

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 25 - Tuesday, 16 April 2024

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

Michael Andrew Thompson (D1) is represented by Miss Anumrita Dwarka-Gungabissoon

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) settled and are no longer appearing

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

Tuesday, 16 April 2024 (10.30 am)

MR MICHAEL ANDREW THOMSON (continued)

MR MICHAEL ANDREW THOMSON: My Lord, before we start -- apologies again, Mr Robins -- could I come back to you on two points you raised with me yesterday? I said I was going to go and find some information?

MR JUSTICE MILES: Yes.

A. The first was, I said I would go back to my bank statements and checked that I received the -- I think it was the 105,000 midway through 2015. And I confirm I have looked at my bank statements and I didn't receive the sum at that point. The second point, my Lord --

MR JUSTICE MILES: I think, actually, on reflection, my question wasn't a particularly sensible one, because the consideration was for loan notes, and so it --

A. I just wanted to confirm, because my Lord asked me. The second one was, did I -- were the transactions, disposals, recorded in my tax returns. So I have had a look at the -- I couldn't remember the tax year that we were discussing at that time. So I have had a look at the '15/'16, '16/'17 tax years, and I can confirm, yes, disposals were recorded in those tax years, and I didn't have any other companies that I have disposed anything of. So I infer from that I provided all the documentation that I said I have done to my accountants. They did the tax calculation for me and I paid the appropriate level of tax, in accordance with the agreements that I'd entered into.

MR JUSTICE MILES: Right.

A. That was all I was going to come back to my Lord on.

MR JUSTICE MILES: Thank you for that.

Cross-examination by MR ROBINS (continued)

MR ROBINS: Mr Thomson, in around May 2017, you were trying to obtain a mortgage, weren't you?

A. Blackdon Cottage, I think.

Q. It was, I think, a property in Scotland, if that rings a bell. Valued at about £1.4 million?

A. You will have to be ... sorry.

Q. Don't remember? Can we go to <D1-0003914>, please. On page 4, there's an email from your accountants to you and, in the final paragraph, Ms Hoque says: "If you have an email address for your mortgage broker, we can forward the information to him. Otherwise, we will put this in the post to the address provided."

Do you remember dealing with a mortgage broker in May 2017?

A. I believe I was looking for a mortgage for Blackdon Cottage, so I don't remember Scotland. Is this me personally or is this me company-wise? I'm sorry, I'm not ...

Q. You personally.

A. You've got me at a loss, Mr Robins.

Q. On page 3, please, at the bottom of the page, you forward that to mortgagefinancial.co.uk and say, "Hi Steven". Do you remember a mortgage broker called Steven from Mortgage Financial?

A. Again, you've got me at a loss, Mr Robins.

Q. The reason I said Scotland is, if you see up the page, at the bottom of his reply, his address is, "Suite 61, Bonnington Bond, 2 Anderson Place, Edinburgh, EH6 5NP". Do you remember dealing with a Scottish mortgage broker called Steven?

A. If this is indeed to do with Blackdon Cottage, I tried to get a mortgage from various different places but, again, you've got me at a loss, Mr Robins.

Q. But you think it might have been Blackdon Cottage rather than a property in Scotland?

A. You have me at a loss, I'm sorry.

Q. Do you remember this mortgage broker asking for information about your financial affairs?

A. Again, Mr Robins, you have me at a loss.

Q. At the top of the page, he emails you: "Hi Andy, I hope you are well?"

"As you know I have someone looking at your case and I forwarded on the documentation you sent the other day (bank statements and tax calculation for 2016. As you have advised you have been self-employed for 3 years they have asked to see the tax calculations/SA302s for 2014 and 2015, could you send these over please?" Are you saying you have no memory at all of a Scottish mortgage broker, Steven, asking you for this information?

A. You have me at a loss, but I have got to ask, Mr Robins, what relevance has this got as against the case you're setting against me?

Q. I'm asking the questions, Mr Thomson. When you say "at a loss", is your answer, "No, I don't remember"?

A. I don't.

Q. Can we look at the previous page, please, page 2. You say at the bottom:

"Hi Steven, thank you for your email.

"As I mentioned on the phone ..."

You don't remember having any phone conversations with Steven, the Scottish mortgage broker?

A. Again, can you tell me which property this refers to?

Q. My question was, do you remember having any phone conversations with Steven, the Scottish mortgage broker? Looking at this, does it jog your memory?

A. You have me at a loss. I have mentioned I was looking for a mortgage at Blackdon Cottage, but that property is not in Scotland. This doesn't tell me what property this is relating to.

Q. You say that you don't have the SA302s for the tax years, you were deemed not to have any taxable earnings: "I will get you the missing bank statements ... and will send on my accountants tax calculations but this is all I can provide. So whoever you approach will have to take a view, the

repayments are just over the rental I'm paying and my bank statements confirm affordability is nowhere near an issue."

You don't have any recollections of telling a mortgage broker that affordability was not an issue?

A. Well, Mr Robins, you're talking about -- you're suggesting buying a property in Scotland, so you, again, have me at a loss. I may very well have dealt with a Scottish mortgage broker because he happened to be -- that's where his property -- his business is located but, as I have said, could this very well be for Blackdon Cottage? So I'm trying to piece together -- you're not giving me the information.

Q. If it was for Blackdon Cottage, does that change your answer?

A. It could very well have been. I know I was looking for a mortgage for Blackdon Cottage but you just slightly threw me because you said "buying a property in Scotland".

Q. If we look at the bottom of the previous page [page 2], please, there's an email again:

"Hi Andy, hope this finds you well? Sorry to keep having to come back to you, but because of RDR there are no self-certification mortgages in the UK market and I am obviously trying to persuade a lender to provide funding based on what I know and what you and I know is a good case, but to get underwriters to see and understand that this is a completely different ball game! Halifax have come back today and have checked Companies House which showed a figure of £166,000 and are looking for an explanation as to why the income received is more than on Companies House, are you able to explain this in a way I can present to the lender?" Is your answer the same: you have no recollection of a mortgage broker called Steven asking you this question?

A. My recollection is I was endeavouring to get a mortgage for Blackdon Cottage. I don't remember a chap called Steven and I don't remember that he was based in Scotland. I, indeed, approached my bank for a mortgage for Blackdon Cottage. I didn't secure one.

Q. It says:

"They are also asking if there was no income in 2014 and 2015 on the SA302s for an explanation of what you lived on? They are struggling to understand and see confirmation that you are, in my opinion, a good mortgage candidate."

You don't remember trying to persuade lenders to provide a mortgage?

A. The income that I had through Lakeview was via director's loans, which I ultimately repaid when I exited. So in terms of income per se, as in taxable income, that is what they were looking for. I didn't have that. I drew as a loan that I then repaid when I exited. But that, in terms of mortgage calculation, isn't income per se. I dealt with and paid the tax on it when I left, and this is why I think we are having these questions. So there is a disparity between my bank statements and my tax returns at the time. And that was just tax planning with Steven Davidson at Oliver Clive & Co. I ultimately paid the tax on what I drew when I exited.

Q. On the first page, 26 May at 10.28, Steven, the mortgage broker, has emailed you again to say:

"Good morning, Andy, very much hope you are on the road to recovery? You will have taken it badly, I'm sure, not being able to talk all day."

Does that place it in your memory at all?

A. Again, you have me at a loss. Which page was that you were reading?

Q. At the top?

A. Which page? Left or right.

Q. Left. Do you remember having some problem that meant you weren't able to talk and you needed to be on the road to recovery?

A. That could have been I had an operation on my right shoulder. I don't remember the date, but that could have been that.

Q. He says:

"I am hoping that I can just give you a little nudge if you are having some recovery time to forward a synopsis of your situation to help the underwriters understand your circumstances."

Do you remember Steven, the mortgage broker, asking for a synopsis?

A. I think that falls in line with what I have just told you about how I, back in the previous years, drew money as a loan and then paid the tax on it when I left. I think that may very well be what he's -- he is trying to understand there.

Q. At the top of the page, you say:

"Hi Steven, here you go, have a read and give me a call if you have any questions."

Do you remember sending any synopsis to Steven, the mortgage broker?

A. Again, Mr Robins, you have me at a loss. I don't -- I remember trying to secure a mortgage. I remember speaking to numerous different people about trying to secure a mortgage. Ultimately, it didn't happen. I don't specifically remember Steven, the mortgage broker.

Q. Well, that's 29 May. Can we look at something else that's 29 May. <D1-0003913>. If we could look at the document properties, please, do you see document date 29 May?

A. I can see that.

Q. If we look at the document itself, it is headed --

MR JUSTICE MILES: Sorry, can I just look at that "Properties" for a minute? I just want to see whether it was called ... it's called "Michael Andrew Thomson earnings.docx".

MR ROBINS: Yes. If we look at the document itself, it's headed "Michael Andrew Thomson Income Sources". Do you think this is the synopsis that you drafted and provided to Steven, the mortgage broker?

A. It could very well have been. I don't remember Steven, the mortgage broker, but it looks like I've written this. I don't remember the document, but ...

Q. Well, first of all, let me ask you this: as a financial services professional, you would have understood that it was a criminal offence to make a false representation to obtain a financial benefit?

A. I do believe you're correct in that. When I drafted this -- I mean, I don't remember writing this, but I didn't receive a financial benefit from it.

Q. No, but lying to try to obtain a financial benefit is wrong, isn't it?

A. Can you take me to where you think that is?

Q. Can you answer my question? You would agree that lying to obtain a financial benefit is wrong?

A. Yes, but, please, take me to that. I was trying to explain where I was.

Q. So do you think what you would have told the mortgage broker was true?

A. Yes, I would have gone through this with my accountants at the time and written what we thought was --

Q. At the top, it says:

"My income can be broken down into three sources: "Monthly drawings from [LCF].

"Payments from companies I have sold my share of. "Loans from companies that I am grooming for sale." Was that true?

A. Yeah, I don't believe I would have put anything that wasn't. I'm not quite sure what "Loans from companies that I am grooming for sale", was, but ...

Q. Let's see what you say about the second of those categories on page 2. "Payments from companies I have sold my share of". You wrote:

"LCF is not my only source of income. I also derive income from company's I been part of developing/turning around which have been groomed for sale. At any one time, I am involved with five company's which are in various stages of developing for sale. During the 2015/16 tax year I received £800,000 from such activities. These sums are classed as capital gains by HMRC and where I can I claim entrepreneurial relief of these sums (10 per cent rate of tax). Although HMRC classes this as capital gains I class it as regular income as it is an ongoing activity. Indeed I have just recently been part of a company sale that I assisted in preparing for the last 2 years, the sale price is £105,000,000 and my share is 5 per cent (this is my standard agreement level of share signed over to me when I become involved in a project) or £5,250,000 which is payable over the coming 3-5 years. In addition, I will be party to three further company sales over the coming 18 months which have a combined sale price of c. £600,000 which my share again is 5 per cent or £30,000,000 which will be payable over 5 years after the sale agreements are signed.

"As each company is sold I look to become involved in other companies that will aim to be sold within 2-3 years thus continuing my capital gains income stream."

Just to ask you some questions about that, 5 per cent was your standard agreement level of share for companies that you were grooming for sale, was it?

A. That's historic and would have been linked to my buyout agreement. I don't think I've put the correct sums in here. During '15/'16, that should have been '15/'16/'17.

Q. The £800,000 that you mentioned was the payment that you received under the SPA for the sale of LCCL to London Trading; yes?

A. That would have been -- as we went through yesterday, yes, that was linked to that, but the -- over and above that, there was my buyout -- I have effectively sold those, so I entered into those transactions because I was still a beneficial owner. But over the top of that is my buyout agreement.

Q. But you agree the £800,000 was the money payable for your 5 per cent of the shares in LCCL?

A. Yes, but that was the beneficial -- part of the beneficial interest that I'd sold with my buyout agreement. So, it's not simply in isolation.

Q. When you referred to "preparing for the last two years" a sale for a price of £105 million, that was the proposed sale to Terry Mitchell's company GRD, which ultimately turned into the Elysian SPA, wasn't it?

A. I don't think that was Terry Mitchell's. I think at that point -- this is May '17, so that would have been Mark Ingham and Tom McCarthy. Although the sale consideration was less.

Q. Let me rephrase my question. When you're referring to the sale for a price of £105 million, that's a proposed sale to GRD. Let's take out the words "Terry Mitchell".

A. I think that's the Elysian transaction. I don't know why I've got 105 there.

Q. Well, that was the original proposed consideration, wasn't it?

A. I don't remember. I've got a figure of 82 for preference shares in my mind.

Q. We will come back to this, but let's have a quick look at <EB0044886>. This is headline terms for GRP sale. You can see in the bold it says:

"The buyer Global Resorts Development ... is purchasing Global Resort Property ..."

And then:

"Buyer will pay 'Sales Price' = [£105 million] ..." That was the initial proposed sale price under the transaction that became the Elysian transaction, wasn't it?

A. Yes, I can see where I got the 105, therefore. What date was this document, sorry?

Q. 25 April 2017.

A. Yes, so I can see where I got 105 from.

Q. If we go back to <D1-0003913>, we were looking at page 2, you said your share of the £105 million would be £5.25 million?

A. Could we make that bigger?

Q. So that's what you stood to receive under the Elysian transaction at the time when the sale price was £105 million; yes?

A. I should have explained it better than that, and that's my fault for how I drafted that. The maximum I could receive out of my buyout is £5 million.

Q. That's complete nonsense. You go on to say: "I will be party to a further three company sales over the coming month which have a combined sale price of £600,000,000 which my share is again 5 per cent or £30 million ..."

There is nothing about any £5 million limit, is there?

A. I can see why you're looking at this. I drafted it to try and get a mortgage. This doesn't reflect my buyout agreement. It doesn't reflect what's gone into my tax return. Parts of it do, but parts of it I'm making future statements there that I'm -- you know.

Q. When you say you drafted it to try to get a mortgage, are you saying you were prepared to lie to obtain financial gain for yourself?

A. What I'm trying to do -- I mean, the last paragraph in that is incorrect.

Q. May I just stop you. You would have known it was incorrect; yes?

A. When I drafted it, yeah, I'm trying to get a mortgage. I put my hands up to that.

Q. Is your evidence that you were prepared to commit the criminal offence of lying to obtain financial benefit?

A. My defence is, I was trying to get a mortgage to buy a house that my family wanted and it was wrong of me to put this in here.

Q. In fact, the real reason there's no mention of the SPA dated 15 July 2015 is because that document didn't exist at the time you provided this information to your mortgage broker?

A. Mr Robins, as I have said to you on a number of occasions now, it did.

Q. The £5 million limit was something that was reverse engineered in February 2019, wasn't it?

A. No, Mr Robins, it wasn't.

Q. You said yesterday that you were completely transparent with your accountants Oliver Clive & Company Limited. Is that correct?

A. I gave them my bank statements, I gave them all the documents. I've known Steven for years and years and I talked to him about everything that we did.

Q. You said yesterday that you were open with Steven. Is that true?

A. I believe I was.

Q. You said yesterday you were honest with Steven. Is that also true?

A. I believe I was -- in the affairs that we were discussing, yes.

Q. So we can assume you would have given them the complete picture and not lied to them?

A. I gave them all the -- I gave them all the documentation I had and it was for Steven to work out the best way for -- you know, in terms of taxation advice, to manage my affairs, which he did.

Q. Can we look at <MDR00227589>, please. Do you see --

MR JUSTICE MILES: Sorry, can I just go back? I'm so sorry. Can we just go back to that synopsis?

MR ROBINS: Yes, that was <D1-0003913>. Which page does my Lord want?

MR JUSTICE MILES: The second page. Mr Thomson, just looking at that, I think you've accepted in one of your answers that the figure of £105 million is related to what was then the proposed Elysian transaction.

A. Yes, I believe that looks like where I would've got it from, my Lord.

MR JUSTICE MILES: What this says is that you have just recently been part of the company sale "that I assisted in preparing for the last two years". Do you see that?

A. Yes, my Lord. Can we make it bigger, sorry?

MR JUSTICE MILES: Had you been involved in assisting for the sale of that asset for the last two years?

A. "The last two years" is incorrect. I believe the assets that they are discussing are -- I think this is the Elysian transaction. I had been involved prior to my buyout in moving those assets on. I was -- I wrote this to try and get a mortgage and I take the criticism that it's not written very well. I have talked the book up, so to speak, in terms of what's going on there. I do appreciate that. I was a man trying to get a mortgage because my family wanted a house.

MR JUSTICE MILES: So "the last two years" would have been between May 2015 and May 2017, wouldn't they?

A. Yes, and that is not correct. I assisted prior to that. I was -- I can only say I was trying to get a mortgage for my family, my Lord. This isn't correct. I take the criticism. It is not well worded. I was concerned because a lot of the documentation, the financials they were looking at, and also in my income that they wouldn't take as income didn't count for -- in terms of mortgages, because I -- prior to 2015, I was paid via loans and then I repaid at the end -- paid the tax at the end, with -- with my drawings from LCF, I drew as a director's loan, but then I injected money back into the company, so that didn't count. I am, in this, wrongly -- and I accept the criticism -- trying to write a narrative that secures me lending. It's wrong what I did. I can only say that I was trying to secure something for my family. I did have the income that I was telling them that I did have. It was just not taxed, so they couldn't accept it. So I'm trying to find another way, incorrectly, to secure a mortgage. The bit at the bottom, three further companies, again, I'm trying -- I believe I'm trying to talk the book up, and that would be what -- that would be IOG. But, again, I'm not putting that in the right way. What I should have done is just set out my buyout agreement. But I didn't do that. I tried to come up with bigger figures to secure a mortgage that ultimately wasn't successful. Again, I'll take the criticism for that.

MR ROBINS: Mr Thomson, do you accept that you are a person who is prepared to lie to suit your purposes at the time?

A. I take the criticism that I have incorrectly drafted this. Absolutely. That was wrong.

Q. Your evidence to this court is untrue to suit your purposes now, isn't it?

A. No, Mr Robins.

Q. The reason you didn't mention the SPA is because it didn't exist?

A. No, Mr Robins.

Q. We were looking at <MDR00227589>. Do you see someone from Oliver & Clive sending you the last two tax returns "as requested"?

A. Yes, I can see that.

Q. The first is for 2014 to 2015. I will show you that for completeness. It is <MDR00227591>. I don't think there is any income in this return other than, on page 9, there is a benefit from -- is this page 9? A benefit from a company called International Resorts Management. That's what Lakeview Country Club Limited came to be known as, isn't it?

A. It changed its name. I don't know at the time. That could -- I don't know.

Q. Well, I can tell you, that is correct. If we go to <A1/5>, page 64, you can see that Lakeview Country Club Limited was known as -- this is about a quarter of the way down the page -- International Resorts Management from 12 January 2017?

A. Okay. I see that.

Q. If we go to <MDR00227590>, do you see this is your tax return for 2015 to 2016?

A. Sorry, the previous tax returns, you said there was no income on it, so that falls in line with what I previously said, that I received money via loans and then I paid the tax at a later date. That's why there was no income on the 14/15.

Q. You see this is your tax return for 2015 to 2016?

A. Yes, I can see that.

Q. On page 3, I think somewhere we will see there is income, at the bottom, of £10,000. Do you see that?

A. I can.

Q. Then, on page 7, do you see you said that was consultancy fees?

A. Mmm, I can see that.

Q. Then page 13. Do you see you've got the reference, about halfway down the page, to LCF?

A. Yes, I can see that.

Q. Your business travel and subsistence expense, at the bottom, of £807?

A. I can see that.

Q. On page 14, there's a reference, again, do you see, in the middle of the page, to International Resorts Management?

A. Mmm-hmm, yes.

Q. And then, the following page, page 15, a capital gain of £30,375?

A. I can see that, yes.

Q. If we go to the following page, we will see what those related to. In the middle of the page, it's £38,000 less allowable costs. At the bottom, it says: "Asset: International Resorts Management Limited. Disposal date 27/07/2015 entrepreneurs' relief." Do you see that?

A. I can.

Q. So, you were telling HMRC that you had made a capital gain of £30,375 on the disposal of your interest in the company formerly known as Lakeview Country Club Limited on 27 July 2015?

A. What I did for this is I provided Steven with all my bank statements and all the documentation, I've said before, and he drafted -- I don't know if it was him personally, it may have been one of the employees in Oliver Clive & Co -- the tax returns in the best way and most tax-efficient method possible. They had all the documentation, so they would have had my buyout agreement, they would have had the other documentation for the sales and they would have decided what to use and this is what they put together. They're my accountants and that's what they've said to do.

Q. You agree that there is no mention of what you refer to as your buyout agreement?

A. It doesn't mean I didn't provide it to them, Mr Robins. They have chosen to do this. That's --

Q. Isn't it more likely, Mr Thomson, the reason there is no mention of it is because it didn't exist yet?

A. No, Mr Robins, that's not correct. I provided them with the documentation. They have drafted my accounts. They have done the tax calculation, they felt, in the best way, and I submitted the tax return.

Q. Do you remember that after the variation to the Lakeview SPA that we looked at yesterday, you had to amend your 2015/2016 tax return?

A. I believe there was an amendment and I think there was a further amendment the following year.

Q. Let's look at <MDR00227593>. There's a letter to you from Oliver Clive & Company, dated 19 June 2017. At the bottom, they say:

"In light of the share purchase agreement and the variation agreement, your 2015/16 tax return will need to be amended. The original return reported the disposal of your shares in Lakeview Country Club Limited (now International Resorts Management Limited) in return for cash. However, the share agreement details that the proceeds were by way of a loan note."

Then over the page:

"I have amended the return to show that the shares were disposed for loan notes totalling £10,873,525. This is based on the revised value of £14,260,361 and has been apportioned in line with your shareholding. The disposal is treated as a paper-for-paper exchange and as such there is no chargeable gain. Instead a gain arises when a loan payment is made."

You agree there is no mention from your accountants of any buyout agreement dated 15 July 2015?

A. No, because of the tax calculation, that they have chosen to use that specific document, there's -- that would be a question for my accountants at the time, which I probably asked, which I don't remember now.

Q. Doesn't this demonstrate what you gave them was the original agreement for the sale of LCCL to London Trading and the variation agreement?

A. I gave them all the agreements, including my buyout. They have chosen to deal with my affairs as tax-efficiently as possible and as simply as possible and they have chosen to do it this way around. I maintain that I provided them with all the documentation.

Q. You understood that the loan notes had been issued to you in return for your 5 per cent shareholding in Lakeview Country Club Limited?

A. At that point, I had -- I was beneficially -- as I said, my buyout agreement, I had sold out of my position, I had a beneficial interest, yes, and I think this is what they are dealing with here in the way that they best feel they should be dealt with. I'm not the accountant. I've provided them with the information and they drafted my accounts.

Q. Do you see, in the second paragraph, it says: "When a loan payment is made Entrepreneurs relief can be claimed as long as the qualifying conditions are met. I note you hold 5 per cent of the share capital in Global Resort Group Plc which is the holding company. Please confirm that the company is

part of a trading group and you are an officer or employee." So, you understood, to claim entrepreneur's relief, you had to be an officer or employee of the company and the trading group?

A. My understanding of that was, when the disposal is made, that's when that condition is met, not ongoing. So, when my disposal was made, was midway through 2015, and I discussed that with Oliver Clive & Co. It's not that you have to have a continuing, because you're exiting.

Q. He says:

"I note you hold 5 per cent of the share capital in Global Resort Group Plc which is the holding company." You hadn't told him you'd sold that under a buyout on 15 July 2015, had you?

A. I still had a beneficial 5 per cent that was being paid down.

Q. Because the buyout never happened?

A. No.

Q. Can we look at the amended tax return, <MDR00227595>. Page 15 shows the amendment. The total gain is now £37,973. Do you see that?

A. Yes, I do.

Q. On the next page, the disposal proceeds, 25, are £10,911,525. Do you see that?

A. Yes.

Q. That was the total sum payable to you and Mr Golding under the sale of Lakeview Country Club Limited to London Trading as amended, wasn't it?

A. That, I think, would have been about the figure. I don't remember the exact -- I take it the tax return is correct. I provided the documentation, again, to our accountants, and, looking at this, it would have been a more complicated explanation for the accountant to HMRC to say, "Yes, you have got a buyout agreement over here but you still retain a 5 per cent beneficial interest until you're paid out, but then that 5 per cent beneficial interest had these disposals underneath it". That would have been a far more complicated thing to draft and explain. So this is why I believe the accountants would have done it this way, because it was simpler, dealing with the taxation on those transactions instead of saying, "Well, you've got these transactions and you've got this one sitting over the top of those". So, they have chosen to draft it this way. I provided them the documentation. I was advised by my accountants and it was their choice to do it this way.

Q. But, as a trustee of Mr Golding's 71.25 per cent, you knew he had received his 71.25 per cent cash entitlement under the sale to London Trading?

A. He would have been entitled to it. The documentation that I gave the accountants, I would have sat down with them, we would have discussed it. Steven knew I had a 5 per cent beneficial interest. Taking the document as he did, yes, it read that, in my name, was those shares, and that's why they have recorded it that way.

Q. I don't think you answered my question. As a trustee of Mr Golding's 71.25 per cent, you knew he had received his 71.25 per cent cash entitlement under the sale to London Trading?

A. I don't know if he had received it. I wasn't dealing with the payments.

Q. Your tax return has the disposable proceeds that include his share. What do you mean?

A. The accountant drafted this. It would be a question I would ask the accountant, and I may have done at the time. I can't answer your question, Mr Robins.

MR JUSTICE MILES: When you say "cash entitlement", Mr Robins, do you mean --

MR ROBINS: I mean cash payment.

MR JUSTICE MILES: Under the loan notes, or --

MR ROBINS: Under the loan notes.

MR JUSTICE MILES: Because one of the points that seems to have been made by the accountants is there may be a difference in treatment of cash and loan notes and that the capital gain only accrues on the payment of the loan note. I don't know if there is anything in that point, but just in the way you have formulated the question --

MR ROBINS: Perhaps it wasn't entirely clear. Mr Thomson, I think you accepted that you held a loan note of 76.25 per cent of the total price?

A. Yes.

Q. And only 5 per cent of that was yours beneficially?

A. Yes.

Q. The rest was for Mr Golding?

A. Mr Golding's family.

Q. You knew that the entire amount due under that loan note had been paid?

A. I knew it was due to him. I don't know if it was paid. And I don't know why, standing here now, it is recorded as that. Mr Davidson may very well have given me an explanation at the time. I certainly didn't receive 10 million.

Q. If we go back to the letter, which was <MDR00227592> -- oops, wrong one. It was <MDR00227593>. On page 2, at the end of the first paragraph, the accountant has told you:

"The disposal is treated as a paper-for-paper exchange and as such there is no chargeable gain. Instead a gain arises when a loan payment is made." So you knew for the figure to go into your tax return as a sum that was liable to chargeable gains tax that the loan notes had to have been paid?

A. I think the figure is -- the figure in the tax return is 10.8. That one is -- 10.9 and that one is 10.8. I don't know if the loan notes were paid out to Mr Golding. I don't know why my accountant has used that figure for the shareholding that I -- or the loan notes that were apportioned to the shareholding I had in my name. Mr Davidson was well aware that I only had 5 per cent. It says here, "I note you hold 5 per cent". I can't answer the question why the tax return was drafted that way. I can only say I provided all the information to my accountants, they drafted the tax return, they advised on what tax that I should pay. They had all my bank statements. They had all of the documentation that I received and they proceeded in the best way forward for me in the most tax-efficient manner, disclosing what they thought was most beneficial to myself, and I took their advice. I remember receiving this letter. I don't think I went through it in detail. My custom was to just sit down with David -- Steven and have a conversation.

Q. You said yesterday, "I wasn't aware that just because I received a 5 per cent payment, 95 per cent would go out the other door". You knew that Mr Golding had received his 71.25 per cent because it was included in your tax return?

A. I think I've answered that question already. I don't know why the accountants put that in there. And for the accountants to put that in there, they would have had to have evidence that those loan notes were paid to Mr Golding, and I wouldn't have had that information. So, they're not representing Mr Golding, they're representing me. For them to have put in there that these were paid out, they would have had access to -- they would have had to have access to company information who they weren't representing, and I didn't have access to, so, again, I don't know why they put it in there. I don't know why they represented it that way. It may very well have been a conversation that I had at the time. But for them to put it in there, they don't deal with Mr Golding's affairs and they don't deal with the company affairs. So, to confirm that they were paid up, they would have had to have that information and they didn't, so I don't know why.

Q. They got it from you, Mr Thomson, didn't they?

A. No. They got my bank statements from me, which showed what I had received. They have had all the documentation that I had, and they have had discussions with me. They were well aware of my buyout. They were well aware that that beneficial ownership, that 5 per cent, was being sold through various company transactions. So I provided them with both. They chose what they felt was the best way forward for me in terms of tax calculations to represent it this way.

Q. So, your evidence is that, although you held a single loan note for 76.25 per cent and although you included Mr Golding's 71.25 per cent as having been paid in your tax return, you didn't actually know whether anything other than your 5 per cent had actually been paid?

A. I didn't pay Mr Golding, and I don't know why my accountants have put that figure in there. They prepared the tax return. They prepared the tax calculations. I signed it and paid the tax they told me to.

Q. Could we have a look --

MR JUSTICE MILES: Tax returns have a declaration on them, don't they?

A. Yes, my Lord, I'm well aware of that.

MR JUSTICE MILES: Did you read the tax return before you signed it?

A. I would have sat down with Mr Davidson. He would have said, "There's your tax return, sign that, this is the tax you need to pay and pay it". I've known Mr Davidson for many, many, many years. I trusted him implicitly. So I would have just signed where he asked me to, trusting that he had -- he had calculated things correctly. I don't believe I would have gone through it in detail. I was open with him. I provided him everything. I am trusting by nature. He hadn't given me any reason to doubt his work in the past, so I would have just signed where he said to sign and paid the tax.

MR ROBINS: Can we go back to <MDR00227595>. At page 22 is the schedule of calculations. Is this what Mr Davidson would have gone through with you?

A. This would have been a calculation that would have been included in the documentation, I imagine, but the conversations with Mr Davidson were: come in, see him, sit down, "How's things?", cup of coffee, talk about family because we knew each other's families, "This is your tax return", already open on the page for signature, "Sign here. Here is the amount you need to pay for tax", paid

the tax and off I go. He wouldn't have -- we didn't go through this. I just trusted him that I provided all the documentation to him, I provided all my bank statements to him, they did all the tax calculations, they did all the computations in the best way that they thought to manage my affairs. I signed it and paid the tax.

Q. You wouldn't have wanted to underpay tax liability, would you?

A. I trusted them that their calculations were correct.

Q. You wouldn't have wanted to pay too much tax either, would you?

A. I trusted that their calculations were -- they told me what tax I needed to pay. I paid the tax.

Q. As someone from the financial services industry, Mr Thomson, you would have wanted to sit down and understand it and make sure that you were paying the right amount of tax, surely?

A. As I have explained, Mr Robins, I know my accountant, I knew my accountant, very well, I have known him for many years, I trusted their work. The meetings to sign this, I did see Steven quite often, socially and for work. I would have gone to his office, tax return would have already been open to sign, cup of coffee, "How is the family? Sign on the dotted line", talk about various different things, aspirations for the future, "This is the tax to pay". We had a very, very trusting and informal relationship. So ...

Q. Can we look at <MDR00227594>, please. This is the tax return for 2016 to 2017. Do you see that?

A. I do, yes.

Q. This would have been prepared by Oliver Clive & Company?

A. Oliver Clive and Company have done, for many years, all of my tax affairs.

Q. They prepared it on your instructions?

A. They would have received all of my information and they would prepared it, yes. They were my accountants.

Q. You wouldn't have wanted to give incorrect information to HMRC, would you?

A. I gave them all of my information, they drafted it, I trusted they put the right things in there, I signed it and paid the tax.

Q. You would have checked it before signing it, wouldn't you?

A. As I have previously said, Mr Robins, I attended my accountants, we had a very informal relationship, cup of coffee, "How is the family?", talking about various different things, the tax return would have been already open to sign it, signed it, "This is the amount of tax to pay", I'd have paid the tax then and there, and that was the meeting. It wasn't a "Let's go through everything in minutiae".

MR JUSTICE MILES: Do you say the first time you saw these tax returns was when you went to the meeting to sign them?

A. Quite often. I didn't have these discussions with Mr Davidson. I just provided his company with the information and they did the calculations and I just trusted that they did the calculations. They may very well --

MR JUSTICE MILES: Sorry, I don't think that was an answer to my question. Just listen carefully to my question. Do you say the first time you saw the tax returns was when you went to the meeting where you say you signed them?

A. I believe so. They may -- I don't remember -- have emailed them to me before the meeting, but I wouldn't have gone -- I don't believe I would have gone through them, my Lord, and just trusted that they represented things in the best way.

MR ROBINS: Could we go back to <MDR00227593>, please. This was a letter we saw from Oliver Clive & Company to you. It is headed "Tax return 2017". On page 3, after the bold, it says:

"After reading the above and checking the entries, if you are satisfied, please sign the following pages." So you understood you had to check the entries and only sign if you were satisfied?

A. This letter is usually given to me with the tax return. Again, I trusted that they were putting it all together correctly, so ...

Q. Do you see at the bottom, after (a) and (b), it says: "Please give this your urgent attention." You understood it was something you had to pay attention to?

A. Mr Robins, I may not even have read the letter. The relationship I had with Mr Davidson, again, was very informal, I saw him very often, and I trusted their work and I signed and paid what they told me to.

Q. Could we look at <MDR00227592>, please. It flashed up on screen a moment ago when I read out the wrong document. This is the covering email to that letter. It is from someone called Juliana Hoque. Do you remember her from Oliver Clive & Company?

A. No, I don't.

Q. It says:

"We attach your completed 2017 tax return along with the tax calculation and our cover letter." Seeing this, do you accept that you didn't receive it for the first time at a meeting? It was actually sent to you by email?

A. As I said, I could very well have been provided it by email before the meeting, but my recollection is, I met with Steven, signed it and paid the tax. Because I received it and, knowing I was going to meet him, I may very well have not gone through it. Again, I trusted them, and I have trusted them for years, to do my tax affairs, and I signed what they asked me to and paid whatever tax they asked me to, having provided them with all the information that I had.

Q. If we go back to <MDR00227594>, on page 12, in the middle of the page, we see a claim to entrepreneur's relief. Then at the bottom, it says:

"Asset loan note -- International Resorts Management Limited disposal date 05/04/2017."

Do you think that's meant to be a reference to the date of the Elysian SPA?

A. I think that happened in May '17.

Q. You agree there's no reference to any buyout of 15 July 2015?

A. No. Again, Mr Robins, I provided them all the information. They have chosen to represent it in this way. It would have been more complicated, I believe, to say, "I've got a buyout agreement over here."

Buying out at 5 per cent beneficial interest in, that beneficial interest is being monetised, for want of a better word, with these transactions below here", and they have represented it in the simplest way they can.

Q. You see it says:

"The above disposed qualifies for entrepreneur's relief by virtue of 5 per cent shareholding in the holding company of the trading group."

Do you understand you wouldn't have been able to claim entrepreneur's relief unless you had a 5 per cent shareholding in the holding company of the trading group?

A. Again, being bought out and entrepreneur's relief I believe is dealt with at the moment that you leave, and I would have done. So, again, I provided all the documentation to Oliver Clive & Co and they drafted all of this.

MR ROBINS: My Lord, I'm moving on to a new topic. Mr Thomson, yesterday, I took you to <A1/14>, page 2, and after the various timeshare lodges, I pointed to the wider rows with lodges 20, 25, 41 and 19. You said, "I didn't deal with it, Mr Robins. This isn't my spreadsheet. Mr Barker and Mr Peacock largely dealt with the lodge buybacks. The programme of lodge buybacks was largely dealt with by Mr Barker and Mr Peacock. Tasks such as purchasing lodges I largely left to others. In terms of what lodges were bought back and when, I would have to say, no, I wasn't aware, I left it to others". I told you we would come back to this.

The four lodges that I pointed out -- 20, 25, 41 and 19 --

A. It could have been Lakeview Lodges.

Q. -- are the only lodges that were acquired before the end of 2014?

A. I can see that it says there the large portion of these things that were dealt with by, as I say, Mr Barker and Mr Peacock, and sometimes Mr Hume-Kendall, I dealt with Lakeview Lodges and Lakeview Capital, which purchased a couple of lodges, but that was it. Largely, it was dealt with by the others.

Q. My question today is the same as my question yesterday: you were closely involved in the buying back of lodges 20, 25, 41 and 19?

A. Were they the ones that were purchased through Lakeview Lodges originally?

Q. Is your answer, "If they were the ones that were purchased through Lakeview Lodges, yes, I was closely involved"?

A. I was involved if they were the ones purchased through Lakeview Lodges. I don't remember the lodge numbers that were. The large portion -- the vast amount of the other -- the lodges were bought by the others.

Q. These are the only lodge buybacks before the end of 2014. Were you closely involved in the only lodge buybacks that completed before the end of 2014?

A. If they were for Lakeview Lodges, then, yeah -- I mean, I believe it even says down there Lakeview Lodges, to the right -- Lakeview Country Club Lodges Limited. So it could very well have been those four were the ones that I was involved with. It was part of what I was doing. But the large part of the

lodge acquisitions -- it's a division of work, Mr Robins. There was so much else I was dealing with, I couldn't have dealt with everything.

Q. The only lodge buybacks before the end of 2015, 100 per cent of them were ones that you were closely involved in?

MR JUSTICE MILES: Do you mean 2015 or 2014?

MR ROBINS: 2014, I'm sorry. The only lodge buybacks before the end of 2014, 100 per cent of them were ones that you were closely involved in.

A. I'm looking at three of those and they say Lakeview Lodges, so, yes, I was involved.

Q. There were no lodge buybacks, therefore, before the end of 2014, that you weren't involved in?

A. I wasn't involved in a large portion of the Lodge buybacks. It wasn't what I was dealing with.

Q. Just focusing on the only ones that ever happened before the end of 2014, there were no other ones that you weren't involved in before that time?

A. Could you just scroll up to the top? You're missing the top of the spreadsheet. I'm just wondering why it says "Proprietary in" -- "Proprietor in July 2014" for the list of those companies. But the -- the lodge purchases were dealt with by others, but the lodge purchases, I am aware, were over a period of time. I say I didn't deal with it. The lodge purchases may have started before then. As I say, I was 2014 -- '13/'14, dealing with lots of other things. I didn't have the time to deal with everything; which I think is what you are intimating, Mr Robins.

Q. We don't have any alternative but to look at the document. Can we look at <MDR00012615>. Do you see this is 25 April 2014?

A. Yes.

Q. Do you see --

MR JUSTICE MILES: No, 2013.

MR ROBINS: 2013. I keep misspeaking. I have to be clearer. Do you see Mr Sedgwick is asking for instructions from you and Mr Hume-Kendall and Mr Visintin?

A. Yes, this would have been the start of -- we had only just purchased the site, so I was closely involved in most things.

Q. Do you see, at the bottom, what he's seeking instructions on is in relation to lodges 19, 20 and 42?

A. Yes, I can see that.

Q. Then if we go to --

A. Can I just read the bottom email? So Ruthern-Barron, they were an entity that, looking at this, wanted to sell immediately. So, yes, I would have been involved because it was right on the back of the original purchase of the site. So Mr Visintin, as we can see, and Mr Hume-Kendall were involved, and this would have been right on the back of the original purchase of the site. So, yeah, I would have been involved in those.

Q. Can we look at <MDR00012674>, which is the very next day, Mr Sedgwick forwarding to you, Mr Visintin and Mr Hume-Kendall. So your answer is, yes, you would have been involved with this as well?

A. I would have been involved but if this is legal work, so agreements and things, that largely would have been between Mr Sedgwick and Mr Visintin, who was the lawyer. I would have left them to get on with it.

Q. Can we look at <MDR00012787>. This is now May 2013. Mr Sedgwick forwarding an email to you and saying that he's not aware of any option or binding agreement. So you were still involved in the lodge purchases in May 2013?

A. Because Lakeview had only just been bought. I was involved in everything. We hadn't divided up -- aside from it was agreed that I would take on the operations and start the refurbishment at that point. This was right on the back of the original purchase. So everyone was involved in this.

Q. So the answer to my question is "Yes"?

A. Your question was, again?

Q. My question was, you were still involved in lodge purchases in May 2013?

A. Yes. It came on the back of these four, Ruthern-Barron, I believe, came on the back of the original purchase, some 11 years ago now.

Q. Let's have a look at <MDR00014064>. You were still involved in giving instructions to Mr Sedgwick in respect of lodge buybacks in October 2013, weren't you?

A. Again, if that's those four that were originally started, so you've got Mr Redman on copy there. He was very much a go-between. I can see this was part of what we were dealing with, the original purchase. So it's --

MR JUSTICE MILES: This isn't one of the original four. This is another one, Mr Thomson.

MR ROBINS: This is lodge 25 that was being bought from the Piggots.

A. Was that one of the four in that spreadsheet you took me to?

Q. Yes, the only ones bought back before the end of 2014?

A. Clearly, I am involved, but we did buy lodges shortly after we took over the site. I don't have a specific recollection of it. Clearly, I am involved. I can see Mr Sedgwick, down the bottom, where he's dealing with it for us.

Q. So that's the beginning of October. If we look at <MDR00014153>, you were also involved, right at the end of October, in the lodge acquisitions?

A. I can see, yes, absolutely, I'm involved in that.

Q. Let's skip forward to December?

A. Can I just read the bottom email, sorry? The bottom email, Mr Redman was the one that was the go-between between the buyers and the sellers acting for us.

Q. You were still involved --

A. I'm still involved. I'm just pointing out the bottom bit.

Q. If we go to December, <MDR00014237>, Mr Sedgwick is emailing the vendor's solicitors, blind copying you. So you're still involved in respect of lodge 25 in December 2013, aren't you?

A. I can see I'm on copy there. I may have gone through the email, I may not. Again, Mr Redman is dealing directly with that. At that time, I was extremely busy down at Lakeview. I'm doing numerous different things, working on the site, as I say, refurbishing, new management structures, planning, power lines, tenders, so I can't deal with everything, Mr Robins, so I can see that, yes, I'm kept in the loop on this. I'm not denying that.

Q. Can we look at <MDR00014238>, please. One of the things you were doing was reviewing the contract for the purchase of lodge 25, wasn't it?

A. They would have sent it to me. I would have maybe very well scanned it and -- prepared by Mr Sedgwick and dealt with the other side's solicitors. So, I would have had a look through. Again, this says completion date is to be six months after exchange. So the lodge purchases wasn't simply an "On day one, you buy". It looks to me a purchase over a period. But I was the director of the company, so it was right that I was copied in and dealt with. But others were dealing with other bits and I was dealing with what I was dealing with. So it was a very busy time.

Q. Mr Peacock is not copied into this, is he?

A. No, Mr Peacock dealt with all the financials for all of the companies.

Q. And Mr Barker is not copied in?

A. Not there, no.

Q. You're the person who Mr Sedgwick was dealing with because you were the person giving him instructions?

A. I was the director of the company. Mr Sedgwick was receiving instructions from all of us.

Q. Can we look at <MDR00014263>. Still in December 2013. You were the only person giving instructions to Mr Sedgwick about the lodge buyback?

A. I can see -- I'm not denying, Mr Robins, that I'm engaged in this. So, those are -- so, that is to a Mr Freeth. So those are the four lodges. I think they were referred to as Ruthern-Barron. I'm not sure. I think we were also dealing with the Vernons for the manor house as well. But, as I say, Mr Sedgwick is sending things to me because I was the director, so I would have needed to sign things. But everyone was dealing with this. So it wasn't just me.

Q. Well, it was just you with the occasional assistance, at this point, of Mr Redman, wasn't it?

A. Mr Robins, I can't do everything. So, according to what you are putting to me, I did absolutely everything and others did nothing. That is not the case.

Q. I'm not putting that to you, Mr Thomson. I'm putting to you that you were principally responsible for liaising with Mr Sedgwick and giving him instructions in respect of the lodge buybacks in December 2013.

A. I admit that I'm involved. I can see that I'm involved. Others gave him instructions. It was a group - all things then were a group effort. Yes, absolutely I was involved. I'm not denying that. I think buying lodges back is a good thing.

Q. Can we look at <MDR00014307>, please. That's an email of 20 December 2013 from you to Mr Sedgwick, no-one else copied:

"Funds have been sent over to enable the exchange to go ahead, please can you proceed."

You were the person who was primarily responsible for giving instructions to Mr Sedgwick in respect of the lodge buybacks?

A. For that, if you look at the email below, there is other people involved. I'm not denying that I'm involved in this. I'm just saying that there are other people involved in it, as well, who are dealing with these things.

Q. The other people are the vendors and their solicitor; yes? The Piggots and Cockshotts?

A. And Mr Redman.

Q. And Mr Redman. So he was helping you out, but you were principally responsible, as director of the company, for giving instructions to Mr Sedgwick on the lodge buyback?

A. On this, I can see that happened. I'm not denying that, Mr Robins.

Q. You and Mr Sedgwick were the people who would discuss which lodges to complete on?

A. I may very well have had that conversation, Mr Robins. I don't particularly remember it. But, again, that would have been a group discussion behind the scenes with everything else that we're dealing with.

Q. That would have continued to be the case going into 2014?

A. If it's a continuation of these lodge purchases, then very probably.

Q. Could we look at <MDR00014518>, please. It is an email from you to Mr Sedgwick, saying:

"Please can you call me before completing on anything, instead of completing on lodge 25 it may be on a cash basis to complete on Don's ..."

It wasn't a group discussion, was it; it was you and Mr Sedgwick?

A. No, I think what's happened here is, I'm going back to Mr Sedgwick with what we, as a group, have agreed to do. Again, I'm a 5 per cent shareholder in this; Mr Hume-Kendall is a larger and Mr Golding and family has a much larger interest. Yes, I'm dealing with it because I'm a director. I'm also dealing with lots of everything else. It was an extremely busy time. I'm -- looking at the bottom of that email, as I think I mentioned to you, that deals with Lakeview Capital as well.

Q. You knew that the master plan from Mr Golding and Mr Hume-Kendall was to buy back lodges, but then you were handed day-to-day responsibility of implementing that?

A. Yes, as I have said, it was a group effort and, yes, I was implementing some of the things for the group and they were doing others. I'm sorry, I don't have, you know, specific recollection of all events that happened at that time. It is -- you know, we are now ten years ago and lots was going on at the time. I was dealing -- it looks like I was dealing with this and other things.

Q. Going into 2014, April 2014, you continued to be the person responsible for day-to-day implementation of the lodge buyback programme?

A. If it relates to the lodges that we dealt with. But the large portion of the lodge buybacks was Mr Barker and Mr Peacock assisted by Mr Redman, because he was the go-between. But I couldn't have done everything, Mr Robins. Although I can see I'm the director, so I had to do certain things, I can't do everything.

Q. You said, "if it relates to the lodges we dealt with", so let me clarify. Going into 2014, let's say April 2014, in respect of the only lodges where acquisition was completed before the end of 2014, you were the person responsible for the day-to-day implementation of the lodge buyback programme?

A. Yes, I can see I worked on the lodge buyback programme. I can see I liaised with the lawyers and I can see we implemented documentation. But, behind the scenes, it was a group effort. I don't think there is anything wrong with that. Mr Robins. As I say, there was a lot going on at the time, not just with Lakeview but with Sanctuary as well, so lots of --

Q. The reason for going through this is you told his Lordship yesterday, in terms of what lodges were bought back and when:

"I would have to say, no, I wasn't aware, I left it to others."

That wasn't true, was it?

A. If you look at the lion's shares of the lodges, yes, it was.

Q. Talking about the only lodges that were ever bought back before the end of 2014, no, it wasn't?

A. Oh, it's clearly the ones that we have gone through I'm involved with.

Q. So, as regards the four lodges that we were looking at on screen when you said what you said yesterday, it wasn't true, was it?

A. Clearly, I was involved, Mr Robins. But what I said is, the large portion of the lodge buybacks were dealt with by others. I don't see anything wrong with that, Mr Robins. It was, at that time, a division of labour, and then I left.

Q. You accept that you continued to be the person responsible on a day-to-day basis for implementing the lodge buyback programme to the end of 2014, at least?

A. If I was involved in it as a director because I had to finalise it, but the large portion of lodge buybacks were dealt with by others. If I was involved as a director, I can see why I would have been, for some part of it. But it's --

Q. You keep saying a large portion were dealt with by others. I think you're talking about the ones after the end of 2014, whereas I'm trying to focus on the ones before the end of 2014. So just focusing on those and that period of time, you were the person in that period who was primarily responsible, on a day-to-day basis, for implementing the lodge buyback programme?

A. I'm not saying I wasn't involved, Mr Robins. I'm just saying others were involved as well.

Q. But are you saying that you weren't the person in that period who was primarily responsible, on a day-to-day basis, for implementing the lodge buyback programme?

A. I was part -- a part of the team that was responsible. Yes, I had director's duties to deal with this. I'm not denying that. I'm just saying other people were involved as well.

Q. I'm afraid, Mr Thomson, I'm not clear whether the answer to my question is yes or no. If you had to answer it yes or no --

A. Primarily responsible, it is a group effort, so I would say no. But was I involved in it, absolutely, yes. It is clear I am.

Q. Let's say, for example, you're the person who would need to liaise with Mr Sedgwick to arrange payment on exchange or completion of the lodge transaction?

A. As the director of the company, yes, I would have been.

Q. And you were the person from whom Mr Sedgwick would seek instructions about timing of exchange or completion?

A. I can see we would have discussed that.

Q. If Mr Sedgwick needed to tell someone how much was required for completion of the transaction, he would tell you?

A. I would be one of the people that he told. Again, the whole project is a group effort.

MR ROBINS: I just need to check something. I see the time. Maybe I could check it over the shorthand writer's break?

MR JUSTICE MILES: We will take a five-minute break. (11.48 am)

(A short break)

(11.57 am)

A. Before we start, can I ask a question? It's just we may have been speaking at cross-purposes in terms of what is the lodge completion programme or purchase programme. In dealing with completion matters at the end with Mr Sedgwick, yes, I accept that, but in negotiating, arranging, bringing about, agreeing on price, there was others involved primarily in dealing with that. So if you're referring to the lodge purchase programme, in terms of completion matters as a director, then yes. But in terms of arranging, bringing about, negotiating, discussing, that was someone else's job.

MR ROBINS: To clarify, Mr Thomson, since you asked for it, I'm referring to your evidence yesterday when we looked at the four lodges that were bought back before the end of 2014 and you said, "In terms of what lodges were bought back in when, I would have to say, no, I wasn't aware, I left it to others". That's really what the questions go to. What you said yesterday, confining it to the four lodges bought back before the end of 2014 wasn't true, was it?

A. Confining it to those four lodges, I can see where you would come up with that point, Mr Robins. But the liaising with, agreeing on price, and all of those matters, then others were primarily involved. Yes, I took a secondary role, but, in terms of completion matters for those four lodges, then I accept your point.

Q. At the end of 2014, sticking with that date, you would have known exactly what lodges had been bought back in?

A. Yes, I was involved in the completion, so I would have done, yes.

Q. You would have been aware, also, which lodges had not been bought back in yet?

A. It would follow.

Q. So, if we look at <MDR00055202>, this is a completion statement for lodge 12, dated 31 August 2016. At the end of 2014, you would have known that lodge 12 hadn't been bought back in yet?

A. So, at the end of -- or from '13 into '14, they were -- there was discussions with all lodge owners to acquire the lodges, and they were bought back in when funds and agreements allowed. So it was a moving feast. So, there may very well have been agreements to purchase at the end of '14 that hadn't been actioned yet, but --

Q. But you would have known, at the end of 2014, that the purchaser of lodge 12 hadn't completed?

A. I don't think I would have paid particular attention to it, but towards the end of 2014, the running of Lakeview was handed over to Mr Barker.

Q. But you were still dealing with the lodge purchase completions in November 2014, weren't you?

A. I could very well have been, Mr Robins, as the director of the company, sorting out completion stuff. I don't have a recollection of it. As I say, all of those times are very busy and lots of things were a group effort.

Q. Let's look at <MDR00015413>. Mr Sedgwick was still updating you about his work on the lodge transactions in November 2014, wasn't he?

A. Sorry, I'm just reading that. So, you've got two different things there. You've got Lakeview Country Club Limited and Lakeview Lodges. They are two different companies. Lakeview Lodges, I think I've said before, yes, I was involved with it, it was linked to Lakeview Capital. It did a small private fundraising and bought a number of lodges in. Yes, I was involved with that. So you've got two different programmes going on there. Ultimately, they all end up in Lakeview Country Club Limited.

Q. When you refer to "Lakeview Lodges", that was an SPV used to acquire lodges which the group had acquired?

A. The group ultimately acquired, yes. I can't remember when they did.

Q. So, Lakeview Lodges and its management were responsible for purchasing, refurbishing and letting lodges before they could be inserted into the relevant group company?

A. That could very well have happened. I don't have a specific recollection of it. Sorry, would it be possible just to go back to the previous document?

Q. Can I just take you to the document that I was getting those descriptions from, <MDR00015279>. Do you see this document headed "Mission statement"? Can we open the native document and look at the document properties under "Information". If we go to "File" and then "Info". On the right, do you see it says "Author: Andy Thomson"?

A. Yes.

Q. "Last modified by Andy Thomson". If we go back to look at the document itself, this is a document you drafted, isn't it?

A. Yes, I can see I drafted it. I would have had -- I'm discussing the group, so I would have had input from everyone else as well.

Q. If we go to page 6, please, towards the bottom of the page, it says:

"(d) Lakeview Lodges.

"Lakeview Lodges is an SPV used to acquire individual villas on sites the group acquires. The company and its management is responsible for purchasing, refurbishing and letting villas and lodges before they can be inserted into the relevant company in the group."

That's a correct description of Lakeview Lodges, is it?

A. I think that is what it was trying to achieve. I don't know how far it got with the refurbishing. Certainly they -- the lodges it got were let out because they went into -- they would have gone into the available stock of lodges for Lakeview to let out to holidaymakers. I don't know how far it got with refurbishing.

Q. You were a director of Lakeview Lodges from 18 February 2014, weren't you?

A. Yes, reading this, I'm saying, yes, purchasing, yes, letting, because they would have gone into the stock of available lodges that Lakeview let out on the site to holidaymakers. I can't tell you if they were refurbished at the time or not.

Q. Can we go to <MDR00021552>, please. This is a contract for the sale of lodge 17. We can see, at the top, the contract was exchanged on 16 November 2015. So, in light of your involvement, standing at the end of 2014, you would have known that the buyback of lodge 17 hadn't happened yet. Contracts hadn't even been exchanged, let alone completed?

A. Why I wanted to go back -- it perhaps provides context, Mr Robins -- to the previous couple of documents, because, on it, it had interest that was due. So, I think what was happening in negotiating to purchase all of these lodges is there was an agreement to buy a specific amount -- I think that document referred to interest payments that were due and then a final completion figure. So, I think the agreement for a lot of lodges was agreed and then the purchase happened later when there was funds available.

Q. You understand the difference between exchange and completion?

A. Yes, I do.

Q. So, you would have understood that lodge 12 that we just looked at and lodge 17 that we are looking at here hadn't completed?

A. I would have had knowledge of specific lodges. I would have known that we wouldn't -- that, at the end of 2014, we hadn't bought all of the lodges. If you had asked me which lodges we had bought and which lodges we had still to buy, I wouldn't have been able to answer you at the time. I would have had to refer to a spreadsheet.

Q. Yes, but the information would have been very readily available to you, at your fingertips?

A. I could have got the information, yes.

Q. If we look at <MDR00055827>, this is August 2016, and they are talking about exchanging contracts on lodge 47. At the end of 2014, you'd have known or been easily able to ascertain that lodge 47 hadn't been bought back yet?

A. The same answer I gave you previously, Mr Robins, that I could have accessed the spreadsheet that would have told us, at the end of 2014, at the time, which we had bought, which we had, I imagine, included in that spreadsheet, which we had agreed terms for and which ones we owned. So information would have been available. But if you asked me, at the end of 2014, did we own lodge 47 or not, I would have said, "I don't know, I would have to go and have a look".

Q. Can we look at <MDR00025357>, please. So, this is a contract for sale of lodges 61 and 63, exchanged in December 2015. At the end of 2014, the same question: you would have known, or very easily been able to confirm, that lodges 61 and 63 hadn't been bought back yet?

A. Would it be possible to see the signature page on that?

Q. I'm afraid I don't know the signature page, but if it can be found, I'm very happy for you to see it. Maybe the previous page? No.

A. I was just wondering whose signature was on it.

Q. But in terms of my question, is the answer yes or no?

A. Sorry, can you repeat the question?

Q. At the end of 2014, you would have been able to know, or very easily able to confirm, that lodges 61 and 63 hadn't been bought back yet?

A. Yes, and it would be the same for all lodges. You're taking me to lots of different agreements for different lodges and the answer would be the same, Mr Robins: I could have accessed the information if I was asked the question.

Q. Can we look at <MDR00009421>. This is a GVA valuation prepared for International Resort Group Limited. If we look at page 3 -- in fact, page -- I'm looking for the date. Is that page 4 or page 2?

A. June '14, down the bottom.

Q. Do you see June 2014 at the bottom of the page?

A. Yes.

Q. Then, over the page, if we look at page 4, do you see it is a letter dated 11 December 2014?

A. Yes, so some months later.

Q. It is addressed to International Resort Group and below the address it says "For the attention of Andy Thomson"?

A. I'm just reading up the other bits. Okay. Yes.

Q. Do you see there is a market value of the freehold interest as at 11 April 2014 in the sum of --

A. 7.1.

Q. -- £7.15 million. Below that, market value on the special assumption the proposed business plan will be achieved in full without delay, £12.4 million?

A. Yes, I can see that.

Q. This is something you saw in December 2014, isn't it?

A. I would have seen that, yes. It's addressed to me because I was the director, but it would have gone to everyone.

Q. On page 56, the proposed business plan is described in the middle of the page. That's to buy back the let lodges --

A. Could you make that a bit bigger?

Q. -- for refurbishment and resale and to develop 36 lodge pitches at the earliest opportunity for sale on a fractional basis, followed by development of the 105-bedroom aparthotel. That's what you understood, at the time, to be the proposed business plan?

A. Yes, that was the business plan, that the site was bought in '13 and get the planning permission back in place, buy all the lodges back and build the additional lodges, extend the facilities and build the hotel.

Q. But, as at, let's say, April 2014, that business plan hadn't been implemented in full, had it?

A. It hadn't been -- it had started, so it clearly couldn't have finished by that date.

Q. But, for example, 36 new lodges hadn't been built, had they?

A. No. The construction had actually commenced. We had put the foundations for the first lodge in. We had received the certificate of lawful development. Obviously, we had only bought it a year before, so, clearly, you wouldn't have built all of this and bought all the lodges back in and everything else.

Q. The 105-bed hotel hadn't been built either?

A. No, it's a year after it's been purchased. So we were refurbishing. The first thing to do is start the refurbishment, which I was heavily involved in, in 2013 into '14, get the planning permission back in place. Again, I was heavily involved in that. Deal with the dropping of the -- the permission to drop the power lines. Again, I was involved in that, at a saving of 3 million.

MR JUSTICE MILES: I think the question, Mr Thomson, was whether the hotel had been built.

A. Sorry.

MR JUSTICE MILES: Sorry, it is just that -- it is not a criticism, but you're giving quite long answers now and, on occasion, I think the answer could be shorter.

A. Apologies, my Lord.

MR JUSTICE MILES: So the question was, had a 105-bed hotel been built?

A. Apologies. No, it hadn't.

MR JUSTICE MILES: No need to apologise. Don't apologise. It is just it will take longer if you give very long answers. Of course, if it is necessary to give a long answer, then by all means do so, but to a question of that kind, it seems to me a short answer could probably be given.

A. Okay. Thank you, my Lord. No, it wasn't built.

MR ROBINS: Thank you. At the bottom of page 34, it says: "The lodge previously used as an office and lodges 3-5, 7, 9, 11-13, 15, 17, 19-20, 25-26, 36, 43, 45-48, 61, 63 and 65-67 are held in hand. You advise us that you have bought in 13 lodges since our last inspection and now own 16 A frame lodges (two with hot tub), 1 two bedroom lodge and 9 three bedroom lodges (six with hot tub). Our valuation is on the assumption that the purchase of the leasehold interest in the additional 13 lodges has completed."

The purchase of those lodges hadn't completed at the end of -- of all of those lodges hadn't completed at the end of 2014, had it?

A. No.

Q. So, the valuation was prepared on a basis that wasn't factually accurate, was it?

A. I can see this is inaccurate. It doesn't mean that the other lodges, the purchase hadn't commenced, but I can see they weren't completed from what you're taking me to.

Q. Had you told the valuers that the company or its associated companies had bought back lodges which hadn't actually been bought back yet?

A. No, everything GVA and Mr Marshall tended to go through Mr Hume-Kendall. Yes, it is addressed to me because I was the director. A lot of the relationship, because they knew each other, was between Mr Hume-Kendall and Mr Marshall.

Q. But seeing this, you would have understood that that was not true?

A. I missed that. I can't say anything other than that.

Q. Can we look at page 35, please. At the top, under the heading, that's the list of lodges not yet bought back. But that was also wrong because it excluded lodges which were still in third party ownership?

A. Again, between Mr Marshall and Mr Hume-Kendall and the provision of information to them, I don't know who provided that information.

Q. When you saw it at the time, you would have known it was wrong?

A. At the time, I would have skipped through the valuation and looked at the headline figures. I don't believe I would have gone through this in great detail. If I had done, I would have pointed that out.

Q. If we look at page 55, right at the top, it says: "In the last 12 months you have been able to buy in 16 lodges ..."

If you had read that, you would have known that that wasn't correct?

A. Mmm. I should have paid far more attention to the document.

Q. Well, you did pay attention and you knew it wasn't correct?

A. Again, I would have gone to the headline figures. Yeah, at the end of '14, we would have seen that -- I don't know who provided these figures, Mr Robins, and I didn't pick this up.

Q. If we look at page 58, please, the final sentence -- well, the last two sentences there are wrong, aren't they?

A. Sorry, the --

Q. If it could be made bigger, it says: "There are 24 lodges subject to timeshare agreements and 20 lodges let on a 999-year lease. There are 26 lodges in hand."

The numbers 20 and 26 were wrong, weren't they?

A. Yeah, I accept those are wrong. I, again, didn't pick it up. I don't know who provided me the information. I don't know why --

Q. If you had read it at the time, you would have known at the time it was wrong?

A. At the time, if I read it, I believe I would have just gone to the headline figures and not paid the rest of the document as much attention as I should have.

Q. Let's look at the calculation on page 62. "Basis of Calculation". These are what you might call the headline figures.

A. The only thing I can potentially say is, and I don't know, there could very well have been option agreements in place to purchase these that hadn't been exercised.

Q. Did you ask them to prepare it on the assumption that you had acquired lodges that hadn't actually been acquired yet?

A. Again, Mr Marshall and Mr Hume-Kendall had the relationship there, and I don't know who provided these figures.

Q. You see, the valuation is by calculating a value per lodge, whether it is two-bed at 135,000 or three-bed at 180,000, and then multiplying it by the number owned. Do you see that?

A. Yep.

Q. So the number of lodges owned is actually critical to the calculation, isn't it?

A. Absolutely. I can see that, yes.

Q. If you had read this at the time, you would have known it was wrong?

A. If I'd paid far more attention to this, I would have known, yes. I do agree with that.

Q. You did read it at the time and you did know it was wrong?

A. Again, I would have gone to the headline figures.

Q. Simon Welsh worked for Hypa Asset Management, didn't he?

A. He was Hypa Asset Management, yes.

Q. They were going to promote the Waterside Villages bond?

A. Yes, they were.

Q. Lewis Silkin, I think, were involved in drafting the information memorandum, weren't they?

A. For, I think, the other company -- they did it for Project Kudos, I want to say.

Q. But they were involved in drafting an information memorandum for the Waterside Villages bond?

A. They drafted it, yes.

Q. The draft information memorandum would have been provided to Simon Welsh?

A. Yes, absolutely, it would have been.

Q. Can we look at <MDR00026834>. Do you see that you're sending the GVA valuation that we just looked at to Mr Welsh?

A. Yes, I can see that.

Q. You were sending that to him because you wanted him to accept that the value of the site was £7.15 million?

A. I'm not sure why I'm sending it to him in 2016. That's some two years, two and a half years, after the report was --

Q. That's when you were trying to get the Waterside Villages bond off the ground, wasn't it?

A. I know I assisted them with the Waterside Villages. But I don't think it ever actually -- I'm not sure it happened. Maybe you're confusing that with the bond that was put in place in 2013, because I know there was one there, called the LUKI bond. I forget the acronym.

Q. You wouldn't have been sending it to him in 2016 in respect of the 2013 LUKI bond?

A. No, I'm just saying I'm trying to remember, sitting here before you now. I know I assisted them in trying to draft another bond for it and, yeah, I can see I forwarded him the valuation.

Q. Let's look at his response. <MDR00026837>. He says: "Hi Andy, the only issue with this valuation is that it says the value is just over £7.15 million, rising to £12.4 million on completion, that's not really going to cut the mustard with them, so will try and get you on a call with them to explain more ..."

Do you remember trying to use this to persuade someone that the value was £12.4 million?

A. I mean, at -- at that time, with the bond, I believe, that we are referring to, I was assisting them because I had left. I believe I got paid for the assistance, or LCF got paid for the assistance. But, I mean, it's obvious that's the only valuation that we had at the time. So, obviously, he's saying it's not going to cut the mustard.

Q. It wasn't the only valuation, was it, you had the GVA valuation of 4 million, the Savills valuation of 4 million. Why weren't you relying on those?

A. Because -- I can't answer you. That's the valuation that was used at the time.

Q. Do you think this was another example of talking the book up?

A. I don't know, but in 2016, Mr Robins, I believe there was more lodges that were being bought, had been bought. I couldn't tell you what the figure is now, but things had changed. Lots of refurbishment had happened and the site had changed.

Q. Can we look at --

A. I can't remember this email. I'm trying to.

Q. Can we look at <MDR00026840>. You reply to say: "Your not reading the valuation correctly ..."

A. Yes.

Q. "... the valuation is 12.4m if it's valued as a development in its current development phase." Does that suggest you think that you had read the GVA valuation?

A. Yes, the bit I'm referring to there, 12.4 million is on the understanding that the company or the site is putting in place its development plan which it had and was putting in place its development plan. It hadn't finished it, but it was putting it in place.

Q. You say:

"I think being on the call will be essential so we can avoid any misinterpretation of the figures ..." If you were in a position to explain what you say was the correct interpretation of the figures on a call, do you accept you would have had to read the GVA report?

A. I would have had the discussion with them. I can't remember how much I delved into this. But in 2016, this would have had to have been signed off by whoever were the directors running the

company at the time. I am assisting. Again, the 12.4 million is on the assumption that the project plan is being put into place. It was being put into place. That included refurbishment planning, lodge purchases.

Q. You were talking the book up again, weren't you?

A. Again, the development of the site isn't a start/stop process. It is a process over many years. I don't know how many lodges were owned in January 2016.

Q. You knew that, in January 2016, 36 new lodges hadn't been built and a 105-bedroom hotel hadn't been built?

A. No. But I do know plans had started for doing that.

Q. Sorry, I said "you knew" and you said "No", I think. Do you mean "Yes"?

A. I know they hadn't been built but I knew plans had started for their construction. Again, the development -- the 12.4 million is on the assumption the development plan is put into place. It is being put into place, but it is not an overnight thing.

Q. The valuation of 12.4 was on the assumption that the business plan had been completed, wasn't it?

A. I can't remember the wording, Mr Robins.

Q. Would you like to see it again?

A. Yes, please.

Q. That was <MDR00004921>, page 4. Wrong document. Let me try again. <MDR00009421>. I think I may have misspoken. At page 4:

"[On the] assumption the proposed business plan will be achieved in full and without delay ..." So you understood the 12.4 was on the assumption the business plan had been achieved in full?

A. No, it says "[On the] assumption that the proposed business plan will be achieved in full", so it is a process that has to happen. So you have a business plan. If you are putting that business plan -- my understanding of this is, if you put that business plan in place, that's what the current value is.

Q. If you immediately -- if you build the foundations for one lodge, it is immediately worth 12.4 million?

A. No. The business plan, if we go back to it, involved refurbishment, involved starting to buy back in. Yes, we had got the planning back in place, we had done all of those things, and we were putting the business plan in place. So, I don't think the market value there says that it is completed, which is, I think, what you said before. It says "achieved in full and without delay."

Q. It says "achieved in full", yes. Doesn't that mean completed?

A. I read that differently, Mr Robins.

Q. Are you saying you thought the valuation had risen to 12.4 million by virtue of the fact that some lodges had been bought back and some foundations had been built?

A. No, I read that -- the market valuation at that date, if nothing else is going to happen on the site. If you have got no other plans, you're not refurbishing, you're not doing anything, that's the value of it.

However, if you start to put your plans in place to do all of these other things, then the valuation is the bottom one. And they had, or we had, started that process.

Q. Mr Thomson, is that another example of talking the book up?

A. No. That was -- that's how we took market valuation with -- when making assumptions of business plan. As long as the company evidenced that it had put that business plan -- had started to put that business plan in place --

Q. And achieved it in full, without delay?

A. "Will be achieved in full and without delay". So there is a time period to put that in place. It doesn't say, "It will be worth this when you complete your business plan", because then, if you had all the lodges in hand, if you had 36 new very nice lodges, if you had increased the value of the central facilities, built a 105-bedroom hotel, the value would be well in excess of 12.4 million.

Q. So, to be clear, are you saying, at the end of 2014, the value was already 12.4 million?

A. The market value -- again, perhaps I'm not explaining myself properly, sorry. The market value has an assumption. If you are putting that plan into place, that is the value of what it is, but you need to be putting that plan into place. That's the value at that time. What the gross development value will be after you've put that in place, that's a different question. It is not saying that.

Q. If we go back to page 56, we saw the proposed business plan --

A. Can we make it a bit bigger, please?

Q. When they say the assumption is that that is achieved in full, they mean that that plan is implemented and completed?

A. No, the plan is implemented. As you have just said, Mr Robins, it doesn't say "completed". Yes, the plan is being put into place. Yes, lodges are being bought back. Yes, lodges are being refurbished. You can't resale on a fractional basis until you have them in hand. Yes, planning permission had been secured. Tender documents were prepared. So, the plan was being put into place. So, I read that as, yes, that's the value if you are putting the plan into place without delay, but I would expect, when all of that is built -- and it hasn't been, but if all of that was built and done, and everything had been refurbished and all the lodges had been bought back, the price would be well in excess of 12.4 million.

Q. But it would also have cost quite a lot money to implement that business plan?

A. Obviously, yes.

MR JUSTICE MILES: The business plan refers to appendix 7 and cash flow model; is that right? That section we have just been looking at?

A. Was that a -- sorry, if we could bring it up, my Lord.

MR JUSTICE MILES: In the paragraph we were just looking at, it refers at the end to --

A. Appendix 7.

MR JUSTICE MILES: -- cash flow model. Do you see that?

A. Yes, I do.

MR JUSTICE MILES: Was the assumption, on your evidence, that it would be carried out in accordance with the timing in the cash flow?

A. When the cash flow model would have been put together, there would have been some assumptions on timing, yes, but that would be dependent on funding availability and other factors that could affect it. But when the cash flow model was put into place -- and I don't remember what it says at this moment -- yes, that would have been part of it, my Lord. I don't remember what the cash flow model looks like, standing here. But it would have been -- it would have had timings and expectations, but if other factors affected that, then it would move. But at that time, yes.

MR JUSTICE MILES: Well, it would have -- as you say, it would have a series of times --

A. Yes, absolutely.

MR JUSTICE MILES: -- in it, and so the -- so you would be able to see, by looking at that, when the various steps in the development were anticipated.

A. Absolutely, my Lord, and I believe, if I'm correct, and it may not be the one that I'm thinking of, that was developed by Oliver Clive & Co. Because this was a 2014 valuation. So we had engaged Oliver Clive, and a chap called Jonathan Cohen, I think, inside Oliver Clive, developed it. If it is, indeed, the right document. I have not seen it for many years, my Lord.

MR ROBINS: If we look at page 112 -- wrong one. The next page, please. Appendix 7, "Proposed business plan cash flow". If we look at the next page, do you accept that's the cash flow that you were just talking about?

A. That doesn't look like the one that was created by Oliver Clive & Co. So it must be another one. But, yes, this looks like a cash flow model and five-year plan.

Q. On page 127, there's an appraisal summary, which has revenues of 78 million, construction costs, other costs, total costs of 62 million and profit is almost 15.7 million. Is this a document that you recognise?

A. Standing here today, I've not seen this for many years, but it was a document clearly included in the valuation.

Q. Is your understanding of this that if you -- you are saying it is actually, if you spent almost £68 million [sic], on certain assumptions, you could have revenues of almost 78.5 million which would give you the profit of almost £15.7 million?

A. That's what the figures said. I don't remember what went into this, it was so long ago. Clearly, it's been put together. It looks like an accountant has put it together. My guess is possibly Mr Peacock. There are some errors in it. It's not -- the hotel is 105, not 104. New lodges, yes, 36. So, I don't remember -- it's been that many years -- this document.

MR ROBINS: Does my Lord have any more questions on this?

MR JUSTICE MILES: If you go back to the special assumption, that letter, wherever that was.

MR ROBINS: Page 4.

MR JUSTICE MILES: Page 4. When it says -- your evidence, as I understood it, Mr Thomson, was that that didn't mean that the whole project actually had to have been completed.

A. That's correct, my Lord.

MR JUSTICE MILES: But looking at what we have just looked at, when it says that it will be "achieved in full and without delay", how does that tie in with that cash flow we just looked at?

A. The one to five years that we looked at?

MR JUSTICE MILES: Yes.

A. All I can say, my Lord, is that it had started. It was a long process. We can see the refurbishments had started, we can see the planning permission had been repute in place. We had seen the certificate of lawfulness. So it had started --

MR JUSTICE MILES: Sorry to interrupt you, but in terms of the wording of the special assumption, when it says that the proposed business plan will be achieved in full and without delay, can you help me with this: was that on the assumption that day one would already have been reached and, therefore, the various stages in the business plan would have been carried out?

A. Yes, and we had started, my Lord, yes.

MR JUSTICE MILES: Thank you.

MR ROBINS: Can we look at a further email from you to Simon Welsh, <MDR00027133>. This is January 2016. You have said:

"Given the IC ..."

Would that be investment committee?

A. I don't know, sir.

Q. Well, it is your email. I'm just wondering if you --

A. I don't know. It's many years ago. I don't remember, Mr Robins. Sorry.

Q. "Given the IC was a couple of days ago I thought it would be useful for everyone if I outlined the security ...

"The valuation of Lakeview was £4.75 million in 2013 ... the valuation has now risen to £12.4 million ..."

Do you say that what you were telling Mr Welsh was truthful?

A. As I have tried to explain before, the valuation, on the assumption that the business plan had started, was 12.4, and I think that's what I'm trying to say.

Q. If we look at <D2D10-00015204>, it looks like you're sending the GVA -- a further GVA valuation to Mr Welsh a few months later. Does this help you remember what the IC was or why you were sending the previous email?

A. I don't know. I mean, we've got Mariana Capital there, who were representative of a group of IFAs. This would have been part of their due diligence. As I say, I was assisting the company at the time because I had left, but "IC" could very well have been investment committee. I don't remember.

Q. If we go to <D2D10-00010793>, at the bottom of the page, or the bottom of the chain, in fact, we need to go to the next --

A. Sorry, can I just read this email?

Q. Let's start at the bottom of the chain. Next page. Sorry, back a page. At the bottom of the left, there is an email from Marcus Francis, 22 May 2015, to Mr Sedgwick. On the right, it's clear from the first paragraph that he's acting for -- he is a solicitor acting for Ultimate, and he says:

"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 Limited is solvent ... "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.

"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; they are only partway through the exercise. Although your client maintains that the £12.4m figure stated in the draft prospectus for the bond launch is a figure which they genuinely believe the site is worth the valuation evidence which Ultimate have points towards a much lower figure."

Do you remember Ultimate saying they didn't accept the 12.4 because it was on the assumption the business plan for the site had been fully implemented, which was not the case?

A. This is, I believe, 2016.

Q. Let's go back and look at the date. I think it was 2015. May 2015.

A. I know there was issues with Ultimate. I can't remember the specifics. Clearly, they have got an issue. I think what you have just read out there, I think confirms that our view at the time that, yes, we had started. It says we are partway through the exercise. We believed that the 12.4 is what it was worth because we were implementing.

Q. Do you remember being involved in discussions with your colleagues about this at the time?

A. In May 2015, I would have been in contact. Mr Hume-Kendall was dealing with Ultimate and I was dealing with other things. But that doesn't say that I wasn't involved, that I wasn't in the know on this.

Q. The next paragraph says:

"Ultimate's loan and interest stands at circa £1.4m ..."

That's correct as at May 2015, isn't it?

A. I don't remember the figure at May, so I will take your word for it, Mr Robins.

Q. It says:

"... and you have confirmed that the capital outstanding on the existing LUKI loan is £3.9 million." That was also the case as at May 2015, wasn't it?

A. Again, I don't have the figures, but I will take your word for it, Mr Robins.

Q. You had been involved, hadn't you, in the LUKI drawdowns?

A. Yes. I'm just saying I don't have the figures in front of me, Mr Robins, so I'll take your word for it that that's the case.

Q. If you hadn't known at the time that the LUKI loan in May was 3.9 million, it is something you would have very easily been able to find out?

A. I could very well have known at the time. I'm just saying, standing here right now, I don't know if that figure is correct and I am saying I will just take your word for it because it would have been something I would have known at the time; I just don't know now.

Q. If we look at <D2D10-00011930>, we need to look at it in native form, this is, if we scroll to the top, the sort of document at the time -- you had available to you at the time showing you the LUKI drawdowns?

A. Possibly. Can we have a look at the properties and see who this was -- it may very well have been me. It might have been someone else.

Q. Michael Peacock. It looks like one of his documents.

A. Yes.

Q. But this is the sort of document you would have had available to you --

A. If I had asked for it, he would have provided it.

Q. We can see that, by August 2015, it is 4.4. But taking it -- we can see the drawdown in August wasn't much. In July --

A. I'm not doubting your 3.9 figure, Mr Robins. I just said I didn't remember it at the time.

Q. There were also valuations of the Lakeview site by someone called John Spacey, weren't there?

A. Yes, there were, but they were later. I think -- did Prime get those or was it Elysian? I can't remember.

Q. Do you remember he was with a firm called Porters Intrinsic?

A. They provided valuations to us, yes. Or they were engaged by -- I think they were engaged by Prime. I'm not sure. I do know they provided valuations.

Q. <MDR00068566>. That's one of his reports. Does this look familiar?

A. It looks familiar.

Q. On page 11, do you see, for capital value, he says three-bed lodges at 175,000, two-bed lodges at 135,000?

A. Yes, I can see that.

Q. You would have known, wouldn't you, that most recent lodge transactions had been far below those figures?

A. No, I wouldn't, actually. This is the end of 2016. I had left. So, I was not involved at all.

Q. You weren't aware of any lodge transactions even approaching £175,000?

A. I don't believe I would have been able to tell you, Mr Robins. I had left by then. So, this would have been prior to the sale to Elysian, so this was being run by Mr Barker and Mr Hume-Kendall with Mr Golding and family in the background.

Q. In fact, I should tell you, this is a draft report?

A. So I may not have seen it then.

Q. Do you think you would have seen it at all?

A. I don't know.

Q. Let's look at <MDR00068562>. This is the email attaching the draft report.

A. I'm on copy.

Q. You can see that you're copied. So, do you accept that you were provided with the draft report at this time?

A. Yes. As I said to you previously, I don't know if I received a copy -- I could very well have done -- and, clearly, I have.

Q. If we look at the final version of the report, <D1-0003193>, at page 11, the capital value figures have gone up. Three beds in the final report are now 180,000 and two beds are 140,000. Do you remember being involved in discussions about whether Mr Spacey could increase the numbers for the lodge values?

A. I have never met Mr Spacey.

Q. Would you be involved in discussions with --

A. No.

Q. -- Mr Hume-Kendall, Mr Barker, Mr Golding?

A. No, they would have dealt with all of this. I had left by then and, looking at the previous email you brought me to, it was Mr Hume-Kendall that was engaged with Porters.

Q. Did they tell you, "We have managed to persuade him to increase his values in respect of the lodges at the site"?

A. I don't remember conversations at that time. There would have probably been conversations. I'm just saying I don't have a recollection today.

MR JUSTICE MILES: Why was that draft report sent to you by email?

A. I don't know, my Lord. This is a report -- it looks like it is addressed -- we would have asked them to have got a report, because there hadn't been one for a while. I can see the report is addressed to - or is for London Capital & Finance, but we can see in the prior email that Mr Golding is dealing with this. I didn't have an involvement with Porters and I've never met Mr Spacey.

MR ROBINS: Were you given the draft report and then you said, "Look, this isn't really high enough. Given what we say about the LTV covenant, you're going to have to get him to put in higher numbers"?

A. I don't remember conversations around this, Mr Robins, sorry.

Q. You must have noticed that the numbers in the final report were higher than the numbers in the draft report?

A. I don't know how much attention I actually paid the draft report.

Q. You have told his Lordship that you were very concerned about the value of LCF's security and paid a lot of attention to it?

A. I have, and LCF did pay attention. The valuations that came over, we would have looked at the total valuation figures and relied on those. Would we have gone into the specifics of the valuation? Probably not. We would have given it a read -- again, all directors at LCF would have done it. The bit we would have paid more attention to is the headline figures and trusted the valuer that this is the value of the security, or this is the value of the -- total value of the asset, are we happy with that total value of the asset? It wasn't our place to go and tell the valuer he is incorrect. We take the headline value. And if that's sufficient for our purposes, as I have done in the bank on countless occasions, you look at the headline value of the asset you want to be valued, you trust the valuer has done their job properly, and you take their figure.

Q. Well, let's have a look at the headline figure, <D1-0003194>. This is the valuation of the development site, and on page 8, he says that the value for a lodge site is £30,000, and so the value for 36 lodge sites is £1.08 million. Do you see that?

A. Yes, I can, point 1.

Q. And then "Hotel Site", he says:

"It would not be viable to build a 105-bedroom hotel on this site.

"Add hope value for 30 lodges at £15,000 per plot = £450,000."

Do you see that?

A. I do.

Q. Do you see he then adds the £1.08 million and £450,000 to come to a grand total of £1.53 million?

A. I can see that.

Q. So you understand that the £1.08 million is part of the £1.53 million?

A. Yes, I can see it says that there, yes.

Q. You couldn't count the 1.08 and 1.53 because then you would be double counting?

A. Yes, they clearly put them together.

Q. Can we look at <MDR00077856>. We looked at this before. Do you see in rows 11 and 12, 1.08 has been counted as well as the 1.53?

A. Yes, I can see that.

Q. Do you accept that's double counting?

A. I can accept that. I can accept that's an error. I don't know -- as I said, I believe, yesterday, I don't know who -- everyone had access to this. I don't know how that mistake has happened.

Q. Was this an example of talking up the book again?

A. I'd say that's an error, Mr Robins.

Q. Why is it, Mr Thomson, that all the errors result in a higher value than it ought to have been?

A. Well, actually, the Jonathan Marshall valuation is below that. We could have used a bigger figure. I can't -- I don't know why that has been put in there. It is clearly an error.

Q. You didn't care about getting it right, did you; you just wanted to come up with a number for security that would be considerably higher than the lending figure?

A. No, Mr Robins.

Q. But, at the same time, you didn't want to have a believability issue, so you didn't want it to be too high?

A. That's not right, Mr Robins.

Q. That's precisely what went on in LCF, isn't it?

A. That's not right, Mr Robins.

MR ROBINS: My Lord, I'm moving to a new topic. I see the time. I'm not sure it would be worth having two minutes on it.

MR JUSTICE MILES: All right. We will come back at 2 o'clock. Thank you.

(12.55 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: Mr Thomson, do you remember, yesterday, we looked at some documents relating to the idea of allocating £16.4 million of Leisure & Tourism Developments' liability to a company called Atlantic Petroleum Support Limited?

A. Yes, I remember that.

Q. Do you remember the idea was that Atlantic Petroleum Support Limited would enter into a new facility agreement with LCF?

A. And novate that amount of funding from LTD's loan profile. I think that's what it was for.

Q. Yes, so 16.4 million of Leisure & Tourism Developments' debt to LCF would become a debt of Atlantic Petroleum Support to LCF?

A. Yes, and then, I believe, guaranteed by its parent company.

Q. Do you remember a discussion around the idea that London Oil & Gas would assign to Atlantic Petroleum Support its right against a company called P/F Atlantic Petroleum?

A. Yes, I believe that was the -- that was what was presented to us, that London Oil & Gas had rights. I think it was a convertible loan, if I'm correct, that converted into, I think, a 4 per cent royalty, a gross royalty, producing -- I can't remember if it was a gas or oilfield, and that was the value of that, and it -- LOG had assigned it to Atlantic Petroleum Support, which part of the deal that they did with Elysian and novating debts to different areas was -- included them retaining that debt. Atlantic Petroleum took the debt, provided security and also security was provided by its parent, London Group, so we would have security over the parent and then we would be able to have a see-through down into London Oil & Gas and the asset that is IOG. I believe that was what was trying to be achieved.

Q. Do you remember Alex Lee at Buss Murton was liaising with Mr Sedgwick about putting the documentation in place?

A. That was his role for most of the stuff we did. Sometimes I was copied in, sometimes I wasn't.

Q. But you were the person who would give instructions to Alex Lee in respect of these transactions?

A. It was myself and Kobus would have given instructions and been involved.

Q. That's not true, is it?

A. I've just told you it is. Kobus was involved. If I wasn't available, Alex would go to Kobus. Kobus had an awareness of what was going on.

Q. Do you remember Alex Lee raising concerns that the value of the rights being assigned to Atlantic Petroleum Support by LOG would not be sufficient to secure the debt of £16.4 million to LCF?

A. If he didn't understand the transaction. I can -- he may very well have come up with that. I don't recall the conversation.

Q. If we look at <MDR00084850>, it is an email from Mr Lee to Mr Sedgwick, copied to you and Mr Hume-Kendall, 26 April 2017. Mr Lee says:

"Dear Robert.

"I have just been doing a small amount (and I mean just what I can find at the Copenhagen Nasdaq) of due diligence. There is something that needs clarifying for the security position. As I understand it, there will be the allocation of a facility of £16.4 million to APS Limited in respect of which the security taken is going to comprise the contractual rights ... currently held by LOG ... however if that is all the security on offer, it is going to be insufficient. Looking [at] the company Atlantic P/F, it seems that as at yesterday that company has a market capitalisation of DKK 38.83m (£4.4m) with a negative EBIT in 2016. Clearly the interest in this is going to be insufficient as security for a facility of [I think he means £16.4m]." Do you remember Mr Lee raising a concern that the security on offer wasn't sufficient?

A. Yes, and then he goes on to say:

"Could you please set out what other security is being proposed in relation to this element of the facility allocation, please?"

Mr Lee wouldn't have had all the documentation to hand. I think that's what he's asking for. He wouldn't have had the CPRs, the financials, the value of gross royalty. He's done a small amount of due diligence. He's asking for further information. He clearly says there, "However, if that is all the security on offer" -- it isn't all the security on offer, as I have previously said, it's a parent company guarantee that would allow us to have a see-through to the asset that's sitting in IOG that we considered is extremely valuable. But he wouldn't have had access, at that time, to the CPRs, the value of the -- the actual value, not the -- what the -- is reported on the Danish exchange of the field. Again, I can't remember if it was an oil and gas field.

Q. Can we look at <MDR00084888>. It is another email from Mr Lee:

"Thanks, Joe, for sending over the document." He says, "Both", and I think that's a reference to Jo and Mr Sedgwick, but I see you are copied: "I have not read these in great detail as yet. That pleasure will be dealt with today and this evening no doubt. However, in the context of the security offered up

in support of the facility of £16.4 million (along with the market cap of Atlantic Petroleum P/F) we are still some way off the security requirements of LCAF (75 per cent loan to value) which would require net assets of £21.9 million.

"The other thing that I have noticed in at least some of the documents -- not least the deed of priority -- it seems to prohibit the assignment of pretty much everything including the debt itself." Do you remember Mr Lee having these concerns about the insufficiency of the security?

A. I remember he had issues. I remember he worked through them with Robert and Jo. I remember he became comfortable with the whole security package. Clearly, he's going through his due diligence. He says there, "I have not read these in great detail yet", and it doesn't say what he has, so I don't know if he's got the CPRs, the valuation -- the value of the royalty, and so on and so forth, but he's doing work. Clearly, he's got a concern, but it's -- you're not also valuing the parent company guarantee in there.

Q. Do you remember Mr Sedgwick responding by telling Mr Lee that BDO had advised that, for accounting purposes, it was permissible to adopt fair value?

A. I don't. I could very well see, if I was copied in, or if I wasn't Mr Lee, bringing it up in conversation with me. I don't specifically remember this, but I remember there was an issue around the time and I remember that Mr Lee got, ultimately, comfortable with it.

Q. <MDR00084938>. The first point Mr Sedgwick makes is, it isn't 100 per cent of the market cap, it's 70 per cent on conversion, and then --

A. Sorry, can we make that a bit bigger? Thank you.

Q. Then he refers to the Orlando field and then he says: "On advice from BDO, we are entitled to adopt a fair value on the expected income from this field." Reading that, you understand he's talking about adopting fair value for accounting purposes?

A. Yes, that's what is said, but we also had numerous other bits of information that showed, backed up by the CPRs, what the value of the asset was.

Q. You understand there's a difference between --

A. Can I just read the rest of the email? Sorry, I didn't mean to cut in. (Pause). It doesn't say what the fair value is, but Mr Sedgwick is confirming there that the expected value is -- say, a conservative value, conservatively valued at 30 million. So -- and there would have been documentation to back that up, which we would have received. So the EIK's charge they're saying is going to be repaid out of cash flow and, also, you have the parent company guarantee.

Q. You understand there is a difference between book value for accounting purposes and realisable value for security purposes?

A. There's accounting purposes and there's actual value. So --

Q. You'd understand, reading this, that the advice from BDO would be for the accounting purposes?

A. That's, "On advice of BDO, we are entitled to adopt a fair value on the expected income from this field". That's, I believe, what he's saying.

Q. But BDO weren't advising LCF as to realisable value for security purposes, were they?

A. No, this is just an email from Mr Sedgwick to Mr Lee telling him what he has -- Mr Sedgwick will no doubt have been told, so he's passing that information.

Q. Mr Lee would then have discussed it with you, would he?

A. Quite probably. I can see I was on copy as well. We probably had a conversation about this, but it's that -- there's getting to an acceptable value of actual value, not accounting value, of what an asset is, and then you also have to, when considering this, look at the value of the parent company guarantee.

Q. Do you remember Mr Lee saying to you that this wasn't really a very satisfactory response, or that it didn't answer the question sufficiently, or anything like that?

A. We would have had conversations at the time. I don't remember these emails. I do remember that we -- that there was an issue. I do remember that we worked -- that it was worked through.

Q. Can we look at <MDR00085008>. Mr Lee emails you on 27 April to say he's emailed Robert, and then: "Looking at the below, the BDO position is simply advice rather than a valuation. The issue for me is that the agreement in relation to the Orlando field will presumably have been reported to the market generally but impact has been nothing more than the current market cap."

Reading that, you'd have understood he was saying that the BDO point is irrelevant because it is not a valuation, and the Orlando field is public knowledge and the market cap is what it is?

A. Yes, but we would have had -- we do have, and I've seen it, the background information of what the CPRs are saying what the value of these assets are. So, yes, I appreciate that you are talking about BDO's position. We didn't rely on BDO. That's just a comment from a previous email from Mr Sedgwick. And I appreciate what you're saying here.

Q. Did you know that only about £1 million had actually been lent to P/F Atlantic Petroleum?

A. At the time or now?

Q. At the time.

A. At the time, I didn't know, I don't believe. I don't remember, anyway. I know they hadn't fully lent the whole loan.

Q. So, you knew that they were not in a position to convert to 70 per cent of Atlantic Petroleum's share capital?

A. There is a put -- my understanding is, part of the loan is, there is a put option. So, if it needed to be exercised, you could pay up the rest of the loan immediately and realise the asset, which is one of the considerations that we had, as well as the parent company guarantee.

Q. So, let's say 1 million had been loaned already. You say you could have forced the borrower, P/F Atlantic -- let's say LOG could have forced the borrower, P/F Atlantic Petroleum, to borrow another 7 million to take it up to the full 8 million and then convert that to 70 per cent of the shares in P/F Atlantic Petroleum?

A. My understanding was, yes, there was a put option in the loan agreement. They could -- Atlantic would have had to have taken it and then you could have converted it. That was my understanding.

Q. As Mr Lee pointed out, the market cap was £4.4 million, so the 70 million would have been worth about £3 million?

A. You're looking at market cap. What we're looking at behind the scenes is the CPR reports, is how they value the field, exactly as we looked at the fields in IOG. You've got market cap there, yes, but you've got all this other information of assessments of the fields showing what they have, showing what that's worth, and that's what we did our assessment on, not this.

Q. But let's say, for the sake of argument, LCF had gone into administration or liquidation and Mr Sedgwick had jumped into action as the security trustee to enforce security for bondholders. Your evidence is that it would have been necessary to pay -- to lend another 7 million to Atlantic -- P/F Atlantic Petroleum to then get 70 per cent of its share capital worth 3 million. How on earth does that pay back the debt of 16.4 million?

A. With respect, you're making an assumption there. You're saying, let's look at LCF went into administration. We weren't looking at that at this time. There was no concerns over LCF going into administration. We were looking at this: if we had -- if LCF had to realise the security, what would LCF that was still trading have done at the time, and we would have looked at the option of paying up the facility to realise the shares in the royalty. The other option we had to us was the parent company guarantee, which would have given us a see-through into IOG. So we would have had options there.

Q. In terms of this security, your evidence is that you would have had the option of paying another 7 million to P/F Atlantic Petroleum to get 70 per cent of its share capital, then hope that that ended up, at some point in the future, being worth 16.4 million?

A. No, Mr Robins, I'm not looking at the share capital. I'm looking at the CPRs that we have been provided, that you have; I'm looking at how they have then valued what the actual oil or gas -- I can't remember which one it was -- is in the ground -- "proven possible and probable", I think it is, so we would have been looking at that, not the reported market cap. It is a gross royalty, not a net royalty. So, that's what our assessment would have been on, not just the market cap, and we would have also valued the parent company guarantee, which you're not bringing up.

Q. But after Mr Lee raised his concerns on the 27th, you didn't get any independent valuation of this for LCF, did you?

A. We would have already had, because I've seen it, all the competent persons reports, which would have had to have been sitting behind a company like this. We had all of the spreadsheets that went with those in valuing the asset that's in the ground. We had forward-looking cash flows on what that's going to look like when it comes out. Yes, there has to be an assumption of what the oil/gas is worth at that time. So, we would have had all of that information. We met with the Atlantic board as well, we met them in Tunbridge Wells on a couple of occasions, and, again, we had the see-through to the parent company. So we don't look at the market cap. We look at what the value of the asset is.

Q. In reality, because you had 5 per cent of everything, you had no interest in actually testing or scrutinising anything that you were told, and every interest in talking the book up?

A. As I have just told you, Mr Robins, we had all of the competent persons reports and all of the financials that sat behind Atlantic Petroleum that showed and demonstrated to us what the value of that royalty is, and that's what we looked at. So I don't accept you saying we didn't have anything. We did. We also had the parent company guarantee and we had great faith in the value of the assets in IOG. So that is, ultimately, how we became comfortable. We had options.

Q. Can we look at <MDR00006056>. This is the Atlantic Petroleum Support facility. Do you see the date, 29 April 2017?

A. I do.

Q. You accept that you hadn't gone back to Mr Lee to satisfy the concerns he'd raised two days earlier?

A. I spoke to Alex a lot. As I have said previously, my modus operandi was to talk as opposed to email. We did have lots of discussions around this time on not just this, on other points as well. We would have talked about it.

Q. Can we look at pages 20 to 21, please. Is that Mr Hume-Kendall's signature on the left?

A. This is Mr Hume-Kendall's signature.

Q. And then your signature on the right?

A. I'm not quite sure why there's two signatures there.

Q. Is that Mr Sedgwick's as well, as secretary?

A. It could be. I'm not sure.

Q. And then your signature on the right-hand page?

A. That looks like my signature, yes.

Q. If we go to page 3, do you see in the middle of the page the commitment is £25 million?

A. Yes.

Q. You knew that Atlantic Petroleum Support couldn't offer security for a commitment of £25 million?

A. That was a ceiling limit we put on a number of loans, but you have to look at the drawn amount versus the security, not the committed, which was -- which is not the facility limit, which is what we looked at. So, again, the 16.4, we had all of the competent persons reports, all of the financials behind the scenes which demonstrated to us what the asset was worth and we had the parent company guarantee which gave us the see-through to IOG.

Q. Can we look at --

MR JUSTICE MILES: Sorry, could I just ask Mr Thomson, the question was whether, at that stage, you had adequate security for £25 million. I understand your point that this is the limit. But just on that question, was there adequate security at that time for £25 million?

A. Yes, because we would have had the parent company guarantee as well on top of that.

MR ROBINS: Can we look at <MDR00006057>. This is the debenture. If we look at page 27, it identifies some specific contracts. Do you say that these had been assigned to Atlantic Petroleum Support Limited?

A. That is what we were told that happened, yes.

Q. Had you seen a signed copy of the assignment?

A. Standing here right now, I couldn't tell you, Mr Robins.

Q. But it was your understanding that LOG no longer owned the rights against P/F Atlantic Petroleum?

A. That is what we were told, and we trusted them, the lawyers, that that's what they were doing.

Q. So, going forward, the rights against P/F Atlantic Petroleum would be assets of Atlantic Petroleum Support?

A. That's the 8 million loan that is in point 1 there. We were told that that had been assigned to Atlantic Petroleum Support, and that had all the associated rights with it.

Q. And those rights had been charged to LCF?

A. There was a debenture over Atlantic Petroleum Support.

Q. Can we look at <MDR00097899>. It is an email from Mr Sedgwick to you on 21 August 2017, copying Mr Hume-Kendall. The subject is "Atlantic Petroleum". He says in the second paragraph:

"If LOG were to exercise its conversion rights I understand that it would own approximately 68 per cent of the equity of Atlantic P/F."

There hadn't been any assignment from LOG to Atlantic Petroleum Support, had there?

A. Our understanding is -- I don't know why this is there, and, hopefully, I had a conversation at the time, but it is a copy of the Orlando profile, the Orlando SPA, fully executed, March '17. Again, we were told at the time that it was signed. We were told by the lawyers acting for LOG that this was done by -- it may be that this is a typo by Mr Sedgwick. Atlantic Petroleum is a subsidiary, I believe, of LOG. So this may very well be a typo, I don't know. But it isn't our understanding when we entered into this.

Q. Your understanding at the time was that the talk of assignment was just a sham to create the appearance of security?

A. No. Again, I would like to ask Mr Sedgwick why -- if LOG -- I may have asked him at the time and he could have said it was a typo. Our understanding, in April, was it had been assigned and we had a debenture over Atlantic and we had the parent company guarantee.

Q. Can we look at <MDR00098405>. This is a few days later, from Michael Peacock to Mr Hume-Kendall, copying you. The second heading is "Atlantic Petroleum P/F". In the final line, he says:

"The fair value of LOG's potential stake of approximately 63 per cent has been valued at [a little over £5.5 million]."

So there hadn't been any assignment, had there?

A. LOG is the parent company.

Q. LOG is the company that continues to have the potential stake of approximately 63 per cent?

A. That is not our understanding. LOG, yes, could have had value through its child. Our understanding was it was assigned to Atlantic Petroleum Support. We took charge over Atlantic Petroleum Support. We entered into a loan agreement and we took a parent company guarantee for it.

Q. Can we look at <MDR00117216>. This is an email from you to Mr Hume-Kendall attaching LPC group chart. You say: "It was good to catch up the other day and thank you for coming over. Would you be able to have a look at the attached group chart and make any amendments as necessary ..."

I think it should be "so we have the right picture of the group". You were sending him a chart reflecting your understanding and asking him to check it?

A. Yes, that's what the email says.

Q. Can we look at the attachment, <MDR00117218>, please. "London Power Corporation" at the top, then there's "London Oil & Gas", and then there are the two investments of London Oil & Gas, Independent Oil & Gas Limited and Atlantic Petroleum. That's on the assumption that the loan is converted, isn't it?

A. Sorry, this just looks like an organisation chart showing the child. It doesn't make mention of any loan conversion.

Q. London Oil & Gas had made a convertible loan to Independent Oil & Gas, hadn't it?

A. Sorry, yes, so London Oil & Gas had loaned to IOG. And the loan that we are talking about in Atlantic should be sitting there. So Atlantic Petroleum Support, should that not be?

Q. On the left, Independent Oil & Gas, that's the convertible loan that LOG had made to Independent Oil & Gas and, on the right, that's the convertible loan that LOG had made to P/F Atlantic Petroleum, isn't it?

A. That is the -- the assignment should be sitting in Atlantic Petroleum, so surely that should be Atlantic Petroleum Support. Again, I'm asking Simon for his input on this. So the loan that we are discussing, which is the 16.4 million, my understanding is that was assigned from LOG to Atlantic Petroleum Support, as we have seen before, and then LCF had a debenture over Atlantic Petroleum and a parent company guarantee.

Q. You've said a number of times you thought that Atlantic Petroleum Support was a subsidiary of LOG. I just want to show you that's not correct. If we go to <A1/5>, page 89, this is the company that was known as Atlantic Petroleum Support until 6 February 2018. Do you see the shareholders at the bottom of the page? Initially, it was London Power Corporation and then it was London Group LLP?

A. Yes, I can see that.

Q. So, in the chart we were just looking at, where it said "Atlantic Petroleum", on the right, that wouldn't have been Atlantic Petroleum Support, would it? That would have been LOG's investment in P/F Atlantic Petroleum?

A. The chart that I sent over to Mr Hume-Kendall, I've asked for his input. You're slightly confusing me with some things, I'm just having a moment to keep up.

Q. Let's go back to the chart you sent. It was <MDR00117218>. On the right-hand side, where it says "Atlantic Petroleum", that wouldn't have been Atlantic Petroleum Support, would it? That would have been LOG's investment in P/F Atlantic Petroleum?

A. If they are, indeed, yes, separate things. But my understanding was LOG -- Atlantic Petroleum Support sat below LOG and, again, we had parent company guarantee. That's what we believed at the time. We would have relied on others to put that structure in place, but are you saying that it was owned directly by London Group?

Q. Can we look at <MDR00120069>. There's an email from Mr Elliott that's then forwarded to you. In the third paragraph, he says:

"Within LOG, the main income is from the bond issue in LPC and latterly from funds received from AP." LOG would only have been receiving funds from P/F Atlantic Petroleum if its rights had not been assigned?

A. Again, we were told that the rights had been assigned almost a year prior to that. However, we relied on those people putting that in place, and we were told it had been done.

Q. Do you remember getting documents about a proposed oil bond?

A. I remember those, yes.

Q. Let's go to <MDR00118776>. Here is someone from Lewis Silkin sending you the updated IM for what's described in the subject line as the "LPC bond". Do you remember reviewing the draft documents for the LPC oil bond?

A. Yes, I did some work on -- I did some work on that. I don't think it was ever issued.

Q. Let's look at <MDR00118777>, which is the attachment. Do you see, in the middle, "London Oil & Gas", and then it shows a convertible loan to Atlantic Petroleum on the left? That's because it hadn't been assigned.

A. I see that, and I take your point. I didn't pick that up. But it was our belief that it had been. So I -- I take your point there.

Q. So your evidence is you didn't pick it up, even though it was there on the first page?

A. I didn't, but we also had the parent company guarantee that owned all of this.

Q. I wasn't asking you about that. You understood that there hadn't been any assignment of that convertible loan?

A. No, I just didn't -- we are -- I mean, when was this? This was '18. I had thought all of the things that we had agreed had been put in place back in 2017. So, when I'm looking at this, it's not in the forefront of my mind. And I didn't pick that up.

Q. Do you remember that London Power Corporation was offering to provide security to bondholders?

A. Sorry, just on this, it was our belief, I believe, that London Oil & Gas held Atlantic Petroleum Support. So, after -- if the royalty got converted and the funds came out, they would have a residual profit interest. But, again, I missed this and didn't take it up. Sorry, your next question was?

Q. It was your understanding that LPC was offering to provide security to bondholders in respect of this bond?

A. I imagine there is some security in this. I don't remember exactly what it is. But, again, it didn't get offered. Or my understanding is it didn't get offered.

Q. Can we look at page 10, please. Can we zoom in on the bottom half of the page? Do you see it shows that London Oil & Gas has a convertible debt interest in IOG and then, below that, a convertible debt interest in Atlantic Petroleum?

A. What percentage is that? Sorry.

Q. It says "56 per cent ownership when executed". So there must have been some further shares issued.

A. Exactly the same as my comment on the front page.

Q. Then, in the italics, it says:

"IOG and Atlantic are not wholly owned

subsidiaries ... LOG has convertible finance arrangements with both ..."

So those hadn't been assigned, had they?

A. Again, back in 2017, when we did this, we were told it had been assigned, and we proceeded on the understanding relying on others to do what they said they'd done. We are almost a year down the line, and, yes, I'm -- have some involvement in reviewing this and assisting with it and I didn't pick these things up. But, again, we had the ultimate parent company guarantee that would have covered all of this anyway.

Q. Can we look at page 15. If we zoom in on the middle of the page under "Security", it says:

"The bonds will be secured by a guarantee from LOG ... supported by the security ..."

The second of those is:

"A first charge over LOG's rights to subscribe for shares in Atlantic and to convert debt owed by Atlantic to LOG to shares in Atlantic ..."

It is the same question, Mr Thomson: you and Mr Hume-Kendall both knew that this talk of an assignment was just a sham to create the impression of security where none existed?

A. No. In 2017, we believed that it had been assigned. We proceeded accordingly. This hasn't happened and, for all of this to have had to have happened, LCF would have had to have agreed to all the security. Which -- this didn't happen. We proceeded in good faith that they had done what they said they were going to do. I appreciate that I didn't bring this up. I can't remember how much interaction I had on this. I can appreciate it's on the front page. How much interrogation I gave to this document, I can't remember. Clearly less than yourself. And we didn't pick it up. But we trusted that they had done what they said they were going to do, and we also had the parent company guarantee as a back-up, which would have then captured everything, including this.

Q. Can we look at <D2D10-00028009>, please. Do you see this is a share purchase agreement between Mr Hume-Kendall, Mr Barker and you, as the sellers, and Elysian Resorts Group Limited?

A. Yes. Is this the one that got executed?

Q. Yes, this is the document that you told us yesterday you had some familiarity with that we refer to as the Elysian SPA, isn't it?

A. Yes, is this the one that got executed? I think there were a couple of revisions.

Q. Yes, I can show you page 50. Mr Hume-Kendall has signed it on your behalf. Do you see that?

A. I can see that. He's even spelt my name wrong.

Q. He's written "as agent duly authorised". So you'd authorised him to sign it?

A. I believe I got a phone call from Simon saying, "I need to sign a document in your name. It relates to your beneficial interest. Are you okay if I sign it?", "Okay, then".

Q. When you said yesterday:

"At some point, I did say to them, 'Look, I'm not going to be signing these anymore, it isn't correct', and so Mr Hume-Kendall signed in my place." You weren't talking about this agreement?

A. I could very well have been.

Q. It is your evidence from yesterday. Are you talking about this agreement or not?

A. Mr Robins, give me a moment. We are jumping around from document to document. I'm trying to keep up. I don't have the benefit of everyone backing me up, like yourself.

Yes, I remember telling them that I'm not going to do this. I'm not just going to sign things willy-nilly. Simon phoned me up and said, "This needs to get done". "Okay, get on with it".

Q. But you saw this before it was signed, didn't you?

A. Possibly. I can't remember.

Q. Can we look at <MDR00085249>, please. It is from Mr Sedgwick to Mr Lee, copying you and Mr Hume-Kendall. Subject "GRP sale". He says:

"This is the latest version of the SPA it is in the process of some revision.

"The intention is that on completion

London Group LLP will receive preference shares initially in the sum of £90.125 million ..."

A. I thought they were 82.

Q. But this is an earlier draft. You were kept informed during the course of the preparation of this document, weren't you?

A. I can see I was copied in. It was sent to Mr Lee. I would have relied on Mr Lee reviewing it. I may have had a look, I may have had a conversation with Mr Lee. I can't remember.

Q. You saw it after it was signed as well, I think?

A. Yes, I have seen it on numerous occasions after it was signed.

Q. At the time, immediately after it was signed, you saw it?

A. I can't remember. Maybe.

Q. I have got one here. <MDR00090456>. Mr Sedgwick is attaching an executed copy in an email copied to you in June 2017. So, it is something that you had a copy of, isn't it?

A. That's not immediately after it was signed, though, Mr Robins, which I think was your question.

Q. You had a copy by 13 June, at the very latest?

A. By this time, yes, I was copied in. As I have said, I have seen it on a number of occasions, but I think your point was I saw it immediately afterwards, which --

Q. Given that you knew about it in advance and you knew that it was being signed on your behalf, it is likely, isn't it, that you had a copy immediately after it was signed?

A. Not necessarily. I don't mean to be contentious, but not necessarily.

Q. You say it is not likely?

A. I'm saying I don't know, Mr Robins.

Q. If we go back to the agreement, <D2D10-00028009>. When you saw the draft of this, you would have understood the fact you were one of the sellers would mean you would be entitled to payments under it?

A. Yes, Mr Robins.

Q. And, no doubt, you would have had an interest to know what you were going to be paid?

A. But sitting over the top of that is my buyout agreement, which limits what I get.

Q. But is the answer to my question yes or no?

A. The answer is, yes, I would have known I would receive something from it, yes.

Q. But you would have had an interest in knowing what you were going to receive when you were looking at it in draft?

A. My answer is the same: it is limited by my buyout agreement, which is 5 per cent.

MR JUSTICE MILES: It may be limited, Mr Thomson, but would you be interested, nonetheless, in the amount?

A. Yes, my Lord, I would. I'm just trying to get in my head what the correctness of it is.

MR ROBINS: Can we look at page 6, please. You mentioned yesterday, and indeed earlier today, that there were to be £82.125 million of redeemable preference shares owned by the sellers. Given that you were one of the sellers, you would own your 5 per cent of those redeemable preference shares, wouldn't you?

A. No, not necessarily, Mr Robins, because I do have the buyout agreement, which limits what I can take. So that the beneficial interest, it's --

Q. That's the limit. If the redeemable preference shares were the mechanism by which monies would be paid to the sellers, then you would have understood that you would get some redeemable preference shares so the monies could be paid to you?

A. That would be the mechanism. I don't believe those were redeemable preference shares. From what I now know, they never actually got issued.

Q. But, at the time, your understanding would have been you were going to get some of the redeemable preference shares?

A. My understanding at the time is I would receive the benefit of those. But, again, under my -- limited by my buyout agreement, so the beneficial interest.

Q. Can we look at page 9, please. Looking at clause 5.3, when you saw this in draft, you would have understood that, as one of the sellers, you were undertaking to use all reasonable endeavours to assist the company, or a subsidiary of the company, to raise funds for the purpose of enabling the company to fund its regular activities and to develop properties, acquire additional property and to redeem their redeemable preference shares?

A. No, that's incorrect, Mr Robins. I left in 2015 and my buyout agreement and the memorandum of understanding said that I take no part. So just because I was listed as a seller, I'm listed there because of my beneficial interest, but I read this as it is the other people, the other sellers. I couldn't do anything. So, this wasn't me.

Q. So, when you were looking at this in draft and getting Alex Lee to check it, were you saying, "Hang on, this isn't right. It should say all the sellers other than me"? Is that your evidence?

A. I don't think that conversation ever happened, Mr Robins.

Q. Because, when you saw it, you understood that you were giving an undertaking and you thought, "Yep, that's correct"?

A. I didn't give that undertaking. I believe it is the other sellers. I'm named in there because of my beneficial interest. I agree the drafting leaves a bit to be desired. I didn't draft it. I didn't pick this up. Mr Lee didn't pick this up. But I'm named there because of my beneficial interest not because I was taking an active role.

Q. If we look at clause 5.5, it is a fairly lengthy clause. When you saw this in draft, you would have understood that it was saying that monies raised by the company would be used in part to repay the redeemable preference shares?

A. Well, you raise corporate finance and, again, you can use corporate finance to pay down deferred consideration. I have done it many times in the bank.

Q. You understood that if, for example, LCF were to send money in future to GRP or its subsidiaries, some of that money would go to the sellers under this agreement in redemption of the redeemable preference shares?

A. Ultimately, but we expected them to act correctly. We expected them to develop the properties. We expected them to move the projects forward. Part of it is, yes, to pay down the deferred consideration, but that deferred consideration -- I don't know the timing on that.

Q. Well, we can see it here. Any corporate finance -- that's line 3 -- so any money, for example, lent by LCF to GRP or its subsidiaries, has to be applied in the following order. The first £1.2 million to £1.6 million per annum is to be spent on general and administrative expenses and working capital. Anything other than that then goes to coupon and interest payments, so that would be interest payments to LCF. And then anything left over would be split 50/50 between developing the properties and repaying the preference shares. That would have been your understanding when you reviewed this in draft?

A. Yes, that's what it says, but it also then goes on to say that they can be waived and amended which I would take to mean, if they needed to amend that because they needed more funds to, for example, buy in the options on Magante, that that wouldn't be unreasonably withheld and the parties would continue on in a reasonable fashion.

Q. You said yesterday that, under this agreement, part of the purchase consideration was to be used to pay down the debt that had been imposed on the Support companies, didn't you?

A. That was our understanding, that the purchase consideration was increased to include the debt and part of that purchase consideration was due to pay down -- I think there may be -- I don't know if there is a clause in here.

Q. So the consideration that Elysian had to pay under the transaction would be used in part to repay the liability of the Support companies to LCF?

A. Some of it, yes.

Q. So, if, for example, LCF were to lend money to one of the subsidiaries of Elysian in excess of the amount for general administrative expenses and coupon and interest payments, 50 per cent of the surplus above those sums was used to redeem the preference shares, and you say that money should then have gone to pay down the liability of the Support companies to LCF; is that --

A. I believe part of it -- and I think there is a different section of this agreement that I believe mentions that.

Q. No doubt you will be taken to that in re-examination. I want to look at <MDR00084857>. This is an email from Mr Sedgwick to Mr Lee but copying you and Mr Hume-Kendall in April 2017, the 26th. He says in the third paragraph:

"In simple terms, the shareholders of GRP are selling their shares for approximately £105 million ..."
That was the previous figure, wasn't it? It had actually been superseded by this point?

A. I think we touched on that this morning.

Q. "But the sellers" -- as we saw, that includes you?

A. Because of my beneficial ownership, yes.

Q. "... the sellers will be responsible for settling the existing debts of GRP out of that money." That's a reference to the Support company liabilities, isn't it?

A. That's what I think I mentioned before.

Q. "Initially the sellers will receive preference shares in that sum and the intention is that these will be redeemed over a two-year period so I would imagine that you will want security over those preference shares." Do you remember Mr Sedgwick and Mr Lee talking about the need to get security over the preference shares?

A. I remember something about that. I remember there was an issue with it. I don't -- again, I don't think the preference shares were ever issued. I think there was -- from memory, I think there was a couple of post-completion issues over the coming months that needed to be dealt with, but then all of that was dealt with and cleaned up when Prime bought everything and put everything back under the same roof, so to speak.

Q. If we look at <MDR00085249>, there is an email from Mr Sedgwick to Mr Lee, two days later, copying you: "This is the latest version of the SPA ... "The intention is that on completion London Group LLP ..."

That's essentially the sellers, which included you; yes?

A. Because of my beneficial interest, yes.

Q. "... will receive preference shares initially in the sum of £90.125 million plus not voting B shares ... "London Group is responsible for repaying the existing debt out of the redemption proceeds of the preference shares."

So, the people, including you, would be responsible for repaying the existing debt out of the redemption proceeds of the preference shares; yes?

A. No, what he's meaning there -- I'm not included in that. I have left. I left in 2015. I am only included in that because of my beneficial interest. Yes, this is just a quick email by Mr Sedgwick. He is referring to the agreement. But all parties -- I'm not one of the sellers. I'm only there because of my beneficial interest.

Q. We saw, Mr Thomson, you are one of the sellers in the draft agreement that you saw, but before and after it was signed?

A. I do appreciate that, Mr Robins. I do appreciate that the document leaves a bit to be desired in terms of drafting. I was not part of London Group. I had exited. I did have a beneficial interest, which is why the lawyers told me I needed to be part of that.

Q. But you were one of the beneficial owners of London Group?

A. Beneficial owners that could not take any part in any activities of the company, which is included in the buyout agreement and the memorandum of understanding. I was solely there because I still had a beneficial interest, but I was not part of these people.

Q. Could we look at <MDR00005228>, please. This is a guarantee and indemnity in favour of LCF. If we look at page 3, you can see who the parties are. They include the guarantors. I think those are set out on page 15. Let's just have a look. So London Group and three of the Support companies, giving this guarantee in respect of the other --

A. And I think --

Q. -- Support company.

A. I think, from memory, there is one of these for each of the Support companies, and it is just names are changed around.

Q. Then <MDR00007514>. Do you remember London Group executed a debenture in favour of LCF to secure any sums due under the guarantee?

A. We took -- there was -- in this transaction, there is so much paperwork. We took guarantees, debentures, cross-guarantees. The endeavour was to try and get as much security as possible.

Q. That was the overriding concern, was it?

A. Well, no, that's just what we wanted to do: get as much security as we can. That's why you see cross-guarantees there. That's why you see the ultimate parent included in those guarantees as well. And I believe there was debentures from -- I think I said yesterday the assets of the company under Elysian that still had the asset provided security to the associated support company. We tied up all of the Support companies and their parent in cross-guarantees and this is just one part of those -- one of the parts of the security that was put in place.

Q. If you look at page 25, please, do you see the reference at 1 to "all of the redeemable preference shares referred to in clause 3 of the sale and purchase agreement"?

A. Yes.

Q. If the proceeds of redemption of the preference shares were going to repay the liability of the Support companies to LCF, and if there was going to be a charge over those preference shares in

favour of LCF, and if the endeavour was to try to get as much security as possible, then you would have wanted to make sure beyond any shadow of a doubt that those preference shares were actually issued, wouldn't you?

A. As I said before, Mr Robins, I don't believe the redeemable preference shares were actually issued. I think there was an issue which got dealt with in post completion.

Q. Is the answer to my question, "Yes"?

A. We got sufficient security to become comfortable. The issue with the redeemable preference shares, I don't believe were ever captured because I don't believe they were issued.

Q. I'm not sure you have answered my question. Would you like me to read it again?

A. Yes.

Q. It was:

"Question: If the proceeds of redemption of the preference shares were going to repay the liability of the Support companies to LCF, and if there was going to be a charge over those preference shares in favour of LCF, and if the endeavour was to try to get as much security as possible, then you would have wanted to make sure beyond any shadow of a doubt that those preference shares were actually issued, wouldn't you?"

A. We would have wanted to make sure, yes. Did we allow the transaction to go ahead without? Yes. Did we think it was going to be put in place post completion? Yes. It didn't happen, but we were comfortable.

Q. Can we look at <MDR00005460>, please. We looked at this earlier. This is the signed agreement. At page 22, we can see who the preference shares were going to be issued to. In the big box in the top half of the page, after dealing with the ordinary shares, it says Elten Barker 36,956,250 redeemable preference shares, Michael Andrew Thomson 4,106,250 redeemable preference shares, and then the same amount for Mr Barker. So, given that the preference shares were actually intended to be issued in part to you personally, wouldn't you have been in a very good position to know whether or not they had been issued?

A. Again, they didn't get issued. I can't remember the reason why. I know it was a post-completion matter. But, taking your point that the payments under the preference shares were due to pay down some of the debtor Support companies, I believe the loan profiles of those Support companies at the time did show a reduction, even though the redeemable preference shares weren't issued.

Q. But you knew that no preference shares had been issued to you?

A. To be honest, Mr Robins, I didn't pay it enough attention.

Q. That's not right, is it? You knew no redeemable preference shares had been issued?

A. Well, I told you no redeemable preference shares had been issued.

MR JUSTICE MILES: But did you know that at the time? In other words, about the time of this transaction?

A. At the time of this transaction, no, I didn't know they hadn't been issued. I trusted others to exercise what they said they were going to do. It became apparent later, my Lord.

MR JUSTICE MILES: I thought your evidence just now -- I may have misunderstood this -- was that you knew that the preference shares hadn't been issued, and that there was what you called an issue that got dealt with in post completion, but you were comfortable anyway?

A. We got comfortable because we continued with the loan. I found out a fair while later. I didn't know at the time. I found out -- I can't -- I don't know when I found out that this was an issue. And I had -- again, because I was bought out, because I wasn't part of it, I didn't pay it as much attention. I trusted these people to do what they said they were going to do. My understanding now is, there was an issue in dealing with those redeemable preference shares that got dealt with in a later transaction with Prime, but the payments for these still happened.

MR ROBINS: Mr Thomson, after the signature of this agreement, you know, don't you, that LCF lent millions of pounds to GRP subsidiaries?

A. Yes, I am aware.

Q. It lent sums in excess of the 1.2 to 1.6 general and administrative expenses and the coupon and interest costs?

A. Yes, but you have to look at the whole security package we had, not just the debenture capturing the preference shares.

Q. But under the clause we were just looking at, clause 5.5, 50 per cent of surplus monies lent by LCF in excess of the general and administrative costs and coupon and interest payments, according to your evidence, should have been used to discharge the liabilities of the Support companies?

A. Can you say that again, please?

Q. Let's go back to look at the clause we were just looking at. <D2D10-00028009>, on page 9, 5.5. That's the one that said, first, 1.2 to 1.6 per annum on general and administrative costs, then coupon and interest payments, and then 50 per cent of what's left over in repayment of redeemable preference shares. So, after the signature of this, when LCF was lending millions to the subsidiaries of GRP, you would have known that, according to the evidence you have given, 50 per cent of the balance after (a) and (b) should have been used to repay the liability to the Support companies?

A. No, Mr Robins, that's not what it says. It says 50 per cent is the repayment of the redeemable preference shares.

Q. Yes.

A. Out of those, out of that 50 per cent, that figure, they would pay down, or start to pay down, some of the liabilities of the Support companies.

Q. I see.

A. It doesn't say 50 per cent -- it doesn't say all of the monies that are paid under the redeemable preference shares go to pay down the Support companies. That's incorrect, Mr Robins.

Q. So, in your evidence -- who would have had the discretion to decide how much of the surplus would be used to repay the Support company liabilities?

A. The Support company -- that would be -- so, the Support company loans would be payable when due. So it's not that they pay them down early. They are payable when due. So, that would be the loan profile that sits with LCF that would dictate that. It is not saying here that, out of the

redeemable preference shares, they will pay the loans early. So, the paying down of that debt would be determined by when those individual loan drawings fall due.

Q. So, when you said yesterday that part of the consideration was to be used to pay down the liability on the Support companies, are you saying when it fell due in accordance with the terms of the facility agreement?

A. Well, it's, when they fall due, the facility agreement would have the loan drawings behind that and it doesn't say they have to repay it early. It is just repay the liabilities. It doesn't stipulate it any further than that.

Q. Do you accept that none of the principal amount of the Support companies' liabilities was ever paid down?

A. I seem to remember loan profiles that showed -- that did show, before it got sold to Prime, that they did start to reduce. It was a short period of time.

Q. The interest was serviced, was it, by further lending but none of the proceeds of -- well, redemption of non-existent preference shares actually came back to LCF to repay the Support company liabilities?

A. No, I seem to remember there's loan profiles that show a bit of a reduction. Again, it would be dictated when those liabilities fall due, and that would be the loan profiles. I do seem to remember looking at the loan profiles and showing some reduction up until when Prime amalgamated everything.

Q. Is your evidence that, in the period before the Prime transaction, some part of the principal sum of the Support companies' liability had fallen due for repayment and was paid using some part of the surplus advanced by LCF to the GRP subsidiaries?

A. I seem to -- I believe I've seen loan profiles that show there was, albeit a small reduction, it was only a short period of time.

MR ROBINS: My Lord, I see the time. I wonder if I could have a look at the loan profile?

MR JUSTICE MILES: Yes, could I just ask a question before the break? I may not have understood this fully, but, looking at those documents, it seemed that the charge that was being given by London Group, or was intended to be given, was over the redeemable preference shares. As I understood your evidence, you're saying that was security effectively in favour of the Support companies?

A. The debenture -- I'd like to have a look at the document again, but the debenture should be, I believe -- and if it is -- LCF's normal debenture is an all-assets charge, so not just the redeemable preference shares, and, yes, in support of the debt of the Support companies.

MR JUSTICE MILES: But the redeemable preference shares, as I recall, were specifically referred to.

A. They were specifically referred to in the schedule.

MR JUSTICE MILES: In the schedule to the debenture?

A. Yes, if I believe it is --

MR JUSTICE MILES: Your evidence has been that the redeemable preference shares were not actually issued, in fact.

A. No, I found that out --

MR JUSTICE MILES: In the Elysian SPA itself, the redeemable preference shares were not to be issued to London Group, but were to be issued to the individuals; is that right?

A. Yes. I believe I saw that. It was issued in the name of the individuals, but, again, I found out afterwards that they didn't -- I should have paid it a lot more --

MR JUSTICE MILES: So, how would the -- my question, I suppose, is this: how would the charge by London Group work if the redeemable preference shares were in the names of the individuals?

A. The charge -- the debenture that we saw didn't just capture the redeemable preference shares. It captured all the other assets of London Group. It wasn't just the redeemable preference shares.

MR JUSTICE MILES: But just sticking -- leave that point to one side. Just sticking with the redeemable preference shares, how would the specific charge over the redeemable preference shares work if the shares were, in fact, going to be issued to the individuals?

A. I don't know. That would be a question, I'd have to say, for the lawyers, my Lord.

MR JUSTICE MILES: Did you review these documents at the time?

A. I reviewed some of them. I didn't go into -- the debenture is a standard form for LCF. I would have -- Mr Lee would have had all the correspondence. As we have seen, he would have drafted them all. We would have discussed it. There was, in this transaction, a whole board table full of paperwork, lots of it variations on the same theme. Yes, I would have reviewed some of it, not all of it. Mr Lee and his team drafted it all. They had all the documentation prior to that to put all of this together. So, we relied on them to do it. I would have reviewed some of it. Some of it is standard form that we would have used previously.

MR JUSTICE MILES: We will take the break now. Thank you. (3.14 pm)

(A short break)

(3.22 pm)

MR ROBINS: Mr Thomson, do you remember, before the Easter vacation, you confirmed that Mark Ingham had been one of the owners of Sanctuary?

A. Him and Mr Woodcock, I think it was.

Q. I think you said this morning that Mark Ingham was one of the owners of Elysian?

A. Yes, he was.

Q. Can we look at <MDR00005716>, please. Let me say it again, I may have got it wrong. <MDR00007516>. This is the calculation of the preference shares of 82.125 million. Do you see, at the bottom of the page, it says "Preference shares, 82.125 million"?

A. Yes.

Q. So, this is the sum that Elysian was going to have to pay under the Elysian transaction?

A. I believe so, yes.

Q. Do you see, at the middle of the page, there is a gross assets figure which has the values that add up to the 82.125?

A. Sorry, can you help me out there?

Q. Middle of the page, "Gross. £GBP"?

A. Sorry, the column.

Q. The figures in the column add up to the 82.125 at the bottom?

A. Yes, I see what you're getting at, yes.

Q. For Dominican Republic El Cupey, the gross value is 28.28 million. Do you see that?

A. 28.2, yes, I can see that.

Q. For Dominican Republic Magante, it is 32.1 million?

A. Yes, I can see that.

Q. Is your evidence that, just a few years after handing over those assets for nothing, Mark Ingham was now buying them back for a combined value of £60.3 million?

A. This isn't my spreadsheet, you know. However, he -- yes, he's stepping in to buy. That's just -- he was a Sanctuary owner/director and he is coming back in. Sanctuary was failing and it was put back on its feet.

Q. So your evidence is that, a few years after giving it away for nothing, he was buying it back for more than £60 million?

A. Factually, that's what it is. That's what the documents say.

Q. Given that you are getting 5 per cent of the 82.125 -- I know you will say "subject to the -- limiting the buyout", and you know I won't accept that, but leave that to one side. Given you are getting 5 per cent, you would have been keen to understand how it was calculated?

A. Not necessarily. I trusted that the 5 per cent from my buyout would be paid fairly and I let them get on with their business.

Q. So, is it your evidence that you weren't interested in knowing what your 5 per cent would be?

A. Of course I had a beneficial interest, Mr Robins. Did I interrogate this document? No, I didn't. Was I aware that I was going to be receiving? Yes, because of my buyout agreement. I was well aware of it. Did I go into the specific calculations? No, I didn't. Did I have the conversation, "Well, the value you are putting on all of these assets, looking at this, LOG, IOG, actually I have undersold my buyout, I should be getting more"? No, I didn't have that conversation. I was happy with what my buyout had. That's why I didn't pay any close attention to the calculations.

Q. You were going to be lending the money to Mark Ingham's companies to pay via LCF. You must have had an interest in knowing how the price had been calculated?

A. There's two things there, Mr Robins: there's the interest in how they're calculating the price -- well, that's between the parties. Our interest is what the valuations told us, in terms of security. They are two different things.

Q. Sticking with El Cupey and Magante, it is preposterous, isn't it, to suggest that, a few years after giving it away for free, Mr Ingham is now essentially going to borrow more than £60 million from LCF to buy them back?

A. That's a question for Mr Ingham. I didn't interrogate that, I didn't discuss it with him. LCF's interest is what the security values are and we would have taken the valuations, not what's in this document, which is not my document. This looks like a Michael Peacock document.

Q. A couple of weeks after the signature of the Elysian transaction, you agreed to provide facilities of £20 million for each subsidiary of GRP, didn't you?

A. Yes, we put facilities in place, I think May '17 springs to mind.

Q. So that is £20 million for CV Resorts; yes?

A. They were -- I think they were still in the same limits across the board.

Q. 20 million for Costa Property?

A. Yes.

Q. 20 million for Colina Property?

A. Yes.

Q. And 20 million for Waterside?

A. I think they were -- I can't remember if the limits were different.

Q. Surely, as a lender providing the monies to pay down the preference shares, you would have wanted to know how Mr Ingham was proposing to generate the funds that he needed to repay those new liabilities to LCF?

A. That's, then, when looking at the -- looking at the resort properties and how they were going to be developed. The development was along the same lines as it had always been. The planning is the planning. The sites is the sites. They haven't changed. So, what's going to happen to those sites hasn't changed. It's -- they have been sold. Mr Ingham and Mr McCarthy bought them. Why Mr Ingham wanted to buy back in, that would be a question for him. I'm not privy to that. But in terms of LCF, the valuations are the valuations and the sites, as far as we were aware, were being developed in accordance with what was happening previously. I say developed, not necessarily bricks and mortar, but the sites were being moved on in terms of the project.

Q. You knew that this was all just another device to enable LCF to pay monies to you and your associates?

A. No.

Q. Can we look at <C2/1>, page 55, please. In your witness statement, in the middle of the page, paragraph 164, you say:

"I received money from various of Simon and Elten's companies on account of my 5 per cent carried interest under the 2015 exit documentation. The sums were reasonably substantial because those businesses had done well but they were not paid from LCF and had nothing to do with my remuneration."

Is that true?

A. Well, yes, they weren't paid directly. What I'm trying to say there is they weren't paid directly to me from LCF. They were loaned to companies. They borrowed. After they borrow the funds, they're their funds. Those -- that's what I believe I'm trying to say there.

Q. You knew they were paid indirectly from LCF?

A. They originated from LCF, yes. That's -- I have not ever contested that.

Q. You knew that whenever you approved a drawdown, a chunk of money would turn up in your bank account?

A. That is incorrect because what you are suggesting there, Mr Robins, is, every drawdown that any of the borrowing companies made, there was a linked payment to my account. That's absolutely incorrect.

Q. Let's say you knew that, more often than not, when you approved the drawdown, a chunk of money would turn up in your bank account?

A. Also, that's incorrect, Mr Robins, because I didn't approve all the drawdowns. Other directors did that. It wasn't just me.

Q. But, more often than not, when you approved a drawdown, you knew a chunk of money would turn up in your bank account?

A. Not necessarily, Mr Robins. All the companies borrowed at various different stages and, as I have said in my witness statement before, I received money and often I didn't know that I was going to receive it. It arrived in my bank account. I queried, "That's part of your buyout", "Okay". It came from various different companies. So it's --

Q. Let's have a look at <MDR00087910>. This is 19 May 2017, Mark Ingham emails you and Katie, and he says:

"We are requesting the draw down of funds ..." He asks for £300,000 and you say "This is okay to pay".

There aren't any occasions, are there, when any other director of LCF approves such a drawdown request?

A. Absolutely there are, Mr Robins. You take August 2018. I was out of the country for most of the time. And then, September 2018, I was in hospital. There were lots of drawdowns that happened in that time period. When I'm not in the office, other directors deal with it as well. It is not just me.

Q. Well, it would have been Katie acting on your instructions when you weren't available?

A. No. It would've been Katie acting on the other directors' instructions when I wasn't available.

Q. Let's look at this one, this is 19 May 2017, £300,000. If we look at your bank statement, <MDR00220286>, page 287, we can see, in the middle of the page, just below the middle, 19 May, Sands Equity Capital share payment, £20,000. Did you not notice that, whenever you approved a drawdown, a chunk of money would turn up in your bank account?

A. Again, what you're saying there is, when I approved a drawdown, a chunk of money would enter my bank account, and that isn't the case.

Q. We just saw your email that said, "Okay to pay"?

A. That's a single email. The drawings on the loan facilities, there's lots and lots and lots of them, but what you are trying to infer is, every drawing that was made, I received a payment. That isn't the case, is what I'm saying to you, Mr Robins.

Q. Well, let's --

A. And I didn't dictate when my buyout payments were to be paid. That was others. So you've got Sands Equity Capital there, so just looking at this, we've got LCF lending to -- I forget which company, one of the Elysian companies. They would -- Elysian would have then had to have made a payment to -- under what it owed and then to a second company, and then I was -- received it. I don't have any control over the Elysian companies. I don't have any control over Sands Equity Capital, which I think stands for Simon and Spencer, by the way. I had no control over that. I had no visibility of that. So I didn't know that payment was coming. Yes, I can see how it was linked to a drawing on a loan facility, but the volume of loans or drawdowns that were made, again, approved by me and other directors, yes, some of them arrived like this, but lots of them didn't.

Q. Let's take one from August, when I think you said you were out of the country, <MDR00096925>. Katie Maddock is emailing you, forwarding an email from Mark asking for over £1 million. Just look at the bottom of the page first. He asks for £1,087,000. Then, at the top of the page, she forwards that to you: "Please could you confirm if this is okay to go? "The available for bond 1 ..."

That's one of LCF's bank accounts, wasn't it?

A. I imagine so.

Q. "... is £1,087,109 which is almost the exact amount they have requested so putting two and two together you must have already spoken about to Mark."

You must have spoken to Mark and said, "We have 1,087,000 available to draw. Why don't you ask for that amount"?

A. Looking at August, I was at a week-long event in the Isle of Wight at the end of July. August, I was Italy, Africa and somewhere else, so I could very well have come back into the country, which is why this is. But, as we have said before, our borrowers -- we actively spoke to all our borrowers about how much we had available to draw. This is, I believe -- yes, it looks like I had a conversation with Mark. He may very well have phoned me up and gone, "We have to make a drawing, Andy, how much do you have available?", "We have this available today", because I'd have checked.

Q. So you think you probably had spoken to him?

A. Quite possibly. I'm not denying that we spoke to our borrowers and kept them informed about how much we had available to lend or, indeed, they asked us how much available -- we had available to lend. Money sitting in the bond account is costing us as opposed to not costing us. I could have either been overseas at this time or I could have been in the office, I don't know, I would have to check my diary. But the majority of August I was away.

Q. If we look at <MDR00096930>, you have replied: "Yes and yes."

So, even in August, when you say you're out of the country, you were the sole director approving drawdowns?

A. No. You have taken me to two emails here -- drawdown requests here, Mr Robins. What I'm saying is, over the years, there is hundreds of drawdown requests. It doesn't stand to reason I'm the only

director that will only ever approve a drawdown request. Other directors had the power to do this. They exercised their power. Yes, I was asked to approve drawdowns. I'm not saying that I didn't. What I'm saying is, other people did as well.

Q. That's not true, is it, Mr Thomson? You are the only person who ever approved drawdowns?

A. No, you have no basis for that, Mr Robins.

Q. What are those emojis meant to signify, Mr Thomson?

A. Probably a joke between myself and Katie. I have no idea.

Q. If we go to into <MDR00220286>, at page 305, that was 11 August. We see, 11 August, £38,250, from Sands Equity Capital share payment, turning up in your bank account. You must have noticed that, whenever you approved a drawdown, a chunk of money would turn up in your bank account?

A. Again, Mr Robins, you keep coming back to whenever I approved a drawdown. No, I didn't. You're not taking us to other drawdowns that happened that there wasn't a corresponding credit to my bank account.

Q. Let's stick with the ones you did approve. You must have noticed, "That's strange. Whenever I say yes to Mark Ingham, I get a chunk of money in my bank account"?

A. I was aware of my buyout agreement, I was aware of the Elysian transaction, I was aware there was consideration being paid, I was aware that part of -- that some of the funds that they borrowed from LCF would be used to make share -- or make payments under my buyout agreement. I didn't control when I was going to receive those. Yes, there is correlation here. But there are numerous other loan drawings, Mr Robins, that this doesn't happen. You're just taking us to a couple to try to make your point.

Q. I could take you to more, but we don't have the time. So let me put our case to you. You understood that, when you approved drawdowns to Elysian subsidiaries, there would be payments coming not just to you but to Mr Hume-Kendall, to Mr Barker and Mr Golding as well?

A. I understood that some of the funds that LCF were borrowing were due -- would be used to pay for the purchase of Elysian. I didn't have any control of those payments and I didn't have any control of the payments that the other parties would receive. I received these on the understanding that this is part of my buyout agreement.

Q. My Lord, I'm moving to a new topic.

Mr Thomson, you say that in November 2017, Elysian sold --

A. Give me just a moment, Mr Robins.

Q. Let's go to <C2/1>, page 44. In your witness statement, in paragraph 125, you say:

"Shortly after that, in November 2017, Elysian sold on to a company called Prime ... because Simon et al had not received all of their deferred consideration ..." Pausing there, you understood that Simon et al had received some of their deferred consideration?

A. I believe they received some. I don't know how much they received.

Q. When you say "Simon et al", you are part of "al"?

A. No, "Simon et al" would be Simon, Elten and Spencer.

Q. And you --

A. That wouldn't -- no, I wasn't referring to myself here because I --

Q. And you were one of the sellers entitled to proceeds of preference shares?

A. I'm telling you what I'm saying there, Mr Robins, what I'm referring to there is the other three people. I believe, in writing this, I have covered the repayments that I'm receiving under my buyout agreement. So I'm referring to others, not myself there.

Q. And you think they'd received part, but not all, of their deferred consideration?

A. I would have thought they would have received some. I don't know how much they would have received. I didn't have any control or visibility over that.

Q. In the next paragraph, you describe the Prime transaction, and then, over the page, you say, in the final sentence:

"... Prime took over the responsibility from Elysian for paying his deferred consideration under the Elysian sale and purchase."

Prime would also have taken over responsibility for paying your deferred consideration under the Elysian sale and purchase; yes?

A. As it relates to my buyout agreement and funds to fund my buyout agreement, yes.

Q. You were keen to ensure that LCF would lend monies to Prime so that the payments to you, Mr Hume-Kendall and Mr Barker and Mr Golding could continue?

A. We were keen to lend to Prime because we thought they were a more professional outlet than Elysian. They had some decent people on their board. We thought it was a better thing. They took all of the Support companies back in, so it was easier for us. Prime looked like a better developer and they proceeded accordingly.

Q. Can we look at <MDR00101213>, please?

MR JUSTICE MILES: Did you think Elysian weren't a particularly professional outfit?

A. I think Prime were better. Certainly, the people they brought in, my Lord. Angel Rodriguez -- I can't pronounce his name, sorry -- certainly had a very good history. He was a qualified quality surveyor, an MD of ING. ING Real Estate had a long history in this sector, history in turning around -- buying and turning around distressed development assets. I forget her name, Philippa, the chair lady, she had a history in this sector. Kobus and I, I remember meeting them, going out for lunch afterwards. They just seemed a more robust option or group of people, rather.

MR ROBINS: This is an email from Mr Sedgwick to Mr Lee, copied to you and Mr Hume-Kendall, 11 September 2017. He says in the middle of the second paragraph: "I understand that LCAF is prepared to continue ..."

A. Sorry, I lost that again when he pulled it up to bigger. Sorry, where am I going?

Q. "I understand that LCAF is prepared to continue funding these companies ..."

So, you were happy to continue to fund Prime?

A. As I say, we thought Prime was more professional. We thought their plans were better than Elysian. So we were more comfortable with them.

Q. Then it says in the next paragraph:

"The buyer is under an obligation to raise corporate finance and the agreement provides that all the corporate finance raised is paid to a company to be appointed by the sellers who then distributes the money raised through an agreed cash waterfall." You understood when LCF lent money, it wouldn't go directly to Prime, it would be paid to a company appointed by the sellers?

A. The agreement between those parties, which I/we didn't have part of, that's what they agreed and that's what they instructed.

Q. You were happy for Prime to draw as much as possible and for it to be paid over to the company appointed by the sellers because you knew it would be divvied up and you'd get your 5 per cent share?

A. No. I think there was, again, a schedule of how things were paid in the Prime agreement as well like there was in the Elysian one. The terms of it escape me. So it wasn't just simply a "throw all the money and it disappears". There was -- you know, and Prime got on with stuff. They engaged with very professional outfits.

Q. You have referred to the Prime agreement. So you saw it at the time, did you?

A. And I believe our lawyers saw it at the time, or before. I can't recall exactly when.

Q. So you and your lawyers saw it at the time?

A. I believe so. I think I've seen the email when going through things over the last couple of months, that Mr Lee received it.

Q. Do you remember after the Prime agreement was signed, you continued to be involved in approving drawdowns?

A. Well, I was a director of LCF, so I would have approved some drawdowns.

Q. Do you remember that, when you approved drawdowns, money would turn up in your bank account?

A. The same answer as given with Elysian, Mr Robins. I'm not going to change my point.

Q. Okay. I think that enables us to take that fairly quickly. Do you remember there came a point where you became concerned that you didn't have anything on file to justify the ever-increasing level of borrowing?

A. There was a point that Prime were doing lots of different things, but they were slow in getting another valuation that we wanted, so we relied on their director, I think it is Angel Rodriguez. I'm not entirely sure of his name. Because of the qualifications he had, we allowed them to provide a director confirmation of value whilst the other valuations were being put in place.

Q. You had a meeting with Terry Mitchell and agreed that, if the directors could write a letter for you to have on file, then you would allow them to borrow some further monies?

A. I think that's just what I tried to explain to you. Again, it wasn't just Mr Mitchell. We were impressed with Mr Rodriguez, his qualifications, what he's done in the past. I think his CV is on file

somewhere, the companies he's had very senior roles in, the portfolios he's managed, it was very relevant experience. So we, as the security hadn't changed, allowed them to confirm value whilst they were putting in place new valuations for us.

Q. Can I show you the draft letter that was prepared and shown to you, <MDR00146131>. It says in the middle of the page -- it is "Dear Andy" and then: "When compared to the recent local valuer's figures ... the directors are of the opinion that the current values are in excess of £50 million each." You knew that was complete nonsense, didn't you?

A. That is what they're telling us. We believed that. There would have been discussion around this.

Q. Then it says Waterside is currently midway through a refurbishment programme and the directors are of the opinion the current value is in excess of £30 million. Again, with your current knowledge and history, you would have known that was nonsense, that was far too high?

A. The resort had changed substantially. There had been far more lodges bought in. Again, we are guided by -- I appreciate that we have allowed them to continue to draw, the security package hasn't changed, directors are comfortable with this, you have also got companies such as RKTLL, which is a major, internationally-renowned architect they had engaged, there was lots of work they'd done, they work with all the major hotel and resort developers around the world. So, as I say, Prime were showing us a far more professional outfit, who they engaged with. We allowed them to continue whilst they're getting other valuations in place.

Q. You were happy for them to talk the book up if it resulted in payments to you?

A. No. And, ultimately, a lot of the work they did with RKTLL was to actually refinance out LCF. We were never going to be a source of development funding because the resorts were too big.

Q. Do you remember seeing this draft letter and thinking, "You know what, they could talk the book up even more. They are not going far enough"?

A. I may very well have had conversations with them, as I've done previously, working through this.

MR JUSTICE MILES: Sorry, could you answer that question?

A. Sorry, can you rephrase the question?

MR ROBINS: Do you remember seeing this draft letter and thinking, "You know what, they could talk the book up even more. They are not going far enough"?

A. I don't know if I received this draft letter or not. I remember this happening. I don't know, no, if this is the final draft letter that they have sent over.

Q. If we look at <MDR00147399>, it is not an email that you saw but it mentions you. At the bottom of the page, Angel says:

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

Terry says:

"He would just like the redrafted letter." Do you think you had probably seen the first draft of the letter?

A. I don't -- genuinely, I don't know. "He would just like the redrafted letter". I may have discussed it. I couldn't tell you if I saw it or not.

Q. If we look at <MDR00147405>, about a quarter of the way down the page, Terry says:

"Hi Angel.

"Andy has asked for a mention of the additional land at Magante in the letter re the values etc. "I have included."

Do you think you had seen a draft and said, "You should mention the additional land at Magante"?

A. I don't know if I saw it or if it was in the conversation.

Q. The signed version of the letter is <MDR00147513>. That's the attachment:

"Hi Andy, I have attached the amended letter ..." You have probably seen the first draft, given he's referring to an amended version?

A. I may have discussed it with him. I don't remember. I may have received it, I may not.

Q. I think the signed version must be the next document, <MDR00147514>. Do you see this version is longer?

A. Yes.

Q. Then, after the first paragraph, the second paragraph now says 52 million and 50 million, whereas the previous said 50 million each?

A. Yes, but, again, I don't know if I received -- I received the draft or I just discussed it -- the content of it.

Q. Do you think you would have known one way or the other that the first draft said 50 million each and you said, "Well, you can go a bit higher than that, can't you"?

A. No, I don't remember that at all, Mr Robins, I don't. I may have received the draft, I may not. I don't know. There could have been a conversation.

Q. The next paragraph is the reference to the additional land at Magante that you asked to be added, isn't it?

A. If the -- the discussions around Magante would have been "You need to include everything", so, yeah, I can see we would have looked at the additional land.

Q. Do you remember discussing the final version of the letter with Mr Hume-Kendall and agreeing with him that drawdowns could recommence?

A. I don't remember, but I may have done. I know Mr Hume-Kendall was in discussions with Prime.

Q. <MDR00147564>, page 2, right at the top of the page. Ian Sands said:

"Just had a call from Simon HK on a number of things but included was that the letters to LC&F were fine and that we can resume drawing down funds. I haven't made contact with LC&F."

Do you remember telling Mr Hume-Kendall he could pass on this message?

A. I may have been talking to Simon on a number of different things and he could have said how things were going with Prime, because they would have been aware of what was going on as they were party to the agreement, and I could have said -- I probably said to him, yes, we were all right with the letter they sent over. "And then we can resume drawing funds" is their language.

Q. That's the --

A. It follows, if we were happy with the letter, that they could resume if we had stopped them before.

Q. So you would have known they were going to resume drawing funds?

A. Well, yes.

Q. What's on the previous page? Can we just see the date on this? That's 11 May. Let's look at the drawdowns they then sent a few days later. <MDR00148058>.

MR JUSTICE MILES: Why was Mr Hume-Kendall involved with the question of whether that letter was okay and involved with Prime at this stage?

A. Mr Hume-Kendall likes to try and involve himself with as much of everything as he could have a conversation about, my Lord. He knew Prime. I don't know how much involvement he had with them. I know he spoke to them. He spoke to us. I don't know -- I can see I can pass on that in conversation, if he asked me, if he knew what was going on. He kept himself up to speed on various different things, my Lord. That was just his character.

MR JUSTICE MILES: As regards those letters from Prime to LCF, did you have any concern that directors of a company who were trying to borrow money might have a conflict if it comes to putting forward valuations?

A. We were reliant on the professionalism and qualification of Mr Rodriguez. We were -- not just me, Kobus was impressed with him. We were -- had requested that they get further valuations, and this was an interim measure. So we didn't think that there was a conflict. We believed in what Mr Rodriguez was doing. And there wasn't just the letter. We would have met with them at the time as well and had discussions.

MR ROBINS: So, this is a few days after the letter and your discussions with Mr Hume-Kendall. Colina Property Holdings Limited is asking for a drawdown of £750,000 payable to London Power Consulting Limited. You would agree that London Power Consulting Limited doesn't sound like a company that has anything to do with resort development?

A. No, and this was a request by a borrower to draw on their loan and it's their choice where they want the funds to be paid.

Q. You were happy for £750,000 to be paid to London Power Consulting if that's what the borrower asks?

A. That is what the borrower asked and that's what we did.

Q. That's something you knew at the time?

A. This is the drawdown request we received and we actioned it, so, yes, I would have known at the time.

Q. If we look at <MDR00148061>, Costa Property is also asking LCF to send £750,000 to London Power Consulting. Did you not think that was a bit strange?

A. We would have probably asked at the time. I don't recollect, now, the conversation. But, again, a borrower requesting to draw and paying away as per their instructions. I agree it's --

Q. Did you know London Power Consultants was the new name for Mr Barker's company Wealden Consultants?

A. I don't remember at the time.

Q. Can we look at <MDR00173805>, please. This is your bank statement. Page 12. Do you see, towards the bottom, 22 May, £112,500 turns up in your bank statement from London Power Consultants?

A. Yes.

Q. Did you know anything about the company that paid that money to you?

A. Again, I received funds from various different companies. I didn't know which one was going to pay. I can see that these payments were made by Prime. They would have been payments under their agreement to purchase, so deferred consideration to pay down their debt in terms of the sale contract.

Q. So you knew that Prime was asking you to pay the money to London Power Consultants so that it could be divvied up between you and Mr Hume-Kendall and Mr Golding and Mr Barker?

A. So, it was paid in accordance with the borrowers' instructions and I didn't know at the time, would I have received this? Again, my buyer agreement payments were ad hoc. I can see, yes, this is linked. But the payments were due under the purchase agreement.

Q. Is that what the letters from --

MR JUSTICE MILES: Sorry, when you say "payments were due under the purchase agreement", that's the Prime agreement?

A. Yes, so we've got a borrower -- a third party borrower who's happy to borrow, we were happy with the security. They borrowed it for their commercial purposes. Part of which a company that is involved in the transaction can borrow to pay deferred consideration. That is what I think is going on here, my Lord.

MR ROBINS: So you knew that the letters from Prime were to justify further borrowing that could be used to make payments under the Prime transaction?

A. Did I know, when we agreed with those letters, that that's what they would straight away do? No, we didn't. Did we know, when we agreed to those letters, that they would continue to borrow for their corporate purposes? Yes, of course. But I had no visibility that they were going to do this straight away.

Q. Do you see, before you got this money, you had a bank balance of £7,586?

A. Yes.

Q. You immediately used £75,000 of it to make an internal transfer. Was that to another account?

A. That looks like it is my savings account. So I didn't routinely keep -- this, I think, is the account ending 2551?

Q. I don't know. I'm asking you, Mr Thomson?

A. Yes, it is: so this is just my day-to-day account, where I would have kept --

Q. Then, if we zoom in again, just over £16,000 to pay Claremont School. Would that have been school fees?

A. That is school fees, yes.

Q. Would you not have had more than a passing interest in the origins of the money that you used to pay the school fees?

A. Yes, the school fees were due at that time. I don't believe I was being chased. But did I know that we were going to approve the letters and then we would have had two sizeable drawdowns to pay deferred consideration? I wasn't aware of that at the time we approved the letters. Clearly, it's happened and clearly I benefited from that. I'm not denying that. But, again, Prime was paying deferred consideration under its agreement.

Q. So, you knew, when you got this money, that this was -- it had done a round trip straight from LCF to Mr Barker's company and then out to you?

A. I can see where it's gone yes, but did I know that was going to happen when we approved the letters? No, I didn't. I can see, obviously, that it has happened. I'm not denying that I received payments out of my buyout agreement. I'm not denying that those payments that I received, where they originated from.

Q. When it happened and you knew it happened, you were perfectly happy with it because it enabled you to pay the school fees?

A. Of course I was okay. I received sums under my buyout agreement. Of course I'm happy to receive those. But I didn't think there was anything wrong with it. I disclosed it to everyone. Our lawyers at LCF knew that these payments were happening. They have seen all the documentation. I've not hidden it from anyone.

Q. Did you know that London Power Consultants had used the rest of the money to make payments to Mr Hume-Kendall and Mr Barker and Mr Golding?

A. Again, I believe I have said before I didn't have any visibility or control over what they were doing.

Q. What did you think London Power Consultants was using the money for then?

A. In isolation, looking at this, I can see that's a deferred consideration payment. So -- but did I think that at the time when I received that? No, I didn't. I was getting on with lots of different things at the time.

Q. You received £112,500. That's 7.5 per cent of the total amount of 1.5 million that was paid to London Power Consultants?

A. Okay.

Q. It's not 5 per cent which you say you would have been due under the buyout agreement, is it?

A. No, 5 per cent under the buyout agreement is a global. How they chose to pay that down, that was their decision and their action. I didn't control that. So it looks like they're paying more, but, at the end of the day, the buyout agreement is a certain ceiling over a certain period of time. Once you have reached that, it stops.

Q. By this point, the percentages for you and, in fact, Mr Barker had been increased to 7.5 per cent, hadn't they?

A. No. I mean, if they had chosen to pay up everything -- at that point, everything that was owed under my buyout agreement, the payments to me would have stopped. Clearly, they have chosen to accelerate it. But that's their decision.

MR ROBINS: My Lord, I am moving on to a new topic. I think it is probably worth starting it, if your Lordship is happy to sit until 4.30.

Mr Thomson, LOG's first drawdown --

MR JUSTICE MILES: Mr Thomson, are you able to carry on until 4.30?

A. I'm quite uncomfortable at the moment, my Lord.

MR JUSTICE MILES: Would you like a five-minute break?

A. That would be very welcome, thank you.

MR JUSTICE MILES: We will take a five-minute break now and then carry on.

(4.09 pm)

(A short break)

(4.16 pm)

MR ROBINS: LOG's first drawdown from LCF was on 21 March 2016, wasn't it?

A. Deemed drawdown, yes, because it didn't actually have a facility in place until later in the year, so it drew under the LTD facility and then the loan books were rebalanced later in the year, I think.

Q. In fact, it just drew down on its own notional facility before there was any written facility agreement in place.

A. I believe the drawings were debited on the LTD loan profile with the agreement of the same people that owned it and then, when the facility was put in place later on, the loan ledgers were adjusted.

Q. I think you may have got confused there. I think, as a matter of mechanics, the drawdown money was paid to LTD, but it was on LOG's own loan ledger, wasn't it?

A. Eventually LOG's loan ledger, but I think originally it was LTD because LOG's loan document wasn't completed until later in the year. You said March, didn't you?

Q. Yes.

A. Yes, I think was later in the year. I think LTD drew because it was a sister company until LOG was put in place because I think that LOG needed to make payments to IOG for various different things that had to happen because of time issues. It's a fair while ago. So I believe that LTD allowed drawings under its loan ledger and then the loan ledgers were rebalanced to reflect the correct position later on.

Q. So the LOG facility was ultimately approved by the board and signed on 20 June 2016, wasn't it?

A. Yes, later in the year, and that's -- so, the sister company, with the agreement of all, allowed drawings to be made on its loan ledger because LOG needed things to be paid and had a time

window to do it, and then, when LOG had its facility in place, those drawings under the LTD facility were taken off of the LTD facility ledger and debited to the LOG ledger.

Q. Can we look at <MDR00044047>. This is an email from Katie, 9 June 2016. This is before the approval and signature of the LOG facility agreement, isn't it?

A. Yes, and, again, I think it is as we had discussed. We allowed to -- I went through it in the lead-up to this hearing, and I went through the documentation and I can see the loan ledger and I could see it rebalance.

Q. This is a loan profile for LOG before the signature of the LOG facility?

A. I can only say that the documentation that I looked at prior to this hearing, that's what I'm referring to.

Q. I think you must be mistaken, Mr Thomson. Let me show you <MDR00044049>. If we open it in the native form. In D, you see the funds were sent to LTD as a matter of banking or payment mechanics, but this is a ledger of LOG's drawdowns, isn't it?

A. We kept a record of it, yes. Obviously, we'd keep a record of it.

Q. You kept a record of it on a separate loan profile for LOG?

A. We had lots of loan profiles.

Q. It wasn't part of an LTD loan profile?

A. No, the spreadsheets that I saw prior to this hearing showed rebalancing. I went through them when I was sat with my lawyers. I don't know what references they are now. I think we looked at bank statements as well.

Q. You're making that up, and the reason you're making it up is because you don't want to accept that money was lent to LOG before the signature of a facility agreement. That's the true position, isn't it?

A. No.

MR JUSTICE MILES: Just for the record, is this the attachment to that email?

MR ROBINS: Yes, my Lord.

MR JUSTICE MILES: Thank you.

MR ROBINS: Because you had lent to LOG without any signed facility agreement, you were pressing Mr Lee to get it documented.

A. We wanted to get it documented because the situation wasn't ideal, but that is, I believe, what we did.

Q. The reason it wasn't ideal is because you were making loans without a signed loan agreement?

A. No. The borrowing was the sister companies and we rebalanced.

Q. The problem facing you was that it would be problematic for LCF's audit if money had been advanced to LOG without a signed loan agreement?

A. The same answer, Mr Robins.

Q. If it had been advanced to a different company under a separate loan agreement, that wouldn't have been problematic for your audit, would it?

A. It would have required some explaining, yes, and I'm not denying that.

Q. It wouldn't have required any explaining. It would just have been part of the loan balance that was owed by that separate company under that separate loan agreement?

A. No, it is not when we rebalanced the ledger, because the ledger would then show drawings before a loan agreement. So, whichever way you did it, it would need explaining.

Q. If we look at <MDR00041147>. This is an email from Mr Lee to you. He says he spoke to Robert. This is 17 May:

"He tells me they weren't signing but getting it approved by the board (which he says they have done) it isn't signed and he said there were one or two comments. "I pressed him to let me know on this as we needed to get the documentation in place if for nothing else your audit. Although pressed on the urgency ..."

A. I'm not denying there was urgency to get it done. It needed doing.

Q. The urgency was that you made loans to LOG without any signed facility agreement?

A. No, the urgency is we wanted it done properly -- we wanted it done. It wasn't ideal. We did what we did to assist.

Q. If it had all been covered by some signed facility agreement in favour of another company, there wouldn't have been any such urgency?

A. We allowed them to do this. It was a -- how can I best describe it? I'm lost for words. We were fairly relaxed in our approach to do this. We were comfortable with LTD. We wanted to assist. We wanted the lending to provide to LOG. We were enthusiastic about where LOG was going. We wanted to assist.

Q. If that's right, why didn't LTD just make drawings on its loan agreement and onlend the money to LOG?

A. Because we wanted to lend the money to LOG. So it wouldn't be right, because we needed to also balance our back-office bonds to loans or -- what's it called? It's the allocation sheet. So the allocation sheet, I think, would have shown the lending to LOG, so it needed to be that, and it was always supposed to be lending to LOG. It was not supposed to be long-term lending to LTD. That wouldn't be right. So we did it this way, rightly or wrongly, that's the way we did it.

Q. Can we look at <MDR00041526>. Katie Maddock emails Nicky to say that Andy is going to be sending £681,208.05 to London Group on behalf of the loan agreement that we have with London Oil & Gas. That's what you told Katie, isn't it?

A. That would have been -- yeah, that's --

Q. So it was a loan to LOG, but there was no signed loan agreement at this point?

A. No, again, the drawing was under LTD, and we rebalanced later. So, everyone knew it was going to be ultimately a loan to LOG and we rebalanced the ledgers later.

Q. You see at the bottom it says:

"Details of the drawing are below.

"Borrower, LOG."

It's not LTD, is it?

A. Yes, because we recognised it as LOG because it was ultimately going to be London Oil & Gas. I can't remember the exact date that the London Oil & Gas loan facility was signed. I have got June in my mind.

Q. 20 July 2016?

MR JUSTICE MILES: So, is your evidence, in substance, that you always understood it to be a loan to LOG?

A. Always understood it to be, yes, and we --

MR JUSTICE MILES: All the way through.

A. Pardon?

MR JUSTICE MILES: All the way through, from the beginning?

A. Yes. Yes.

MR ROBINS: You said earlier you were fairly relaxed. You were relaxed about LOG going over its credit limit, weren't you?

A. When, Mr Robins?

Q. October 2017.

A. If we did -- because we would have had a continuing security, we were happy with the security.

Q. But is the answer yes?

A. If that is indeed what we did in 2017. Various different people would have been happy -- would have had to have been happy to do it and continued the drawing and, again, it would have been because we were happy with the continuing security that we held.

Q. Let's look at <MDR00106611>. Just to confirm, October 2017, second paragraph: "LOG is £2,869,837.58 over their credit limit." Seeing that, the answer to my previous question is, yes, isn't it?

A. If that is indeed what that is. I seem to remember looking at this as well pre-trial, and it wasn't quite as cut and dried as this email suggests from Ms Wade to Ms Maddock. There was other things going on behind the scenes that Ms Wade may not have been aware of. I remember looking at this, I remember looking at other documentation around why this happened, and I have a sense that Ms Wade wasn't necessarily correct.

MR ROBINS: My Lord, I see the time. I'm about to go on to a new topic, so I wonder if that would be a convenient moment?

MR JUSTICE MILES: All right. We will come back at 10.30 am tomorrow.

Sorry, before I rise, I think I received an application yesterday evening, or first thing this morning.

MR ROBINS: Yes. With the original order that your Lordship made -- I don't know if you have had a chance to look at the application --

MR JUSTICE MILES: All I know is, it is something to do with a Bankers Trust type order.

MR ROBINS: That's right. I think an order was made in respect of a wrong bank account or a non-existent bank account, or something like that. Oh, sorry, it is a further bank account for one of the same companies. I was misdescribing it.

MR JUSTICE MILES: Right. Is there -- that's something that the defendants have seen?

MR ROBINS: Yes, I'm told they have.

MR JUSTICE MILES: Is there any objection from the defendants in relation to that?

MR LEDGISTER: No, my Lord.

MS DWARKA: No. No objection.

MR JUSTICE MILES: I'm assuming that there is a draft order.

MR ROBINS: Yes, I'm told there is a draft order.

MR JUSTICE MILES: And evidence in support, and so forth.

MR ROBINS: I believe so. I haven't personally been involved in it.

MR JUSTICE MILES: I will try to do that this afternoon.

MR ROBINS: I should also mention that we were due to get Kingsley Napley's witness statement by 4.00 pm. They have written saying that it will be ready at some point before midnight. So hopefully we will have seen it by tomorrow morning.

MR JUSTICE MILES: Right. Thank you.

(4.30 pm)

(The hearing was adjourned to Wednesday, 17 April 2024 at 10.30 am)

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