

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17 September 2020

**Before :**

**MR ASHLEY GREENBANK**  
**Sitting as a Deputy Judge of the High Court**

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**Between :**

<b>(1) Stephen John Bulled</b>	
<b>(2) Shirley Bulled</b>	<b><u>Claimants</u></b>
<b>- and -</b>	
<b>(1) Anthony Petrie</b>	
<b>(2) S &amp; B Developments (Chigwell) Limited</b>	<b><u>Defendants</u></b>

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**Adrian Pay, counsel, (instructed by Moss & Coleman) for the Claimants**  
**Sarah Walker, counsel, (instructed by Keystone Law) for the Defendants**

Hearing dates: 7, 8, 9, 10, 13 and 14 July 2020  
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**This judgment was handed down by Mr Ashley Greenbank (sitting as a Deputy Judge of the High Court) remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 17 September 2020 at 2.00pm.**

## **Mr Ashley Greenbank sitting as a judge of the Chancery Division :**

### **Introduction**

1. This claim concerns a bitter family dispute, which has at times descended into violence, about the ownership of two pieces of land and the parties' respective entitlements to the profits arising from the development and sale of one of those sites.
2. The central issue in this case is the nature and terms of an agreement reached between the First Claimant, Mr Stephen Bulled, and the First Defendant, Mr Anthony Petrie, in a series of telephone conversations between March and June 2008. The terms of this agreement were not reduced to writing. The accounts of Mr Bulled and Mr Petrie are conflicting.
3. I have referred to the two pieces of land as the "**Brentwood Site**" and the "**Hornchurch Site**" in this judgment. In summary, the Claimants' central claim is that, as a result of the agreement reached between Mr Bulled and Mr Petrie in 2008, the Defendants hold a 50% interest in the Brentwood Site and a 100% interest in the Hornchurch Site on constructive trust for the Claimants.

### **The hearing and the evidence**

4. The hearing was conducted remotely by video.
5. I was provided with various bundles of documents by the parties. The bundles of documents included:
  - i) a witness statement of Mr Bulled the First Claimant;
  - ii) a witness statement of Mrs Shirley Bulled, the Second Claimant, the partner of Mr Bulled;
  - iii) a witness statement of Mr Stephen Shafe, a property investor and a former investment banker, who gave evidence for the Claimants;
  - iv) a witness statement of Mr John Crowder, a mortgage broker and director of Plan Ahead Financial Limited, who gave evidence for the Claimants;
  - v) a witness statement of Mr Mark Groom, a solicitor, who at the time of the events which are at issue in this case, was a partner in Smallpiece & Co and who gave evidence for the Claimants;
  - vi) a witness statement of Mr Alan Ray, a chartered accountant practising at FSP (UK) Limited ("**FSP**"), who gave evidence for the Claimants;

- vii) a witness statement of Mr Petrie, the First Defendant;
  - viii) a witness statement of Ms Veronica Gickel, the partner of the First Defendant;
  - ix) a witness statement of Mrs Sonia Goodman, a local resident, who gave evidence for the Defendants.
6. All of the witnesses gave evidence and were cross-examined on their statements. I also asked Mr Bulled and Mr Petrie to give evidence in-chief on the circumstances surrounding their agreement in 2008 which forms the central issue in this case.
7. As counsel for the Claimants, Mr Pay, pointed out in his submissions, this case turns on the witness evidence. Some of that evidence is conflicting and so it is a case in which some of the evidence must be disbelieved. In this respect, Mr Pay drew my attention to the dictum of Goff LJ in *The Ocean Frost* [1985] 1 Lloyds Rep 1 at page 57:
- “Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular, by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities.”
8. Although this is not a fraud case, I have, in assessing the witness evidence, sought to adopt this approach. As will be seen, in my view, there is no monopoly on truth available to either side to this dispute.
9. I cannot leave the issue of witness statements without commenting briefly on their content. The witness statements prepared on behalf of the Claimants’ witnesses were drafted in a manner, which was difficult to regard as an account of matters on which the witness is able to give evidence in the words of the witness. A substantial proportion of Mr Bulled and Mr Shafe’s statements, in particular, were in exactly the same terms. For these reasons, some of the witnesses found it difficult to stand behind the details in their witness statements when tested on them in cross-examination.

### **The facts**

10. I have set out most of my findings of fact in this section. For the most part, this section sets out those facts in chronological order in order to provide a narrative of the background to this dispute.

11. I have dealt with the agreement reached between Mr Bulled and Mr Petrie in 2008, which forms the central issue in this case, in a later section of this judgment. Further findings on the nature and content of that agreement are found in that section.
12. Some of the facts in this case are hotly disputed. Where the issue in question is particularly contentious, I have sought to identify my reasons for preferring the account of one party over another.

*The arrangements between Mr Bulled and Mr Shafe (2004-2007)*

13. Mr Bulled is a builder, who undertakes groundworks for construction projects. In 2003, Mr Bulled identified a site in Brentwood (the Brentwood Site) on which a number of lockup garages were located and which had potential for redevelopment.
14. Mr Bulled was unable to finance the purchase of the Brentwood Site alone so he approached Mr Shafe, a former investment banker, for whom Mr Bulled had done some building works in the past.
15. On 10 October 2003, Mr Bulled and Mr Shafe acquired the Brentwood Site for a purchase price of £60,000. The property was registered in their joint names and they each paid £30,000 of the purchase price.
16. Both Mr Bulled and Mr Shafe describe the arrangements under which they acquired the property as a “partnership”. There was, however, no formal partnership agreement. The arrangements between them were relatively loose. The broad agreement between them was that they would each contribute to the development either by providing finance or by doing work on the development and that, on a sale of any developed property, they would each be reimbursed for their contributions to the development and any resulting profit would be divided equally between them.
17. In 2004, Mr Bulled identified another site at Hornchurch (the Hornchurch Site) for development. Mr Shafe suggested that he and Mr Bulled should incorporate a company to acquire the Hornchurch Site.
18. Mr Shafe instructed Mr Alan Ray of FSP, a firm of accountants, to incorporate the company. With the assistance of company formation agents, Mr Ray incorporated a company with the name of S & B Developments (Chigwell) Limited (“**Chigwell**”) on 18 March 2004.
19. The sole shareholder in Chigwell following its incorporation was Ms Marcia Cochrane, the partner of Mr Shafe. Ms Cochrane held one ordinary share of £1 in the company. She was the sole director. The company secretary was Mrs Bulled, the Second Claimant. At the time, Mrs Bulled was not married to

Mr Bulled. They had divorced in 1994. However, with some periods of separation, they had lived together for much of the time since their divorce and more recently have remarried.

20. The registered office of the company was the address of FSP.
21. On 21 July 2004, the Hornchurch Site was acquired in the name of Chigwell for a purchase price of £16,000. The purchase price was funded entirely by Mr Shafe. No documentation was entered into to govern the financing arrangements. It is not clear precisely how Mr Bulled paid his share of the purchase price to Mr Shafe, but both Mr Bulled and Mr Shafe agree that he did do so. Notwithstanding the corporate and financing structure, Mr Bulled and Mr Shafe regarded the Hornchurch Site as subject to the “partnership” arrangements that I have described above.
22. The accounts of Chigwell were drawn up to 31 March in each year. Mr Ray filed dormant company accounts for Chigwell for the accounting periods ended on 31 March 2005, 31 March 2006 and 31 March 2007. The accounts were signed on behalf of the company by Ms Cochrane. Mr Ray was not told at any stage that the company had acquired any interest in the Hornchurch Site. So neither the Hornchurch Site nor the funding provided by Mr Shafe (and later by Mr Bulled) were reflected in the balance sheets of Chigwell for any of these periods.
23. Mr Ray also filed annual returns for Chigwell at Companies House as at 18 March in each year from 2005 to 2007. In each of those returns, Ms Cochrane is listed as the sole shareholder and sole director, and Mrs Bulled as the company secretary.
24. At some point between 2004 and 2007, Mr Bulled applied for planning permission for the Hornchurch Site. That application was refused.
25. In 2006, Mr Bulled engaged architects and applied for planning permission for two residential properties on the Brentwood Site. In October 2006, that permission was granted.
26. No significant work was done on the Brentwood Site or the Hornchurch Site before the events that I have described below which occurred in 2007 and 2008 except that, at some stage in 2006 or 2007, Mr Bulled arranged for the garages on the Brentwood Site to be cleared and for fencing to be erected around the site.

***The KSF facility (October 2007)***

27. In 2007 Mr Bulled negotiated to purchase various additional plots of land adjoining the existing land at the Brentwood Site to facilitate its development.

The plots of land formed parts of the rear gardens of various properties in Cromwell Road Brentwood, which adjoined the Brentwood Site. The relevant properties were at 62, 64 and 66 Cromwell Road.

28. Mr Bulled and Mr Shafe needed additional finance to acquire the new plots of land and to develop the Brentwood Site. They negotiated a facility on behalf of Chigwell in the amount of £430,000 for this purpose with Kaupthing, Singer & Friedlander Limited (“KSF”). However, in order to put the facility in place, it was necessary to reconfigure the arrangements in relation to Chigwell.
29. On 14 September 2007, Mr Bulled and Mr Shafe were appointed as additional directors of Chigwell. Ms Cochrane remained a director. At or about the same time, three new ordinary shares of £1 each in Chigwell were issued to Mr Bulled, Mrs Bulled and Mr Shafe. The exact date of issue of these shares is uncertain. I was not provided with board minutes concerning their issue or a register of members recording their issue. However, the share issues must have taken place before the steps, which took place on 11 October 2007, and which I describe below.
30. On 11 October 2007, Chigwell:
  - i) entered into the loan facility with KSF;
  - ii) acquired the main part of the Brentwood Site from Mr Bulled and Mr Shafe;
  - iii) acquired the plots of land forming part of the rear gardens of 62 and 64 Cromwell Road for an aggregate purchase price of £50,000 using funds drawn down under the KSF facility; and
  - iv) granted a legal mortgage in favour of KSF over the entire site (i.e. the original part of the Brentwood Site and the land forming part of the rear gardens of 62 and 64 Cromwell Road).
31. Mr Bulled and Mr Shafe also gave personal guarantees of the borrowings of Chigwell under the KSF facility. The precise terms of the KSF facility were not before the court. However, it was Mr Bulled and Mr Shafe’s evidence that it was a short term facility, with a term of 12 months.
32. The issue of the new ordinary shares to each of Mr Bulled, Mrs Bulled and Mr Shafe was reflected in the annual return of the company as at 18 March 2008, which was filed by Mr Ray, as were the appointments of Mr Bulled and Mr Shafe as directors of Chigwell. Mr Ray was not informed of the transactions relating to the KSF facility. He did not file any further accounts on behalf of the company for the reasons that I have set out at [55] and [72] below and, in

particular, he did not file accounts for the accounting period ended 31 March 2008, which might otherwise have reflected the transactions undertaken by Chigwell on 11 October 2007.

33. In the transfer form (TR1) for the transfer of the Brentwood Site by Mr Bulled and Mr Shafe to Chigwell, the purchase price is stated to be £196,056. Neither Mr Bulled nor Mr Shafe were able to explain this figure. The signatures of Mr Bulled and Mr Shafe on the TR1 form are witnessed by Mr Groom of Smallpiece & Co. However, he also had no meaningful recollection of the transaction and was also unable to explain the figure set out on the TR1 form as the consideration for the transfer. It was Mr Bulled and Mr Shafe's evidence, which I accept, that neither of them received any part of the stated purchase price for the transfer of the Brentwood Site to Chigwell. The company did not have the funds to pay this consideration other than by drawing down further on the KSF facility, which it did not do.

***Mr Shafe withdraws from his arrangements with Mr Bulled (late 2007)***

34. Shortly after the transfer of the Brentwood Site to Chigwell, Mr Shafe began to have reservations about the venture. Mr Shafe states that he had a large property portfolio and that he needed to direct his attention elsewhere. He was not interested in pursuing the proposed development of the Brentwood Site as quickly as Mr Bulled.
35. Mr Shafe took steps to withdraw from the arrangements with Mr Bulled. With the agreement of Mr Bulled, towards the end of 2007, Mr Shafe was repaid the £30,000 that he had invested in the acquisition of the Brentwood Site. This payment was made to Mr Shafe by Chigwell with funds obtained by drawing down on the facility arranged with KSF. It is not clear on what basis the payment was made by Chigwell to Mr Shafe.
36. At this stage, Mr Shafe remained a shareholder in and a director of Chigwell. His personal guarantee of the KSF facility also remained in place.
37. There is some dispute about the value of the Brentwood Site at this point. I have discussed this issue in more detail at [189] below. However, it is sufficient to note at this point that Mr Shafe in cross-examination accepted that he regarded himself content with his being able to withdraw from the arrangements with Mr Bulled without having made a loss.
38. Arrangements were also made for Mr Shafe to withdraw from other aspects of his venture with Mr Bulled. Both Mr Shafe and Mr Bulled gave evidence that Mr Bulled bought out Mr Shafe's interest in the Hornchurch Site through a combination of works undertaken on Mr Shafe's other properties, the provision of a digger to Mr Shafe and the repayment of a debt due from Mr

Shafe to another business associate, a Mr Roger Farthing. There were various discrepancies in Mr Bulled and Mr Shafe's descriptions of precisely how the repayment was made, but both Mr Bulled and Mr Shafe were clear that by this time Mr Shafe regarded Mr Bulled as having repaid not only Mr Bulled's share of the initial investment in the Hornchurch Site (i.e. £8,000) but also Mr Shafe's investment. I have accepted their evidence.

***Mr Petrie agrees to discharge the KSF facility (March to June 2008)***

39. We now arrive at the key episode in this particular drama.
40. At some point in March 2008 Mr Bulled called his sister, Ms Gickel, in Australia. Following that conversation, Mr Bulled had further conversations with Ms Gickel's husband, Mr Petrie, concerning the Brentwood Site and the repayment of the KSF facility. At the time, the amount that had been drawn down under the KSF facility was £90,000. This was made up of: £50,000, which had been used to acquire the land forming part of the gardens of 62 and 64 Cromwell Road; £30,000, which had been used to pay Mr Shafe; and a further £10,000, which had been used on various other expenses. This balance had increased as a result of accruing interest.
41. The parties both assert that an agreement was reached in these conversations. However, the Claimants' and the Defendants' accounts of the agreement are markedly different.
42. The Claimants say that in these conversations, it was agreed that, in return for Mr Petrie arranging to discharge the balance on the KSF facility, Mr Petrie would "step into the shoes of Mr Shafe" in relation to the investment in the Brentwood Site. On the Claimants' case, the effect was that Mr Petrie would acquire a 50% interest in the Brentwood Site, but would have no interest in the Hornchurch Site.
43. The Defendants' case is that Mr Petrie agreed to discharge the KSF facility in consideration for the transfer to him of all of the shares in Chigwell and, as a consequence of his acquiring those shares, he acquired, indirectly, through his ownership of Chigwell, a 100% interest in both the Brentwood Site and the Hornchurch Site.
44. The terms of this agreement are the key factual issue in this case. I have dealt with it in more detail in the section headed "The 2008 agreement" below.

***The implementation of the agreement between Mr Petrie and Mr Bulled (June and July 2008)***

45. Following these discussions and the oral agreement reached between Mr Petrie and Mr Bulled, various steps were taken which might be regarded as having

taken place to complete the arrangements, which formed the oral agreement between Mr Petrie and Mr Bulled.

*Filings at Companies House*

46. First, Mr Shafe instructed Mr Ray to file forms at Companies House terminating the appointment of Mr Shafe and Ms Cochrane as directors of Chigwell. The relevant forms were filed by Mr Ray at Companies House on 18 June 2008.

*The stock transfer forms*

47. Mr Ray drew up four stock transfer forms. The stock transfer forms were for the transfer of all of the issued ordinary shares in Chigwell from Mr Bulled, Mrs Bulled, Mr Shafe and Ms Cochrane to Mr Petrie. The stock transfer forms were sent by Mr Ray under cover of a letter addressed to Mr Shafe also dated 18 June 2008. The letter was sent to the address of Mr Bulled's mother. In the letter, Mr Ray suggested that, once executed, the stock transfer forms should be delivered to "the registrar, which is probably [Mrs Bulled], but I am happy to do what's required if you return them to me".
48. In his letter of 18 June 2008 enclosing the stock transfer forms, Mr Ray referred to an earlier telephone conversation with Mr Shafe and an email. Mr Ray was, however, unable to recall the detail of the conversation with Mr Shafe in which he was given instructions to draft the stock transfer forms. He also confirmed that he had been unable to trace the email to which he referred in his letter. However, he did recall that it resulted in his drafting four stock transfer forms.
49. Mr Shafe in his oral evidence suggested that Mr Ray may have drawn up four stock transfer forms rather than the two that would have been necessary to transfer the shares held by Ms Cochrane and Mr Shafe himself out of a degree of prudence. However, Mr Ray appears to be a careful and methodical professional man, who would not have prepared four stock transfer forms without having been instructed to do so or, even if he had done so, would have referred to that fact in his letter to Mr Shafe. There is no such reference. Notwithstanding certain comments in his witness statement, which suggested that he was aware of the arrangements between Mr Petrie and Mr Bulled – and, in particular, that he understood Mr Bulled and Mr Petrie were going into partnership – Mr Ray withdrew those comments in cross-examination. The only reasonable inference that can be drawn is that Mr Ray was instructed by Mr Shafe to draw up four stock transfer forms and did so.
50. The consideration set out in each of the stock transfer forms for the transfer of each share was a nominal consideration of £1. This is unsurprising given that

at the time, Mr Ray understood that Chigwell was a dormant company, with no assets. He had not been informed by Mr Shafe or Mr Bulled of the loan to the company from KSF, the acquisition of the Brentwood Site and the adjoining land by the company, or the charge which had been granted by the company over the Brentwood Site and the adjoining land.

51. Mr Shafe and Ms Cochrane executed the two stock transfer forms in their names on 23 June 2008.
52. As regards the stock transfer forms in the names of Mr Bulled and Mrs Bulled, copies of these stock transfer forms were also in evidence before me. The stock transfers were signed by Mr Bulled and Mrs Bulled. Mr Bulled and Mrs Bulled each confirmed that the signatures on the stock transfer forms appeared to be genuine. The date on the stock transfer forms was 23 June 2008. Mr Bulled and Mrs Bulled questioned the validity of the date on the stock transfer forms on the grounds that, in each case, the date was not in their handwriting.
53. I have concluded that the copies of the stock transfer forms were genuine and that they were executed by Mr Bulled and Mrs Bulled on 23 June 2008, the date set out on the stock transfer forms. All four transfer forms were sent in the same package by Mr Ray to Mr Shafe to Mr Bulled's mother's home address. The date on the forms is consistent with the date on which Mr Shafe and Ms Cochrane executed their stock transfer forms. There was no reason for the preparation of the forms other than as part of the transactions to complete the arrangements with Mr Petrie. I have therefore concluded that Mr Bulled and Mrs Bulled signed their stock transfer forms at or about the same time as Mr Shafe and Ms Cochrane.
54. This leaves open the question of the intended effect of the stock transfer forms. It is clear that Mr Shafe regarded the execution of the stock transfer forms as part of his and Ms Cochrane's exit from the arrangements with Mr Bulled. There is no doubt that he intended to transfer any interest that he may have had in the shares (and any interest he had in the venture with Mr Bulled) to Mr Petrie. The question of the intention of Mr Bulled and Mrs Bulled forms part of the consideration of the terms of the oral agreement reached between Mr Bulled and Mr Petrie. I have discussed this issue in the section headed "The 2008 agreement" below.
55. Notwithstanding the offer in his letter of 18 June 2008, the stock transfer forms were not returned to Mr Ray. I have not seen any evidence that Chigwell maintained a register of members or that the company issued share certificates to members. The transfers were not reflected in the books of the company in any way. Mr Ray was not instructed to take any further steps in relation to the company. For the reasons that I give below, he did not file an annual return for the company as at 18 March 2009, which might otherwise

have reflected the share transfers and the resignations of Mr Shafe and Ms Cochrane as directors.

*The repayment of the KSF facility*

56. Mr Petrie and Ms Gickel came to the UK on 22 June 2008. During their visit to the UK, Mr Petrie and Mr Bulled visited the Brentwood Site. Ms Gickel did not attend the site with them.
57. On 30 June 2008 Mr Petrie and Ms Gickel visited the branch of HSBC in Oxford Street. They obtained a banker's draft for £104,901.38 and delivered the banker's draft to the branch of KSF near Bond Street. With the banker's draft, they repaid the outstanding balance including accrued interest on the KSF facility. Mr Petrie and Ms Gickel report that the official who dealt with them at the time told them that if the facility had not been repaid, the bank would have begun proceedings to recover the loan the next day. I have accepted their evidence.

*The meeting at the offices of Smallpiece & Co*

58. On 1 July 2008, Mr Petrie and Ms Gickel say that they attended a meeting at the offices of Smallpiece & Co. The Claimants dispute that this meeting took place. I have set out the evidence relating to this meeting in a little more detail below.
59. The Defendants did not refer to this meeting in their Defence or Amended Defence to this claim. In his first witness statement, Mr Petrie refers to the fact that "on or around 1 July, we met with a firm of solicitors named Smallpiece & Co, who acted for the Shafes". As regards the content of that meeting, Mr Petrie goes on to state that although he could not remember the exact paperwork that was signed, he believed that it was "director termination forms and stock transfer forms". Mr Petrie also says that Smallpiece & Co confirmed that they would take on the administration of Companies House filings and registration of the relevant transfers and that he paid Smallpiece & Co's fees for doing so. He refers to a discussion of the purchase of the land at the rear of 66 Cromwell Road, that Chigwell had exchanged contracts for the purchase of this land, and that he decided to honour those contracts and proceed with the purchase.
60. In cross-examination, Mr Petrie maintained that the meeting took place at the offices of Smallpiece & Co on or around 1 July 2008. His evidence was that he and Ms Gickel met with Mr Peter Smallpiece, Mr Groom's partner at the time. There were no other parties at that meeting except that Mr Shafe contacted Mr Smallpiece at various times during the meeting. Mr Petrie could not recall precisely which documents had been signed at the meeting, but he

still maintained that he received the stock transfer forms from Mr Smallpiece at that meeting, that he agreed that the company should honour the contract to purchase the land at the rear of 66 Cromwell Road, and that he paid the balance of the completion monies.

61. Mr Petrie produced a copy of the receipt from Smallpiece & Co in the amount £15,572.69, which he says represents the payment of the balance of the purchase price for the land at the rear of 66 Cromwell Road together with relevant fees of Smallpiece & Co.
62. Mr Petrie's evidence was, to an extent, supported by Ms Gickel. Ms Gickel did not refer to the meeting at the offices at Smallpiece & Co in her witness statement. In cross-examination, she said that she was aware that Mr Petrie had referred to the meeting in his statement and had therefore seen no need to do so. She said that she had attended the meeting with Mr Smallpiece and Mr Petrie on or about 1 July 2008. She recalled the journey to Smallpiece & Co's offices, meeting Mr Smallpiece, that Mr Shafe had called Mr Smallpiece several times during the meeting, and, although she did not recall signing any documents herself, receiving an envelope containing various documents during that meeting.
63. As I have mentioned above, it was the Claimants' case that this meeting did not take place.
64. Mr Pay pointed to the changes in Mr Petrie's account of the meeting and inconsistencies between his account and the account of other witnesses.
  - i) Mr Ray prepared the stock transfer forms, not Smallpiece & Co.
  - ii) It was Mr Groom's evidence that the business of Smallpiece & Co was limited to conveyancing and real estate matters and, with the possible exception of the transfer of shares in property management companies, Smallpiece & Co would not have been involved in a transaction involving the transfer of shares in a company or the filing of documents at Companies House.
  - iii) Mr Groom was also clear that he dealt with the purchase of the land to the rear of 66 Cromwell Road on behalf of Chigwell. Mr Groom was Mr Shafe's contact at Smallpiece & Co not Mr Smallpiece and it was not their usual practice to share clients. He had never met Mr Petrie or Ms Gickel.
  - iv) Mr Petrie would not have signed the stock transfer forms at the meeting. The stock transfer forms were dated 23 June 2008, before the meeting allegedly took place. In any event, Mr Petrie's signature was not required.

- v) The natural inference from Mr Petrie's witness statement was that the meeting at the offices of Smallpiece & Co was a meeting of all the relevant parties, including Mr Bulled, Mr Shafe and Mrs Bulled, as they would have been required to sign the relevant paperwork. None of the other shareholders could recall a meeting at the offices of Smallpiece & Co for this purpose.
65. Mr Pay suggested that Mr Petrie and Ms Gickel had adapted their accounts to accommodate the evidence given by the other witnesses. For example, Mr Petrie's report of the purpose of the meeting changed when it became clear that Mr Ray had drafted the stock transfer forms and sent them to Mr Shafe at Mr Bulled mother's address.
66. I have concluded that a meeting did take place at the offices to Smallpiece & Co on or about 1 July 2008 involving Mr Smallpiece, Mr Petrie and Ms Gickel.
- i) The only contemporaneous document that is available to corroborate the account of any of the parties is the receipt produced by Mr Petrie. It does not prove that a meeting took place, but it does show that Mr Petrie and Ms Gickel did engage at some point with Smallpiece & Co.
- ii) I accept Mr Groom's evidence. However, his evidence does not preclude the possibility that a limited administrative meeting of the kind described in Mr Petrie and Ms Gickel's oral evidence took place – in which Mr Petrie and Ms Gickel went to the firm's offices to settle some accounts and collect some of the corporate documents - with his partner at the time, Mr Smallpiece.
- iii) I found Ms Gickel's account the most compelling. She did not elaborate and was clear when she did not know or could not recall particular matters. Yet she was clear about details of the journey to Mr Smallpiece's office and certain aspects of the meeting.
- iv) I do not agree with Mr Pay's suggestion, made in cross-examination and in his closing submissions, that the reference in Mr Petrie's witness statement to the meeting was to a meeting of all the relevant parties, including Mr Bulled, Mr Shafe and Mrs Bulled, as they would have been required to sign the relevant paperwork. In the context of the witness statement, which at this point is describing the actions taken by Mr Petrie and Ms Gickel on their visit to the UK in 2008, the reference to "we met" in Mr Petrie's witness statement is, in my view, a reference to Mr Petrie and Ms Gickel.

67. I therefore find that a meeting did take place at Smallpiece & Co's offices on or around 1 July 2008 between Mr Petrie and Ms Gickel and Mr Smallpiece. The transfer forms were not signed at that meeting as may have been implied by Mr Petrie's witness statement. They were signed on 23 June 2008 in the manner that I have described above. I can only infer that the completed stock transfer forms were, in some way, then delivered to Smallpiece & Co and handed to Mr Petrie and Ms Gickel at the meeting.
68. Following the repayment of the KSF facility and the meeting at Smallpiece & Co, Mr Petrie and Ms Gickel returned to Australia.

*The purchase of land at 66 Cromwell Road*

69. There is the separate issue of the completion of the purchase of land forming part of the rear garden of 66 Cromwell Road. Mr Groom was clear in his evidence that he dealt with the purchase of this land on behalf of Chigwell. The transfer was completed late in July 2008. Mr Groom produced a copy of a letter dated 1 August 2008 to Mr Bulled in which he, Mr Groom, confirmed to Mr Bulled that the purchase had completed. I accept the evidence of Mr Groom.
70. Both Mr Bulled and Mr Petrie assert that they paid the completion monies for the purchase. The only documentary evidence that I have in relation to this matter is the letter from Mr Groom to Mr Bulled on 1 August 2008 and the receipt from Smallpiece & Co which Mr Petrie says relates to payment of the completion monies and Smallpiece & Co's fees. Mr Bulled has not produced any alternative evidence to support his contention that he paid the balance of the purchase price.
71. I accept Mr Petrie's evidence that he paid for the purchase of 66 Cromwell Road and the receipt from Smallpiece & Co represents, at least in part, the completion monies for that purchase. The receipt is the only documentary evidence. Furthermore, it seems unlikely that Mr Bulled, who did not have cash resources to fund the repayment of the KSF facility at or about that time, would have had the finances to fund the completion monies for the purchase of the land at 66 Cromwell Road. The letter from Mr Groom to Mr Bulled does not affect that view. It is not, to my mind, surprising that Mr Groom would send the documentation directly to Mr Bulled. Mr Shafe, Mr Groom's usual contact at the company, had by this time ceased to be a director. Mr Bulled remained a director and was known to Mr Groom. Mr Petrie had, by this time, returned to Australia.

***Chigwell is struck off the register (September 2009)***

72. In 2009, Mr Ray filed forms at Companies House to change the address of the registered office at Chigwell from the address of his office to the address of Mr Bulled and Mrs Bulled. It is his evidence, which I accept, that, despite numerous requests, he had received no information from the directors to enable him to complete the annual returns or prepare accounts and so he took the view that it was more appropriate for the directors to deal with Companies House directly. The change of registered office took effect on 13 April 2009. It was authorized by Mrs Bulled as company secretary.
73. Chigwell did not make any further filings at Companies House (including annual returns or accounts) until Mr Petrie began the restoration process in 2013 (see [97]-[120] below). The company was struck off the register for failure to file annual returns and/or accounts in September 2009. In their Particulars of Claim, the Claimants state that official correspondence had been passed on by the Claimants to Mr Petrie for him to deal with. In his witness statement, Mr Petrie said that he was not aware of the filing requirements for a UK company, but he had agreed to the change of the company's registered office to Mr and Mrs Bulled's address as the registered office needed to be at an address in the UK. Mr Bulled and Mrs Bulled had promised to forward any correspondence to him in Australia. It was his unchallenged evidence that no correspondence was forwarded to him by Mr Bulled or Mrs Bulled whilst he was in Australia.
74. I have accepted Mr Petrie's evidence on this point. In cross-examination, Mr Bulled's response to questions regarding the forwarding of correspondence to Mr Petrie was that he did not do the paperwork. However, Mrs Bulled accepted, in cross-examination, that the statement in the Particulars of Claim was not correct and the correspondence had not been forwarded to Mr Petrie during this time. The result was that Mr Petrie was not aware that Chigwell had been struck off the register of companies in 2009.

***Mr Petrie and Ms Gickel return to the UK (June 2010)***

75. In June 2010, Mr Petrie and Ms Gickel came to live in the UK. By this time, the financial circumstances of Mr Petrie and Ms Gickel had changed markedly. In 2007 and 2008, Mr Petrie and Ms Gickel had been relatively financially secure. Mr Petrie's estimate was that their net wealth in 2007/8 was of the order of A\$10 million.
76. By 2010, Mr Petrie and Ms Gickel's net wealth had fallen significantly as a result of losses on their portfolio in the Australian financial markets. They did, however, retain a 50% interest in a caravan park business in Australia and two properties in Brisbane, which were let and produced income. They also

owned a property in the UK known as “Maplecroft”, which they had acquired for cash in 2007, and which Ms Gickel’s parents used as their home. Mr Petrie and Ms Gickel took up residence in a converted Nissen hut in the grounds of Maplecroft.

77. Although their financial circumstances had change markedly, both Mr Petrie and Ms Gickel described the primary motive for their return to the UK has being her concern for her father, who was seriously ill at the time. I have accepted their evidence.

### *The development of the Brentwood Site*

78. For some time following the discharge of the KSF facility, no steps were taken to develop the Brentwood Site. The planning permission, which Mr Bulled had obtained in 2006, expired.
79. It was only once Mr Petrie and Ms Gickel moved to the UK that the development of the Brentwood Site began in earnest. Mr Petrie and Ms Gickel acknowledged that, as a consequence of their changed financial circumstances, the development of the site had become more important to them in terms of their future financial security.
80. On 5 May 2010, shortly before Mr Petrie and Ms Gickel moved to the UK, Mr Bulled made an application for planning permission of the Brentwood Site in the name of “S&B Developments”. The application and drawings were prepared by Mr Gary Cumberland of Form Architecture Limited on the instructions of Mr Bulled. His fees of £587.50 (including VAT) were paid by Mr Bulled. Mr Bulled also paid £670 of Mr Cumberland’s costs for planning drawings. The request for planning application was refused by Brentwood Borough Council in a letter dated 10 May 2011.
81. In May 2011 Mr Petrie and Ms Gickel took out a mortgage of £400,000 on Maplecroft. They used the majority of the funds for living expenses but approximately £180,000 was used to fund the development of the Brentwood Site.
82. Following the refusal of planning permission, Mr Bulled put Mr Petrie in touch with a planning consultant, Susan Bell. With her assistance, Mr Petrie appealed against the refusal planning permission. The appeal was successful.
83. In early 2012, Mr Petrie began to seek quotations from builders for the development of the Brentwood Site. Mr Bulled was also involved in this process. In particular, I have been referred to quotation sent to Mr Petrie on 5 April 2012 addressed to Mr Bulled and Mr Petrie. Mr Petrie also sought Mr Bulled’s advice in relation to a quotation for the preparation of working drawings, which he had requested from Mr Cumberland of Form Architecture.

Mr Petrie forwarded the quote to Mr Bulled and Mrs Bulled under cover of an email dated 2 May 2012 expressing the opinion he was “not sure is what we need”.

84. Work began on the Brentwood Site. The work was project managed by Mr Petrie and largely funded by him. Mr Bulled provided details of contractors, who were then engaged by Mr Petrie to undertake work on the site. Mr Bulled also did some work on the site, often through a company, Skippy Grabs and Groundworks Limited (“**Skippy**”), which was wholly owned by him. There is a material dispute between the parties as to the scope of the work undertaken by Mr Bulled and Skippy and the extent to which Skippy was paid by Mr Petrie for the work, which was done. I have addressed these issues at [131]-[136] below.

#### *The Montello loans*

85. At or around this time, it became necessary to obtain additional bridging finance to complete the development of the Brentwood Site.

#### *The initial enquiry in the name of Chigwell*

86. Mr Bulled contacted Mr Crowder, a mortgage broker about the possibility of obtaining finance. However, it was not until early 2013 that an enquiry was made by Mr Crowder to a bridging finance company known as Montello. An initial enquiry was made on behalf of Chigwell. It was refused; Montello informed Mr Crowder that Chigwell had been struck off the register of companies.

#### *The application in the name of Essex*

87. Mr Petrie was advised by his accountant that the best way to overcome this issue was simply to make an application in the name of another company. A further enquiry was then made in the name of another company, S&B Developments (Essex) Limited (“**Essex**”). The enquiry was undated, but the evidence of Mr Crowder was that it was made in June 2013.
88. Essex was not a newly incorporated company. It had been incorporated in September 2012. It had an issued share capital of £2 comprising two ordinary shares of £1 each. Mr Petrie and Mr Bulled each owned one ordinary share. Mr Petrie and Mr Bulled were directors of the company. The secretary was Ms Gickel.
89. There is some dispute about the reasons for the incorporation of Essex.
90. The Claimants say that Essex was incorporated for the purposes of applying for the loan from Montello and to undertake the development of the

Brentwood Site. They point to the fact that in their pleadings in the proceedings before the First-tier Tribunal (Lands Chamber) (see [149] below), the Defendants refer to Essex as having been incorporated in 2012 “in order to develop the Brentwood Site”.

91. The Defendants say that the statement in the pleadings before the Lands Chamber is a mistake. Essex was not incorporated to develop the Brentwood Site nor was it incorporated to make an application for the loan from Montello. It was incorporated to undertake other property developments (not including the development of the Brentwood Site) which Mr Bulled wanted to pursue with Mr Petrie.
92. The chronology is not consistent with the Claimants’ explanation. In cross-examination, Mr Crowder accepted that, although he was initially contacted by Mr Bulled in 2012, the first enquiry in the name of Chigwell was not made until early 2013. This was some time after Essex had been incorporated. At the time of Essex’s incorporation, neither Mr Petrie nor Mr Bulled could have foreseen the need for Essex to make the loan application as they were proceeding on the mistaken assumption that Chigwell was still on the register.
93. In the form for the enquiry, which was made by Essex, Mr Bulled and Mr Petrie were named as applicants and guarantors along with Essex. At the time at which it was made, the first house on the site is described as being “at roof level”.
94. On 28 June 2013, Montello issued a conditional offer for a loan of £228,000. The security for the loan was to be a charge over the Brentwood Site and personal guarantees from both Mr Bulled and Mr Petrie as directors of the Essex.
95. The initial enquiry was followed by a full application for a bridging loan with a term of 12 months at an interest rate of 1.5% per month. The application was dated 2 July 2013. It was made in the name of Essex, but both Mr Bulled and Mr Petrie were referred to in the application as “applicants and guarantors”. The application refers to other properties owned by Mr Bulled and the homes of both Mr Bulled and Mr Petrie as assets of the guarantors. Those properties include a farm and building owned by Mr Bulled “which will be the next project after completion of this one with his brother-in-law”.
96. Essex could not proceed with the loan because it was unable to give a charge over the Brentwood Site as the property was registered in the name of Chigwell.

*The restoration of Chigwell*

97. When Essex's application was rejected, Mr Petrie took steps to restore Chigwell to the register. He instructed Premier Solicitors to undertake this work. Their engagement letter is dated 20 August 2013.

*The advice from Premier Solicitors*

98. As part of this process, it was necessary to regularize the position of the company by making appropriate filings at Companies House. No filings had been made at Companies House since Mr Ray notified Companies House of the termination of the appointments of Mr Shafe and Ms Cochrane as directors of the company on 18 June 2008. The last annual return to be filed was the return as at 18 March 2008. The last set of accounts that had been filed were the accounts for the accounting period ending 31 March 2007.
99. On 17 October 2013, Premier Solicitors wrote to Mr Petrie to advise him that because he was not a director or a company secretary of Chigwell at the time at which the company was dissolved, the annual returns which were required to complete the company's corporate history would need to be signed by Mr Bulled or Mrs Bulled, who according to the filings that had been made at Companies House were the director and secretary of the company at the time. Premier Solicitors also advised Mr Petrie that the company would need to be restored with Mr Bulled and Mrs Bulled as director and company secretary before their appointments could be terminated. Premier Solicitors asked Mr Petrie to liaise with Mr Bulled and Mrs Bulled to request that they provide necessary passport and identification information to enable Premier Solicitors to proceed.
100. Premier Solicitors sent a second email on 17 October 2013. This email appears to have been sent following an email from Mr Petrie and a voicemail, which Mr Petrie left with Premier Solicitors. This second email appears to contradict the earlier advice. In the email, Premier Solicitors advised that "on the basis that you were appointed as a director of Chigwell on 19 March 2008,... but failed to send in the appropriate Form 288a to notify Companies House... you are permitted to sign all the outstanding annual returns and accounts". Premier Solicitors go on to advise that Mr Petrie will still need to file a Form 288a notifying his appointment as a director as of 19 March 2008 signed by Mr Petrie and Mr Bulled. Mr Petrie was also asked to obtain signed Forms 288b notifying the termination of the appointments of Mr Bulled as a company director and Mrs Bulled as company secretary with effect from 7 April 2008.

*Execution of documents by Mr and Mrs Bulled*

101. On 18 October 2013, Mr Petrie and Ms Gickel went to Mrs Bulled's home. They took with them the documents which Mr Bulled and Mrs Bulled were required to sign in order to complete the restoration of Chigwell to the register. These were the Forms 288b to confirm that Mr Bulled and Mrs Bulled had resigned as director and secretary, respectively, of Chigwell with effect from 7 April 2008, and a set of accounts for Chigwell for the accounting period ended 31 March 2008.
102. The accounts of this meeting differ. Mrs Bulled says that she was at home with her grandchildren. Mr Petrie and Ms Gickel report Mrs Bulled being at home alone when they arrived. Mr Petrie explained that the documents were necessary to complete the restoration of the company to the register. Mrs Bulled signed the Form 288b to confirm her resignation as secretary. She agreed to procure the signature of Mr Bulled to the other documents and to arrange for them to be returned to Premier Solicitors. It would appear that Mr Bulled signed these documents later that day or early on 19 October 2008. Mrs Bulled then posted the papers to Premier Solicitors together with identification documents which Premier Solicitors had asked her and Mr Bulled to provide.

*The meeting on 19 October 2013*

103. Also on 18 October 2013, Premier Solicitors wrote to Mr Bulled and Mrs Bulled. This letter was sent by post and would not have reached Mr and Mrs Bulled until the next day at the earliest. It provided a summary of the events which were being represented to Companies House in the filings that were being made as part of the restoration of Chigwell to the register. Those events were: that Mr Petrie was appointed as a director on 19 March 2008, that Mr Bulled and Mrs Bulled's appointments as director and company secretary of the company were terminated on 7 April 2008 and that Mr Bulled and Mrs Bulled transferred their shares in the company to Mr Petrie on 23 June 2008. Premier Solicitors asked Mr Bulled and Mrs Bulled to confirm that the summary was correct. Neither Mr Bulled nor Mrs Bulled responded to this letter.
104. Mr and Mrs Bulled say that they received this letter after Mrs Bulled had posted the other documents to Premier Solicitors and that, having read the letter, they became concerned that Mr Petrie was trying to exclude them from participation in the company. Mr Bulled and Mrs Bulled say that they had not noticed the dates on the documents when they signed them and returned them to Premier Solicitors. However, the letter from Premier Solicitors alerted them to the backdating and, following its receipt, on 19 October 2013, Mr Bulled went to the Defendants' home and confronted them about it. He says

that, when he did so, Ms Gickel had assured him that “we would never have you over”. Having been reassured that the documents were only required to ensure that Chigwell could be restored to the register as quickly as possible for the purposes of the loan application, Mr Bulled says that he decided to take no further action and so he and Mrs Bulled did not respond to Premier Solicitors’ letter.

105. The Defendants deny that this meeting took place.
106. I do not accept Mr Bulled’s account of the events surrounding the submission of the documents to Companies House and his confrontation with Mr Petrie and Ms Gickel on 19 October 2013.
  - i) Mr Bulled and Mrs Bulled, on their own evidence, had signed the forms terminating their appointments as officers of the company before they received the letter from Premier Solicitors setting out the details of all of the documents which were to be submitted as part of the restoration. The dates of termination on those forms could not have escaped their attention.
  - ii) The only additional date in the description in Premier Solicitors’ letter was the date of the stock transfer forms. That date, 23 June 2008, was the only date, which had not been created by Premier Solicitors and was the date already known to Mr and Mrs Bulled.
  - iii) Mr Bulled and Mrs Bulled did not challenge the letter from Premier Solicitors.
  - iv) Only days afterwards, Mr Bulled signed the form of appointment for Mr Petrie as a director of Chigwell.
107. I have therefore concluded that, although the dates for the appointment of Mr Petrie as a director and the termination of the appointment of Mr Bulled and Mrs Bulled as respectively director and secretary as set out in the documents submitted to Companies House were false, they were concocted by the advisers to Mr Petrie with the aim of expediting the process of restoring Chigwell to the register. That was done so that Chigwell could make the application to Montello for a further loan, which would enable it to obtain the funds that it needed to complete the development at the site as quickly as possible.
108. On 21 October 2013, Premier Solicitors wrote to Mr Petrie to inform him that the Form 288a appointing Mr Petrie as a director with effect from 19 March 2008 had not been signed by Mr Bulled and so could not be submitted to Companies House. Following that email, Mr Bulled counter-signed the Form 288a.

*The submission of documents to Companies House*

109. On 23 October 2013, Premier Solicitors wrote to Companies House enclosing various documents in support of the restoration of Chigwell to the register. Those documents included the signed Form 288a.
110. Companies House identified two documents missing from the package, which Premier Solicitors sent to Companies House on 23 October 2013. They were the annual return for 18 March 2009 and the accounts for the accounting period ended 31 March 2008. The documents were prepared at the instigation of Mr Petrie and submitted to Companies House under cover of a letter from Premier Solicitors dated 7 November 2013.
111. On 15 November 2013, Chigwell was restored to the register.

*Details of the documents filed at Companies House*

112. Before I move on to the next events in the chronology, I should record some of the details of the documents which were filed at Companies House in connection with the restoration of Chigwell to the register.
113. As I have mentioned above, the documents included a Form 288a signed by Mr Petrie and Mr Bulled confirming the appointment of Mr Petrie as a director of the company with effect from 19 March 2008 and two Forms 288b confirming the termination of the appointments of Mr Bulled and Mrs Bulled as a director and the secretary of the company with effect from 7 April 2008 signed by Mr Bulled and Mrs Bulled respectively.
114. The dates of appointment of Mr Petrie as a director, of the resignation of Mr Bulled as director, and of Mrs Bulled as company secretary as shown in the Form 288a and Forms 288b are fictitious. Mr Petrie accepted in his evidence that these dates were incorrect. He suggested that the dates had been selected by Premier Solicitors at random.
115. The dates are not entirely at random. The documents represented that Mr Petrie was appointed as a director on 19 March 2008. That day was the first day after the date of the last annual return that had been filed by Mr Ray. The selection of that date allowed Mr Petrie to be treated as having been a director for the longest period of time possible and so to sign as many documents as possible for the restoration of the company. It also ensured that Mr Petrie would be treated as having been a director at the time at which the company was struck off the register.
116. The documents represented that the resignations of Mr and Mrs Bulled took place on 7 April 2008. The selection of this date allowed Mr Bulled or Mrs Bulled to approve the appointment of Mr Petrie, but also ensured that neither

Mr Bulled nor Mrs Bulled were required to sign any of the other documents that would be required to restore the company to the register. The effect was, therefore, to leave the restoration of the Chigwell entirely in Mr Petrie's hands.

117. The documents included annual returns for Chigwell as at 18 March in each of 2009, 2010, 2011, 2012 and 2013. Mr Petrie signed each of these returns. The return for 2009 recorded the directors of the company as being Mr Petrie and Mr Bulled. This is inconsistent with the Form 288b, which was filed at the same time. The returns for 2010, 2011, 2012 and 2013 recorded Mr Petrie as the sole director. In all of the annual returns, Mr Petrie is shown as the sole shareholder, holding all of the four issued ordinary shares of £1 in the capital of the company.
118. The documents also included accounts of the company for the periods ended 31 March 2008, 2009, 2010, 2011, 2012 and 2013. These sets of accounts are all in abbreviated form and contain only a short form unaudited balance sheet. They were prepared by Rebecca Associates, a firm of accountants, on the instructions of Mr Petrie. The accounts for the period ended 31 March 2008 are signed by Mr Bulled; the date of his signature is given as 27 September 2013. The remaining accounts are signed by Mr Petrie. The date of Mr Petrie's signature on the accounts for the period ended 31 March 2009 is given as 5 November 2013; the remaining accounts are undated.
119. The entries in the balance sheet for the period ended 31 March 2009 are summarized below. The entries in the balance sheet in each of the other sets of accounts were identical.

	<b>£</b>
Fixed assets	181,000
Current assets (cash)	4
Total assets	<u>181,004</u>
Creditors	(181,000)
<b>Net Assets</b>	<u>4</u>
Capital and reserves	4
<b>Shareholders' funds</b>	<u>4</u>

120. Mr Petrie was unable to explain the entries in the balance sheets for creditors and fixed assets. He suggested that the figure of £181,000 shown as creditors represented the funds derived from the mortgaging of Maplecroft, which he had applied in the development of the Brentwood Site. However, those funds could not have been provided to the company until May 2011, when Mr Petrie and Ms Gickel remortgaged Maplecroft. Furthermore, the accounts for the

period ended 31 March 2008 did not show the liability to KSF, which had not been discharged at the balance sheet date.

*The loans to Chigwell*

121. The application for a loan from Montello in the name of Chigwell proceeded in parallel with the restoration of the company to the register.
122. On 22 September 2013, Holmes & Hills, the solicitors acting for Mr Petrie in relation to the Montello loan, wrote to Montello's advisers, Brightstone, confirming that Mr Bulled was not to be a party to the application and would not be providing a guarantee.
123. On 27 September 2013, Montello sent a letter offering to make a loan to Chigwell on the same terms as had been offered to Essex on 28 June 2013; that is, a loan of £228,000 for a period of 12 months secured by a charge over the Brentwood Site and requiring guarantees from "the directors of any corporate borrower". Mr Bulled and Mr Petrie signed the offer letter.
124. On 8 October 2013, Mr Crowder wrote to Mr Petrie by email. In that email, he advised Mr Petrie that Montello required passport information from "you both". In the context, this can only have been a reference to both Mr Petrie and Mr Bulled. There then follows an exchange of correspondence between Holmes & Hills, acting for Mr Petrie, and Brightstone, acting for Montello, concerning the identification documents that Montello required from Mr Petrie.
125. On 17 October 2013, Holmes & Hills received an email from Brightstone advising them that Montello would require Mr Bulled to provide a personal guarantee for the proposed loan. Brightstone requested identification information from Holmes & Hills for Mr Bulled. No specific reason was given in the email for this request.
126. The arrangements for the drawdown of the loan from Montello completed on 4 December 2013. The debenture was signed by Mr Petrie on behalf of Chigwell. On the same date, Mr Petrie executed a guarantee and indemnity in favour of Montello. Mr Bulled also executed a guarantee and indemnity in favour of Montello. The guarantee document included a warranty that "the guarantor is a director of the borrower".
127. The Defendants say that Mr Bulled signed the offer letter because Mr Crowder had mentioned to him that Montello had raised concerns that he had not provided a UK passport as part of his identification documents. Mr Petrie has never had a UK passport. He says that Mr Bulled offered to sign the application and to give a guarantee in order to overcome this difficulty and

that Mr Petrie offered Mr Bulled an indemnity for any liability he might incur as a result of his doing so. The Claimants refute this explanation.

128. The order of events does not support Mr Petrie’s account. Mr Bulled and Mr Petrie signed the offer letter before the question of Mr Petrie’s identification documents was raised. I find accordingly that the questions surrounding Mr Petrie’s lack of a UK passport were not the reason that Mr Bulled signed the offer letter. The better explanation, in my view, was that Montello required Mr Bulled to sign the offer letter as a director and guarantor because he was listed as a director of Chigwell at the time that it was struck off the register and his name remained on the register at the time at which the loan application was made. It was not until Chigwell was restored to the register on 15 November 2013 that the relevant details were amended to show Mr Bulled as having resigned.
129. Chigwell obtained further finance from Montello in order to complete the development of the Brentwood Site in the amounts of £54,000 pursuant to an offer letter dated 12 June 2014 and £45,000 pursuant to an offer letter dated 28 August 2014. In each case, the loans were guaranteed by Mr Petrie and Mr Bulled. In a later guarantee document, the warranty given by Mr Bulled was corrected so that it read “the guarantor is not a director of the borrower”. Mr Bulled initialled that amendment.
130. Payments pursuant to the Montello loan documents were paid out of Mr Petrie’s account with the exception of one interest payment, in the amount of £4,320, which Skippy discharged on 15 January 2015.

***Continuation of the development of the Brentwood Site***

131. Throughout the development of the Brentwood Site, Mr Bulled, largely through Skippy, did some work on the site and provided some materials. There is, however, considerable dispute between the parties as to the level of Mr Bulled’s involvement.
132. Mr Bulled produced a schedule of works and materials, which he asserted had been undertaken to complete the development. The list of works and materials (together with the values ascribed to them by Mr Bulled) is summarized in the table below:

<b>Item</b>	<b>Description</b>	<b>Value (ex. VAT) (£)</b>
1.	Clearing concrete and asbestos roof	12,000
2.	Fencing site	1,400
3.	Reducing ground level	8,400

4.	Pile and concrete to level	1,200
5.	Miscellaneous machine hire	2,800
6.	Ringby machine hire	2,000
7.	Box granite (40 tonnes at £40 per tonne) plus labour	2,900
8.	Wall foundations	3,200
9.	Clear concrete wall at entrance	1,200
10.	Electric gate – supply and labour	5,200
11.	Block paving	7,000
12.	Footings for garage	7,000
13.	Turf	3,000
14.	Patio	4,200
15.	Rock and stone	1,500
16.	Fill wall	800
17.	Paid for works to sewers	2,000
18.	Provision of portable toilets	500
19.	Provision of skips on site	2,000

133. Mr Bulled’s estimate of the costs of these works and materials was therefore of the order of £68,300, excluding VAT. He provided no documentary evidence of the costs, which he or Skippy had incurred, although he did provide two invoices for “groundworks” issued by Skippy to Chigwell, the first in the amount of £8,400 (including VAT) dated 16 December 2013 and the second in the amount of £10,000 (including VAT) dated 1 April 2015.
134. The Defendants accept that Skippy did some work on the site. However, they dispute many of the entries in Mr Bulled’s schedule and the values placed on them. In a little more detail, the Defendants’ say as follows:
- i) Some of the work in the schedule – the work clearing and fencing the site listed in the schedule items 1 and 2 – was done before Mr Petrie acquired any interest in the site. This is accepted by the Claimants.
  - ii) Some of the works in Mr Bulled’s schedule were undertaken by other contractors and paid for by Mr Petrie. This applies to the works relating to block paving (item 11) and the patio (item 14).

- iii) Some of the expenses listed in the schedule were met directly by Mr Petrie. This applies to the sewer works (item 17) and the provision of portable toilets (item 18).
  - iv) The laying of turf (item 13) and the laying of rock and stone (item 15) were undertaken by Mr Petrie and Ms Gickel and not by Mr Bulled or Skippy.
  - v) Machinery was provided as part of the other agreed works in the list, but there was no justification for a separate charge for miscellaneous machine hire (item 5).
  - vi) The filling of a wall (item 16) bore no relation to any work done on the site.
  - vii) Even in cases where the Defendants accept that Mr Bulled or Skippy has undertaken some work or incurred some cost, the values attributed to the work or the costs quoted in the schedule are overstated or the extent of Mr Bulled or Skippy's involvement is exaggerated. This applies to items 3, 4, 6, 7, 8, 9, 10, 12 and 19.
135. The Defendants also assert that Mr Petrie paid for the bulk of any work that was actually done and materials that were provided by Skippy. The Defendants provided evidence of payments made to Skippy in the course of 2013 and 2014, in the amount of £38,400 for various items (including a payment of £8,400 in respect of the invoice from Skippy dated 16 December 2013). The Defendants estimated the value of unpaid work and materials as being of the order of £6,830 excluding VAT.
136. It is difficult for this court to place a value on the work and materials without the assistance of expert evidence. However, after I have excluded the costs which were incurred before Mr Petrie acquired any interest, directly or indirectly, in the site, I have to conclude that a substantial proportion of the costs listed in Mr Bulled's schedule were paid for by the Defendants. In the absence of any material documentary evidence to support Mr Bulled's claims, I accept that, even if the Defendants' estimate of the amount of unpaid costs is an underestimate, it is unlikely to be a substantial underestimate.

#### ***The completion of the development of the Brentwood Site***

137. On 27 January 2015, certificates of completion were issued for Brentwood Site. The land is now registered at the Land Registry as 50 and 52 Cromwell Road.
138. The property at 52 Cromwell Road was sold on 27 March 2015 for £460,000. A payment of £343,744.13 was made to Montello to discharge the balance of

the Montello loans. After deduction of further costs, an amount of £108,865.87 was returned to Chigwell.

139. On 1 April 2015, Mr Petrie or Chigwell made a payment of £10,000 to Skippy. Mr Petrie says that this was a goodwill payment to thank Mr Bulled for his assistance with the development of the Brentwood Site. It was intended to compensate Mr Bulled and/or Skippy for the work that was done on the property, which had not otherwise been paid for. As I have mentioned above, this payment is reflected in an invoice for “groundworks” issued by Skippy to Chigwell on 1 April 2015.

### ***The Hornchurch Site***

140. Following the completion of the development on the Brentwood Site, Mr Petrie instructed valuers to value the Hornchurch Site. The valuers set out guide prices of £550,000 if a house was built on the site or £250,000 for a sale of the land.
141. Mr Bulled took exception to Mr Petrie’s proposals regarding the Hornchurch Site. He claimed that the site had always belonged to him and not Chigwell whereas Mr Petrie asserted that it was property of Chigwell and therefore had been transferred to him when he repaid the KSF facility in 2008.

### ***The deterioration in the relationship between Mr Petrie and Mr Bulled***

142. Relations between Mr Petrie and Ms Gickel, on the one hand, and, Mr and Mrs Bulled, on the other, deteriorated rapidly from this point.
143. On 25 June 2015, Mr Bulled resigned as a director of Essex.
144. Ms Gickel reports a particular violent incident when Mr Bulled drove their mother to Ms Gickel and Mr Petrie’s house. There was an altercation between Mr Bulled and Ms Gickel which, Ms Gickel says, resulted in Mr Bulled verbally abusing her, punching her in the face and throwing her to the ground. Mr Bulled disputes this account of the events. The police were called but Ms Gickel declined to provide a statement. The next day, Ms Gickel was arrested for assaulting Mr Bulled and their mother. Charges were brought against Ms Gickel, but she was acquitted.
145. Ms Gickel also reports that Mr Bulled made various death threats against her and Mr Petrie. These threats were reported to the police.
146. At or around this time, Mr Petrie sought to organize a gift of the Hornchurch Site to Mr Bulled. He said that he did this in order to bring an end to Mr Bulled’s aggressive behaviour.

147. Mr Bulled became frustrated by the time that was being taken to complete the transfer. In July 2015, Mr Bulled went to Mr Petrie and Ms Gickel's home with draft documents and demanded that Mr Petrie sign a transfer of the Hornchurch Site to him. Mr Petrie refused to sign the transfer. It is Mr Petrie and Ms Gickel's evidence that Mr Bulled became very angry and grabbed Mr Petrie around the throat. Ms Gickel tore up the transfer and Mr Bulled left.

***The applications for restrictions against the titles to the sites***

148. Following this incident, Mr Petrie says that he was still contemplating a transfer of the Hornchurch Site to Mr Bulled. However, when his solicitors, Holmes & Hills, approached Mr Bulled's solicitors to agree the transfer, Mr Bulled instructed his solicitors to refuse to complete the transaction unless Mr Petrie also agreed to transfer a 50% interest in the Brentwood Site to him. At this point, Mr Petrie withdrew his offer to transfer the Hornchurch Site to Mr Bulled.
149. At this time, negotiations were ongoing for the sale of the other property on the Brentwood Site, 50 Cromwell Road. Mr Bulled instructed solicitors to register restrictions against the titles of the Brentwood Site and the Hornchurch Site. On 27 July 2015 applications for restrictions were made to the Land Registry. The applications were referred to the First-tier Tribunal (Lands Chamber) on 7 March 2016.
150. The applications for the restrictions resulted in the sale of the property at 50 Cromwell Road falling through. The proceedings in this court were issued on 27 October 2016. The proceedings before the Lands Chamber have been stayed behind the decision in these proceedings.

**The issues in this case**

***The Particulars of Claim***

151. In their Particulars of Claim, the Claimants' primary claim is that Chigwell holds its assets and the proceeds of disposal of those assets on trust: the Brentwood Site on trust for (i) Mr Bulled and Mrs Bulled and (ii) Mr Petrie in equal shares; and the Hornchurch Site on trust for Mr Bulled and Mrs Bulled.
152. The Claimants also, and in the alternative, assert that the assets of Chigwell were partnership property, that the parties' entitlements to share in the assets were in similar shares to those which arose under its primary claim, and/or that Mr Petrie holds one ordinary share in Chigwell on trust for Mr Bulled and one ordinary share in Chigwell on trust for Mrs Bulled.
153. On that basis, the Claimants claim:

- i) a declaration that Chigwell holds (a) the Brentwood Site (and the proceeds thereof) on trust for (i) Mr Bulled and Mrs Bulled and (ii) Mr Petrie in equal shares and (b) the Hornchurch Site on trust for Mr Bulled and Mrs Bulled;
- ii) a declaration that Mr Petrie holds any proceeds of sale of the sold property on the Brentwood Site (52 Cromwell Road) on trust for (i) Mr Bulled and Mrs Bulled and (ii) himself in equal shares;
- iii) an order that Chigwell or, as the case may be, Mr Petrie pay to Mr Bulled and Mrs Bulled their share of the proceeds of sale of the sold property on the Brentwood Site;
- iv) a declaration that Mr Petrie holds one ordinary share of £1 in the capital of Chigwell on trust for Mr Bulled and one ordinary share of £1 in the capital of Chigwell on trust for Mrs Bulled;
- v) an order requiring Mr Petrie to transfer the legal title to the shares in Chigwell mentioned at (iv) above to Mr Bulled and Mrs Bulled;
- vi) an order requiring Mr Petrie to enter Mr Bulled and Mrs Bulled on the register of members as holders of the shares in Chigwell mentioned at (iv) above or rectification of the register to the same effect;
- vii) all necessary accounts and enquiries.

### ***The parties' cases in outline***

154. Before this court, the Claimants' central claim is that there was an oral agreement between Mr Petrie and Mr Bulled in 2008 relating to the Claimants' and Mr Petrie's respective interests in the Brentwood Site and the Hornchurch Site, in reliance upon which the Claimants have acted to their detriment, thus making it unconscionable for Mr Petrie to assert his ownership of the sites to the exclusion of the Claimants' interest. The Claimants say that, in these circumstances, the Defendants hold their interests in the site on constructive trust for Mr Petrie and the Claimants (*Paragon Finance Plc v D B Thakerar & Co* [1999] 1 All ER 400 ("*Paragon Finance*") per Millett LJ at 408-409, *Pallant v Morgan* [1953] Ch 43).
155. In the alternative, the Claimants say that the arrangements between Mr Bulled and Mr Petrie constituted a partnership and that the shares in Chigwell and/or the interests in the Brentwood Site or the Hornchurch Site were partnership property.
156. Finally, in his skeleton argument, Mr Pay asserted, as a further alternative, that Chigwell was never the beneficial owner of the Brentwood Site or the

Hornchurch Site and that, at all material times, Chigwell held its interest in the two sites on trust for the relevant individuals. Prior to the discharge of the KSF facility, Chigwell held its interests in the Brentwood Site on trust for (i) Mr Bulled and Mrs Bulled and (ii) Mr Shafe and Ms Cochrane. After the discharge of the KSF facility in 2008, Chigwell held its interests in the Brentwood Site on trust for (i) Mr Bulled and Mrs Bulled and (ii) Mr Petrie. Chigwell has held the Hornchurch Site on trust for Mr Bulled following his repayment of Mr Shafe's investment in the site.

157. The Defendants deny all of these claims. As I have mentioned above, the Defendants' case is that the agreement in 2008 related to the transfer of the shares in Chigwell: Mr Petrie agreed to discharge the KSF facility in exchange for the transfer to him of the entire issued share capital of Chigwell. As a result of that transfer, Mr Petrie acquired, indirectly through his ownership of Chigwell, the entire interest in the Brentwood Site and the Hornchurch Site.

***The issues before the court***

158. The parties presented an agreed list of issues for resolution by the court. In summary, those issues were:
- i) The 2008 agreement: What was agreed between Mr Petrie and Mr Bulled at and around the time when Mr Petrie discharged the loan to KSF facility?
  - ii) Detriment: What, if any, acts of detriment did Mr Bulled and Mrs Bulled carry out?
  - iii) Reliance: Did the Claimants carry out any such alleged acts in reliance on the agreement?
  - iv) Stock transfer forms: In what circumstances and when did Mr Bulled and Mrs Bulled (and Mr Shafe and Ms Cochrane) sign stock transfer forms relating to their shares in Chigwell?
  - v) Essex and the Montello loans: The circumstances in which Essex came to be incorporated, loan(s) were applied for from Montello and guarantees given by Mr Bulled and Mr Petrie.
  - vi) Partnership: Was the arrangement between Mr Bulled and Mrs Bulled and Mr Petrie (and Mr Bulled and Mrs Bulled, Ms Cochrane, and Mr Shafe) a partnership?
  - vii) Relief: Are Mr Bulled and Mrs Bulled entitled to the declarations and orders set out in the Particulars of Claim?

159. I have dealt with the issues concerning the stock transfer forms, the role of Essex, and the Montello loans in my discussion of the facts and, in part, in my discussion of the 2008 agreement. I have dealt with the remaining issues separately below.

### **The relevant law**

160. Before I turn to these issues, it will assist my explanation if I address some of the issues of law that are relevant to this case. Subject to some relatively minor issues, which I discuss below, the parties did not materially disagree on the principles of law which were to be applied.

### ***Constructive trust***

161. As I have mentioned above, the Claimants' central claim is based in constructive trust.
162. The Claimants say that the facts in the present case give rise to a constructive trust of the type recognized in the decision of Harman J in *Pallant v Morgan* and that an authoritative description of this type of trust is given by Millett LJ in *Paragon Finance* at 409. At this point in his judgment, Millett LJ is describing the use of the term "constructive trust" in two distinct types of case: first where the defendant, although not expressly appointed as a trustee, has assumed the duties of a trustee as a result of a lawful transaction prior to the breach of trust; and second, where the trust obligation arises as a direct consequence of an unlawful transaction.
163. Millett LJ described the first type of case in the following terms (at 409):

"A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right, but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust. Well known examples of such a constructive trust are *McCormick v Grogan* (1869) 4 App.Cas. 82 (a case of a secret trust) and *Rochefoucauld v Boustead* [1897] 1 Ch. 196 (where the defendant agreed to buy property for the plaintiff but the

trust was imperfectly recorded). *Pallant v Morgan* [1953] Ch. 43 (where the defendant sought to keep for himself property which the plaintiff trusted him to buy for both parties) is another. In these cases the plaintiff does not impugn the transaction by which the defendant obtained control of the property. He alleges that the circumstances in which the defendant obtained control make it unconscionable for him thereafter to assert a beneficial interest in the property.”

164. Amongst the particular circumstances that may give rise to such a constructive trust as identified by Millet LJ are those which arose in *Pallant v Morgan*. That case concerned two parties to a joint venture arrangement under which it was contemplated that the first party would acquire property and, if the property was acquired, the second would have an interest in it. In those circumstances, the first party may hold the property on constructive trust in accordance with the bargain between the two parties.
165. The key features of this type of joint venture constructive trust are set out in the judgment of Chadwick LJ in *Banner Homes Group Plc v Luff Development Ltd* [2000] Ch 372 (“*Banner Homes*”) at 397-399. In the present case, it was common ground between the parties that, in order to demonstrate that the arrangements gave rise to a constructive trust in line with the principles in *Pallant v Morgan*, it would be necessary for a claimant to show that there was some form of arrangement or understanding between the parties in relation to the joint ownership of property, and that, in the circumstances, it was unconscionable for the defendant to assert his or her own beneficial interest in the property and deny the beneficial interest of the claimant. It would be unconscionable for a defendant to do so where, in reliance upon the arrangement or understanding, the claimant had done something or omitted to do something which conferred an advantage on the defendant in relation to the property or was detrimental to the claimant.
166. One aspect of the facts of the *Pallant v Morgan* case was that the arrangement between the joint venture parties came into existence before the acquisition of the property by one of them. It is now clear that the principles of *Pallant v Morgan* are not limited to such cases and may arise, for example, where the property in issue was owned by one of the parties at the outset (see Kitchin LJ in *Farrar v Miller* [2018] EWCA 172 at [42]).
167. I did not ascertain any material disagreement between the parties in relation to these basic principles. The parties did, however, dispute certain features or requirements of this type of constructive trust. I will deal with these issues briefly here.

168. At times in her submissions, Ms Walker raised concerns about the relevant level of certainty that is required in the relevant arrangement or understanding in relation to the joint venture property in order to establish a constructive trust consistent with the principles in *Pallant v Morgan*. In my view, it is clear that the arrangement or understanding must contemplate that the non-acquiring party will obtain a beneficial interest in the property. However, at least in the case where the arrangement or understanding is formed before property is acquired, the arrangement or understanding does not need to be sufficiently certain so as to be an enforceable contract (*Banner Homes* per Chadwick LJ at 398, *Farrar v Miller* per Kitchin LJ at [24]).
169. In a case where the relevant property is held by the putative constructive trustee before the relevant arrangement came into being, that arrangement may need to be enforceable in order for a constructive trust to arise. If so, it may prove unnecessary to rely upon a *Pallant v Morgan* equity (*London and Regional Investments Ltd v TBI Plc* [2002] EWCA 355 per Mummery LJ at [48], *Yeoman's Row Management Limited v Cobbe* [2008] UKHL 55). However, the Claimants' case in these proceedings is that the arrangement, which gave rise to the constructive trust in this case, arose before Mr Petrie acquired any interest in the property and so that question does not arise.
170. Ms Walker also submitted that, where one party relies upon having acted to his or her detriment in order to demonstrate that it is unconscionable for the other party not to honour the arrangement or understanding, the relevant detriment must be both substantial and personal for a constructive trust to arise. She submitted that it is not sufficient for the other party in these circumstances to rely upon the actions of another person to its detriment even if that other person is a company that is wholly owned by the other party (see *Lloyd v Dugdale* [2001] EWCA Civ 1754 at [35]). On that basis, Ms Walker argued that it was not possible for the Claimants to rely on any detriment suffered by Skippy in support of their claim.
171. *Lloyd v Dugdale* is a case concerning proprietary estoppel. Although the principles underlying the law of proprietary estoppel are closely akin to those underlying joint enterprise constructive trusts, they remain separate. I was not referred to any separate authority on this issue in the context of constructive trusts based on the principles in *Pallant v Morgan*. But I note that, in his judgment in *Lloyd v Dugdale*, Sir Christopher Slade (at [35]), indicated that a different conclusion may be reached on this issue in joint enterprise constructive trust cases. For the reasons that I give below, I do not need to reach a conclusion on this issue in this case and I do not do so.
172. Finally, Mr Pay submitted that the interposition of a corporate structure cannot be a bar to the creation of a *Pallant v Morgan* constructive trust. He refers to the decision of the Court of Appeal in *Farrar v Miller* in support of his

argument that it is possible to look through a corporate structure for these purposes. I accept that the judgment of Kitchin LJ in that case demonstrates that it may be possible to give effect to a constructive trust of this type in circumstances where the underlying property is held through a corporate structure. However, I note that, in his decision (at [35]), Kitchin LJ noted that it was not part of the defendant's case that a constructive trust could not arise over the real estate in question because it was held through a separate corporate structure. I have not been referred by either of the parties to any other authority on this issue, but, in my view, the question must turn on the particular facts of the case, including the interest held by the putative constructive trustee, the nature of the relevant arrangement and the obligations to which it gives rise.

### ***Alternative bases of claim***

173. As I have mentioned above, the Claimants' alternative case is that Mr Bulled and Mr Petrie were in partnership and the shares in Chigwell and/or the interest in the Brentwood Site and the Hornchurch Site were partnership property. I was not referred to any authority in support of this alternative claim other than the leading text on partnership law.
174. The Claimants have also asserted that Chigwell did not hold a beneficial interest in the Brentwood site or the Hornchurch site and that they retained an interest in both sites. The only authority to which I have been referred in this respect is the decision of the Supreme Court in *Prest v Petrodel* [2013] UKSC 34 particular to the judgment of Lord Sumption.

### **The 2008 agreement**

175. I must now turn to the central factual issue in this case. What was the arrangement or understanding reached between Mr Petrie and Mr Bulled in 2008? The only direct evidence on this issue is the conflicting accounts of Mr Bulled and Mr Petrie.

### ***The parties' submissions in outline***

176. The Claimants say that in exchange for agreeing to discharge the KSF facility, Mr Petrie became an equal "partner" in the Brentwood Site, but that Mr Petrie acquired no interest in the Hornchurch Site.
177. Mr Pay, for the Claimants, says that the other evidence supports Mr Bulled's account of the agreement. He refers, in particular, to the following matters.
- i) In contrast to Mr Petrie's account, Mr Bulled's account of the agreement is commercially plausible. On Mr Bulled's evidence, the

land with planning permission was worth substantially more than the £105,000 paid by Mr Petrie to discharge the KSF facility.

- ii) Mr Bulled's account of the agreement is borne out by subsequent events: on his own evidence, Mr Petrie had no knowledge of the Hornchurch Site when he acquired his interest and discharged the KSF facility; the Brentwood Site was developed by Mr Petrie and Mr Bulled together, with Mr Bulled making a significant contribution to the construction of the houses on the site; and Mr Bulled acted as guarantor for the loans to Chigwell from Montello.
  - iii) The proposed use of Essex, a company whose share capital was owned as to 50% by Mr Bulled, as an alternative borrower in relation to the Montello loans, demonstrated the nature of the arrangements between Mr Bulled and Mr Petrie.
  - iv) The evidence of Mr Crowder and Mr Shafe suggested that Mr Bulled and Mr Petrie were "partners" in their development of the site.
178. The Defendants say that, in exchange for the discharge of the KSF facility, Mr Petrie acquired the entire legal and beneficial interest in the shares in Chigwell. By doing so, he acquired, indirectly a 100% interest in the Brentwood Site and the Hornchurch Site.
179. Ms Walker, for the Defendants, says that the other evidence supports Mr Petrie's account of the agreement. She refers, in particular, to the following factors:
- i) Mr Petrie's account is supported by the only contemporary piece of documentary evidence, the stock transfer forms, which had been signed by all of the former shareholders in Chigwell.
  - ii) The evidence of the principal witnesses supports Mr Petrie's account. Mr Bulled was not clear on the terms of the investment made by Mr Petrie and in particular whether it should be treated as equity or debt or on whether or not the arrangements in relation to the Hornchurch Site were discussed. In contrast, Mr Petrie's evidence was clear.
  - iii) Mr Bulled's suggested arrangement was not commercially plausible. His valuation of the Brentwood Site was a demonstrable overvalue. It was not supported by any valuation. The only clear indication of the value of the Brentwood Site at the time of their agreement was that Mr Shafe confirmed that he was happy to withdraw from the arrangements without making a loss, that is, being repaid the £30,000 he had invested for a 50% interest. Furthermore, Mr Bulled had previously spoken to

another potential investor, Mr Roger Farthing, who had declined to invest.

- iv) The chronology of the transaction, in particular Mr Shafe's exit, supported Mr Petrie's account that Mr Bulled was in a difficult financial position and that the transaction was, in effect, a rescue.
- v) Mr Bulled's account ignores Chigwell. The KSF facility was an obligation of Chigwell. The borrowings under the facility were secured on the assets of Chigwell. It was inconceivable that Chigwell was not part of the discussion between Mr Petrie and Mr Bulled when the KSF facility had been entered into by Chigwell so shortly before the agreement and Chigwell had acquired the other plots of land.
- vi) The subsequent development of the site had been done predominantly by Mr Petrie or at Mr Petrie's cost. Mr Bulled's contribution was minimal.

### ***Background to the 2008 agreement***

180. I shall begin with the background to the 2008 agreement.
181. In his evidence Mr Bulled says that the proposal that he put to Mr Petrie in early 2008 was a business deal. He was not desperate to find another investor. He had other options. He was not about to lose his home as Ms Gickel suggests. He says that he offered Mr Petrie a 50% interest in the Brentwood Site and that Mr Petrie "jumped at it".
182. As I have mentioned above, Ms Gickel and Mr Petrie's account is very different. They say that Mr Bulled was in a desperate financial position. He needed a bail-out to discharge the KSF facility.
183. I prefer Mr Petrie and Ms Gickel's account.
- i) The events in question took place in 2007 and 2008. As Mr Shafe pointed out in his evidence, this was a time at which the financial crisis was beginning to bite. Real estate values were falling: Mr Shafe estimated that the value of his own portfolio fell in value by between 25% and 35%.
  - ii) Mr Bulled says that he did not need to repay the KSF facility in March 2008. It was a 12 month facility and the final repayment was not due until October 2008. However, in cross-examination, Mrs Bulled referred to KSF having called the loan in early. Mr Petrie and Ms Gickel's accounts of being told by an official at the offices of KSF that KSF would have taken steps to enforce the security, if Mr Petrie had

not repaid the loan, support her account. Mr Bulled's evidence does not preclude the possibility that KSF may have been entitled to demand early repayment of the loan in some circumstances. Although the terms of the loan were not before the court, I have therefore concluded that KSF had, for whatever reason, demanded early repayment of the loan.

- iii) If that had occurred, KSF may have been entitled to call upon the personal guarantees of Mr Bulled and Mr Shafe if Chigwell was unable to repay the loan. In those circumstances, Mr Bulled's assets, including his interest in his own home, would have been at risk in the event of a default.
  - iv) Chigwell was in no position to repay the facility. The evidence also suggests that Mr Bulled would not have had the cash resources himself to put Chigwell in funds to repay the outstanding balance on the KSF facility. Mr Bulled's previous financial partner, Mr Shafe, who had provided the funding for the acquisition of the Hornchurch Site, had withdrawn from the joint venture with Mr Bulled. In order to fund the repayment of Mr Shafe's investment, Mr Bulled had had to arrange for Chigwell to draw down further on the KSF facility using funds which Mr Bulled acknowledged in his evidence had been earmarked for the purchase of the additional land at the rear of 66 Cromwell Road.
  - v) Mr Bulled was therefore in a position where he needed either to refinance the KSF facility or to find another investor. In his witness statement, Mr Bulled referred to having approached Mr Roger Farthing before he turned to Mr Petrie. In cross-examination, Mr Bulled suggested that this conversation was contemporaneous with the discussion with Mr Petrie and that it was Mr Farthing's suggestion that Mr Bulled should keep the investment opportunity in the family. However, I have taken the view that the earlier version, as set out in his witness statement is the more accurate as it is in keeping with the chronology.
184. For all of these reasons, I have concluded that Mr Bulled was facing the prospect of significant financial difficulties when he approached Mr Petrie for assistance in March 2008 and that the transaction between them was more in form of a financial rescue than the beginnings of a new business venture.
185. Some flavour of the background to the 2008 agreement is also given by the arrangements for Mr Shafe's withdrawal from his "partnership" with Mr Bulled.

186. Mr Shafe described his desire to exit from the venture as being driven by a difference in opinion between himself and Mr Bulled as to the speed at which the development should be pursued rather than any concern about the approaching financial crisis. Mr Shafe also said that he wanted to concentrate on his personal real estate portfolio. These explanations do not sit easily with the fact that the KSF facility to fund the development was put in place only a few months earlier. My conclusion is that Mr Shafe was concerned about the worsening financial conditions and that these prompted him to seek to withdraw his investment at an early stage.
187. Even though Mr Shafe regarded himself as having withdrawn from his venture with Mr Bulled following the repayment of his investment, he remained concerned that the KSF facility should be repaid. The reason is clear. Until it was repaid, Mr Shafe was exposed through his personal guarantee to any drawdown and any default on the loan facility. The alacrity with which Mr Shafe and Ms Cochrane took steps to complete his withdrawal from the venture once he became aware that Mr Petrie was prepared to invest – by resigning as directors and executing stock transfer forms well before Mr Petrie had discharged the KSF facility – is notable in this respect.
188. In my view, these factors point to a worsening financial position for the venture and Mr Bulled's need to secure a financial rescue in March 2008.
189. The lack of financial underpinning to the agreement between Mr Bulled and Mr Petrie also suggest to me that the arrangements between them were not commercially driven.
- i) Neither Mr Bulled nor Mr Petrie suggested in their evidence that there was any discussion of figures. The agreement appears simply to have been that Mr Petrie would discharge the outstanding balance of the KSF facility whatever it may be in return for an interest in the site or the company. That amount was, of course, a moving target as interest was accruing on the facility throughout this time.
  - ii) Mr Petrie undertook no due diligence other than visiting the site with Mr Bulled when he came to the UK to discharge the loan, in particular, he did no diligence on the company.
  - iii) There was no agreed valuation of the site. In his evidence, Mr Bulled described the value of the site with planning permission as being in excess of £200,000. Mr Pay sought to justify the commerciality of Mr Bulled's version of the agreement by reference to that figure. However, Mr Shafe in cross-examination estimated the value of the Brentwood Site at between £75,000 and £150,000 at the time of the repayment of the KSF facility. Furthermore, he was prepared to

withdraw from the arrangements and his 50% interest in the site for a repayment of his investment of £30,000 and the release of his liabilities under the financing arrangements with KSF.

190. For all of these reasons, I have concluded that Mr Petrie's discharge of the KSF facility was not part of the commencement of a new commercial arrangement and the parties did not seek to justify it in those terms. I am supported in my conclusion by two additional factors:

- i) First, although Mr Pay sought to cast the arrangements between Mr Bulled and Mr Petrie as Mr Petrie agreeing to "stand in the shoes" of Mr Shafe, that is not what happened.

Mr Bulled's arrangement with Mr Shafe was a business venture to develop the Brentwood Site. They had arranged for Chigwell to enter into the KSF facility for that purpose. Mr Shafe's withdrawal from the venture was, according to their evidence, due to a difference of view over the speed at which that development should take place, with Mr Bulled wanting to pursue the development quickly whereas Mr Shafe wanting to develop the site at a slower pace.

When Mr Petrie became involved, Mr Bulled and Mr Petrie did not continue with the development using the funds provided by the KSF facility. They did not seek to arrange alternative finance. Mr Petrie discharged the KSF facility and, when he had done so, he and Ms Gickel went back to Australia. Development on the site did not start until Mr Petrie and Ms Gickel returned to the UK in 2010, when their financial situation was markedly different.

- ii) Second, I accept Ms Gickel's evidence that the primary motivation on the part of Mr Petrie and Ms Gickel was to assist Ms Gickel's brother, Mr Bulled. Mr Petrie and Ms Gickel were relatively wealthy and in their words, the amounts required to discharge the KSF facility "were neither here nor there" to them at the time. They came to the UK, repaid the facility and then returned to Australia without giving any further thought to the development of the Brentwood Site.

### *The terms of the 2008 agreement*

191. The issues that I have just discussed – the financial background, the motivation of the parties to the transaction – provide some context in which to judge the terms of the agreement that was reached between Mr Petrie and Mr Bulled in 2008. I must now turn to what the terms of that agreement or understanding actually were.

*The role of Chigwell*

192. As a starting point, although the parties in this case have paid scant regard to the formalities of company law, the factual background suggests that the discussion surrounding the Brentwood Site must have taken into account the position of Chigwell.
- i) The constituent elements of the Brentwood Site – the original site together with the land at the rear of 62 and 64 Cromwell Road – had been transferred to Chigwell at the time of the completion of the KSF facility only months before the discussion between Mr Bulled and Mr Petrie.
  - ii) Shortly before the drawdown on the KSF facility, the ownership of the capital in Chigwell, which previously did not reflect the true beneficial ownership of the parties or their interests in the Brentwood Site, had been reorganized. After those steps, the ownership of capital of Chigwell was divided equally between Mr Bulled and his partner, Mrs Bulled, and Mr Shafe and his partner Ms Cochrane and so more accurately reflected the relevant parties' interests. At the same time, Mr Bulled and Mr Shafe became directors.
  - iii) The discussion between Mr Bulled and Mr Petrie took place in the context of the repayment of the KSF facility in respect of which the borrower was Chigwell and security was given by Chigwell over the Brentwood Site.
  - iv) Chigwell was in the course of acquiring the final piece of land for the site, the land at the rear of 66 Cromwell Road.

All of these elements must have been in the mind of Mr Bulled at the time. It is improbable that any discussion of the future of the Brentwood Site and the discharge of the KSF facility would not, at the very least, have taken into account the position of Chigwell as the owner of the site.

193. Furthermore, as I have found, the stock transfer forms were executed at or around this time. The transaction between Mr Petrie and Mr Bulled completed, at least in part through the execution of the stock transfer forms.

*50% interest v 100% interest in the Brentwood Site*

194. There is then the question of whether or not it was the parties' intention that Mr Petrie should acquire a 100% or 50% interest in the Brentwood Site, whether directly, or indirectly through the acquisition of shares in Chigwell.

195. The only witness evidence that is directly relevant to this issue comes from the conflicting accounts of Mr Petrie and Mr Bulled. The other witnesses could not shed any particular light on the terms of the arrangements between them. Although in his witness statement Mr Shafe was supportive of Mr Bulled's position, he accepted in cross-examination that he was not aware of the details of the arrangements between Mr Bulled and Mr Petrie. I have dismissed Mr Shafe's evidence on this issue. Mr Shafe's primary motivation at the time was to complete his exit from the arrangements with Mr Bulled.
196. As regards the evidence of Mr Bulled and Mr Petrie, Mr Petrie's position is clear. He says that he acquired a 100% interest in the Brentwood Site through his acquisition of the shares in Chigwell.
197. For Mr Bulled, Mr Pay submitted that Mr Petrie's agreement to discharge the KSF facility was, in effect, an equity contribution to a partnership between Mr Bulled and Mr Petrie so that Mr Petrie did not become a creditor as a result of his contribution; future profits would simply be divided equally between Mr Petrie and Mr Bulled. That submission was not, however, supported by the evidence. Mr Bulled's own explanation, both in evidence in chief and in cross-examination, was that his arrangements with Mr Shafe, and accordingly his arrangement with Mr Petrie, operated on the basis that each party would first be repaid any contribution made to the venture before profits were divided equally between them. Mr Shafe described the arrangements in similar terms. The difference in the two descriptions may not, in practice, be material if the values of Mr Bulled and Mr Petrie's respective contributions at the time were regarded as equal, but, as I have described, there is no indication that any regard was had to the valuation of the Brentwood Site at the time.
198. The execution of the stock transfer forms supports Mr Petrie's view of the arrangements as a transfer of the entire interest in the company. As I have described, the stock transfer forms were signed at or around the time of the repayment of the KSF facility. They provide the only contemporaneous documentary evidence of the arrangements between Mr Petrie and Mr Bulled. If the intention had been for Mr Petrie to acquire only a 50% interest, there was no reason to transfer all of the shares in Chigwell to Mr Petrie at the time.
199. Mr Pay points to evidence of cooperation between Mr Bulled and Mr Petrie following the 2008 agreement as evidence of what the agreement between them must have been. I will deal with each of the factors in turn.
- i) Mr Bulled and his company, Skippy, undertook work on the site.

As I have described, the extent of these works, their value and the extent to which Mr Petrie paid for them are the subject of conflicting evidence from the parties. On the whole, I have concluded that the

amount of work for which Skippy was not paid was not material in the context of the expenditure on the site as a whole.

I also heard evidence from Mr Crowder and Mrs Goodman regarding the level of involvement of Mr Bulled in the work on the site. They give conflicting accounts: Mr Crowder suggested that Mr Bulled was often present at the site when Mr Crowder met Mr Petrie and Mr Bulled to discuss the Montello loans; Mrs Goodman suggested that it was Mr Petrie who was often present and clearly managing the work on the site. Their evidence did not advance my understanding of the position significantly.

- ii) Mr Bulled and Mr Petrie co-operated more generally in relation to the construction of the houses on the site.

Mr Petrie instructed advisers to apply for planning permission when the previous permission lapsed in 2010. Mr Petrie explained that his understanding was that Mr Bulled made this application as favour when the previous permission lapsed. The application was unsuccessful and Mr Petrie then obtained permission on appeal.

There are other examples of Mr Bulled providing assistance in the development of the site: Mr Bulled provided advice on quotations from contractors; he provided contacts with contractors and financiers and engaged directly with them; and Skippy paid one of the instalments of the Montello loan. Mr Petrie provided no explanation for this assistance other than acts of goodwill from one brother-in-law to another.

- iii) Mr Bulled provided personal guarantees as security for the loans from Montello.

This is the most substantial contribution made by Mr Bulled. These obligations were material. Even though the amendments to the later loan documents demonstrate that Mr Bulled did not at the time regard himself as a director of Chigwell, it is difficult to understand why Mr Bulled would enter into such personal guarantees without some form of interest in the transaction. Mr Petrie's explanation is that he had agreed to indemnify Mr Bulled in respect of these liabilities. I have discounted that explanation. It was not supported by other evidence.

- iv) Essex – a joint venture company established by Mr Petrie and Mr Bulled – was used as an alternative borrower for the Montello loans when Mr Petrie and Mr Bulled realized that Chigwell had been struck off the register.

Mr Pay placed much emphasis on this point. He submitted that the use of Essex demonstrated that the true nature of the arrangements between Mr Petrie and Mr Bulled. As I have mentioned above, the chronology does not support Mr Pay's further submission that Essex was incorporated in order to make an application for the loan from Montello, but that does not negate Mr Pay's point.

I have, however, concluded that the use of Essex was seen as an expedient means of obtaining funds to complete the development site. Mr Petrie had been informed, through Mr Crowder that Montello had objected to Chigwell's initial enquiry because Chigwell had been struck off. The use of Essex, was regarded, erroneously, as simplest and at the time most efficient means of making an application for a loan from Montello and obtaining the funds to complete the development of the site.

200. Mr Pay also points to the restoration of Chigwell as evidence of Mr Petrie's attempts to exclude Mr Bulled from an interest in the Brentwood Site to which Mr Pay says Mr Bulled was entitled. The dates set out in the forms for the appointment and termination of the appointment of officers of the company and the figures set out in the accounts, which were submitted to Companies House in support of the application for registration, were clearly a work of fiction. They were designed with the aim of expediting the process of restoring Chigwell to the register so that Chigwell could make the application to Montello for a further loan as quickly as possible. For the reasons that I have given, I do not accept Mr Bulled's account of the events surrounding the submission of the documents to Companies House or his subsequent confrontation with Mr Petrie and Ms Gickel. However, the process does not reflect well on Mr Petrie. Nor does it reflect well on Mr and Mrs Bulled, who also signed documents in the knowledge that they did not accurately reflect the true position.

#### *Conclusions in relation to the Brentwood Site*

201. I am therefore left with a conflict between the evidence surrounding the discharge of the KSF facility in 2008 and the evidence concerning the parties' later conduct regarding the site.
- i) The evidence surrounding the discharge of the KSF facility in 2008 points towards the transaction being, in reality, a financial bail-out by Mr Petrie rather than a business arrangement under which Mr Petrie would "stand in the shoes" of Mr Shafe under his previous arrangement with Mr Bulled. In my view, that evidence supports the only contemporary documentary evidence – the stock transfer forms – which suggests that the intention was that Mr Petrie would acquire a

100% interest in the Brentwood Site through the acquisition of the entire issued share capital of Chigwell.

- ii) The later evidence of Mr Bulled's involvement in the construction of the houses on the site points, if anything, in the opposite direction. The most powerful evidence is that which relates to Mr Bulled's provision of personal guarantees to support the applications for the loans from Montello. I agree that such support goes beyond the level of support that one might reasonably expect of a brother-in-law without any other recompense. The other aspects of the co-operation between Mr Bulled and Mr Petrie in the development of the site, whilst supportive of the Claimants' case are less substantial.

202. In the final analysis, I have reached the conclusion that the evidence of the parties' co-operation in the development of the site is not sufficient to disturb my conclusions on the form of the agreement between them as derived from the stock transfer forms and the evidence surrounding the discharge of the KSF facility. For these reasons, I find that Mr Petrie agreed to discharge the KSF facility in 2008 in exchange for the transfer to him of a 100% interest in the Brentwood Site, which was effected by the transfer of the entire issued share capital of Chigwell to Mr Petrie.

*Conclusions in relation to the Hornchurch Site*

- 203. The bulk of the evidence in this case has revolved around the development of the Brentwood Site and the financing of that development. There has been comparatively little evidence of the parties' agreement in relation to the Hornchurch Site.
- 204. Mr Bulled's evidence is that the Hornchurch Site was discussed with Mr Petrie in 2008 and it was agreed that Mr Petrie should have no interest in the site. Mr Shafe's witness statement supported Mr Bulled's position, but in cross-examination, Mr Shafe accepted that he had not been a party to any discussion of the Hornchurch Site.
- 205. Mr Petrie and Ms Gickel's evidence is that they were not aware of the existence of the Hornchurch Site until Chigwell was restored to the register in 2013. I have preferred their account for the reasons that I have set out below.
- 206. The evidence suggests that Mr Bulled (and Mr Shafe) did not associate the ownership of the shares in Chigwell with the ownership of the Hornchurch Site.
  - i) Mr Bulled and Mr Shafe were both clear that they regarded Mr Bulled as having paid Mr Shafe for his interest in the site and so regarded it as

wholly-owned by Mr Bulled irrespective of the fact that the site had been acquired in the name of Chigwell.

- ii) The ownership of the shares in Chigwell was reorganized before the company entered into the KSF facility to reflect Mr Bulled and Mr Shafe's intentions regarding the underlying ownership of the Brentwood Site (and so the contributions that they were effectively making to Chigwell by the transfer of the main part of the site to the company). It did not reflect in any way their intentions regarding the ownership of the Hornchurch Site even though they should have been aware that the title to the Hornchurch Site was registered in the name of Chigwell.
- iii) At the time at which Chigwell entered into the KSF facility, no attempt was made to extract the Hornchurch Site from the company so that it would not be affected by the security arrangements for the loan to develop the Brentwood Site.

207. My conclusion is therefore that there is no particular reason why Mr Bulled would have raised the question of the ownership of the Hornchurch Site with Mr Petrie. He would not have regarded it as relevant. There is no evidence of any further dealing with the Hornchurch Site between the discharge of the KSF facility and the restoration of Chigwell to the register. I find accordingly that the 2008 agreement did not involve any agreement in relation to the ownership of the Hornchurch Site.

*Conclusions on the terms of the 2008 agreement*

208. The result of my findings is that there was no arrangement or understanding between Mr Bulled and Mr Petrie in 2008, which would meet the requirements set out in *Pallant v Morgan* and later cases for the establishment of a joint venture constructive trust of property. Mr Petrie did not "step into the shoes" of Mr Shafe. There was no arrangement between Mr Bulled and Mr Petrie in 2008 for the joint ownership of property: in relation to the Brentwood Site, the intention was that Mr Petrie would acquire the entire interest in the site through the acquisition of the shares in Chigwell; in relation to the Hornchurch Site, there was no arrangement or understanding at all.

209. The Claimants have not referred to any promise or undertaking which came into being following the discussion in 2008 on which they might be said to have relied to their detriment and which might form the basis of a claim in proprietary estoppel or constructive trust.

**Detriment and reliance**

210. My conclusions on the form of the 2008 agreement mean that it is not necessary for me to consider further the other requirements for the creation of a constructive trust in accordance with the principles in *Pallant v Morgan* – that the Claimants carried out acts to their detriment or to the advantage of the Defendants in reliance upon the relevant arrangement or understanding – and I do not do so.

**Partnership**

211. The parties' submissions did not focus to any significant extent on the Claimants' alternative argument that the relationship between Mr Bulled and Mr Petrie should be regarded as a partnership for the development of the two sites. In any event, for the reasons that I have given, in my view, the facts do not demonstrate any intention of the parties to establish a partnership for the development of the Brentwood Site or the Hornchurch Site.

**Beneficial ownership of the two sites**

212. The Claimants final alternative argument was that Chigwell did not obtain any beneficial interest in the two sites and that the Claimants retained an interest: a 50% interest in the Brentwood Site and a 100% interest in the Hornchurch Site.
213. Once again, the parties' submissions did not focus to any significant extent on this alternative argument. I have, however, set out below my conclusions on the implications of my findings of fact on the ownership of the two sites.

***The Brentwood Site***

214. I turn first to the ownership of the Brentwood Site.
215. Prior to the steps which were taken in advance of Chigwell entering into the KSF facility, Mr Bulled and Mr Shafe held the title to the main part of the Brentwood Site in their joint names. All the evidence suggests that the legal ownership reflected their beneficial interest in the site as tenants in common. The ownership of the site also reflected their respective positions as equal partners in their venture.
216. When the steps were taken to prepare Chigwell to enter into the KSF facility, the ownership of the capital of Chigwell was rearranged. Whereas before this time, the one issued share in Chigwell was held by Ms Cochrane, who was not a party to the venture, in preparation for the new financing arrangements, new shares were issued so that the share capital was owned as to 50% by Mr Bulled and his partner, Mrs Bulled, and as to 50% by Mr Shafe and his

partner, Ms Cochrane. The main part of the site was then transferred to Chigwell.

217. In my view, this transfer was, and was intended to be, a transfer of the entire legal and beneficial interest in the site. Mr Bulled and Mr Shafe had reorganized the share capital of Chigwell so that thereafter their equal interests in the venture would be represented through their interests in the shares in the company rather than direct interests in the real estate. Chigwell became the beneficial owner of the property. It was Chigwell that entered into the agreements with KSF and granted security over the site. It was Chigwell that drew down on the facility and acquired the plots of land at the rear of 62 and 64 Cromwell Road.
218. The transfer form (TR1) suggests that the transfer was made for consideration. But the treatment of that consideration is not clear from the evidence. Neither Mr Bulled nor Mr Shafe was able to explain the figure given for the consideration in the TR1. Neither Mr Bulled nor Mr Shafe received any amount of consideration at the time, and neither of them expected to receive any consideration.
219. The position as between Mr Bulled, Mr Shafe and Chigwell is further complicated by the transaction only a few months later in which Chigwell drew down on the facility and made of payment of £30,000 to Mr Shafe, which Mr Bulled and Mr Shafe treated as having repaid to Mr Shafe his investment in the venture. No explanation was provided as to how and on what basis Chigwell made that payment.
220. At the time of the transaction with Mr Petrie, and as I have found, the agreement was that Mr Petrie would acquire 100% of the Brentwood Site through the acquisition of the shares in Chigwell. The consideration for his acquisition of the shares was his undertaking to discharge the amounts outstanding under the KSF facility (and, in effect, procure the release of the personal guarantees that had been given by Mr Bulled and Mr Shafe). Mr Petrie then put the company in funds to acquire the remaining part of the site, the land to the rear of 66 Cromwell Road.
221. There is insufficient evidence for me to determine the details of the effect of that transaction on the arrangements between Mr Bulled, Mr Shafe and Chigwell. However, it was always clear that Mr Petrie would take the shares in the company free and clear of interests of Mr Bulled and Mr Petrie. Without reaching any conclusion on the details of those transactions, the overall effect must have been to discharge any claims which Mr Bulled or Mr Shafe might have had against Chigwell. Chigwell remained the beneficial owner of the site.

***The Hornchurch Site***

222. The facts surrounding the Hornchurch Site are very different.
223. The site was acquired in the name of Chigwell at a time when the entire issued share capital was registered in the name of Ms Cochrane. The funding for the acquisition of the site was provided by Mr Shafe, but the evidence of Mr Bulled and Mr Shafe is, however, clear that the site was acquired as part of their joint venture arrangements and was intended to be held by them in equal shares. The natural inference from these transactions is that Chigwell held the legal title on trust for Mr Bulled and Mr Shafe in equal shares as tenants in common.
224. Mr Bulled and Mr Shafe are equally clear that at some point Mr Bulled acquired Mr Shafe's interest in the site. From that point on, Chigwell held the title to the site on trust for Mr Bulled alone.
225. At the time of the preparations for the entry in to the KSF facility, nothing changed. As I have described, the changes, which were made to the share capital of Chigwell, were designed to reflect the parties' interests in relation to the development of the Brentwood Site. They took no account of their interests in the Hornchurch Site.
226. At the time of the agreement with Mr Petrie, nothing changed. As I have found, in my view, the agreement between Mr Bulled and Mr Petrie did not extend to the Hornchurch Site. Mr Bulled continued to be the beneficial owner of the site.

**Decision**

227. It follows that:
- i) I dismiss the Claimants' claims for declarations regarding the ownership of the Brentwood Site, the proceeds of sale of any of the properties on the Brentwood Site, and the ownership of the shares in Chigwell;
  - ii) I grant the Claimants' claim for a declaration that Chigwell, the Second Defendant, holds the Hornchurch Site (or the proceeds thereof) on trust for Mr Bulled, the First Claimant.
228. I will ask counsel to prepare an order to give effect to my decision.