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

BL-2020-001343

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 2 - Tuesday, 20 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

Housekeeping

MR ROBINS: My Lord, I think there are three pieces of housekeeping before I answer some of the questions that your Lordship raised yesterday and I was unable to answer yesterday.

The first relates to the application by Mr and Mrs Hume-Kendall. I am told, although Mr Shaw is in a much better position to explain it to your Lordship, if necessary, that the parties are now extremely close to reaching agreement. Crowell & Moring provided comments on the draft order to my instructing solicitors at some point yesterday evening. We responded this morning. I am told that there are only three remaining points that are yet to be resolved by further discussion between the parties. So, we would invite your Lordship to give the parties that opportunity to resolve the matter. As I said, if your Lordship wants any more assistance on that from our side, it will be for me to hand over to Mr Shaw to explain it further.

MR JUSTICE MILES: Mr Warwick, what is your position on that?

MR WARWICK: My Lord, I'm afraid I will have to press the point. An order is needed. There are differences which create significant difficulties: one, in terms of delay; another in terms of sequencing as between your Lordship's order and the order that would have to be given by Southwark Crown Court in respect of the criminal restraint order.

I'm afraid what we are seeing here is a sort of rolling process of, for want of a better expression, kicking the can down the road with dealing with this. It matters very much to my clients that they are able to move forward with the benefit of what your Lordship has already ruled they should have, subject to suitable security arrangements.

My learned friend is correct that the parties have moved closer together, but I fear that at least two of the points between them may require some resolution and a sort of daily process of checking in may not resolve that without your Lordship hearing this application briefly.

The common ground does streamline the application as to whether a variation should be made, for example, a sequencing of drawing down against security, my Lord, and also the treating of a pension asset about which your Lordship heard submissions in November separately from the remaining personalty. I estimate that it would need around 30 minutes of the court's time this morning to be heard, and it could be put to bed that way, my Lord.

MR JUSTICE MILES: Well, my experience is that 30 minutes doesn't mean 30 minutes, I'm afraid. It is going to have to be explained to me in some detail. I would be very surprised if it's possible to deal with this matter in 30 minutes. It would be very unfortunate if it couldn't be dealt with by agreement. You say the can is being kicked down the road. As I understand it, the application was made on Friday, was it?

MR WARWICK: That's correct, my Lord, yes, but the issues that the application sought to address had been in play, for the most part, during the larger part of January and February, and the proposals finally made with respect to the pension were made several days, I think, before the 16th, at least on the 14th, I believe, by email. So, they came as no surprise, my Lord. The difficulty my clients face, my Lord, is that they are without access, and have been so since your Lordship's order in the summer of 2023, to any of the funds which your Lordship has ruled it's appropriate for them to have. The application isn't one of the kind that one sees where a party is trying to revisit in a favourable result; it's of a kind where it is about the technical means of achieving the result, giving effect, in effect, to your Lordship's order. There is a legal team here, and the trial is progressing and, for example,

yesterday, extensive submissions were made about the Sanctuary investment and Mr Hume-Kendall's involvement, and so on and so forth. The pressing need on the side of my clients is to have the matter resolved properly and promptly, so that the team can progress with their work.

MR JUSTICE MILES: I can understand your wish to do that. I also, though, am concerned not to take up time if this can be dealt with by agreement.

Is it not possible for your solicitor and someone from the claimant's team to go and sit outside and actually try and thrash this out?

MR WARWICK: That may well be possible.

MR JUSTICE MILES: Sending emails back and forth, and so on, is all very well, but it may be that you can sit down together and actually get a result.

MR WARWICK: Yes. I will just check. I assume the answer is yes. Yes, my Lord, for our part, that would be perfectly acceptable.

MR JUSTICE MILES: Does that work on your side? Is there someone who can deal with that, Mr Robins?

MR ROBINS: I believe so, yes. I think we may have already suggested a meeting. Is that right?

MR JUSTICE MILES: Well, let's not worry about that. I think what I am going to do, Mr Warwick, and I'm not kicking the can down the road, I'm trying to --

MR WARWICK: My Lord, I certainly wasn't making that suggestion of the court, of course.

MR JUSTICE MILES: No, you were saying the process is one of kicking the can down the road. I'm saying to you I'm not kicking the can down the road by saying that I would like the solicitors to go and try and thrash out an agreement. I will be very disappointed if it is not possible to reach an agreement, and both sides should understand that. But, if it is necessary to hear and resolve this question, I will do so at 2.00 o'clock.

MR WARWICK: I'm most grateful, my Lord.

MR ROBINS: My Lord, the second matter is Mr Slade's application, which we first became aware of at about 4.30 yesterday afternoon, and had a brief look at yesterday evening. Our position in respect of that is that it would be wrong to disrupt the trial to deal with an application which is, as matters stand, entirely academic. It is an application made by Mr Slade, who of course acts for the first defendant, Mr Thomson, but, in substance, it is an application on behalf of the fourth defendant, Mr Golding, seeking a variation of the worldwide freezing order and the proprietary injunction in respect of him to permit him to make an interest-free loan of almost £2.2 million to Mr Thomson. But it is not merely the freezing order and the proprietary injunction that prevent Mr Golding from making any such loan. There is also the restraint order against Mr Golding that was made in the Crown Court under the Proceeds of Crime Act. My Lord may recall that Mr Golding has litigated against the SFO to the Court of Appeal in a case which ultimately went to the Supreme Court to establish that he's entitled to spend a reasonable sum on his own legal expenses in related civil proceedings, notwithstanding the restraint order, but, of course, that's not what he's now seeking to do. He isn't incurring any legal expenses in these proceedings because he's debarred from defending the claim against him.

What Mr Golding apparently wants to do now is to make an interest-free loan of £2.2 million to an associate, and, as far as we can see, that's something that is highly unlikely to be permissible under the Proceeds of Crime legislation. It is not within the ordinary course of business exception because he's not in the ordinary course of lending large sums to associates, and it is not in the legal expenses exception, because it doesn't relate to his own legal expenses in related civil proceedings, it is Mr Thomson's legal expenses.

So, we anticipate, for the reasons that I have given, that the SFO will refuse to consent. We have asked the SFO if they have responded to Mr Slade, and, whilst it is not entirely clear, we understood from what they said that they have responded or will be responding. So, we have asked Mr Slade if there has been any communication, any material communication, to him from the SFO. He hasn't yet said one way or the other.

But it seems to us that, if the SFO have already responded to him in a material way, then it is incumbent on him to be frank with the court and to provide a copy of the SFO's response to the court and to the claimants. It would obviously be a breach of the standards expected of solicitors for him to be coy and to fail to explain the position in that regard.

Assuming that the SFO refused to consent, as we expect, then it would be for Mr Golding to apply to the Crown Court for permission to make this loan of £2.2 million to Mr Thomson. But unless and until Mr Golding has obtained either the SFO's consent or the Crown Court's permission to make the loan, the application issued by Mr Slade is entirely academic because it seeks permission to do something that is impossible, due to the restraint order. For that reason, it is our position that it shouldn't be permitted to disrupt the trial. It is not merely disruption in terms of court time, disruption to the timetable, it is obviously also disruption to our work on the trial. We spent last night looking into the questions that your Lordship raised yesterday during my submissions. We haven't really had a chance to digest Mr Slade's application to work out whether what is being proposed might prejudice the claimants. (Confidential material redacted)

MR ROBINS: If we weren't in trial, then one might say, well, it is a chicken and egg question between the High Court and the Crown Court. Someone has got to go first, and you can't have both courts saying that they will postpone their determination until the other has decided. But the fact that the trial has now started makes a major difference because it would be wrong to disrupt the trial to hear an application which is presently entirely academic.

We could spend a day or two arguing about Mr Slade's application. There may be issues, for example, about Mr Golding trying to do indirectly something that he is prohibited from doing directly. There may be some very interesting and novel issues raised that require some careful thought and some interesting debate. But then, if the Crown Court says no to Mr Golding, we have delayed progress and disrupted the trial for no good reason and any order this court may have made on Mr Slade's application would then turn out to be a dead-letter. We say this court should wait for Mr Golding to make any application that he needs to make in the Crown Court, see what the Crown Court has to say about the matter, before requiring the claimants and this court to devote time to Mr Slade's application. Mr Slade, of course, says it is urgent, but it is not. It can't actually be urgent unless and until the Crown Court has given permission to Mr Golding. Until then, the only thing that might be said to be urgent is Mr Golding's application to the Crown Court. But as far as we are aware, he hasn't made any such application yet. We certainly haven't been told about it if it has been made.

We are also concerned, and this is, again, something we would want to address in evidence if it became relevant, that any urgency would seem to be a product of Mr Thomson's own conduct. Your

Lordship permitted him back in October to sell the house. Mr Slade explained in his witness statement what efforts were made to raise finance, but he's conspicuously silent about efforts to sell the house. That's because, until recently, there were no real efforts, and we can go into that in evidence in due course if we need to do so. But, as matters stand, as I say, we haven't even digested Mr Slade's application to investigating the potential prejudice. We haven't even begun to think about preparing evidence in response.

MR JUSTICE MILES: Mr Slade?

MR SLADE: My Lord, I have a number of things to say in response to that, as you may imagine.

First of all, Mr Robins provocatively refers to my client as Mr Golding's "associate". That language is wholly inappropriate. It is simply a matter of assertion and position on the part of Mr Robins, which is no part of his function as an advocate before this court at all. For the record, Mr Thomson does not regard himself as an associate of Mr Golding, and there is no basis for saying, on any recognised definition of that word, that he is. So, Mr Robins ought, in my respectful submission, to be more careful with his use of language.

Secondly, he makes the point that the application made by Mr Thomson is, in reality, an application made on behalf of Mr Golding. With respect, that's not correct. Mr Thomson is the subject of freezing injunctions made by this court. Mr Golding is too. The application was made hastily yesterday to address a pressing need, and it was made by me on behalf of my client, Mr Thomson. It was done in association with the solicitors for Mr Golding, and, if it proved to be appropriate, an application notice could be issued today.

I have asked your clerk, my Lord, to make arrangements for Mr Posener, Mr Golding's solicitor, to be available to participate in this hearing by Zoom or Teams, whichever the system is, so that he can address your Lordship briefly in support of the application. So, in my submission, there is nothing in that point.

MR JUSTICE MILES: Well, there needs to be an application by Mr Golding, because, at the moment, he is subject to various orders.

MR SLADE: Yes, my Lord.

MR JUSTICE MILES: So, it can't simply be an application by your client.

MR SLADE: No, my Lord, and that's appreciated, and Mr Posener had no particular notice of this yesterday. He made himself available to assist me getting the application out. He's made it perfectly clear that he would give your Lordship an undertaking to issue an application during the course of today. So, that's a procedural -- a minor procedural impediment which is easily overcome, in my submission.

Thirdly, Mr Robins says that the application is academic. He is completely wrong about that, of course. It is not academic at all.

First of all, there is a pressing need for Mr Thomson to resolve the issues which would enable him to be represented in this 22-week trial, in which he is the subject of claims for relief of some £350 million, or thereabouts. It is hard to see how that could be described as something which was merely academic. He is the subject of three completely freestanding forms of restriction on his liberty. The first is the worldwide freezing order made in this court; the second is the proprietary freezing order made --

MR JUSTICE MILES: Sorry to interrupt you, Mr Slade, but I want to keep things moving along. The point made is not that his application as regards his own position is academic. It is that the proposed solution, which is a loan from Mr Golding, is at the moment prohibited by, amongst other things, the criminal restraint order.

MR SLADE: Yes, my Lord, I was coming to that.

MR JUSTICE MILES: The suggestion it's academic was concerned with that criminal restraint order against Mr Golding.

MR SLADE: My Lord, that's also misconceived. It would be concerned with criminal restraint orders against both Mr Golding and Mr Thomson. It is accepted and, indeed, expressly stated in my evidence that applications would need to be made to the Crown Court, either by consent or contested applications, on behalf of both defendants to vary the terms of both restraint orders. With respect, that's completely obvious.

But one has to start somewhere. And the trial is running in this court. The matter is concerned with Mr Thomson's representation in this court and so, with the greatest of respect, it seems sensible to commence the process in this court.

If your Lordship were to allow the application, then we would, of course, go to the Crown Court and seek to have the restraint order varied there as well. No doubt the Crown Court judge would be materially assisted by your Lordship's comments on the application.

MR JUSTICE MILES: Possibly, Mr Slade, but the difference is that the rules concerning criminal restraint orders are not the same as those concerning civil orders made by this court. It is a statutory regime.

MR SLADE: I appreciate that, my Lord.

MR JUSTICE MILES: As Mr Robins pointed out, there was actually litigation which went as far as the Supreme Court about what was meant by "reasonable legal expenses" and whether that meant the expenses of the criminal proceedings or also of related civil proceedings, and that was a matter of statutory interpretation.

MR SLADE: I appreciate that, my Lord, yes.

MR JUSTICE MILES: As I understand it, the criminal court doesn't have the same form of discretion that the civil court has in relation to these matters. It is bound about by statute.

MR SLADE: My Lord, I think, with the greatest respect, that also contains a misapprehension. No-one is talking about using the legal expenses exception --

MR JUSTICE MILES: No, I know they are not. That is just an example. But the -- I mean, I don't have the legislation in mind, but, as I understand it, there are express restrictions on the forms of exception under criminal restraint orders, and you would have to persuade the court, the Crown Court, that one of those was engaged.

MR SLADE: Yes, my Lord, of course.

MR JUSTICE MILES: So, which one is it?

MR SLADE: That's completely accepted.

MR JUSTICE MILES: Are you able to say --

MR SLADE: I don't have that in mind because I have come here today, my Lord, prepared to deal with the civil orders. The forum for dealing with the criminal restraint order is the Crown Court.

MR JUSTICE MILES: But, if it is a waste of time, then why should we waste time?

MR SLADE: My Lord, if you would like me to prep the point, I will do so and some back to you later today. But it seems to me tolerably clear -- and my preliminary exchanges with the SFO suggest that they share this view -- that if Mr Golding simply exchanges one form of property for another within the terms of the restraint order, that is permitted. Of course, it is a feature of the application -- the application wouldn't have been made otherwise -- that the value of Mr Golding's net estate is not diminished in the slightest by this proposal.

MR JUSTICE MILES: Do you have those communications with the SFO?

MR SLADE: I have them, yes, but I haven't printed them out.

MR JUSTICE MILES: Are you able to provide those to the parties and the court?

MR SLADE: Yes, of course I can, indeed. The only reason I didn't do so was that Mishcon de Reya wrote to me late last night and I was otherwise engaged. Their email came to my attention this morning, and I haven't responded to it yet. No difficulty whatsoever sharing the communications.

MR JUSTICE MILES: Well, that's not particularly helpful, Mr Slade. If it came to your attention this morning, it should have been straightforward to provide those both to the court and to the claimant.

MR SLADE: Well, my Lord, one can only do so much, particularly in the early stages.

MR JUSTICE MILES: You can only do so much, but this is an important matter.

MR SLADE: Yes, of course it is an important matter, my Lord.

MR JUSTICE MILES: It is not helpful to be talking in general terms about those communications without actually having copies of them.

MR SLADE: My Lord, the communications are extremely preliminary. Nobody has yet given full thought to the matter. It was only raised yesterday. I served the application, after I had served it on everybody else, on the SFO and asked them to consider it urgently, which they kindly did. Their initial reactions were to point out various possible objections they might take. But, with respect to everybody, those communications have not yet developed beyond an exchange of emails. I suggested a call with the SFO during the course of today to discuss the matter further with them so that I might bring them up to speed with things from my side and see how they reacted on the basis of more information. Who is to say, my Lord, with respect?

So, I am asking your Lordship to consider the position as it is in relation to the civil orders this morning and I will progress matters with the relevant authorities in relation to the criminal aspects of this as soon as I leave court.

I appreciate, my Lord, that everybody would benefit from all of these things having already been done, but, with the greatest of respect, one has to --

MR JUSTICE MILES: Why are we dealing with this now, at the beginning of the trial? You must have known for a long time that this was a problem.

MR SLADE: No, my Lord, not at all. Quite the contrary. I cherished the hope, as recently as last week, that this would be resolved by the provision of a commercial bridging loan, such that the application

I would need to make to your Lordship would simply be for the approval of a subcharge on my firm's mortgage. It only became apparent on Wednesday last week that that was proving difficult, and might not be achieved in time. The urgency was enhanced when the barrister team told me on Wednesday that, unless they were paid by Friday, they would have to withdraw professionally from the case, which we saw happened symbolically yesterday, though it actually happened on Friday.

I don't think it can be said against me, my Lord, with the greatest of respect to all concerned, that I have delayed in making this application. I have brought it on as quickly as possible.

MR JUSTICE MILES: When the order was made some months ago now, the basic idea was that the house would be sold.

MR SLADE: Yes, my Lord.

MR JUSTICE MILES: There's almost nothing in your evidence about the efforts to sell the property.

MR SLADE: Well, my Lord, I can expand on all of that, of course. I took it as read, for the purposes of the evidence, it takes time to sell a house. That's a matter of common experience. The house is on the market and efforts are being made to sell it now. But it would be unrealistic to assume, if it were to sell today, subject to contract, that the completion would take place less than a month from now. So the sale of the house presents us with no solution, my Lord, as would be relatively obvious, I would think, in my respectful submission. So, we have to find a way of bridging the gap. Hence the attempt on my part to rely on bridging finance. That has proved significantly more difficult than anyone might have imagined. One has a house. One has a mortgage. One would have thought it was very easy, in this modern age, to arrange bridging finance. Unfortunately, the blackened reputation from which my client suffers as a result of this case has made it impossible for most lenders in the market to touch him. One can see the point, my Lord. Many of these lenders draw their funds from the public in one way or another. Peer-to-peer lending platforms and such things. How could somebody who drew their finance from the public in that way possibly lend against the background of the unfortunate publicity generated by this case?

MR JUSTICE MILES: Right. Well, this application is not yet in, to my mind, a proper state to be argued and determined. There would have to be an application by the fourth defendant himself, supported by evidence. The claimants would have to have an opportunity themselves to put in evidence. And I think they also need the opportunity to consider their position further. I don't think it is fair to expect them to deal with this on less than one day's notice.

The concern I have, Mr Slade, which is a real concern, is the position of Mr Thomson if some kind of funding arrangement can't be reached. You say in your evidence, I think it is, or your skeleton argument, you refer in general terms to some medical evidence. That's quite historic now, and there's very little up-to-date medical evidence, I think.

There is certainly not the kind of medical evidence that one would expect to find in support of any sort of applications that are made based on it. So, there are quite general statements of that kind. But I do have some concerns about Mr Thomson's position if he's not represented. But I don't think it is fair, at the moment, to move your application. I think the claimants need some more time to consider it. And I think it is also relevant to find out more about what position the SFO are going to take in relation to this.

MR SLADE: My Lord, I'm grateful. It seems to me, in response to that, that there could be few more urgent matters before your Lordship at the moment than the matter of a defendant's representation, if it is a choice between representation and no representation, which is the choice which confronts

him, and indirectly your Lordship, against the background of medical indisposition. The evidence to which your Lordship refers is not so historical, with respect. It was refreshed with a new expert report as recently as the application I made to your Lordship to vary the freezing order in the autumn.

MR JUSTICE MILES: That's quite a while back.

MR SLADE: Well, in terms of the progression of medical conditions, my Lord, I would submit it's not. It's relatively recent. It's three or four months old. Since then, as you know from the opening, Mr Thomson has undergone emergency surgery of a very serious nature and is presently on painkilling drugs.

MR JUSTICE MILES: Right. Well, there is no evidence about that. When one talks about medical evidence, Mr Slade, there are well-known authorities which tell you what the evidence has to contain if the court is going to act upon it. It is not good enough just to have general statements of that kind. At the moment, there isn't medical evidence of the kind that would satisfy a court. But, of course, I understand that Mr Thomson has had emergency surgery. What I don't know is what effect that's had on him, or is having on him, or the prognosis, because there isn't any evidence.

MR SLADE: No, my Lord, of course that's all appreciated and well understood on my part. I can say this -- two things. The first is that medical evidence is in the course of being prepared, expert reports have been commissioned and they will be laid before your Lordship in due course.

The second point is equally straightforward and it is this: the application to vary the freezing regime, both here and in the Crown Court, does not depend in any way on medical evidence. That is simply seeking the court's approval for a commercial transaction which has the happy outcome of enabling Mr Thomson to be represented at no cost to anybody, because the sum loaned by Mr Golding would be secured on Mr Thomson's house by a mortgage in substitution for that presently existing in favour of my firm. Substitution is possible because my firm will be paid in full by this proposed transaction.

(Confidential material redacted)

MR SLADE: Yes, my Lord, but, again, Mr Robins knows this perfectly well, but takes the point nonetheless for purely prejudicial reasons, the transaction proposed is not a transaction which involves any action on the part of my firm at all which could fall within the concerns that have been mentioned. It is a loan to Mr Thomson against the grant of a mortgage by Mr Thomson to Mr Golding, with the happy effect that my firm is then paid in full for its services, such that it releases its mortgage. Now, who could possibly suggest, in the real world --

MR JUSTICE MILES: I think he was talking about the assignment, which is something you have referred to.

MR SLADE: Yes, my Lord, that was a typographical error. It would be obvious from the documents exhibited that that was an earlier iteration of the proposed transaction, which is not what is now proposed. What is now proposed, as I have just explained, is that Mr Golding lends the money to Mr Thomson and takes a mortgage so as to protect the position of the SFO and result in no net diminution in the value of Mr Golding's estate. That results in my firm being paid. That has certain beneficial consequences vis-a-vis HMRC and the release of my firm's mortgage because it no longer secures anything. Now, that is not a transaction which would call to be reviewed in any circumstances. It is simply a client paying his bill.

My Lord, I'm not quite sure -- it is all right, but I see where your Lordship is going, I think.

MR JUSTICE MILES: I know you mean, all right, you have made your point.

MR SLADE: Yes, I thought you might.

MR JUSTICE MILES: I'm not going to hear this application substantively now. It is unfortunate to have these things rolling along. I quite understand that you say it is urgent, and I recognise that. But I don't think it is sufficiently urgent that it can be dealt with on the hoof without giving the claimants a bit of time to respond. I do think that the position of the SFO is highly relevant, so that, if you have the opportunity, as you said you would, of trying to find out their position in the course of the day, then I think that would be of some assistance. So, I'm not going to determine this application -- I'm not going to hear this application at this stage, but I recognise the urgency of it.

Again, it is something that the parties must either seek to resolve or be prepared to argue over the next day or so.

MR SLADE: My Lord, thank you. I'm grateful. Would your Lordship give a firm indication now that the court expects the parties' solicitors to meet and discuss these matters for the purpose of seeking to achieve a resolution? If your Lordship recalls, you gave such a direction on a previous occasion with beneficial consequences.

MR JUSTICE MILES: What do you say, Mr Robins? It seems sensible?

MR ROBINS: Absolutely, it seems sensible. I would also, of course, reiterate our request for Mr Slade to share copies of --

MR JUSTICE MILES: I think he's already said he will do that.

MR SLADE: My Lord, yes.

MR JUSTICE MILES: That includes sharing it with the claimants, obviously, and any further communications.

MR SLADE: My Lord, do I get an apology from Mr Robins and the claimants?

MR JUSTICE MILES: You can seek your apology outside court, but I'm not going to --

(Confidential material redacted)

MR JUSTICE MILES: Well, is it a matter that's also in the public domain?

MR SLADE: No, my Lord.

MR JUSTICE MILES: Is it sufficiently in the public domain that Mr Robins knows about it?

MR SLADE: Mr Robins knows about it for private reasons which are the subject of a confidentiality agreement.

(Confidential material redacted)

MR SLADE: Well, I will perhaps take that up with Mishcon de Reya. But, my Lord, if you would make the order preventing publication of these matters pro tem, that would be of assistance.

MR JUSTICE MILES: My difficulty, Mr Slade, is not knowing whether these matters are already in the public domain. It is effectively a publicity order. It is an order against the press, in circumstances where I don't know the extent to which it is already in the public domain.

MR SLADE: I appreciate that, my Lord. It puts you in a difficulty and me. I didn't know that Mr Robins was going to say what he said.

(Confidential material redacted)

MR SLADE: I'm grateful, my Lord. I think that covers the position pro tem. Hopefully, of course, my client pays his bill, because he is permitted to do so, and the matter ceases to be a problem.

I had, then, two other matters, but they have been covered. So, my Lord -- would your Lordship give an indication that, provided the steps that your Lordship has indicated should be taken today are taken today, your Lordship would hear this application tomorrow?

MR JUSTICE MILES: I'm not sure I can hear it tomorrow. I think we will say it will be dealt with on Thursday, if it is not resolved.

MR SLADE: My Lord, I understand, and resolved. I'm grateful.

MR JUSTICE MILES: It may be resolved in a way which is satisfactory to you; it may be that the court concludes that it is indeed premature. But that's a matter --

MR SLADE: A resolution is a resolution, my Lord.

MR JUSTICE MILES: But it also seems to me that, if there is to be an application, there must be an application by the fourth defendant because your client doesn't have standing to seek variations of orders against the fourth defendant.

MR SLADE: My Lord, that was contemplated, as I mentioned, and was to be the subject of an undertaking, which will have to be done.

MR JUSTICE MILES: That will have to be done with a formal application supported by evidence.

MR SLADE: Did your Lordship make the order requiring Mishcon to meet with me, so that we --

MR JUSTICE MILES: I direct them to do so.

MR SLADE: I'm grateful.

MR ROBINS: My Lord, in terms of what's in the public domain, if it is a matter that needs to be looked at, Mr Shaw reminds me there was an article in the Times that quoted Mr Slade confirming his firm's financial plight but saying, in the event of his company's collapse, "I have another firm lined up for me to join". He said, "The only creditor is HMRC. They usually allow taxpayers time to pay their tax but, with the election coming, they have been told to collect the tax immediately. If good firms go to the wall, so be it, because the government will not be in office. There is a chance the company will not go into administration", he added, saying that several clients owed him cash, "I have a ton of money coming to me."

That's why I certainly had no understanding this might not be in the public domain.

(Confidential material redacted)

MR JUSTICE MILES: We will say no more about that, Mr Slade.

MR SLADE: I think that's the best course, my Lord.

MR JUSTICE MILES: Thank you. Mr Robins, on this point, I have already expressed that I do have some obvious concerns about the position of Mr Thomson.

MR ROBINS: Yes.

MR JUSTICE MILES: The reason why the variation was made originally was because it was considered to be in the interests of -- partly because it was considered to be in the interests of justice that he should be represented, and there are also the further developments since then regarding his medical condition. I have already said I don't think there is satisfactory medical evidence at the moment about that. But you and your team will be well aware of the difficulties that can arise in a case where a party is unable properly to represent themselves or participate in a trial and the possible consequences of that.

MR ROBINS: Yes.

MR JUSTICE MILES: So, it is something that really does require pretty urgent thought and real engagement because it is not, to my mind -- well, I won't say too much more about it. But I think simply -- and I'm not accusing you of this -- taking the hard-nose view of, you just want to get on with it, may not, in these circumstances, be enough.

MR ROBINS: That only underlines why we were so puzzled by the lack of any real effort that was made during the later part of the autumn to get on with realising the property. We do have a concern that this entire situation is of Mr Thomson's own making and that is obviously something that will be weighed in the balance in the event of your Lordship needing to undertake any assessment in respect of that.

In terms of finding an opportunity to hear the application, your Lordship is, of course, sitting in the trial for only four days every week. I know your Lordship doesn't ordinarily want to sit on Friday --

MR JUSTICE MILES: I'm afraid I have got something else in the diary on Friday this week.

MR ROBINS: In which case, we can maybe find an early morning or late afternoon slot. I know it is not ideal.

MR JUSTICE MILES: I'm not sure about that. It may be it just has to be dealt with.

MR ROBINS: We will obviously need some time to consider the issues that I mentioned earlier and prepare any evidence in response. Can I just turn my back for a minute to see how long we would need for that?

MR JUSTICE MILES: Yes.

MR ROBINS: I'm told we can provide evidence in response within 48 hours.

MR JUSTICE MILES: I did say I wanted it dealt with on Thursday, but you're saying you want --

MR ROBINS: As my Lord pointed out, we only got a chance to look at this application after the end of the court day yesterday and we need to have a discussion with Mr Slade to see if there is any practical resolution.

MR SLADE: My Lord, I don't see why the evidence can't be filed by 10 o'clock tomorrow morning.

MR ROBINS: My Lord, Mr Davis is suggesting by close of play tomorrow so Mr Slade can then look at it overnight.

MR JUSTICE MILES: What about things like skeleton arguments?

MR ROBINS: I'm not sure there will be time for any, will there?

MR JUSTICE MILES: You have got quite a big team.

MR ROBINS: When would your Lordship like them by?

MR JUSTICE MILES: Well, I would like to get this resolved as quickly as possible, but I can understand the point you're making.

What do you say, Mr Slade? If they get their evidence in by close of business tomorrow?

MR SLADE: Close of business means 4.30, when the court rises?

MR JUSTICE MILES: 4.30.

MR SLADE: I don't see why the evidence shouldn't be considered and skeletons prepared such that the application can be argued in court at 10.30 the day after that, which would be Thursday, I think, which is what your Lordship had in mind.

I should say, my Lord, that Mr Robins seems determined to take cheap points far wide of the mark. This business about the sale of the house, the delay was generated, of course, by his own solicitors, who have been slow --

MR JUSTICE MILES: That's one of the things they will have to cover in evidence.

MR SLADE: Indeed, my Lord.

MR JUSTICE MILES: I think what I'm going to say is that they must put in their evidence by 4.30 tomorrow. I think that makes it too tight, then, to deal with it on Thursday. Unfortunately, I'm not available on Friday because I have got other commitments.

I think we are going to have to say that the hearing will have to be on Monday, the following week.

MR SLADE: My Lord, that puts my client in the frankly intolerable position of being unrepresented for the first week of the trial.

MR JUSTICE MILES: Well, you're still representing him.

MR SLADE: Counsel are not, and I will be out of court dealing with these matters. My Lord, will have to consider the wider perceptions on the part of the public of justice in this case. The situation is that so many of the defendants are unrepresented and the reason for that is freezing orders granted by the court on the evidence of the claimants, proprietary freezing orders, which have made it very, very difficult for these people to release funds to pay for their own defence, in circumstances where, as appears from my client's skeleton opening, it is perfectly obvious that these freezing orders should not, in fact, have been made. One has to ask, my Lord --

MR JUSTICE MILES: I'm going to deal with this on Monday, Mr Slade. It has been brought on very late in the day, and the claimants need a proper chance to deal with it. They also need a proper chance to prepare. I think Thursday morning is too tight. As I say, Friday is, unfortunately, unavailable. So it is going to be Monday.

MR SLADE: My Lord, could I suggest this in addition, that the court be kept updated as to the progress of this matter, both in relation to the meetings and in relation to contact with the SFO, by emails to your clerk copied to the parties, so that your Lordship may see how the matter is developing during the course of this week?

MR JUSTICE MILES: What I don't want is piecemeal -- I don't want that. I don't want piecemeal emails. I don't want different versions of meetings. I have directed that the parties should meet. It can happen after court. It doesn't have to happen during court hours. But if there is some important communication involving the SFO, or obviously some resolution, then I would expect to be told. But what I don't want to happen is to be drip fed bits of information which may very well be contentious.

MR SLADE: No, my Lord, I completely see that and I sympathise with your Lordship's position. However, what we don't want is what appears to have happened in the Hume-Kendall application, which is that the parties' positions are communicated in writing half an hour before the beginning of Monday's hearing.

MR JUSTICE MILES: I'm not in a position to comment on whether that's a fair representation of what's happening in that application, and I don't think it really assists. So, I'm going to say that it must be dealt with in that way, with a view to a hearing on Monday, if the matter isn't resolved otherwise before then.

MR SLADE: My Lord, I'm grateful.

MR ROBINS: My Lord, the third matter of housekeeping relates to the email that your Lordship's clerk sent to us alerting us to the existence of an application by a non-party, Mr Cloake, for the provision of various documents from these proceedings.

My clients, for their part, have no objection to that, but we are aware of the particular position of witness statements that have not yet been deployed in evidence. Your Lordship is no doubt familiar with the authorities in respect of that. If your Lordship wants any assistance in respect of those authorities, Mr Judd has prepared to deal with those, but, as I say, it is not something we would actively oppose. We would merely be seeking to assist your Lordship on the authorities.

MR JUSTICE MILES: How is that generally -- is there a mechanism for dealing with that?

MR ROBINS: For dealing with such applications?

MR JUSTICE MILES: For dealing with the position of witness statements for witnesses who have not yet been called.

MR ROBINS: I may need to cede to Mr Judd, but I understand the general position is the court doesn't ordinarily allow release of witness statements until they have been deployed in evidence. In other words, until the witness has been sworn in in chief and the court has accepted the written evidence as being their evidence-in-chief. But if my Lord wants to hear any more, I can hand over to Mr Judd.

MR JUSTICE MILES: Not really because I want to get on. Sorry, Mr Judd, that's not a personal slight. Is this something that you could helpfully discuss with the gentleman in question?

MR ROBINS: Absolutely. We can draw the authorities to his attention.

MR JUSTICE MILES: It may be that, for the time being, it will be sufficient for him to be provided with such documents as can be provided uncontroversially, and then, if there is any dispute about further documents, that can be brought to my attention.

MR ROBINS: Yes, absolutely. We can do that. In which case, I just need to sweep up with some points in answer to questions your Lordship raised yesterday.

Opening submissions by **MR ROBINS** (continued)

MR ROBINS: The first relates to the El Cupey trust arrangement. Your Lordship asked which buyers were beneficiaries under those security arrangements. Your Lordship asked, was it all of the investors or the ones who had said yes?

Your Lordship's hunch has proved to be correct. It was all of the investors who signed a new contract, whether or not they provided the additional deposit. The way it worked -- we can go back to it if necessary, but it is in the contract we looked at yesterday -- the party entering into the contract is a "Buyer", with a capital B. The trust is expressed to be for the security of the buyer and the other buyers. The term "Buyer" is defined to mean someone who has entered into a contract in materially the same form as this contract. An enhanced buyer is then a buyer who has provided the additional deposit. A standard buyer is a buyer who has not provided the additional deposit. So, if you are an enhanced buyer, in the particulars on the front page, under "Security type", it says "Enhanced Buyer"; if you haven't provided the additional deposit, you're still invited to sign the contract, and in the "Security type" box it says "Standard Buyer". The impact of that is then on the ranking, priority ranking, of distributions of any proceeds of sale of The Hill in the event that the development does not proceed.

In that event, if the development doesn't proceed and the site is sold, then the enhanced buyers who paid the additional deposits have priority and they are entitled to receive their buyback entitlements, in other words, 150 per cent of their total deposits and deposit amounts. If there is any money remaining thereafter, the next level in the waterfall consists of the standard buyers, who get their buyback amounts in the original sum of 120 per cent.

So, that obviously has a bearing on the other debate my Lord and I had yesterday, as to whether the amount that was secured by this arrangement was the 16-point-whatever-it-was deposits or the 25-point-whatever-it-was buyback entitlement. It is actually the latter because, in the event of the property being sold -- it is in clause 19 on page 18 -- there is this waterfall where, first, it is the enhanced buyers get their enhanced buyback amounts and then the standard buyers get their standard buyback amounts.

Secondly, my Lord asked what the documents say about the purpose of the additional deposits. We have been back to look at that and can't find any scripts from the roadshow. The closest one gets to it, I think, is in the new contracts. First of all, special condition 9.1 on page 4 which says:

"Buss Murton will only ..."

MR JUSTICE MILES: You had better give the reference to the document.

MR ROBINS: <MDR00065292>. That's the exemplar we looked at yesterday. Page 4, special condition 9.1: "[Buss Murton] will only distribute the escrow funds to the seller or such other company or companies in accordance with the instructions of the trust." Which is El Cupey Limited. Then at page 18, clause 19.4:

"The trust [El Cupey Limited] shall ensure that sufficient funds are paid out of the additional deposits ... into the planning fund reserves which shall be used for the application for the planning consents or such other purpose as the trust in its absolute discretion considers to be in the west interests of the buyers as a whole."

I'm afraid we haven't been able to find anything clearer than that. It seems to have been a suggestion that the additional deposits were required to advance the application for planning permission. Thirdly, my Lord asked me yesterday what was the extent of The Beach land that was actually valued in the various valuations. Your Lordship asked, "Is it a valuation of all the land because you told me that only some of the land was actually acquired? Does it describe what they are valuing?" I said to your Lordship that, "Nothing is ever straightforward", and then Mr Shaw stood up and proved my point. Mr Shaw has helpfully prepared a note which sets out in writing what he sought to explain to your Lordship yesterday orally. If I could just pass up a copy of that. (Handed).

I don't know if your Lordship wants to read that now or take it away.

MR JUSTICE MILES: No, I will look at that later. Will that be put into the trial bundle?

MR ROBINS: Yes, we will put that into the trial bundle and I will tell your Lordship where it has gone. Fourthly, your Lordship asked me if there was ever a mortgage over land in the Dominican Republic. Your Lordship asked, was there some sort of specific pledge in respect of The Hill? I told your Lordship that there were attempts at a much later date to try to get some sort of security over the properties in the Dominican Republic, but that ran into difficulties, obviously, in respect of The Beach, because nothing had been acquired yet. I said it was a long, involved story and said there were emails back and forth for months but no security was ultimately registered for a long time. I said I thought I might be right in saying that, in the end, there was some token security in the sum of something like $20,000 registered over a parcel of land on The Beach, but, for the majority of the period we are concerned with, it is simply an English law debenture by a borrowing company and I said we would check. We have checked. I was almost right. The answer is that, at around the end of 2017 or the beginning of 2018, a charge was registered over The Hill in the sum of -- sorry, £250,000 in favour of a company incorporated in the Dominican Republic, which was owned by LCF.

Again, I have got something to hand up. It is a very short chronology on this point. (Handed). It sets out the long, involved story with the various emails back and forth, and it starts with Mr Thomson, on 4 May 2016, saying that he needed a charge on DR land to be in place when the auditor starts their DD in two weeks.

There is then quite a lot of email correspondence about the way in which that will be achieved. Over the page, for example, on 30 July 2016, Mr Lee of Buss Murton is emailing Richard Lozada, a lawyer in the Dominican Republic, to say there have been further discussions and that the instructions from LCF are that it wishes to proceed to place a charge and, if possible, a restriction over two properties at El Cupey in Magante, each of the charges should be for a sum secured of £250,000, and there is some discussion and it is agreed that it would be sensible to register the charges in that specific amount to that limit in order to minimise the fees that would be payable on registration of the charges in the Dominican Republic, and so, again, for example, on the next page, page 3, 18 March 2017, the email quote says:

"I understand the charge will be for £250,000 over each."

There is then some discussion in the emails about the need to incorporate a company in the Dominican Republic to facilitate this. It will be the charge holder. That is all borne out by the subsequent emails on page 4 in the middle of the page in bold, for example, there is a report prepared by

Jeremy Friedlander which says Serulle are registering a charge over the property, that's El Cupey, in favour of London Capital & Finance:

"This is almost in place. It is with the relevant department awaiting registration. The charge is for a nominal amount of £250,000."

Then, in the middle of 2018, at the bottom of page 4, Kobus Huisamen of LCF tells Jeremy Friedlander he's slowly going through the security, "We're holding off borrowers" and he has holes in his file. One of the things he's looking for is a specific company of the firm owned by LCF holding charges over Inversiones and Tenedora and he's told in response by Mr Friedlander that the company with the charge over Inversiones is Continente Soluciones del Pacifico, a company owned by LCF, but that no charge has been registered over the Tenedora properties as Tenedora doesn't own the land yet.

So, that, as I say, is a short chronology of that issue. We can put that into the trial bundle as well. So, to correct what I said yesterday, it is a token security in the sum of £250,000 and it is over The Hill, but there is no security in respect of Tenedora. One sees that from the very late email, the final email in the chronology, 25 October 2018, where Jeremy Friedlander says he's met with Terry: "They are continuing to finalise the acquisition of the various parcels at Magante. They have final agreements in place for the large parcel adjacent to Magante 1. However, they do need the funds to complete the acquisition. Once the purchase is agreed, they will be in a position to place a charge over the property in favour of LCF."

My Lord, where we broke yesterday was a quick tour through some of the inflated values that were placed on The Hill and The Beach. We looked at some letters signed by Mr Hume-Kendall. We looked at Mr Thomson's security valuation spreadsheet, which took the dollar amount and simply replaced the dollar sign with a pound sign. One other document to look at -- again, we will come back to it in context later --

MR SLADE: My Lord, I do apologise. Before Mr Robins gets into his flow, I don't need to be here. If I might withdraw?

MR JUSTICE MILES: Yes. I mean, it is up to you whether to be here. You are representing your client.

MR SLADE: But sitting here, my Lord, it just seems to be a bit odd to disappear without asking.

MR JUSTICE MILES: We are about to come to the break, Mr Slade. Why don't you sit tight for the moment. Is your colleague going to remain here?

MR SLADE: No, but my team behind me will.

MR JUSTICE MILES: Oh, they are part of your team, thank you. All right. Just wait until the break, Mr Slade, and then there will be less disruption.

MR ROBINS: As I say, my Lord, we will see this in the proper context in due course but it is helpful to have a look at it at this juncture. <MDR00007516>. It is a table which calculates the amount that was payable under the transaction that we described as the Elysian SPA. That total amount can be seen right at the bottom of the page --

MR JUSTICE MILES: Sorry, you're going to have to tell me what this is.

MR ROBINS: This is a table that calculates the amount that's payable to Mr Thomson, Mr Hume-Kendall, Mr Golding and Mr Barker under the Elysian SPA. At the bottom, my Lord --

MR JUSTICE MILES: This is in about when?

MR ROBINS: My Lord can see the date at the bottom, "As at 18 July 2017". The figure that's payable -- we will see this in the agreement in due course -- is £82.125 million. That is calculated by reference to the items in the column above. It is said to be the gross values of the assets, and the first, "Dominican Republic El Cupey" is said to have a gross value of £28.28 million. The Magante is said to have a value of £32.1 million, and so on. We see Lakeview is given a value of £18.745 million. And CV Resorts -- again, we can come back to this -- towards the bottom, is given a value of £3 million. That's all on a gross basis; in other words, no deductions are made in respect of any liabilities, but for present purposes, the two relevant entries to note are, of course, the top two, that the sum payable of £82.125 million included £28.28 million in respect of The Hill and £32.1 million in respect of The Beach.

Those values were obviously grossly inflated and well into the realms of fantasy. But I mention it at this point as an illustration of how the inflated values weren't merely used for the purpose of justifying borrowing from LCF or for the purpose of LCF advertising in newspapers how much security it held. They were also used to calculate the sums that would be paid out to various of the defendants, funded by LCF under agreements that were entered into.

We will see it in due course, but the person who incorporates Elysian Resort Group Limited is Mark Ingham, who, according to Mr Thomson's evidence, has given them his shares in the Sanctuary for nothing in 2013 and 2014. Just a few years later, he's supposedly buying back the assets for £60 million, which he is going to borrow from LCF. As I say, we will see that in context later.

Another illustration of the inflated values attributed to these properties can be found in <MDR00131382>. If we can see it in native form, please. It is another security valuation spreadsheet prepared by Mr Thomson. "Headline loan book valuations". By this point, the shares in Tenedora are held by a company called Costa, which we see in cell A5.

The valuation, which is ultimately for The Beach, is in cell C5, a sum in excess of £31.4 million. The shares in Inversiones have been registered in the name of Colina, which we see in A6. The valuation attributed in cell C6 is in excess of £28.4 million. So, that's, again, an example of Mr Thomson, who knows that The Beach hasn't yet been acquired and that The Hill was bought for a much lower sum, only a fraction of that amount, and is held on trust for the Sanctuary investors, attributing fantastical valuations to these so-called assets for the purpose of calculating the loan-to-value ratio in respect of LCF's loan book. My Lord, I see the time. It is probably a convenient moment for the shorthand writer.

MR JUSTICE MILES: Yes, right. Is five minutes enough? We will take five minutes.

(11.45 am)

(A short break)

(11.50 am)

MR ROBINS: My Lord, the final example, at this stage, of inflated values being attributed to The Hill and The Beach is a letter that we see first in draft at <MDR00146131>. It is a draft letter from PRD, Prime Resort Development, to -- LCF's name has been missed off this draft, it is corrected in the subsequent draft, but that's its address, Eridge Park, Eridge Green, Tunbridge Wells. It is addressed to Andy. It says: "Following a recent review of the sites owned by the company, having taken into account the master plans prepared by leading globally renowned architects ... together with the independently prepared business plans, the Atlantic Hills (Inversiones) and Magante (Tenedora) have a conservative NPV in excess of $65 million each property (at a discount rate of 7.5 per cent). "When

compared to the recent local valuer's figures of $41.2 million and £39.6 million, the directors are of the opinion that the current values are in excess of $50 million each."

That is sent by Terry Mitchell of Prime to Mr Hume-Kendall, asking him for his comments. That's <MDR00146132>. Terry says to Mr Hume-Kendall: "Hi Simon.

"I hope you are enjoying the BH weekend heatwave. "I have attached a draft letter to Andy and a status report and would really appreciate your views before sending."

Terry also provides that in draft to Mr Thomson. If we look at <MDR00147399>, at the bottom, Angel Rodriguez has asked:

"Any news from Andy? Does he need anything more from us?"

Terry says at the top:

"He would just like the redrafted letter." Then <MDR00147405>, Terry explains what needs to be redrafted. He says, about a quarter of the way down the page:

"Hi Angel.

"Andy has asked for a mention of the additional land at Magante in the letter re the values et cetera. I have included. Please sign and scan to me." The revised letter is at <MDR00147410>. My Lord will see in the second paragraph --

MR JUSTICE MILES: Oh, I see, it's still got the same date on it.

MR ROBINS: Yes. This one has been signed at the bottom by Terry Mitchell. He wants Angel to sign it as well. The second paragraph says:

"When compared to the recent local valuer's figures ... the directors of the opinion that the current values are $52 million and $50." Which obviously is a typo. There is an "m" missing. The first draft said, as we saw, $50 million each. That's been changed to 52 and 50. That's then sent to Mr Thomson, and we can see that at <MDR00147513>: "Hi Andy, I have attached the amended letter that I see has missed LC&F off. I will be able to send the correctly [addressed] one tomorrow morning." That's the point about it having the address but not the name of the company. The attachment to that is the signed letter we just looked at. Then Ian Sands emails Paul Seakens and Terry Mitchell, if we can look at --

MR JUSTICE MILES: Is there any context to these letters so I can understand what they are for?

MR ROBINS: Yes. We will come to see them in context in due course. But, in a nutshell, Mr Thomson has been concerned that he has nothing on file to justify the ever-increasing level of borrowing by the various companies which are now subsidiaries of Prime Resorts Group Limited, and there has been what's described as a payment holiday for the deferred consideration that the various Prime subsidiaries stop making new drawdowns from LCF to fund payments to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. That's when the mechanism that ultimately becomes the LPE SPA is created, to ensure that the payments funded by LCF to those four individuals don't come to an end. But, ultimately, Mr Thomson asks Mr Mitchell for a letter that he can have on file with higher security values that can justify the recommencement of drawdowns by the Prime subsidiaries, and so this is sent to Mr Thomson at 2.21 pm on 11 May 2018. Very shortly after that, at <MDR00147564>, if we could go to the bottom of the chain, please, that's an email -- if we can see the two pages side by side, we will see the heading, from Ian Sands, "**@*******.com", saying: "Hi Chaps, just has a

call from Simon H-K on a number of things but included was that the letters to LC&F were fine and [that] we can resume drawing down funds."

So that's within just a couple of hours of the letter being sent to Andy, Mr Thomson, Mr Hume-Kendall gets in touch to say, "Those letters were fine. You can resume drawing down funds". We will see in more detail what happened to those funds, but, in summary, the Prime subsidiaries draw down £1.5 million. That money is paid to Mr Barker's company, London Power Consultants, which then transfers it immediately to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. So it is a letter that's been requested by Mr Thomson so that he's got something on file to justify continued drawdowns, or recommencement of drawdowns. He gets it on file. He pays out £1.5 million. It is paid to London Power Consultants and then it is paid to the first to fourth defendants.

But the purpose of looking at it in this context is simply as an illustration of the inflated valuations that are put on The Hill and The Beach. We are now up to 50 million and $52 million each.

I think that's probably enough, at this point, in respect of The Hill and The Beach. We can move on to Paradise Beach, as it is called.

MR JUSTICE MILES: You are going to come back to all of the various SPAs and so on?

MR ROBINS: Absolutely, yes.

MR JUSTICE MILES: So, at this point, as a matter of kind of ownership, is Prime the owner of the various subsidiaries --

MR ROBINS: The Topco, yes.

MR JUSTICE MILES: So Prime is the --

MR ROBINS: Yes, the final SPA is in respect of these assets is the Prime SPA where Prime ultimately buys Elysian Resorts Group Limited which had bought these subsidiaries in the prior SPA we described as the Elysian SPA. So you have the Elysian SPA to get the subsidiaries into Elysian, and then, the combined version of the Prime SPA, Elysian is sold to Prime. Under both transactions, there is a clause requiring the purchaser to borrow from LCF as much as LCF can lend in order to fund payments, 50 per cent of which, after the deduction of any administrative expenses and interest costs, is to be used in making payments to the first to fourth defendants.

MR JUSTICE MILES: The drawdowns that are being referred to -- I know you're going to come back to this, but the drawdowns being referred to here are drawdowns by various companies from --

MR ROBINS: LCF.

MR JUSTICE MILES: -- LCF.

MR ROBINS: From Prime subsidiaries -- Costa, Colina, Waterside, they have the facilities with LCF. Ian Sands of Prime puts in the drawdown requests. The money is generally not paid to Costa, Colina and Waterside. It is paid to whichever company is nominated in the drawdown request. Often, Global Advance Distributions, a company controlled by Mr Sedgwick, but in this instance, the nominated recipient of the £1.5 million is Mr Barker's company, London Power Consultants, which gets the money and transfers it to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. It is the final payment under the Prime SPA. We will come back to it.

MR JUSTICE MILES: All right.

MR ROBINS: That's probably enough in respect of The Hill and The Beach. I don't need to reiterate the key points. Perhaps to remind your Lordship, because we will come back to it probably tomorrow, the consequence of taking the additional deposits from the Sanctuary investors was that they had to start paying $£88,000 a month to the Sanctuary investors by way of interest. That is a point which looms large. As I say, probably tomorrow.

We can move-on to Paradise Beach, the other Beach, in Cape Verde, which is similar to The Beach in the Dominican Republic insofar as no asset is ever required. There is simply a contract to acquire an asset for most of the period.

The difference is that, whereas in the case of Tenedora, towards the end of 2017 and the beginning of 2018, Tenedora does begin to acquire some of the parcels, for Paradise Beach in Cape Verde, the intended purchaser is to be a company called CV Resorts and it never acquires anything. It is a single contract with a number of parts, we will see in a moment, but it doesn't actually acquire anything and the contract is ultimately terminated. So no asset is ever acquired at all.

We can begin with <D2D10-00007581>, please. It is important to see the chronology and, of course, who is involved. This is an email dated 13 August 2014 from Mr Hume-Kendall to Mr Golding's "nanoferros" email address with the subject "Paradise Beach". It is a draft email to John Cotter, which Mr Hume-Kendall is sharing with Mr Golding in draft, saying that they have had a meeting in London:

"We hope ... you found [it] constructive and are pleased to say that yesterday we reached 'in principle' agreement with Stirling Mortimer ... subject to board approval on mutually acceptable terms under which they would agree the assignment or novation of their contract with Paradise Beach SA on a full and final basis which would therefore allow us to proceed as discussed." So, it is a matter that's proceeding, at this point, in discussions with Mr Hume-Kendall and Mr Golding. If we could go to <D2D10-00008050> and read up the chain from the bottom, please. We will see -- sorry, the previous page, I think we need to see the email of 11 September at the bottom of page 1:

"Dear John and Ned."

It is from Mr Hume-Kendall to John Cotter copying Ned Cotter and Mr Thomson. He says on page 2: "Thank you both for taking the time to see Spencer and I in Cork yesterday and we hope that you, like us, found the meeting productive ..."

And he sets out the terms that are in discussion at that point. We don't need to look at the terms too closely because we will see the contract in a moment, but it is relevant to note that Mr Thomson is involved in the email chain at this point as well as Mr Hume-Kendall and Mr Golding. Mr Golding is there at the top of page 1 where Mr Hume-Kendall forwards the exchange to him.

<D2D10-00008127>. We see some other familiar names in the email chain: Mr Sedgwick is involved alongside Mr Thomson, Mark Ingham's name appears as well. So those are the individuals dealing with the proposed acquisition of the Paradise Beach resort. As my Lord may have picked up from those emails and from the pre-reading, it was a partly-built resort owned by a company called Paradise Beach SA.

Paradise Beach SA had contracted to sell it to Stirling Mortimer. That sale had fallen through and it was proposed that a company associated with Mr Hume-Kendall and Mr Thomson and Mr Golding called CV Resorts would step into the shoes of Stirling Mortimer as the purchaser of the property. Mr Thomson, as we see, was closely involved. We see that again at <D2D10-00009437>. In the middle of the page, Mr Sedgwick is attaching the addendum agreement, which we can see is still in draft

because he has amended it in line with notes and comments. He says he hasn't done anything to the termination provisions which he agrees need to be changed:

"The agreement may need to be tidied up and the numbering checked, particularly any cross-references." That's copied to Mr Hume-Kendall and Mr Thomson. So they're fully aware of the terms of the proposed contract, and of course the purchase price. We don't need to look too closely at the attachment to this because we will see the signed version shortly. In terms of the timing, the chronology, if we look at <D8-0000516>, we see, on 8 April 2015, Mr Sedgwick is telling Mr Hume-Kendall:

"Stirling Mortimer have signed up the novation agreement so we just now need to organise signing of the main agreement."

Then, please, <EB0002079>. This is 13 April 2015 -- sorry, the 14th. In the middle of the page, Mr Sedgwick asks:

"Is it okay to exchange the agreements?" Mr Barker, above that, says:

"I believe so but hold fire until you speak to Simon."

And Mr Hume-Kendall, at the top of the page, says, "Yes, agreed".

So we do have contemporaneous email traffic on this occasion to confirm that the agreement, which we will see in a moment, dated 13 April 2015, was, in fact, executed on that date.

The agreement itself is <MDR00005376>. It is entitled "Framework addendum to promissory contracts of purchase and sale Paradise Beach resort". It is between the company I referred to as Paradise Beach SA -- I think in our written submissions we said Paradise Beach ATASA, but that takes a bit longer to say -- and CV Resorts, which is the purchaser. The recitals identify that the seller is the owner and possessor of two plots of land located within the integral touristic development area and it gives the further details.

On page 2, recital B identifies that the seller is developing a touristic resort named Paradise Beach, it is going to comprise of 732 apartments, 199 villas, a hotel with 60 bedrooms, 16 shops, nine swimming pools, a beach club and other leisure facilities. Recital C records that there was a prior contract with Stirling Mortimer, who promised to purchase the freehold over units located in the resort.

Then, at D, Stirling Mortimer has assigned to CV Resorts its contractual position in all the contracts, so that assignment has become effective. And then E, in the recitals, identifies that this is an amendment to the contract:

"The parties now intend to change the terms and conditions of all the promissory contracts by establishing a general framework addendum that amends and will govern all the promissory contracts ..." So, it is an unperformed contract that's assigned and then amended.

We can see the terms starting on page 3, halfway down the page, which explains that CV Resorts has to pay various sums for various phases of the development. In clause 2.1, it has to pay 20.6 million euros for south side phase 1 on or before 30 April 2017. Then clause 2.2 identifies the instalments and the dates by which those instalments are to be paid. So 2.2 is the breakdown of the total figure of 20.6 million euros in 2.1. We can see, over the page, the instalments are to start on 30 September 2015 and run through to a final payment of 8.8 million euros on or before 30 April 2017. That's for south side phase 1.

Then, on page 4, we have, in clause 2.3, the units located in the north side of phase 1, and that's a sum that has to be paid on or before 31 March 2019. It is a total sum of 25.4 million euros, and clause 2.4 sets out the instalments and dates. Those sums together constitute the total of 25.4 million euros in clause 2.3 for north side phase 1.

Then, on page 5, we see in clause 3.4 the purchase price for phase 2 is the property's nominal value of 184,864 euros, which is deemed received. So phase 2 is deemed received.

Then, on the same page, in clause 4.1, there is to be a payment in respect of the phase 4 land, 4 million euros is identified in clause 4.2 in various instalments, and then, on page 7, clause 5.1, there is an option to purchase phase 3 for 6 million euros, and then, in 6.4, there is 1 million euros -- it must be on the next page -- payable for phase 5. If you add up all of those constituent elements, you come to a total purchase price of 57 million euros. We can see it in a spreadsheet summary that was sent by Mr Sedgwick to Mr Peacock on 2 December 2015 at <D2D10-0012921>. We probably need to open it in native form.

MR JUSTICE MILES: Was this dependent on the seller building something there?

MR ROBINS: It was a partially completed resort development. So, part of phase 1 -- there are some photos of it somewhere, we can dig them out -- had the concrete shell of some buildings. Some of the units seemed to have been fitted out. It was -- unlike The Hill and The Beach, it wasn't just barren land. There was a partially constructed development site. The total sum payable for it under this contract in that state, that partially-built state, was --

MR JUSTICE MILES: Under this contract, were they required to build out the units?

MR ROBINS: No. It was a contract to acquire it in this partially-built state. We will see from the subsequent correspondence that there were disputes between the parties because CV Resorts failed to pay the sums due, and Paradise Beach SA complained rather vociferously about that and threatened to terminate. CV Resorts did point to some obligations which it said were unperformed on the part of the vendor which needed to be attended to. But they were not in the nature of building it out. It was a partially-built resort being sold in this unfinished state. As I understand it, the idea was that CV Resorts would finish the development of these various parts, having acquired them. But the total sum payable -- and I hope we can find <D2D10-00012921>. That is, as I say, a spreadsheet which was sent by Mr Sedgwick to Mr Peacock on 2 December 2015. It identifies the various sums.

If we add up cells C3, C9, C14, C18 and C25, it comes to the grand total of 57 million euros, which, at the prevailing exchange rate, was about £41 million. As I say, Mr Thomson was fully aware of the sum payable under the contract. If we could look at <EB0004668>, we will see that, in the second half of July 2015, Mr Thomson has received an email from Savills. That's at the bottom of the page. We don't need to look at what they say because we will see their report in a moment. But he's received the email from Savills and he emails Mr Barker, saying: "We need to talk the below through. Savills' verbal opinion on phase 2 in its current state is that it will be little more than the value of the land with planning as the only construction is the shell, as a very rough indication they pointed to their valuation less remaining construction and fit costs out which on their initial thoughts only left a valuation of a couple of million. There may be a greater uplift but they won't make comment until they have been there. "They have also suggested taking 20,000 euros per unit fit-out costs of the phase 1 values." And then says in the final paragraph:

"So taking all of the above into account, the site value in its present state will be in the early 40 million euro range! Tag onto this the issues with the site and what we would have to pay SM we are overpaying by quite a margin."

One can see why he says that because the contract requires them to pay 57 million euros, but Savills are advising them that the site value in its present state will be in the early-40-million-euro range, and so they're overpaying by quite a margin.

We see the Savills valuation report in a moment, but first if we could look at <MDR00017747>, we see that Savills is sending, or has sent, towards the bottom of the page, a draft report to Mr Thomson, and he's forwarded it to Katie Maddock of LCF. The report itself is at <MDR00017752>, and this is a draft of the report, dated August 2015 in the top.

We saw on the previous email they sent it to Mr Thomson on 21 August 2015.

On page 3, I think it is, we see the letter from Savills to Leisure & Tourism Development, for the attention of Mr A Thomson, "Property: Paradise Beach Resort, Sal, Cape Verde", and they say they have provided the report.

If we look, please, at page 9, we see that they describe it as a resort development which has been partially constructed. That's the third row of the table. They have provided two valuations, at the bottom:

"Market value -- 40.55 million euros.

"Worth value -- 56.72 million euros."

Those terms are defined on page 12. The definition of "market value" in 1.1.4 is, no doubt, familiar to your Lordship. It is:

"The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction, after proper marketing, and where the parties had each acted knowledgeably, prudently and without compulsion."

The worth value is the value of an asset to the owner, or a prospective owner, for individual investment or operational objectives.

What they are saying is, if you pay 57 million euros for this site and try to sell it again, you are only likely to get back 40.55 million euros. If you keep it for your own investment purposes, you might be justified in saying that it is worth 56.72 million euros. In other words, it's worth to you what you paid for it. You might not get that much if you sold it to a third party, but it is worth to you what you paid for it. Of course, from a security valuation perspective, it is the market value you need to look at because, as a lender enforcing security, you do so by way of sales. So that's the 40.55 million euros market value. But given that the site will cost 57 million euros, it's not a particularly attractive proposition. As Mr Thomson said, "We are overpaying by quite a margin". It is therefore no surprise to see that CV Resorts fails to pay the instalments that it's contracted to pay under the contract.

If we look, please, at <EB0008909>, we find Mr Sedgwick, on 24 November 2015, telling Mr Hume-Kendall and Mr Barker that he's received a letter from Paradise Beach, by which he means Paradise Beach SA, that he hasn't yet had an opportunity to read. But it would seem to be a claim against CV Resorts for failure to perform the agreement. He attaches the letter of claim, it's the next document, <EB0008910>. My Lord will see it is a letter from Paradise Beach to CV Resorts for the attention of Mr

Sedgwick. It says they are writing in relation to the contract. If we can look at the next page, please, they say at the top:

"Further to our previous correspondence ... Paradise Beach already underlined in numerous occasions, CV Resorts is presently in default of numerous of his contractual obligations, namely the following ..." They identify the various defaults including purchase of south side phase 1 units. They identify the sum that was supposed to be paid, and point out that there has been no performance of that obligation. On page 3, they say in bold:

"Facing this, CV Resorts is presently in breach of the framework addendum as it did not fulfil its contractual obligations ..."

They identify those obligations. Then they deal with the purchase of phase 2. At the bottom, they make another allegation of breach. There is more of the same on page 4 in respect of purchase of phase 4 and, again, in bold at the bottom, the allegation of breach. On page 5, purchase of phase 5, another allegation of breach. Then, in section E, they set out the amounts due under the framework addendum, and then, on the next page -- continue -- they identify the outstanding amount there. My Lord will see it is a little under 220,000 euros at that point that ought to have been paid but hasn't been paid.

Then, on the next page, another allegation of breach. With these letters, I think they are drafted by local counsel and are all in a similar form. There is probably on the final page -- sorry, penultimate page. In bold, the conclusion:

"Considering the above mentioned, we hereby notify to you, within 28 days from the present date, remedy as a whole all CV Resorts' contractual breaches ... "Should the above mentioned actions not be performed and therefore CV Resorts does not remedy as a whole ALL its above identified contractual breaches ... (i) CV Resorts will enter in definitive breach of the framework addendum; (ii) consequently Paradise Beach will lose his interest in CV Resorts' performance of its contractual obligations ... (iii) consequently Paradise Beach shall terminate the framework addendum and all promissory contracts without the need for any further notice or warning."

It identifies the various consequences. There may be something on the final page we should see. Let's have a look. It is more of the same. So, there can be no doubt that CV Resorts was in breach of its obligations.

There is another letter at <EB0014785>, this time dated --

MR JUSTICE MILES: Was there a governing law of the agreement?

MR ROBINS: We can go back and look at it. I think it was the local law, but let me check that. <MDR00005376>. I'm not sure if there is a contents page on page 2. It might be quicker to resolve this now, rather than mentioning it tomorrow morning. Yes, it is page 21, clause 24.1. It is Cape Verde law, but with London arbitration.

So, the next document to look at is <EB0014786>. We don't need to go through it in any great detail. <EB0014785>. We don't need to go through it in any great detail, but it is another letter from Paradise Beach, this time dated 15 February 2016 and received 22 February 2016 complaining of non-payment by CV Resorts and so on.

We get a description of this in an email at <EB0014904> in which, on the 23rd, the day after receipt, Mr Sedgwick emails Mr Hume-Kendall, Mr Barker and Mr Golding to say the allegations against CV Resorts are -- he summarises them:

"1. That we failed to purchase sufficient units within phase 1 to comply with our obligations under the contract."

This is a dispute that rumbles on, and, ultimately, the parties managed to agree the terms of a further variation which essentially pushes out the various dates for payment of the various instalments. If we can look at <MDR00042487>, my Lord will see 29 May 2016, Mr Sedgwick is forwarding to Mr Thomson an email that Mr Sedgwick had sent to John and Ned Cotter attaching four documents, including a variation agreement signed by Simon, the varied addendum agreement, the executive summary and soft copies. So, Mr Thomson is kept in the loop as to the state of play in respect of this property and is aware that they haven't paid and they have pushed out the dates. The variation agreement itself is <MDR00042489>, and this is a draft signed by Mr Hume-Kendall but at this point no-one else. On, I think, probably the next page, recital B identifies the various disputes that have arisen as to the performance of the agreement and says that the parties wish to amend the agreement. Then the varied agreement is at page 3, it begins at page 3. Clause 2 sets out the consideration which is a payment by CV Resorts to Paradise Beach of the sum of 100,000 euros, which is to be credited against payments made by CV Resorts under clause 4.2. That's the consideration for the variation.

Then the variation itself is <MDR00042490>, which was the schedule to the agreement we were just looking at. On page 3, in clause 2, my Lord will see it is very familiar. It takes the same form as the previous agreement. The same prices for each of the phases, for example, 20.6 million euros for south side phase 1. But what it has done, if we look at the next page, is to push out the instalments. They are now payable from 30 June 2016 to -- sorry, I'm looking at the wrong one. Those are the original dates, I think. No. Those are the correct dates. The instalments for phase -- let's look at the bottom of the previous page -- south side phase 1:

"All the referred south side phase 1 units shall be purchased as soon as the promissory buyer is able to complete each purchase and in any event sufficient units at its choice so that the sum of the individual balances is up to the following amounts to be paid up to the following dates."

So this is a new payment schedule for the various instalments. We see the same in respect of north side phase 1, the new instalment dates are set out in clause 2.4. On page 5, it says in clause 3.3 that, on payment in full of the sums payable for south side phase 1 and phase 4, Paradise Beach SA will transfer phase 2 to CV Resorts. So transfer of phase 2 is now conditional on payment in full for south side phase 1 and phase 4.

Then page 6, there are similar modifications in respect of phase 4. The phase 4 price is still 4 million euros, but only 3.8 will be actually payable because of the payment that has been made and credited. It says:

"The purchase price of phase 4 ... is 4 million euros and the promissory buyer shall, between 1 June 2016 and 1 September 2016, deposit the sum of 3.8 million with its solicitors Buss Murton and provide evidence of the same to the promissory buyer and the promissory buyer's solicitors shall pay the same to the promissory seller ..."

It says "the balance of the sum of 4 million euros having been already paid to the promissory seller under clause 13.8 of clause 2 of the variation agreement." So, those are the sums that are credited as being part of that.

The option prices for phase 3 and phase 5 remain the same, and the total price payable for phases 1 to 5 continues to be 57 million euros. All that is done by this is to reschedule the payment dates. One sees confirmation of that in other documents -- for example, <MDR00056253>. Towards the end of August, we can see, at the bottom of the page, Paul Seakens was asking Mark Ingham various questions and Mark Ingham replies saying, "See my comments below."

What we see at the bottom of the page are, in the darker text, the questions from Paul Seakens and then, in the slightly lighter text, the responses from Mark Ingham. Right at the foot of the page, Paul Seakens is asked:

"Can you confirm my understanding that the purchase price for Paradise Beach is 57 million euros?" Mark Ingham replies:

"There are several parts to the contract but they add up to 57 million."

So, as I say, it continues to be 57 million euros that remains payable.

The sums due under the contract continue to go unpaid. If we could look, please, at <D2D10-00020961>, we will see Mr Sedgwick emails Mr Friedlander, copies to Mark Ingham and Mr Hume-Kendall and Mr Barker. He says: "I have already given you a copy of the latest agreement with Paradise Beach but for completeness' sake I attach a further copy together with a summary of the terms of the contract.

"To date we have not been able to complete the purchase of any of the units largely because the sellers have not fixed a date with the notary in Sal to close the transaction. They would probably say that the delay was our fault in that we have only recently supplied the tax reference number and the power of attorney to deal with the completions. However, probably they have string it out so that the value of the closings is sufficient to get them out of a default position with the bank ..."

He says:

"We are ready, willing and able to complete the transactions that should have happened

in June-September; however, when we complete these they have to provide us with security to cover the amount paid for the phase 1 and phase 4 properties purchased to date.

"We should also have purchased phase 4 at a price of 3.8 million euros but they have not been pressing for that."

The attachment at <D2D10-00020963> is a summary from Mr Sedgwick with the various amounts and payment deadlines:

As a result of CV Resorts' continued non-performance of the contract, the dispute between CV Resorts and Paradise Beach SA is reanimated.

If we could look at <EB0032302>, my Lord will see Mr Hume-Kendall is emailing John Cotter, copied to Mr Barker, Mark Ingham and Spencer Golding, and the relevant numbered paragraphs:

"1. Our legal team is working with yours to find a solution to the issues outstanding ..." In paragraph 3:

"You expressed the considerable dismay and even anger felt by your board towards CV Resorts' continued delay and I would humbly like to respond that whilst the delays have been longer than they (or we) would have liked, Paradise Beach has benefited in the following manner."

He says, for example, the euro has increased against a basket of global currencies. Right at the bottom of the page:

"Even if your board does not feel a 52-million-euro debt of gratitude to CV Resorts, we hope it will at the very least consider an extension in time based on the fact that the price in contemplation is far in excess of an open market sale."

So, he seems to be asking for more time on the basis that the price that remains payable is far in excess of the open market value, which obviously it was. We have seen the Savills valuation of the market value. Then if we could look, please, at <EB0032324>, we will see Mr Cotter doesn't seem to have been persuaded it was all good news, because Mr Sedgwick is providing Mr Hume-Kendall and Mr Barker, copied to Mark Ingham, with a draft email to John Cotter. We see that in the subject of the email. He says -- proposes to say: "Dear John, further to our conversations with Simon and various email exchanges, as I anticipated it is not going to be possible to close the initial purchases of units at Paradise Beach."

The next paragraph:

"However, I understand from your conversation with Simon and your emails that it is Paradise Beach's intention to consider the contracts between Paradise Beach and CV Resorts to be terminated if the closing does not happen today: I think that would be an unfortunate reaction ..."

There is, indeed, a subsequent letter from Paradise Beach SA complaining of the default and setting a deadline for performance of 1 February to remedy those defaults. That's <EB0035997>. That's the email from Mr Sedgwick attaching the letters he's sending them to Mr Hume-Kendall copied to Maria Godinho, who was the Portuguese lawyer who was acting for CV Resorts, and probably also to Mr Redman. He says:

"Please find letters from Paradise Beach in effect giving us until the 1st February to remedy our alleged breaches of the agreements."

The first attachment is at <EB0036001>. You can probably get the flavour from looking at pages 7 and 8. It is a notification of:

"... a last and final 20 days' deadline from the present date to remedy as a whole all CV Resorts' contractual breaches identified above ... "Should the abovementioned actions not be performed and therefore CV Resorts does not remedy as a whole all its above identified contractual breaches within the foregoing 20 days deadline: (i) CV Resorts will enter in definitive breach ... (ii) ... Paradise Beach will definitely lose its interest in CV Resorts' performance ...; (iii) ... Paradise Beach shall terminate the framework addendum ..."

There is another attachment we should probably look at, <EB0036009>, page 4. Again, it is another letter from Paradise Beach:

"Facing this, we underline that, in case you do not comply with your contractual obligations and therefore CV Resorts does not attend to the public deeds of purchase and sale and/or does not perform the payment of the balance ... on the new scheduled date (1 February 2017), CV Resorts will enter in definitive breach ..."

It says essentially the same thing. So there is no doubt about it.

Then at <D2D10-00024621>, on 6 February 2017 Mr Sedgwick emails Maria, the Portuguese lawyer, copied to Mr Hume-Kendall, and he says:

"Further to our recent conversations, I would be grateful if you could review the position of CV Resorts with regard to Paradise Beach. As you know, we are of the view that the price being paid for the site is too high and wish to persuade them to accept significantly less."

We don't need to go into the detail, but there is a plan to borrow money from a third party, to take an assignment of the security in favour of the lender which lent money to Paradise Beach SA, so that they can then effectively hold that in terrorem over Paradise Beach SA and say, "We have now stepped into the shoes of your bank. You defaulted under your loan agreements with your bank. We will enforce that against you unless you negotiate a lower price with us". But for one reason or another, that scheme doesn't go anywhere and Paradise Beach end up terminating the contract. We see that at <D8-0010649>. We can see from the first page it is a letter from Paradise Beach to CV Resorts, it should be. Is that the first page? It is dated 24 February 2017. If we jump straight to page 11, the final paragraph:

"Thus, in face of the lack of a contractual and/or legal justification for your present breaches, and especially considering the contents and level of arguments of your previous correspondence that shows your total and definitive lack of commitment and interest for the fulfilment of your contractual obligations and for the fulfilment of the framework addendum, Paradise Beach has definitely lost all its interest in the present deal and in the signed promissory contracts, and therefore your present breach of the promissory contracts is deemed definitive." That's followed by a final letter, <EB0049496>. This is the covering email. Mr Cotter has sent it to Mr Sedgwick, copied to Mr Hume-Kendall. Mr Sedgwick is forwarding it to Mr Golding and Mr Barker saying, "As you anticipated!". The attachment is <EB0049497>.

MR JUSTICE MILES: Mr Hume-Kendall forwards it saying that.

MR ROBINS: Sorry? I'm sorry --

MR JUSTICE MILES: You said it was Mr Sedgwick who forwarded it. Mr Hume-Kendall forwards it and says that.

MR ROBINS: Your Lordship is quite right. That is a mistake in my note. It is Mr Hume-Kendall saying, "As you anticipated!". The attachment is <EB0049497>. So, this is early June 2017.

While we are waiting for it, we can see on that page the attachment is "IRG PB letter termination 070617.PDF". It is a letter from Paradise Beach to CV Resorts. If we look at the bottom of the page, it says:

"Paradise Beach has underlined in numerous occasions over the past two years, CV Resorts has constantly breached its contractual obligations during the period ..."

And they provide a summary. We see on pages 21 to 22, essentially Paradise Beach is terminating the contract:

"Pursuant to the foregoing contractual and legal dispositions we hereby terminate the framework addendum ..."

So, they enter into a contract, they don't pay anything and it is ultimately terminated. But that doesn't prevent various representations or assertions being made as to the ownership of the valuable asset in respect of Paradise Beach.

If we could look back, please, at a document we have seen before, <MDR00029049>, this is the letter of representation signed by Mr Hume-Kendall. The second item in paragraph 5 is:

"Paradise Beach Resort, Cape Verde", given a value of £29 million. This is a letter that's signed on 5 October -- sorry, 20 January 2016. By that point, of course, they have signed the contract to pay 50 million euros. Mr Thomson has said, "We are overpaying by quite a margin". They have received the Savills report with the market value of 40.55 million euros. They haven't paid anything under the contract. In fact, they have failed to pay the 1.2 million euros that they were required to pay on 30 September 2015. They have received the first letter from Paradise Beach, dated 24 November 2015, complaining about their default. They haven't actually acquired anything. Mr Hume-Kendall knew that. Mr Thomson knew that.

I have reminded myself. The reason I mentioned 5 October is that's the date in paragraph 5. All the things that I have said a moment ago had happened by that date of 5 October. By the date of the letter, 20 January 2016, the position is worse because they have received the signed Savills valuation confirming a market value of 40.55 million euros. They have failed to pay the further sum of 1.2 million euros that was due on 15 January 2016. They still haven't actually acquired anything. Again, Mr Thomson and Mr Hume-Kendall are both fully aware of that. Another document to go back to is <MDR00077856>, which is Mr Thomson's security valuation spreadsheet dated 6 March 2017.

In row 20, he has "Leisure & Tourism Dev -- Paradise Beach Resort -- Sal, Cape Verde", which he gives a value of 40.55 million euros. That's the market value attributed by Savills. He converts that to a little over £35 million. But, of course, they still haven't acquired anything by that point. It doesn't matter what the market value of the asset is if you don't own it. By this stage, they have renegotiated the instalments and they have got the new instalment dates, and that contract was sent to Mr Thomson. But they have, again, failed to pay.

As Mr Thomson is fully aware, what they need to pay adds up to 57 million euros. If they paid something in that order of magnitude to get an asset that Savills says has a market value of 40.55 million euros, there's an instant loss. There is no asset worth £35 million sterling and Mr Thomson is well aware of that. In fact, by this date, Paradise Beach has written saying that CV Resorts is in definitive breach and threatening to terminate.

It is interesting to contrast all this with the value that is subsequently attributed to the Paradise Beach Resort in the calculation of the sum payable under the Elysian SPA, <MDR00007516>. By this point, nothing has changed. They still haven't acquired anything. But the gross value of CV Resorts is said, towards the bottom, to be 3 million. It's inexplicably gone down. It is now less than a tenth of what it was said to be only a month earlier, in Mr Thomson's security valuation, which formed the basis for advertisements in the Times, the Telegraph, the Financial Times.

Then <MDR00131382>. This is Mr Thomson's security valuation spreadsheet of 22 February 2018. CV Resorts is in row 16. The valuation of the security is now said to be nil. Well, the only real development is that Paradise Beach SA has now, in fact, followed through on its threats to terminate the contract, instead of merely threatening to terminate, and Mr Thomson recognises the value is nil, but the value was always nil. There was never any asset here worth £29 million, as Mr Hume-Kendall had said in his signed letter of representation, or £35 million, as Mr Thomson had put in his security valuation spreadsheet that underpinned the advertisements in the newspapers. So, that's, I think, as

much as I need to say about Paradise Beach, Cape Verde. It is really very simple. The next asset is the Lakeview Resort. We have probably got time before the short adjournment to begin looking at that. If we could start, please, with <MDR00013548>. This is a valuation report by GVA. In fact, I think the valuer is Mr Marshall, who is obviously familiar to us. But, on page 12, I think we will find a map of the site. It is near Bodmin in Cornwall. On page 13, there is a description. Let's start on page 12 with the description:

"The subject property comprises a leisure resort with club house, 69 holiday lodges, an 8-bedroom owner's residence, 9-hole golf course, 4-bay driving range, maintenance shed, 2 outdoor tennis courts, fishing lakes and amenity woodland."

The majority of the 9-hole golf course is within the land coloured pink and is excluded from the charged property. The property was developed in the late 1980s and opened in 1991.

Perhaps the next page, please. They describe the club house building, the holiday lodges, they say there are 23 bungalows built of timber frame construction with timber cladding under pitched tiled roofs. And 46 A-frame, two-storey lodges built with timber frames under pitched concrete tiled roofs with timber-clad end elevations. There is an owner's residence, which is a detached two-storey building during the 1980s. There are golf facilities.

Over on the next page, there are outdoor facilities described in an area of woodland and some administration and maintenance buildings. There are some photos on page 15, to give your Lordship an idea. The top left is the central facilities unit. What else have we got on this page? There is an A-frame lodge in the left on the middle. As my Lord can see, there is a wooden lodge, there is one bedroom upstairs and I think two rooms and possibly a bathroom downstairs. To the right of that is one of the bungalows. There is the golf driving range. I think there are some more photos on page 16. That's the owner's residence, the two-storey residence. Page 18 is important, for reasons that we will come to in due course, because it identifies the configuration of the lodges. It says in the first paragraph:

"There are two styles of A-frame lodge: those with a bay window ... and those without. Those with a bay window have a larger living area. We understand that there are four one-bedroom lodges and 42 two-bedroom lodges."

Then the bungalows in the middle of the page: "We understand that there are 5 two-bedroom bungalows and 18 three-bedroom bungalows." That's an important point that we will come to. The total number of three-bed units is 18. That is all that exists on site. That is confirmed by numerous other documents. There are only ever 18 three-bed units. So, if we see a document valuing this site on the basis that there are 57 or 62 three-bed units, we know it is entirely bogus and, as I say, that's confirmed by numerous other documents. There are only 18 three-bed units on site.

But, importantly, page 33. Although there are these various wooden lodges and bungalows on site, they are not all owned outright. Importantly, 36 lodges have been let to various individuals on 999-year terms. My Lord will see in the middle of the page: "We understand that the 36 let lodges 2, 4-6, 9, 11-14, 16-22, 25, 32-36, 41-49, 61-64, 68, 69 ..." They have all been let on 999-year terms for a rent of £200 per annum. There is a service charge also payable of £1,450 per annum.

So, those are in the leasehold ownership of third parties.

Then, on page 34, a further 24 lodges have been let on a peppercorn rent to a third party company called Lakeview Title Limited, it is sometimes described as a timeshare club. These are the 24

timeshare lodges: 8, 10, 23, 24, 27, 31, 37-40 and 50-60. This is a remaining term of 76 years and the rent is described as a peppercorn rent.

So, 36 leased to third parties, 24 leased to the timeshare club, that's a total of 60 that are leased to third parties. Of the 69 units, therefore, only nine are owned outright. So the rest are subject to leases. But, of those nine, one is a service lodge, which is described in one document as being little more than a shed. So, sometimes my Lord will see people refer to eight owned lodges rather than nine owned lodges, because they are discounting or ignoring the service lodge.

My Lord, I see the time.

MR JUSTICE MILES: Here it's talking about -- I haven't been following the numbers exactly, but there was reference both to -- so "lodges" includes the bungalows, so it is A-frame plus bungalows equals lodge.

MR ROBINS: That's right.

MR JUSTICE MILES: There are 69 --

MR ROBINS: In total. We saw on page 18, if we can go back to that, it's said to be four one-bed lodges and 42 two-bed lodges.

MR JUSTICE MILES: That's not the right page.

MR ROBINS: Page 18. Under "A-frame", they say four one-bedroom lodges and 42 two-bedroom lodges. So, we are up to 46. And then, below that, we have got the bungalows. It is five two-bedroom bungalows, so we are at 51. And 18 three-bedroom bungalows, which takes us to 69.

MR JUSTICE MILES: 69.

MR ROBINS: But I think it is possibly one of the one-bed lodges, which is described as a maintenance lodge, which is why, as I say, when you put to one side the 36 leased lodges and the 24 timeshare lodges, leased to the timeshare club for the peppercorn rent, there are 60 leased lodges and, depending on how you count it, either eight or nine owned lodges.

MR JUSTICE MILES: Yes, eight or nine.

Right. Okay. We will come back at 2 o'clock. Thank you.

(1.03 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: My Lord, just to mention Mr Warwick's application on behalf of the second and tenth defendants. At 1.15, about 50 minutes ago, we received a markup of the attached order -- of the order from Crowell & Moring and a cover email that ended with: "We have therefore marked up the attached order showing changes to the last version and including (draft alternative language on those points at this stage). Very happy to talk through at your convenience." My instructing solicitors responded about 20 minutes ago to suggest that they have a catch-up call later this afternoon to try and "knock over these final few points" and suggesting some time. So, it seems to be that matters are progressing. The solicitors are discussing it, as your Lordship hoped, and, for our part, we hope that a final discussion this afternoon will resolve the final few points of difference between the parties. So, unless Mr Warwick has anything to say, that's all --

MR WARWICK: My Lord, I don't, no. That's the position, save only that discussions had taken place reasonably extensively, I understand, before the 1.15 email.

MR JUSTICE MILES: Let's leave it there. As I said before, I am obviously fully aware of the urgency of dealing with it, but if it is progressing, let's hope that it resolves itself. Thank you.

MR ROBINS: My Lord, before the short adjournment, we looked at the configuration of the Lakeview site. We can now turn to look at the acquisition of that site. The best place to pick it up is probably at <MDR00010655>, which is a draft report by Moore Stephens for Lakeview Properties Limited, dated 6 September 2012. On page 2, it identifies the various relevant entities at this point. The holding company is said to be Lakeview Properties Limited registered in the Isle of Man. The directors are Geoffrey Hunt and John Banks, and the company secretary is Bridgewater (IOM) Limited. The trading subsidiary, on the right, is Lakeview Operations Company Limited registered in England and the directors are Simon Hume-Kendall and Clint Redman and the company secretary is LV Management Limited, Mr Hume-Kendall's company.

On page 3, there is some further information on the left-hand side. We see that the report has been prepared by Simon Paterson and Paul Sayers -- the name Paul Sayers is one that crops up again -- who are involved with Moore Stephens LLP.

On page 5, they identify that the resort on the left is Lakeview Spa Hotel & Resort, Old Coach Road, Bodmin. "The Owner or VKA" is Vernon Knight Associates, which is the owner of the Lakeview site. The bank with security over it, Barclays Bank. The developer, on the right, Telos (IOM) Limited of the Isle of Man. The directors, Geoffrey Hunt, John Banks, Clive Hilton. The investors' personal representative is Clint Redman and the investors, on the bottom right, are "136 investors purchasing interests in the resort from the developer [Telos (IOM) Limited] in 2008". That is all explained a bit further in the report. But, first, page 6, we see some more entities. On the left, "LVI" is Lakeview Investors LLP, designated partners Simon Hume-Kendall and LV Management. There is also "LVP", Lakeview Properties Limited, and "LVOC", Lakeview Operating Company Limited.

On page 7, the report explains in paragraph 1.1 that it has been written at the request of Lakeview Investors LLP in co-operation with Lakeview Properties Limited. It has been written firstly to assist LVI in dealing with the losses faced by 136 individual investors as a result of the failed ambition of Telos to purchase the resort. The second objective is to assist in the restructuring of the project to put it back on track: "Such restructuring is essential to protect the investors who are now facing a total loss of their investment."

In paragraph 1.2, it explains:

"This report contains:

"An outline of the proposed investigation into the affairs of Telos and the conduct of its directors and ... shadow directors.

"The detailed proposals of LVP to restructure the failed Telos project and to restore value for the investors.

"The proposed restructuring of the Telos project by ... (LVP) ..."

The background is set out on page 10, which explains in paragraph 2.3, towards the bottom of the left-hand side, that Telos agreed to purchase the resort for £6.9 million with an initial payment of £1.7 million paid out of the monies received from investors with the balance payable over two years.

Telos defaulted and the initial payment was forfeited. Telos now have no interest in the resort nor has any rights to purchase. Then it says in 2.4:

"LVI has drafted a new offer, submitted through Telos, to purchase the resort -- ie, the property and the business -- for £3 million cash, with an additional £1.5 million in deferred consideration payable out of future earnings."

In 2.5:

"Taking responsibility for the original £6.4 million invested and lost by the investors, the effective ingoing cost for LVP is £9.4 million plus other costs estimated at £400,000. Total investment required is therefore £9.8 million."

Then on page 11, paragraph 3.1, there is some more history explaining that the ownership position is that it is owned by Vernon Knight Associates, a trading partnership between Mike Vernon and Penny Vernon, his wife. All funded by Barclays Bank. Barclays is seeking early repayment. KPMG has been engaged by VKA to assist in this regard.

It explains, just towards the bottom of the left-hand side, they have been requested by some of the investors to investigate the level of involvement of Mr Vernon in the affairs and management of Telos. That investigation is currently suspended. Let's have a look on the next page. It says somewhere -- no, can we look at the previous page. I'm looking for the words "Mr Vernon played a leading role ..."

MR JUSTICE MILES: It is on the left-hand column, "Personal representative".

MR ROBINS: Yes, got it. That's what I was looking for.

MR JUSTICE MILES: Just remind me who are the companies? What is "LVI" and "LVP"?

MR ROBINS: LVI was Lakeview Investors LLP, the designated partners, Mr Hume-Kendall and LV Management Limited.

MR JUSTICE MILES: And "LVP"?

MR ROBINS: Lakeview Properties Limited -- hang on. Can we go back to page 5, please? These are companies that pop up at this point. We don't really see them again. A new company is incorporated instead. Previous page, please. Page 6, please. LVP, Lakeview Properties Limited, an Isle of Man company. But, as I say, these companies are mentioned at this point. They don't really pop up again. This is just the state of play as at September 2012, when various entities associated with Mr Hume-Kendall are trying to put together some sort of proposal to rescue the project, as it is described, and put it back on track, in circumstances where these investors have paid a considerable sum to Telos, some £6.4 million. Who knows where the money has gone, but Telos has forfeited its deposit and has no right to proceed to acquire the property. One gets some more of that on page 13 in paragraph 4.1, where the background is set out on the left-hand side:

"Telos is a company incorporated in the Isle of Man and managed by Bridgewaters, which is a fully licensed company manager regulated by the Isle of Man Financial Services Commission. Two of the directors of Bridgewaters, Geoffrey Hunt and John Banks, were also directors of Telos."

Further down:

"We are informed that the sales teams employed to attract investors were operated by Hansard Worldwide Limited and Bavington Consultants Limited. Both companies are now subject to creditor voluntary liquidation ..."

Then in 4.3:

"Telos, the two marketing companies, Mr Vernon and Mr Hilton were responsible for procuring investors' funds of £6.4 million."

It carries on to say in the final paragraph: "Expenditure did include £2 million for third party sales commissions in line with normal terms." So, of the £6.4 million, £2 million has gone out in sales commissions.

Then, on page 14, paragraph 4.5:

"The directors of Bridgewaters who are common to Telos have assisted and cooperated fully in the preparation of this report.

"As an indication of their goodwill, they are considering providing financial assistance with funding the project and the purchase of The Resort by LVP." So they are going to help LVP to buy it.

MR JUSTICE MILES: What's Bridgewaters?

MR ROBINS: Bridgewaters was the secretarial company in the Isle of Man that was associated with Mr Hunt and Mr Banks. They were the corporate directors of Telos. We see, ultimately, they are sued for misfeasance in connection with the loss of the investors' money. Then page 16, paragraph 5.1:

"We have been provided with a schedule of names and addresses of 136 investors who have contributed funds of £6.4 million.

"...

"In most cases the investors had paid 30 per cent of the total sum to be invested ..."

That's the third paragraph on the left. So it is 30 per cent deposits.

Page 19, we see the driving force behind all of this on the left-hand side, 7.1, "Simon Hume-Kendall": "The principal architect of the restructuring plan, Simon Hume-Kendall, has been active in the regeneration of Lamberhurst Vineyard, the formation of the successful English Wines Plc and the development of two tourist important attractions in Kent -- The Hop Farm and Bewl Water."

He is the principal architect of the restructuring plan. At 9.2, on page 21, we see, on the left-hand side, that in 9.2:

"It is proposed to take assistance in developing the team from industry experts who assisted Telos in their successful sales period. His company Ecoresorts Sales Limited has reviewed the proposals of LVP and are very familiar with the site and its potential." So Ecoresorts Sales, we saw yesterday, was the sales agent for the Sanctuary scheme. Mr Barker and Mark Ingham were associated with that company and it took the very substantial commissions of 20 per cent from the sale of the units to the Sanctuary investors. So, that's the proposal as at 6 September 2012. It's developed a bit in the course of that month. If we go to <D2D10-00005037>, Mr Hume-Kendall is emailing Mr Sayers of Moore Stephens and Mr Hunt at Bridgewaters. It is copied to Mr Golding at the "nanoferros" email address. I don't know why it says "John Smith": "Hi Paul, I reckon this is the basis of the discussion for tomorrow -- I still haven't managed to discuss this with the whole team so I'm not 100 per cent sure

it's our position but it looks okay. LCCL's offer: price £4.5 million payable £1 million in advance plus 3.5 million deferred for 24 months (repayable 1.75 million @ 12 months and 1.75 million @ 24 months) or sooner based on sales pattern less 25 per cent."

He says:

"Interest payable on the above at Barclays rate to [Vernon Knight].

"Reasons for KPMG to recommend LCCL's offer: "1. High advance cash lump sum from visible source. "2. Top end price."

So he thinks 4.5 is a top-end price:

"3. Rapid purchase process based on former documentation and due diligence almost complete. "4. Guaranteed rapid exit based on previous sales. "5. Avoidance of 'toxicity' from disaffected investors."

We see that encapsulated in a letter at <D2D10-00005051>. This is the covering email. My Lord can see Paul Sayers of Moore Stephens is sending it to KPMG, Liz Turner, also to Mr Hume-Kendall, copied to others at a law firm, and Mr Hume-Kendall at the top is forwarding it to Mr Golding. The attachment is the very next document, <D2D10-00005052>. It is on behalf of a company called Lakeview Country Club Limited. This is the first -- well, there are a number of Lakeview Country Clubs Limited. This is not the one we are concerned with. It is the penultimate one. This is a company called Lakeview Country Club Limited which we can see has the company number ending in 935. If we go to the next page, we will see that the letter is signed by Mr Sayers, who is a director. He is also the individual from Moore Stephens who was involved in putting together the rescue plan with Mr Hume-Kendall. My Lord can see, on the left-hand side, from the first paragraph, that it is the offer with the price of £4.5 million. The terms of payment have developed slightly in the middle of the first page. It is now £1.25 million on exchange of contracts and completion and £3.25 million as deferred consideration paid in four semi-annual consecutive payments.

My Lord has seen it already in two of the emails we have looked at, that Mr Golding is not copied into any of the emails, but Mr Hume-Kendall promptly forwards any relevant emails to him. We see that again, for example, at <D2D10-00005056> where, at the top, Mr Hume-Kendall is forwarding a document in relation to the Lakeview Country Club to Mr Golding. We have got <D2D10-00005060>, where it is, again, the same thing, a Lakeview timeshare discussion doc, which Mr Hume-Kendall is sending to Mr Golding. <D2D10-00005059>. This one is slightly different. It is sent by Mr Hume-Kendall. Mr Golding is blind copied so that the other recipients can't see that the email was simultaneously sent to him. It is an email to Andrew Visintin, who is a solicitor, or former solicitor, who was going to be assisting them with the acquisition of Lakeview. The general impression one gets from these documents is that Mr Hume-Kendall is involved but is also fronting the transaction, if you like, for Mr Golding, who is at least one of the main actors who is behind the plan to acquire the Lakeview resort.

Another person who becomes involved is Mr Sedgwick, if we look at <MDR00010015>. We see that he's forwarding an email from Nigel Boobier of Osborne Clark, who acts for the vendors. Mr Boobier has said: "I have been provided with your contact details and understand that you are instructed by Lakeview Country Club Limited ..."

That's, by necessity, the prior Lakeview Country Club Limited because the one we are concerned with hasn't actually been formed yet. But Mr Sedgwick is involved at that point, acting for the proposed purchaser. He is forwarding the email to Mr Hume-Kendall. He confirms at <MDR00010014> that he's been instructed by Lakeview Country Club Limited. But, as I say, that's the earlier Lakeview Country

Club Limited. So, they have made the offer of 4.5, including the very substantial element of deferred consideration, but there is a plan afoot to renegotiate and to reduce the price payable. If we can look at <MDR00010046> we find Mr Sedgwick, at the bottom of the page, saying to Mr Hume-Kendall and Mr Visintin that he's had a call this morning from Nigel Boobier, together with his team, "who are checking up on our progress". He explains Andrew is doing the donkey work, he was waiting for instructions, he hadn't seen due diligence, he mentioned the date of 5th December for completion: "It might be helpful for me to know a little more about how we are planning to play this matter to achieve the desired price adjustment, in the meantime I am happy to play dumb!"

As I say, there are moves afoot to reduce the price payable. Mr Visintin replies at the top to say he would like to have a conference call tomorrow morning to work out the strategy.

He emails, at <D2D10-00005103>, Mr Hume-Kendall and Clint Redman to set out his thoughts:

"I can see how you arrived at the £4.5 million purchase price. We are all agreed that this is way in excess of what the property and business are worth." That's why they want to try to reduce the price. They think that's way in excess of what the property and business are worth. He suggests a price of £1.5 million. Let's see where he says that. It is possibly on the next page, after his workings. The penultimate paragraph:

"I remain of the view that 1.5 million is the right price. Having thought about this, I think it's been suggested we put these facts to KPMG and say we are struggling to attribute a value to the site and ask for a further meeting with KPMG and insist that the bank is present."

That is, again, an email, on the top left, forwarded by Mr Hume-Kendall to Mr Golding.

Mr Hume-Kendall put some thought into this over the next couple of weeks and at <D2D10-00005120> he emails Mr Visintin, copied to Mr Golding, to say: "Herewith layman's guide to our subject to contract terms agreed with Vernon Knight, KPMG and Barclays as I see them ..."

This is the proposal that he's envisaging as a means of transacting:

"£2.7 million (subject to final chattel and goodwill valuation of £300,000).

"Payment of 5 per cent upon exchange of contract £135,000 balance £965,000 payable upon completion." That obviously doesn't add up to 2.7 million. There is a further balance of £1.6 million to be repaid in four equal instalments of £400,000 each, six-monthly in arrears following completion plus interest of Bank of England base rate plus 3.5 per cent. He sets it out. In the final sentence he says: "This is all I can remember at the moment but please could you try to draft it in the correct way?" As a result, there are further negotiations, new heads of terms are agreed and we see that in <D2D10-00005127>. This is Liz Turner of KPMG. Again, an email that Mr Hume-Kendall forwards to Mr Golding. Liz Turner says:

"Thank you for your time yesterday. I have provided Osborne Clark with details of the revised offer agreed on the call yesterday as follows."

This is the revised offer, 2.75 million. That includes a £200,000 non-refundable deposit to be paid upon exchange of contracts. Exchanged by 20 December 2012. £950,000 to be paid on completion. Completion by 28 February 2013 and a deferred consideration of £1.6 million to be made by four instalments on a six-monthly basis. She says, "A revised contract will be issued today". The ambition to exchange contracts by 20 December 2012 proves to be rather over-ambitious. What ultimately happens is the proposed purchaser asked to extend the date for exchange. The proposed vendor

says, "Well, I will agree to that if you pay a non-refundable deposit of £200,000 pending exchange", so not a deposit on exchange, but a deposit before they have even exchanged, "to fund the trading costs in the meantime", but seemingly premised on the idea that the business is loss making and they need an injection of cash in order to continue trading pending the exchange. We see that at <MDR00010217>, where there is an email from -- I think this is the wrong document. <MDR00010217>. This is from a senior associate at Osborne Clark agreeing to extend the date for exchange from 20 December 2012 to 4 January 2013 on condition of payment of £200,000 to fund trading costs. The bottom three lines of the italics:

"Such payment is non-refundable and will be deemed to satisfy the initial payment ... provided the contract is exchanged no later than the 4 January 2013. In the event the contract is not exchanged, this payment will not be refunded to you."

So, they managed to delay the date for completion, the price for that is to pay --

MR JUSTICE MILES: To exchange.

MR ROBINS: Sorry, exchange, my Lord. The price for that is the non-refundable deposit of £200,000. So, they need to raise £200,000. What we see is that Mr Hunt and Mr Banks of Bridgewaters, the corporate directors of Telos, agreed to provide that sum as a loan. We can see that, I think, first at <D2D10-00005141>. This is an email from Mr Sedgwick to Mr Hume-Kendall, which is again forwarded by Mr Hume-Kendall to Mr Golding. It is about an undertaking to be given to the providers of the loan:

"I would suggest the following undertaking to Geoffrey Hunt and John Banks who I understand are the providers of the loan ...

"Please check with them that they are happy with the undertaking and let me then have their contact details." The undertaking is:

"In consideration of your advancing to Lakeview Country Club Limited the sum of £200,000 we confirm that we are instructed by Bewl Holiday Homes LLP to give you an undertaking that we shall pay to you the sum of £100,000 out of the net proceeds of the sale of Hook House ... received by us due on the 31st March 2013 or such later date as may be agreed between buyer and seller."

So, that's the undertaking. It is proposed at that point to be given by Buss Murton.

If we can look at <MDR00010351>, Mr Sedgwick has revised the undertaking slightly. But it is in broadly the same form. It is for the money to be paid from the proceeds of sale of Hook House. The sum of £200,000 arrives with Buss Murton, <MDR00010501>. He says at the bottom:

"I am now in funds for the deposit."

Claire says:

"Please send this across now."

He asks at the top, to Mr Hume-Kendall and Mr Visintin:

"May I send them the £200,000?"

Then, at <MDR00010508>, having received that confirmation, he instructs the account department to pay the £200,000. Where is that? Is that on this page? Let's have a look at the next one.

MR JUSTICE MILES: It is that first line, isn't it?

MR ROBINS: Thank you, my Lord, the first line. So, the final Lakeview SPA for execution is circulated. This is <MDR00010568>. This is the transaction by which Lakeview Country Club Limited, which has now been incorporated, is going to be acquiring the Lakeview resort. Claire Bundy says:

"Please find attached sale agreement with schedules for execution."

The document is signed by Mr Thomson as a director of Lakeview Country Club. This is the new Lakeview Country Club which has now been incorporated, I think possibly on this day, 20 December, or possibly the day before. It is also signed by the Vernons and forwarded to Mr Thomson and Mr Hume-Kendall. Perhaps we can look at <MDR00010610>:

"Here is the sale agreement executed by the Vernons. All now signed and we have exchanged."

The contract that has been signed is at <MDR00010616>. My Lord can see the parties. Can we look at the next page, please? That's the contents page. The next page has the parties. My Lord will see that this Lakeview Country Club Limited is company number ending 648. So this is the newly incorporated one that is to be acquiring the Lakeview site. On page 4, I think the only bit we need to look at, for present purposes, is the completion payment is £950,000 and the deferred consideration, just a bit below that, is £1.6 million.

So, the contracts have been exchanged. But there is then a further renegotiation of the price at <MDR00011028>. Mr Sedgwick tells Mr Hume-Kendall, copied to Mr Thomson, that he's concerned that the recent search of the Land Registry has "brought up a number of issues with regard to the title to the land you are acquiring". He sets those out and in the third paragraph says:

"All of these items should have been well known to Mr Vernon at the time of exchange of contracts yet no mention was made to us."

In the final paragraph, he says he is concerned that Mr Vernon is quite ready to be economical with the truth and to play fast and loose. So a meeting takes place between LCCL and the Vernons. We can see that at <MDR00011079>. A revised offer is made on behalf of LCCL. In the bottom half of the page:

"I refer to your client's request for an update regarding the position following the meeting that took place on 14 February 2013."

He says -- Mr Sedgwick says at the top: "Please see the response I have received from Claire Bundy with regard to the revised proposal." Osborne Clark say that the issues that led to the revised offer are being investigated, and the terms of the revised offer are seen at <MDR00011223>, and something has gone slightly wrong with the formatting, but it is still legible. We can see, in paragraph 1, the purchase price is now to be £1.525 million: "2. The long stop completion date is 10 April 2013. "3. LCCL agree to pay £4,000 per day from (and including) 9 March 2013 to 10 April 2013." They have to pay these sums weekly in arrears. They are on a non-refundable basis in addition to the purchase price:

"4. If LCCL complete prior to 10 April, then only the number of outstanding days up to the completion date of the £4,000 per day is payable.

"5. There has to be a further non-refundable deposit of £150,000 on signing of a variation agreement to the contract.

"6. The amount to be paid on completion is £1.175 million ..."

Which is the 1.525 million less 200,000 and 150,000: "... plus the number of outstanding days of the £4,000 per day payments.

"7. If any of the weekly amounts are not paid on their due dates or the final consideration paid on the completion long stop date the contract will be automatically rescinded."

Finally:

"The variation agreement to be signed in the next 48 hours ..."

What we see from the subsequent documents is that a supplemental agreement is signed. We find it at <MDR00015182>. Same parties. 15 March 2013. Page 4, clause 4.1, the completion date has been deferred to 10 April 2013. The second initial payment is £150,000. Then 4.2:

"The definitions of completion date, deferred consideration, [et cetera] are deleted." So there is no deferred consideration anymore. 4.3:

"The definition of completion payment ... the sum of £1.157 million."

4.4, deferred consideration, as I said, is deleted, all references to deferred consideration throughout the agreement are deleted. Then at 4.7, the consideration is now £1.525 million, which is to be paid by way of the initial payment, the second initial payment and the completion payment.

In clause 4.15, there is a new clause, which refers to that £4,000 a day for every day that completion is delayed after 8 March up to the final completion date. It is to be paid in instalments of £28,000, £28,000, £24,000, £32,000 and £20,000.

4.16 has what we saw about the right to rescind the contract in the event of delay. So, there's, as I say, a second renegotiation to get the price down even further.

The purchaser, however, still has a major problem in that it doesn't have the money that it needs to proceed with the purchase, and so various avenues are explored to raise the money to complete.

The first point to mention is the efforts that are made to raise monies from the Telos investors, the 164 members of the public who paid £6.4 million to Telos and faced losing everything. If we look at <D2D10-00005186>, we see, again, Mr Hume-Kendall is forwarding something to Mr Golding. What he is forwarding is a further revised version of an investor letter that's being provided by Mr Hunt of Bridgewaters. He says:

"Can we set up a call with you both for tomorrow ... to discuss ..."

The attachment is at <D2D10-00005187>. We don't need to look at it too closely because we will see a further draft in a moment and it is probably more productive to look at that. But it is a letter to be sent by Telos (IOM) Limited to the investors. If we look at <D2D10-00005189>, we see there's a further -- this is the final version of the investor letter. It's being provided by Mr Hunt. That's what Mr Hume-Kendall is forwarding to Mr Golding.

This is the one I think we should probably look at. It's <D2D10-00005190>. After the apology for the delay, in the second paragraph:

"The original sale and purchase agreements for LCC ..."

That's not a reference to the company, that's the Lakeview site, Lakeview Country Club:

"... were rescinded in October 2011 by the vendor, Mike Vernon, due to this company's inability to raise financing to complete ... with the result that the deposits paid were forfeited and the company therefore has no assets. John Banks and I, as directors of this company, continued to investigate possible ways to preserve the stability of the company and in July 2012 were introduced by Mr Redman to a third party with whom we have been working since then to negotiate a new deal to enable the purchase of [Lakeview] with the continued involvement of existing investors. A new and separate UK company has been formed by the third parties involved, Lakeview Country Club Limited, which finally completed what turned out to be extremely tortuous and difficult negotiations with the vendor and exchange took place on 20 December 2012 with completion due on or about 28 February 2013."

If we just see below that, he says:

"We understand that the intention of LCCL is to offer you, as a Telos (IOM) Limited investor, a number of options, including retaining your existing agreement for lease albeit with the new company. The finance arrangements will cease, however, there will be alternative interest arrangements depending on the options referred to earlier. We also understand that negotiations have taken place with representatives of groups of your fellow investors in structuring LCCL's proposal with a further meeting scheduled for next week shortly after which it is expected that the proposal will be communicated to you."

So, he says at the bottom:

"You would of course have the right to retain your existing agreements ... However, as stated earlier, as a result of the company's inability to raise finance the company has no assets and will have to be placed into liquidation."

Let's see if there is anything on the next page. He says:

"The economic situation has changed materially ..." He says that the position will be explained in LCCL's forthcoming communication. He thinks it will be a positive step.

So, meetings are arranged with the Telos investors. If we look at <MDR00010855>, we can see that Mr -- sorry, that's the wrong document. Try that again. <MDR00010855>. Mr Sedgwick is providing Mr Thomson and Mr Redman with a bundle of letters "we have received". Those are the very next document, <MDR00010856>. The first one is a letter to Mr Thomson:

"We would like to thank you and the team you have organised for your very hard work on our behalf and for the progress you have made with the Lakeview project. We look forward to hearing from you again and especially to making a recovery on our investment." Then the next one is a form, they have been given a number of possible locations for the meeting. They said they would like to attend the meeting in Newcastle. There are, I think, perhaps more on the next page and the page after.

So, the investors are invited to meetings and a presentation is prepared to be made to them at those meetings. That's at <MDR00011181>. This is the Telos investor proposal by Lakeview Country Club Limited. If you look at page 3, please, it gives a number of -- actually, let's go back to the previous page. There's a nice picture. That is a picture of the 110-bedroom hotel which it is proposed to build at the Lakeview site. That's never built, but that's a graphic that we see being used in a number of contexts. Page 3 starts explaining the options for the Telos investors. Option 1 is:

"Do not take up any options offered by Lakeview Country Club Limited and pursue the recovery of your investment from Telos (IOM)."

Then option 2 is on the next page, I think: "A new contract with Lakeview Country Club Limited mirroring the Telos contract, ie, for a 30 per cent deposit (which in essence means that Lakeview Country Club Limited is gifting every investor a 30 per cent deposit) with the balance paid on handover/completion. "If an investor feels that they will [be] unable to complete the contract, Lakeview Country Club Limited will repurchase the gifted contract for 33 per cent of their original investment with Telos IOM. This payment will be paid out on completion of the build. "It should be noted that if the gifted 30 per cent deposit is accepted and subsequently upon completion of the build the investor is unable to complete the contract the deposit will be forfeited and the 33 per cent repurchase will not be made." Then the next page is trust payments:

"10 per cent of all property sale proceeds will be paid into an independently managed trust (a number of seats on the trustee board are available for investor representation).

"The trust will be set up and managed by Moore Stephens LLP.

"A hardship fund is possible within the trust to make early payments to elderly/less advantaged individuals (... sole discretion of the board of trustees ..."

This is page 5. Page 7, please. Here is an illustration:

"Based on a total £100,000 investment with a £30,000 initial deposit.

"Option 2.

"30,000 gifted deposit.

"Balance of £70,000 to pay on completion. "Total value returned £100,000."

There is also an option 3, which involves the prospect of the Telos investors advancing further monies to Lakeview Country Club Limited to assist Lakeview Country Club Limited to proceed with completion of the site. Basically, the more you -- that's the Telos investor -- provide by way of loan to Lakeview Country Club Limited, the more you get in return. So, if you provide 33 per cent of £30,000, then the position is, as set out, you get £10,000 funds accumulated in trust account and payable upon completion date. If you provide a 10 per cent contribution, that's £3,000 you have to hand over, and you're upgraded now to 67 per cent of 30,000. So, instead of getting £10,000 back, you get £20,100 back and the total funds returned will therefore be £23,100, plus you get the 8 per cent interest per annum on the £3,000 that you put in. That's the 10 per cent contribution.

If you make a 15 per cent contribution by providing a loan of £4,500, then you're upgraded to a return of 83 per cent of your £30,000 you've previously paid. The total funds being returned will therefore be £29,400, plus you get interest on your £4,500 at 8 per cent per annum.

If you make a 20 per cent contribution in the sum of £6,000, then you're upgraded to 100 per cent of the £30,000 that you paid previously, so you get back the £6,000 new money that you put in, the £30,000 money that you put in previously when it was under the auspices of Telos, the total you get back is £36,000 plus you get 8 per cent interest per annum on the £6,000 loan you made.

So, those are the various options that are put to the Telos investors at the Telos investor roadshow, the Lakeview roadshow.

There is a draft letter prepared for Telos investors to be sent subsequently to spell all this out. We can see who is involved in that at <MDR00011187>. Mr Thomson is sending the draft to Mr Sedgwick,

asking for him to review it. He is worried it might constitute investment advice. The draft letter is at <MDR00011188>. It says:

"You will have recently been written to by Telos IOM and the company I work with, Lakeview Country Club Limited ... The letter from Telos IOM sent to you January this year, outlined that the company has no assets and is being placed into liquidation. Additionally, the letter confirmed that Mr Clint Redman had found a prospective purchaser of Lakeview who was willing to be sympathetic to your situation and that of your fellow investors. The letter from LCCL was meant to simply introduce the company and invite you to meet with us to discuss your position ..."

This is one to be sent to someone who hasn't attended:

"Unfortunately, despite a further letter and telephone calls we were unsuccessful in contacting you. "The purpose of this letter is to endeavour to set out for you a number of options we have that would see at least some if not all of your, to date, lost investment returned to you.

"At this point, I should point out that LCCL does not have any dealings with Telos, we are a new company and have not received any of the monies invested in Telos. LCCL has exchanged contracts for the purchase of the Lakeview site, completion is scheduled for 28 March 2013, and it is the intention of LCCL to develop the site in accordance with the existing planning and to sell the various lodges, villas and duplex apartments. I am sure you are aware the site is located in a very nice part of the Cornish countryside ..."

And he says there is a development that's been prepared by -- plans have been prepared by an award-winning architect and a recent report by Savills has valued the site at £60 million when built. Then he says:

"A programme of regional meetings have recently been concluded which presented a number of options ranging from receiving a minimum of 33 per cent of the amount you lost returned to you, to seeing all of your lost investment returned to you.

"In the first instance, LCCL are proposing to purchase from you the deposit you made in Telos IOM at 33 per cent of its value and make you a creditor of LCCL ... For example, if you invested £50,000 ... then LCCL is willing to purchase this from you for £16,500 ...

"We are proposing to set aside in a responsibly managed trust run by Moore Stephens (the 10th largest accountancy practice in the world) 10 per cent of net sale proceeds. From these sale proceeds, the trustees will make pro rata payments from the trust to participating creditors until all monies owed are paid out. It is envisaged this will take between 2-3 years with payments made every six months ..." The next page sets out the other options. It starts by saying:

"The reason LCCL is proposing to work with the ex Telos investor group is to improve the site's name and reputation, which in turn will make it easier for LCCL to sell the constituent parts of the site ..." Then he says:

"It is clear that both the interests of LCCL and the ex Telos investors are linked and with this in mind LCCL is offering an enhancement to the 33 per cent recovery previously highlighted in return for a loan from creditors. This will enable LCCL to sell the component parts of the site quicker and pay more funds into the trust that will ultimately see the ex Telos investors paid out sooner. In return for loaning LCCL funds, LCCL will be able to ultimately return a greater percentage of the funds lost to Telos. Additionally LCCL will offer an 8 per cent interest payment on any loans to the company."

There is the table. If you provide a loan of zero per cent of your original payment, in other words, no loan at all, you get 33 per cent back. If you loan 10 per cent of your original investment, 67, 15 per cent is 83 and, if you loan 20 per cent, it means you get back, as we saw on the previous illustration, 100 per cent of your deposit.

So, you stand to lose 30,000. If you provide us with another 6, you will get back 36. Plus you will get 8 per cent interest on the amount of the loan in the meantime. So, that's what Mr Thomson is involved in proposing to the Telos investors.

I think there might be something on page 3, or so my notes tell me. Yes. An illustration. It is the illustration that we have seen in the presentation. Some Telos investors do like the sound of that proposal. They agree to loan monies to LCCL in the hope of receiving advanced returns. We see that at <MDR00011363>. This is a form that they send back. Mr Reese is happy to lend 26 per cent of his original investment to get back not only the amount of the loan but 100 per cent of his original investment plus interest on the amount of the loan at 8 per cent. I think there might be some more of these. Is there anything else? Page 3 maybe. No. There's an example. Then, at <MDR00011270> --

MR JUSTICE MILES: What were the investors going to get under the original deal with Telos?

MR ROBINS: They were going to get units in the development that was going to be built on the Lakeview sites. The 110-bedroom hotel was going to consist of various apartments. They were additionally going to build another -- I can't remember -- 36, off the top of my head, lodges. But the idea was, if you paid your 30 per cent deposit, that would enable Telos to acquire the site from the Vernons, proceed with the development of the hotel and the additional lodges, and then the investors could pay the remaining 70 per cent to acquire their units on the site. The problem, of course, for Telos is that it hadn't actually acquired the site yet. It was taking in the 6.4. Eventually, its deposit was forfeited and the investors were left high and dry.

MR JUSTICE MILES: But if it had all gone according to plan, would they have ended up with a room -- a unit in a hotel, or something, or -- was it a piece of property or was it a collective right?

MR ROBINS: They would have had a leasehold interest.

MR JUSTICE MILES: In some specific bit?

MR ROBINS: We can check that. As I understood, it was a leasehold interest in a lodge or it may be there were some that were in the nature of timeshares. I'm afraid, off the top of my head --

MR JUSTICE MILES: But they were getting some specific bit of property?

MR ROBINS: Yes, they were going to get some -- whether, as I say, it is a leasehold interest or something less than that, a timeshare interest, a right to stay at the resort for a certain number of weeks a year, I'm afraid I don't know off the top of my head. We can look into that tonight.

Looking at the size of the deposit, if they were typically 30 per cent in any illustration that, was typically £30,000. That would be a full price of £100,000, which is more in line with the sort of price that you would expect for a leasehold interest in the lodge. We will see that the 999-year leases with the £200 a year rent and the service charge changed hands for somewhere between £80,000 and £100,000. So it is in the region of a price for a lodge.

But that is the proposal that's made. This email is from Clint Redman updating Mr Hume-Kendall and Mr Thomson and Mr Hunt and Mr Visintin: "Just to keep you up to date we are now down to six investors that we have not had a reply from." So, they have been doing very well in getting in touch

with the investors. Then, if we look at <MDR00011281>, there's an email from Mr Sedgwick to Mr Redman and Mr Thomson attaching a draft letter to the Telos creditors. That's the next document, <MDR00011282>. This is to be sent by Buss Murton saying that they act for Lakeview Country Club Limited, which has exchanged contracts with Mr and Mrs Vernon to purchase Lakeview Country Club:

"We understand from our client that you had agreed with Telos Limited, an Isle of Man company, to purchase part of Lakeview Country Club and that you paid a deposit towards that purchase. Unfortunately, Telos were unable to complete ... and you lost your deposit. "My clients have offered to buy from you your claim against Telos Limited and also any claim you may have against Barclays Bank Plc arising from your lost deposit. The arrangement which they are proposing is, once they have completed the purchase of Lakeview Country Club they will construct and seek to sell a number of new lodges and from proceeds of sale of those lodges they will pay 10 per cent into a trust. The trust fund shall be used to pay to each of the creditors of Telos up to 30 per cent of the deposits which you paid to Telos. In addition, if you have agreed to make a payment to our client you will be entitled to receive enhanced payments from the trust fund.

"We therefore attach the agreement between you and our client. Please read this through carefully to ensure that it does set out correctly the terms which you have agreed."

He comments on the terms of the draft agreement. We can see that the letter is actually sent out in those terms, and I don't think we need to go to it because it's the same as this, but it is signed -- for the transcript, it is <MDR00011417>.

The draft agreement is probably a more important document. <MDR00011408>. That's going to be an agreement between the relevant Telos investor and Lakeview Country Club Limited. It sets out the background in the recitals and in clause 1: "In consideration of the payments to be made by Lakeview to the trustees, the creditor assigns to Lakeview all rights and actions that it may have against Telos arising out of the creditor's payment of the deposit and any other investment in or payment to Telos."

The various terms are set out. I don't think we need to go through them in detail. What follows is that the Telos investors start to --

MR JUSTICE MILES: Can I just ask a question? This says it is in consideration of the payments to be made by Lakeview to the trustees, and the letter we were just looking at said that 10 per cent of the proceeds of sale of the units would be paid to the trustees.

MR ROBINS: Yes. That's also clause 2 here.

MR JUSTICE MILES: So -- right.

I suppose my question is this: are the creditors made creditors of the company beyond that right? In other words, is it a sort of non-recourse arrangement, where the only recourse of the creditors is to their share of the fund?

MR ROBINS: I think so, but that is a question that we are going to have to look at this evening.

MR JUSTICE MILES: If we just go over the page, perhaps. So, it looks as though the creditor shall be entitled to the benefits set out in schedule 1 which shall be paid to him by the trustees.

MR ROBINS: Yes.

MR JUSTICE MILES: So, I mean, you know, I don't reach any conclusion on this, but, at the moment, it looks as though it's what I have called a sort of non-recourse arrangement, where there is an obligation on the company to pay the 10 per cent of the proceeds of sale of any lodges to the trustees, and the rights of the creditors are rights in any amounts paid to the trustees.

MR ROBINS: Yes.

MR JUSTICE MILES: So, it doesn't look as though, on the face of this document, the creditors become, as it were, unsecured creditors of the company.

MR ROBINS: That's consistent with my understanding. For example, the accounts of Lakeview Country Club Limited, as far as I can recall, don't start including the creditors as creditors of Lakeview Country Club Limited, but I'm afraid there are so many documents I've looked at in this case -- I would rather have a chance to check that before I give your Lordship a definitive answer. The trustees we see on page <MDR00011415>. Katie Maddock is providing Mr Sedgwick with the names of the trustees. They are Mr Ruscoe, who was, I think, formerly one of the eleventh to fifteenth defendants. Mr Hume-Kendall, Mr Sayers and someone called Bob Kendall. I don't know much about him. But these are the trustees who are going to be in charge of the performance of those obligations that my Lord was just looking at.

Mr Sedgwick starts receiving monies from the Telos investors. We see that, for example, at <MDR00011509>. He says:

"We have received agreements today from: "1. Mr and Mrs ******** (with cheque for £9,450.60. "2. Mr and Mrs ******.

"3. Mr and Mrs *******.

"I also have a form with no name on it promising a 20 per cent contribution."

Then <MDR00011656>, he provides a spreadsheet with a bit more on it than thought.

Then <MDR00011739>, "We have got more money coming in from Telos investors", Clare Simpson of Buss Murton tells Mr Sedgwick.

Then <MDR00012395>, they have received £33,051.20 from *********.

As to the total amount received, we can see what Mr Sedgwick says in <MDR00013464>. It is an email from him to Francis Marcus of FSP Law copied to Ultimate Holdings and Mr Thomson and Mr Visintin. I think I'm right in saying that FSP Law are acting for Ultimate Capital, which is a bridging lender which is proposed to be used for a refinance of the Lakeview indebtedness at this point, and he has been asked, towards the bottom, number 1:

"Confirm the number of former investors who have signed creditor agreements and amounts raised to date." He says:

"Approximately 85 signed agreements whereby they lent money to Lakeview and the total raised was approximately £800,000."

He says "approximately". We think it is slightly less than that. If we could look at <D2D10-00007195>. This is a spreadsheet we need to see in native form. The column headings, if we could see those, please, show "Surname", "Phone number", "Contract back", in column R, "Option", "Money received", "Contract", "Discrepancy", "Original investment", and so on, then in AB "Paid". Then, at cell C139, if we can look at that, please, that has the total amount received -- cell 139. No, it is cell

Y139, £728,572.88 that is received. So, a little under the approximate figure of 800,000 that Mr Sedgwick gave.

There are 22 documents in disclosure which are consistent with that figure. So we think that's the right one.

They have been promised 8 per cent interest per year on those sums, which means that £58,293 a year is payable to the Telos investors by way of interest. So, that's the first way that they seek to raise money for completion.

Obviously, it is not enough and, ultimately, as we will see, not all of that is used to make the completion payment. A large part of it is retained in Lakeview Country Club Limited.

The bulk of the completion monies are provided by way of bridging finance, and, perhaps looking at the time, we could pick that up after the shorthand writer's break?

MR JUSTICE MILES: We will take five minutes. Thank you. (3.15 pm)

(A short break)

(3.20 pm)

MR JUSTICE MILES: Just before you go on, Mr Robins, I have had a communication from Mr Slade, saying that there seems to have been some interest in some of the things that were discussed earlier on about his firm, in respect of which I made a reporting restriction. But he's asked that the parts of the transcript which referred to it be redacted because it seems that there have been members of the press who have been asking about it.

Now, it seems to me that there would be no real harm, at least for the time being, in that passage being redacted. I don't know --

MR ROBINS: I can't see a problem with that.

MR JUSTICE MILES: -- what position you take.

MR ROBINS: No problem with that at all.

MR JUSTICE MILES: So I will give a direction that that bit of the transcript should be -- how are we going to deal with this?

(Discussion re transcript)

MR JUSTICE MILES: If you could keep the confidential version, as it were, and the version you circulate is the redacted version.

I don't think anyone will be affected by that, and it is just the safest way of dealing with it. But if it could be maintained on your system, just in case -- I can't see at the moment how it could arise, but just in case anything arises, that would be helpful. So if you could talk, at the end, to counsel for the claimant, and there will be a passage or a couple of passages which can be identified and those can be marked confidential. Good. That's very helpful. Thank you.

MR ROBINS: We certainly have no objection to erring on the side of caution, but, as I said this morning, it is our understanding that this matter is in the public record.

MR JUSTICE MILES: I heard that, but I made the order, in any event, and I don't want to make life difficult for Mr Slade, if it can be avoided.

MR ROBINS: No. It is a shame he is not here now, because he has given us a copy of the most recent communication from the SFO which does cast in serious doubt what he told the court this morning --

MR JUSTICE MILES: I don't want to hear anything about that --

MR ROBINS: Again, unfortunately, we can't get into that --

MR JUSTICE MILES: -- Mr Robins, in his absence.

MR ROBINS: -- we'll have to get into that on Monday.

MR JUSTICE MILES: I should have said, because I have forgotten you are, of course, members of Mr Slade's firm. Presumably, you are happy with that course that I have just suggested?

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: Thank you. Right. That's what we will do. Perhaps you could let Mr Slade know that I have given that direction.

MS DWARKA: I have, my Lord.

MR ROBINS: I mentioned, before the shorthand writer's break, that efforts were also under way to find bridging finance, and at <D7D9-0000100> we see an email from Benjamin Beal towards the bottom of the page. He turns out to be the individual who ultimately introduces Mr Careless to Mr Russell-Murphy, but at this stage, a couple of years earlier, he is receiving an enquiry from Mr Russell-Murphy about a bridging loan, and responding to Mr Russell-Murphy in the terms set out at the bottom of the page:

"Hi John, the guy has come back with some questions regarding the finance required for Spencer." Which ties in very much with what I said this morning about one getting the impression from the documents that Mr Golding is actually the real party behind the acquisition with Mr Hume-Kendall fronting for him, providing copies of all the emails to him. But this is evidence to show that the bridging finance is being sought at this point.

Mr Russell-Murphy forwards the email to Mr Hume-Kendall, who provides some of the information in the middle of the page.

At <MDR00011504>, on 21 March 2013, Mr Sedgwick, at the top of the page, is having to tell Osborne Clark that they aren't ready to complete and will be, therefore, paying the compensation payment tomorrow morning in accordance with the supplemental agreement that we looked at.

Then, at <MDR00011732>, a week later, Mr Sedgwick is informing Osborne Clarke that he will be sending another compensation payment tomorrow morning and will let you know when it's sent.

So, completion is delayed but, ultimately, bridging finance is obtained from a company called Ortus, which provides an £800,000 facility, <MDR00012401>. This is the facility letter in respect of the loan facility of £800,000 from Ortus to the directors of Lakeview Country Club Limited. It is a facility to be granted, in paragraph 2, "to assist the borrower with the purchase of the freehold and leasehold titles to Lakeview Country Club".

There is a debenture and a charge in favour of Ortus we don't need to look at, but there are also guarantees from Mr Thomson, Mr Hume-Kendall and Mrs Hume-Kendall. Those are at <MDR00012403>. The first one is from Mr Thomson to Ortus. The next one, on page 2, is from Mrs Hume-Kendall. And then, on page 3, from Mr Hume-Kendall. All dated 5 April 2013. It is relevant to

note the chronology because one of the things that Mr Hume-Kendall says, and we will get into it in due course, is that Mrs Hume-Kendall was given 25 per cent of Lakeview Country Club Limited when it was incorporated on 19 or 20 December 2012 because she signed a guarantee in favour of Ortus. Well, that doesn't work on the chronology because she didn't do that until 5 April 2013, and, as we will see in due course, she wasn't even aware she was going to be giving a guarantee until very shortly before she signed it. But the money is raised from Ortus in that way, and the sale of Lakeview completes on 5 April 2013. We can see the amount that was paid on completion in two emails from Mr Sedgwick. The first is at <MDR00013166>, where he confirms to one of his -- to Parminder Kaur of Crystal Mortgages, who I think may have been the mortgage broker who organised the bridging finance from Ortus:

"... I confirm that the net amount payable on completion was £1,124,755.38. This sum was provided by: "1. Ortus Secured Finance 1 Limited £747,157.00. "2. Lakeview Country Club Limited £377,578.38. "The earlier deposits and all costs of the transaction were paid by Lakeview Country Club Limited."

So that's what was paid on completion. But, as he alludes to, the sums paid over also included earlier payments, including the compensation for deferred consideration. Those precompletion payments are identified in <MDR00013168>, where Mr Sedgwick explains that, in addition to the completion payment, they also made the following additional payments. There is the £200,000 on 20 December 2012 which came from Mr Hunt or Mr Banks or both of them, I can't remember; the subsequent deposit; the payments in return for further deferments of consideration. He says in the final sentence:

"This means that the total paid to the sellers was [a sum in excess of £1.6 million]."

That's what they have paid in total to acquire the Lakeview site, and, as my Lord and were discussing earlier this afternoon, it is certainly our understanding that that is the extent of the payment made and that the Telos investors didn't become creditors of Lakeview Country Club Limited, they had their rights under the trust. But the total price paid by Lakeview Country Club Limited was the £1.6 million that it paid over in cash, consisting entirely of borrowed monies, most of it from Ortus. There is also, in there, of course, a very sizeable chunk of the sum of £728,000-odd from the Telos investors. But it is money that's been raised in that way. Lakeview Country Club Limited hasn't put in any of its own cash. A newly incorporated company didn't have any cash. As to the value of the Lakeview site, there are some valuations which are all broadly consistent with each other and which we should turn to now. They will provide a value for the Lakeview site of somewhere between about £4 million and £4.6 million. If they are right, it means that Lakeview Country Club Limited did get quite a good deal. My Lord will recall that the initial offer was £4.5 million. After two rounds of negotiations, they got that down and ended up paying just over £1.6 million. If the value is actually between £4 million and about £4.6 million, then that was quite a good investment.

The first valuation is <MDR00011619>. This is a valuation from GVA, dated 17 January 2013. We see the date January 2013 on the left-hand side. On page 2, there is an executive summary that provides a description of the property. On page 3, there's a business summary saying that the Lakeview Country Club trades as a holiday lodge resort, generating income from a variety of sources, including the lodge ground rents, timeshare and let lodge maintenance charges, lodge hire fleet letting income, both in hand and on behalf of owners, facility income; and purchase and resale of lodge units. They say under "Income":

"We consider that fair, maintainable trading profit (EBITDA) for the business excluding ground rents and the purchase and resale of lodges is approximately £300,000 per annum."

They say that key valuation issues include the large freehold site, planning permission in place, located close to good road links and they also mention dispute with lodge and timeshare owners.

The summary of value is £4.65 million. Can we look at page 4, please. This is a certificate of value, if you like, dated 17 January 2013, and they say, towards the bottom, that they assess the market value of the freehold interest in the property, as at 25 October 2012, to be £4.65 million.

It is important to see how that is calculated. If we could look at the bottom of page 31, please, my Lord will see it says right at the bottom:

"Lodges 1, 3, 7, 15, 26 and 65-67 are held in hand." So, those are the owned lodges. So, they're counting it as eight that are owned by Lakeview Country Club Limited, or to be owned by Lakeview Country Club Limited because they haven't actually completed the sale at this point.

Over the next page, we see that these are the lodges that are subject to the 999-year leases. 36 lodges in total. And then, as we have seen, there's a rent of £200 per annum for each.

Then, on page 33, we have the 24 leases that are let on 76-year terms to the timeshare club on peppercorn rents. So, with the eight owned, the 36 on 999-year leases, the 24 on 76-year leases, you get to 68 in total. So, they are counting it as being 68 rather than 69.

On page 55, there is the valuation. After nil for the golf course, nil for the timeshare lodges on peppercorn rents and nil for the admin lodge, they say that the lodge ground rents of £200 per annum have a net present value of £120,000. The owned A-frame lodges, there are five A-frame lodges owned. He says £135,000 each. But he discounts -- he takes 85 per cent of that to come up with a figure in the right-hand column. There are three other lodges that are owned, presumably the bungalows, slightly higher value, 180,000 each, but, again, he takes 85 per cent. The hotel site, he attributes a value of £100,000. Undeveloped lodges, these are the plots for the development of further lodges that haven't been built yet, 36 plots. He attributes a value of £25,000 each for the development lands. He adds trading EBITDA for six years in the term of -- in the sum of £1.8 million. Lodge resale EBITDA, which is a profit you can get from buying back lodges, refurbishing them and selling them at a slightly higher price, he puts that in at £90,000 per annum. And the owner's house, which we saw the photos of earlier, he gives a value of £750,000. It comes to £4,657,750, but he says let's round it down to £4.65 million. So that's how that value is arrived at.

At <D2D10-00005358> -- have I given you a bad reference? Excellent. Thank you. It is an email at the top of the page from Mr Hume-Kendall. It is five months after the report we were just looking at. He's sending it to Simon Welsh of Hypa Management copied to Clint Redman, Andrew Visintin and blind copied to Mr Golding. He says:

"At the moment the only valuation on which we can rely is the current GVA report which PK had in a final form and we will email to you tomorrow -- it was for £4.6 million although it might now have increased in light of the works we have done and the improved trading/outlook.

"Although we have asked Savills to look at this again their 2010 valuation was obviously not addressed to us and is three years out of date but they have verbally informed us that they broadly agree with GVA's valuation format and levels which they have seen." So, at this point, Mr Hume-Kendall is hoping that GVA might increase their valuation slightly. They don't. The next GVA valuation we get is <MDR00013548>. This one, my Lord can see on the bottom left, is prepared for Ultimate

Capital, who are a bridging lender who are approached to refinance the Ortus loan when it comes to its expiry. The valuations for third party lenders are potentially of more weight because, of course, the valuer will know that he or she is potentially liable in negligence to the lender if they get it wrong. So one might expect details in valuations to people like Ultimate Capital to be rather more accurate.

This one has -- well, let's see. Page 2 is in the format we have seen. Page 3.

MR JUSTICE MILES: Go back to that. That seems to say there are 70 lodges, but I may have misread it.

MR ROBINS: Oh, it does. 70 holiday lodges. As I say, it depends on quite what you count. When we look at the substance of this report, I think it's still 68. We can have a look at that in a moment.

There is another oddity in this report in that, if we look at the next page, at the bottom, "Summary of value", there is a market value of £4.2 million, and market value assuming a sale period not exceeding 180 days is £3.6 million. But if we look at the very next page, the market value is given as £4.5 million. So, the discounted price with the 180-day sale period is still £3.6 million, but it is a £4.5 million valuation. But on page 33, the second paragraph, just after the first long paragraph:

"The lodge used as an office and lodges 3, 7, 15, 26 and 65-67 are held in hand."

MR JUSTICE MILES: The same number.

MR ROBINS: Yes, still eight. Then we have a table with the 36 let lodges, it says just above, "36 let lodges", with the 999-year terms. Then, on page 34, the 24 lodges subject to the 76-year leases to the timeshare club. So that's still 68. I'm not quite sure where 70 comes from.

On page 55, after the nil, nil, nil, for the golf course, timeshare and admin, we have the 36 lodge ground rents at 120 still; five A-framed lodges, 135 each, again an 85 per cent stake; three other lodges at 180 each; the hotel site still a value of 100,000; 36 lodge sites 25,000 each; trading EBITDA, 1.8; lodge resale EBITDA; owner's house has gone down slightly since the report we looked at earlier, it's now at 525. He gives an allowance for loss of amenity land and says 4.5. So a little bit lower than the 4.65 that we saw earlier, but same ballpark.

Mr Hume-Kendall, in that email, mentioned Savills, who he said broadly agreed with GVA. We see a valuation from them at <MDR00014615>. This is dated 17 January 2014 for the attention of Mr Thomson of Lakeview UK Investment Plc. It is a draft. It says the basis of the valuation, in 1.2, in the first bullet point, is the current market value of the freehold interest. That's first.

Second, the current market value of the freehold interest with the special assumption, in lines three and four, that the tie restricting occupation of the house to an owner or manager of the holiday park is lifted. Then the third and fourth bullet points are not market value. The third is:

"... investment value or worth of the freehold interest with vacant possession ... taking into account the unexercised planning permissions and prepared on a residual basis taking into account the profits potential of the property based solely upon the Lakeview business plan 2013 LBPV1 and the projected revenues, sales prices and costs ... which have been provided to us."

Then finally:

"The estimated gross development value of your planned development as above and based solely upon the Lakeview business plan 2013 LBPV1, and the projected revenues, sales prices and costs with which we have been provided to us."

The business plan, in short, as I have mentioned, is to build a hotel with 110 bedrooms and a further 36 lodges. We will see that in due course. But at page 5, at the bottom, we see that they are -- they understand there to be 23 bungalows and 46 A-frame units. So 69 units in total. Page 18 has the development proposals from the business plan. This is 9.4. They mention planning consent. They say it is a 105-bedroom hotel -- I'm sure I have seen 110 somewhere else, but 105 here -- and 36 golf lodges. That's the planning permission and that's the part of the business plan.

On page 21, the construction cost is identified. Towards the top of the page, bottom of the table in bold, £23.5 million. So that's how much it is going to cost to build the hotel and the additional lodges. On page 25, in paragraph 14.1, they mention the 24 timeshare lodges, timeshare leases. On the next page, in 14.2, they mention the 36 -- towards the bottom of the page, 36 long leases, the 999-year leases. And on page 28, in 14.4, it's said that there are five three-bedroom bungalows and six A-frame lodges owned by Lakeview Country Club Limited. Well, that's 11. Something has gone wrong because 24 plus 36 plus 11 is 71, but there aren't that many lodges on site, and they have previously in the same report said there are 69 units. But I'm not sure anything really turns on that. On page 54, they start to identify the market value, and in 19.1.1, they say they have not attached any capital value to the timeshare units.

In 19.1.2, for the 33 units let under the 999-year leases, the income stream for the ground rents, they have £113,333, similar to GVA's 120,000 for that income stream.

For the in-hand units, in 19.1.3, five three-beds and they say six A-frames, they say that they are worth £120,000 to £140,000 each, giving a total of just over £1 million at the end of the final paragraph in that section.

At page 55, paragraph 19.1.6, they say £160,000 for the house, not far off the GVA valuation we just looked at.

19.1.18, the planning consent for the 36 villas, they say £15,000 a plot, a bit lower than GVA's figure, but same ballpark. Then, on page 56, we can see a summary table with a market value giving a total of just under 4 million. They say:

"We have adopted a value of £4 million in existing operation use to a traditional buyer."

If we look at the bold text, this is where they begin to move away from market value to the worth value and the gross development value, and they say: "This appraisal provided is the worth value to you and your investors on the basis that you undertake the development within the cost and time parameters set, achieve sales within the timeframe and at the prices you have shown in your business plan. We have not departed from the figures or timescales utilised in the business plan apart from where it has been indicated by you that there have been alterations you wish to be adopted. The resulting calculation is particular to you and your investors and the business plan you are adopting. This is likely to substantially differ from the value applied by a traditional operator or indeed an alternative fractional operator as the value derived will differ dependent upon their view of sales costs, construction costs, sale period or even a different development. "It cannot therefore constitute an opinion of market value."

And, for that reason, we don't really need to go into it further.

The final page to look at is probably page 58, which gives the summaries. The market value from Savills is £4 million. At the bottom, the market value with the special assumption about lifting the tie on restriction of the occupation of the house, they say £4.125 million. So, broadly similar to the GVA valuation. Then at <MDR00014871>, there is another Savills valuation. If we can look at the next page -- sorry, the page after that, this is the final version of the one we just saw in draft, still addressed to Mr Thomson. If you look at page 60, please. That's the same. So, this is the signed version from Savills. There is another GVA valuation for Ultimate Capital, <MDR00015672>. This is dated 29 January 2015. We see that on page 2. January 2015 on the left. That's the executive summary. Page 3, at the bottom, they say: "Market value on the assumption of a sale period not exceeding 90 days: £2.6 million."

We will see how they get to that in a moment. But page 4 is the page where we get the date 29 January 2015 and they give the £2.6 million.

If we look at the bottom of page 36, and it will be important, for reasons we come to, to see this, this is 29 January 2015. At the bottom, it's the same: "The lodge previously used as an office and lodges 3, 7, 15, 26 and 65-67 are held in hand." At the top of page 37 --

MR JUSTICE MILES: Sorry, that was seven, wasn't it?

MR ROBINS: Sorry?

MR JUSTICE MILES: That looks like seven.

MR ROBINS: Eight, is it?

MR JUSTICE MILES: Including the office.

MR ROBINS: Yes.

MR JUSTICE MILES: That might be the non-trading one, is it, or the shed that you referred to?

MR ROBINS: They talked before about a maintenance lodge and an office, so I think --

MR JUSTICE MILES: It is all a bit unclear.

MR ROBINS: The important point is, it's not that many. It's eight or nine.

MR JUSTICE MILES: It's eight including the office.

MR ROBINS: Page 37, we have the 36 let lodges. Page 38, the 24 timeshare lodges, as we have seen before. Page 72, it's essentially the same calculation, broadly, but then they discount it substantially to get to a 90-day figure. There is a discount. They take 60 per cent of the valuation they have come to and say, "Let's call it 2.6 million". So it is not actually that different from the valuation that we saw earlier. It is simply that they have applied a larger discount to reflect a shorter sale time.

There is another Savills valuation at <MDR00016309>. This is dated 17 January 2015. If we look at the bottom of page 7, please, we have 23 bungalows, 46 A-frame units. Page 30, slightly different now, because in 14.4 it is five three-bedroomed bungalows and seven A-frame lodges. That's 12. But then page 56, 19.1.3, it's five three-bedroom and six A-frame. That's 11. No-one seems to know. At 58, we have the summary and it is broadly in the terms that we have seen before. So, by January 2015, nothing has really changed. What does change subsequently is that Lakeview Country Club Limited and associated companies do gradually incrementally proceed to buy back a fairly substantial number of lodges. But it is important to get the chronology right, for reasons that we will come to.

A lot of these purchases take place in late 2015 and early 2016. The prices at which they buy back the leasehold interests are generally fairly low, at around £100,000 or below that, sometimes £80,000, £85,000. The real substantial change comes on 6 December 2016, when Waterside Villages, which owns the freehold of the Lakeview site at that time, agrees to pay £762,000 to the timeshare club in return for a surrender of the timeshare club's 24 peppercorn leases.

Obviously, the gross asset value is gradually increased through the reacquisition of lodges, but obviously debt is incurred to fund that which, on the balance sheet, broadly cancels it out.

But the greater asset value is increasing. There are a number of spreadsheets in disclosure which are contemporaneous and which record the position in respect of these various lodge acquisitions at various points in time. They are snapshots. So, they are not particularly helpful because they don't provide a complete picture.

What they do confirm -- there are other documents that reinforce the point -- is that the process of lodge acquisition was rather messy and drawn out. Lakeview Country Club Limited and associated companies often entered into option agreements with the owners of the lodges, who gave them an option to buy the lodge in the future at a fixed price, often in the region of 85,000 to 100,000, and Lakeview Country Club Limited agreed to pay option fees in the meantime pending the exercise of the option. Sometimes the price was renegotiated, sometimes contracts were exchanged but completion was delayed for months and months and then there were attempts to renegotiate the price downwards and, ultimately, revised terms were agreed. So, it's quite difficult to get the complete picture from the documents in disclosure. So, what my instructing solicitors did was to get a comprehensive suite of the documents from the Land Registry, and those have been provided to the other parties by way of supplemental disclosure, and my instructing solicitors have used that information to prepare varying spreadsheets which we will find at <A1/14>. This is a forensic document. This is not a contemporaneous document.

It is based on a sale on documents from the Land Registry which have been provided by supplemental disclosure. The first page is the title numbers that were acquired on the completion of the sale of the property in 2013. It is not quite as easy as saying that each of these are lodges because some of them are golf clubs -- the golf course, some are the central facilities block, some of them have more than one lodge on them. But those are the freehold sites that were acquired on completion of the transaction we just looked at.

The next page shows the lodges that were acquired over the subsequent years. If we can just scroll out a little bit further, we see the third column is "Number", that's lodge number. "Proprietor in April 2022" -- we can ignore that -- is ultimately which group company it was transferred to. What is relevant for our purposes is the acquisition date, which is the date of completion of the acquisition of the lodge in question. Registration date, when it was registered at the Land Registry. Price paid. All the first block is the timeshare lodges, which is why it's 31,750 for each. It is the total sum divided by the 24 timeshare lodges. They all have the same acquisition date but for some reason the transfers weren't registered for a very long time. My Lord can see, in the column on the right, it notes the position as at July 2014, Lakeview Title Limited was the proprietor of all of those.

Then if we scroll down a bit further, we can see there are various other lodges that were acquired. My Lord can see the dates of acquisition and registration. The earliest are in May, July, September 2014. The bulk of them are much later, 2017, 2016. Over the next page, we have got, I think, even more. And to take, for example, at the top of this page, my Lord can see the second one down, lodge

12, acquisition date 31 August 2016. The price was £82,500. The fourth lodge, 17, acquisition date 7 October 2016, price of £85,000.

If we go back to the previous page, towards the bottom, let's have a look and see if we can find lodge 47. It is a few up from the bottom. It is an acquisition date of 1 December 2016. Just a few below that, lodge 61, there's an acquisition date of 30 March 2016. The price for those is £94,000 and £95,000 respectively.

There are documents in disclosure which bear all of this out, but it is a fairly messy picture and the only way to really get a reliable steer is from the Land Registry.

If we look at <MDR00055202>, we see, for example, there is a completion statement for lodge 12 as at 31 August 2016, and the price is £82,500. That's the lodge that we just saw at the bottom of page 3. If we look at <MDR00021552>, for example, we have the contract for the sale of lodge 17. That's been exchanged on 16 November 2015. The completion date, as we saw, was 7 October 2016. So, there's a very long delay before completion.

But given that exchange is 16 October 2015, of course any document suggesting that Lakeview Country Club Limited owns this lodge at any point prior to 16 November 2015 is obviously wrong.

Let's have a look at --

MR JUSTICE MILES: How many were acquired?

MR ROBINS: In total, I think they ended up acquiring 66 -- no. In fact, I tell you what, we can do it this way. If we go back to <A1/14> and look at page 4, there is a list of lodges that were never acquired. These are lodges that remained, and still remain, privately owned. It is relevant to note that, in the list of privately-owned lodges that are never acquired, we find, for example, lodge 5, lodge 13. These are never acquired. Is that ten in total? Nine. So they bought 60 of the lodges in total.

MR JUSTICE MILES: Well, they already had --

MR ROBINS: Let me put it the other way: they ended up with 60 lodges in total because there are these nine that remain in third party ownership.

MR JUSTICE MILES: How much were GVA and Savills putting on the lodges? Just remind me?

MR ROBINS: GVA was 135 for a two-bedroom or 180 for a three-bedroom. If we go -- these are the prices paid by the various third parties not the prices paid by LCCL. If we go back to the previous page, we can see the actual price paid.

MR JUSTICE MILES: It varied quite a bit.

MR ROBINS: It varied quite a bit, but it's between about 80 and I think the highest on that page is 135. I think that's a three-bed. Let's look at the previous page. We can leave to one side the Lakeview Title lodges because they are in a rather special position as a bulk deal. But, below that, we have got 100, 50, 95, 100, 110, 97, 82, 84, 116. So the highest is 134. That's the highest ever achieved. But they go down as low as -- well, there's a 75, there's a 50. But, as I say, that is a very rough guide. They're sort of in the 80 to 100 range. There is a few above that, a few below that. If you were to draw a bell curve, that's where most of them would be located.

The asset value was obviously increased by the reacquisition of lodges. Ultimately, after the commencement of the administration of the Prime companies, Miller Commercial were appointed

and provided a valuation range of £7.9 million to £14 million. Their realistic best case was £10.45 million. The sale price actually achieved by the Prime administrators was £10.1 million, and so one can see the overall picture that, after those valuations up to and including January 2015, that we have seen, that come in at the range of about £4 million to £4.5 million based on plenty of time for achieving that sort of sale price without any sort of liquidation discount. There's then a programme of lodge acquisitions that proceeds mainly through late 2015, 2016, 2017 and ultimately the gross asset value is increased and the administrators achieve a sale price of £10.1 million. But for the purpose of extracting monies from LCF, whether pursuant to borrowing or pursuant to transactions for the sale of assets with the purchase price funded by LCF, considerably higher values are attributed to the Lakeview site. We have seen one of them before, <MDR00029049>. This is the letter of valuation signed by Mr Hume-Kendall. It is dated 20 January 2016. But the valuation date, in paragraph 5, is 5 October 2015, where he gives a value of £12.4 million. We will see where that comes from in a moment.

Then, at <D2D10-00020177>, just a few months later, the valuation is given by Mr Hume-Kendall in the bottom of the three secured assets, Waterside Village. It is £17.5 million less outstanding liabilities of £10 million. He gives a net valuation of £7.5 million. That's just a few months later.

But then <D8-0008779>, page 2, this is the letter signed by Mr Hume-Kendall on 16 January 2017, but it is backdated, as we saw. Page 2, please. Now he says £17.5 million. So I don't know what's happened to the £10 million liabilities but it's gone up by £10 million in eight months since the last letter.

<MDR00077856>. In native form, please. This is Mr Thomson's security valuation spreadsheet. The Lakeview site is between rows 6 and 14 and comes in total to £16.25 million. It is based, it says in the right-hand column, on a Porters Intrinsic valuation. We will have a look at that in a moment. As a preview, anyone who knew anything about Lakeview would have known those were hopelessly inaccurate. In any event, this is not a figure that is actually supported by those valuations.

MR JUSTICE MILES: That seems to say 18 three-bedroom units.

MR ROBINS: There are 18 three-bedroom units on site, certainly on the assumption that they are all owned --

MR JUSTICE MILES: That's on the assumption they are all owned, presumably.

MR ROBINS: I would need to check precise details to see how many had been owned. But it's interesting my Lord notes that because, when one looks at the Porters Intrinsic valuation that's mentioned, that values 62 three-bedroom units. So the spreadsheet is inconsistent with the valuation, and the valuation is unsustainable for that reason: it values more than three times more three-bed units than have ever existed on the site. <MDR00007516>. We looked at this. It's the calculation of the sum of £82.125 million payable under the Elysian SPA. The value attributed to Lakeview, and this on a gross basis, which is, ignoring all the liabilities, the basis on which the £82.125 million is calculated, a sum of £18.745 million is attributed to Lakeview.

Then <MDR00147429>, this is the letter signed by Terry and Angel that we saw earlier that was reviewed by Mr Thomson and Mr Hume-Kendall in draft, used to justify further drawdowns, and £1.5 million was paid to London Power Consultants and distributed to the first to fourth defendants. This says in the final line, dealing with Waterside:

"Waterside is currently midway through a refurbishment programme ... Taking into account the UK renowned Design LSM's direction and the independently prepared business plan the indicated value is in the region of £39 million.

"When compared to the November 2017 valuation of £22.6 million, the directors are of the opinion that the current value of the entire development is £30 million." That's the letter that Mr Thomson sees in draft and wants to have on file to justify the recommencement of drawdowns so that more money can be paid to him and the second, third and fourth defendant.

Again, the value is repeatedly exaggerated to justify the extraction of monies from LCF. One of the documents we just looked at, the letter of representation signed by Mr Hume-Kendall, referred to a value of £12.4 million. That's something that is mentioned by some of the defendants in their trial witness statements.

For example, Mr Sedgwick, in his trial witness statement at paragraph 19, refers to a valuation from GVA dated 25 November 2014 which stated that the site in its present condition was worth £7.15 million, but would be worth £12.4 million if LCCL's business plan was fully implemented. Mr Hume-Kendall places reliance on this valuation as well. So we should look at it now. It is <MDR00009421>. It is another GVA valuation. It is -- we see at the bottom left, it's prepared for International Resorts Group. On the first page, the date on the left is April 2014. On page 2, at the bottom of the page, right at the bottom, we can see June 2014. But then, on page 4, it says, towards the top, 11 December 2014. So, we are assuming that the final date is the correct one. What may have happened is that, who knows, GVA may have updated previous reports.

MR JUSTICE MILES: Sorry, you just mentioned a date of 25 November.

MR ROBINS: That's Mr Sedgwick's witness statement. We can't find that date anywhere. I don't know if he's referring to the draft. But from the value, it is apparent he's referring to the same report. My Lord will see it is for the attention of Andy Thomson and it gives a valuation, market value, of £7.15 million towards the bottom of the page, and the market value, on the special assumption that the proposed business plan will be achieved in full without delay, is £12.4 million.

The earliest electronic date in the metadata, so far as we can see, is 15 December 2014. For the transcript, that's <EB0125116>. So that does suggest to us the December 2014 date on this page is the correct date for the final version. But it may be that it was prepared earlier, say around June, which may be where the June date comes from, but not finalised until December that year. One gets a bit of that from page 6. If we look at the contents page, in the contents, 16 is economic overview May 2014, and 18 is caravan park and timber lodge investment commentary spring/summer 2014. It's been based on that data when it's become available. In any event, Mr Barker has an electronic version by 15 December 2014, which is, therefore, the latest possible date for it. If we could go back to page 3, please, we will see the valuation summary as follows, towards the bottom, market value 7.15 million. Market value, assuming the proposed business plan will be achieved in full and without delay, 12.4 million. We can deal with the 12.4 million first. The proposed business plan is on page 56. We can see halfway down the page "Proposed business plan":

"Your proposed business plan is to buy back both the let lodges for refurbishment and resale on a fractional basis. You also intend to develop the 36 lodge pitches at the earliest opportunity for sale on a fractional basis followed by the development of the 105-bedroom aparthotel, also for sale fractionally." At the top of page 57, we see:

"Your current proposal is to build the 36 lodges, extend and improve the central facility building and build the 105-bedroom aparthotel at an estimated build cost of £27.5 million excluding design and disposal fees."

Well, that business plan was never commenced, let alone completed. So we can put the £12.4 million to one side. That's based on assuming something that never happened. That leaves you with the £7.15 million market value. But that's also based on an unsustainable assumption.

If we could look at the bottom of page 34, please, we see the passage about the number of lodges owned. Bear in mind, this is, at the very

latest, December 2014. It is just not true: "The lodge previously used as an office and lodges 3-5, 7, 9, 11-13, 15, 17, 19-20, 25-26, 36, 43, 45-48, 61, 63 and 65-67 are held in hand. You advise us that you have bought in 13 lodges since our last inspection and now own 16 A-frame lodges (two with hot tub), 1 two-bedroom lodge and 9 three-bedroom lodges (six with hot tub). Our valuation is on the assumption that the purchase of the leasehold interest in the additional 13 lodges has completed."

Well, it hadn't. They were telling the valuers they had bought back lodges which they hadn't bought back yet, which they didn't buy back until many years later or, in fact, in some cases, never bought back at all. We have prepared a table, if we can go to that, please, at <A1/13>. This is the table of lodges mentioned in that GVA valuation, page 34. My Lord can see that three of them, lodges 4, 5 and 13, were never bought back and remained in third party ownership at the commencement of Prime's administration. The others were not bought back until much later, and my Lord can see the sale date in the middle column, June 2016, July 2016, August 2016, October 2016, there's a September 2016, but they're all 2016 dates. As at December 2014, the date of the GVA valuation we were just looking at, they remained in third party ownership and the registered proprietor, as at December 2014, is set out in the column to the left, various third parties who had acquired 999-year leases many years previously and still owned them as at the date of the GVA report. 41 So, the £1.75 million GVA report we were just looking at is based on an inaccurate assumption. We saw some of the examples earlier. I took my Lord to the completion statement in respect of lodge 12, which wasn't acquired until 23 August 2016. We looked at the exchange of contracts in respect of lodge 17. The contract wasn't exchanged until 16 November 2015. So, as at December 2014, it was a lodge that remained in third party hands.

Then, if we go back to <MDR00009421>, page 35, please, this is a document we were just looking at. This is the table of lodges that are said to be in third party hands. Well, it is wrong because it excludes some lodges which were still in third party ownership which were wrongly included in the final paragraph at the foot of the previous page.

The top of page 55, if we could look at that, please, is also untrue. It says:

"In the last 12 months you have been able to buy in 16 lodges at an average price of about £80,000-£100,000 each, with refurbishment costs of now more than £35,000 per unit."

They haven't done that. Page 58, the final sentence is also untrue:

"There are 24 lodges subject to timeshare agreements and 20 lodges let on 999-year lease. There are 26 lodges in hand."

Not true.

Page 62. This obviously has an important bearing on the calculation because the calculation we see at the bottom of the page, after nil and nil for the golf course and the timeshare, there's 16 owned A-frames at 135,000 each and 10 owned lodges at 180,000 each. So, the numbers have been inflated by basing the valuation on an assumption as to ownership of lodges, which is simply inaccurate. The value is therefore overstated. We saw the true position a moment ago in the GVA valuation for Ultimate Capital dated 29 January 2015. In other words, about a month or two after the date of this report.

If we could just go back to it, and I think it is probably the final document that we need to look at -- perhaps, if my Lord indulges me, the penultimate document we need to look at today, <MDR00015672>. We looked at the bottom of page 36. This postdates the document we were just looking at, but now it's only the lodge, previously used as an office, and lodges 3, 7, 15, 26 and 65 to 67 held in hand.

Interestingly, when GVA are providing a valuation to a commercial lender and are potentially liable in negligence, they value it on the basis of the true value of owned lodges.

At page 72 -- again, this postdates the document we were just looking at -- we have the real position: five A-frame and three other lodges.

I said "penultimate", but perhaps we don't need to turn back to it. The other document that I showed your Lordship earlier is the Savills valuation of 17 January 2015, again, postdating the £1.75 million valuation. It was <MDR00016309>. That was the one which was slightly confusing because it said, on page 30, that LCCL owned 12 lodges; on page 56, it said 11 lodges. But, either way, it is not 26.

MR JUSTICE MILES: Right. We will resume at 10.30 am tomorrow.

(4.30 pm)

(The hearing was adjourned to

Wednesday, 21 February 2024 at 10.30 am)

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