, that is a contemporaneous Buss Murton document. The Buss Murton client account. This, by contrast, is a CSV bank statement. My Lord, as I say, we have a few gaps in the bank statement record and, in some instances, we have --

MR JUSTICE MILES: What does CSV stand for?

MR ROBINS: I can find out. I'm afraid I don't know, off the top of my head.

MR JUSTICE MILES: That's not meant as a sort of pernickety question. I'm just wondering what it is. So, it is a form of bank statement, is it?

MR ROBINS: It is a form of bank statement. My Lord, where we have identified these gaps, we have been in contact with the relevant financial institutions and we have explained what we are missing. They are content to provide the missing bank statements to us, in the event of your Lordship making an order, and we are putting the final touches to an application under the Bankers Trust jurisdiction and/or third party disclosure jurisdiction, which we will obviously provide to the other parties, but invite your Lordship to deal with on the papers. The banks are content with the form of order that we have proposed and they will provide the bank statements --

MR JUSTICE MILES: I have got in the back of my mind something called the Bankers' Books something Act --

MR ROBINS: Bankers' Books Evidence Act.

MR JUSTICE MILES: -- which is directed specifically to this sort of thing, which may be more appropriate. But I don't know whether that --

MR ROBINS: I'm told CSV stands for commerce separated values, which doesn't really advance matters one way or the other.

MR JUSTICE MILES: Thank you. I just mention that Act because I think it's a statute which enables documents to be collected from banks in these sorts of situations, but I say no more about it. You might want to look at that.

MR ROBINS: There is no issue between us and the banks. They are happy to provide the missing bank statements as soon as your Lordship writes the order, and we will update you about that in due course.

This is the One Monday bank statement, and if we see in row 2, for example, there is the £600,000 coming in from Buss Murton, which we saw in the Buss Murton client account. £30,000 of that is transferred out immediately to Mr Thomson personally. We don't necessarily understand all of the other withdrawals, but we see, for example, in row 7, there seems to be a payment of £50,000 to Ryan Golding, Spencer Golding's brother. But the money seems to be used for various purposes. In row 6, there is the £503,151.99 that we see coming in from Buss Murton's client account. In row 27, there is another payment out to Mr Thomson personally, £7,500.

In row 47, there is a payment of £535,000 to Clydesdale Property Developments Limited, which is a company owned beneficially by Spencer and Ryan Golding. Then, in row 49, £200,000 is paid out to Mr Hume-Kendall's company, LV Management. The totals, in terms of Clydesdale Property and LV Management are therefore, so far as we can see, £535,000 of the additional deposits are paid to Clydesdale Property, that's row 47, and then, if you add up all the payments to LV Management via Buss Murton and One Monday, it comes to £570,000. So of the additional deposits from the Sanctuary investors, it seems a sum in excess of £1.1 million was paid to companies owned by Spencer and Ryan Golding and Mr Hume-Kendall. That's obviously a considerable proportion. My Lord saw that the total sum of additional deposits was 2.4 million. So 1.1 million of that is accounted for by payments to companies of the second and fourth defendants. As regards the payment through One Monday Limited, there is corroboration of that in other documents. For example, <D2D10-00006194>. It is headed "One Monday Limited. Trial balance as at 20 November 2013". My Lord will see in the credit column on the right there is a sum of £982,418.46 that comes into One Monday Limited with the narrative "Sanctuary loan". In terms of the debits, the second entry with the narrative "Clydesdale loan" is a debit of £536,030 with the narrative "Clydesdale loan". That seems to be the payment that we just saw to Clydesdale plus a small additional amount.

Just below that, "LV Management loan £200,030", that we saw went through One Monday to LV Management. There is also, interestingly, in the debtors column a John Russell-Murphy loan, just over £100,000, and another loan, just below that, to Sustinere in the sum of £100,000.

So the money that comes in as the additional deposit seems to be disbursed in those ways.

There is one further document I should show you, <D1-0000521>, which is an email from Mr Thomson, using his email address *****. It is dated 23 September 2014.

The numbers are not exact. They seem to have been rounded. But it is the same broad picture. It says: "Clydesdale directors loan.

"£735,000 transferred from SPCC [Sanctuary PCC] to 1[Monday].

"£200,000 paid to LVM.

"£535,000 paid to [Clydesdale Property Developments] as a directors loan."

Again, it seems to accord with the other documents that we have seen, that a large proportion of the additional deposits from the Sanctuary investors get disbursed in that way.

There is an email copied to Mr Hume-Kendall, which seems to cast some light on these events. It is <D2D10-00011455>. If we could go right to the bottom, my Lord will see there is an email from Murray Baker, whose name we saw earlier. It's dated 21 August 2015. It is to Mark Ingham, copied to Mr Hume-Kendall and Mr Thomson, and Mr Golding on two different email addresses, and, in fact, Mr Barker.

On page 2, fourth paragraph down, Mr Baker says: "Just going back to 2013, as a franchise, I brought in the last 11 sales for Eco Resorts totalling over £500,000 in cash to the business.

"I was then given the job of devising a presentation along with Andy Woodcock and Simon HK to take on a roadshow of existing Sanctuary clients, which were attended by both yourself and Spencer.

"We then embarked on the roadshow where we led clients to believe that Group Sustinere, under SHK and Clint, were investing £3 million into the project and provide the 282 clients with security over the El Cupey site, that was valued at \$27 million. If required, I can provide recordings of these meetings, as well as the follow-up meetings which were also attended by both yourself and Spencer.

"As a follow-up to this, I then contacted all 282 clients on the telephone (along with Michael who dealt with circa 30 clients) and raised over £1.8 million of extra money, supposedly to be invested in the Magante beach site which would then be developed. As this money came in, I was provided with all the details of the bank accounts by Buss Murton and could see that immediately the money came in, it was transferred out and never invested in the Magante site as the clients believed. This money was never used for anything in the Dominican Republic which has never been made aware to the clients. I retain in my possession all the bank transfer details, indeed I had to send copies of these to the company accountant Michael Peacock as he was missed off the mailing list.

"This roadshow also reduced the monthly payments due to the Sanctuary clients, the overall saving was in excess of £2.4 million."

So that seems to be consistent with the other documents we have seen and identifies that the additional deposits weren't used in any way to fund development in the Dominican Republic but were paid out to various recipients, including companies connected with the second and fourth defendants.

My Lord, the next topic relates to valuations of The Hill. I am going to show my Lord two unreliable contemporaneous valuations and explain why they are unreliable before showing your Lordship later this afternoon the reliable evidence as to the value of The Hill and The Beach.

If we could start with <D2D10-00006624>.

MR JUSTICE MILES: Is there any evidence about what was said on the roadshow in the nature of a script or anything of that kind?

MR ROBINS: I don't think I've seen that, but we can have another look. We saw those various documents summarising the proposal this morning.

MR JUSTICE MILES: Was anything said in those documents that you have shown me about what the additional deposits would be used for?

MR ROBINS: We can go back and dig that out. We saw this morning, just from memory, some documents saying that it would be held in an escrow account by Buss Murton and disbursed in accordance with the conditions of the trust. I think we may need to just go back --

MR JUSTICE MILES: As I recall, what it said was something like, "It will be held in escrow until the security was put in place", but whether there was anything about the reason for needing the extra money is something I would like to know.

MR ROBINS: We will go back and check that, my Lord. This is the first valuation of The Hill. It is a draft. It is produced by Jonathan Marshall, a valuer from East Sussex. You will see in a moment it is in the sum of US\$7.3 million, which at the time was equivalent to about £4.4 million. On the first page, my Lord will see in the second paragraph he says that he's been requested to give guidance as to the appropriate fair value of the property.

Then, in the third paragraph, he said that the advice is required for internal purposes only: "It has been prepared in accordance with our terms of engagement letter and as an exception to the mandatory conditions VS2 to VS6 of the RICS Valuation -- Professional Standards ... Our advice should not be relied upon for loan security."

Then on page 4, please, he explains that he's visited the Dominican Republic and he's been introduced to an individual known as Julio Perdomo. He says: "We met with Julio Perdomo on our last day in the Dominican Republic. Senor Perdomo is a property appraiser and was previously employed for 5 years by the Banco de Reservas and has worked subsequently for eight years as an external appraisal. Senor Perdomo stated that the reasonable market value of the El Cupey land was in the region of \$16.60 per square metre as the 'Average value of similar mountain lands valued and offered in the national and actual market'." On page 5, he sets out two valuation methods. The second, (b), is:

"Apply Senor Perdomo's rate per square metre but discount to reflect selling costs, infrastructure costs and time to sell."

Both of his approaches, approach (a) and approach (b), give you broadly equivalent figures of \$7.3 million. In method (b), my Lord will see that the deductions include 30 per cent selling costs and 10 per cent infrastructure costs that are then discounted to arrive at the net present value, which is said to be 7.3.

Then, if we can look at page 6, he says: "Having regard to the above factors, we are of the opinion that fair value of the El Cupey site is in the region of \$7.3 million.

"This appraisal has been very limited in scope and undertaken without the benefit of a full investigation as to detailed costings and comparables. The figures should be treated as indicative only and with a considerably wider range of deviation than would apply to figures reported in a formal 'Red Book' valuation report.

"You should therefore place limited reliance upon these figures and we would recommend that no irrevocable decision is taken with regard to the property without commissioning a formal valuation report in accordance with the RICS Valuation -- Professional Standards ... "Our reported figures are provided solely for the use by you for your internal purposes only." So, that's the first valuation we see.

MR JUSTICE MILES: What was the date of that?

MR ROBINS: That was dated 24 December 2013. We can see at <D2D10-00006233>, in the bottom email, we see he sends it to Mr Hume-Kendall, saying:

"I've reworded the terms and report with regard to third parties. Please see attached and let me know if this is now OK."

Then just reading up the chain, Mr Hume-Kendall, at the bottom of page 1, sends it to Mr Thomson, and then, at the top, Mr Hume-Kendall sends it to someone called Richard, copying it to Mr Thomson and Mr Golding. Then he says:

"As regards the Dominican Republic, the price per metre referred to in Jonathan Marshall's email only relates to the area of ..."

He says 1.35 square metres. I think it should be 1.35 million square metres. He says:

"... of which we own one third ..."

This is presumably at the point where they have got some of the shares in Sanctuary but not all of them. Then he refers to some other land, Palanco land. But that's the first valuation. That \$7.3 million valuation is recirculated by email --

MR JUSTICE MILES: Just on that, sorry, isn't that the amount of the land under the contract, the 1.35 million?

MR ROBINS: Yes, that's the amount of land acquired under The Hill contract.

MR JUSTICE MILES: Isn't that what he's talking about there? Oh, I see. Then he goes on to say "of which we only own one-third".

MR ROBINS: I assume that he was writing this at a time where Mr Thomson has got the 30 out of 80 shares in Sanctuary International Resorts. It's 24 December 2013. Mr Thomson doesn't get the further 25 shares until the end of December. So I think he's saying that, "We own a third because we have 30 out of 80". I mean, it's roughly right.

This valuation of US\$7.3 million is recirculated on 20 March 2014, at <D2D10-00006621>. It is Michael Peacock sending it this time. My Lord will see the attachment at the top of the page includes "El Cupey Valuation Report", and it's the same one. But then, just ten days later, a revised valuation of The Hill is circulated. That's <D2D10-00006670>. We can see who is on the email chain. It is sent by Mr Marshall to Mr Hume-Kendall, who then forwards it to Michael Peacock, Mark Ingham and copies it to Mr Thomson. This is, as I say, a revised report. We find it at <D2D10-00006671>. Page 1 is the same, but then, on page 3, at the bottom half, we see some new tables. These weren't in the first

version. The first shows that phase 1 of the intended development is going to consist of 266 units. On page 4, after the bullet points in the middle of the page, it says: "You have advised us that sales have been previously achieved on phase 1 for 282 units with deposits paid of £14.252 million equivalent, at an exchange rate of \$1.66 to £1, to \$23.65 million. At 30 per cent deposit, this indicates a gross development value of \$78.8 million for phase 1, based on contracted sales. The achieved sale rate is broadly in the region of \$2,000 per square metre footprint."

So that seems to be a rather approximate or inaccurate reference to the Sanctuary clients. Then, on page 5, at the bottom, there's the same text about meeting Julio Perdomo. That hasn't changed. But then, over on page 6, what was valuation method (a) has gone and what was valuation method (b) "apply at Senor Perdomo's rate" is now (a) but it's changed. We saw before it was "apply Senor Perdomo's rate per square metre but discount to reflect selling costs, infrastructure costs and time to sell". Now there are fewer deductions, it is just:

"Apply Senor Perdomo's rate per square metre but discount to reflect selling costs."

And the new (b) is:

"Carry out a simple development appraisal on phase 1."

If we look, please, at page 7, we see those differences in method (a) rather more starkly because the selling costs which had been 30 per cent are now only 15 per cent as a deduction. There is no deduction for infrastructure costs, there is no discount to arrive at the net present value. The product of that calculation is \$19 million-odd.

Approach (b) is essentially a prediction of how much profit could be made from proceeding with the development. He's essentially saying, if you build it and sell it, the total receipts are the GDV, gross development value, but you then have to deduct construction costs, infrastructure costs and development profit -- developer profit, and he says you will be left with \$19,643,840.

He then says:

"Having regard to the above factors, we are of the opinion that fair market value for the El Cupey site is in the region of US\$19.35."

If we can go back to that page to look at the calculations in approach (b), it is in dollars, but it is possibly helpful to translate it to pounds. At the end of 2014, \$1 was worth about 60p. So, if you multiply the dollar figures by 0.6, you get to the pounds sterling equivalent.

The GDV, which is the total proceeds of selling the villas, is that figure of \$79,109,600. That's equivalent to £47.5 million sterling. The various deductions are equivalent to about £35.7 million sterling. So the site value of \$19.6 million is equivalent to about £11.6 million sterling. So, what he's saying is, if you can get in £47 million sterling from the sale of the villas but you're going to need to spend £35.7 million sterling to do it, then the opportunity is worth the difference between those two figures, the difference between what you could get from selling the villas and what you'd have to spend to generate that money.

It doesn't include any discount for the time value of money or any interest costs. We can see that from the top of page 7, where he says:

"We have not carried out any detailed due diligence on the above points; neither have we undertaken a detailed development appraisal with cash flow forecasts. We have disregarded interest costs, mainly on the basis that there would be stage payments for the sale of units. However, we

have also disregarded the value attached to the balance of the development site. We have only considered the phase 1 development of 266 units, all of which are effectively sold."

My Lord, the problem with all of this is apparent from the email that we looked at earlier showing how much is owed to the Sanctuary clients. It was an attachment to an email, a table that we looked at earlier, <D2D10-00006946>, which had those various headings. If we can go to the final page of this document, please, we saw from this that if all the investors elect to complete, the total sum payable by them is just under £25.5 million, £25,496,168.62. If they were all to exercise their buyback option instead, the total sums payable to them would be £23.6 million -- it's that figure 23,598,718.39. That obviously causes a major problem for Mr Marshall's revised valuation. First of all, if all 280-whatever-it-is investors exercise their option to complete, there are not going to be enough villas to go around because he's saying phase 1 consists of 266 villas. But, more importantly, the total sum that would be payable by them is not the gross development value that he gives equivalent to £47.5 million. It is, in fact, a little under £25.5 million.

Therefore, if, on his approach, the various costs that you would incur come to £35.7 million, you don't even break even. You make a loss of more than £10 million because that's the amount you get if they complete. You have to incur £35 million to generate that cash. You have made a loss. And the site value is nil.

But, in fact, it is even worse than that because Mr Marshall excluded, as we saw, interest costs on the basis there would be staged payments. But (a) the investors actually weren't liable to pay anything further until completion, if they did elect to complete; and (b) Inversiones was liable to pay £88,000 per month to the investors pending the completion of phase 1 of the construction.

So, to do an accurate calculation, you'd have to take account of the interest payable to the investors on their deposits. You would also have to include interest payable on sums borrowed to pay construction costs because you're going to have to finance the development somehow. The investors aren't liable to pay anything further until completion. So you have to borrow money to pay for construction and pay the interest costs on that.

So, if you do proceed to build it and all the Sanctuary investors want to complete, then, on any view, the project is hopelessly insolvent and, on that basis, the site value is nil.

On the other scenario, if all the Sanctuary investors elect to exercise their buyback options, well, according to what Mr Marshall has been told, the gross development value is £247 million. Let's just assume, for present purposes, that Sanctuary is able to sell 266 villas for £47.5 million. The various deductions are £35.7 million. The balance left is £11.8 million. That's not enough to pay the sum of almost £23.6 million that would be owed to the investors in the event of them all exercising their buyback option. So the scheme would be insolvent again.

The relevance of this, of course, is Mr Marshall's valuation would have been obvious nonsense to anyone who knew anything about the Sanctuary project, such as, for example, Mr Thomson and Mr Hume-Kendall. The fundamental problem with trying to use the El Cupey land as security for any borrowing or, as we will see in due course, as consideration --

MR JUSTICE MILES: I wonder whether that's -- as you're explaining that, whether another way of looking at this is that, what he's doing, as I understand it, is giving a value of the land. He is not giving a value of it as owned by any particular person.

What you are doing in your analysis is saying, "Oh, well, here, lots of the units have already been sold, and, what's more, people have paid deposits". Is there another way of looking at this, which is

to say that, yes, that -- if you take that valuation at face value, that tells you a value of the land, but the fact is that the company is already contracted to sell all of these plots and, what's more, has taken deposits of whatever it is, 16.8 million, or whatever it was, and has given effective security in respect of that.

MR ROBINS: Yes.

MR JUSTICE MILES: So, is that really a fair criticism of the valuation method, or is your point, rather, that someone looking at that might say, oh, well, that's for, as it were, the gross value of the land, but you've got to set against that the liabilities.

MR ROBINS: It is both of those points, my Lord. It is a fair criticism --

MR JUSTICE MILES: Sorry, his valuation, when he does that sort of appraisal, what he calls an appraisal, isn't, as it were, talking about real world events, about who will own the property at the end of the day and your points about buyback options and things. It is just a valuation. He is just saying, whoever owns it, it is worth this amount. As I understand it, he's taken the sale value of the various plots as a kind of proxy for the overall amount for which it can be sold.

MR ROBINS: Yes. The problem with it as a valuation is that it is way out of line with anything else that we will see. We will see that in due course. My Lord saw that the land was bought for £708,000. It is not worth, on any view, the sort of numbers that Mr Marshall was identifying.

MR JUSTICE MILES: In his valuation, did he give any back-up for the construction costs?

MR ROBINS: No, it is based on what he's been told. He says, you've given me your development plan, you say that the finished properties can be sold for X. You tell me that your costs are Y. I'm going to add a few more deductions for -- I think he deducts something more for infrastructure. It is simply a mathematical exercise based on the figures that he's been instructed to use.

If we go back to it, it was <D2D10-00006671>. He says -- if we can scroll through it, let's see where he mentions the development plan. Can we have a look at the next page. Here we are, "Proposed scheme". This is where it starts. He says there's a scheme to build 266 units. Then, over on the next page, he describes that further. That's where we have, third paragraph from the end:

"You have advised us that sales have previously been achieved ..."

That's, my Lord, what he takes as the proxy. Then, over on the next page, we have the meeting with Julio Perdomo. Next page, "Analysis", and we get the assumptions for the phase 1 scheme at the bottom of the page. First, that planning permission is forthcoming with no onerous conditions; second, that the southern access road is hard surfaced at local government expense; thirdly, that the Puerto Plata bypass is built within the next three years; fourthly, that the contracted sales are deliverable at \$2,000 per square metre; and that the accommodation units can be built for \$1,000 per square metre; and, finally, that phase 1 can be sold with central facility and infrastructure costs of no more than \$10 million. So those are the assumptions.

When we look on the next page at the analysis in approach (b), it is simply the product of applying those assumptions to arrive at the GDV, the construction costs, central facility/infrastructure costs, he adds a 20 per cent developer profit. That's why I say it is not really more than a mathematical exercise based on the inputs. If you vary the inputs, you obviously get very different outputs. So, that's the first criticism of it.

But the more important one is the one that your Lordship has identified, which is that, as a property in this particular ownership in this particular situation, the valuation is obviously flawed and inapplicable because the company has already contracted to sell the villas. It knows how much it would actually get, and it's not the GDV that he used. It knows how much it would have to pay if they all exercised their buyback option. And it is a sum vastly in excess of the amount that he says would be left over at the end of the day.

The project is insolvent, on any view.

The security in favour of the Sanctuary investors continues to exist. So, this isn't unencumbered property of the London Group that can be offered up as security for loans from LCF. It is not property with valuable equity in it that can change hands in a transaction to justify the extraction of monies from LCF. It is ultimately owned beneficially by the Sanctuary investors through the mechanism that your Lordship has seen.

That trust in favour of the Sanctuary investors continued to exist notwithstanding the changes that occurred subsequently in the group structure. If we could look, please, at <MDR00015986>, this is an unsigned draft declaration of trust by International Resorts Group Plc as the trustee in favour of El Cupey Limited, in contemplation of a transfer of the shares in Inversiones by Sanctuary International PCC to International Resorts Group Plc. In other words, the shares in Inversiones were going to be transferred to International Resorts Group Plc but it would then execute a declaration of trust declaring, as set out in clause 1 at the bottom of the page, it holds the shares in Inversiones and "all dividends and interest accrued, or to accrue, upon the same or any of them upon trust for the beneficiary". If we go to the final page, we will see that the shares are the shares in Inversiones in the schedule. So that's what's contemplated. Then, on 12 June 2015, at <D1-0000716>, we see a letter from Mr Thomson consenting to become a director of Sanctuary International PCC Limited. At <MDR00016275>, we see that he was indeed appointed as a director of Sanctuary International PCC Limited. My Lord will see directors to be added to the company, in the bottom half of the page, Michael Andrew Thomson. Then, at <MDR00016284>, the existing director Sovereign is removed. On the next page, "Directors to be removed from the company: Sovereign Directors". Mr Thomson becomes director of Sanctuary PCC.

The next thing we see at <D1-0000096> is an agreement for the shares in Inversiones and, in fact, Tenedora to be transferred to IRG. After the notarial certificate on the next page, my Lord will see a share purchase agreement dated 31 August 2015 between Sanctuary International PCC Limited and International Resorts Group Plc.

We don't need to look at the detail, but it is an agreement for the transfer of the shares in Inversiones to International Resorts Group Plc.

Perhaps we can look at the next page, sorry, the page after that, just to make that good. The seller has agreed to sell and the buyer has agreed to buy the sale shares, and the sale shares are defined on the next page, please, the shares in the companies. And then, back on the previous page, that is defined to mean Inversiones and Tenedora.

So the shares in those two companies are to be transferred to IRG. That transfer doesn't happen immediately. We see at <EB0017315>, Michael Peacock is emailing Mr Sedgwick, copied to Mark Ingham, Mr Hume-Kendall and Mr Barker, and I think copied to himself, MP, Michael Peacock:

"Hi Robert, as discussed and agreed there should be another declaration of trust, this time between IRG Plc and El Cupey Limited, so the current arrangement (declaration of trust dated 30 July 2013) can be cancelled and the share register in Inversiones 51588 SRL amended."

Then at <EB0017647>, we see Mr Sedgwick emailing Mr Peacock on 11 April 2016 attaching "IRG Declaration of Trust re Sanctuary". He says:

"Further to our recent conversations I attach a draft declaration of trust with regard to the shares in Inversiones. As you will appreciate, Sanctuary International PCC is in the process of closing down and so is in the process of transferring the shares in Inversiones to IRG. Mark is dealing with the actual technicalities ... I would propose that IRG executes the declaration of trust. In essence it says that it holds the shares on the same basis as Sanctuary International PCC and subject to the terms of the development agreement. I have yet to have this approved by Simon and Elten as directors of IRG and no doubt you will want to get it approved by Alex Lee."

The attachment is <EB0017648>, and my Lord will see it is the same draft declaration of trust. I think it's been updated as to the execution date at the top of the first page. We do actually have a signed copy of it, <MDR00116028>. This is the executed declaration of trust, dated at the top 17 June 2016, by International Resorts Group Plc in favour of El Cupey Limited as the beneficiary.

If we can go to the signature page, my Lord will see it is signed by Mr Hume-Kendall on behalf of International Resorts Group and witnessed by Mr Sedgwick, executed as a deed by El Cupey and the signature is Michael Peacock.

So, notwithstanding the transfer of the shares to International Resorts Group, they continued to be held on trust for the Sanctuary investors.

Then, subsequently, the shares are transferred by IRG to Colina Property Holdings Limited. There is another declaration of trust at that point <MDR00124476>. This is dealing with the position after the transfer of the shares in Inversiones to Colina Property Holdings Limited. El Cupey is the fourth party. That's still the beneficiary. Over on the next page, I think it is going to be clause 1, there is a declaration of trust. Can we see who this one is signed by, please? Executed by Mark Ingham on behalf of Colina Property, by Mr Hume-Kendall on behalf of London Group and IRG.

Throughout the entire period, the shares in Inversiones are held on trust for El Cupey which is owned by Buss Murton (Nominees) on trust for the Sanctuary investors. The consequence of that is obvious. It is not that The Hill property, that has been acquired by Inversiones for £708,000, is not an asset that can be treated as unencumbered or available for the purposes of borrowing or to justify any transactions.

My Lord, that's the position in respect of The Hill. As regards The Beach, my Lord saw that the Sanctuary investors were given the option to transfer from The Hill to The Beach. But in the event it was decided not to proceed with the purchase and development of The Beach. If we could look at <D2D10-00005723>, my Lord will see that Mr Hume-Kendall is emailing Mr Woodcock and Mr Ingham. It seems like a draft email to someone else because he begins it "Dear Anabel". He is asking various questions about the Tenedora contract. He says:

"During our meeting on Friday evening our lawyers raised some issues from their review of the documents that we hoped you could help resolve for us." He asks:

"Are all the individuals selling this property with their full knowledge and at their free will", et cetera. My Lord can see, at the top of the page, that that email is forwarded by Mr Hume-Kendall to Mr

Golding. Then <D2D10-00005724>, Mr Hume-Kendall emails Ignacio Gomez, who was the main player acting for the vendors of the various Beach parcels. The subject is "Contract Playa Magante":

"Dear Ignacio, I am very sorry to have to inform you that following a very difficult weekend with our board of directors that we have recalled the \$50,000 we instructed the bank to send you on Friday. The reason for this is that our board of directors under [advice] from our General Attorney have found some complex problems with the transaction and have recommended we do not ... proceed until these are resolved.

"We have asked Andy Woodcock to travel to DR as soon as possible and he will meet you if you wish to try to sort out the issues with you.

"Spencer and I are both deeply disappointed but this is one of two major projects where we have encountered major legal and technical difficulties and it has been decided that we can only proceed when everything is clear."

At <D2D10-00005726>, Mr Hume-Kendall emails Richard Marsh, blind copied to Mr Golding, with the subject "I. Gomez", and he seems to predict that Mr Gomez will be upset. He says:

"As I am sure you will understand our board of directors have instructed me to advise Ignacio that we cannot proceed with the purchase until all these issues are resolved and although we have not heard from Ignacio we predict he will be pretty upset."

There is a decision that's been taken at this point not to proceed with the contract in respect of The Beach and they think that Mr Gomez is going to be upset. That seems to be right. At <D2D10-00005729>, Mr Marsh responds to Mr Hume-Kendall. It is halfway down the page:

"Dear Simon, we have been in touch with I Gomez, first he would not answer the phone, but then he phoned back.

"We asked if we can see him to explain the situation, he said he is very angry with Sanctuary for cancelling the transfer ..."

So that contract is not proceeding. We see that again in other documents. For example,

<D2D10-00006381>. It is a minute of a meeting of the board of directors at El Cupey Limited.

MR JUSTICE MILES: Can I just understand what the -- I'm just trying to follow the chronology here. These are in -- those documents you have just shown me are in August 2013.

MR ROBINS: Yes.

MR JUSTICE MILES: It is Mr Hume-Kendall who is writing -- he is talking about the fourth defendant but he talks about the directors, and so on. Who owns the rights at this stage?

MR ROBINS: Well, at this stage -- my Lord saw they started making their loans by Sustinere Plc to Sanctuary in May 2013. It is in May 2013 that Sanctuary starts writing to investors saying, "We have got a development partner. We can't tell you their name yet. But there is going to be the roadshow", and it is in May 2013 that Mr Hume-Kendall is discussing by email the proposal for the Sanctuary investors to pay additional deposits. It is in June 2013 that he goes on his roadshow to various provincial hotels to meet the Sanctuary investors and to persuade them that they should make their additional deposits.

It is towards the end of June 2013 that the proposed deal for Sanctuary investors is then set out in the various letters that your Lordship saw this morning. The El Cupey trust deed is signed at the end of July 2013 and it is over the rest of 2013/2014 that steps are taken to put the additional contracts in place, the new contracts.

In terms of the ownership, we saw Mr Thomson got 30 shares in Sanctuary International Resorts on 25 June 2013. There was then that email from Mr Hume-Kendall referring to owning a third, and it wasn't until the end of December 2013 that Mr Thomson got a further 25 shares. So, at this point, they have made the proposal, they have had the roadshow, they are receiving additional deposits. Mr Thomson has got 30 out of 80 shares.

MR JUSTICE MILES: And the director is -- is it Mr Woodcock?

MR ROBINS: I think it is Mr Woodcock. But it certainly seems to be Mr Hume-Kendall and Mr Golding who are running the show, making decisions about whether or not to proceed with the contract in respect of The Beach, and my Lord sees it is Mr Hume-Kendall sending the emails and copying them or blind copying them or forwarding them to Mr Golding.

MR JUSTICE MILES: The contract here --

MR ROBINS: Is the contract for the acquisition of The Beach.

MR JUSTICE MILES: Which was Tenedora?

MR ROBINS: Tenedora is the purchaser.

MR JUSTICE MILES: That's under the Sanctuary structure.

MR ROBINS: Yes. My Lord saw Tenedora was a direct subsidiary of International Resorts.

MR JUSTICE MILES: So, as it were, the ownership position in the group at this stage is that Mr Thomson has got 30 per cent of the shares -- is that right?

MR ROBINS: 30 out of 80.

MR JUSTICE MILES: 30 out of 80, sorry. Then there is the document a little bit later -- was that April 2014? -- where he was said to have 5 per cent. Is that right?

MR ROBINS: Yes, that's right.

MR JUSTICE MILES: 71 per cent was held for --

MR ROBINS: Mr Golding and family.

MR JUSTICE MILES: And --

MR ROBINS: 23.75 --

MR JUSTICE MILES: For D10. But that was a little bit later?

MR ROBINS: Yes, that's right. In these emails in August 2013, Mr Hume-Kendall is telling Mr Gomez that they have got issues with the transaction and they don't intend to proceed with the contract to acquire The Beach. My Lord, I notice the time. I don't know if the shorthand writer would like five minutes.

MR JUSTICE MILES: Yes. We will take five minutes now. (3.16 pm)

(A short break)

(3.21 pm)

MR ROBINS: My Lord, we were looking at the emails from Mr Hume-Kendall explaining that they didn't intend to proceed with the contract to acquire The Beach. The problem that poses for Mr Hume-Kendall is obviously they have given options to the various Sanctuary investors to transfer their investment to the Beach. So, what you see in a number of documents is Mr Hume-Kendall essentially pouring cold water on the idea of proceeding to acquire and develop The Beach. The first example is at <D2D10-00006381>. Let's try another one. I will read this one out. It is a minute of an El Cupey board meeting dated 11 October 2013. It says: "As a result of his visit to the Dominican Republic, SHK is confident that the resort of El Cupey could yet be a success. He said that his personal view was that the other proposed development at The Beach was not quite ready. It is some two hours' drive from the airport and, while it looks like a desert island paradise, it will be difficult to provide the sort of facilities that most tourists require and, in his view, it is not appropriate at the moment."

We see another passage to the same effect at <D2D10-00006379>. It is another minute of a meeting of directors of El Cupey, this time dated 21 January 2014. On page 2, if you look at the middle of the page, there is a heading underlined "Which site?":

"SHK is talking to other local landowners regarding potential land swaps.

"The allocated £300k planning spend was discussed; El Cupey needs to decide which land should be developed before committing to spend this money." Then just below that, there is a heading "The Beach", after the heading "Land values": "Planning permission has been granted on Magante -- The Beach. There is an unwarranted risk in developing this beautiful site due to a potential legal dispute as there are 38 owners of this site on which Sanctuary has paid for an option to purchase. SHK recommended that these options are only progressed with great care and this is probably not the best option at this stage." Then <D2D10-00052881> is another El Cupey board minute. Under the heading "Which site?", it says: "SHK asked RM [Richard Marsh] which site he would choose to built at present based on his local knowledge: "Magante (Beach) no. Too many legal issues regarding title despite planning permission being available. Could be a long time before satisfactory legal title can be obtained so the business risks are too great."

Then at the bottom of the same page, "Magante -- The Beach":

"Planning permission has been granted on Magante -- The Beach.

"There is an unwarranted risk in developing this beautiful site due to a potential legal dispute as there are 38 owners of this site on which Sanctuary has paid for options to purchase which should only be progressed with great care which is not an option at this stage." Then that remains the position. There are no steps taken in relation to that land. We see that a bit later at <MDR00035933>. It is an email from Mark Ingham to Mr Thomson dated 15 April 2016, where he says: "Andy, hope all is well -- we don't own land at Magante -- Tenedora just has a contested purchase agreement. Inversiones owns land at El Cupey." <MDR00080319>. This should be an email from Alex Lee of Buss Murton to Mr Thomson, dated 16 March 2017. In the third line:

"I am going to try and speak to Mark Ingham about the Magante position, as Robert didn't really know. What I do gather is that the position appears to be that the contract for the sale of the property there has not yet completed and, in fact, there is going to be a new contract with respect to it. I will get more details." We then have <MDR00080867>, a spreadsheet as at 20 March 2017, if we

can see it in native form, please. I think it is perhaps sheet 1. This shows the summary of anticipated costs for DR. Under the heading "Magante" in row 23, we begin to see various sums that are still to be paid in respect of the acquisition of the various parcels of land on that property. So, as at March 2017, they haven't yet been acquired. Then, finally on this point, <MDR00080904>, this spreadsheet identifying the various sums payable is sent to Mark Ingham, copied to Alex Lee and Mr Thomson, among others. The email gives a commentary of the various difficulties that were being encountered at that point in time in negotiating with the various owners to acquire the parcels. As I said earlier, my Lord, it's in late 2017 that Tenedora begins to pay for and acquire some of the parcels of land and, in 2018 and 2019, that some of those parcels of land, not all of them, begin to be registered in its name and, ultimately, it has a patchwork of parcels of land.

So, throughout the entire period that we are concerned with, right up until the second half of 2017, it doesn't actually own any of these parcels at all. Again, there is an unreliable valuation to look at before we turn to the more reliable evidence of value, and that's at <D1-0000457>. It is another valuation from Mr Marshall of East Sussex, a desktop appraisal on land at Playa Magante, Puerto Plata prepared for International resort Group. We will see at page 3 that it is addressed to Mr Thomson, dated 26 May 2014. Then on page 6, interestingly, in the last sentence, Mr Marshall -- I'm looking for a sentence that says, "We have not ourselves seen evidence of title": "We have not ourselves seen evidence of title." Which is, of course, important because Tenedora, at this point, didn't actually own any of the parcels of land yet.

Then on page 6, in the final paragraph, in the middle of the paragraph, he says after "Appendix 3" in bold:

"We have also been provided with a schedule of unit sales prices showing a total gross development value of \$119 million and build costs totalling \$55 million." So, it's information that he's been provided, a gross development value of \$119 million and build costs of \$55 million. He says that's been attached at appendix 4.

Then on page 9, under "Meeting with Julio Perdomo": "We met with Julio Perdomo on our last day in the Dominican Republic."

He says what he said in his other report about Mr Perdomo:

"Senor Perdomo stated that the reasonable market value of the Playa Magante land was in the region of \$329 per square metre as the 'Average value of similar lands valuated and offered in the national and actual market'."

At the bottom of page 9 he sets out two approaches. (a) is:

"Apply Senor Perdomo's rate per square metre, or "(b) carry out a simple development appraisal." He says the first approach doesn't actually work because, although Senor Perdomo is knowledgeable and experienced and the analysis of comparables is generally the favoured means of assessing value, they noted from the meeting with him that he "took little account as to the extent of development authorised on each comparable or the extent to which his analysis should be differentiated to reflect location, situation, lot size, planning designation, road access and development timescale. His rate of \$329 per square metre produces a site value of \$77 million, a figure which is in excess of the difference between your assessment of gross development value and build costs. We therefore consider that Senor Perdomo's site value is excessive and that it would not be prudent for you to use his figure to arrive at a fair value for the site". When we look at the expert evidence, that judgment

was entirely correct. The expert witness in these proceedings says that the land on The Beach would have been worth about \$24 per square metre at this time, not \$329 per square metre.

Mr Marshall, in all fairness, does seem to have twigged that there was something wrong with Mr Perdomo's figures and decided not to use that method, and that left him with his option (b) which he described as a simple development appraisal. On page 10, we see the assumptions. The first is that planning permission is in place with no onerous conditions. Secondly, that the land between the site and access to the main road has been acquired, which it hadn't been. Thirdly, that sales are deliverable at \$2,500 per square metre based upon covered areas. Fourthly, that the accommodation units can be built for \$1,100 per square metre. And, finally, that the units can be sold with central facility and infrastructure costs of no more than 10 million. He says:

"We have not carried out any detailed due diligence on the above points, neither have we undertaken a detailed development appraisal with cash flow forecasts. We have disregarded interest costs, mainly on the basis that there would be stage payments for the sale of units. As there are no presales in place, we consider that you should adopt a developer's profit rate of 30 per cent on cost."

He says:

"This approach would give a fair value as follows ..."

So, what he does is he sets out the GDV figure that he's been given. He deducts the construction figure that he's been given. He deducts his figure for central facility and roads and for developer's profit, and he's left with \$37.9 million. In light of what he says about not having carried out any due diligence, it is, again, an exercise of obviously limited utility. He's saying, basically, "I've been told that the GDV is \$119 million, but I haven't checked that. I have been told that the build cost is \$55 million, but I haven't checked that either. If I deduct 55 from 119 and then deduct another 10 for infrastructure and 30 per cent for development profits I'm left with 37.9 million". But he doesn't seem to have been told about the unperformed sale contract with a price of \$3.5 million, even though that's obviously a very material fact you would have thought it would be prudent to explain to any valuer. He said essentially, "Well, if you implement your development plan, then, on the basis of your assumptions, you will be left with \$37.9 million".

But if that were true, then you would expect Mr Hume-Kendall and his associates to proceed to buy the land and develop it. There is a great deal of profit they could potentially make. My Lord has already seen they don't actually see any benefit in developing it. They get into a row with Mr Gomez, telling him they are not going to proceed with the contract. They don't actually proceed to acquire any of the parcels in the site. The Beach remains an unperformed, disputed contract. The valuation was entirely unreliable, as would have been apparent to anyone with any knowledge of the Sanctuary Investment Scheme, including Mr Hume-Kendall and Mr Thomson, because it is a development plan for a site they haven't acquired and don't intend to develop. The real values are apparent from other materials before the court.

My Lord saw earlier the sale contracts. It was £708,000 for The Hill and \$3.5 million or £2.2 million for The Beach. That would obviously be the price to acquire it. If you spend that money, you get an asset worth that much. Those valuations are broadly consistent with the valuations obtained by the administrators. The first is <MDR_POST_00002207>. this is a valuation from Cushman & Wakefield, dated 1 June 2020, prepared for the administrators. If we can look at page 5, please, this one relates to The Hill, El Cupey. They give an opinion of value for -- just below the halfway point on the page -- \$2 million market value as-is on 1 June 2020, \$1 million liquidation value as-is on 1 June 2020. The explanation in the box below tells you what those terms mean. Market value is on a sale within 12 to

24 months, liquidation is on a sale within three to six months. Those figures are broadly in line with what you might expect to see, given that The Hill was acquired for £708,000 in 2012. Allowing for a modest amount of property appreciation, one might expect to see a value in that sort of region. For The Beach, a Cushman & Wakefield valuation at <MDR_POST_00002205>. Again, this is for the administrators, dated 1 June 2020. If we look at page 5, please, my Lord, you will see the opinion of value is \$4 million market value, ie, 12 to 24 months, and \$2.8 million liquidation value, ie, three to six months, again, bearing in mind that the contract price in 2012 was \$3.5 million. But, of course, we also know that opportunity wasn't attractive because the purchaser didn't proceed to completion under that contract. These figures are in the sort of range that you would expect to see.

MR JUSTICE MILES: Is that a valuation of all of the land? Because you have told me only some of the land was actually acquired. Does it describe what they're valuing?

MR ROBINS: Nothing is ever straightforward. Mr Shaw is telling me that they valued all of the land that your Lordship saw in that spreadsheet prepared by a firm of Dominican Republic lawyers called Serulle & Associates. It comes to about 295,000 square metres. The amount of land under the 2012 contract was described in that contract as being in the region of 245 or 249 square metres, but Rofiasi, who we will see in a moment, carried out a survey of the plot in the 2012 contract and concluded that the total area stated in that contract had been overstated and that, in fact, the area known as Magante 1 was an area in the region of, I think I'm right in saying, 145 -- 152 square metres, I'm told.

So, this one is for an area in excess of the area covered by the 2012 contract.

The expert evidence in respect of The Beach, we will see it in a moment, the same for the Rofiasi valuations we will see in a moment, is for the area covered by the 2012 contract, but it turns out not to be as extensive as was stated in the 2012 contract. So, this is Cushman & Wakefield --

MR JUSTICE MILES: If one was to draw a line on the map, the map would look the same as that in the 2012 contract.

MR ROBINS: For this one? This one would be bigger.

MR JUSTICE MILES: This one would be bigger, but for the other two you described, including your expert evidence, it would look the same on the map, but in fact, is this right, someone says that that overstates the acreage, or have I misunderstood that?

MR ROBINS: Perhaps I can cede to Mr Shaw, who has looked at this in far more detail than me.

MR SHAW: My Lord, unfortunately, I don't think it is quite that straightforward. It starts off with the plot being 241,000 as per the contract. Primed Dominican Republic counsel produced a spreadsheet we saw which contained plots totalling around 295,000 metres squared, which include most of the 38 plots in the contract, but not all of them -- I think six are missing -- and then some additional plots of land. But that was the area valued by Cushman & Wakefield.

What Rofiasi did, and what the expert did, is, they didn't look at the contract, they looked at the plot of land, I think from the development plan, and mapped it and said, "Actually, this is a plot of land that is Magante 1. That's 152,000 metres squared". Now, only 91,000-odd of that is actually in the table produced by Serulle. The development plans for Magante one, it doesn't appear the contract was for the entirety of Magante 1. What you have is this area of Magante 1, Magante 2, various parcels of land dotted around and no coherent piece of land that could be developed. But the bit that's valued subsequently by the expert and by Rofiasi is what they took to be the development site

Magante 1 on the assumption that it was all owned by Tenedora. I'm sorry, that's probably not shed a lot of light, but that's about as far as we've been able to get with it.

MR JUSTICE MILES: Not entirely, but all right.

MR ROBINS: As I say, it is all rather complex. But, ultimately, it doesn't make a huge amount of difference because, whatever it is you're valuing, you're drawn inexorably to the conclusion that the land is worth only a fraction of the value that it was presented to have for the purpose of securing loans and justifying consideration under transactions to extract monies from LCF.

The Rofiasi valuations are -- the first one is <MDR_POST_00002202>. They valued The Hill first, my Lord will see on the first page, "Property: land in a weed state". If we look at the next page, you will see a letter to "Distinguished Sirs" presenting their appraisal report. The next page is just contents. They identify the property. This is The Hill. So we do know the area of this one. It's the 1.3 million square metres located on a hill with cattle grazing on it. Then the next page, please. They describe the property. They point out that it's -- under "Land use, Features":

"The area, in a general sense, is an area that has traditionally been used for livestock, mainly dairy cattle."

They say it is "Of rugged topography and access by roads with a certain degree of deficiencies". Then, the next page, they think that the property is ultimately suited as grazing land. They say, in the second paragraph under the heading "Background": "The sustained condition of poor communication pathways has prevented the evolution from traditional use to vocational use of mountain tourism." They say there are some attempts to change use that have generally not had the expected success over time. At the bottom, "Summary of Current Use", they say it is "in disuse, although there is a 'sub-use' of cattle grazing informally and very limitedly. There is a small area in the Southpart ... with a trace of very primary development consisting of the layout and sub-base of communication routes ..."

I think that's the "sand or caliche" we saw in the other description. They think the best use is livestock use and they give a description of the topography. On the next page, please, they explain other matters. Can we see the next page? Then we go to "Values, Comparisons" and identify some comparable properties which, my Lord will see on the map, are very close by and very similar topography. They explain what those properties were offered for or sold for. Then the next page, please. They go into details of comparables. Then they give their conclusions at the bottom of the page. They conclude:

"... the market value of the property appraising consisting of a barren land with an area of [1.3 million] square metres ... is ... (US\$928,227) ..." That, at the time of this report, is equivalent to about £700,000. It might, I suppose, be considered a low-end valuation, given the property was acquired for £708,000. It hasn't really gone up in value in eight years. But, then again, our expert Mr Watson says that property values in the Dominican Republic were fairly flat over that period of time, so it might not necessarily be right to --

MR JUSTICE MILES: Who was this one done for?

MR ROBINS: For the administrators, again, but by a local agent, Rofiasi, on the island. They also prepare a valuation of The Beach. <MDR_POST_00001611>. If we could just scroll through until we find the map. Maybe there is not one in this. I think I'm imagining things. Instead, please. For The Beach, they say it is an approximate area of 152 square metres, which is what Mr Shaw was saying. They measured what they understood to be covered by the 2012 contract or what they understood

to be called Magante 1 and thought that it had that size. On that basis, they valued it at the sum of just under \$2.7 million. At the time of that valuation, that's about £1.9 million.

Again, it might be thought to be a bit of a low-end valuation in the scheme of things, but it is not a million miles away from the contract price of \$3.5 million, particularly when it's recalled that that contract didn't proceed to completion because the purchaser seemed to think that the price was too high. So, those are the valuations obtained by the administrators. We have then also got the values provided by the expert.

If we could go, please, first, to <D1/2>, page 3, this is Mr Watson's report, and he gives a valuation summary for March -- in the middle of the page, March 2012, April 2016, December 2016 and April to November 2017. The first market value he gives, four rows up from the bottom, is the present market value for The Hill. He attributes a market value of \$5.43 million currently. For 2012, in the penultimate row, he says \$3.8 million, which is about, as of March 2012, £2.3 million, £2.4 million sterling. 34 Over the page, for April 2016, he says \$4.4 million, that's about £3 million as at that date. For December 2016, he says \$4.4 million, which is about £3.6 million as at that date. And then, for April to November 2017, he says \$4.55 million, which is about £3.3 million, £3.4 million. So, rather higher than we have seen in the other documents, but there it is. That's the expert's report on behalf of the claimants from Mr Watson. Still only a small fraction of the sort of values that were attributed to this site by various of the defendants.

For The Beach, we have got expert evidence as well. If we could go, please, to <D1/1>, page 3, he's looked at a similar date, it's not identical, August 2012, April to August 2015, April to December 2016 and April to November 2017. His current market value, four up from the bottom, is \$4.9 million, which is about -- on the current exchange rate, about £3.8 million. Looking at the historical valuations, the penultimate row, market value as of August 2012, he says \$3.45 million. In other words, pretty much identical to the contract price under the 2012 contract for the acquisition of the Beach. Over the page, for April to August 2015, he says \$3.7 million; at the exchange rate at that time, that's about £2.4 million. For the next date range, April to December 2016, he says \$3.9 million, and then for April to November 2017, he says \$4.1 million. So a small appreciation over that period from the contract price to a sum of about \$4.1 million. As I say, these valuations, again, although perhaps at the higher end of the reliable evidence before the court, are still only a small fraction of the asserted values on which reliance is placed and from which much was made by various of the defendants.

We looked at earlier, and perhaps we can go back to look at it now, <MDR00029049>. This was the letter of representation signed by the second defendant. At the bottom of the page, he gave a value for El Cupey of £12 million. Of course, vastly in excess of the contract price of £708,000 which was actually paid to acquire it. But also ignoring completely the interest of the Sanctuary investors who were the ultimate beneficial owners of that property through the trust structure that your Lordship has seen. It was not an unencumbered asset of the London Group. There was no equity in it for the London Group given (a) the value of the property; and (b) the existence of the trust. <D2D10-00020177>.

MR JUSTICE MILES: Sorry, can I just try and understand this. Part of your case is that, because of the trust arrangements, the asset didn't have any value because, in effect, there was security for 16.8 million, or whatever it was.

MR ROBINS: 25-point-whatever-it-was. Either the amount of deposits they provided or, if the properties developed and they exercised their buyback options, 25 million.

MR JUSTICE MILES: At least the lower of those, just for the purposes of this question.

MR ROBINS: Yes.

MR JUSTICE MILES: Just assume it is effectively security for the deposits.

MR ROBINS: Yes.

MR JUSTICE MILES: At the stage of that letter you were just showing me, if we can just go back to that, which is 20 January --

MR ROBINS: Well, 17 August, the date at the bottom.

MR JUSTICE MILES: All right. As at that date -- I'm just trying to get into my head who owns what at this stage. Because this is a letter by London -- oh, go back to the previous one.

MR ROBINS: The previous one was <MDR00029049>.

MR JUSTICE MILES: A London Group letter. This is London Group Plc, January 2016, at least on the top of the letter.

MR ROBINS: Yes.

MR JUSTICE MILES: So, what interest, as it were, does London Group Plc have -- what does it own which it could be saying, "We are going to pledge?" Has it got shares indirectly in El Cupey, in the land at El Cupey somehow? How does it work?

MR ROBINS: By this point, the shares in Sanctuary PCC have been transferred to International Resorts Group which is holding them on trust for El Cupey.

MR JUSTICE MILES: Leave aside the trust interest a minute. I understand your argument on that. What is it that the London Group has that it could be offering? It says here "the group's development sites". Does it have an interest in what was the Sanctuary Group you have shown me at various points?

MR ROBINS: I think, and it is just being checked, London Group Plc owns shares in IRG, which at this point owns 99 per cent of Sanctuary PCC, which owns Inversiones, which owns The Hill.

MR JUSTICE MILES: So it is IRG by this stage?

MR ROBINS: Yes. That's why the trust is relevant because it is IRG that executed the declaration of trust in favour of El Cupey.

MR JUSTICE MILES: So, looking at it from the point of view of London Group Plc, its asset is the shares in IRG; is that right?

MR ROBINS: Yes.

MR JUSTICE MILES: Sorry, I'm going to be asking these questions at various stages. Because there were so many changes in the way that assets were owned, it is important, when one looks at documents, at various stages, to understand who owned what, as it were, at various stages -- at those relevant stages. I'm keen to try, as far as I can, to have that in mind when we are looking at the documents.

MR ROBINS: Yes. At best, it owns legal title to the indirect parent company of the company which owns the land. The company which owns the land acquired it for £708,000 only a few years earlier.

The shares in that company which acquired the land are now held on trust for a company called El Cupey Limited, which is owned beneficially by the Sanctuary investors as security, either for their deposits or for any other obligations that may be owed to them. But there is no asset worth 12 million in the hands of London Group Plc that the directors could represent that they own. It becomes even clearer, when we look at <D2D10-00020177>, which is the letter dated at the top 29 April 2016, at the bottom 17 August 2016, which gives a value of The Hill in the sum of \$25.9 million, equivalent to £19.749 million. And Magante site, The Beach, \$25.6 million, equivalent to £19.5 million. Those valuations are fantastical. First, as regards The Hill, it ignores the fact the property was acquired only a few years previously for £708,000, and the trust, and as regards Magante, that property hasn't been acquired. There was a contract to acquire it for \$3.5 million, but they fell out with Mr Gomez and decided not to proceed with the purchase. So, this is a work of fantasy.

What's interesting, if we look at --

MR JUSTICE MILES: Sorry, again, here, we have now got this being said by Leisure & Tourism Development Plc, and that then says that it owns International Resorts Group; is that right?

MR ROBINS: No. It says Leisure & Tourism Developments Plc including International Resorts Group Plc.

MR JUSTICE MILES: What's the ownership position at this stage with this company?

MR ROBINS: I'm going to see if I can answer that by reference to another document which might be helpful. That is, if I can find it, an ownership chart that was prepared, I believe, by Michael Peacock. Let's have a look. <MDR00081717>. This is a bit later. This is the group structure as at 28 March 2017. My Lord, it might actually be quite helpful to look at the schedule to the statement of agreed facts because we had exactly the same problem as your Lordship, trying to keep track of which company owned what and when.

In the statement of agreed facts -- Mr Judd prepared the first iteration and deserves the credit -- there is a schedule. It is in the trial bundle, bundle A1, <A1/5>. There is a schedule running to 118 pages of various companies. If we look at page 34, this is the company that becomes Global Advance Distributions and is used as a conduit for monies from LCF to various recipients and also to administer the Ponzi scheme. But it is known as International Resorts Group Plc from 19 December 2013 to 9 November 2017.

If we look down at the bottom of the page, we can see that, from 1 September 2015, it is owned by the London Group Limited. That's why I'm pausing, to say Leisure & Tourism Developments including International Resorts Group is a bit odd. You're talking about a company and its parent company. If we go back to the document that we were just looking at, I think there is potentially a simpler way of dealing with it, which is <D2D10-00020177>. That's to say that the Hill has been acquired for £708,000 and is held in trust for investors to whom at least £16 million is owed, and the beach, the Magante site, hasn't been acquired yet. There is a contract to acquire it for \$3.5 million, but they have fallen out with Mr Gomez and they are not proceeding with that contract. So, whatever the corporate structure might have been in terms of which company owned what at any time, one can say that the underlying assets in respect of which these representations were made didn't actually exist as assets of any group. The first was held on trust for third parties and the second hadn't actually been acquired. So the figures that are put on them of £19.7 million and £19.5 million are utterly fantastical.

MR JUSTICE MILES: This says it is the value of security pledged against the loan. So this seems to be saying that there have actually been pledges at this stage. Was there some sort of specific pledge in respect of The Hill, or was it part of a sort of debenture type --

MR ROBINS: Debenture. We will see that in due course. There was an English law debenture executed by Leisure & Tourism Development Plc. There were attempts, at a much later date, to try to get some sort of security over properties in the Dominican Republic, but that ran into difficulties obviously in respect of The Beach because nothing had been acquired yet. It is a long and involved story. There are emails back and forwards for months, but no security is ultimately registered for 36 a very long time. I think I might be right in saying that, in the end, there is some token security in the sum of something like \$20,000 that is registered over some parcel of land on The Beach after it's been acquired. But, for the majority of the period that we are concerned with, there is simply an English law debenture by a borrowing company.

MR JUSTICE MILES: What about the other piece of land, The Hill? Was there, as it were, a specific pledge --

MR ROBINS: Not as far as I'm aware.

MR JUSTICE MILES: -- or mortgage over the land?

MR ROBINS: We can check that, but not as far as I'm aware.

MR JUSTICE MILES: In other words, it's done through the shareholding structure?

MR ROBINS: Yes. The interesting thing with this letter that we are just looking at, if we can go to <MDR00052809>, we see an email from Mr Thomson to Mr Barker and Mr Hume-Kendall, security certificates, and he attaches two things, the first of which is LTD asset valuation certificate:

"Hi guys, we are finalising our accounts and to assist with fundraising we are adding a security section to the notes, basically it details the value of the assets we hold as security against our loan book and it will give a good indication to all as to the loan to value of the loan book.

"I have prepared certificates for LTD and LOG (based on discussions earlier in the year) which are attached, please can you review and if happy put both on headed paper, sign and return them to me."

The first of those is <MDR00052813>. It is the document we were just looking at. I mention that because it rather shows that, contrary to first impressions, and perhaps expectations, that this is a document from Leisure & Tourism Developments to London Capital & Finance, it is actually one prepared by Mr Thomson and he asks Mr Hume-Kendall to sign it. Of course, Mr Thomson was closely involved with the Sanctuary Group, as we saw, and processing various payments through his company One Monday. He knows the truth in respect of these properties and knows that this letter, the contents of this letter, is a work of fiction.

There's also a letter signed by Mr Hume-Kendall on 16 January 2017 at <D8-0008779>. It is dated October 25, 2016, but, as we will see in a moment, it is signed subsequently. Sorry, wrong letter. We need to look at page 2 of this document. Dated 20 December 2016 and signed subsequently to Mr Thomson: "I refer to the current loan facility and our recent discussions, as you know we wish to consider with you reorganising the facilities so that the loans lie with the subsidiary companies which have the relevant assets. Presently, the current facility is close to its maximum limit and I would be

grateful, in order to continue the successful progress of the various projects, if you could kindly consider a temporary extension of our current facility to say £30 million.

"In support of this request I have set out the current values of the company's portfolio of assets." The second is El Cupey, £30 million. The third is Magante, £14 million. That letter, although it is dated 20 December 2016, was signed on 16 January 2017. We can see that if we go first, please, to <MDR00071397>. It is an email from Mr Thomson to Mr Sedgwick with the subject "Letters". The attachments are "Default notification and extension request letter to London Capital" and "Facility extension letter to London Capital". He says:

"Hi Robert. These are the letters I sent over last week."

The first, <MDR00071398>, is a draft letter. Although Mr Thomson has sent it out on 16 January 2017, it is dated, at the top, I think what should be October 25, 2016. It says:

"I regret that it is not going to be possible to finalise the accounts for Leisure & Tourism Developments Plc in time to file them by their due date ... The major reason for this is that we are waiting for updated valuations on the company's portfolio of assets and there are some technical accounting issues to be resolved."

The final sentence:

"I appreciate that this is a default under our facility agreement and would be grateful if you could agree to extend our time to file these accounts." It is obviously backdated to 25 October so that it can look like the waiver was granted in advance of the default.

The second letter --

MR JUSTICE MILES: Sorry, I just want to understand this. That's attached to an email from Mr Thomson, saying, "I sent these out to" --

MR ROBINS: He's sending them to Mr Sedgwick, as we will see in a moment, to say, "Please can you get these executed for me?". He needs to present --

MR JUSTICE MILES: But it is a letter addressed to LCF.

MR ROBINS: To LCF. He's saying, "Sign this letter and return it for me so I can show my accountants and auditors that I waived the default before it occurred". He is sending it out on 16 January 2017 and saying it should be dated October 25, 2016, so that it looks like it was done and dusted in advance of the deadline for filing accounts on 28 October and that the default which has occurred was, in fact, waived before it had occurred. It is to present a false impression. The other attachment is <MDR00071400>. This is the draft of the -- the first draft of the letter we saw a moment ago requesting an extension to the facility. The reason for this one is that Leisure & Tourism Developments has by this point borrowed vastly in excess of the facility limit and so they want to have something to show to the accountants and auditors to make it seem as though the facility was extended before the limit was exceeded.

The spaces for the valuations of Waterside, El Cupey and Magante in the middle are blank.

If we look at <D8-0008772>, we see Mr Sedgwick sends the first of those two letters to Nicola, who was a secretary or personal assistant, at London Group, saying, "Please print this letter out on LTD notepaper and get it signed by Simon. It is important that the letter is dated 25 October 2015". And the attachment is the draft letter that we have seen requesting the waiver of the default before it

occurs. But, obviously, it is backdated because this is 16 January 2017. Then, at <D8-0008775>, Mr Sedgwick sends the second letter to Nicola saying:

"Please also send this letter in the same way, dated 20 December 2016."

This is the facility extension. Again, as I said, it needs to be backdated to present the false impression that the facility was extended before the limit was exceeded.

If we look at the attachment to this one, <D8-0008776>, by the time Mr Sedgwick is sending it to Nicola, the values have been added in the middle of the page. It is not clear whether they were added by Mr Sedgwick or whether he was acting on instructions in doing so, but he's added the values.

Then at <MDR00071455>, we see Nicola sending the two letters from Simon, as she describes them, to Mr Thomson, copied to Mr Hume-Kendall and Mr Sedgwick. The letters are <MDR00071456>. They are both in the same PDF. On the first page is the default waiver letter, backdated to 25 October 2016, so it can look like the default was waived before it occurred. Then the second page of this is the facility extension request, backdated to 20 December 2016, so it can look like the facility was extended before its limit was exceeded. It's signed by Mr Hume-Kendall with those values in the middle of the page.

My Lord knows why we submit that those values for The Hill and The Beach are fantastical and Mr Hume-Kendall and Mr Thomson would have known that very well.

MR JUSTICE MILES: Just remind me, was Mr Thomson a director of LTD?

MR ROBINS: We need to check schedule 1 to the neutral statement of uncontested facts.

MR JUSTICE MILES: Because those letters that you have just shown me -- just from that trail you have just shown me, and without any further comment -- seem to be being drafted by him for LTD to send to him.

MR ROBINS: Yes. He wasn't, at this point, a director. The reason I pause is I'm not sure if he was previously. He was certainly involved with Sanctuary. My Lord saw he became a director of Sanctuary International PCC. He was a director of El Cupey. He knew all about the Sanctuary Investment Scheme. I have been told it's page 66 of schedule 1, he was a director of Leisure & Tourism Developments until 12 January 2016. So, by the time he's sending these out in January 2017, he's ceased to be a director. He's not been a director for a year. Mr Thomson prepared the security valuation spreadsheet we saw earlier. It is probably appropriate to go back to it at this juncture, <MDR00077856>. We need to open it in native format. We see the values that he's attributed to the so-called assets for the purposes of security valuation. In row 16, land at Playa Magante, column E, £37.95 million. Never mind the fact that Mr Marshall's report said \$37.95 million and Mr Thomson has merely switched the dollar sign for a pound sign to increase the amount. He's done the same for El Cupey. Mr Marshall had said \$19.35 million. Again, Mr Thomson switched the dollar sign to a pound sign to increase the amount. But he's also, of course, ignoring the fact, of which he is fully aware, that The Hill is effectively held on trust for the Sanctuary investors and the Marshall valuation of The Hill can't be relied on because it doesn't reflect the position of the property in its ownership state.

And The Beach hasn't even been acquired. It's being treated here as an asset worth £37.95 million, even though there was only ever a contract to buy it for \$3.5 million, which was never completed because they fell out with Mr Gomez and decided not to pursue it. They haven't acquired any of that

property yet. In any event, Mr Marshall's valuation, which I said was in dollars, not pounds, was premised on there being a development in accordance with a development plan which the relevant individuals had no intention of actually implementing and on the basis of assumptions which were, therefore, entirely irrelevant. I think possibly we have time to look at a few more documents.

MR JUSTICE MILES: I think we might draw stumps there.

MR ROBINS: Okay.

MR JUSTICE MILES: I have seen Mr Slade has come back into court. I have been told that there is an application, but that's something that obviously can't be dealt with at the moment. I will hear from the parties in the morning their proposals of when and how that can be dealt with. And then there is also the position with Mr Warwick's claim.

MR SLADE: My Lord, I have brought with me a hard copy bundle in relation to the application. I don't know whether your Lordship would find it convenient.

MR JUSTICE MILES: Yes, I will have that. Thank you, Mr Slade.

(Handed).

We will resume at 10.30 am tomorrow. Thank you. (4.30 pm)

(The hearing was adjourned to Tuesday, 20 February 2024 at 10.30 am)

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