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 5 - Monday, 26 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

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

MR ROBINS: My Lord, the topic to which we now turn is the series of transactions by which monies were extracted from LCF for the benefit of the first to fourth defendants and others, by which I mean the transactions that we describe as the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA. Before looking at the first of those transactions, it is helpful to have an overview of the position. An overview is helpfully provided in the form of attachments to an email that was sent by Mr Barker to Mr Sedgwick on 13 April 2019. The reference is <EB0123427>.

As to the date of the email, LCF went into administration on 30 January 2019. London Oil & Gas went into administration on 18 March 2019. So, this email postdates both of those events.

My Lord can see that there is a series of attachments to the email. They are various spreadsheets. When we go through disclosure, we see these spreadsheets being built and compiled in real time.

For example, we will see it in due course in respect of the spreadsheet entitled "LPC preference share payments". We see a first draft of that being prepared with the proposed payment before those payments are made and, as further payments are made, the spreadsheet is updated to include the subsequent payments. So, they are compiled in real time, contemporaneously with the payments, and they reconcile to the bank statements. My Lord has seen the exercise that we have been through in our opening written submissions. The footnotes to the descriptions of the variation payments are hyperlinked to bank statements which support those descriptions. So, these are accurate contemporaneous spreadsheets.

They show the payments that were made to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, Mrs Hume-Kendall and others including Mark Ingham and a company owned by Terry Mitchell. They show the dates. Importantly, as we will see, they show the percentage to which each of those persons was entitled at that point in time. As we will see, the percentages change over time. The first spreadsheet to look at is <EB0123430>. This is the spreadsheet -- we need to see it in native form -- entitled "LTD share payments". It's what we describe as the Lakeview SPA, or payments under the Lakeview SPA.

If we start here on the third tab, we can see payments to Mr Golding between 2 October 2015 and 18 March 2016. They amount to £1 million in total. We see that at C20. There is a reference on the left-hand side to a loan amount which has been repaid. So, this seems to be the loan of £1 million that was referred to in the Golding-SHK agreement to be secured by an arrangement involving the transfer of the manor house and three lodges to a company called Ashdown Acquisitions.

That loan, it seems, had to be repaid, or Mr Golding required it to be repaid, before anything could be paid to anyone else.

If we go to the first tab on the left, this is the payments under the Lakeview SPA up to the amount of £6 million, the first £6 million. Column A has the date. If we scroll down, we can see that it runs from row 6, 18 February 2016, all the way down to 4 November 2016 in row 34. So, that's the period in which the first £6 million under the Lakeview SPA was paid out.

If we go back up to the top to look at the column headings, in column B, we can see the column headed "Credit". That is the total amount from LCF that was distributed between the individuals in question on the date shown immediately to the left of each amount. Then, column C is headed "SG", that's

Spencer Golding, "67.5 per cent". There is then two columns, "Amount paid" and "Extra payments". Those are sums paid to Mr Golding. Then F is "HHK 22.5 per cent", that's Helen Hume-Kendall, 22.5 per cent. Again, the amounts in columns to the right, this time columns G and H.

In column I, it is "EB 5 per cent" and then amounts paid in J and K. Then finally, in column L, "AT", Mr Thomson, "5 per cent", and the amounts paid. Then there is some narrative in the column immediately to the right, for example, "Paid in advance as a loan from", I think it says "SG", if we can just have a quick look at the right. There is also a column "Telos investor money transferred to Buss Murton".

As to those percentages in the heading row that we see, 67.5 per cent for Mr Golding, 22.5 per cent for Mrs Hume-Kendall, 5 per cent for Mr Barker and 5 per cent for Mr Thomson, that is obviously an evolution of the position.

I have mentioned before, and we will see it again, either today or tomorrow, the ratios start with 75 per cent for Mr Golding and 25 per cent for Mrs Hume-Kendall -- we say, in fact, holding it as nominee for her husband -- but it is 75 per cent/25 per cent.

When Mr Thomson comes in and gets 5 per cent, it is taken from the shares of the two original beneficial owners in the ratio in which they hold their shares. So 75 per cent of Mr Thomson's 5 per cent comes from Mr Golding's share and 25 per cent of Mr Thomson's 5 per cent comes from Mrs Hume-Kendall's, or Mr Hume-Kendall's, share, and that's what results in the ratios that we have mentioned before of 71.25 per cent, 23.75 per cent and 5 per cent.

But then the next step is that Mr Barker comes in to get 5 per cent and, again, his 5 per cent is taken from the holdings of Mr Golding and Mr and Mrs Hume-Kendall in the ratios in which they hold shares. So 75 per cent of Mr Barker's 5 per cent comes from Mr Golding and 25 per cent of Mr Barker's 5 per cent comes from Mr and Mrs Hume-Kendall. That's what results in those ratios that we see of 67.5 per cent, 22.5 per cent, 5 per cent and 5 per cent.

Those formulas are not just in column G; they are actually built into the spreadsheet. So, if, for example, we look at row 21, in B, there is a sum of £400,000 -- let's take one that's actually filled in. Let's go to row 20. There is £250,000 from LCF. If we click on D20, then we should see the formula appear in the formula bar. Yes, there it is, at the top of the page. It's "B20*67.5 per cent". Similarly, if we click on G20, we should see in the formula bar "B20*22.5 per cent". So, this is a working spreadsheet, if I can put it that way. You fill in, in column B, the amount that has been paid, funded by LCF, and the spreadsheet itself will tell you how much needs to be paid to which individual.

If we scroll across to look at J20, we should see the same sort of thing in the formula bar, but now it is 5 per cent, and the same in M20.

The columns headed "Extra payments" seem to represent additional ad hoc payments which do not accord with those ratios but which ultimately have to be taken into account in the reckoning between the parties at the end of the day, so this covers the period up to 4 November 2016.

The second tab is then payments under the Lakeview SPA in excess of £6 million. We can see in column A this covers the period from 4 November 2016, where the previous tab left off, to 4 May 2017, if we scroll down in row 32.

If we go back to the top, we can see in row 3 the same individuals, but my Lord will see that the percentages have changed. This is still under the Lakeview SPA, which is a transaction by which we

will see shares in Lakeview Country Club Limited were sold to London Trading, but the percentages have changed. We move on to what is described in the documents as the new ratios.

The new ratios are 45, 45, 5 and 5. Again, those percentages are built into embedded formulas in the spreadsheet that can be seen by clicking on the cell and looking at the formula bar.

Again, this is all still money from LCF, but it's divvied up differently. The payments up to £6 million have been paid out in accordance with the formulas shown on the previous tab. The payments in excess of £6 million are split on the new ratios. If we scroll to the bottom of this, we see it comes to an end on 4 May 2017, as I have said. In I think it is row 53, according to my notes, we have got the totals, and row 45 has the totals per person in terms of the payments in accordance with the percentages and the extra payments. 46 is the grand total per person, so the aggregate of those two amounts. And this is sums on this spreadsheet in excess of £6 million.

The row below that, 47, "Amount received from initial £6 million sale" is the amount from the previous tab, up to the first 6 million. So then the total received per person under the Lakeview SPA is in row 48. Cell A53 shows in red the grand total received by all of those individuals from both tab 1 and tab 2. That's the total amount that was paid out to all of them from LCF under the Lakeview SPA. So, that's the first spreadsheet. As we have seen, it comes to an end on 4 May 2017.

The next one, again, attached to Mr Barker's email, is <EB0123428>.

MR JUSTICE MILES: What was that one called? Did it have a name? I think you said at one point. That document. What was it called?

MR ROBINS: "LTD share payments". LTD is Leisure & Tourism Developments. As we will see, that is the company that borrowed the money in question from LCF, and it was paid out to those individuals under the transaction by which Mr Thomson and Mrs Hume-Kendall sold the shares registered in their name to a company called London Trading.

This one, my Lord can see the title, "Share payments from Global Resorts & Prime". This covers the two separate transactions that we describe as the Elysian SPA and the Prime SPA. Although they are two different transactions with two sets of parties, they have been rolled into a single spreadsheet here.

The first point to note is that this one picks up just a couple of weeks after the previous spreadsheet comes to an end. So, here we can see in column A the payments under these two transactions start on 19 May 2017. So, the previous spreadsheet came to an end on 4 May 2017, tab 2. This is now 19 May 2017. So, very little gap between the two spreadsheets in terms of the periods covered by them.

The payments are fairly regular in time, every few days or few weeks, until we come to 29 January 2018, if we could just scroll down to find the 29th. There we are, 29 January 2018.

The payments are fairly regular, but we can see, after that payment, a total amount of £1.3 million from LCF on 29 January 2018. There is then a considerable gap in time, where, as I mentioned before, there was what was described as a breathing space for the deferred consideration before, in row 39, a payment of £1.5 million on 21 May 2018.

That was the one-off payment that went through London Power Consultants. My Lord will recall we looked at the communications about ensuring that Mr Thomson had something on file to justify continued drawdowns by the subsidiaries of Prime. There was a letter signed by Terry Mitchell and Angel Rodriguez saying that The Beach and The Hill were 30 million and 32 million and that Lakeview

was worth -- I forget the amount -- something in the region of 30 million. That was then relied on for one final drawdown by the Prime subsidiaries, which is the final payment on this spreadsheet in row 39, on 25 May 2018.

But, leaving that aside, to all intents and purposes, the payments under this spreadsheet come to an end on 29 January 2018. There is, as I say, one exception after that date, but 29 January 2018 is the end date, until that one-off payment comes to be made several months later.

If we look at the top, we can see that the total amount from LCF is in column B, with the heading "Share payment", and then the columns to the right of that are headed "Credit", "Extra credits", "SG 33.175 per cent" in column E. Then, after "Amount paid" and "Extra payments", which are the payments to Mr Golding, there is a column, column H, which says "SHK [Mr Hume-Kendall] 33.175 per cent", and then columns showing the amounts paid and extra payments to him. Then in column K, "EB 5 per cent", Mr Barker's 5 per cent. Column N is "AT", that's also 5 per cent, although it doesn't say it in the column heading. Then in column Q, "MI", that's Mark Ingham, "5 per cent". In columns, I think, U to V, if we scroll over, we can see various additional sums that were paid to Mark Ingham in column U; to Tom McCarthy in column W; and to Zechtrade, Terry Mitchell's company, in column Y.

What we will see in more detail in due course is that, although Mark Ingham was supposedly the owner of the purchaser under the Elysian SPA, he was getting 5 per cent of the purchase monies that were borrowed from LCF.

Similarly, although Terry Mitchell was the beneficial owner of the buyer under the Prime SPA, he was getting a percentage, almost 4.5 per cent, of the purchase monies that were payable to the vendors under that transaction, again, borrowed from LCF. So, columns Q through to Y are all part of the sale proceeds which you would expect to go to the sellers in fact being paid to the supposed buyers. In cell, I think, M53, we can see the total amount -- no, it's not M53. Maybe if we go back to the left. Yes, it's B53. We have the total amount that was paid out under these two transactions, a sum of almost £21 million.

Now, my Lord saw, a moment ago, the percentages in row 3, if we could scroll back up, and they start in column E with 33.175 for Mr Golding. Now, in fact, those percentages represent the position towards the end of the period covered by this spreadsheet. The accurate percentages are apparent from the formulas which are embedded in the spreadsheet itself.

So, if we look at row 8, for example, on 13 June 2017, there was a payment of £300,000 that had come from LCF. If we click on F8, which is Mr Golding's share of that, we can see in the formula box that he was, in fact, at that point, receiving 42.5 per cent of the monies from LCF, not 33.75 per cent. Again, if we look for Mr Hume-Kendall in I8, we see, looking at the formula bar, it's also 42.5 per cent for him.

So, what has happened at the beginning here is that we have gone from the ratios for the sums in excess of £6 million under the Lakeview SPA, which were 45, 45, 5 and 5; Mark Ingham has come in, he gets 5 per cent, and that comes out of the shares of Mr Golding and Mr Hume-Kendall. Their shares are equal at this point, 45 and 45. Half of Mr Ingham's 5 per cent comes from Mr Golding's share, half of Mr Ingham's 5 per cent comes from Mr Hume-Kendall's share. So that then gives you the revised ratios of 42.5, 42.5, 5, 5 and 5. Those ratios remain in place up to and including row 32, which, if we scroll down, we will see is 10 January 2018.

If we click on, let's say, F32, we can still see in the formula bar the 42.5 per cent for Mr Golding. If we click on the cell immediately below that, which will be F33, and look at the formula bar, we can see that Mr Golding's percentage has now fallen from 42.5 per cent to 35.675 per cent, and I33, for Mr Hume-Kendall, again, looking at the formula bar, his share has fallen to 35.675 per cent.

The same is the case in the rows immediately below 34, 35, and so on. So, if we scroll across row 35, we can see the further revised ratios. In column F, cell F35, we have got 35.675 per cent for Mr Golding. I35, and look at the formula bar, 35.675 per cent for Mr Hume-Kendall. L35, we can see in the formula bar 5 per cent, that's for Mr Barker. O35, we see 5 per cent for Mr Thomson in the formula bar, if we click on the cell. And then Mr Ingham, in R35, on the formula bar it shows his 5 per cent.

But, then, scrolling over even further, column U, U35, shows some further sums that are payable. These are the columns for Mark Ingham and Tom McCarthy, and they split 9.167 per cent between them, which is why the formula is "= C35/2*9.167 per cent", and W35 will be the same thing for Mr McCarthy.

Then, finally, I think it was column Y, we see Terry Mitchell's company, "Zechtrade", and in the formula bar it gets 4.484 per cent. So, as I say, the company of the man who owns the purchaser getting 4.484 per cent of the purchase monies that come from LCF.

As I said, with the exception of the one-off payment via London Power Consultants on 21 May 2018, the payments on this spreadsheet come to an end on 29 January 2018.

The next spreadsheet is <EB0123432>. This is a spreadsheet that is headed "LPC Technology Share Payments". When we first see this spreadsheet being created, the heading is different. It's called, at that time, "LPC Preference Share Payments" but, as we will see in due course, towards the end of the period of time covered by this spreadsheet, those payments are retrospectively recharacterised as not having anything to do with LPC preference shares, but as, instead, being payments under what we describe as the LPE SPA. We can see from column B that this spreadsheet covers a period from 5 February 2018, which my Lord will see is pretty much as soon as those payments on the Prime spreadsheet stopped, on 29 January 2018, and they continue until 3 July 2018, in A17.

The group of recipients this time is smaller. There are no payments here to Mark Ingham or to Tom McCarthy or to Terry Mitchell's company. We are back to the four individuals that we saw on the first spreadsheet -- Mr Golding, Mr Hume-Kendall, Mr Barker and Mr Thomson. We can see in B23, the total sum paid to them on the spreadsheet is £20 million. All of that came from LCF. In terms of the ratios, the column headings in row 3 are, again, apt to mislead because they set out the period towards the end of -- the percentages towards the end of the period covered by this spreadsheet. If we click on row 4, for example, there is £1 million from LCF. If we click on E4 and look at the formula bar -- well, we don't need to do that. We can work it out ourselves. It is 45 per cent. H4 is also 45 per cent. K4 is 5 per cent and N4 is 5 per cent. So, we have gone back to 45, 45, 5 and 5.

But then, at row 7, we can see that the ratio has changed. If we scroll across and look at E7, Mr Golding's percentage has gone down to 43.75 per cent. Similarly, H7, the formula bar reveals that Mr Hume-Kendall's percentage has gone down to 43.75. But this time it isn't because of the introduction of new individuals getting a share, it is simply because, as K7 and N7 reveal, when we look at the formula bar, we have now got 7.5 per cent for Mr Barker and in N7 it's still 5 per cent for Mr Thomson. So, what's changed is that Mr Barker is getting an enhanced share, and that's come out of what would otherwise be payable to Mr Golding and Mr Hume-Kendall.

Then, in row 13, there's another change. If we look at N13, we can see Mr Thomson has now gone up to 7.5 per cent in the formula bar, to match Mr Barker. Then, in the rows below that, take, for example, row 15 as an example, we are at the ratio of 42.5, 42.5, 7.5 and 7.5, and it is the same in row 16. So, the ratios change during that set of payments. The final attachment is <EB0123429>. This is headed "LPC Preference Share Payments". This is what we call the LPT SPA. They start on 23 July 2018, so fairly shortly after the conclusion of the run of payments in the previous spreadsheet.

It is the same four individuals. We have got larger payments this time, more widely spaced out -- £5 million from LCF, 2.5 million from LCF, 3.5 million from LCF. Because they are larger, as I say, they are more widely spaced out in time, often a few weeks between them. The final one is 27 November 2018. They were, of course, curtailed by the FCA's raid on LCF's premises on 10 December 2018.

We can see in cells B21 and B23, it's the same figure. The total paid out under this spreadsheet from LCF is £16.7 million. In terms of the percentages, it's consistent throughout. It is 42.5 per cent for Mr Golding, 42.5 per cent for Mr Hume-Kendall, 7.5 per cent for Mr Barker and 7.5 per cent for Mr Thomson.

I've mentioned the dates covered by each of these spreadsheets. They are obviously very revealing. What they show is that the individuals in question moved seamlessly from one transaction to the next. The Lakeview SPA spreadsheets cover the period from 10 October 2015, on tab 3, which was the start of the £1 million repayments to Mr Golding, through to 4 May 2017, on tab 2, which brought us to the grand total figure that we saw on that page. So, that comes to an end on 4 May 2017.

The Elysian and Prime spreadsheet starts on 19 May 2017, so, as I said when we were going through it, just a couple of weeks later, and that runs to 29 January 2018, leaving aside that one-off payment via LP Consultants, so 29 January 2018.

The LPE SPA then picks up on 5 February 2018, just a week later, and runs to 3 January 2018. Finally, the LPT SPA starts some 20 days after the LPE SPA has come to an end, that's 23 July 2018, and that runs pretty much to the end of LCF when it is all curtailed by the FCA's raid.

So, apparently, the relevant defendants who, as your Lordship has seen, were all behind LCF just happened --

MR JUSTICE MILES: Sorry, I'm just looking at the transcript. You said that the LPE SPA ran until 3 January 2018.

MR ROBINS: I'm sorry, 3 July is what I meant to say. Then the next one picks up on 23 July, LPT SPA. According to the relevant defendants, who were, as my Lord has seen, behind LCF, they just happened to sell shares to a series of companies in a series of separate transactions which resulted in them receiving an unbroken flow of monies from LCF for the whole of that period. They didn't really miss a beat. They moved straight from one transaction to the next. In terms of the percentages, my Lord has seen the position. It wasn't stable over time. It wasn't even stable within a particular transaction. Under the Lakeview SPA, once Mr Barker had got his 5 per cent from Mr Golding and Mr Hume-Kendall, it was 67.5 per cent, 22.5 per cent, 5 per cent and 5 per cent. Then, for the Lakeview SPA payments above 6 million, we move to the new ratios of 45, 45, 5 and 5. For Elysian and Prime, the ratios change because, as my Lord saw, there is 5 per cent for Mark Ingham, which comes from Mr Golding and Mr Hume-Kendall. So then it is 42.5, 42.5, 5, 5 and 5.

But then the percentages for Mr Golding and Mr Hume-Kendall fall further because they have to give away some of their entitlement to Mark, Tom and Terry, which may explain why they ceased to be

very keen on that transaction and have a payment holiday and move immediately to the LPE SPA, as it becomes, described in those payments as, in fact, having something to do with LPC preference shares. We are back to the original ratios of 45, 45, 5 and 5 for Mr Golding, Mr Hume-Kendall, Mr Barker and Mr Thomson, but then that evolves to become 42.5, 42.5, 7.5 and 7.5. Mr Barker and Mr Thomson get an enhanced share. Those ratios then continue under the LPT SPA.

So, my Lord, that's the overview of the position.

MR JUSTICE MILES: Whose documents were those?

MR ROBINS: They are in circulation between Mr Barker and Nicky Thompson. As I say, they are generated contemporaneously, they are filled in as they go along. What is so special about the email we started with, on 13 April 2019, from Mr Barker to Mr Sedgwick, is that we have a full and complete set that is sent by Mr Barker to Mr Sedgwick after the commencement of LOG's administration.

MR JUSTICE MILES: Just remind me, who is Nicky Thompson?

MR ROBINS: She was the executive assistant associated with Mr Hume-Kendall. She was part of the various companies. We saw there was a Sustinere email footer for her at the beginning and then a London Group email address, LPC ultimately. She's his executive assistant. As I have said, these reconcile with the bank statements. So, the proof is in the pudding to that extent. These reflect payments that were made ultimately by LCF to various intermediary companies which then forwarded them on to the relevant individuals in the amounts set out in the spreadsheets. What the spreadsheets do, helpfully, is to provide an overview of the period so that we can see that the defendants moved seamlessly from one transaction to the next without missing a beat. But they also very helpfully show the evolution in the ratios over time, and indeed, as I've said, even within a particular transaction.

MR JUSTICE MILES: When they're referring to payments, what does that mean? Who is making or receiving -- I mean, ultimately, the individuals are receiving the amounts, but who is making the payments, according to these documents? When it says "preference share payments", say, "5 million" --

MR ROBINS: It varies. This one, there is an explanation in cell F1. Purple means via GCEN. So, when we look down columns E, H, K and N, we can see the purple entries. Those ones are via GCEN, which is LCF's payment provider.

But my Lord will see the detail as we go through it. It is a very convoluted picture. Various intermediary companies are used from time to time. Towards the beginning, LCF pays the money to Leisure & Tourism Developments, which pays the money on to the defendants in the relevant percentages.

At a later stage, in the payments covered by the Elysian and Prime spreadsheet, there's a company which is renamed "Global Advance Distributions". It is controlled by Mr Sedgwick, or its bank account is controlled by Mr Sedgwick.

The drawdown requests that are made to LCF by the various borrowers request that LCF pay the loan monies to Global Advance Distributions, and then Global Advance Distributions pays them out to the various individuals. At another time, a company called Sands Equity, of which Mr Hume-Kendall is a director, fulfils that role as intermediary company. For a period of time, it's London Group which fulfils that role.

We will see in detail, in due course, that it is often a question of simply identifying a company with a bank account which can be used for that purpose, and so, for example, when Metro Bank writes to say that they have detected a pattern of suspicious behaviour in London Group's transactions and that the account will be closed, and they give a period of notice -- I can't remember exactly how long the notice period is, but the account is going to be closed. Payments continue to be made through that bank account for as long as it's available. Subsequently, when it's closed, payments are made through another company, I think it is London Power Consultants at that point in time. But, ultimately, they're driven to use GCEN in order to make the payment because Metro Bank has closed down the bank accounts of the companies in question, having said that it's detected suspicious payment patterns.

So, it's driven by necessity rather than, it seems, by any commercial rationale, and, as I say, we will see in due course, that's why GCEN comes to be used. So, there was a whole series of intermediary companies, often having nothing to do with the loan agreements put in place between LCF and the various borrowers, but simply interposed as agents to receive and distribute the monies from LCF.

MR JUSTICE MILES: If one then goes back, say, to the first -- if we can look at the first of those spreadsheets.

MR ROBINS: Do you want me to call out the number again? It was <EB0123430>. We go to tab 1, I think, for the payments up to £6 million. As we will see, this was the agreement that had the original sale price of £2.1 million. It was revised upwards to 3.5, then there was talk of 4.5, then to 6, and this covers the payments up to -- it is a little over 6 million. If we scroll down to the bottom, we can see, in A46, it is a little over 6 million.

MR JUSTICE MILES: So, when it refers to -- if we can scroll back up to the top of B, when it refers to "credit" there, say if there is an amount of -- the one of £30,000. What's that talking about? Where is that credit --

MR ROBINS: That is talking about the total payment out by the intermediary company. We will see this in detail in due course.

The drawdown request to LCF might not have been for £30,000, it might have been for £35,000 or £40,000. £30,000 of the money from LCF is then distributed in the manner set out. The 30 is the aggregate or total of the figures that we see.

So, it should be the total of D11, G11 and J11. I haven't done the maths to check that example. But because the numbers we see in those cells are driven by the formulas which refer back to the 30,000, it should be the case. If we click on G11, say, and look at the formula -- this shows it is 22.5 per cent of B11. So, it takes the figure in B11 and the formula is based off that.

MR JUSTICE MILES: So, these amounts are being received by the named recipients?

MR ROBINS: Yes.

MR JUSTICE MILES: And then the total is the 30,000.

MR ROBINS: Mr Shaw is saying it might not be on this occasion because it may be, on this occasion, Mr Thomson didn't get his 1,500.

MR JUSTICE MILES: Yes, it doesn't add up, does it?

MR ROBINS: It seems what's missing on this occasion --

MR JUSTICE MILES: It adds up to 28,000 --

MR ROBINS: -- is Mr Thomson's share. As I said, the "Extra payments" column reflects the ad hoc payments. What seems to have happened is that Mr Thomson, at the beginning of column N, gets various additional payments at the outset, and so the distributions to him are effectively suspended to take account of the fact that he's got his money early, and they pick up again later, in about row 14 or 16. So, he's got some money early. So, it's a bit ad hoc. It is a bit rough and ready. It is not done with absolute mathematical precision every time. For example, in row 8, Mr Golding gets a sum of almost £13,000, and the narrative on the right reveals that that was Home Farm Quad Bikes. So he seems to get an extra lump sum. It is all taken into the overall reckoning. It seems they were trying to ensure that the payments accorded with the ratios overall, even if each individual payment wasn't divvied up with mathematical precision on every occasion.

MR JUSTICE MILES: Right.

MR ROBINS: So, that's the overview.

The first transaction, as my Lord has seen, is the Lakeview SPA, and the shares which were sold pursuant to that transaction were the shares in Lakeview Country Club Limited, which was incorporated on 18 December 2012; it's the company that acquired the Lakeview site.

At <MDR00010405>, we can see who is involved in the incorporation of that company. Mr Sedgwick is telling Mr Hume-Kendall and Mr Visintin that the new Lakeview Country Club has been incorporated.

Two days later, <MDR00010544>, Mr Sedgwick has lodged new director details in respect of the appointment of Mr Thomson. He is the director of Lakeview Country Club Limited from that date. As to the shareholding position at the outset, at <MDR00010565>, on the same day, 20 December 2012, the second email on the page, Mr Sedgwick emails Mr Thomson and Mr Hume-Kendall with the subject "Shareholding of Lakeview Country Club Limited". He says: "Dear Andy and Simon.

"I confirm that Buss Murton (Nominees) Limited holds the only share in Lakeview Country Club Limited. This share is held on trust for Michael Andrew Thomson as to 75 per cent and Helen Charlotte Hume-Kendall as to 25 per cent."

My Lord knows it is common ground that Mr Thomson was not the beneficial owner of 75 per cent. He was holding, at the outset, the entirety of that 75 per cent for Mr Golding. But, due to the concerns regarding Mr Golding's disqualification, that was something that had to be concealed, and so it was said that he was the beneficial owner of 75 per cent.

Similarly, and we will look at the others in due course, it is our case that Mrs Hume-Kendall was the nominee for Mr Hume-Kendall as to that 25 per cent. But, as I have mentioned earlier this morning, at the outset, the ratios are 75:25. That is confirmed in the middle of February of the following year at <MDR00011009>, where, about two-thirds of the way down the page, Mr Hume-Kendall asks Mr Sedgwick: "Can you please confirm that the Lakeview shareholders are 75 per cent Andy T and 25 per cent HHK."

Mr Sedgwick replies at the top of the page: "At the moment there is just the one share in issue which is held by Buss Murton (Nominees) Limited on trust for Andy T as to 75 per cent and Helen HK as to 25 per cent."

So, the ratio is still the same on 12 February 2013 and, again, we say that Mr Thomson was the nominee for Mr Golding and Mrs Hume-Kendall was the nominee for Mr Hume-Kendall.

Consistent with the position in respect of Mr and Mrs Hume-Kendall, my Lord has already seen Mrs Hume-Kendall doesn't appear in any of the email traffic about acquiring the Lakeview site. That was all Mr Hume-Kendall, more often than not forwarding the emails in which he was involved to Mr Golding. Consistent with what we say about nomineeship also is the document at <D2D10-00005307>. This is on 7 April 2013, a day after completion of the acquisition of the Lakeview site. Mr Hume-Kendall is emailing Mr Thomson, Mr Visintin, Mrs Hume-Kendall and Mr Golding about the Lakeview Country Club Limited board meeting that's going to take place on the very next day, 8 April 2013.

There is then a board minute in respect of that meeting at <MDR00217539>.

It is a document we need to view in native form. It is a .txt file, if that helps. I think this is the document I meant to refer to a moment ago. This is a board meeting of Lakeview Country Club Limited on 24 April 2013.

My Lord can see that in attendance are Mr Visintin, Mr Thomson and Mr Hume-Kendall. It says "holding a proxy for Helen Hume-Kendall", so we can see she doesn't attend the board meeting. Also in attendance are Clint Redman and Spencer Golding.

MR JUSTICE MILES: Sorry, Mr Robins, I thought you said that this was on 8 April.

MR ROBINS: Yes, sorry, this is the document I meant to refer to. This is a few weeks after --

MR JUSTICE MILES: So, it is not straight after.

MR ROBINS: -- completion. Not straight after, a few weeks after completion. It says that Mr Hume-Kendall, SHK, was appointed chairman and acts as such throughout. And the previous minutes were approved:

"AT said he had not read them but would revert if he had any issues."

Under 3, "The shareholders' agreement", it says: "The shareholders' agreement was then discussed. At present, the shareholding [in] LCCL was: "AT 75 per cent.

"SHK 25 per cent."

As we say, Mr Hume-Kendall was the true owner of 25 per cent:

"The shares were to be transferred to Group Sustinere Plc. The said parties would hold 50 per cent each with a financial adjustment taking place. Below Group Sustinere Plc would be the minority shareholders ..."

So, there is already talk at this point of moving from these ratios of 75:25 for Mr Golding and Mr Hume-Kendall to a 50:50 split, and that, at this point, is contemplated as being done through Group Sustinere Plc. So, all the shares would be transferred to Group Sustinere Plc and then Mr Thomson for Mr Golding would hold 50 per cent and Mr Hume-Kendall would hold 50 per cent.

This is, of course, completely inconsistent with the suggestion that Mrs Hume-Kendall owned 25 per cent. It says "SHK 25 per cent".

Similarly, there's a document at <MDR00013755>. There is an offering memorandum in respect of Lakeview Country Club Limited. This is a draft dated August 2013 contemplating an offering of 8.5 per

cent bonds due 2018 for relinquished timeshare and 5 per cent to keep timeshare. So, it seems that this was a bond issue that is targeted at the members of the timeshare club. I don't think it ever proceeds, but it's in contemplation at this point in time.

On page 8, we can see in the first paragraph under the heading "The company", it says:

"The company is a company incorporated in the United Kingdom with ... The share capital of the company is denominated in sterling. The directors of the company are Michael Thomson, Andrew Visintin and Simon Hume-Kendall ..."

It then says:

"... there are various shareholder of which the directors are three."

So, it seems to proceed on the basis that Mr Hume-Kendall is one of the shareholders. We will see in a moment that Mr Visintin had been promised 2.5 per cent. But also, in terms of the day-to-day management of the affairs of Lakeview Country Club Limited, Mr Hume-Kendall was treated as being the minority owner, and we can see that in the discussion about the bridging finance when the Ortus loan was due to expire and steps were being taken to find a new bridging lender. At <D7D9-0000215>, we can see, at the bottom of the page, Jo Baldock emails a mortgage broker to say:

"Remember this one!

"Well the clients managed to purchase the site with a bridge at 2.5 per cent, the bridge is due to expire in July and they would like to refinance on either a term loan or replace with another bridge." Over the page, she mentions that they owe £800,000 on the bridge. The mortgage broker comes back with some questions at <D7D9-0000311>, and Jo Baldock forwards the email to Mr Russell-Murphy. About a third of the way down:

"Can you answer this?"

He is asked some questions. Mr Russell-Murphy replies to her to say:

"Can you give Andy Thomson a call, he will be able to answer the questions ...

"He is employed by Spencer and is running Lakeview." As we have seen, Andy Thomson is Mr Golding's representative.

Then at <MDR00012907>, there's an email in connection with the refinancing of the Ortus bridging loan. <MDR00012906>. We can see that, at the bottom of the page, there's an email from Ultimate Capital's solicitors with a summary of the agreed terms. It is a £1.4 million facility to be drawn, £1 million on completion and £400,000 upon the redemption of the first existing charge on Hook House, et cetera. Mr Sedgwick, at the top of the page, forwards it to his colleague at Buss Murton, Daldeep Jaswal:

"This is the variation on the original terms. I believe that whilst Simon Hume-Kendall wants to proceed Andy Thomson who represents the major shareholder does not. I am awaiting instructions and the clients know that I am away and there is no pressure on them to do this."

So, in day-to-day terms, it is Mr Hume-Kendall who is treated as being the minority shareholder, Mr Golding the majority shareholder with 75 per cent. I see the time. When we pick this up again, we can look at how the ratios evolve from 75:25.

MR JUSTICE MILES: Are we set for the application?

MR ROBINS: Yes, my Lord.

MR JUSTICE MILES: Is Mr Slade here?

MR ROBINS: I'm told he is outside.

MR JUSTICE MILES: Right. We will come back, then, in five minutes.

(11.43 am)

(A short break)

(11.50 am)

Application by **MR SLADE**

MR SLADE: My Lord, you're expecting this application which I'm making on behalf of Mr Thomson. Mr Posener, to my right, appears on behalf of Mr Golding. My Lord, a lot has happened since last Tuesday when this matter was last raised. In particular, I have been attempting to find practical solutions to the problem. Last Tuesday, there was only one possibility before the court, and that's the subject matter of my application as it then stood. That was the proposed loan from Mr Golding.

Now we have a further three options for the court to consider this morning.

Your Lordship will recall directing my opponent, Mishcon de Reya, to meet with me and see whether we could at least narrow the gap between us. That meeting took place on Tuesday afternoon, following your Lordship's direction in the morning. It lasted 20 minutes. It was totally unsatisfactory. I was told by Mishcon that they would come back to me "shortly" with their reaction to the general proposals I put forward at that stage. I heard nothing from them, save for the service of evidence of the skeleton argument last week and the letter this morning. I predicted last time, my Lord, that the letter would come 40 minutes before the hearing. I was completely wrong. It came two hours or so before the hearing.

Would it assist, my Lord, if I --

MR JUSTICE MILES: I don't think I'm aware of that letter.

MR SLADE: I'm sure a copy will be handed up.

MR JUSTICE MILES: Is there another copy for my judicial assistant?

MR ROBINS: Yes. (Handed).

MR JUSTICE MILES: Okay.

MR SLADE: My Lord, I have come prepared, obviously, to open the application in the usual way, and I anticipate that I might be speaking for a little over an hour. But if your Lordship has had the opportunity to read some of the documentation, in particular my fifth witness statement, Mr Davis's witness statement in reply and my witness statement of last Friday in reply to that, it may be that your Lordship would wish to be rather more interventionist and get through this rather more quickly than the conventional way would do.

MR JUSTICE MILES: Well, I think it is going to take some time, Mr Slade, however one goes about it. My experience of being interventionist is that it's often a short route to a longer way around.

MR SLADE: Counterproductive, my Lord, yes, I see.

MR JUSTICE MILES: One immediate question which seems to affect, I think, three of your suggestions is the position of the SFO and whether there is really any utility in this court spending time which is necessarily taken out of the trial considering issues which may turn out to be completely academic.

What I have picked up is that, first, the SFO is not going to consent to this arrangement, so it would have to be contested, but, second, one of the points taken by the SFO, which I think was taken in previous litigation with Mr Golding, was that he had not satisfactorily evidenced, or provided evidence, that he had no other assets, which was taken as a threshold point, a separate point, from the question of whether the court had any power to, in that case, allow the expenditure on legal expenses.

That point, as I understand the correspondence, remains a live one. Now, that's not something which is on the evidence at the moment currently before me. It is not something I could give a ruling on. So, it is going to be, as I see it -- there is necessarily going to have to be a decision by the Crown Court. Now, if the Crown Court decides against Mr Golding's application, that is the end of the matter.

MR SLADE: Yes, my Lord, that's accepted.

MR JUSTICE MILES: So, what's the point of --

MR SLADE: Well, the point is this --

MR JUSTICE MILES: Sorry, what's the point of considering those options which are contingent on the Crown Court coming down in favour of Mr Golding's application? Because it is going to take time to deal with this.

MR SLADE: Yes, my Lord. I see the point. My point is that the Serious Fraud Office is just plain wrong, my Lord. The points they take are points which are unarguable. Now, I'm not inviting your Lordship to reach that conclusion -- I can't; your Lordship has no jurisdiction to reach that conclusion. But if what I have called option one, namely, the Golding loan, is still in play, the Serious Fraud Office doesn't have a monopoly in terms of deciding when cases are heard. They say this case should be heard four or five weeks from now.

MR JUSTICE MILES: Well, that's a different question. The timing, I accept -- they have said that. It doesn't mean that it will be. It may be that it can be dealt with by the Crown Court more rapidly.

MR SLADE: Yes, my Lord, I was thinking perhaps the end of this week.

MR JUSTICE MILES: That may be. I can't, of course, say anything about that, other than to, no doubt, express, as any other judge could, the hope that that might be possible. But I've got no influence over the lists in the Crown Court.

MR SLADE: No, my Lord, neither do I. I can simply ask.

MR JUSTICE MILES: If that is right, is there really any utility in me considering those options and taking quite a bit of time to do so, where it may be completely academic?

What I have in mind is that, if you want to pursue those options, the right way around, it seems to me, is for the application to be made in the Crown Court and for a ruling to be given there. If it's favourable to your client, and to Mr Golding, then you can come back and seek the relief you seek

from me. But, at the moment, I can't see what real utility there is in me deciding the question now when it may be completely pointless.

MR SLADE: Well, my Lord, yes, but one has to start somewhere. I would venture to suggest that a ruling from your Lordship, were it favourable, under the freezing order regime may conceivably have some beneficial effect when the Crown Court comes to consider the matter.

MR JUSTICE MILES: I'm not sure about that, because the jurisdiction is different.

MR SLADE: One cannot say. I don't think, in actual fact, it will add very long to proceedings today because Mr Posener is here.

MR JUSTICE MILES: I know, but Mr Posener can also presumably be here on another occasion.

MR SLADE: My Lord, yes, of course. Can I say this, my Lord: shall we see how we get on --

MR JUSTICE MILES: Well, no, I'm not sure we should, Mr Slade. Because if there isn't really an answer on this point, then as regards the first three options, it seems to me that there isn't -- if it is right that it cannot go ahead without the approval of the Crown Court and the SFO has made it clear that it is going to oppose, so that is going to have to happen, and the principles are different, because it is a statutory jurisdiction, you will have to persuade me that it's worth this court now diverting itself from the trial to even entertain the matter.

What I don't want you to do is simply open the application if there isn't really an answer on this what I call preliminary point.

MR SLADE: My Lord, we may be at cross-purposes. Insofar as Mr Golding's position is concerned, that only operates in relation to option 1. I had understood your Lordship to be talking, therefore --

MR JUSTICE MILES: Is that right?

MR SLADE: Yes, it's right.

MR JUSTICE MILES: Sorry, let's just think about that for a moment. Yes, that's right, isn't it, because the other -- he is not involved in the other --

MR SLADE: No, not at all. In relation to the other options, I served the witness statement which I served on the parties to these proceedings on Friday afternoon also on the Serious Fraud Office, and their off-the-cuff response -- I have to be very careful what I say because I will be criticised from here to eternity if it is suggested that I am gilding the lily, but, as I read their response, it was, "Find out what Mr Justice Miles thinks about options 2 and 3 in particular", also I suppose option 4, "and come back to us". So, I detected --

MR JUSTICE MILES: Have we got that communication?

MR ROBINS: We have Mr Crome of the SFO, at the back of the court, holding up his hands and shaking his head, which perhaps indicates there was a certain amount of gilding the lily going on there.

MR JUSTICE MILES: Sorry, I hadn't realised there was a representative of the SFO in court. Is that right?

MR SLADE: Shall I sit down?

MR CROME: My Lord, I didn't realise I would be addressing the court. I just turned up to see what would happen in these proceedings because, obviously, what's decided here has an impact in the Crown Court. But I received Mr Slade's application on Friday night. I think I responded to that. I'd have to check. But Mr Slade seems to suggest I didn't make any response.

MR JUSTICE MILES: Could I take your name?

MR CROME: Paul Crome, my Lord. C-R-O-M-E.

MR JUSTICE MILES: Right. Thank you.

MR SLADE: My Lord, I wasn't suggesting there had been no response. On the contrary. I was suggesting Mr Crome had invited me to come back after this hearing with your Lordship's reaction to the non-Golding options so that the matter could be considered further. The Serious Fraud Office's concern appears, so far as I can tell -- Mr Crome is happily here, so he can confirm or deny it -- seems to relate primarily to Mr Golding. I haven't detected, so far, any objection which relates to my client, Mr Thomson.

MR JUSTICE MILES: I'm not sure whether they have had an opportunity to consider that.

MR SLADE: My Lord, they did reply very helpfully and very quickly after they received the evidence on Friday. My understanding of their response was that, in relation to Mr Golding, they were going to oppose, and that was going to take a period of time in the Crown Court. But in relation to the other non-Golding options, they wished to be informed of your Lordship's view so that they could further consider the matter. That seems perfectly sensible.

I would respectfully suggest, my Lord, when it comes to the first defendant's representation and the nature of my evidence in relation to the activities of Mishcon de Reya and my statement on Friday afternoon, the can cannot, to adopt an expression that was used in court last time, be kicked down the road any further. This issue has to be grappled with, in my submission, and grappled with now.

So, on that basis, my Lord, the options that confront the court are fourfold. The first is the Golding loan, which I think everybody now understands fully.

The second is a relatively small bridging loan. What distinguishes that from the others is that that would be a loan to my firm, secured by a subcharge on my firm's existing mortgage. So, to that extent, it doesn't require the approval of the Serious Fraud Office at all. To the extent that the mortgage is sought to be increased to cover the cost of the loan, that is to say, the interest and charges that would be incurred, the Serious Fraud Office's consent would be required. But that involves a relatively small sum of some £150,000. So, that's option 2.

Option 3 is -- I have used an exemplar loan -- a larger bridging loan to Mr Thomson himself. The loan I have put forward for consideration nets £1.8 million. Now, the thing about that is, again, twofold. The first is, to secure that, since it would be a loan to Mr Thomson, there would need to be a fresh mortgage in favour of the lender over the property. Now, that would require the consent both of this court and of the Serious Fraud Office or the Crown Court; and, secondly, the same point arises: borrowing a sum of that magnitude costs money. The allowance which has been made is for legal fees and expenses, not for the cost of borrowing, and so my submission to this court is that the cost of borrowing should be secured on the property in addition to the legal fees and expenses. Now, in the case of a loan for £1.8 million to Mr Thomson, the cost is not inconsiderable. It comes in at £450,000-odd. So, I will be inviting your Lordship to agree that that sum be secured on top. Now, that sort of arrangement requires the approval of this court because it is a new mortgage and because of

the additional amount. It would also require the approval of the Crown Court for the same reason. The fourth option really occurred to me only late last week when I read Mr Davis's statement, and he made the observation, which I found a helpful one, that the only reason we are in this situation at all is because Mr Thomson's house has not yet been sold. So the thought occurred to me, well, why don't I buy it? Now, Mishcon de Reya, in their letter this morning, asked the question rhetorically, what use is that to anybody? It doesn't solve the problem. But, with respect to them, I don't think they have thought it through. It does solve the problem. The fact is that it is very much easier to arrange finance on bricks and mortar, where you own the bricks and mortar and it is therefore a regulated loan of some sort, and cheaper than if you are trying to arrange quite tricky bridging finance to assist a person in litigation who is also accused, potentially accused, or being investigated by the Serious Fraud Office, whose consent is required to any disposition of his property.

That has a chilling effect on the market, my Lord, I can tell you, because I've experienced it first-hand for the last few months, and makes it difficult to arrange such a loan.

So, were I, for example, to entertain option 4, I have terms for a loan which would net something in the region of £2 million, of which I would use £700,000 or £800,000 to pay the difference between £3 million, the purchase price, and the sum secured to Mr Thomson's frozen account. That gets me title. I can then secure my £2 million loan on a property which I own. I have something in the region of £1.2 million in hand to pay the barrister team and my firm's expenses, and I get the rest of my fee and the barrister's fee when the property is sold.

Now, that takes the whole situation out of this mess, if I can call it that. No longer is any court consent required because the property has been purchased outright. In that way, my Lord, it occurred to me we could solve the problem.

All that is required there is the consent of this court and the Crown Court, or the SFO, to a sale of the property at 3 million, and that, I thought, was something that they would welcome because they have expressed considerable doubts themselves, including in Mr Davis's most recent evidence and in Mr Robins' skeleton argument for this application, that the property is worth that much. They say it could be worth less than £2 million, in which case I would have expected them to be, speaking colloquially, biting my arm off, my Lord. But so far they haven't.

MR JUSTICE MILES: What does the existing order say about the sale of the property?

MR SLADE: Simply that the court expects the parties to collaborate in relation to the price and, if they can't reach an agreement which would be sufficient, to come back to court. That, it is fair to say, relates to this court and the civil jurisdiction. It doesn't deal with the Crown Court, whose consent or the consent of the Serious Fraud Office would be required separately. But you can see, my Lord, how the easiest iteration of this, with the practical intent of getting Mr Thomson's barrister team back into court as quickly as possible, potentially as soon as tomorrow, is a combination of option 2 and option 3. Option 2 requires your Lordship's consent to my executing the subcharge over my existing charge in favour of the bridging loan. There would be a need to apply to the Serious Fraud Office, but only in relation to the interest element of £150,000, and I would hope that, in the interests of justice, an agreement could be made about so small a sum, in the scheme of things. And then, if your Lordship approved the sale at 3 million, that could go through and solve the problem completely. I am sure that Mr Mayes and his colleagues, if they were able to see your Lordship's order to that effect made today wouldn't insist on waiting for the money but would come back into court straight away. Now, it is not as good as the Golding proposition, my Lord, because Mr Golding's proposition is interest free. That's the big attraction of it. Unfortunately, the Serious Fraud Office take a dim view of

Mr Golding, for whatever reason, I don't know and don't need to know, but they have put their stick in the spoke of my bicycle wheel on that one, as they are entitled to do. This is the next-best option, my Lord, because it requires the least amount of judicial time and intervention.

MR JUSTICE MILES: Which one?

MR SLADE: 2 and 4 combined.

MR JUSTICE MILES: Why do they need to be combined?

MR SLADE: Because 2 gets the money quickly, 4 solves the problem, but it takes longer and it requires the agreement of the Serious Fraud Office to a sale at 3 million. So, I need 2, in any event. If you give me 2 and 4 --

MR JUSTICE MILES: What happens if you only get 2?

MR SLADE: Then I don't have enough money.

MR JUSTICE MILES: So 2 is no good on its own?

MR SLADE: No, I need 2 and 4. I can see no reasoned objection to 4 because 4 is what everybody wants. Everybody has said, and option 4 was born out of this, speaking with one voice on behalf of all interested parties, they all say, "We want the property sold". Funnily enough, Mr Thomson says to me, "I want the property sold".

MR JUSTICE MILES: What about option 4 on its own?

MR SLADE: It doesn't get me the money fast enough, my Lord. 2 gives me speed. 4 gives me, in due course, the full amount and better security because I then own the title. I believe, my Lord, it is simply a matter of valuation, and, in relation to that, I repeat that Mishcon de Reya are sceptical. They say the property could be worth as little as 2 million, and they rely on what they describe as a valuation but which is not, which says it is worth only 2.5. So, on the basis of their figures, I'm paying -- foolishly, on my part -- way over the odds for a property which isn't worth it. Now, the Serious Fraud Office, I don't believe, I have seen no evidence to suggest they have taken any valuation advice of their own. They may have done, I don't know. It appears to me that they're working off the back of Mishcons' figures. But Mishcons' figures are what they are. They don't really matter. Because if they are saying it is worth less than I'm prepared to and am able to pay, who cares? If Slade takes a foolish gamble to help a client. That's Slade's lookout. So, it may be, my Lord, that the quick way through this application, without the need to go into all of it, would be for the court to grant options 2 and 4. I would also ask, in those circumstances, that the court grant option 3. I may not choose to pursue it, I may not be able to pursue it, but in and of itself it is totally inoffensive. It simply involves raising a larger bridging loan over the property by organising a loan to Mr Thomson, and that's what requires judicial intervention, the fact it is a loan to him. That in itself wouldn't cause a problem, but he would need to secure that loan by issuing a new mortgage over the property, and that's what would offend the freezing order and the restraint order without consent. So, if Mr Golding's generous offer is off the table, simply because of the resistance of the Serious Fraud Office and potential listing difficulties in the Crown Court, and a view, which I say is completely without foundation, that the law is against me on this, or against Mr Golding, then I would invite the court, without further ado, if it is relatively uncontroversial, if your Lordship can see a way of doing it without hearing me for an hour and a half, to explore with Mr Robins the possibility of the court sanctioning options 2, 3 and 4 on the basis that my preferred option, I can tell your Lordship now, is options 2 and 4 in combination, but I would still like to retain the ability to pursue option 3, which, as I say, is harmless.

Perhaps your Lordship would care to explore that with Mr Robins before we continue? I simply raise the possibility, with respect.

MR JUSTICE MILES: Well, we could end up having a sort of Punch and Judy show, where we have lots of submissions, but I will hear briefly from Mr Robins at the moment, just to see what his position is.

They have actually set out in their letter what their position is, as far as I can see.

MR SLADE: Yes, my Lord. The reason I press the point is this: the letter, I think, objects to options 2 and 3, if I'm not mistaken, solely on the basis that the extra interest charge, the cost of borrowing, would need to be secured on the property. Were it not for that, they would agree options 2 and 3.

Option 4, the purchase, I think they are just simply mistaken, they haven't thought it through and couldn't see why it would assist anybody. But I hope that, with the benefit of my explanation in court this morning, they can see (a) that I'm probably right when I say that it's easier to borrow against a property that you own rather than arrange a bridging loan for someone who is accused of what Mr Thomson is accused of, where you need the consent of the Serious Fraud Office, and if they are with me on that, there is no disagreement to that extent, then I think they will see how the proposal makes sense, because if, say, I raise £2 million on the property, and that's done simultaneously with my purchasing it, I have got £2 million in hand. To complete the purchase, I have to pay 750,000/800,000, something of that order, to Mr Thomson's frozen account, that's also good for them, and I have retained the rest and I have money to pay counsel.

MR JUSTICE MILES: How long is all this going to take, on your -- I have got no real evidence about it. It is very broad and vague. It is just a sort of suggestion which is being floated at the moment.

MR SLADE: My Lord, an awful lot was done between Tuesday afternoon and Friday.

MR JUSTICE MILES: That may be, but the court has to operate on the basis of some firm evidential basis.

MR SLADE: My Lord, I can help you there.

MR JUSTICE MILES: What I'm thinking about is, how long is everything going to take? How realistic is it that you will be able to raise finance? How quickly would Mr Thomson's counsel be able to resume acting for him? Those sorts of things. At the moment, there's no evidence about it.

MR SLADE: My Lord, with respect, there is. The evidence in relation to your Lordship's first question, how long in relation to option 2, is --

MR JUSTICE MILES: Just at the moment, I was thinking about 4.

MR SLADE: On 4, my Lord, that came to me very late in the day on Friday. There isn't evidence on that. I decided that I couldn't produce a full picture and wouldn't, quite frankly, because I don't see why I should subject my personal asset position to scrutiny by Mishcon de Reya and, through them, the entire world. That would be extremely unfortunate and quite unnecessary.

I am inviting your Lordship to make the order in relation to option 4 on a permissive basis. If I can do what I say I can do, I can go ahead and do it. If I can't, well, too bad, nobody has lost anything. But in relation to option 2, the evidence is in the form of the term sheet, and I have said in my witness statement that that term sheet is compliance and credit backed on the part of the lender. That means, my Lord, that it is an offer to put up finance subject to two things and two things only. The first of those is contract, subject to contract. Well, my Lord, bridging loans operate on standard

forms. So that's something which could be done in an hour or so, the production of documents. And it is also subject to the valuation which I have produced, the valuation from Mr Street, which is in the evidence submitted to the Crown Court that produced my witness statement here as an exhibit redirected to them. It is presently directed to a different lender.

So, to give rise to a duty of care, possibly a contractual duty, they would want the valuation -- what's known in the bridging world as "retyped", which, as I understand it, simply involves changing the name of the person to whom it is addressed.

So, those are the only two conditions --

MR JUSTICE MILES: But option 2, you have said, doesn't work on its own.

MR SLADE: No, that's option 2, my Lord.

MR JUSTICE MILES: It comes with a cost. Leaving aside for a minute the argument about whether this is even something the court can get into, because the claimants are saying that I don't even have a power in relation to this, but leave that to one side for a minute. Supposing it was on the table of options. On its own, it doesn't work, but it has a charge attached, so it would be probably a surprising thing for the court to allow that to happen, given the cost, unless it was combined with option 4, so, in other words, unless the court was confident that option 4 was a real option, it would be a surprising thing to permit option 2.

MR SLADE: Well, my Lord, would it, with respect?

MR JUSTICE MILES: It would, because there would be a cost attached to it. Quite a substantial amount of money.

MR SLADE: Well, a relatively small amount of money in the scheme of this case.

MR JUSTICE MILES: What was it?

MR SLADE: 150,000.

MR JUSTICE MILES: Well, that's not an insignificant amount of money.

MR SLADE: It's not nothing, but by comparison with the amounts of money we are talking about in this case, my Lord, it is a drop in the ocean. But put that to one side, my Lord --

MR JUSTICE MILES: I'm not going to put it to one side because I would only even think of approving it if I thought that it was a cost that was worth incurring, as it were. If it's only in combination with option 4 that it could possibly work, I would need to be satisfied that option 4 is workable, is practical, could happen, and I would need to know a lot more, it seems to me, about timing, how quickly would all of this happen, how quickly would it be possible to raise money on the property, what would it mean in practical terms for getting your client represented by counsel again. Those sorts of things.

MR SLADE: My Lord, I can help you on those. This morning, I had a conversation with counsel's clerk, in the usual way, and he confirmed to me that the three barristers, one of whom is present in court this morning, were keeping abreast of the case from the transcripts and receiving instructions from Mr Thomson as the hearings have progressed each day. So, they are fully up to speed. They wouldn't wait for the money. They would be satisfied, if your Lordship made the order, that the money would be forthcoming and they would be back in court potentially as soon as tomorrow. It might be Wednesday, it might be tomorrow.

MR JUSTICE MILES: But, as it were, irrevocably, or what happens then if you struggle to -- in fact struggle to raise money on the property?

MR SLADE: In fact, my Lord, I can share this with you and I can confirm it on a witness statement, if that would be of assistance, the money has been raised.

MR JUSTICE MILES: What, the mortgage?

MR SLADE: Yes. On the same basis as option 2, that is to say, it is credit backed, which means it has passed all internal credit processes imposed by the lender. It will produce a figure in the region of £2 million. And that would enable the purchase to go through. In fairness to counsel, we'd still want option 2 because that's certain and that's quick.

MR JUSTICE MILES: But option 2 involves the cost of £150,000 --

MR SLADE: Well, my Lord, yes. I can't do the --

MR JUSTICE MILES: -- which then comes off the assets which are available.

MR SLADE: Yes. But since this is a claim for £350 million or more --

MR JUSTICE MILES: But it is also a claim where -- I can't remember what Mr Thomson's overall assets are, but they are very far from being £350 million.

MR SLADE: Yes, my Lord.

MR JUSTICE MILES: So 150,000 has to be seen, I think, not in the context of the amount of the claim, but in the context of his available assets.

MR SLADE: Yes.

MR JUSTICE MILES: It is not an insignificant amount.

MR SLADE: I appreciate that, my Lord. But the position is, with respect, somewhat impossible. I considered this, which is why I approached Mr Golding through Mr Posener for an interest-free loan. I delivered that. That would have had no cost. But the Serious Fraud Office doesn't like it.

In the teeth of their opposition, it is going to take weeks to resolve. That, I accept, clearly. However fortunate I am in my dealings with the listing department of the Crown Court, it is going to take weeks to resolve.

So the interest-free option is unavailable because of the attitude of the Serious Fraud Office. There is no problem with this court. I think all of those concerned, even the claimants, can see the attraction of the interest-free solution. They have a concern that your Lordship might not have the power to vary an undertaking as a matter of law because, as it happens, Mr Golding did not consent to the proprietary freezing order, he gave a voluntary undertaking in lieu of it, and that gives rise to a point of difference, it is said. On this side of the court, we say they are completely wrong about that, but there is that issue. But the Golding option is cost free.

Now, if the Golding option is unattainable, as I say, because of the attitude of the Serious Fraud Office, then we have to turn to alternatives. Every other alternative involves borrowing from a commercial lender, my Lord, and that comes with a cost. So, the cost-free option is there, but it is unachievable for that reason. Every other option has a cost. Now, I would say, looking at all of these possibilities, and bearing in mind that bridging finance, my Lord, is notoriously expensive, everybody knows that, the cost of £150,000 to implement option 2 and get counsel back in court potentially as

soon as tomorrow is actually extremely attractive, in conjunction with option 4, which solves the problem, or indeed option 3, which solves the problem but is more protracted because of the need for Mr Thomson to execute a fresh mortgage. The case is overwhelming. This man needs to be represented. I think everybody accepts that. I took Mishcons' letter this morning as a helpful acknowledgement that that was the case. The first page of the letter says so. On that basis, of the options which are available to you, I can see nothing inherently wrong with options 2 and 4, and option 3, well, that's simply there in case I need it.

MR JUSTICE MILES: I am going to take up your invitation to hear briefly from Mr Robins, but I don't -- let me just hear briefly from you, Mr Robins. Are you dealing with this?

Submissions by **MR ROBINS**

MR ROBINS: My Lord, I will set out our position in respect of the various options in a moment, but it is, I think, important to focus on the issue that has prompted all of this, and that was Mr Thomson's counsel team walking out, as Mr Slade put it, symbolically, on the first day in court, although we now know from Mr Slade that their deadline -- their final extended deadline for payment was the previous Friday. The payment itself, Mr Slade tells us, had fallen due for payment in December. So, the question, as we see it, is whether there is any means of raising money to bring them, or some of them, back to court in the very near future so Mr Thomson can be represented by counsel during the period covered by the trial timetable. In fact, it turns out, based on what Mr Slade said a moment ago, it is not quite as stark as that, because we are told they are reading the trial transcripts and taking instructions from Mr Thomson and haven't completely disengaged.

But, before looking at the options, it is important to say at the outset that, ultimately, it may prove to be impossible for Mr Thomson to be represented by counsel during the trial, and if that ends up being the case, then it is the foreseeable, one might even say intended, consequence of Mr Thomson's own conduct because he's known for a very long time that he'd need to sell his house to pay legal fees.

My Lord will recall that there was a CMC before your Lordship on 8 to 10 March 2022, almost two years ago. Your Lordship held that the trial should commence in October 2023. That, ultimately, couldn't be accommodated by listing, and very shortly after that CMC the trial was listed to commence in January 2024. It was obvious to Mr Thomson, at that point, that, if he wanted to be represented, he would have to instruct solicitors and counsel and raise monies to pay them and that he would have to sell his house in order to do so. We have got in the bundle at <P6/18>, page 13, a letter --

MR JUSTICE MILES: At the moment, Mr Robins, you're in a slightly difficult position here because Mr Slade has invited me to ask you what your position is. You're opening now on your submissions --

MR ROBINS: My Lord has seen our position in the letter.

MR JUSTICE MILES: Your position is as per the letter.

MR ROBINS: Absolutely. Option 1 has numerous problems that stand in the way. There has been no change in Mr Golding's circumstances and, therefore, no basis for releasing him from his proprietary undertaking and accepting a new one in different terms. There is a frank admission on the other side of the court that, from Mr Golding's perspective, this is designed to circumvent the debarring order and get him the benefit of expenditure on legal defence costs. The terms of the loan are entirely

unsatisfactory and there's no possible way the court could sanction it with regard to the repayment terms of the signed loan agreement.

There is obviously a risk of prejudice to the claimants if the house turns out to be worth a lot less than Mr Slade asserts.

Fifthly, it is not going to be feasible within the near future because the SFO wants two to three weeks to file evidence in response. It suggests that Mr Golding should serve evidence in reply a week after that and then there will be a hearing with a one-day time estimate in the Crown Court. Who knows when that will take place? Obviously, the Crown Court prioritises matters relating to custody time limits. This isn't the sort of thing that's ordinarily prioritised in the Crown Court.

Our concern is that it could take a very long time to resolve. If it were decided against the SFO, then obviously there would be a prospect of them wishing to appeal to avoid setting unhelpful precedents in other cases. So, we are not sure that option 1 is realistic. It is not going to have any real prospect of bringing counsel back in the near future.

Option 2 is obviously the loan to Mr Slade's firm at a cost of £151,000 in interest and charges. Option 3 is the loan to Mr Thomson at a cost of £426,000 in interest and charges. The only point of difference between the parties is Mr Slade says that the interest and charges should be added to the mortgage. We oppose that because, at the hearing in October, it was apparent that a sale would take some time, and your Lordship permitted Mr Thomson to grant a mortgage in favour of Mr Slade to secure Mr Slade's position pending the sale of the property on the basis that it may take some time for Mr Slade to be paid, and that's how Mr Slade himself explained the need for the mortgage.

It now seems that Mr Slade doesn't want to wait until the property is sold. We are told Mr Thomson's counsel are also unprepared to wait. If getting the money sooner comes at a cost, then that's a cost that's going to have to be borne by them. They are effectively in commercial terms entering into an arrangement that might be compared to invoice discounting or factoring. If they want the money sooner and it comes at a cost, then it is a cost to them.

It would obviously be wrong to allow the interest costs and charges to be added to the mortgage in light of the long background of this. Your Lordship set a limit of £1.2 million plus VAT to get legal representation for Mr Thomson to the end of the trial. That was a figure your Lordship set by reference to evidence as to the value of Mr Thomson's assets and to ensure the claimant's claims were not rendered nugatory at the end of the day, bearing in mind also the high level of living expenses permitted to Mr Thomson which are eating away rapidly at his remaining assets. My clients obviously weren't particularly happy with that outcome. It is significantly higher than we had submitted your Lordship should set.

We were, of course, even more unhappy when Mr Slade got permission to appeal. But we ultimately compromised that appeal with Mr Thomson on terms that he would be entitled to £1.9 million plus VAT to get legal representation for himself to the end of the trial. That's a compromise that was embodied in a consent order of the Court of Appeal. It is effectively a contract between the parties --

MR JUSTICE MILES: What's the date of that?

MR ROBINS: <P6/18>, page 43. <P6/18/43>. We settled on the amount that should be added to the charge. My Lord can see it is sealed on 8 December 2023.

MR JUSTICE MILES: Is there evidence that, by that date, there had been efforts to raise bridging finance?

MR ROBINS: Yes. The evidence relating to bridging finance was in the bundle for Mr Thomson's application for the hearing on 19 September, and Mr Slade exhibited very extensive correspondence with brokers. I can give the page references. We can look at them. They all said, once they found out who Mr Thomson was, that they weren't going to touch him with a bargepole for reputational issues, given the information they had seen about him on the internet.

Mr Slade himself has explained to your Lordship, I think on Day 2 of the trial, that, once they found out who Mr Thomson was, they were not prepared to provide bridging finance. That's why, at that hearing before your Lordship, Mr Slade was saying he wanted a mortgage, because he recognised that he wasn't going to get cash until the property was sold. That was to secure his own position.

We agreed, by way of a compromise, that the amount secured by the mortgage should be £1.9 million plus VAT and that that was to secure legal representation, that was the maximum that could be spent to obtain legal representation for Mr Thomson to the end of the trial. As we have set out in the letter, that is a compromise between the parties. Even if the court had theoretical jurisdiction to re-open a binding compromise, the authorities make clear that the court should be incredibly slow to do so, and we can look at that in due course if we need to do so. The court should essentially respect the sanctity of contract and hold parties to their bargain. The court's theoretical power to vary a consent order shouldn't override that important principle. The cases make clear that the court should only re-open a compromise if there are some exceptional, unforeseeable circumstances which have wholly undermined the basis of the compromise, and Mr Slade hasn't addressed that. If I need to address it in submissions, it's my position that we don't come anywhere near. It was always foreseen that the house might not be sold, which is precisely why Mr Slade asked for and obtained the mortgage.

We don't have any problem, therefore, with options 2 and 3. Insofar as the interest is borne by the legal professionals for whom those proposals are put forward, it is to enable them to get the money sooner, if they bear the interest, and they can do that, but it shouldn't have any impact on the overall total that is permissible or on the amount of the mortgage, or indeed on the amount of representation that Mr Thomson is getting for the money.

We have, obviously, concerns about those options as well, in terms of deliverability. Option 3 in particular, the email from the broker on Friday last week with an agreement in principle seems to be the sort of thing Mr Slade has described in detail in his evidence about it being a frustrating experience, about brokers being quick to make offers but quick to withdraw them and about offers coming and going. We don't really have any faith in option 3 materialising. It seems to be the sort of thing that would be likely to be a replay of what we saw in August and September, of people pulling offers when they find out more about what's on the internet regarding Mr Thomson. So, we have concerns about that really being likely to solve the problem. We don't think it is.

There is also, obviously, a potential impact on option B of the pending bankruptcy position relating to Mr Slade. It does seem to be perhaps rather optimistic to think that that wouldn't have any impact on a proposal by Mr Slade to borrow that sort of money. As regards option 4, obviously we don't oppose a purchase by anyone at a proper price, and until we saw Mr Slade's evidence, we would have thought that £3 million was a very good price indeed. But Mr Slade has now put in evidence to say that -- there is valuation evidence to say that the proper price is £3.25 million and there is a concerning lack of evidence about the marketing. There is no evidence from the estate agent regarding the marketing that's happened or regarding the viewings. We don't know whether any offers have been made, or at what level, or whether there have been any other expressions of interest. If that sort of evidence is forthcoming and there is evidence of a professional

recommendation that £3 million is as good a price, then obviously I will take instructions and one might imagine that my clients would be likely to agree to a sale at that price. But, at the moment, what's being put forward is very nebulous and not really supported by any proper evidence. Again, it seems there's a huge amount of optimism in thinking that this would resolve the issue that faces the court at any sort of acceptable timeframe. It would need Mr Slade to buy Mr Thomson's house, and one knows how long that can take with searches at the Land Registry, the conveyancing would be complicated by the fact that the lender to Mr Slade would need a charge to replace Mr Slade's mortgage. It is not going to be entirely straightforward. We are concerned that the impact of the bankruptcy petition against Mr Slade might, again, cause complications and delay on this option.

We are concerned that option 4 wouldn't actually bring Mr Thomson's counsel back to court in the near future, even if it were in a position to be approved by the court today.

That's why we have made the offer in that letter, option 5. I can take my Lord through the history of this to explain why we are concerned that Mr Thomson's approach to this may be tactical. He may be deliberately seeking to put himself in a position where he has no representation.

My clients have paid for him before to undertake various stages of this litigation to ensure that it remains on track and I'm thinking in particular of disclosure. My Lord has seen the offer that has been made. That would be intended to be something that could be finalised and documented very quickly to ensure that junior counsel could return. It obviously wouldn't be enough to pay for Mr Mayes, but it would enable Mr Thomson to have legal representation. Mr Slade would need to agree for his mortgage to be second ranking, but that wouldn't prejudice him because --

MR JUSTICE MILES: Sorry, I'm trying to understand. This works by his charge being postponed to a new charge?

MR ROBINS: Exactly. That wouldn't prejudice him because the sum of £350,000 would be used to discharge what would otherwise be a liability of Mr Slade in the nature of a disbursement and a liability of Mr Thomson to Mr Slade in respect of that disbursement. So, it would effectively pay part of the sum that would otherwise remain unpaid and it would reduce the amount that Mr Thomson could then spend from his other assets. It wouldn't be £350,000 plus the 1.9 plus VAT, it would be 350,000 that comes out of the 1.9 plus VAT. That offer has been put forward in the hope that it would enable junior counsel to return almost immediately, so that the various concerns we have about the delays inherent in the other options and the lack of realism in them could be put to one side. There is an offer that would resolve the problem.

As I say, we will have to see if Mr Slade is able to take instructions. We did have an initial response from him this morning, an hour and a half after we sent the letter, saying that it didn't work and it wouldn't be accepted, but he didn't mention in his response anything relating to having taken instructions from Mr Thomson. We are not sure, and it is not clear to us, whether Mr Slade did, in fact, take instructions before responding in a negative sense to that offer. But it does remain on the table and we hope it can be taken seriously to ensure Mr Thomson gets representation. Ultimately, if he doesn't want representation, if that's what he's hoping to achieve, then that's his decision. But it is not ultimately going to be something that can be held against the claimants.

MR JUSTICE MILES: Well, you have made your position clear. Mr Slade, where do we go from here?

Submissions by **MR SLADE**

MR SLADE: My Lord, that was, in fact, helpful, simply because it focuses the debate down and enables me to come back on a number of particular points which appear to concern my opponents, rather than dealing with the whole thing, as it were.

First of all, on conduct. They make an awful lot of this, the fact that Mr Thomson hasn't sold his house before now and all the rest of it. With the greatest of respect, that is just so much rubbish. He can't control the date on which he sells his house any more than the rest of us can.

MR JUSTICE MILES: He can in the sense that, if he started a year and a half ago, it's very likely he would have sold it by now.

MR SLADE: If he had been represented by my firm a year and a half ago, my Lord, we would have advised him to do exactly that. Unfortunately, circumstances are as they are and there is nothing anyone in this court can do to change them now. I'm simply trying, as his solicitor, to make the best of the situation, to ensure that he is represented.

As for the suggestion this is some sort of tactical master plan, that is just ridiculous, with the greatest of respect, and I will say no more about it. Clearly, it's not. He is trying to arrange for representation in very difficult circumstances.

With regard to options 2 and 3 and Mr Robins' point on the compromise, I'm glad that came out and I have the opportunity of addressing it. My position is that I don't ask for a compromise to be re-opened at all. The point I make is not that. This was not covered by the compromise. That's my answer to Mr Robins on this. I can make that point good by taking your Lordship to the order you made in October. That's to be found -- I'm using a paper bundle --

MR JUSTICE MILES: There is a principle of Henderson v Henderson that, if you are going to raise a point, you should raise it at the time the matter is before the court. There was an application to vary the orders to release monies, and all relevant matters should, therefore, have been argued at that stage. If it was always foreseeable that bridging finance would cost money, then that's something that should have been raised and argued.

MR SLADE: My Lord, I think you're setting the bar far too high, with the greatest respect. I did give full and frank disclosure of all the applications that had been made to bridging lenders at that point and they all came back with a flat, "No, we are not lending to Mr Thomson". That was as far as the point went at that stage.

MR JUSTICE MILES: You said earlier on, Mr Slade, that it is obvious that if you are going to raise bridging finance it is notoriously expensive.

MR SLADE: Yes, my Lord, that's right.

MR JUSTICE MILES: What you are trying to do now is raise bridging finance.

MR SLADE: Yes.

MR JUSTICE MILES: Why was that not foreseeable?

MR SLADE: My Lord, the hearing we are talking about took place in the first half of September. At that stage, the trial was however many months there are between September and the end of January and there was every prospect, at that stage, that the house would sell. So the position, as it appeared to me at that point, was that bridging finance was a no and there was every chance that the house would sell. Your Lordship's judgment came out in October and there were then a series of

delays which meant the house was not marketed as quickly as it might otherwise have been. That doesn't help any of us. And the position is as it is.

But in relation to the compromise point, you will see your Lordship allowed a figure of 1.2 million plus VAT for fees and disbursements. Essentially, legal costs. That was what the application was all about. I took that to the Court of Appeal and the appeal was compromised, as Mr Robins says. The compromised figure of £1.9 million plus VAT related to legal costs. Neither the original order nor the compromise which was then embodied in an order by the Court of Appeal had anything at all to do with the cost of borrowing money. That's something which has arisen subsequently. That's why I say that the compromise on its terms, on its face, which doesn't mention the cost of borrowing at all, is a contractual compromise which I don't seek to re-open because this matter falls outside it. But that's a point which your Lordship can determine now, and that will no doubt advance the resolution of this matter. In relation to option 4, it is unfortunate that we haven't got evidence as to the present state of marketing of the property, but the offer that I have made of 3 million falls more or less exactly halfway between the expert assessment in a Red Book valuation of full market value, which is 3.25 million, and forced sale value at auction, which is 2.76 million, I think, from memory, but I will be corrected.

So, the offer that I have suggested falls squarely between the two. I would have thought that would be unobjectionable.

Various more minor points are made. The conveyancing would take time, et cetera, et cetera. Well, Mr Robins isn't to know this, but that's not a good point because, on account of the experience we have had with bridging lenders, we have all the conveyancing searches in hand. The money has been the subject of an offer subject only to contract and the redirection of the valuation. So, in actual fact, the sale process would not take very long.

The title concerns which had troubled the parties before have all been resolved by my colleagues. The title is now in good order. So, that can proceed relatively quickly.

The question of the process which has been commenced against me as a result of client default exacerbated by the activities of the regrettable -- I have described them as "grubby" in my witness statement -- activities of Mishcon de Reya are irrelevant because they have been fully disclosed, I can tell the court right now, to the lender, both in connection with option 2 and in connection with option 4. So, there is no risk of the approach I'm taking being compromised by those matters, much though I'm sure that would be desired on the other side of the court.

As to the postponement of the charge, that's not going to help because any lender, whether a bridging lender in option 2 or a lender to Mr Thomson in option 3 or a bricks and mortar lender in option 4 would require a first legal charge over the property. So, I don't think that assists us.

In relation to the expense, it occurred to me while I was listening to Mr Robins that I may inadvertently have slighted misrepresented the position against my own case. The cost of £151,000 is the cost of borrowing money for a year. Now, if that were combined with option 4, a sale next week, there would be a cost and there would be, I'm sure, some sort of minimum borrowing requirement of possibly two or three months, but it would be nowhere near £150,000. So, I gave your Lordship the figure for the term loan of a year, and that will appear from the loan document, if anybody cares to look at it, the heads of terms document. So, the actual cost of implementing options 2 and 4 in combination strikes me as being unlikely to be a figure that would trouble your Lordship. Those are my immediate --

MR JUSTICE MILES: Sorry, on the postponement of the charge point, the idea was, as I understand it, it was a sort of cash flow -- it was just a cash flow idea, that they would come up with -- the claimants, rather unusually, would come up with some cash which would enable you to pay that sum as a disbursement to counsel, but that would then be knocked off the amount of your existing charge, effectively. So, there wouldn't really be any significant economic effect. It wouldn't change the remaining equity in the property, just reallocated.

MR SLADE: That doesn't address my concern, which was that a lender coming in would require a first charge. Now, if --

MR JUSTICE MILES: But that's a different option. That then requires -- what do you mean by "lender coming in"? Do you then mean one of your options, option 3 or whatever?

MR SLADE: My Lord, the claimants have not given your Lordship the benefit of my response to them this morning in full. Paying money so that Mr Thomson would be represented by two juniors rather than by leading counsel is (a) wholly inconsistent with the approach taken by your Lordship and the Court of Appeal, which is that he should have access to £1.9 million plus VAT for his defence; but doesn't work for other reasons as well. Number one, those barristers do not operate on the basis of direct access. When I spoke to their clerk this morning, he confirmed to me that they would not take this case on the basis of direct access. If my firm is to brief them, my firm has to be paid.

MR JUSTICE MILES: I think the proposal was that your firm has already got its mortgage.

MR SLADE: That's not cash, my Lord.

MR JUSTICE MILES: No, I know it is not. But that was the -- that was how the matter was compromised when -- or, at least, first of all, the order that I made was for you to have a mortgage so that, if you couldn't be paid upfront, you would at least have security, and then that was reflected in the Court of Appeal compromise. It's just for a larger amount.

MR SLADE: All the Court of Appeal compromise did, my Lord, was adjust the figures in your Lordship's order. It didn't change any of the words.

MR JUSTICE MILES: So the idea of the mortgage was that it would give you security if you couldn't get cash to pay your --

MR SLADE: Yes, I accept that I'm secure.

MR JUSTICE MILES: The idea here is to provide some cash for counsel, but, as I understand their proposal, they're saying, as far as you're concerned, you would be in the position you have been in since September, which is that you have a mortgage in respect of your outstanding fees.

MR SLADE: Yes.

MR JUSTICE MILES: Then, once the property is sold, you can recover your money.

MR SLADE: Yes, my Lord, but I won't work on that basis, and I have always made that clear. Your Lordship's order provided for payment, by which I mean payment, on successively 1 October, 1 November, 1 December, 1 January, 1 February and, shortly, 1 March.

MR JUSTICE MILES: But that was on the assumption that the money was available.

MR SLADE: Yes, my Lord, but it is not.

MR JUSTICE MILES: But if it is not available -- I didn't understand, maybe I've misremembered, but I didn't understand that, if the cash wasn't available, you would, to put it colloquially, down tools.

MR SLADE: My Lord, I haven't downed tools.

MR JUSTICE MILES: But you're threatening to do so now.

MR SLADE: Yes, my position now is I need the money. It's as simple as that. I will not continue in this case without the money. Bear in mind the sums we are talking about, my Lord, I don't think anybody would say that was at all an unreasonable position. I have gone out of my way to provide means by which we can all get there. My Lord, I notice the time. Could I make this suggestion, in terms of the short adjournment: where we have got to, I think, if I may try to summarise this, is that nobody has a burning objection to option 2, subject to the additional cost. Largely owing to a fault on my part, that additional cost has been assumed to be £150,000. But that's clearly wrong. It will be a proportion of that, depending on how long the loan remains outstanding.

No-one has -- at least I don't think anybody has -- a burning objection to option 3, subject to the same point.

MR JUSTICE MILES: It is a larger amount of money.

MR SLADE: It is a larger amount of money. I accept that, my Lord. The principal is also a larger amount of money. And nobody has a burning objection either to option 4. Everybody doubts whether it can be achieved. I don't. I know that it can be achieved.

MR JUSTICE MILES: Well, there was an objection, as I understood it, which was that 3 million may not in fact represent, as it were, a fair price, or, better expressed, the market price.

MR SLADE: My Lord, what can I say? I have offered smack in the middle of the two figures of the valuation that I prepared at my own expense. There is no other valuation evidence in the case. It is a price which the Thomsons are prepared to accept with the court's sanction.

My Lord, since we all clearly need to break for lunch, can I suggest that you direct that the solicitors have a conversation over the lunch adjournment about these matters to see whether a figure -- a way forward can be agreed? I make it absolutely clear that the offer of £350,000 from the claimants, while it might form a part of the solution, it is not, in itself, the solution.

MR JUSTICE MILES: What do you say about that, Mr Robins?

MR ROBINS: My Lord, our position is as set out in the letter: any costs associated with option 2 is not something that could be added to the mortgage. Subject to that, we have got no objections to option 2. It is an option along the lines that Mr Slade floated at the consequentials hearing before your Lordship in October when he said he might get some sort of bridging finance and secure it by way of a subcharge. There's no objection in principle to that. If it secures Mr Thomson legal representation and doesn't prejudice the claimants, as I said, there is no issue with objection 2. The objectionable feature is the suggestion that the additional cost to the benefit of Mr Slade should be added to the mortgage. If that's a benefit he wants, then he can pay for it. On option 4, as I said, provided we can be satisfied that £3 million is a proper price, then it may be that that can proceed. But obviously Mr Slade procuring a valuation isn't quite the same thing as hearing from the estate agent and learning --

MR JUSTICE MILES: Right. But you've put in evidence it is worth quite a bit less than that, so it does look, on the face of it, from your position, it is quite a good price.

MR ROBINS: It may turn out to be a very decent price.

MR JUSTICE MILES: What I want to do, Mr Robins, you will understand, is try and find some way of resolving this.

MR ROBINS: Yes, which is why we made our offer as well.

MR JUSTICE MILES: I know, but that's been rejected. The question is whether there's any -- what I'm concerned about is how long all this is going to take, because so far I have just heard parties setting out their position in quite summary terms. I probably need to be taken to more argument on the question of the nature of the compromise, the background to all of that, what was in play or what should have been in play, and so forth. I can see this taking quite a lot of time. These questions do take time to argue and resolve. There is also just the practical question that time is passing where Mr Thomson is not represented in court. At the moment, I am told that his counsel have been keeping up to speed, and that's helpful. Is there any room for further discussions or are you going to tell me that it's better for me just to devote perhaps the rest of the day to hearing these applications?

MR ROBINS: I can take instructions. Maybe that's what I should do.

MR JUSTICE MILES: Well, I will leave it to you. I'm not going to direct anything to happen. What I do say is that, if there is a practical way through this, then I would like the parties to seek to find it. I won't say anything more than that. I won't direct meetings to take place, or anything of that kind, but I am concerned that this is going to eat up quite a lot of time which, to my mind, would be better devoted to getting on with the trial.

MR ROBINS: Yes. It seems there is a way forward, which is option 2, provided that Mr Slade bears the interest costs --

MR JUSTICE MILES: Except he says that's not enough on its own. He says that option 2 is not sufficient on its own. It might be worth a bit more thought being given to how realistic the price of 3 million is.

MR ROBINS: Absolutely. We can do that.

MR JUSTICE MILES: We will come back at 2.00 o'clock. (1.08 pm)

(The short adjournment)

(2.00 pm)

MR JUSTICE MILES: I see Mr Robins is on his feet, Mr Slade, so I'll see what he has to say.

MR ROBINS: My Lord, I have had the opportunity to take instructions. My clients, of course, are insolvency practitioners. As my Lord will know, they generally like to act on advice, so they have in turn spoken to their valuer, Mr Pitt, who would recommend a sale of the property at £3 million, not just to Mr Slade but to any purchaser. The identity of the purchaser isn't material. So my clients would be content for your Lordship to make an order permitting the property to be sold for that amount. That deals with option 4. On option 2, our position remains that any additional interest costs would have to be borne by Mr Slade and not added to the mortgage. I can take your Lordship through the argument on that in due course if your Lordship wants to hear it. Is probably fairly short.

MR JUSTICE MILES: You have heard that, Mr Slade.

MR SLADE: My Lord, yes.

MR JUSTICE MILES: You have invited me to be reasonably interventionist and to give you an idea of what I'm thinking as this goes along.

I got the message that Mr Posener was not going to be in court, and I think that's sensible because I have reached the view already that, really, dealing with option 1 isn't on the table because of the position of the SFO, and I don't want to spend time on a potentially academic question.

You have heard what's said about option 4. Therefore, it really comes down to a question in relation to, I think, option 2, as to whether the interest costs should be -- there should be a further variation, in effect, in relation to that. I am prepared, obviously, because I haven't heard full argument on the point yet, to do so. Just so you know my initial view, having heard some of the argument, is that the interest cost is not something -- sorry, the cost of the interest should not be something that should be the subject of a further variation because it was part and parcel of what has already been decided. I know you take issue with that. But that's my preliminary view, having heard some of the argument. But earlier on you said, well, actually, it may not be such a big deal because that's for a year's interest, and you would very much hope that the period would be much shorter than that.

Now, in the light of that no more than preliminary indication -- it is not a ruling -- how do you want to take it forward? Do you want to argue the point now, and I will then give a ruling on it? Or do you want to go away and think about where we have got to, which has been helpful, I think, because a lot of progress has been made.

MR SLADE: Extremely helpful, and I have had the opportunity over the luncheon adjournment to speak to Mr Crome of the Serious Fraud Office. He wasn't initially opposed to the figure of 3 million but, sensibly, wanted to take advice on the subject. So he is going to do that and come back to me. So that is also progress. In relation to the interest point, I have made some enquiries over the adjournment also and made an open offer simply to compromise and avoid the need to argue the point which would take time and cost money, I offered to limit the additional charge to the equity to £50,000. That offer was rejected.

MR JUSTICE MILES: Right.

MR SLADE: So, at the moment, that's where we stand. One other matter I should raise: I asked Mr Davis whether he would leave his offer of £350,000 on the table for the rest of the week, by which I suppose I mean until 4.30 pm Friday, and consider whether it could -- and neither of us have had a chance so far to think this through -- operate in conjunction with one of the other options. It was expressed, I think, as a stand-alone proposal in the letter of this morning. If there was some flexibility on that, that might be of material assistance and might, for example, avoid the need for me to press option B at all, and so avoid the need to take time and trouble over the interest point.

MR JUSTICE MILES: How do you want to proceed? Do you want now to go ahead with the argument on the interest point, or do you want to take stock and see whether it might be possible to get to some solution?

MR SLADE: My Lord, that would seem commercially sensible. In the interests of continuing the interventionist approach, does your Lordship have a view -- it is an open offer, so there is no difficulty in my telling you about it, and it has been rejected. Now, for the cost of £50,000 on a mortgage, we can spend some time in court, which would otherwise be used --

MR JUSTICE MILES: I'm afraid to say, on this point, I'm not in the business of --

MR SLADE: Helping broker a deal.

MR JUSTICE MILES: -- negotiating or coming to a judgment of Solomon. It seems to me the question here is essentially one of principle and it's binary: either you're right or they're right. It may be that the parties think that, if it is a sum of £50,000, they will end up spending more arguing about it than the amount at stake, although Mr Robins says it is not a very long argument, and I suppose he's ready for it now. But it does seem to me that there might be some merit, in the light of where we have got to, for everyone to take stock and just see whether there is a way of reaching a final resolution. If there isn't, then we can come back to the point and perhaps have -- what will it be, do you think? Mr Robins, do you think this question -- because it is just the question, really, of -- I think it boils down to this question about the interest charge. Do you think it is about an hour's argument?

MR ROBINS: Yes, and including decision.

MR JUSTICE MILES: Mr Slade?

MR SLADE: Should we say 10.30 in the morning for that, then, my Lord, if we haven't managed to reach agreement --

MR JUSTICE MILES: I'm not sure whether we should do it --

MR SLADE: 2 o'clock?

MR JUSTICE MILES: -- maybe at 2 o'clock tomorrow.

MR ROBINS: Fine.

MR JUSTICE MILES: It would enable us then to get on with the openings, which I would like to do, but there is at least the possibility of reaching some sort of --

MR SLADE: I think it is a very sensible course, my Lord.

MR JUSTICE MILES: It would also mean you would be able to find out a little more from the SFO whether they agree with the valuation point, because Mr Robins has said what he has to say on behalf of his client, but if there is an objection to that from the SFO, then it may be that it is not quite such a straightforward solution.

MR SLADE: Yes. I agree, my Lord.

MR JUSTICE MILES: Shall we deal with it in that way? Would that be satisfactory to everybody?

MR SLADE: I think it is very sensible, my Lord.

MR ROBINS: Yes, my Lord.

MR SLADE: If I may, I will leave court and go and speak to counsel's clerk.

MR JUSTICE MILES: And possibly have an opportunity to have a word with the SFO's representatives as well.

MR SLADE: Yes. I'm grateful, my Lord. And I wish everybody a good afternoon.

MR JUSTICE MILES: Thank you.

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

MR ROBINS: My Lord, we were looking at the position in respect of the shares in Lakeview Country Club Limited in the period before the Lakeview SPA. We saw the 75:25 ratios at the outset. We can see from the next document that those have changed. <EB0000596>. This is an email dated 6 February 2015 from Mr Sedgwick to Mr Hume-Kendall copied to Mr Barker and Mr Thomson, subject "Shares in Lakeview":

"Dear Simon.

"I am told that you have agreed terms with Elten with regard to the shareholding in Lakeview claimed by Andrew Visintin and that his claimed 2.5 per cent which was bought out by a payment made by Spencer will be split between Helen's share and that part of Andy's share which he is holding in trust pro rata to your respective shareholdings.

"Thus as I understand it the shareholdings will be: Andy personally 5 per cent, Helen 23.75 per cent, Andy on trust 71.25 per cent."

So, we can see from this that Mr Visintin has been promised 2.5 per cent of the shares in LCCL in return for his work in helping to acquire the Lakeview site. We know from another document, <MDR00014338>, that he was initially looking for £125,000 in return for his shares. This is a draft agreement. In paragraph 1 of the recital, Lakeview Country Club Limited is defined as "Lakeview", and in clause 1 it says:

"In consideration of the payment of £125,000 by the company ..."

The company has not yet been identified: "... to Andrew ... Andrew releases and assigns absolutely to the company any interest or right that he may have had to be issued with any shares in Lakeview ..."

It looks as if he was looking for £125,000 but, ultimately, it seems he agreed to sell his shares, his 2.5 per cent, for £11,000, <MDR00014723>. This is an agreement dated 7 April 2014, "Sale of interest in and purchase agreement relating to Lakeview Country Club Limited". At page 2, we see the definition of the term "Shares" with a capital S. Page 3, I'm sorry, it will be. It is:

"An interest of 2.5 per cent of the shares in the capital of the company claimed by the seller." Then, on the next page, clause 2.1, we see the reference to the sum of £11,000 in the second line. That sum of £11,000 was paid to him on 7 April 2018 from Sophie Golding's client account with Buss Murton. That's at <EB --

MR JUSTICE MILES: Was the buyer Mr Golding? I didn't see that.

MR ROBINS: If we go back to the first page, we can see the parties. It is Mr Sedgwick, presumably as nominee for Mr Golding because the £11,000 is paid from Mr Golding's wife's client account with Buss Murton, that's <EB0000540>. We need to open it as a native document. My notes say it is row 9. Yes, there we are, "Share payment AO Visintin £11,000". It seems, working it out, originally it was 75 per cent held by Mr Thomson for Mr Golding and 25 per cent held by Mrs Hume-Kendall, we say for her husband. Then 5 per cent is allocated to Mr Thomson and 2.5 per cent to Mr Visintin. That means that there is 92.5 per cent left over split one-quarter in the name of Mrs Hume-Kendall and three-quarters in the name of Mr Golding. That results in 23.125 for the Hume-Kendalls and 69.375 for Mr Golding, held in the name of Mr Thomson. But then if Mr Golding buys out Mr Visintin's 2.5 per cent and that is split pro rata, as that email we saw said, between the Hume-Kendall share and the Golding share, then the Hume-Kendall share is increased by 0.625 and the Golding share is increased by 1.875. That's what brings us to those new ratios of 71.25 per cent for Mr Golding held on trust by Mr Thomson, 23.75 per cent held by Mrs Hume-Kendall, and Mr Thomson still has his 5

per cent. A roughly contemporaneous draft trust deed shows those new ratios. It is at <MDR00014323>. it is a draft document, as I say, but it bears a date, about a quarter of the way down the page, that says:

"This deed is made on the 19th of December 2012." Bearing in mind what we have just seen, this is necessarily backdated. If we could look, please, at the document "Properties" tab in the trial bundle, we can see what the metadata says about the date of creation. I'm hoping we see a document date there of 2 January 2014. Yes, there it is. This is from the metadata, my Lord. It is reflected in the document "Properties" tab of the trial bundle.

So, it seems that the ratios we just saw had been arrived at by that date. It is executed subsequently and we can see the executed version at <MDR00224886>.

MR JUSTICE MILES: Sorry, Mr Robins, I'm just pausing for a moment. I thought that email was dated February 2015.

MR ROBINS: Yes.

MR JUSTICE MILES: Sorry, the one that you showed me that says they have agreed about the split, and so on.

MR ROBINS: Yes.

MR JUSTICE MILES: Wasn't that date you just showed me 2014?

MR ROBINS: It was, yes. The only way I think it can be understood is that if you start by the January 2014 date with 71.25, 23.75 and 5, and then Andrew Visintin is to get his 2.5 per cent from the Golding share and the Hume-Kendall share, without affecting Mr Thomson's 5 per cent, and then that entitlement for Mr Visintin is effectively reversed out, he's paid £11,000 and his 2.5 per cent is reallocated, essentially back to where it came from, and so you end up with the position as at February 2015 that we saw.

But these are clearly the ratios because they appear in this signed version. My Lord can see clause 1.2: "The beneficial owners own the share in the proportion 71.25 per cent for the Golding family, 23.75 per cent for Helen and 5 per cent for Andy." This still has the date, towards the top, 19 December 2012. We can see from the final page it's been signed by Mr Sedgwick on behalf of Buss Murton Nominees and witnessed by Mr Thomson.

But it's clearly been backdated, in light of everything else we have just seen.

If we go back to the position on 19 December 2012, that was the day after the incorporation of the company. All the emails from that time as we saw, say 75 per cent/25 per cent. So, for some reason, this has been backdated to make it look as though it's always been the position. But it hasn't.

There is then an LCCL minute, <MDR00015796>. My Lord can see it's dated, on its face, 15 December 2014. It relates to the issuance of the shares in those ratios with Mr Thomson holding Mr Golding's interest. So, this is effectively Buss Murton (Nominees) disappearing from the picture and the company issuing shares to the shareholders in the ratios that we have just seen set out.

We can see that from paragraphs 5(a) and (b), which I think must be on the next page or the one after [page 2]:

"The following documents were produced to the meeting:

"(a) transfer of one share from Buss Murton (Nominees) Limited to Michael Andrew Thomson. "(b) applications by the persons listed below for the allotment to them of the number of shares in the capital of the company set out against their respective names."

What Mr Thomson will end up with is 76.25 per cent which is Mr Golding's share and his share, Mrs Hume-Kendall ends up holding 23.75 per cent. This is dated on its face, as we saw,

15 December 2014, but if we look again at the document's date in "Properties", in the "Properties" tab, we can see, hopefully, that it was produced on 13 February 2015.

MR JUSTICE MILES: Sorry, what was that date?

MR ROBINS: "Document date: 13 February 2015". That seems to be the date on which it was produced, and that's the date -- roughly contemporaneous with the date on which it was decided that Buss Murton would, in fact, cease to be in the picture and that the shares would be issued into the names of the individuals who we saw mentioned in the minute.

Consistent with that is an LCCL annual return that was filed on 25 February 2015 --

MR JUSTICE MILES: Did that then happen? Were the shares then allotted to those --

MR ROBINS: That's right. That's what we see from the annual return, <D8-0062179>. This is filed on 25 February 2015, and we can see that towards the top, "Received for filing in electronic format". It is backdated to the date that was stated on the minute -- no, sorry, to three days after the date that was stated on the minute, 18 December 2014.

In that return, I'm not sure which page it is on, Mr Thomson is recorded as the registered holder of 7,625 shares, Mrs Hume-Kendall recorded as the registered holder of 2,375 shares. Those are directors. Look at the next page. And the page after. There we are, "Statement of capital", full details of shareholders. The one share has been transferred by Buss Murton (Nominees). Mr Thomson holds 7,625, Mrs Hume-Kendall holds 2, 375. So, that's how the shares are put into the names of those two individuals.

Then, by the Lakeview SPA, Mr Thomson and Mrs Hume-Kendall sell the shares registered in their names to a company called London Trading. Before looking at the origin of that, it is worth making the point that the shares in London Trading, the purchaser, were registered in the name of International Resorts Partnership LLP. That's the registered owner of the purchaser, London Trading. We call it IR Partnership. As at 8 July 2015, IR Partnership held the shares in London Trading on trust. It held 7,125 shares on trust for Mr Golding, 2,375 shares on trust for Mrs Hume-Kendall and 500 shares on trust for Mr Thomson.

We can see that from the documents at <MDR00002220>. It is a deed of trust dated -- I'm not sure I can see what that says, something of July 2015. The 3rd, possibly. "By International Resorts Partnership LLP". The declaration of trust in clause 1.1 says: "The nominee declares that the shares registered in the nominee's name listed below are held by the nominee on trust for the persons whose names are set out against each share ..."

I think that must be referring to the document on the next page, because it doesn't seem to be on this page. Is there one further page? There we are. Clause 6, "Details of shares". It is the numbers that I just mentioned.

Obviously, these percentages replicate what we say are the percentage ownership of LCCL as at this time. Mr Golding, 71.25 per cent, Mr Hume-Kendall 23.75 per cent and Mr Thomson 5 per cent.

MR JUSTICE MILES: Hang on. I think, when you were going through it for the transcript, you said that it held the shares for Mr Golding, Mrs Hume-Kendall and Mr Thomson.

MR ROBINS: Did I? In which case, I misspoke. It is Mr Hume-Kendall.

MR JUSTICE MILES: Right. Those percentages are ...?

MR ROBINS: The percentages --

MR JUSTICE MILES: What are those in percentage terms? Is that --

MR ROBINS: That's the 71.25, 23.75 and 5.

MR JUSTICE MILES: Right.

MR ROBINS: The percentage ownership of Lakeview, of Lakeview Country Club Limited. We can see that this is a contemporaneous document, it is not actually a backdated document here, because there is discussion in the email correspondence about having something in place to set out this understanding.

At <EB0003566>, towards the bottom of the page, there is an email from Mr Sedgwick to Mr Hume-Kendall, copied to Mr Thomson, with the subject "Shareholdings in London Trading Development Limited", and he says: "Simon, I have had a call from Elten who is anxious to ensure that the shareholding of London Trading & Development Group Limited is in the agreed percentages. At the moment all the shares are held by IRP. However as this is going to be the Topco he would like to see the shares divided as to Andy 76.25 per cent, Simon 23.75 per cent."

Mr Hume-Kendall says "Confirmed" and Mr Sedgwick says he will prepare the appropriate transfers. But what we then see him prepare is not actually share transfers, it's a deed of trust -- it is done by way of deed of trust at <EB0004189>. He says: "Please find the deed of trust varied as discussed." The attachment is a version of what we were just looking at, <EB0004190>. If we look at the second or third page, we should see the same table. There it is. There is a subsequent amendment two days later, <EB0004242>, where Mr Sedgwick explains that he's removed reference to the nominee complying with the requirements of the beneficiaries as to voting: "So the trust is merely as to the beneficial interest."

The version attached to this is the version that your Lordship saw a moment ago, the signed version, at <MDR00002220>. If we look at the final page, we should see the signatures. This is the draft version. It is then executed. <MDR00002220>.

If we look at the final page, we should see the signatures. Sorry, previous page. It is signed by Mr Thomson and Mr Barker.

The relevance of this, of course, is that the shares in Lakeview Country Club Limited were held in these percentages. They were then sold to London Trading, which was owned beneficially by the same individuals in the same percentages. So they were selling to themselves. Mr Thomson would continue owning 5 per cent, Mr Golding would continue owning 71.25 per cent, Mr Hume-Kendall would continue owning 23.75 per cent. That's obviously an important point to bear in mind when looking at this transaction. As to the origin of the transaction itself, probably the easiest place to pick it up is <D8-0000501>. On 6 April 2015, Mr Sedgwick emails Mr Hume-Kendall and Mr Thomson with the subject "Revised restructure of Lakeview". So there had been some prior discussions in respect of the restructure. This is the revised position. He says:

"Further to my discussions with Simon ... I confirm that we decided to carry out the restructure as follows."

Paragraph 3 is:

"Andy and Helen sell Lakeview Country Club to London Trading for £6.75M to be paid by loan notes repayable in 8 years."

So that's clearly what's contemplated at that point, £6.75 million payable within eight years. But that evolves.

At <D8-0001250> --

MR JUSTICE MILES: "LTM" is what? It might not matter.

MR ROBINS: It is proposed to be the purchaser -- the companies all go through a variety of names. I think, subject to checking, it is the company that we refer to as London Trading, which ultimately becomes known as London Trading & Development Group Limited. We can check. The point, for present purposes, is the contemplated price of £6.75 million payable within eight years.

Then, on 10 July 2015, Mr Sedgwick sends Mr Hume-Kendall and Mr Golding a memo which he says he's amended to reflect his conversation with Simon. The memo is the attachment <D8-0001251>. This is where we -- Mr Shaw has helpfully looked it up. The company known as London Trading Development Group Limited was previously known as Leisure & Tourism Management Limited. So LTM became LT&DG and we refer to it as London Trading. This is where we begin to see the evolution. Paragraph 2 says:

"The shareholders of [Lakeview Country Club Limited] have agreed to sell their interest in Lakeview to [what is now London Trading & Development Group] for £6.75M and repayment of the existing loans."

But then in paragraph 7:

"First in priority is the money due to

[Michael Andrew Thomson] which he is holding in trust. Provided that this is paid by the end of December, [Mr Thomson's] beneficiaries will accept £1.5M in full settlement of their entitlement. Second in priority is HHK who will accept £750K in full settlement of her entitlement."

So, there is contemplation of a smaller sum being paid rather sooner than the eight years originally contemplated.

At <D8-0001326>, Mr Sedgwick emails Mr Golding to say:

"I have updated my memo with regard to the movement of the Lakeview assets, et cetera, to take account of our discussion on Monday at the Hotel du Vin." This memo is the attachment, <D8-0001327>. It is the same as the previous version, but there is a new paragraph 12 at the end, which says:

"I think it might be sensible to amend the price paid for the Lakeview shares so that the figure reflects the cash being accepted by the parties in 7 above (subject to [Mr Thomson's] agreement in respect of his 5 per cent) which would reduce the stamp duty payable on the sale and any capital gains tax liability." So he seems to be saying, "Well, instead of having an agreement for £6.75 million in respect of which you then accept a smaller amount for sooner payment, why not amend the price

so that it's in fact the total of the cash being paid by the parties in 7 above". If we can just look back at clause 7, that's the paragraph which referred to the £1.5 million and the £750,000. There is some further light shed on this by the document at <MDR00016398> which is another note from Mr Sedgwick. He says at paragraph 1:

"MAT and HHK sell their shares in Lakeview Country Club Limited to London Trading.

"(a) Spencer to receive £1.5M.

"(b) MAT and HHK to receive £700,000 -- is it that or pro rata what Spence is receiving."

And he has some other questions. We then come to the email that we saw earlier in a different context attaching the first draft of the Golding-SHK agreement at <D8-0001352>. This is 16 July 2015, where Mr Sedgwick attaches the Golding-SHK agreement in draft, he sends it to Mr Golding and Mr Hume-Kendall, he copies Mr Thomson and says:

"Please find an agreement which I have prepared to reflect what I understand to be agreed between you." In the second paragraph he says:

"With regard to the sale Lakeview to LTDG I would suggest that the price payable be varied from the current figure of £6.75 million to what is being paid which if Spencer is receiving £1.5 million is £2,105,263.10."

As I think I said to my Lord the first time we saw this, if £1.5 million represents a share of 71.25 per cent, then 23.75 per cent is another £500,000 on top of that and 5 per cent is £105,263.10, which is how you get to that total.

He says:

"This in turn reduces the stamp duty to £10,530 (0.5 per cent rounded up to the nearest £5)." The attachment, we looked at it in a different context, it is possibly, I hope, a bit clearer now, at <MDR00016481>, the draft agreement which says in paragraph A of the recital that Spencer is the beneficial owner of 71.25 per cent of the shares in the company, the balance of the shares are owned by Andy Thomson and Helen Hume-Kendall."

Then in paragraph 2, or clause 2, after the reference to the money due to Simon, it says: "The parties will procure that London Trading & Development Group will purchase all the shares in the company on the agreed terms and the assets of the company will be transferred by the agreed means to LV Resorts Limited a subsidiary of LTDG." Then 3 has the reference to the manor house and the three lodges, which we will see was, in fact, implemented, and then 4:

"The consideration due to Spencer (£1.5 million) for the sale of his shares in the company shall be paid to him as soon as Simon is able to introduce new investors in LTDG and in any event before 30 September 2015." We saw in 5:

"The shares in London Trading shall be held as to 45 per cent by Simon and 45 per cent by Elten [in inverted commas to mean Spencer]."

Over the page, [page 2], 6, two points in this clause. First:

"Elten and Andy Thomson shall each be entitled to a 5 per cent holding in London Trading ... [Secondly] Andy Thomson shall be entitled to all the shares in London Capital & Finance Limited which shall enter into an agreement with LTDG to be responsible for all fund raising for [London Trading] and its group of companies."

The implication seems to be, although it is not spelt out, that London Trading is going to use the money from LCF, at least in part, to pay what it owes for the shares in LCCL.

We also saw, when we first looked at this, that I think the first time you see the new ratios --

MR JUSTICE MILES: Sorry, I'm just trying to get to grips with this. So, Mr Golding or his company will have -- it will still have its debt claim against the company; is that right?

MR ROBINS: There are two --

MR JUSTICE MILES: So, is the debt claim of a million --

MR ROBINS: Yes. That stays.

MR JUSTICE MILES: That stays and that's secured over the assets --

MR ROBINS: Yes.

MR JUSTICE MILES: -- in 3.

MR ROBINS: Yes, and that's what's repaid by the third tab on the Lakeview SPA spreadsheet that we looked at --

MR JUSTICE MILES: Let me quickly make a note.

MR ROBINS: -- which has the dates and the amount.

MR JUSTICE MILES: So that's a claim against the company. That's against LCCL --

MR ROBINS: A debt claim, yes.

MR JUSTICE MILES: -- which stays. Then, on top of that, he's getting, on this draft at least, £1.5 million for his shares.

MR ROBINS: Yes. And he's going to own 45 per cent of the purchaser. We saw a moment ago the deed of trust in respect of the ownership of London Trading from 8 July, just ten days earlier, which had Mr Golding having 71.25 per cent of London Trading. It now seems to have been agreed that, going forward, they're moving to the new ratios. He will have 45 per cent of London Trading, 45 per cent for Simon and 45 per cent to "Elten". Clause 6, Elten and Andy get 5 per cent each. So the ownership of the purchaser is being adjusted to mean that Mr Golding and Mr Hume-Kendall are going to be equal, instead of Mr Hume-Kendall being a minority partner.

That change in ratios is important because, up to and including the Lakeview SPA, it's the 71.25 per cent, 23.75 per cent, 5 per cent and 5 per cent. We saw that in recital A of this agreement. That's going to apply for distribution of the proceeds under the Lakeview SPA. But in the future, in respect of any other dealings between these parties, it's going to be 45, 45, 5 and 5. Those are the new ratios.

MR JUSTICE MILES: Sorry, I'm being a little bit slow. The ratios which were set out in that trust deed, that was in --

MR ROBINS: That was 8 July 2015. This is 16 July 2015.

MR JUSTICE MILES: But the sale hasn't taken place yet.

MR ROBINS: It hasn't yet.

MR JUSTICE MILES: Is this the SPA?

MR ROBINS: No. This is --

MR JUSTICE MILES: Oh, sorry.

MR ROBINS: -- a side agreement. We will look at the SPA in a moment. This is the Golding-SHK agreement. But what we can see from this is that the old ratios are going to apply to the Lakeview SPA.

MR JUSTICE MILES: Sorry, let me -- just hold on. How does one see that?

MR ROBINS: Recital A, Spencer is the beneficial owner of 71.25 per cent. Clause 4, he is getting £1.5 million for his shares. That's, as we will see, 71.25 per cent of the consideration, the sum of just over 2.1. Perhaps it is clearer on the next document, <D8-0001354>.

MR JUSTICE MILES: When you say the old ratios will apply to the Lakeview SPA, what you mean is the old ratios will apply to the consideration payable under that agreement?

MR ROBINS: Yes, sorry, I was abbreviating it too much.

MR JUSTICE MILES: I see.

MR ROBINS: I hope this document makes it clearer. 16 July 2015, from Mr Sedgwick to Mr Hume-Kendall, Mr Thomson Mr Barker and Mr Golding. He says: "I have amended the sale agreement for the sale of Lakeview to LTDG so that the total price is £2,105,263.15 which is divisible (if my maths is correct) between the shareholders:

"Spencer £1,500,000.

"Helen £500,000.

"Andy [the balance] £105,263.15."

So that's how the consideration is to be divided. He attaches a draft SPA at <D8-0001355>, and, on page 1, we see the parties, the registered shareholders and the purchaser, London Trading. We also see the parties on page 4: Mr Thomson and Mrs Hume-Kendall are the seller and London Trading is the buyer.

Then on page 6, clause 2 provides for the seller to sell and the buyer to buy the "Sale Shares" -- capital S for "Sale" and capital S for "Shares". Those are the shares in Lakeview Country Club Limited. The purchase price is in clause 3.1. It is the number that we have just seen.

Then page 11 has a schedule which identifies the sale shares. It is the shares in Lakeview Country Club Limited.

We know that a document in substantially this form was executed. It hasn't been disclosed by any party. We don't have a signed copy of it. But all the contemporaneous documents make clear that it was executed in this form, <D8-0001461>. It is an email from Mr Sedgwick, on 22 July, to Mr Hume-Kendall, Mr Thomson, copying Mr Barker and Mr Golding, and he says:

"To carry out the restructure we need to execute the following documents."

And he itemises them. Then, at the bottom of the page, he says:

"I will send you separately copies of the various documents so that these can be printed out in readiness for completion."

The documents that he sends include a further draft of the SPA, that's at <D8-0001463>. It's in the form we have seen. If we look at page 6, clause 3.1 confirms that the price in this draft is unchanged from the previous draft. Mr Sedgwick also sends out a loan note instrument at <D8-0001471>. If we look at the top of page 7, we can see in clause 2.1:

"The aggregate principal amount of the notes is [the familiar figure, the sale price]."

There are also draft loan note certificates. The first is at <D8-0001473>. This is a certificate in the sum of £500,000 in favour of Mrs Hume-Kendall. Then <D8-0001474> is a certificate in favour of Mr Thomson for his share and Mr Golding's share.

As I say, no-one has disclosed a signed copy of any of these documents, but it is clear that they were executed because that is what the documents tell us happened.

At <MDR00016700>, there is another email from Mr Sedgwick, it is to Mr Thomson and it says: "Dear Andy, can I please let you have a brief summary of transactions whereby we reorganised the Lakeview properties ...

"1. You and Helen sold your shares in Lakeview Country Club Limited to London Trading ... for £2,105,263.15 which was satisfied by the issue of loan notes issued by London Trading."

So we know that's happened. We can see that the documents were executed even though no-one has disclosed a signed copy of any of them.

The price of a little over £1.2 million was plainly not --

MR JUSTICE MILES: Do you mean 2.1 million?

MR ROBINS: What did I say?

MR JUSTICE MILES: 1.2.

MR ROBINS: Sorry, £2.1 million, was not justifiable on any basis. My Lord has seen that the Lakeview site was worth somewhere in the region of £4 million to £4.5 million. My Lord has seen that the GVA valuation of £7.1 million has to be left out of account because it was based on a wholly inaccurate assumption about the number of owned lodges.

So, the asset is worth somewhere between £4 million and £4.5 million. The liabilities of Lakeview Country Club Limited include, as we have seen, the £1 million to Mr Golding. There is also a sum of £1.4 million owed to Ultimate Capital, which replaced Ortus in respect of the bridging loan, and £4.1 million owed to Lakeview UK Investments Limited, LUKI, which issued the LUKI bond and lent the proceeds to Lakeview Country Club Limited. We can see those figures in a document <D2D10-00010793>. This is from -- it is at the bottom of this. We need to scroll down the chain, right to the -- there we are. This is from Marcus Francis of Ultimate Solicitors to Robert Sedgwick, 22 May, so this is May 2015. He says:

"Dear Robert.

"Thank you for your time earlier.

"Ultimate have considered their position against the background of our advice. They are concerned that if the restructuring is to take place they must have sufficient comfort that Lakeview Country Club

Limited is solvent at the time of the restructuring. "Until today, we had been assured that there was a valuation confirming a value of £12.4 million but it turns out that this is not the case. Ultimate have the January 15 valuation which confirms £2.6 million on a 90-day basis and they hold a copy of your client's valuation issued prior to lending which confirms a value of £4.4 million."

He says:

"According to the GVA valuation, the £12.4 million figure assumes that the business plan for the site has been fully implemented which your client has confirmed is not the case ..."

Below that:

"Ultimate's loan and interest stands at £1.4 million and you have confirmed that the capital outstanding on the existing LUKI loan is £3.9 million." So that's in May. It is fair to say, by the end of June 2015, there have been two developments but neither of them materially improves the position from LCCL's perspective.

First, the Ultimate loan was repaid by London Trading, with the effect that Lakeview Country Club Limited owed £1.4 million to London Trading instead of to Ultimate. We can see that from <D2D10-00011925>. I think it must be on the next page. It is an email relating to the preparation of the accounts. Paragraph 5, two-thirds of the way down the page: "Ultimate Capital which is now repaid is fine -- I just need to relabel it and we need a loan agreement or letter from whoever has taken on the loan." What's added in blue below that is:

"The ultimate debt of [a little over £1.4 million] ... has been repaid by London Trading ... so the sum of [a little over £1.4 million] is owed by LVCC to London Trading as a separate intercompany loan." So that liability doesn't go away, it is just owed to a different creditor. Secondly, we saw that it referenced the LUKI loan being --

MR JUSTICE MILES: That's the company that bought the shares?

MR ROBINS: The company that bought the shares.

MR JUSTICE MILES: It is an intercompany debt between the parent and subsidiary?

MR ROBINS: Absolutely, yes. So it doesn't go away on the LCCL balance sheet, but it is owed to its new parent company, or what is to be its new parent company. Secondly, we saw the reference to the LUKI loan being £3.9 million. By June, there had been further drawdowns and that sum has gone up to £4.1 million. So that's <D2D10-00011930>. We need to see it in native form. It is a schedule of drawdowns on the LUKI loan. My Lord can see there are some more drawdowns in June and July in rows 21 and 22, another in August, but the £3.9 million figure in May has gone up. There are other trade creditors but we don't really need to get into those.

Taking the sum owed to Mr Golding and the 1.4 and the 4.1, you come to debts of 6.5 million, which is already in excess of the value of its assets. It's balance sheet insolvent and we don't see how the shares could be worth anything, let alone a sum in excess of £2.1 million.

But notwithstanding that, within a few weeks of the execution of the Lakeview SPA, there are discussions about increasing the price payable under it. The first we get of that is <EB0005518>.

MR JUSTICE MILES: Just going back a moment, you said earlier on that, at the time of the Lakeview SPA, the owners were the same as the sellers. That's your case. The beneficial owners were the same as the beneficial sellers.

MR ROBINS: Yes.

MR JUSTICE MILES: So, was the change to the -- did the change to the ownership of LTDG, which was envisaged in that Golding-Hume-Kendall agreement, not take place at that time, or how does that work?

MR ROBINS: It took place. The change in the ownership of the Topco moved to the new ratios of 45, 45, 5 and 5.

MR JUSTICE MILES: When was that, though? At the same time?

MR ROBINS: Yes. It seems to have been something that the Golding-SHK agreement envisages will be contemporaneous with the sale of the shares in Lakeview Country Club Limited.

I have to see if we can find the earliest reference to it, but if we look, for example, at <MDR00017071>, this is now 3 September 2015. It is a note that was sent by Mr Sedgwick to Mr Thomson and Mr Hume-Kendall. The Topco, by this point, is London Group Limited and he says in paragraph 2:

"International Resorts Partnership LLP holds the shares in the London Group Limited on trust for Simon Patrick Hume-Kendall as to 45 per cent and Elten Barker [in inverted commas] as to 45 per cent. The balance of 10 per cent are non-voting shares and held for Michael Andrew Thomson and Elten Barker equally."

Obviously the reference to Mr Barker is a code reference for Mr Golding. Leaving that aside, we can see the change in ratios has been implemented by this point. We will come back to --

MR JUSTICE MILES: Your point about them being the same, is it your case they were the same at the time of the sale or not? Because --

MR ROBINS: The same beneficial owners, yes.

MR JUSTICE MILES: But not in the same --

MR ROBINS: Not in the same --

MR JUSTICE MILES: -- proportions.

MR ROBINS: -- proportions. My Lord has seen, at the beginning of July 2015, the purchaser is owned by the relevant individuals in the old proportions. The Golding-SHK agreement then contemplates the new ratios of 45, 45, 5 and 5 for the ownership of the Topco which, at that point, is going to be London Trading Development Group. Ultimately, the corporate structure is changed. The Topco is instead London Trading. Sorry, I will say it again. London Group Limited. And the ratios are implemented in respect of that entity.

MR JUSTICE MILES: Does Mr Barker not come in, though?

MR ROBINS: Oh, he's come in as well.

MR JUSTICE MILES: But he wasn't there at the time of the sale --

MR ROBINS: No, we don't know exactly.

MR JUSTICE MILES: He wasn't an owner of LCCL at the time of the sale?

MR ROBINS: No-one has mentioned him as being a beneficial owner of Lakeview Country Club Limited at any time prior to the sale. It is one of the oddities. He gets 5 per cent of the proceeds of sale, but there is nothing to suggest that, at any time prior to the sale, he was actually a beneficial owner.

MR WARWICK: My Lord, I hate to intervene, I'm very sorry to do so, but it is no part of my learned friend's pleaded case that Mr Hume-Kendall was a beneficial owner of LCCL prior to the transaction. I think that needs to be clarified.

MR ROBINS: My Lord, my learned friend raised this with me earlier and I said I would have a look at it later on today. Obviously, I haven't had a chance, given the other things that have been going on.

The document that we were going to look at is <EB0005518>, which is a document dated 18 August 2015, an email from Mr Sedgwick to Mr Hume-Kendall and Mr Barker copied to Mr Thomson and Mr Golding. He says: "Further to the meetings last week ..." That must be the week commencing 10 August: "... I thought it might be helpful to set out what I think we will be doing and to outline any issues. "Firstly, we need to conclude the original restructure.

"I think that the major question about this is whether we amend the price being paid by London Trading for the shares in Lakeview Country Club Limited. If we are going to change that figure then I need to know as soon as possible. Please remember that stamp duty is payable on the consideration for the shares ... and it needs to be paid within 30 days ... I would welcome early instructions on this.

"At the moment the sale price is to be satisfied by the issue of non-qualifying loan notes. I think that you want to vary this to make the loan notes secured and so I need to produce the security documentation." So he seems to be raising two points there: first, amending the price and, secondly, changing the nature of the loan notes.

So, it seems that, within about two weeks of the execution of the Lakeview SPA, there is already talk about increasing the amount that is going to be paid under that transaction.

Of course, what we know, slotting this back into the chronology that we have seen already, by this point, Surge has been engaged and is beginning to ramp up the bond sales. There's an increasing amount of money that's coming into LCF.

The discussion about increasing the sale price results in a suggestion by Mr Sedgwick we see at <EB0005581>. He says on 18 August 2015 to Mr Hume-Kendall, Mr Barker and Mr Golding: "Further to discussions the other day I have amended the contract for the sale of shares in Lakeview to include provision for an uplift in price in the event of successful settlement of either the Telos matter or the timeshare leases.

"I attach the revised contract and would draw your attention to clause 3.4."

The attachment is <EB0005583>. It is a revised version of the SPA. At the bottom of page 6, we can see that the loan notes are still in the sum --

MR JUSTICE MILES: Sorry, can I go back to the first page?

MR ROBINS: Yes.

MR JUSTICE MILES: Yes.

MR ROBINS: At the bottom of page 6, we see that the loan notes are still in the sum of a little in excess of £2.1 million but on page 7 there is a new clause 3.4, third down:

"The parties acknowledge that there is a potential value in the Telos claim and the timeshare claim which cannot be quantified until they are each settled. Upon the settlement of each claim the parties will negotiate in good faith to agree a fair figure for the increase in the purchase price ..."

Those terms are defined at the bottom of page 5 and the top of page 6. At the bottom of page 5 is -- no, it must be earlier in the definitions section. Can we go back? Page 2 and page 3 is what I meant to say. Sorry, numbered page 2 and page 3. "Telos claim" is at the bottom on the right:

"Any claim made against the former directors of Telos (Isle of Man) Limited as a result of the collapse of that company."

At the top of the next page, "Timeshare claim": "Any claim against the owners of the timeshare club at Lakeview regarding the leases of Lakeview Title Limited."

We can see what those are, but I note the time. I don't know if it's a convenient moment for the shorthand writer's break.

MR JUSTICE MILES: We will take five minutes. (3.12 pm)

(A short break)

(3.18 pm)

MR ROBINS: My Lord, we saw that Mr Sedgwick circulates a further draft of the SPA with a new clause 3.4 referring to the Telos claim and the timeshare claim. As regards the Telos claim, my Lord knows that, during 2013, when Lakeview Country Club Limited was in the process of acquiring the Lakeview site, it was borrowing money from the Telos investors, and part of that arrangement involved the assignment by the Telos investors to Lakeview Country Club Limited of the Telos investors' claims against Telos in respect of the deposits that they might have paid to Telos. My Lord saw a draft of that contract and a signed example.

Obviously, LCCL's claims by way of assignment were claims against Telos. It didn't have any direct claims against the directors of Telos; those would be claims that were vested in Telos itself. But Mr Sedgwick's idea seems to have been that, if Telos were to go into liquidation, then a liquidator of Telos would be able to pursue the former directors of Telos by way of bringing civil claims against them.

What Mr Sedgwick seems to have been suggesting in the new clause 3.4 was that, if such claims against the directors of Telos were to result in a dividend payable to Lakeview Country Club Limited in the liquidation of Telos, then some additional consideration could be negotiated and agreed in respect of the shares in Lakeview Country Club Limited. They could retrospectively increase the price payable. The difficulty with that, of course, is that the facts relating to the Telos assignment predated by a very long time the first version of the Lakeview SPA which was signed on 27 July 2015. The parties at that time had been able to agree a price of a little over £2.1 million for the shares. The fact that Lakeview Country Club Limited was the assignee of the claims against Telos posed no obstacle and they didn't see any need to include any provision for a future uplift in the share price in respect of those matters. But now, on 19 August 2015, Mr Sedgwick is saying, "Well, you could potentially add a clause for a future uplift in the price in the event of value being realised from those assigned claims".

The position in respect of the timeshare claim is similar. My Lord has seen that 24 of the lodges on the Lakeview site had been leased to the timeshare club, with peppercorn rents. But the timeshare

club was liable under the leases to make a rateable contribution towards common costs. This had previously been a contentious matter which had been referred to expert determination. We can see that from <D2D10-00006280>. This is from August 2012, so before LCCL's acquisition of the Lakeview site. It is an expert determination. The date appears at the bottom. The relevant provisions of the lease are summarised on pages 2, 3 and 4, if we could just have a quick look at those. I won't read them out. They provide, in essence, for a recharging of a rateable proportion of certain common costs.

Subsequent to LCCL's acquisition of the Lakeview site, further disputes had arisen in respect of these lease provisions. There had been an invoice in the sum of £139,000. We can see that, I think, at <D2D10-00011307>. This is the invoice to Lakeview Country Club timeshare care of Resort Solutions Limited. It is dated 1 January 2015, "Invoice in relation to annual cost charges for 2015". My Lord can see there are charges for electricity, gas, water, works on site, refuse collection, et cetera. The invoice total is £139,774.21. So that's an invoice that was rendered to the timeshare club. It wasn't paid in full. At <D2D10-00010334>, we can see a letter to the timeshare club's solicitors dated 19 March 2015. It says somewhere in this letter -- I think it is page 2, the third paragraph, under the heading "Next steps" -- that almost £42,000 of that invoice remained unpaid. We see the sum of £41,887.20 "unpaid following our invoice in relation to charges due for 2015 in the original total sum of £139,774.21."

So that hadn't been paid in full and there was a claim for the balance. There was also a dispute in relation to the timeshare club's liability to contribute to CAPEX. We can see invoices at <D2D10-00009921>. There is an invoice in relation to capital costs incurred in 2013 in the total sum of just under £40,000. On page 3 of the same document, there is an invoice in respect of capital costs incurred in 2014 in a sum of £115,676.66.

Those invoices hadn't been paid. Of course, those sums were outstanding when the first version of the Lakeview SPA was signed on 27 July 2015. The parties at that time seemed able to agree a price of £2.1 million for the sale of the shares. The unpaid invoices didn't pose any obstacle. The sum that they had agreed in respect of the loan notes presumably took account of the assets of LCCL including its receivables, but now, on 19 August 2015, Mr Sedgwick is saying, "Why don't you add a clause for a future price uplift in the event of a settlement with the timeshare club?", and it seems that this was at the forefront of Mr Sedgwick's mind, on 19 August 2015, because the outstanding CAPEX invoices had just been revised. We can see these in three places. First, <D2D10-00011413>. This is for 2013. An admin fee of 15 per cent has been added, among other things. The total now is just over £40,000. But, relevantly, the date is 18 August, so that's the day before Mr Sedgwick drafts clause 3.4. There is another at <D2D10-00011415>. It might be my notes, <D2D10-00011415>. This is in the sum of £205,000. Is there a page 2? Again, 18 August 2015.

Let's try, just as a guess, <D2D10-00011416>. I may need to come back to it if this isn't right. It is another one for 2015 in the sum of £135,000. Not to worry if you can't find it. That seems it is an error in my notes. We will look at this.

Mr Sedgwick sent them to Mr Peacock on 19 August 2015, <EB0005565>. In the middle of the page, Mr Peacock says to Clint Redman, copied to Mr Hume-Kendall and Mr Barker and Mr Golding: "I have now finalised the CAPEX timeshare reclaim for 2013 and 2014.

"The reclaim is still in draft at this stage for 2015 as it needs more work but has been issued on account for 2015 to date."

Clint, at the top of the page, says:

"The timeshare bills attached plus the 43,000 from January ..."

That's the unpaid amount we have seen -- sorry, he says it was 43,000 and we saw it was 42,000, but he is in the right ballpark:

"... and the 23,000 additional leisure bill will all be sent today to Lakeview Title Limited from matineau shakespear acting on our behalf." So one can see why this is in the forefront of Mr Sedgwick's mind on the 19th and he puts it into clause 3.4 that he drafts. But the totals, as we have seen, 40,000, 205,000 and 135,000 for the CAPEX invoices, there's the 42,000 from January that was unpaid on the 139,000 invoice and it is said here that there's an additional 23,000 leisure bill, but if you add all of those up, the total quantum of the timeshare claim is £445,000.

So, what Mr Sedgwick seems to be saying in the new clause 3.4 that he drafts on the very same day as these emails is, "Well, you could potentially increase the future price if Lakeview Country Club Limited were to succeed in recovering some or all of these outstanding sums from the timeshare club". That's his proposal. But, as far as we are aware, the draft SPA with the clause 3.4 referring to Telos and the timeshare claim isn't executed. What we then have instead, chronologically, as the next step, is the first payment to Mr Golding on 2 October 2015. We don't need to go to that. We have set out the facts in our opening written submissions at paragraph E3.8. That seems to be taken into account subsequently as part of the repayment of the sum of a million pounds.

We then see a further draft of the SPA at <MDR00018231>.

If we can look at the "Properties" tab in the trial bundle, I hope we see a document date for it. I think it is 6 October 2015. Yes, document date 6 October 2015. So that helps us place it in the chronology.

On page 7 of the document, we see a further draft of clause 3.4. This refers to the Telos claim and the timeshare claims we have seen previously. But it refers also, as the first of the three items, to the Magante asset:

"The parties acknowledge there is potential value in the Magante asset, the Telos claim and the timeshare claim which cannot be quantified until they are each settled. Upon the realisation or settlement of each claim the parties will negotiate in good faith to agree a fair figure for the increase in the purchase price which shall be paid by the buyer to the sellers in addition to the initial purchase price."

On page 5, we see the term "Magante asset" -- page 5 of the document, not internal page 5. We see a definition of the Magante asset about two-thirds of the way down the page. It is defined to mean: "The agreement with Sanctuary PCC whereby the company agreed to fund the development of a site at Megante in the Dominican Republic in consideration of share in the proceeds of sale of that site." The term "Company", with a capital C, is defined in this agreement to mean Lakeview Country Club Limited. This seems to be a reference to an agreement by Lakeview Country Club Limited and Sanctuary PCC whereby Lakeview Country Club Limited agreed to fund the development of the site at Magante in consideration of a share in the proceeds of that site. Mr Sedgwick seems to have been saying, well, if the Magante site, we know as The Beach, were to be developed and sold and if some of the proceeds of sale were to be paid to Lakeview Country Club Limited, then the parties, at that point, could negotiate a price increase. So the trigger for an increase referable to the Magante asset would be a payment to Lakeview Country Club Limited following the development and sale of the Magante site. That doesn't make a lot of sense. We don't think we have seen any agreement between Lakeview Country Club Limited and Sanctuary PCC whereby Lakeview Country Club Limited agreed to fund the development of the site at Magante in consideration of a share in the proceeds of

sale of that site. I don't think any party has disclosed any such document. I'm, of course, happy to be corrected, but we haven't been able to find it. It doesn't seem to us at the moment that any such agreement ever existed.

It seems unlikely that such an agreement would have existed, given that Tenedora hadn't actually acquired any of the parcels of land on The Beach yet. Such an agreement would have been somewhat premature because Tenedora didn't actually own any land to develop yet. In any event, Sanctuary PCC had sold the shares in Tenedora some month and a half earlier, on 31 August 2015. That's <MDR00005334>. It is a share purchase agreement dated 31 August 2015 between Sanctuary International PCC Limited and International Resorts Group Plc. If we look on page 3, we can see the term "companies" defined in clause 1.1 to include Tenedora, as well as Inversiones. Then at page 4, at the top, the term "Sale Shares" is defined to mean:

"99 per cent of the whole of the allotted and issued share capital of each of the companies." Then, at the bottom of that page, clause 2, "Sale and purchase":

"The seller shall sell with full title guarantee free from all encumbrances and the buyer shall buy the sale shares ..."

So, as at 6 October 2015, when Mr Sedgwick adds the reference to the Magante assets to the draft clause 3.4, even if Tenedora were to acquire The Beach, it is unclear what Sanctuary PCC would have to do with the subsequent development of it. Lakeview Country Club Limited, if it were to fund anything, wouldn't be funding the development of the site by Sanctuary PCC, and Sanctuary PCC wouldn't have been in a position to pay any of the proceeds to Lakeview Country Club Limited, which indicates, in our submission, that this is all contrived. As we have seen, clause 3.4 emerges from discussion about increasing the price. It is an artificial mechanism that's been introduced to open up the possibility of future price increases. But, as far as we are aware, the draft SPA that we have just seen, with a consideration of just over £2.1 million and the expanded clause 3.4 referring to Magante, is not executed. Instead, there is discussion about increasing the price and including clause 3.4 to cater for future price increases. That's at <EB0006449>. Mr Sedgwick, on 7 October 2015, emails Mr Hume-Kendall and Mr Barker, copying Mr Thomson and Mr Golding with the subject "Sale of Lakeview Country Club Limited". He says:

"Further to our discussions yesterday, I understand that it has been agreed that the price payable for the sale of the Lakeview shares to LTDG be increased to £3.5 million in total with the provision that the price can be further adjusted depending on the outcome of the Magante sale, the Telos claim and the timeshare claim.

"This means that the proceeds for each shareholder ... shall be ..."

And he sets out the new figures. It's just under £2.5 million for Mr Golding, just over £830,000 for Mrs Hume-Kendall and £175,000 for Mr Thomson. But that's, it seems, not executed at this point. Instead, there are some further payments that are made under this transaction, or at least in connection with it. We have set them out in our opening submissions. If we could go, please, to <A2/1/63>. My Lord will see in paragraph E4.5, towards the bottom of the page: "On 9 October 2015, LCF advanced £50,000 to [Leisure & Tourism Developments] which paid £25,000 to [Mr Golding] (with the reference Share Payment) and £5,000 to [Mrs Hume-Kendall] (with the reference Share Payment).

"On 18 November 2015, LCF advanced a total of £125,000 to L&TD, which paid £100,000 to [Mr Golding]." So those payments are made. Then there is some further discussion about the possible

increase in the sale price at <MDR00025728> where Mr Sedgwick emails Mr Thomson on 3 January 2016, copying Mr Barker and Mr Golding. He says:

"Further to my emails this morning, I trust that you now have the necessary documents to deal with the restructuring of the companies over the last few months. "As discussed I would like to draw your attention to the following points."

The first is:

"I included the original contract for the sale of Lakeview Country Club Limited to London Trading and Development Group Limited. Since then there have been discussions to increase the purchase price from approximately £2.1 million and I have drafted some amendments to that contract to allow an uplift dependent on a successful renegotiation of the timeshare leases and other eventualities, in the security arrangement with London Group support the amount due under the sale contract has been treated as if it were £3.5 million. If we were to add CV Resorts as a subsidiary of this company then this would enable us to increase the purchase price further. There is an issue with SHK on this point, however. He believes that he agreed with Spencer that any increase in the consideration for the sale of LVCCL should be divided in the current ratios and not the previous ratios. Subject to reaching a deal on that issue, there should be no problem in including CV Resorts as a subsidiary of LVCCL. This could have happened at the end of March 2015 before the contract with Paradise Beach was entered into and when the company had no value."

There are two points about that, my Lord. First, Mr Sedgwick is clearly envisaging a backdated transfer. He says, "This could have happened at the end of March 2015". He is saying that in January 2016. Secondly, Mr Hume-Kendall has apparently been saying that any increase in the consideration should be divided in the current ratios, which would be 45:45:5:5, and not the previous ratios. There is a related email three days later, at <EB0011191>, where Mr Sedgwick emails --

MR JUSTICE MILES: Wait a minute. I'm just thinking about that. All right.

MR ROBINS: Mr Sedgwick emails Mr Barker and Mr Golding with the subject "LVCCL" and he says:

"I was going through the audit issues with Simon and Michael and he [presumably Simon] asserted that with regard to the sale of Lakeview Country Club Limited he said that it was agreed that the sale price is £3.5 million and he also asserted that the division of the proceeds in excess of the original price is to be divided as to 45 per cent to Spencer, 45 per cent to Elten and 5 per cent to Andy and he wants me to draw up the agreement on this basis."

Well, there's a typo one way or the other because it should be 45 per cent to Spencer, 45 per cent to Simon, 5 per cent to Elten and 5 per cent to Andy. Something has gone a bit wrong. It should possibly be 5 per cent to Elten rather than 45 per cent to Elten. But we know what he's trying to say.

There are two points here, according to this report of what Mr Hume-Kendall has said. First, they had agreed that the revised base price, if I can put it that way, is going to be £3.5 million. But, secondly, any subsequent increase, any proceeds in excess of the original price, should be divided in the new ratios of 45:45:5:5. My Lord can see how the issue arose. They have decided, in the Golding-SHK agreement, they are moving from the old ratios of 71.25 per cent for Mr Golding and 23.75 per cent for Mr Hume-Kendall to the new ratios, where they're equal, they get 45 per cent each, and that's being implemented across the board. My Lord saw earlier the document relating to the ownership of London Group Limited.

The shares in Lakeview Country Club Limited have been owned in the old ratios, and the sums payable under the Lakeview SPA should be paid out in those old ratios. But the question arises, if there is going to be an increase in the sum payable under the Lakeview SPA, should the proceeds in excess of the original price be divided on the basis of the old ratios or the new ratios?

One can see why Mr Hume-Kendall would want the new ratios to apply, because he gets 45 per cent instead of 23.75 per cent. That seems to be what he is pushing. We have seen already in the spreadsheets how that debate is ultimately resolved with the ratios changing in the second tab of the proceeds above 6 million. But to stick with the chronology, the next step is that they did execute a new version of the Lakeview SPA with £3.5 million loan notes as the price and the clause 3.4 referring to the three items, Magante, Telos and the timeshare claims.

We get a bit of a clue about the date of that from <EB0012057>. This is an email from Mr Sedgwick to Mr Peacock, copied to Mr Hume-Kendall and Mr Barker on 14 January 2016:

"Please find attached a copy of the sale contract and the stock transfer form for the sale of the shares of Lakeview to London Trading and Development Group." The attachment is at <EB0012103>. We can see it is a share purchase agreement in relation to the purchase of Lakeview Country Club Limited between Mr Thomson and Mrs Hume-Kendall, on the one hand, and London Trading, on the other. It is dated, at the top, 27 July 2015. On page 5 of the document, we see the loan notes -- the term is defined towards the middle of the page to mean: "The loan notes in the agreed form of an aggregate principal amount of £3.5 million ..."

On page 6, at the top, clause -- sorry, we need to go on a bit further. It will be the next page, "Purchase price", 3.1:

"The initial purchase price for the sales shares is £3.5 million which is to be satisfied by the issue of the loan notes by the buyer at completion to each of the sellers ..."

Just below that, it is the version of clause 3.4 that refers to the Magante asset, the Telos claim and the timeshare claim.

Then, if we go to page 12 of the document, Part I of schedule 1 refers, about a third of the way down, to loan notes in the sum of £2,668,750 and £831,250.

MR JUSTICE MILES: I don't think I've ever seen an agreement which lists people as shadow directors before. That's unusual. But there it is. In fact, they are just the directors.

MR ROBINS: They are the directors.

MR JUSTICE MILES: So it doesn't tell us anything, but it is just unusual.

MR ROBINS: Page 44. It must be two pages on from this. We see -- sorry, a page back -- it is a signed copy, signed by Mr Thomson, Mrs Hume-Kendall and Mr Hume-Kendall. So, that's what's put in place and, as my Lord has seen, backdated to 27 July 2015.

MR JUSTICE MILES: Was that the date of the original --

MR ROBINS: Yes.

The sums that have been paid by LCF to, principally, Mr Golding but also to Mrs Hume-Kendall, as set out in our opening written submissions, have been paid as loan advances to Leisure & Tourism Development. But there is no facility in place between that company and London Capital & Finance.

That's the case notwithstanding the impression that you might gain from looking at the documents. If we look at <J1/1/1>, my Lord will find a facility agreement that bears the date 15 March 2016. Sorry, this is the wrong one. I'm looking for -- is this <J1/1>, page 1? This is London Oil & Gas. I'm looking for one between LCF and Leisure & Tourism Developments. That's right. This is the one. Dated 27 August 2015 on its face. On page 3, the commitment or facility limit, three up from the bottom, is a gross sum of £25 million. On pages 23 and 24, we can see the signatures. There is one of Mr Hume-Kendall and one of Mr Thomson. My Lord saw on the front page it's dated 27 August 2015. Actually, this was signed at the end of March 2016 and was presumably backdated to make it seem as though there had been a signed facility agreement in place before the first payment by LCF to Leisure & Tourism Development.

What we see from the documents is that drawdowns were made before there was any facility agreement in place, and it was initially intended to have two facility agreements. What would be referred to as the old facility agreement, they were still drafting it, but they were calling it the old facility agreement, and that was going to cover historic drawdowns, and then they would have what they referred to as the new facility agreement to cover any future drawdowns. We see that, for example, from <MDR00028014>, where Mr Lee of Buss Murton emails Mr Sedgwick copying Mr Thomson, and he attaches two draft facility agreements, both in Word format. They are not signed: LCAF (old) facility agreement and LCAF facility agreement. He says:

"As discussed, attached are the two draft facility agreements. The 'old' refers to the facility that has already been drawn down and the other is for the proposed new facility (imagine that) for ease of reference I can tell you that the only difference between the two is the interest rate which is 11.5 per cent for the old and 12.5 per cent for the new."

So there is actually no facility agreement in place --

MR JUSTICE MILES: Can I just understand, again, which companies we are talking about here? This is called Leisure & Tourism Development. The buyer under the SPA is --

MR ROBINS: London Trading.

MR JUSTICE MILES: -- London Trading. So, how does this operate?

MR ROBINS: There is a parent and subsidiary relationship one way or the other, but, off the top of my head, I can't remember which. Mr Shaw is just looking it up. Leisure & Tourism Developments Limited. The shareholder was -- well, from 23 January 2015 to 1 September 2015, the shareholder was Mr Thomson. Then, from 1 September 2015 to 2 September 2015, so only one day, the shareholder was the London Group Limited. From 2 September 2015, the shareholder of Leisure & Tourism Developments was London Trading. So it was the subsidiary of the purchaser that was borrowing the money from LCF.

MR JUSTICE MILES: Was that company in some way -- well, do the documents suggest that it was -- the reason it was drawing down under the facility was to make the payments under the agreement? In other words, is there a link in the documents between the SPA and the drawdowns? I think you showed me earlier on something which said that the payments were described as share purchase, or something like that.

MR ROBINS: Yes.

MR JUSTICE MILES: Where was that? Was that in your skeleton?

MR ROBINS: Yes, let's go to that. Can we go to <A2/1/65>.

MR JUSTICE MILES: It was the bit you showed me before. Did that refer to share purchase?

MR ROBINS: "Share payment" was the term. If we go --

MR JUSTICE MILES: Where is that shown?

MR ROBINS: Let's see if there's any light cast on it.

MR JUSTICE MILES: It says "with the reference share payment" --

MR ROBINS: The reference share payment. That's not the reference for the payment by -- E5.4, for example. That's not the reference in the bank statements showing the payment from LCF to Leisure & Tourism Developments. That's the reference in the Leisure & Tourism Developments bank statements but also in the bank statements of the recipient. They tie in to the payments from LCF by reference to the date. So, for example, my Lord can see in E5.4, on 28 January 2016, and this is notwithstanding the absence of any signed facility agreement or any security, LCF paid £180,000 to Leisure & Tourism Developments. Then, on the next day, one sees from the bank statement how the monies are disbursed. It is £60,000 to Mr Golding with the reference "share payment" and £20,000 to Mrs Hume-Kendall with the reference "share payment".

MR JUSTICE MILES: Is that in the statements of L&TD where it says "Share payment"?

MR ROBINS: I believe it is in the statements of L&TD and Mr Golding and Mrs Hume-Kendall. Are these footnotes hyperlinked? Can we open these directly from the footnotes? We can in our version of the trial bundle. If we look at --

EPE OPERATOR: Yes, we can.

MR JUSTICE MILES: That was footnote 535, I think.

MR ROBINS: If we go to footnote 535 and open the first reference ending 389. So that's going to be -- well, <MDR00031389> page 7, <MDR00215815>, page 39, and <EB0067853>, page 3. Let's look at those three for a start. The first is <MDR00031389>, page 7. This is the Leisure & Tourism Developments bank statement and we see, on the 28th, the money coming in from London Capital & Finance. Then, on the 29th, there's a payment showing to Mrs Hume-Kendall of £20,000 and Mr Golding.

MR JUSTICE MILES: So, on that bank statement, it's just recording -- is this right --

MR ROBINS: Just recording the payment.

MR JUSTICE MILES: The payment.

MR ROBINS: Then <MDR00215815> -- I think I said page 29. I think this might be the London Trading Development bank statement again. Let's try the third one, <EB0067853>. This is Mr Golding's bank statement. Page 3. We are looking for maybe -- there we are, it is under 29 January, fourth down, "Received from Leisure & Tourism de. Ref: share payment".

MR JUSTICE MILES: Just thinking about the way bank accounts work and references work, that means that L&TD must have put in the words "Share Payment".

MR ROBINS: Yes.

MR JUSTICE MILES: So it then appears in his bank account as "Share Payment".

MR ROBINS: Yes. The payments below are payments from London Capital & Finance with the reference "Home Farm Loan". So he also receives -- in fact, there is another Leisure & Tourism Development share payment towards the bottom of that run of 40,000.

MR JUSTICE MILES: Okay.

MR ROBINS: If we go back to <A2/1/65>, we see the various drawdowns from LCF that were paid to Leisure & Tourism Developments, which were then distributed. We have looked at E5.4 already. E5.5, LCF paid £80,000 to L&TD which paid £30,000 to Mr Golding with the reference "Share Payment" and £10,000 to Mrs Hume-Kendall with the reference "Share Payment".

Then E5.6, LCF paid a total of £944,000 to Leisure & Tourism Developments. That's the money that had come from Pennington Manches on behalf of Alan Darrah's daughter Chloe, who was in hospital in a coma, and Leisure & Tourism Developments used that to pay £575,000 to Mr Golding, £90,000 to Mrs Hume-Kendall and £30,000 to Mr Thomson. As it notes, this was the first time Mr Thomson had received anything from Leisure & Tourism Developments. The spreadsheet indicates that's because he'd received his initial payments from Mr Golding as loans from him.

As we point out in E5.7, there was still no signed facility agreement between LCF and Leisure & Tourism Developments. LCF had no security for the monies it had loaned to Leisure & Tourism Developments. The next thing that happens is that those two drafts that we saw, "old" and "new", were combined, and at <MDR00032341>, Mr Lee provides Mr Sedgwick, on 4 March 2016, copied to Mr Thomson, with an LCAF new 25 million facility agreement. He says: "Hi Robert.

"Further to your email, please find attached a draft facility agreement, proposed debenture, cross guarantee and minutes ... I gather some drawdown has already taken place and they should be treated as being so drawndown pursuant to the terms of the documents attached." He says:

"Perhaps we can discuss next steps to implement the facility, including the necessity of obtaining a charge over the Dominican Republic property as well as the property at Cape Verde. I gather that Simon is going to Alaska this weekend and Andy needs to get at least the facility signed before he goes."

Then we can see that this facility agreement is signed towards the end of March 2016 at <MDR00034010>. Mr Lee sends the documents to Mr Sedgwick for signature: "Can you let me know when signed and I can arrange for LCF to sign as well."

Then, at <EB0017004>, this should be the 4 April 2016. This is now 4 April 2016, and Mr Sedgwick says to Mr Hume-Kendall and Mr Barker:

"I had Alex Lee on the phone this morning. He is seeing Andy later this morning and wanted to know that: "1. LTD has executed all the documents LCF requires.

"...

"With regard to item 1 you did sign them on Wednesday but asked to hold on to them until you had approved them. We need to address that today ..." By this point, we can see that the document has been signed. To go back to it, at <J1/1>, page 1, we can see it is backdated to 27 August 2015. We saw on page 3 the commitment of £25 million. The term "charge", four up from the bottom, is defined to mean:

"... the Dominican Republic charge and the Cape Verde charges."

Let's look at the Cape Verde charge first because that's on this page:

"All those parcels of land in the island of Sal in the Cape Verde islands which are referred to in the agreement between Paradise Beach ... SA and CV Resorts ..."

None of those have been acquired. Over the next page, the Dominican Republic charge is defined to mean: "A first charge over the Dominican Republic property."

The Dominican Republic property is:

"Those parcels of land in the Dominican Republic which are owned by Inversiones ... and Tenedora." The shares in Inversiones were held on trust for El Cupey and Tenedora hadn't acquired anything yet. So, this is the agreement that was put in place to govern the advances LCF had been making to Leisure & Tourism Developments, which Leisure & Tourism Developments has been using to make payments to Mr Golding, Mrs Hume-Kendall and, latterly, Mr Thomson, himself, in discharge of the liabilities of London Trading under the Lakeview SPA.

L&TD's liability to LCF is, we are told, going to be secured by these charges, but Mr Thomson and Mr Hume-Kendall know all the facts relating to The Hill and The Beach. They know that Leisure & Tourism Developments can't procure security over those properties and they know that CV Resorts didn't own Paradise Beach yet and would have to spend 57 million euros to get it and that Savills have told them the market value was 40 million euros. So, there was nothing to secure L&TD's liability to LCF. The supposed security was entirely illusory. The payments, however, continued. If we can go back to <A2/1/68>, we set out in E7.1:

"Notwithstanding the lack of assets of sufficient value to support L&TD's borrowing, LCF continued to lend monies to L&TD ..."

My Lord can see various payments in E7.2. On 1 April 2016, LCF paid a little over £53,000 to L&TD, which used that to fund payments to Mr Golding and Mrs Hume-Kendall.

In E7.3, there are further such drawdowns and payments. We note that this is the first payment to Mr Barker. Notwithstanding the fact that he was never said to have been a beneficial owner of any shares in Lakeview Country Club Limited and was not a party to the Lakeview SPA.

In E7. 4, further such payments. Over the page, please, page 68, E7.5, L&TD paid £20,000 to Mr Golding with the reference "Share Payment". Then E7.6, L&TD makes further payments to Mr Golding and Mrs Hume-Kendall and Mr Barker.

We mentioned that there was a one-off with LOG making a drawdown request under its facility with LCF. Mr Hume-Kendall authorised that and asked for it to be paid to London Group Plc. LCF paid that. In E7.9, London Group paid £50,000 to L&TD which paid £20,000 to Mr Golding and £20,000 to Mrs Hume-Kendall, each with the reference "Share Payment".

Then E7.10, LCF paid £201,500 to L&TD which paid £99,000 to Mr Golding, £33,000 to Mrs Hume-Kendall and £7,000 to Mr Barker, each with the reference "Share Payment".

E7.11, there's another set of similar payments. This is the first payment for Mr Thomson since the initial payment from the Darrah monies on 19 February 2016.

Over on the next page, we see that in E7.12, on 6 July 2016, LCF paid £551,000 to Leisure & Tourism Developments which paid £270,000 to Mr Golding, £90,000 to Mrs Hume-Kendall, £20,000 to Mr Barker and £20,000 to Mr Thomson. As we point out, the reference for each was "Share Payment"

and the running total of the payments under the Lakeview SPA, which we take from the spreadsheet mentioned in the footnote, was £2,363,081.49.

In E8.1, we explain that, during this period, LCF was raising £2 million to £3 million per month from the sale of the bonds and there was plenty of money available in LCF's bank accounts to fund payments. In E8.2, we point out that the payments to Mr Thomson, Mr Barker, Mr Golding and Mrs Hume-Kendall already totalled more than the initial price of a little over £2.1 million, but we observe that the payments were becoming larger and more frequent. My Lord has seen the last set of payments in E7.12 is now up to £270,000 to Mr Golding in one shot.

The revised price of £3.5 million in the second version of the Lakeview SPA would soon be reached at that rate, the money is just coming out thicker and faster.

So we explain in E8.3, in order to ensure the payments could continue beyond the sum of £3.5 million in the second version of the Lakeview SPA, it was agreed that the purchase price would be increased further to £4.5 million.

The document that we refer to there can be found at <D2D10-00018954>. Mr Sedgwick, on 13 July 2016, emails Mr Thomson, Mrs Hume-Kendall, copying Mr Hume-Kendall and Mr Golding, saying:

"I am instructed that it has been agreed that the initial [purchase] price ... for your shares in Lakeview should be £4.5 million subject to further adjustment depending on the any profits on the sale of IRG, the timeshare and Telos claims.

"Assuming that you agree the revised agreement could you please both sign the agree and your respective share transfers so that I can submit them for stamping." The attachment is <D2D10-00018955>. We can see it is a further version of the document. On page 5, the definition of the term "loan notes" has been changed to mean £4.5 million worth of loan notes. Then, at the top of page 6, clause 3.1 now provides for -- it is going to be one page on from this -- the initial purchase price for the sale shares is £4.5 million.

3.4 is there still referring to "Megante Asset, the Telos Claim and the Timeshare Claim". But that's not executed. There are, instead, further payments as set out in our written submissions at <A2/1/71>. We set them out in E8.5 at the top of the page and we make the point in E8.6 that it must have seemed that even an increased price of £4.5 million would soon be exceeded. Then we get <MDR00050334>. We are now into the second half of July. This is 20 July 2016. Mr Sedgwick says to Mr Hume-Kendall, Mr Thomson, Mrs Hume-Kendall and Mr Golding as well:

"Following on from my email earlier, I understand that it has been agreed to increase the sale price to £6 million so I attach copy of the agreement for the sale of the shares and the transfers. If you agree please sign both the agreement and the transfers and return them to me as soon as possible ..." The attachment to that is <MDR00049432>. If we look at page 5, in the definitions we can see the loan notes are now £6 million. Page 7, clause 3.1, the purchase price is now £6 million and clause 3.4 is in the form that we have seen.

At <MDR00050416>, we find the associated stock transfer form.

At <MDR00050415> is the document I was looking for. The email from Mr Sedgwick to Mr Hume-Kendall and Mrs Hume-Kendall, copied to Mr Thomson. This is 20 July 2016:

"Andy has signed the contract and the transfer. I attach the two signature pages that still need to be signed. Helen, can you sign both and Simon can you sign on behalf of London Trading & Development Limited the contract signature page."

So the 6 million document has been signed. But payments continue, not just to the new limit of £6 million that has been set, but way beyond. We can see them in our opening written submissions at <A2/1/71>. In paragraph E9.1 at the bottom of the page, we refer to the payments on 20 July 2016, LCF paid almost a quarter of a million pounds to L&TD which used that money to make payments to Mr Golding, Mrs Hume-Kendall, Mr Barker and Mr Thomson with the reference "Share Payment". Then, over on the next page, we set out further payments in E9.2, E9.3, E9.4, E9.5, E9.6, E9.7, and then, over the page, E9.8, E9.9, E9.10. In E9.11, I don't think we need to go to the underlying document but it is worth noting, on 9 September 2016, Mr Thomson sent a text message to Mr Barker to say he had "just looked at the overnight collection report" and would "be able to send over £200,000-ish this afternoon" and he sent another text message to say he would "send just £203,000 in total today". In E9.12 we see LCF paid that amount to Leisure & Tourism Developments which paid £135,000 to Mr Golding, £45,000 to Mrs Hume-Kendall, £10,000 to Mr Barker and £10,000 to Mr Thomson. The reference for each was again "Share Payment". Then, over on the next page, please, we see, E9.13, further such payments, LCF to L&TD, then on to the recipients. E9.14 and E9.15, we point out that this brought the total paid under the Lakeview SPA to a sum in excess of £6 million. So, within just two months of the amendment of the Lakeview SPA to increase the purchase price to £6 million, the payments broke through that figure. There had been no subsequent increase in the purchase price under clause 3.4 and nothing that could justify any further payments, but still the payments continued. We set those out beginning at E9.17, when LCF paid another £203,000 to L&TD to fund payments to Mr Golding, Mr Barker, Mr Thomson and Mrs Hume-Kendall, and similarly E9.18, further such payments.

Then, over on the next page, E9.19, E9.20, E9.21, we point out that LCF had paid a total of £13.9 million to L&TD. A little over half of that sum had been transferred by Leisure & Tourism Development to Mr Thomson, Mr Barker, Mr Golding and Mrs Hume-Kendall. Then E9.22, there are further such payments. E9.23 is interesting because this seems to be when we move to the new ratios of 45:45 for Mr Golding and Mr Hume-Kendall. In E9.23, they are equal, it is £270,000 to Mr Golding and £270,000 to Mrs Hume-Kendall and still 5 and 5 for Mr Barker and Mr Thomson. The references are "Share Payment".

Similar such payments in E9.24 and E9.25. Then over the next page, E9.26, E9.27, E9.28. By this point, it's been noted in E9.28 LCF had paid more than £19.6 million to Leisure & Tourism Developments. But we point out in E9.29 the liability of Leisure & Tourism Development to LCF was grossed up to include the 25 per cent commissions paid to Surge and LCF's lending fee. So the gross sum owing by Leisure & Tourism Developments to LCF stood at £27 million, or thereabouts, which was significantly in excess of the £25 million limit in the backdated facility agreement we looked at earlier. Notwithstanding that, there were further payments by LCF to Leisure & Tourism Development which were used to fund payments to Mr Golding, Mrs Hume-Kendall, Mr Barker and Mr Thomson, all with the reference "Share Payment". This is where the letter that we saw previously fits in. I don't think we need to go back through the detail, but Mr Thomson provided Mr Sedgwick with draft letters, one of them notifying LCF of a delay in filing L&TD's accounts, which was backdated, on its face, to 25 October 2016; the other requesting an extension in the facility to £30 million. We can see it again, if my Lord would like to, but I hope it is still fresh in my Lord's mind.

Mr Sedgwick sent the first of those letters to Nicola, saying, "Please print this letter out on LTD notepaper and get it signed by Simon. It is important the letter is dated 25 October 2015". Mr Sedgwick sent the second to Nicola, and my Lord will recall Mr Sedgwick had either himself, or acting on instructions, added some values in respect of the so-called assets. He put, "Waterside 17.5 million, El Cupey 30 million, Magante 14 million(?)" and he sent that to Nicola saying, "Please also send this letter in the same way, dated 20 December 2016", so, again, instructions to backdate that. Then Nicky Thompson sent the letters signed by Mr Hume-Kendall to Mr Thomson, copied to Mr Hume-Kendall and Mr Sedgwick, both, as I said, backdated, the first to 25 October 2016, the second to 20 December 2016.

So, both of those seem to have been put in place for the purpose of LCF's audit.

MR JUSTICE MILES: I wouldn't mind seeing those, but I think -- you have shown me them, but I would like to see them in context.

MR ROBINS: We can start with that tomorrow morning.

MR JUSTICE MILES: We can perhaps start with that tomorrow morning. Good. We will return at 10.30 am tomorrow. (4.29 pm)

(The hearing was adjourned to Tuesday, 27 February 2024 at 10.30 am)

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