Case No: HQ11X02644

Neutral Citation Number: [2014] EWHC 160 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2014

Before :

MR JUSTICE SILBER

- -

Between :

WATSON FARLEY & WILLIAMS (a firm)	**Claimant**
- and -	
ITZHAK OSTROVIZKY	**Defendant**

- -
- -

Ben Hubble QC and Pippa Manby (instructed by **Clyde & Co**) for the **Claimant**
Michael Pooles QC and Gary Blaker (instructed by **Matthew Arnold & Baldwin LLP**) for the **Defendant**

Hearing dates: 12-15 November 2013, 18- 21 and 28 November 2013

Further Written Submissions served on 6, 9 and 10 December

- -

Judgment

MR JUSTICE SILBER:

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Mr Justice Silber:

I. Introduction

1. Mr Itzhak Ostrovizky ("the Defendant") has brought a counterclaim seeking damages on the basis of the negligence and/or breach of duty of a partner in the Athens office of his former solicitors, Watson Farley and Williams, ("the Claimant") relating to the appropriate corporate structure and the contractual provisions adopted in three share purchase agreements ("the 2007 agreements") drafted by the Claimant which concerned investments made by or to be made by the Defendant in Greek Photovoltaic Parks ("PV"). The PVs were ground-mounted projects for producing solar electricity.

2. The first agreement in respect of which the Defendant complains was made on 31 July 2007 ("the First Agreement"), between on the one hand, Ekoplyn Hellas ("Ekoplyn"), and Mr Christos Rinis and, on the other hand, Mr Abraham Weinerman and the Defendant relating to ten PV parks in Mytilini in Greece. The second agreement was made on 5 September 2007 ("the Second Agreement") between the same parties relating to eighty PV parks on the islands of Crete, Rhodes and Chios and which are not connected to the mainland electricity distribution grid in Greece. The third agreement was made on 16 October 2007 ("The Third Agreement") between the same parties relating to fifty PV parks on the islands of Crete, Rhodes, Karpathos, Kos, Samos, Mytilini and Chios and which were also not connected to the Greek mainland electricity grid.

3. Many of the terms contained in the First Agreement were repeated in the Second and Third Agreements, but there are some significant changes to which I will refer. The Defendant was represented by Mr Abraham Weinerman in all matters leading up to the agreements in which the Claimant was acting for the Defendant, who accepted before closing oral submissions that Mr Weinerman was authorised to act for him. Mr Athanasios Orestis Simos acted as the assistant of Mr. Weinerman in the period before and after the time when the 2007 agreements were made.

4. I will refer in this judgment to the allegations that the Claimant has acted negligently and in breach of duty collectively as being allegations of "negligence", without always adding that they also constituted allegations of breach of duty. In addition, I use the name of "Mr Rinis "to describe both himself and his company, Ekoplyn, in this judgment.

5. The case for the Defendant on his counterclaim in outline is that:-

    a) The Claimant (through its partner Ms Virginia Murray, who is a Greek-qualified lawyer) acted negligently in relation to provisions which should have been and which were not incorporated in each of the 2007 agreements relating to investments made by the Defendant in the Greek PVs and the advice given by that firm or the lack of it concerning those matters;

    b) In consequence, the interests of the Defendant were not properly protected; and that

c) The Defendant has thereby suffered loss which comprised first, loss of profits which he would have received if it had not been for the Claimant's negligence, and second, wasted expenditure.

6. The response of the Claimant in outline is that:-

a) Ms Murray was instructed to draft the 2007 agreements, or at least the First Agreement along the lines of a written document entitled the "Points for Agreement" provided to her by Mr Weinerman as supplemented by oral instructions and as drafted for another investor for whom he acted, Mr Jacob Engel. Matters such as the corporate structure to be used had been determined by the Defendant's agent, Mr Weinerman, who the Defendant now accepts acted as his agent;

b) Ms Murray of the Claimant complied with this obligation. If, as is alleged by the Defendant, the Claimant was also obliged to give advice, then the advice given was not negligent, but it was appropriate;

c) Even if the Claimant had acted negligently, the Defendant and/or his agent, Mr Weinerman, had been contributorily negligent;

d) The Defendant has not suffered the losses alleged or sustained the wasted expenditure alleged. In any event, he cannot recover both;

e) In any event, even if the Defendant had suffered the loss alleged or sustained the wasted expenditure alleged, such matters were not caused by the negligence of the claimant but by other factors, such as the decision of the Defendant to promise to make substantial payments to Mr. Rinis even though not obliged to do so under the 2007 agreements and then his failure to make those payments when promised or at all; and that

f) Even if the Claimant was obliged to give advice and did so negligently, this did not cause any loss to the Defendant. In so far as the Defendant has suffered loss (the extent and nature of which is denied) it is then contended that, inter alia, (i) even if the 2007 agreements had instead been drafted as contended by the Defendant, he would not have availed himself of those rights and/or would still have suffered the alleged loss alleged; and (ii) the losses alleged were caused by other factors, including but not limited to first, the amendments agreed by the Defendant to the 2007 Agreements without the involvement of the Claimant, second, the Credit Crunch and the ensuing financial problems in Greece, and other factors not connected with the way in which the Claimant performed or ought to have performed its services.

7. As I will explain, just before closing submissions were made, the Defendant's counsel made radical changes to the allegations of negligence against the Claimant by not pursuing some issues and also raising issues, some of which are

said by the Claimant's counsel not to have been pleaded. The central issues on the counterclaim relate first, to the scope and nature of the Claimant's retainer; second whether the Claimant acted negligently; third, whether any breach of retainer committed by the Claimant caused the loss and damage alleged; and finally, the amount of the Claimant's loss and wasted expenditure.

8. Mr Michael Pooles QC, counsel for the Defendant made it very clear both in his written opening and in answer to a question from me at the outset of the hearing that as appears from the pleadings, the Defendant's complaints and allegations of negligence against the Claimant do not extend to any matters other than or later than the drafting of the 2007 agreements. In some material supplied by his counsel after the end of oral submissions, the Defendant now seeks to complain about the Claimant's conduct subsequent to the drafting of the 2007 agreements, but I will not comment on these very late and unpleaded allegations, save to state that my preliminary impression is that there is no merit in any of these post-2007 agreement complaints.

9. The matter with which this judgment is concerned arises by way of a Counterclaim as the Claimant initially brought a claim for its outstanding fees against the Defendant. On 29 November 2012, these claims were the subject of a successful summary judgment application determined by His Honour Judge Mackie QC, sitting as a Judge of the High Court. The Defendant then paid £22,109.24 into Court in satisfaction of that judgment in favour of the Claimant pending determination of the counterclaim.

10. I am very grateful for the admirable and detailed oral and written submissions from Mr Ben Hubble QC and Ms Pippa Manby, counsel for the Claimant, and Mr Pooles QC and Mr Gary Blaker, counsel for the Defendant. I must explain that I have considered have but necessarily not dealt with every point that they have raised.

11. An issue in this case relates to the corporate entity, which should have been used when setting up the Greek project companies for the Defendant's investment. Any type of corporate structure could apply for exemption decisions. It is important to bear in mind that there are four main types of company/partnerships in use in Greece and they are:-

    i) **SA *"société anonyme"***, which are companies limited by shares, which in 2007 required EUR 60,000 paid up initial capital. They are similar to an English limited company. They cost about EUR 5,000 to set up and are relatively cumbersome to establish and run. Until just before Mr Pooles for the Defendant made his closing submissions, a feature of the case for the Defendant supported by expert evidence had been that the Claimant should have advised the use of a SA for the venture entered into by the Defendant, but this allegation is correctly in my opinion no longer pursued;

    ii) **EPE "*etairia periorismenis efthinis*"**, which were smaller companies, in 2007 requiring EUR 18,000 paid up initial capital. In these companies, liability was limited by capital contribution, but ownership of share parts was of a more personal nature with any decisions requiring a majority of

shareholders in number as well as the majority of the company's paid up capital;

iii) **OE *"omorrhythmi etairia"***, which are partnerships under Greek law which are discrete legal entities in which the partners have unlimited liability for the company's debts (and in that sense are akin to English general partnerships). They are cheap and quick to establish as the agreement between the partners is not subject to any particular formality and is simply registered with the local court. There are no minimum initial paid-up capital requirements; and also;

iv) **EE "*eterrorhythmi etairia*"**, which are also partnerships under Greek law which are discrete legal entities in which one of more partners has unlimited liability, whilst the liability of the other partners, who play no role, is limited to their contribution; in that sense, they are similar to the old English limited partnerships established under the 1907 Act. They are cheap and quick to establish as the agreement between the partners is not subject to any particular formality and is simply registered with the local court. There are no minimum initial paid-up capital requirements. Just before Mr Pooles made his closing submissions, the case for the Defendant became that the Claimant should have advised the use of EE entities for the project companies.

12. I propose now to set out in more detail first the issues in this case in section II below, second my views on the witnesses in section III below and then set out the chronology in section IV below before determining the issues.

II. The Issues

13. The case for the Defendant is that the Claimant failed to exercise reasonable skill and care when drafting the corporate and contractual provisions in the three 2007 Agreements, and also in relation to the advice that it gave, or that it failed to give concerning these arrangements. In essence, the complaints are first that these agreements did not in Mr Weinerman's words "obey the Points for Agreement" which were not drafted by the Claimant, second and that they failed to provide the Defendant with the appropriate protection when then the Defendant and Mr Weinerman fell out with Mr Rinis the counterparty to the three 2007 agreements, so that in the words of the Defendant's opening:-

> "Mr Rinis having been vested with the ownership of those companies was placed in a position where he could and did hold [the Defendant] to ransom over the years receiving sums significantly in excess of those sums to which he would otherwise have been entitled under the agreements"

14. The Defendant's case is that as a consequence of the lack of protection given to the Defendant in the 2007 Agreements, Mr Rinis was able to demand exceptionally large payments from the Defendant by the use of threats to sell the PV licences if those payments were not made. In consequence, it is contended by Mr Pooles that the Defendant has lost the majority of the 161 PV licences that he anticipated that he would have received pursuant to the three 2007 Agreements. It

is also said that in consequence of these breaches of the Claimant's retainer, the Defendant was deprived of control over the applications for the exemption licence for PVs and he was therefore unable to advance the applications promptly or to take control over the projects including their assets and rights.

15. The Defendant claims that as a result of the Claimant's negligence, he has lost the opportunity to sell the PV Parks and he contends that his loss of profits under this head to be €8,705,500. In addition, he seeks to recover very substantial expenditure amounting to €4,220,248 incurred by him in order to seek to obtain control over the projects.

16. Until the close of evidence, the case for the Defendant was a multi-facetted collection of allegations including, for example, allegations that the Claimant failed to advise that the appropriate corporate body to hold the licences for PV plants was an SA company. Furthermore, the Defendant's expert on Greek company law, Mr Yanos Gramatidis, stated that there were various different and in some cases very intricate corporate structures which the Claimant, as firm of reasonably competent Greek lawyers, should have advised the Defendant to adopt.

17. After receiving the closing written submissions of both parties and immediately prior to the oral hearing of final submissions, I was concerned as to the exact nature of the Defendant's allegations of negligence. I therefore asked the Defendant's counsel to explain the allegations of negligence, which they then wished to pursue. Mr Pooles and Mr Blaker then produced a very helpful note, which identified the issues they wished to pursue, and by implication it indicated that many matters had been abandoned. I should stress that the case for the Defendant is still based on the negligence by the Claimant in respect of the structure and of the form of the 2007 Agreements and not on subsequent matters.

18. The Defendant now contends that the Claimant ought to have included in the three 2007 Agreements provisions for (i) the immediate appointment of a minority shareholder nominated by the Defendant; (ii) the use of an EE entity so as to permit the appointment of a minority shareholder without unlimited liability; and (iii) pledges which protected the totality of any claim which the Defendant might have in respect of his rights concerning the project companies.

19. It is also now said that the Claimant also ought to have provided clear advice to the Defendant through Mr Weinerman concerning (i) the immediate need to appoint a minority shareholder; (ii) the absence of protection over the assets of the project companies if a minority shareholder was not appointed; (iii) the absence of any control over assets by reason of delivery of documents; (iv) the limited ambit of the pledge of proceeds; and (v) the steps necessary to render such a pledge effective. It is also contended that the Claimant ought not to have inserted various provisions into the 2007 agreements and I will return to consider them.

20. The Claimant denies that it had either a duty to the Defendant to consider his position independently of that of Mr. Engel or a freestanding duty to consider the position of the Defendant separately. Mr Hubble contends that, in the words of his speaking note for his closing oral submissions, the Claimant only owed Mr Engel:-

> "a duty to prepare a draft agreement following on from the Points of Agreement, to provide appropriate explanations of significant risks arsing from the draft agreement, to ask for instructions as necessary and then to act on and to incorporate further instructions received".

21. I have already set out in paragraph 6 above the response of the Claimant and why it is contended that the Claimant was not negligent, that if the Claimant was negligent, the Defendant would not have acted on the appropriate advice, and that the Claimant's negligence did not cause the Defendant any loss of profits or wasted expenditure.

22. Before setting out the issues, it is appropriate to explain that Counsel agree that although English law governs issues relating to the formation of the retainer of the Claimant, in deciding whether the Claimant has discharged its obligations under the retainer, Greek law should be applied in order to determine whether Ms Murray acted as a reasonably competent Greek lawyer when drafting each of the 2007 Agreements and when advising or failing to advise in respect of each of them. Evidence on these issues has been adduced in the form of written reports and the oral evidence of Greek law experts as well as from Ms Murray. It is also agreed that issues such as to the causation and quantum of damage are governed by English law. Thus, for example, the burden of proof of showing that the Claimant's negligence was the cause of the alleged loss is on the Defendant.

23. In the light of my findings, it is unnecessary to consider whether the Defendant has been contributorily negligent. The issues that have to be considered are:-

    a) Whether the Claimant's Retainer included a duty to advise the Defendant ("The Retainer Issue") (see paragraphs 205 to 217 below);

    b) If the Claimant's Retainer included a duty to advise, whether this was complied with and also, if the Claimant had acted negligently, whether the Defendant would have acted differently from the way he actually did if he had been advised properly ("The Breach Issue") (see paragraphs 218 to 291 below);

    c) Whether there is any causal connection between any of the Claimant's negligence and the loss of profit claim of the Defendant ("The Causal Connection/ Loss of Profit Issue") (see paragraphs 292 to 320 below);

    d) Whether there is any causal connection between any of the Claimant's negligence and the wasted expenditure claim of the Defendant ("The Causal Connection/Expenditure Issue") (see paragraphs 321 to 331 below);

    e) What losses are recoverable by the Defendant for the loss of profits claim ("The Quantum Issue on Loss of Profits Claim") (see paragraphs 332 to 384 below); and

f) What losses are recoverable by the Defendant for the wasted costs claim ("The Quantum Issue on Loss of Profits Claim") (see paragraphs 385 to 386 below).

III. The Witnesses

(i) Introduction

24. There are a number of factual issues which have to be resolved in this case and they relate to events and matters which occurred between four and six years ago. As one might expect, there have been many emails passing between the parties as well as many other relevant documents. Leggatt J stressed the obvious importance of documentary evidence in *Gestmin SGPS S.A v Credit Suisse (UK) Limited and Credit Suisse Securities (Europe) Limited* [2013] EWHC 3560 (Comm) when he observed that:-

> " 22…the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

25. At the time when the events which led to the present action occurred, those involved with them would have had no reason to believe, or even to suspect, that they would be or even might be questioned about them between four and six years later in a Court in November 2013. In those circumstances, the documentary evidence is especially important and therefore disclosure has been and is of great importance. Indeed not only does contemporaneous correspondence enable a Court to evaluate the evidence of witnesses especially those who produced the documents, but also it helps the witnesses to recall events.

26. The comments of Leggatt J are particularly relevant in a case such as the present one in which, as I will explain, the Defendant's side have not given full disclosure as they contend belatedly that documents can no longer be produced. Indeed, when further documents were brought to Court by Mr Simos, who was not a party to the action, it undermined aspects of the Defendant's case. I will explain my views on the reliability of the evidence of the witnesses starting with those involved in the decision of the Defendant to invest in the PVs.

(ii) Mr Abraham Weinerman

27. Mr Weinerman is an Israeli, who had acquired experience in the solar energy sector in Israel since 1978, and in PV projects in Germany since 2006. He is clearly a very experienced and an astute businessman who has played a pivotal role in the matters which have given rise to this counterclaim. He acted for the Defendant in his dealings with the Claimant before any of the 2007 agreements were made and he was also closely involved in all subsequent matters. Mr Weinerman must have been aware when he was giving evidence that he was responsible for his principal, the Defendant, entering into the 2007 Agreements with Mr. Rinis which have cost him a great deal of money because the counter-party, Mr Rinis, was either unable or unwilling to finance the work which he was obliged to do under the 2007 Agreements and in consequence, the Defendant promised to make the payments, which were met late or not at all. Mr Weinerman also had an arrangement with the Defendant that in return for his services, the Defendant would permit him to receive 25% of the profits made by the Defendant, but that he would not be responsible for the losses. He is also now involved in litigation in Greece relating to the PV projects.

28. Mr Weinerman explained in his oral evidence, but not in his witness statement, that his laptop had been stolen in Verona in 2009, and he contended that therefore he could not access his emails. Mr Hubble says that this was the first occasion on which the Claimant had been informed about this and this statement was not disputed. No reason was given as to why Mr Weinerman could not access his emails from a different device or indeed what attempts had been made to access his emails in that way. The Claimant's solicitors had made a number of requests to the Defendant's solicitors for the disclosure of documents held by the Defendant's agent Mr Weinerman. They explained on 30 July 2013, that "the hard disk of Mr Weinerman's computer was burnt". On 4 September 2013, they stated that Mr Weinerman prior to 2011 worked on different computers in different offices and that "he also had two laptops, one which broke and which he discarded [and] another one which he continues to use".

29. Mr Weinerman also had two memory sticks with documents on them, but they had been found to be ruined. They were the subject of some investigation which led to 43 documents being produced, but at least half of the papers comprise a spreadsheet from 2009 which is said to be incomprehensible in places. The earliest correspondence retrieved in this way was a memorandum from the Claimant dated 12 May 2008 and the earliest email is dated 12 October 2009.

30. The absence of many emails and the changing excuses for the failure to produce them is a source of substantial concern, particularly as Mr Weinerman sent many emails and also because, as I will explain his principal, the Defendant, received, sent or had sent on his behalf emails to which he too contends that he cannot obtain access for reasons which I will explain. Such emails would provide the only contemporary evidence relating to what was discussed between Mr Weinerman and the Defendant and others, as well as the attitude of Mr Weinerman and the Defendant on various significant matters (such as to the contractual rights given to them in the 2007 agreements) or what was known or intended by them at different times. It is now belatedly accepted by the Defendant that Mr Weinerman was his agent with the consequence that he, that is Mr

Weinerman is required to disclose those emails in his control (see *Murray v Walter* (1839) 41 ER 433).

31. Not surprisingly, because many aspects of this case related to matters arising more than six years ago and because Mr Weinerman did not have his emails to refresh his memory, there were occasions on which his evidence was unreliable and particular in his recollection of what he knew or what he had been told about the critical issue relating to various corporate structures in 2007 prior to the signing of the agreements. He, for example, denied that EPEs were discussed prior to mid-June 2007, notwithstanding that Ms Murray had referred to this type of company in her letter to him of 23 April 2007 and in the quotations provided to Mr Weinerman by the Claimant for the formation of such companies following the meeting on 13 June 2007.

32. My conclusion was that I should treat Mr Weinerman's evidence with substantial caution bearing in mind these factors. In addition, his inability to retrieve his pre-2009 emails means that the Court has not been provided with all the relevant evidence and this is important factor in determining those issues on which the burden of proof is on the Defendant.

(iii) Mr Itzhak Ostrovizky

33. The Defendant, Mr Itzhak Ostrovizky, is an Israeli who prior to 2008 had set up a number of businesses including manufacturing aluminium, particularly for window frames and then being involved in a textile business with a number of factories manufacturing clothing. Much of his commercial life has been spent in Germany, including building up a significant property portfolio and developing properties that were reclaimed after reunification. In addition, he developed a shopping centre in the Czech Republic, which he sold for a very substantial profit. He lived in Berlin until 2008 when he returned to Tel Aviv.

34. The Defendant has explained first, that throughout his business career he had relied on other people to carry out day-to-day tasks for him and second, that he has "enjoyed some considerable success over the years". He particularly trusted Mr Weinerman. Indeed, the negotiations carried out leading to the 2007 agreements, which are the subject of the present action, were conducted on behalf of the Defendant solely by Mr Weinerman and the Defendant was preoccupied with other business ventures.

35. Mr Hubble criticises the Defendant's failure to give proper disclosure as he had purported to make proper disclosure under cover of four separate disclosure statements, but in none of them was any reference made to difficulties accessing his emails and other documents. All the disclosure statements appear to have certificates personally signed by the Defendant which indicate that he understood his duty of disclosure and that he searched for electronic documents as the certificates related to:-

> "All emails passing between myself, my daughter Ilanit, Mr Avi Weinerman, Mr Damien Isaacs, Anastasia Chronopoulou and the claimant and other third parties

relating to this action which are either in my possession or have been provided to me by the aforementioned."

36. The Defendant accepted that he knew that in litigation relevant documents have and had to be provided to the other side, but he now explains that he had searched his email address ostrovizky@freenet.de, and he also had at least one German email address. His evidence when he first gave oral evidence was that he was unable to search all of his emails, because he said that he could only search back to a certain date of which he was unaware. The Defendant had to be recalled to give evidence when further documents were disclosed by Mr Simos, and which showed that the Defendant must have received emails which he had not produced. He then explained that he could not access emails on his Freenet account prior to 2009 as it had run out of space.

37. When the Defendant was asked why his solicitors had not stated this when the Claimant's solicitors were pressing for disclosure, the Defendant's response was "maybe it was said on the phone", but no evidence has been adduced to support that suggestion and so I cannot accept it. The Defendant added that he had checked with Freenet about how he could access this account, but he could not say exactly when this check was made such as whether it was in 2011 or in 2012. In all fairness to the Defendant and his solicitors, I should add that his solicitors tried for some time to obtain the relevant documents from Mr Simos, who was then Mr Weinerman's agent, and he brought them to Court when he gave evidence and this led to the Defendant being recalled to give evidence.

38. The Defendant said that he had never sent more than 10 emails in his life but Mr Hubble showed that the extensive bundle of documents prepared for this trial contained or referred to more than 10 emails sent by the Defendant. It was said on behalf of the Defendant that his English was not good, but they were written in immaculate English which the Defendant is not capable of, and so they were probably written on behalf of him. So I do not attach much weight to this complaint of Mr Hubble in the light of his other more serious complaints.

39. More importantly, there are other relevant emails sent by the Defendant which were not disclosed in the period from 2011 to 2012 and which was a period during which the Defendant does not claim to have had problems accessing his emails. There are, for example, emails from Ms Chronopoulou, who replaced the Claimant as the Defendant's solicitor where in an aggrieved tone she defends her conduct of his affairs and which is a response to a lengthy email from the Defendant which does not appear in the disclosure. There are other emails of 13 February 2012 and 21 October 2012 from Ms Chronopoulou to her partner, Ms Ioannidou and to the Defendant and which refer to having received emails from the Defendant.

40. When the documents provided by Mr Simos when he came to Court to give evidence were analysed, it was apparent that some of the emails disclosed by Mr Simos relate to key events and issues in disputes between the parties such as one from Ms Murray of 26 July 2007 forwarded from Mr Simos to the Defendant on 27 July 2007. This email to which I refer in greater detail in paragraph 81 below contained a draft of the share purchase agreement and an explanation from Ms

Murray relating to the pledge and to which I will refer in greater detail when setting out the chronology.

41. This email was put to the Defendant when he was recalled to give evidence and when asked if he had received this email, his response was that:-

    i) "it doesn't look like an email that was sent. ..I believe that I never received this email";

    ii) When asked if he had received this email he said "I believe – I don't not remember. I remember the – I am one hundred per cent sure that I didn't. Not because I know the content of the email, but because of the date. I was not involved in it at all at the time and I didn't know anything about it..";

    iii) He had sought the advice of "clever young people" on the authenticity of 27 July 2007 email provided during the trial by Mr Simos, but apparently he did not ask them to tell him what the email said; and that

    iv) The part of email of 27 July 2007 with his email address as a recipient "appears to me to be" a forgery and that is what " the clever young people said to me" even though there was no expert evidence or any credible support for that contention.

42. Some of the emails in the bundle provided by Mr Simos, but not by the Defendant and Mr Weinerman, contradict the evidence of both of these gentlemen on some aspects of their dealings. Another aspect of the Defendant's evidence which caused me great concern was that when the Defendant was being recalled, he explained all his sufferings were the fault of Ms Murray as he believes "everything was destroyed by Virginia". I was unable to understand how he believes that she alone is responsible for the sums that he lost in Greece which he claims total €10 million notwithstanding he was previously worth many more tens of millions of Euros.

43. In that evidence, he very surprisingly ignored the difficulties that he faced on account of the Credit Crunch, the consequent freezing of his accounts and above all his decision and promise to fund the activities of Mr Rinis notwithstanding that he was not obliged to do so under the 2007 agreements. By doing this, the Defendant reduced the incentive on Mr Rinis to complete his obligations under those agreements which he had to complete in order to receive anything other than small initial payments. It also enabled Mr Rinis to keep making demands on the Defendant and, as I will explain, his failure to make these payments promptly led to or aggravated the breakdown of his relationship with Mr Rinis.

44. Mr Pooles contends that the Defendant was a credible witness and that the answers given by him were consistent with his written testimony, while the answers provided on the last day when he was recalled do not in any way diminish the reliability or the credibility of his evidence. I readily appreciate and do take into account the facts that it must have been difficult and a great strain for the Defendant to return to this country to give evidence and then to be recalled a few days later to give further evidence.

45. Nevertheless I have concluded that on numerous occasions, the Defendant gave answers that show that he was prepared to say whatever he considered most likely to advance his case without considering whether his answers were correct, and in particular in relation to the email of 27 July 2007 and his statement that "everything was destroyed by Ms Murray". He also admitted that in 2007, he was preoccupied with other business ventures as he explained that he "had two large deals going on in Berlin… a medical centre in the Czech Republic and a building to convert into a hotel in Germany". Further, he was not involved in the discussions with Ms Murray and Mr. Rinis in the period leading up to and immediately after the 2007 agreements. I was left in no doubt that these matters whether considered individually or cumulatively led me to the conclusion that he was a witness whose evidence I should, approach with extreme caution.

(iv) *Ms Ilanit Ostrovizky*

46. Ms Ostrovizky is a graduate in Law of Queen Mary Westfield College and a member of the Israeli Bar. Most of her career has been spent in developing various business ventures. She is the daughter of the Defendant and she provided a lengthy witness statement, which was for the most part not evidence of fact, but more of a commentary on the documents. She returned to Israel from the Czech Republic in 2007, but she was not involved in the PV licences with which this case is concerned in 2007. At the end of 2008, Mr Weinerman kept her informed of developments, but she was not involved in, for example, the negotiations leading up to the crucial November 2008 agreement. She then also had other primary responsibilities as a result of the Credit Crunch and so she was not involved in the attempts to sell the project companies to Silcio and Energetica in 2009. Ms Ostrovizky sought to give evidence both in her witness statement and orally about matters of which she had little or no actual direct knowledge and indeed it was accepted eventually that her evidence was largely comment. In so far as she commented on matters of which she had actual direct knowledge, she was a reliable witness.

(v) Ms Virginia Murray

47. Ms Murray was a careful and reliable witness, but unfortunately she did not make attendance notes. She explained that there was no firm-wide rule for the provision of attendance notes. Indeed, I accept the evidence given by Ms Faitakis, the Claimant's expert on Greek law, which was that it is not common practice for Greek lawyers to keep attendance notes or records of meetings or of telephone calls especially if there is no specific task assigned to them after the meeting or the call for which they need to have a reminder or the details.

48. I regard her as a totally honest witness who was prepared on occasions to state when she did not have personal knowledge of matters or that she could not remember them. Where there was a dispute between her evidence and that of Mr Weinerman, it was clear that her recollection was much more reliable. Of course, this finding only shows how I should approach her evidence, but that does not resolve the issue of whether she acted negligently.

(vi) Mr Athanasios Orestis Simos

49. Mr Simos, who was the assistant of Mr Weinerman, was involved in the developments leading up to and after the 2007 agreements. When he gave evidence, he provided a number of contemporaneous documents, which the Defendant ought to have disclosed but had not done so. They were of value in deciding this case. His sympathies are now with Mr Rinis, and he is involved in litigation in Greece against the Defendant with whom he has fallen out.

50. I will bear all these matters in mind when considering the value of his evidence which I will consider with special care and in the light of the other evidence whether I should accept it. Mr. Simos was criticised by Mr. Pooles for his attitude to disclosure in this action as he had failed to comply with earlier requests for his documents even though he was not a party to this litigation. I will bear those criticisms in mind when considering with substantial caution whether his evidence on different matters is credible.

(vii) Mr Christos Rinis

51. Mr Rinis is the Managing Director of Ekoplyn, which is a business started for the purpose of manufacturing natural gas. Between 2000 and 2006, he was a consultant advisor to the Minister of Development in Greece and he undertook feasibility studies for the construction of PV parks. By 2006, he became interested in the development of PV parks.

52. Significantly, it was very evident that there is very substantial hostility between him, on one hand, and the Defendant and Mr Weinerman, on the other hand, because Mr Rinis feels that he has been badly treated by the Defendant, who for his part considers that he is the victim of the actions of Mr Rinis. He is involved in litigation with the Defendant.

53. The 2007 agreements protected the Defendant as Mr Rinis had to fulfil all his contractual obligations before he could receive anything other than a small initial payment but Mr Rinis demanded payments from the Defendant. By promising to fund Mr Rinis' activities without any obligation to do so, the Defendant undermined this protection as he left himself open to repeated demands for more money to perform his contractual obligations to which the Defendant seemed to yield even though he was not entitled to those sums under the 2007 Agreements. Mr Rinis showed himself to be disreputable in dealings with the Defendant and other parties with which this judgment is not concerned.

54. As I will explain, he would not have been able to behave like this if the Defendant had not disregarded the contractual regime by not taking advantage of the provisions in the 2007 Agreements inserted by the Claimant for the protection of the Defendant and also made the promises to make payments to Mr Rinis. I will bear the allegations made against him in mind when I consider with extreme caution whether his evidence on particular issues is credible.

(*viii) Mr Aris Papachristou of Silicio and Mr Rene Battistuta, the Chief Executive Officer of Energetica.*

55. Both of these witnesses gave evidence in relation to potential deals made by their respective companies to purchase parks, but which in the circumstances did not

proceed. It is common ground that they were both honest, impartial and reliable witnesses on these issues.

IV. The Background

(i) The PV projects in Greece

56. As is widely known, many efforts have been made in recent years to develop ways of using the elements to produce energy, such as by using wind farms. Another source is solar energy and that was particularly attractive for countries with sunny climates. Not surprisingly, the Greek authorities sought to use solar energy. So in June 2006, a Greek law permitting ground-mounted PV projects to be built on agricultural land was passed. Implementing regulations were introduced in April 2007. Because of favourable feed-in-tariffs and government grants available to investors, there was much interest in investing in these PV projects in Greece. A higher feed-in-tariff was granted to projects which were situated on Greek islands and which were not connected to the mainland electricity grid, due to the higher risk of the non-absorption of the electricity generated at times of limited demand. Those islands, and in particular the larger ones such as Crete, were seen as attractive investment options given the high number of solation hours.

57. PV Parks with a generating capacity above 150 Kilowatt Generating capacity peak traditions ("kWe") required a production licence from the Greek Regulatory Authority for Energy ("RAE"). The application procedure for such production licences was bureaucratically onerous, as it required applicants to establish that they had sufficient funds to cover at least 18% of the budgeted investment costs. In contrast, smaller projects of between 20kWe peak and 150kWe peak only required a RAE decision stating that a production licence was not required; such an exemption decision required a much simpler and less bureaucratic process. All of the projects with which this claim is concerned were of the smaller kind of under 150kWe capacity and so they only required exemption decisions.

58. The RAE was concerned to prevent multiple applications for a number of contiguous parks so as to create a larger park in common ownership in one area as they would be the equivalent to a larger park exceeding 150kWe capacity for which the abridged exemption process was not appropriate. So the RAE would not have approved an application for such parks by a single entity.

(*ii) Mr Weinerman's Investigations into Investment in PV projects in Greece*

59. As I have explained, Mr Weinerman, who is a key figure in this dispute, is an Israeli businessman and a semi-retired engineer who had acquired experience in the solar energy sector. By the spring of 2007, he became aware of the potential for investments in PV projects in Greece, but at that time he did not have any recent and relevant experience in setting up companies in Greece or in dealing with the corporate structures necessary to invest in such projects in that country. He sought to obtain the necessary information for his investors and to negotiate for them. His role was essentially to act as an intermediary between the investors, who he had identified, and the Greek authorities as well as the legal advisors and Mr. Rinis.

60. Mr Weinerman was conscious first, that he required to be advised about the relevant investment laws for renewable energy in Greece, and second, that he also needed assistance as he did not speak Greek. At about this time in March 2007, Mr Weinerman was introduced to Mr Orestis Simos, who is a Greek/US national with connections in the renewable energy market. He was available to assist him in reviewing potential business ventures which would be of interest to Mr Weinerman's investors. One such investor was Mr Engel who is a leading Israeli businessman and for whom Mr. Weinerman had worked prior to 2007. Mr Engel indicated he was interested in investing in PV plants through his companies. So it was agreed that Mr Weinerman would represent him and they would aim towards entering into a joint venture. Mr Weinerman instructed Mr Simos to find professional advisors and local connections in order to obtain information to assist Mr Weinerman in developing a scheme for his PV investment projects. Mr Simos was essentially the assistant of Mr Weinerman.

61. During the period from March to June 2007, Mr Simos and/or Mr Weinerman had many meetings with various professional advisors and local businessmen in Greece in order to gather as much free information about PVs as possible with a view to formulating the most advantageous strategy and corporate structures for the proposed PV investment. They visited various professional teams, including at least eight lawyers and potential developers in this period for free initial consultations and for "beauty parades". During this period, Mr Weinerman and Mr Simos acquired from these consultations much information about the PV market and how to bid for exemption decisions as well as about prospective partners and advisors. The Claimant's case is that Mr Weinerman's approach in selecting these advisors and the nature of the project was influenced largely by costs considerations. It is clear that costs were important to Mr Weinerman and I accept the evidence of Mr Simos that "at the end of the day all Mr Weinerman seemed to care about at this stage was what it would cost as this was the specific goal by him and the investor partners".

(iii) The involvement of the Claimant and Ms Murray

62. One of the professional advisors consulted by Mr Weinerman and Mr Simos for free advice was Ms Virginia Murray of the Claimant who met with Mr Weinerman and Mr Simos on 18 April 2007. The Claimant is a well-known international law firm with offices in many countries. Ms Murray qualified as a barrister in October 1991. She practised as a barrister in London for 5 years in the Chambers of Mr Stephen Coward QC, and which are now the Chambers of Mr Simeon Maskrey QC, before moving to Athens in 1997 following her marriage to a Greek national. She qualified as a Greek lawyer in 1998.

63. Ms Murray worked as a Greek lawyer for the Greek commercial law firm of I.K.Rokas & Partners from 1997 to 2007, and latterly while working there, she became increasingly involved in corporate and financing in the wind energy sector as well as with insurance law and general commercial law. She joined the Claimant firm in March 2007 as a partner in its Project and Structured Finance Group. She has since November 2007 been based in Athens and has a solely Greek-Law practice.

64. The meeting with Ms Murray of 18 April 2007 was followed by a letter sent by Ms Murray on 23 April 2007 to Mr Weinerman on behalf of Engel Europe Limited in which she set out the Claimant's costs for the establishment of limited liability companies. She also stated that she would recommend the establishment of SA companies, even though they required €60,000 initial capital as opposed to €18,000, which was required for an EPE, which was the small limited liability company. She explained that the sale of SA companies was more tax beneficial as only these companies could obtain bond loans thereby avoiding stamp liability, but the costs of establishing an SA company was in the region of €5,000.

65. On 21 May 2007, Mr Jacob Engel and Mr Weinerman signed a letter confirming that Mr Simos had authority to act for Mr. Engel in Greece.

66. A second meeting took place on 13 June 2007 between Ms Murray, Mr Simos and Mr Weinerman and this was followed by a letter from Ms Galani of the Claimant to Mr Simos and Mr. Weinerman regarding the establishment of an EPE company. On 15 June 2007, Ms Murray wrote to Mr Weinerman at Engel Europe enclosing the terms of engagement and explaining that they had *"agreed a fee of €3,500 for the establishment of a limited liability company ("EPE")… once we have resolved on the structure; it may be better for all of us to agree on a fixed or capped fee so that you can predict costs".*

67. On 21 June 2007, Ms Murray made a "know your client" enquiry of Mr Engel. This is an English concept, which, as I will explain, is neither known nor adopted by lawyers in Greece.

68. By this time, Mr Weinerman had discovered a great deal about the possible structures of his investment. He knew from what Ms Murray had told him that if time and costs were not issues, then it would have been preferable to use SA companies for the project companies rather than any other form of company. Such companies had tax advantages and would potentially provide an investor with more control than partnerships would. They did, however, require working capital of €60,000 per company and there were also additional establishment and legal costs. There were time pressures as the opening date for the applications for Mytilini projects was 1 August 2007 and it was thought that a "first come, first served" approach would be adopted for dealing with the applicants.

69. By this time, Mr Weinerman also knew various matters from information supplied to him, such as in the enclosure to the email of 17 June 2007 from Mr Simos. First, he knew that in an OE partnership, the partners had unlimited liability and so that he would need to find at least two partners per partnership to undertake that liability, because Mr Simos was not prepared to take on this role. Second, he knew that an EE partnership required an active partner to assume unlimited liability. Third, Mr Weinerman also appreciated that although the law stated that exemption decisions would be granted in ten days, nobody in Greece actually believed that these decisions would be issued so quickly. Mr Weinerman himself thought that they would take a matter of months and his evidence was that it would take "two, three, four months". Fourth, Mr Weinerman also knew that at the time when the grants for exemption were applied for, the applicant would need to be able to show access up to 25% of the very substantial construction costs. Fifth, he also appreciated either from his own analysis or from what Mr Simos had

told him (but not from what Ms Murray had explained) that it would be sensible to have a number of companies in order to pursue multiple applications in the same location so as to circumvent the restrictions imposed by the RAE on one applicant making many applications in the same location. Sixth, he knew that one of the advantages of this cluster theory was that it would reduce infrastructure costs when it came to the construction of the parks. Finally, he knew about the uncertainty in the application process in what was a relatively new market so that it would be best to have an agreement under which the risk lay with the developer and not with the investor until the licensing process was completed and the licence obtained.

70. On 15 July 2007, Ekoplyn made an offer to act for Engel. On 20 July 2007, a document entitled "Points for Agreement" was signed by Mr Rinis for Ekoplyn, who was described in that document as "the Developer", and Alon Abdani, the Vice President of the Engel Group for the Cypriot company ("EW"). Those terms, which related to 10 PV installations each of 0.15 or 0.10 MWp in Mytilini had been negotiated and agreed by Mr Abdani and Mr Weinerman in Israel, but without any involvement of the Claimant. They included provisions that:-

a) the Cypriot company, represented by Mr Abdani, would make a down-payment of € 2,000 per application and would pay €3,000 to each company on full registration;

b) Mr Rinis and Ekoplyn Hellas would register five new companies to submit the full applications, required by RAE on 1 August 2007 and they would be to receive a Feed-In-Tariff of € 0.5 or 0.45 per kilowatt hour and 40% investment grants;

c) under point 6, Mr Rinis and Ekoplyn would hold the companies as "trustee" for EW and, besides submitting the above application and dealing with the approval process, the Developer "will not do any operation with them and will not create any obligations";

d) under point 7, the ownership of the companies would be assigned on "blank" to EW and all their statutory documents would be held by EW's lawyers;

e) the Developer would sign rental agreements for each of the 10 plots of land which would start after connection to the grid and then for a 20 year period; and that

f) upon grant of each application, EW would decide whether to request the Developer to proceed to the construction stage. If it decided not to engage the Developer, then €30,500 would be paid to them within 30 days to settle all the claims and "relations" between them. If it was decided to engage the Developer, a separate construction agreement would be reached between the parties.

71. It had also been agreed with Mr Rinis that he would provide associates to be partners in the project companies which required more than one partner. Mr

Weinerman had also determined predominantly for tax reasons that he wanted the project companies to be owned by a Cypriot holding company.

(iv) Mr Weinerman's Instructions to the Claimant to act for Mr Engel

72. On 23 July 2007, there was a telephone call between Mr Simos and Ms Murray in which he instructed her to produce the first draft of a development agreement between Mr Engel and Ekoplyn based on the Points for Agreement. A fee of €1000 was agreed as being the fee of the Claimant for producing this agreement for Mr. Engel. Later on that day, Mr Simos emailed the basic Points for Agreement to Ms Murray. By this time, Mr Weinerman knew about the process for applying for PV exemption decisions as well as the different corporate structures that could be used. He did not seek advice from Ms Murray specifically on the corporate or shareholder structures once she had been instructed. It is necessary to explain in a little detail how Ms Murray went about preparing what became the First Agreement as this is relevant to the disputed issue of what her duties were as well as what advice was given by her at different times.

73. The evidence of Mr Weinerman, which I accept, was that he wanted the Claimant to produce an agreement which in his word "obeyed" the Points for Agreement. What is important is that he did not want or request specific advice on corporate structure for which he would have been charged € 30,000 to €40,000. As I have explained, he was very concerned about keeping the costs down until the exemptions decisions were made. Indeed, that was the reason why the Claimant was not instructed to set up the project companies as this was to be done by Mr Rinis under the Points for Agreement because it was cheaper for him to do it rather than to entrust this task to the Claimant.

74. On the following day, Ms Murray sent an email to Mr Weinerman with a copy to Mr Simos confirming that she would produce a first draft of the Agreement with Ekoplyn. She pointed out that the "know your client" information which she had requested relating to Mr Engel was still outstanding.

75. At 11.42 on that day, Ms Murray sent to Mr Simos the draft Agreement with a copy to Mr Weinerman and she explained that the draft Agreement provided for "special-purpose companies". Ms Murray raised questions which had not been answered, including:-

> "*1. What sort of companies are these going to be? SA, EPE?*
>
> *2. What would their registered capital be? Surely more than the 7,000 you seem to be agreeing to pay for them?"*

76. This email was forwarded by Mr Simos to Mr Weinerman who was then in Italy. On the following day, Mr Simos instructed Ms Murray that Mr Weinerman had decided that the special purpose vehicles were to be OEs rather than SAs or EPE companies on grounds of costs as they were cheaper and quicker to establish. Ms Murray has explained that a final decision had been made on this issue, and that her advice was not being sought. She explained that some of the companies set up were OEs and some were EEs and that this was done to apply for contiguous

plots. Ms Murray observed that companies were not entitled to obtain exemption decisions for adjoining plots as this was deemed to amount to a circumvention of the more detailed requirements as to what amounted to a project with a generating capacity of above 150kWe. She said that she did not know at the time whether this might create legal problems and she was not asked to advise on this. I accept all Ms Murray's evidence on this matter.

77. On the same day, Ms Murray sent an email to Mr Simos with a copy to Mr Weinerman attaching a further draft to the Agreement and which provided for "special-purpose omorrythmes etairies (OE) companies".

78. Ms Murray also explained in the email that there were a number of other amendments made to reflect that there were OE companies with no share certificates and the transfer of ownership taking place by the registration of amended Articles of Association signed by the new and by the outgoing shareholders at the local court. She also stated that there should be notification that any OE company must have at least two members. This meant that Ekoplyn would have had to give Mr Simos the names of the other shareholders and it would have to be decided who would purchase the other shareholding on closing.

79. On 26 July 2007, Ms Murray sent an email to Mr. Simos with a copy to Mr. Weinerman attaching a further draft of the agreement referring to special purpose OE partnerships or EPEs and explaining that that she had amended the SPA to provide that project companies:-

> "can be either OE partnerships or EPE limited liability companies- in the latter case, there will be more money for the buyers to pay as each company will have a EUR 18,000 minimum capitalisation. I have also put Mr Rinis as well as Ekoplyn as a party, as I understand that he will be the majority shareholder of one or more Project Companies, rather than Ekoplyn…."

80. Later on the same day Ms Murray sent an email to Mr Simos with a copy to Mr Weinerman, stating that:-

> "I attach the SPA, with amendments to the definition of 'Grants', 'Permits' and increase to 99% of the Sellers' shareholding with an insertion at 3.6 concerning the feed-in tariff."

81. In a further email sent on that day to Mr Simos, Ms Murray attached a draft lease for the PV plots providing for rent to be payable only once the licence had been issued and also asking Mr Simos to pass the letter on to Mr Rinis in a third email sent on that day to Mr Simos and also sent to Mr Weinerman and Alon Avdani attaching a draft agreement providing for special-purpose partnerships (OEs), it was stated by Ms Murray that:-

> "*I attach an SPA with further revisions following my discussion with Mr Avdani. I have provided at Cl. 4.3 for a pledge over the proceeds of the shareholding of the OE (such as the profits); I do*

> *not think that it is possible to pledge the shareholding itself, as membership in a partnership is a personal right which cannot be subject to pledge.*
>
> *I have also provided that the conditions precedent at Clause 3.6 must be met in order for the transfer to take place, or waived by you (if you want to complete the transfer earlier to secure your position).*
>
> I have left the amounts for the development bonus as they are, and deleted the reference to EPEs. I can confirm that an OE can be converted into either an EPE or an AE at a later stage, you will have to consider all your options in this regard at a later stage"

82. This was the email which appears to have been forwarded to the Defendant and about which he was cross-examined and in respect of which he gave the answers which I have set out when dealing with his reliability as a witness in paragraph 40ff above

83. On 28 July 2007, Mr Alon Avdani sent an email to Ms Murray with comments on the latest draft Share Purchase Agreement. On the following day Mr Simos wrote to the Defendant relating to his commission. On 31 July 2007 Ms Murray prepared a further agreement.

(v) The involvement of the Defendant and the 2007 Agreements

84. In late July 2007, Mr Weinerman had told Ms Murray first that the Defendant wanted to enter into an agreement with the same wording and structure as that drafted for Mr Engel and second that he was aware of the projects and the agreements being envisaged. Ms Murray explained that Mr Weinerman had told her first that the Defendant, like Mr Engel, was an experienced and substantial investor, and second, that he was aware of the projects and the agreements made or to be made with Mr. Engel. Indeed, in evidence, Mr Weinerman explained that at a meeting with the Defendant in Berlin on 22 or 23 July 2007, he discussed with him the Points for Agreement point by point. I accept this evidence and do not accept the contrary evidence of the Defendant, who said that he was preoccupied with other business ventures so that he did not know anything about this.

85. The Claimant was not asked or instructed to give the Defendant any specific advice on the partnership structure. Ms Murray assumed that the advice that she had tendered in respect of Mr Engel would be relied upon by the Defendant. This assumption was clearly sound, as Mr Weinerman was acting for both Mr Engel and the Defendant, who explained that he left it to Mr. Weinerman to deal with Ms Murray and the developer, Mr Rinis, in Greece. Slightly better payment terms were negotiated for the Defendant than for Mr Engel.

86. A meeting took place at the Claimant's offices on 31 July 2007 which was attended by Mr Weinerman, Mr Rinis and Mr Simos at which the parties signed an agreement ("the First Agreement") between Mr Rinis and Ekoplyn of the one

part as sellers and Mr Weinerman and the Defendant, of the other part as buyer and founders of Cypriot Company to be established, of which Mr Weinerman and the Defendant were to be shareholders, relating to installations in Island Mytilini, Greece. It contained provisions that :-

a) Ekoplyn would develop PV projects in Mytilini and in paragraph B in the Background to the agreement, it was explained that production licence applications would be made in the name of special-purpose OE partnerships which would be the Project Companies; in which Ekoplyn and/or Mr Rinis and one of their Associates would be shareholders;

b) Under Recital C, that the Defendant and Mr Weinerman would purchase shareholdings in Project Companies on successful grant of Production Licences for the PV projects;

c) Under clause 2.2, Ekoplyn or Mr Rinis would hold at least 99% of the shareholding in each project company and the Defendant and Mr Weinerman would appoint an additional party to purchase up to 1% of the shareholdings, which party would also be bound by this Agreement;

d) Under clause 2.3, Ekoplyn would receive €35,000 upon signing which represented €2,000 for each of the 10 projects and €3,000 for each of the 5 OE partnerships;

e) Under clause 3.2, the Defendant and Mr Weinerman would have the right to monitor and check the progress by performing additional due diligence;

f) Under Clause 3.3, Ekolyn would procure that no project Company would at any time prior to Closing without the prior written consent of the Buyer enter into any contract, liability or other binding agreement with any third party subject to certain limitations except in so far as might be reasonably required to give effect to this Agreement or to satisfy the conditions precedent to Closing set out in Clause 3.4;

g) Under Clause 3.4, Mr Weinerman and the Defendant would be entitled to rescind the agreement without any liability to Ekoplyn in a wide variety of cases including where an event occurs which has a material adverse effect on the Project;

h) Mr Weinerman and the Defendant would purchase the shareholdings of the OE/EE partnerships once the conditions of clause 3.6 had been met or waived;

i) Under clause 3.7, if the conditions precedent were not met by 31 December 2007, then Ekoplyn would be entitled to a further 6 months to replace the project with one or more further projects. If Ekoplyn could not replace the project by 30 June 2008 then Mr

Weinerman and the Defendant could complete closing for that project company or rescind the agreement for that company;

j) Under clause 4.1 the developer would within one week of signing, deliver to Ms Murray the Articles of Association, corporate records and executed and undated letters of resignation from the administrators of each project company;

k) Under clause 4.2 the statutory documents referred to in clause 4.1 would be retained by Ms Murray *"by way of security*";

l) Under clause 4.3 there would be a "Pledge of Proceeds of Shareholdings" which would be expressed to be "as security for the First Payment, Mr Weinerman and the Defendant would be entitled to require that all shareholders of the Project Companies assign and pledge the share of profits and all other rights and benefits arising from their shareholdings in favour of Mr Weinerman and the Defendant who would be entitled to perfect such pledge by registration with the Company";

m) Under Clause 4.4, Mr Weinerman and the Defendant would have an early closing option,

n) Under Clause 5.1, Ekoplyn would give a number of warranties including that:-

   i) at the Closing Date the project company would have obtained Production Licences for the Projects and all licenses, consents, approvals, certifications and authorizations or other supporting documentation necessary for the issue of the Production License, as well as all Land Rights required for the Project and entry into this Agreement does not violate the validity of such licenses, consents, approvals, certifications and authorizations;

   ii) to its knowledge the Production License and any other Permits, all licenses, consents, approvals, certifications and authorizations or other supporting documentation as required by Greek Law which have been obtained up to date, would have been 10Wfully issued and obtained and would be valid and in full force and effect and all conditions of such permits and licenses have been fully complied with; and that;

   iii) to its knowledge, the Company would have complied with any environmental legislation applicable to it and would have obtained any environmental licenses or permits necessary for carrying on its business which it had obtained to date and entry into this Agreement does not violate the validity of such licenses or permits; and that:

o) Under clause 7.3 Defendant and Mr Weinerman would pay Ekoplyn a bonus of €30,500 per project upon the issue of a decision to award a grant of 40% towards the cost of the project. In addition, Defendant and Mr Weinerman were obliged to provide to Ekoplyn by 31 August 2007 a letter of guarantee in the sum of €305,000 to secure its payment of the bonus to Ekoplyn.

(vi) Developments after the First Agreement was made

87. Ms Murray was informed in September 2007 that a further agreement was needed as Mr. Rinis had submitted applications for Crete and Rhodes because the deadline for doing this was 31 August 2007. These applications were in the names of seven companies. So on 5 September 2007, a further agreement ("the Second Agreement") was made relating to 80 solar panel projects in Crete and Chios Islands in Greece, and providing for applications for Production Licence Exemptions for 44 projects in Crete by 7 special purpose partnerships.

88. On 4 September 2007, there were further emails passing between Mr Simos, Ms Murray and her assistant Ms Maria Galani, in which Mr Simos told Ms Murray not to proceed to incorporate the two companies that had been discussed as he needed to make sure when the money would be sent to him. Ms Murray noted that she had been told not to proceed with establishing the companies while her assistant Maria Galani set out the costs and requirements for establishing an OE/EE entity.

89. On 16 October 2007, a third agreement ("the Third Agreement") was made relating to 50 solar panel projects in Crete, Rhodes, Karpathos, Kos, Samos, Mytilini and Chios and to be conducted by 7 special purpose partnerships.

90. The Second and Third Agreements were drafted by Ms Murray and were based on the First Agreement, but with some changes. Each of those latter two agreements contained nearly all the same terms as the First Agreement, but they did not contain a provision similar to that of clause 2.2 of the First Agreement that the Defendant and Mr.Weinerman should appoint an additional party to purchase up to 1% of the shareholdings or the requirement that Defendant and Mr.Weinerman would provide a guarantee, which was replaced by an obligation to pay €750 per project as a deposit to the relevant landowners. Ms Murray had not advised on the merits of these agreements.

91. On 30 October 2007, Ms Murray reported to Mr Simos in an email that the President of the RAE had confirmed that the decision forbidding the transfer of exemption decisions meant that they could not be transferred from one person to another, not that the shares of that company could not be transferred.

92. On 6 November 2007, Ms Murray in response to a request from Mr. Weinerman reported on her discussions with the RAE concerning the use of Cypriot companies explaining that she had been told first, that provided there was transparency concerning the ultimate owners of any company, any 'onshore' company within the EU would be acceptable; and second, investors from outside the EU, such as Israel, would not constitute a problem for RAE.

93. The Claimant was not asked to incorporate and to register any new companies or to assist in any way in establishing the Ostrovizky Cypriot company. In addition, the Claimant was not involved in a separate agreement made between, on the one hand, the Defendant and Mr Weinerman, and, on the other hand, Mr Rinis for further applications for PV exemption decisions for the Connected Islands which were near the mainland in North-Western Greece. The Claimant was involved in the incorporation of OW Energy, which was a SA and which was set up in relation to six mainland projects. The Claimant was not, however, involved in the agreements with Mr. Rinis in relation to that company or with the Connected Islands venture.

(vii) How the terms of the 2007 Agreements were disregarded by the parties

94. The case of the Defendant is that the negligence of the Claimant in drafting the 2007 Agreements meant that he was inadequately protected in his dealings with Mr Rinis and his threats to sell the project companies. This allegation, which is denied, requires consideration of a number of issues such as whether these agreements were varied, whether Mr Rinis was relying on his rights to thwart the Defendant, and also whether the Defendant was invoking his rights. It is appropriate to start this exercise by considering three critical features of the 2007 Agreements.

95. First, before Mr Rinis could receive anything more than the initial sum of €35,000, he had to carry out a large number of duties in satisfying the various demanding conditions that had to be satisfied before he could receive any further sums. The conditions that had to be met by him included the issue of a decision exempting the project from a licence, and the issue of all necessary environmental approvals.

96. This work was likely to be very time-consuming, very demanding and also very costly as it required Mr Rinis to find and use substantial funds to ensure that the appropriate licences and permits were obtained. It became clear that Mr Rinis, who had been selected as the counter-party by Mr Weinerman and not by the Claimant, was not or held himself out as not being a man of the appropriate means necessary to comply with his obligations under the 2007 agreements. This is surprising as it ought to have been obvious to those selecting the counterparty to the agreement that this role would require an outlay of capital to obtain the necessary approvals.

97. Mr Rinis would under the 2007 agreements have been required to carry out this work in the hope that the demanding pre-conditions for payment of further sums would be satisfied. It soon became clear that the projects with which he and the Defendant were involved were heavily over-subscribed and that it would take much longer to complete the exemption process than had been originally anticipated. That meant that the payment of any further sums which he hoped that he would receive would be delayed.

98. It is of critical importance to explain that Mr Weinerman on behalf of the Defendant had made the critically important commercial decision that Mr Rinis was ready, willing and able to carry out this work and to incur the expenses

involved. The Claimant cannot be blamed if, as appears to be the case, this decision turned out to be wrong and that Mr Rinis was unable or unwilling to meet these requirements.

99. A second noteworthy feature of the First Agreement was that apart from making the initial payments and giving the guarantee set out in clause 7.3, the Defendant and Mr Weinerman had no other obligations to Mr Rinis prior to him complying with his demanding obligations. In the Second and Third Agreements, the Defendant and Mr Weinerman did not have the obligation to give the guarantee, but instead had to make payments of €750 per project as I have explained.

100. A third feature of the 2007 Agreements was the presence of the large number of rights given to the Defendant and Mr Weinerman to rescind those agreements before Mr Rinis had been able to satisfy the conditions without incurring any obligations and to receive back the initial payments under clause 3.7(b) of the agreements. Clause 3.4 of those agreements enabled the Defendant and Mr Weinerman to rescind those agreements in a wide number of situations, such as if any act, omission or event occurred which rendered any of the many warranties materially untrue or inaccurate or if an event occurred which would have a material adverse effect on the projects or if there were a material breach of any of the undertakings of Mr. Rinis or Ekoplyn. Other situations in which there could be rescission would be where there was a failure to meet conditions precedent by certain dates.

101. Many of the provisions in the First Agreement were disregarded by the Defendant. He did not give the letter of guarantee in the sum of €305,000 or indeed any sum to secure payment of the bonus to Ekoplyn. In addition and more surprisingly, he also did not at any time take advantage of the very important rights given to him in the First Agreement to appoint the company which would purchase the 1% shareholding of the project company so as to preclude its sale by Mr Rinis. Nor did the Defendant seek to enforce the required pledge to which he was entitled.

102. Pausing at that stage, it seems clear that the parties were not concerned to enforce their contractual rights and were not placing great reliance on them, which is relevant to the claim of the Defendant that he was adversely affected in his dealings with Mr Rinis because of the terms of the 2008 agreements. It is appropriate now to examine the attitude of the parties to making payments.

(viii) The Major Amendment to the 2007 Agreements so that Mr. Rinis became entitled to payments from the Defendant not provided for in the 2007 Agreements

103. Not merely did the Defendant and Mr Weinerman not take advantage of provisions inserted for their protection in some of, if not all of the 2007 Agreements, such as the right to acquire the pledge and the 1% shareholding, but the Defendant also started voluntarily paying sums to Ekoplyn/ Mr Rinis even though he was not obliged to pay them and this radically changed the nature of the agreement and drastically reduced (if not removed) the substantial obligations of Mr Rinis to finance the obtaining of the exemptions. By making these voluntary payments, the Defendant was assuming very substantial obligations which greatly exceeded the very limited obligations on the Defendant to make any payments

prior to closing. In other words, there had been a radical increase in the Defendant's obligations from those in the 2007 agreements.

104. So instead of relying on Mr Rinis to finance the work necessary to obtain the requisite permits, the Defendant assumed that financial responsibility of his own volition. Indeed Mr Weinerman contended that just before the November 2008 agreement was made, Mr Rinis had by then already received €1.2 million from Defendant. As with all these payments, I am uncertain precisely how much had been paid, but for present purposes, it suffices to state that the Defendant accepted very substantial responsibilities to finance Mr Rinis. Significantly this meant that a very important, if not crucial incentive to make Mr Rinis obtain the licences speedily was reduced.

105. The Defendant did not, as I have explained, give the guarantee specified in the First Agreement. Therefore Mr Rinis was deprived of this important form of security. Mr Simos has explained in his evidence that one of the reasons why Mr Rinis agreed to a low initial payment was that he would be able to use the guarantee in order to borrow money, but in the absence of the guarantee, he could not do so. Whether or not that is correct, the evidence is that the Defendant and Mr Rinis reached oral agreements under which the Defendant would advance money to Mr Rinis even though he was not obliged to do so. So this meant that the parties had agreed to remove the basis of the 2007 Agreements of ensuring that Mr Rinis only received his payments other than the small initial payment to which I have just referred, when the demanding conditions imposed on him in the 2007 Agreements were satisfied.

106. The Claimant was not involved in making or advising on these changed arrangements, but it seems to have been agreed as a side agreement to the First Agreement or when matters were being renegotiated, that due to the absence of bank guarantees the Defendant would from 2007 pay the landowners sums that they would be required to pay to the authorities as tax. There were further agreements made between the parties by which the Defendant took on further financial obligations to assist Mr Rinis as it was apparently agreed that the payment of the rent would be deferred to the time when the project would be completed.

107. The background to the decision of the Defendant to make these additional payments was that there were many delays in the licencing process caused by the large number of applications. When pressed to proceed with his applications, Mr Rinis told Mr Weinerman that that he did not have sufficient money to fund the various studies such as the archaeological and environmental studies which were required for the licensing process. According to Mr Weinerman, Mr Rinis explained that if the Defendant wanted to speed up the application process, he, that is Mr Rinis, would require more money from the Defendant and the Defendant apparently agreed although he had no obligation to do so, but he did so without involving the Claimant or Ms Murray. Of course by making these payments, the Defendant was removing an important incentive for Mr Rinis to obtain the permissions speedily.

108. There were, for example, demands for payments such as on 19 December 2007 when Mr Rinis requested advance payments of €100,000 "to pay my people

before Christmas". Another demand for payment of €100,000 was made on 23 March 2008. There were problems arising because the application process was taking longer than expected because of the larger than expected interest in PV investment.

109. Mr Rinis also contended that under the 2007 Agreements, he was entitled to be paid certain non-development expenses associated with establishing the parks as he did the work with the full amount payable on completion. The Defendant accepted the obligation to pay the cost of fencing the sites and other matters although he had no contractual obligation to do so. The Defendant said that he agreed because he says that Mr Rinis was constantly threatening to sell the projects if he did not receive the money. I cannot accept that constant threats were made as the evidence relating to them is very vague and very surprisingly, the Defendant did not immediately seek advice on how to handle these threats, which implemented, would have meant that at a stroke the Defendant would have lost his prospect of making the large profits that he contemplated receiving. I would have expected at least that there would have been some strongly worded emails, which would have been copied to Ms Murray answering or complaining about these threats but none have been adduced.

110. Having seen the Defendant and Mr Weinerman give evidence, I realised that they were tough and very demanding negotiators well capable of negotiating every issue and airing their grievances. I would have been amazed if they had stood idly by when threats were made and not consulted Ms Murray who would have told the Defendant that if threats were being made, he could, and should have invoked his rights to buy a 1% shareholding in the project companies and thereby preclude a sale or alternatively obtain an injunction to prevent it as I will explain in paragraphs 245ff below.

111. In my view, the reason why these payments were made by the Defendant was that, as I have explained, Mr Rinis explained that if the Defendant wanted to speed up the application process, he, that is Mr Rinis, would require more money from the Defendant and the Defendant apparently agreed although he had no obligation to do so, but he did so without involving the Claimant or Ms Murray.

112. The Defendant also agreed to pay Mr Rinis €10,000 of the € 32,500 success bonus as provided in the Engel agreement of 31 July 2007 on the issue of each Exemption Decision, even though this obligation was not included in the agreements.

113. In January 2008, Mr Rinis and Mr Simos travelled to Tel Aviv where it was agreed that VAT for the expenses of the project companies, which was due to be paid on 20 January 2008 would be paid by the Defendant. It is not suggested that the decision of the Defendant to take on any of these additional very substantial financial liabilities was provided for in the 2007 Agreements or was in any way connected with any alleged negligence of the Claimant.

114. In summer 2008, the requisite exemption decisions for 44 of the Defendant's parks in Crete were issued but the decisions were only for 80 KW per park because of over-subscription for the island's parks. The RAE had been swamped with applications as is apparent from the fact that the Minister for Development

announced on 1 August 2008 that he would be issuing legislation to resolve the outstanding issues relating to PV projects.

115. There were further financial problems for the Defendant arising in connection with OW Energy, which was an SA company owned by Mr Weinerman and the Defendant in which Mr Rinis' role was not as a shareholder but as the person charged with applying for the licences. The problems arose because that company was incurring fines. So on 6 August 2008, Mr Simos chased Mr Weinerman for payment of the outstanding OW Energy debts and he explained that he was under great pressure because there had been a delay of almost two months in paying the local landowners and that Mr Simos had to pay out of his own pocket salaries for two employees for the month of September 2008. He added that "I am literally without money because of all this".

116. At this time, relations were then still cordial between the parties as was apparent from the tone of the correspondence and the fact that Mr Rinis was making a proposal in mid-August 2008 to Mr Weinerman and the Defendant regarding 20kw projects in Greece. All this had to be seen against the background that the Crete exemption decisions had been successfully obtained and that there was then the hope of the parties that other exemption decisions would follow shortly afterwards.

117. On 21 September 2008, Mr Simos produced an updated document showing the sums owed by the Defendant to Mr Rinis. The Claimant was not directly involved in what appears to have been a renegotiation of the terms of the agreement. At about this time, it was agreed that there would be an extension of time for the completion of the licensing stages by Mr Rinis and a Deed of Variation was duly signed. The Defendant would start to pay rent for landowners, and this would be backdated to the dates on which the leases had been granted and signed.

118. The landowners were at this stage demanding rent, and according to Mr Weinerman, Ms Murray said that the Defendant was not obliged to pay the rental sums. He nevertheless agreed to pay them perhaps to placate the landowners especially because once the exemption decisions were granted, the licensing process would have reached a stage when the authorities were likely to visit the plots to check their suitability as PV sites.

119. It was also agreed that as payments were apparently required to be made to the RAE, the Defendant would pay Mr Rinis €10,000 per park for which an exemption decision had been obtained. In addition, the Defendant agreed to pay Mr Rinis for fencing the plots even though this was a construction cost and so it was not covered by the 2007 Agreements, which required the developer, namely Mr Rinis, to pay the costs of completing the licensing procedure. It was promised that the sums would be paid within 6 months of the telephone call apparently in August 2008.

120. It is appropriate now to consider if and how these promises by the Defendant to make payments to Mr Rinis had altered the terms of the 2007 Agreements. I consider that Mr Hubble is correct and that as a result of the matters to which I have referred, there had been some form of renegotiation in late 2007 and/or in summer 2008 between, on one side, Mr Rinis, and, on the other side, Mr

Weinerman and the Defendant, under which it was agreed that the Defendant would advance sums to Mr Rinis for matters such as RAE approvals, fencing and rent, even though he was not obliged to do so under the 2007 Agreements, which were thereby varied.

121. The matters that lead me to this conclusion that there was such a basic and radical amendment to the Defendant's obligations are first, that in his update of 21 September 2008 to which I have just referred, there was a statement of Mr Simos referring to "OW Money still owed to [Mr. Rinis] and commissions after the conference call with OW"; second, that there had been frequent requests by Mr Rinis to the Defendant for money, some of which had been met; and third, the reference in Ms Murray's letter to Mr Rinis of 19 November 2008 to "oral agreements" and which was based on Mr Weinerman's draft which had referred to advances "promised".

122. This new arrangement constituted an important variation to the 2007 agreements as the Defendant thereby acquired obligations to make very substantial payments to Mr Rinis, which were not included in the original 2007 agreements. It constituted a radical departure from the scheme of the arrangements in those original agreements under which the Defendant only had very limited obligations essentially to make small initial payments, and, in the case of the First Agreement, to give a guarantee. In other words, the Defendant had voluntarily put much more of his money at risk probably because he or Mr Weinerman had selected as a counterparty a person, namely Mr Rinis, without the means to comply with his obligations thereby requiring the Defendant to take on additional obligations.

123. In their closing submissions, the Defendant's counsel made what I consider to be an understatement when they stated that "it might have been slightly naïve for the Defendant to hand [Mr Rinis] these sums". I am very surprised at the way in which he took on these liabilities, which were not his obligations under the 2007 Agreements without even seeking to obtain a charge over the project companies for the money advanced or to obtain legal advice. The Defendant did not obtain advice on these matters from the Claimant, and in retrospect, he might well regret this omission. Of course, it could not have been contemplated when the 2007 Agreements were being negotiated that the obligations of the Defendant would be altered so that he became the financing party or that the Defendant would abandon the structure of the 2007 Agreements under which Mr Rinis had the incentive to complete his task speedily in order to receive more than the initial minimum payments. Those arrangements undermined the basic features of the 2007 Agreements that the Defendant only had to pay small initial payments until Mr. Rinis completed his tasks and that the incentive for Mr. Rinis to complete his task was that he would only then receive more than the small initial payments.

124. As a result of this renegotiation, the Defendant contends that he made payments to Mr Rinis totalling €450,000 in August and November 2008. Mr Rinis used the first payment of €270,000 to pay the landowners €170,000 for the first year of rent less the deposit thus making a total of €135,000. He then paid €130,900 to RAE for 11 PV parks. I will assume that these payments were made.

125. Pausing at this stage of the chronology, there is nothing whatsoever in the evidence which shows or even conceivably indicates that at or before this time

when the Defendant agreed to make and did make these payments to Mr Rinis that that the negotiating position of the Defendant and Mr Weinerman had been impaired or inhibited in the negotiations with Mr Rinis by the alleged negligence of the Claimant. Nor is there anything to show that the Defendant would have acted differently if the 2007 Agreements had contained provisions of a kind now advocated by the Defendant in these proceedings or if it had not contained the matters which Mr Pooles says should not have been included in the agreements or if matters had been explained by the Claimant to Mr Weinerman or the Defendant in the way that Mr Pooles now says that they should have been explained.

126. There is no evidence that when deciding to make these payments to Mr Rinis, the Defendant or Mr Weinerman were discussing among themselves or considering their legal rights or the lack of them under any of the 2007 Agreements or taking advice on these matters. If there was such evidence, it would and should have come primarily if not exclusively from the Defendant and/or Mr. Weinerman. As I have explained, the Defendant and Mr Weinerman seemed to have attached no importance not merely to their obligations under the First Agreement to give Mr Rinis the guarantee, but also to their rights to obtain a pledge and have a 1% shareholding in the project company. Indeed there is no evidence that Defendant felt obliged to make these payments and promises of payments to Mr Rinis because of any of the terms of the three 2007 Agreements, but it seems that they made the payments in spite of those terms.

127. As I will explain, even if the threats were made by Mr Rinis to sell the projects, they could, and should if valid, have been countered by enforcing the Defendant's rights by means of an application for an injunction to restrain the threatened sale. The decision to make the additional substantial payments was a commercial decision made by the Defendant which entailed jettisoning the important and costly financial obligations imposed on Mr Rinis and instead taking them on himself without obtaining any contractual benefit in return.

(ix)The Credit Crunch

128. As I have explained, the Defendant had made promises by September 2008 to make payments to Mr Rinis. The enormous growing worldwide financial problems became apparent when on 15 September 2008, the major American banking house, Lehmann Brothers, collapsed leading to the worldwide Credit Crunch. In consequence, the Defendant suffered from a major cash flow problem as his funds said by him to be worth nearly €30million, which were held in the German Bank BHF, became inaccessible to him as it was said that his funds were apparently invested in a number of structured schemes held by different AAA-ranked banks.

129. There is a dispute as to when the Defendant's cash flow problems ceased. He maintained that his cash problems lasted only until March 2009, but this does not appear to be the case. Indeed, in March 2009, the Defendant and/or his son Alon was struggling to find €2,000 to pay Mr Simos to provide for the running of OW Energy and other projects. Further court proceedings and eviction proceedings were brought by numerous landowners in the period from 2009 onwards as the Defendant had failed to pay rent for plots when due. Not surprisingly, in January

2010, the Defendant's daughter frankly explained that "we, as a family, need to be very careful with our spending in next few months". In addition, new requests and demands for payments from the Defendant were being made by his accountant, by his travel agent and by the Claimant.

130. At the construction stage, the Defendant also defaulted in paying his contractors because he was unable to obtain access to his funds and so he could not pay his expenses when they became due. Not surprisingly this caused tension with Mr Rinis and the Defendant's other creditors. Mr Rinis was disappointed and eventually he became very angry because payments that had been promised by the Defendant as a result of the renegotiation in August 2008 had not been made.

131. By October 2008, it was clear that the Defendant was not going to be able to produce the 25% construction *costs own funds equity* that was required for the application for the Public Power Corporation ("PPC") and the grant. In that month, there was an opportunity for the 161 parks to be presumably shown to potential investors and the construction costs of 161 parks were anticipated to be €110 million. The 25% share of that would therefore have been €27.5 million which was something that the Defendant could not produce as a result of the Credit Crunch and his ensuing problems in obtaining funds. Thus he desperately needed a partner or to sell the projects.

132. The picture that was emerging at this time was that Mr Simos was continuing to provide status reports as to outstanding payments that were made while Mr Rinis was becoming exasperated, as the Defendant had failed to make payments. In consequence, Mr Rinis was concerned about the consequential effect on his own credibility.

133. On 30 October 2008, Mr Rinis wrote a letter to the Defendant and Mr Weinerman explaining that he had been waiting for 3 months to be paid, and that while some money had been paid, the Defendant and Mr Weinerman still had not paid what they had agreed to pay. He explained that he would continue the projects if the money that was due to him was paid but that:-

> "after the 20.11. 2008, whoever does not reply to my letter to forget his investment in Greece I will sell the approvals/applications in order for me to be able to pay off my obligations and to avoid my personal destruction"

134. This letter showed the desperation of Mr Rinis and the difficult financial circumstances in which he had found himself, especially as he did not have the comfort of the promised bank guarantee for sums due under the First Agreement. The desperation of Mr Rinis was a consequence of these failures of the Defendant to honour his obligations to make payments to Mr Rinis under the amendments to the 2007 Agreements by which the Defendant assumed these major financing obligations.

135. In early 2008, the Prefecture told Mr Rinis that he would have to pay an additional €141,000 (€3,000 per park in Crete) to help Mr Rinis with his environmental approvals which he was obliged to obtain. In addition, the RAE was threatening to cancel Mr Rinis's applications if he did not pay €10,000 per approval. Mr Simos was the intermediary between, on the one hand, Mr Rinis, and on the other hand,

Mr Weinerman and the Defendant. He was being instructed by the Defendant and Mr Weinerman to promise that the money would be sent shortly. Not surprisingly and very understandably, Mr Simos was becoming exasperated at having to make these excuses to Mr Rinis for the Defendant and for Mr Weinerman.

136. At about this time, Mr Rinis explained that a relative of his might be interested in purchasing the parks and that he was seeking the consent from the Defendant, whose major cash flow problems might have been such that he would wish to cash in on his investments and sell some of the parks, so that the money generated from such a sale would and could be used to pay for the development of the remaining parks.

137. On 19 November 2008, at the instruction of Mr Weinerman, Ms Murray drafted a letter to Mr Rinis using a draft originally provided to her by Mr Weinerman. It referred to an "oral agreement" having been reached between Mr Weinerman and Mr Rinis to cover Mr Rinis's working capital requirements. It explained the Defendant's position and it threatened litigation in the event that Mr Rinis sought to withdraw from that agreement. There is nothing in that correspondence to suggest that the Defendant and Mr. Weinerman considered that their position in relation to Mr. Rinis was being jeopardised, or might have been jeopardised in some way by any act or omission (whether negligent or not) of the Claimant in relation to the drafting of the 2007 Agreements on which the Defendant now relies. I have been unable to identify any evidence or any indication of any conceivable actual or perceived prejudice to the Defendant caused by any of these matters or indeed any consideration by him or Mr. Weinerman of any of these contractual provisions or their limitations. I would have expected there to be such evidence and the absence of it explains why the Defendant and Mr. Weinerman were not questioned about it.

138. In the letter, it was pointed out that:-

> "in spite of the fact that no sums are payable in accordance with the [2007] Agreements… efforts have been made throughout your cooperation to provide additional payments outside the scope of the agreements in order to provide you with working capital. To that end Mr Weinerman had agreed that he would try to supply [Mr Rinis] with a further sum of [€900,000] without any documentation to support that payments and based only on an oral agreement, to cover your working capital requirements. However the light of the current banking crisis, and as has been explained to you by [the Defendant] in person, it had not proved feasible to send that sum; however a sum; however a sum of [€450,000] has been sent to you, without documentation or any legally-binding obligation on [the Defendant's] part. Their efforts are continuing to find further funds, which they hope to be able to send you within the next few weeks.
>
> Please also note that there are no grounds on which you are entitled to withdraw from the terms of your agreements with my clients and any attempts to do so will be met by immediate litigation.

> I therefore trust that you will be able to respond by return with a clear withdrawal of the allegations contained in your letter dated 30 October 2008."

139. What is striking is that the Defendant and Mr. Weinerman were neither seeking advice on their legal rights or on any of the 2007 Agreements or seeking to invoke them in negotiations. So even if there were defects in those agreements as a result of any error of the Claimant, there is no evidence that any of the defects were known to or even suspected by the Defendant or Mr Weinerman at this time. Indeed if any such matter had been known or even suspected by them, I have no doubt having seen both the Defendant and Mr.Weinerman in the witness box, that they would have complained loudly about it and that they would have sought to renegotiate their outstanding fees and might well have terminated the Claimant's retainer. Neither of them would have felt in any way inhibited from so taking such steps if they had grievance.

140. To complete the picture, I should add that there is no credible evidence that the Defendant was considering his rights and obligations under the 2007 Agreements or that Mr Rinis was relying on what he perceived to be his rights under the 2007 Agreements, although he was clearly relying on his rights under the variation by which he was promised funding from the Defendant. Any threats made by Mr Rinis were a consequence of the failure of the Defendant to honour promises made by him to make payments to Mr Rinis as a result of the important and radical variation to the 2007 agreements to which I have referred in paragraph 121ff above.

(x) The Further Amendments to the 2007 Agreements in the 22 November 2008 Agreement

141. The position in November 2008 was therefore that Mr Rinis was then in financial difficulties as the Defendant and Mr Weinerman had not fulfilled their obligations and, that in Mr Rinis' words, *"the projects were going to die out if he didn't put some money into them".* Mr Rinis wanted to arrange a meeting with Mr Simos, the Defendant and Mr Weinerman, and this meeting duly took place at the end of November during the PV exhibition in Athens.

142. Mr Simos has explained that important issues were discussed at this meeting, and that he together with Mr Weinerman recorded the financial breakdowns with the consequence that it was agreed that €3,835,000 had to be secured immediately. This sum reflected the missed payment in August 2008, the upcoming previously agreed payment due in December 2008; and the most important future payments starting in January 2009 which were required to finalise the licensing procedure and to start the construction phase of the projects ready for construction. This payment would have prevented the parties from missing out on the benefits of securing the grant subsidy from the Government and also the highly profitable feed-in tariff to which I have already referred. Mr. Simos has also explained that all parties were aware that at some time in 2009 these two state benefits were to be amended so that they would most likely diminish in value.

143. The payment of €3,835,000 was agreed primarily due to the fact that trust was lost between the parties. The Defendant and Mr Weinerman accepted not surprisingly that they were to blame for the failure to make the payments. So they asked Mr Rinis to give them three days to secure the money on the condition that if they failed to do so, Mr Rinis would then be free to sell close to one-half of the mature part of the portfolio in order to support the remaining mature one-half which had not been sold and also the additional separate portfolios which were not then mature.

144. It was agreed that Mr Rinis was to be paid first some of the money that he had provided on behalf of the Defendant and of Mr Weinerman, and second the expenses that he had incurred due to the extended size of the portfolio. Such a payment was only feasible if part of the portfolio was sold so that a major part of the portfolio would be the responsibility of the new investor. The Defendant told Mr Rinis that if the sale proceeds exceeded the sale value as set between Mr Weinerman and Mr Rinis, then the excess would be divided between Mr Rinis and Mr Simos for the expenses suffered for the past work and this was agreed. All these discussions were carried out without the involvement or the advice of Ms Murray or of the Claimant or any advice being sought.

145. These terms were embodied in a written agreement which provided that:-

a) by 24 November 2008 and before 23.59pm, Mr Weinerman and the Defendant either individually or together would notify Mr Rinis by phone, fax or email whether they would be able to deposit into his Greek account to be proven by a copy of the wired deposit details slip the sum of €3,831,400;

b) should the Defendant and Mr Weinerman fail to make the payment, then they would both agree that they would permit and allow Mr Rinis to proceed and sell 79 parks of the Non-connected islands portfolio for no less than €40,000 per park and 200 PV of the 409 PV Connected Islands portfolio for no less than €40,000 per PV;

c) the money which Mr Rinis would collect from the sale would be used to cover his immediate and near future project expenses and the debt which he was obliged to cover; and that

d) if Mr Rinis received for the sale of those projects more than those sums, then the additional money would be split between Mr Rinis and Mr Simos.

146. Unfortunately, Mr Rinis did not receive the promised sum of €3.8 million by 24 November 2008. There are disputes as to how and why the agreement came to be made. Various hand written drafts were produced by Mr Simos on 22 November 2008 and they contradict the account of the Defendant that he was presented with a demand for more than €3 million by Mr Rinis and/or Mr Simos. There are handwritten calculations which show how the parties arrived at and then agreed this figure of €3.8 million and they are set out in the schedule to the Agreement itself. The true position appears to be that it was the Defendant who offered to pay €3.8million within 2 days and apparently according to Mr Weinerman, the

Defendant considered that he might have been able to come up with these funds, but he did not do so.

147. Another substantial dispute relates to how the parties reacted to making this agreement. According to Mr Simos, all the parties had a meal at a fish tavern and he described the atmosphere as "joyous", while Mr Weinerman described the negotiations by saying in relation to himself and the Defendant that there "was a gun being held to their heads" with the consequence that they signed the agreement under duress before dashing to the airport to catch the plane. The Defendant also said that he did not regard the agreement as source of celebration. I have already explained why I have concluded that even if there were defects in the 2007 Agreements as alleged by the Defendant, there is no evidence that those defects were known to the Defendant and Mr Weinerman or that they influenced their actions in any way in making this agreement. There is no evidence of any complaint being made to the Claimant to the effect that there were defects in the 2007 agreements. In my opinion, neither the Defendant nor Mr Weinerman would have been coy about making these complaints or changing their legal advisers if they thought that they had been let down by the Claimant in drafting and advising on the 2007 Agreements. Their silence is very surprising in the light of the subsequent developments.

148. I unhesitatingly reject the contention of the Defendant that in the words of his closing submissions that "in signing this agreement, he was seeking to mitigate his loss" if it is being suggested in this assertion that the Defendant's loss was the fault of the Claimant as this is not correct. The loss was the consequence of first, the decision of the Defendant to ignore the terms of the 2007 Agreements and instead to take on the responsibility of financing the licensing project by a variation of the kind to which I have referred, and then second, his failure to comply with that financing responsibility.

149. As I will explain, I have concluded in the light of the subsequent behaviour of the Defendant's agent Mr Weinerman that he and the Defendant were pleased to have resolved matters with Mr Rinis with a solution that appeared to have resolved their problems which had been caused by the Credit Crunch and the Defendant's lack of access to funds as well, of course, by the Defendant's decision to promise the large payments to Mr Rinis to which he was not entitled under the 2007 Agreements.

150. Ms Murray and the Claimant had not been involved in the negotiations or in any aspect of the November 2008 Agreement, but having seen the Defendant and Mr Weinerman give evidence, I have no doubt that if they had thought as they now contend to be the case that there that they had been blackmailed or they had had "a gun put to their head", they, as experienced and mature businessmen, would have consulted Ms Murray, but the stark fact is that they did not do so. So she cannot be blamed for any aspect of the November 2008 Agreement.

151. On the contrary, there was no complaint about the November 2008 Agreement or more importantly the drafting of the 2007 Agreements when Mr Weinerman wrote to Ms Murray:-

a) on 7 December 2008 explaining that according to the document they had signed, Mr Rinis "sold three companies with 79 applications and 200 of the applications in the connected islands. This was for a total sum of 3.831 million, this sum supposed to be paid to him in a way that he can cover all his expenses". Nothing in that email suggests that this was not a commercially negotiated arrangement or that the Defendant was in some way handicapped by the terms of any of the three 2007 agreements. No complaint about the terms of the agreement was to be found in an email from Mr Weinerman to Mr Rinis stating that "you absorbed the other 200 preparation in the connected islands, to finance with those EUR3.82m for the 82 …";

b) on 14 January 2009 when he and the Defendant asked her about the implications of the November 2008 Agreement which they had been "forced to sign", but significantly there was no suggestion in that email of a wish to rescind it or to resile from it or that they had been unduly pressurised into signing it; or more pertinently that they had done so as a result of any defect in any of the 2007 Agreements. Of course, the reason why, if that was the case, the Defendant was forced to sign was because he had taken on a responsibility to finance Mr Rinis but he then failed to do so; and it is not then suggested that he was forced to sign because of defects in the Claimant's services or in any of the 2007 Agreement;

c) in an email in early 2009 in which the Defendant refers to having agreed to sell 79 parks and 200 submissions in the Connected islands to Mr Rinis. This undermines the contention that the November 2008 Agreement was made under some form of duress or as a consequence of any defect in the 2007 Agreements or any negligence of the Claimant ; and

d) on 21 March 2009 Mr Weinerman emailed Ms Murray a table of the Non-connected island applications showing a division of the parks into 79 and 82.

152. Further, there was nothing in the contemporaneous correspondence, which I have seen, that indicated that the Defendant and Mr Weinerman were inhibited in the negotiations leading up to the November 2008 Agreement by the terms of any of the three 2007 Agreements from obtaining better terms or by any of the alleged errors of the Claimant. Indeed perhaps more importantly and more specifically, there is no oral or written evidence showing or implying that the Defendant has been prejudiced by the facts first, that the three 2007 Agreements did not contain the provisions which Mr Pooles now says should have included; second, that they contained the provisions about which he complains; and third, that the Defendant did not have the explanations which Mr Pooles says should have been given.

153. It is noteworthy that there was no contemporaneous complaint to Ms Murray that the November 2008 Agreement was entered into as a result of duress, but on the contrary, the Defendant and Mr Weinerman seemed satisfied by it. I accept as correct the evidence of Mr Simos that there was a celebratory dinner at a fish

restaurant opposite his house after the Agreement was made. The Agreement came about because the parties wanted to find a way of dealing with the situation in which the Defendant owed Mr Rinis €3,831,400 and they resolved it by entering into an arrangement which gave the Defendant and Mr Weinerman the choice of paying €3,831,400 or of allowing some of the parks to be sold so that Mr Rinis could be paid some money due to him and thereby extinguishing the Defendant's debt to him.

154. I should mention that Mr Pooles has contended that the November 2008 Agreement is of no effect because Mr Rinis considered it to be of no effect. Mr Pooles, however, accepts correctly that Mr Rinis at least for a period clearly regarded himself as entitled to sell 79 small parks. The views of a party on the enforceability of an agreement are not decisive. I cannot see why the November 2008 Agreement was not enforceable and any ambiguity in the express terms can be resolved by implying terms. In any event, the November 2008 Agreement has been overtaken by subsequent agreement to which I now turn and that is perhaps what Mr Rinis meant when he said that the November 2008 Agreement would be of no effect.

(xi) The Post November 2008 Agreement Varying the 2007 Agreements and the November 2008 Agreement

155. The next development after the failure of the Defendant and Mr Weinerman to make the payment specified in the November 2008 Agreement was that in consequence, Mr Rinis then became free to sell 79 parks, but subject to achieving the sale price of €40,000 per park. Mr Weinerman emailed to Mr Simos a break down of the 79 small parks on 24 November 2008. Mr Rinis realised that it was not possible to sell only a small part of the portfolio rather than the whole portfolio. He then spoke to the Defendant who confirmed that he could try to sell his 80 parks alongside Mr Rinis's 79 parks. In essence, the Defendant and Mr Weinerman instructed Mr Simos to try to find purchasers for the portfolios. This was another major variation of the 2007 Agreements and of the November 2008 Agreement and indeed much of the 2007 Agreements had been varied at this stage. These variations could not have been contemplated when the 2007 Agreements were made.

156. So in December 2008, Mr Rinis began approaching various entities who it was thought might be interested or who would be interested in buying the projects and thereby raising capital for the portfolio. Mr Simos was instructed by the Defendant and Mr Weinerman do the same thing for them and also to assist Mr Rinis in his efforts. Mr Simos explained that there were various difficulties in doing this because first, there was the problem caused by the distribution of the many PV parks across various islands thereby engaging different local authorities, second, they had to deal with the ever-changing regulations and legislation, third, they had to encounter tough and unattractive terms offered by potential purchasers and finally, there were the difficulties of potential investors obtaining money given the instability in the international money markets at that time.

157. On 18 December 2008, emails were exchanged regarding the leasing agreements with Mr Rinis informing the Claimant of an amended agreement to provide for

rent from signing as this was allegedly required by the RAE. Ms Murray noted that the lease which she had provided had been amended.

158. On 14 January 2009, Mr Weinerman emailed Ms Murray requesting her advice on various matters. On 16 January 2009, Ms Murray emailed Mr Weinerman a response in which she explained that she, that is Ms Murray, could only proceed further if paid her outstanding fees. As I have explained, Mr Weinerman was always determined to reduce legal and other costs. So it is surprising that if the Defendant felt that he had been let down by the negligence of the Claimant and so was vulnerable to Mr Rinis because of the drafting of the 2007 Agreements, this point was not made in order to obtain a discount on the fees due.

159. On the same day, Mr Simos emailed Mr Weinerman and the Defendant and he alleged that there had been a lack of financial support for him. He explained that:-

> "For the first time I will go on record and say that the way things have turned out. I conclude [Mr Rinis] is 100 per cent right to be angry, disappointed and furious with how things have turned out. All he ever asked for was your financial support when he would have needed it, and he would have been able to handle everything else".

160. There was an undated response from the Defendant to Mr Rinis explaining that he had invested over €1.6million and that he had taken steps to move the project forward. He explained that he had been convinced by Mr Rinis to invest twice €100,000 for preparing the applications in the connected Islands in 2007, but that they were never submitted by Mr Rinis as the applications were never opened.

161. The Defendant also explained in that email that during Mr Rinis's visit in the fourth quarter of 2008 to Berlin, the Defendant took him to his bank and they advised that the Defendant still had tens of millions of Euros blocked in his bank. It was also explained in that email by the Defendant that he had agreed to sell Mr Rinis three of the connections with 79 applications and 200 submissions for the connected islands for a sum of €3.8 million enabling Mr Rinis to carry on the 161 to the stage of completing all approvals, besides some part of the fencing for the islands if and when they would be approved by RAE. This constituted a further and significant amendment to the 2007 Agreements and to the November 2008 Agreements.

162. The email also stated that the urgency according to Mr Rinis was that Rhodes, Karpathos and some other applications were supposed to be RAE-approved in November 2008 and the rest were to be approved in December 2008 and in January 2009, but that by the time of this email, none of the other Non-Connected islands had been RAE-approved other than the Crete projects.

163. This response also explained that bearing in mind the previous history and the fact that the Defendant had invested with Mr Rinis ("including the sale of the 79 units + 200 for EUR3.8 million"), it was not fair in those circumstances for Mr Rinis to give the Defendant the ultimatum to the end of January 2009. It also stated that Mr Weinerman had located "two serious and heavyweight financing groups,

interested and able to assist us in executing all the project, he hopes to conclude with them in the coming months".

164. In January 2009, there was a meeting between Ms Ostrovizky, Mr Rinis, Mr Simos and Ms Murray at which Mr Simos was contending that there had been a lack of financial support for Mr Rinis and this meant that the projects had not been developed. On 2 February 2009, there was a telephone conversation between Mr Rinis and Ms Murray in which Mr Rinis asked her whether she had instructions to draft an agreement terminating the original agreements.

165. On 20 February 2009, the Defendant's daughter, on behalf of the Defendant, sent an email to Ms Murray with a copy to Mr Weinerman explaining that at that time their family's funds were affected by the credit crunch with large sums of money deposited with a German bank and invested in financial structures so that "the liquidity is on hold". It was explained that the Defendant was therefore preoccupied with such matters, but the Defendant believed that should there be a successful meeting with the potential purchasers, the Defendant would be able to pay Mr Rinis the due amounts and ensure further co-operation. The wish to pay Mr Rinis is further proof that the Defendant accepted his liability to him. There was at this time no criticism of the Claimant by the Defendant's daughter who is a qualified lawyer although she had not been involved in the negotiations of the 2007 Agreements.

166. I have concluded that the Defendant and his agent Mr Weinerman were not concerned about exercising their rights or about the limitations of their rights under the 2007 Agreements but that instead, they considered that they were bound to finance Mr Rinis under the amendments made to those agreements by which the Defendant took on very substantial additional financial obligations. There is no evidence that the Defendant or Mr Weinerman were in 2007 or 2008 complaining or making any adverse comments about any of the Claimant's work in relation to the 2007 Agreements and certainly not making the present claims that the 2007 Agreements were negligently drafted.

(xii) The Silcio Negotiations

167. The significance of these negotiations is that the Defendant's case is that the potential sale to Silcio was lost because of the inability of the Defendant to control Mr Rinis in relation to his demands, Mr Rinis's failure to carry out due diligence and Mr Rinis's threats to sell. In addition, according to Ms Ostrovizky, Silcio had been advised by Norton Rose that the Defendant did not have ownership of the projects and that is why they bought some projects directly from Mr Rinis.

168. For the Defendant to succeed in showing that the failure to complete the sale to Silcio was a consequence of the Claimant's negligence, it has to be proved first that it was because of the actions of Mr Rinis, and second that he was only able to act as he did because of the negligence of the Claimant in relation to the 2007 Agreements and particularly in the way which Mr. Pooles has now formulated the counterclaim as I have described in paragraphs 18 ff above.

169. The Claimant's case is that the sale was not lost because of this, but because there was no agreement on terms with Silcio, but that in any event, even if (contrary to their case) there were defects in the drafting of the 2007 Agreements as a result of the Claimant's negligence, they had no effect on the failure of the Defendant to reach an agreement with Silcio. It must not be forgotten that by this time the 2007 Agreements had been varied in a very substantial manner because of the arrangements made before and after the November 2008 Agreement by which parks could be sold by Mr Rinis and also many of the rights in those agreements had not been exercised as I have explained.

170. In about March 2009, Silcio became a potential purchaser of the parks alongside LDK, a large Chinese manufacturer for whose German arm Mr Weinerman was working at the time. On or about 18 March 2009, a letter of intent was agreed between OW Group and Silcio/LDK, and the proposed terms included provisions that:-

a) the price that Silcio proposed to pay would take account of the respective maturity of individual parks with less being paid for parks that had not reached a PPA and applied for a subsidy than for those parks that have completed the licensing stage of the development process;

b) the seller would complete all payments due to the developer for the licensing stage and the price would include payment for land rentals until the date of the signing of the agreement;

c) the seller would pay the PPC connection charges for each park;

d) the payment would be in instalments according to progress along the development process;

e) the price would be 1 million Euros per mw;

f) Silcio wanted a refund for any park for which an exemption decision was not issued or where the purchaser decided that the land was unsuitable.

171. Ms Murray assisted in revising the Letter of Intent and a new draft was circulated on 20 March 2009. At the same time, negotiations were proceeding with Mr Rinis with the intention of reaching an agreement with him which would enable the portfolio to be sold with all the parties working together. Mr Rinis was concerned that Mr Weinerman and the Defendant would not be able to pay the balance due under the agreements at the date when the 80 parks had completed the licensing stage. So he sought a bank guarantee from a Greek bank to confirm that the sums would be payable.

172. By 26 March 2009, Mr Rinis had decided that he would instead co-operate in the Silcio sale because Ms Murray had passed on a message from Mr Rinis to Mr Weinerman that Mr Rinis wanted to sell to Silcio some of his projects. She asked Mr Weinerman whether he consented to this and so he knew that Mr Rinis was cooperating.

173. On 6 April 2009, Mr Aris Papachristou of Silcio emailed Mr Weinerman and Ms Murray as well as various other people explaining his concern about matters, such as the absence of notarised leases and the absence of ratified environmental terms in the applications as that was "a very crucial stage, and it could take months or over a year for the ratifications". He also noted the risk of having adjacent plots because archaeological findings could prevent matters going forward.

174. He concluded by explaining that:-

> "bureaucracy is very harsh in Greece, but we need to understand exactly the status of your applications to be able to assess the possible time schedule for the realisation of the projects and to estimate how many have a chance of materialising".

175. Further concerns of Silcio were apparent in a further email from Mr Papachristou sent on 13th April 2009 to Mario Zen of LDK in which he explained that although the whole proposal was a "decent one and should be further examined", but that "the permitting stage of the applications is not as advanced as we had initially understood", and "the most important environmental permitting is missing". It was also pointed out that some of the proposed projects were on plots that had been split up and even though the applications are by two different companies, the PPC could consider this fact as an attempt to circumvent the law that allows one small PV installation per land plot, and refuse to connect, even though the PV installation would have been set up. Those points could mean that a significant percentage, or even the majority, of the proposed installations might not eventually materialise.

176. It was also made clear that there was a need to determine the basics of the co-operation between LDK and Silcio. Therefore even in April 2009 there was a lack of certainty about the composition and approach of the purchasing consortium and many issues to be resolved before the parks could be sold.

177. On 14 April 2009, there were a number of further developments. First, Mr Rinis emailed Ms Murray explaining first that Mr Weinerman had asked for more time to send money; and second that the Defendant and Mr Weinerman had until the 21 April 2009 to provide him with €80,000, if he was going to assist with Silcio's due diligence requirements and to provide Mr Weinerman with the extra two weeks for the payment that he wanted. Also on that day Ms Murray emailed to Mr Weinerman the note that she had just received from Mr Rinis, explaining that he was desperate for the cash.

178. On the same day, Ms Murray also emailed to Mr Weinerman explaining first, that Mr Rinis was very angry; and second, that he had assured her that he would sell all the companies if he did not receive at least 50,000 Euros "by Monday", but that if he did get at least that much and preferably €80,000, then he would be happy to cooperate on the sale as required. Ms Murray said in that email to Mr Weinerman that she had told Mr Rinis that Mr Weinerman would sue if he did sell the companies, but that Mr Rinis then claimed that he no longer cared.

179. On 22 May 2009, Ms Murray emailed Silcio and she explained that Mr Rinis and his partners were still the legal owners of the shareholdings who "will be required

to formally sign certain documents to perfect the transfer of the companies" but "they are however bound to comply with the instructions of Mr Weinerman and the Defendant in this regard".

180. Pausing at this juncture, there is no evidence to show first that either the Defendant or Mr Weinerman had been impaired or inhibited in their negotiations by any omissions in the agreements, or second that Mr Weinerman and the Defendant would have acted differently if the agreement had contained provisions of the kind advocated by the Defendant in these proceedings. Of course, by this time, Mr Rinis had acquired a right to sell some project companies as a result of the November 2008 Agreement and the subsequent variation even though none of those rights were acquired by him in the 2007 Agreements, but were acquired by the subsequent amendments to which I have referred.

181. In May 2009, Silcio proposed an agreement which was potentially very onerous for the sellers because:-

a) clause 5 would require that the purchase price be refunded for any application for which an exemption decision was not issued;

b) clause 6 provided that any part of the purchase price paid for a project would be reduced or delayed if the Purchaser decided that the land was or might be unsuitable for building or if zoning restrictions applied. The obligations of the seller to repay had to be backed by a bank guarantee;

c) clause 7 provided that the seller would be obliged to complete the licensing process including obtaining the grid connection agreement and the PPA;

d) clause 8 provided for payment in instalments including 22% related to the connection of the project to the grid after construction and on signature of the PPA and 16% on approval of the grant;

e) clause 11 gave the Purchaser the right not to complete in the event of a Material Adverse Change which was very broadly drafted;

f) all lease agreements up to the date of completion would have to be paid prior to completion.

182. Ms Murray made substantial amendments to try to protect the position of her clients, the sellers, such as removing the clause about withholding the purchase price, as well as removing conditions precedent and many of the warranties. The Defendant would have been required to provide bank guarantees equal to the amount received from Silcio and that would have constituted a 100% cash collateral for the bank guarantee.

183. Eventually, the sale to Silcio did not proceed because the parties could not agree a price. Silcio was prepared to pay €8 million on terms that were very advantageous to it, including instalment payments, while the Defendant wanted to receive €10 million. These were the entrenched positions of the parties and neither party was

moving. It seems that the Defendant when recalled almost accepted this position or certainly did not show that this was incorrect.

184. Thus the position is that the sale did not fall through because of an inability to undertake diligence or because of some difficulty with Mr Rinis. Indeed, insofar as there were due diligence concerns in April and May 2009, this was because the bulk of the RAE exemption decisions had not been received because of the administrative chaos and not because of any failing of Mr Rinis. Some documents recently produced showed that the reason why Silcio did not proceed in early to mid 2009 was because of the emergence of Energetica as a potential alternative purchaser offering potentially better terms particularly as to price.

185. In any event, it is clear that even if the Defendant's case is correct and the Claimant had been negligent in drafting the 2007 Agreements, then, as I will explain in paragraph 313 below, such negligence did not cause in any way the Silcio negotiations to result in a contract not being made. Indeed even if the Claimant had carried out its duties in relation to the 2007 Agreements in the way in which Mr Pooles contends that it should have performed them, the Silcio negotiations would still not have led to a sale.

186. There is no credible evidence that Mr Rinis would have behaved differently if the alleged negligence of the Claimant had not occurred. In reaching this conclusion, I have not overlooked a number of contentions of the Defendant including that Mr Rinis was responsible for the fact that a deal was not made with Silcio and that he was only prepared to assist in the due diligence process if he was generously paid for his services. Mr Pooles placed reliance on the fact that in March 2009, Mr Rinis demanded payment of €2.6 million to assist with due diligence and that this demand was reduced to €80,000 in April 2009. These submissions fail to appreciate that the parties failed to agree on price and that the terms proposed by Silcio were very onerous as well as the fact it was thought that Energetica were prepared to offer more money.

187. When, however, the Energetica deal later fell through, the Defendant decided to reopen negotiation with Silcio in late 2009, they could not agree on terms and a counter offer made by Silcio was more aggressive, probably in the light of the impending cut-off date for grant applications. Mr Simos sought the instructions from the Defendant and Mr Weinerman as to whether Silcio's terms were acceptable. They both rejected the terms and instead made a counter proposal in early December 2009 seeking more money and better terms. Silcio refused that counter offer and the deal stalled. There is no evidence that this counter-offer of Silcio was acceptable to the Defendant and his evidence in re-examination, if anything, suggested that the opposite was correct.

188. It seems that in December 2009, Mr Rinis tried to sell some projects direct to Silcio with success, but that is not relevant to the issues before me.

(xiii) The Energetica negotiations

189. Energetica Hellas ("Energetica") acted as a broker on behalf of potential investors who were interested in purchasing parks in Greece and, in particular, in acquiring project companies that had completed the formalities and were ready to be

constructed and to be connected to the grid. The role that Energetica wished to pursue was to act as the contractor for the projects that it would purchase.

190. On 9 June 2009, a Letter of Intent was signed by Energetica and Mr Rinis. Mr Weinerman accepted that Mr Rinis and Mr Simos had kept them updated about the emergence of a potential purchaser. Emails recently made available during the trial show that Mr Weinerman and the Defendant were aware of the interest from Energetica from the outset. Their evidence that they did not know about the deal is flatly contradicted by emails produced by Mr Simos. Indeed, Mr Weinerman accepted in evidence that Mr Simos and Mr Rinis kept him updated about the fact that there was another potential purchaser.

191. The Energetica price was initially thought to be €1,000 per KW for a park that was ready to be built, but the payment terms were 35% of the payment price would be paid if the due diligence was positive and that it showed that the parks had completed the development stage and that the formalities had been complied with. On payment of that sum, Energetica would take over all of the projects as security for the investment. Significantly, the final 65% was only to be paid when and if each park was constructed. This meant that under Energetica's offer that this very substantial final payment would be deferred to the end of the construction stage so as to protect Energetica if problems with the park arose and if the parks were not constructed.

192. Energetica paid €450,000 to Mr Rinis with the full knowledge and consent of the Defendant and Mr Weinerman certainly as to the first €300,000 and in all likelihood as to the balance of €150,000. The payment was secured by the personal cheques from Mr Rinis but no security was taken over the project companies. One of those cheques when presented was dishonoured. Energetica has brought claims against Mr. Rinis in Greece to seek to recover these sums and these proceedings have not been concluded.

193. Unfortunately, when carrying out the due diligence stage, Energetica discovered that not all the parks had reached the "ready to construct" stage. It emerged that many of the exemption decisions only came through in the period from June to September 2009, and Energetica decided not to proceed with the sale. It is clear that the reason why the deal fell through was due to the fact that the parks were not sufficiently mature and also because of the onerous nature of the instalment terms sought by Energetica. Significantly, it did not fall through for any reason resulting from the structure of the agreements or the alleged inability of the Defendant to compel Mr Rinis to sell the parks. Indeed the decision not to go ahead was in no way connected with any aspect of the drafting or the advice given or not given in respect of the three 2007 Agreements by the Claimant.

194. To complete the story, as I have explained, when it became clear that Energetica would not proceed, Mr Rinis, Mr Weinerman and the Defendant turned their attention back to Silcio and negotiations resumed but finally failed as I have explained.

195. None of these matters had anything to do with the way in which any of the three 2007 Agreements were drafted or the advice that was given or that should have

been given. There is no suggestion or credible evidence that the Defendant or Mr Rinis would have behaved differently if the alleged errors had not occurred.

(xiv) Developments in 2010-2012 including the Demand for Payment of the Claimant's fees, the Termination of the Claimant's Retainer and the Fate of the Projects

196. On 13 January 2010, Ms Murray emailed Mr Simos and Ms Ostrovizky explaining that the November 2008 Agreement must have been intended to mean that in return for allowing Mr Rinis to sell 79 of the parks, the Defendant would be released from Mr Rinis's demands from interim payments for the remaining projects. She stated that the reason why the Defendant had entered into the November 2008 Agreement was that he was obliged to make certain payments at that time which he was unable to make as a result of the economic crisis. She stated that Mr Rinis should offer something in return for the cash and she advocated giving a financial incentive to bring back the other projects.

197. On 14 January 2010, an agreement was reached between the Defendant and Mr Rinis, but on 21 January 2010, Mr Simos wrote to Mr Weinerman explaining that Mr Rinis "is selling everything that he can sell". On 25 January 2010, Ms Murray issued a new retainer to the Defendant including "taking powers of attorney from [Mr Rinis] in my name to transfer the shares of the companies which [Mr Rinis] holds into the names you indicate to me".

198. Pausing at this stage, I am not aware of any communication from the Defendant, Mr. Weinerman or the Defendant's daughter, Ms Ostrovizky (who was then involved in the dealings with Mr. Rinis and is a qualified lawyer) complaining at this stage about any aspect of the 2007 Agreements but if any aspect of it had caused problems for them, it would surely have been apparent long before this time and, at least, referred to in emails in the light of, what are now said to be, its disastrous consequences. Ms Ostrovizky was not cross-examined about this and so I will not attach any weight to this point.

199. On 8 February 2010, Ms Murray emailed Ms Ostrovizky requesting payment of outstanding fees to which Ms Ostrovizky replied stating that "we would not be in the legal situation that we are today vis-à-vis [Mr Rinis] had our legal rights been safeguarded". She added that "we are in a position to transfer monthly instalments to your account, and as such to split the grand sum". No suggestion was made by Ms Ostrovizky, who is a lawyer, as to what the Claimant should have done, but had not done, to safeguard the rights of the Defendant or that the Defendant had a claim against the Claimant which was much larger than the outstanding fees as is now contended to be the position. Ms Ostrovizky and she was not cross-examined about this and so I do not attach weight to this omission.

200. Between 15 and 17 February 2010, there were meetings between Mr Rinis and the Defendant and Ms Ostrovizky in Tel Aviv. On 8 July 2010, Mr Rinis emailed Ms Ostrovizky a letter he had written to the Defendant threatening to sell the projects. On 7 September 2010, Ms Murray emailed Ms Ostrovizky, Mr Simos, and Mr. Isaacs, who was an advisor to the Defendant, stating that she had spoken to Mr Rinis on 6 September 2010 and that he had started to sell the small projects. On that day, Ms Murray emailed Mr Rinis requesting that he should stop selling any

projects and threatening legal action. There is no evidence that he has actually sold any project companies covered by the 2007 Agreements.

201. On 25 October 2010, the Claimant's retainer was terminated in an email thanking the Claimant for its services. The Defendant subsequently instructed Ms Anastasia Chronopoulou.

202. An application was made on behalf of the Defendant on 6 October 2010 for an injunction to stop the sale of the projects, but it was refused. Nobody knows why this application was refused, as it could have been because it was not considered that there was a risk of an imminent sale or because the Defendant did not have proper title to sue. Ms Murray has explained that this was not surprising as the lawyer acting for Mr Rinis, Mr Ntasios, attended Court and "effectively agreed that no sale would take place". I accept this evidence.

203. On 21 December 2010, a Memorandum of Understanding was entered into between the Defendant and Mr Rinis in Tel Aviv and this was subsequently amended on 24 February 2011. In 2011, the Defendant negotiated with George Alexandrious for the purchase of the PV projects. On 18 October 2011, Mr Rinis demanded €1 million to extend the 2011 Agreements by six months.

204. On 24 October 2012 the Defendant made a final proposal to Mr Rinis to split the projects but Mr Rinis had to transfer the licences. During 2012, the Defendant entered into agreements with Big Solar and Smart Group for the construction of some of the PV projects.

V. The Retainer Issue

(i) Introduction

205. The case for the Claimant is that it only owed Mr. Engel a duty to produce an agreement along the lines of the Points for Agreement, to provide appropriate explanations of significant risks arising from the draft agreement, to ask for instructions as necessary, and then to act on and to incorporate further instructions received. It is said by Mr. Hubble that the Claimant did not owe either a duty to the Defendant to consider his position independently of that of Mr. Engel or any freestanding duty to advise the Defendant. This, he says, was shown by the fact that for a fixed fee of €1,000 per agreement, the Claimant's obligation was to produce a development agreement in accordance with the previous instructions given to the Claimant in respect of Mr Engel, when incorporating the terms of the Points for Agreement document and then making some amendments. The case for the Defendant is that the Claimant had a greater duty, including a duty to advise him because of the many matters left outstanding in the Points for Agreement document and the issues raised by Mr Weinerman during consideration of the drafts.

206. It is appropriate to determine what duty the Claimant owed to Mr Engel, who was its initial client; and then to consider what duty was owed to its subsequent client, who was the Defendant.

(ii) The Duty owed by the Claimant to Mr. Engel

207. There were many matters which were left undetermined or had not been considered in the Points for Agreement and on which advice or action was required by Mr Engel or his agent Mr Weinerman from the Claimant. This obligation was satisfied by Ms Murray asking for instructions on matters not considered in the Points for Agreement and then producing a series of drafts with explanations being given by her for the changes that had been made, with these changes often reflecting the advice that had been given by her. Indeed, it seems that when she inserted a new provision in a draft which had not appeared in the Points for Agreement, she was in fact implicitly advising what was required for her client's benefit. It is perfectly usual and appropriate for a solicitor to add provisions in a draft which it is believed will help the client and this is a form of advice, albeit not expressly stated to be advice.

208. The substantial size and nature of the task of drafting of what became the 2007 Agreements is shown by examining, as I have done in summary earlier in this judgment, the different drafts and seeing how they developed and how the executed agreement dealt with matters left open or not considered in the Points for Agreement. Indeed, that document occupied one-page, but it was eventually developed into a detailed agreement comprising the twelve closely typed pages of the First Agreement which was signed on 31 July 2007. There were six drafts of the First Agreement and the history of them shows the changes that were made and how the developments occurred. I have concluded that by agreeing to provide the draft for Mr Engel, the Claimant was putting forward not merely an undeveloped version of the Points for Agreement, but instead a different and much more detailed document which was provided with the benefit of Ms Murray's advice and which sought to further safeguard the position of the Claimant's client.

209. The Claimant was specifically required to advise on the first draft of the Agreement, on which Mr Weinerman's own manuscript comment in Hebrew can be seen. He explained in oral evidence that the translation of these comments is "*stronger – I want it stronger than he must sell it, and we can buy it back every date until we get the final approvals."* It is an obvious inference that he fed his comments back to Ms Murray and that they included an instruction that Mr. Weinerman and his investor should be able to "buy" the companies back with advice needed as to how this could be achieved. Ms Murray then ensured that the instruction was duly incorporated by inclusion of the rights in clause 3.6 of the draft development agreement and in the First Agreement.

210. It will be seen that there were other gaps in the Points for Agreement document, which had to be addressed and to be completed on matters such as the type of Project Company to be used and the membership it required. In addition, the Claimant must have considered the way in which its investor/client, who in that case was Mr Engel, could be further protected by giving him a minority interest in the project company. The duty of the Claimant to Mr Engel was to produce a draft agreement based on the Points for Agreement document and then seeking to reduce the significant risk arising for Mr Engel; this entailed where appropriate asking for instructions before acting on and incorporating the instructions received. There were occasions where advice was specifically given as in the email of 27 July 2007, which dealt with pledges and which was forwarded to the

Defendant and about which he was cross-examined when he was recalled as I have explained.

211. A few examples of the important matters contained in the First Agreement but not in the Points for Agreement are that the First Agreement provided that :-

a) The project companies would be OE entities as set out in Background Paragraph B and this was after advice had been given about the alternative SA companies;

b) There would be a large collection of warranties given by the Developer as set out in clauses 3.2 and 5.1;

c) There would be a variety of conditions precedent to be satisfied before the buyers would have the obligation to purchase the project company shareholdings on completion as set out in clause 3.6;

d) The right of the Defendant and Mr Weinerman to require that all shareholders of the project companies assigned and pledged the share of the profits and other rights and other benefits arising from their shareholding in favour of them;

e) The right of the Defendant and Mr Weinerman to rescind the agreement without incurring any liability to Ekoplyn; and

f) The provision that the Defendant and Mr Weinerman would appoint an additional party to purchase up to 1% of the shareholdings which would be bound by the Agreement.

212. So I am unable to accept the contention that the only obligation imposed on the Claimant was to produce an agreement incorporating the terms of the Points for Agreement document as it was necessary to deal and to advise on many very important matters not covered by the Points for Agreement document. Similarly I must reject the submission of Mr Pooles that the 2007 Agreements failed to incorporate key parts of the Points for Agreement because the 2007 Agreements built on that document adding many terms which benefitted Mr. Weinerman's client, who at that time was Mr Engel.

213. There was much time spent on considering the provision in the Points for Agreement which provided that Mr Rinis and Ekoplyn would hold the companies as "trustee", notwithstanding that there is no concept of trusteeship in Greek law. Ms Murray (who had not drafted the Points for Agreement) explained convincingly her understanding which coincided with that of Mr Weinerman, who with Mr. Avdani (who acted for Mr. Engel's company) drafted the Points for Agreement, which was that Mr Rinis would own the companies up and until the end of the licencing process but could only deal with them at the instruction of the buyer. In other words, the position was that the developer would act as the representative of the investor, who was in the 2007 Agreements, the Defendant. That was how it was stated in the 2007 Agreements and how the Claimant's Greek law expert, Ms Faitakis, would have expected the provision in the Points for Agreement to be dealt with in the 2007 Agreements.

214. The Points for Agreement were the starting point and the Claimant did not have a duty to Mr Engel to start afresh or to provide general advice on the correct corporate/ shareholding structure but merely to build on what had been stated in the Points for Agreement in the way I have indicated.

215. As I will explain, the 2007 Agreements were regarded by Ms Faitakis, who was the Claimant's Greek law expert, as being "competently drafted" and they contain many provisions which operated in favour of the investor, such as the list of conditions precedent which had to be satisfied before Mr Rinis could receive anything other than the small initial payment.

(iii)The Duty owed by the Claimant to the Defendant

216. Until now I have been dealing with the duties owed to Mr Engel, but the Claimant's case is that it did not owe a separate duty to the Defendant to look at matters afresh in the light of the instruction by Mr Weinerman to produce for the Defendant a similar agreement to that prepared for Mr Engel. The correct position is that if the agreement prepared for Mr Engel was negligently produced in the light of the instruction received from Mr Weinerman, then the agreement produced for the Defendant would also be regarded as negligently drafted unless there was a factor distinguishing the position of the Defendant from that of Mr Engel. There is no reason to believe that the Defendant's position and requirements were different from those of Mr Engel in the light of the identical explanations given and the instruction received from Mr Weinerman. So it follows that if the agreement produced for Mr Engel was not negligent, then the agreement produced for the Defendant would also not be negligent, and vice-versa.

217. Thus it now becomes necessary to consider the specific allegations of negligence which are now being pursued against the Claimant.

VI. The Breach Issue

(i) The Expert Evidence on Greek Law

218. Both sides relied on expert evidence on Greek law relating to the duties of a Greek lawyer as it was common ground that this evidence was required in order to determine if the Claimant was negligent. A meeting of the experts instructed by each of the parties took place prior to the hearing, but it showed that there was little agreement between the two expert witnesses on many issues. Both of them made witness statements and gave oral evidence. As I have explained, shortly before the start of closing speeches, the Defendant changed the focus of his case in a substantial manner. Therefore much of the evidence and many of the complaints of the Defendant's expert witness were thereafter no longer relied on.

219. The expert witness called by the Claimant was Ms Christina Faitakis, who is a Greek-qualified lawyer and who was admitted to practice by the Athens Bar Association in 1995. Since 2000, she has been a partner with Karatzas & Partners where she specialises in project financing and she is leader of its Energy Group

and has carried out work including the successful financing of the first PV plant in Greece with a capacity of over 1MW.

220. The Defendant's expert is Mr Yanos Gramatidis and he is a member of the Athens Bar Association. He is the managing partner at the law firm of Bahas, Gramatidis & Partners.

221. I concluded that the evidence of Ms Faitakis was much sounder than that of Mr. Gramatidis for a number of reasons. First, she had been involved in drafting agreements and in advising on small park projects at the relevant time, while Mr Gramatidis did not have this experience, which was of obvious relevance to the issues in this case.

222. Second, as I have explained, on 6 October 2010, an application by the Defendant for an injunction restraining Mr Rinis from selling the projects was refused. Mr Gramatidis had asserted that a judge at the Athens Court of First Instance had rejected this application for an injunction on the grounds that there was no agreement between the parties preventing Mr Rinis from selling the licence.

223. This was a serious error as the true position is that neither he nor anybody else knows or knew why the Defendant's application for an injunction restraining Mr Rinis from selling the project companies was rejected as the judge did not give any reasons for the decision. Ms Murray has explained in her witness statement that this was not surprising as a lawyer acting for Mr Rinis, Mr Ntasios, attended Court and "effectively agreed that no sale would take place". The reason for that decision could have been that there was not sufficient risk of disposal or that there was no agreement between the parties preventing Mr Rinis from selling the licence because the Defendant did not have any title or rights in the projects. What is important is that if the injunction had been refused on the latter ground, this would constitute important evidence in support of the contention that the Defendant had not been adequately protected by the Claimant. This error made by Mr Gramatidis might well have influenced unfairly the remainder of his evidence. In addition incidentally, the relevant decision was not, as stated by Mr Gramatidis, that of the Athens Court of First Instance but instead that of a totally different court in Komotini.

224. Third, and perhaps equally importantly I had a number of very serious reservations about Mr Gramatidis's evidence as the alternative structures put forward by Mr Gramitadis were based on a detailed knowledge of Cypriot law as to nominee shareholdings and directorships which in cross-examination he accepted would not have been within the knowledge of Greek-qualified lawyer, such as Ms Murray. In all fairness to the Defendant, I should explain that much of this evidence from Mr Gramitadis was not relied on by Mr Pooles in his final submissions.

225. A fourth matter of concern was that Mr Gramatidis said that Ms Murray was not entitled to take instructions from Mr Weinerman, although he was not aware of the full factual matrix surrounding the instructions of the Claimant in 2007. Indeed it is now conceded correctly, albeit belatedly, that Mr Weinerman had authority to make agreements on behalf of the Defendant.

226. In contrast, the reasoning of Ms Faitakis was sound and thoughtful. She emerged from the witness box with her evidence unscathed on the material issues.

(ii) "Know your client"

227. Before considering the matters set out in the Note supplied by the Defendant's counsel immediately before the final submissions were made, it is appropriate to mention a recurring complaint of Mr Pooles which was that Ms Murray did not seek to discover the particular requirements of the Defendant along the lines of the English concept of "know your client". The evidence was that Mr Weinerman, who was the authorised representative of the Defendant, asked Ms Murray in very late July 2007 to prepare an agreement for the Defendant, who was an experienced and substantial investor, and that this agreement was to be the same as the one prepared for Mr Engel. Ms Murray did not complete a "know your client" exercise in relation to the Defendant.

228. The concept of "know your client" is not known or adopted in Greece and so the Claimant cannot be criticised for not pursuing it. In any event, it is difficult to understand why and how the Defendant has been prejudiced by not being submitted to that process for a number of different reasons bearing in mind that the applications for exemptions for Mytilini were accepted from 1 August 2007, and it was anticipated that they would be dealt with by the RAE on a "first come, first served" basis so that there was a strong wish to enter into the First Agreement on or before that date.

229. First, even if Ms Murray had tried to make a "know your client" inquiry of the Defendant after being instructed in the last few days of July 2007 and in the very limited period prior to the deadline of 1 August 2007, she would have missed the deadline for submitting applications. Second, the Defendant said in evidence that he was overrun with work in late July 2007. So at best any "know your client" inquiry made by the Claimant of the Defendant would probably not have been considered by the Defendant and if anything had been done in respect of such an inquiry, it would have been directed back to Mr Weinerman.

230. Third, the Defendant and Mr Weinerman still had not provided their home addresses to Ms Murray by 20 August 2008, and so it is unlikely that they would have provided any information in the short period between the time when the Claimant was instructed in very late July and the deadline a few days later.

231. Fourth, in any event, I am unaware of any matter which would have been put forward by the Defendant if he had responded to a "know your client" application which would have had any impact on the duties of the Claimant and which was not known to Ms Murray before the First Agreement was entered into. The only matter which is now raised is that Mr Weinerman has said that their requirement was that he and the investor was "protected and we get in the end the thing" but, as I will explain, I accept the evidence of Ms Faitakis that the Defendant was properly protected.

(iii) The Approach to the Breach Issue

232. In *Boateng v Hughmans* [2002] EWCA Civ 593, Slade LJ giving the only reasoned judgment of the Court of Appeal explained that:-

> "In short, in my judgment, as the law stands, any claimant who seeks substantial damages arising from a solicitor's negligent failure to give him proper advice must satisfy three separate conditions, namely by showing
>
> (1) what advice in all the circumstances should have been given by a normally competent solicitor; and
>
> (2) what action the claimant would on the balance of probability have taken if he had received such advice; and
>
> (3) that, in the light of (1) and (2), the loss which he has suffered was in fact caused by the failure to give the relevant advice"

233. Applying that approach, it is convenient to consider first, if the Claimant's advice to the Defendant was negligent or if in drafting the 2007 Agreements the Claimant failed to incorporate the appropriate provisions in the agreement, and then, if so, second, how the Defendant would have acted if the Claimant would have properly carried out its duties to act with the proper and appropriate skill and care. Those two issues, which are the same as those referred to as (1) and (2) in Slade LJ's analysis are so closely intertwined that they can be, and will be, considered together. Issue (3) will be considered in detail later. I will therefore start by considering the three matters which Mr. Pooles contends should have been included in each of the 2007 Agreements.

(iv) The Claimant's alleged failure to include a provision for the immediate appointment of a minority shareholder nominated by the Defendant in the <u>First</u> Agreement

234. Mr Pooles for the Defendant stresses the importance of having a minority shareholder in the project company because such a shareholder could have prevented the sale of the company, because his, her or its consent would have been necessary to amend the Articles of Association before a sale could take place. This contention was accepted by Ms Murray in evidence. Similar evidence was given by the Claimant's expert on Greek law, Ms Faitakis.

235. The submission of the Claimant is that such a provision was in fact inserted in the First Agreement in clause 2.2 which provides that:-

> "Either [Ekoplyn] or [Mr Rinis] shall hold at least 99% shareholding in any project company. [Mr Weinerman and the Defendant] shall appoint an additional party to purchase up to 1% of the shareholdings which party shall be bound by this Agreement"

236. In response to this, Mr Pooles contends that this obligation only arose on closing, but not prior to it. He draws attention to paragraph B of the "Background to the first Agreement", which provides that:-

> "Production Licence Applications are to be made in the name of the special-purchase partnerships (..OE).. in which [Ekoplyn] and/or [Mr Rinis] and one of their Associates will be shareholders".

237. He then points out that clause 2.1 of the First Agreement provides first, that Ekoplyn and Mr Rinis agree to sell and Mr Weinerman and the Defendant or company appointed by them agree to buy 100% of the shareholding of each of the project companies on the closing date together with all entitlements, and second that Ekoplyn shall elect at its discretion whether to establish OE companies in order to ensure the fastest incorporation and most effective long-term licensing strategy. Mr Pooles asks rhetorically why Mr Weinerman and the Defendant would be purchasing a 1% shareholding at the outset, when that is contrary to the whole structure of the agreement which provides for the purchase of 100% of the shareholding by Mr Weinerman and the Defendant at closing.

238. Notwithstanding those submissions, there are five reasons which individually and cumulatively have led me to reject the submission that the obligation to appoint an additional party to purchase up to 1% of the shareholding only arose on closing, and not at any earlier time after the First Agreement was made. Greek law is the governing law of the First Agreement, but nothing has been shown to prove that Greek rules of construction of agreements are different from English rules.

239. First, Mr Pooles' submission would entail rewriting the second sentence of clause 2.2 so as to insert into it the words "at closing", when at present there is no such limitation. The present wording is clear and the words "at closing" need not be added for it to have a clear meaning. The Courts are understandably very reluctant to change or to limit the clear meaning of words in a carefully drafted agreement, especially as where those have a specific purpose. As I have explained, clause 2.2 on the Claimant's interpretation, if implemented prior to closing, would have prevented the sale of the company because if the Defendant and Mr Weinerman had appointed an additional party which purchased up to 1% of the shareholding, its consent would have been needed to prevent such a sale as the outgoing shareholders would have to agree to a change in the Articles so as to permit the sale.

240. Second, there is no justification on commercial grounds for adding the additional words to the clear wording of clause 2.2. so as to permit its use only on closing, not least because it is difficult to understand what the purpose would be for the Defendant and Mr Weinerman to purchase the 1% shareholding on closing because they would then also be entitled to purchase the entire company. What the Court is being asked to do in this case by the Defendant is to rewrite a clearly worded provision and that is not permissible. Indeed, if the parties to the First Agreement had intended that the purchase could take place at any time and not merely at closing, as is contended by the Claimant, it would have been appropriate for them to have used the actual wording adopted in clause 2.2.

241. Third, the First Agreement is a carefully constructed agreement and it is noteworthy that where there is a requirement for matters to occur on or in relation to the closing date in the First Agreement, that fact is *expressly* stated, such as in statements in clauses 3.3 and 3.4 which related to matters occurring "prior to closing" or "before closing". Indeed when a matter has to occur on the closing

date, this is *expressly* stated as in the provision immediately preceding clause 2.2, which is clause 2.1 and which provides that the sellers agree to sell and the buyer agree to buy "on the closing date". Perhaps, more relevantly is that such a statement set out in clause 2.2 where there is no time stated for when the appointment shall be made. This suggests strongly that the absence of the words "on the closing date" in clause 2.2 shows that these words were not meant to apply to that provision.

242. Fourth, this provision in clause 2.2 appears in the section of the First Agreement entitled "The shareholdings", but significantly it is not to be found in the sections of that agreement entitled "Signing Events and Steps to Closing of the Transaction" or "Closing Procedures". That indicates that clause 2.2 does not relate to closing procedures. After I came to this conclusion, I noted that in *Farstad Supply AS v Envirico* Ltd [2010] UKSC 18, [2010] 2 Lloyd's Rep 387, the Supreme Court took into account the heading of a clause in a charter party entitled "Exceptions/Indemnities" in interpreting the scope of that clause (see, especially, Lord Phillips of Worth Maltravers [22]).

243. Fifth, I do not think that there is any valid or cogent reason as to why this obligation should only arise at closing, but not at an earlier stage, particularly as it would give the Defendant, through his agent Mr Weinerman, an important right which would preclude the sale of the business without his consent at any time, whereas at closing such right would have no purpose as the agreement provided for the purchase of the entire holding on closing. Therefore I cannot see why there had to be a provision for the acquisition of the 1% shareholding on closing if the Defendant's submission is correct.

244. It was clear from his oral evidence that Mr Weinerman considered that the purpose of the provision in Clause 2.2 was to prevent the sale of the project company by Mr Rinis and he did not say anything to suggest that the right to purchase would only arise on closing. More importantly, he took steps to set up the Cypriot company well before closing and soon after the First Agreement was signed. Ms Faitakis said for what it is worth that the shareholding could be bought at any time. So that shows that there is nothing in the factual matrix to show that the words in clause 2.2 should not have their ordinary meaning so as to permit the acquisition at any time and certainly prior to closing. So it follows that the answer to Mr Pooles' complaint is that clause 2.2 constituted a provision for the immediate appointment of a minority shareholder nominated by the Defendant.

245. Even if this is wrong and that the clause 2.2 right could be exercised *only* on closing, the Defendant would be protected against a premature sale by Mr Rinis as he could always apply for an injunction to support his right to buy the project companies, as that right also means that there was an obligation on Mr Rinis not to sell to anyone else. Ms Murray in her evidence explained that an injunction that the 1 per cent shareholding was not the only "trump card" to prevent a sale as the contractual obligations to prevent a sale could be enforced by emergency injunction and so it could have been applied for in October 2008 if needed. No cogent evidence was given to show that this was inaccurate or that in the absence of a clause 2.2 provision, a sale by Mr Rinis could not have been stopped by an injunction if there was evidence of an impending sale. As I have explained an application for an injunction was made in 2010 but it was rejected, which Ms

Murray says was not surprising because as I have explained, I accept as correct her assertion in her witness statement that "Mr Ntasios attended court and effectively agreed on Mr Rinis's behalf that no sale would take place".

246. There was some evidence that Greek Civil proceedings are slow but this still does not show that there was not an effective remedy in the form of an emergency injunction available to the Defendant to prevent a sale if my conclusion in respect of the 1% shareholding set out above is incorrect. After all, Mr Rinis and his company was obliged to sell the project companies to the Defendant and Mr Weinerman on closing and they could not take any steps to prevent this. There were provisions in each of the 2007 agreements which entitled the Defendant and Mr Weinerman to rescind the agreement if Mr Rinis took steps which would have precluded closing occurring (see clauses 3.2 and 3.3).

247. There were also provisions in the 2007 Agreements, which enabled the Defendant and Mr Weinerman to obtain a pledge, because clause 4.3 of each of them provides that as security for the first payment of €2000 for each of the ten companies, the Defendant and Mr Weinerman:-

> "shall be entitled to requires that all shareholders in the Project Companies assign and pledge the share of profits and all other rights and benefits arising from their shareholding in favour of [the Defendant and Mr. Weinerman] and [the Defendant and Mr. Weinerman] shall be entitled to perfect such pledge by registration with the Company".

248. The significance of this is that if the pledge had been enforced by the Defendant and Mr Weinerman, then any purchaser would have taken subject to that charge.

249. The next issue is whether Mr. Weinerman, and through him the Defendant, had actually been informed by Ms Murray that there should be an immediate appointment. Mr Pooles contended that Ms Murray had not explained to Mr Weinerman the need for him and for the Defendant to immediately appoint a party to purchase the 1% shareholding. The evidence of Ms Murray, which I accept, was that this matter was understood by Mr Weinerman during their discussions. Mr Weinerman explained in evidence that he knew that if a minority shareholding was taken by him and /or the Defendant, that would be protection against a sale of the project company. So it must have been obvious to the Mr Weinerman that this protection was needed immediately from the signing of the agreements and it was not suggested by him that it was otherwise as is shown by a number of other factors.

250. First, on 1 August 2007, which was the day after the First Agreement was signed, Mr Weinerman emailed Mr. Simos and asked him to advise "5. All costs shelf and establishing Cypriot company and yearly operation costs and reports required". Second, as I will explain, Mr Weinerman actually took steps to set up the Cypriot company. Third, Ms Murray had explained that not long after the First Agreement was signed, Mr Weinerman had asked her to find out from the RAE if there would any difficulty with the licensing procedure if a Cypriot company was a shareholder in a Greek company applying for a licence. So I reject the

contention that it was not made clear to Mr Weinerman that there was a need to immediately appoint a party to purchase the 1% shareholding.

251. I should add that even if this analysis is wrong and that there should have been a clearer requirement for the *immediate* appointment of a minority shareholder nominated by the Defendant than was set out in clause 2.2, but this was not included in the First Agreement, then this has not caused the Defendant any loss whatsoever because there is no reason to think that such a minority shareholding would have been taken up by the Defendant because of what Mr Weinerman did in relation to his obligation to take up the 1% shareholding set out in the First Agreement.

252. Although there was much questioning about whether it was explained to Mr Weinerman that the 1% shareholding should be taken up, I am satisfied that he knew full well after the time when or immediately after the First Agreement was signed that a Cypriot company had to be set up as he said "for protection" which was for the purpose of preventing any attempt by Mr Rinis to sell the project company.

253. Mr Hubble's point is that Mr Weinerman acting for himself and the Defendant did not avail himself of that right although he was well aware of it. Significantly, the Cypriot company was not set up and Mr Weinerman explained the reason for that omission was that he assumed it was "because of neglection between me and [the Defendant]". He clarified this answer by saying that it was really their "neglect" as being the reason why the Cypriot company was not set up. It is noteworthy that Mr Weinerman knew of the importance of this provision and also that he was being reminded orally on a number of occasions by Ms Murray about the need to set up this company. The Defendant said he could not remember if there was a need to take a 1% shareholding in the holding companies, but I believe that he was told because, as I have explained, Mr. Weinerman talks of "neglection between [himself] and [the Defendant]". Indeed the Defendant spoke in his evidence about the fact that he was preoccupied in other ventures and that he did not focus on the arrangements with Mr Rinis until 2008.

254. Indeed, after Mr Weinerman gave evidence, revealing emails were produced by Mr Simos when or just after he gave his evidence and they showed that Mr Weinerman had been in contact with a Cypriot Lawyer, namely Ms Chrysso Savva in November 2007. He made a request for authenticated registration papers on 20 November 2007 as:-

> "we have to put this [company] as a shareholder for the Greek companies, submitting RAE applications and the shareholders have to be put in place before the application (sic) are submitted and they have to be submitted this week"

255. The email exchanges showed first, that Ms Savva set up the Cypriot company but that she would not release it until her bill was paid, and second, that this bill had not been paid by Mr Weinerman or by the Defendant with the result that it had never been released to them. This shows that even when the Defendant and Mr Weinerman were aware of the need to have a minority shareholder in the form of the Cypriot company, they still did not pursue this matter probably because of an

unwillingness on their part to pay the fees or because of neglect on their part to do so. So a further answer to this claim is that the Defendant and Mr Weinerman when he knew of the need to seek an immediate appointment did not consider it worthwhile to pursue this important right to ensure that Mr Rinis could not sell the project companies. So even if there was not a provision along the lines of clause 2.2 for the *immediate* appointment of a minority shareholder in the First Agreement, the Defendant and Mr Weinerman have not been prejudiced as in any event, they would not have availed themselves of this right. Indeed I am fortified in coming to that conclusion or obligations by the fact that the Defendant had not shown any interest in his contractual rights as I explained in paragraph 94ff.

256. Apart from the clause 2.2 provision, the Defendant had an important right to prevent the sale by means of an application for an emergency injunction, but none was applied for until late in 2010. This shows that the Defendant was not interested in using existing rights to prevent a sale in 2008 and 2009 especially as there is no evidence that he was seeking legal advice on how he could stop a sale by Mr Rinis or his rights under any of the three 2007 Agreements. This is not surprising because, as I have explained in paragraphs 94ff, the Defendant was not interested in relying on his contractual rights in other ways such as enforcing the pledge and enforcing the obligation of Mr Rinis to pay for all the steps needed to obtain the exemptions. So if clause 2.2 could not have been invoked prior to closing, the Defendant was protected as there could always have been an application for an emergency injunction to restrain a sale by Mr Rinis which would have restrained a sale which in any event, if effective, could, and would, have been subject to the Pledge in the First Agreement if enforced

257. In conclusion, having considered all Mr Pooles' submissions and in particular those based on points that emerged from the cross-examination of Ms Murray and the Greek Law expert. I consider that this complaint must be rejected in respect of the First Agreement as (a) there was a provision in the First Agreement for the i*mmediate* appointment of a minority shareholder nominated by the Defendant; (b) this was known to Mr Weinerman; (c) if such protection could not have been invoked prior to closing, the Defendant was protected as there could always have been an application for an emergency injunction to restrain a sale by Mr Rinis which would have restrained a sale which if effective could and would have been subject to the Pledge in First Agreement if enforced, and (d) in any event, even if the First Agreement had failed to contain a provision for the *immediate* appointment of a minority shareholder nominated by the Defendant, the Defendant has not been prejudiced as he would not have taken advantage of it as Mr Weinerman thought that the Defendant had such a right but that nevertheless, he did not pursue it because of neglect.

(v)The failure to include a provision for the immediate appointment of a minority shareholder nominated by the Defendant in the <u>Second and Third</u> Agreements

258. Whereas there was a provision in clause 2.2 of the First Agreement that there should be a right on the part of Mr Weinerman and the Defendant to purchase up to 1% of the shareholding, no such comparable express provisions were contained in the Second and Third agreements. This means that not all the arguments relied upon by Mr Hubble in relation to clause 2.2 of the First Agreement and to which I

have just referred would necessarily apply in precisely the same way in relation to the Second and Third Agreements.

259. Mr Hubble's response is first that the relevant project companies had been set up between 8 and 16 August 2007 pursuant to the First Agreement and second that this was before the instruction of the Claimant by Mr Weinerman on behalf of the Defendant to produce what became the Second and Third Agreements and third that the same project companies set up pursuant to the First Agreement would be used as the project companies in the Second and Third Agreements. Thus, there was, according to Mr Hubble, no need for anything to be said about the need for there to be minority shareholdings in the Second and Third Agreements because the minority shareholdings would or should have been set up under the First Agreement. Indeed paragraph B of the Background refers to the fact that "applications have been made in the name of the seven special-purpose partnerships… listed in Schedule 1". Those entities had been set up between 8 and 16 August 2007 before Ms Murray had been instructed to draft the Second Agreement and of those seven, five had been used for applications for the First Agreement and the remaining two were treated or to be treated as if they were.

260. As for the Third Agreement, paragraph B of the Background contains the same wording as the equivalent provision in the Second Agreement, but Schedule 1, which is referred to in paragraph B and which is to be found at D887 in the core bundle, is blank and no new project companies are referred to. I consider that it was envisaged and assumed that the same entities would be used as in the earlier agreement with the holdings on the 99/1% basis stipulated in clause 2.2 of the First Agreement. That would be the answer to the complaint.

261. I am fortified in reaching that conclusion by a section of Ms Murray's witness statement in which she considered (with emphasis added) "the whole point of the 2007 Agreement**s**" and she explained that "if a the Buyer had appointed a 1% shareholder, he could have prevented the sale of the other 99% shareholding". She did not seek to distinguish between the three 2007 Agreements and significantly she was not challenged about it. Nor was it suggested to the Claimant's expert, Ms Faitakis, that she was not correct in approaching this case on the basis that the protection given to the Defendant and Mr Weinerman were the same in each of the three 2007 Agreements and she did not distinguish between any of then in her evidence as I understood it.

262. So I accept Mr Hubble's submission on this issue, but if that is wrong, there is a second answer to this complaint of the Defendant and that is as in the case of the First Agreement, that the Defendant was able to seek an injunction if there had been a threatened sale of the project companies by Mr Rinis. It follows that the Claimant did not act negligently in not placing an obligation similar to clause 2.2 of the First Agreement in the Second and Third Agreements.

263. In addition, as I have explained, that when Mr Weinerman and the Defendant knew in the case of the First Agreement that the minority shareholding company should be set up, they did not take advantage of it because of an unwillingness to pay the fees or because of neglect. I am satisfied that their attitude in relation to the Second and Third Agreements would have been the same there is no reason why it would be different. So they would not have exercised that right if the

Second and Third Agreements had contained the equivalent of clause 2.2 and Mr Weinerman had been advised about it. If I had been in any doubt on this conclusion, I could, and would, have taken into account the matters which I have set out in paragraph 94ff above which show that the Defendant and Mr Weinerman were not invoking their contractual rights or complying with their contractual obligations.

264. Therefore I reject the Defendant's complaint for essentially the same reasons as I set out in relation to the First Agreement. I should add that if the reasoning set out in paragraphs 259 to 262 is incorrect, then the only remedy for the Defendant would be nominal damages, which are usually in the sum of £2 because for the reasons set out in the last paragraph, I consider that he would not have taken advantage of such provisions for the immediate appointment of a 1% shareholder.

(vi) The Failure to include a provision in the agreement requiring the use of an EE so as to permit the appointment of a minority shareholder without unlimited liability.

265. As I have explained in paragraph 6 above, an EE partnership under Greek law is different from an OE partnership, because whereas in the OE partnership, the partners have unlimited liability for the debts of the partnership, in the case of the EE the liability of the partner who plays no role in the partnership is limited to their contribution.

266. Mr Hubble contends that the Defendant cannot pursue this allegation that there was a failure to include a provision in the agreement requiring the use of EEs so as to permit the appointment of a minority shareholder without unlimited liability, as it was not pleaded as it should have been. He submits that this allegation is the opposite of the pleaded case, which was that SAs should have been used rather than OEs or EEs. In response, Mr Pooles explains that there was no need to plead this complaint, because it was covered by the more general allegations of negligence put forward and also because Ms Murray in her evidence did not distinguish between OEs or EEs.

267. This allegation is indeed significant, and it should have been pleaded as it would have shown the need to question Ms Murray and the Greek law experts so they could explain why a minority shareholder in an EE set-up would have given better protection to the Defendant than such shareholding in an OE set-up. In other words, the evidence would then have had to focus first on the differences between these two entities; second, on whether it was negligent of the Claimant not to use solely EEs or to have advised this; and if so, third, how the Defendant has been or might have been prejudiced by the fact that not all the project companies were EEs.

268. Mr Pooles stated that the Claimant's expert said that she would not have advised the Defendant to become a minority shareholder in an OE, while Ms Murray did not distinguish between an EE and an OE. In my view, that is not an answer because Ms Murray, whose conduct was under attack, should have been given the opportunity to explain why she was content to use an OE and if need be, Mr Pooles should have requested her recall if, as has occurred, this matter was to become one of the three major planks of his case. Further, if the Defendant's expert had supported this allegation, Mr Hubble should have had the opportunity

of cross-examining him on what very belatedly has become one of the main parts of the Defendant's case. I accept that if his allegation had been pleaded, Mr Hubble would have conducted this case differently and that shows why the Defendant cannot now pursue it. The more general pleaded allegations of negligence were not specific enough to have alerted him or indeed me to the way in which the case is now being put.

269. In any event, even if that is wrong and this point had been adequately pleaded, it is noteworthy and it is not stated anywhere by Mr Weinerman or the Defendant that if they had been told that an EE could, and should, have been used so as to permit the appointment of minority shareholder without unlimited liability, they would have taken advantage of it and why. Indeed, if that had been said by the Defendant and Mr Weinerman, they would probably have then been extensively cross-examined about it not merely because it is difficult to see how the use of an EE would have prevented the loss of profits or the additional expenditure but also because the evidence is in fact to the contrary to what Mr Weinerman said in evidence that "I don't care if it was OE or SE (sic) –any one that you want- so long as I and my investors are protected and we get in the end this thing". He added in relation to the licence:-

> "We are buying it only finally when it is finished, when there is a licence. Then we replace it . But until this stage, I don't care"

270. Furthermore, Mr Weinerman explained that in July 2007, he knew the difference between an OE entity and an EE entity. In other words, this was a decision which had been taken by Mr Weinerman, who, as I have explained, had spent much time previously receiving free advice while conducting "beauty parades" with potential advisers before instructing the Claimant. Mr Simos had told Ms Murray that Mr Weinerman had chosen the OE entity because of the costs involved. That constitutes one reason why any advice to the knowledgeable Mr Weinerman to use an EE would not have been wanted, needed or accepted.

271. A second reason arises because, as I have already explained in paragraph 94ff, the Defendant and Mr Weinerman ignored many of the provisions in the 2007 Agreement, such as their obligation to give the guarantee, to appoint the company which would take up the 1% shareholding in the project companies and their right to a pledge. I have concluded that they were not interested in what rights were granted to them and the obligations in any of the 2007 Agreements and so the Defendant and Mr. Weinerman would not have used an EE entity, which was less important than the 1% shareholding which was not taken up.

272. In any event, as I have explained, a further reason why this complaint fails is that two of the project companies which were set up were in fact EEs.

273. This complaint has to be rejected as first, this allegation was not pleaded and Ms Murray was not questioned about it with the consequence that it cannot be pursued; second, Mr Weinerman knew the difference between OE and EE entities but he decided that an OE would be used, and third if the Claimant had advised that the project companies should be OE entities, there is no reason to believe that the advice would have been accepted any more than the advice on other rights which were not invoked. Also two of the project companies were EEs.

(vii) The Agreements should have contained pledges which protected the totality of any claim that the Defendant might have in respect of his rights concerning the project companies.

274. This contention has to be considered in the context of clauses 4.3 of each of the 2007 Agreements which provided that:-

> *"as security for the First Payment [namely €2,000 for each of the ten companies], [Mr Weinerman and the Defendant] shall be entitled to require that all shareholders of the project companies assign and pledge the share of profits and all other rights and benefits arising from their shareholding in favour of [Mr Weinerman and the Defendant] and [Mr Weinerman and the Defendant] shall be entitled to perfect such pledge by registration with the Company".*

275. Thus, this new allegation is that the pledge given to the Defendant and Mr Weinerman in the 2007 Agreements should not have been restricted to covering and protecting the initial payment. Mr Hubble complains that this allegation was not pleaded, and in my view, it should have been pleaded, because Ms Murray would then have been able to deal with this specific allegation and to justify her actions in limiting the pledge as she did. She did not do so in the appropriate detail as this matter was not pleaded.

276. Ms Faitakis defended the structure of the existing provision and she explains convincingly that nothing more than €20,000 had been paid to secure under the pledge and that if an attempt was made to "secure also the enhanced value as you call it, then we are talking about over-collateralisation here. Actually you have not paid anything more than €20,000 to secure under the pledge". This is another answer to the claim.

277. A further reason why this allegation cannot be accepted is that the pledge provided for in the existing 2007 Agreements was not entered into nor was it enforced in relation to the initial payment. So there is no reason to believe that the Defendant and Mr Weinerman would have entered into or enforced any pledge of the kind now advocated by Mr Pooles relating to the totality of any claim the Defendant might have had if it had been included. There is no cogent evidence to the contrary.

278. So this complaint has to be rejected as first, this allegation was not pleaded and therefore, Ms Murray's evidence did not focus on why the pledge was not drafted in the way in which Mr Pooles now contends that it should have been pleaded with the consequence that it cannot be pursued; and second, there is no reason to believe that the Defendant would have taken advantage of and enforced the pledge which Mr Pooles now contends should have been included in the 2007 Agreements as he did not enforce the existing pledge or take advantage of the existing pledge relating to the initial payment.

(viii) Matters on which the Claimant ought to have provided clear advice.

279. Mr Pooles puts forward a number of matters on which he submitted that the Claimant ought to have given clear advice, but did not do so.

280. The first matter in respect of which it is said that the Claimant ought to have given clear advice was the immediate need to appoint a minority shareholder, but this was known to Mr Weinerman for the reasons which I have set out when dealing with the similar allegation relating to what should have been included in the First Agreement. In essence, the evidence shows that he accepts that he knew that if the Defendant took a minority shareholding in the project company, Mr Rinis could not sell that company to someone else and that this shareholding should have been acquired soon after the First Agreement was signed. That shows that clear advice was given and his actions in seeking to have it set up to which I have already referred and his decision requiring Ms Murray to make inquiries on the RAE shows that he knew this had to be done speedily.

281. A second reason why this complaint has to be rejected is that even if that reason is incorrect, there is nothing in the evidence to show that the Defendant would have acted differently if, as alleged by Mr Pooles, clear advice had been given on these matters. After all, when Mr Weinerman knew about the need to appoint a minority shareholder, he did nothing about it because of his neglect as I have already explained.

282. The next head of complaint is that the Claimant ought to have provided clear advice on the absence of any control over assets by reason of delivery of documents, the limited ambit of the pledge of proceeds and the steps taken to render such a pledge effective. There is no cogent evidence that the provision of any such advice would have led to the Defendant to act differently from the way in which he did. In other words, such advice would not have had any effect. If it had been pleaded, this issue could and would have been explored.

283. Nor is it said, let alone proved, that the Defendant or Mr Weinerman was lulled into a false sense of security. The onus of proof on these matters is on the Defendant and Mr Weinerman as they alone can state how they would have acted if given clear advice, but they have not discharged this onus. Indeed I did not understand Mr Pooles to submit that if the Defendant failed to succeed in respect of any of his three main complaints relating to the 1% shareholding, the EE entity and the pledge, he would then still be able to show that these other complaints would have entitled the Defendant to obtain damages in the absence of specific evidence of prejudice of which there is none.

(ix) Matters which should not have been included in the three 2007 Agreements

284. Mr Pooles says that there are six matters which he contends ought *not* to have been included in the agreements. They are:-

i) Background B which provided that the developer and/or Mr Rinis or one of his associates would be shareholders of the project companies;

ii) the provisions in clause 2.1 that required Mr Weinerman and the Defendant to buy 100% of the shares if it was intended that he would hold 1% already;

iii) the developer's discretion in that clause as to the use of EE companies;

iv) Clause 2.2 in its final form as later substitution of a minority shareholder would cancel exemption applications;

v) Clauses 4.1 and 4.2 the provisions in respect of delivery and retention of statutory documents; and

vi) Clause 6.1(a) and its warranty concerning an existing Cypriot company.

285. I should say that if the Defendant failed to succeed in respect of his three main complaints relating to the 1% shareholding, the EE entity and the pledge, I cannot understand how he would be able to succeed in obtaining any damages by relying on these issues, unless there was *clea*r evidence that he had been misled and that in consequence, he had acted to his detriment. There is no such evidence and indeed the effect of these statements on the Defendant and Mr Weinerman was not explored in any way with them as it should have been if the Defendant had wished to pursue any of them.

286. It is true that there was clearly an error in respect of item (v), as there were no documents that could be held by way of security, but the inclusion of this matter does not show any breach of the Claimant's duties bearing in mind the adequate protection given for the interests of the Defendant and Mr Weinerman elsewhere. In any event, I do not understand what damages, if any, could have been caused by it. Further, there is no evidence that Mr Weinerman and the Defendant had been misled by these provisions or had altered their position in reliance on them. It is noteworthy that neither the Defendant not Mr. Weinerman ever indicated that they relied on the delivery or on the retention of the statutory books to give them some form of protection, which is not surprising as he and Mr. Weinerman failed to rely on their rights under the 2007 Agreements in relation to the 1 % shareholding, the enforcement of the pledge and not to have to make any payment to Mr. Rinis (save for the small initial payments) until after he had complied with onerous conditions. I find that he was not misled by the statutory books requirements.

287. As to the remaining matters, it has not been shown that they are incorrect. Some of those points such as (i) and (ii) are similar to the points on Mr Pooles' interpretation of clause 2.1 which I could not accept for reasons which I have already explained. In any event, the Defendant and Mr Weinerman had been adequately protected by other provisions and there is no evidence that Mr Weinerman and the Defendant had been misled by these provisions or that they had altered their position in reliance on them or that they would have acted differently if they had not been included.

288. Furthermore if the Defendant has failed to succeed in respect of any of his three main complaints relating to the 1% shareholding, the EE entity and the pledge, then it is difficult to see or to accept why in the absence of evidence of prejudice, any of these matter constitutes a breach of any of the duties owed by the Claimant to the Defendant or that he has suffered any loss in consequence.

(x) Conclusion

289. Having considered all Mr Pooles' submissions on the evidence of Ms Murray and the Claimant's Greek law expert, I have concluded that I must reject the contention that the Claimant acted in breach of its retainer or negligently in relation to its work on any of the three 2007 Agreements. In any event, even if that was incorrect, the Defendant would not have acted differently if the agreements had been drafted and the Defendant and Mr Weinerman had been advised in the way that Mr Pooles contends that they should have been. Accordingly the counterclaim has to be dismissed.

290. To my mind, the Claimant adopted a sound structure for the Defendant, with him paying small sums prior to the completion of the formalities of the development stage. Mr Rinis had to carry out all the work at his own expense and he would only receive further payments if and when he completed that stage. Under the 2007 Agreements, the Defendant could purchase the project companies early and he had the right to rescind the agreements if stringent conditions were not complied with. The Defendant had the right under those agreements to monitor the work done by Mr Rinis. He, and not the Defendant, had the obligation to spend much time and money in completing this demanding formalities, although, as I have explained, the Defendant later voluntarily agreed to make very substantial payments but then did not do so. This led to the problems with which this judgment is concerned and not the drafting by the Claimant. So I reject the contention that the Claimant acted negligently or in breach of his retainer.

291. Indeed I agree with the statements of Ms Faitakis in her report that:-

> "21. The Agreement was competently drafted and provided terms which operated in favour of the investor such as the list of conditions precedent before payment and the pledge over the share profit.
>
> 22. The agreement provided for a controlling system of the Defendant over his partner Mr Rinis.
>
> 23. By drafting the relevant contractual terms Ms Murray acted diligently and competently protecting the interests of her client, given the instructions that she had received to use the OE partnership structure.
>
> 24. I do not agree that the corporate system resulting from the Agreement that was drafted by Ms Murray resulted in Mr Ostrovizky having no control over his investment. The Agreement provided for Mr Ostrovizky to have control and his investment was protected in that he did not need to pay until various conditions precedent had been met. Given the fact that Mr Ostrovizky opted for a system where OE/EEs in Greek ownership applied for licence exemptions, there was no way that the agreement could have been structured better to protect Mr Ostrovizky's interests".

VII. The Causal Connection/ Loss of Profits Issue.

(i) Introduction

292. As I have endeavoured to explain, the Defendant has failed to satisfy two of the requirements necessary for him to succeed on his counterclaim. Those requirements are first, that the advice given by the Claimant was negligent, and second, that if proper advice had been given, he would have taken advantage of it. So his counterclaim for damages must therefore fail, but I will now consider the next issue which is the causal connection issue, and which I will consider although more briefly than I would have done if it was an issue of crucial importance in determining whether the counterclaim could succeed.

293. This issue requires me to consider if any of such acts of negligence committed by the Claimant *actually caused* the Defendant damage in the form of loss of profits, but on the assumption that I am wrong and that the Claimant has acted negligently and that if proper advice had been given, the Defendant would have acted differently. I will deal with the issue of the causal connection with the alleged wasted expenditure separately in the next section of this judgment, as it raises different factual issues. For the purpose of considering this issue, I will assume that the Claimant has been negligent in the way contended by Mr Pooles and I will refer to these acts and omissions collectively as "the alleged negligence of the Claimant". The burden of proof on this issue is on the Defendant as the counterclaiming party.

(ii) The Submissions

294. Mr Hubble submits first that that there was no causal connection between the alleged negligence of the Claimant and the alleged loss of profits claim of the Defendant. Thus he contends that this constitutes another reason why the counterclaim has to be dismissed.

295. Mr Hubble's second and alternative submission is that the Defendant cannot prove that his claims for loss of profits arose as a consequence of the Claimant's negligence on account of first, the failure of the Defendant and of Mr Weinerman to comply with their obligations of disclosure to which I have already referred; and second, the fact that neither of them was a reliable witness. This, he says, means first that this Court cannot be satisfied that the Defendant's case on causation has been proved, and second, that it should not tolerate the attitude towards disclosure exhibited by the Defendant because to do otherwise would be effectively to condone the Defendant's procedural abuses and also to deny the Claimant a fair trial. I will deal with each of these issues separately.

296. Mr Pooles submits that I can, and indeed that I should, rely on the evidence of the Defendant and Mr Weinerman, because they are both reliable and credible witnesses. His case is that I should then conclude that the Defendant's loss of profits was caused by the absence of the proper protection sought by him from the Claimant and, in particular, the alleged negligence of the Claimant. He contends that there was a critically important difference between, on the one hand, what the Defendant and Mr Weinerman were entitled to receive by way of protection against Mr Rinis and, on the other hand, the absence of protection for the Defendant in the 2007 Agreements drafted by Ms Murray, which left the Defendant in a "position of vulnerability to Mr Rinis".

297. The case for the Defendant is that these errors of the Claimant on which the Defendant relies and to which I have referred mean that he and Mr Weinerman could not control Mr Rinis, who threatened to sell the project companies and who would not cooperate on the due diligence exercise in respect of the potential sales to Silcio and Energetica to which I will return later. This had led to the Defendant sustaining a loss of the profits that he would, and should, have made on the venture. It is said by Mr Pooles that if the Claimant had not been negligent and had ensured the presence of a minority shareholding, the use of EE entities and the enhanced pledge described by Mr Pooles and the other ways in which it is alleged that the Claimant had been negligent, then the consequences would be that he, that is the Defendant, would have made very substantial profits and he quantifies his claim for loss of profits at €8,705,500.

298. The consideration of this issue has to be on the artificial basis that the Claimant was negligent, which as I have explained, I do not consider to be correct.

(iii) Is there a causal link between, on the one hand, the alleged negligent errors of the Claimant and, on the other hand, the Defendant's loss of profits claim?

299. There was much evidence of threats by Mr Rinis to sell the project companies and I will assume for the purposes in this section of this judgment that they were all made (although I am unsure how many threats were made), but it seems clear that none of the companies was ever sold. Five factors, whether considered individually or cumulatively, have satisfied me that there is no appropriate causal link between the alleged negligent errors of the Claimant and the Defendant's loss of profits claim.

300. The first reason why this claim fails on this issue is that there is no causal connection between the Claimant's alleged negligence in the drafting of the 2007 Agreements, the vulnerability of the Defendant and the threats of Mr Rinis and his alleged loss of profit. The vulnerability of the Defendant to the threats of Mr Rinis was caused not by any negligence of the Claimant but instead by first, the promises of the Defendant to make payments to Mr Rinis even though he had no obligation to do so under the 2007 Agreements, second, by the expectation on Mr Rinis' part that the promised further payments would be made to him by the Defendant and then third, by the Defendant's subsequent failure to comply with those promises. So the chain of causation had been broken. The Claimant had no duty to envisage that the Defendant would ignore the provisions of the 2007 Agreements by taking on the responsibility of financing Mr Rinis who alone had the clear duty to finance his own activities under the 2007 Agreements.

301. By taking on the responsibility of financing Mr. Rinis in the way I have indicated, the Defendant radically amended his obligations under the 2007 Agreements with Mr Rinis. The November 2008 Agreement followed with another radically new right given to Mr Rinis to sell some of the parks when the Defendant and Mr Weinerman failed to pay the sum of €3,831,400 specified in that agreement. Ms Murray and the Claimant were not involved with those decisions to make payments which were not payable under the 2007 Agreements and nor were they asked to advise about them.

302. In other words, there is no connection between the drafting of the 2007 Agreements, even if negligent, and the Defendant's decision to ignore the obligation of Mr Rinis to finance his obligation to complete the licensing, but instead to promise to make these further payments. The promises of payments and the actual payments were made because the Defendant, through Mr Weinerman, had chosen to make an agreement with Mr Rinis who either could not or would not comply with his obligations to finance the work which he was obliged to perform at his own expense and he had persuaded the Defendant and Mr. Weinerman that they needed to pay him money in order to speed up the process. As I have explained in their written closing submissions, the Defendant's counsel stated that "it might have been slightly naive for the Defendant to hand Mr Rinis these sums" and it was what is described as this slightly naïve behaviour that has caused the alleged loss of profit.

303. The Claimant was not responsible for the choice of the Defendant's counterparty, Mr Rinis was apparently chosen or approved by Mr Weinerman. The Defendant believed that by making the payments, he would stand a better chance of obtaining the exemptions and this was a commercial decision not connected with the terms of the 2007 Agreement or any advice of the Claimant. I have explained why and how the Defendant defaulted on those payments and made them late. This led to the projects not being taken forward and the threats of sale. If those promises had not been made and then not complied with, the threats to sell would not have occurred as they would not have had the support of the promises by the Defendant to make these payments.

304. As Ms Faitakis correctly observed, "it is not the lawyer's responsibility to compensate their client because they have chosen to pay over money that was not contractually due". This shows how the chain of causation between the alleged negligence (even I made out) and the Defendant's loss had been broken.

305. The second reason why the Defendant fails on the causal connection issue is if (contrary to my conclusions) the Defendant ought to have been advised, as Mr Pooles says that he should have been advised, and that advice had been accepted, this would not have prevented the Defendant suffering a loss of profits because it is clear that Mr Rinis either could not or would not have complied with his financial and other obligations. On the Defendant's case, Mr Rinis has proved to be a dishonest and incompetent man and he was chosen as the counterparty by Mr Weinerman. The Defendant did not seek to terminate the agreements with Mr Rinis and the Claimant is not blamed for this. In my view, the decision to enter into an agreement with Mr Rinis with his serious failings and then to continue with it when he could not comply with it were the effective causes of the failure of the Defendant to achieve the profits he wished to receive.

306. Third, the threats made by Mr Rinis to sell the project companies could and would have been resisted if the Defendant had used the remedies open to him, because, as I have explained, there is the evidence of Ms Murray, which I accept, that the 1% shareholding was *only one* of the "trump cards" against a transfer of the project companies without the consent of the Defendant because another effective way of preventing the transfer was the use of an application for an injunction to prevent in Ms Murray's words;-

> "the sale of the shares, of the partnership, the shareholdings…on the basis of that Mr Rinis was endeavouring to do something in breach of his contractual obligation"

307. There were also numerous remedies open to the Defendant to terminate the 2007 Agreements with Mr Rinis because of his conduct such as under clause 3.4 the occurrence of an "event which has a material adverse effect" on the Project". Such events could be the threats to sell and the demands for money not due under the 2007 Agreements as a condition for performing his duties. In my view that shows why the Defendant was adequately protected and that the alleged defects in the 2007 Agreements did not cause the Defendant to be in a "position of vulnerability to Mr Rinis" or have any causal connection with the alleged loss of profits of the Defendant. This failure to use the remedies open to him is another reason why the Defendant fails on this issue because that was the cause of the alleged losses of profits of the Defendant rather than the alleged negligence of the Claimant.

308. Fourth, there is no *contemporaneous or other evidence* that the negligence of the Claimant had the consequence contended for by Mr Pooles, which was that the Defendant and Mr Weinerman considered in their dealings with Mr Rinis that they lacked the protection, which it is said that he should have received from the 2007 Agreements. On the Defendant's account, it must have been clear in 2008 to 2010 to the Defendant and Mr Weinerman that they were inhibited from acting as they wished because of the Claimant's negligence or at least because of the absence of some rights which they believe that the Defendant should have received in the 2007 Agreements. If they had felt that there was something defective in the 2007 Agreements , I would have expected that that the Defendant and Mr Weinerman to have appreciated this and then complained loudly and promptly when the difficulties arose if the negligent defects or absence of rights in the 2007 Agreements were then genuine concerns and not merely afterthoughts.

309. After all, limitations of the Defendant's rights in the 2007 Agreements would surely have been apparent when Mr Rinis was threatening to sell the projects. Having seen the Defendant and Mr Weinerman give evidence, I cannot believe that if they even suspected that their difficulties were or even possibly were caused by Ms Murray's defective services, they would not have complained loudly to her, but no such complaint was made until she pressed for fees in 2010 which was long after Mr Rinis started to threaten to sell the project companies.

310. Only the Defendant and Mr Weinerman would have known about this but they failed to address this issue in their evidence even though these were matters solely within their knowledge. Indeed as I explained when setting out the chronology, there was no contemporaneous evidence or any indication that the Defendant or Mr Weinerman felt inhibited in any way in their dealings with Mr Rinis by the terms of the 2007 Agreements or the matters in respect of which it is contended that the Claimant was negligent and that probably explains why they were not cross-examined about this. On the contrary, the parties appeared to disregard their obligations and rights under the 2007 Agreements as I have explained in paragraph 94ff above.

311. Fifth, I cannot see how a failure to have the 1% shareholding provision and the enhanced pledge or the use of EE entities could have caused the loss of profits because no project companies were sold and also it is not clear what is the connection between, for example, the use of EE entities and the loss of profits.

312. Until now, I have been considering the connection between the threats of Mr Rinis to sell the projects and the Defendant's alleged absence of control or ownership over the projects. I must now consider whether there is a causal contention between the Claimant's defective advice and drafting in relation to the 2007 Agreements and the loss of the sales to Silcio and Energetica and, in particular, whether these defects were responsible for the fact that Mr Rinis could not be compelled to assist on due diligence or assist in other ways in connection with the proposed sales to Silcio and Energetica or acted surreptitiously and in consequence, the sales were lost.

313. As I have explained in paragraphs 185 and 186 in respect of Silcio and paragraphs 193 and 195 in respect of Energetica, I have concluded that the sales did not take place because the parties could not agree on price and this shows the absence of any causal connection between the alleged negligence of the Claimant and the lost sale. A further reason why there is no causal connection between those two matters is that even if the 2007 Agreements had included provisions for 1% immediate ownership, for the use of EE entities and for the pledge over the totality of any claim that the Defendant might have, such provisions would not have assisted the Defendant to obtain any assistance from Mr Rinis (whether by assistance with due diligence or otherwise) in order to reach agreements with Silcio and Energetica.

314. I should add that I concluded that Mr Weinerman was very confident that he and the Defendant would have obtained a substantial profit from obtaining the production licences with the benefit of the subsidies; so they were keen to proceed and not to let this opportunity slip. Mr Simos described there being a feeling of a gold rush among those seeking exemptions and licences from the RAE. By the time the Defendant decided to get involved in late July 2007, he would have had no alternative but to proceed with the agreement prepared for Mr Engel if he was to meet the deadline of 31 July 2007 as they would not have let this opportunity slip. So the Defendant's case fails on this aspect of the causation issue.

315. For all those reasons, I conclude that even if contrary to my conclusion, the Claimant had acted negligently, this has not *actually caused* the Defendant damages in the form of loss of profits

(iv) The Effect of the Defendant's failure to disclose documents and to give reliable evidence.

316. It is said by Mr Hubble that a further or alternative reason why the Defendant cannot succeed on this issue is that first, the failure of the Defendant and Mr Weinerman to comply with their obligations of disclosure and second, the fact that neither of them was a reliable witness means that the Defendant cannot prove that his claims for loss of profits arose as a consequence of the Claimant's negligence. In essence, he submits first that this Court cannot be satisfied that the Defendant's case on causation has been proved, and second that it should not tolerate the

attitude towards disclosure exhibited by the Defendant, because to do otherwise would be effectively to condone the Defendant's procedural abuses and to deny the Claimant a fair trial.

317. My preliminary view is that the Claimant should succeed on this issue, but at present I find it difficult to see how the Claimant could fail on the matters set out in paragraphs 300 ff and yet succeed on this ground. In the light of my other conclusion, it is unnecessary for me to deal with this issue further at this stage.

(v) Conclusion

318. I have considered this issue on the basis that contrary to my findings first the Claimant has acted negligently and second that if proper advice had been given, the Defendant would have acted differently, but even on those assumptions the acts of negligence committed by the Claimant did not actually cause the Defendant the loss of profits claimed or any loss of profits.

VIII. The Causal Connection/Expenditure Issue

(i) Introduction

319. The Defendant contends that he has incurred expenditure in his efforts to obtain control over the projects and that these expenses were incurred as a result of the Claimant's breach of retainer and/or negligence in connection with the three 2007 Agreements.

320. A schedule was prepared of those sums in September 2013, but after closing submissions were made, the Defendant's counsel revised this claim to a total sum of €4,220,248 and details are set out in the attached Appendix to this judgment. The Claimant contends first that none of these payments were due because little or no evidence has been adduced in support of them and I will deal with that contention in the quantum issue in section IX below.

321. The Claimant's case on this causal connection issue is that :-

a) Many of these payments would have been payable in any event even if the Claimant had not been negligent as alleged and so they are irrecoverable as wasted expenditure;

b) Other payments were made as a result of the promise of the Defendant to pay the expenses of Mr. Rinis even though under the 2007 Agreements, no such obligation was imposed on the Defendant and in respect of which there is no evidence that these payments were made as a result of the alleged negligence of the Claimant.

(ii) Sums which would have been payable even if the Claimant was not negligent

322. There are many payments on the Defendant's Schedule, which would have been made in any event even if the Claimant had not been negligent as alleged. Examples are the three initial payments due under the First, Second and Third

Agreements. The first payment was for €36,000 payable on 1 August 2007 comprising €35,000 due under the First Agreement and €1,000 to be paid via Mr Rinis in respect of the fees of the Claimant. The second payment was for €207,000 paid on 11 September 2007 comprising €206,000 due under the Second Agreement and €1,000 to be paid via Mr Rinis to pay the Claimant's fees. The third payment was for €126,000 being the payment due under the Third Agreement.

323. All of these payments were payments which were due under the 2007 Agreements and are ones which the Defendant would have had to pay if he was to be in a position subsequently to obtain the exemption licences for the PV. Thus, they are not recoverable as the Defendant is claiming loss of profits. In any event, none of these payments were caused by any act or omission by the Claimant in relation to the three 2007 Agreements, because they would have been payable even if the Claimant had complied with its professional obligations. There is no suggestion that the Defendant received no benefit from any of these agreements.

324. The same is true of many of the payments to the Claimant and Mr Simos which might well have been made even if the alleged negligence had not occurred.

(iii) Sums paid as a result of the promise of the Defendant to pay the expenses of Mr. Rinis even though under the 2007Agreements, no such obligation was imposed on the Defendant and in respect of which there is no evidence that these payments were made as a result of the Claimant's negligence

325. As I have explained, the Defendant promised to make payments to Mr Rinis even though he had no obligation under the 2007 Agreements to do so. The Claimant was not responsible for those decisions, which were commercial decisions taken by the Defendant, and no reason has been given as to why they were caused by any negligence of the Claimant. Indeed the Defendant's counsel accepts that those payments might well be regarded as naïve.

326. In the Schedule and in the Appendix hereto, there are many payments alleged to have been made to Mr Rinis pursuant to the 2007 Agreements. The Defendant has failed to show that such payments were caused by the alleged negligence of the Claimant and that this money would not have been paid if the Claimant had acted in the way in which Mr Pooles now says that the Claimant should have done.

327. Some examples of items in respect of which there is this lack of evidence relate to the claims in respect of: -

a) The Kos Equipment and the Possible 50% share in the parks a sit is unparticularised and it is unclear as to why or how it is related to the alleged breaches of duty or negligence of the Claimant. In any event, there is no evidence to show that any ascertainable loss has been suffered; and

b) The fees of Ms Chronopoulou which are similarly too unclear as it has not been explained in evidence why they arose as a consequence of or related to the Claimant's negligence. There is

much to suggest that these fees could wholly or partially have related to OW Energy and other services performed for the Defendant which are unrelated to the present counterclaim against the Claimant.

328. In any event, I do not understand how these sums are said to be connected with or a consequence of the alleged negligence of the Claimant. For all those reasons, the Defendant cannot recover these sums. So far as the remaining claims are concerned, it is a striking feature that neither Mr Weinerman, nor the Defendant, nor Ms Ostrovizky were able when giving evidence to explain and show that any of these payments were caused by the negligence of the Claimant. Some might relate to work done by Mr Simos when acting for the Defendant in relation to other matters such as OW Energy of which he was managing director. For that reason I would reject this claim.

329. Thus I conclude that the is no causal connection between the Claimant's alleged wrongful conduct and the any of the losses claimed and that is an additional reason as to why the claims must fail.

IX. The Quantum Issue on Loss of Profits Claim

(i) Introduction

330. I have concluded that the counterclaim must fail for the reasons which I have sought to explain. So this quantum issue is academic and I will therefore deal with it more briefly than if it had transpired to be a crucial issue. It is appropriate to explain that the Court of Appeal has explained that a claimant must choose between claiming for his wasted reliance expenditure and claiming for his loss of expected profits when holding that claims cannot be made for both (*Cullinane v British "Rema" Manufacturing Co Ltd* [1954] 1 QB 292). In the light of my other findings and the absence of submissions on this, I will not deal with the relevance of this authority to the Defendant's counterclaim, save to state that my preliminary view is that both claims cannot be brought and that they should be regarded as alternatives.

331. Both the Claimant and the Defendant relied on expert evidence to help to quantify this claim. The claimant's expert was Mr Ioannis Xenopoulos and he has previously worked as a business consultant specialising in accounting and tax issues with Arthur Anderson and Ernst & Young. Since 2009, he has been a partner at Premier Consulting which he describes as "a boutique consulting firm located in down town Athens". Its clientele includes many foreign companies operating in Greece, and in consequence, he has been involved in a large number of projects regarding "Green Energy mostly wind and PV".

332. The Defendant's expert is Dr Andreas Koras who has experience in project development in the renewable energy sector. He had been involved in the development of at least sixty wind energy projects.

333. The experts had a useful meeting at which much agreement was reached and the areas of dispute were reduced. They both then gave oral and written evidence.

(ii) The Defendant's case

334. The case for the Defendant is that as a result of the negligence or breach of retainer of the Claimant, he was deprived of control over the application process and thereby control of the projects in which he was investing, including their assets and the rights over which it was intended that he should retain control. Thus, it is said by Mr Pooles that in consequence the Defendant has been deprived of his ability to advance the application process promptly or take control over the applicant businesses including their assets and rights.

335. The Defendant contends that: -

a) 161 exemptions had been obtained and of those, 32 would or should be deemed failures to have achieved construction;

b) The value of those 32, which would be deemed to have failed to achieve construction, would be according to Dr Xenopoulos € 20,000 each giving a claim of €640,000; and

c) Of the remaining 129 which would have been ready for construction, 39 would have been in Crete with 90 on other islands. Their average value would have been € 100,000 thereby giving a value of € 12,900,000.

336. The Defendant accepts that he would have had to incur a developer's fee which in the terms of the First, Second and Third Agreements would have been €30,500 balance payable on closing for each project. Thus, for the 129 projects the total for which credit would have to be given would be €3,934,500.

337. Thus, the Defendant's counterclaim would be worth €9,605,500 being the total of the sums to which I have referred of €640,000 and €12,900,000 less the sum of €3,934,500. The Defendant accepts that he would also have had to give credit for the further residual value of €900,000, thereby reducing the counterclaim to €8,705,500.

(iii) The Claimant's Case

338. The case for the Claimant is that:

a) The number of the relevant parks should be based on the November 2008 Agreement with the maximum number being 91 parks, namely the 102 exemptions in the trial bundle less 11 Kastoria parks;

b) The maximum value of each park which would be developed to construction should be assessed at €80,000;

c) Credit against this maximum value has to be given not merely for the sum of €32,500 per park accepted by the Defendant as being the sum due to Mr Rinis for each licence park, but also for the PPC connection charge which is about €15,000 per park. This leads to a

maximum value of €32,500 per park being the difference between €80,000 and the total of the two credits of €32,500 and €15,000;

d) A deduction of 20% has to be made because tax that would be payable on the profits if actually obtained if the Defendant had been able to develop the park, bur no tax would be payable on the damages. This would leave a balance of €26,000 per park;

e) There has to be a discount of 75% for contingencies bearing in mind that there were a number of conditions that had to be met before a park could become fully licensed and any purchase price paid with many parks not reaching that stage; and

f) A further discount of 25% has also to be given for Mr Weinerman's interest bearing in mind that the shareholding in the Cypriot company was to be 75% to the Defendant and 25% to Mr Weinerman with the consequence that the Defendant could only recover 75% of the loss.

339. Those credits and discounts are not accepted by the Defendant and there are also disputes in respect of some of the calculations to which I now turn.

(iv) The number of parks which had received exemptions

340. Surprisingly, there is an uncertainty about the number of parks for which exemptions had been obtained and the experts have said that they could not ascertain the number of parks. The Claimant was provided with the exemption decisions when the sale to Silcio was being negotiated and 102 exemption decisions were disclosed. The Defendant has not disclosed any further exemption decisions.

341. Dr Koras said that he considered that there were 122 exemption decisions which was the figure provided by the Defendant's Greek lawyer, but no clear and cogent explanation was given as to how this figure had been reached. He sensibly contacted the RAE for information, but he was unable to reach a view as to the exact number. Dr Koras accepted that there was no science behind his calculation and each time he tried to calculate the number of parks, he reached a different figure. It appears that the difficulty occurs because there were many companies with the same name and these caused difficulties in determining in whose name exemptions were being or had been applied for.

342. I note that Mr Weinerman believed that there were 161 exemptions as do Mr Rinis and Mr Simos, but nobody has identified those which were granted after the Silcio negotiation or precisely how that figure of 161 exemptions has been calculated.

343. Mr Hubble accepts that there might be more than 102. To my mind, the critical factor is that the burden of proving the number of exemptions is on the Defendant. There is no acceptable evidence from him that if there were more than 102 exemptions, how many more there were. So I have concluded with some diffidence that the Defendant has not satisfied me that there were more than 102 exemptions decisions.

344. It is necessary to subtract from that total of 102 parks the 11 Kastoria parks as they were too far from the grid with the consequence it would have been uneconomical to build a substation to connect them to the grid. In any event, they were located on the less profitable mainland. Thus the Defendant would never have connected or sold such parks. Thus the maximum number of parks, which would have been connected, should therefore be 91, namely 102 parks with exemption decisions less the 11 parks in Kastoria.

(v) What is the maximum achievable purchase price for a fully licensed park?

345. The experts have produced not dissimilar figures for the achievable purchase price with Mr Xenopoulos suggesting between €40,000 and €120,000 per park depending on location and with Dr. Koras contending that the bracket of €80,000 to €110,000 was appropriate.

346. I sought to derive assistance from contemporaneous figures and it is noteworthy that the minimum price in the November 2008 Agreement for the sale of the 79 parks was €40,000 per park. Ms Murray in an email to Mr Weinerman in March 2009 stated that she had been told that "100 kW exemption decisions usually sell at around €40-60,000 but that those in Crete could sell for up to €100,000 each". These figures suggest the range might be from €40,000 to €100,000.

347. I have concluded that in the circumstances, a fair assessment for the maximum price would be €80,000 for each fully licensed park as I do not know enough about the precise value for each of the parks which would enable me to arrive at anything other than an average figure.

(vi) What deductions would have to be made for expenses that would have been incurred by the Defendant?

348. It is accepted that a credit of €32,500 had to be given for each park as this was the amount due to Mr Rinis for each fully licensed park. There would also be the PPC connection charge of €15,000 per park which was a construction cost and which would have had to be paid by the seller in the Silcio Agreement; it should be deducted. Thus the credit had to be given of €47,500.

349. Pausing at this stage, the claim before deductions for each of the parks would be €32,500 being €80,000 less the deductions of the total of €32,500 and €15,000.

(vii) Should there be a deduction for the tax that would be payable of 20%?

350. The Claimant's case is that the partnership tax of 20% would have been payable on any sale of the PV projects. So the amount that the Defendant would have received and retained would have been 80% of the loss. Mr Pooles disagrees and he says that the critical issue is whether or not tax would be payable on the damages that it recovers in this action. It is only if no tax was payable on the sum awarded as damages that the damages would have had to be reduced by the amount of the tax which ordinarily would have been paid on the profits in accordance with the decision in *British Transport Commission v Gourley* [1956] AC 185.

351. This case establishes that deduction for tax from damages can only be made if (i) the sum for which compensation is ordered would have been subject to tax, while by way of contrast, (ii) the damages compensating for this loss would not have been subject to tax.

352. The onus of proving that the damages have to be reduced because the *Gourley* principle applies is on the paying party, who in this case would be the Claimant. It would have to show that "it is clear beyond peradventure" that the sum received would not be taxable in the hands of the receiving party (see *Stoke on Trent City Council v Wood Mitchell* [1980] 1 WLR 254). A similar approach was adopted by Ouseley J in *Finley v Connell Associates* [2002] Lloyds Rep PN 62, who observed that that it is for Claimant, as the paying party, who has the burden of proof of what is an exception to the normal rule in relation to the incident of tax.

353. The response of the Defendant as the receiving party is that the *Gourley* principle does not apply, as the present quantum issue is about compensating the Defendant for the sum he would in fact have received but that is precisely when *Gourley* applies. The fall back position of the Claimant is that it is obvious that the Defendant would not pay tax on any damages awarded to him because he had incurred a loss of €10 million in Greece so that there does not have to be a *Gourley* deduction.

354. No evidence has been adduced showing that the damages paid to the Defendant under this head would be taxable either because of Greek tax law or because of other losses of the Defendant. Bearing in mind that the onus in this issue is on the Claimant as the paying party, I have concluded that there should be no deduction for the tax of 20%.

(viii) How many parks would have been connected and would have started producing electricity and making profits?

355. Until now, I have been assuming that all the parks which had obtained an exemption decision would be connected and would then start producing electricity and profits. There are a number of reasons why that assumption is not correct, because there are many ways in which a park can be unable to pass through the stages which are required before it can produce electricity and that is because there are stages in the licensing process.

356. Those stages for the licensing state after obtaining an exemption decision are (i) obtaining environmental approval; (ii) securing grid connection terms with the PPC; and (iii) signing a Power Purchase Agreement (PPA).

357. A park could fail to progress through any of these stages or it might well be delayed and such delay could cause the park's progress to stall indefinitely. This was a particularly significant problem because the very large number of applications for exemption exceeded the original planning by 900%. There was evidence that the delays could arise for many reasons such as first, that the authorities were taken by surprise by the over-subscription and so could not cope with the numbers; second, the reorganisation of local authorities could cause problems; third, the environmental approval stage was often time-consuming and complicated involving a number of different local authorities with the discovery

of archaeological ruins; fourth, there might be a negative reaction from the local population; and finally, the undeveloped state of the PPC connection and energy transport grid.

358. A further problem for any applicant for the PPC was the need to show proof of his own his funds equivalent to 25% of the sum required to cover the construction phase and the average cost of constructing one park in late 2009 was €300,000. So it would have been necessary for an applicant to show proof of funds of €75,000 per park and proof of financing for the remaining 75%. This was a very demanding requirement in the light of the liquidity problems which arose at the time of the credit crunch and which hit the Defendant and Greece so severely.

359. These matters constituted difficult obstacles for an applicant, such as the Defendant, to overcome as is shown by the statistics. They reveal that there were approximately 30,000 applications for PPA and PPC filed up to 31 December 2010, but that connection terms were provided to only 7,871 parks, PPAs to only 2672 parks and only 2626 parks were operating as at the 31 December 2010. This shows that only about one-third of those parks which received connection terms received PPAs and were operating.

360. Dr Koras had a success rate of 80% of applications from the time from obtaining the exemption decision to obtaining a PPA and he was clearly very successful and competent. Even on the Defendant's case, Mr Rinis did not satisfy this requirement. It is, however, noteworthy that although Dr Koras has a wide experience of development of PV projects, he could only refer to one comparable one which was Project B where there were 130 parks in Crete and Rhodes, which were two prime island locations for PVs. Yet none of the parks in Project B were ever constructed or even ever reached the stage of the PPC because of the financial problems of the investor caused by his inability to obtain the release of his funds. The Defendant also had liquidity problems.

361. Dr Koras accepted that he could not provide evidence of any comparable parks to the Defendant's that had actually proved successful. Mr Hubble is right in contending the "gold rush" of PV in Greece did not result in the majority of investors obtaining huge profits on sale of the operational PV parks. In fact, many of them did not make any profit at all, because of many factors, such as the Credit Crunch and the end of the government subsidies.

362. My starting point is the statistics set out above, which shows only about one-third of those parks which received connection terms received PPAs and were operating and producing electricity. In my view, there had to be a further deduction for those which did not reach the connection stage.

363. It is worth bearing in mind that even in a case in which complete control remained with the investor, he could still lose control of the PV projects and fail to obtain licences and progress to final connection. In this case, Mr Hubble points out that OW Energy SA is a useful comparable because it was established as SA Company in which the Defendant and Mr Weinerman held the shares with a ratio of 97.5% and 2.5% and that they controlled appointment to the Board of Directors. There was no development agreement with Mr Rinis and his only obligation was to apply for the licences.

364. Its investments were in large mainland projects but they failed. Not a single one of the six projects has been constructed nor according to the witness statement of Ms Ostrovizky is there any prospect of one being constructed.

365. Therefore I see nothing wrong with the assessment of one-quarter of those, which had exemptions would realised their maximum value and produce electricity although this might be a little too favourable to the Defendant.

(ix) What deduction (if any) should be made because the Defendant only had a 75% interest with Mr. Weinerman, who was not a party having a 25% interest?

366. Mr Hubble contends that the Defendant only had a 75% interest in the projects which are the subject of the 2007 contracts and so he could only recover 75% of his losses because Mr Weinerman, who owned the remaining 25%, was not a party to the counterclaim. He further submits that the Defendant and Mr Weinerman gave evidence that the PV investment was a joint venture between them and that any profits generated by the joint venture would be split in the ratio of 75:25. So it is said by Mr Hubble that the most that the Defendant could recover by way of damages is 75% of any loss in the light of the legal and procedural principles governing claims by partnerships.

367. Mr Pooles submits that no deduction is appropriate because there was no partnership between the Defendant and Mr Weinerman. He points out first that the Claimant did not consider that Mr Weinerman had any liability for its outstanding fees, and second, that this showed that Mr Weinerman was the agent and not the partner of the Defendant. In consequence, it is said that any damages awarded to the Defendant should be assessed on the basis that the Defendant would have to account to Mr Weinerman for his share. This was an issue which was referred to, but which was not fully argued in the closing oral submissions. At my suggestion, Counsel then helpfully produced written submissions but I am conscious that I am dealing with this issue without the benefit of full oral submissions.

368. I do not consider how the Claimant charged or claimed for fees as against the Defendant is crucial because that represents the specific contract made with the Claimant. Moreover, it does not answer the point that it was agreed that there would be partnership in relation to sharing the profits. I am also unable to accept the submission that there was not a partnership between the Defendant and Mr Weinerman because in the words of the Defendant's written skeleton argument that "it was foreseeable and/or known to the Claimant that [Mr Weinerman] was entering into an agreement with the Defendant (and other parties in respect of the other agreements) whereby he would reward them for their contribution". This submission ignores the arrangement for sharing profits.

369. Where, as in this case, the partnership was not carrying on business in this jurisdiction at the relevant time, proceedings were required to be issued in the partners' individual names, unless it can be proved that the firm has a separate legal personality under the law by which it was constituted.

370. In the present case, there is (to the Claimant's knowledge) no separate legal personality for the partnership or the joint venture between Mr Weinerman and the

Defendant. Accordingly, for both partners to recover, they should both be parties to counterclaim.

371. In the related cases of *Addison v Overend* and *Sedgworth v Overend, (*1796) 6 Term Reports 766; 101 ER 916 and (1797) 7 Term Reports 279; 101 ER 974, Addison and Sedgworth owned a ship in the proportions of 25% and 75%. Their ship was damaged by the defendant's ship. Addison sued the defendant and no plea of abatement was raised by the defendant on the basis of Addison's partial ownership. Addison then recovered for what Lord Kenyon described as (with emphasis added) the *"full satisfaction of all the damage that he had sustained to his share of the ship"*

372. In the later case brought by Sedgworth against Overend, the Court had to determine the issue of whether Addison should have been joined as co-claimant to that later claim. The Court dismissed Overend's contention to that effect and permitted recovery by Sedgworth. There was no suggestion by either Court that Addison or Overend could or should have sued on behalf of the other at the same time as bringing their own action and the Court only allowed them to recover in relation to the share that each owned.

373. For tortiuous claims, the general rule was formulated by Lord Lindley as being that:-

"… where a joint damage accrues to several persons from a tort, they ought all to join in an action founded upon it." (Lindley & Banks on Partnership, 19th Ed, (Sweet & Maxwell, 2010) at 14-35, citing Cabell v Vaughan (1669) 1 Wms. Saund. 291m)

374. This approach is followed in CPR 19.3(1), which provides that:-

> "Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise."

375. CPR 19.6 provides the Court with the power to direct that, where more than one person has the same interest in a claim, the claim may be begun or be continued by one of those persons as a representative of the others.

376. No application was ever been made to join Mr. Weinerman as a Claimant to the Defendant's counterclaim or for the Defendant to act as a representative of Mr Weinerman in respect of the lost profits of the joint venture PV investment. Mr Weinerman has been fully aware of the counterclaim since at least November 2012 when he provided a witness statement for the summary judgment application and probably earlier at the date when the original Defence and Counterclaim was pleaded.

377. The Defendant does not plead or even suggest that he is acting in this case in a representative capacity on behalf of Mr Weinerman. He cannot now make such a claim having not originally claimed in a dual capacity on his own behalf and on behalf of Mr Weinerman.

378. So it follows that the Defendant ought not to recover the percentage of the profits that would have had to be paid to Mr Weinerman under the "regular format" of a 25:75 split between Mr Weinerman and the Defendant. In Mr Hubble's words, "allowing IO to recover in full would overcompensate him".

379. Thus there has to be a reduction of the amount recoverable by the Defendant to 75% of his loss.

(x) Credit for residual interest in the remaining parks

380. The Defendant now claims to have a residual interest of at least 25% of 51 constructed PV parks/companies. The Defendant's expert contends that the value is €18,000 per park while the Claimant's expert is €17,350 per park. It seems that there is agreement that the credit should be for €950,000.

381. The evidence of Mr Aris Papachristou and Mr Rene Battistuta, who were employed by Silcio and Energetica respectively shows that at the relevant time buyers were driving hard bargains and deferring payments until the parks were at an advanced stage particularly as the deadline for submission of the grants applications became closer.

(xi) Conclusion

382.

i) The maximum number of parks was 91 Parks (being 102 exemption decisions minus the 11 worthless Kastoria Parks).

ii) The maximum achievable purchase price for a full licensed park in 2009 would have been €80,000.

iii) In respect of each park that reached the connection stage:

a) €32,500 would have had to be paid to Mr. Rinis; and

b) €15,000 would have had to be paid for the PPC connection charge (which was a construction cost).

iv) Thus, the net maximum value per park would be: €32,500 (being €80,000 – [32,500 + 15,000]) and for 91 parks, that would have amounted to €2,957,5000.

v) Assuming a 75% discount for contingencies in respect of whether 91 parks would ever have realised their maximum value on sale: that would have been €739,375 (being €2,957,500 x 25%).

vi) Deduction of Mr Weinerman's 25% means a further reduction of €184,843.75.

vii) It is necessary to give credit for the residual interest of: €950,000, and so there is no loss suffered by the Defendant. Indeed, there would have been no loss if no deduction was made for Mr Weinerman's 25% interest.

X. The Quantum Issue on the Wasted Costs Claim

383. I have already explained why even if the Defendant had incurred this expenditure, there is no causal connection between the Claimant's alleged negligence and that expenditure. There is an additional reason why this claim must fail and that is because to succeed on this issue, it must be proved by evidence that these sums were paid. There is evidence of some sums being paid but the exact amount is unclear.

384. Surprisingly neither the Defendant, his daughter nor Mr Weinerman gave evidence of the precise sums that were actually paid. The other witnesses called by the Defendant were representatives of Energetica and Silcio who did not deal with these payments. It seems that the person who could have given evidence concerning these payments was the Defendant's wife but she was not called and did not even produce a witness statement. So that is another reason why this claim must fail.

XI. Conclusion

385. During this case, the conduct of the Claimant has been subject to detailed scrutiny and for the reasons, which I have sought to explain, I have concluded that:-

a) The Claimant was not negligent (see paragraphs 234-252, 258-262, 265-268, 274-276);

b) Even if the Claimant had produced the 2007 Agreements with the rights and remedies which it is said by the Defendant should have been included and advised in the way in which it is said by the Defendant that the Claimant should have acted, the Defendant would not have taken advantage of or used any of those rights and remedies (see paragraphs 253-256, 263, 269, 271 and 277) or followed that advice (see paragraphs 330-382);

c) The Defendant has not established that he has suffered any of the alleged loss of profits or incurred any of the alleged wasted expenditure (see paragraphs 383-384); and that

d) Even if the Defendant has established that he has suffered a loss of profits and/or incurred any wasted expenditure, this was not a consequence of the Claimant's negligence or any aspect of the 2007 Agreements but a consequence of a variety of other factors. These factors include (but are not limited to) (i) the Defendant's decision to promise to make payments to Mr Rinis to which he is not entitled under the 2007 Agreements which, as I have explained, his counsel has described in an understatement as "slightly naïve"; (ii) thereby removing the incentives set out in the 2007 Agreements for Mr Rinis to perform his duties so as to receive more than the small

initial payments until he had performed his duties under each of the 2007 Agreements and thereby radically amending the entire basis of the carefully constructed agreements which protected the interests of the Defendant; (iii) the failure of the Defendant to pay the sums promised to Mr. Rinis at the appointed time and in some instances at all.

386. The Defendant has the consolation of knowing that his case has been very ably presented by his Counsel and all points that could have been made on his behalf have been pursued skilfully, but for the reasons which I have explained, the counterclaim must be dismissed.

APPENDIX

a) The payment of €11,000 on 29 January 2010 which is alleged to be an additional down-payment for the Rhodes projects but there is no evidence that this payment related to the Rhodes projects;

b) The claim for a payment of €72,000 on 24 February 2010 in respect of which there is no evidence as to what the balance of €32,000 related;

c) The payment of €125,000 on 30th April 2010 which allegedly relates to "projects appropriated by CR but which is not supported by evidence";

d) The payment of €149,410.07 on the 21st May 2010 which is alleged to be in relation to "Crete rents paid even through projects not operating and these projects were appropriated by CR" but this is not supported by any evidence;

e) The payment of €60,500 on May 2010 for PPC payments for projects appropriated by Mr Rinis but the evidence does not support the assertion that this was a payment "for projects appropriated by CR";

f) The payment of €300,000 on 28 May 2010 for "additional down-payment to CR for EPO approvals is unrelated to the First Agreement, the Second Agreement was the Third Agreement and is thus irrecoverable;

g) The payment of €30,000 on 17 June 2010 which is not a payment to Mr Rinis but a payment to Zetro Ltd a separate company of Mr Simos;

h) The payment of €124,545.15 for "PPC payments for projects appropriated by CR" but it not supported by any evidence;

i) The payment of €14,760 on 9th November 2010 for pre-invoice payments for "projects appropriated by CR" which again is not supported by evidence;

j) The payment of €31,500 on 9th December 2010 being payments demanded by Mr Rinis allegedly for the Forest Land Office in the sum of €62,000 for which Mr Rinis is alleged to have failed to supply invoices for those payments but the documents produced do not give evidence of "payments demanded by Mr Rinis";

k) The payment of €32,000 on 17th December 2010 for "see previous payment and in addition €1,500 general expenses demanded by CCR" There is no evidence to reprove the relationship between the payment of €31,500 on 9th December and the payment of €32,000 on the 17th December nor to any payment in addition of €1,500 "general expenses demanded by CR";

l) The payment of €72,437.17 on 4th January 2011 for PPC payments for five PV projects in Crete appropriated by Mr Rinis which is unsupported by evidence;

m) The payment of €42,269.49 "PPC payments for three projects in Crete appropriated by CR" which is not supported by evidence;

n) The payment of €18,450 for "PPC payment for pre-invoice payments transferred to CR but the invoices were not delivered by him" but this is not supported by documents;

o) €15,375 on 18th February 2011 for "PPC payments for pre-invoice payments transferred to CCR but the invoices were not delivered by him" but this is not supported by any documents.