Neutral Citation Number: [2022] EWHC 1880 (Ch)

Case No: CR-2020-003980

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT

In the matter of KTA Group Limited (company number 03669201)

And in the matter of the Companies Act 2006

Rolls Building
London
EC4A 1NL

Date: 19/07/2022

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGGS

- -

KHADIM HUSSAIN

Petitioner

and

(1) ALLAH HUSSAIN
(2) TANVIER HUSSAIN
(3) SHAHZAD AKHTAR
(4) KTA GROUP LIMITED

Respondents

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- -

Shantanu Majumdar QC and Robin Somerville (instructed by **Keidan Harrison LLP**) for the **Petitioner**

Jonathan McDonagh (instructed by **Wolf Law Solicitors Ltd**) for the **First to third Respondents**

Hearing dates: 13-17, 22 June 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE

Chief ICC Judge Briggs:

Introduction

1. Tolstoy writes: “Happy families are all alike; every unhappy family is unhappy in its own way.” This case concerns an unhappy extended family in which its members, once close, lost trust and confidence in each other. The Petitioner seeks by this action to force the First Respondent to sell his shares to him on the basis that there has been unfair and prejudicial conduct where the Respondents have, without his knowledge or permission, taken money from the family run company and excluded him from management. At the core of this case is the basis of the relationship between the Petitioner and the First and Second Respondents.

2. The family operates a business using an incorporated company known as KTA Group Limited (the “Company”) where the initials (KTA) referred to the first names of three members of the family, Khadim, Talib and Allah. Only Khadim and Allah survive. They are equal members of the Company. Talib was never made a shareholder although he undoubtedly made financial and other contributions toward the Company’s early success. Today their children are the driving force of the Company which produces substantial revenues.

3. This judgment provides reasons why the relief sought is to be denied. In summary, the underlying understanding between the Petitioner and First and Second Respondents, manifested by conduct, renders the strict enforcement of directors’ duties *inter se* and claimed by the Petitioner inequitable (see paragraph 10). There has been no exclusion from management deserving of a remedy.

The legal framework

4. The legal framework is not in dispute. As there is no dispute I do not intend to dwell long over the legal principles.

5. Section 994 of the Companies Act 2006 provides that, a member of a company may apply to the court for relief where the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of members generally or of some part of its members. To succeed, the Petitioner must establish that the conduct complained of is both prejudicial to his interests and unfair. The element of prejudice must be suffered in his capacity as member rather than any other capacity.

6. The factors I have mentioned above are summarised in Hollington at 7-01. The conduct must be inequitable: *O'Neill v Phillips* [1999] 1 W.L.R. 1092 at 1099A. Final relief is to remedy the consequence of the unfair conduct; there has to be a link between (1) the proved unfair conduct, (2) the prejudice and (3) the final relief to be granted. That relief must be referable to the prejudice proved, and proportionate.

7. The interests of a member are not limited to his strict legal rights under the constitution of the company or under collateral agreements. As Hoffmann J. said in *Re A Company (No. 00477 of 1986)* [1986] BCLC 376 at 378-379, "[t]he use of the word 'unfairly' in [section 994], like the use of the words 'just and equitable' in section 122(1)(g) of the [Insolvency Act 1986] enables the court to have regard to wider equitable considerations…".

8. Any element of unfairness is generally established by reference to a breach of the basis upon which the petitioner agreed that the affairs of the company would be conducted. That is often measured by the duties and obligations imposed by the Companies Act 2006, the company's constitution, and its articles of association which formed the basis of the contract between the members.

> "It follows that it will not ordinarily be unfair for the affairs of a company to be conducted in accordance with the provisions of its articles or any other relevant and legally enforceable agreement, unless it would be inequitable for those agreements

> to be enforced in the particular circumstances under consideration. Unfairness may, to use Lord Hoffmann's words, "consist in a breach of the rules or in using rules in a manner which equity would regard as contrary to good faith"…; the conduct need not therefore be unlawful, but it must be inequitable.": *Grace v. Biagioli* [2006] 2 BCLC 70 at [61].

9. "Fairness" is a flexible concept but is to be judged in a principled manner. It is generally unfair to breach an agreement or operate contrary to an understanding to the prejudice of a member.

10. In *O'Neill v Philips* Lord Hoffmann cited with approval the speech of Lord Wilberforce in to *Re Westbourne Galleries Ltd* [1973] AC 360 which has resonance in this case:

> "that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure…and that these enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."

11. In that case, Lord Hoffman gave an example of unfairness, using the rules in a manner which equity would regard as contrary to good faith.

12. For the misapplication of a company's assets for the benefit of the directors and their associates see *Re Elgindata (No.1)* [1991] BCLC 959.

13. Exclusion of those directors who have an expectation of management may form a ground for conduct that is prejudicial and unfair. In *Grace v Biagioli* (supra) the Court of Appeal explained:

> "It is not enough merely to show that the relationship between the parties has irretrievably broken down. There is no right of unilateral withdrawal for a shareholder when trust and confidence between shareholders no longer exist. It is, however, different if that breakdown in relations then causes the majority to exclude the petitioner from the management of the company or otherwise to cause him prejudice in his capacity as a shareholder"

14. Whilst "prejudice" may often be economic it is capable of being established otherwise than in a pure economic sense. In *Re Coroin Ltd (No. 2)* [2012] EWHC 2343 at 630 David Richards J. stated:

> "Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member. So, for example, removal from participation in the management of a company and the resulting loss of income or profits from the company in the form of remuneration will constitute prejudice in those cases where the members have rights recognised in equity is not at law, to participate in that way. Similarly, damage to the financial position of a member in relation to a debt due to him from the company can in the appropriate circumstances amount to prejudice. The prejudice must be to the petitioner in his capacity as a member, but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of the member as such, without any financial consequences, may amount to prejudice falling within the section."

15. There is no requirement that a petitioner must satisfy a 'clean hands' test however wrongdoing by a petitioner may be relevant in two ways: first, the petitioner's wrongdoing may make the prejudicial conduct of the respondent not unfair; secondly,

the petitioner's wrongdoing may justify the court in refusing to grant relief to the petitioner or may influence the choice of any relief which is granted: *Interactive Technologies v Ferster* [2016] EWHC 2896 at [318]

16. As regards relief the powers are contained in section 996(1) of the Companies Act 2006 to "make such order as it thinks fit for giving relief in respect of the matters complained of." The purpose when granting relief is to remedy the unfair prejudice, and therefore such a remedy should be proportionate to the prejudice suffered by the Petitioner and not seek to have punitive effect on any wrongdoing found: *Hawkes v Cuddy* [2008] BCC 390 at [246]; and will be fashioned having regard to "the reality and practicalities of the overall situation, past, present and future" to ensure that a remedy cures for the future any unfairly prejudicial conduct: *Grace v Biagioli* [2006] BCC 85 at [73].

17. This is a summary only. The court was blessed with a number of authorities which I have taken into account. In closing Khadim submitted that the case will turn on the facts that are rightly described as complex. In Khadim's written argument he says:

> "As so often in cases involving longstanding businesses, the pleadings and witness statements range widely and rather vaguely over decades. Such vagueness is an inevitable consequence of fading memories, incomplete records but these obstacles to forensic clarity are compounded by what might be called the "sub-continental" way of doing business:
>
> a. informality (including the absence of written agreements and other records even of substantial financial contributions);
>
> b. the influence of family hierarchies and relationships;
>
> c. a lack of (consistent) observance of legal forms and requirements."

18. This sentiment was accepted by all present at trial.

Direction of travel

19. First, I introduce the witnesses to the action; secondly, I shall consider the legal framework; thirdly I shall provide a sketch of the background and lastly, I shall consider the witness evidence before entering the discussion. It is important to note that, as with many trials where there is a large volume of documents, it is disproportionate and unnecessary to refer to every document included in the trial bundles. The background is necessary to inform how the allegations of unfair prejudice sit in the context of the particular case given the personal relationships, their understanding of their roles and how they changed over time, their obligations and responsibilities among themselves and their common understanding of how the Company was to operate. I have also found it necessary to say something about the pleadings since, evidentially, there are few secure footholds to decide issues of fact due to the lack of Company records. All decisions of fact have been determined having regard to the allegations and the discharge of the burden of proof to the requisite standard.

The main witnesses

20. Khadim called his two sons as witnesses, Mazamal (commonly known as "Louie") and Tazamal (commonly known as "Bobby") the Company's in-house book-keeper Kim Dorsett, and manager Nigel Findlow. Allah called his son Tanveir (commonly called "Tan") and the non-executive director Shahzad who is the second son of Talib. I have used the first names of the parties as that is how they were addressed at trial. No disrespect is intended.

Background

21. The evidence of Khadim is that Talib, as the eldest, received most if not all the income he generated in the early days, when employed and self-employed. Khadim would be given sufficient money to sustain himself and Talib would the send money he and Khadim had earned to Pakistan for the benefit of his family. Khadim explained that it was part of the Pakistani tradition that members of the family had complete trust and confidence in other members. There was no need to reduce agreements to writing or monitor one another due to the trust and confidence reposed. Allah explains in his evidence that nothing was reduced to writing. Money gained by the hard work and enterprise of one was for the benefit of the whole family. However, the collective

nature and mutual support given by the family was and is not absolute. Two examples from the evidence I heard assist the understanding. First, Khadim chose how much salary to take from the business without consultation with the other stake holders; secondly Mazamal and Tazamal treated the Company as a vehicle through which they could operate their own businesses, again without prior stakeholder/family approval. Tazamal, a high earning IT consultant working in Dubai paid his income to the Company and attached conditions as to its use. He at no stage categorised the income as a loan. No terms were attached to the payment-in of his income. According to Tazamal the money could be taken out at his will or used for Company purposes. This unusual treatment of money paid to the Company was not transparent and no accounting mechanism was in place to prevent abuse.

22. In addition, certain members of the family have property portfolios that generate income from lettings. The ability of those members of the family who worked for the Company to afford the property portfolios came from income generated by the Company. It is not easy to square declared incomes of family employees and their ability to raise sufficient money to obtain mortgages or pay for the property portfolios: certainly, in the early days. In any event, the income from the rentals is not pooled for the good of all family members. Tanvier is said to have approximately twelve income producing properties and Khadim many apartments.

23. There is no evidence to support the view that the Hussain family operated the Company by reference to the articles of association; there was no shareholder agreement. Equally, there is no evidence that the directors gave a moment's thought to their duties as directors. There was no discernible distinction between a shareholder, a director or employee save that a director or the Company secretary signed the accounts and had dealings with agencies such as the bank and franchises. Any governance rules were based on loose unspoken understanding that was never reduced to writing.

24. The governance of the Company and understanding between Khadim and Allah can be viewed through the lens of conduct. Talib took a salary from the business but was not an employee of the Company. It is common ground that he was paid for work he did not undertake. Talib was not the only family member who received an income from the Company without employment. This was acceptable to Allah and Khadim

(notwithstanding they would have both been in breach of duty by causing or allowing such activity). Income would often be calculated by reference to tax thresholds for family members. The position of Talib, outside the business yet receiving an income, opens a window into how members of the family viewed financial obligations among themselves leading, somewhat inevitably, to unpredictable and chaotic accounting outcomes. It is fair to say that transparency was not a priority.

25. The accounting chaos led to a serious HMRC investigation ending in 2011. It concluded with an agreement that significant payments were to be made to the Revenue for undeclared income. Less than a decade later Tanvier made a voluntary submission to HMRC in respect of undeclared income he received from approximately 2013/2014. Tanvier employed solicitors and an independent accountant to make an outline disclosure statement under HMRC's Contractual Disclosure Facility. The procedure is designed to provide immunity from prosecution if HMRC is satisfied that the outline statement is complete. A failure of disclosure in the outline statement will not attract immunity and the taxpayer may face criminal prosecution. Tanvier's evidence is that complete disclosure has been provided.

26. The Company itself was formed to incorporate the previous unincorporated business begun and developed by Khadim, Talib and Allah. Upon incorporation, in November 1998, the appointed directors of the Company were Khadim and Allah. Although Khadim portrays his relationship with his older brother as one of respect and deference it is more likely than not that Khadim assumed a dominant role. There was a falling-out between Khadim and Talib with the result that Talib played a lesser role in the business once the Company was incorporated: "a number of years earlier Talib had gone his separate way". Shahzad explained that his father had felt wronged by Khadim, but he did not know why or any reasons for their disagreement. He reasonably said that although his Father's feelings infected the household at the time, after 20 years away from the family, he was unable to judge whether his Father had in fact been wronged or just suffered from a sense of ill treatment.

27. It is common ground that the unincorporated business began in or around 1971, when Khadim and Allah used their entrepreneurial skill and hard work to establish the business. The evidence of Allah is that he initiated many of the innovations in the business in order to provide a living for the three of them. Allah says that "Khadim

did not have the appetite for the hard work." There is no need to resolve who was the driving force behind the business to determine the outcome of the present dispute, but this provides an example of how each recalls the past. I am satisfied that they worked together to produce what they thought was the best outcome for their families.

28. There is some common ground. Khadim began his working life at an early age, starting as a labourer for a furniture business in or around 1966. He swept floors and undertook general labour. Talib was also in the furniture business. Ambition drove Khadim to start evening classes to gain a City and Guilds qualification in welding and fabrication. Subsequently he worked for Hands Mackvey Furniture Limited that manufactured hospital furniture. The part- owner of that business moved to South Africa offering to sell his shares to Khadim. He chose to start his own business and "secured a contract for manufacturing hospital furniture". The repair of cars was attended to in the evenings and at weekends. Khadim employed another welder to assist during the day. Allah was a sawmill operator at the time Khadim was a furniture maker. According to Khadim, Allah would be paid to help in the evenings and weekends. Allah says he was never paid and effectively was an equal partner in the garage repair venture, working in the evenings and at weekends.

29. Upon discovering a garage for sale on a freehold site in High Wycombe Khadim tasked himself with raising sufficient finance for the purchase. Khadim says he persuaded, with the aid of a friend, the owner, Mr Worley, to take part-payment immediately and instalments for the remainder of the price over a ten-year period. I have mentioned that Allah has a different story to tell. He recalls that Talib provided the "majority" of the deposit.

30. Khadim, Talib and Allah retained the name of the garage, "Worleys". I accept that the instalments paid to the seller absorbed most of the profits.

31. The next chapter for Khadim and Allah was to expand the Worleys business. In 1979 they obtained planning permission to build a workshop and forecourt funded by the business' retained profits. The Worleys business was predominately run and operated by Khadim, but that does not mean that Allah and Talib were not involved. The forecourt and workshop facilitated a "full-service garage" offering MOTs. It had a canopied forecourt to make it attractive for drivers to fill their tanks. There was also a

"showroom for 6 cars." The business concentrated on Volvo and this led to the first franchise with others to follow.

32. Worleys secured a Citroen franchise in the mid-1980s. In the meantime, a licence for a garage at Southrold was taken by Khadim. The fact that the licence was in his name is not, in my judgment, indicative of ownership. The conduct of the parties makes it more likely than not that the name of on the licence was a matter of expediency only. The Southrold was intended and was a joint but the intention was that Allah and his wife Mumtaz would have full control of the day-to-day management and benefit from profits made. They worked long hours. Allah's unchallenged evidence is:

> "The business had to be built from zero, there was no business when we opened. We slowly built the workshop business and then slowly built the car sales business. I started with a £10,000 overdraft facility with HSBC, when we left the site in 1987 (Esso would not sell us the premises) I had accumulated £75,000 cash and used car stock."

33. A garage in Pewsham in Chippenham was purchased in 1987. Allah and Khadim have different memories as to how the Pewsham garage was found and how it was funded. As Pewsham has been run by Allah and his family from the time it was purchased it is more likely than not his memory is more reliable. His recall is more likely to be sharper since he moved his family from London to Pewsham at the time which would have been a deeply impressionable event. I recognise that neither the evidence given by Allah or Khadim may be complete. Allah says:

> "I spotted Pewsham for sale in one of the motor trade publications (1986/1987), advertised via Adler's. Myself and Khad viewed the site. On the day myself and Khad viewed, the owner was also present and we shook hands on the day and agreed to purchase Pewsham Garage. The purchase price for Pewsham Garage was approx. £320,000. The deposit of approximately £32,000 came from the profits of Southrold, the remainder was funded by Wagon Finance, and they took a first legal charge over Pewsham and second legal charge over

> Worleys. When we purchased Pewsham there was a sitting tenant operating the petrol forecourt. We paid him to surrender his lease. These funds also came from the profits of Southrold."

34. Khadim and Allah agree that it was always the intention that Allah would move to Pewsham to operate and manage the garage whilst Khadim would remain at Worleys. Allah and his family initially lived in a flat above the garage. The businesses have always had separate bank accounts giving complete freedom (there being no consultation between directors or shareholders) to pay staff, purchase stock and supplies, set wages for the directors and raise finance or repay finance. The businesses were not, however, totally independent. Khadim would supply cars at cost to Allah and each had visibility of the various bank accounts.

35. Allah's evidence is that Talib and Khadim were not working well together and suggested the purchase of another garage for Talib. Khadim's evidence is that he first discovered "Corner" garage in Burstow (near Gatwick Airport) and purchased it himself obtaining a loan of £500,000 secured against his own assets. Allah says he cannot remember Khadim providing any security but is able to give evidence that he and Mumtaz ran Corner garage for some years whilst also managing Pewsham. Allah and Khadim acted, loosely) together with the aim of establishing the new business. Pewsham paid for fuel supplies and absorbed the overdraft that was needed for Corner garage. By contrast, he says, Khadim worked at Corner garage for about a month and unilaterally transferred (without consultation) money from the bank account of Corner garage to the Worleys bank account which in turn increased the financial pressure on Pewsham. The unilateral nature of the transaction was not in the spirit of the understanding between the parties as it breached the independent yet linked nature and understanding of how the businesses would be governed. Since 2004 Corner garage has been let to a third party and produces a rental income of about £80,000 per annum. Khadim has accessed and used the income from time to time for his own purposes or that of Worleys.

36. As regards ownership, Khadim's evidence is that it was the intention of he and Allah that he would share the ownership of Worleys with Talib and that Corner garage and Pewsham would be split three ways. Allah's evidence is that if this is what Khadim

intended it was not an intention shared or agreed with him. At paragraph 41 of his statement Allah says:

> "I am aware that Khadim has alleged that he gifted parts of Worleys, Pewsham and Corner to me and Talib. There were no gifts. Originally there were 3 partners. The original plan was the businesses were intended for each family; set up as Khad's family-Worleys, my family-Pewhsam, and Talib's family - Corner."

37. He maintained this position when giving evidence in court. In my judgment Allah's recall is more reliable on this issue than that of Khadim, is more consistent with how he, Talib and Khadim worked together before incorporation of the Company, and his memory is consistent with their aspirations: to provide a business that would support each of their families. By contrast I find Khadim's assertion unreliable. It is premised on his initial ownership of the various garages. If he did not have ownership, he could not make the purported gifts. There is no evidence that Khadim was the sole owner of the businesses before making the purported gifts. Khadim's evidence is inconsistent with his treatment of Talib and his estate.

38. Nevertheless properties upon which the garages operate were purchased in the name of Khadim, Talib and Allah.

39. The Company had not long been incorporated when Allah and Khadim started to consider handing over the businesses to their sons. The retirement or semi-retirement of Allah (who still attends the garage most days of the week) led to Tanvier taking control of the Pewsham business. He was appointed director in 2006. The business has done well under his stewardship. Firstly, it was redeveloped. Secondly, he has attracted three franchises, Jeep, Suburu and Fiat. Lastly, the Pewsham garage has absorbed two further business operations namely, AM Autocare ("AM") situated in Calne in 2009 and, Sawmills Garage ("Sawmills") in Chippenham in 2018.

40. Khadim's eldest son, Mazamal, was appointed director in December 2005 but resigned in 2009.

41. The event that may have triggered this action was an inspection of the Company's bank account by Tazamal. It is pleaded:

> "Due to the Petitioner's concerns over the lack of transparency on the part of the First and Second Respondents concerning the affairs of the Company, Tazamal conducted an examination of the Company's bank statements in an attempt to identify payments which did not appear to be legitimate Company expenditure. That examination was eventually concluded in early May 2020."

42. It is not said how Tazamal obtained his authority to conduct such an examination: he is neither a director nor a shareholder of the Company. The pleaded case is in any event disingenuous. Khadim had wanted repayment of a loan he purported to make to the Company. Tanvier objected on the basis that the Company could not afford it and invited Khadim to speak with Allah (which he did not do) about the purported loan as Allah would know more about it. The purported loan is not recorded in any Company record. Tazamal, believing that Khadim was owed a significant sum, could not understand why Pewsham would not contribute to the repayment. Pewsham was either running at a loss and could not afford to pay it or was refusing to pay it. His investigation began in the hope that he would discover hidden money that could be made available to Khadim. Instead Tazamal discovered, simply by going through the accounts and records, that Tanvier had taken income more than his disclosed salary. The discovery, in my view, should have come as no surprise to Khadim, since taking more than the disclosed salary was agreed or at least there was an understanding that the practice was acceptable *inter se*. Numerous instances of the same conduct among the shareholders and directors over many years gives evidential weight to the understanding. For the same reason it should not have been a surprise to anyone else connected to the family business at the time. Tanvier realised that he needed to disclose the excess takings to the Revenue and do so properly and accurately. This led to the instruction of Mishcon de Reya to make a voluntary disclosure of income received and not declared.

43. Another stray issue led to this petition. Tazamal was suspicious that Tanvier was planning to seize control of the Company. His suspicion was founded, principally, on

how the board of directors was made up. Two directors came from Allah's family (Tanvier and Allah) and only one from Khadim's (Khadim himself). This produced an imbalance according to Tazamal. Any imbalance arose from the resignation of Mazamal a decade earlier (2009). It was not until 2019 that Khadim suggested that Tazamal should join the board. Tazamal was keen to be on the board. Friction between he and Tanvier prevented his appointment. Tanvier admitted that Tazamal was asking difficult questions but his main reason for not wanting to approve his appointment was that the board would be deadlocked, and the Company paralysed. Tanvier thought that board meetings would descend to \shouting matches. Tanvier wanted some help with corporate governance and having considered options for the appointment of an additional member to the board, Shahzad was appointed in July 2020 as a non-executive director. Tazamal and Khadim object to his appointment on the ground that Shahzad would hold a form of unspecified grudge against Khadim for how his father (Talib) was treated by Khadim.

The pleaded case

44. The pleaded case, in summary, relies on two grounds of prejudice. First it is said that "the management of the Company was…to be conducted…on the basis that [Khadim] would be treated as having an equal right to involvement in the management" of the Company. The meaning of "the management of the Company" is specifically pleaded to mean that Khadim was entitled to:

(1) access to the Company's accounts. It is not disputed that each site has a separate bank account with the Royal Bank of Scotland, that each director is able to view each bank account and obtain copies of cheques via Bankline;

(2) involvement in significant management decisions, if he wished;

(3) liaise with professional advisors on accounting and legal matters;

(4) an explanation of any significant payment made by the Company; and

(5) would not be prejudiced if he was the only member of his family on the board of directors following the resignation of Mazamal.

45. It is not pleaded that any of the above matters arose from an agreement between Khadim, Talib and Allah, nor is it pleaded that there was an understanding in relation to these matters. Indeed, in respect of (1) that would give rise to a curiosity since the Company's accounts were held at Worleys, and Khadim had available to him the services of the Company bookkeeper and manager. He occupies the position of director and Company secretary and signed-off accounts (the term "book of accounts" has been used without further expansion). In respect of (2) it does not form part of the pleaded case that Khadim has been excluded from management decisions period, but that he should be entitled to be involved in "significant" decisions. As regards (3) there is no evidence that a power to liaise has been withdrawn from Khadim. He has the same access to professional assistance as he had historically. The restriction relates to incurring costs on behalf of the Company without the board agreeing to the costs. This has arisen since the break down in trust and confidence to ensure transparency and fair dealing between the parties. In any event there is no complaint that the board of directors should approve expenditure in advance of it being incurred. On the issue of (4) the basis of the relationship did not require a detailed explanation for expenditure from each business, when that expenditure was taken from the respective bank accounts. As the understanding was that such expenditure as required could be taken from the respective bank accounts for the respective businesses without more. The allegation turns on the use of adjective "significant". As regards (5) a search of the evidence must be undertaken to understand the basis of the relationship, and the allegation of prejudice.

46. The second ground of prejudice relies on the failure to comply with the statutory duties of directors as provided by the Companies Act 2006. Although 7 matters are particularised, they fall into three categories. First, taking more from the Pewsham business than the declared salary (the "Excess Takings"); and failing to disclose to HMRC; disguising the Excess Takings in the records of the Company. Tazamal has produced schedules of the Excess Takings. These accompany the petition. Secondly, preventing Khadim from giving instructions to the Company bankers or accountants (to carry out an investigation into the Excess Takings) without first consulting and then obtaining the agreement of the board of directors. Lastly, approving the appointment of Shahzad as a non-executive director for an "improper purpose". It is not disputed that the Company never had a written contract of employment with any

director (other than Shahzad) and there was no written or orally agreed policy on expenses and payments.

47. It is pleaded that Shahzad has "agreed to side with the First and Second Respondents" and "given his longstanding bad relationship with [Khadim]" was not an "independent director". The "improper purpose" is defined in paragraph 43 of the petition: "to ensure there was an in-built majority of 3 to 1 on the board which they intended to (and intend to) use to protect themselves from the Petitioner's attempts to uncover the truest state of the Company's finances and the breaches of duty of [Tanvier and Allah]".

48. The petition provides particulars of how the board of directors has failed the Company. It is pleaded that since October 2020 the board has:

> "a) refused to appoint the Petitioner's son Tazamal Hussain as an alternative (sic) director.
>
> b) called board meetings at very short notice and/or without the time of the meetings being communicated until very short notice with the purpose or effect of making it difficult for the Petitioner to engage or prepare.
>
> c) attended board meetings in a manner of fait accompli and/or where the agenda items have already been decided on in advance by the First, Second and Third Respondents where there is little or no meaningful debate.
>
> d) conducted board meetings in such a way, that the Petitioner need not have attended and/or squeezed him out and/or left him with no effective voice and/or acted in a hostile and/or oppressive and/or undermining manner towards him.
>
> e) not permitted the review of board meeting minutes when issues, errors or omissions have been identified.
>
> f) proposed and/or adopted measures to one or more of their personal interests including, but not limited to creating a back

> dated lease over parking spaces allegedly owned by them and retrospectively applying payment for them, retrospectively applying a salary increase in favour of the second respondent
>
> g) failed to investigate the Petitioner's concerns over potential abuse of the furlough scheme."

49. Khadim asserts that whereas he has provided £1.07 million to the Company by way of directors' loans since incorporation, Allah and Tanvier have provided nothing. This is likely to relate back to the purported loan mentioned in the "Background". The assertion is extraordinary in the sense that the Company's accounts fail to disclose the directors' loan and a report by the auditors shows that no funds are due to Khadim. This is to be contrasted with the Company accounts showing a debt owed to Talib.

50. The defence takes some of the sting out of the petition by admitting to the Excess Takings and admitting that they constitute prejudicial conduct. The defence is summarised in paragraph 4:

> "the First and Second Respondent are engaged with HMRC under HMRC Code of Practice 9, just as previous disclosures to HMRC addressed withdrawals made by the Petitioner and his other son, Mazamal, among other people. HMRC is also investigating KTA itself under HMRC Code of Practice 8. Any necessary action will, of course, be taken. HMRC's investigations are expected to examine the Petitioner's conduct. It is the First and Second Respondent's case that the Petitioner's conduct over many years, his knowledge of, and acquiescence in, the essential matters now advanced in the Petition, and the timing of the Petition, will show that the Petition falls to be dismissed in its entirety. The criticisms made of the Third Respondent are unsubstantiated and wrong."

51. The defence states that the Company accounts are signed-off at Worleys each year and that Khadim knew about and acquiesced in the information contained in the accounts. Khadim knew about and acquiesced in any payments made by or for Tanvier's benefit, or other family members (including his own). The Company's bank

requires quarterly financial reports. As far as Pewsham is concerned these are prepared by Tanvier and sent to Worleys for transmission to the bank. Khadim will have known of the state of the Company's income and expenditure.

52. In any event, the Excess Takings, it is pleaded, ought to be viewed considering Khadim's own conduct. He allowed, and did not compensate the Company, losses caused by Mazamal. Such losses included:

i) Obtaining finance from Lombard for cars that did not exist. This had at least two consequences. First, a County Court Judgment in excess of £100,000 and secondly the placing of the Company into a specialist restructuring group at RBS;

ii) Between 2002-2009 Mazamal, an appointed director, operated an undisclosed bank account in the Company's name causing losses to the Company;

iii) Company funds were used to pay staff at a company owned and controlled by Mazamal and wrote-off personal expenses of approximately £102,000 which was not repaid;

iv) The Company paid approximately £75-£80,000 to Mazamal to fund his personal tax liability and used a Company credit card when he was not working for the Company;

v) A sum of £477,118 owed by Mazamal to the Company and guaranteed by Khadim was treated as a distribution to Khadim (subject to National Insurance) so that Khadim did not have to meet his obligation under the personal guarantee. In reply Khadim says that he had raised £500,000 to pay into Corner garage. He does not state who paid for the loan. In any event it is likely the two cancelled each other out; and

vi) It is contended that a deposit of £150,000 held by the Company was paid out to Mazamal in or around 2005

53. The defence to the petition claims that repeated breaches of the Company's overdraft facility led to disagreement and "bail outs" from Pewsham and Corner garage. The repeated overdraft breaches triggered the instruction to the Company's bank that two

directors were required to authorise transfers. It is said that this would prevent Khadim from taking money from the Pewsham bank account and paying it into the Worleys account. In addition to this tension, it is said that the present proceedings are a result of sour discussions about dividing the assets.

54. As regards the appointment of Shahzad it is said that Khadim is unfairly hostile toward him but in any event, he had proper notice of the meeting where his appointment was debated and made on 30 June; that Khadim declined to attend, when attempts were made to contact him.

55. The reply denies certain events, asserts that Khadim and Allah (as joint owners of the Company) were the only persons entitled to agree remuneration (although it is not asserted that this ever occurred in the history of the Company nor that there was a written or oral agreement in respect of any family members' remuneration), Khadim had no ability to effect payments on any account he controlled and it is asserted that "Shahzad is a puppet for Allah and Tanvier".

56. At the time the case came on for trial four major issues had been identified and agreed:

i) Did the Excess Takings amount to prejudice that can be categorised as unfair?

ii) Has Khadim been excluded from the management of the Company?

iii) If the Respondents have breached their duties as directors, are the breaches sufficient to give rise to unfair prejudicial conduct? and

iv) What relief, if any, should be granted?

57. I turn next to assess the witness evidence.

The witnesses

58. Whilst hearing the evidence it became apparent, with some witnesses more than others, but to some degree all witnesses, that false memory and cognitive bias was largely responsible for differing accounts. Parties on each side of the argument found something to confirm their beliefs and ignored contradictory evidence.

59. Khadim and Allah's evidence, unsurprisingly, was steeped in solipsism. Khadim viewed his role in the Company as the hard-working entrepreneur responsible for its success. Allah's evidence, a little more tempered, was that it was he and his family that were hard-working entrepreneurs. Khadim "did not have the appetite for hard work". Khadim's evidence was that it was he who purchased one of the businesses, Worleys garage, with his savings used as a deposit and a mortgage, whereas Allah explains that Talib provided "most of the deposit", which made up 40 percent of the purchase price. It was money raised from the sale of Southrold that paid the deposit for Pewsham, which was found and run by Allah. There are many other inconsistencies and a lack of documentary evidence.

Khadim

60. I have no doubt that Khadim was a hard-working individual with drive and determination. He did his best to give his evidence truthfully, but it was apparent that he did not know much about the affairs of the Company in its present form. As an example, he had the ability to check the accounts of the Company and the bank statements. He had the ability to oversee the payroll and VAT returns. His evidence is that he did not do so or always do so. This may explain why the Worleys overdraft was not kept in check, as claimed by Allah. In recent times Khadim says he asked for help from his son, Tazamal. He was vague at times and unable to respond with accuracy to some basic questions. His answers were often confused:

> "Question: you looked after the accounts of Worleys; is that correct?
>
> Answer: No
>
> Question: No, you didn't?
>
> Answer: I was responsible to get the-running the both businesses, i.e. accounts were done at Pewsham and accounts were done at Worleys. So there was no -in any time, it was agreed to have separate business, no."

61. He explained in cross examination that it was for each business to decide salaries but later contradicted himself asserting that the decision was his. There was no evidence to back up his latter assertion. In answer to a question about his involvement, he said from 2000 "that was era when Mazamal and Tan was running the business as KTA Group. I was out of it". Yet he still received drawings otherwise than in his capacity as a shareholder, remained a director and signed accounts after 2000. Credit should be given to him for accepting that he "made a mistake" for 10 years by receiving company funds he should not. That is he received excess takings and failed to declare those excess takings to the Revenue. The admission of his mistake when contrasted with his outrage in respect the current position of Tanvier was both paradoxical and striking. In contradiction to his own case, that the board is unfairly weighted, his evidence was that he told Tanvier to "run the business" and gave the "business to Tanvier and Louie". His gift of the business to Tanvier and Louie was not explored further. It suggests that he no longer had a role, which is in some respects accurate, but in other respects not entirely accurate, since, in my judgment, Khadim never quite let go of his "baby".

62. The contradictions and vagueness peppering Khadim's evidence may have been partly to do with his inability to understand fully the questions put and/or his failing hearing may have been a cause for misunderstanding. There was one constant factor. When he was unsure or did not want to answer a question he would repeat, like a mantra, "that was era when I wasn't involved." Another common feature of his evidence is that he signed documents without reading or having any regard to their importance, according to his evidence. Yet he had "visibility" of the bank accounts and saw the audited accounts. At one stage during cross examination he distanced himself of all knowledge (and in particular about takings):

> "I didn't know the account functionality, because I am not an accounting person so there I trusted. Whatever Tan said, I went along with it... I keep saying that, sir. I did not understood account flexibility of that thing. So then I -- I'm saying you don't get that word out of me such as: did I knew? No, I didn't knew. Did I understood the account flexibility? No, I didn't. So

> then I -- I signed the document with Tanvier saying "sign here", which I did."

63. His answer demonstrates that his cautious approach to not admit knowledge of the Excess Takings, lead to an extreme position, which I do not accept on the evidence, that he derogated all responsibility (in breach of duty), signed any document placed before him without reading or questioning, not knowing, not understanding the basics of accounting or business dealings and not questioning. This evidence runs counter to a self-proclaimed entrepreneurially spirited individual who claims to have started and run a successful business. At the same time his evidence is that he blessed the use of Company funds to support businesses owned and managed by Mazamal through separate companies. There is no doubt, in my judgment, that neither Allah nor Kahdim had any regard to corporate responsibility differentiating between the interests of the Company and their own personal interests. Khadim raised, on his own evidence £950,000 in or around 2005 retaining half for himself and paying half into a Company bank account for Mazamal to use in other companies. He considers this gave rise to a repayable loan when none of the money was used, nor was it intended for Company purposes. This conduct helps inform the common understanding between the directors and shareholders. The articles of association and directors' duties, at least the enforcement of directors' duties was not relevant to the governance of the Company. Directors' duties, if known, were not enforced, or mentioned. Finally, I remark that I regard Khadim as a very intelligent man, bestowed with great determination and a forceful nature. These strengths have at times clouded his judgment so that he has been unable to recognise his own wrongdoing, overstepped the mark, exceeded his authority, damaged relationships and acted with a sense of entitlement. His evidential inconsistencies and treatment of the Company lead me to conclude that his evidence should be treated with caution.

Tazamal

64. Tazamal gave evidence about his investigation into the withdrawals made by Tanvier. He gave evidence that his investigation was a response to his perception that "they are going to whitewash you". Referring here to Tanvier as "they" and Khadim as "you". Tazamal has a quick and lively mind that tended to see matters in such a way that it reinforced views he already held. As an example, he was taken to a report produced

by the auditors that focused on withdrawals. The report stated that Tanvier informed the auditors that Corner garage assisted Worleys in the clearance of a £1.4 million pound overdraft. Tazamal quickly discounted the truth of the statement: "excellent, Tanvier Hussain, the guy that's in the middle of everything." This was a reference to the instruction given by Tanvier. He was ready to discount it out of hand. Later he said that the UHY report had "no value at all" if the auditors relied on Tanvier's explanations. He went further saying that the statutory auditors lacked impartiality suggesting that Tanvier was conspiring with UHY: "especially when he's got such a good relationship with Paul Daly of UHY". The line of questioning proceeded:

> "Q. And, indeed, you don't like this report because it suggests that your side of the family has caused very substantial losses in the lifetime of the company?
>
> A. No, because -- because UHY have -- UHY have clearly taken an instruction from Tanvier and Shahzad, okay. That's one thing. But -- and they've said: Khad is owed nothing. But I've got a document from 2018 that Tan wrote that says: Khad is actually owed close to a mill if not on more -- sorry not "owed". He's put into the business close to a mill if not more. So why couldn't that message have impossible to UHY. Actually, Paul actually or actually Carl, whoever is doing that report, the accounts may not show it, but you know what Khad has put this money in over the years. Where did that suddenly disappear to?"

65. Paradoxically, Khadim wanted to commission a report where UHY was to investigate all drawings made from the Company. His choice of UHY suggests firstly, he trusted UHY to undertake the job diligently and secondly, the report would be impartial. UHY had for many years been the Company's auditors and any debt that Tazamal thought may be owed to Khadim, who would on occasion sign off the accounts as director or the Company secretary, was not shown in the Company accounts. The assertion made by Tazamal is that Khadim had "put into the business close to a mill". The assertion is not substantiated, and the evidence points in the opposite direction. This issue relates back to the £950,000 raised in or around 2005 I have mentioned

earlier. None of the £950,000 was for the Company although it passed through the account of Corner garage. Tazamal accepted (in the passage of cross-examination I have set out above) that Khadim's chosen "independent" investigator found that no money was owed to Khadim by the Company. The 2018 document he refers to was not put before the Court.

66. Tazamal was eager to give the evidence he wanted to give, and this led, on several occasions, to him not clearly understanding the question put to him or answering a different question than asked. Nevertheless, his evidence began with a surprising admission: he did not know if he was employed by the Company despite receiving an income. He had no contract of employment. It is only surprising, however, if the common understanding between Allah and Khadim is not factored in, and strict legal rights and obligations are observed. The history of dealings demonstrates, in my judgment, that members of the family (possibly from both sides) commonly received an income without working for the Company. Yet the strict legal rights of the Company in respect of the wrongful takings were not enforced.

67. Tazamal left England in 2013/2014 to work in the UAE. His evidence was that he was providing free IT advice to the Company. He was not on the payroll. He accepted that he was later put on the payroll and the Company paid PAYE and National Insurance for the purpose of repaying a "loan" he had made to the Company of £100,000. At least this is how it appeared from the accounts. Tazamal, Mazamal and Khadim did not question the payments to Tazamal. The payments were accepted in the guise of income although he had no employment contract and was not employed by the Company. This led to an odd situation where he was not being paid for work he undertook and was receiving remuneration for work he did not do. He was unable to understand the irony of his situation by accusing Tanvier of taking money for work he was doing; albeit Tanvier failed to declare the Excess Takings for tax purposes.

68. I have considered his evidence at length, and reached the conclusion that, save where supported by contemporaneous documentation or corroborated from an independent source, his evidence where contentious, both written and oral, should be treated with caution.

Mazamal

69. Mazamal was introduced to a company known as Proximus by his cousin Pervaiz. Proximus' technical arm provides IT services. Mazamal was able to earn well and quickly. He borrowed £150,000 from Pervaiz for the purpose of the business at Worleys, which was in need of a capital injection demanded by Citroen. It is his evidence that he repaid the loan to Pervaiz. Although Mazamal claims that the £150,000 was provided to the Company, his evidence about the timing of the loan and payment into the business is that the loan was made before incorporation. This is consistent with the Company accounts for the first year of trading, as those accounts do not include a reference to any loans made to the Company. Mazamal's written evidence is that he provided other money to the Company for the benefit of all three businesses over a period of time. No submissions were made in respect of the status of the money, if introduced. The best evidence, in my judgment, is the contemporaneous documents. Any sums introduced were not recorded in the accounts as loans. There are no loan documents. No minutes of meetings record these loans. It follows that the sums introduced, if they were introduced to the Company were not loans but gifts.

70. Mazamal was not appointed director. Although it can be inferred he had express authority to act on behalf of the Company, or acted as a *de facto* director, it provides another window into the Corporate governance of the Company. In 2004 he changed the Company's bank and added accounts for a "high end" car sales and restaurant business. He explains that he left Nigel Findlow in charge of Worleys and began a property development company where he was director and sole shareholder. If this evidence is accurate, and there is no reason to disbelieve it, the impact on corporate governance is as follows. Khadim was, according to his evidence, less interested in the Company's dealings and content to leave the corporate governance to Mazamal. Mazamal had decided not to engage with the corporate governance as he wanted to foster his own ambitions. Worleys was, without consultation with Allah, left with no director oversight. And this appeared to trouble no one. Mr Findlow says: "This meant I would get on and run the business…and he could get on and develop his own business...Mazamal went off to do his own thing." Three other special purpose companies followed. He accepts that the "operational expenses I was incurring, such as salaries and pre-site acquisition costs were paid by the Company." These were not recorded in the Company accounts: no related party transactions are recorded. His

evidence is that a ledger was kept. The ledgers include payments of a salary by the Company to a person employed by Mazamal in his businesses.

71. In cross-examination Mazamal accepted that there was no loan agreement between the Company and the SPVs set up for development. Nothing for the Company to enforce and no ability for the Company to prove in any subsequent liquidation. Money was taken from the Company (Worleys) for the purpose of the activities that had nothing to do with its business and were not, I find, in its best interests. Yet there was no enforcement of directors' duties.

72. It is pertinent to mention here the 2007 accounts include a sum of £182,906 as "other loans". That is the introduction of money that did not come from an overdraft facility or bank loan. That sum is acknowledged to have been a sum introduced by and owing to Talib. It is striking that other purported loans are not recorded.

73. It has been argued that Tanvier and Allah knew of the developments undertaken by Mazamal. That Allah was also aware that money came out of the Company to permit Mazamal to pursue the developments. There is no challenge to that evidence: it accords with the general understanding between the parties that I find. An understanding that directors' duties were not to be enforced between themselves or by the shareholders. Although Tanvier and Allah knew that money came out of the Company for the benefit of Mazamal they did not know or need to know the precise sums or the reason for each extraction/taking. This again is conduct that evinces the common understanding. The developments were not a success and Mazamal subsequently resigned.

74. Mazamal accepted that the Company's overdraft was supporting his businesses and the ledgers demonstrate money going to Mazamal from the Company until about 2016, including the payment of a lease for a car. Mazamal says that he paid for the lease, but no documentary evidence was produced to identify payments made back to the Company for the purpose of paying the lease. Mazamal was asked about 9 payments from a company account at Corner garage totalling £168,719 in cross-examination:

> "Q… the payments appear to be related to property transaction, notably Artisan Mews. That was another of your property interests, wasn't it?
>
> A. Yes, yes, it was, yeah.
>
> Q. And you don't appear to have known precisely what the payments were for, but you say they might have been to either your cousin or the wife of a friend and business associate. So, again, these were monies paid that had nothing to do with the business at Worleys or at Corner Garage or anywhere within the company?
>
> A. The Artisan properties were bought, I believe, in the names of my family members."

75. This evidence encapsulates Mazamal's evidence in general. This mild tempered and rational thinking individual provided honest answers in cross examination, and accepted money was taken from Worleys and Corner garage for (what would be in law) improper purposes. At times he could not recall detail, unsurprisingly. This made parts of his evidence unreliable but not dishonest. His evidence also included opinions about the character of other members of the family "Shazhad Akhtar always had a temper." His opinions may be accurate, but not particularly helpful in the context of this case.

Nigel Findlow

76. Mr Findlow is the general manager of the Company. He was called as a witness to support Khadim's petition. He gave written evidence that Tazamal was involved in the business at Pewsham "on and off for many years". The only evidence to support this is from Tazamal who says that he helped on the forecourt occasionally. If Mr Findlow intended to convey that Tazamal worked on the forecourt, that is one thing, but if he intended to mean that he was involved in the management of business at Pewsham, that evidence is unsupported and I would reject it. He gave evidence about how the losses caused by Mazamal's diversions of corporate monies were written-off in 2013, 2016 and 2018.

77. His written evidence is that he knew little of what was happening at Pewsham and has never had access to the Pewsham computer system or accounts. He only visited Pewsham on a few occasions over many years. That evidence is consistent with the evidence that the businesses were ran separately.

78. Mr Findlow was engaged in advising Khadim about reducing his tax liabilities, or those of the Company. He produced a spreadsheet deducting money from Khadim and "spreading" the deduction among other members of the family to the level of basic taxation. He was asked about his advice and the spreadsheet:

> "So you're telling Taz here that you have made these calculations in order to ensure that tax and National Insurance is not paid?
>
> A. By our company, but by the individual that's up to them to declare any income in the same way as we all have to declare any income, any cash payments etc that we earn through our -- through our jobs etc.
>
> Q. So it's simply a misrepresentation by the company that you understood would be made?
>
> A. I don't know. I can't recall."

79. The line of questioning hit the mark. Mr Findlow's evasive answer, I infer, was given to avoid a "yes" answer. The advice he was giving is advice that is consistent with the common understanding between the shareholders and directors *inter se*. Mr Findlow was, he said truthfully, instructed to make such payments (having given advice) to avoid taxation. His answer was that he relied on someone else (usually the auditors) to find out what had happened and declare takings to HMRC. There is no doubt that Mr Findlow, like the next witness, Kim Dorsett, employed by Worleys and having a long relationship with Khadim cannot be viewed as providing entirely objective and reliable evidence, however his evidence on this issue, which is a core issue in the petition, I accept as it is consistent with the conduct of Khadim and Allah extending back many years.

Kim Dorsett

80. Ms Dorsett started working as a bookkeeper for the Company in 1994. One of her responsibilities was to carry out the payroll. She received an e-mail from Tanvier every month with the data for the SAGE accounting system. Her evidence is that she "never met the people on the payroll from Pewsham and I wouldn't know whether they were genuine employees." She then directly contradicted her own evidence saying that she knew that "family members" on the payroll "didn't work at Pewsham". It was rather an astonishing statement as she had never been to Pewsham and her belief or basis upon which she gained her knowledge was not disclosed. The family members included Tanvier's daughter, Zara, and his mother. Allah's evidence is that Mumtaz has been "integral to our business." It would not be surprising that these family members worked in the family business or, as Tanvier explained, Zara worked in the business whilst in education. It maybe that they were paid in excess of the time they worked or for hours they did not do, but there is no evidence of such conduct. The allegation is simply that they did not work at all at Pewsham, an allegation I reject. It may have been that Miss Dorsett used her knowledge of the workings at Worleys as an anchor for her statement about the managmeent at Pewsham. She explains that Khadim was on the payroll for some time and received cash, Mazamal was on the payroll (and he was operating his own businesses) and "Taz is still paid a small amount of money." In any event in cross-examination her evidence was that it is "not for me to make accusations about what family members are on the payroll".

81. It was Ms Dorsett who compiled the schedules that are relied upon by Khadim to demonstrate the undeclared takings from Pewsham by Tan. Her evidence is that Tazamal asked her to "do a spreadsheet of how much Tan and other family members at Pewsham had earned ..." She compared those takings to the P45s. Overall Ms Dorsett's evidence does not greatly assist with the issues before the court. In respect of her evidence about who was on the payroll at Pewsham, as it is not based on her first-hand knowledge nor any documentary evidence I reject it as representing the truth.

Allah

82. Allah provides written evidence of the strong family ties between Khadim, Talib and himself. These first-generation immigrants undoubtedly worked hard and shared success and failure. They tended to use each other's assets to raise money. For example Khadim, says Allah, raised funds on a house owned by Talib in the early 1980s and they jointly owned a farm where Allah injected the majority of the cash and paid the mortgage. The farm was sold to help Khadim purchase a house to live. Allah recounts "the family was so close and trusting." None of this evidence was challenged. Revealingly Allah admits that they chose not to disclose the profits gained from the sale of the farmhouse because they could not afford to pay the tax; they were prepared to pay penalties and, on that basis, content to wait until "HMRC came knocking". In my judgment this approach has been adopted by in the garage partnership and later the Company. It forms part of the unspoken common understanding between the shareholders of the Company, Allah and Khadim and the next generation of directors.

83. Although the businesses were connected in that each business assisted the other (at times), the intention, according to Allah was that he would run and benefit from Pewsham and Khadim would run and benefit from Worleys. Worleys was an early success; Pewsham caught up and assisted Corner garage which was (initially at least) intended to provide an income for Talib. While Allah and Mumstaz worked to establish the business at Corner garage. As the family pulled together, Khadim would, at times, assist at Pewsham during this period. On one occasion, while helping at Pewsham, Khadim made a few alterations and changed some light fittings in the showroom. Khadim later withdrew £200,000 from Pewsham supposedly for the work without consulting Allah. Allah resisted when he found out about the withdrawal, but Khadim would not discuss the issue. It was not the last time that Khadim would take money without consultation. Money was taken without consultation from Corner garage and in 2013 a loan of £700,000 was obtained from RBS to repay the overdraft used by Mazamal and a further £700,000 was taken from Corner garage for the primary benefit of Worleys. This evidence was not challenged and provides further insight into the dealings between the parties. Consultation was rare before the Pewsham site was purchased and after. Allah's evidence is that he never had a conversation with Khadim regarding dividends drawings: he would not interfere with Khadim's withdrawals. This was on the basis that any dividends taken did not affect

Allah and Worleys, as a business, could support Khadim's takings; Khadim would not interfere with Allah's withdrawals from Pewsham. I accept this evidence as true, and it demonstrates the depth of the common understanding between the parties.

84. In cross-examination it became apparent that Allah was very hard of hearing. At times this interfered with the evidence he gave as he misheard. Despite the disability Allah was resolute. He accepted that the investigation initiated by Khadim without any consultation with him or Tanvier, where UHY were instructed to establish what money was taken from the Company and by whom, was halted. In rather tortured (due to Allah's hearing impairment) yet diligent cross-examination, Allah agreed the investigation had been halted as first, Khadim had not sought permission; secondly there was an ongoing investigation by HMRC into the Pewsham business; and lastly because UHY were the auditors and not wholly independent. If an investigation of any kind was required, considered Allah, it should be directed at Worleys (despite thinking that UHY would not be independent). At one point in the cross-examination, he appeared to agree that the wider form of investigation (the whole Company should be investigated) "was appropriate" but later said that it was not appropriate because Khadim had "not come to the board", meaning at the time he failed to consult Allah on something that would affect him. He was unapologetic:

> "A. he put it to the UHY first…If he would have came through the board, things would have been different.
>
> Q. Well, they might have been different.
>
> A. They might have been different…he should have come to the board first. I mean, it's the same case. I mean, we're not calling the -- he had the agenda, he come to the board and put the agenda there, we consider whatever necessary. He didn't put the agenda, nothing at all, went straight to the UHY, so we used the majority... He's the one started the wrong."

85. Cross-examination turned to the restriction on signing cheques by one director. It was accepted that (i) Khadim should have been consulted and (ii) there was no intention to prevent him from signing lower value cheques in respect of the Worleys business account without authorisation as long as the sums drawn remained within the

overdraft limit. He also accepted that the restriction had not been imposed prior to the break down in relations and could only be imposed now because of the majority on the board:

> "No, no. He can open whatever he want from Worleys account. We got £35,000 overdraft facility for each side. He could do whatever he want as long as he's stayed within the limit, like we got 35,000, he got 35,000."

86. My understanding of his evidence is that the bank instruction not to allow withdrawals unless two or more directors approve was not intended to affect the Worleys business. The allegation (paragraph 24 (1) (d) of the petition) is that the Company's bankers to "refuse to accept instructions from the Petitioner". There is no evidence that this is the case, but two signatures are required which may include Khadim. The allegation falls away. Allah also made the point that Khadim did not engage with the board or seek alternative arrangements.

87. There was another stand-off after Khadim heard that Tanvier had withdrawn money from Pewsham without declaring it as income. In fact the stand-off is more likely than not to have related to Khadim not obtaining a repayment of a loan he purportedly made to the Company. Adopting the same approach as I have with Mazamal (**paragraph 68 above**) I find that no loans were due to Khadim. There is no supporting documentation to support Khadim's contention. In any event Khadim unilaterally purported to suspend Tanvier as an employee. Allah responded that he was not suspended.

88. Allah was aware of the excessive drawings of Tanvier, that is drawings in excess of his nominal salary. He was aware that Tanvier, a director and employee of the Company could not withdraw dividends. He did not know but guessed he would be taking over twice of the nominal salary but was content as Pewsham was able to afford the extra payments. Accordingly, at least two directors and 50% of the shareholders knew and agreed or acquiesced in the extra drawings. Allah said he did not know that Tanvier had failed to declare the extra drawings to HMRC:

> "By looking at his business accounts, they always been healthy. That's one thing, a plus point for him, because he did work and

> earn. That's beside the point, we all liable for the HMRC… The instruction [to the bank] only came to effect when Pewsham Garage credit was covering Worleys overdraft, that's when he looked at it."

89. It is apparent that the "plus point" is intended to convey that Tanvier was entitled to take the drawings in excess of the nominal salary, in accordance with the common understanding, because (i) Pewsham was able to afford it the salary paid to Tanvier; (ii) Tanvier worked hard for the money he received and (iii) he "earned" the income. It is also apparent that the "besides the point" meant that he should have declared the Excess Takings to the Revenue. Tanvier and Allah agree with the "besides the point" issue. In my judgment this is accurate and truthful testimony. I accept Allah's evidence on these issues.

90. Allah, now 80 years of age and suffering from cancer, was an alert and honest witness. His evidence was not always completely accurate when tested against documentary evidence but overall, I assess it as reliable.

Tanvier

91. Tanvier was an impressive witness. Cross-examination centred on three issues. First, the decision not to proceed with Khadim's instruction to UHY to investigate all withdrawals from the Company. Secondly the HMRC investigation and lastly excluding (as it is called) Khadim from management. He accepted propositions put to him knowing, in my view, that they would not necessarily assist his case. He accepted his failure to declare tax to HMRC saying that it was wrong. He, in my judgment honestly gave the reason for taking more than he was strictly entitled, saying that he panicked at a time of family change. He thought he may not be able to rely on family financial support as easily as he had in the past since his parents had moved out of the family home. He accepted that Tazamal had asked difficult and hard questions of him and that the reason for not wanting him on the board of directors was because they would argue:

> "We're already at each other's throats and nothing would get done. Every board would be a slagging match, a shouting match, "My Dad's bigger than your Dad." And yeah, there's no

> doubt that Taz was asking uncomfortable questions, but Khad never gave a reason why he wants an alternate director."

92. He held firm on some issues: Shahzad had been appointed a non-executive director in good faith and for the purpose of assisting the board; and the HMRC investigation into his failure to declare income is, in his view, sufficient to satisfy the concerns that money taken from Pewsham had now been properly declared. He explained that he "made a full and comprehensive disclosure" and the HMRC investigation as "full warts-and-all on everything".

93. During cross-examination Tanvier recalled a meeting of directors in 2020. The meeting was held for the purpose of approving the accounts for the year ending 31 December 2019. His evidence was that Khadim had no questions and knew about his drawings. It is important evidence:

> "It was always -- well, this was being driven by Taz. Khad already had copies of all the undeclared income that was paid by cheques. He had the direct debit payments sitting on the ledger which he could see. When we had year end August '19 accounts done, we have an audit team at Worleys, we had an audit team at Pewsham, Khad was never stopped to come and speak to the guys carrying out the audit. What this was, was an agenda driven by Taz. Khad asked no questions at the audit at Worleys. He was never denied coming to Pewsham and looking at '19, I went through all my undeclared income with the auditors when they arrived in 2019 -- sorry, in 2020, because obviously they do the accounts almost a year after. When we had the closed meeting for year end '19, Khad was invited to the year end meeting. He attended. All the directors were there. Taz was given -- Khad was given the forum to ask any questions he wanted… Khad had the stuff, he was showing me the cheques and the schedules. Khad, Khad knew… Khad had the stuff, he was showing me the chequesand the schedules. Khad, Khad knew"

94. He explained that although the accounts were not always reflective of the business finances, as it was a family business:

> "there was a common understanding what behaviour was acceptable. Take, for example, the £150,000 deposit taken by his son and Khadim. Khadim knew that wasn't coming back to the company, he was aware of that, he still signed off the accounts. He still sat in the year end meetings, he never raised it."

95. He accepted that it was unlikely that Khadim knew about the "granular details" of takings from the Company. I infer from the combined evidence of Khadim and Tanvier that this is because Khadim could not (or would not) read the accounts and although he had "visibility should he choose to look" at the bank accounts or cheque images to provide "pretty much instant" detail, opted not to do so, preferring to leave detail to others. However, Khadim was interested in his family and the business. His knowledge and understanding of the business world around him came from observation, asking questions and been given information proffered by others. In this context Tanvier added: "We are a family business we know each other's inside leg measurements and we're Asian as well." This exchange followed:

> "Q. Well, he wouldn't have known, for example, whether a particular figure, which is described as a KTA expense, was actually the cost of a cruise that you and your family went on?
>
> A. I disagree. He knew how much I was being paid on the payroll. He knew my mortgage liability. He knew my kids went to private school. You don't need to be Alan Sugar to deduce what's going on. He stayed at my house, judge. He saw my kids go to school in the mornings. His wife stayed at my house."

96. The cross-examination on the issue stopped at that point. Tanvier's evidence on this issue, as with some others, I find compelling and truthful. It has the merit of consistency with the common understanding.

Shahzad

97. There were two connected themes of Shahzad cross-examination. First, his view of Khadim is coloured by how Khadim treated his father. Secondly, after his appointment as an additional director he acted to exclude Khadim and frustrate the appointment of Tazamal (the improper purpose allegation). He relied on others to direct him, such as his brother Pervaiz. E-mail exchanges between him, Pervaiz and Tanvier provided evidence of a closed board seeking to exclude Khadim.

98. In his written evidence he explained that his father had wanted an "active role in the business". Khadim had discouraged him. Khadim's treatment of his father was tantamount to "exclusion" but in a non-corporate context. His unchallenged evidence is that he has been separated from most of his family for about 20 years, living independently since the age of 16. In cross-examination he explained how living away from the family had given him independence of mind and assisted his ability to act objectively as a director. He presently works as a business consultant and is versed in how to run a board of directors, introducing meetings, agendas and minuting the outcomes.

99. In written closing submissions the Court was referred to a number of e-mail exchanges to demonstrate that Shahzad was partisan, or his actions were not transparent to the whole board. The e-mail exchanges do not reflect well on Tanvier or Shahzad. As an example, an e-mail written by Pervaiz to Tanvier and Tanvier stated:

> "We require a unilateral push to build a case against [Khadim] as incompetent and unfit to continue in his current capacity."

100. Tanvier and Shahzad agreed that the e-mail reflected badly on them but having accepted this they both gave evidence that no action was in fact taken. It was put to Shahzad that there were conversations "effectively plotting against Khadim behind his back." The e-mail was written after Tanvier had received the letter from Khadim purporting to suspend him from the board of directors (Khadim also instigated an investigation as to why Tanvier had not complied with his order). Attached to the e-mail was an authority and Pervaiz invited Shazad and Tanvier to read it. It concerned strengthening a board of directors to ensure that a managing director could not

unilaterally suspend another director. The context understood, Shahzad responded that there was no plot.

101. Shahzad, demonstrating independence of mind, gave evidence, which I accept, that if Pervaiz had e-mailed to suggest a particular course that was unfair to Khadim, he would not recommend actioning it. In a rather perverse switch, Shahzad was asked, as a son of Talib, whether he was fit to be appointed an independent member of the board. Shahzad responded that he knew his oldest brother had been approached by Tazamal to take the position. I accept his answer. It has never been explained how Pervaiz could be "independent" and Shahzad not when the allegation is that their common father held a grudge against Khadim. In any event the material suggestions made by Pervaiz in e-mails did not proceed. The allegation that Shahzad had been appointed for an improper purpose fails if the evidence relied upon is e-mails sent by Pervaiz.

102. The allegation does not solely rely on these emails. Shahzad was taken to several e-mail exchanges where Khadim and Allah were not copied into the e-mails. This meant there was no transparency about how board decisions were reached if they were reached. Shahzad accepted, as he had to, that he was taking the lead from Tanvier. That is understandable as Tanvier is the most active director and Khadim was choosing not to fully engage: "There was nothing forthcoming from Khadim with any interest in running the company". He explained that his influence was limited since, as a non-executive director, he was engaged to work only 1 day a week: "It's difficult. You can only put your best foot forward which is what I tried to do". From this evidence I reach the conclusion that there was no "side" taken by Shahzad but that he was obliged to take instructions and act at the Company's direction. Shahzad acted according to instructions given by the only human agent of the Company engaging with him, Tanvier.

103. My overall assessment of the evidence given by Shahzad is that it is reliable. Although reliable, due to the limited time he spends at the Company and the timing of the events in question his evidence is of limited assistance.

Discussion

<u>The basis of the relationship</u>

104. Khadim and Allah had no regard to Company law. No meetings were held. Dividends were taken from the Company by Khadim at will. Money was paid into and out of the Company's bank accounts without regard to the Company's separate personality. Although Khadim pleads that salary was to be agreed by he and Allah as shareholders/directors there is no record of an agreement made in advance of takings, no evidence of a discussion resulting in an oral agreement or any discussion about remuneration and emoluments. The bank accounts were treated as a mere extension of personal family wealth. The evidence shows that family members were paid by the Company even though they were not employees. Some takings were not disclosed to HMRC by either side of the family. There was no regard for the articles of association and no shareholder agreement had been thought of let alone agreed. Generally, no mechanisms had been, until about 2020, adopted to ensure that the directors would act in accordance with their company law duties. The background is peppered with instances of directors' breach of duties without penalty or enforcement *inter se*.

105. Yet in this proceeding, Khadim relies on a breach of duty to the Company by a director, Tanvier, as a springboard to petition for unfair prejudice.

106. A general theme throughout the petition and the proceedings is that Khadim was the driving force, main investor and dutiful family man whose generosity extended to making gifts to Allah. His evidence in cross-examination sums up his belief:

> "It was my business. I was the one put the money in. I was the one running all of the company until early 2000. It was my baby. It was my care. So if I'd known -- how could you say it wouldn't care about the business, business was half mine now, but it was then third and third and third. But after the company formed, it was 50/50... It's my businesses. You know, it was my baby."

107. I find that over the course of the years he has come to exaggerate his position in the business and either forgotten, misunderstood or mis-remembered the importance of Talib and Allah's role. Allah's evidence is that "most of the deposit" for Worleys was provided by Talib and that he and Khadim considered themselves equals in the business from the start. The Southrold business operated under Allah, Khadim and

Talib's name, but it was Allah who traded at the station, not Khadim. It was his good governance that built up a car sales business and accumulated £75,000 of cash and used car stock before the licence, in the name of Khadim, was withdrawn. And it was Allah who found Pewsham and paid the deposit with a mortgage secured against that garage and Worleys. The fact that security was given by one member of the family for the benefit of another was not uncommon. The mortgage was paid by income generated by Allah from the Pewsham garage. I do not accept Khadim had made any gifts. Most matters were left unsaid. The unsaid permits a reasonable observer to conclude that the enterprise was joint and their skills complimentary.

108. The self-elevated importance Khadim credits to his role in the business, is likely to be one of the seeds of his discontent. His evidence suggests his entitlement (passed to his family) to run the Company and use its assets as he pleased. I have little doubt that he believes that the business was his, that he had a right to decide what is to be done with the business, who could be employed and when money could or could not be taken out of the Company. He was mistaken. Given that nothing was recorded in writing, and no evidence of any oral agreement advanced, the business was owned and managed on an unspoken understanding. Such an understanding is liable to misunderstanding. The family ties, financial investments (earned from the businesses) and commitment of the individuals point toward a finding of a shared ownership from early days. The shared ownership and management manifested itself in the structure of the Company on incorporation.

109. On incorporation nothing changed in terms of how the business was run. The understanding was that Khadim would run and earn an income from Worleys and Allah and his family would run and earn an income from Pewsham. There was a common element to the businesses in that the businesses were in a stronger position to raise money and obtain franchises when viewed as a whole. The longer the business relationship the more divorced the businesses despite the outward facing appearance. That is not to say that owing to the roots and strong family ties one part of the family would not assist and help the other when required. At times there was a failure to recognise their own unspoken understanding. This would often result in one side of the family tolerating an infringement of the understanding. An example of an infringement and tolerance occurred when Khadim took £200,000 from the Pewsham

business following some minor works at the garage at a time when Allah and Mumtaz were living at Corner garage where they worked and managed Corner garage as well as keeping an eye on Pewsham.

110. Corner garage was an exception in that it provided an income and was treated, at some point, as a mere investment.

111. I accept the evidence given by Tanvier in the heat of cross-examination:

> "Obviously, the money we're talking about is often money that's come in via family. And the general rule is, is my side of the family have used Pewsham bank account, Khadim's side of the family have used Worleys' bank account. The money that each member of the family has gone in into the individual bank accounts. If Khadim's bank account had 1.2 million in and Khadim said to my father, "Can I take 800,000 out?" My father would have said, "Yes, go ahead. Take it out." So generally, my understanding is: these are your pots of money, get on with it."

112. Tanvier's example of £800,000 was hypothetical. There was never such a conversation whereby Khadim would ask Allah if he could take money from the Worleys bank account. Tanvier gave another example of how the family would view the withdrawal of money from the Company that had been borrowed by an individual for the benefit of the Company and secured against his home:

> "Like, for example, if I put -- borrowed money and put 180,000 in my house, mortgaged my house and put it into the business, and a year later, I rang Khadim up and said, "Dear uncle, can I take my 180,000 out of Worleys' bank account?" The reply would be short and shrift. But provided my bank -- if I had it in my bank account, the Pewsham, and took it out, there wouldn't be an issue...it's just the way the family operated"

113. The evidence given by Tanvier is supported by the evidence given by a witness called for Khadim: Kim Dorsett. She explains: "I did not have any dealings with anything

about Pewsham." Similarly, Nigel Findlow, based at Worleys, knew "very little" about the Pewsham business.

114. For many years the unspoken understanding and infringements did not lead to disagreement. The lack of disagreement meant that the business continued according to its unwritten understanding and in a haphazard way. As an example, no salaries were discussed between the directors on each side of the family; the documentary evidence is that remuneration was influenced by tax thresholds and takings by how much was in the bank account. There was no discussion about dividends, and no consideration was given to Company law restrictions. If Khadim's evidence is to be believed, he gave no thought to company accounts of any type; if money was in the bank account it was treated as available. In this haphazard way Khadim took monthly dividends from the Worleys bank account.

115. In contrast to a good majority of family run companies, I find that save for the articles of association, which were ignored by the owner-managers, the affairs of the Company were not conducted by closely regulated rules to which the shareholders agreed. The understanding between Khadim and Allah arose from their conduct, which trickled down to other members of the family who became employees and directors. The understanding may be summarised as follows:

i) Khadim would run and manage Worleys garage. He retained his interest in Worleys at all times. Any suggestion that he was disinterested is against the tide of evidence; "its my baby"; "I did not want to let my baby go".

ii) Management included Khadim's unfettered ability to hire members of staff and determine their pay without reference to Allah or any other director.

iii) Khadim was paid a salary which was not intended to be a market rate for his work. There is no evidence that market rates were contemplated or researched. Salaries appear to have been benchmarked, in large part, against taxation levels.

iv) Khadim drew dividends not by reference to capital requirements governed by company law but by reference to the bank balance or overdraft facility. Khadim often withdrew dividends at monthly intervals. It is more likely than

not, due to the frequency of dividend payments, that the withdrawals were in breach the laws of capital maintenance.

v) Khadim drew further sums from the Company when he required them. He considered that these further sums were either (i) owed to him for money he had lent the Company at some point in the past; or (ii) he had an entitlement as one of the owners of the business. Taking money in excess of declared income was part of the common understanding: see paragraph 121 below.

vi) After Allah's attempts at making Corner garage profitable it was let with its income available to the Company for any legitimate purpose;

vii) The land and buildings of Corner garage was at the free disposal of the Company to charge as security for loans.

viii) Khadim also took an interest in the business located at Pewsham and its profitability.

ix) He had visibility and understood the Company's overall financial position. He would read and understand the Company's audited accounts (sometimes signing them off), the monthly reports processed at Worleys and the various bank accounts. His passion for the Company, so clearly articulated in cross-examination, leads me to conclude that he did understand figures and did keep a watch on the accounts after 2000.

x) Allah, Khadim and Tanvier, but particularly Tanvier, would have regular conversations with Khadim in which they discussed the finances of Pewsham, Corner garage and Worleys. Conversations were causal. They included withdrawals from the business for personal use and Khadim seeking returns of capital he says he lent to the Company.

xi) Khadim knew of the financial dealings at Pewsham and Corner garage, Allah and Tanvier knew of the financial dealings at Corner garage and Worleys. This did not stretch to a knowledge of precise sums taken by the directors or family members nor the reason for all takings. As an example, Tanvier would not inform and Khadim would not ask, if money had been taken or how much

money was taken to purchase food, a holiday or a tank of petrol. Khadim knew that Tanvier chose to school his children privately and the bank statements clearly showed money leaving the business to pay the school fees. It was accepted that such takings as required were available to Tanvier, Allah and Khadim for the purpose of supporting their families in the best way they saw fit.

xii) If sums were found to be due to HMRC (such as on the sale of the farm (paragraph 82)) the understanding between Allah and Khadim was that HMRC should be paid including penalties. In respect of the farm there was a deliberate policy not to declare the profits at the time of sale but to pay later and suffer penalties. This common understanding persisted in respect of takings in excess of those declared from the time of incorporation and continued after the conclusion of the HMRC report in 2011. That does not mean that the accepted treatment of takings (accepted as a common understanding) between the shareholders and directors persisted in every year or by every director or family member.

xiii) The common understanding meant that Khadim knew about and acquiesced to any payments made by or for Tanveir's benefit, or other family members and did not rely on strict legal rights.

xiv) It was as a result of the common understanding that Allah wrote to Khadim on 4 June 2020 to express his view that it was a "great shame" that Khadim had resorted to unilateral steps, without discussing matters first.

Breaches of directors' duties

116. It is acknowledged by Allah and Tanvier that shareholders in general permit the directors to apply the assets of a company in accordance with its constitution on terms that the directors perform their duties. If there is a breach of duty the director may be liable to the Company.

117. The members of the Company did not alter when, in or around 2000, Allah and Khadim spent less time in the management of the Company. Their chosen successors not only assumed the role of director but accepted and assumed the unspecified and

unspoken understanding of how the Company would be managed and run including how the directors were to perform their duties. An example of the assumed role is evident from the manner in which the directors and shareholders acknowledged and resolved breaches of directors' duties discovered in the first decade of 2000.

118. HMRC began an inquiry into the finances of the Company in or around 2003/2004. The inquiry ended in December 2011 with a letter sent to the Company attaching a copy of a final settlement computation of liabilities.

119. The correspondence from HMRC does not reflect well on any member or director of the Company. I shall not repeat all the correspondence but intend to give some flavour of the discoveries made by HMRC.

120. False invoices for consultancy fees were raised by Mazamal and funds were subsequently paid into Khadim's account in the Channel Islands. These funds were then used by Tanvier to pay a mortgage on a flat. Tanvier reported to HMRC that the practice continued for several years (2003-2006). HMRC found that a "substantial number of defalcations from the company by the members of the Hussain family, as well as transactions that were omitted from the books and records in their entirety, meant that the books and records and the accounts drawn up from them were fundamentally flawed."

121. HMRC recorded that money had been paid into Khadim's private account at HSBC. There was no evidence to support Khadim's contention that some of the Company money paid to him was money he had lent to the Company (that is no evidence that the money he received was for repayment of a loan), and little evidence to support his alternative explanation that money was paid into his personal account from rental incomes. HMRC, doing its best on the documents and evidence, found that at least some of the money had been extracted by Khadim from the Company and that a further sum of nearly £400,000 had been paid from Company funds into his personal account in the years 1999 to 2009 for no consideration. These sums, similar to Tanvier's Excess Takings, represented undeclared income. Nowhere in Khadim's evidence does he report board approval from Allah, Mazamal and Tanvier. Similarly, Mazamal and Tanvier received undeclared income and/or receipts from the Company.

Tanvier admitted that food purchases by his wife on credit or debit card had been paid for by the Company.

122. The investigation, responses and compromise reached demonstrates (i) that the Company was run without regard to the seven statutory duties imposed on directors by the Company Act 2006; (ii) Khadim and Allah's family sought to benefit from extractions from the Company, without declaring the extractions to HRMC; (iii) there was a failure to keep or retain adequate or any books and records and (iv) there was no record of any agreement to permit the extractions by the directors or shareholders. The investigation and outcome provides evidence that the directors and shareholders knew and accepted undeclared extractions from the Company.

123. The Code of Practice 9 disclosure records that Tanvier did not continue the practice of "extracting cash and banking unrecorded cheques into private accounts" following the earlier settlement in 2011. The untaxed personal expenditure charged to the Company for Tanvier's benefit has been declared at £770,515.10 for the period 2013-2020. He also caused untaxed bonuses to be paid to staff in the same period. To assist with the disclosure RA Accountants (appointed as independent accountants by Mishcon de Reya (MdR)) have reviewed:

i) The private expenditure of Tanvier;

ii) The business bank account and supplier invoices for the years 2013-2020;

iii) The bank records to identify bonuses paid;

iv) The directors' loan accounts and movement ledgers;

v) The company credit card to identify private expenditure.

124. The report is dated August 2021 and was produced for the benefit of HMRC and provided to Khadim. It explains that Tanvier had used cheques and the Company credit card to meet personal expenditure. The expenditure included payments for private school fees, legal fees, holidays, and works to properties owned by Tanvier.

125. The report records a conversation with HMRC and Tanvier for the purpose of the outline disclosure. He informed them of two matters relevant to this case. First, the

"practice was known to other members of the family and sanctioned by them." Secondly, the Excess Takings not declared to HMRC only related to expenditure and not the business of the Company. He was "confident" that this was correct in respect of Pewsham "but as sites were run independently, he was unable to verify this for High Wycombe."

126. The schedule produced by Tazamal detailing "Family", "Building", "Fuel", "Insurance", "Staff" and "Credit Card" payments were, according to Tanvier, provided to HMRC. The schedules were rarely referred to at trial and when they were, only in respect of a few items. One such items was the payment of wages to Zara Hussain, the daughter of Tanvier. Tanvier convincingly explained that she worked at the Pewsham site. Another item was the payment of school fees, accepted by Tanvier.

127. The voluntary disclosure enables a disclosing party to provide "Other information you think is relevant". Allah stated that Khadim was, at that time, pursuing a claim against him and others in his family in respect of the level of personal expenditure paid for by the Company. It states: "His contentions is that this expenditure was neither sanctioned by nor known by him. I dispute this." Tanvier provided a similar statement adding that Khadim may provide more information to HMRC and cautioned that such information may not be correct. He was referring to the employment of family members in the business.

Knowledge of Excess Takings

128. In his written evidence Tanvier recalls (he says he recalls extremely clearly):

> "Before I completed the purchase of my private residence my father showed Khadim and his wife around the property. I had discussed the purchase price with Khadim, he was aware it was mortgaged. Initially my parents moved in with me, Khadim and his family would visit and stay. Khadim was aware that all my children attended private school. All the payroll was done at [Worleys and] all my family's payslips were kept in a folder [at Worleys], in full view of Khadim. In hindsight my behaviour was foolish and naive, but I certainly did not hide anything from Khadim or my father. Sometime in 2015/2016 I recall a

> very specific conversation I had with Khadim on the fore court at Pewsham Garage. At the time Worleys and Pewsham would swap car stocks. On this particular day Khadim and a driver had come to drop of two cars at Pewsham. I remember this because on this particular day the driver who had come with Khadim was the tenant who lived at Khadim's private house in the annexe. Me and Khadim were chatting on the forecourt at Pewsham and the conversation turned to this:
>
> Khadim; You and your father should be taking more out of the business.
>
> Tan; No, we are taking a good amount probably £150 000 for all the family.
>
> Khadim, I didn't know that, I didn't know that. That's good you should be. I am pleased you are yeah."

129. He says he remembers the words of the conversation "fairly well". He was tested on the figure, giving later evidence that the figure was about £170,000- £180,000 and accepted that he could not recall the figure precisely. It was then "suggested" to him that the conversation never took place. Tanvier was adamant:

> "Yes, it did, because I remember it clearly, because the driver was Khad's tenant who lived at Templar Mead Cottage…I can only remember him coming by once…Khadim knew everything."

130. In cross-examination Tanvier explained that it was Khadim who initiated the conversation because "he knew my father worked for many years for nothing as well, and he knew that me and my father were running Pewsham." He was tested further and emphasised that he "did not make this conversation up".

131. Justifying his 'higher' salary, now in the process of being regularised, he compared the "tired old filling station" he took control of at Pewhsam to the current station that has "changed beyond recognition" now having "a Fiat main dealer, Jeep main dealer,

Ford main dealer" and acquiring two other businesses where the funding is "secured in part [against] my father's house". It was put to Tanvier that only the members represented the correct company organ to approve salary. Tanvier disagreed saying it was for him to decide the salaries of those who worked at Pewsham. This is another example of the common understanding. The independence of each business appeared, in part at least, to be borne out by the deficiency of minutes and demonstrated by Khadim taking monthly dividends from Worleys bank account whereas Allah either took no dividends or annual dividends from Pewsham. I accept Allah's succinct statement given in evidence: "Nobody interfered at all as long as we didn't ask each other, "pay my wages, I haven't got the money." In any event the point was rightly taken no further in cross-examination nor in closing, since neither Khadim nor Allah would consult the other about detailed takings.

132. Khadim stated that he did not know about the Excess Takings; he knew how much Tanvier's house costs, although not precisely; did not know if he had employment outside of Pewsham garage as he considered that "none of my business"; "I bluntly say I do not remember any of that conversation on that forecourt" and "he has taken money out without my knowledge."

133. I do not accept the protests of Khadim. First, his denials of knowledge are inconsistent with the common understanding I have found to exist and persist and are inconsistent with Khadim's strong attachment to the Company in which he knew nearly every internal dealing. That does not mean he knew of every detail. In common with Allah he knew that family members would withdraw money in excess of posted salary, as indeed he did. I accept Allah's evidence on the subject. He himself knew Tanvier was taking money, "but how much, I didn't know. I knew his kids was at school, the money was going out in a private school. Not only me, I think both sides of the family knew that."

134. Secondly, Khadim may not have remembered the detail of the conversation on the forecourt but did recall the conversation. I prefer the evidence of Tanvier that the content of the conversation included the matters, however imperfectly remembered the words used, that he says it included. Lastly, the Excess Takings were permitted in accordance with the common understanding. As a result, Khadim, at the very least, knew about and acquiesced to any payments made by or for Tanveir's benefit.

135. I mention briefly the letter dated 28 May 2020 written by Khadim suspending Tanvier as an employee pending disciplinary proceedings. The letter was self-serving, motivated, I find, by the family dispute, and in breach of the common understanding. The evidence is that it was written by Tazamal. In fact, at the time of the letter, Allah and Khadim were in discussions to resolve their issues one of which was to divide the businesses so that Khadim would retain Worleys, and Allah, Pewsham. The letter led to strong feelings and, according to Tanvier, drained the trust that existed. The letter is another example of Khadim doing one thing and saying another. He failed to do one of the very things he complains about in these proceedings: consult the other directors prior to sending the letter. I observe that the Company had no policy regarding disciplining family members who were directors of the Company in any event.

136. Khadim gave unreliable and disingenuous evidence in response to the question put to him about Tanvier having a second job to pay for school fees and his house. He had knowledge of the cost of Tanvier's house: "I knew it costed whatever it was, you know". An intelligent motivated and highly interested man of business within the framework of a close family is more likely than not to have known that Tanvier had no other job.

137. The content of fairness is coloured by the context of the corporate vehicle. The following features colour fairness in this case: (i) the close family ties; (ii) the lack of regard to the legislative corporate framework throughout the Company's trading life; (iii) the reason for incorporation of the partnership; (iv) the agreement between Khadim and Allah that tax would not be paid until "HMRC came knocking" (see para 82 above) that continued as an understanding after incorporation (demonstrated by the HMRC 2011 settlement); (v) the common accepted treatment of the Company's assets (accepting as I do the evidence of Allah that there were "no discussions ever on withdrawals. We never took dividends, because each family would just draw from their own businesses" and later dividends were taken without consultation with one another: he "just withdrew dividends"); (vi) the historical legal failures having some commonality with the failures complained of in this case: Excess Takings; (vii) the acceptance of shareholder and director failures in the past; (viii) the division of businesses within the Company framework; (ix) knowledge of the business by each of the directors without the need to know of every detail; (x) the common understanding

that the remuneration was not limited to the salary declared (as such) and (xi) the directors' and shareholders knowledge, as I have found, that Tanvier was using drawings over and above his salary to support his family does not render the admitted prejudice unfair. I have purposefully restricted (xi) to address Tanvier. That is because these payments are under attack. The withdrawals in excess of declared salary reflected an understanding as to the rights of the family members to draw on the profits generated by the businesses held within the Company.

138. In summary the Excess Takings are prejudicial (as admitted). They are not unfair.

Exclusion from Management

139. The agreed list of issues includes the management roles of Khadim, Allah and Tanvier. Those roles, not reduced to writing, are not capable of definition by the Court. As is apparent from the background in this judgment and the "Discussion" above, the roles changed from time to time and in the latter years Allah stepped back from front line management as did Khadim. They both remain engaged and interested in the Company's fortunes. Khadim gave evidence that once Mazamal resigned as a director Khadim re-engaged in the corporate governance of the Company. Tazamal was never a director or shareholder in the Company. He had been employed and received an income even when he was not employed by the Company. It was in or about 2018 or 2019 that Tazamal says he suggested to Khadim that that the businesses should be divided and the families go their separate ways: "it was only a high-level plan". Tazamal's role, assumed by himself, (it is not pleaded that he acted as agent of a shareholder or was delegated responsibility from the board) became that of interrogator of the Company's finances and without consultation presented the pleaded schedules of extractions to Tanvier and Allah. Tazamal appears to have participated in the management of the Company insofar as it related to Worleys. There are e-mails in 2019 that provide evidence that Tazamal was consulted on the Suzuki franchise. Nigel Findlow's evidence supports this finding. Based in Qatar, Tazamal has some influence, including authoring many e-mail sent by Khadim.

140. There are two main pleaded elements of exclusion. The first concerns the make-up of the board of directors and the second, access to information and the Company finances. In respect of the first of these it is pleaded as a matter of fact that: (i) the

only two directors from incorporation to 2005 were Khadim and Allah. A period of approximately 7 years. Mazamal and Tanvier were appointed following the 7-year period. There is no minute recording the reasons for the appointment of additional directors to the board. There is evidence of an intention to plan for succession. In the context of the basis of relationship (summarised in paragraph 137 above) the appointments were intended to give control of the business at Worleys to Mazamal, and the business of Pewsham to Tanvier. As much as succession planning appears to have been in the forefront their minds, the decision to give control of Pewsham and Worleys to their chosen successor appears unconnected in time. Khadim's evidence is that Allah had decided to "hand over" Pewsham a few years earlier than Khadim, and Khadim's decision came after a visit to Pakistan in 2004. I accept Allah's straight forward evidence: "When Tan and Maz became directors this really was the business being handed over.. Maz earns a living from Worleys and Tan earns a living from Pewsham". That statement is subject to my findings that both Allah and Khadim remained interested and engaged in the business since and have knowledge of the dealings I have found.

141. The lack of minutes about the appointment of the additional directors, the failure to record the reasons for the resignation of Mazamal (the evidence being that it was due to his failures as a director), and the failure of any evidence to support an agreement or understanding limits the basis of a finding as to the existence of an understanding or agreement that the board would always include equal numbers from each family to the recent past (that is after the early structure changed to introduce additional directors). For the years 2009 to July 2020 the board had unequal representation. This suggests that there was no such understanding or agreement in the post hand-over or after the 2009 period. In the post 2009 period Khadim did not seek the appointment of any other member of his family. The reason why the board was not represented equally by each family in the 11-year period was due to the voluntary resignation of Mazamal. Accordingly, the fact that the composition of the board is not represented equally in that period is not prejudicial or unfair.

142. In the period 2020 to 2022 the board sought not the appointment of an additional director but the appointment of a non-executive director working part time. Khadim's evidence is that Shahzad's appointment was to spite him. His analysis is born of two

suspicions. The first among them is: "Shahzad and his brothers, because of their grudges against the family were known." The second that: "Tan and Allah have acted very deceptively and used their board majority position to try and cover themselves." I accept that Khadim believes these are true, but an objective analysis of the evidence does not support his understanding. At the heart of his assessment is his historic knowledge of Shahzad (he last saw him 10 years earlier). He fails to explain how Talib, and Shahzad's brothers had "poisoned" his view against him. On his own evidence he did what he could for the family including Talib and Shahzad. Shahzad accepts, to some extent, that his father was not happy with Khadim, but he has been separated for the family for the same time and the separation has given him objectivity. Khadim simply turned his back without further investigation.

143. The following factors lead me to conclude that Shahzad was appointed for reasoned and proper purposes. First, Tanvier was under considerable personal pressure from the breakdown of the family relationship. Secondly, he had recently suffered a serious medical issue that contributed to the pressure he was under. Thirdly, having realised that he should have declared the Excess Takings to HMRC he spent time instructing solicitors to act on his behalf and compiling evidence for the COP 9 disclosure. Shahzad was appointed as a director on 30 June 2020 and helped to oversee the investigation and liaise with HMRC; and lastly, due to the break-down in the family relationship Shahzad promised to provide an objective position on the board.

144. I find as a matter of fact it is more likely than not that the motivation behind the appointment of Shahzad was not to secure a 'majority' against Khadim on the board as claimed. Allah and Tanvier already had a majority, if they chose to vote in the same way, prior to the appointment of Shahzad. This fact appears to have passed Khadim by. I find that the motivation was to add objectivity to the board, gained from Shahzad's experience outside of the Company (and family business) and introduce a business-like company structure to increase transparency and accountability to the decision-making process required in a new era of crisis due to the break-down of family relations.

145. Upon appointment Shahzad failed at times to live up to the high standards of corporate transparency required of a director when measured by modern standards. He rightly accepted this in evidence but convincingly added that although Khadim and

Allah were not copied into all the e-mail traffic, any adverse recommendations made by Pervaiz were not acted on as he assessed them as unfair.

146. In an email dated 8 June 2020 Allah wrote to Khadim to inform him that he had instructed MdR to carry out an investigation into the Excess Takings and disclose the findings to HMRC. In respect of the internal management of the Company he wrote:

> "I also note that you have appointed Paul Daly at UHY on behalf of the company to investigate payments made by the company to Tan without consulting with Tan or I or obtaining our approval. I have considered this with Tan and, as the director majority, we have decided to terminate UHY's appointment with immediate effect. As you are aware, UHY carried out the audit during periods when the payments to be investigated were made. We do not therefore believe that UHY's investigation would be fully independent or appropriate. I will be emailing Paul today to communicate the termination of the engagement. We do not give you authority to re-instate UHY's appointment."

147. The instruction given by Khadim to the Company auditors to investigate the Company's business where that business was run and managed according to the understanding forming the basis of the relationship was unprecedented and deliberately provocative. There was no agreement or understanding that Khadim would have a right to incur the cost of an investigation on the scale he proposed or at all. The response from Allah was reasonable and measured. Unlike Khadim, Allah informed Khadim of his intentions before acting to terminate the instruction. On the other hand, I am not convinced that the reasons given for termination are entirely accurate. One factor I do not dismiss is Allah's hurt feelings. The background to the relationships and independence of the businesses (as previously described) would suggest that Allah would have considered Khadim in breach of the understanding and offended by his unilateral action.

148. The pleaded case is that the use of the majority to override Khadim's instruction to UHY for an "independent" instruction is an example of the board excluding Khadim

from the management of the Company. A considerable amount of the cross-examination by Khadim related to this issue of the "independent" report.

149. It is not easy to see how the retraction of the investigation was either a breach of duty, a breach of understanding or excluded Khadim from management. Never before had Khadim instigated a wholesale investigation with or without consultation. The wholesale investigation included an investigation into the management of Pewsham. There was an understanding that he would not and could not interfere with the management of Pewsham. The motivation behind Khadim's instruction was also obscure.

150. It could be argued that the UHY report was important to the Company since it will be liable for the unpaid taxes. This goes against the evidence that it is Pewhsam that will pay the taxes. Khadim pleads that: "By letter of 16 July 2020 the First and Second Respondents' solicitors wrote that their clients were subject to a Code of Practice 9 investigation by HMRC Fraud Investigation Service and that their clients had sent a clear message to HMRC that they wished to settle outstanding liabilities in relation to their own and the Company's affairs." The defence accepts that the letter was written. It cannot be argued with any conviction that the instruction to UHY would have assisted the HMRC settlement process. There is another oddity, Tazamal thought that UHY was not "independent" and had spent considerable time with the help of Kim Dorsett undertaking an investigation, reporting the findings to Tanvier and the police.

151. Leaving aside the failure of Khadim to consult Allah and Tanvier about the instruction to UHY at a time when Allah had written to Khadim to invite him to discuss Tazamal's findings, there are at least two other difficulties with the contention that the instruction to UHY would have provided any useful findings. First, it is Khadim's case that Allah and Tanvier hid information from the accountants. If that was correct there was little prospect of a successful report and Khadim would have known that to have been the case. Secondly, the real concern for the Company was not that there had been Excess Takings. That was understood. The concern was the liability to HMRC for the delayed disclosure. On this, Allah and Tanvier were taking this issue seriously as demonstrated by their instruction of solicitors and the voluntary disclosure. Khadim received a letter on 8 June 2020, from Tanvier stating his intent in: "correcting any errors in tax returns, whether our own, or others for which we still

have a legal responsibility such as the company's CT600, payroll and VAT returns". Lastly, Allah had not refused an explanation.

152. I return to the remainder of the response from Allah which is also contentious as it is said it provides evidence of Allah seeking at best to reduce Khadim's influence in the Company and at worst oust him:

> "Going forwards, acting as a director majority, Tan and I have decided to put in place a new procedure with immediate effect that any director must obtain the written authority of a majority of board members to appoint any third-party advisors or incur costs on behalf of the company. If you do not follow this procedure, you do not have the authority to bind the company. To the extent you fail to follow the procedure, we will look to you to recover the cost of any unauthorised engagement of third- party adviser."

153. This was a direct response to Khadim's interference with Pewsham in three respects. First, the unilateral instruction to UHY to investigate the Company including the business at Pewsham; secondly, the purported suspension of Tanvier; and thirdly an instruction from Khadim to Paul Eddington to investigate an allegation that Tanvier had not complied with Khadim's order of suspension. Khadim had acted precipitously, provocatively and in breach of understanding in respect of both matters. Underlying the concerns was Khadim's alleged inability to control the overdraft at Worleys.

154. In any event, the response from Khadim was not one of incredulity or that his powers had been curtailed. He wrote:

> "I welcome the referral to HMRC and accept there has been 'tax irregularities' although I think this understates the position…"

155. In my judgment his response self-evidently recognised he had overstepped the mark.

156. Prior to the purported suspension, Tanvier was the sole director with permissions for Bankline. Following Khadim's letter of suspension he asked Allah to grant him the permissions that Tanvier enjoyed "it was requested…for me to be granted the same Bankline permissions that Tanvier had before I suspended him." The request was denied. This denial of the request is said to give rise to exclusion. In step with his character Khadim did not recognise that he was at once seeking to suspend Tanvier in breach of understanding and seeking to obtain an advantage by doing so. Tanvier was not suspended, yet Khadim asked for the "same level of permission Tan had in Bankline before I suspended him". No justification for the "same level of permission" was given, other than Tanvier had those permissions. The reliance on this as a ground for exclusion is at odds with Khadim's evidence that he could not read accounts understand figures. Nevertheless, it has not been explained how the failure to grant a new right to Khadim is exclusion as pleaded in paragraph 22 or 24 of the particulars of claim.

157. Khadim's difficulty lay in his inability, due to the need to demonstrate to third-parties that he acted with the authority of the Company, to act unilaterally (paragraph 24 of the particulars of claim). That complaint cannot succeed as there was no understanding that he could act unilaterally when it came to any matter that effected all businesses of the Company. This ground of exclusion is not too different to the change of bank mandate requiring more than one director to sanction payment instructions. It is not prejudicial to introduce oversight for bank payments. It is true that only one director was required for the mandate in the period prior to 2019 but this does not mean that implementing oversight (to prevent argument in an increasingly difficult relationship among the directors) was incapable of introduction. It is said the mandate "removed a substantial part of the Petitioner's involvement in the management of the Company" but that has simply not been made out on the facts. It has not removed any involvement but required him to consult as it has required of all directors. It is said that there is "a comparative disadvantage". No particulars are tendered. In my judgment the fact of the mandate is not prejudicial or unfair, but its implementation could give rise to conduct that is unfairly prejudicial. This could arise, for example, where the mandate was used to benefit Allah and Tanvier at the expense of the Company. No such allegations are made in this case.

158. I find that Khadim was not excluded from management. The court provided a useful example of exclusion in *Saul D, Harrison & Sons Plc* [1995] 1 BCLC 14, 19. It will usually be considered unfair for a majority to use their voting power to exclude a member from participation in the management where there was an understanding that each member would participate. Khadim was able to participate in the management of the Company. He was able to, in accordance with the understanding, run, manage and profit from the Worleys business. Nothing had changed. In respect of the pleaded case that Khadim "would have access to all the Company's books of account", he has access to the Company's books of accounts, payroll information and bank accounts as a director. It is not argued that there was an understanding that Allah and Tanvier had agreed or were under some other obligation to consent to Khadim's request in respect of Bankline but in any event the circumstances had changed with Khadim's hostile actions (for example, informing the police that money had been stolen by Tanvier) and the issue of the petition.

159. It is worth stating that the use of the board as a platform to make decisions required for the Company as a whole, has in my view, become a necessity. The break down in family relations, failed mediation, communication break-down and the unilateral actions of Khadim (suspending Tanvier, investigating reasons for his failure to obey an order, and instructions to the Company's accountants) required a response that provided the introduction of a transparent and accountable decision-making forum. The pleaded case that Khadim should be involved in significant management decisions if he wished to, runs contrary to his actions. He chose not to take part in board meetings. An example of self-exclusion is the meeting on 12 August 2020 where the issue of engaging UHY to undertake an analysis of funding and takings where he opted to make no contribution. A second example is when he chose not to attend a meeting where the agenda included the appointment of a non-executive director. He chose not to attend due to his belief that it was a "stitch-up". If it was a "stitch-up" he would have been able to make his observations and objections all of which would have been recorded in the minutes. Khadim chose to self-exclude and then complain. Nor was he excluded from liaising with advisors or prejudiced on the board since the first of the above examples concerned significant decisions and he chose self-exclusion.

160. Part of the case mounted by Khadim is that he self-excluded due to a feeling that the decisions made at the board were "fait accompli", the agenda had been either decided in advance or that it was received too late to prepare. The evidence is that a schedule of meetings is circulated to directors quarterly in advance and an independent minute taker now keeps a record of decisions at the meetings. It has not been said that an issue tendered for inclusion on any agenda had ever been refused or that Khadim asked for a meeting to be adjourned to permit him time to prepare: it is not said what preparation was required or how long it would take.

161. It is also said that the board failed to approve Tazamal as an alternate director. In closing Khadim's argument is that there has been unfair prejudice by reason of the failure as Tazamal "has been productively serving the Company". The simple submission is intended to convey that Tazamal had been acting as a *de facto* director. This is not the pleaded case.

162. The board of directors had serious concerns that the appointment of Tazamal would not be in the best interests of the Company. These concerns were repeated by Tanvier in cross-examination. Open correspondence between solicitors identified the issue: "Tazamal Hussain is the driving force behind the present litigation being pursued in his father's name…Tazamal has already been seeking to interfere with the board's workings in order to promote his personal agenda." It is hard to understand Khadim's case in response: that he has been productive for the Company. The context is important. The request to appoint Tazamal came after hostile proceedings had been issued by Khadim. If correct and Tazamal is and was the driving force behind the proceedings, which makes many and various allegations against the board members, the best interests of the Company will not obviously be served. In this context it is not explained how his appointment would be in the best interests of the Company. No such explanation was advanced: it is said that he is younger and more able than Khadim. The question for an objective board of directors is what Tazamal will add to the board of directors in this hostile environment. The reason given is to ensure Khadim had his interest as a member represented. This does not answer the question posed by an objective board. In any event the logical response is to ask for reasons why Khadim cannot represent his own interests? I infer from his participation in these proceedings that he can represent his own interests. Given the timing of the request

(with a threat that a further allegation of unfair prejudice would be included in the event the board did not accede to the demand) and the hostility that had broken out (perhaps with Tazamal being the "driving force") there was no Company justification to appoint Tazamal, nor was any valid reason advanced.

Conclusion

163. I refer to paragraph 44-49 above as a summary of the petition.

164. The answers to the questions posed in the agreed list of questions, where relevant, can be given shortly. The agreed list has many sub-categories. I have not followed the subcategory numbering and I hope does not cause confusion.

165. In respect of question 1. the admitted Excess Takings are prejudicial but not unfair: see the summary of findings in **paragraph 114, 137, 139** above.

166. Question 2. is answered in the affirmative in respect of Tanvier and Allah. There is no evidence that Shahzad has received any takings in addition to those that he is entitled. I accept Allah's evidence that Zara (not a respondent to the petition) received pay for work she undertook.

167. The parties agreed that question 3, determining the quantum of Excess Takings, is not possible at this trial. I am satisfied that the Excess Takings are more likely than not to be fully declared to HMRC through the voluntary procedure given the serious approach to the issue that has been adopted by Tanvier.

168. Question 4. is otiose given the nature of the understanding between the parties.

169. Question 5. concerns the allegation of blocking the investigation. The board did not block an investigation in breach of agreement or understanding. The investigation was initiated unilaterally in circumstances where it would affect Allah and with the likely intention of gaining an advantage. The reasons for initiating the investigation using UHY are obscure and unlikely, given the common understanding, to have had any efficacy: **paragraphs 146-151**

170. Given Tazamal's evidence about UHY's "independence" I have grave doubts that the investigation was initiated as an independent response to the alleged surprise

discovery (which I have found not to be a surprise since the behaviour was accepted and formed part of the understanding of how the Company would operate) that Tanvier had received Excess Takings.

171. Question 6. concerns payments received by Mazamal for his development companies. There has been an admission that Company monies were used. This is consistent with the basis of the relationship and common understanding.

172. Question 7. Khadim has not been excluded from the management of the Company as pleaded. In particular the common understanding as a basis for the operation of the businesses explains why it is not unreasonable that Khadim should be included in discussions about Tanvier's remuneration; the issue of Excess Takings has been adequately dealt with by voluntary disclosure, but the common understanding permitted the activity complained of; there is no evidence advanced and it an issue at trial, that there had been exclusion in respect of discussions concerning releases of guarantees. Khadim continues to manage and control Worleys in accordance with the common understanding. He has access to the payroll, Company accounts and bank statements. Since the resignation of Mazamal only Khadim has been on the board of directors from the Hussain family. There was no agreement or understanding that the board would be equally weighted. Any exclusion from board meetings have been caused by Khadim. He has chosen not to attend or not to participate.

173. Question 8. I have found that Tazamal was not wrongly rejected as a potential appointee director of the Company. In any event there was no breach of duty in respect of not appointing Tazamal.

174. Lastly, I find that Shahzad was validly appointed and there was no wrong doing involved in his appointment.

175. I shall dismiss the petition and invite the parties to agree an order.