

Case No: HC-2016-00763

Neutral Citation Number: [2018] EWHC 68 (Ch)

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

Royal Courts of Justice
7 Rolls Buildings, Fetter Lane,
London, EC4A 1NL
Date: 19/01/2018

Before :

THE HON MR JUSTICE HENRY CARR

Between :

Tarlochan Singh Badyal

Claimant

- and -

- 1) Malkiat Singh Badyal
- 2) Santokh Singh Badyal

Defendants

Claim No: HC-2016-000763

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

IN THE MATTER OF PARAMOUNT POWDERS (UK) LIMITED (02047961)
AND IN THE MATTER OF THE COMPANIES ACT 2006

BETWEEN:

Tarlochan Singh Badyal

Petitioner

-and-

- 1) Malkiat Singh Badyal
- 2) Santokh Singh Badyal

Respondents

Martin Mann QC and Richard Ritchie (instructed by **Gannons Commercial Law Limited**)
for the **Claimant/Petitioner**

Jeffrey Terry (instructed by **Allan Janes LLP**) for the **First Defendant/First Respondent**
Stuart Hornett and Sarah Walker (instructed by **Gordon Dadds LLP**) for the **Second Defendant/Second Respondent**

Hearing dates: 6, 7, 8, 9, 10, 13, 14, 15, 16, 22, 23 November

Judgment Mr Justice Henry Carr :

Introduction

1. These proceedings concern a bitter dispute between three brothers who have built up a very successful business. In order to distinguish between members of the Badyal family, I shall refer to the main protagonists in the way that they were referred to during the trial, either by initials or first names. The Claimant (“TSB”) is the eldest brother, the First Defendant (“MSB”) is the middle brother and the Second Defendant (“SSB”) is the youngest. The brothers came to the United Kingdom to join their father, Sohan Singh Badyal (“the Father”) in 1976. In 1981 the brothers began working together at a business known as Slough Plastics Company (“SPC”) which was formally constituted as an equal three-way partnership between the brothers in 1983. This partnership was involved in the manufacture of powder coating. In 1986, Paramount Powder UK Limited (“PPUK”) was incorporated with TSB and MSB as directors. PPUK also manufactures powder coating. The brothers each held 25% shares in PPUK, with the remaining 25% being given to the Father. The Father did not contribute to the business, but was given a share as a mark of love and respect. The three brothers agree that PPUK was treated as a quasi-partnership between them.

2. In 1990 the Father moved to India, where a farmhouse was bought. TSB moved to India in 1993/4 with the intention of setting up and running a powder coating business. The Father and TSB stayed together in the farmhouse, and TSB visited the UK regularly to look into the affairs of SPC and PPUK. In his absence, MSB and SSB ran the UK businesses, with the administrative side, such as company filings, tax returns and the payroll being managed by Mr Varinder Bij, who was employed by SPC/PPUK to provide accountancy services, although he had not passed his final accountancy exams.

3. In 1996/1997, the Indian business, which manufactured powder coatings, was incorporated under the name Paramount Powders Private Limited (“Paramount India”). Other companies were also established in India, and assets were acquired. Several assets had been leased or purchased in the UK and others were acquired, including a hotel, a public house, and various residential houses, described more fully below.

4. The relationship between TSB and his brothers became increasingly sour, and in 2015, things came to a head when it was discovered that TSB’s son (“Sandeep”), had set

up a company, Trident Powders Limited (“Trident”) in competition with PPUK. MSB and SSB claim that TSB, whilst still a director of PPUK, was involved in, amongst other things, funding, promoting and encouraging Sandeep to set up Trident, in soliciting key employees of PPUK to join Trident, and in running Trident.

5. On 12 August 2016, TSB was removed as a director of PPUK. Thereafter, he commenced a claim seeking to wind up the partnership (or partnerships in the event that some assets were owned by stand-alone partnerships other than SPC) and for the taking of accounts (“the Partnership Claim”). It is agreed that the partnership(s) should be wound up and accounts should be taken. It is agreed that certain properties and businesses were partnership property, in particular the business of SPC, the Ann Boleyn Hotel, the Jolly Farmer Public House, 2&4 David Road Slough, 6 David Road Slough, and residential properties known as Snitterfield House, Stoke Poges and Greystones, Wexham. However, there are many disputes about whether other assets are partnership property, or jointly owned beneficially by the three brothers, or are owned, legally and beneficially, by TSB alone.

6. TSB has also filed a Petition seeking to wind up PPUK on the basis that MSB and SSB have acted in a manner unfairly prejudicial to TSB or that it is just and equitable that the company should be wound up (“the Company Claim”).

The witnesses

7. Primarily, this is a factual dispute. TSB, on one side, and MSB and SSB on the other, have traded allegations of misconduct which range from highly disreputable to criminal. I shall begin by setting out my impressions of the main witnesses, which will be the subject of more detailed consideration when dealing with the key issues in dispute.

TSB

8. TSB claimed that he required an interpreter in order to give evidence. MSB and SSB suggested that he was pretending that his English was much worse than it was. I do not accept this. Although he had spent many years in England, his language skills were poor and his speech was indistinct. The interpreter was essential for his evidence to be understood. TSB was cross-examined for three days. Counsel indicated that a short time would be required on the fourth day to finish the cross-examination. Whilst waiting outside court on the last morning of his cross-examination, TSB had a stroke. He remained in hospital and on the last day of the trial I was told that he was due to have a triple heart bypass operation.

9. TSB is an imposing man with a very strong will. He holds a genuine (albeit misplaced) belief that, as eldest brother, he is entitled to more of the partnership and company assets than his younger brothers. He also believes that he was primarily responsible for the success of the family business. In my judgment, TSB exaggerated his contribution and minimised that of his brothers. When assessing his evidence, I bear in mind his limited English, and the poor state of his health during his cross-examination. Unfortunately, I have concluded that both in his written evidence and his oral evidence, he did not tell the truth about key issues in dispute.

10. TSB was reluctant to give direct answers to direct questions, and frequently, the relevant facts emerged after much evasion on his part. In respect of certain Indian companies which are alleged to be partnership assets, he made great efforts to conceal the fact that he had reduced the shareholding of his brothers, without their knowledge. He failed to give any proper disclosure in respect of the Indian Assets (as defined below) which were clearly in issue on the pleadings, as were the shareholdings of MSB and SSB. Furthermore, I do not accept TSB's evidence about Trident. He repeatedly denied any involvement in Trident in his witness statements and in his oral testimony, but he was not telling the truth.

Sandeep

11. Sandeep was very defensive during his cross-examination, preferring to respond to questions with a question rather than an answer. Whilst claiming that he had set up, financed and run Trident without any assistance from his father, he did not provide documents to show that this was the case. After he was cross-examined, I was concerned that he had chosen not to reveal evidence which might assist him, in order to avoid disclosing matters about Trident to MSB and SSB. I gave him the opportunity to corroborate his evidence with documents, including bank statements from his personal account and Trident's account, to establish that he had provided the considerable sums required to finance Trident's business. He provided two sets of documents (not including any bank statements) and was twice recalled for cross-examination. He did not provide a complete or credible account and I did not consider that I could rely upon his evidence about Trident.

Mr Bij

12. Mr Bij worked for SPC/PPUK for many years, and was a highly trusted employee. He had a very close relationship with TSB and was acting primarily in his interests during his employment. By the time he left, he had developed a strong antipathy against SSB, which emerged clearly during his cross-examination. He claimed that he had been assaulted by SSB shortly before leaving his employment. This is strongly denied by SSB, who nonetheless accepts that there was a heated argument between them shortly before Mr Bij left SPC/PPUK.

13. Upon leaving his employment Mr Bij tried to change the password of an email account that he had set up in the name of PPUK, whilst employed by the company, and to transfer it to his own name. He claimed that this was his email account. I accept that he may have had some personal emails on this account, but he set it up for the company, and it did not belong to him. He wished to continue to have access to company emails, and to prevent PPUK from having access to its own emails on that account, after he left his employment.

14. Mr Bij was in charge of the payroll for PPUK. For several years, wives and children of the brothers had been included on the payroll, although they did not work for the company. This was characterised by Counsel during the trial as "a tax dodge". Mr Bij added his own son to the payroll, who did not work for PPUK. During his cross-examination he offered two explanations for this, neither of which I believed. First, he suggested that this was done as a salary sacrifice by him. The suggestion that this justified a false claim that his son was employed by PPUK was wholly implausible. Secondly, he claimed that as the brothers were making similar claims, they agreed that

he could do the same. This is denied by MSB and SSB who claim that they did not know that Mr Bij had added his son to the payroll. I accept their evidence. They had nothing to do with the payroll, and left it to Mr Bij. I did not consider that Mr Bij was a reliable witness.

MSB

15. MSB was accused by TSB of having conducted, from 2008, a business which competes directly with SPC by providing powder coating services, without the knowledge of TSB. This was a serious allegation. The relevant company (“DPS”) has at all times operated openly, and TSB and Mr Bij knew about it. TSB did not object. The allegation was, wisely, abandoned by Mr Mann QC during closing speeches. Mr Mann did not suggest that MSB was untruthful. In my judgment, he gave his evidence in a straightforward manner and was not seeking to mislead the court.

SSB

16. During his oral evidence SSB was prone to making speeches, rather than answering the questions put to him. Although this was not helpful, I do not think that he was deliberately trying to deceive the court. He was cross-examined for a long time, and was keen to ensure that his evidence was understood. In common with his other brothers, he participated in tax evasion by falsely claiming that relatives were employed by PPUK. I accept his evidence that all the paperwork, including the payroll and his tax returns, were left to TSB and Mr Bij. He signed what they gave him. This was most unwise. SSB also took for himself rental income from a property known as Bon Accord, which he admits is partnership property and, insofar as any sums have not yet been returned, he will have to account for them. I did not form the impression that, in his written or oral evidence, he was trying to deceive the court.

17. SSB was accused of breaching his fiduciary duties to PPUK by setting up a competing company (“PPL/AMJ”). Mr Hornett, who appeared on behalf of SSB, acknowledged that, on the basis of SSB’s own evidence, unless TSB and MSB consented to or acquiesced in the incorporation of PPL/AMJ, SSB was in breach of his duties as a director of PPUK. The fact that he was prepared to disclose his involvement in PPL/AMJ, potentially to his detriment, shows, in my view, that he was not trying to hide the relevant facts.

18. It was also alleged by TSB that, without his knowledge or consent, SSB had used £20,000 of PPUK’s funds to acquire shares in a company known as Jaytees Limited and had failed to account to PPUK for the profits when the shares were sold. This allegation was abandoned on behalf of TSB in Mr Mann’s written closing submissions.

Manpreet

19. Manpreet is SSB’s daughter. She is qualifying as an accountant and is a director of PPL/AMJ. It was suggested on behalf of TSB that she did not have the relevant experience to run PPL/AMJ’s business and that in reality, she was just a front for SSB. During her cross-examination, she showed that she was very capable, and knowledgeable about the business of PPL/AMJ. She was a truthful witness, and it was not put to her that she was lying.

Mr Brown

20. Mr Brown is the Sales Manager of PPUK, where he has worked since July 1994. There was no attack on his credibility.

The issues in dispute

Partnership Claim

21. The issues in the Partnership claim which remained in dispute at the end of the trial are:

- i) Whether the following properties (“the UK Disputed Properties”) are partnership properties of SPC, or jointly owned, beneficially, by the brothers:
 - a) 118 Stoke Road, Slough, Berkshire (“118 Stoke Road”);
 - b) The Cottage, St Mary’s Road, Ascot, SL5 9AY (“The Cottage”);
 - c) Bon Accord, Windsor Road, Gerrards Cross, Buckinghamshire (“Bon Accord”).
- ii) Whether SSB has breached a collateral agreement that he should account to SPC for the rental income received since 2008 from Bon Accord.
- iii) Whether the site at 116 Stoke Road and the Petrol Pump was part of the partnership assets of SPC or jointly owned, beneficially, by the brothers before being sold or shut down:
- iv) Whether the following Indian properties or companies are part of the partnership property of SPC or jointly owned, beneficially, by the brothers (“the Indian Assets”):
 - a) Aashirwad Farmhouse, Delhi (“the Farmhouse”);
 - b) Paramount India;
 - c) Paramount Landcon Limited (“Paramount Landcon”), a company which has developed land in Hoshiarpur in India.
 - d) Tansy Paints India Pvt Ltd (“Tansy”), a company acquired in 2009, which manufactures liquid paints.
 - e) Greystone Impex Private Ltd (“Greystone”) which buys powder from Paramount India and sells it in the State of Maharashtra;
- v) Whether MSB and SSB wrongly excluded TSB from the partnership and its premises.
- vi) Whether the MSB and SSB wrongly changed the bank mandates for SPC and the Hotel to require joint instructions.

vii) Whether MSB and SSB wrongly made withdrawals of £50,000 and £70,000 respectively and payments for leasing cars from the bank accounts of the Anne Boleyn Hotel, which included the Jolly Farmer public house.

viii) Whether the TSB wrongly withdrew £66,000 after receipt of notice of the meeting proposing the changes to the bank account mandates.

Company Claim

22. The issues in the Company Claim which remained in dispute at the end of the trial are:

i) Whether SSB breached his fiduciary duties to PPUK by setting up a competing trading company, PPL/AMJ.

ii) Whether there were irregularities in, and false recording of, PAYE records for four members of staff for which SSB should be held responsible; and if so, whether SSB benefitted from this by misappropriating in cash the difference between the wages that were declared and actually paid.

iii) Whether MSB and SSB wrongly removed TSB as a director of PPUK and excluded him from the management of the company in May/June 2016. This depends, primarily, upon whether TSB was involved in the setting up and running of Trident, in breach of his fiduciary duties as director.

iv) Whether MSB and SSB were additionally entitled to remove TSB as a director because of wrongful and unauthorised payments from PPUK, including payments to himself of £5,000; the leasing costs of a Rolls Royce and Range Rover and because he insisted on unjustified salaries being paid to his son and wife.

v) Whether Trident has acted in breach of confidence by misusing information confidential to PPUK which was disclosed to it by TSB.

The Partnership claim – legal principles

23. Sections 20 (1) – (2) and 21 of the Partnership Act 1890 provide that:

“20. (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

21. *Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.*”

24. The fact that a property has been bought out of partnership funds, although held in the name of a single partner, gives rise to the presumption that the partner holds such property in trust for the partnership, which is one manifestation of the principle given statutory force by section 21; *Lindley and Banks on Partnership*, 20th Edition at [18-07], citing Lord Lindley in *Ex. P Connell* (1838) 3 Deac. 201; *Ex p. Hinds* (1850) 3 De G. & Sm. 613 states that:

“Lord Lindley said of such acquisitions:

“The mere fact that the property in question was purchased by one partner in his own name is immaterial, if it was paid for out of the partnership monies; for in such a case he will be deemed to hold the property in trust for the firm, unless he can show that he holds it for himself alone. Upon this principle it has been held that land purchased in the name of one partner, but paid for by the firm, is the property of the firm, although there may be no declaration or memorandum in writing disclosing the trust, and signed by the partner to whom the land has been conveyed. So, if shares in a company are bought with partnership money, they will be partnership property, although they may be standing in the books of the company in the name of one partner only, and although it may be contrary to the company’s deed of settlement to hold shares in it.”

25. Of course, the statutory presumption may be rebutted. However, the mere fact that the property is vested in the name of one partner is not enough to rebut this presumption. As noted in *Lindley and Banks* at [18-08]:

“The statutory presumption that assets purchased with partnership money constitute partnership property may, of course, be rebutted. An obvious example is where the asset is vested in some or all of the partners upon express trusts which are inconsistent with it being partnership property. The mere fact that the property is vested in the name of one partner is clearly not sufficient to rebut the presumption, especially where it is shown as a partnership asset in the firm’s accounts. Equally, if it can be shown that what appeared to be the firm’s money was in fact lent by the firm to one of the partners and thus became his money prior to the date of the acquisition, no trust in favour of the firm will arise.”

The drawings point

26. It is convenient at this stage to deal with an assertion that was a consistent theme of TSB’s evidence. SPC and/or PPUK funded numerous of the assets in dispute. TSB claimed that these funds were drawings or dividends to which he was personally entitled. He claimed that the assets were not paid for by SPC or PPUK, but rather by TSB in his personal capacity. I do not accept this.

27. At paragraph [61] of his fifth witness statement, TSB explained that Mr Bij kept the business expenditure and personal expenditure separate in the accounts. The personal items were accounted for in a ledger of personal expenditure which might be allocated to one of the brothers. If not specifically allocated, Mr Bij would choose one of the ledger

accounts into which to enter the item. This did not matter because, in the annual accounts, Mr Bij totalled the personal expenditure paid by the business and divided it by three. He showed the brothers as receiving drawings or dividends in equal amounts, although this did not accord with reality. This explains why the brothers' tax returns consistently showed equal amounts by way of drawings. The accounts do not support TSB's contention that funds used to purchase specific assets were from his drawings, because the brothers' drawings were equalised at the end of the year and shared between them.

28. This was consistent with Mr Bij's explanation of the accounting system that he operated. He did not make any attempt to allocate expenditure to any particular partner, and a similar approach was taken to the treatment of dividends in PPUK, regardless of how much had been taken by each of the brothers. This does not support TSB's claim that the large sums of money required to purchase the assets in dispute were from his personal drawings or his personal dividends.

29. Furthermore, I do not accept that MSB and SSB agreed that TSB was entitled to take disproportionate sums from the business and use such sums to acquire assets for himself alone.

118 Stoke Road

30. TSB relies on the fact that this property is registered in his sole name. The rent on 118 Stoke Road has always been paid to TSB alone and shown on his tax returns. It has not been included in the accounts of SPC, either as an asset or in respect of the rent received.

31. These are relevant facts which, without more, lend support to TSB's case of sole legal and beneficial ownership of 118 Stoke Road. However, they are not decisive. The fact that 118 Stoke Road was registered in TSB's sole name does not determine its beneficial ownership. Since the brothers' personal tax liabilities were paid by SPC or PPUK, their individual tax returns are not determinative. Although Mr Bij chose to keep the accounts of 118 Stoke Road separate from SPC, the tax on the rents from 118 Stoke Road was not paid by TSB alone, but by the three brothers equally. The fact that the rents for 118 Stoke Road were paid into the joint account of TSB and the Father is also not determinative. This account was always treated as a family account into which joint funds were paid and on which the parties could draw for their joint purposes. MSB had custody of a cheque book on this account on which cheques had been signed in blank in advance to allow him to draw funds.

32. There are further facts relied on by MSB and SSB, which suggest a contrary conclusion in respect of the beneficial ownership of 118 Stoke Road. First, the purchase price of 118 Stoke Road was paid either by SPC or by PPUK, and not by TSB alone. This is significant. The completion statement shows that the purchase price and associated costs were raised in 3 tranches: A deposit of £11,000; an advance of £78,237.50 and a further payment of £23,895. The deposit of £11,000 came from the account of SPC. The advance came from UCB and was paid off by SPC. The further payment came in part from PPUK and in part from rent from 116 Stoke Road. TSB claims that this all of this was his money, which he took either as drawings from SPC or as dividends from PPUK. I reject this, for the reasons set out above.

33. Secondly, in common with 118 Stoke Road, 116 Stoke Road was originally acquired in the name of TSB alone. Nonetheless I have concluded, for reasons which I set out below, that 116 Stoke Road was an asset acquired jointly by the brothers, as partnership property. This, in combination with other relevant facts, supports the same conclusion in respect of 118 Stoke Road.

34. Thirdly, TSB also asserted sole ownership in respect of 2&4 David Road, which is SPC's trading premises. In common with 118 Stoke Road, this property is registered in the sole name of TSB, although in contrast to 118 Stoke Road, Mr Bij included the David Road properties in the partnership accounts of SPC. Originally, TSB sought a declaration that 2&4 David Road belonged to him alone and was neither an asset of SPC nor partnership property. However, he abandoned this claim after service of the Defence, which showed that it was obviously unsustainable.

35. During cross-examination, TSB was challenged about why he had brought a claim in respect of 2&4 David Road, and he was unable to provide a coherent explanation. Initially, he suggested that he not know who owned 2&4 David Road and thought that he was the sole owner because it was registered in his name. He said that once he saw other documents suggesting that he was not the sole owner, he dropped the claim. He then sought to justify the claim on the basis that, even if he knew that all three brothers paid for the property out of partnership funds, if he signed the documents, then he believed that the property was his. In fact, the lease in respect of 4 David Road was granted to and signed by all three brothers in 2001.

36. In this context, TSB was asked about an attendance note of a meeting with a financial adviser, Mr Hughes, on 12 July 2004. TSB and Mr Bij attended this meeting, and MSB and SSB were not there. This (amongst other things) corroborates the evidence of MSB and SSB, which I accept, that TSB and Mr Bij were entrusted to deal with the paperwork and financial side of the businesses whilst MSB and SSB, respectively, were responsible for the operating side of SPC and PPUK.

37. Mr Hughes was told that "*all [of the three brothers] effectively share the family wealth equally.*" This was inconsistent with TSB's claims in these proceedings, and the information must have come from Mr Bij or TSB. There was no attempt to exclude 118 Stoke Road or any other asset. Mr Hughes was also told that the partnership owned all the relevant properties in David Road. TSB could not explain how that information had been given Mr Hughes in 2004 and yet nonetheless he had claimed sole entitlement to 2&4 David Road when initiating these proceedings.

38. In my judgment, the inclusion of the claim to 2&4 David Road was an opportunistic attempt to take advantage of the fact that TSB had registered the property in his name alone, when he knew, or simple enquiries would have revealed, that it was a partnership asset. This impacts on the credibility of his claim to sole ownership of 118 Stoke Road, as well as the other UK Disputed Assets.

39. Fourthly, MSB personally managed the refurbishment and re-letting of 118 Stoke Road in 2002 using £60,000 of funds from the SPC account. The reason why he did this, in my judgment, is because the property was regarded as a jointly owned asset by the brothers.

40. Having regard to all relevant circumstances, I conclude that 118 Stoke Road is not owned solely by TSB.

41. The position as to ownership is complicated by the fact that some, but not all, of the funds were provided by SPC, and some by PPUK. So this is not a straightforward application of the statutory presumption. Mr Hornett contended that the property is nonetheless owned by SPC. It is common ground that PPUK is a quasi-partnership. PPUK does not assert any claim over 118 Stoke Road (or any other of the UK Disputed Assets). In addition, even though the funds to purchase Snitterfield came from PPUK, it is agreed by TSB that it is the property of SPC. The same conclusion should follow in respect of 118 Stoke Road.

42. Mr Terry, on behalf of MSB, supported that case, or contended in the alternative that TSB holds the property (and the other UK Disputed Assets) on trust for TSB, MSB and SSB in equal shares. Mr Terry submitted that since these alternatives make no difference to TSB's claims, which should be rejected whichever analysis is correct, I should leave the issue of whether the UK Disputed Assets are owned by SPC or held on trust to the account.

43. There are strong grounds for concluding that Mr Hornett is correct. The brothers regarded the sums generated by the businesses which they had built up as a family pot in which they shared equally. So it makes sense to conclude that assets purchased with funds to which they were jointly entitled should be partnership assets.

44. The position is complicated by the fact that the Father is still the registered owner of 25% of the shares in PPUK. On his death, these shares passed to the Mother. On her intestacy, those shares are likely to have passed to the five siblings, not just to the three brothers. In my judgment, this makes no difference to the issues in dispute. The only effect of an interest of two other siblings in the shares of PPUK is that the three brothers jointly hold 60%, rather than 100%, of the Father's shares.

45. Mr Terry suggested that whether the Disputed UK Properties and the Indian Assets are owned by SPC or jointly by the brothers may have practical consequences as to whether tax has been paid by SPC. I stated in the draft of this Judgment which was sent to the parties that I had decided to leave the question of which alternative is correct to be decided at the account. After receipt of the draft Judgment, Mr Ritchie, on behalf of TSB, submitted that the question of whether properties are partnership assets or jointly owned was not a matter for the account and should be determined at this stage in the light of the evidence at trial. However, I am not satisfied that the full facts have yet emerged, particularly concerning the Indian Assets as to which proper disclosure has not yet been given by TSB. I accept Mr Terry's submission that these alternatives make no difference to TSB's claims. Therefore, I consider that this issue should be left to be decided at the account. I have already indicated my provisional view that properties are partnership assets, and if there is no further information at the account to indicate a contrary conclusion, that will be the result. For present purposes, I conclude that 118 Stoke Road is either partnership property of SPC or alternatively, it is held on trust by TSB for TSB, MSB and SSB in equal shares.

The Cottage

46. This property was purchased in 2006 for £2 million and is registered in the names of TSB and his wife and occupied by them as their family home. TSB's wife is not a party to the Partnership Claim. The background to the purchase of The Cottage is explained in the third witness statement of SSB at [8] – [12], [23] to [28] and [32]. In brief, the Father wanted each of the brothers to have a family house of similar value. The plan was that the businesses would fund the acquisition of such houses. After several changes of position, TSB eventually decided that he wanted a house of greater value than his brothers, who did not agree to this, and the plan was not carried through. MSB has lived at Greystones, which is agreed to be a jointly owned property, SSB at Snitterfield House, which is also agreed to be a jointly owned property and TSB at The Cottage, which, according to MSB and SSB, was paid for by joint funds and is a jointly owned property.

47. TSB relies on the fact that the mortgage application was made by TSB and his wife, who represented to the mortgagor that they owned the property as their home, not as an investment property purchased by the three brothers. He draws a parallel with Bon Accord, which he claims is solely owned by SSB and his wife. SSB denies this, and has acknowledged that Bon Accord is partnership property. As with 118 Stoke Road, TSB relies on the fact that The Cottage was not listed in the partnership accounts as a property belonging to SPC.

48. These facts are relevant but not determinative. There is no suggestion that TSB's wife made any contribution to the acquisition cost of the property, nor made any mortgage payments. There was some indication in correspondence that she was prepared to give an undertaking to abide by the outcome of these proceedings. As she is not a party, any relief must be subject to any rights that she seeks to assert. However, she could not, in equity, take more than TSB could give her. I do not accept TSB's case in relation to Bon Accord, for the reasons set out below. I have set out my views on the partnership accounts when rejecting TSB's claim to sole ownership of 118 Stoke Road.

49. MSB and SSB claim that the equity in the property was funded as follows: £171,000 was provided by SPC; £361,980 was provided by PPUK; £32,500 was provided from the SPC rent account for Bon Accord; £161,547.39 was funded from an endowment policy in which all three brothers had an equal share; £50,000 was provided by SPC via a State Bank of India account; and mortgage interest payments totalling £1,039,515 were paid by SPC until October 2015, when TSB chose to start paying the interest himself. By that stage, MSB and SSB claim that he was concerned to show that he was the sole owner of the property.

50. Much of this is accepted by TSB. His answer, as before, is that the mortgage payments, and the capital payments by SPC and PPUK, were his drawings and dividends. Therefore, this was his money. I reject this. TSB could not suggest that these drawings or dividends were matched by equivalent drawings made by his brothers. In my judgment, this is no more than a convenient label under which TSB has sought to explain away payments made from joint funds. Such payments were made by all three brothers.

51. There are limited areas of controversy in relation to the payments. It is agreed that £50,000 came from the State Bank of India account in the joint names of TSB and

the Father. TSB claims that this was an account holding his personal money. MSB and SSB claim that it was used as a partnership account holding joint funds. They suggest that TSB, as the eldest brother, together with the Father, operated what was, in effect, a family account containing joint funds generated by the family business. I accept that this was the case

52. Furthermore, I accept the evidence of MSB that the proceeds of an endowment policy which had originally been taken as security for borrowings in respect of Greystone, a jointly owned property, had matured, and that a banker's draft from the Halifax of £165,000, drawing substantially on those funds, was drawn in favour of TSB and credited to the State Bank of India account, thus putting TSB in funds to meet the rest of the sums due in respect of the purchase of The Cottage.

53. In conclusion, I consider that TSB did not purchase The Cottage, nor pay the mortgage with his own money, but rather with joint funds from the three brothers.

54. Furthermore, I do not accept TSB's case that there was an agreement between the brothers and the Father which applies to The Cottage. The original agreement or understanding was conditional upon the brothers being treated equally, and having properties of similar value or cash equalisation to compensate for any differences. All of the brothers accepted this during their cross-examination and it is evidenced by a written agreement signed by the brothers in June 2004. This indicates that each of them would get properties and cash to a value of £1,660,000. This agreement was not carried out because of changes of mind by TSB, referred to in more detail below. The Cottage is worth considerably more than the other properties, and MSB does not have any property in his own name. So, the original agreement does not support his case for sole ownership of The Cottage.

55. In all the circumstances, I conclude that The Cottage is not owned solely by TSB. It is either the partnership property of SPC, or TSB holds The Cottage on trust for TSB, MSB and SSB in equal shares.

Bon Accord ownership/rental income

56. TSB seeks to bolster his claim to sole ownership of The Cottage by asserting that SSB is the sole owner of Bon Accord. At [73] of his fifth witness statement, TSB said that Bon Accord was bought in the name of SSB and his wife, and was his personal property. It does not appear on any of the accounts or asset statements or tax returns of the businesses. Yet all the funding was provided by the businesses either by way of deposit or payment of loans, which, according to TSB, were either drawings or dividends taken by SSB. He stated that "*SSB is content – and rightly so – that Bon Accord should be treated as his own property*".

57. In fact, this is not SSB's case. His evidence is that Bon Accord was purchased using SPC money for £850,000 pursuant to the understanding reached in 2001, in accordance with the Father's wishes, that each brother would have a property of similar value. Initially, TSB insisted that he should have sole ownership of Snitterfield, which was more valuable. Then he agreed that Snitterfield should be rebuilt and used as a family home for all three families. SSB moved in to Snitterfield to commence the works. However TSB then decided that he wanted a larger property in Ascot. SSB remained at Snitterfield and Bon Accord was rented out.

58. Therefore, although the original intention was that SSB should have sole ownership of Bon Accord, this was superseded by events. SSB makes no claim to sole ownership of Bon Accord and accepts that all properties, including Bon Accord, are part of the family assets and should be brought into the account.

59. TSB claims that this is opportunistic on the part of SSB. Mr Mann QC pointed out that in the Amended Defence and Counterclaim at paragraph [7], it was admitted that Bon Accord was owned by SSB, who has now changed his position by a further amendment. Furthermore, since 2008, it is alleged that SSB reneged on an agreement that he would pay the rent received from Bon Accord to SPC or PPL, as consideration for the fact that SSB and his family moved into Snitterfield and lived there rent free.

60. I reject TSB's case in respect of Bon Accord, and I consider that SSB is right to accept, somewhat belatedly, that he is not the sole beneficial owner of Bon Accord. As to the rental income, SSB's evidence is that there was never any express agreement to pay the Bon Accord rent to SPC. This was done by default until 2008, when SSB opened his own bank account. Prior to 2008, the rent went to SPC and was used, amongst other things, to fund the purchase of the Anne Boleyn Hotel and The Cottage. After 2008, when the rent was paid into a separate savings account in the name of SSB, he still used a significant portion of the rent for various business expenses and acquisition costs.

61. SSB claims that the schedule produced by TSB in the course of the trial, which purports to set out the sums taken by SSB from the rent relating to Bon Accord, is misleading. It does not plot the rent coming into SSB's savings account. Instead, SSB argues that it records the money taken out of that account, either by direct payments or by way of transfer to SSB's current account, some of which is not derived from rental income and some of which relates to expenditure that has always been covered by drawings or dividends.

62. I accept that there was no collateral agreement that the Bon Accord rent should be paid to SPC. No such agreement was required, as Bon Accord was either the property of SPC or otherwise jointly owned by the three brothers. SSB accepts that not all of the rent from Bon Accord has been used for business expenditure and that he has taken some of the rental income himself, which he says was "*in lieu of drawings*". I do not accept that this was in lieu of drawings, and he should not have done this. He did so because TSB refused to account for the income from 118 Stoke Road and 2&4 David Road as well as the Indian Assets, despite SSB's proposal that it should all be paid into SPC. This is not an excuse, and the rent from Bon Accord should have been paid by SSB to SPC.

63. I do not need to determine the amount of rent from Bon Accord which SSB will be required to pay back to SPC, since SSB accepts that he must account for any such rent. Mr Hornett submits, and I agree, that the amount of rent from Bon Accord which must be paid by SSB to SPC should be left to the taking of the account.

64. I conclude that Bon Accord does not support TSB's case to sole ownership of The Cottage, since Bon Accord, as with the other Disputed UK Assets, is either a partnership asset, or a jointly owned asset of the three brothers.

65. 116 Stoke Road is not directly in issue in the proceedings as it is not included in the Partnership Claim. MSB and SSB contend that its ownership is relevant to the ownership of the other Disputed UK Assets. The lease was acquired in 1983 and the freehold in 1987. It was sold in 1999 for £260,000. TSB's case is that he was the sole owner of 116 Stoke Road. He claims that he purchased the Petrol Pump and land at 116 Stoke Road in 1983. He chose the name "Sandy Petrol Sales" and ran the business with his wife as a separate concern from SPC. There are separate Property Development Accounts for this property in the name of TSB alone.

66. The Property Development Accounts produced by TSB are relevant but not determinative. TSB was the only brother who had a bank account at this time. SSB first opened a bank account in his own name in 2008, and MSB in 2013. TSB had legal title to the property and therefore it is unsurprising that the accounts were in his name. TSB declared the rental income for tax purposes, but all of the brothers' personal tax was paid by SPC.

67. MSB and SSB gave evidence that partnership money from SPC was used to pay for 116 Stoke Road (together with a loan from MSB's wife's uncle). The funds were provided by all three brothers, and not TSB alone. MSB and SSB explained that the Petrol Pump was originally intended to be purchased jointly by the brothers, together with the Kang family. When the Kang family lost interest, TSB took the lease of 116 Stoke Road on behalf of all of the brothers. MSB and SSB did not know at the time that only TSB's name was on the title. They did not concern themselves with the paperwork. SSB stated at paragraph [5] of his third statement that the brothers ran the Petrol Pump together and let out the rest of the site at 116 Stoke Road to tenants. I accept the evidence of MSB and SSB and I conclude that 116 Stoke Road was an asset of the partnership, or was held on trust by TSB for the brothers in equal shares.

The Farmhouse

68. MSB has abandoned his claim that the New Delhi Farmhouse is partnership property or jointly owned by the brothers. However, SSB still pursues this claim and contends that the Farmhouse is partnership property of SPC because it was acquired pursuant to an agreement that it would be a family home and was paid for from funds belonging to SPC. SSB's case is that between July 1990 and August 1991, SPC provided approximately £500,000 by transferring funds to an account opened with the State Bank of India, all of which was used to purchase the Farmhouse. SSB also relies upon a draft unsigned will of the Father which indicates that the Farmhouse should belong to the three brothers after the death of the Father and the Mother; and conversations between MSB, SSB and the mother concerning registration of the Farmhouse.

69. TSB claims that payments made to India after 1990 were dividends due to him, in particular for the Father's medical care. He does not admit the payment of £500,000 but nonetheless asserts that the funds were to be used for living expenses for TSB and the Father or were a gift from the brothers and were paid into the State Bank of India account when both of them were living in the UK. He says the Farmhouse was only ever intended as a home for the Father and not for any business and was not partnership property.

70. In his fifth witness statement TSB claimed that Farmhouse was bought for the price of 90 lakh rupees (about £250,000) and was financed partly from the sale of the

Father's house (40%) and partly from the Petrol Pump (60%), of which he claimed sole ownership. However, during cross-examination, TSB stated that he thought that £300-350,000 had been sent from the UK for the Farmhouse.

71. I do not accept TSB's evidence as to alleged entitlement to dividends, nor as to the source of funding for the Farmhouse, nor its purchase price. Mr Bij had prepared a contemporaneous schedule which supported SSB's case that £500,000 had been transferred from the UK for the purchase of the Farmhouse, and he confirmed during cross-examination that he had been told that the sums in the schedule were to be used for that purpose.

72. I find that the purchase of the Farmhouse was funded by: the re-mortgage of Greystones for £125,000; a further £25,000 paid directly from SPC's NatWest account; £100,000 borrowed from the family; and money from a bridging loan taken out on 116/118 Stoke Road.

73. SSB submitted that since SPC can be shown to have provided all or most of the funds for the Farmhouse and no contrary intention can be demonstrated, it is to be treated as the partnership property of SPC. I do not agree. This transaction, in my judgment, is of a different character to the other disputed assets which I have considered. The Father wished to leave the UK and to move permanently to India.

The brothers all gave evidence of their love and respect for the Father. TSB said at paragraph [96] of his fifth statement that the Farmhouse was purchased for the Father as his property and that any money from SPC's funds was a gift to the Father. I accept this evidence. In my judgment, the Farmhouse was purchased as a gift for the Father, and was not intended to be partnership property.

74. I conclude that the Farmhouse is not partnership property, and MSB was right to abandon his claim on this issue. However, the Farmhouse is not solely owned by TSB. The Father and the Mother did not make a will, and I was told that under Indian intestacy rules, the three brothers and their two siblings will each be entitled to a one fifth share of the Farmhouse.

Paramount India

75. The ownership of Paramount India impacts upon ownership of other Indian Assets. TSB claimed that he alone established the Indian companies (including Paramount India) and MSB and SSB were not involved. He stated that in 1993, his cousin, Vikrant Gill, proposed that together, they would open a powder coating manufacturing business in New Delhi. This prompted TSB and the Father to enter into a partnership in 1993, which began to operate in 1994. Mr Gill left in 1995, and TSB and the Father continued the business under a formal partnership deed dated 1 April 1995. TSB then incorporated Paramount India in 1997. TSB and the Father had equal shareholdings. Paramount India bought the partnership in 2000. TSB denied that SPC had any ownership of Paramount India, and claims that it did not provide any technical knowledge or funding. He admits only that SPC sold a second-hand machine to Paramount India at market price.

76. MSB presented a different account. The first Indian venture was set up with funds from SPC. TSB himself acknowledged this at [31] of his fifth statement, although he claimed that these were his drawings from SPC and not an SPC investment. MSB asserted that this was a false claim, used by TSB in respect of all of the assets in dispute. According to MSB, Mr Gill rapidly dropped out of the picture. The family representatives in the business which became Paramount India were those living in India, namely TSB and the Father, who was, in reality, a nominal participant. It made sense for TSB to pioneer the new venture in India in the early days, whilst MSB and SSB generated the funds from the UK businesses to finance the Indian venture.

77. According to MSB, it was intended and agreed that the parties would create and carry on a family run business in India as equal partners on terms that all profits would be applied to meet the reasonable living expenses of the partners, and then to invest in other enterprises and properties to be held for the use and benefit of the partners in equal shares. This is why MSB and SSB agreed to send substantial sums from the UK businesses to India, from which MSB and SSB have had no return.

78. SSB supported MSB's account. He added that the Indian business expanded and acquired a site in Gurgaon, which was purpose built for powder manufacture. Machinery and raw materials were all funded by SPC. This included two containers of machinery sent to Paramount India in 2007, paid for by PPUK, and invoiced from SPC at a discount. SSB says that he was fully involved in Paramount India's operation and that he and MSB frequently visited the Indian site to deal with technical and mechanical issues. This continued until 2015 when MSB and SSB were excluded from Paramount India by TSB.

79. I accept the evidence of MSB and SSB in relation to Paramount India, and reject the evidence of TSB, for the following reasons. First, at paragraph [31] of his fifth statement TSB considered the formation of the partnership in India which was the precursor to Paramount India. He stated that "*the finances for starting the same came from my drawings from SPC but I would emphasize that these were my personal drawings, not an investment by SPC.*" It is therefore common ground that the Indian partnership was financed by SPC. I reject TSB's evidence that these were his drawings, and that there was no discussion or intention that SPC would have any interest in the Indian businesses.

80. He also stated at paragraph [102] that "*while substantial sums were transferred from SPC's other UK business bank accounts over the years to India, these were for private family purposes...*" Approximately £3 million was transferred from SPC or PPUK to India. I do not believe that the substantial proportion of this money was transferred for private family purposes. It was an investment by the three brothers in the Indian businesses, as stated by MSB and SSB in their evidence, which I accept. This is corroborated by a letter from financial advisers, Taxrite, to Mr Bij at SPC dated 6 February 1996, which gave advice as to how to set up a company in India to be funded by SPC and PPUK. Following that letter, Paramount India was incorporated. The fact that Paramount India was funded by SPC and PPUK supports the conclusion that it is partnership property, or otherwise jointly owned by the three brothers.

81. Secondly, TSB and the Father were the original shareholders in Paramount India, but they were merely the holders of the subscriber shares on incorporation. TSB refused to give disclosure about the shareholdings in Paramount India. This is despite numerous

demands in correspondence for such disclosure, and applications by MSB and SSB before Rose J at the PTR for specific disclosure, which she did not have time to consider. Rose J invited the parties to co-operate constructively with regard to disclosure, which made no difference to TSB's position.

82. The shareholdings were specifically in issue on the pleadings. In particular, paragraph [39.4] of SSB's Amended Defence and Counterclaim pleads that TSB has failed to account to SPC for the assets in India, including the shares in Paramount India (and the other Indian companies), and at paragraph [9] (c) of the Counterclaim a declaration is sought that the shares in Paramount India (and the other Indian companies) are assets of the SPC partnership and are owned by the parties beneficially and in equal shares. Similar relief is sought by MSB at paragraph [33.4] and paragraph [9] (a) of the prayer for relief in the Re-Amended Defence and Counterclaim.

83. I do not accept TSB's attempts to suggest that he was unable to give disclosure as a result of (unidentified) provisions of Indian company law or pursuant to a resolution of the Board of Paramount India. Since TSB purports to be the majority shareholder in Paramount India, he has control of documentation relevant to the ownership of Paramount India. Nor do I accept that the question of the shareholdings is a matter for the Indian Courts. It was clearly in issue in these proceedings, and TSB did not challenge the jurisdiction of the English courts to decide any of the claims concerning the Indian assets, nor did his pleadings contain any reference to Indian law.

84. MSB and SSB discovered, having obtained reports from publicly available information about the Indian companies, that they each had shareholdings in Paramount India. In 2000 TSB held only 4.885% of the shares and MSB is shown as holding 50%. Yet on TSB's account, MSB contributed nothing to the Indian business and his shareholding was not properly explained. In 2007, the shareholding of TSB was increased to 13.72%; the shareholding of MSB was reduced from 50% to 24.99%; and SSB is shown as holding 24.99%. By 2009, MSB and SSB are still shown as each holding 24.99%. However, TSB is shown as the holder of all the remaining shares, giving him majority control. In 2010, TSB's holding was increased to 55.56% and those of MSB and SSB reduced to 22.2% each.

85. In his fifth witness statement, TSB expressly denied that SPC had any interest in Paramount India, or in the partnership which preceded it. He omitted to mention that MSB or SSB had shareholdings in Paramount India. The absence of this information meant that his witness statement was misleading.

86. His explanation in cross-examination for the shareholdings of his brothers was that "*shares were allocated according to the money which was put - according to the funds which were individually credited into the company*". The suggestion was that as the amount of capital invested by MSB and SSB in Paramount India varied as a proportion of its total capital, their shareholdings were varied in the same proportion. This explanation was inconsistent with his witness statement which claimed that the substantial sums that were transferred from SPC were for private family purposes. He was cross-examined about this at Day 2 page 201 lines 2-19:

"Q. So how does that sit with what you say in your witness statement, and indeed in your statement of case, that all the funds that were sent to India were for private purposes?"

A. I did not say all of it went in for personal matters.

Q. Can I take you back to your witness statement paragraph 102. Paragraph 102 says in very clear terms that: "Substantial funds were transferred from SPC or other UK business bank accounts over the years to India. These were for private family purposes." Then there is a long list of what those purposes were, none of which include investing in limited companies?

A. When you say "substantial" it does not mean all of it.

Q. Your paragraph says substantial sums were transferred. These were for private family purposes."

A. But I also mentioned bank accounts, not the business.

Q. Why is there nothing in your statement, or your statement of case, about Mick having half the company in 2000?

A. It was not necessary to mention that."

87. TSB's oral evidence, cited above, was inconsistent with his witness statement and evasive. He was trying to conceal the truth about the shareholdings in Paramount India. MSB's and SSB's shareholdings in Paramount India corroborate their evidence that the ownership of this company is shared equally between the three brothers. In my judgment TSB has manipulated the shareholdings to reduce the shares of his brothers, without their consent, to give himself control over Paramount India.

88. Thirdly, the evidence of MSB and SSB makes commercial sense. They were working in the UK to build up SPC and PPUK and other joint investments of the brothers, in which TSB had an equal share. TSB was working in India to build up the business of Paramount India, and other commercial ventures, in which MSB and SSB would have equal shares with TSB. That is why they were prepared to transfer substantial funds from the UK businesses to India. The opposite case, that TSB went to India to build up businesses in which MSB and SSB had no interest; that he retained an equal share in the UK businesses whilst not contributing to them; and that he was able to use millions of pounds from the UK businesses for his own ventures in India; makes no commercial sense.

89. I conclude that Paramount India is either the partnership property of SPC or TSB holds the shares on trust for TSB, MSB and SSB in equal shares.

Greystone

90. The name of this company is an obvious reference to the UK residential property which is agreed to be partnership property. TSB provided minimal information about Greystone at [105] – [106] of his fifth statement. He explained that he set up this company in 1997, again with Mr Gill. He stated that SPC had no part in Greystone and provided no funding for it. He claimed that the sole purpose of Greystone has always been to buy powder from Paramount India. It acts as a local distributor for Paramount India in Maharashtra, to avoid the bureaucracy and delay which would occur if Paramount India made the sales directly into that territory. He claimed that MSB and SSB have never worked in or contributed anything to Greystone.

91. TSB gave no evidence as to how the set-up costs of Greystone were funded and he did not say that he provided the funds. Mr Terry submitted, and I agree, that in the absence of such evidence, there is no reason to conclude that TSB personally funded such costs. Such costs were likely to have been met by Paramount India, or by funds sent from SPC or PPUK. In addition, Greystone has a large loan from PPUK, which is inconsistent with TSB's witness statement. He was unable to give a satisfactory explanation for this in cross-examination.

92. I conclude that Greystone is either the partnership property of SPC, or TSB holds the shares on trust for TSB, MSB and SSB in equal proportions.

Tansy

93. As with Greystone, TSB provided minimal information about Tansy at paragraph [108] of his fifth witness statement. He claimed that he bought a company which owned some land using his own funds (not funds from SPC) and changed its name. He stated that Tansy makes liquid paint, which uses powder supplied by Paramount India on arm's-length commercial terms. He stated that Tansy is not in competition with PPUK or any partnership business and that SPC has no interest in Tansy, which is not shown in SPC's accounts.

94. As with the other Indian companies, TSB gave no disclosure about Tansy. Investigations in India have revealed that TSB holds 99.9% of the shareholding, with a presumed bare nominee holding the balance. TSB controls the company, and there is no excuse for his failure to give disclosure. Tansy, like Greystone, is a substantial debtor of Paramount India, and is effectively funded by it. I have concluded that Paramount India is either partnership property or held on trust for the three brothers. In my judgment, Tansy is an extension of the operation that TSB has conducted in India on behalf of the brothers jointly.

95. I conclude that Tansy is either the partnership property of SPC, or TSB holds the shares on trust for TSB, MSB and SSB in equal proportions.

Paramount Landcon

96. The parties' positions in relation to Paramount Landcon are essentially the same as their positions in relation to Paramount India. Paragraph [107] of TSB's fifth statement contains minimal information about Paramount Landcon:

"In 2003, an opportunity arose to purchase a plot of land in Hoshiarpur, India, for development. I arranged for the incorporation of Paramount Landcon Private Ltd ("Landcon") as the corporate vehicle for this. Funding for the purchase came from PPUK through dividends payable to us as shareholders. There was never any intention or agreement that Landcon would be owned, wholly or partially, by PPUK, or SPC or any other partnership between us. The three of us all had shares in Landcon which is how we each owned a stake. SPC's accounts have never shown any interest in Landcon as an asset and MSB and SSB have always approved those accounts."

97. For the purposes of these proceedings, a schedule was prepared on behalf of MSB which set out certain funds sent to India by PPUK between January 2003 and June

2005, and provides references to supporting documents. Mr Bij confirmed in cross-examination that this was probably accurate, and it was supported by the evidence of MSB, which I accept. This shows that a total of £1,358,000 was sent to India by PPUK in relation to Paramount Landcon's development in Hoshiarpur.

98. As with Paramount India, TSB failed to give any disclosure about the shareholdings in Paramount Landcon. Investigations on behalf of MSB and TSB revealed that 99% of the original shareholding in Paramount Landcon was owned by TSB and 1% by Rajiv Paul. Mr Paul did not contribute any funds, and he appears to have been a convenient nominee chosen by TSB. After the Father's death in 2005, 43.53% of the shares were owned by TSB, 30.61% by MSB and 25.85% by SSB (the balance was held by Rajiv Paul). In 2009, TSB caused the shareholdings to change so that he owned 55.73%, MSB 24% and SSB 20.27%. The evidence of MSB and SSB, which I accept, is that they were not consulted or notified of any of these changes.

99. Insofar as he maintained this position, I reject TSB's evidence that the money provided by PPUK to Paramount Landcon was dividends to which he was personally entitled. On TSB's case, it was not possible to understand why MSB and SSB had shareholdings at all. His explanation as to why they had smaller shareholdings than the proportion that he owned was, again, that their shares were proportionate to capital introduction. That is contrary to his evidence that no money from MSB and SSB went into the Indian companies. He was evasive about who had instigated the changes to the shareholdings and provided no evidence as to where he had obtained the funds to introduce share capital and increase his own shareholding. He claimed that the money had come from his personal account but did not disclose supporting documents.

100. In all the circumstances, I conclude that Paramount Landcon is either the partnership property of SPC, or TSB holds the shares on trust for TSB, MSB and SSB in equal proportions.

Other issues in the partnership claim

101. It is agreed that trust and confidence between the parties has broken down and that the partnership should be wound up. However, TSB has raised additional issues as to the cause of this breakdown. TSB complains that MSB and SSB have committed acts in breach of their duties of good faith and calculated to exclude TSB from the partnership. In addition to matters raised in the Company Claim, TSB claims that on 21 October 2015 MSB and SSB:

- i) resolved to change and thereafter changed the bank mandates for the SPC and Anne Boleyn Hotel partnerships. Until then, any one partner could sign. This was altered to require two signatures, which meant that as MSB and SSB were acting together they effectively controlled the bank accounts;
- ii) thereafter refused to provide TSB with copies of the bank statements which was only resolved by TSB applying for an interim order against them;
- iii) determined that payments for each partner's personal expenses, including personal credit card payments and vehicle lease payments would cease immediately and all relevant direct debit and bank mandates, would be terminated and:

- a) resolved that partners' drawings would henceforth be limited to £6,000 per month each and
- b) that mortgage payments in relation to The Cottage would be reduced to £6,000 per month.

102. TSB further complains that notwithstanding those resolutions:

- i) MSB and SSB made various payments to themselves contrary to the resolutions. In particular:
 - a) on 9 November 2015 they withdrew the sums of £50,000 and £70,000 from the Anne Boleyn Hotel bank account;
 - b) allowed £2,163.75 to be paid on 16 November 2015 in respect of a Bentley leased by MSB and on 19 December 2015 £1,676 in respect of a Mercedes also leased by MSB from the Anne Boleyn Hotel bank account.

103. TSB further complains that:

- i) On 8 December 2015 TSB attended the Anne Boleyn Hotel and asked Mrs J. Mohindra, the employee responsible for the accounts for financial documents relating to the hotel. On instructions from MSB she refused to allow him to see any documents except certain bank statements
- ii) On 18 February 2016 TSB attended SPC's premises and MSB used threatening words and behaviour and told TSB he had no right to be on the premises.
- iii) On the same day MSB telephoned TSB's wife (while he knew TSB was away from home) and used abusive language about TSB and threatened to burn the premises down.

104. Since the parties are agreed that the partnership should be wound up and there is to be an account, I shall deal with these issues briefly.

105. As to the variation of the bank mandates and the limits on partnership withdrawals, I do not consider that this was prejudicial to TSB as the limits applied equally to MSB and SSB. SSB states at [52] and [56] of his third witness statement that it was done to protect SPC from overspending and because it had large tax liabilities. This was supported by the evidence of Mr Bij, who accepted that there were cash flow problems with the business as a result of the brothers "*unaccounted, unexpected expenditures*".

106. The reason for reducing the mortgage payments for The Cottage was because interest rates had been reduced. It was unclear during his cross-examination whether TSB objected to this. TSB was notified of the meeting to discuss changing the mandates and limiting partner expenditure, and was provided with the agenda, but he decided not to attend. Instead, TSB withdrew £66,000 from the hotel bank account, without the authorisation of his brothers. Following this MSB and SSB withdrew £50,000 and

£70,000 which they claim was to protect SPC. They claim that they have now returned these sums by paying partnership creditors and by refurbishing the Anne Boleyn Hotel.

107. In my judgment, changing the bank mandate and limiting partnership expenditure was justified and in keeping with MSB and SSB's duties to safeguard the interests of the SPC partnership. In so far as there are complaints about unjustified withdrawals by each of the brothers, they shall be determined when the account is taken.

108. The allegation that TSB was prevented from having access to the partnership's records is denied by MSB and SSB, and I accept their evidence. MSB denies instructing Mrs Mohindra to limit TSB's access in December 2015 but accepts that he may have instructed her to prevent him from taking the hotel cheque book. Given TSB's unauthorised withdrawal of £60,000, this, in my view, was justified.

109. MSB accepts that his discussion with TSB on 18 February 2016 became heated, but denies that it was threatening. I accept his evidence about this. MSB also agrees that he called TSB's wife in an attempt to discuss how best to resolve the differences. TSB's wife did not give evidence about this incident and I accept MSB's evidence that he was not abusive. At paragraph [68] of his second witness statement MSB states that he was exasperated by the pointlessness of the dispute and in frustration he said that he felt like burning the factory down and jumping into a river, but that he did not threaten to do this. In the absence of evidence to the contrary from TSB's wife, I accept what MSB has said.

The Company Claim

Legal principles

110. TSB alleges that the affairs of the Company are being or have been conducted in a manner which is unfairly prejudicial to his interests. Prior to amendment, he sought an order that MSB and SSB should purchase his shares in the Company at a price to be determined by the Court, or in the alternative that he be authorised to bring proceedings in the name of the Company to recover profits and other amounts. He now seeks by amendment that the Company should be wound up on the ground that it is just and equitable to do so.

111. Just and equitable winding up is sought pursuant to section 122 of the Insolvency Act 1986. Remedies for unfair prejudice are sought under sections 994 and 996 of the Companies Act 2006. These statutory provisions were considered by the Court of Appeal in *Fulham Football Club v Richards* [2011] EWCA Civ 855; [2012] Ch 333. At [44] – [45] Patten LJ explained that sections 994 and 996 give wide powers to the Court to grant appropriate relief where a member of a company has been unfairly prejudiced:

“44. Section 994(1) provides:

“A member of a company may apply to the court by petition for an order under this Part on the ground— (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.”

45 If the petitioner establishes unfair prejudice to at least himself as a member, the court has wide powers. Section 996 provides:

“(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

“(2) Without prejudice to the generality of subsection (1), the court's order may— (a) regulate the conduct of the company's affairs in the future; (b) require the company— (i) to refrain from doing or continuing an act complained of, or (ii) to do an act that the petitioner has complained it has omitted to do; (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct; (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court; (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.”

112. The flexible approach of section 994 is to be contrasted with just and equitable winding up in a dispute between shareholders, which should only be used as a last resort. It is an exceptional remedy and section 994 will normally provide a more appropriate alternative, as Patten LJ explained at [54] – [56] of *Fulham Football Club*:

*“54 The power of the court to wind up on the just and equitable ground is also contained in section 122 of the 1986 Act but, in relation to a contributory's petition, the conditions for its exercise are very different. As a general rule, the shareholder seeking the winding up order must be able to establish that the company is solvent and that there will be a surplus remaining for distribution after the payment of the company's debts and the costs and expenses of the liquidation: see *In re Rica Gold Washing Co Ltd* (1879) 11 Ch D 36.*

55 A shareholder will not therefore be permitted to petition under section 122(1)(g) for the winding up of an insolvent company and, in the case of a solvent company, the court's power will only be exercised in his favour with a view to dividing the net assets of the company where no other means can be found of resolving the dispute between shareholders in relation to their rights and interests as members. To this end, section 125(2) of the Insolvency Act 1986 provides:

“If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion— (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.”

56 Section 994 will usually provide the source of a satisfactory alternative remedy such as a buy-out order so that winding up under section 122(1)(g) is therefore a last resort and, in my experience, an exceptional remedy to grant in the context of disputes between shareholders. This is confirmed by the terms of the current Practice Direction 49B (Order under section 127 of the Insolvency Act 1986) which draws attention to the undesirability of asking, as a matter of course, for a winding up order as an alternative to an order under section 994.”

113. It was submitted on behalf of TSB that for a just and equitable winding up, it is necessary only to show that mutual trust and confidence has broken down. Mr Mann QC relied upon the opinion of Lord Wilberforce in *Ebrahimi v Westbourne Galleries* [1973] AC 360. In particular at p376E Lord Wilberforce, as part of his review of the authorities, said:

“In England, the leading authority is the Court of Appeal's decision in Re Yenidje Tobacco Co. Ltd. [1916] 2 Ch. 426 . This was a case of two equal director shareholders, with an arbitration provision in the articles, between whom a state of deadlock came into existence. It has often been argued, and was so in this House, that its authority is limited to true deadlock cases. I could, in any case, not be persuaded that the words 'just and equitable' need or can be confined to such situations. But Lord Cozens-Hardy M.R. clearly puts his judgment on wider grounds. Whether there is deadlock or not, he says, at p. 432, the circumstances

'are such that we ought to apply, if necessary, the analogy of the partnership law and to say that this company is now in a state which could not have been contemplated by the parties when the company was formed ...'

Warrington L.J. adopts the same principle, treating deadlock as an example only of the reasons why it would be just and equitable to wind the company up.”

114. Further, Lord Cross referred to the *Yenidje* decision at 384A and said:

“People do not become partners unless they have confidence in one another and it is of the essence of the relationship that mutual confidence is maintained. If neither has any longer confidence in the other so that they cannot work together in the way originally contemplated then the relationship should be ended - unless, indeed, the party who wishes to end it has been solely responsible for the situation which has arisen. The relationship between Mr. Rothman and Mr. Weinberg was not, of course, in form that of partners; they were equal shareholders in a limited company. But the court considered that it would be unduly fettered by matters of form if it did not deal with the situation as it would have dealt with it had the parties been partners in form as well as in substance”

115. *In re Westbourne Galleries* establishes that analogies between companies and partnerships or quasi-partnerships may serve to confuse, rather than illuminate. Lord Wilberforce, with whose opinion Viscount Dillon, and Lords Pearson and Salmon agreed, held at 379-80 that:

“To refer, as so many of the cases do, to 'quasi-partnerships' or 'in substance partnerships' may be convenient but may also be confusing. It may be convenient

because it is the law of partnership which has developed the conceptions of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words 'just and equitable' sum these up in the law of partnership itself. and in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations. A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

116. This issue was specifically addressed by Lord Hoffman in the leading case *O'Neill v Phillips* [1999] 1 WLR 1092 1104B – 1105C. When considering a claim of unfair prejudice under section 459(1) (as amended) of the Companies Act 1985 he rejected the submission that because trust and confidence between the parties had broken down, it was obvious there ought to be a parting of the ways. He characterised the submission as saying that in a “quasi-partnership” company, one partner ought to be entitled at will to require the other partner or partners to buy his shares at a fair value, and that all he need do is to declare that trust and confidence has broken down. At 1104F Lord Hoffman concluded that there was no support in the authorities for such a stark right of unilateral withdrawal. He rejected the proposition that a member who has not been dismissed or excluded can demand that his shares be purchased simply because he feels that he has lost trust and confidence in the others and he noted that in *In re Westbourne Galleries* at 380, it was made clear that one should not press the quasi-partnership analogy too far: “*A company, however small, however domestic, is a company not a partnership or even a quasi-partnership ...*”

117. Lord Hoffman concluded that:

“The Law Commission, in the report to which I have already referred, Shareholder Remedies (Law Com. No. 246) (1997) (Cm. 3769) considered whether to recommend the introduction of a statutory remedy “in situations where there is no fault,” so that members of a quasi-partnership could exit at will. They said, in paragraph 3.66:

“In our view there are strong economic arguments against allowing shareholders to exit at will. Also, as a matter of principle, such a right would fundamentally contravene the sanctity of the contract binding the members and the company which we considered should guide our approach to shareholder remedies.”

The Law Commission plainly did not consider that section 459 already provided a right to exit at will and I do not think so either.”

118. When summarising the *O'Neill* principles in *Grace v Biagioli* [2005] EWCA Civ 1222; [2006] BCC 85 Patten LJ stated at [61] (6) that:

“(6) It is not enough merely to show that the relationship between the parties has irretrievably broken down. There is no right of unilateral withdrawal for a

shareholder when trust and confidence between shareholders no longer exist. It is, however, different if that breakdown in relations then causes the majority to exclude the petitioner from the management of the company or otherwise to cause him prejudice in his capacity as a shareholder.”

119. In the light of these authorities, I reject the submission that for a just and equitable winding up, it is necessary only to show that mutual trust and confidence has broken down. I shall apply the principles set out in *Grace v Biagioli* to the facts alleged to constitute unfair prejudice to TSB and I shall only order a winding up if it is just and equitable to do so and no other more appropriate alternative is possible.

Alleged wrongful competition and diversion of business by SSB through PPL/AMJ

120. TSB complains that SSB breached his fiduciary duties to PPUK by setting up and trading through a competing company and diverting business away from PPUK and thereby has unfairly prejudiced TSB. In particular, TSB alleges that from about 6 December 2013 SSB has been competing with PPUK through a company initially called Paramount Powder Ltd, which sells raw materials for powders and diverts to it business that would otherwise have been carried out by PPUK. The name of this company was changed to AMJ Paint Ltd after a complaint by TSB’s solicitors that it was confusingly similar to PPUK.

121. In about 2011 or 2012 PPUK had secured the ability to acquire greater amounts of raw materials than it needed for itself to manufacture powder coating. It did so at discounted prices by placing high volume orders. Therefore, it was able to sell the excess raw materials for higher prices. TSB alleges that PPL/AMJ diverted the acquisition of raw material to itself and so took the profits, which would otherwise have gone to PPUK.

122. TSB complains that Manpreet does not run PPL/AMJ’s business, and that she is just a front for SSB. Manpreet was only 21 when the business was started and TSB claims that she did not have any relevant experience. TSB claims that PPL/AMJ is, in reality, SSB’s business, and he is the only one who is able to draw on inside knowledge of the raw materials side of the paint business.

123. SSB’s case is that prior to the incorporation of PPL/AMJ, he had carried out a small amount of chemical trading through PPUK. However, TSB and MSB objected to this and asked SSB to stop, because it was causing cash flow difficulties to PPUK. SSB’s evidence is that he had a meeting with Mr Bij who suggested that the trading could be done outside of PPUK, and Mr Bij then assisted in the incorporation of PPL on 6 December 2013. Manpreet was the sole director, and save for a period between 15 October 2014 and 27 July 2015, when her directorship would have breached her employment contract, she has always been the registered director. Since incorporation, Manpreet has been responsible for the day-to-day running of the business. TSB and MSB knew this and did not object in any way.

124. Having heard Manpreet’s evidence, I am in no doubt that she is extremely capable, that at all times she has operated and run PPL/AMJ, and she is the controlling mind of the company. She has a clear grasp of the mechanics of its trading, and was able to explain how the business operated. She was telling the truth, and it was not suggested otherwise during her cross-examination.

125. Nonetheless, Mr Mann submitted that PPUK would not have been willing to hive off the chemical sales business, which had a significant turnover and is now profitable. In my judgment, the evidence established that from PPUK's perspective, the decision was understandable. PPUK was concerned about cash flow as a result of substantial sums taken out of the company by the brothers for personal use, as Mr Bij confirmed. The chemical sales business made this worse. VAT had to be paid on the purchases of the raw materials and SSB and Manpreet explained that the delay in recovery was three to four months. Furthermore, suppliers had to be paid up-front for the chemicals and on occasion, there was delay in receiving payment from purchasers. MSB and SSB gave evidence that after an order had been placed with the supplier, the purchaser might cancel or go out of business. In those circumstances, PPUK was faced with the risk that it would be left with a significant stock of chemicals when it was unable to recover its costs. In addition, MSB explained that the chemical trading might have taken PPUK over the £6 million turnover limit that required company accounts to be audited, which it wished to avoid.

126. A small business such as that of PPL/AMJ was able to avoid these problems. Manpreet explained that because PPL/AMJ was owed money by HMRC on trades within the European Union, it was not liable to make payments to HMRC. In those circumstances, it was able to recover monthly payments. It also operated on terms that required payments up-front from suppliers. Its turnover was modest and there was no question of exceeding the £6 million limit. I accept her evidence.

127. I accept TSB's case that PPL/AMJ is, at least potentially, a competitor of PPUK. It is operating a business previously conducted by PPUK. Furthermore, in the absence of agreement or acquiescence by TSB and MSB, I also accept that SSB would have been in breach of his fiduciary duties as a director to PPUK. He admits that it was his idea to set up Manpreet in this business, that he assisted her in its important initial stages in negotiating with suppliers, and that he continues to assist by carrying bags from the lorries to the warehouse.

128. However, the difficulty with TSB's case is twofold. First, the business of PPL/AMJ was conducted in an open manner and no attempt was made to hide it from TSB, or anyone else within PPUK. Mr Bij was asked to help Manpreet to incorporate PPL and he set up Sage software for its use. SSB and Manpreet anticipated (rightly) that Mr Bij would report this back to TSB because he was TSB's eyes and ears within PPUK. PPUK's offices and facilities were openly used to operate PPL/AMJ, as Mr Bij admitted during his cross-examination. I do not believe that this would have happened unless SSB and Manpreet were satisfied that there was no objection to this business from PPUK.

129. Secondly, there is strong evidence that TSB and MSB agreed to or acquiesced in SSB and Manpreet carrying on the business of PPL/AMJ. In his witness statements, TSB did not respond to SSB's evidence that he was asked by TSB and MSB to stop trading chemicals within PPUK, and that TSB was aware that SSB and Manpreet had set up PPL/AMJ. SSB's account was contained in his third witness statement, to which TSB replied in his sixth witness statement but did not dispute this.

130. Mr Bij explained during cross-examination that he informed TSB that SSB and Manpreet were running PPL when he came back from India, and that TSB's reaction was "*indifference*". TSB's passport schedule shows that he was in the United Kingdom

from 18 December 2013 to 22 January 2014. PPL was incorporated on 6 December 2013. I find that TSB was told the facts about PPL/AMJ by Mr Bij very shortly after its incorporation and he did not object.

131. The evidence of the other main witnesses was to similar effect. Sandeep stated that it was common knowledge in the PPUK office that Manpreet had started PPL/AMJ and that the business was openly discussed. MSB confirmed during cross-examination that it was common knowledge that Manpreet had opened a company trading in chemicals and that he did not object, and nobody else objected as far as he was aware. Manpreet stated that TSB discussed the PPL business with her. He looked at her files and was able to see that the business was not being conducted by PPUK, because the invoices were for a different company and she was the contact on the address. I accept her evidence on this issue.

132. I conclude that TSB was aware, shortly after its incorporation, that SSB and Manpreet had set up PPL/AMJ and that he consented to or acquiesced in this business. In common with MSB, TSB did not want PPUK to continue to trade in chemicals, and therefore it is unsurprising that he had no objection. I reject TSB's complaint that SSB has breached his fiduciary duties to PPUK by setting up and trading through PPL/AMJ, to the unfair prejudice of TSB.

Staff payroll irregularities

133. The allegations made by TSB against SSB in relation to payroll irregularities are extremely serious. It is alleged that SSB stole cash from PPUK and, without the consent or knowledge of TSB, falsely inflated employee salaries to assist in fraudulent applications for mortgages, benefits and work permits. Before turning to the detail of these allegations I shall consider certain general points made on behalf of SSB.

The allegations are said to be inherently unlikely

134. Mr Hornett submitted that these claims were outlandish and inherently unlikely. He relied upon the dictum of Lord Nicholls in *Re H(minors)* [1996] A.C. 563 at 586C that "*the more improbable the event, the stronger must be the evidence that it did occur.*" He submitted that SSB had no motive for assisting low level employees to obtain mortgages, benefits, or work permits by deception; and that he did not need to misappropriate cash, when he was withdrawing hundreds of thousands of pounds a year from SPC and PPUK.

135. I do not accept the characterisation of these allegations as outlandish. SSB enjoys the lifestyle of a wealthy man. He takes a paternalistic interest in the welfare of PPUK's employees, and it is conceivable that he was prepared to break rules to further their interests. However, it is important to have regard to the way in which these allegations of wrongdoing have been pleaded, and that there must be solid evidence in support of such grave allegations, if they are to be established.

Timing of the payroll allegations

136. The allegations concerning PAYE irregularities relate to incidents which occurred between 2012 and 2015. They were not mentioned in pre-action correspondence written on behalf of TSB and were raised for the first time in the Petition

dated 4 March 2016. They concern discrepancies which are said to have occurred when Mr Bij was in charge of the payroll. During cross-examination Mr Bij said that he told all the brothers, including TSB, about the payroll irregularities well before he left PPUK.

137. TSB fell ill before he was asked why these grave allegations against SSB were not raised by him until service of the Petition, if he was really concerned about them. There is no obvious answer to this. TSB's family positively benefited from Mr Bij's dubious handling of the payroll, as Sandeep was paid a salary when he was not working for the company, and it would appear that TSB had good reason not to object. Even if these allegations are proven, I do not accept that they amount to unfair prejudice against TSB.

Provenance of the payroll allegations

138. Mr Bij admitted during cross-examination that he was the source of the payroll allegations made against SSB in the Petition. Earlier in this judgment, I have set out my reasons for finding that Mr Bij was not a reliable witness. He benefited personally from irregularities in the payroll, for which he was responsible, because his son was paid a salary by PPUK, when he did not work for the company. By the time that Mr Bij left PPUK, he harboured a strong personal antipathy against SSB. This, in my judgment, motivated him to raise these allegations against SSB.

139. Paragraph 28 of the Amended Petition alleges that:

“Throughout the periods when the true salaries of Ravinder Singh, Rominder Marway and Digsh Bhatt respectively were less than that recorded in the payroll records the amount of money that exceeded their true salaries was misappropriated by the Second Respondent [SSB] for his own benefit without the consent or knowledge of the Petitioner [TSB] and in breach of his duties as a director of the Company.”

140. Mr Bij was cross-examined about this allegation of theft against SSB, of which he was the source. Having claimed that payments were made in cash and SSB took them, he accepted that he did not see SSB do this. His answers then made clear that he was quite unable to say that SSB had stolen this money:

“Q. So you cannot give any evidence at all that SSB misappropriated the difference between the true salary and the payroll and recorded salary?”

A. No, I cannot say that.

Q. Did you pocket the difference, Mr Bij?

A. No

Q. You could have done, could you not, as you were in a position of trust?

A. So many others could have done.”

In the light of that cross-examination, in my judgment, there is no basis for the allegations of misappropriation against SSB.

SSB's position

141. SSB was cross-examined about the payroll documents, and clearly knew nothing about them. He explained that he never got involved in the payroll, as he was handling the daily operations of the company, and that Mr Bij was responsible for the payroll. I accept this. SSB and MSB trusted Mr Bij in relation to the payroll and left the responsibility for preparing it to him. Insofar as there were irregularities, Mr Bij knew more than anyone about them, and, until leaving the company, was content to perpetrate such acts. SSB, as a director, should have taken care to avoid payroll discrepancies, and to check what Mr Bij was doing. However, that criticism applies to all of the brothers, and it is not a matter about which TSB can complain. In order to succeed on this aspect of the petition, TSB would need to prove that SSB has breached his fiduciary duties, and that TSB has not done so, such that SSB's conduct amounts to unfair prejudice to TSB. This was not established on the evidence.

The payroll allegations in detail

Ravinder Singh

142. TSB alleged that SSB was responsible for falsely inflating the salary of Ravinder Singh. At [89] of his fifth witness statement, TSB stated that from August 2012 onwards, Ravinder Singh's salary was falsely inflated to assist him in obtaining a visa/work permit. Thereafter, he stated that his salary was falsely inflated to assist him to obtain a mortgage. He alleged that SSB misappropriated the difference between the true salary and the payroll recorded salary by requiring the difference in cash to be paid to him.

143. According to TSB's statement, he learnt of these facts from Ravinder Singh's father. However, Mr Singh's father was not called as a witness, nor was a hearsay notice served on his behalf. I do not believe that Mr Singh's father was the source of this allegation. For the reasons set out above, in my judgment, the allegation emanated from Mr Bij.

144. Following cross-examination Mr Mann relied on the fact that, according to the payroll records, the wages of this employee rose steadily until he received £2971.68 per month from 31 December 2014 until 31 January 2015; then fell back to £2333.33 per month from 27 February 2015 to 29 February 2016; then rose again to £3000 per month from 31 March 2016. SSB was unable to explain the fluctuations in wages. Furthermore, SSB received two payments from Mr Singh of £82 and £600 in September 2013 and January 2014, and it was suggested that SSB's explanation that these were repayments of loans was untrue.

145. I accept Mr Mann's submission that no explanation was provided by SSB for Mr Singh's fluctuations in salary. I do not accept that SSB assisted Ravinder Singh in falsely obtaining a work permit, and in perpetrating a mortgage fraud, by causing his salary to be falsely inflated. In my judgment, SSB knew nothing about this. As to the payments that were transferred by Mr Singh to SSB, SSB explained that he lent Mr Singh some money, and these were repayments. I found this explanation to be credible, and I accept it. If it were the case that Mr Singh was receiving the inflated salary and paying the excess to SSB, then there would be likely to be regular payments into SSB's account over an extended period of significant sums, rather than two isolated payments.

146. I reject the allegation that, without the consent or knowledge of TSB, SSB carried out irregularities in relation to the salary of Ravinder Singh.

Rominder Marway

147. Paragraph [25] of the Amended Petition alleges that Rominder Marway's true salary in 2014 - 15 was £23,720 p.a. but her salary was falsely recorded in the payroll records as being £42,500 p.a. in order for her to obtain a mortgage. Following cross-examination, it was alleged that Ms. Marway had several pay rises. Between 30 April 2015 and 31 March 2016 her salary was recorded as £26,890.20 and in the period 30 April 2016 to 28 February 2017 as £31,808.02 which, over a 12 month period would be £34,699.85, or a rise of about 29.38%. This latter allegation is not pleaded, and relates to a different time period to the complaint made in the pleadings. It is not open to TSB to rely upon it.

148. As with the other allegations of payroll irregularities, I accept that no explanation was provided by SSB for Ms Marway's fluctuations in salary. I do not accept that SSB assisted Ms Marway in perpetrating a mortgage fraud, by causing her salary to be falsely inflated. In my judgment, SSB knew nothing about this. I reject the allegation that SSB misappropriated the difference between the salary that Ms Marway received and her salary as recorded in the payroll.

Digsh Bhatt

149. At paragraph [26] of the Amended Petition it is alleged that Mr Bhatt earned between £20,000 and £22,000 from 2008 - 15. In 2013 - 14 his salary is alleged to have been falsely recorded in the payroll records as being £34,000 in order for him to obtain a work permit until it reverted to the true amount in 2014 - 15.

150. As with the other allegations of payroll irregularities, I accept that no explanation was provided by SSB for Mr Bhatt's fluctuations in salary. I do not accept that SSB assisted Mr Bhatt in obtaining a work permit by deception, or in perpetrating a mortgage fraud, by causing his salary to be falsely inflated. In my judgment, SSB knew nothing about this. I reject the allegation that SSB misappropriated the difference between the salary that Mr Bhatt received and his salary as recorded in the payroll.

Joy Robinson

151. At paragraph 27 of the Amended Petition it is pleaded that Joy Robinson's payslips falsely state that he works 21 hours per week whereas he works between 70 to 80 hours per week. It is alleged that his remuneration for the additional hours of work is paid to him under a different name and National Insurance number so as to enable him to continue to claim State Benefits.

152. Following cross-examination of SSB, complaint was made about fluctuations in Joy Robinson's recorded earnings and the fact that his wages do not correspond to the hours worked. It appears that Mr Robinson worked less hours than were represented by the payroll. This is contrary to the pleaded allegation that he worked more hours than was shown in the payroll and was paid under a different name and National Insurance Number. It is not open to TSB to rely upon this unpleaded allegation.

153. As with the other allegations of payroll irregularities, I accept that no explanation was provided by SSB for Mr Robinson's payroll. I do not accept that SSB assisted Mr Robinson fraudulently to claim State Benefits. In my judgment, SSB knew nothing about this. It can fairly be said that, as a director, he should have taken care to ensure that there were no irregularities in the payroll. However, the same criticism applies to TSB, who has not been unfairly prejudiced.

Trident

154. SSB and MSB claim that they were entitled to exclude TSB from management of PPUK in May 2016 because they had learnt of his involvement in Trident, a direct competitor of PPUK. The fact that Trident directly competes with PPUK, has approached PPUK customers and has sought to undercut its prices was admitted by Sandeep in his second witness statement. In my judgment, if TSB was involved in Trident, then his exclusion from PPUK was not unfairly prejudicial, as it was warranted by his own conduct; Joffe *et al*, *Minority Shareholders Law Practice and Procedure* (5th ed) at 6.158.

155. This is a pure issue of fact. TSB denied any involvement in Trident. Mr Mann characterised this allegation as mere suspicion with no evidence to support it. Mr Hornett relied upon the following ten allegations which were alleged to give rise to an overwhelming inference that TSB either controls, directs and funds Trident directly, or assists Sandeep in doing so:

- i) The allegedly false account given by TSB and Sandeep in relation to conversations about Trident;
- ii) the supply of powder by Paramount India to Trident;
- iii) the use of common professionals;
- iv) the funding of Trident;
- v) attendance by TSB at Trident's premises;
- vi) evidence of TSB placing orders for Trident at a Mitsubishi dealership;
- vii) approaches made by TSB to UK machinery manufacturers;
- viii) an email from a customer (Cosa Mia) which is said to provide corroboration that TSB financed Trident;
- ix) the employment by Trident of Dr Manro and Mr Bij;
- x) alleged misuse of confidential information by Trident.

156. Although I consider each of these allegations separately, my conclusions are based upon the totality of the evidence, and upon such allegations in combination, as well as individually.

Alleged conversations between TSB and Sandeep concerning Trident

157. TSB and Sandeep gave no evidence in their witness statements as to TSB's reaction when he learnt that Sandeep was setting up a business in competition with PPUK, and that PPUK's chief chemist, Dr Manro, was joining that rival business. This was a significant omission. Since TSB was a director of PPUK, he would have been in breach of his fiduciary duties if he knew about the threat that Trident presented to PPUK and failed to report it to his fellow directors.

158. When cross-examined about this issue TSB and Sandeep claimed that Sandeep had set up Trident and persuaded Dr Manro to join it without telling TSB what he was doing. They claimed that TSB first found out about Trident when SSB told him of it in April 2015. They claimed that, at that time, TSB told Sandeep to stop this business, and Sandeep ignored him. Sandeep then allegedly obtained a loan from his sister Amandeep to assist in financing Trident. Sandeep said that he did not tell Amandeep that their father objected to Trident, and that he did not tell his father that he had involved Amandeep in Trident's business, nor that that she had loaned him £210,000.

159. I bear in mind that both witnesses gave a very similar account, and Sandeep was not in court when TSB was cross-examined. I am prepared to accept Sandeep's evidence that he did not tell TSB about the loan that Amandeep had made to him, which he may well not have wished to reveal to his father. Nonetheless, I do not accept the rest of their evidence which, in my judgment, was an untrue story which they concocted together.

160. During the set-up of Trident, TSB and Sandeep were living together at The Cottage. TSB had a wealth of experience in the powder coating business, and a very keen interest in that business. He had known Dr Manro for many years. I do not believe that Sandeep embarked upon this venture and persuaded Dr Manro to join him without telling his father. Nor do I believe that, in the light of all of the evidence concerning TSB's involvement in Trident, when Sandeep told TSB about Trident, TSB asked Sandeep to stop.

Powder supply from Paramount India to Trident

161. TSB and Sandeep admitted in their witness statements that Paramount India had supplied Trident with powder. However, TSB did not disclose any documents showing the number of orders, the quantity or the price of such supplies. During cross-examination TSB said that there was a single order of 8 or 9 tonnes of powder supplied by Paramount India at a price of £25-30,000. Sandeep also referred to a single order which he said was in about October or November 2015 for 12 tonnes at a cost of about £40,000. Sandeep accepted that he got a good deal on the powder because he had a connection with Paramount India. When asked to identify the connection, he did not do so, and said "*the whole company*". He said that he sold the powder at cost in January 2016 for marketing purposes in order to undercut competitors, including PPUK, and "*to get a foot in the door*". Although Sandeep denied it, I have no doubt that this supply was very important to Trident as a start-up company.

162. TSB accepted that he was aware that Paramount India was going to supply the powder to Trident and claimed that he had told the sales department to stop it. He claimed that he was unable to stop it because the board took the decisions and the sales team at Paramount India told him that Paramount India would lose the sale and Trident would buy from somewhere else. I do not accept this evidence. Paramount India is controlled by TSB. If he had wanted to stop the shipment I find that he could have done

so. He did not wish to do so, because he knew that the supply was important to Trident, and he wanted to assist in its nascent business. In my judgment, TSB procured the supply by Paramount India to Trident of this order, at below market price, so that it would be in a position to undercut PPUK.

163. Sandeep said that he had told TSB about the supply by Paramount India before the powder arrived and that TSB had no reaction, and did not ask him to cancel the order. This is inconsistent with the claim that TSB objected to Sandeep's involvement in Trident, which I do not accept.

The use of common professionals

164. Trident has used the same solicitors, the same accountants and the same company formation agent as TSB. MSB and SSB allege that this is because TSB has at all material times been involved in Trident.

165. Sandeep engaged Gannons Commercial Law Limited to write a letter dated 18 June 2015 to complain about his alleged unfair dismissal from PPUK. It is suggested that he must have discussed this with TSB, who must have agreed to him using solicitors who were engaged on the wider partnership and company disputes which TSB was pursuing against SPC and PPUK. Whilst the evidence of TSB and Sandeep was not consistent on this point, Sandeep said that he found Gannons for the purposes of these proceedings. Sandeep then decided to use Gannons for his unfair dismissal claim. Sandeep's explanation is credible and I accept it.

166. JSP Accountants are the registered office for Trident. They are also Trident's accountants. They have been TSB's accountants from at least 31 March 2016. TSB could not explain why his accountants were the registered office for Trident and acted as its accountants. Sandeep claimed to know of JSP through Dr Manro and suggested that the accountant was Dr Manro's close personal friend. He claimed that he had not discussed with TSB the fact that he was using his father's accountants to set up Trident. I do not accept the evidence of TSB and Sandeep on this issue, and I do not believe that it is a coincidence that TSB's accountants are the registered office for Trident, and act as Trident's accountants. They were selected because TSB was involved in Trident from its formation.

167. By an application dated 15 August 2016, TSB has sought an order for the appointment of a receiver and manager in respect of the assets of SPC and the business and assets of PPUK. Paragraph 5 of this application requests that:

“Ashok Bhardwaj, Licensed Insolvency Practitioner, of 47/49 Green Lane, Northwood, Middlesex HA6 3AE be appointed to collect in and receive the debts due and owing and other assets and property belonging to the Receivership Business and to manage the Receivership Business and out of the first monies received to pay the debts due from the said business.”

168. Bhardwaj Limited, at the same address at 47/49 Green Lane, acted as a company formation agent for Trident and confirmed that the requirements of the Companies Act 2006 as to registration had been complied with by Trident. TSB said that he had met Mr Bhardwaj at the Gymkhana club (a hockey club) and had not instructed him until the application of August 2016. He claimed not to know that Sandeep had used the same

insolvency practitioner to incorporate Trident. I do not accept this evidence. I do not believe that it is a coincidence that TSB selected Mr Bhardwaj to be appointed as a receiver over SPC and PPUK, when the same practitioner also acted for Trident. Mr Bhardwaj was selected because TSB continued to be involved in the business of Trident.

Funding of Trident

169. Trident required significant capital to set up and significant expenditure to operate. Paragraph [22] of the Amended Defence to the Petition expressly put in issue Sandeep's ability to provide this funding:

“Sandeep is a recent business graduate and the Respondents believe that he lacked the funds necessary to capitalise Trident. By contrast, Sandeep's father, the Petitioner, has relevant industry and commercial experience and has the financial ability to provide and/or procure the funding required to establish and operate Trident.”

170. At [57] (i) of his third witness statement SSB alleged that Sandeep has no financial resources or business expertise, nor any track record whereby any bank or other financial institution would lend him the money to set up Trident. SSB calculated from his knowledge of the business that the costs involved in setting up Trident were about £1 million, comprising £600,000 worth of machinery, £100,000 expenses, £200,000 of material, business rents and wages, as well as cash flow of about £100,000. He asserted that those funds must have come from TSB.

171. Sandeep's written evidence did not address how he funded Trident. There was no satisfactory explanation for this omission, as it was plainly an important allegation which he needed to address. During cross-examination, he was most reluctant to reveal his sources of funding. Despite being given the opportunity to do so after his evidence had finished, he did not provide bank statements from his bank accounts nor Trident's bank accounts nor other underlying documents to show how Trident had been funded. After he had been cross-examined, he provided abbreviated accounts for Trident, and a directors' loan account which had been produced by JSP. This purported to show that approximately £542,000 had been loaned to Trident between 21 April 2015 and 8 July 2016. As well as loans by Sandeep, sums are recorded as having been loaned by Amandeep, a Mr Sidhu and the Temple, who were not directors of Trident, and their presence on the directors' loan account was not explained.

172. The directors' loan account contains very little detail and there are no underlying documents to show where the money came from, nor how or when it has been spent. These loans did not support Sandeep's claim that he had funded Trident from sales of properties that he owned. On the last day of the trial, during closing speeches, Sandeep produced a 10 year lease on Trident's premises at Unit L1, Grafton Way, Basingstoke. This led to further questions. Contrary to the account that he had given as the terms of this lease when first cross-examined, it did not contain a nine or ten month rent free period.

173. During his cross-examination, Sandeep claimed that the entire plant had cost about £200,000, although he produced no invoices or other documents to corroborate this. Quotations for plant which are in evidence (namely a quotation from Baker Perkins for two extruders at a cost of £363,000 and from Xtrutech for one extruder plus

conveyor at a cost of £318,704) suggest that SSB is correct and two complete lines would cost far more than Sandeep claimed. I do not accept, without supporting documents, that it was possible to buy state-of-the-art equipment from China or India at a fraction of this price.

174. I was not satisfied by Sandeep's evidence that he had the means to fund the set-up or operating costs of Trident. TSB, however, had access to substantial funds. In addition to funds from the Indian assets and rent from 2&4 David Road and 118 Stoke Road, calculations prepared on behalf of SSB and MSB for the three years ending March 2014 -2016 (the accuracy of which I accept) show that TSB took a total of £1,335,547 from SPC and PPUK, which was significantly more than his brothers, in addition to mortgage repayments on The Cottage.

175. During his cross-examination, TSB disclosed documents relating to his re-mortgage of The Cottage in October 2015. This showed that TSB re-mortgaged the property for £1,117,000 of which approximately £654,000 was required to pay off the existing mortgage. That left a balance of approximately £515,800. The re-mortgage was completed on the 15 October.

176. There are no entries in the directors' loan account for Trident between the end of April 2015 and 20 October 2015. From 20 October 2015 onwards, Sandeep is recorded as having loaned significant amounts to the company. In the draft Judgment, I took the view that this timing was no coincidence, and that shortly after the re-mortgage was completed, TSB provided funds to Sandeep from his share of the re-mortgage money to enable Trident to begin trading, which it did in late 2015 or early 2016. However, Mr Ritchie drew my attention to various bank statements disclosed by TSB which, according to his submission, showed that TSB's share of the funds from the re-mortgage were used for the costs of this litigation and for living expenses. I accept this submission and I am grateful to Mr Ritchie for drawing this to my attention. However, it does not alter my overall conclusion that Sandeep did not have the means to finance Trident, and that TSB provided funds to Trident from other substantial sums that were available to him (see paragraphs [169] - [174] above).

The Cosa Mia email

177. SSB relied upon an email dated 8 July 2016 sent to him by Lee Nizzardi of Cosa Mia Ltd, a customer of PPUK. It reports on a conversation between Mr Nizzardi and Malcolm Fitter, an employee of Trident. In the email, Mr Nizzardi said:

“When I suggested Trident might be a short-lived thing he assured me that they have state of the art, new equipment and that the company has sound financial footing as it's financed by your father. He may have this fact slightly wrong as I think your father passed away some time ago.”

178. SSB and MSB contend that this email is referring to TSB (it should say “brother” rather than “father”), and provides corroboration that he financed Trident and put it on a sound financial footing. I do not attach significance to the Cosa Mia email. It is, at best, an inaccurate account of a conversation between Mr Nizzardi and Mr Fitter, neither of whom gave evidence.

179. Colin Brown stated at paragraph [8] of his first statement that representatives from Trident had stated to potential customers that Trident was a new company started by TSB. No such customers were called to give evidence and Mr Brown's account is lacking in detail. I do not attach significance to it.

Mitsubishi dealership/reports to Mr Brown

180. At paragraph [9] of his first statement, Mr Brown explained that in May 2016, SSB had told him that TSB had been making regular telephone calls to a Mitsubishi dealership in Woking. Mr Brown agreed to go to the garage to find out more information. He met with Anthony Fraser on 25 May 2016 and told him that he worked for PPUK. Mr Fraser confirmed that he had been dealing with TSB from Trident. He showed Mr Brown on-screen details for a Trident account which was set up in TSB's name and showed his address (The Cottage, Ascot). Mr Brown sent an email to SSB on the same date describing his meeting with Mr Fraser and what he had seen on the screen. Furthermore, reports from private investigators record that they saw a white Mitsubishi L200 truck at Trident's premises, which was the same colour and make of vehicle as referred to in Mr Brown's email.

181. It is suggested on behalf of TSB that a car dealership would not be interested in which member of the Badyal family had dealt with the order and may well have confused Sandeep and TSB. Sandeep said that Mr Welfare, an employee of Trident, arranged for the purchase and Sandeep signed for it, and that his father had nothing to do with it.

182. If there were no more evidence of TSB's involvement in Trident than Mr Brown's account, I would not attach significance to it. However, when considered in the light of all the evidence, I believe that the on-screen details that were shown to Mr Brown were accurate and provide further confirmation of TSB's involvement in Trident.

Quotes from Baker Perkins and Xtrutech

183. TSB made approaches to and obtained quotes for plant from Baker Perkins and Xtrutech in November 2014 and May 2016. Mr Hornett submitted that the most credible explanation is that TSB was obtaining quotes for Trident and not, as he claimed, for Paramount India. TSB accepted that SSB had ordered machinery for India in the past. SSB did not know that Paramount India required any new machinery and was unaware of the fact that TSB had made any approach until he was told by Baker Perkins. TSB's explanation of why Paramount India needed the machinery was unsatisfactory.

184. I do not accept Mr Hornett's submission. Baker Perkins wrote to the British High Commissioner in India requesting a visa for a Mr Tripathi of Paramount India to visit the UK to inspect the plant. Xtrutech offered to send employees to Paramount India's premises. Both suppliers were under the clear impression that TSB was obtaining quotes for India. I do not accept that TSB would have deceived his suppliers in order to disguise his interest in Trident. On other occasions, he made little effort to cover his tracks.

Visits to Trident Premises

185. Private investigators reported that TSB was seen at Trident's premises on 25 February 2016, 3 March 2016, 7 April 2016, 11 April 2016, and 25 April 2016. This was

on every occasion that the private investigators attended Trident's premises, save possibly for their first visit. Mr Brown also saw TSB's car at Trident on 28 January 2016, 5 April 2016 and 25 April 2016. TSB did not tell SSB or MSB that he was visiting Trident's premises even though he knew, from April 2015, that they were very concerned about this business. TSB claimed that he needed Sandeep to help to translate conversations with his solicitors and he attended the premises for that purpose. However, he accepted that he had help from his daughters and wife in interpreting and translating. He did not need go to Trident's offices for this purpose. At The Cottage he had his own study, telephone and Internet access.

186. Mr Bij said that when he saw TSB at Trident's offices, he was doing nothing and just walking about. I do not accept that evidence, which is inconsistent with TSB's own account that he was using Trident's offices to speak to his solicitors. Nor do I accept TSB's explanation. The reason why, in my judgment, he was seen repeatedly Trident's premises is because he was involved in its business.

Dr Manro and Mr Bij

187. Mr Hornett submitted that Dr Manro left PPUK because TSB encouraged him to do so. Dr Manro was a key employee of PPUK who had worked there for 14 years. TSB asked him to join PPUK as he knew him through the Gymkhana Club. Mr Brown gave evidence that TSB visited PPUK's premises on an unusual number of occasions during 2014 and that he saw TSB in several conversations with Dr Manro.

188. During his cross-examination TSB claimed that he challenged Sandeep about his employment of Dr Manro, although he had not mentioned this in any of his witness statements. Sandeep said that he poached Dr Manro, but that he did not tell TSB about this at the time. The accounts of TSB and Sandeep were inconsistent.

189. In the absence of evidence from Dr Manro I do not believe that he would have been prepared to leave his long-standing employment PPUK at the behest of Sandeep, who had no proven track record and insufficient funds to start Trident. In my judgment, Dr Manro left PPUK and to join Trident because TSB encouraged him to do so.

190. I have reached the same conclusion about the departure of Mr Bij from PPUK. Mr Bij admitted that TSB was very close to him, and that he has assisted TSB in this litigation. I do not believe that Mr Bij would have been prepared to leave his long-standing employment at PPUK without reassurance from TSB that he would be offered a position at Trident. This is corroborated by evidence from SSB. SSB stated at paragraph [58] of his third witness statement that after the departure of Dr Manro, in February 2015, he questioned Mr Bij about his loyalty, and whether he would consider leaving to work for Trident. Mr Bij's response was that "*they do not need me yet as they are setting up the business, but once TS gives me a good package I will see.*" Mr Bij admitted that he had said something similar, but alleged that he did not mean it. In my judgment, Mr Bij was waiting for an appropriate offer from TSB, and once he received it, he left PPUK to work for Trident.

Confidential information

191. The allegation that Dr Manro has misused confidential information was neither sufficiently particularised nor supported by proper evidence. It was abandoned during closing speeches.

192. The allegation that Mr Bij disclosed confidential lists of PPUK's customers and suppliers to TSB, which was misused by Trident, has more substance and is still pursued.

193. Mr Bij sent an email to NatWest Bank on 16 September 2015 enclosing: a three month profit and loss account for PPUK; its Purchase Ledger Control; a detailed list of its creditors; and a detailed list of debtors. This included names and contact details of customers and suppliers and the amounts they were due. I accept that this would constitute valuable information to a direct competitor at the start of its business. That email was copied to each of the brothers, including TSB. Mr Bij resigned two days later. During his oral evidence he did not give a credible reason for sending the email. There was no other example in disclosure of Mr Bij having sent such information to the bank on any previous occasion.

194. Mr Bij claimed that when he sent this email he was unaware of the allegation that TSB was behind Trident. I do not accept this. The brothers agreed that the issue of Trident was raised at a meeting in April 2015 and TSB confirmed that Mr Bij was present at that meeting.

195. Mr Bij tried to change the password on PPUK's Hotmail account. If he had succeeded, he would have prevented SSB and MSB from accessing the account and they would not have been able to produce the email of 16 September 2015.

196. Mr Bij resigned on 18 September 2015, when the brothers were attending a funeral. Whilst at the funeral, MSB saw TSB make a telephone call. Phone records viewed by MSB and SSB on-line at the time showed that he had phoned Mr Bij's home. MSB and SSB infer, and I accept, that TSB instructed Mr Bij that he could now go to PPUK. Those records also showed that TSB had a lengthy conversation with Mr Bij on 16 September 2015, when he sent the email which included the attachment of customer and supplier lists.

197. MSB and SSB also allege that Trident has targeted PPUK's customers, which is said to show that they have misused the customer lists. These customers include Purpose Powder Coating, Hatwee, Davrol Paints, GG Powders, Flexiform and Elite Coaters. Mr Brown suggested that certain of Trident's pitches indicated a specific targeting of PPUK's customer base and PPUK's pricing. For example, in an email from David Maycock of Trident to Purpose Powder Coatings, he offered "*the same powders as Paramount at cheaper prices*". In addition, a number of customers have commented to SSB and Mr Brown that Trident appeared to be aware of PPUK's prices.

198. Mr Bij's email of 16 September 2015, his contact with TSB on that day, and his attempts to change the password on the PPUK Hotmail account, support an inference that he wanted to disclose confidential information about PPUK's business to TSB for use by Trident, and to provide himself with an alibi by including the bank and the other brothers on the email as well. On the other hand, this would have been a very elaborate scheme. If Mr Bij had wished to pass confidential information to TSB for use in

Trident's business, I believe that he would have done so without alerting MSB and SSB. He could simply have taken copies of the lists and given them to TSB.

199. Furthermore, I was not convinced by the evidence of alleged misuse of this information by Trident. It is unsurprising that Trident, as a direct competitor, would approach certain of PPUK's customers, and only a small proportion of those on the customer lists have been identified by Mr Brown as having been approached. There was no clear evidence, which would have satisfied me that confidential information had been misused. Misuse of confidential information is a serious allegation, which could have serious consequences for the continuation of Trident's business, and I am not persuaded in the present case that it has been proved against Mr Bij, TSB or Trident.

Conclusion

200. Although I have not accepted all of the arguments advanced by MSB and SSB, I am satisfied that TSB has been involved in Trident's business from the outset, has funded it, and has encouraged Dr Manro and Mr Bij to leave PPUK and join Trident. In my judgment, it was not unfair for MSB and SSB to remove TSB as a director of PPUK in these circumstances.

201. MSB and SSB claim that they have offered to buy TSB's shares at a fair (undiscounted) independent valuation, but TSB denies that the offer was fair. In the light of my conclusions concerning Trident, MSB and SSB were not obliged to buy TSB's shares. In all the circumstances, I do not consider that TSB has been unfairly prejudiced and I shall refuse relief under section 994. I do not consider that it would be just or equitable to wind the company up. There is no justification for doing so, and the effect would be to leave the field clear for Trident, a result which I believe would be unjust and inequitable.

Other grounds for justification of removal of TSB as a director

202. MSB and SSB also sought to justify the removal of TSB as a director on the basis of certain payments that were made to him which were used for personal rather than business purposes and because he put his son and wife on the payroll. Given the conduct of MSB and SSB, against whom very similar allegations could be made, this was not pressed with any enthusiasm by Mr Terry or Mr Hornett. If I had not accepted MSB and SSB's claims against TSB concerning Trident, I would not have held that TSB's removal as a director was justified on these other grounds. Insofar as TSB has taken disproportionate or unauthorised payments, as with the other brothers, this can be dealt with on the account.

Overall Conclusion

203. My overall conclusions are as follows:

- i) The SPC partnership has been dissolved and the usual orders for winding up and the taking of accounts shall be made.
- ii) The Disputed UK Properties are either partnership property of SPC or alternatively are held on trust by TSB for TSB, MSB and SSB in equal shares.

iii) Save for the Farmhouse, the Indian Assets are either partnership property of SPC or alternatively are held on trust by TSB for TSB, MSB and SSB in equal shares.

iv) Whether these assets are partnership property of SPC or alternatively are held on trust by TSB for TSB, MSB and SSB in equal shares shall be determined on the taking of accounts.

v) TSB has been involved in Trident's business from the outset, has funded it, and has encouraged Dr Manro and Mr Bij to leave PPUK and join Trident.

vi) It has not been proven that TSB, or anyone else involved with Trident, misused PPUK's confidential information.

vii) TSB has not been unfairly prejudiced. I do not consider that it would be just or equitable to wind up PPUK.

viii) The Petition to wind up PPUK, and/or for section 994 relief, shall be dismissed.