Neutral Citation Number: [2022] EWHC 735 (Ch)

Case No: CR-2021-000490

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)
Re: QUAY STREET LTD (CRN:11695145)
And re: THE COMPANIES ACT 2006

Royal Courts of Justice, Rolls Building,
Fetter Lane, London EC4A 1NL

Date: 31/03/2022

Before :

ICC JUDGE PRENTIS

- -

Between :

SALLY ELIZABETH JOHNSON	**Claimant**
- and -	
1. HOWARD DUNCAN SPOONER	**Defendants**
2. QUAY STREET LTD	

- -
- -

Paul O'Doherty (instructed by **Keystone Law**) for the **Claimant**
Tina Kyriakides (instructed by **Greenwoods GRM LLP**) for the **First Defendant**
The Second Defendant did not appear and was not represented.

Hearing dates: 22, 23, 24, 28 February 2022

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JUDGMENT

ICC JUDGE PRENTIS:

Introduction

1. Around the new year of 2019, while shooting pheasant in Hampshire, Charles "Brook" Johnson and his wife Sally became enthused with the idea of joining Howard Spooner in his latest venture, the George Hotel, Quay Street, Yarmouth, Isle of Wight. Mr Johnson thought it would give his wife, who did interiors and gardens, something to sink her teeth into. By the beginning of the next season relations had fallen apart.

2. This is the expedited trial of Mrs Johnson's 17 March 2021 claim under section 125 of the *Companies Act 2006* that the share register of Quay Street Ltd be rectified to record her as the holder of 1 fully paid-up ordinary share, and Mr Spooner as the holder of the other. More materially, as ICCJ Jones on 12 August 2021 ordered such relief, subject to her shareholding being marked "disputed", it is the trial of Mr Spooner's counterclaim which contends that that on 2 July 2020 she agreed to sell him her share; or that that agreement was varied by a further agreement of 8 July 2020; or that the agreement was made on that last date. If Mr Spooner is unsuccessful then the 12 August order left open to him the opportunity to seek to argue, by application made within 7 days of circulation of the draft judgment, that Mrs Johnson anyway ought to be refused relief as being pursued for a collateral purpose (namely the promotion of the interests of David McCormick in evening out matters between himself and Mr Spooner).

3. I record my gratitude to counsel for the calm, sensible and able way in which they promoted their respective client's interests at trial.

Quay Street Ltd

4. Quay Street Ltd ("QSL") was incorporated on 26 November 2018 as Howard Spooner's vehicle for the taking of a short but extendable lease on the George Hotel from the freeholder, Dame Dianne Thompson. He has been a director

and the holder of 1 share throughout. Companies House records that Mr Johnson was appointed director on 1 March 2019, ceasing on 4 March 2020; and was then reappointed from 5 March 2020 to 7 August 2020. Mrs Johnson became the holder of 1 share on 4 March 2019. As with her husband's directorship there was a hiatus in March 2020, but after re-registration her share was said to have been transferred to Mr Spooner on 7 August 2020. On terms, it was restored by the 12 August order which also enabled her nominee, being an accountant, Graham Jones, to be registered as a director on 2 September 2021.

Law

5. By section 125:

> (1) If
>
> (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
>
> (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,
>
> the person aggrieved... may apply to the court for rectification of the register.
>
> (2) The court may either refuse the application or may order rectification of the register...
>
> (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in... the register... and generally may decide any question necessary or expedient to be decided for rectification of the register.

6. Mr Spooner's counterclaim relies upon an alleged oral agreement made on 2 July 2020, and an alleged agreement reached in an exchange of emails on 8 July which were headed "subject to contract". The parties are agreed that the necessary law is largely contained in the judgment of the Supreme Court delivered by Lord Clarke in *RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH* [2010] UKSC 14, [2010] 1 WLR 753. At [45] Lord Clarke said this:

> 45. The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a pre-condition to a concluded and legally binding agreement.

7. Despite its subject-matter being outside the usual context for such cases, the parties agree that the general law as Lord Clarke goes on to describe applies.

> 46. The problems that have arisen in this case are not uncommon, and fall under two heads. Both heads arise out of the parties agreeing that the work should proceed before the formal written contract was executed in accordance with the parties' common understanding. The first concerns the effect of the parties' understanding… that the contract would "not become effective until each party has executed a counterpart and exchanged it with the other" – which never occurred. Is that fatal to a conclusion that the work done was covered by a contract? The second frequently arises in such circumstances and is this. Leaving aside the implications of the parties' failure to execute and exchange any agreement in written form, were the parties agreed upon all the terms which they objectively regarded or the law required as essential for the formation of legally binding relations?...
>
> 47. We agree with Mr Catchpole's submission that, in a case where a contract is being negotiated subject to contract and work begins before the formal contract is executed, it cannot be said that there will always or even usually be a contract on the terms that were agreed subject to contract. That would be too simplistic and dogmatic an approach. The court should not impose binding contracts on the parties which they have not reached. All will depend upon the circumstances…
>
> 48. These principles apply to all contracts, including both sales contracts and construction contracts, and are clearly stated in *Pagnan SPA v Feed Products Ltd [1987] 2 Lloyd's Rep 601*, both by Bingham J at first instance and by the Court of Appeal. In Pagnan it was held that, although certain terms of economic significance to the parties were not agreed, neither party intended agreement of those terms to be a precondition to a concluded agreement. The parties regarded them as relatively minor details which could be sorted out without difficulty once a bargain was struck. The parties agreed to bind themselves to agreed terms, leaving certain subsidiary and legally inessential terms to be decided later.

> 49. In his judgment in the Court of Appeal in Pagnan Lloyd LJ (with whom O'Connor and Stocker LJJ agreed) summarised the relevant principles in this way at page 619:
>
> "(1) In order to determine whether a contract has been concluded in the course of correspondence, one must first look to the correspondence as a whole…
>
> (2) Even if the parties have reached agreement on all the terms of the proposed contract, nevertheless they may intend that the contract shall not become binding until some further condition has been fulfilled. That is the ordinary 'subject to contract' case.
>
> (3) Alternatively, they may intend that the contract shall not become binding until some further term or terms have been agreed…
>
> (4) Conversely, the parties may intend to be bound forthwith even though there are further terms still to be agreed or some further formality to be fulfilled…
>
> (5) If the parties fail to reach agreement on such further terms, the existing contract is not invalidated unless the failure to reach agreement on such further terms renders the contract as a whole unworkable or void for uncertainty.
>
> (6) It is sometimes said that the parties must agree on the essential terms and it is only matters of detail which can be left over. This may be misleading, since the word 'essential' in that context is ambiguous. If by 'essential' one means a term without which the contract cannot be enforced then the statement is true: the law cannot enforce an incomplete contract. If by 'essential' one means a term which the parties have agreed to be essential for the formation of a binding contract, then the statement is tautologous. If by 'essential' one means only a term which the Court regards as important as opposed to a term which the Court regards as less important or a matter of detail, the statement is untrue. It is for the parties to decide whether they wish to be bound and if so, by what terms, whether important or unimportant. It is the parties who are, in the memorable phrase coined by the Judge [at page 611] 'the masters of their contractual fate'. Of course the more important the term is the less likely it is that the parties will have left it for future decision. But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later. It happens every day when parties enter into so- called 'heads of agreement'.
>
> The same principles apply where, as here, one is considering whether a contract was concluded in correspondence as well as by oral communications and conduct.

8. Thus, whether negotiations are continued under an express "subject to contract" banner or not, the court's task is to determine the facts and then to

consider whether objectively, and taking into account that banner, there was a sufficiently-determined agreement effective before being contained in writing.

9. The parties' other authorities were really pointers within those general principles. Ms Kyriakides quoted *Chitty on Contracts, 34th ed, 4-156* and the "possibility" that the contemplated document was "intended only as a solemn record of an already complete and binding agreement". Mr O'Doherty took me to the Chancellor in *Whitehead Mann Ltd v Cheverny Consulting Ltd* [2006] EWCA Civ 1303 at [42]. Both parties also cited the initial group of the principles enunciated by Beatson J, shortly after *RTS*, in *Benourad v Compass Group plc* [2010] EWHC 1882 (QB) with their extended references to authorities, which begins with Mr O'Doherty's excerpt from *Cheverny*.

> (a) "[T]he more complicated the subject matter the more likely the parties are to want to enshrine their contract in some written document to be prepared by their solicitors. This enables them to review all the terms before being committed to any of them. The commonest way of achieving this ability is to stipulate that the negotiations are 'subject to contract'. In such a case there is no binding contract until the formal written agreement has been duly executed …. But it is not necessary that there should have been an express stipulation that the negotiations are to be 'subject to contract'. …": *Cheverney Consulting Ltd v Whitehead Mann Ltd [2006] EWCA Civ 1303* at [42], per Sir Andrew Morritt C; *Investec Bank (UK) Ltd v Zulman [2010] EWCA Civ. 536* at [17]. Where there is no such stipulation, this (see e.g. Winn v Bull (1877–78) LR 7 Ch 29 , 32, per Jessel MR) is a question of construction. The fact that a draft contractual document or a covering letter to it invites a party to initial or sign a copy and return it to the other party, or contemplates that a party would obtain legal advice before signing are telling indications that the parties do not intend to be bound until the document is signed: *Investec Bank (UK) Ltd v Zulman [2010] EWCA Civ. 536* at [19–20].
>
> (b) Although the parties may initially have intended that their oral agreement is not to be legally binding until a formal written document has been duly executed, if "it can be objectively ascertained that the continuing intention of the parties changed" at some point there will be no need for a written document to be executed: *Cheverney Consulting Ltd v Whitehead Mann Ltd [2006] EWCA Civ 1303* at [46]. For example, the requirement of an executed written agreement may have been waived by communications between the parties or by the conduct of one party known to the other: see Galliard Homes Ltd. v J Jarvis & Sons Ltd. (1997) 71 Con LR 219 , at 236; The Botnica [2006] EWHC 1300 (Comm) at [90] and *RTS Flexible Systems Ltd. v Molkerei Alios Müller GmbH [2010] 1 WLR 753* at [55], [67] and [87]. Alternatively, a party may be estopped

from relying on his non-execution of the document: Cheverney Consulting Ltd v Whitehead Mann Ltd at [46].

(c) One situation in which it can be objectively ascertained that the continuing intention of the parties has changed is where work has begun before the formal contract is executed: see *Trentham (G Percy) Ltd v Archital Luxfer Ltd. [1993] 1 Lloyd's Rep. 25* , *per* Steyn LJ. In this situation it will often be unrealistic to say that there is no intention to enter into legal relations or that the performer takes the risk of the document not being executed. However, it does not follow that those legal relations will be contractual or, as Lord Clarke of Stone-cum-Ebony JSC, delivering the judgment of the Supreme Court in RTS Flexible Systems Ltd. v Molkerei Alios Müller GmbH at [47] stated, if they are, that the contract "will always or even usually be a contract on the terms that were agreed subject to contract". That he stated, "would be too simplistic and dogmatic an approach", and "all will depend upon the circumstances". As to the line between contractual and non-contractual legal relations, in *Whittle Movers Ltd v Hollywood Express Ltd. [[2009] EWCA Civ. 1189* Waller LJ, with whom Dyson and Lloyd LJJ agreed, stated (at [15]) that Professor McKendrick's suggestion ((1988) 8 OJLS 197) that in these situations "a court should not strain to find a contract because a restitutionary remedy can solve most if not all of the problems" was the "correct approach".

(d) Where the case is not a "subject to contract" or "subject to written contract" type of case, the fact that the services have been rendered is a particularly important factor and there is likely to be a contract on the terms that were agreed: *Pagnan SpA v Feed Products Ltd. [1987] 2 Lloyd's Rep. 601* ; Trentham (G Percy) Ltd v Archital Luxfer Ltd ., and RTS Flexible Systems Ltd. v Molkerei Alios Müller GmbH at [55].

(e) Where the terms were agreed to be "subject to contract" or understood to be, a court will not "lightly" hold that the parties have waived reliance on the "subject to contract" term or understanding, although it may do so: RTS Flexible Systems Ltd. v Molkerei Alios Müller GmbH at [56]. Where all the essential or important terms have been agreed and substantial services have been rendered, however, a court is likely to find that there is a contract without the necessity for a formal written agreement. In such circumstances the fact the services have been rendered is "a very relevant factor pointing in that direction": RTS Flexible Systems Ltd. v Molkerei Alios Müller GmbH at [54]. The contract will be either on the terms originally agreed "subject to contract" or those terms as varied by a subsequent agreement. But if there is "neither complete agreement on important terms nor any indication that either party was resiling from the requirement that negotiations were clearly subject to contract in the sense not only of requiring a formal document but in the sense of nothing being binding until a written contract is signed" it is unlikely that a contract can be found: *Whittle Movers Ltd v Hollywood Express Ltd. [2009] EWCA Civ. 1189* , at [10] *per* Waller LJ.

10. These are the principles which will be applied. It is, of course, for Mr Spooner to prove the agreement on which he relies.

11. I add that while Mr Spooner's counterclaim pleads an alternative case in estoppel by convention, in closing Ms Kyriakides accepted that, here, that could add nothing.

Witnesses

12. It is not disputed but that here, where the parties are running factual cases of striking dissimilarity, credibility is of large importance.

13. Mr Spooner has been a director of a series of companies over the last 30 years, and is an experienced operator of businesses in the leisure sector. That expertise did not extend into a detailed knowledge of legal matters, as we shall see. He is a man who acknowledges that he is vulnerable, including to anger, under pressure; and one who has engendered enduring dislike in Mr McCormick, a former business partner, and it seems in the Johnsons.

14. I refer to these matters because it seemed to me that Mr Spooner gave his evidence as one deliberately keeping himself on the confined path of listening to the question and answering it. In sure contrast to the glimpses we were given of him as hotelier and as nightclub owner, he was restrained, kept his head down much of the time, concentrating on the matters he was asked and his recollection of them.

15. There are elements of his evidence which I will not accept, in particular what I regard as an embellishment of his account of 2 July with the parking of Mrs Johnson's luxury Scania horse transporter round the corner from the hotel. I bear in mind as well that that flourish was seeking to boost his evidence as to one of the critical days in this saga. It is also true that this has been a particularly fractious dispute and that over the course of the communications he has occasionally expressed himself or acted in self-serving and irrational ways, including his deplorable and misguided series of actions in March 2020.

Those, though, he openly admitted were wrong and borne of his anger. Overall, and with those various qualifications, I regard his evidence as fundamentally credible.

16. His case was supported by his wife, Lucy, whose evidence was directed at her dealings with Mrs Johnson, especially in the period 26 June- 5 July 2020, and her communications over that time with her husband. Like Mr Spooner's other witnesses, Mrs Spooner gave a straightforward and honest account. The other witnesses were Mr Spooner's niece, Lily, who was working as a waitress at the George in the summer of 2020; and Olivia Story, head waitress at the hotel.

17. As she said, Mrs Johnson represents the artistic side of her family. She displayed a remarkable knowledge of the plants she had acquired for the hotel, and her genuine desire to improve the look of the hotel's garden and interiors cannot be faulted. It cannot be said, though, that her evidence evinced any intent to give the court her genuine and considered recollection of events. Her cross-examination took a day longer than anticipated because of her relentlessly not answering direct questions and instead arguing her case at some length, regurgitating passages of what she thought her case as presented was. She had plainly studied the case and the accompanying correspondence in detail, and missed no opportunity to make her points.

18. Her difficulties derive from the fact that, as will be described below, from as early as July 2020 she was being told by others, especially her husband and Mr McCormick, what to do and say; and she relied on them because these were financial matters which she left in their hands, and in which she had no real interest. It was a part of their scheme that she should not be frank in her post-8 July communications with Mr Spooner. From then, the truth became mutable and Mrs Johnson has been sticking to the script.

19. This achievement of the goal approach also led her to fly away with bits and pieces which she had gathered from others but did not fully understand, adopting them as though they were the full explanation for why no deal had or

could have been done: we had excursions into, for example, "capex" and due diligence.

20. The desire to present her best case, rather than one founded in actual fact, also lay behind evidence as to documents which, as we shall see, could not be true. To take one example for the moment, it is utterly implausible that in a list of expenditure created (she said) for her husband in December 2019, she would describe herself in the third person; that same list, which she maintained was of her and her company Sarcen Ltd's general expenditure and not just expenditure on the hotel, was headed "The George Hotel and Garden", and has no entries relating to, for example, Sarcen's role as her farming company.

21. In short, clear corroboration, documentary or otherwise, is required for Mrs Johnson's evidence to be accepted on any point.

22. Her one witness to be called was Georgina Evans, her housekeeper and general doer for more than 20 years. Ms Evans confirmed her "very strong loyalty" to and "fantastic working relationship" with Mrs Johnson, as must be the case. The relationship had its limits, though: Ms Evans was not privy to the reasons for the breakdown with Mr Spooner. Ms Evans was an honest witness, but her ability to assist on controversial points was limited.

23. A statement was served from Mr McCormick, a chartered accountant and former business associate of Mr Spooner. Containing three relevant paragraphs, it is in general terms. It confirms that he has been assisting the Johnsons since March 2020, they being friends of friends. He would look at the financial information Mr Spooner sent Mr Johnson. Up to July 2020 he had "several meetings and numerous phone calls" with the Johnsons, and in August 2020 their relationship was formalised, which appears to mean put on a contractual basis. Although he attended court for at least some (and perhaps all) of the trial, he was not called because by letter of 25 January Mr Spooner's solicitors said there would be no questions for him. On the evidence we have, it can be observed that Mr McCormick has not yet found a state of peace concerning Mr Spooner, against whom he brought a successful libel action.

24. No statement was served by Mr Johnson. It is right that he was not at the meetings between his wife and Mr Spooner on 2 July or 4 July so could give no direct evidence of those. He could, though, have deposed to what she told him about the meetings; and as to the opinions he conveyed on settlement both before and after those dates; and as to the original agreement and its carrying through, including as to the financial information received. Ms Kyriakides suggested in closing that *Wiszniewski* adverse inferences could be drawn. As the timing of that submission indicates, the significant problems with Mrs Johnson's evidence became apparent only over trial. It follows that, while I do not think adverse inferences can be drawn, there is a hole where Mr Johnson's evidence might have been.

Facts and findings

The original investment agreement

25. In January 2019 QSL acquired a 3-year lease to the George Hotel from Dame Dianne Thompson, together with an option (formal or informal) to acquire its freehold. Its initial spending was funded by loans from Mr Spooner, whose wholly-owned company Stony Valley Ltd ("Stony Valley") also acquired on lease items which it sub-leased to the company. Mr Spooner personally also loaned furniture. Being the experienced operator he was, he had a planned refurbishment programme over the quiet months until spring, which was put in hand.

26. It was the Johnsons' enthusiasm which led him to accept investment for which he had not been looking. They had been acquaintances for about 15 years, and at one point had sought to rent the Spooners' house. The families lived very close to each other, just outside Marlborough, where the Johnsons were building a sizeable new house. Mr Johnson overheard Mr Spooner talking about the hotel while out shooting. "His ears pricked up and he wanted to talk to me about that… He spoke a lot". Mr Johnson told him then, and later, of "all the people he knew" who would come to the hotel if they were involved: "old rockers", yachtsmen, polo players and "many powerful Americans". Mrs

Johnson said she had political friends who would come, from her previous marriage to David Faber. The prospect of high-profile and high-spending guests was attractive to Mr Spooner, and it was doubtless the failure of any of them ever to materialise which was a factor in the swift breakdown. Mr Johnson also had ideas for realising the future value in the hotel, by swift sale after 12-18 months to one or a group of his connections at the New York Yacht Club, to whom he had already been talking.

27. On 18 January 2019 Mr Spooner and Mr Johnson met at a pub Mr Spooner then owned near Marlborough. Then and afterwards the investment negotiations were carried out between them: although it was her money which was to be used, Mrs Johnson was not involved. She described her husband as "a very successful businessman… He was a very top class executive of a Fortune 500 company on the New York Stock Exchange. He's much better placed to deal with financial aspects than I am". So "there's a division of labour. I'm probably the creative side of the family, and he would be the finance side". That was an oft-repeated statement which I accept.

28. I accept as well, because it features large in this case, her description of a character trait of her husband's. "My husband's a businessman. He's an American… but sometimes something is lost in translation between Americans and English and I think that always in business there's an element of compromise and negotiation and you go on through things and see a better way of doing it"; as she told Mr Spooner on 2 July, "it was the American way to agree something and then come back to make it even better".

29. If he was to sell anything, Mr Spooner had not intended that it be more than 25% of QSL. But Mr Johnson persuaded him that, with his connections, it was better to have 50% of something big than 75% of something less. So they initially agreed, on a shake of hands, that Mrs Johnson would invest £250,000 for a 50% stake, by way of £150,000 for the equity and future matched investment of £100,000, leaving Mr Spooner in charge of day-to-day management, and with a mechanism to be put in place to avoid deadlock. From Mr Spooner's side, £250,000 meant that improvements to the hotel were not dependent on cash-flow. It was also important to him that he maintained

control of business operations, not least as he had already formed the view that while Mr Johnson was good at talking about what could come out of the business by way of ongoing dividends, he appeared to have little understanding of PAYE and other ongoing taxes, or the cyclical nature of the hotel's trading year which required the retention of cash from the good months to cover the quiet.

30. When in mid-February he and Mr Johnson met in the same pub, Mr Johnson was re-negotiating. This time they shook hands at £215,000. After lunch Mr Johnson showed Mr Spooner the grounds and plans for his new house, and the shipping containers filled with furniture which could be loaned to the hotel.

31. By the end of February Mr Johnson had finessed some more. On 26, before a morning meeting with Mr Spooner, at 0628 he emailed his recollection of the previous lunch. Mr Spooner had wanted £150,000 for his share, with expected investment of £100,000 each on top; but they had discussed Mr Johnson's "similar proposal… with a different way to use my £150,000 equity contribution", being that "I would pay you the £65,000 direct [for the share] (your best estimate of what you had spent to date …) and the remaining £85,000 to make up the £150,000 you had requested would be invested by me into the business as needed". "We also agreed that after my £85,000 was spent we would invest £1 for £1 as needed for the hotel", although Mr Johnson would "bet that after my injection of another £85,000 into cap ex and including all the furniture… that we both intend to contribute I would think that the need for you and I to contribute additional funds… will be small".

32. That was not Mr Spooner's recollection, but he agreed. At 1743 he wrote to his accountant, Tim Cundy, copying Mr Johnson, asking him to issue 50% of the shares to Mrs Johnson. "The deal is £65,000 to be paid to me for the shares and £85,000 to be injected into the company in a combination of payments into quay street and payments on behalf of quay street with vat receipts produced". Not of relevance to Mr Cundy was an additional element, which was that the Johnsons, like the Spooners, would loan the hotel certain personal items for its benefit while they were shareholders.

33. That was the investment agreement. It was for a substantial enough amount of money to matter to the Johnsons, but was made on a handshake between Mr Johnson and Mr Spooner, and without the experienced Mr Johnson considering due diligence necessary.

34. It may be noted that the £85,000 was a part of the £150,000 equity contribution, and insofar as made by payments for QSL rather than injections into it was to be accompanied by VAT receipts to allow QSL's recovery of that element.

35. Mrs Johnson's eventual answer to the question whether her husband had reported the terms of the investment agreement to her was that "I would have had a general understanding". Asked "Were you and your husband actually in agreement on what the terms were, on what your investment was to be?" she replied "I understood that the shareholders' agreement was very clearly written out by Payne Hicks Beach, who were a good law firm in London".

36. Mr Johnson and Mr Spooner had agreed that although the share was to be issued to Mrs Johnson, she was not to be a director. By 4 March her share was issued and Mr Johnson appointed director in her stead.

37. On 7 March Mr Johnson sent Mr Spooner the first draft of a shareholders' agreement drafted by Payne Hicks Beach ("PHB"). On 4 April a shareholders' agreement was signed.

38. In cross-examination it was Mrs Johnson's repeatedly proclaimed understanding that the terms of the investment agreement were definitively set by the shareholders' agreement, which "was the only agreement that I agreed to and signed". There had been no effective handshake deal between her husband and Mr Spooner: "I understand that it was taken to lawyers and it was made formal through the correct process… so there's no misunderstanding and that is what is agreed".

39. Her first witness statement had put it differently. "I signed the shareholders' agreement under an understanding that I paid £65,000 and as part of an

agreement that was made between Howard and my husband, in terms of agreeing the finances".

40. By clause 2.2 of the shareholders' agreement: "So far as is lawfully possible in the exercise of his or her… rights and powers as a Shareholder, each Shareholder shall promote and develop the Business for the benefit of the Shareholders as a whole and with a view to profit".

41. Clause 4.1 entitled Mr Spooner to be a director, and Mrs Johnson to appoint a director, for as long as each held shares.

42. Clause 4.3 prescribed that board meetings were to be held at least monthly or otherwise as the directors might agree, with a quorum of two.

43. Clause 4.5 gave Mr Spooner "responsibility for the day to day running of the Business in the ordinary course, and in respect of such matters, shall have a casting vote at Board Meetings".

44. Clause 6 required certain identified decisions to be unanimous.

45. Clause 8 was this:

> "Mr Spooner and Mrs Johnson, for as long as each holds Shares, shall respectively procure that any items (including furniture, paintings and other decorative items) (to be labelled as being the property of Mr Spooner or Mrs Johnson or the relevant third party (as appropriate)) made available by each of them to the Company at the Premises exclusively for use in the Business, shall be made available without charge to the Company, on the basis that title in such items remain with Mr Spooner, Mrs Johnson or the relevant third party respectively, to include in the event of the Company's insolvency".

46. Clause 9 contained mandatory pre-emption provisions in the event of a desired transfer of shares.

47. Clause 22 contained a dispute resolution procedure.

48. Contrary to Mrs Johnson's later understanding, neither clause 8 nor any other clause contains investment obligations. Indeed, that was deliberate. On 15 March Mr Johnson emailed the partner at PHB, Jonathan Gatward:

> "I am with Howard now and we agreed that they draft they just sent back to you is incorrect. We will not be putting in any of the financial matters including shares loans and investments. So ignore those additions. I have agreed that Howard has operational control and that only expenditures over £5,000 need joint approval! So your draft as written with those two changes are what we have agreed to sign".

49. The investment agreement therefore stood outside the shareholders' agreement. Mrs Johnson may not have signed any investment agreement, but it was made by her husband with her authority on her behalf; and (which may have been the point Mrs Johnson wished to avoid) it was made on a handshake and without due diligence.

50. Although a definitive construction of the terms of the investment agreement is not a matter for this trial, Mrs Johnson's understanding of the treatment of the £85,000 investment obligation is material. In her first witness statement she referred to it being "agreed that instead of investing a further £85,000 into the Company's business as equity Brook and I would either personally, or through my company Sarcen… purchase assets to the value of the £85,000 which I would then loan to the Company free of charge for use by the Hotel. This is reflected in the terms of the SHA" being, presumably clause 8.

51. In her evidence as well she said that "as part of an agreement that was made between Howard and my husband", which may be underlined, "we would put a further £85,000 into the business by ways of whatever I felt was needed for the renovations of the hotel… We agreed to put £85,000 in by way of buying pieces of furniture or paying for labour but those items, to protect them… would be bracketed or conserved or saved in the event of liquidation, whereby we could then remove those items… Very clearly defined, as I understood it. That was my understanding…".

52. This mixes the treatment of the £85,000, which as above was an equity contribution, and the furniture and effects which were separately to be loaned and which were indeed covered by clause 8 of the shareholders' agreement. It would anyway make no commercial sense for the £85,000, which was to match what Mr Spooner had or was to put in, to be irrecoverable by Mrs Johnson. As it transpired, some of the £85,000 was labour costs of no benefit to the Johnsons themselves; neither would they necessarily want the furniture which was purchased for the hotel.

53. While I consider Mrs Johnson was wrong on this point, its relevance lies not in the construction of the agreements but in her belief and Mr Spooner's. I accept that at all relevant times she maintained what I consider an erroneous belief; but Mr Spooner believed that the investment agreement was to be interpreted as I have indicated, with the amount up to £85,000 to be recoverable by the Johnsons as a loan, and the expenditure to be treated as if made by QSL, and hence VAT being recoverable. Further seeds of this dispute rest in this mutual misunderstanding. Mrs Johnson regarded what represented the £85,000 as being her goods, as it were munificently, though under obligation, loaned to QSL. For his part, Mr Spooner was becoming increasingly desperate to have a proper list of expenditure so that he knew for his budgeting how much more money was to come in, and to improve cashflow through the VAT reclaims. I understand that not until August 2021 were invoices provided, yet he had repeatedly asked for them. Although we will see some lists of expenditure, Mrs Johnson's evidence is malleable: at one point she says that by Summer 2019 she had "purchase items/ paid for refurbishment work for the Hotel worth in excess of £85,000"; at another that during 2019 she "spent in excess of £100,000" (and that is likely to have been spent before July 2019, as by the time she and Mr Johnson returned from their holiday in the September, relations were nearly done); her second witness statement has "approximately £60,000 plus" spent outside, and "approximately £35,000 inside".

54. Mr Spooner had the additional concern that once the £85,000 had been reached, he and Mrs Johnson were to contribute pound for pound. The

meeting of the threshold was therefore of personal import. As early as 27 March 2019 Mr Johnson was writing to him "I am close or over the 85k number… I think we agreed that after the 85k level (unbelievable how quick) you and I would go in 1 and 1, but I am sure you are over the 150k number yourself". On 8 April he reiterated "we are above our promised input of £85,000 net of vat". Both of these also show that at least at that point Mr Johnson shared Mr Spooner's interpretation on the investment agreement.

The breakdown, and negotiations

55. Before her July departure for France Mrs Johnson achieved the creation of the Mediterranean garden for the hotel as well as interiors work, and she and her husband would wine and dine there. Mr Spooner asked her about the cost of the flowers and plants. "She was very cagey". He insisted that expenditure needed approval. "I quickly realised there was no transparency in items Sally was purchasing… this made me nervous". As to the £85,000 "they kept fobbing me off". The Johnsons introduced only a single guest, at a discount; and "I got the impression... that he didn't actually know" them. Mr Johnson was rude to the groom at a wedding, and began to involve himself in the staffing.

56. The Johnsons had their own concerns about Mr Spooner: his personal use of the hotel without accounting for it; failures to consult them; and payments made to his other businesses "without explanation or authority". Among the last was a 6 June 2019 transfer of £40,000 to Stony Valley. There was also a complaint about lack of financial information, although that cannot truly have been about inadequate volume: some 14,000 pages of information was sent to Mr Johnson between 1 March 2019 and 1 July 2020, including daily and weekly sales reports, bank statements (to which the Johnsons had access anyway) and management accounts.

57. Whatever, for present purposes it need only be remarked that very early on each side had their own grievances, which they regarded as justified; and which were not ameliorated over time.

58. When in September the Johnsons returned from their holiday Mr Johnson told Mr Spooner he thought it best if he bought his wife out. On 5 October he proposed a figure of £250,000.

59. When Mr Spooner and Mr Johnson sat down for lunch together on 1 December, there having been some discussions in October and November, £250,000 remained the starting point. Afterwards Mr Spooner wrote "There is no way that I can get to 250k on a buy out as that will be the next two years entire cash profit and everything I have done would have been for absolutely nothing". £80,000 was owed to HMRC and £100,000 needed to cover the winter cash shortage. "The sort of structure would be to agree on exactly how much money you put in, plus the 60k in shares and pay it back across two summers".

60. On 16 December Mr Johnson told Mr Spooner that "we are looking at over £120,000" additional to the £65,000 for the share.

61. Mrs Johnson was, again, being kept up with negotiations "in a general sense", rather than seeing each email or WhatsApp. Mr Johnson was running a strategical campaign. He did forward his wife an email of Mr Spooner's of 21 December, with the message "Already backing down Keats just leave this now we are in the drivers seat!". Mrs Johnson told the court she had never been called Keats, and did not understand the reference, so perhaps that was auto-correct. Mrs Johnson had been involved in this part of the strategy, asking Mr Spooner earlier in the day for "a full breakdown of refurbishment costs… And a full breakdown… of this past year for contract staff, zero hours staff, food, drink" and the list went on through categories of no interest to Mrs Johnson because she could not read the accounts which had been sent through. Her request followed Mr Spooner's, again, for "a detailed breakdown of your investment so that we can negotiate either you buy us out or we buy you out", followed up by the request that she "line up your remaining £85,000 injection of funds as we will need it in January".

62. It was at around Christmas-time that Mr Johnson showed Mr Spooner the First List, to which I have referred above. It is headed "The George Hotel and

Garden". The first page describes her work on the garden; the next five itemise expenditure on labour, plants, bar and garden furniture and so on; against each is the cost (VAT not separated out), and whether paid by Sarcen or herself. She ends by describing her work on the bedrooms "By memory only- Inventory yet to be taken": the list is incomplete. "Please note that there are a number of pieces of furniture throughout the hotel, which were not bought for the hotel but which are specifically owned by Sally Johnson and only temporarily on loan to the premises. These will be listed separately and include many pictures, paintings, pieces of furniture, mirrors, sculpture, antique and vintage bottles etc".

63. That last quotation, with its third-person reference and description of items irrelevant to the £85,000 expenditure, shows the hopelessness of Mrs Johnson's statement in cross-examination that "This was prepared by me but not for Mr Spooner. This was prepared by me for my husband… [to] try and remind him of what things I had been buying". So too does the fact that in the bottom right corner of the front page is Mrs Johnson's handwriting, totting up the figures in round terms: "15,000 labour 2,200 ferries 50,000 internally 75,000 externally = 142,200 + 65,000 share 19,000 loan = £226,200" (the loan was Mr Johnson's director's loan, made shortly before). Whenever she wrote that, she was using this document to calculate not just expenditure, but her overall position in respect of QSL.

64. She elaborated on the story to explain how Mr Johnson had come to give Mr Spooner this list. While the list was unfinished, it was taken from her desk without her knowledge. She was "very cross with him. I said it had left off as many things as it included that shouldn't have been there", which does not explain her handwritten additions. "So it was a personal document for my husband, not for Mr Spooner", "done in the context of me trying to be more organised with what had come out of what account and what had been paid and where it was", and including (apparently) not just expenditure on the hotel but Sarcen's own. She said she knew shortly after it was taken that Mr Spooner had been given the document, but agreed that she had not contacted

him to ask him to ignore it. Mr Spooner was certain that the investment had been a fraction of that, perhaps £40,000.

65. On 17 January 2020 Mr Johnson wrote to Mr Spooner telling him "I am getting the share sale and note agreements put together… I am basing the numbers on our agreement. That is you repurchase the shares at £65,000 over May-June-July-Aug at £16,250 per month. In Sept you start the loan note repayment % of gross revenue per month". There does not actually appear to have been any such agreement, although there were discussions through January, in which month also the Johnsons instructed PHB. Their own financial position was not as lavish as might be anticipated: Mr Johnson's email ended "Short term I could use the 19,000 loan back now, I can replace it next month if necessary".

66. In January or February Mr Cundy stopped sending financial reports, because he had not received the receipts from the Johnsons, and because Mr Johnson had been telephoning him with criticism; and the last led him to resign. Mr Spooner says that even before the first lockdown in March, when staff were furloughed, the financial position of QSL was "bad".

March – July 2020

67. Mrs Johnson's offer was formalised in a suite of draft documents drafted by PHB and sent by them on 4 March to Mr Johnson, who that evening forwarded them to Mr Spooner. They comprised a share sale agreement; an agreement as to the £19,000 loan; a "Chattels/£141k agreement"; a personal guarantee from Mr Spooner; and a settlement agreement including as parties Mr Spooner, the Johnsons, QSL, Sarcen and Stony Valley. The total of £225,000 was very close to the £226,200 which Mrs Johnson had written on the First List. The difference derives from the chattels and so forth there being £142,200 and here £141,000.

68. On 5 March Mr Spooner replied to Mr Gatward, copying in Mr Johnson. He enclosed emails confirming the investment agreement "which was not addressed in the shareholders' agreement you previously put together". He stated "that your client has wandered away from the [original] agreement and

instead decided without agreement from me that his investment in the business is now actually a 'loan' from Sarcen… Your client's insistence that Sarcen has made 'loans' of items is a huge improvement for him to the agreed position and is clearly unacceptable to me. Furthermore, despite numerous requests, your client has not provided any actual proof of the £141,000 he claims was spent on items for the Hotel".

69. Mr Spooner's letter went on to make allegations which have continued to infect the parties' relationship. He referred to Mr Johnson's access to the QSL bank account, and his earlier desire to remove funds (from which in fact he had desisted after Mr Spooner explained the monies were needed for wages); to his own loaning of "£100,000 to the business since the unravelling discussions took place and your client has not"; and his continued support of the business through the loss-making months of winter.

70. Mr Spooner's suggestion that there be an "account, with itemised receipts for anything which he or Sarcen paid for" ought not to have been provocative: it was what had been sought for many months, and seems implicit in the investment agreement. To that, though, was added what on any view might pique a recipient: because of the previous (notified) attempt, he sought an agreement that Mr Johnson "not touch the company bank account"; together with a more neutral request to "acknowledge that these items cannot be under a threat to be removed from the Hotel premises as they belong" to QSL, which was then saddled with a warning that the Police would be called if attempts were made.

71. Mr Spooner ended by offering repayment of the £65,000 and of the agreed amount Sarcen had invested, to rank behind his own recent investment of £100,000 and be repaid equally with it.

72. The Johnsons say there was no such input from Mr Spooner. That is not a matter which I am asked to decide although, like the £85,000 investment, it seems a matter susceptible to easy proof. But, while freely making their own, they took these suggestions and insinuations in bad part. The consequent

rancour has remained, and the rights and wrongs are not directly for this trial. Plainly, each side genuinely believed they had been wronged.

73. Unquestionably and acknowledgedly culpably, Mr Spooner also took matters into his own, uninformed, hands, which actions understandably stoked the fires. His view was that "the company desperately needed money and money was owed to it by one source and one source only and that was the Johnsons". He googled some law, and acted.

74. His first act was on 6 March to make filings at Companies House confirming both the removal of Mr Johnson as director with effect from 4 March, and his purported issue of two shares in the Company to himself, diluting Mrs Johnson to the 25% which he regarded her contribution as meriting.

75. His research also caused the sending of an email to Mr Gatward on 9 March. "I have taken considerable time to go through all correspondence from your client on the build up to signing the 'shareholder agreement'".

> "It is abundantly clear to me (and backed up with irrefutable written proof) that your client" had made a knowing false representation, intending him to rely on it, which representation therefore "satisfies the four basic tests for fraudulent representation", being that £85,000 would be invested into QSL and thereby "getting full access to the company bank account, facilities, staff and premises, whilst he had no intention whatsoever of performing on what had been agreed, ie injecting £85,000 into the company". "The question of the investment and itemised purchase invoices have been constant from myself to your client, with no disclosure whatsoever from him apart from a self-typed list of numbers totalling £141,000".

76. On 14 March 2020 Mr Spooner wrote again, concerning the First List: "they showed me this before Christmas and went to great lengths to explain along with written notes that they had used their incredible reputation with their trade suppliers to 'heavily discount' everything further than trade prices". Mr Spooner, though, had now obtained two invoices from the plant supplier CassifloraZelari which added up to £24,592, as against the £24,835 in the

letter. Of these, £11,172 was for plants for the Johnsons' home. (In cross-examination Mrs Johnson explained that these were not the only plant invoices, and that she had spent, separate to expenditure for QSL, around £100,000 on plants. But, again, Mr Spooner's belief that he had been wronged was not assuaged by the simple provision of invoices.) After giving another example he wrote this:

> "Sally and Brook have attempted to charge the company £26,000 with the narrative 'Trade, heavily discounted'… It is my position that I do not recognise the shareholders agreement… I have therefore removed Brook as a director and Sally's share has been dramatically reduced… duties were seriously breached including fiduciary duties, secret profits were made, and your clients were at all times acting for the sole benefit and profit of themselves at the expense of the company".

77. To his credit, on being informed on 15 March by Mr Gatward that he simply had no power to remove Mr Johnson on 19 March, and having now taken a barrister's advice, Mr Spooner recanted and corrected the position. The next day, Mr Gatward nevertheless sent the letter before action adverted to in his earlier correspondence describing a number of breaches of the shareholders' agreement, seeking undertakings including giving the Johnsons "free access to the Hotel, including to collect their personal property", and otherwise threatening injunctions coupled to, at the least, an unfair prejudice petition. This letter continued to aver that clause 8 of the shareholders' agreement covered all property provided by the Johnsons, including that of Sarcen pursuant to the £85,000 obligation.

78. Mr Spooner launched a second wave. On 28 March he sent out his own letter before action to Mr Johnson, alleging fraudulent misrepresentation and misfeasance. The day before he caused QSL to serve on Mrs Johnson a statutory demand for the £85,000 due under the investment agreement, together with £5,400 for a "specialist barrister's opinion".

79. On 9 April Mrs Johnson applied to set aside the statutory demand, which did not prevent Mr Spooner from causing a further demand to be drawn up on 29

April against Mr Johnson and Sarcen for £16,612. That was withdrawn as against Sarcen on 7 May. Mr Johnson applied to set aside his on 15 May.

80. The Johnsons' applications being conjoined and due for hearing on 30 June, on 28 June Mr Spooner withdrew them. On 30 June the only live issue was costs, which on 30 June, in the Swindon County Court, Deputy District Judge Napier summarily assessed on the indemnity basis at £35,000 plus VAT. Mrs Johnson was not pleased with the award: PHB had charged her more than £100,000.

81. Intersected into the statutory demand matters was on 26 June a mollifying of positions between the wives. At 1137 Mrs Spooner WhatsApp'd Mrs Johnson to tell her she had tried to call. "I'd love you to call Lucy… but I received this yesterday from Howard. X", enclosing a short-tempered message. That brought this from Mrs Spooner to Mrs Johnson.

> "Let's speak and ignore Howard's angry message. I actually think we could get somewhere…"
>
> "I keep remembering back in February last year how we all promised not to fall out and somehow the boys have managed it and I'm so upset about it all. All I want is a shot at speaking with you to see if we can sort this mess out. I have looked at your proposed deal and I think we could be nearly there. Can I call you? X".

82. Mrs Johnson was talking to a builder, but said she would call. "I agree it should never have come to this and we need to sort this out" said Mrs Spooner.

83. At some point before Mrs Spooner's WhatsApp of 1510 they spoke. The WhatsApp attached a list of items, which has been called the Personal List, prepared by Mrs Johnson and headed "This list is prepared to the best of our recollection. We have not been able to attend the site to confirm whether there are any additional items that constitute our personal possessions", which it identified by location and which was annotated by Mr Spooner through yellow

highlighting of the items which he considered were the hotel's. "Let's chat it through once you've had a chance to look at it", said Mrs Spooner.

84. It was the personal effects which Mrs Spooner and Mrs Johnson agree were the focus of their discussion. Mrs Johnson was keen to remove them. "Sally was really upset" said Mrs Spooner "and wanting her furniture from the George. That was Sally's main focus… the furniture in the George that she wanted back… The conversation we had was all about finalising a mutually agreeable deal for them to leave the business and what items she was going to remove when the deal was agreed". These items included "a desk she said was Brook's desk, and a wedding picture they were given on their engagement… There were a lot of items and… I understood from her they meant a lot to her. She loved talking about them. She would say about the bunk beds that her daughter… used to sleep in… She loved her items".

85. On 29 June, the day before the hearing now effective as to costs only, at 0719 Mrs Johnson sent Mr Spooner, copied to his wife and her husband, an offer. The subject matter was "Without prejudice offer subject to contract". It was headed "Without prejudice and subject to contract" and "Offer, heads of terms", and was addressed to both Spooners. It was "to settle all outstanding issues between us, and, with the proposed imminent reopening of The George Hotel" which, after the lifting of restrictions, was for 6 July, "allow both parties to move on".

86. It recorded Mr Spooner's last offer of £120,000. "Our offer, due to the increasing stat demand costs is for £132,001 GBP, with payment structured as indicated below. Furthermore, as requested, this offer now includes" and there followed a list of plants and a "children's commercial wooden play boat".

> "There is a separate list of Johnson personally owned goods, that Sally and Lucy will look over and agree on… which will be temporarily loaned and temporarily left on the Hotel premises but returned… in good order by 31st October 2020".
>
> "All Johnson personal items as per the Personal List, to be collected from The George Hotel by Sally asap but certainly prior to the reopening

> of the hotel expected 4th July [sic]… following their conversation last week Lucy voiced her concerns about the time left to prepare the hotel for reopening. In this regard, as Sally has personally renovated both the garden and hotel rooms, Sally has agreed to make sure, providing she has unimpeded hotel access this week and by Tuesday morning, that at the time her personal items... are being packed to return them home, she will help to make sure that each hotel room is fully functional, enabling the hotel to be successfully ready to reopen... Lucy Spooner is welcome to be in attendance".

87. A payment structure followed, "All payments to be personally guaranteed by Howard Spooner". £31,000 was to be paid "in full at signing", being half of the present legal costs. By 31 August £18,000 was to be repaid, being the outstanding director's loan (after the application of an agreed £1,000 credit). £85,001 was then to be paid over 16 months, "representing our 155,000+ paid out investment". There followed a schedule, which allowed smaller payments over the winter months, and ended on 31 October 2021. "In addition to settling the current dispute between us, we would require this agreement to bind all parties to agree that no further legal actions will be taken against either party following the signing of the above agreement".

> "This should not be a matter of 'winning' or 'losing'. For our own part, we are putting our own large financial losses aside to try and end this senseless, expensive and time wasting 'dispute' and make the most of a bad situation for both families… the resulting distress of the past 4 months is hard to comprehend… we hope that the above WP offer provides a solution for some kind of closure, however imperfect for either party, allowing us all to move on. Life is too short".

It was signed by both Johnsons.

88. The rub was that this offer was only open for acceptance until the conclusion of the costs hearing.

89. In cross-examination Mrs Johnson said that she had drafted this offer herself. While I think it more likely that she had some assistance from elsewhere (but

not from PHB), I accept that the terms were hers and that she was aware of them.

90. It also seems to me clear that this was what it purported to be: following the softening of the 26 June, a genuine, heartfelt offer which would resolve all matters in circumstances where all sides were suffering huge stress and anxiety: "tensions were running fairly high at this point", said Mr Spooner.

91. In saying that I reject Mrs Johnson's extraordinary evidence in cross-examination that this letter was a mere feint: "I was curious, really. I think it was more out of curiosity. I just wanted to know if he really wanted- was just going to keep going on and on". Later she said that, if it had been agreed, that would have been in principle only: it would have gone to the lawyers and the numbers would have been clarified; there would have been "due diligence". The reference to there being a later formalised written agreement is right, but these were heads of terms, specific as to numbers, within an offer open for a specific and limited period.

92. Another view of this offer, but not one promoted by either party, is that it was just to enable the Johnsons to obtain an advantageous re- or second mortgage from Hoares bank. At 1246 of the same date Mr Johnson was writing to their mortgage broker, Mike Boles, discussing their ability to fund an extended mortgage. He referred to "Another £130,000 coming from the sale of our 50% ownership and assets at the George Hotel which will be paid out over the next 12 months, but £59,000 by the end of August". The 12 months was not right under the offer, but the £59,000 was, and the figure of £130,000 is close enough to the £132,000, plus £1 for the £1 share. Now, I do not think that this alternative view is right: the offer is too detailed, and too emotional, to support it. But this email does show that Mr Johnson was willing to settle; and accept £130,000 as a figure; and had some belief that settlement was close.

93. What he had seen by this point was an email from Mr Spooner of 0910, thanking the Johnsons for the offer.

> "I think it is now a good time to discuss the gap between our respective offers… because if we cannot find a settlement deal we all, as Sally

> rightly points out, need to know where we stand and what is actually happening at the Hotel… Therefore we will draw up notes for discussing the offer… please do the same… We should conduct the meeting this afternoon… How about 2pm? I hope we can agree a settlement, in the absence of which at least we will all know what the future looks like at the George".

94. The Johnsons did not respond. At 1205 Mrs Spooner WhatsApp'd Mrs Johnson "thanks for coming back with an offer this morning and glad we are making some progress. Hope Brook is able to discuss this with Howard later on today and we will definitely put our best foot forward in trying to resolve this amicably. Shall we send Brook a zoom invitation for 2pm?". Mrs Johnson's 1351 reply was a brush-off: "just read this inbetween meetings. Going back into one now which is expected to run all afternoon and Brook is with our lawyer… I'm assuming he's replied to it".

95. In the evening of DDJ Napier's decision Mr Johnson wrote to Mr Spooner, referring to the "now public damning verdict" of the judge. "As a director I am going to insist on a full scale audit".

96. That appears to be more manoeuvring by Mr Johnson. It cannot have been remotely attractive to either side to continue to be bound together. As the letter to the mortgage broker shows, the Johnsons had additional reasons for wanting a sale because they had to ensure the funding of their building project. On a personal level Mrs Johnson had her much-loved furniture and chattels on the premises which Mr Spooner was not allowing her to visit; and, I am sure genuinely, also wished to ensure the hotel looked its best for the reopening.

97. On 1 July at 1626 Mr Spooner sent a message to the Johnsons, focussing on what Mrs Johnson really wanted:

> "Having looked closely at everything in the Hotel, I do believe that we can get closer to an agreed list for you to take… If you are still interested in a deal let me know and I will go through the list again… I still genuinely want to resolve matters but there has to be compromise so the business does not suffer".

98. At 1653 Mrs Johnson wrote to say she appreciated the offer but "you've got too much work to do on the other more important issues", and suggesting that she be allowed to "set up the rooms and garden furniture layout… There is enough time before Monday for me to get the rooms right" and then the reference to her personal effects "and what I need back at home". She suggested coming on 2, 3 or 4 July to "go through it all on site with Lucy".

99. At 1713 Mr Johnson texted Mr Spooner

> "on my personal text as I want it private between us. This whole nightmare has been unnecessary and expensive for both of us. That's now water over the dam. What has to happen is that we stop the fight and resolve this as men. We both take our losses and end it for our families sake. Sally wants to get her personal items (you have no idea how important this is to her and therefore to me.) She can get the items critical to her now without affecting the operation of the hotel. The others can come later. Leave this with Sally and Lucy and independent of you and me. That's the smart move. I don't need a mediator and neither do you. I will come down on Friday and we will meet together and finish this for good. We are close enough on numbers as our last two emails show to make that happen. Maybe it's a time issue more than a numbers issue. Don't say no to this olive branch as then it's more war, more expense and who knows where or how it ends not necessary or smart. We have been friends and partners in the past and we can both show good faith and common business sense again and get this done... I can be at the hotel by 9:00 AM [on Friday 3 July] we can meet in the garden or anywhere comma alone I no one else has to know what we are doing. This is our last chance I believe, but a chance that could work for both of us. See you Friday morning".

100. Mr Spooner responded positively, but asked that the meeting be on the phone not at the hotel as "there is way too much going on here". Mr Johnson replied:

> "it's critical Sally meet Lucy at the hotel to go thru the personal items thing and get that resolved. You and I can meet in Lymington or

> anywhere but not on the phone we need to shake hands on a deal or we don't but we need to give each other that closure!... don't blow this chance now".

101. Mr Spooner was concerned about the opening. Mr Johnson pushed again. At 2235 Mr Spooner continued to resist any on-site meeting. At 0726 the next morning, 2 July, Mr Johnson texted again:

> "We will meet offsite if that works for you. I want a handshake on the unwinding, what you pay back and when. You need to give back the important sentimental items to Sally now, she does not want things you clearly need to run the business now, but eventually all her personal items back. That's easy for you. I will be in touch today to set up our meeting".

102. After another exchange, in which Mr Johnson confirmed that while a list had been going between the wives, he did not know what was on it, and it was "not a good subject for me with Sally right now", Mr Spooner ended by saying "I simply cannot have Sally just turn up and grab things".

103. At 1108 he offered a meeting "let's meet on the proviso I have a rough and ready list and I am in attendance with Sally afterwards when things are removed. We need to nail this so it doesn't just get worse. This cannot degenerate into a smash and grab!"

104. Mr Johnson replied:

> "I agree 100%, that's why it must be handled carefully which I am trying to do right now", from which it may be detected that he was under considerable spousal pressure, "I will be in touch and you must believe me I, like you, want this to work but it's delicate. You and I can get to the numbers and timing, that's the easy part. I will be back in touch, give me a couple of hours".

105. In fact, by then the Johnsons were on their way to the hotel, via various police stations to check if indeed they would respond to a call from Mr Spooner

barring them from entry. They were also in contact with John Gilbert, Mrs Johnson's brother, in Australia, who had assisted with the statutory demand case and was now asked for Companies House documents, including those showing that she was a 50% shareholder and he a director.

106. Mrs Johnson said she did not know of her husband's communications with Mr Spooner. I doubt that, as they were both dealing with Mr Gilbert and as they were travelling together. On any view, in the forefront of the minds of each was the removal of Mrs Johnson's personal items, which would require a deal to be done; and as to that deal, Mrs Johnson had set out her stall as to the amounts and timings in her 29 June offer, and Mr Johnson, while considering timing might be the issue, thought the offer close enough that closure could be achieved; and both also wanted closure for emotion's sake. So too did the Spooners.

107. That is not to say that the Johnsons were at one on all points: it is clear from Mr Johnson's communication to Mr Gilbert at 1209 that she disagreed with both of them: "Call her number again now she might not answer because she knows you agree with me". Mrs Johnson confirmed that they had "ganged up" on her, but could not remember over what. The most likely option is that while for Mr Johnson a deal was a stage in negotiations, Mrs Johnson was prepared to do a deal which was certain because of her overwhelming desire to obtain her furniture and effects. There is an indication of that in the continuation of this text:

> "We are on our way to Newport to see the police but Howard texting me to say he wants a deal and wants to get Sally's personal goods back but needs some of them (this is true) to open on Monday and for the summer. He's guaranteed them returned and frankly we don't need them for a while anyway. Once this issue is out of the way I can for sure make a deal to get substantial money back with PGs… he needs to make the hotel work and to do that needs a deal with us".

108. The texts now switched to Mrs Johnson and the Spooners. At 1229 Mrs Johnson sent a lengthy text to the Spooners, not telling them they were on

their way, but promising to "work through my list and get back to you as to what I can manage without for a bit longer" and recording her intention to "support the hotel in every way I can" as "I gather that no deal is forthcoming".

109. At 1254 Mr Spooner laid down his position:

> "I have always been delighted in what you achieved here. I don't want to reiterate what has caused me to snap but it wasn't you. Unfortunately though, whilst you remain a shareholder, nothing but essential personal goods can be removed. I think what you are talking about is 'the list' which hinges around a separation deal. In a nutshell you must not remove any loaned items that would disrupt the business, therefore we need to agree on the essential items and any others depend on you leaving the business and the timing cannot be before January. It can all be done, but let's agree matters together properly".

110. As he explained in cross-examination, he was distinguishing between "essential personal goods, like the picture…", which "I think Brook was given as a wedding present or they were given as a wedding present by Sally's ex-husband" and the personal goods loaned while shareholder for the benefit of the hotel, just as he had loaned his. "I wouldn't want to hold anyone's personal heirlooms… if they wanted them back. Absolutely she had a few things she wanted back. I was very happy… to give those back. I don't know what they were doing in the hotel in the first place". As to the other personal items

> "Mrs Johnson was desperate for her belongings back and the only leverage that the business had over them leaving the business or putting the money in was her desire to get items for the hotel. So it was always going to be that we had to agree on the mechanism for her leaving, in order for her to take items from the hotel".

111. There was then a gap until another lengthy text from Mrs Johnson at 1434 which opened "Let's agree matters" before explaining that the Personal List items were not the same as those contributed to QSL and making up the

£85,000. Her position was that "If there is any kind of separation agreement to do, that's entirely separate to this issue of my things". She ended now telling Mr Spooner that "I will be over to the hotel shortly… but not Brook. Please be friendly". Mr Spooner's short reply was "I need to go through everything with you in a civil manner before anything at all leaves the hotel". He added "I suppose you are in your horse box then?".

112. The £85,000 spend had been subject to a list, called the "85k List", which had been drawn up by Layla Starsmore, Mrs Johnson's accountant, and produced in the statutory demand application. It was itemised, the first items being labour for builders and painters, followed by lists of plants and furniture and other items. It totalled, again without separation of VAT, £87,936. It was the items on the £85k List which were distinct from those on the Personal List. As Mr Spooner said, as at 2 July

> "I've never seen- this gets back to the original situation. I had never seen any proof of any receipts to quantify what made up the £85k List. I'd seen a list of items and travel and ferries and all of this, but that list had also been 141,000, it had also been 100,000, it had also been- it had been all over the place. The personal items… were covered in the shareholders' agreement and both Brook and Sally were very quick to quote the shareholders' agreement at me constantly. So… she knows fine well that all the items that were in the hotel were there as part of the deal: 85,000 as part of the investment deal and all other items as part of the shareholders' agreement".

The meetings of 2 and 4 July

113. To assess the accounts of Mr Spooner and Mrs Johnson of the meetings which they agree they had on 2 and 4 July an overview of them is required.

114. Mrs Johnson's written evidence began by being very short. On 2 July they had talked for about 2 hours. She told him "how much stress and legal costs he had caused"; he wanted control of QSL. "The upshot was that we agreed to try to come to some form of agreement whereby we could go our separate

ways. We did not reach an agreement for the sale of my shares. Frankly, it was progress that we were finally talking for the first time in over 4 months".

115. On 4 July, while she and Ms Evans were in the middle of hanging pictures in the private dining room, Mr Spooner

> "walked in. He said he was in a hurry because he had a ferry to catch and gave me a piece of paper (of which he said he retained a copy) with some manuscript on it which he said was his suggestion for a deal… I looked at the paper and laughed and told him he would have to come up with something better. I remember specifically asking why… I should pay for my personal ferry charges when QSL had paid Mr Spooner's, his family and his friends', he jovially said he would think more on it and email me at some point… We did not discuss his proposal in any detail"

and after some remarks about how pleased he was with the look of the hotel, he left. That first account is almost identical to, and must be based on, an account which Ms Evans wrote down at the end of August 2020 at the suggestion of Mr McCormick, and which she adopted in her evidence.

116. Having seen Mr Spooner's much fuller account of the 2 July meeting, which stretched over paragraphs, Mrs Johnson improved hers in her second statement. She now recollected that she had explained that she had not made any secret profits; his denying that he had, and showing her Telleroo accounts, which she did not understand, in demonstration; his expressing his dislike of Mr Johnson "poking at him over the numbers and asking questions"; saying that he wanted 51% of QSL (although Mrs Johnson clarified that by that she meant control); her saying that the 85k List was her spending and the First List was private; their discussion of some figures; and his wanting VAT receipts so he could claim them through QSL. Before the end "Mr Spooner asked if I wanted to discuss numbers. I declined and told him that I was exhausted and could not face that kind of conversation… We had by then been talking for close to 3 hours".

117. As to 4 July, she confirmed "only glancing" at the piece of paper he had handed her.

118. Mrs Johnson expressly denies that any deal was done on 2 July; and that any piece of paper was given to her other than on 4 July.

119. Mr Spooner says that on 2 July having received the text telling him Mrs Johnson was arriving he printed off 2 copies of the 29 June offer letter, without the headings and cutting off the payment schedule at August 2021. He wrote on the back of one sheet, headed "The Deal" the points he wished to negotiate, and copied that. The meeting lasted about 4 hours. Mrs Johnson cried continually. She said he had belittled her work; that the items of furniture "were like babies to her as they reminded her of places she had been in her life"; of her daughter's illness; of Mr Johnson and his American ways of business dealings; of the actual costs of the statutory demand application; how she had not had a penny back from the hotel; that Mr Johnson said Mr Spooner had stolen £100,000, so he called up the Telleroo account to demonstrate otherwise. He then gave her her two photocopies of what have been called the deal notes. They discussed the 85k List. He said he had never seen invoices. "She immediately started referring to the items purchased and their prices. I started writing these down…". They went through the 29 June offer and discussed items, Mr Spooner ticking them on the reverse of his sheet as they went through. She said that she would not leave for less than the total with no deductions, which he worked out at £133,084 without VAT. He said that was more than 29 June, but agreed that he and QSL would pay that figure. "Sally said 'great, that's a deal, let's be friends' and started to talk about love and effort. She promised not to involve her husband. They "shook hands for a long time across the table". She asked if she could take her personal items, and he said yes. Mr Spooner then photocopied the handwritten part of his deal note with his added notes and gave it to her. He asked her if they should sign, and she replied "no; we will get it drawn up; we have a deal". And on the next day she arrived with her trailer, loaded up with staff help, and left on 4 July, on which day he saw her and Ms Evans and said to her "fine, Sally, take it", referring to the surprising volumes of furniture and effects.

120. In his second statement Mr Spooner confirmed that there was no piece of paper passing on 4 July.

121. Mr Spooner raised other matters over his three statements, in particular that on 2 July Mrs Johnson's unmistakably large blue Scania horse lorry was parked about 100m from the hotel in the harbour car park. We have already seen the throw-away remark in the texts of that date referring to the horse box. Whether it was there on 2 July (it was on everybody's case there on 3 and 4) is by itself a point of little relevance: it might perhaps add to the evidence that Mrs Johnson was desperate to extract her personal effects no matter what. But Mr Spooner does describe how he received a call from his wife during the meeting, telling him not to trust Mrs Johnson and to see if the lorry was there; he said not; she said look in the harbour car park: it was. His next statement corrected the time of that call from his phone records, and his final one the timing of his own ferry on 4 July (now 3pm rather than 2pm).

122. In cross-examination Mr Spooner said "All I know is that when I looked from the corner near the harbour office back to the harbour car park, which is about 100m, I could see what I believed to be her blue horse lorry sitting there"; that "I believe I saw it" was evidence which was notably less assured in comparison with the rest. As I say, I think Mr Spooner is wrong about seeing the horse trailer on 2 July, even though, as his wife confirms, she did on that date tell him to check if it was around. It would have had to have been driven over by someone other than the Johnsons. Why would they do that before a deal had been done and the furniture released, and when without any great inconvenience the lorry could be driven over any time?

123. Other than that, his cross-examination on these days fixed convincingly to his written account. Asked why if there was a deal Mr Johnson did not need to sign the reply was "He was appointed by Sally", which is right. "Sally was very specific and emotional, that she and I had both had enough of legal fees and all the fighting. She just wanted closure, she wanted to move on and so did I. It was that simple. I said to her 'I don't want to ever deal with Brook again in my entire life. I don't want to even see him, speak to him'. She said to me, 'It would be a shame if you can't shake hands after all of this, so when you pass each other'- we live in the same town- 'there's no animosity'. That was the basis of 'OK, let's get closure'".

124. In the known circumstances and the weight of the evidence, and having heard how Mrs Johnson expresses herself, I find that convincing. So too I find convincing that at this meeting, with the card of the personal furniture, and supported by his wife, Mr Spooner was going to insist on his rights as to the furniture under the investment agreement and shareholders' agreement and not let it go without an agreement.

125. In contrast, Mrs Johnson's evidence in cross-examination was inconsistent with her statements and within itself. We had both "The conversation with Mr Spooner was a big sweeping conversation" and "There was absolutely no discussion about an SPA in terms of valuation of my shares or how it would be structured or what would happen. It was simply that I would go and set up the hotel, make it look fantastic, take the bits that I really really needed that did not affect the running of the hotel and thereafter, yes, we would be able to discuss it, but there was no discussion". We know from the prior texts that Mrs Johnson's priority was not the aesthetics of the interiors and garden but the recovery of her items. That quote is also another example of her seizing on extraneous explanations: it incorporates a share purchase agreement, and a valuation of her shares. At another point she said "I did not go there to do a deal. I did not discuss a deal" before seizing on another phrase: "We discussed only conscious uncoupling": even that, in its apparently commonly understood sense, is a process which has a resolution, in divorce.

126. The profound difficulty with Mrs Johnson's evidence is that it does not address the deal notes which she was given, and which indeed she annotated. It was not until January of this year that her pencil annotations to the handwritten and photocopied deal note were disclosed in a legible state. So, it is incontrovertible that she had (at the least) this document, and wrote on it. She also took a red-coloured photocopy of it, she now says on 5 July.

127. Her receipt of this document not being in her evidence, and indeed being contrary to it, she had to deal with it orally. She said that she was given it on 4 July. Her pencil additions were made then, with Mr Spooner sitting next to her "and my housekeeper standing opposite". Ms Evans said "I was sat at a table… when Mr Spooner came in and gave Mrs Johnson a bit of paper. They

spent maybe a few minutes talking. I remember Mrs Johnson saying something like 'you're going to have to come up with something better than this'". Those few minutes talking which she described were not just about the bit of paper, and Ms Evans, picking up fragments of conversation, has no recollection of annotations. Mrs Johnson's new account is a stark contrast to her own written evidence which has her merely looking, or glancing, at the piece of paper and laughing and making some remarks. It is not evidence which now squares with Ms Evans'. I do not find it credible.

128. Mr Spooner's hand-written notes on the reverse of the 29 June photocopy began with the first head of the 29 June offer, which had been £31,000 for the legal costs. In accordance with DDJ Napier's order he wrote in 35+VAT = £42,000 with the note "You wanted 31k to legals- allow me to put the money through the company and claim back VAT- I put 100% into the company account". Mrs Johnson has circled the £42,000, and Mr Spooner confirms she rejected the VAT treatment.

129. Next was "Brook's loan account need 1k deducted for Fry teak". His figure was £16,375.14. She said "it's a dealbreaker" and wanted the £18,000 which was in the 29 June offer. He agreed. Her note has pencil circlings around "1k deducted" and the proposed amount; and bears the figures 19,000 and 1,000 and their total, 18,000. £19,000 was the original amount of the loan, and £1,000 the agreed deduction.

130. Next was headed "The £85,000 List" with proposed "deductions from £85,000". She has circled the first of those, £10,000, and its description "Labour was never costed out and Brook said he was paying this (I will show texts). Let's split it 50/50 £10k each". That was rejected, and Mr Spooner scored through this figure on his copy.

131. So did they both for the next, £3,500 for "Travel. I paid my own travel- this was never discussed. Split 50/50 @ approx. £7k". "She said absolutely no way so I took it on the chin".

132. Neither made any markings against the £11,916 for "VAT not claimed on the items and we always agreed NET amount to be 85k (will show texts). VAT

on the balance @ 20% = £11,916". While she said she did not want this deducted and would talk to her accountant about it, it is apparent that this was agreed because in place of the £117,995.14 which Mr Spooner was originally offering he has now written £133,084. While there is no such marking on Mrs Johnson's note, on the back of the red photocopy are Mr Johnson's subsequent figures, which include a short working-back from the figure of £133,000. So it seems likely that, as Mr Spooner says, he did indeed at the end of this meeting give her a copy of his own marked-up note. £133,084 was £42,000 + £18,000 + £85,000 – £11,916 VAT.

133. Mr Spooner had already written at the bottom "£42,000 7th August as agreed" (it was anyway the date under the court order), and proposed the balance "as in adjusted timings you proposed", which covered almost the exact same amount. QSL was to make the payments, as it was repaying the £85,000 and director's loan, except for the £42,000 which would remain with Mr Spooner, who would also guarantee the others.

134. As to the transfer of the share and resignation of Mrs Johnson's appointed director, it seems a plain implication that as this agreement was to end her and her husband's involvement with QSL, that should be effected on the making of the first payment.

135. For the reasons given, I accept Mr Spooner's account of 2 July meeting. There is no other meeting suggested at which Mrs Johnson could have made her notes. I therefore accept that he and Mrs Johnson treated this as a conclusive agreement, notwithstanding, as she said, that she wished it to be drawn up formally (as it would have to be anyway, in respect of the guarantee). On an objective view, given the background I have described, that is what it was. It put an end to the disputes and, critically from her viewpoint, permitted Mrs Johnson to collect her personal items, which she otherwise could not have done. As she said, "selling or not selling was ultimately my decision, even if I often discussed how to deal with the issue with my husband".

136. Mrs Spooner recalled talking to her husband that evening.

> "He was totally elated. He told me he and Sally were friends again and they hugged. He said she didn't want this anymore: she wanted to end all the stress and the legal battle, she said it was all Brook and she had left it to Brook and this is where it got her… Howard told me on the phone 'it's 100% done'. He reassured me again and again…".

Orally she said "That was a massive part of our life and that was a big, big deal. So I 100% remember that…". Perhaps the next day her husband had told her that, as was right, "he had photocopied it, they'd both got a copy", because she was still seeking reassurance. As she wrote to her best friend, Pip Hurd at 0755 on the morning of 3 July, still not quite believing it "Howard and Sally met at the George yesterday… had a 3 hour chat, loads of tears from Sally, hugs etc and looks like we have reached an agreement for them to leave the business and now we are friends again…".

137. Mr Spooner recalls having a "knees-up" with the chef, Claude Bosi, in celebration.

138. The next day Mrs Johnson and Ms Evans arrived in the Scania horse trailer to remove her items, and in their wake rearrange the hotel for its imminent opening. She too was happy: dancing around the tables and in the garden; hugging staff; thanking them for working for her. The staff helped move the items into the lorry, filling the horse compartment by 4 July. Olivia Story remembers her saying "things like 'it was the end' or something like 'this is over'… Sally gave me a hug when she left, and she gave Roxy a hug… Everyone else had gone by this point… After she left, there was gossip in the George about Sally going and stuff. The way I took it was that was the end of her business ties with Howard". Lily Spooner too had helped load. "When she said goodbye to me, she said something to me along the lines of 'it has been really lovely to meet you, it's a shame I won't have the opportunity to get to know you'… All I understood was that Sally just wasn't involved with the George anymore. That was the general gist among the staff".

139. Mr Spooner too witnessed the staff goodbyes, and his saying good bye to her "next to the hotel garden gate… She said 'no hard feelings' and a whole lot of slushy stuff…". He left by 2pm for the ferry.

140. These goodbyes were not a waving off of the lorry and Mrs Johnson. Ms Evans thought she and Mrs Johnson had left without a send-off, but I am satisfied it happened even if in dribs and drabs, with the last staff there Ms Story and her friend Roxy.

Dealings and communications during and immediately after the meetings

141. Into this picture, which in my judgment tells the story of a definitive agreement reached, like the original investment agreement, by a handshake or its equivalent, and, like it, with documentation to follow, must be intruded first what Mrs Johnson was saying, and secondly Mr Spooner's email of 5 July.

142. What she told her husband we do not know, beyond a light account in her second statement that she said to him she had told Mr Spooner that there had been "several misunderstandings, but that I cared about the hotel and wanted it to work. I state[d] that I want[ed] closure but that no deal had been agreed that day". The last phrase seems to me curious, unless someone were expecting a deal to be done.

143. Also, at 0033 on 3 July she replied to her brother's text of 2132 the evening before headed "How did you go today?" and with two question marks in its body. It is likely that, as she said, it was her husband who had told her brother that she was going into the hotel to see Mr Spooner. She wrote this.

> "I went in and talked to Howard and told him all the stress he's put me under when I'd done all the work and paid the money… and I cried a lot. He apologised and said we could try to sort it out. Did I want to stay in etc… he wants brook out… 49/51% (ya right) and then to go on. I said I couldn't deal with the stress etc and that I thought he was better being a business man on his own… he didn't like brook constantly poking at him etc. He said he'd send me an offer – but nothing has been forthcoming".

144. There are a number of oddities in that, beginning with why Mr Johnson had not updated Mr Gilbert. Mrs Johnson confirmed that the "49/51%" were not actual words but her understanding. Having dismissed that, she says that it was she who invited him to become a businessman on his own. That he would send her an offer is not in her evidence anywhere, and it seems unlikely that there should be an expectation that if it were not made at the meeting it would be forthcoming so shortly after. There is no mention of the personal effects.

145. It looks as though Mrs Johnson, while surely very tired at that time, and with long days ahead of her, is spinning a line. As we know, she was not in agreement with her brother's and husband's strategy.

146. There is an insight into that in Mr Gilbert's at 0205 forwarding the message to Mr Johnson, and referring to newspaper articles about the Swindon County Court hearing. "I think you now need to keep the pressure up on Howard". "One of the key strategic questions is whether you want to get a buyer lined up and get Howard out of the business, whether to sell to Howard, or to jointly sell to a third party". Mr Johnson was still eyeing up maximising value.

147. This small deception on her husband is one which Mrs Johnson maintained. At 0215 on 4 July, as she said "knackered" after hours of moving furniture, she told him that "Seeing howard at 10am to hear his proposal… not that hopeful really". Mr Johnson's advice was "don't react to his proposal just bring it home and we can think about a response", then a few minutes later "Remember do not get in a discussion with Howard about whatever proposal he gives you no matter how stupid it is. Just say thank you and we will get back to him. We have a lot of ways to play this game, you want to avoid any confrontation. Even if he asks us to pay him don't react. Just get your furniture out".

148. Again, nowhere in her evidence does Mrs Johnson identify when this 10am meeting was set up, nor what had happened to the written proposal she was apparently expecting on the evening of 2 July. She does not say she was surprised when she saw Mr Spooner at the time she did on 4 July, given they had a meeting for 10am. Again, this seems a small ploy of her own, keeping

her husband away until she has extracted her personal items the only way she ever could, by making a deal.

149. On the evening of 4 July she and Ms Evans and the lorry arrived home.

150. She now says that on the morning of 5 July the deal note she had marked up in pencil was on the kitchen table. Her husband, as he was wont to do, picked it up; he took it to Waitrose; lost it there; and found it when he went back. She says it was then that she took the photocopy which came out in red. She said at some later point she put the original in an envelope and filed it. The copy she hold-punched and also filed, although she would take it out to refer to it.

151. As I have found, from Mr Johnson's notes on the back there must also have been to hand the copy of the final deal note which Mr Spooner had given her: Mr Johnson was scribbling on the back, looking at the figures on the other sheet. Mrs Johnson was also noting her own calculations of the cost of items and more generally: in the top right are, added up to £145,000, the £42,000, £18,000 and £85,000: the elements of the 2 July deal. It does seem to me that the most likely time for these jottings was immediately after the copy was made, and before it was filed; and that the most likely time for that was 5 July. So, on that day, and with her personal items now to hand, Mrs Johnson came clean to her husband, if she had not done so on her return the evening before (there is a short text timed at 0121 on 5 July in which Mr Johnson informs a US-based friend of "a little local news on the hotel we jointly purchased with Spooner who turned out to be a real [.]… Anyway that's sorted").

152. She also, at her brother's suggestion, wrote down a note of part of the conversation of 2 July, in which she recorded that Mr Spooner had suggested that all the plants which she had bought from Cassiflora Zelari, whether for the hotel or home, should be put through QSL's books: "He said it would just need a bit of 'paper shuffling' to make it legal". I think it more likely that Mr Spooner was making two points: first, that she was relying on expenditure from that company which had actually been for her home, not the hotel; secondly, that he did indeed want invoices for the hotel spending, so it could be reclaimed.

153. At 1219 on 5 July, headed "Heads of agreement for settlement without prejudice and subject to contract", Mr Spooner emailed Mrs Johnson. That heading was the same as that for Mrs Johnson's 29 June offer, to which this email replied with the 2 July updates, with the addition "Heads of agreement for settlement". In cross-examination Mr Spooner said that actually this entire heading was the same as that on his initial and binding agreement with the freeholder, which was only subject to formal written contracts a month after he had entered occupation. In his non-legal way, he had thought "without prejudice" meant "private", and "subject to contract" meant that "there was going to follow a contract". Later he said this:

> "in my understanding, you can have a binding heads of agreement which say 'subject to contract' that are binding and the contract to me was and has always been; the way I've done business, it's a very quick moving industry we're in and you agree terms with an agent or the other side and you've agreed the terms and you're bound by that, subject to the contract being produced to reflect the same terms in your agreement. And that's how I've always understood that and, yes, most of the deals I have done have been on one or two sheets of paper, often handwritten, and then followed up by the lawyers drafting the various documents that are required and, as long as they've reflected the heads of agreement, as long as the contract has reflected the heads of agreement, the agreement has gone ahead. And if they haven't, they've tried to sort out why there's differences there".
>
> "To me, 'subject to contract' has always meant that we will put this into a contract… regardless of that, I'd done a deal with Sally Johnson on 2 July. The deal was done".

154. That is apparent from this email's opening: "I am pleased that we managed to shake hands and move on". Not all the language is at first sight so definitive- "The offer to settle which we discussed is basically your offer below"- although that is an accurate description of the process of 2 July, as is what follows: "with the exception that we need to account for VAT… but legal fees

have been agreed at a higher amount by the court. We also agreed on a figure of £18,000 for Brook's director's loan account".

155. Mr Spooner also anticipated Mr Johnson's actions: "Please don't let Brook get tricky with this as it's very straightforward and much more than the business can afford".

156. In cross-examination Mr Spooner said that this email was written "in a rush on the only Sunday I had seen my children in weeks. This was supposed to be some sort of confirmation". As he wrote in it

> "I will insert the figures [discussed] in red below", being the amendments to the 29 June offer. "Unless there are any parts we have misunderstood, let's just flip this email into a 1 page agreement and get on with it. Neither of us needs to spend £11,000 on agreements as Brook wanted to. Are you happy for me to send proposed new agreement that covers everything? I have no intention of falling out with you and I think this matter is now very simple… Have a look below, it gives you what you wanted".

157. As he also agreed, his alterations to the 29 June offer did not entirely match what he said (and I agree) was settled on 2 July. Mr Spooner did not see this as material: "I'd done the deal on 2 July. We'd shaken hands, we'd moved on. I don't see the difference". He said he had "recalculated the basis, but… it had no bearing on the agreement we'd reached".

158. His differences in calculations derived from his no longer simply deducting the VAT from the £85,000 figure, resulting in the total of £133,084 once the £42,000 costs order and £18,000 loan account had been added in. Instead, he arrived at a figure of £72,944 to be added to the £60,000, giving a slightly lower total of £132,994. That was because he stripped from the 85k List the actual amount of labour in it, of £12,664; then deducted the £12,056 which was the VAT on the balance; then added back in the labour: a more scientific process than on the Thursday before.

159. However Mr Spooner perceived it, this was, then, a proposed variation to the 2 July agreement which had already been performed in part through Mrs Johnson's removal of her personal items. He remained in no doubt as to the making of that agreement. At 1841 on 5 July he was emailing Mr Bosi headed "the future" and thanking him for his "extremely committed and professional approach to the George… Moving forward, these are my thoughts". The first was that the "season ends and we shake hands and the association ends". The alternative was that "We move forward and assign the lease and option (to buy freehold) into a new company owned 50/50 to commence trade in March 2021". That was not something which Mr Spooner could have proposed without an existing compromise with Mrs Johnson. He drew to Mr Bosi's attention that "There will be about £85,000 of payments left to my ex partners for their share of the current company (paid over 18 months)".

160. Neither was there doubt on the Johnson side. At 0654 on 6 July Mr Johnson was emailing Mr Boles the mortgage broker with an update on the 29 June position to support the affordability of an additional £350,000 bridge loan from Hoares: "we have just finished selling Sally's share in the George Hotel for £130,000. The schedule of these payments [is] provided below, they start in Aug… I am providing these exact details of income and expenditures because we know this is the way Hoare and Co makes decisions". That was unequivocal. The only agreement which Mr Johnson knew about can have been that of 2 July. At 0909 Mr Boles asked for details on the George payments. At 0950 Mr Johnson was back with "funds from the George sale are £130,000 over 18 months that's £7,222 per month starting the end of Aug". The details of that are wrong, but the representation that there was a definite sale remains.

161. These representations to Hoares did not mean that for other purposes Mr Johnson was not acting true to form and Mrs Johnson being led by him. At 1722 on 5 July, after Mr Spooner had sent Mrs Johnson his email with the terms, and after the Johnsons had discussed the papers she had brought back, Mr Johnson texted Mr Spooner: "I will send you a reasonable counter proposal

to the offer you gave Sally. Hopefully we can get a deal agreed and all move on".

162. Mr Spooner replied at 1728, when surely he ought to have been getting the hotel finalised for tomorrow's opening:

> "I really do not want to go back and forth. That was your deal which has simply had vat treatment and the new legal contribution. Please don't change it. It's a lot higher than the deals I was offering and based on it I was not obstructive with Sally in any way. It's what you asked for. I took the heat out of everything by reaching out and then followed up with Sally. This is your deal structured correctly, not a negotiation, please please respect that".

163. At 1147 on 6 July Mr Spooner emailed to report that Tatler had cancelled its proposed visit to the hotel because of the newspaper reports of the DDJ Napier hearing. Some local suppliers had also withdrawn their business. "The damage is huge. Please don't mess about on the agreement as we both need to put in more money now".

164. At 1643 the same day Mr Spooner was pressing Mrs Johnson for a reply to yesterday's email.

> "I am worried now that you have what you want and again I am left with Brook negotiating the price of eggs. You gave me your word, I am clinging to that and I honoured my side of the bargain. Why have you not confirmed what we agreed?".

165. At 1717 Mrs Johnson responded.

> "I've just walked in. Not had my phone with me on site I'll go through my emails… did you send something? You were going to adjust your deal offer, as during our brief chat you said and agreed that the deductions you were suggesting were not justified. So you were going to resend your suggested deal to me by email… so can you do that please? PS how has today gone? All ok?"

At 1720 she added "I've just got to go back up to the site quickly then I can sit down and read your suggestion… in half hour or so".

166. This smacks of scheming. There is no excuse proferred for not answering the email yesterday, when it was sent. It cannot be that she had not discussed matters with her husband since lunchtime the day before. While her first account of the 4 July meeting did end with Mr Spooner's saying that "he would think more on it and email me at some point", that disappeared from her second. She had told her brother that after the 2 July meeting, but that had been anything but brief. The words "deal offer" seem careful and contrived.

167. They were. Mrs Johnson had at one time been a television regular against whose continued acting abilities Mrs Spooner had warned her husband. Her email to Mr Spooner was a lie. By then she had received the 5 July email and been considering it with her husband and Mr McCormick. We do not have the details, but it seems that Mr McCormick had a meeting at their home in the morning of 6 July, planned since 4 July. Certainly by 1415 that afternoon he was emailing the Johnsons "When you go back to Howard on a figure at which you will sell say it is 'subject to contract' or equivalent". "Will do thanks" said Mr Johnson at 1440.

168. By 1809 on that same Monday Mr Spooner was telling Mrs Johnson that a customer had turned down one of the rooms because of "4 great big holes and a lot of scrapes", and to "get this [deal] done as we agreed it please. It's not fair to mess about now you have what you want".

169. At 2151 Mrs Johnson felt able to say "Just read email. Will get back to you in the morning by email. Couple of issues. Have to talk to my accountant re your vat suggestion etc".

170. By 7 July Mr Spooner says he was "immensely frustrated at what Brook and Sally were trying, again, to do".

171. At 1428 on 7 July Mrs Johnson sent her response "Without prejudice and subject to contract". It began with what we can now see was naked untruth:

> "I have not taken advice on anything but I am replying in good faith to your emails to the best of my own personal ability. I see your email was indeed sent yesterday lunchtime, but it was lost in my junk box".

172. It proposed two ways of achieving a buyout. First was that she would accept "145,000 GBP, subject to contract", with £18,000 on signing, the £42,000 in accordance with the court order, and then 16 months of payments. Second was "super simple" but surely not of her making, £100,000 straight up by 6 August, with a share transfer then, and the £42,000 as ordered (actually due by the next day). "This would again be subject to contract". "I would request that any agreement document is in the proper form rather than flipping the email. It is really important that nothing is misunderstood and that the agreement is legally binding".

173. While maintaining that the 2 July agreement remained- "My offer, which you agreed to, was extremely fair"- and while reminding Mrs Johnson of her promise to match his spending, at a time when "I have a personal loan of £120,000… and the company needs that money [from you]", at 1458 Mr Spooner offered movement, on terms:

> "You will transfer the shares on signing so I can borrow more money. I cannot get my hands on any more up front money, so the payment schedule remains. I will increase your price to £135,000 which is higher than we agreed, subject to getting the vat invoices for everything and copy invoices for labour and receipts for ferries".

174. At 2008 Mrs Johnson wrote to her accountants, referring to her worries about Mr Spooner's "paper shuffling" and wanting to "claim back the vat myself" if she could. "I do not want to get into trouble with the HMRC".

175. The next day, 8 July, at 1206 Mrs Johnson provided her lengthy and detailed response to Mr Spooner's latest suggestion. "I'm glad we are chatting, as such, but for the record, I have NOT agreed to any deal. There has been no handshake deal of any sort, only a 'calming of the waters' enabling us to communicate… We have, however, agreed on the principle of uncoupling the business partnership. What we have NOT agreed on are the specific terms to

do this". She referred to being given a "hand penned suggested deal", she said on 4 July, "which I have looked over. I have given you a rock bottom offer, which you continue to try to chip away at. I am not trying to negotiate further". She then named a lawyer at a local firm in Marlborough for the drafting, and gave the "Deal terms subject to contract" of the £42,000 costs plus £103,000, backed by personal security from Mr Spooner and with £18,000 paid on signature for the loan and the balance by way of £5,312 per month for 16 months, and shares delivered on final payment.

176. "Sally, you are moving the goalposts again because [it is] you clearly brook who I am dealing with here" Mr Spooner wrote at 1222. "I need the shares to refinance the company, they get handed over on signing the agreement. The payment schedule was tailored to the seasons and must remain so… I will now instruct my lawyers to push ahead. You are not acting honourably at all. Call me".

177. "Don't start all this again" responded Mrs Johnson at 1230. "No goalposts [have] been moved… Brook is staying out of this"- which was not true- "I've spoken to my accountant as I said I would. You come up with a schedule of payments… I just divided up the 85,000 over your requested 16 months. Tailor it to the hotel's good months. You write it. I don't mind. If you want the shares up front, how would you suggest I have security for the payments?".

178. Mr Spooner wrote again at 1245:

> "Look at my offer in red please. Your money is secured by the personal guarantee that's why the shares are handed over on signing… I'm giving up this afternoon and instructing my lawyer… I've kept my side of this and am about to really lose it… You clearly have given no attention to my offer and cannot have read it properly. I'm not budging now, it's way too high anyway and I do not appreciate what you are doing. Please pay in your loan to match mine as promised".

179. At 1258 he sent an addendum: "When we sat down I agreed not to deduct the list of queries I had made. Now you are pushing too far".

The 8 July variation

180. At 1408 Mrs Johnson wrote a further reply to Mr Spooner's of 1458 the day before, with its offer of an increase to £135,000, but keeping to the same (so far as could be) payment schedule as in his 5 July email, and wanting VAT invoices.

> "Howard I accept your offer of 135,000 subject to contract, and conditional on your personal guarantee. Shares up front on signing. Payment as per the suggested schedule over 16 months. So 42,000 August 7th as per court order, 18,000 30th September 2020, then the rest over the next 16 months on a monthly basis according to your schedule already suggested. All personal items already listed to be returned first week jan 2021. Can you please draft up the contract and send it to me- I've stuck to my side of this, please be honourable and stick to yours. Let's all move on. This has to be the end of the matter. Sally".

At 1805 Howard replied. "Thanks Sally. I will get a draft across to you. H".

181. For the moment, and even ignoring the agreement made on 2 July, I read this as an immediate acceptance by Mrs Johnson of the terms sent at 1458 on 7 July. She has had enough. She has already replied once, in detail, to this offer making her own counter-proposals. Those are gone. There has been a change of heart. Agreement is effective immediately, with the terms to be written up, as before, as the record of what has been agreed.

182. In the context of the 2 July agreement this therefore stands as an agreed variation; and so again it, like that agreement, would be effective immediately.

183. That that was the intent and result is clearer still from the surrounding circumstances. On 8 July the Johnsons were in their car. Mr Johnson was driving. Mrs Johnson read out Mr Spooner's email of 1245 with its request to match his loan.

> "When I read that apparently I had to put another £100,000 plus into the company the fact that what we'd been through was expensive but that

> we were about to step into another arena, my husband started to rub his chest, saying he was feeling stabbing pains. We pulled over the road. I thought my husband was having a heart attack. I felt bullied and pressured by Mr Spooner and I was deeply concerned for my husband. My husband asked me to take the decision to accept Mr Spooner's offer and so I accepted by email his offer of £135,000 'SUBJECT TO CONTRACT'. Even with my limited experience in business, I understand 'subject to contract' to mean just that".

184. The capitals are Mrs Johnson's emphasis of the words she wrote. In my view, however she may now want them understood, and notwithstanding her requirement in correspondence since 4 July that matters be reduced to a negotiated formal contract, those words refer to the obligation to later put this agreement into writing. This was no longer a time for Mr Johnson's negotiation schemes. He was apparently having a heart attack. He and his wife were understandably anxious about his condition. It was caused by these ongoing negotiations. They put an end to them, deliberately and finally.

Communications after 8 July

185. Of course, once Mr Johnson felt better he and his wife went back to his ways.

186. On 12 July Mr Spooner sent a copy of an agreement

> "almost a carbon copy of the PHB draft. It has the agreed schedule of payments and we need to update the list of items for delivery in January, please could you send that across. I hope we can wrap this up amicably now. I may be able to get the money to complete earlier than the 7th August, but we can sign and add the date when I pay the first instalment. I have added a simple PG clause, but I am personally liable anyway as the agreement is with me and all the obligations. I am really glad that we have been able to put all this behind us".

187. It was put to Mr Spooner that Mr Johnson was not a party to his draft, nor Sarcen:

> "Mrs Johnson had already said I'd never have to deal with him again. We'd done a deal on 2 July. Mr Johnson was therefore no longer acting as a director, as far as I understood, and I was only dealing with Sally Johnson… She'd already had her stuff from the hotel, so it was just purely a separation of her and me. It seemed very simple to me".

188. On 14 July Mr McCormick stuck his oar in again:

> "I am really disappointed that you are considering capitulating… You hold all the cards but you have decided to throw in the towel when your opponent is at his absolute weakest. There is nothing stopping you just slowing things down and seeing what mistakes he makes, you aren't going to be any worse off… when desperate he makes errors, and he is now desperate".

189. Later that day he told the Johnsons that Kevin Doyle had a plan to buy their debts

> "and use that to force Howard into behaving in a professional manner… I think he will also say he is looking to buy your share".

190. Suddenly, again, a better deal was in view (even if a reading of the shareholders' agreement, with its pre-emption provisions, would have given the idea of sale of the shareholding to another short shrift). Mrs Johnson tried to make their subsequent actions sound noble: "I thought perhaps somebody like Mr Doyle could convince Mr Spooner that this is wrong, what you're doing"; but Mr Spooner was not doing anything wrong, and the Johnsons had been happy to settle her dealings with him over QSL without resolution of all the matters which lay between them, whether that was their belief in his diverting of monies, or his of her failure to meet the monetary requirements of the investment agreement, or otherwise.

191. There is no need to go through the subsequent dealings in detail.

192. Mrs Johnson recollected that by the middle of July "It was… decided that it seemed pretty silly to take a rubbish price for something that was clearly

worth more and the dividend would be about the same on a yearly basis". By then it was known that the hotel was trading vigorously, aided by the "Eat Out to Help Out" scheme.

193. On 16 July Mr Johnson was writing to McCormick "Please keep Kevin on board, we need him, but it's also a great deal for someone who knows the business". He and Mr McCormick, and occasionally Mr Doyle, were choreographing Mrs Johnson's responses. The initial tactic, as before, was delay. On 17 July at 1724 Mrs Johnson replied to the 12 July draft: "I have just found your email with your suggested SPA, subject to contract draft": again, untrue; again, careful wording. Now her terms were that there could be no discussions until the £42,000 costs order was paid.

194. That was still her position on 30 July. "Fine, I totally understand. So predictable" wrote Mr Spooner. It was observed that he was not there asserting a binding agreement: "No, that language there from me is 'I give up' basically… I'm being given the run-around".

195. He was. After he had replied later on 17 July noting "You've been avoiding calls and emails since you got what you wanted" and stating that "I have not chased you for the 100k loan because we have thankfully agreed terms and a way forward", at 2304 Mr McCormick advised her not to respond as he was talking to Mr Doyle. The next day he was telling her "The only action required is to eventually get back in touch with him… Then it will be short, professional and sweet".

196. Mr McCormick could ensure that, as he was drafting replies for the Johnsons, whether by editing Mr or Mrs Johnson's drafts or through his own suggestions. He it was who came up with her 20 July email protesting "I am away this week with intermittent sporadic phone and email access". He did so by email.

197. On 24 August Mr McCormick was editing a proposed missive from Mrs Johnson to

> "follow the narrative we are painting of calm, reasonable people".

Further communications with Hoares

198. In among these tactical flurries the Johnsons were still pursuing their additional mortgage lending for their ongoing construction project. To Hoares their position was not double-tongued, but true: there was an agreement to sell.

199. On 13 July Mr Johnson was writing again to Mr Boles, asking if Hoares were genuinely interested in the lending, and what they needed to progress. "On the Hoare affordability question we have sold the share of the hotel for £135,000. These funds come in monthly over the next 14 months". At least after the August payments for the costs and the loan accounts, under the 8 July agreement there did follow 14 payments of agreed lending. It was also that agreement which was at the £135,000 which Mr Johnson was now confirming; an improvement on the £130,000 he had told Mr Boles of previously.

200. On 22 July Harriet McIlroy Smith of Hoares wrote to Mrs Johnson, copied to her husband and Mr Boles: "Good to speak to you the other day. I am pleased to hear that the house is coming along well. As discussed, it would be most useful to have the following", being bulleted requests largely for financial information going to affordability. One of these was for "Confirmation of the funds due from the sale of your share in the George Hotel".

201. Not until 12 August was Hoares updated on the Johnsons' alternative beliefs. Dina Chowdhury of the mortgage broker informed Ms McIlroy Smith that

> "Sally has received an offer of £135,000… the documents are being drawn up… Since the offer was made the hotel reopened on the 6th of July and is doing very well having been booked out until October. Considering its performance post lockdown Sally is now reluctant to sell as it makes sense to stay with the hotel and take cash dividends over the next 3 years (est.£75,000 per shareholder pa)".

So, in confirmation of Mrs Johnson's recollection, the reluctance to sell came after 2 July and, realistically, because trading had to be established, after 8 July too. It came about because of the sighting of money on the horizon.

Conclusions

202. I therefore find that on 2 July 2020 Mrs Johnson did agree to sell her share in QSL to Mr Spooner; which agreement was varied (or, if not made on 2 July, was then made) on 8 July 2020.

203. It is not controversial that certain sums representing the purchase price have been paid over by Mr Spooner, and that the balance under the 8 July variation of £60,001 is held by his solicitors.

204. I will hear the parties on the terms of relief, including for the collection by Mrs Johnson of any personal items of hers which still remain at the hotel.