This is the final judgment as handed down in writing no further transcript is required.

CLAIM Nos D6QZ45HN and D30NE082

NEUTRAL CITATION NUMBER: [2021] EWHC 938 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN NEWCASTLE

BUSINESS LIST (ChD)

Before His Honour Judge Kramer sitting as a judge of the High Court sitting on 21 January 2021 at a MS Teams in respect of which notice was given of arrangements for the media and public to attend

BETWEEN:

MR ANTHONY MCGILL

Claimant

and

(1) MR HAIZHE HUANG
(2) MR BARRY WILKINSON
(3) MR PAUL BRACEWELL

Defendants

Judgment

Judge Kramer

1. This case arises out of a partnership between the claimant and defendants carried on in the name of CIA Sports, the CIA standing for China Intermediaries Agency. Mr McGill has settled his dispute with Messrs Wilkinson and Bracewell, leaving the only claim outstanding that between him and Mr Huang.
2. Mr McGill is represented by Mr Goldberg and Mr Huang by Mr McCreath, both of counsel.

3. In broad terms, the relevant business of the partnership in the period under consideration was the sale of rights to advertise on LED display boards at the grounds of English Premiership football clubs. The partnership purchased such rights from a company called Lagardère and sold them on to a Chinese company called Tomorrow Sunshine, which is the agent to place advertising for Vivo Communication Technology Co Ltd, a large Chinese telecoms manufacturer. The contracts for the 2015/16 and the 2016/2017 season have been called Vivo 1 and Vivo 2 respectively.
4. On 6th December 2016 Mr Huang sent an email to the other partners which, it is argued, amounted to notice of dissolution of the partnership with immediate effect. In June 2017 Beijing Xiai Sports Media Co Ltd ("Beijing Xiai") purchased similar rights from Lagardère to that purchased by the partnership for the previous season and sold them to Tomorrow Sunshine, acting for Vivo. Beijing Xiai is a company which had been set up by Mr Huang in late 2016. This transaction has been called Vivo 3.
5. The issues which I have been asked to determine are as follows:
    a. Are there sums due to the partnership from Vivo 1 for which Mr Huang is liable to account?
    b. Was the partnership dissolved by the email dated 6th December 2016?
    c. Is Mr Huang liable to account to the partnership for the profits from Vivo 3?

    A further issue to be determined, which concerned the effect of assignments to Mr McGill of the second and third defendants' rights in any monies Mr Huang is ordered to pay in these

proceedings, was resolved prior to trial. There is no longer a challenge to the effectiveness of the assignments.

The Background

6. Mr Huang is a Chinese national living in Newcastle. He owns a number of business, one of which, Team Cycles (North East) Ltd, he co-owns with Mr Wilkinson. The latter has an electrical business, Park Electrical Distributors Ltd. He is a longstanding friend of Mr Huang's father who has an electrical business in China which manufactures some of the products sold by Park.
7. Mr McGill is a football agent. He is a long-time friend of Mr Bracewell, who was a professional footballer and, at times relevant to the operation of the partnership, the assistant manager of Sunderland AFC. They were both friends of Mr Wilkinson.
8. In communications with each other, Mr Huang is referred to as 'Terry', Mr McGill as 'Tony', Mr Wilkinson as 'Barry' and Mr Bracewell as 'Paul' or 'Brace'.
9. Mr Huang has a friend in China called Leo who works for SS Sports Media Company, which then owned the rights to show English Premier League matches in China. In 2016 Leo told him that he was coming to England to film a television programme and that he knew some clubs in China who were interested in purchasing players. Mr Huang discussed this with Mr Wilkinson, who introduced him to Messrs McGill and Bracewell at a meeting on 8th February 2016 where they discussed the transfer of football players from England to China. It is now accepted that it was at this meeting that the parties agreed to go into business together and the partnership was formed. At that stage it was envisaged that the business of the partnership was to be the arrangement of player transfers between the UK and China. It is

common ground that they agreed that they would split the proceeds of each transfer transaction equally between the partners and they were to receive their share after the completion of each transaction.

10. Later in February, Leo informed Mr Huang that he was in England visiting a number of football clubs for his programme. He told Mr Huang of an unsatisfactory visit to Newcastle United. He passed the information to Mr Wilkinson, who informed Mr McGill and he arranged for Leo and his crew to visit Sunderland Academy of Light, Sunderland AFC's training facility, where they were met by Messrs Huang and McGill and there was some talk of business cooperation in the future.

11. Following his return to China, Leo contacted Mr Huang with details of a contact of his called Xiaofei Lin, ("Xiaofei") who worked for China Central TV, the main state broadcasting company in China. Mr Huang contacted Xiaofei. It turned out they had mutual friends as they had both studied in Newcastle. Xiaofei is the cousin of the brothers Michael and Zhiqiang Wang who are the owners of Tomorrow Sunshine, the sole advertising agency for Vivo.

12. Xiaofei informed Mr Huang that he had arranged LED pitch side advertising for Vivo at grounds in the Bundesliga in Germany. He asked if there were such opportunities in the English Premier League. As has become apparent in the course of the trial, the right to place LED advertisements on the boards which surround football pitches at premiership grounds is a valuable one due to the opportunity for the advertisement to appear on televised showings of the game, albeit I was told there is an element of luck as to whether your advert appears at the moment that the cameras are pointing at the play on the part of the pitch from which it is visible. Mr Huang passed on the enquiry to Mr Wilkinson who asked Mr McGill.

13. The request from Tomorrow Sunshine was for 2 minutes of advertising at a Premier League match as a test purchase. This was not a standard arrangement as pitch side advertising is usually sold for the duration of the football season. Mr McGill knew that Lagardère had the rights to the LED display advertising at several Premier League grounds. He informed Mr Huang that Lagardère would not give him a price quotation unless he had a letter of appointment. On 27th April 2016 he emailed Mr Huang with a suggested wording for such an authority. Mr Huang sent him a suitable letter from the client which followed the wording provided, save that it named Mr McGill alone as acting on behalf of Tomorrow Sunshine.

14. Mr McGill told me that Lagardère would not give him a price when he first approached them due to the unorthodox nature of the request, but after he told them that he had arranged for Sunderland AFC to provide the advertising directly, they relented and quoted him a price of £5,000 plus VAT for the Sunderland v Chelsea game on 7th May 2016. The evidence shows that this was accepted on 4th May 2016 and paid for at the time by Mr Huang, via his company Relecy Investments Ltd.

15. Mr Huang informed Xiaofei that the advertising had been arranged but somehow, Mr Huang claims it may have been due to a typing error, Xiaofei told Tomorrow Sunshine that the price was £50,000 for 2 minutes and that is what they paid; the equivalent in Chinese currency is 472,500 RMB. This is the Vivo 1 transaction. There is a dispute as to how the payment of the £50,000 was handled, which I shall deal with when examining the evidence concerning Mr Huang's liability to account for the proceeds of Vivo 1.

16. The advertising on 7th May found favour with Vivo and there were discussions that month between Mr Huang and Xiaofei on the China

side of the transaction, and Mr McGill and Lagardère, on the English side, about purchasing advertising for the whole of the 2016/2017 season. On 16th May 2016, Mr Wilkinson set up a company in Dubai, CIA Sports Group FZE, referred to as CIA Dubai in the trial, to receive payment for future sales and Mr Huang set up Wenzhou Xiai Sports Development Co Ltd in China, he said to export currency received from Tomorrow Sunshine to CIA Dubai.

17. On 2nd June 2016 Mr Huang and the other defendants, but not Mr McGill, travelled to Beijing where they met Xiaofei and the Wang brothers. Mr Huang says that the visit was necessary as Tomorrow Sunshine wanted to meet the people they were dealing with. By this stage there had been discussions with Lagardère for the provision of further advertising at Premier League grounds for the 2016/17 season for a price of £1,180,000 plus 10% commission to CIA. The price CIA proposed to charge Tomorrow Sunshine was £1.9 million.

18. There had been some difficulty in obtaining the package. On 22nd June 2016 Lagardère emailed Messrs McGill and Wilkinson to say that they understood Mr Huang had said it would have to be 12 clubs or nothing and that they would do their best. In the same email they said they required a mandate from the client. After further prompting from Mr Wilkinson that the client required 12 matches at 3 minutes each, Lagardère emailed all the partners, bar Mr Bracewell, to say that they could offer the package requested but they had to move quickly as they had to close the deal with the clubs by the following Friday. They required payment of 50% of price by 8th July 2016.

19. The requirement to pay £594,000 within the period stipulated presented a problem for the partnership. Mr Wilkinson emailed Lagardère to tell them as much. They agreed to accept £180,000 as a non-refundable deposit. Mr Wilkinson approached Mr Huang to assist

but in the event paid the sum from his company Park on 1st July 2016, which is the date upon which the partnership became bound to pay the balance. He asked Mr Huang to pay him £90,000 of this deposit money.

20. The agreement with Lagardère was that the balance of the purchase price was to be paid as to 50% by 22nd July 2016, a sum of £414,000, and the remainder in stated instalments in September and November 2016 and January 2017. None of Messrs McGill, Bracewell or Wilkinson offered to provide the funding for the initial 50% payment. Mr Wilkinson emailed Mr Huang asking him for the money on a number of occasions and in somewhat abrasive terms when it appeared he thought that Mr Huang may be wavering.

21. After the purchase from Lagardère, Tomorrow Sunshine dropped the price it was willing to pay for this transaction to £1.4 million. According to Mr Huang, the licence for the export of money in relation to Vivo 2 was for £1.9 million in accordance with what was thought to have been agreed with Tomorrow Sunshine, and to export a payment equivalent to £1.4 million would have created bureaucratic difficulty with the Chinese authorities. He says that in order to deal with this issue, and the need to pay the 50% balance that Lagardère demanded, he borrowed £500,000 from his family. This money was paid to CIA Dubai to pay Lagardère and to be added to the Tomorrow Sunshine payments exported under the licence, thus bringing the total to £1.9 million.

22. In July 2016, £594,000 was transferred from the account of Wenzhou Xiai to CIA Dubai to cover the 50% payment due to Lagardère and reimburse Mr Wilkinson for payment of the of the £180,000 deposit paid on 1st July 2016. Mr Huang says that £500,000 of the money transferred derived from a family loan and that he and his family

expected that he would be repaid once Vivo 2 was completed. In the event, he claims, having consulted his bank accounts, that he was reimbursed in irregular payments from the CIA Dubai account between November 2016 and February 2017.

23. Vivo 2 was a success and generated a profit for the partners of about £60,000 each. On 2nd August 2016 the partners had a minuted meeting at which Mr Wilkinson presented a status and finance report on Vivo 1 and 2 and updated the others on the company set up and banking situation. The minutes record that is was decided that: "*…all matters relating to activity in China must be lead and actioned by Terry but likewise, any requirements linked to activity in the UK or Europe MUST be actioned through Barry or Tony."*

24. On 25th October 2016 the partners Huang, McGill and Wilkinson visited China, where they met the Wang brothers at the Kerry Hotel on 2nd November 2016. There is a dispute as to what was discussed at that meeting. Mr McGill says that the discussion was about renewing the contract for LED advertising for another season, Mr Huang says that that the discussion was about a possible contract to sell advertising space on the sleeves of premiership football shirts.

25. Mr McGill says that by the end of the China visit he had suspicions as to the information he was receiving from Mr Huang as he had discovered that Tomorrow Sunshine operated from a private apartment; the circumstances in which he made the discovery are disputed. Even prior to that visit, however, he had expressed resistance to Mr Huang receiving expenses for one of his visits to China unless they had been approved in advance; his email of 6th October 2016 to Mr Wilkinson asks him to tell 'Terry' that all trips and expenses need to be approved beforehand. He also expressed

alarm at the prospect that Terry was the sole signatory on the CIA China account in that email.

26. On 6th December 2016 Mr Wilkinson sent a long email to Mr Huang said to express the feelings of the other partners. According to Mr McGill, this followed a discussion he had with Mr Wilkinson in which the latter had asked whether he felt that Mr Huang should be confronted. The email accused Mr Huang of disloyalty and alleged facts which indicated that he was untrustworthy. Mr Huang's email in response came less than an hour later and was copied to the other partners. Mr McCreath relies upon the contents of this email as Mr Huang's notice of dissolution.

27. It was following this exchange that Mr Huang liaised with Xiaofei who dealt with Tomorrow Sunshine to arrange the advertising contract called Vivo 3. Negotiation with Lagardère was conducted by Mr Wilkinson. Mr Huang says that he, Xiaofei and Mr Wilkinson agreed to share the profits on this deal equally.

28. On 18th May 2017 Lagardère took an order for 3 minutes LED advertising at 12 premiership grounds at a price of £1,706,400. The contact name on the order form being Terry Huang. The invoice for a 10% deposit is dated 14 June 2017 and is addressed to Beijing Xiai Sports Media Co Ltd. On the same day that company entered into a contract with Tomorrow Sunshine for the on sale of the rights at a price equivalent to £1,970,000 and entered into a memorandum agreeing, subject to agreement as to price and a right to terminate, to renew the agreement for the following two seasons.

29. Mr Huang has produced documents which he claims evidence the fact that he advanced £511,920 on behalf of Beijing Xiai in order to facilitate the deal, albeit he was reimbursed by that company. The CIA Dubai bank account was used to receive the purchase monies from

Tomorrow Sunshine and commission from Lagardère, as well as to pay Lagardère its charges, to reimburse Mr Huang and pay him both his and Xiaofei's share of the profit on the deal which Mr Huang says amounted to £270,000 but was completed defrayed in expenses. In addition, Lagardère paid commission for the purchase totalling £280,000. Mr Huang accepts that he received £170,000 of that sum from Mr Wilkinson on 18th March 2018 which he says represented both his and Xiaofei's shares. Mr Huang says that he paid Mr Xiaofei his share. Mr McGill accepts that he received £70,000 from Mr Wilkinson which he says represented 25% of the commission and Mr Bracewell accepted he had received £37,000. The payments to Mr Mcgill and Mr Bracewell were made under a Tomlin Order which provides that Mr Wilkinson is to pay £70,000 to Mr McGill and £37,500 to Mr Bracewell in full and final settlement of claims between the claimant, second and third defendants.

The parties' contentions on the facts

30. Both Mr Goldberg and Mr McCreath started their submissions by inviting me to conclude that the other's witnesses (s) were unreliable.
31. In the case of Mr Huang, Mr Goldberg identified a number of respects in which Mr Huang can be shown to be an unsatisfactory witness. Leaving aside evidence going directly to the issues before me, he says:
    a. Mr Huang's own evidence is that he took part in an arrangement to fool the Chinese authorities that a transaction for £1.4 million was in fact for £1.9 million. In his statement he said that it was Xiaofei who was responsible for this sham but in his evidence he said that 'we' were responsible.
    b. In relation to Vivo 2, Mr Huang was responsible for the production and use of forged bank statements and payment

advices. He admits the existence of the forgeries but says they were the work of Xiaofei, who has since apologised to him for their production. Mr Goldberg says that on the evidence this explanation is unconvincing. He asks me to accept the evidence of Lily Zhan who claims that she saw the forger, Li Ying, receiving instruction from Mr Huang's wife, Yupei, to produce the forged documents.

32. Mr McCreath says that the evidence as to the forged bank documents is insufficient to draw an inference that Mr Huang was party to the forgery. He described Mr Huang as a careful and truthful witness who looked me in the eye. Inconsistencies in his evidence were explicable due to difficulties in translation and errors in relation to minor detail. He said I could not rely on the evidence of Lily Zhan as she had personal reasons for disliking Mr Huang as he sued her for £20,000 in relation to a loan to a business which she ran with his wife.

33. As to the witnesses Mr Bracewell and Mr McGill, he says that the former is unsatisfactory because in response to the suggestion that he did not wish to be seen to be taking part in the partnership business because of the terms upon which he was engaged by Sunderland AFC, he ignored the obvious when taken to his contract and shown the wording which prevented him taking part in all but a limited number of outside activities. He also criticises the absence of detail from his evidence as to challenging expenses which Mr Huang claimed to have incurred. He, nevertheless, seeks to rely upon that part of Mr Bracewell's evidence as is supportive of his case as to the arrangements surrounding Vivo 3 and the termination of the partnership. He describes Mr McGill's evidence as an exercise in revisionism and re-interpretation of events driven by his conviction that he is the hero and Mr Huang the villain.

34. My impression of Mr Bracewell is that he was an essentially truthful witness. Most of his evidence was even-handed, for example, his acceptance that the emails which followed Mr Huang's purported notice of dissolution pointed to an agreement under which he and Mr McGill would look to Mr Wilkinson for any payments arising from Vivo 3 and not Mr Huang. He was defensive about whether his involvement in the partnership contravened his contract of employment with Sunderland AFC but that is consistent with a fear on his part that it might, and I do not regard his response to that question as indicative of preparedness on his part to mislead the court. His evidence that he would not have been prepared to proceed with Vivo 2 had he known that a £20,000 gift of wine had been made in respect of Vivo 1, however, seemed to be a product of hindsight. On his own evidence he knew about the wine payment by 4th August 2016 but that did not persuade him to distance himself from Vivo 2 or leave the partnership.

35. I agree with Mr McCreath that Mr McGill's evidence did place an interpretation upon events which was coloured by his view of Mr Huang as the wrongdoer throughout. His refusal to accept the role of Mr Huang, as recorded in the minutes of the partners' August meeting, as the person for arranging the business in China and his repeated stress on the fact that he had a mandate giving him sole rights to act on behalf of Tomorrow Sunshine, were intended to portray him as central to the whole sale of advertising business, and thereby to inflate the importance of his role. In fact, his part was that he knew where to go to purchase the display rights and was able to persuade Lagardère to make a test sale of a single match. Whereas his part in finding Lagardère could have been ascertained by very basic enquiry, the business in China would not have happened at all had it not been for

Mr Huang's contacts. The exclusive mandate was no more than a piece of paper produced to satisfy Lagardère on whose behalf he was acting. The obtaining of that mandate also depended on Mr Huang and his contacts and could have been countermanded by them without Mr McGill's say so.

36. Lily Zhan gave her evidence in a straightforward manner, that is to say she gave direct answers to the questions put to her. She made no secret of the fact that she had come forward to give evidence as she is of the view that Mr Huang behaves badly in business and she did not want Mr McGill to think this was typical of the Chinese community; she says as much in her statement. She gave evidence that Mr Huang's wife gave instructions to the web designer to doctor the bank statements. Mr Huang's allegation is that she is lying because of the dispute over the payment of £20,000. If it were the case that Ms Zhan was making up allegations in order to assist Mr McGill, it is difficult to see why she involves Mr Huang's wife, rather than claiming that he gave the instruction. Of course, I have to compare her evidence to the other evidence surrounding the forgeries, but I do not consider her evidence inherently improbable or obviously doubtful.

37. Ms Zhan's evidence was to the effect that she was in business with Mr Huang's wife, Yupei Chen, operating a cosmetics shop in central Newcastle. They employed a website designer called Li Ying. She saw an email which she believes was on Mr Huang's account, asking the designer to alter 4 bank statements; there is no dispute that these statements have been altered. She asked the designer what she was doing and she replied that Mr Huang's wife asked her to do it. Later that day his wife gave the designer some bank statements. She was asked why she did not remonstrate with Mr or Mrs Huang. She replied that she was busy and, in any event, it was none of her business.

38. Mr Huang says in his witness statement that almost immediately after he terminated the partnership, Mr McGill asked for bank statements for Wenzhou Xiai. He asked Xiaofei to get these together with receipts showing the payments from Tomorrow Sunshine. Xiaofei sent him some documents which he forwarded to Mr McGill on 6 and 7 December 2016; these are the documents referred to as featuring in the email described in Ms Zhan's evidence and consist of bank transfers showing the receipt of monies. In the course of disclosure in these proceedings on 7th March 2020 he became aware that these documents were forgeries.

39. Mr Huang said, in his statement, that the account of the email referred to by Ms Zhan is that of Xiaofei. He has learnt from Xiaofei that he forged bank transfers for Mr Huang to give to Mr McGill to evidence the Tomorrow Sunshine payments to Wenzhou Xiai. He, Xiaofei, admitted what he has done is wrong. In cross-examination Mr Huang said that Xiaofei had never confessed to him that he caused the bank transfers to be altered. When taken to that part of his statement in which he said that he has made such an admission, his explanation for the discrepancy was that whilst he did not tell him in conversation that he did it, he could tell that he had and *"he just said sorry"* and he had a *"guilty expression*." He has never explained why he did it and Mr Huang has never asked his wife about Ms Zhan's allegation. There were also forged bank statements which were altered at a later stage but he does not know who did this. He has not asked Xiaofei if that is his work.

40. Mr Huang was asked how Xiaofei came to be dealing with his wife's website designer. He said that the partnership had promotional material from Lagardère which they wanted to use with their Chinese clients but they wished to remove the Lagardère Logo. It is expensive

to hire someone to alter digital material in China so he got Li Ying's details from his wife and passed them on to Xiaofei to alter the promotional images. Later in his evidence he said it was Xiaofei who asked for the logos to be removed. He requested the alteration by a message sent on a mobile phone. When asked why he had not produced the text, he said that he had lost the phone and the information it contained. He was asked why he had not previously given this explanation of giving Li Ying's details to Xiaofei but he could not remember why he had not done so.

41. I was taken through the bank statements and transfers so as to compare the true statements with the forgeries. It is not necessary to go through the same process in the judgment. It is sufficient to observe that the alterations to the statements were designed to obscure the fact that there were much larger sums going through the account than shown on the forgeries. In particular, payments said to be from Vivo, but not related to Vivo 2, had been removed and a loan of 3.6 million Yuan, almost £400,000, which Mr Huang says represents the family loan he used to fund Vivo 2, is also missing. There are 5 forged bank statements and 4 forged transfer documents designed to support the forged statements.

42. Mr Huang says that the payments from Vivo which have been removed relate to other contracts between Xiaofei and Tomorrow Sunshine which do not relate to Vivo 2. Whilst the dispute concerning Vivo 2 was still a part of these proceedings, and somewhat late in the day, Mr Huang produced notarised contracts between Tomorrow Sunshine and Xiaofei to evidence the source of these other payments.

43. There are some peculiarities surrounding Mr Huang's account concerning the forgeries. The first arises from his connection with Wenzhou Xiai. His evidence was that the company was set up to allow

foreign exchange dealing on the Vivo 2 contract. He did not ask for it to be set up but he discussed this with Xiaofei and some family members. He gave the contact details of Bili Zhan, the son of a friend of his father, and following a process in which he was not involved, Bili Zhan became the sole shareholder in the company but held the shares on behalf of Xiaofei. When cross-examined as to how it could be that it was not him who had asked for the company to be formed given its purpose, he changed his evidence, saying that he asked Bili and Xiaofei to set it up and he told them why it was needed. He followed that by saying he had not spoken to Bili at first but asked Xiaofei to speak to Bili to set up the company and that he had no discussion with Xiaofei as to who was to be the shareholder, he trusted him enough to leave it to him. He said he had only known Xiaofei for 2 months at this time and, on his evidence, had yet to meet him in person. He also said, when cross-examined, that Xiaofei was now his business partner but by re-examination said that he had quit the business about one year ago and they have barely contacted each other since the forgeries came to light.

44. Putting to one side the inconsistencies in Mr Huang's account concerning the formation of Wenzhou Xiai, on his evidence it was set up to deal with the proceeds of Vivo 2 which amounted to over £1 million. It is implausible that he would be completely incurious as to who was to be in control of that company or would have left someone he claims to have known for only 2 months to form the company and decide as to the structure of ownership. The fact that Mr Huang told me that Xiaofei was not a big businessman but just an employee China Television who has a family connection to Tomorrow Sunshine renders it even more improbable that he allowed him, without

oversight, to set up Wenzhou Xiai in order to receive the Vivo 2 monies.

45. I do not accept Mr Huang's account as to his connection to Wenzhou Xiai. It is far more likely that whoever owns the shares, it was set up as his business, probably in association with Xiaofei as it was politic to take him in given his connections. The fact that Xiaofei stayed in the business after Vivo 2 and took part in transacting Vivo 3 supports this view.

46. I then look at a question posed by Mr Goldberg. He asked, who stands to gain from the alteration of the bank statements? In view of my conclusion that Wenzhou Xiai was Mr Huang's business, as much as that of Xiaofei, he had a clear motive in hiding from the other partners that it was transacting valuable business with Vivo outside of that of the partnership. The motive was all the greater as the statements and transfers were supplied by Mr Huang to Mr McGill at a time at which he was questioning how the Vivo 2 money had been dealt with in the light of the fact that a £1.9 million deal had been reduced to £1.4 million.

47. It may be asked what motive he could have had for removing the entry concerning the 3.6 million Yuan family loan. It may be looked at in another way, however. Mr Huang said he did not appreciate the bank statements had been forged. It seems odd that he did not notice and remark upon the fact that a very large sum which had come from his family and he had used to finance Vivo 2 had disappeared.

48. Mr Goldberg makes further points. He asks why should Xiaofei ask the web designer employed by Mrs Huang to make the alterations. There will be many such designers in the world, why choose her, particularly as she is the only one in the world who posed the risk that she informed Mr Huang what Xiaofei was up to. Mr Goldberg adds

that it is worryingly convenient that the text exchange in which Mr Huang claims Xiaofei asked him to alter the Lagardère publicity material and the contact details he gave him for Li Ying, by WeChat, have all disappeared.

49. Standing back, I have a wholly unconvincing account from Mr Huang as to the setting up of, and his part in, the company whose bank statements have been forged and of his relationship with Xiaofei. Coupled with this is the fact that he would have a motive to cause the statements to be altered and should, at the very least, have spotted that a very large transaction involving his families' money was unaccounted for, whatever else Xiaofei was allegedly trying to hide. In addition, there are Mr Goldberg's observations as to missing evidence and the unlikelihood of Xiaofei choosing to use Li Ying to carry out this task. In contrast I have a seemingly reliable witness, in Ms Zhan, which supports the allegation that Mr Huang had a part in the forgery.

50. Whilst I recognise I should hesitate from making so serious a finding as one of forgery without weighty evidence, the fact is sufficiently proved if made out on the balance of probabilities. On the evidence I have recited, it is more likely than not that Mr Huang was a participant in the forging of the bank statements and supporting transfer forms. Albeit that this finding relates to his behaviour in relation to Vivo 2, it does have an impact on his credibility as regards his evidence concerning Vivo 1 and 3. I would add that my view as to his evidence concerning the formation and control of Wenzhou Xiai also places a considerable dent in his credibility. I do not, however, disbelieve everything he has said as a result of this conclusion, but I have to be careful to look for supportive evidence from other sources before I accept the truth of what he says.

Vivo 1

51. The questions on this contract are how much of the £50,000 was received by Mr Huang, and what did he do with it. The law as to the court's approach is uncontroversial.
    a. The account consists of charges, which are items debited against the accounting party on the incoming side and discharges. An accounting party is charged with all property coming into their hands in an official capacity, whether personally or through an agent, the test of receipt being whether the accounting party has control so as to be able to apply the property for an authorised or unauthorised purpose; Snell's Equity (34th Ed) Ch 20-19.
    b. A discharge extinguishes an accountable party's responsibility for their receipt. An accounting party is entitled to discharge in respect of all dispositions within their mandate. Relevant for present purposes are those used for proper administrative outlays; Snell Ch 20-20.
    c. It is for the beneficiary, for practical purposes in this case Mr McGill, to prove the surcharges, i.e. what should be debited on the incoming side, including any money which he says should have been received but due to Mr Huang's fault was not, and the accounting party, i.e. Mr Huang, to prove their discharge.
52. A useful starting point is to consider what Mr Huang says happened to the £50,000. The Yuan equivalent of that sum was paid by Tomorrow Sunshine to Shanghai Zhongfeng Ltd on 5 May 2016. He produced a summary of how that money was spent in relation to Vivo 1 which is as follows:

	£

4 May 2016 Lagardère invoice paid by Relecy Investments	5,000
16 May 2016- Shanghai Zhongfeng Ltd transferred all but 94,500 Yuan, which it kept as commission, to Xiaofei	10,000
2 IPhones to Leo	1,000
Cash Fee to Leo	4,000
2 Gucci Belts and Chanel Earrings as gifts for Xiaofei Samuel and his wife.	1,000
Wine	20,000
Trip to China (Wilkinson, Bracewell and Huang)	9,526.92
Internal travel in china, hotels and ancillary expenses	8,068.21
Total	58,631

Mr Huang points out that his expenditure exceeded the £50,000 by about £9,000.

53. Mr Huang produced a breakdown of the expenditure on internal travel and hotels. He accepted that this should be reduced by 5,126 Yuan,

about £564 as, on questioning at the trial, he accepted that this had been spent on visiting his family in Wenzhou. He was not cross-examined as to the other expenses shown in his breakdown. His evidence is to the effect that that much of the £50,000 never came into his hands.

54. He said that Xiaofei used a company called Shanghai Zhongfeng Technology Ltd to receive the money from Tomorrow Sunshine as that was needed to generate an official tax invoice for Tomorrow Sunshine in China. Tomorrow Sunshine paid 472,500 RMB, equivalent to £50,000, to Shanghai Zhongfeng on 5th May 2016 under a written agreement called a "Business Consulting Service Contract" a copy of which he produced. Under a supplementary provision in that agreement Shanghai Zhongfeng was entitled to a service fee of 94,599 RMB and was obliged to return the balance of 378,000 RMB to Xiaofei. Mr Huang says that Xiaofei said that the sums retained were to cover 17.5% tax and the balance a service charge.

55. It was Xiaofei who bought phones for Leo and gave him cash, Mr Wilkinson having agreed to the payment as a reward for having made arrangements for the showing of the game on CCTV5, his employer's television station. In his most recent statement, though not in his original statement, he claims that Xiaofei kept approximately £5,000 to cover expenses he had incurred, in cross-examination he indicated it may have been as much as £10,000. This left a balance of £30,000 which was paid to him out of Xiaofei's mother's bank account. He used that money to buy £20,000 of wine as a gift which was given to Tomorrow Sunshine on the day after the meeting with the Wang brothers at the Kerry Hotel. He produced a receipt for the wine from a Hong Kong saleroom which evidences the sale of 3 lots, which Mr Huang suggests were 3 cases of wine, one of Chateau Lafite Rothchild

2007, one of Domaine de la Romanee-Conti 2011 and lastly a case of Salon Champagne 2002, for a price of 181,130HKD, which equates to roughly £20,000. The billing date is 28 May 2016, though Mr Huang said that this post-dates the sale, and the invoice and payment date is 3 June 2016.

56. Mr Huang says that he took £5,000 of the sum to cover Relecy's payment to Lagardère, he spent £1,000 on 2 Gucci belts and some Chanel earrings purchased for Xiaofei, and for someone called Samuel and his wife; he said that Samuel and his wife played no part in Vivo 1 but they were going to meet Samuel who wanted to talk about football transfers. He could not produce proof of the payment as he had cancelled the credit card he used in the purchase. He said Mr Bracewell agreed to the purchase, but that is denied by him. He says that he was unware of the purchase at the time. The remainder he has kept to cover some of the travelling and entertaining expenses he incurred.

57. Mr Goldberg argues Xiaofei was Mr Huang's agent. Accordingly, he should be surcharged with the full amount of £50,000 as, through his agent he had control as to the disposal of this sum. Accordingly, the claimant has discharged the burden upon him. As to the Mr Huang's attempts to discharge the burden upon him, he questions the veracity of the transaction with Shanghai Zhongfeng. He says why should I accept that the Consultancy Contract is genuine given that both Xiaofei and Mr Huang will forge documents when it suits them. The only evidence that it was necessary to involve Shanghai Zhongfeng comes from Mr Huang. He had never seen the invoice which he claims was so essential that it required an agreement of this type. Furthermore, the agreement does not say anything about paying tax. The 94,500 RMB is referred to as a service fee.

58. In relation to the other claimed expenditure Mr Goldberg points to the fact that there are no receipts relating to the iPhones and no statement from Leo that he received phones or money. There is no statement from Xiaofei. There is no documentary proof that he purchased the belts and earrings. He argues that the timings surrounding the acquisition of the wine throw doubt upon whether it was provided to Tomorrow Sunshine on 3rd June 2020, the day following the meeting with the Wang brothers. That would mean that the wine was paid for in Hong Kong and delivered to Beijing on the same day. There is no evidence from Tomorrow Sunshine that it ever received the wine, indeed Mr Huang does not know if they did, for he left it to Xiaofei to pass it on. There is also a dearth of documentary evidence to support the travel expenses claimed. As to the flights, Mr Huang now accepts that they are documented as having been paid for by Park, Mr Wilkinson's company, and were accounted for against the profits of Vivo 2.

59. Mr Goldberg has a secondary argument. He says that even if I accept Mr Huang's evidence about the wine and travel expenses, these were attributable to Vivo 2, as they appear in a work book prepared by Mr Wilkinson in relation to that transaction. The partners have been paid out on Vivo 2 and the claim on that contract has settled. Mr Huang is double dipping by claiming them again against the receipts for Vivo 1.

60. Mr McCreath argues that is has never been pleaded that Xiaofei was an agent of Mr Huang. He was a middle man, acting on his own behalf who had a mutual interest in dealing in the proceeds of Vivo 1. If he was an agent, it was of the partnership as a whole, not Mr Huang personally. The expenses for the June trip must have been borne by Mr Huang as neither Mr Bracewell or Mr Wilkinson are claiming to have paid and he was only cross- examined about his trip home to

Wenzhou. There is no evidence to counter Mr Huang's explanation for the involvement of Shanghai Zhongfeng. If the claimant wants to surcharge him for the sums he should prove that there is some other way of transferring the money from China, and he has not.

61. In relation to the gifts, Mr McCreath points to the fact that Mr Huang was open with his partners about his acquisitions, sending them photographs of the belts and earnings and a bottle of Chateau Lafite Rothchild on sale at the airport to demonstrate what a good price he had got. At the time the claimant was not complaining about this expenditure. Although he now says that he did, his email of 4th August 2016, which refers to accounts showing this expenditure, does not raise any criticism at the time. Mr McGill calls the statement a good guide though he wants clarification and transparency; this seems to relate to the involvement of Shanghai Zhongfeng. As regards the £1,000 said to be spent on gifts at the airport, Mr McCreath argues that Mr Bracewell knew of and acquiesced in the purchase. In those circumstances it would be unjust to allow Mr McGill to require Mr Huang to account for this under the claim assigned to him by Mr Bracewell. He makes the same argument in relation to the purchase of wine.

62. Mr McCreath concedes that the credit claimed for air fares in the sum of £9,526.92 is untenable, but otherwise, there is no question in this case of double dipping. The Vivo 2 claim settled on no particular basis other than the parties agreed to drop hands. If the claimant wanted to prevent Mr Huang from claiming the expenditure he seeks to set against Vivo 1 he should have included a provision in the Vivo 2 settlement to this effect, but he did not do so.

Discussion and Conclusion

63. The first issue to resolve is whether Xiaofei was Mr Huang's agent to deal with the Vivo 1 money or that he was in control of that money before the £30,000, which he admits receiving, came into his hands. They were certainly acting in concert by the time of the forgery of the bank statements in late 2016 and, on his evidence, he had entrusted him to be the beneficial owner of the shares in Wenzhou Xiai. Part of the problem here is that the evidence of Mr Huang is unreliable. It is one thing to say I should not believe what Mr Huang has to say about Xiaofei but it is another to conclude that this on its own proves that he was Mr Huang's agent in dealing with the money once it left Tomorrow Sunshine, as opposed to a middle man simply acting in his own interests. The burden is on the claimant to prove agency or that Mr Huang had control over the money before he actually came into his hands.

64. There is documentary evidence in the form of bank transfers showing the payments from Tomorrow Sunshine to Shanghai Zhongfeng and the latter to Xiaofei. These have not been impugned save to say that they have been produced into evidence by Mr Huang. There has been no evidence from a source with reliable knowledge as to how business is transacted in China to contradict Mr Huang. I acknowledge that Mr McGill has expressed his misgivings about these documents based on his understanding of Chinese commerce but this is a long way short of establishing that his opinions on this transaction are correct. For example, there is no evidence that the claimant has asked Shanghai Zhongfeng to confirm, or otherwise, whether the transaction or transfer took place, or evidence from a Chinese official, accountant or lawyer to undermine Mr Huang's evidence on this point.

65. If Mr Huang did have control over Xiaofei, it is difficult to see why he would cause him to act as an intermediary to receive the payment at

that stage of their relationship. It is also unlikely that he would be trying to cheat his partners at CIA on the test transaction which was intended to lead to a much more valuable business proposition given the real risk, if he was indeed the controlling hand, that they could discover what had done if they happened to meet Xiaofei or the Wangs. It is more likely that the payment was made to Shanghai Zhongfeng and subsequently to Xiaofei under arrangements between the payors, essentially his cousins, the Wang brothers and Xiaofei. If the transaction is colourable, it is more likely that this was Xiaofei's scheme to cream off some of the price, after all, one would expect him to want something out of the transaction, given that without him there would have been no deal and this points towards Xiaofei acting independently of Mr Huang in his dealings with the payment. If Mr Huang wanted to siphon off some of the price, why would he need to use the device of the Shanghai Zhongfeng contract, he could simply have asked for the whole price to be paid to him and claimed some bogus expense, such as paying Xiaofei his cut. The fact that Mr Huang received the £30,000 from Xiaofei's mother is a further indication that it was Xiaofei who decided in what way, and how much of, the Tomorrow Sunshine money was to be paid to CIA. I am not satisfied that Xiaofei was acting as Mr Huang's agent to handle the proceeds of Vivo 1. Neither I am satisfied that that Mr Huang had control of the Vivo 1 proceeds up to the time at which he received the £30,000 from Xiaofei's mother.

66. There is a £10,000 deficit to be accounted for, however. Xiaofei received £40,000 from Shanghai Zhongfeng but only caused £30,000 to be paid to Mr Huang. When Mr Huang was asked about this in evidence, he said that *"we"* agreed to spend this money and he told Mr Wilkinson in advance what it was to be spent upon. As Mr Huang,

on his own admission, was in a position to direct how the £10,000 was to be spent, he must have had sufficient control over that sum to charge it to his account.

67. Has Mr Huang satisfied me that the £40,000 charged was spent on proper administrative outlays, that is to say payments made in the ordinary course of the business of the firm? The £5,000 reimbursement for the payment made to Lagardère by Relecy is not disputed. Of the expenditure claimed for internal travel on that trip he accepted on questioning that £564 was for personal use but he was not cross-examined as to the other expenditure claimed. The areas of dispute were as to the purchase of wine for £20,000 and smaller gifts totalling £1,000 and the £10,000 apparently retained by Xiaofei.

68. I have no doubt that Mr Huang purchased the wine for £20,000; I have seen the sale room documentation and an email of 3 June 2016 confirming payment. I am also satisfied that he purchased the Gucci belts and earrings in the airport; I have seen his photograph of the belts dated 2 June 2016. Despite the absence of a credit card statement for the purchase, £1,000 does not seem to me to be out-with the price which could be expected for designer accessories from an airport shop. The dispute as to whether Mr Bracewell was aware of the purchase at the time is not key as to the fact of the purchase as this was some time ago. He may not have been shown or told of the purchase, when in the airport, or he may have forgotten. Equally, I am not satisfied that he or Mr Wilkinson knew and approved of the purchase, which puts pay to Mr McCreath's acquiescence point.

69. The fact is that they were at the airport on 2 June 2016 and there is a photograph of 2 Gucci belts taken that day. It is unlikely that he took the photograph that day so as to be able to deceive his partners as to how he had disposed of £1,000. It is far more likely that this was a

photograph of belts he had bought, he says for business purposes, just as he also took a photograph at the airport of a bottle of Lafite Rothchild to show the type of wine he had bought. He said that he saw one of the wines he bought at the airport and wanted to demonstrate how expensive it was. That is consistent with the reference in his email, to which the photograph was an attachment, to there being 12 bottles in a case, thus showing what a case of the wine would have cost if bought at the airport.

70. The next question is as to whether Mr Huang made these purchases in the ordinary course of the business. Was the wine a gift to Tomorrow Sunshine as he claims, and if so, does it qualify as a proper administrative outlay? Mr Huang told me that the giving of lavish gifts after a successful contract is a feature of Chinese commerce, and again I did not hear any evidence to the contrary. The claimant does not argue that it does not qualify if it was indeed given as a gift. After all, what followed was a much more valuable contract with Tomorrow Sunshine. The claimant's case is that I should not be satisfied that it was purchased for the claimed purpose or for the alleged recipient.

71. Mr Goldberg points out that there is no evidence that the wine reached Tomorrow Sunshine and that whilst Mr Huang had recorded in his email of 4 June 2016 to Mr Bracewell and Mr Wilkinson that he had ordered the wine shown, i.e. Lafite Rothchild, there was no reference to the other wines bought at auction. Further, the 4 June email refers to the wine ordered for Xiaofei. He also has his point as to the date of payment and delivery being the same.

72. The fact that Mr Huang made no secret of the fact that he had bought the wine at a cost £20,000 is an indication that he did not purchase it for a purpose of which the other partners would have disapproved, albeit at a later stage they have said that they thought the cost

exorbitant. The photograph and email demonstrate that he wanted his partners to know what a valuable gift had been given. The fact that he only photographed one type of wine is not sinister in the absence of evidence that there were bottles of the other types of wine for sale at the airport which he had not photographed. I do not take that as an indication that he may have made a gift of the Lafite but kept the rest. The reference to ordering it for Xiaofei is also consistent with his evidence that it was he who had told him to buy it.

73. It is also worth noting that the wine seems to have been purchased very shortly in advance of the China trip resulting in a temporal coincidence between its purchase and the planned trip to meet Tomorrow Sunshine. This is further support for the contention that it was bought to be used as a gift to Tomorrow Sunshine. The fact that it was paid for on the date of delivery is neutral. It was certainly purchased several days before delivery.

74. Mr Huang can only say that the wine was purchased and delivered to Xiaofei. He did not see him give it to the Wang brothers. It might be thought that if he was concocting a story about the gift he would have included an account of its receipt. The point I made about the improbability of Mr Huang taking the risk of cheating his partners on the eve of securing a substantial business opportunity holds good for the wine. He would very easily have been discovered if one of the other partners had asked the Wangs if they enjoyed the wine, on some later occasion. Provided he purchased it as a gift to them and did what he could to see that it was delivered, the money spent on the purchase was a proper administrative expense.

75. Looking at the totality of the evidence, notwithstanding my view of Mr Huang's credibility, there is sufficient other evidence from which I can infer that what he says is correct. He has satisfied me that he did

spend £20,000 on wine as a gift for Tomorrow Sunshine and which he arranged to be delivered to the Kerry Hotel so that it could be given to Michael Wang but that Xiaofei wanted to repackage it from the wooden crates in which it came into a gift box which he presented to the Wang brothers the following day. Even the detail about the change of packaging, which may run contrary to the aesthetic of the wine buff, has a ring of truth to it.

76. As to the purchase of the belts and earrings, these only amounted to £1,000. Mr Huang claims to have purchased these for Xiaofei and a colleague of his at CCTV, Samuel and his wife. Mr Huang has a motive to give gifts to those may have been helpful in Vivo 1 in order to smooth the path for Vivo 2. Having concluded that he made the purchase, and the evidence pointing to the fact that Xiaofei was essential to Vivo 1 and the deal to come, and that it benefitted the partnership to maintain good relations with employees of the television channel which may show the matches, on balance, I find that this was the purpose of the purchase and it was a proper administrative expense.

77. This leaves the £10,000. Can the court be satisfied that Xiaofei rewarded Leo with £4,000 and 2 iPhones at a cost of £1,000, and what happened to the £5,000 balance? My Huang says that the £5,000 was retained to cover expenses incurred by Xiaofei, but there is no detail about this and on this limited and unreliable evidence I am not satisfied that it has been spend on proper administrative expenses.

78. Although Mr Huang originally said that Leo was paid the £4,000 in his last statement he said that only some of the cash went to Leo and the rest was for someone else at China Central TV, who he does not know. Whilst this is a change in his evidence there is fairly contemporaneous documentary evidence that there were gifts of

iPhones and cash of that order. On 25th May 2016 Mr Huang emailed Mr Wilkinson asking if the deal were done, are we going to pay Leo commission? Mr Wilkinson responded 18 minutes later to say that CIA could not hand out more and more of its profit. Leo was important but should not be a huge cost and he was already being looked after by Mr Huang with phones and a little cash, said to be £5,000. The motive to reward Leo was obvious, he was the first contact who led to Vivo 1 and all that followed, was connected to the rights to show Premier League matches in China and was a contact of Xiaofei. In the light of this evidence I am satisfied that the gifts were made as claimed and these was also for a proper administrative purpose.

79. The final issue arising from the Vivo 1 account is the double dipping argument. It is correct that Mr Wilkinson has shown in his accounts that the wine was an expense of Vivo 2. I accept Mr McCreath's argument that one cannot discern, save in one respect, that the wine was included in the calculation of profit share on Vivo 2. The exception is the flights to China which are included in the additional contract costs deducted, which taking into account Lagardère, company set up and business development costs, left a gross profit of £211,999 to share amongst the partners. Mr Wilkinson did, however, produce an account showing that there was no profit from Vivo 1, and there he did take into account the cost of the wine. This removes the basis from the allegation of double dipping.

80. I also accept Mr McCreath's further argument that Mr Huang reimbursed himself the cost of the wine out of the Vivo 1 proceeds, thus he no longer has the £20,000 because he used it to indemnify himself against a legitimate business expense. If Mr McGill had wanted the Vivo 2 settlement to prevent Mr Huang from relying on

having used Vivo 1 money to reimburse his expenditure on the wine he should have stipulated for this in the settlement.

Account

81. The account is as follows:

	Sums paid in discharge £	Amount charged to the account £
		40,000
Wine	20,000	
Lagardère	5,000	
Travel and entertainment exp	7504	
Gifts purchased at airport	1,000	
Gift to Leo and other	5,000	
Total	38,504	

82. The sum for which Mr Huang must account to the partnership is £40,000 less £38,504 = £1,496.

Was the partnership dissolved in December 2016?

83. CIA was a partnership at will. The principles governing dissolution relevant to the facts of this case are:

a. A partner can determine the partnership at any time by giving notice of his intention to do so to the all the other partners; section 26 of the Partnership Act 1890.

b. "A dissolution notice must be clear and unambiguous but is not necessary that the partner giving it appreciates its legal effect." (Ch 24-28, Lindley & Banks on Partnership 20th Ed.)

c. There is no technical language required for an effective notice of dissolution. All that is required is a clear intimation that the defendant did not wish the partnership to continue, even if the defendant did not think there was a partnership but nevertheless indicated that if there was he wanted it brought to an end; see *Syers v Syers (1876) 1 App Cas 174* per Lord Cairns LC at 183.

d. "A dissolution notice, once given, cannot be withdrawn without the consent of all the partners." (Ch 24-30 Lindley & Banks)

84. The defendant relies upon his email to the other partners dated 6th December 2016. About one hour prior to the transmission of this email he had received an email from Mr Wilkinson, which had been copied to the other partners, informing him that he had behaved in an untrustworthy manner and Mr McGill and Mr Bracewell thought he had added £500,000 to the Vivo deal which was not his personal cash, that is the £500,000 which Mr Huang said he had advanced to finance the transaction and make payments to coincide with the permit for the export of currency. He was told that he was not going to be repaid any more of his advance until he produced bank statements.

85. Mr Huang's email in response says as follows:

"I will get all the evidence show the things and financial side.
I had enough with all this and all the distrust!!!! I am out!!!
Good luck!!!!"

The email went on to respond to the criticisms levelled at him. In answer to the complaint that he had disregarded the other partners interests and kept Mr McGill in the dark, he said:

"Bullshit!!! Anyway this is end now.!"

Mr McCreath says that the email is the clearest intimation that Mr Huang did not want the partnership to continue. Alternatively, I should infer that there had been dissolution as a quarrel between

partners is an obvious basis for such an inference; *see Hopton v Miller [2010] EWHC 2232 (Ch)* per HHJ Behrens at [71].

86. It seems Mr McGill's immediate reaction to Mr Huang's reply was an email to him asking if he should cancel the Lagardère contract. There was no response. Mr McGill tried again, this time saying he hoped to provide an apology and that he would not have to cancel the Vivo contract and would prefer to talk. The same, or the following, day he messaged Mr Huang saying *"I am a good friend, but a bad enemy, don't fuck with me."* On 7th December 2016 it seems Mr Huang sent the requested bank statements. Mr McGill responded in a message *"You have made a big mistake fucking with me. I am preparing several emails to send various people and authorities both here and in Chine, you fat fuck."* He explained the terms of this email as resulting from his belief that the bank statements provided did not tally with other statements. In an email dated 12th January 2017 Mr McGill informed Mr Wilkinson that he could not work with Mr Huang any more, referring to him as someone who cheats and steals from his mates. In cross-examination he claimed that he thought that Mr Huang, by his email, was just letting off steam. His reaction belies that answer and I do not accept it.

87. By the end of the trial Mr Goldberg did not put up much resistance to the notion that the email of 6th December 2016 was a notice of dissolution. In his skeleton argument he had suggested that Mr Huang could not have been intimating an intention to dissolve the partnership, as he did not realise at the time that this was his business relationship. He also relied upon emails between Mr Wilkinson and Mr McGill indicating what Mr Huang was saying, e.g. that Mr McGill had left the partnership, that he wanted a list of players for Chinese clubs and discussing potential business for CIA.

Conclusion

88. Mr Huang's email was perfectly clear that he wanted the business relationship between himself and the other partners to come to an end. It does not matter that he did not realise, in law, that it was a partnership. His legal analysis of the relationship, or lack of it, is irrelevant. It is sufficient that he made it clear that he was bringing it to an end. The fact that Mr Wilkinson passed on an enquiry by Mr Huang does not establish that he was prepared to continue in business with either Mr Bracewell or Mr McGill. In any event, notice of dissolution having been given, it could not be withdrawn without the agreement of all the partners and there is no evidence that this was forthcoming. Even if that were not the case, I would readily have inferred a dissolution given that Mr Huang had said he wanted out and Mr McGill made it clear he could not work with Mr Huang and behaved in such a way toward him that he could not have expected that he could.

89. I find that Mr Huang's email of 6th December 2016 contained an effective notice of dissolution and the CIA partnership was dissolved that day.

Vivo 3

90. The issue here is whether the partnership is entitled to an account of Vivo 3 by virtue of section 29 of the Partnership Act 1890. These are profits which were earned post dissolution but before the winding up. This question does not arise in its purest form, for on the facts of this case there is a dispute as to whether the parties came to an agreement as to who was to account to the claimant and Mr Bracewell for any of the profits deriving from Vivo 3.

91. There were two events of note in late 2016. Mr Huang formed a Chinese company, Beijing Xiai Sports Media. He said that it was set up with two other businessmen, Li Yeng and Xiaofei. The latter is a shadow director. Mr Huang is the managing director of the company. His pleaded case is that the company was formed in December 2017, but he corrected this in evidence to 2016, and the correction is probably correct as I was shown a contract between that company and Tomorrow Sunshine dated 29th May 2017 and Mr McGill says that he saw a Facebook post by Mr Huang in December 2016 in which he said he was working at Xi-Ai Sports.

92. The other event, which has featured prominently in the evidence, is the visit to China of Messrs Huang, Wilkinson and McGill from 25 October to 3 November 2016. It is on this trip that Mr McGill said he discovered that Tomorrow Sunshine operated from an apartment block. He told me that it struck him that something did not add up as Tomorrow Sunshine had not met him at their office. I accept that he was suspicious as to who he was dealing with as regards Tomorrow Sunshine as this is reflected in the email from Mr Wilkinson to Mr Huang dated 6th December 2016, in paragraph 9 of which, Mr Huang is accused of misleading his partners about that company as it consists of *"2 guys using a private apartment"*.

93. The meeting of which Mr McGill spoke took place at the Kerry Hotel in Beijing on 2nd November 2016. The three partners who were on the trip were present as were Michael and Zhiqiang Wang and Xiaofei. Mr McGill says that the discussion at this meeting covered a repeat order for Vivo 2 type advertising for the 2017/2018 season and the possibility of Vivo taking advertising on the shirt sleeves of Premiership football clubs. It is common ground that if CIA had landed such a deal it would have been worth many millions of pounds.

He said that arising from his meeting with Tomorrow Sunshine there seemed a very good chance that they would renew the advertising deal for the following year. He explained that such deals cannot be finalised until the end of the football season for it will not be known until then which teams have been relegated from, and promoted to, the Premiership. Mr Huang's account is that there was no talk about the follow up to Vivo 2, the conversation was restricted to that about a football sleeve deal. The relevance which the parties place on their differing accounts is that Mr McGill argues that Vivo 3 was partnership business as it was discussed in favourable terms at the meeting. Mr Huang says Vivo 3 had nothing to do with CIA as it was not discussed on that occasion and was arranged and agreed post dissolution.

94. On balance, I prefer Mr McGill's evidence in relation to what was said at the meeting. Not only does it not suffer from Mr Huang's disabling credibility as a witness, but it accords with the fact that CIA and Tomorrow Sunshine had concluded Vivo 2 in July 2016 and were interested in repeat business. That is not just common sense but is evident from Mr Huang's email of 24th May 2016 in which he refers to providing Vivo with confirmation that CIA has permission to do the deal, at that stage Vivo 1 had just been completed. He says *"We need to try our best to cooperate (sic) this as this will bring us leasest (sic) 3 years deal afterwards.*" The memorandum to Vivo 3 also makes reference to the willingness of both parties to cooperate on the basis of the 2016 and 2017 seasons. It is likely that both parties were looking towards further pitch side advertising and in those circumstances this will have been discussed. I do not doubt that sleeve advertising was also discussed, but that was no more than a possibility which, on the evidence, required much further enquiry and organisation.

95. I add a caveat to my conclusion concerning the 2nd November 2016 meeting. Whilst Mr McGill left the meeting feeling that there was a good chance of further business, it is unlikely that anything was concluded, even in principle. As late at 28th March 2017 Mr Wilkinson texted Mr Huang concerning Vivo 3 saying *"Surely they must know if they want to continue with LED."* Later still, on 8th June 2017, Mr Wilkinson texted Mr Huang to say that Lagardère felt that the deal may not go ahead and seeking information as to Vivo's stance.

The parties' contentions

96. Section 29 of the Partnership Act 1890 provides:

"(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner."

97. Mr Goldberg argues that section 29 (1) appears as a positive duty to account but its effect is to create a negative obligation preventing Mr Huang from making a personal profit from partnership connections or property. Xiaofei and Tomorrow Sunshine were partnership connections once they were exploited for the benefit of the partnership. At that point they ceased to be Mr Huang's personal connections. He says that it does not matter whether the partnership had been dissolved by the time of the Vivo 3 contract because the duty to account continues until winding up, he referred me to *Don King Promotions Inc v Warren and others [2000] Ch 291* and is not

restricted to cases of dissolution by death. He gains further support from Lindley and Banks paragraphs 16-31 to 16-34.

98. Mr Goldberg refers to Vivo 3 as a repeat order which followed on from the November 2016 meeting. In view of *Don King Promotions*, he says that this is not essential to establish a duty to account as Vivo 3 was an asset of the business in any event, but he also points to the fact that the case was one in which it was held there was a liability to account for the renewal of contracts post dissolution which had been in being prior thereto. The obligation arises from the fact that the duty to account arose from the status of the partners, which is fiduciary in nature, as they have a duty of good faith to each other. Further, it makes no difference that Vivo 3 was made between Tomorrow Sunshine and Beijing Xiai, as opposed to Mr Huang, and that is not advanced as a defence in any event.

99. Mr McCreath resists the claim for an account in two ways. First, he says that there was an agreement between the partners post dissolution under which Mr Huang and Mr Wilkinson were free to pursue their own business to secure a Vivo 3 agreement and Mr McGill and Mr Bracewell agreed that they would only look to Mr Wilkinson for any benefits arising from a Vivo 3 deal.

100. The second defence to the account is that the obligations of the partners post dissolution are restricted to doing that which is necessary to wind up the partnership on beneficial terms and he relies upon *Hopper v Hopper [2008] EWCA Civ 1417* in support. The duties do not extend to taking on new business after dissolution for, in the ordinary course, in so doing there is no risk of a conflict between the interests of the former partner and the dissolved partnership. He argues that the case of *Don King Promotions* is distinguishable and much misunderstood. If Mr McGill has any remedy it is for an account

as a retired partner under section 42 of the Partnership Act 1890 but Mr Goldberg has confirmed he is making no such claim.

101. Whilst the case on the post dissolution agreement and the legal question as to the existence of a duty to account may appear to operate independently, the matter is not so straightforward. Mr Goldberg's response to the subsequent agreement point is not only was there no agreement in fact, but that such an agreement could not be effective. He argues that because the appropriation of the Vivo 3 business by Mr Huang amounted to a breach of trust, it is a breach from which the beneficiaries, in this case Mr McGill and the other partners, could only provide release if they had full knowledge of the facts. Mr McGill and Mr Bracewell were kept in the dark as to Mr Huang's dealings with Tomorrow Sunshine in relation to Vivo 3 and could not have granted a valid release accordingly. He adds that the pleaded claim of a further agreement was only made after Mr McGill had settled with the other partners and that it is designed to take advantage of that fact.

Vivo 3 and the post dissolution agreement

102. Mr McCreath says that the post dissolution agreement arises from an exchange of emails on 12th January 2017.

103. In the aftermath of the emails concerning the dissolution, Mr Wilkinson emailed Mr McGill on 12th January 2017. He informed Mr McGill that Mr Huang had already made it clear that he couldn't work directly with him after what happened. He said *"This puts me in a difficult position as the business can't really function without both of you contributing. Terry does not want to be excluded from CIA Dubai, this isn't an option and he's already talking about how much we should leave out of the profits from Vivo, in Dubai, to cover ongoing expenses* [this must be a reference to Vivo 2]. ... *The only way I can*

see this working is if you withdraw from our informal arrangement in CIA Dubai and I pay all your share from Vivo. This removes your ongoing need to question every think (sic) that doesn't add up and removes the conflict between you and Terry. I don't see this as a major issue is currently nobody other than myself is registered in any of the CIA companies and all partners are together on trust… Going forward I will hundred percent work with you as I do now to facilitate player/manager transfers, you are my only option and I wouldn't have it any other way. You can broker deals, we can agree commission share and you can invoice me for your cut. Of course transfers may never materialise and the only thing we've achieved so far is commercial sponsorship with Vivo. Again we have no guarantee of any repeat business but if more Vivo advertising comes off, I'm happy to cut you in on future Vivo commissions to reflect your input so far.

104. Mr McGill replied to the email 30 minutes later asking *"are we having a full disclosure of accounts as we planned?"*. There was a further email from him suggesting he and Mr Wilkinson go through bank statements provided by Mr Huang. Mr Wilkinson replied that he had no interest in challenging Mr Huang on one single aspect of his statements and that no good would come out of digging into this, as insisting on financial reconciliation, taking into account the cultural business differences between England and China, would lead to the end of CIA. He added: *"you didn't make it any easier by burning your bridges with the Chinese side and if you're intent on not walking away as you suggested then I cant (sic) see how it could work. Terry, like it*

or not will not work through Dubai if your (sic) directly involved and the sensible thing to do is what I've suggested, work with me in a different capacity and you can make some cash. Im (sic) not asking you to walk away, I'm asking you to stay involved but keep your independence.

105. Mr McGill replied: *"Well, I cant (sic) work with someone who steals and cheats his mates, no matter how much is in it. When I get the accounts, I will make a proposal. Looks like you are happy to work with him and no question him… I cant (sic) do that, he will only take the piss more. To ask someone in the business to step aside for exposing a cheat is beyond me. As I say, send the accounts, I will make a proposal from now, and the future"*. Mr Wilkinson responded a few minutes later with this: *"we haven't got a business without Terry, that's just fact unfortunately. I'm not asking you to work with him, I'm asking you to work with me."* Four minutes later Mr McGill sent an email to Mr Wilkinson which reads, *"No problem with commercial."*

106. These emails were followed by correspondence between Mr Wilkinson and Richard Bermitz of Lagardère, from which it appears that at a meeting in January 2017 Lagardère were told that Mr Wilkinson was to be the point of contact and that Mr McGill would concentrate on player deals and club acquisitions. There is a further

email, dated 13 February 2017, from Mr Wilkinson to Messrs Bracewell and McGill which evidences that the arrangements for a further contract with Tomorrow Sunshine had been left to Mr Huang to organise, and emails between Mr Wilkinson and Mr Bracewell and Mr McGill in which Mr Wilkinson reported that he was receiving no information from Mr Huang. This prompted a reply from Mr Bracewell that he was happy for the recipients of the email to make their own approach to Vivo if nothing came back from Mr Huang.

107. On 14th June 2017 Lagardère entered into a contract with Beijing Xiai Sports Media Co Ltd for the provision of LED advertising for £1,706,400. Beijing Xiai and Tomorrow Sunshine produced a "Memorandum of Contract" of which I have only seen an unsigned copy. It is dated 29th May 2017 but is said to have been made on 17th June 2017, when these companies signed the contract for the provision of LED advertising for the 2017/18 season for £1.94 million. The document records that "*Based on the cooperation of the previous year, party a and party b* [that is Tomorrow Sunshine and Beijing Xiai] *consider it necessary to negotiate and revise the cooperative Premier league team and price, and therefore cannot complete the renewal of the agreement in 2018 and 2019 before the expiration of the agreement. In view of the willingness of both parties to cooperate on the basis of the 2016 and 2017 seasons, this memorandum is hereby*

signed to maintain the continuity and stability of the advertising publishing business cooperation."

108. Mr McCreath argues that the reference to *"no problem with commercial"* in the last of the 12th January emails refers to back Mr Wilkinson's description of the LED contracts in his first email that day, in which he offered to give Mr McGill a share of the commissions; these are the payments from Lagardère for introducing the business. The effect of what Mr McGill wrote was that he was going along with having a different relationship than had existed under the partnership and would only look to Mr Wilkinson to pay him any sums arising from the LED transactions. Mr McCreath also relies upon Mr Bracewell's evidence in cross-examination in which he said that Mr Wilkinson and Mr McGill were exchanging emails about a way forward and if they came up with a deal which was fair to him he would go ahead with it. Having read the 12th January emails he agreed that both he and Mr McGill were to look to Mr Wilkinson for their share of commission.

109. Mr McGill said that the "*no problem"* comment did not signify his agreement just to work with Mr Wilkinson or to look to him for any claim arising from future Vivo business. His subsequent emails are not consistent with this stance.

110. On 11th August 2017 Mr McGill emailed Mr Wilkinson following a telephone conversation between them. His complaint appears to be that Mr Huang wants to keep the majority of the Lagardère commission on top of the mark up from Vivo 3. Mr Wilkinson responded that he now had the deposit for the 2017/18 season. That contract had been obtained without out any work from those on the UK side, i.e. Messrs McGill and Bracewell, so it would be unjust if they received 25% of the commission each but that he would share his profits with them for one last time. He said that if Mr Huang thought that Mr McGill was still involved with Lagardère he would not have placed the business. Mr McGill's response, in an email also dated 11th August, states: "*I cannot accept Terry takes all my contacts… If Terry was only looking after business in China, keeping all the mark up from VIVO, and letting us continue with Lagardère, that may have been a clean way forward. But asking for commission from my contacts, and insisting I'm out, he can fuck off!* The "*way forward"* he is describing is what Mr Wilkinson was proposing on 12th January 2017. His complaint is that it is not acceptable at a time he appreciates that he is not getting what he regards as his entitlement to the commission. On 5th September he sent an email to Michael Wang when he again appears to be complaining the Mr Huang wants to keep Mr McGill's commission on Vivo 3.

111. Both Mr Bracewell and Mr McGill said that when, in March 2017, they were being told by Mr Wilkinson that he was not receiving information from Mr Huang as to the progress of Vivo 3, and that Lagardère were getting impatient, they proposed that if this continued the three of them should approach Vivo and exclude Mr Huang from any future deal.

Discussion and conclusion

112. It is apparent from Mr Bracewell's evidence that he was leaving it to Mr McGill to deal on his behalf as to the arrangements between the former partners in relation to future Vivo 3 deals. Mr Huang says that he and Mr Wilkinson were partners at the time. Whilst I have been critical of some of Mr Huang's evidence, his account of being in a relationship of partnership with Mr Wilkinson, whether in the formal sense or a quasi- partnership, is supported by what followed namely, he and Mr Wilkinson, alone of the former partners, arranged Vivo 3 and he received his share of the Lagadère commission from Mr Wilkinson. It follows that Mr Wilkinson had the authority to speak for him. It is also clear that Mr Bracewell and Mr McGill were leaving it to Mr Huang and Mr Wilkinson to pursue Vivo 3 and only proposed that they would take steps to deal with Vivo themselves when they thought that Mr Huang was not keeping Mr Wilkinson informed of

progress. Not only is this apparent from their emails, but it is also evidenced by their lack of action in this respect. Consistent with emails between Mr Wilkinson and Mr Bermitz of Lagardère, dated 27th January 2017, Mr Wilkinson dealt with that company in negotiating and placing the Vivo 3 advertising. Mr McGill told me that this was just to relieve him of the effort of picking spot times for the advertising. I do not accept that as the overall picture points to the fact that he took no part in Vivo 3 after the 12th January 2017 emails.

113. Both Mr McGill and Mr Bracewell say that if they did decide to deal with Vivo direct and they succeeded in obtaining an advertising deal they considered they were under no obligation to Mr Huang as regards any benefit thereunder.

114. If there was any contract between Mr McGill and Mr Bracewell on one side and Mr Huang and Mr Wilkinson on the other, it was contained in the emails of 12th January 2017, thus it was a contract in writing. The court's task is to first decide if there was a concluded agreement and, if so, construe what it meant. I was not addressed as to the court's approach to construing and determining the existence of an agreement. This is unlikely to be controversial. As to construing what the parties meant by the words used, the law is well settled. Lewison on the Interpretation of Contracts (6th Ed) puts it this way:

"Even after *Investors Compensation Scheme v West Bromwich Building Society*,[2] it remains the case that "the primary source for understanding what the parties meant is their language interpreted in accordance with conventional usage": *BCCI v Ali [2002] 1AC 251* per Lord Hoffman. The court "reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties": *BCCI v Ali* per Lord Bingham.

115. Post-contract communication and other behaviour is not admissible to construe the meaning of the contract but it can be considered to determine whether a term of a contract has been agreed; *see Great North Eastern Railway Ltd v Avon Plc [2001] EWCA Civ 780* per Longmore LJ at [29].

116. I agree with Mr McCreath that Mr McGill's use of the word *"commercial"* in his *"no problem"* email meant future LED advertising agreements with Vivo. Mr Wilkinson had distinguished between football transfer business and commercial sponsorship with Vivo in his first email on 12th January 2017, as to which, in relation to advertising, he offered to cut him in on commissions. This leaves the question as to what did he mean by *"no problem"*.

117. The factual background was that set out in Mr Wilkinson's preceding emails, i.e. there was to be an attempt at a Vivo 3

agreement, there would be no business with Vivo without Mr Huang's involvement, Mr McGill and Mr Huang could not work together, Mr Wilkinson could, and was, proposing to work with both of them separately, with Mr McGill in a different capacity than previously, and Mr Wilkinson made an offer to cut Mr McGill into future commissions to reflect his input so far. Against that background, although the words *"no problem"* were in response to the email stating that Mr McGill was not being asked to work with Mr Huang, but Mr Wilkinson, that was a clarification of the original proposal and the fact that it was said in relation to *"commercial"* is a clear reference to that proposal. These facts point strongly to the conclusion that an objective observer would undoubtedly conclude that Mr McGill was agreeing to Mr Wilkinson's original proposal vis a vis a further Vivo advertising contract.

118. This conclusion is fortified by what followed. Mr Huang was left to get on with arranging Vivo 3 until Mr Wilkinson reported a lack of information from Mr Huang and Lagardère's concerns, prompting the decision to approach Vivo directly if that did not change. Mr McGill stopped corresponding with Mr Huang altogether and ceased asking that he supply accounts from Vivo 1 and 2. Mr McGill's email of 11th August 2017 referring to Mr Huang taking his contacts gives a description of what *"may have been a clean way forward,"* which

resembles Mr Wilkinson's January 2017 proposal. His objection to the *"way forward"* is that Mr Huang is trying to take the lion's share of the commission. That is some indication that he did go along with it in January but objected when he realised how little he would get. Further support for such a conclusion is to be found in his email to Barry Wilkinson at 10.12 on 11th August 2017 and his email to Michael Wang on 5th September 2017 from which is it apparent that his complaint is that he is not receiving 25% of the commission from Lagardère, not that he has been shut out of the profits from the sale to Tomorrow Sunshine.

119. I find that Mr McGill did agree with Mr Wilkinson that his entitlement to any proceeds from Vivo 3 was restricted to a share of the Lagardère commission on Vivo 3 in the January 2017 emails and to look to him for payment. Mr Goldberg did not argue that the fact that the January agreement did not specify the percentage of the commission payable rendered the agreement void for uncertainty. In any event, the gap could be filled by an implied term that it was to be a reasonable percentage in the light of his input in securing the original commission. In the event, he has received £70,000, which is 25% of the commission, that being the amount which he said was his due.

120. There is no claim by Mr Bracewell before me, although Mr McGill pursues his share by assignment. In evidence he told me that he also agreed to deal with Mr Wilkinson for his share of the commission. He said he would have agreed to an accommodation reached between Mr McGill and Mr Wilkinson which was fair to him, and on what he told me, he clearly did. In particular, when cross-examined about the emails of 12th January 2017, Mr Wilkinson said that he agreed that the relationship between the parties was that Mr McGill would look to Mr Wilkinson for payment and that he too agreed to deal with Mr Wilkinson and look to him for his share of the commission.

121. What of Mr Goldberg's argument that the agreement was of no effect as Mr Huang was in breach of fiduciary duty and such agreement as there was lacked knowledge at consent. The first matter I have to consider is whether, absent effective consent, Mr Huang was in breach of fiduciary duty in contracting for Vivo 3 on behalf of his company.

122. I have already set out the provisions of s.29 of the 1890 Act. I was also referred to sections 38 and 42(1), which read as follows:

"38 After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions

begun but unfinished at the time of the dissolution… But not otherwise.

42(1) where any member of the firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such a share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of 5% per annum on the amount of his share of the partnership assets."

123. I was also referred to the following authorities, *Hopper v Hopper [2008] EWCA Civ 1417*, *Pathirana v Pathirana [1967] 1 AC 233*, *Don King Productions Inc v Warren & Others [2000] Ch 291*, *John Taylors (A firm) v Masons [2001] EWCA Civ 2106 and Lindsley v Woodfull [2004] EWCA Civ 165*.

124. Before looking at the effect of these authorities it is necessary to consider Mr McCreath's argument that *Don King Productions* is a much misunderstood case as both *John Taylor's (a firm)* and *Lindsley*, rely heavily on that decision. In *Don King Productions* the claimant and defendant were boxing promoters. They formed a partnership to

promote and manage boxers whose contracts were held in the sole name of Mr Warren, the defendant, but were found to be partnership assets. Following dissolution, but before winding up, the defendant renewed some of the contracts for his own benefit. It was held that the renewed contracts were partnership property and the defendant had to account to the partnership for the benefit of those contracts just as he had to account for contract formed prior to, but surviving the dissolution; the Court of Appeal did not regard contracts with new boxers, that is to say those who had not been under the management of the partnership or Mr Warren before the dissolution, as partnership assets.

125. Mr McCreath says that the order made at first instance, and upheld on appeal, contained a proviso which enabled the defendant to argue at the account stage that a particular boxer's contract was not held on trust for the partnership. Accordingly, the case is not authority for the proposition that all post dissolution renewal contracts are partnership property. Secondly, there were special facts in that the partnership agreement required Mr Warren to buy the assets of the partnership on dissolution. He would be conflicted if he was able to reduce the value of the partnership at winding up by taking out the value of the boxers under contract by renewing contracts for his own benefit. To do so would breach his duty of good faith to his partner in effecting the

winding up. Thirdly, he says that there is a distinction between an ongoing contract, like a lease or the management contracts in that case, which is the vehicle which produces the profit and a one-off sale as existed in this case. Fourthly, the case gives rise to a problem. What if the winding up is protracted, how many renewals can fall within partnership property?

126. Mr McCreath is correct to the extent that the case is not authority for the proposition that every post dissolution renewal contract will necessarily be partnership property. The question in each case is whether the contract meets the criteria for determining whether the duty to account arises; see Don King Promotions per Morritt LJ at [41]-[44]. Whilst it is correct that, on the facts of the case, the provision in the partnership agreement for a buy-out was one of the reasons for holding that the renewed contracts were partnership property, it was not the only reason. A further reason was that the successful management of the boxers gave rise to goodwill in that the boxer was more likely to re-sign with the same manager; per Morritt LJ at [43].

127. The separation of ongoing and one-off contracts is a distinction without a difference when considering the question of renewal. The questions which determine whether they are partnership property is the same. As to the problem posed by the protracted winding up, this

was not dealt with by the Court of Appeal. The question does not arise in this case as Mr McGill, after he got nowhere contacting Michael Wang to secure his claim to commission, wrote letters threatening to denounce various actors in the Vivo 3 transaction, on the Chinese side, to the Chinese authorities, threatening them with legal proceedings and generally traducing Mr Huang in their eyes. There was no Vivo 4 and following, Mr Huang would say, because of Mr McGill's actions.

128. The authorities to which I have been referred establish the following principles:

a. On dissolution of the partnership, the partnership contract is at an end save to the extent provided for in section 38 of the 1890 Act. *"In the absence of agreement to the contrary by all the surviving partners… nothing is to be done with regard to the business save with a view to winding it up and, for that purpose, realising the value of all the assets, by sale if necessary, and applying the assets in payment of the partnership's debts, and paying a surplus to the partners…"* see *Hopper* per Etherton LJ at [46].

b. The meaning and effect of S.42 is that where, following the dissolution the business of the former partnership, it is continued by one or more former partners, not for the purposes of winding up the partnership but for the personal benefit of

those continuing to run the business, all *"non-participant former partners are "outgoing partners;" and they… are entitled, in the absence of agreement to the contrary, to such share of the profits made since the dissolution as the court may find to be attributable to the use of their shares of the partnership assets or, at their option, to 5% per annum on the amount of their shares. If they have reached agreement as to some other entitlement… Then they will be entitled to what they have agreed." Hopper* per Etherton LJ at [49]

c. There is a potential overlap between the duty to account under section 29 of the 1890 Act and section 42; see *John Taylors (a firm)* per Arden LJ at [38].

d. A fiduciary relationship between partners arises from the duty of good faith which each partner owes to the other. Because the partnership is deemed to continue for the purposes of winding up, the duty continues until the affairs of the partnership are settled; see *Don King Promotions* per Morritt LJ at [40] approving the judgement of Sir John Pennycuick V.-C. in *Thompson's Trustees in Bankruptcy v Heaton [1974] 1 W.L.R. 605 at 613.*

e. A fiduciary is under an obligation "*to account a person to whom the obligation is owed for any benefit or gain (i) which has been*

obtained or received in circumstances where a conflict or significant possibility of conflict existed between his fiduciary duty and his personal interest in the pursuit of a possible receipt of such a benefit or gain or (ii) which was obtained or received by use or by reason of his fiduciary position or of opportunity a knowledge resulting from it." See *Don King Promotions* per Morritt LJ at 40, referring to, and subsequently applying the judgement of the High Court of Australia in *Chan v Zacharia (1984) 154 C.L.R. 178* per Deane J at 198-199.

f. The key questions to ask when considering whether a partner must account for his dealings between dissolution and winding up is whether they fall into either or both of Deane J's two categories; see *Don King Promotions* per Morritt LJ at [42]-[43].

g. A former partner's use of intangible property such as the goodwill or business opportunity of the partnership for his own benefit will, without more, fall into either both categories, see *Woodfull*, as will the use of partnership assets such as a licence granted during the continuance of the partnership to occupy a petrol service station and sell the licensors products, see *Pathirana*, or a licence to occupy premises as a livestock market granted after dissolution in succession to a provisional

licence granted during the continuance of the partnership, see *John Taylors (a firm)*. Post dissolution successive renewals of a business opportunity or obtained through the use of the partnership's goodwill may also fall into these categories; see *Woodfull* per Arden LJ at [28] and [42]. A relevant consideration in respect of such renewals is whether it can be inferred that the former partner obtained the renewal because he had successfully discharged the earlier contract; see *Woodfull* per Arden LJ at [28] - this may be an answer to Mr McCreath's successive renewal problem in that there may come a time when the inference that it was the successful discharge of a contract formed during the partnership which led to renewal can no longer be drawn.

h. For the purposes of accounting no distinction is made between the former partner and a corporate entity through which he operates; see *Woodfull* per Arden LJ at [27].

i. It is open to the partners to allow use of the goodwill after the dissolution by other partners for their own benefit. Often there will be some appropriate compensation for the excluded partners, see *John Taylor's (a firm)* per Peter Gibson LJ at [45]

129. The application of these principles to the facts of this case establishes that in the absence of agreement to the contrary, Mr Huang

would be under a duty to account to the partnership for the profits of Vivo 3. Whilst his personal connection with Xiaofei was very important in obtaining the business, it was secured on the back of the goodwill which had been generated by the previous contracts. It is evident from Tomorrow Sunshine's request for a one match test contract, and desire to meet the partners to see with whom they were dealing that they were not prepared to deal with just anybody and wanted proof that they could deliver on their promises. They set store by the successful provision of the first match and the successful conclusion of Vivo 2, hence the fact that a possible Vivo 3 was discussed at the meeting on 2nd November 2016. Part of the thrust of CIA's sales pitch was that it had credibility in English footballing circles because of Mr Bracewell and Mr McGill's background. It is not only the goodwill generated with Tomorrow Sunshine that is relevant. Goodwill was also generated with Lagardère. That company had to be prepared to hold open pitch side advertising opportunities for particular dates and clubs whilst Vivo 3 was being negotiated. I can infer that their willingness to accommodate those transacting Vivo 3 was influenced by CIA's successful discharge of the previous two contracts, in particular, there were no problems as regards payment.

130. Mr Goldberg is correct to the extent that he says that in order to be absolved from the duty to account all the partners must not only know

that Mr Huang was using partnership property for his own benefit but they must also consent, the authorities make that clear. The partners knew that Mr Huang was seeking to transact Vivo 3 for himself and Mr Wilkinson, for that was the agreement between them, as I have found. The agreement between Mr Wilkinson, for himself and Mr Huang, and Mr McGill, to which Mr Bracewell agreed he would be bound, was that Messrs Huang and Wilkinson were to take any profits arising from the proceeds of sale to Tomorrow Sunshine, and Mr McGill and Mr Bracewell would receive a share of the commission from Lagardère from Mr Wilkinson without having to expend any further effort or resources in relation to Vivo 3, as happened. The agreement described above is one of those arrangements contemplated by Peter Gibson LJ at paragraph 45 of *John Taylor's* (above) which free former partners, post dissolution but prior to winding up, to use the goodwill and contacts of the firm, and knowledge gained as partners, without being required to account to the firm. Accordingly, Mr Huang is not under a duty to account to the partnership for the profits, if any, from Vivo 3.

131. Decision in relation to the three issues tried;

    a. Mr Huang is liable to account to the partnership for the proceeds of Vivo 1 in the sum of £1,496.

    b. The partnership was dissolved by notice on 6th December 2016.

c. Mr Huang is not liable to account to the partnership for the profits arising from the proceeds of sale from Tomorrow Sunshine for Vivo 3 or the Lagadère commission.