



Neutral Citation Number: [2022] EWHC 875 (Ch)

Case No: BL-2018-001918

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

Rolls Building  
Fetter Lane  
London, EC4A 1NL

12/04/2022

**Before :**

**MRS JUSTICE JOANNA SMITH**  
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**BETWEEN:**

**JASWINDER SINGH BAHIA** **Claimant**  
- and -  
**(1) INDERDEEP SINGH SIDHU**  
**(as Personal Representative of the Estate of TARA SINGH SIDHU)**  
**(2) A STAR LIQUORMART LIMITED** **Defendants**

**AND BETWEEN:**

**(1) INDERDEEP SINGH SIDHU**  
**(as Personal Representative of the Estate of TARA SINGH SIDHU)**  
**(2) SATPAL KAUR SIDHU**  
**(in her personal capacity and as Personal Representative of the Estate of TARA SINGH SIDHU)**

**Part 20 Claimants**

-and-  
**(1) JASWINDER SINGH BAHIA**  
**(2) BALBIR KAUR BAHIA**

**Part 20 Defendants**

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**Mr Robert-Jan Temmink QC and Mr Gabriel Buttimore** (instructed by **Teacher Stern LLP**) for the **Claimant and Part 20 Defendants**  
**Mr Ian Clarke QC and Mr Barnaby Hope** (instructed by **Ralli LLP**) for the **Defendants and Part 20 Claimants**

Hearing dates: **25 and 31 January, 2, 3, 4, 7, 8, 9, 10, 14, 17 and 18 February 2022**

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## **APPROVED JUDGMENT**

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

**Covid-19 Protocol: This judgment is to be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be 12 April 2022.**

**Mrs Justice Joanna Smith:**

1. This is a trial arising out of a partnership dispute between the claimant, Jaswinder Singh Bahia (“**Mr Bahia**”) and the representatives of his late brother-in-law, Tara Singh Sidhu (“**Mr Sidhu**”). Mr Sidhu died on 20 November 2018, but the parties have been locked in dispute over the partnership income and assets since well before the date of his death.
2. There are two partnerships with which the court is concerned. The first, which has been referred to as “**the Partnership**”, was entered into between Mr Bahia and Mr Sidhu (together referred to as “**the Partners**”) in 1972 at around the time of the purchase of a property at 8 King Street, Southall, Middlesex (“**8 King Street**”). Since then, the Partnership has successfully acquired a sizeable property portfolio (including residential and retail premises). Several of these properties feature in this dispute.
3. On 1 October 1976, the second defendant, A Star Liquormart Limited (“**ASL**”), was incorporated by the Partners as directors and equal shareholders. It traded from 8 King Street and 136 High Road, East Finchley (“**136 High Road**”), a property purchased by the Partners in the same month, but moved to the ground floor of 8 King Street in August 1991, when the Partners granted it a commercial lease. ASL continued to run an off licence (“**the Off Licence**”) from 8 King Street until March 2020, when it closed down due to the Covid 19 pandemic.
4. The second partnership, which has been referred to as “**the Greatway Partnership**” was formed in or around 1990 by the Partners with a view to trading as “**Greatways**”, a convenience store, from the ground floor of a property at 44-48 King Street, Southall, Middlesex (“**44-48 King Street**”) which the Partners had acquired pursuant to a lease in February of the same year. In December 1998, the second Part 20 defendant, Mrs Balbir Bahia (“**Mrs Bahia**”) and the second Part 20 claimant, Mrs Satpal Sidhu (“**Mrs Sidhu**”), the respective wives of the two existing partners, were admitted as partners to the Greatway Partnership (each holding 40%, with their husbands holding the remaining 20% equally between them). I shall refer to Mr and Mrs Bahia and their family as “**the Bahias**” and Mr and Mrs Sidhu and their family as “**the Sidhus**” throughout the course of this judgment.
5. The Partners appear to have managed their property portfolio in harmony for many years. However, it appears that from about 2007/2008, they each began to harbour suspicions about the other in respect of the collection of, and accounting for, rental income from partnership properties and the unauthorised personal use of partnership monies. Difficulties inevitably arose in relation to the settling of accounts, such that since 30 November 2007 there have been no signed accounts for the Greatway Partnership. The last signed accounts for ASL date back to the year ending 30 September 2008 and the last set of signed accounts for each Partnership property were signed on 5 April 2011.
6. Unfortunately, the accountants used by the Partners, who were tasked with preparing partnership accounts, have not provided evidence for this trial and are apparently unwilling to attend. In their absence, and in circumstances where the accounts that have been prepared are challenged, the parties each seek to rely on

miscellaneous handwritten notes appearing on scraps of paper, cheque stubs, bank statements and the like dating back, in some cases, over 30 years. Mr Bahia challenges the authenticity of various of the documents disclosed by the Sidhus, including notes made on a diary (“**the Diary**”) originally completed by him but, he says, later altered by the Sidhus, in relation to the rents collected at 44-48 King Street from a greengrocer and kiosk situated (with Greatways) on the ground floor and from bedsits at 44A and 48A King Street. Needless to say, the record keeping in relation to both partnerships appears to be wholly inadequate and each family complains that, even now, it has not been given access to key partnership documents in the possession of the other family.

7. By 2010, if not before, the hostility between the Partners was such that the Bahias were no longer welcome at 8 King Street and had little to do with the running of the Off Licence or the management of the various residential properties on the premises. On 13 December 2012, the Greatway Partnership ceased to trade and Tesco took over the ground floor premises at 46-48 King Street, although the Bahias continued to manage the rental properties at 44A and 48A King Street.
8. On 27 October 2016, Mr Sidhu served a Notice of Dissolution of the Partnership under section 32 of the Partnership Act 1890 (“**the 1890 Act**”) on Mr Bahia, dissolving the Partnership from 28 October 2016. On 19 November 2018, Mr and Mrs Sidhu served a Notice of Dissolution of the Greatway Partnership, also under section 32 of the 1890 Act, dissolving the Greatway Partnership from 23 November 2018.
9. By the time of the Dissolution Notice in respect of the Greatway Partnership, these proceedings had been commenced by Mr Bahia, and on 8 November 2019, Chief Master Marsh gave summary judgment on the issue of the existence and dissolution of both partnerships, declaring that each had been a partnership at will created by oral agreement and that each had been dissolved by the relevant Notice of Dissolution. Chief Master Marsh ordered that both partnerships should be wound up and that there would be the taking of a dissolution account and such inquiries as may be necessary. As to the scope of any necessary inquiries, the Chief Master ordered that these should be determined by the court at a hearing on written evidence.
10. On 9 July 2020, following a hearing at which the parties were represented by counsel, Deputy Master Linwood ordered a trial of 17 separate Inquiries arising in the dispute.
11. Prior to the trial, the parties agreed that Inquiry 1 should be adjourned for directions as to the production of dissolution accounts and that Inquiries 11 and 15 were no longer required. By the time of closing submissions, it was apparent that Inquiries 3 and 5 were also no longer in dispute. I was required to determine the scope of Inquiries 6, 7 and 16 in a judgment given on the third day of the trial and for reasons set out in that judgment, I determined that Inquiry 16 should be adjourned to be dealt with at the same time as Inquiry 1.
12. That leaves 11 outstanding Inquiries for determination by the court following this trial, some of which overlap and some of which are in respect of relatively insignificant sums of money. It is most unfortunate that the rancour between the

parties has apparently precluded any sensible resolution to date. I shall set out the terms of each of the Inquiries at the beginning of each individual section of this judgment addressing the arguments and evidence on that Inquiry. Where Inquiries are no longer live I shall set out the terms of the Order I propose to make. For present purposes, however, I note that during the course of closing submissions the parties provided me with a combined Scott Schedule (“**the Scott Schedule**”) identifying the issues which remain in dispute between them and identifying their claims on a line by line basis. I am extremely grateful for this assistance and I have had close regard to the Scott Schedule in the preparation of this judgment.

13. It is anticipated that once the outstanding Inquiries have been resolved by the court, dissolution accounts for both partnerships can be drawn up. I would strongly encourage the parties to try to agree those accounts so as to bring this dispute to an end without the expenditure of yet more legal fees and the yet further animosity between the families that is likely to be engendered by ongoing proceedings. If the accounts cannot be agreed, then the parties anticipate that a further hearing will be necessary to determine Inquiries 1 and 16.

## **THE LAW ON DISSOLUTION OF PARTNERSHIPS**

14. There is nothing between the parties on the relevant law in relation to dissolution.
15. In summary:
  - i) Pursuant to section 28 of the 1890 Act, partners are “bound to render true accounts and full information of all things affecting the partnership to any other partner or his legal representative”.
  - ii) Section 24(9) of the 1890 Act provides that every partner may, when he thinks fit, have access to and inspect and copy any of the partnership books and records. The refusal to provide proper access for whatever reason will result in the court making all necessary presumptions against the partners who have failed to provide access (unless all partners are equally at fault) (see *Lindley & Banks on Partnership* at §22-15).
  - iii) Every partner must account for “any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connection” (see section 29(1) of the 1890 Act). This also applies “to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner” (section 29(2) of the 1890 Act).
  - iv) Section 42 of the 1890 Act deals with the treatment of post-dissolution profits. Where the business has been carried on post-dissolution, the estate of the deceased is entitled to a share in the continuing profit: see also *Hopper v Hopper* [2008] EWCA Civ 1417 at [48-49] per Etherton LJ.

- v) On the taking of an account:
    - a) If the partners have agreed that the partnership's annual accounts, once approved, should not be reopened, that agreement will normally be given effect to, unless fraud, misrepresentation or serious errors can be proved (*Lindley & Banks* at §23-38). In the event of fraud or misrepresentation, a new account will be directed, even after a considerable lapse of time (*Lindley & Banks* at §23-112). Alternatively the existing account may be corrected (surcharged and falsified). In the event that an error is positively identified and proved then the court may give leave to surcharge and falsify generally, unless the account has stood unimpeached for many years. In such a case, the court will ordinarily do no more than rectify particular items. Errors caused by mutual mistake will usually be corrected, but if the partners knew of the errors and there is no fraud or misrepresentation, the court will usually infer that the items were dealt with in an agreed manner and ought not to be disturbed (*Lindley & Banks* at §23-113).
    - b) each partner is entitled to have the partnership property applied in liquidation of the partnership debts, and to have any surplus assets divided.
    - c) each partner is, in general, entitled to force a sale of all partnership assets which are capable of being sold and to have the value of any unsaleable asset brought into account by the partner who retains it.
    - d) save in special circumstances, no partner can insist on taking the share of any other partner at a valuation or to insist on a division of the partnership assets in specie.
    - e) for the purposes of winding up, the partnership is deemed to continue with "*the good faith and honourable conduct due from every partner to his co-partners during the continuance of the partnership being equally due so long as its affairs remain unsettled; and that which was partnership property before, continuing to be so for the purpose of dissolution, as the rights of the partners require.*" (*Lindley on Partnership* cited with approval by Pennycuik VC in *Thompson's Trustee v Heaton* [1974] 1 WLR 605 at 613).
    - f) the right to wind up the partnership affairs is personal to the partners so that the representatives of a deceased partner will not normally be permitted to interfere.
  - vi) As to the scope of the account, the position will vary depending on the subject matter of the dispute. It may either be a general account of the dealings and transactions of the partnership, with a view to winding up the partnership, or a more limited account, directed to some particular transaction as to which there is a dispute (see *Lindley & Banks* at §23-80).
16. At the outset of the trial there was a dispute between the parties as to what constitutes a "settled account", i.e. an account that has been agreed between the

partners. That is no longer a live issue, but suffice to say that no precise form is required, but merely rendering an account will not be sufficient to deprive a partner of his right to have the same account taken under the direction of the court; he must be shown to have both received and acquiesced in the account. Moreover, such acquiescence must relate not only to the principles on which the account was prepared, but also to the items included in it (see *Lindley & Banks* at §23-110 and §23-111).

## THE EVIDENCE

### Approach to the Evidence

17. The court heard from a total of ten witnesses, many of whom were dealing with events which occurred many years ago (in the case of Inquiry 2, the key events took place in 1972). In respect of a number of the Inquiries there were few, if any, contemporaneous documents concerning the events about which the witnesses were giving evidence and, where documents were relied upon, their provenance was not always clear and their authenticity was on occasions challenged. Perhaps unsurprisingly given the level of antipathy between them, the evidence given by the Bahias and the Sidhus was, for the most part, completely at odds. It is no exaggeration to say, as Mr Clarke accepted in closing, that the court's decision on the credibility of the evidence given by each family will determine the outcome on the vast majority, if not all, of the Inquiries.
18. In the circumstances, my assessment of the individual witnesses is particularly important in this case and, at the outset, I must have regard to the warnings as to the fallibility of human memory given by Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (comm) at [15]-[22], including the unreliability of memory when it comes to recalling past beliefs, the considerable interference with memory that may be introduced in civil litigation by the process of preparing for trial and the potential for powerful biases where witnesses have a stake in a particular version of events. I bear in mind that the passage of time can cloud or distort memory and that it is unlikely to be the case that individual witnesses will be consistently reliable or unreliable. I also bear in mind that some witnesses may, for whatever reason, have better (or less fallible) recollections than others.
19. Given the lack of documentation in relation to various of the Inquiries, the approach advocated in *Gestmin* of testing the evidence against the contemporaneous documents is not always open to me in this case, or is of limited assistance. Instead, I must follow the guidance given by the Court of Appeal in *Natwest Markets Plc v Bilta (UK) Ltd (In Liquidation)* [2021] EWCA Civ 680 at [51] to the effect that faced with a documentary lacuna:

“...the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence; the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how

they performed in the witness box, especially when their version of events was being challenged in cross-examination.”

20. Mr Temmink QC, on behalf of the Bahias, also directed my attention to a passage in *Phipson on Evidence* 20<sup>th</sup> Ed. at 45-18 as to the approach to adopt when considering whether a witness is lying. The factors to be taken into account overlap with those that apply in assessing the reliability of a witness’s account and are:

“(1) the consistency or otherwise of the witness’s evidence with what is agreed, or clearly shown by other evidence, to have occurred;

(2) the internal consistency of the witness’s evidence;

(3) consistency with what the witness has said or deposed on other occasions;

(4) the credit of the witness in relation to matters not germane to the litigation;

(5) lies established in evidence or in the context of the proceedings;

(6) the demeanour of the witness;

(7) the inherent probabilities of the witness’s account being true”.

21. As to the demeanour of a witness, however, I accept Mr Clarke QC’s submission, on behalf of the Sidhus, that it will generally be dangerous for the court to determine the reliability of a witness’s evidence principally by reference to the impression created by his or her demeanour (see *Phipson on Evidence* at 45-22). There are numerous reasons for this which I need not elucidate further here, save to say that I bear in mind that peoples’ mannerisms may differ as between individuals and as between cultures. I also bear in mind that where witnesses are giving evidence through an interpreter it will be even more difficult, if not impossible, to draw any inference from demeanour.

22. With these principles firmly in mind, I now turn to consider the evidence of the witnesses.

### **The Claimant’s Witnesses**

23. The Bahias called four witnesses to give oral evidence, to whom I shall refer in the order in which they were called. In addition, the Bahias served witness statements from Ms Jatinder Bahia (whose evidence was not needed in light of a concession made by the Sidhus as to Inquiry 11) and Mr Imran Butt. As to the latter, I was told that a witness summons had been issued, but Mr Butt did not appear at court. Mr Temmink confirmed that he would not be seeking a bench warrant for Mr Butt’s arrest and that I would be left to determine what, if any, weight to attach to his statement.

### **Mr Bahia**

24. Mr Bahia was the first to give his oral evidence. He was born in India, but has lived in the UK for over 50 years. As at the date of the trial, Mr Bahia was 72



years old. His son, Mr Hardeep Bahia, described his father as “not particularly sophisticated in relation to financial and accounting matters” and I have no doubt that this assessment is correct.

25. Mr Bahia relied upon two witness statements, dated 2 July 2020 and 17 December 2021. Each statement ran through the Inquiries in considerable detail over the course of 164 and 210 paragraphs respectively. Paragraphs 2 and 3 of Mr Bahia’s second statement said this:
  - “2. I have had discussions with my solicitors, Teacher Stern LLP, during meetings and by telephone on a number of occasions throughout 2020 and 2021. During the discussions with my solicitors, they made notes of my evidence and showed documents to me that have been provided in this case. This witness statement has been prepared by my solicitors, I have read it and understand its contents, which I confirm are true to the best of my knowledge and belief.
  3. English is not my first language, but I have an understanding of it. My usual way communicating is by speaking a mixture of Punjabi and English. The meaning of certain words and phrases used in the case have been explained to me by my solicitors. The discussions I have had with my solicitors for the preparation of this witness statement have mostly been in English.”
26. Although it came to light during the course of his evidence that a Punjabi translation of Mr Bahia’s second statement had been prepared after the date on which he had signed his English statement, it had never been signed or lodged with the court. It was Mr Bahia’s evidence that the Punjabi statement contained words which were out of date and which he did not understand (“[t]he wording they have used in the statement, that is hard for me to understand”) and that a comparison between the Punjabi and the English versions of his statements had left him “stuck” on the difficult words.
27. When it came to his oral evidence, Mr Bahia was plainly hesitant about speaking in and understanding the English language, confirming on one occasion during his evidence that he had left correspondence to Mr Sidhu because “my English is not very good”. He appeared to understand and speak simple English, but whenever he got stuck with an English answer, he switched to Punjabi. He required an interpreter for the entirety of his evidence, even requesting that paragraphs to which he was taken in his second statement should be translated before he was asked a question about them. Upon being questioned about his grasp of English, Mr Bahia accepted that there were “many” words in his English witness statement which he did not understand. Indeed, when Mr Bahia was asked, during the course of his evidence, to go away and spend time reminding himself of the content of his statement, without discussing it with others, he admitted that it had been necessary for him to seek assistance as to the translation (of “some of the words”) from his son.
28. This state of affairs led to submissions from Mr Clarke in closing to the effect that Mr Bahia’s statements were in breach of CPR PD32 and CPR PD57AC, on the grounds that (i) they were not in his own words (CPR PD32 §18.1); (ii) they had not been drafted in his own language (i.e. in a language in which he was

sufficiently fluent to give oral evidence, including under cross examination see CPR PD32 §18.1, CPR PD57AC §3.3 and the Chancery Guide at §19.13); and (iii) the statement of truth was not in his own language (CPR PD32 §2.4). In addition, Mr Clarke pointed out that, contrary to the Statement of Best Practice at §3.7 contained in the Appendix to CPR PD57AC, Mr Bahia's statements did not state in his own words how well he recalled key disputed matters of fact.

29. In the circumstances, Mr Clarke submitted that the court should approach Mr Bahia's statements "with a considerable degree of caution" on the grounds that the breaches identified above are serious and that they "affect the weight which the court should give to that evidence because they concern the extent to which the court can be sure that the contents of the witness statement truthfully reflect the evidence of non-English speaking witnesses" (see *Diamond v Secretary of State for the Home Department* [2020] EWHC 3313 (Admin) per Calver J at [49]). Mr Clarke acknowledges that recent authorities on the exercise of the court's case management powers in relation to deficient witness statements identified in advance of trial are of little assistance where the deficiencies have come to light only during cross examination and he does not suggest that an order striking out Mr Bahia's statements would be appropriate. However, it is his submission that in the absence of documentary or other satisfactory corroboration, the court should afford Mr Bahia's statements no weight, certainly in relation to disputed issues.
30. I am bound to say that having seen Mr Bahia being cross examined over the course of three days in the witness box, I was doubtful as to whether his statements should have been prepared in English. Following some responses he gave to questions about a reconciliation document that had been directly referred to in his second statement but which he did not appear to recognise in cross-examination, I was particularly concerned that a statement prepared in English was incapable of being properly understood by Mr Bahia, or of accurately reflecting the evidence that he could actually give. I was also concerned that his statements had not been prepared in his own words. However, Mr Temmink's response to these concerns and to Mr Clarke's submissions is robust.
31. He submits that the recent proliferation of rules and guidance in relation to the taking of witness statements by solicitors has become "a legal minefield" and a particularly hazardous one in this case where Mr Bahia speaks in a mixture of two languages. He says that the rules do not adequately cater for such a situation.
32. He refers, in particular, to the following guidance in the Equal Treatment Bench Book:
  - i) "...it is important to bear in mind that an individual's communication style will be a result of both cultural patterns and the structure of their mother tongue" (§87);
  - ii) "...it can be easy to over-estimate an individual's ability to cope with language as used in court and under the stress of proceedings. The fact that an individual can communicate perfectly well in their work context may not be a reliable guide to how well he or she can communicate in court. Equally, a person may appear entirely fluent at the start of a hearing, but

the level of their fluency may reduce when overtaken by emotions or stress, as may happen under cross examination” (§99);

- iii) “When giving evidence, people for whom English is not a first language may not always fully understand what they are being asked. It is one thing to know the basics of a language and to be able to communicate when shopping or working. It is quite another matter having to appear in court, understand questions, and give evidence...Judges should therefore be alert to different language needs, and should not assume, simply because a witness has lived in the UK for many years, that he or she does not require an interpreter” (§109);
  - iv) “some people also ‘code switch’ as they talk, switching unconsciously between languages as they search for the most natural way to express themselves for the point they are making...” (§113);
  - v) “...Languages do not operate in ways which identically match each other. They can differ in grammatical structure, vocabulary, the meaning of certain abstract concepts, and in how much is directly spoken as opposed to understood between the lines...” (§117);
  - vi) “Many words in English do not have exact single term equivalents in many other languages...” (§133).
33. Against this background, Mr Temmink points to CPR PD32 §18.1 which provides that “the witness statement must, **if practicable**, be in the intended witness’s own words” (**emphasis added**) and he contends that in this case, where Mr Bahia’s usual way of communicating is by speaking in a mixture of Punjabi and English and where the meaning of certain English words needs to be explained to him, it was not practicable to do anything other than prepare his statements in English in words which were not necessarily his own. He says that the fact that certain words and phrases had to be explained to Mr Bahia chimes precisely with the guidance in the Bench Book to which I have referred and he invites me to take judicial notice of the fact that Punjabi was first developed in the 12<sup>th</sup> Century and is a ‘basic’ language with no exact words for various of the English concepts which arise in this case (such as ‘reconciliation’ and ‘property revenue accounts’), hence Mr Bahia’s difficulties with the Punjabi version of his statement.
34. Referring to the cross examination of Mr Bahia on the reconciliation document referred to in his statement (mentioned above), Mr Temmink points out that there had been no introduction to the document whatsoever, that it had not been put in context and that Mr Bahia had not been given an opportunity to refresh his memory as to what he had said about the document. He submits that, in the circumstances, it would be unfair to expect an elderly witness operating under the pressure of cross examination immediately to recognise one of many documents he will have been shown in the course of the proceedings. It would certainly not be appropriate to conclude from that incident that Mr Bahia did not understand what was in his witness statement.
35. Having regard to the submissions from both parties, I accept that in the particular circumstances of this case there has been no serious breach of the relevant practice

directions. Mr Bahia's solicitors were faced with a difficult decision over the language to use in the preparation of his statements and, on balance, their decision to prepare them in English is not open to criticism. Mr Bahia's statements clearly set out how they were prepared and, notwithstanding Mr Clarke's suggestions to the contrary, there is no evidence that any pressure was put on Mr Bahia to say anything in particular about his evidence and no evidence that he was "led" during the preparation of his statements. I am inclined to agree with Mr Temmink that the relevant Practice Directions could perhaps be rather clearer as to the approach to be adopted in a situation of this sort.

36. Having said that, I have little doubt that the statements were overly "lawyered" and that Mr Bahia's second statement (prepared after CPR PD57AC came into effect, but clearly adopting much of what had been included in the first statement, prepared pre-CPR PD57AC) does not make clear the full extent of Mr Bahia's recall of key events. However, these features alone do not lead me to determine that it would be appropriate or fair at this stage in the proceedings to afford the statements no weight or probative value. Mr Bahia was asked about his recall in cross examination and he frankly conceded that his memory was "not that sharp", that he tended to "forget things after a week" and that "any time I can be forgetful". Mr Bahia's evidence was also tested directly by reference to his over-engineered statements and I am in a position to form a view on that evidence.
37. Indeed, Mr Temmink accepts that there were occasions during his cross examination when Mr Bahia gave oral evidence which was not as detailed as the evidence in his statements and also occasions when he gave evidence of extra detail not contained in his statements (to which I shall return in a moment), but he says the court must deal with this in the usual way, having regard to the fact that memory is fluid (see the Statement of Best Practice) and to the guidance given in the Bench Book to which I have already referred. I accept this submission, although I observe that inconsistencies in Mr Bahia's evidence are obviously capable of going to his credibility as a witness, a topic to which I shall now turn.
38. Having regard to his oral evidence, I formed the view that Mr Bahia was a straightforward witness who was doing his best over the course of his lengthy cross examination to answer the questions he was asked, whether in English or in Punjabi or in a mixture of the two. He plainly did not always understand the questions that he was being asked and he became confused on more than one occasion, leading me to express concern about his overall understanding of English and prompting the submissions to which I have already referred. However, his explanation of the way in which his statements had been prepared was entirely consistent with the explanation given in those statements and, having regard in particular to the provisions of the Bench Book, I am unsurprised that Mr Bahia found the experience difficult. Importantly, in my judgment, he did not seek at any stage to advocate his case or to argue with Mr Clarke.
39. In closing, Mr Clarke identified what he described as "glaring examples" of inconsistencies between Mr Bahia's statements and his oral evidence. I am not at all convinced that he was right about all of these (many of which Mr Temmink was able to address in his closing submissions), but there is no doubt that there were inconsistencies. Thus:

- i) Mr Bahia claimed never to have seen and to not agree with the entries in the reconciliation document to which I have already referred which he had said in his statement had been shown to him and prepared by Hardeep. When questioned about this he said he must have missed the document in the bundle of documents he had been sent with his statement.
  - ii) Mr Bahia was asked about the amount of money that he had contributed to the purchase of 8 King Street in 1972. He gave precise evidence (for the first time) as to the individual members of his family from whom he had borrowed money and the specific sums that he had borrowed from them. When shown his witness statement in which he said that he had no clear recollection of the amounts provided by anyone, he was unable to explain himself.
  - iii) Mr Bahia's evidence at para 179 of his statement was that in 2007 he had been provided with some rough calculations by Mr and Mrs Sidhu as to money he owed to the Partnership. His evidence in the witness box was that nothing had been given to him on paper and that, instead, he had given handwritten figures to Mr Sidhu, which Mr Sidhu could not read and so Hardeep Bahia had produced a spreadsheet which was handed over. When asked about his statement, he described it as a "mistake".
40. However, having regard to the totality of Mr Bahia's evidence given over the course of some 3 days in the witness box, on balance I do not consider that these inconsistencies indicate that Mr Bahia was not doing his best to assist the court, much less that he was a dishonest or wholly unreliable witness. He plainly had difficulty understanding detailed and complex questions put to him in cross examination and his memory of the documents to which he had been directed for the purposes of his statement was poor, but that is not indicative of dishonesty. Indeed on various topics (for example payments made in respect of tax), Mr Bahia made appropriate and reasonable concessions. Furthermore, I reject the suggestion made by Mr Clarke in closing that Mr Bahia's answers were rehearsed – that was not my impression of them and the example on which Mr Clarke relied did not appear to me to make good his point.
41. Ultimately, I consider Mr Bahia to have been an honest witness, who was from time to time hampered by language difficulties and poor recollection. I accept that this means that I must treat his evidence with caution, particularly where it descended into detail not contained in his witness statements. However, I also observe that (for reasons which will become clear) where his evidence conflicts with that of the Sidhus' and absent any contemporaneous documents to resolve the matter one way or another, I prefer his evidence.

### **Mr Hardeep Bahia**

42. Mr Hardeep Bahia (to whom I shall refer in this judgment as "Hardeep" without any disrespect being intended) is Mr Bahia's son. He has previously worked as a recruitment professional in the construction industry but more recently he has begun to work full time with his father in the management of the properties in which Mr Bahia has an interest by virtue of the partnerships. It is as a consequence of his investigations into the "40 year's worth of mess", as he

described the partnership affairs, that discrepancies about which Mr Bahia now complains have come to light.

43. Hardeep produced two witness statements, focussing in large part on his investigations, and he prepared various Schedules which were attached to the Particulars of Claim and were designed to address the allegation of misappropriation of rents and income from various properties which is dealt with by Inquiry 4.
44. During the course of his cross examination I formed the very clear impression that Hardeep was a transparently honest witness who had done his best under very trying circumstances to piece together information about the partnerships over many years and who was similarly doing his best to assist the court. Where his cross examination required concessions, he made them and where he could not give evidence one way or the other, he made that clear. Insofar as Hardeep was able to give evidence from his own knowledge, I consider him to be a reliable witness and I accept that evidence.
45. Mr Clarke acknowledged that Hardeep presented as a good witness, but contended that, at least in respect of the detail of any transactions, he had “constructed a narrative for Mr Bahia to sign off, most of which he has no personal knowledge of”. Mr Clarke also sought to suggest that the inconsistencies in Mr Bahia’s evidence might be explicable by reference to the fact that his evidence was “scripted for him” by Hardeep. I reject these submissions, which, importantly, were not put to Hardeep in cross examination.

### **Mrs Balbir Bahia**

46. Mrs Bahia is Mr Bahia’s wife of many years and mother to Hardeep. Like her husband, Mrs Bahia required the assistance of a translator even though her witness statement had been prepared for her in English and apparently signed by her before she had seen a version of that same statement in Punjabi. She confirmed that she could understand simple English but did not understand all of the words in her statement. The description of how Mrs Bahia gave her statement (as set out in that document) is entirely consistent with the explanation that she gave more fully when cross examined about it. I do not consider there to be any issue with the preparation of Mrs Bahia’s statement and I did not understand Mr Clarke to suggest in closing that I should accord it no weight.
47. Mrs Bahia gave evidence in her statement as to her working history, her knowledge of the occupation of 8 King Street and 15 Aylmer Road by the Sidhus and some more specific evidence in relation to a payment of £13,000 loaned to Mr Sidhu by her father in the 1990s. She was not cross examined at length but insofar as she was given an opportunity to answer questions from the witness box she appeared to me to be trying to answer honestly, although she was plainly confused over what had taken place with the English and Punjabi versions of her witness statement, suggesting, wrongly, that she had signed a copy of the Punjabi statement at the same time as signing the English statement.

48. Much of Mrs Bahia's evidence was peripheral but, insofar as she gives evidence of undocumented incidents dating back to the 1980s, I shall have to consider the inherent probabilities of her account being true in due course.

### **Mr Devender Saini**

49. Mr Saini provided a short statement in which he confirmed that from late 2008, for a period of about four months, he had lived in a small room at 44A King Street. He remembered speaking to Mr Sidhu about the rental and he also remembered handing rent of approximately £40 per week in cash to Mr Sidhu and sometimes to Mr Bahia.
50. Mr Saini's evidence was challenged in cross examination. Although Mr Clarke accepted in closing that Mr Saini was "plainly an honest witness", he nevertheless suggested that his evidence as to events which occurred 13 or more years ago should not be accepted. However, I have no reason to think that Mr Saini was not giving evidence to the best of his recollection.

### **The Defendants' Witnesses**

51. Had he been alive, Mr Sidhu would of course have been a key witness in this case and his absence left, as Mr Clarke submitted, a significant lacuna in the evidence. It is a matter of speculation what he would have said in relation to the matters that are now before the court.
52. The Sidhus called six witnesses.

### **Mr Raminder Singh Sidhu**

53. Mr Raminder Sidhu is the younger brother of Mr Sidhu and Andy Sidhu's uncle. He has lived in the UK since arriving here from India in around June/July 1968 and he is the active director of a number of different companies. He provided one witness statement which focused primarily on the ownership of what the Sidhus termed 8a King Street, a property occupied by Mr and Mrs Sidhu (an issue arising under Inquiry 2), together with the circumstances surrounding the closure of Greatways in December 2012.
54. Mr Raminder Sidhu appeared to give evidence truthfully. He gave evidence before he had heard the case advanced by his nephew, Mr Inderdeep Sidhu (Andy), and in a couple of important respects he disagreed with that evidence, first saying that the Sidhu children had moved out of 8 King Street when they got married and then confirming that "Andy now lives in the London House" (i.e. 15 Aylmer Road), a state of affairs which is hotly denied by Inderdeep Sidhu. Insofar as he gave evidence about the closure of Greatways, Mr Raminder Sidhu confirmed that he had paid for stock in two tranches, which is consistent with the available bank statements and is also accepted by the Bahias.
55. However, while Mr Raminder Singh appeared to be doing his best to assist the court, I do not consider that he had a clear recollection of events dating back many years and there were occasions during his cross examination when he was obviously looking to the back of the court for assistance from members of his

family. Furthermore, his witness statement did not appear accurately to reflect his evidence; perhaps the most obvious example being his confusion over what was meant by 8a King Street (“Meaning what?”) notwithstanding that his statement recorded that it had been prepared “specifically in relation to the ownership of residence at 8a King Street”. When asked how much 8 King Street was purchased for, Mr Raminder Singh said it was “approximately” £30,000 and that “I wouldn’t know the exact figures”; later he suggested it was “30, 35 in total or 34 in total” but that he didn’t know. This was notwithstanding that in his statement he had been very specific about the £30,000 purchase price, plus stock.

56. In the circumstances, I do not regard Raminder Singh’s evidence as being entirely reliable, and will look to test it against any available contemporaneous documents, the evidence of others and the inherent probabilities in due course.

### **Mr Inderdeep Sidhu**

57. Mr Inderdeep Sidhu, referred to hereafter, again with no disrespect intended as “**Andy**”, is Mr Sidhu’s son. He has provided four witness statements in the proceedings. Andy trained as a lawyer but then converted to being a surveyor after completing the Legal Practice Course. He has been involved in the family business of the Partnership for most of his life but became more closely involved in the early 2000s, when his father was diagnosed with cancer and he began to assist with the management of the property portfolio, helping his father with drafting letters to tenants, witnessing formal agreements and involving himself in correspondence with letting agents and with solicitors acting for the Partnership. In his witness statements there was a tendency to seek to minimise his involvement in managing the property portfolio, but for reasons which follow, I consider that he was closely involved. Indeed, he himself sent an email to Hardeep dated 20 March 2009 in which he asserted that he had “for free been very efficiently and successfully managing the property portfolio...”.
58. Andy was cross examined over four days and during the course of that process I formed the clear view that he was a thoroughly dishonest witness, whose aim was to manipulate evidence in his favour and to deflect the court’s attention from his own activities. Mr Temmink’s closing submissions described his evidence as “dreadful: untruthful, inconsistent, argumentative, manipulative and misleading”. I agree. Even Mr Clarke recognised in his closing submissions that Andy had been “prolix and argumentative”.
59. Despite in excess of 20 warnings from me, Andy appeared to see the process of giving oral evidence as an opportunity to argue the Sidhus’ case, including making increasingly serious allegations against the Bahias as he did so. In advance of the trial, Andy produced various documents designed to advocate his case, including schedules setting out his opinion on primary documents and a spreadsheet purporting to identify local competitors to the Off Licence business. These documents are not signed and nor are they subject to a statement of truth. In the case of the spreadsheet I have no doubt that, although the information contained within it is not wholly inaccurate, nevertheless, Andy was seeking to leave a misleading impression on the mind of the court that numerous new off licences had sprung up in the vicinity of the Off Licence which explained the dramatic fall in turnover from 2009/20010 onwards. Under cross examination, a



rather different picture emerged. I accept Mr Temmink's submission that these documents should be disregarded entirely.

60. It became evident during his cross examination that there were numerous documents which Andy had written on with a view to supporting his case. Thus, by way of example, he had plainly written "Bahia" or "Sidhu" on cheque stubs, bank statements or other documents (including miscellaneous scraps of paper setting out figures, which it appeared he had been seeking to fit within his own narrative). Some of the cheque stubs appeared to have been "rubbed out" and a new name inserted. There were also spreadsheets whose provenance appeared to be uncertain, save that Andy had written "Accountants Notes" on the top. Even during the course of the trial it became apparent that Andy was continuing to make pencil notes on original documents and a warning had to be given. Furthermore, upon the originals of various emails being produced by the Sidhus during the trial, it became clear that Andy had chosen to "cut and paste" extracts from email correspondence rather than disclosing whole chains.
61. I have no doubt that in tampering with the original documents in this way, Andy was deliberately seeking to mislead the court by controlling the narrative. Notwithstanding his suggestion on a number of occasions that he "might be naïve", I have no doubt that Andy, a trained lawyer and plainly an intelligent and astute individual, knew exactly what he was doing. My views in this regard apply also to the Sidhus' failure to provide adequate disclosure in this case (to which I shall return in more detail in a moment). No adequate explanation has ever been given for this failure and, given his manipulative and evasive conduct in these proceedings, it is difficult not to arrive at the conclusion that this failure was deliberate on the part of Andy and was intended to leave the Bahias without the necessary contemporaneous evidence to establish their case in the Inquiries.
62. On the third day of Andy's evidence, Mr Temmink invited me to caution him as to his right to remain silent before questioning him about his conduct in holding himself out as a director of ASL, entering into an agreement on behalf of ASL and stealing the money received pursuant to that agreement. I gave the necessary caution having afforded Andy time in which to take appropriate legal advice from Mr Clarke. No objection was made by Mr Clarke to this approach and, although this incident now falls outside the time period agreed between the parties to be covered by the Inquiries, it appears to be conceded by the Sidhus that the money taken by Andy and paid into his personal bank account will have to be repaid to ASL.
63. Mr Clarke invited me to make allowance for "the obvious emotions caused by the hospitalisation and death of [Andy's] father during dissolution", but having seen various examples of Andy's angry, expletive-ridden and condescending correspondence dating back to the years before his father's death, I see no reason to excuse his behaviour in the witness box. I agree with Mr Temmink that Andy's deep antipathy towards Hardeep appears to have coloured his approach to every aspect of this case, leaving him intent on winning whatever underhand tactics he is forced to employ to achieve that end.
64. The examples of inconsistencies in Andy's evidence exposed by cross examination are numerous (and many were set out in a schedule to Mr Temmink's

closing submissions, which Mr Clarke made no attempt to gainsay). I identify below a small selection which evidence Andy's evasive and dishonest approach:

- i) Despite Mr Raminder Singh's evidence that Andy lives at 15 Aylmer Road, Andy went to considerable lengths to convince the court that he continues to reside at 8a King Street. He failed to include an address on his first two witness statements and his oral evidence was internally inconsistent as to his use of 15 Aylmer Road. First he said that he was living there now with his wife, then later he said he had only stayed there during the covid pandemic. Various documents suggested the contrary, including, by way of example, a tenancy agreement for a bedsit at 48 King Street dated August 2007 which Andy witnessed giving 15 Aylmer Road as his address. In common with this theme, there was clear evidence of redactions made by Andy to a document which stated "15 Aylmer Road: Main Residence".
- ii) Andy was cross examined about the removal of an ATM Machine from the Off Licence. During the course of this cross examination, I asked him a specific question about an email to which he responded by explaining at length, amongst other things, that the reason for the removal of the ATM was the amount of "fraud" arising from the machine's use and the complaints made to his mother. However, this explanation bore no relation to the explanation provided in an email sent by Andy on behalf of his father to the ATM Company, Note Machine UK Ltd, on 21 August 2018. Yet, Andy would simply not accept that his explanation from the witness box was inconsistent with the contemporaneous documents, notwithstanding that the reason for removal of the ATM machine was peripheral. This is not the approach of an honest witness.
- iii) Andy plainly lied about his mother's use of an email address previously used by his father (Mrs Sidhu's evidence was that she had never used a computer before 2018 and that she did not use English to communicate by email in any event); again a point of only peripheral relevance, but nonetheless indicative of Andy's deceitful approach to his evidence.
- iv) The evidence in Andy's fourth statement was that neither he, nor his father, ever collected any cash rents from 48A and 44A King Street after 2004/early 2005. Under cross examination, a different story emerged, with Andy accepting that the Diary evidenced the receipt of rent by Mr Sidhu in 2005 and confirming that his father had been "handed rents", by which he meant "received rents" from tenants up to 2007. Despite the content of his statement, Andy was forced to accept that he had also helped to manage the property portfolio, a role he had sought to play down in his statements.
- v) It was a constant refrain from Andy when under pressure that he had informed the accountant about various transactions, or that he had spoken to the accountant to obtain his approval. Yet there were no notes of any of these interactions and Andy had made no reference to the majority of them in his witness statement. The overwhelming probability is that if Andy had genuinely had this level of contact with the accountants he would have recorded it in his witness statements.

65. In all the circumstances, I consider that Andy's evidence is wholly unreliable and cannot be accepted unless corroborated by other reliable evidence.

### **Mrs Tarinderpal Kaur Dhaliwal**

66. Mrs Dhaliwal is Andy's sister and daughter of the Deceased. She is a qualified accountant, although she is no longer practising. She made two short witness statements in the proceedings dealing (in her first witness statement) with individual financial transactions with which she was involved together with some evidence about the occupation of 8 King Street (and in her second witness statement) with two meetings she attended with tenants at 44A and 48A King Street on 12 November 2021 and 28 November 2021 respectively. It was clear from the evidence that Mrs Dhaliwal had attempted to carry out some forensic accountancy work on the figures produced by the Bahia's expert, Mr Grunberg, but her work has not been disclosed and the Sidhus have chosen not to call an expert.
67. Although Mrs Dhaliwal was plainly well acquainted with the arguments being advanced by the Sidhus, I formed the impression that she was nonetheless aware of the need to give honest evidence to the court. She gave her answers carefully and she was frank in acknowledging that, as an accountant, she would have been obliged to warn of the dangers of being involved in undocumented letting agreements for cash. She also acknowledged that there would be no reason for her brother to use the Aylmer Road address as his address unless he was living there.

### **Mr Surinder Kumar**

68. Mr Kumar lives at 6a King Street and he provided a short witness statement in which he set out his experience of working at the Off Licence between October 2011 and March 2020, together with his understanding that, since his arrival in England in June 2010, the Sidhus had always lived at 8a King Street.
69. Notwithstanding his obvious loyalty to the Sidhus, Mr Kumar struck me as a straightforward witness who was seeking to give honest evidence to the court. He accepted that he had a tenancy agreement at home for his occupation of his bedsit at 6a King Street, he acknowledged that his salary for working at the Off Licence was always paid in cash and when asked about his evidence that there were other shops in the area of the Off Licence with new licenses (evidence which appeared closely aligned with Andy's case), he accepted that they had been selling alcohol for a long time. To my mind, this undermined his apparent support in his witness statement for the Sidhus' case that sales at the Off Licence had declined over time due to local competitors.

### **Mrs Balbir Kaur Khosa**

70. Mrs Khosa is Mr Sidhu's younger sister and aunt to Andy. She arrived in the United Kingdom from Punjab, India, in or around July 1968, and has lived here ever since. Upon arrival and together with other members of her family, she moved in to live with Mr Sidhu and his wife at 34 Wentworth Road, Southall. At that time, Mr Bahia also resided in the house.

71. Mrs Khosa provided one witness statement in which she focused in particular upon her knowledge as to the ownership of “residence 8a King Street, Southall”.
72. During her short cross examination, Mrs Khosa’s evidence on the key issue of the purchase of 8 King Street in 1972 was not entirely consistent with the evidence she had given in her statement. In her statement she said that Mr Sidhu asked for money to purchase 8 King Street “from me and my father” and that Mr Sidhu borrowed money from her “immediate family” as well as from her. She also said that she “understood” that her brother had provided “almost all of the purchase price”. In her oral evidence, however, she said that the money had come from “My uncle, my mother’s side uncle, some more people from villages, friends, that’s I remember”. It was plain that she did not know how much money had been collected, although she said it was more than half of the £33,000 purchase price identified in her statement.
73. On balance (and perhaps unsurprisingly given the passage of time) I am not satisfied that Mrs Khosa genuinely has a clear recollection of an event that occurred in 1972. I accept that she remembers discussions within the family about that event, but I am not satisfied that she remembers the precise details. Accordingly, I do not accept that her evidence as to the events surrounding the purchase of 8 King Street is necessarily reliable. I also note that in one obvious respect, Mrs Khosa went too far in her oral evidence in an apparent attempt to assist her family, saying that all of the Sidhu children “lived [at 8 King Street] all the time, they never moved”; evidence which was entirely at odds with the evidence of everyone else. For this reason, it seems to me that I must treat Mrs Khosa’s evidence with caution.

### **Mrs Satpal Kaur Sidhu**

74. Mrs Sidhu is Mr Sidhu’s widow and Andy’s mother. She is also Mr Bahia’s sister. She married Mr Sidhu in 1964 and it is her evidence that since 1972 she has lived at “8a King Street” above the Off Licence. Mrs Sidhu provided one witness statement in which she gave a substantial amount of evidence about her occupation of 8a King Street (including a key meeting in 1972 at which a specific promise had been made to her about her occupation of 8 King Street) together with addressing others of the Inquiries that were within her knowledge.
75. Mrs Sidhu was the only witness whose statement was prepared in Punjabi and then translated into English. She explained orally that questions from her solicitor had been translated into Punjabi by Mrs Dhaliwal, her daughter, and then her answers had been translated back into English by Mrs Dhaliwal before being returned to her solicitor for use in preparing her statement. The absence of reference to this process in her witness statement was described by Mr Temmink as a technical breach of the practice directions as to the collection of witness evidence, albeit that no point was pursued in that regard.
76. Mrs Sidhu’s evidence was that she was unable to speak English and that save for writing her name, she was unable to read or write in English. Accordingly, she gave her evidence through a translator. However, during the course of her evidence it became abundantly clear that she in fact had an understanding of various of the questions that were put to her, as she answered them before they

had been translated to her. It also became clear that she was able to do rather more than merely write her name in English.

77. Mrs Sidhu, who is 75, was plainly frail and she was nervous about giving evidence. However, this could not excuse her refusal (in the face of numerous warnings from me and a short break during which Mr Clarke accepted the responsibility to explain to her yet again how she must give her evidence) to give her evidence in a straightforward manner. She frequently answered questions she had not been asked, gave lengthy answers which it was impossible for the translator to translate, sought to engage in discussion with the translator, gave answers which appeared to make no sense and, towards the end of her evidence, answers which sought to accuse the Bahias of misconduct rather than responding to direct questions asked of her. In this sense, her argumentative approach mirrored that of her son.
78. Furthermore, over the course of her cross examination, I formed the distinct impression that, just like her son, Mrs Sidhu was seeking to pull the wool over the court's eyes. Examples of obviously unreliable evidence on the part of Mrs Sidhu were identified by Mr Temmink at Annex 2 to his closing submissions and no attempt was made to challenge them by Mr Clarke. For present purposes, the following examples will suffice:
  - i) Her evidence in cross examination that she had never received any wages whilst working at the Off Licence, notwithstanding the evidence in her witness statement to the contrary (“Q. How were you paid for the work you did at A Star Liquormart? A. I did free work. All the hours I put in the work was free”);
  - ii) Her evidence that she could not write in English (“I can only write my name. I cannot make a sentence and write it”), notwithstanding the various records that had been disclosed (and which she accepted were in her handwriting) which included columns of figures (headed “Date”, “To Whom”, “cash”, “VAT” and “Taking”), references to days of the week and the names of various shops, together with notes about “cleaning” and “wages”. One of the handwritten records which Mrs Sidhu confirmed was hers included the full sentence: “Mr Sandhu left on 28 September 2020 because he had no job. He own (sic) us 18 weeks rent £1710”.
  - iii) Her evidence in cross examination that the works to 6 and 8 King Street undertaken in 2009/2010 were not paid for by ASL or the Partnership, but by the Sidhus personally. This is directly contradicted by the records of the works in ASL's nominal ledgers.
  - iv) Her evidence in cross examination that she had never signed off accounts for the Greatway Partnership. In fact, she was forced to accept when shown a copy of the accounts that her signature was on the accounts but stated that she did not know “how they took my signatures here”.
79. It was Mrs Sidhu's evidence in her witness statement that Mr Bahia had assaulted her in 2010 by grabbing her by the wrists, an event which the Sidhus appeared to rely upon as a major cause of the deterioration in relationships between the

Partners. However, I formed the distinct impression when Mrs Sidhu was asked about this event in cross examination that she had been given a story to tell which she could not remember under the pressure of questioning. Thus when it was put to her that it was not true that there had been an altercation or fight with her brother in 2010, she immediately responded “There was no fight. My husband was asking him to sit down and discuss, and he was not listening, he didn’t want to discuss anything”. Although Mrs Sidhu did finally remember her story in re-examination, I remain extremely sceptical that her written statement reflects a true account of events.

80. In all the circumstances I consider Mrs Sidhu to be an unreliable witness, whose evidence cannot be accepted unless corroborated by reliable evidence.

### **The Expert Evidence**

81. Mr Bahia relies upon the independent expert report of Mr Benjamin Grunberg of Grunberg & Co in respect of his case on Inquiry 7. Despite having permission to do so, the Sidhus chose not to rely upon any expert evidence and I was given no explanation for this decision.
82. Mr Grunberg, who gave his evidence remotely, is a qualified Chartered Accountant with over 11 years’ experience in practice. His CV records that as a partner of Grunberg & Co he advises a diverse portfolio of clients and that he oversees the forensic and corporate finance departments. In his practice, he has been exposed to all aspects of a company’s accountancy requirements, from day to day bookkeeping to year-end financial statements and statutory audits. He has dealt with clients of varying sizes from sole traders and owner managed businesses to international groups.
83. Mr Grunberg’s report is dated 13 August 2021 and attaches an earlier report prepared by him in June 2020. Mr Grunberg explained that he had carried out all of the analysis work for his August 2021 report, even though the same did not apply to his earlier report. The August 2021 report identifies his instructions as asking him to address whether “all profits generated by [ASL] from 1 January 2009 to date have been accounted for to the Partnership operated by Mr Bahia and the late Mr Sidhu”.
84. Notwithstanding criticisms of Mr Grunberg made on behalf of the Sidhus, I formed the clear impression that Mr Grunberg was an independent expert who knew and understood his duties to the court and the obligations imposed on an expert pursuant to CPR Part 35. Having obviously kept abreast of the oral evidence, Mr Grunberg made appropriate corrections to his report to reflect that evidence prior to giving his testimony.
85. Under cross examination, Mr Grunberg appeared to me to be measured and reasonable, making appropriate concessions (on more than one occasion referring to the question posed as a “fair assessment”) and responding to the questions asked of him without seeking to advocate on behalf of the Bahias. Given the scope of his instructions, I reject the criticism made by Mr Clarke that Mr Grunberg should not have used FY ending 2009 as a benchmark for the performance of ASL in subsequent years; Mr Grunberg frankly acknowledged

that he had not done any analysis of earlier years and that he did not know whether 2009 was a “one off” year. In any event, there is no evidence before the court to support a submission that the position pre-2009 was in fact the same as the changes Mr Grunberg noticed between 2009 and 2011 or that the criticism that was being made was based on anything other than a hypothetical proposition.

86. Absent any expert evidence to the contrary, and given my assessment of Mr Grunberg as an expert, I accept his evidence in its entirety.

### **The Documentary Evidence**

87. Two main issues arise in relation to documentary evidence: first whether the Sidhus have proved the authenticity of documents put in issue by Mr Bahia’s Notice to prove documents dated 17 December 2020; and second whether there is anything in the complaints made by each side that the other has given deficient disclosure and, if so, the consequences.

88. As to authenticity of documents, I am satisfied that, save where the Claimant no longer disputes authenticity, there is a serious issue in respect of the remaining documents identified in the Claimant’s Notice. I have already mentioned Andy’s propensity for tampering with documents and I accept that many of the documents identified in the Notice have been altered or manipulated in some way or other by him. This includes the Diary and various cheque stubs. Insofar as these documents are relevant to the individual Inquiries I shall return to them in more detail in due course.

89. As for disclosure, I can deal with the position relatively briefly.

90. The law on the circumstances in which the court may draw adverse inferences from a failure to disclose documents is uncontroversial. It was recently summarised (following an analysis of the relevant cases) in *MacKenzie v Alcoa Manufacturing (GB) Ltd* [2019] EWCA Civ 2110 by Dingemans LJ at [50]:

“It seems therefore that it is possible to state the following propositions. First whether it is appropriate to draw an inference, and if it is appropriate to draw an inference the nature and extent of the inference, will depend on the facts of the particular case, see *Shawe-Lincoln* at paragraphs 81-82. Secondly silence or a failure to adduce relevant documents may convert evidence on the other side into proof, but that may depend on the explanation given for the absence of the witness or document, see *Herrington* at page 970G, *Keefe* at paragraph 19 and *Petrodel* at paragraph 44”.

91. I would add the observation of Lord Sumption in *Petrodel Resources Limited v Prest* [2013] UKSC 34 at [44] (identified by Dingemans LJ in *Mackenzie* at [49]), that “there must be a reasonable basis for some hypothesis in the evidence or the inherent probabilities, before a court can draw useful inferences from a party’s failure to rebut it”. Lord Sumption adopted the approach of Lord Lowry in *Inland Revenue Commissioners Ex parte TC Coombs & Co* [1991] 2 AC 283 at 300:

“In our legal system generally, the silence of one party in face of the other party’s evidence may convert that evidence into proof in relation to matters which are, or

are likely to be, within the knowledge of the silent party and about which that party could be expected to give evidence. Thus, depending on the circumstances, a prima facie case may become a strong or even an overwhelming case. But, if the silent party's failure to give evidence (or to give the necessary evidence) can be credibly explained, even if not entirely justified, the effect of his silence in favour of the other party may be either reduced or nullified".

92. Mr Clarke drew my attention to the case of *Malhotra v Dhawan* [1997] 8 Med LR 319, a case involving the taking of an account, in which the Court of Appeal was required to consider the approach the Judge at first instance had taken to the drawing of inferences where it was accepted that documents had been destroyed by Mr Dhawan (albeit not with the intention of destroying evidence relevant to the claim). The Judge decided that in the circumstances of the case, the court should not be slow to make such inferences or assumptions against Mr Dhawan's interests as were consistent with other available evidence. The Court of Appeal endorsed this approach and, in doing so, it had regard to the Latin maxim *omnia praesumuntur contra spoliatores*, albeit accepting that the true principle was not as extensive as that maxim would suggest owing to the fact that "not everything is to be presumed against the destroyer". Morritt LJ identified the limits of the presumption at page 6, including that:

"if the judge forms a clear view, having borne in mind all the difficulties which may arise from the unavailability of material documents, as to which side is telling the truth, I do not accept that the application of the presumption can require the judge to accept evidence he does not believe or to reject evidence he finds to be truthful".

93. It is the Bahias' case that the Sidhus' failure to make proper disclosure in this case has been so marked as to justify the court drawing adverse inferences. Mr Temmink accepts that this is a high hurdle to cross, but he submits that the facts of this case amply justify the drawing of appropriate inferences. I agree. In my judgment the Sidhus have failed to provide a credible or coherent explanation for their failure to disclose documents which, on any view, should be in their possession and control and would have been directly relevant to these proceedings. As I have already said, I have little doubt that this has been a deliberate tactic on the part of Andy, but, whether deliberate or not, the unexplained failure to disclose obviously relevant documents appears to me to justify appropriate inferences.
94. I shall deal with the detail of the missing documents and the inferences to be drawn in more detail when I address Inquiries which are said to have been affected by a lack of adequate disclosure. However, suffice to say for present purposes that I am satisfied that:
- i) The Sidhus have never complied with the terms of the order of Deputy Master Linwood of 9 July 2020, requiring the Sidhus to deliver up the books and records of ASL from 1 January 2009 to date. Whilst receipts and purchase invoices falling within the period September 2017-September 2019 were disclosed on 29 September 2020 and till rolls falling within the same period were disclosed (extremely late) on 18 December 2021, the Sidhus have never disclosed any documents relating to ASL prior to 2016.



No explanation was given for the late disclosure of the till rolls. Indeed, there appears to be no coherent explanation for any of these failures.

- ii) A complete list of missing documents relating to ASL was identified by Mr Grunberg and attached to his report at Appendix 8, but it has never been answered and the documents have never been provided. Mr Grunberg pointed out in the body of his report that he had “identified large holes in ASL’s accounting records which remain unjustified...”.
- iii) The Sidhus have also provided incomplete disclosure of Partnership records, including, in particular, documents evidencing their management and control of Partnership properties, such as tenancy agreements, schedules of rent, correspondence with tenants and the like. Hardeep, who, since about 2016, has carried out a detailed and meticulous investigation into the affairs of the Partnership also confirms in his statement, and I accept, that there “remains a substantial amount of key documentation which Andy has not disclosed”. The Sidhus have suggested that these records were “uplifted” by the Bahias in 2008/2009 and that only some of them were returned, making it impossible to determine whether documents may have gone missing whilst in the Bahia’s possession. However, Mr Bahia’s evidence on this, which I accept, is that in 2008/2009 he was asked by Mr Sidhu to remove most of the financial records from 8 King Street while building works were carried out. This he did, storing the records at Greatways in the meantime. Mr Bahia said during his oral evidence that five boxes were removed from 8 King Street and 6 boxes (one of which may have belonged to Greatways), were taken back after the building works were complete. In circumstances where there is no evidence of the accountants, or Mr Sidhu, raising any queries about the whereabouts of partnership documents at any time thereafter, it seems to me to be inherently improbable that Mr Bahia was wrong about this.
- iv) The Sidhus’ original excuse for these failures (that the relevant documents were with their accountants) – an excuse which persisted until it was sensibly dropped by Mr Clarke during his oral closing submissions – carries no weight in the face of a letter from the accountants on 23 July 2020 confirming that they were not responsible for holding client records and that “the records have been returned at 8 King Street shop to Mr and Mrs Sidhu after 2010-2011, until he was alive and then to Mrs Sidhu...”.
- v) An alternative excuse, that the documents may have been destroyed in a flood at 8 King Street in September 2016 does not bear close analysis. The evidence is vague. Mr Kumar says only that “cardboard boxes and documents stored in the store room” had become damp and were “dumped”. He does not say what the documents were and there is no evidence to suggest that they are the documents which should have been disclosed in this case. Mrs Sidhu describes a flood in her statement in or around September 2016, but she does not identify the documents that she says were destroyed. Even Andy says that he “cannot say for sure” whether there were relevant documents in the boxes that were disposed of. There is no evidence that, for example, the documents ordered by Deputy Master Linwood to be disclosed by the Sidhus on 9 July 2020 were amongst the

paperwork that was ruined by water and there is in any event no evidence as to where any relevant paperwork created since the date of the flood might be.

- vi) There is nothing in the suggestion by the Sidhus that the loss of documents dating back (in some cases) 25 years is inevitable and unsurprising, simply by reason of the passage of time. Numerous documents have been disclosed in this case dating back many years and it does not appear to me to be a given (without more) that the passage of time has itself resulted in the loss of documents. I note that where Andy considered them to support his case, he has been able to produce notes on scraps of paper and (literally) on the front and back of an envelope, dating back many years. In any event, many of the missing documents (as is clear from the Appendix to Mr Grunberg's report) are relatively recent and, in light of the letter from the accountants referred to above, they should be stored at 8 King Street.
95. In all the circumstances, I accept that the Sidhus have never credibly explained their failure to give full disclosure. I will return to the inferences that I consider it appropriate to draw in the particular circumstances of this case in due course.
96. In his closing submissions, Mr Clarke made a valiant attempt to maintain that the Bahias' conduct in relation to disclosure was equally deficient, pointing to *inter partes* correspondence in which his solicitors had identified a lack of disclosure and identifying that the Bahias had failed to give disclosure of tenancy agreements, rent books or schedules of tenants in relation to the greengrocers, the kiosk and the residential accommodation at 44A and 48A King Street. It was his written submission (somewhat watered down in his oral submissions) that in light of the failures he had identified "no proper criticism can be made of deficiencies/gaps in the context of the Sidhus' paperwork". Effectively, there should be a "plague o' both [their] houses".
97. I reject this submission, which, in my judgment, bears no relation to the reality. It is true that over the course of the litigation, the Sidhus' solicitors have made various requests for disclosure, most of which related to tenants and rents at 48A King Street. However, having examined the correspondence between the parties, I accept Mr Temmink's submission that many of these requests have been "tit-for-tat" reactions to complaints from the Bahias' solicitors, Teacher Stern, about inadequate disclosure (see for example Teacher Stern's comment to this effect in its letter of 17 June 2020). Although the Sidhus' solicitors have threatened to pursue applications for specific disclosure, they have never done so. Furthermore, I accept that the Diary in its original form is relied upon by the Bahias as evidencing the rent at the greengrocer and the kiosk, as well as the residential premises. Andy describes the greengrocer as "essentially a licence" in his fourth statement.
98. The Bahias' case, which I accept, is that they have disclosed all documents which the rules required to be disclosed. Hardeep's evidence confirms the lengths to which he has had to go in order to identify the documents that were available to the Bahias and the documents that were not. The fact that, as Mr Clarke pointed out in closing, the Bahias' disclosure was given in tranches over time, is, in my

judgment, neither here nor there. There is certainly no basis upon which it can be said that the conduct of the Sidhus is excused by that of the Bahias.

## **INQUIRY 1**

### **The terms of the Inquiry:**

99. Inquiry 1 is in the following terms:

“An inquiry (1) whether (i) any of the Partnership debts and liabilities have since been paid and by whom and out of what fund and (ii) of all income and expenses in relation to all partnership properties not otherwise provided for below from 6 April 2011 to date.”

100. The parties are agreed that nothing further need be done by the court in relation to this Inquiry at this hearing and, accordingly, I make no order. Directions will be given for the taking of a dissolution account for the Partnership from 6 April 2011 at the consequential hearing following the hand down of this judgment.

## **INQUIRY 2**

### **The terms of the Inquiry:**

101. Inquiry 2 is in the following terms:

“An inquiry (2) as to the beneficial ownership of the freehold property known as 8 King Street, Southall, Middlesex UB2 4DA (Title Number NGL208705) and, specifically:

- (i) Whether the property is Partnership property or any part of it is held on trust for the First Defendant and/or the Second Part 20 Claimant; and
- (ii) If so, whether the First Defendant and/or the Second Part 20 Claimant should account to the Partnership for use and occupation of the property between 1972 and the present date.”

## **Factual Background**

102. 8 King Street is a four-floor property comprised of self-contained accommodation at the rear ground floor, with further residential accommodation on the first, second and third floors. At the front of the ground floor is the commercial premises from which (together with the basement) ASL has, until recently, traded as the Off Licence.

103. It is common ground that 8 King Street was purchased by the Partners in 1972 as a Partnership property, but the Sidhus advance a claim of proprietary estoppel in respect of the beneficial ownership of what they refer to as 8a King Street, namely the flat over the Off Licence which they say has been the primary residence of Mr and Mrs Sidhu and their family since 1972. It is their case that a substantial percentage of the purchase price of 8 King Street was contributed by the Sidhus and that the Partners promised Mrs Sidhu that if she agreed to the sale of 17 Saxon

Road (a property occupied at the time by Mr and Mrs Sidhu and their children) in order to help fund the purchase of 8 King Street, she could move in to the residential flat above the Off Licence and would never have to move again. In her witness statement Mrs Sidhu describes a meeting in 1972 at which this was discussed between her, Mr Sidhu and Mr Bahia; she says that she distinctly remembers Mr Bahia promising her “a house for a house”. Her evidence is that had this promise not been made to her, she would not have agreed to the sale of 17 Saxon Road and would have continued to live there.

104. Accordingly, the Sidhus contend (i) that Mr Sidhu’s estate has a claim in proprietary estoppel to the residential part of 8 King Street, which they call 8a King Street; alternatively (ii) that Mrs Sidhu has such a claim in her own right. They say that the estate or Mrs Sidhu acted to their detriment in selling 17 Saxon Road and using the proceeds of sale to purchase 8 King Street and in contributing a substantially greater percentage of the purchase price to 8 King Street than was contributed by Mr Bahia. They say detrimental reliance is also established by reference to building works carried out to 8a King Street in 2008/2009.
105. There is no dispute that the remainder of 8 King Street, i.e. the Off Licence and the bedsits in the rear extension constructed in around 2008/2009, comprise Partnership Property.
106. The Bahias strongly reject the claim in proprietary estoppel. Mr Bahia’s evidence in his witness statement is that 8 King Street was bought as a 50/50 joint venture, that he and Mr Sidhu contributed equally to the purchase price and that the conversation relied upon by Mrs Sidhu never happened.
107. Further and in any event, the Bahias rely upon a written memorandum of severance dated 20 October 2005 (“**the MoS**”), signed by both Partners, which they contend constituted a valid declaration of trust, capable of superseding any proprietary estoppel that might otherwise have arisen (although they acknowledge the MoS is incapable of binding Mrs Sidhu who is not a party to it). Pursuant to the MoS, the Bahias say that the Partners severed their equitable joint tenancy and declared henceforth that 8 King Street was to be held by them as tenants in common in equal shares. This, they say, created an express trust which is determinative of the legal and beneficial ownership of the property; they also say that this was wholly inconsistent with Mrs Sidhu having an individual entitlement by reason of a proprietary estoppel. The Bahias seek a payment to the partnership of a reasonable rent (to be assessed at a later date on the taking of the account) for the parts of the property occupied by the Sidhus, together with payment of the costs of occupying, including utilities and council tax.
108. The Bahias are critical of the failure to disclose documents in relation to this Inquiry, pointing out that until the letter serving the notice of dissolution of the Partnership in 2016, no document referring to, or asserting that the Sidhus had funded 80 or 90% of the purchase price of 8 King Street had ever been provided. They point out that there are still no documents disclosed by the Sidhus to support their case. I shall return to the significance of this in due course.

## The Law

109. The legal issues raised by Inquiry 2 fall into three categories: (i) Proprietary Estoppel; (ii) Declarations of Trust; and (iii) Use and Occupation.

### Proprietary Estoppel

110. The principles relating to proprietary estoppel are not controversial. Lord Walker identified the three main elements by reference to academic authority in *Thorner v Major* [2009] 1 WLR 776 at [29] as follows:

“...a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance.”

111. These principles were analysed in more detail by Lewison LJ in *Davies v Davies* [2016] 2 P&CR 10 at [38]:

“38. Inevitably any case based on proprietary estoppel is fact sensitive; but before I come to a discussion of the facts, let me set out a few legal propositions:

i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18; [2009] 1 W.L.R. 776 at [57] and [101].

ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at [29].

iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a “mutual understanding” may depend on how the other elements are formulated and understood: *Gillett v Holt* [2001] Ch. 210 at 225; *Henry v Henry* [2010] UKPC 3; [2010] 1 All E.R. 988 at [37].

iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* at [38].

v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.

vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159; [2003] 1 P. & C.R. 8 at [56].

vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].

viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].

ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": *Taylor v Dickens* [1998] 1 F.L.R. 806 (a decision criticised for other reasons in *Gillett v Holt* )."

112. Where effective proprietary estoppel is identified, the Sidhus also rely upon *Anaghara v Anaghara* [2021] 2 P&CR 441, at [19]-[27] in respect of the appropriate means by which to give effect to the equity. In that case, Zacaroli J sets out the principles elucidated in *Jennings v Rice* [2002] EWCA Civ 159 as follows:

"20. ...Robert Walker LJ, at [45] to [47] contrasted (i) cases where the assurances, and the claimant's reliance on them, had a consensual character falling not far short of an enforceable contract with (ii) cases where the claimant's expectations were uncertain, or where the high level of the claimant's expectations may have justified only a lower level of expectation. At [47] he said:

"If the claimant's expectations are uncertain (as will be the case with many honest claimants) then their specific vindication cannot be the appropriate test. A similar problem arises if the court, although satisfied that the claimant has a genuine claim, is not satisfied that the high level of the claimant's expectations is fairly derived from his deceased patron's assurances, which may have justified only a lower level of expectation. In such cases the court may still take the claimant's expectations (or the upper end of any range of expectations) as a starting point, but unless constrained by authority I would regard it as no more than a starting point."

### **Declaration of Trust**

113. It is common ground that a written declaration of trust made and executed between all beneficiaries of land entitled to declare a trust over that land is conclusive as to the interest to which it relates (*Pettitt v Pettitt* [1970] AC 777 at

813E per Lord Upjohn), subject to evidence that the document should be rectified or rescinded on the grounds of fraud or mistake (see *Goodman v Gallant* [1986] Fam 106, per Slade LJ at 116).

114. Thus in *Pink v Lawrence* (1978) 36 P&CR 98, the Court of Appeal held that the doctrine of constructive trusts cannot be relied upon to contradict an expressly declared trust (see Buckley LJ at 101).

115. However, as Mr Clarke pointed out, Baroness Hale envisaged the possibility of exceptions in *Stack v Dowden* [2007] 2 AC 432 at [49]:

“No one now doubts that such an express declaration of trust is conclusive unless varied by subsequent agreement or affected by proprietary estoppel: see *Goodman v Gallant* [1986] Fam 106”.

116. Mr Clarke suggests that this brief observation was intended to apply to a pre-existing proprietary estoppel. However, on the facts of *Stack v Dowden*, the House of Lords was not concerned with whether a pre-existing equity based on proprietary estoppel would survive an express declaration of trust. Furthermore, *Goodman v Gallant* has nothing to say on the subject of proprietary estoppel, much less is it authority for the proposition that a pre-existing equity based on proprietary estoppel is capable of being set up at variance with a declared trust. None of the other opinions in *Stack v Dowden* referred to proprietary estoppel in similar terms and, indeed, while Lords Neuberger and Wilson briefly discussed the nature of a proprietary estoppel claim by comparison with a common intention constructive trust (at paragraphs [37] and [128]), Lord Neuberger observed that it was not necessary or appropriate to discuss proprietary estoppel further.

117. Whilst Lord Wilson (at [37]) disavowed his own suggestion in *Yaxley v Gotts* [2000] Ch 162 that proprietary estoppel and common interest constructive trusts were closely akin, if not indistinguishable, nevertheless there is little doubt that the facts needed to establish each equitable interest are closely analogous (this much was recognised by Lord Neuberger in *Stack v Dowden* at [128] and see *Pickering v Hughes* [2021] EWHC 1672 (Ch) per Andrew Lenon QC sitting as a Deputy High Court Judge at [62]). In the circumstances, I am inclined to agree with Mr Temmink that in cases involving agreements alleged to have been made around the time of acquisition of a property, which might equally be characterised as giving rise to a proprietary estoppel or a constructive trust, it would be surprising if the legal effect of a subsequent declaration of trust were to be treated in a different way depending on the equitable tool deployed. I do not consider that Baroness Hale’s *obiter* remark in *Stack v Dowden* at [49] can possibly have been intended to suggest as much.

118. Indeed it appears to me to be more likely that Baroness Hale had in mind the potential for a proprietary estoppel to arise on facts occurring after the date of an express declaration of trust and thereby to override it, a potential scenario which was recognised by Warren J in *Clarke v Meadus* [2010] EWHC 3117 at [41]-[42] and [56]:

“In my judgment, it is clear that the express trusts declared in the [Deed of Trust dated 4 September 1996] are capable of being overridden by a proprietary

estoppel in favour of Mrs Clarke as a result of promises and representations made after September 1996...It cannot, in my judgment, sensibly be argued that once beneficial interests have been declared in a formal document, those interests become immutable and incapable of being affected by a proprietary estoppel”.

119. Mr Clarke submitted that *Clarke v Meadus* is authority for the proposition that representations (giving rise to an equitable interest by reason of a proprietary estoppel) made both prior to and after an express declaration of trust can be relied upon notwithstanding the terms of the trust. However, that is not my reading of *Clarke v Meadus*, which was an appeal from a decision of the master ordering strike out/summary judgment against a claimant seeking to establish proprietary estoppel, alternatively a constructive trust. I need to set out the facts in a little more detail.
120. In that case the declaration of trust made in September 1996 identified a 50/50 beneficial ownership of the property shared between the claimant and the defendant. However, on one view (set out by the judge in paragraphs [72] and [76]), that declaration of trust was not in fact inconsistent with the promise alleged to have been made to the claimant before that date to the effect that the property would be left to her in the defendant’s will.
121. In paragraph [75] Warren J identified that the issue arising was “whether the express provisions of the [declaration of trust] make it impossible to rely on the representation or promises made before that time in the light of (a) the express declaration of trust...”. In paragraph [76] Warren J explained that it was the claimant’s case that the declaration of trust was simply part of a tax planning exercise and that as part of that exercise it was agreed that the defendant’s half remaining share would be bequeathed to the claimant by a will to be executed following the implementation of the declaration of trust. As Warren J then said:  
  
"Thus, far from the [declaration of trust] being intended to displace or satisfy the previous promise to leave Bonavista to [the claimant] there was, on the claimant’s case, an agreement which was consistent with, and only consistent with, an affirmation of that promise.”
122. Accordingly, Warren J’s decision in paragraph [77] to the effect that, quite apart from a new case by way of amendment as to a promise that was made after the declaration of trust (which he had addressed in paragraph [56]), the claimant “clearly has in my view, a well arguable case that the [declaration of trust] makes no difference whatsoever to the claim based on proprietary estoppel which she would otherwise have had”, does not support Mr Clarke’s case. Aside from the fact that Warren J was dealing with a summary judgment application and so could make no findings on the facts, it is quite clear that he was accepting in his judgment only that the claimant had an arguable case that there was nothing to preclude a claim in proprietary estoppel having regard to the particular (potentially consistent) terms of the later declaration of trust and the case advanced by the claimant to the effect that the declaration of trust was plainly not intended to be determinative. This is entirely different from accepting the much broader proposition that a prior equity can always be relied upon notwithstanding the inconsistent terms of a subsequent declaration of trust.



123. Drawing the threads of these authorities together, in my judgment:
- i) An express declaration of trust will be conclusive subject to rectification or rescission (*Goodman v Gallant*);
  - ii) A constructive trust cannot be relied upon to contradict or override the terms of a subsequent declaration of trust (*Pink v Lawrence*);
  - iii) Given that the facts needed to establish a constructive trust and a proprietary estoppel are analogous, there is no principled reason to treat a proprietary estoppel claim any differently from a claim of constructive trust in the context of determining the conclusiveness of a subsequent declaration of trust (save where, as was the case in *Clarke v Meadus*, the declaration of trust is not, on close analysis of the evidence, inconsistent with the equity and/or, as explained in Megarry & Wade (9<sup>th</sup> Edition) footnote 240 at page 426 by reference to Baroness Hales' remark at [49] in *Stack v Dowden*: "...one of the parties to the express declaration [has] led the other to believe, unconscionably, that they will not rely on that declaration as evidence of equitable ownership");  
  
however
  - iv) An express declaration of trust may be overridden by an equity arising in light of representations and promises made after the declaration of trust (see *Clarke v Meadus*).
124. It is common ground that an express declaration of trust cannot preclude a claim in proprietary estoppel on behalf of a person who is a stranger to the declaration of trust, and whose interest, therefore, cannot be bound by an agreement or transfer to which he or she was not a party (see *Lohia v Lohia* [2021] EWHC 2752 (Ch) at [31]).
125. Insofar as it is necessary in this case to construe the MoS, I did not understand the parties to be in dispute over the applicable principles. Mr Clarke drew my attention to Lewison, *The Interpretation of Contracts* (7<sup>th</sup> edn), at 3.143-3.147, pointing out in particular that in construing any written agreement the court is entitled "to look at evidence of the objective factual background known to the parties or reasonably available to them at or before the date of the contract". However, Mr Clarke also acknowledged that there were inevitably limitations on the utility of the background facts which 'should not be used to create an ambiguity where none exists' (Lewison, *The Interpretation of Contracts* (7<sup>th</sup> edn) at 3.168) and he specifically drew my attention to a passage from *Roar Marine Ltd v Bimeh Iran Insurance Co* [1998] 1 Lloyd's Rep. 423 per Mance J at 429:
- "Even if the most generous examination of surrounding circumstances is permitted, any decision on interpretation must pay due regard to the explicitness of particular wording and the nature and strength of any circumstances suggested as putting a different complexion upon it."
126. I shall bear all of these legal principles in mind in determining the issues arising on Inquiry 2.

## **Occupation and Use**

127. In the event that the proprietary estoppel claim fails, the parties agree that Mr Sidhu's estate may be held to account for the Sidhus' occupation and use of 8 King Street (although I shall need to determine the date from which any rental payments are to run), however, they are not entirely agreed as to the applicable statutory mechanism for enabling an account.
128. Mr Temmink relies upon section 29 of the 1890 Act (as set out above), which creates a mandatory duty on partners to account (section 29(1)), and which expressly applies to transactions undertaken after a partnership has been dissolved by the death of a partner and before the affairs thereof have been completely wound up (section 29(2)).
129. Mr Clarke agrees that this is one jurisdictional route to an award of mesne profits for use and occupation, but in his closing submissions he suggested that sections 12-15 of the Trusts of Land and Appointment of Trustees Act 1996 ("**TLATA 1996**") "might" have application as a second jurisdictional route. He accepts that one of these routes will be engaged but he points out that the court has a discretion under TLATA 1996 to make such order as it thinks fit, whereas no such discretion exists under the 1890 Act.
130. Mr Clarke provided little explanation in closing as to why he contended, if he did, that TLATA 1996 was the appropriate jurisdictional route in this case and, in my judgment, it is not. In his written opening submissions, Mr Clarke justified his approach by submitting that in the event that 8 King Street was held on trust for Mr and Mrs Sidhu, "it would not comprise partnership property for the purposes of section 29". However, the question of use and occupation only arises in the event that the Sidhus' case on proprietary estoppel fails – in which case there can be no doubt that 8 King Street is partnership property. Accordingly, section 29 of the 1890 Act appears to me plainly to cover the position.

## **Proprietary Estoppel: The Evidence**

131. This Inquiry is heavily dependent upon the evidence of the witnesses. However, I shall begin by considering the available documentary evidence.
132. There is only one contemporaneous document from the time of the purchase of 8 King Street, which shows that Mr Sidhu paid the deposit of 10% of £28,000 for the freehold in 1972, i.e. £2,800. The Office Copy Entry for 8 King Street (title number NGL208705) records Mr Sidhu and Mr Bahia as proprietors pursuant to a transfer on 19 February 1973. There is no registered property in the name of 8a King Street. The original transfer is not available.
133. In about September 2005, it would appear that the Partners sought legal advice from E.D.C. Lord & Co, as to various matters relating to their property portfolio. In a letter from E.D.C. Lord to the Partners dated 29 September 2005, the solicitors dealt with issues arising in respect of 44-48 King Street. The final paragraph of the letter said this:

“I do note that you are registered as holding this property as “joint owners” which means that in the event of the death of either of you it will pass automatically to the survivor of you. Usually in business partnerships a set up with separate shares is made to ensure that in those circumstances the share of any deceased partner goes to his family. We can make arrangements for this now and please give the matter careful consideration....”

134. At around this time, it is common ground that Andy prepared a document which he appears to have faxed to E.D.C. Lord (their fax number appears in handwriting at the top of the document) setting out a list identifying ten “Joint Properties – TS Sidhu & JS Bahia” including “10. 8 King Street, Southall, Middlesex UB2 4DA”. The document asks EDC Lord to “[p]lease ensure all the properties are owned as tenants in common and NOT as joint tenants”.

135. It is clear from an invoice sent to the Partners by E.D.C. Lord dated 9 January 2006 that they proceeded to follow this instruction in relation to 8 King Street, by preparing the MoS dated 20 October 2005. It is signed by each of the Partners and records the following declaration:

“WE, TARA SINGH SIDHU and JASWINDER SINGH BAHIA hereby declare that our joint tenancy of and in the freehold property 8 King Street aforesaid is henceforth severed in equity and on and from the date hereof we shall hold the property as tenants in common in equal shares.”

136. Against that background I now turn to consider the evidence of the witnesses.

137. There are two key elements to the factual evidence – first the evidence from Mrs Sidhu (but no one else) as to the promise that she says was made to her in 1972 by the Partners. Second, the evidence, from both sides, as to the percentage contributions made to the purchase price by the individual Partners; these are relevant to the question of detrimental reliance but also have the potential to go to the credibility of the accounts of the witnesses as to the circumstances surrounding the alleged promise and thus the inherent probabilities. I begin by considering Mrs Sidhu’s evidence as to the promise.

138. In her statement, Mrs Sidhu explains that by 1972 she had three children, she had moved five times in a short space of time and she was living at 17 Saxon Road. She goes on to say this:

“Before 8 King Street was bought there was a meeting in April. I had a talk with my husband and my brother at 17 Saxon Road as I was tired of moving and did not wish to do so again. The discussion was in April 1972 and we were talking in the living room of 17 Saxon Road at an arranged meeting as my husband wished to talk about the possibility of selling of the house in order to finance the deal to buy the off licence and property he had found at 8 King Street which he told me was a good purchase. I was not very happy about this and I said to them that if we sold our home at 17 Saxon Road and moved to the flat (8a) at 8 King Street I would not move again. I understood the only way to raise the full funds to buy 8 King Street and also for my brother to be involved, with his limited funds, was to sell 17 Saxon Road as it was not easy to get finance in those days. It was rare for me to have such a discussion with my brother or husband but now with three

young children I wanted to make sure that my husband understood I did not wish to move again and that my brother also understood I would not sell my home unless the upper residential part at 8 King Street was ours as 17 Saxon Road had been.

The meeting lasted for an hour to an hour and a half as my husband and brother were trying to persuade me to sell the house to fund the deal. To the best of my recollection my brother said to me in Punjabi why would you need to move again, you are going to get another house instead of this one, so why are you worried about anything? If you sell this house then the flat will be yours to do as you wish as you are getting a house for a house so you don't need to worry, you will have the flat but we will also be able to get the shop or words to such effect. I distinctly remember that he promised me a house for a house, as a result of this being said, I agreed to sell 17 Saxon Road to help fund the purchase of 8 King Street and I also make sure my brother was involved in the business".

139. It is fair to say that Mrs Sidhu stuck to this account under cross examination, asserting that she knew how long the meeting had lasted and the specific words used by Mr Bahia. However, Mr Bahia's evidence, which he also stuck to in cross examination was that "I never had such conversation or ever agreed to 8 King Street being used as [the Sidhus'] permanent residence". He accepts that he did not complain at the time the Sidhus moved in to 8 King Street and that for many years he did not ask the Sidhus to pay rent for their occupation, but says there was originally no reason to complain owing to their close family ties (in cross examination he said "I thought they were temporary and they will move out" and "I did not know they were going to stay their whole life"). His evidence is that he has objected to their ongoing use and occupation since the 1990s.
140. Whilst I remind myself that I must not take an overly rigorous approach to assessing the terms of the promise alleged to have been made to Mrs Sidhu or the inconsistencies that may exist in the Sidhus' case owing to "imperfectly remembered" facts (see *Pickering v Hughes* at [76] referring to *Lloyds Bank v Rosset* [1991] 1 AC 107 at 132F-G and *Thorner v Major* [2009] 1 WLR 776 at [56]-[57] and [84]-[86]), having given careful consideration to the context, the surrounding circumstances, and the inherent probabilities, I am bound to say that I prefer Mr Bahia's account of events. I say that for the following reasons:
  - i) There is no documentary evidence to support Mrs Sidhu's case and no evidence that a right to occupy 8a King Street was ever asserted by or on behalf of the Sidhus prior to 26 October 2016 when their solicitors sent the notice of dissolution of the Partnership. If Mrs Sidhu's evidence is to be believed, the promise made to her by Mr Bahia in the presence of her husband was of the utmost significance, concerning the Sidhus' permanent occupation of a family home. In the circumstances, I would have expected there to be a record of it, even if only an informal record. I do not consider it to be credible that Mr Sidhu (a man who, as Mr Raminder Sidhu confirms in his evidence, already had business interests by this date, and who, as Hardeep confirms, appears to have had no difficulty dealing with professionals, including accountants and solicitors), and Mrs Sidhu (whose interests were, on her case, so substantially affected) would have left the issue of documentation of their ownership rights in abeyance for over 40

years. There is certainly no reason to suppose that they would not have had the resources formally to document the position. Even assuming that the Sidhus did not consider there to be a need to document the position when relations remained good prior to 2009/2010, it is very difficult to see why they would not at least have raised the topic in writing when relations soured.

- ii) There is no evidence that the alleged agreement was ever mentioned to anyone, whether in 1972, or at any time before these proceedings were commenced. Mr Raminder Singh's evidence, which I accept, is that Mr and Mrs Sidhu and their family lived with his family temporarily at 3 Saxon Road when he was in the process of buying King Street and that "we would discuss the purchase amongst the family" – however, he makes no mention of having been told about the conversation on which Mrs Sidhu now relies. Similarly, Mrs Khosa's evidence was to the effect that she had been told about the purchase of 8 King Street, including that her brother was contributing the lion's share, but she also makes no mention of having ever been told about the alleged promise. I find it extremely unlikely that, if a promise of this significance really had been made to Mrs Sidhu, it would not have been mentioned to other family members at the time.
- iii) Andy's evidence also made no mention of ever having been told about the promise, notwithstanding that he said he had frequent conversations with his father about partnership affairs before his father's death. Mr Sidhu had caused his solicitors to serve the notice of dissolution of the Partnership just over two years in advance of his death and in light of his deteriorating health condition, it is to be anticipated that any evidence he had of a promise that would have protected his wife's continuing occupation of her home would have been communicated to his son. Whilst I of course accept that this would only ever have been second hand hearsay evidence, nonetheless it is striking given the information Andy says he was given by his father that he appears never to have been told about the alleged promise.
- iv) As I shall come to in a moment, I am unable to accept the Sidhus' case that Mr Sidhu contributed the lion's share of the purchase price of 8 King Street. In circumstances where I accept that the Partners contributed equally to the purchase, it is unlikely that Mr Bahia would nevertheless have made a promise in the terms suggested.
- v) It is common ground that the MoS amounts to a trust validly declared (conforming with section 53(1)(b) Law of Property Act 1925). I shall return to its construction in a moment, but in my judgment, if a promise of occupation really was made to Mrs Sidhu in her husband's hearing, it is inconceivable that such promise would not have been raised with E.D.C Lord at the time of the MoS. I agree with Mr Temmink that I am entitled to infer from the terms of the MoS and the fact that it was prepared following legal advice, that Mr Sidhu did not have it in mind in October 2005 that he (or his wife) had an entitlement to any more than 50% of the beneficial interest in the freehold of the property.

- vi) As I have said, the topic was raised for the very first time in the notice of dissolution of 26 October 2016. That letter said this:

“We are further instructed and understand in relation to the shop and residential parts occupied by our client at 8 King Street, Southall that there is a constructive trust in our Client’s favour pursuant to which the Partnership holds the majority of that property on trust for our Client to include the entirety of the residential part occupied by our client (since purchase in 1972). This is based on the facts giving rise to the historic purchase of that property including the payment by our client of 90 percent of the purchase monies”.

Whilst I do not regard the reference to a constructive trust, as opposed to a proprietary estoppel to be of any particular significance, I note that at this time, Ralli’s instructions appear to have been that the claim to beneficial ownership was dependent upon the fact that Mr Sidhu had contributed the vast majority of the purchase monies. Indeed, this led Ralli to suggest an entitlement to “the majority of” 8 King Street, and not just the residential part. In my judgment, the absence of any reference in this letter to a promise is significant. Mr Sidhu was alive at the time this letter was written and if there had indeed been such a promise made, it is inconceivable that he would not have mentioned it to his solicitors when seeking dissolution of the Partnership and in the specific context of the points made in the letter.

- vii) After October 2016, Ralli continued to make out a case of constructive trust based on the fact that the purchase of 8 King Street had been funded predominantly by Mr Sidhu. In a letter of 23 November 2016 they said this:

“...The facts should speak for themselves and the history is clear as our Client financed the purchase of that Property predominantly with his own money (to include a redundancy payment and the proceeds of sale of the family home) and sourced the balance of the purchase monies via loans from third party family members and friends...Our Client has occupied the upper part of the Property since the purchase of the property and never paid rental on the basis that he funded the purchase personally and is entitled to the entirety of the residence”

On 21 February 2017, Ralli confirmed their instructions that Mr Sidhu had “contributed the purchase monies” and that the residential part of 8 King Street had always been “treated by accountants and all parties” as the Sidhus’ main residence. On 5 May 2017, Ralli informed the Bahias that the Sidhus “will not vacate the residential part of 8 King Street and if necessary a sale can take place of the remainder”, thereby confirming that their continued residence at 8 King Street was an important goal. At no time prior to Mr Sidhu’s death was the case that is now being advanced by Mrs Sidhu raised by Ralli.

- viii) Indeed there is no reference to any conversation involving Mrs Sidhu until the Defence and Counterclaim was served on 2 February 2019. It is only at this point that the case subsequently articulated by Mrs Sidhu in her

statement was set out in paragraph 22 (albeit without reference to the specific promise of “a house for a house”).

- ix) Of course the inferences that may be drawn from a failure to record or assert an oral agreement obviously depend upon the factual context. As Andrew Lenon QC pointed out in *Pickering v Hughes* at [85], a failure to document an agreement made between two cohabiting partners in a romantic relationship may not cast doubt on whether the agreement was ever in fact made. However, although Mrs Sidhu and Mr Bahia were siblings, the purchase of 8 King Street was a business arrangement marking the start of a decades’ long partnership between Mr Sidhu and Mr Bahia. I consider that, in the circumstances, I am entirely justified in drawing the inference that there was no such agreement, particularly where that inference is consistent with the inherent probabilities and available evidence.

141. In the circumstances, I reject Mrs Sidhu’s account of events, which I can only assume was part of the Sidhus’ attempt (whether instigated by Andy, or not) to manipulate the evidence. I have already said that I found Mrs Sidhu to be a wholly unreliable witness and, given the factors I have identified above, I have no difficulty in this instance in finding that she was not telling the truth about the promise in her witness statement or in her oral evidence.
142. This finding effectively determines the outcome of Inquiry 2, at least insofar as the claim of proprietary estoppel is concerned. However, there are a number of additional points with which I must deal.

*The Claim by Mr Sidhu’s estate*

143. It was contended by the Sidhus that Mr Sidhus’ estate was entitled to set up a proprietary estoppel by reason of the promise made to Mrs Sidhu in Mr Sidhu’s presence. Aside from the argument (which I have rejected) that there is authority for the general proposition that a pre-existing proprietary estoppel can defeat a later express declaration of trust, it was also argued on behalf of the Sidhus that the MoS was properly to be construed so as to have effect only in relation to that part of 8 King Street which excludes the residential part at 8a King Street.
144. In my judgment, this argument does not bear scrutiny. The MoS is in the clearest terms possible; it is said to relate to the freehold property at 8 King Street and it identifies the Land Registry Title Number as NGL208705. There is no 8a King Street recorded at the Land Registry and nothing whatever in the MoS to suggest that the parties intended to create a “carve out” for some part of the property. Any such carve out would be directly contrary to the clear and unambiguous words used by the parties.
145. Even on the assumption, for these purposes, that the parties to the MoS were aware of a promise in the terms identified by Mrs Sidhu, I reject the suggestion that, on its true construction, the MoS is to be interpreted to take account of such promise. Where the parties to the MoS have referred in such clear terms to 8 King Street in its entirety and without any attempt to recognise that different arrangements may apply to different parts of the property, in my judgment there

is no scope for Mr Sidhu's estate to contend that it is to be construed as meaning anything other than that it applies to the whole property.

146. In my judgment, even if a promise had been made to Mrs Sidhu in the terms she suggests, such promise would be incapable of creating an equity in the form of a proprietary estoppel as between Mr Sidhu's estate and Mr Bahia in circumstances where the terms of the MoS are conclusive of their interests in 8 King Street. There is no claim for rectification or rescission in this case.

*Financial Contributions to the purchase of 8 King Street*

147. Before turning to Mrs Sidhu's individual position, I should next address the question of the financial contributions made by the individual Partners to the purchase of 8 King Street, not least because the Sidhus' evidence on this topic was said to support their case as to the existence of the promise to Mrs Sidhu of "a house for a house".
148. The evidence as to the financial contributions made to 8 King Street by the Sidhu family has not been consistent and there is no contemporaneous documentary evidence to assist:
- i) In their 26 October 2016 letter, Ralli put Mr Sidhu's contribution at 90%, asserting on 23.11.16 that the purchase monies came predominantly from "his own money" and that they included a redundancy payment, the proceeds of sale of the family home and loans from third party family members and friends.
  - ii) In the Defence and Counterclaim, the Sidhus identified the purchase price as £33,000, of which £7,500 was contributed from the sale of 17 Saxon Road (registered in joint names), £2,000 came from Mr Sidhu's business earnings and £15,500 was borrowed in loans from family, friends and business acquaintances (a total of £25,000 or roughly 75% of the purchase price) with the remainder (i.e. £8,000) being provided by Mr Bahia.
  - iii) Mrs Sidhu says in her statement that 8 King Street was purchased for £28,000 with an additional £5,000 being paid for stock, fixtures and fittings and goodwill (i.e. a total of £33,000). The total contribution from "my husband" was £27,000 (i.e. roughly 81% of the purchase price), with the contribution from 17 Saxon Road now put at no more than £6,500. On this evidence, Mr Bahia contributed £6,000, as Mrs Sidhu confirmed in cross examination. Mrs Sidhu says that monies for the purchase were obtained from the sale of 34 Wentworth Road, an investment property in Slough, profits from her husband's business and borrowings from members of the extended Sidhu family, "members of my husband's village in India who lived locally and friends". There is no suggestion from Mrs Sidhu that any of the purchase price was contributed directly from her own funds.
  - iv) Mr Raminder Sidhu says in his statement that to the best of his knowledge, 8 King Street was purchased for £30,000 plus stock, with his understanding being that his brother contributed "almost 80% of the purchase price", which came from a sale of "his home" at 17 Saxon Road and funds from



the sale of 34 Wentworth Road, together with money from his driving school business and earnings from Mrs Sidhu.

- v) Mrs Khosa's evidence was that her brother had told her that he had purchased 8 King Street for £33,000, that he had provided "almost all the purchase price" and that he had borrowed some of the purchase price from elsewhere (immediate family, as she said in her statement, and people from villages and friends, as she added in her oral evidence).
- vi) The Bahias have always denied that contributions were provided anything other than equally between the Partners. In his witness statement Mr Bahia confirmed that he "paid half the money for the property and stock", recalling that he had personally contributed about £1,800 from his savings and that he had borrowed the rest as loans from family and friends. He identified the individuals from whom he had borrowed money but said that he did not know the precise amounts borrowed. Under cross examination he robustly rejected the Sidhus' case when it was put to him saying that it was "all lies" and that "I do know that I put my share in". He went on to identify the precise sums that he said had been borrowed from various individuals and put in by himself, coming to a total of approximately £16,200.

149. In trying to evaluate this evidence, I start from the common sense perspective that, absent a contemporaneous documentary record, it is difficult to believe that anyone could possibly remember the precise sums that were borrowed from individuals for the purchase of a property that took place approximately 50 years ago.

150. I accept that the total purchase price of 8 King Street was probably about £33,000 including approximately £5,000 for stock and fixtures and fittings (this appears consistent with the only available contemporaneous evidence of a price of £28,500 for the property alone), but the Sidhus have not satisfied me (the burden of proof on this issue lying with them) that they contributed the lion's share of the monies. That is because:

- i) The Sidhus have not been consistent in their story, as I have set out above. If they genuinely knew the sum that Mr Sidhu contributed to the purchase of 8 King Street (or his percentage contribution), they would not have advanced several different inconsistent stories about the level of that contribution, or indeed where it came from.
- ii) Mr Raminder Singh's evidence as to his "understanding" could only be based on what he had been told by others half a century ago about the circumstances of the purchase of 8 King Street and I have no means of knowing whether that information was reliable. I note in this regard that when Mr Raminder Singh was first asked in cross examination who had told him about the purchase of 8 King Street his response was merely that it was "discussed with the family" and when the figure of £30,000 in his statement was put to him his response was "...I wouldn't know the exact figure". He also admitted that he did not know how much 17 Saxon Road had sold for and that he did not know how much money any other member

of the family had contributed to the purchase price or where the money came from to pay them back. Whilst I accept that Raminder Singh was doing his best to assist the court, the quality of his evidence is not such as reliably to corroborate the evidence of Mrs Sidhu.

- iii) Equally, for the reasons I have already given, I take the same view in relation to Mrs Khosa's evidence. Mrs Khosa appeared rather too enthusiastic to support the Sidhus' case if she possibly could and the inconsistencies in her evidence on this subject, to which I have already referred, do not provide any comfort that I can rely upon that evidence as corroborating that of Mrs Sidhu. I accept that she gives evidence of family uproar at the involvement of Mr Bahia in the Partnership, but I do not consider that in itself points one way or the other when it comes to the question of the levels of contribution.
- iv) Mr Bahia has been consistent in his case that he contributed 50% of the purchase price, a case that was expressly asserted in paragraph 23 of the Amended Reply (notwithstanding submissions to the contrary). Following the Notice of Dissolution of the Partnership on 26 October 2016, Teacher Stern confirmed in their letter of 7 December 2016 that it was the Bahia's case that the property was owned on a 50/50 basis. Mrs Bahia gave evidence that this had always been her understanding. Whilst I am afraid that I consider that Mr Bahia cannot possibly have remembered the details of each individual lender and the amount borrowed from that lender for the first time in cross examination (which I consider probably to be the result of misguided or wishful thinking on his part) I accept his evidence that he contributed 50%, which, having regard to the inherent probabilities, appears to me to be more likely.
- v) If Mr Sidhu had really contributed a much greater proportion of the purchase price, I would have expected him, as a businessman, to want to record that arrangement in writing. In the absence of any such record I can only infer that the Sidhus' account is inaccurate.
- vi) Furthermore, the MoS again appears to me to create a significant difficulty for the Sidhus in this context. In my judgment it is highly improbable that Mr Sidhu would have signed the MoS in the terms set out above if he had thought in 2005 that 8 King Street was not held equally and he had contributed between 75% and 90% of the purchase price, as is now suggested. At the very least it is to be assumed that he would have sought advice about this state of affairs from EDC Lord and yet there is no whisper of any concern being raised by him with EDC Lord at the time.

151. In the circumstances, I reject the Sidhus' case that contributions towards the purchase of 8 King Street were unequal in terms of cash.

*Mrs Sidhu's case on detrimental reliance*

152. On the evidence, I also reject the Sidhus' case that (even assuming a promise of "a house for a house") Mrs Sidhu would have been able to establish detrimental reliance in her own right. This reliance was argued by Mr Clarke to arise by

reason of the sale of 17 Saxon Road and the deployment of the proceeds in the acquisition of 8 King Street.

153. On balance, I accept that 17 Saxon Road was sold prior to the purchase of 8 King Street and that the proceeds were used to help fund the purchase of 8 King Street. Mrs Sidhu's evidence about this was corroborated by Raminder Singh, whose evidence on this topic I accept. Mr Bahia's evidence in cross examination was that he did not think he remembered this and that he thought 17 Saxon Road had been sold after the purchase of 8 King Street. However I am satisfied that (perhaps unsurprisingly given his admittedly poor memory and his lack of any involvement in the sale of 17 Saxon Road, which was owned by the Sidhus) he is mistaken about this. He frankly conceded in cross examination that he did not know where Mr Sidhu "got the money from".
154. However, I am not satisfied that the Sidhus have established that Mrs Sidhu herself contributed anything to the purchase price of 8 King Street. In particular:
  - i) Although there are grounds to conclude on the basis of evidence in Mrs Sidhu's statement that 17 Saxon Road was jointly owned by herself and her husband and that therefore some of Mrs Sidhu's own funds were used to purchase 8 King Street, Mrs Sidhu in fact gave no direct evidence whatever that she had contributed her own funds to the purchase. No documents have been disclosed evidencing the ownership of 17 Saxon Road.
  - ii) The reference later in Mrs Sidhu's statement to the funds for the purchase coming from "my husband" is potentially equivocal given her evidence that she and her husband were co-owners of 17 Saxon Road, but does not address the question of whether she simply provided her share of the funds (assuming she was entitled to them) to her husband or whether she herself expressly contributed to the purchase monies.
  - iii) Further, I am not satisfied that Mrs Sidhu's evidence on this subject is corroborated (as in my judgment, it would need to be) by more reliable witnesses. Raminder Singh's clear evidence in cross examination, which I accept, is that his brother owned 17 Saxon Road: "...as far as we knew, that house belonged to my brother", while Mrs Khosa's evidence was that funds for the purchase had come from "her brother". Although Raminder Singh suggested in his statement that some funds may have come from Mrs Sidhu's earnings as a seamstress, I can only assume that he was mistaken about that (or that any such contribution was of an extremely minor nature) as Mrs Sidhu would surely have mentioned that if it had been the case and no other witness made any such suggestion. Mr Clarke did not seek to rely on this point in his closing.
155. Finally, insofar as Mr Sidhu's estate sought to place reliance upon building works carried out to 8 King Street to establish detrimental reliance over the years after the MoS, I reject that case which is not made out on the evidence (as Mr Clarke appeared to recognise in his written closing submissions). With the exception of a single credit card payment by Mr Sidhu for a carpet in the sum of £1,045.05, there was no direct evidence of either Mr or Mrs Sidhu paying for any repair

works to 8 King Street. On the contrary, insofar as there was documentary evidence of repairs being carried out, they appeared to have been paid for by ASL.

*Conclusion on the claim of Proprietary Estoppel*

156. In all the circumstances, the Sidhus' claim of proprietary estoppel fails. Mr Sidhu's estate has no claim in any event by reason of the terms of the MoS. On the facts, no promise was made that the Sidhus could occupy 8 King Street as their home and, even if a promise had been made, I cannot see that there was any detrimental reliance on the available evidence: Mrs Sidhu cannot establish that she made any contributions to the purchase price of 8 King Street in her own right.
157. Accordingly, I must turn to consider the question of use and occupation.

**Use and Occupation: The Evidence**

158. It is common ground that the key question for determination by the court is the date on which the Sidhus' occupation of the residential premises at 8 King Street ceased to be with the consent of Mr Bahia. It is also common ground that once consent has been withdrawn in a case involving a longstanding rent-free occupation of property by licensees, there should be a reasonable notice period before payment of rent was expected (see *Pickering v Hughes* at [116], in which that period was 6 months).
159. Notwithstanding the debate about the two possible jurisdictional avenues to recovery of mesne profits for occupation and use, it appears to be accepted by the Sidhus that, if the proprietary estoppel claim fails, then occupation rent must be paid from a date falling a reasonable period from the date of the request made by Teacher Stern for the Sidhus to vacate the residential property at 8 King Street on 30 July 2018. However, the Bahias contend that this is not the earliest date on which their consent to occupy the premises was withdrawn.
160. Mr Temmink points to unchallenged evidence from Mrs Bahia to the effect that she complained to Mrs Sidhu on dates she could not remember "about why her family were also staying at 8 King Street" and that in the mid-1980s, during an argument with Mr Sidhu, she had asked Mrs Sidhu "why she would stop living at 8 King Street because it was our property too". However this evidence does not strike me as an unequivocal request for the Sidhus to leave 8 King Street and, in any event, I accept Mr Clarke's submissions that Mrs Bahia was not in a position to determine any licence on behalf of the Partnership.
161. Mr Temmink also relies upon evidence from Mr Bahia, confirmed in cross examination, that since the 1990s he has objected to the Sidhus' use and occupation of the residential part of 8 King Street and that "over the years" he had a number of conversations about the occupation of 8 King Street and asked Mr Sidhu to move out so that the flat could be let to tenants. However, it was clear in cross examination that Mr Bahia was unable to put a date on these conversations and that, during a particular conversation (the date of which he did not recall) he did remember that Mr Sidhu said he would move out when the Sidhus had bought another property. Mr Bahia did not say anything to indicate

that he did not agree with this or immediately withdrew any further consent to occupation. Accordingly, I do not consider it to be safe to rely on this evidence as establishing a clear withdrawal of consent to occupy.

162. Hardeep gave evidence in his statement that he specifically recalled an occasion in around 2008/2009 at the time of his cousin Kamalpreet's wedding when he, Mr Bahia, Mr Sidhu and Andy were all in a car together and his father had complained about the continued occupation of 8 King Street. He was questioned about this in cross examination but maintained his evidence confirming that he had a recollection of the incident "sitting here today". I accept Hardeep's evidence about that and also accept therefore that it was clear from 2009, if not before, that Mr Bahia was unhappy with the Sidhus' continuing occupation of 8 King Street. However, unhappiness is not the same as a clear demand for possession and Hardeep did not say how, if at all, the matter was resolved between his father and Mr Sidhu. Further, there are no documents evidencing any request to vacate the property prior to a letter from Teacher Stern dated 3 February 2017.
163. The Teacher Stern letter of 3 February 2017, however, appears to me to make it plain that the Bahia's consent to occupation had been withdrawn. It points out that "we are instructed that as recently as January 2014 our client asked your client to leave the property", a possible reference to a conversation referred to by Mr Bahia in his statement as taking place in 2015, during which Mr Sidhu asserted he was a "sitting tenant", albeit there is no evidence from Mr Bahia as to precisely what he said to Mr Sidhu. Teacher Stern's objection to occupation was repeated in a letter of 26 April 2017, expressly inviting the Sidhus to vacate 8 King Street and again in a further letter of 14 September 2017. In all the circumstances I consider that the Sidhus can have been in no doubt by 3 February 2017, if not before, that the Bahia's had withdrawn their consent to the occupation of the property.
164. Allowing a reasonable notice period of 6 months, I find that the Partnership is entitled to occupation rent for the residential premises at 8 King Street from 3 August 2017 onwards.

### **Conclusion on Inquiry 2**

165. In all the circumstances, I dismiss the Sidhus' claim of proprietary estoppel in relation to the residential part of 8 King Street. Having regard to the terms of Inquiry 2, I find that the whole of 8 King Street (including that part of 8 King Street which the Sidhus refer to as 8a King Street) is Partnership Property. I also find that occupation rent, together with the costs of occupying (such as utilities and council tax) must be paid by Mr Sidhu's estate to the Partnership pursuant to section 29 of the 1890 Act from 3 August 2017 onwards with the quantum of such rent to be adjourned to be determined at the hearing of the account ordered in Inquiry 1, if not agreed.
166. I appreciate that the outcome of this Inquiry will be disappointing to the Sidhus and to Mrs Sidhu in particular, who says she has lived at 8a King Street since 1972. However, I am conscious that my ruling will not leave Mrs Sidhu without a home. She was amply provided for by Mr Sidhu's will and the property at 15 Aylmer Road, which for many years was described by the accountants as Mr and

Mrs Sidhu's "main residence", would appear to be available for use by her and by Andy and his wife.

### **INQUIRY 3**

#### **The Terms of the Inquiry**

167. Inquiry 3 is in the following terms:

"An inquiry (3) as to the beneficial ownership of the freehold property known as 136 High Road, East Finchley, London N2 9ED (Title Number NGL274102) and whether the property is Partnership property, specifically, whether the beneficial owners are (i) the Claimant and the First Defendant (on behalf of the estate of Tara Singh Sidhu (the "Deceased") in equal shares absolutely; or (ii) the Second Defendant absolutely."

#### **Factual Background**

168. 136 High Road consists of a ground floor shop on a commercial lease, one residential flat/bedsit sharing a bathroom and three bedsits/rooms with shared facilities. It is common ground that it was purchased jointly in the names of the Partners in October/November 1976 for £28,000, and that it is registered in their joint names.

169. The Sidhus' case is that the registration of 136 High Road in joint names was "an error by the solicitors", that it is beneficially owned by ASL, alternatively that Mr Bahia is estopped from asserting the contrary.

#### **Conclusion on Inquiry 3**

170. By the time of closing submissions there was nothing between the parties on this issue. It is agreed that I should make a declaration in the following terms: The property at 136 High Road (registered at HM Land Registry under title number NGL 274102) is held on trust in its entirety for A Star Liquormart Limited by Jaswinder Singh Bahia and the estate of Tara Singh Sidhu.

### **INQUIRY 4**

#### **The Terms of the Inquiry**

171. With amendments to reflect the agreement between the parties as to the time periods to be covered in respect of each property, Inquiry 4 is in the following terms:

"An inquiry (4) whether the Deceased or the First Defendant on behalf the Deceased converted any of the following Partnership properties or the rental income derived therefrom to their own use and/or generated private or undisclosed profits for the purposes of section 29 of the Partnership Act 1890 and/or failed to account to the Partnership:

- (i) 136 High Road, East Finchley, London N2 9ED (Title Number NGL274102), from 2005 to 5 April 2019.
- (ii) 99 – 101 High Road, East Finchley, London N2 8AG (Title Numbers MX374345 and MX372197), from 2006 to 5 April 2019.
- (iii) 47 Stroud Green, Finsbury Park, London N4 3EF (Title Number LN243024), from 2006 to 5 April 2019.
- (iv) The self-contained residential flats at 8 King Street, Southall, Middlesex UB2 4DA (Title Number NGL208705), from 2009 to 5 April 2019.
- (v) 2 The Broadway, Ealing, London W13 0SR (Title Number MX176191), from 1997 to 5 April 2019.”

### **Factual Background**

- 172. It is common ground that accounts for each of these properties (which I shall refer to collectively as “**the Inquiry 4 Properties**”) need to be taken post 5 April 2011, but it is alleged by Mr Bahia that the Sidhus misappropriated rental income from these properties for their own use. It is agreed between the parties that at this hearing the court must seek to determine both liability and quantum in respect of this claim for the periods identified in relation to each property.
- 173. The total claim for the Inquiry 4 Properties advanced in closing by the Bahias having regard to the Scott Schedule is £526,147. The vast majority of this claim is disputed, although the Sidhus accept a liability to account from 1 September 2012 in relation to the self-contained bedsits at 8 King Street in the sum of £100,167, less fit out costs of £14,972, a total sum of £85,195. Ignoring for a moment the fit out costs, which are not agreed, the total figure remaining in dispute between the parties is therefore £425,980.
- 174. In order to undertake this factually dense task, I shall need to consider the allegations in relation to each property in turn. By way of preliminary observation, I note that 2 The Broadway is also subject to Inquiry 13 which is a cross allegation by the Sidhus that the Bahias have misappropriated rental payments from 2 and 2A The Broadway between January 2006 and 2013. I shall return to this when I consider the allegations specifically relating to that property.
- 175. I shall begin, however, with some overarching points about the management and control of the Inquiry 4 Properties, together with the disclosure of documents evidencing their management.
- 176. It is the Bahia’s case, which I accept, that for many years the Sidhus had control of the management and collection of rents at the Inquiry 4 Properties (with the exception of 2A The Broadway in respect of which it is accepted by the Bahias that while Mr Sidhu had control over the management of the premises between 1997 and 2014, nonetheless, Mr Bahia did collect some cheques in respect of rent which were paid into a Partnership bank account). In his statement, Hardeep confirms that “[g]enerally for a number of years, Mr Sidhu (with help from Andy) took it upon himself to manage [the Inquiry 4 Properties], to find tenants and to

collect rental income. Since around 2009/2010, my father had little or no access to these properties. Even after the Notice of Dissolution was served, Teacher Stern LLP made repeated requests...on our behalf for the keys to various properties and we were met with prevarication...”.

177. Hardeep explains (and I accept) that in the circumstances he has carried out his own investigation and has prepared schedules which were attached to the Re-Amended Particulars of Claim and were designed to illustrate the estimated sums due to the Partnership in respect of the Inquiry 4 Properties. These schedules were prepared having regard to the information obtained by Hardeep from Partnership bank statements and accounts evidencing occupancy of various of the Inquiry 4 Properties and rental payments made by various individuals. By reference to the available information, Hardeep then made assumptions as to additional periods of occupancy based, largely, on information that had been reported to him by tenants and former tenants. This enabled him to estimate the total rental payments for each property that had not been declared by the Sidhus and were missing. As at the date of preparation of the Re-Amended Particulars of Claim, the estimate of undisclosed rental income as set out in Annex 7 amounted to £437,231.
178. Hardeep explains in his statement, and I accept, that his investigations were “hampered by a refusal on the part of Mr Sidhu and subsequently Andy to provide us with information and documents relating to the Partnership and the Company”. An email from Hardeep to Andy of 9 August 2016 evidences his thwarted attempts to obtain information about “the goings on of the joint portfolio” and to obtain “all files relating to the joint portfolio”. His requests appear to have been met with undisguised disdain and intransigence by Andy, a state of affairs that did not improve when the Bahias involved their solicitors. Letters from Teacher Stern to Ralli beginning in September 2017 evidence their frequent requests for documents, including details of occupants of the Inquiry 4 Properties, copies of tenancy agreements, details of rental income received and details of the bank accounts into which such rental income had been paid.
179. However, notwithstanding these requests, I agree with Mr Temmink that the lack of disclosure appears startling. There has been no disclosure of:
  - i) Details of deposits received from tenants;
  - ii) Schedules of rent received (save belatedly handwritten schedules prepared by Mrs Sidhu in relation to rents received from 8 King Street from 2018);
  - iii) Correspondence with tenants (save for some limited exceptions);
  - iv) Emails between the Sidhus and the Partnership’s accountants concerning the reporting of rental income;
  - v) Mr Sidhu’s personal bank statements, notwithstanding the existence of documentary evidence suggesting that rent had been banked in Mr Sidhu’s personal Santander account;
  - vi) Evidence of rent received in cash being banked;



vii) Rent books.

180. Furthermore, very few tenancy agreements have been disclosed by the Sidhus for the Inquiry 4 Properties (two Assured Shorthold Tenancies (“ASTs”) for 136 High Road, one AST for 99-101 High Road, two ASTs for 8 King Street and no ASTs for either 47 Stroud Green or 2 The Broadway). As I have already said, there has been no credible explanation for the missing documents.
181. I agree with Mr Temmink that if Andy had been an honest witness, he would have responded to the claims that were being made in relation to the Inquiry 4 Properties by attaching to his Amended Defence and Counterclaim a comprehensive schedule of tenants who occupied each of those properties in the relevant period together with the rents received from those tenants. This he failed to do, choosing instead to seek to suggest in his fourth statement that all income and expenditure had been properly accounted for, that Mr Bahia “would usually deal with the tenants”, that both partners were broadly aware of the occupancy status of each property and that “there is no question that any of the properties were under exclusive Sidhu management (except the new 8 King Street bedsits)”. From 2010, when everyone accepts that the relationship between the Partners became strained, Andy nevertheless asserted in his statement that Mr Bahia continued to visit 136 High Road, together with other properties, to carry out repairs and maintenance. I reject all of this evidence, which I consider to be entirely disingenuous.
182. In an attempt to plug the information vacuum, Hardeep explains in his written evidence that in February 2017, Teacher Stern obtained information from inquiry agents as to the individuals who were listed on the electoral roll for certain properties and who were connected with the properties through information recorded on marketing and credit databases.
183. Hardeep also records the various enquiries he made of individuals he was able to speak to at the properties about the occupancy of the individual bedsits/flats and the identity of the occupants (on which he based his assumptions as set out in the Schedules to the Re-Amended Particulars of Claim). Although Mr Clarke suggests in closing that I should have no regard to the hearsay evidence obtained by Hardeep in this way, on the grounds that to give it any weight would be unfair to the Sidhus, I am bound to say that I disagree.
184. I consider Hardeep to have been telling the truth about his conversations with individuals he spoke to about the properties and I accept his evidence as to why it has not been possible to obtain witness evidence from these various individuals in these proceedings. I consider that the absence of adequate disclosure from the Sidhus, together with the lack of any credible explanation for that lack of disclosure means that it is just and appropriate in considering Inquiry 4 to accept Hardeep’s evidence, which itself gives me a reasonable basis on which to infer that Hardeep’s analysis in his Schedules is correct. I also note, for what it is worth, that Hardeep has, in my judgment, sought to base his analysis on the available evidence together with reasonable assumptions. Where there is no evidence whatever (as, for example, where the Sidhus say properties have not been occupied for long periods of time and Hardeep has nothing to gainsay that

statement) he has not sought to make a specific claim, even though he has expressed doubts over whether the Sidhus' account is truthful.

185. Against that background, I turn now to deal with each individual property.

### **136 High Road from 2005 to 5 April 2019**

186. 136 High Road incorporates a ground floor shop on a commercial lease, together with one residential flat/bedsit sharing a bathroom & WC and three bedsits/rooms with shared facilities.

187. For the purposes of this judgment I shall refer to the accommodation at the property as flats A, B, C and D and understand that they are labelled in this way at the property. Insofar as Andy chose not to use this form of identification in his evidence (and indeed deliberately sought to ignore the existence of any such form of identification when taken to documents directly evidencing it, such as a tenancy agreement referring to 136C High Road), I have no doubt that he was seeking to obfuscate and confuse.

188. It is common ground that:

- i) There has been a commercial tenant in occupation since 1995;
- ii) Flat A has been occupied by Ms Elaine Mason ("**Ms Mason**") since at least 2005 and she has paid rent directly into a Partnership account ending in 5658;
- iii) Flat C has been let to Mr Leacy since around 2013 and he has paid his rent into an ASL account;
- iv) The rent received for Flat D over the relevant period has been accounted for.

189. I accept Hardeep and Mr Bahia's evidence that between 2005 and 5 April 2019, the Sidhus have been managing this property and have been solely responsible for tenanting flats A-D, collecting rent and declaring that rent (together with any expenses) for the purposes of preparing the relevant accounts. I reject Andy's evidence to the contrary and I find that, as Hardeep and his father confirmed both orally and in writing, Mr Bahia entirely trusted Mr Sidhu properly to account for all rental income. Sadly it appears that trust has been misplaced.

190. The dispute as it has crystallised at the trial arises in respect of:

- i) whether Flat B was occupied in the period 2005-2013, or was empty as Andy maintains. The disputed sum is £45,600;
- ii) whether there are three periods of 2 months' worth of rent unaccounted for in relation to Flat C between 2008 and 2013, or whether Flat C was empty during these periods as Andy maintains. The disputed sum is £2,730; and
- iii) whether there is an amount of £5,000 missing from the shop rent for 2009-2010.

*Flat B*

191. Hardeep's evidence is that he had a conversation with Ms Mason by phone in 2019, that he read out the names of individuals who appeared in the electoral roll and that Ms Mason confirmed that a family called the O'Rourkes (David and Angelina) had been in occupation of Flat B for at least 5 years. Further, Ms Mason told Hardeep about a tenant called Rachel Fenlon whom she said had occupied Flat B after the O'Rourkes. Unfortunately, although Hardeep tried to contact Ms Mason with a view to obtaining a statement from her, his efforts were fruitless – she did not return his calls. He also recently tried to contact the O'Rourkes, but was unsuccessful.
192. Hardeep accepted very frankly during cross examination that it was possible that Ms Mason had been mistaken as to the O'Rourkes' occupancy of Flat B and as to the period of their occupancy, but he denied that his narrative of the conversation was untrue and he confirmed that he had not suggested to Ms Mason the period for which the O'Rourkes were occupants of Flat B. Further, he volunteered the information that Ms Mason "seemed very confident" when she was talking to him and he confirmed that he did not believe he had misremembered the conversation. I have no doubt that Hardeep was telling the truth about this.
193. The accounting records do not show any rent being deposited from either the O'Rourkes or from Rachel Fenlon and the Sidhus have disclosed no tenancy agreements evidencing their occupation of Flat B, or any financial records evidencing payment of a deposit. However, I accept Hardeep's evidence and I note that "David Rourke" and "Angelie Rourke" are both included in the Inquiry Agent's report for 136 High Road. Andy sought in his evidence to suggest that the O'Rourkes were tenants of Flat C, but this seems clearly to be incorrect having regard to the known occupants of other flats and I reject his evidence that Flat B was uninhabitable from 2005 onwards. Given the obviously lucrative business of renting out bedsits in this property, I fail to see why it would have made any sense to leave a room in the property in an uninhabitable state and I do not consider that this accords with the inherent probabilities.
194. The missing rent figure for Flat B therefore includes five years' rent from the O'Rourkes at an assumed figure of £5,700 per annum (£475 per month). Hardeep explains that he has arrived at that figure in the following way: "I have assumed a rental figure of £475pcm for Flat B because the amount being paid at the same time by Mr Gimes for Flat D (which is a smaller flat) was £420pcm [in 2005/2006] (rising to £455pcm in 2007/8)". This appears to me to be a reasonable assumption.
195. As for Rachel Fenlon, Hardeep has assumed (based on the information from Ms Mason) that she occupied Flat B for three years between 2010 and 2013 also at a monthly rent of £475. In his oral evidence, Hardeep said that Ms Mason had told him that Ms Fenlon had occupied Flat B "for a couple of years", and so, whilst I am prepared to infer that Ms Fenlon occupied Flat B for at least two years after the O'Rourke's departure (on the grounds that, as Hardeep confirms, there was no deposit paid for a new tenant until February 2012) I do not consider that it would be appropriate to assume a three year occupation by her.

196. I note in this regard that the Bahias have themselves fairly added a question mark to the Scott Schedule entry for the year 2012/13 and that Hardeep's evidence for that year refers only to an unidentified "new tenant". Bank statements show that a loot advertisement was placed on 11 February 2012 and a deposit taken on 24 February 2012, which appear to have related to Flat B. Whilst this could not have been Ms Fenlon, I accept that, on balance, it must have been a yet further, unidentified tenant who rented Flat B for at least 1 year.
197. Accordingly, I find that the Sidhus have failed to declare 8 years of rental payments on Flat B at the sum of £5,700 per year, a total of **£45,600**.

*Flat C*

198. Hardeep's evidence is that in 2010 he and his father visited 136 High Road and spoke with Mariette Acosta who informed him that she had moved into Flat C in July 2008. Although Mr Bahia did not have a clear recollection of his visits to 136 High Road and certainly could not remember who he had met, he confirmed under cross examination that he recalled visiting together with Hardeep. Hardeep's evidence was also that Ms Mason recalled Mariette Acosta's name when he spoke to her in 2019. Mariette Acosta's name appears on the electoral roll for 136 High Road, albeit without any date being identified for her occupation.
199. Under cross examination, it was put to Hardeep that his recollection of his conversation with Ms Acosta might be flawed and incorrect, a proposition with which he firmly disagreed, going on to explain in some detail why he remembered the conversation.
200. Hardeep's investigations have established that rent collected from Ms Acosta was not shown in the ASL accounts until September 2008 (i.e. 2 months after she says she moved in to the property). He has been unable to locate a tenancy agreement or any financial records evidencing payment of a deposit and his investigations have also revealed that only 10 months' rent was declared for Flat C in the years 2011-2012 and 2012-2013 (the bank statements for the Partnership account ending 5658 show monthly rent being paid for only 10 months in each year). The identity of the tenant in 2011/12 is unclear, but the bank statements evidence payments in 2012/13 from a tenant called "Learnmount".
201. Hardeep's evidence confirms that he is not aware of Andy entering into a tenancy agreement for a period of 10 months and I note that all of the ASTs which have been disclosed have been for the period of 12 months. Hardeep says that he does not know what has happened to the additional two months' rent paid in each of these years and that in circumstances where Andy has not sought to put forward any explanation he can only assume that this rent has been retained by Mr Sidhu or Andy.
202. I accept Hardeep's evidence about the occupancy of Flat C and, absent adequate disclosure from the Sidhus, I infer that Ms Acosta paid an additional amount of £910 for her rent in July and August 2008 (i.e. 2 monthly payments of £455, the sum that the bank statements confirm was being paid on a monthly basis from September 2008). Furthermore, on balance I accept that it is not likely that the

Sidhus entered into a 10 month rental agreement and that the two missing months' rent of £910 in each of the years 2011/12 and 2012/13 must be accounted for. Under cross examination, it was put to Hardeep that it was conceivable that the periods he had identified were consistent with voids at the beginning and end of the periods. Whilst he accepted that this could be the case, he also said this: "it could also be deposits being retained and one month's rent being retained, as I recall. I couldn't see any of those in the bank statements. The only reference to any deposits was with a company I think it was called mydeposits.co.uk but we haven't been disclosed any of that information, so I can't comment further unfortunately".

203. Absent adequate disclosure from the Sidhus and in light of my findings above, I accept that Mr Bahia has a valid claim in respect of Flat C to a missing sum of **£2,730** (a total of 6 months of missing rent).

*Commercial Premises*

204. For the year 2009-2010, Hardeep's evidence is that a further £5,000 is missing from the rent paid by the commercial tenant. The ASL nominal ledger for the year ending September 2010 refers to "136 shop rent for £4,000 per quarter banked into Mr Sidhu's personal account" with a total of £15,000 (clearly an error – the figure should have been £16,000). Hardeep points out that the lease for the commercial tenant in fact provides for a rent of £21,000 per annum, not £16,000.
205. Hardeep was cross examined about this evidence by reference to a lease entered into by the commercial tenant on 18 October 2010. It is clear from the face of this lease that it is retrospective, providing as it does for a contractual term "beginning on and including 29 September 2009 and ending on, and including 28 September 2021". The annual rent was recorded at "an initial rate of £21,000 per annum until 28 September 2010 and thereafter £22,000 until 28 September 2011 and thereafter £23,000 and then as revised pursuant to this lease and any interim rent determined under the LTA 1954".
206. It was put to Hardeep that the lease was retrospective and that accordingly the only fair inference was that the increased rent for 2009/2010 was also retrospective such that there was no reason to suppose that the commercial tenant had been paying anything other than the pre-existing rent of £16,000 prior to entry into the new lease. Hardeep's response was that the tenant had been in occupation for a long time and that he had no information about the rental figure in fact received in the year 2009/2010. He confirmed that he had looked for rental payments of £5,250 per quarter (i.e. £21,000 per annum) in the paperwork "but couldn't find them because Mr Sidhu retained them according to the accountant". In response to a question as to whether he had looked for the additional £5,000 in any period after 2009 and 2010, he replied very fairly that he could not recall whether he had done so or not.
207. In the circumstances, and bearing in mind that any additional payment would likely have been made after the date on which the lease was signed, I am not prepared to make a finding that an additional £5,000 in rent was paid in respect of this period and is missing.

*Conclusion on 136 High Road*

208. In the circumstances, I find that the Sidhus have failed to account to the Partnership for **£48,330** in respect of 136 High Road.

**99-101 High Road from 2006 to 5 April 2019**

209. 99-101 High Road, East Finchley is a mixed commercial and residential building purchased by the Partners in 1983. Commercial tenants occupy the ground floor and the first floor (front) and there are three residential flats: 99A, 99B and 101A. It appears to be common ground that between 2006 and 2009 Flat 99A was let as two separate bedsits. Hardeep's evidence was that when he obtained access to the property in May 2021, Flat 99A was still divided into two separate units.

210. I accept the evidence of Mr Bahia that from around 2006 until May 2021, 99-101 High Road was under the sole management and control of Mr Sidhu and Andy. Mr Bahia's evidence is that during this period, the rent received from tenants should have been paid into the partnership bank account ending 5409. I reject Andy's evidence that both Partners managed this property and collected rent and I further reject his evidence that Mr Sidhu never collected the rent for Flats 99A, 99B and 101A. In this regard, I note the terms of an AST with Margarita Tesarikova dated 30 December 2007 in respect of the front bedsit at Flat 99A, and an AST with Mervyn-Lewis Coker dated 12 July 2011 in respect of Flat 101A – Mr Sidhu is named in each as the only landlord and his mobile phone number is provided as the only point of contact.

211. The dispute between the parties concerns:

- i) Whether rent was received by the Sidhus and not accounted for in respect of Flat 99A (front) for the tax years 2006/07 to 2009/10;
- ii) Whether rent was received by the Sidhus and not accounted for in respect of Flat 99B for the tax years 2006/07 to 2011/12; and
- iii) Whether rent was received by the Sidhus and not accounted for in respect of Flat 101A for the tax years 2009/10 to 2016/17.

*Flat 99A (front)*

212. It appears to be common ground that rent was paid by a tenant called Ms Tesarikova in the sum of £13,890 between 2006/07 and 2009/10. However, Mr Bahia's evidence (which I accept) is that he knew nothing about Ms Tesarikova's occupation until it was discovered by Hardeep during his investigations several years later. Hardeep's evidence, which I also accept, is that he discovered Ms Tesarikova's existence when he visited 99-101 High Road in late 2015 and met an existing tenant called Jackie Cumber outside the property. Ms Cumber gave him the names of previous tenants, one of whom was Ms Tesarikova. Hardeep tried unsuccessfully to contact Ms Tesarikova in 2016, but in 2017 she agreed to speak to him and informed him that she had occupied Flat 99a (front) from late 2006 until late 2009. She provided Hardeep with a copy of the AST to which I have referred above (which was not disclosed by the Sidhus) and she informed

Hardeep that she recalled paying the rent in a mixture of cash and cheques to Andy. On the AST itself, Ms Tesarikova had written that prior to December 2007 she paid rent at £390 per month; thereafter, the AST required a payment of £420 per month.

213. In the face of the evidence contained in the AST, the Sidhus accept Ms Tesarikova's occupation for the period and at the rent alleged by the Bahias but Andy claims that Ms Tesarikova "paid cash or cheque to the claimant". Thus although the Sidhus make no cross claim in the proceedings in respect of Ms Tesarikova's rent, it appears to be their case, nonetheless, that the rent claimed by the Bahias as part of Inquiry 4 was in fact misappropriated by the Bahias themselves. Andy relies in particular upon an undated letter from Ms Tesarikova to both Mr Bahia and Mr Sidhu at 48 King Street, i.e. the Greatways address, submitting that this is evidence of involvement on the part of Mr Bahia with the tenants at 99-101 High Road.
214. I reject Andy's case, which does not appear to me to accord with reality. It does not explain why an AST was entered into by Mr Sidhu alone which refers only to Mr Sidhu's mobile phone number as the point of contact. Further, I can see nothing in the letter from Ms Tesarikova itself from which I could safely conclude that Mr Bahia was involved in collecting rent from her. Mr Bahia's evidence, which I accept, is that not only did he have no knowledge that Ms Tesarikova was occupying Flat 99A(front) but he also does not recall receiving the letter and does not understand why it was addressed to him. He says that he also does not know where Ms Tesarikova's rental payments went. There are various entirely plausible reasons why Mr Bahia's name may appear at the top of the letter from Ms Tesarikova and I note in any event that it was Andy's evidence that it was found at 8 King Street. It certainly appears to me that the terms of the AST, together with the evidence of Mr Bahia and Hardeep, must carry more weight.
215. I find that rent is missing for Flat 99A (front) in the sum of **£13,890** and that the Sidhus must account for that sum.

*Flat 99B*

216. The Bahias contend that the Sidhus failed to declare receipt of rent for Flat 99B from 2006 to 2012.
217. Hardeep's evidence is that when he spoke to Ms Tesarikova in 2017 about her occupation of Flat 99A (front), she gave him the contact details of another tenant, Markita Haranacova. Hardeep subsequently spoke to Ms Haranacova and she informed him that she had occupied Flat 99B from October 2005 until 2008 and that she had paid her rent by way of both cash and bank transfers. Hardeep confirms that he has tried to contact Ms Haranacova again but she refused to take his calls. During his conversation with Ms Cumber in late 2015 (referred to above), Ms Cumber informed him that a Finlay McNab and a Thea Hogan had occupied Flat 99B for approximately 4 years from around late 2008.
218. Andy accepts in his evidence that Ms Haranacova occupied Flat 99B from December 2005 and he points to evidence in bank statements for the account ending 5409 of her paying rent of £867 per month. However, Andy says that Ms

Haranacova stopped paying rent in mid 2006 owing to a water leak in the flat. Andy says that he remembers speaking to Mr Bahia about this at the time and that Mr Bahia then arranged repair work. Andy then says that Ms Haranacova left at some point in 2006 and that, after a 2 month void period, she was replaced by individuals by the names of Hogan and McNab. They were replaced by Mr Butler from March 2007 until September 2008 and then the property was let to Mr Smith between November 2008 and February 2010 for £690 per month rent paid into account ending 5409. Thereafter, it is his evidence that Mr Bahia and Mr Sidhu agreed to works being carried out by 5 Star Builders to repair the roof at 99-101 High Road.

219. I accept the Bahias' case that Andy's account is inconsistent with the information provided to Hardeep by Ms Haranacova and that Andy's story about a water leak resulting in a suspension of the rent is untrue. No documents were disclosed evidencing any agreement to suspend the payment of rent or any complaint from the Sidhus about a unilateral suspension. Furthermore, Andy was here directly caught out in a lie in relation to his story that Mr Smith had occupied Flat 99B and paid rent into an account ending 5409. The bank statements on which Andy relied for this purpose identified payments from "R Smith" between 14 November 2008 and 12 January 2010 as follows: "Bank Giro Credit Ref Smith R"; they did not give details of the flat to which the rent relates. However, the Bahias had copies of similar bank statements setting out more detailed information and recording payments from R Smith as follows: "Bank Giro Credit Ref Smith R 47A Stroud Green" (emphasis added).
220. In the circumstances, it is plain that Mr Smith was a tenant at 47A Stroud Green and not at Flat 99B High Road. I accept Mr Temmink's submission that Andy appears to have made up this lie about Mr Smith's occupation (and probably also Mr Butler's occupation) in order to cover up the fact that Flat 99B was in fact let to Ms Haranacova and then Mr McNab and Ms Hogan for the periods of time identified by Hardeep.
221. In calculating the full extent of the missing rent, Hardeep identified that only 3 months' rent in 2006 at £867 per month had been declared in relation to Ms Haranacova and he therefore calculated the missing rent from her over the period of nine months in 2006/07, 12 months in 2007/08 and 6 months in 2008/09 at £867 per month. He then identified missing rent in relation to the McNab/Hogan occupation for a further 6 months in 2008/09, 36 months in the years 2009/10 to 2011/12 and 6 months in 2012/13. In his statement he explained that absent any evidence about the rental payments being made by Mr McNab and Ms Hogan, he assumed a rental figure of £1,040 per month (which he considered a flat of this size should have been generating at the time having regard to a Google search, as he explained orally) and he assumed that Ms McNab and Ms Hogan occupied immediately after Ms Haranacova vacated. Insofar as the 6 months in 2012/13 is concerned, Hardeep's evidence is that he assumed 6 months' rent, but from his analysis £982 had been declared in the accounts. He reduced the 6 months rental figure accordingly.
222. I accept Hardeep's reconstruction of events and accept that there is rent missing in respect of Flat 99B for which the Sidhus must account. However, doing my best to be fair to the Sidhus, there is no evidence to support Hardeep's assessment



of the figure of £1,040 rent which he has assumed was paid by Mr McNab and Ms Hogan, and I find that a maximum figure of £867 per month would therefore be appropriate. Hardeep fairly accepted in cross examination that he was not qualified as a valuer and that the tool he had used was “crude and inaccurate” but that it was the only tool he had had available to him. Furthermore, there is no evidence to indicate immediate occupation by Mr McNab and Ms Hogan after Ms Haranacova vacated the property, and I find that a two month void period is likely more realistic. Finally, I notice that the Scott Schedule does not appear to factor in the £982 which Hardeep concedes was declared in the accounts for 2012/2013.

223. In the circumstances, I find that the Sidhus must account for £23,409 of missing rent in respect of Ms Haranacova’s occupation (9x£867 in 2006/07; 12x£867 in 2007/08 and 6x£867 in 2008/09) and for £38,900 of missing rent in respect of Mr McNab and Ms Hogan’s occupation (4x£867 in 2008/09; 12x£867 in 2009/10; 12x£867 in 2010/11; 12x£867 in 2011/12 and 6x£867 in 2012/13 less £982). Together a total of **£62,309**.

*Flat 101A*

224. The claim of missing rent in relation to this property is for £7,420 and arises by reason of short periods of missing rent having been identified by Hardeep. I accept Hardeep’s evidence about these periods, which he has identified through analysis of the available bank statements and having regard to additional information provided to him by Ms Cumber. I reject Andy’s evidence to the effect that these periods may be explained by void periods and/or arrears of rent. He produced no documentary evidence whatever to substantiate his case and was unable to give any explanation in cross examination as to the absence of such documents. When asked why he had not chased the arrears that he alleged, he gave an entirely unsatisfactory answer saying, amongst other things that he had asked the accountants, that he had not looked at the issue of arrears “because it’s not the most important thing as far as I’m concerned” and that he did not know “what arrears there are”.
225. In closing, Mr Clarke fairly acknowledged that “...to the extent that they are missing periods within a run of rent, then your ladyship might reach the conclusion that that’s missing rent”. Accordingly, I find that the Sidhus must account for **£7,420** of missing rent in respect of Flat 101A.
226. Before moving to the next Inquiry 4 Property, I should record that the Sidhus accept in the context of Inquiry 1 that they have a liability to account for 3 months’ rent received in respect of 99-101 High Road from the Constantins in 2021 in the sum of £3,600. This was granted at a time when the Sidhus’ solicitors were firm that no new tenancies should be granted owing to the dissolution of the Partnership. Andy was taken to various documents on this subject in cross examination and, in my judgment, plainly lied when it was put to him that he had given the Constantins a tenancy agreement (he insisted that he had not done so). I need not go into the detail for present purposes, but suffice to say that the documents to which he was referred (including WhatsApp exchanges with Anton Constantin and a “Flatshare Agreement” which was inexplicably drafted in the name of Mr Bahia as Landlord) told a different story. This episode compounded

my sense that Andy was prepared to lie indiscriminately in order to maintain his case and that his evidence was entirely untrustworthy.

*Conclusion on 99-101A High Road*

227. In the circumstances, I find that the Sidhus have failed to account to the Partnership for **£83,619** in respect of 99-101 High Road.

**47 Stroud Green from 2006 to 5 April 2019**

228. 47 Stroud Green, Finsbury Park consists of a ground floor commercial unit and two flats, referred to as the upper flat (which has 3-4 bedrooms) and the rear flat, the rear flat being situated in an outbuilding at the back of the property. It is common ground that until 2016 this accommodation was let out to “lead tenants” who sub-let the rooms to others.

229. I accept Mr Bahia’s evidence that, although he had some contact with at least one tenant at this property, from 2006 onwards, Mr Sidhu was in control of the collection of rental income which was usually paid into a Partnership bank account ending 5409. The available documentary evidence supports this state of affairs: in particular a tenants’ notice to quit dated 21 March 2012 which was sent to “our landlord Mr Andy Sidhu” at 8 King Street and an email dated 19 March 2012 evidencing Andy’s interaction with the tenants.

230. It was originally Andy’s case that the upper and rear flat were generally let together with one or two lead tenants collecting rent. However, in cross examination, having had sight of the bank statements referred to above which evidenced Mr Smith’s occupation of 47A Stroud Green, Andy was forced to concede that it was not in fact the case that a lead tenant collected rent for the whole of the property.

231. The claim for missing rent relates to various short periods identified by Hardeep in respect of the upper flat (a total of £14,430) and the rear flat (a total of £9,600). I shall deal with these periods in turn.

232. The first period is 2 months in 2008/09 when Hardeep believes that a Mr Smallcombe was occupying the upper flat at a rent of £1,820 per month. This claim is based on evidence from Mr Bahia that he had been told by Mr Smallcombe that he had been residing at the property since September 2008; despite this, the only rent shown on the bank statements from Mr Smallcombe began in December 2008. Under cross examination Mr Bahia had difficulty recollecting this conversation; he could not remember Mr Smallcombe’s name and his evidence about the conversation was that “it was just a normal conversation”. When asked specifically whether the individual to whom he had spoken had told him how long he had been in occupation, Mr Bahia replied “No, he didn’t”. In circumstances where this period is based solely upon Mr Bahia’s imperfect recollection of a conversation with Mr Smallcombe, which Hardeep has assumed took place for the purposes of preparing his schedules, I am not prepared to find that there is, on balance, missing rent.

233. The second period is 5 months in 2010/2011 when there is no record of rent being received from Mr Smallcombe for 5 months between June and October 2010. It is common ground that Mr Smallcombe occupied the upper flat without a break in his tenancy until April 2012 and so Hardeep has assumed that the rent for the five months must be missing. Andy explains in his statement that he recalls that around mid-2010, the only tenant left in the upper flat was struggling to pay the rent and threatening to vacate. Andy says his father offered a rent-free period if the tenant would re-decorate and find new occupants. This, he says, gave rise to a void period of a few months from June 2010. However, notwithstanding that he accepted under cross examination that he had become more involved in managing this property in 2010, Andy has been unable to provide any documentary evidence to support his recollection. In closing, Mr Clarke submitted that the disrepair at the property evidenced by emails in 2012 was likely to explain the missing 5 months. I disagree. It was not Andy's evidence that this was the reason for any void period and, having regard to the probabilities, I reject the suggestion that the void was the result of an agreement of the type suggested by Andy. Absent any documentary evidence of such agreement (which is to be expected where a waiver is being given in relation to rent), I can only infer that Hardeep is right to assume that the 5 months of missing rent, amounting to £9,100, was misappropriated by the Sidhus.
234. The third and fourth periods are 2 months in the year 2012/13 and 10 months in the year 2013/2014 and concern the rear flat. Hardeep's evidence is that the bank statements show a payment of £800 to a tenant called Malgorzorta Jasinska on 28 January 2014 out of the partnership account. Hardeep believes this to have been the return of a deposit when Ms Jasinska's tenancy reached its end and from this he calculates that Ms Jasinska must have occupied the rear flat for a 12 month period spanning these two years (the upper flat already being occupied in this period). Andy's evidence in response was that the £800 payment had been made by cheque to Ms Jasinska (as a non-lead tenant) for re-decoration of "her room and parts of the hallway". In my judgment this explanation rang hollow. Andy accepts that he was dealing with the property at this stage and yet he has produced no documents in support of this proposition, including any estimates or invoices relating to the works he says Ms Jasinska was going to undertake. It is inherently improbable that the Sidhus would have paid Ms Jasinska to carry out such works. As Hardeep said in cross examination "I would find it odd to pay somebody, a single tenant who's not a lead tenant £800 for refurbishment works when the lead tenant was taking care of that". Furthermore, I reject Andy's evidence that £8,000 worth of rent in the year 2013/2014 was not missing from Ms Jasinska owing to the fact that "she would be paying rent to Mr Smallcombe". There is no supporting evidence for this proposition and it seems to me highly unlikely. Far more likely is that Andy made up the story about lead tenants to which I have already referred. In all the circumstances, I infer from the absence of documents and the probabilities that rent in the sum of £9,600 (i.e. 12x£800) is missing for these two periods.
235. The fifth and final period is one month in the year 2015/16, at a time when a Mr Fuller was occupying the upper flat. Hardeep's evidence, which I accept, is that bank statements show that Mr Fuller paid only 11 months' rent during this year at £1,690 per month. Andy was unable to give any evidence about this period,

albeit he confirmed in his statement that he was aware that Mr Fuller had been a tenant at the property. On balance I accept that it is likely that Mr Fuller paid rent over a period of 12 months and accordingly I accept that £1,690 is missing and must be accounted for.

236. In all the circumstances I find that the Sidhus must account for **£20,390** in missing rent.

### **8 King Street Bedsits from 2009 to 5 April 2019**

237. The claim made by the Bahias relates only to the ground and first floor bedsits at 8 King Street which were constructed in late 2009/early 2010. It is conceded by the Sidhus that they must account for £85,375 in respect of rent collected in relation to the two first floor bedsits between October 2012 and 2019. However, three remaining issues arise between the parties:

- i) Whether and to what extent the bedsits were let out between completion of the building works in early 2010 and August 2012;
- ii) Whether the ground floor bedsits were ever let out at all; and
- iii) Whether the Sidhus have correctly deducted a figure of £14,972 fit out costs from the rental payments in respect of which it is accepted that they must account.

238. Andy's written evidence on the first issue was that although the bedsits had been completed by January or February 2010, "the flats were only registered with VOA and with Ealing Council for Council Tax from 1 September 2012. These have been included since September 2012 in the Partnership property accounts". He went on to say that "None of these self-contained bedsits were occupied before 1 September 2012". He gave no other explanation beyond this. However, in his oral evidence he gave two reasons for the flats remaining empty between early 2010 and September 2012, first that there weren't sufficient funds to do the necessary fit out and second that the relationship between the parties had broken down. In Mr Clarke's opening submissions a yet further reason was floated, presumably on instructions, namely that "there was a subsequent period of pre-occupational issues including building control certification...".

239. Absent any documentary evidence in support of these various reasons, I am not inclined to accept them. The fact that the Sidhus have not been consistent in advancing their case on this issue suggests that they have something to hide, as does the fact that they failed to give any disclosure of:

- i) Mr Sidhu's personal bank statements, notwithstanding that Andy accepted in cross examination that the rental from the flats was being paid into his father's personal account at Santander (as was evidenced by a document apparently prepared by the Partnership's accountants for the year ended 2015);
- ii) Any ASTs, with the exception of only two dating to 2018;

- iii) Any receipts for cash rents; and
  - iv) Any rent book information prior to 2018.
240. I agree with Mr Temmink that the overwhelming probability is that, having spent money to build the new bedsits at 8 King Street, the Sidhus would have rented them out as soon as possible, and I infer from the absence of the documentation identified above that the Sidhus wish to hide the rental they received from the bedsits in the period 2010-2012. Some support may be garnered for this inference from the very long list of names identified by the Inquiry Agents as being connected with 8 King Street from, amongst other sources, the electoral roll. In all the circumstances, I accept that rent in the sum of £1,211 per month (the declared monthly rent for the period September 2012-March 2013) is missing in respect of the first floor bedsits for the period October 2010 to September 2012. This totals **£31,488** and must be accounted for by the Sidhus.
241. As for the ground floor bedsits, it is the Sidhus' case that the two rooms created on the ground floor behind the shop were staff/store rooms and never bedsits. A plan provided by Andy late in the day is consistent with this arrangement. However, a plan prepared by MFS Estate Agents in December 2012 with a view to marketing 8 King Street portrays a very different picture, clearly marking two bedsits at the rear of the ground floor of the property. The Bahias were refused access to 8 King Street until July 2018, when some limited access was given. At this time, the two rooms at the rear of the property were empty, but the Bahias claim for their occupation between March 2010 and the year end of 2017.
242. I accept Mr Bahia's evidence, which was not challenged, that he and Mr Sidhu had agreed when discussing extension works at 8 King Street that the new ground floor rooms at the rear would be rented out as bedsits and that this made sense in circumstances where both rooms were fitted with kitchen and toilet facilities. In my judgment, it is inherently unlikely that the Sidhus would have passed on the opportunity to make additional money through renting out these rooms and there is no evidence to suggest that they were genuinely required for any other purpose. Furthermore, the complete failure of transparency on the part of the Sidhus in relation to 8 King Street leads me to infer that rents have been received but not declared. On balance, therefore, I infer that the Bahias are entitled to **£41,880** (two ground floor bedsits at £606 per month, i.e. half the monthly rate for the four first floor bedsits).
243. The proposed deduction of £14,972 was pleaded in the Defence and Counterclaim from the outset, but Andy gave no evidence about it in his statements. In closing, Mr Clarke directed my attention for the first time to a handwritten document in the supplemental bundle (not addressed by any witness in written evidence and not put to any witness in cross examination) purporting to list various expenses totalling £14,972.02 and headed "8 KS Rear". However, absent any evidence as to the source of the document, its author and when it was created, it is difficult for me to attach any serious weight to it. Furthermore, Hardeep asked the Partnership's accountants in an email dated 8 February 2019 for information about the build costs of the flats, including access to any invoices provided, together with information about the specific figure of £14,972 for expenses. Mr Sheth's response was that, despite asking for invoices, he had never received any

invoices for the works and that the figure of £14,972 had been “given to us over the phone”.

244. In the circumstances I am not satisfied that I have sufficient evidence of deductible expenses and accordingly, I find that the Sidhus must account to the Bahias for rent in respect of the first floor flats from October 2012 to 5 April 2019 in the sum of **£100,167**.
245. In total, the Sidhus must account to the Bahias for this period for the amount of **£173,535** (which includes the sum already conceded by the Sidhus).

## **2 The Broadway from 1997 to 5 April 2019**

246. This property consists of a commercial premises with residential flats above it (2 The Broadway) and a further small commercial unit, or lock-up shop (2A The Broadway). The period covered by Inquiry 4 includes the period identified in Inquiry 13 in respect of the same property which involves a claim by the Sidhus of misappropriation of rent by the Bahias between January 2006 and 2013. However, the Bahias’ claim is limited to missing rent from 2 the Broadway and is not concerned with the small unit at 2A, whereas the Sidhus’ complaint concerns both parts of this property.
247. The key issues between the parties appear to be:
- i) Who received the rental income (it being accepted by both parties that there are significant sums missing); and
  - ii) Whether 2 The Broadway was let out as one combined property occasioning one rental stream, or whether the rent was split between the residential and commercial parts of the property.
248. Andy’s evidence in his fourth statement is that to his knowledge 2 The Broadway “has always...been let as one in that the commercial tenant takes the residential accommodation and then sublets it, so one rent is paid for 2 and the flats above it”. Andy says that Mr Sidhu did not go to collect rent from 2 The Broadway but that this was done by Mr Bahia.
249. Mr Bahia’s evidence, on the other hand, is that Mr Sidhu was mainly responsible for collecting rent from tenants at 2 The Broadway and that he believes that Mr Sidhu lied to him about the amount of rent collected over the years. He says that Hardeep’s investigations have uncovered many periods in respect of which substantial amounts of rent are missing and that these sums must have been misappropriated by the Sidhus.
250. There is very little available documentary evidence and there are no ASTs for the residential flats at 2 The Broadway. In cross examination, Andy denied that the rent was split between the commercial premises and the flats at 2 The Broadway and further denied that he knew what the rent was. However:
- i) He was shown two Abbey National deposit receipts evidencing that on 14 and 16 October 1996 he had paid in £1,289 and £1,000 respectively relating

to “2 The Broadway”. Andy confirmed that the payments would have been for the shop and for the flats. He was also shown another pair of deposit receipts for September 1996 in the sums of £1,000 (on which he accepted he had written “2 Broadway “Flats”) and £1,289 (on which he had written “2 Broadway Ealing Rent”). When it was put to him that he in fact knew that payments were made in two tranches he tried to deflect the question by asserting that the deposits dated back to 1996 and that he had merely done what he had been told;

- ii) Hwas shown two cheques written on the same day in March 2009 by Mr Butt and Mr Malik, trading as Perfect Fried Chicken, then the tenants of the shop, and it was put to him that the only explanation for these two cheques was that one was for the shop and one was for the residential premises above. Andy’s response was that he had not been “aware” of the split, a response he maintained in the face of being shown similar cheques in different periods.

- 251. In my judgment, this cross examination plainly established (contrary to Andy’s written evidence) that as early as 1996 Andy knew that rent was being received separately for the shop and the flats and that he had himself been involved in paying those sums into the building society. It appears that he was not honest about this and I infer that the reason for his dishonesty was his desire to hide the fact that rent was missing from the property and had been misappropriated by his father and/or himself – there is no other rational explanation. An email from Andy to Krish Ratna & Co, a firm of solicitors, dated 25 May 2016 betrays knowledge that there was more than one lease relating to the property (“*Further to our conversation yesterday I can confirm that there are leases in existence and the current tenant is holding over*”).
- 252. Hardeep’s evidence, which I accept, is that he had spoken to Imran Butt (tenant at the shop until 2012) who had confirmed to him that rent for the upper residential parts was often paid in cash. As it happens, this evidence was confirmed in a witness statement from Mr Butt, but in circumstances where he did not attend at court to give evidence I give it minimal weight. It would have been all too easy for the Sidhus to make use of cash payments without declaring them as partnership monies. I accept that, just as appears to have been the case with the other Inquiry 4 Properties, Mr Sidhu (with the assistance of Andy) was generally in charge of managing 2 The Broadway and collecting the rent – the few available documents appear to support this.
- 253. Hardeep’s analysis of missing rents identifies the sums that were in fact being paid in rent for the commercial premises and for the flats and then points to periods when rent is missing. This analysis was explored in detail in cross examination by Mr Clarke and Hardeep made a number of reasonable concessions, albeit sticking to his guns as to the vast majority of the missing sums.
- 254. In circumstances where inadequate disclosure has been provided and Andy has lied about a key issue in the context of this issue, I have reasonable grounds on which to infer that the case presented by the Bahias is correct. Accordingly, I am satisfied that, on balance, rent in the sum of **£180,613** must be accounted for by the Sidhus.

## **Conclusion on Inquiry 4**

255. Taking together the various sums that I have identified above in respect of the Inquiry 4 Properties, in my judgment the Sidhus must account to the Partnership for the sum of **£506,487**.

## **INQUIRY 5**

### **The Terms of the Inquiry**

256. Inquiry 5 is in the following terms:

“An inquiry (5) into whether there are any settled Partnership accounts for periods prior to 5 April 2011 and, if so, whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation on the part of the Deceased and/or the First Defendant. Further, whether the Claimant must establish the basis for reopening settled accounts in light of his claim under section 29 of the Partnership Act 1890.

### **Factual Background**

257. By the time of closing submissions, this Inquiry had largely fallen away. It is agreed by both parties that there are no settled Partnership Accounts for the period prior to 5 April 2011, although there are property revenue accounts for individual partnership properties. In the circumstances, no issue arises as to whether those accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation on the part of Mr Sidhu or Andy.
258. It is accepted by both parties that if the court accepts, as I have done, that there are any sums owing or unaccounted for in Inquiry 4, then the property revenue accounts prepared for each property will be wrong and, whether under section 29 of the 1890 Act or pursuant to the claim for an account, those accounts should be amended to take account of the missing sums, or the sums which need to be restored to the Partnership.

## **INQUIRY 6**

### **The Terms of the Inquiry**

259. Inquiry 6 is in the following terms (as amended to reflect the agreement of the parties as to the terms of the Inquiry):

“An inquiry (6) into sums collected by or on behalf of the Claimant for the Partnership in respect of the following properties:

(i) 44 – 48 (including 44A and 48A) King Street, Southall, Middlesex UB2 4DB (Title Number AGL23536), from 6 April 2011 to 5 April 2019.

(ii) 13 Damsonwood Road, Southall, Middlesex UB2 4RL (Title Number AGL15988), from 6 April 2011 to 5 April 2019.



260. In my judgment on the third day of the hearing, I determined that the scope of this inquiry concerns the net sum collected by Mr Bahia in respect of these properties (i.e. it requires the court to consider both rental income and rental expenses).
261. As at the date of trial there remains no factual dispute in relation to 13 Damsonwood Road, it being accepted that there is evidence of rent on this property having been paid into the Partnership account. Accordingly the only outstanding dispute concerns rents at 44-48 King Street which consists of two residential bedsits known as 44A and 48A King Street and a commercial premises on the ground floor which until 2012 was occupied by Greatways, a greengrocers and a kiosk.
262. Mr Bahia concedes that net rent for 48A King Street in the sum of £79,047 must be accounted for to the Partnership for the period April 2011 to April 2019.
263. The Sidhus originally appeared to dispute this sum, and it was suggested in Mr Clarke's closing submissions that an issue remained as to the quantum of the rent received and the deductions to be made for legitimate expenses. Indeed Mr Clarke went so far as to make submissions about various documents which it was suggested evidenced the real value of the rents received, submissions which he withdrew in his oral closing upon Mr Temmink pointing out that his points were not valid.
264. Notwithstanding Mr Clarke's submissions, it is apparent from the Scott Schedule that the figure being advanced by the Sidhus in respect of undeclared rental payments in this period is in fact £56,779, i.e. a figure of over £20,000 less than was actually conceded by the Bahias.
265. In the circumstances, there is no issue to resolve between the parties. The claim in relation to 13 Damsonwood Road is dismissed. The Bahias must account to the Partnership for rent collected at 44-48 King Street between 6 April 2011 and 5 April 2019 in the sum of **£79,047**.

## **INQUIRY 7**

### **The Terms of the Inquiry**

266. Inquiry 7 is in the following terms (amended to reflect the parties' agreed position as to the term of the Inquiry):
- “An inquiry (7) whether the Second Defendant was a Partnership asset and, if so, whether the Deceased and/or the First Defendant have accounted to the Partnership for all the profits generated by the Second Defendant from 1 January 2009 to 5 April 2019.”
267. In my judgment on the third day of the trial I determined that the scope of this Inquiry includes consideration of whether commission from ATM withdrawals made at the Off Licence is missing and must be accounted for.

## **Factual Background**

268. It is conceded by the Sidhus that ASL is a partnership asset and that it has been managed by them since May 2010. Its business, in the form of the Off Licence, was managed by Mr Sidhu and then, as his health deteriorated, by Mrs Sidhu with the assistance of Andy together with various members of staff. It was closed at the beginning of the covid 19 pandemic. Essentially, it is the Sidhus' case that the Off Licence was a tired and outdated outlet suffering from lack of investment and increasing competition from nearby competitors. They say that it has never been profitable and that this much is borne out by the historic accounts.
269. The Bahias disagree. They maintain that ASL's profits have been underdeclared such that some transactions have not found their way into the accounts and that even where transactions have been declared, there remains cash missing in respect of those transactions. They point out that rental income from 136 High Road has been paid into ASL's trading account, suggesting that it has been used to pay Off Licence expenses and that Mr Sidhu used takings from the Off Licence to pay bills relating to his family's occupation of the flat at 8 King Street. They rely principally upon Mr Grunberg's report in support of this case, and I have already said that I accept Mr Grunberg's evidence in its entirety. The Sidhus have never provided any explanation for their failure to rely upon expert evidence, despite having permission to do so.
270. Before I turn to consider the detail of the claim, I should say something further here on the subject of disclosure, because the lack of documentation in relation to ASL is, as I have already said, very striking. The Sidhus failed to comply with the order of Deputy Master Linwood in relation to disclosure of ASL's books and records and, although some documents falling within the period September 2017 to September 2019 were disclosed prior to trial, no documents prior to 2016 have ever been disclosed. Mr Grunberg attached a lengthy schedule of 34 missing categories of documents to his report at Appendix 8, including amongst other things, till receipts, credit card receipts, purchase invoices, cash books and cash reconciliations, rental agreements, employment contracts, cheque books for ASL accounts and details of the value of stock held. The Sidhus have never attempted to engage with or answer this Schedule.
271. Over the years, as Hardeep explains in his witness statement and I accept, the Bahias have tried to obtain the missing information from ASL's accountants and from the Sidhus. In his email of 23 July 2020, Mr Sheth not only informed Hardeep that all documents had been returned to the Sidhus at 8 King Street, but also that the company accounts were approved by Mr Sidhu and, after his death, by Mrs Sidhu "who was managing the shop and acting as a shadow director and 50% shareholder". Indeed (consistent with Mr Bahia's unchallenged written evidence) it appears from various contemporaneous emails that Board meetings were not held from at least 2010 onwards and that Mr Bahia was never asked to approve the accounts filed at Companies House over that period or (upon Mr Sidhu's death) to agree to Mrs Sidhu acting in Mr Sidhu's place. From that date, Mr Bahia was sole director of ASL, but until he was belatedly provided with some disclosure pertaining to that period in the course of these proceedings, he had no visibility whatever over ASL's financial affairs.

272. Teacher Stern took up the baton of requesting documents and information in 2017 but, despite the court order made by Deputy Master Linwood on 9 July 2020, have also failed to establish any degree of transparency. This is clearly illustrated by their letter of 10 May 2021 listing the numerous items of disclosure relating to ASL that remained outstanding and warning the Sidhus that absent disclosure of those documents they would instruct Mr Grunberg to complete his report on the assumption that the Sidhus were deliberately failing to deliver up documents. Teacher Stern pointed out at that time that no credible explanation had been offered for failing to provide disclosure. In my judgment, this remains the case.
273. In an extraordinary letter from Ralli dated 31 July 2020 it was suggested that the Bahias should not “interfere with the running/management of ASL” and that it was clear that Mr Bahia had “historically relinquished and failed to fulfil his duties” as director of ASL. This was a refrain that was repeated by Andy during his oral evidence, but I find that it is untrue. There are various examples of emails sent by Hardeep to Mr Sheth trying to uncover what was going on and expressing an increasing degree of concern over his father’s apparent exclusion from the business of ASL and the lack of available information. For present purposes I need only refer to an email dated 7 October 2013 in which he thanks Mr Sheth for forwarding ASL’s accounts but says this: “I am somewhat perturbed by the fact these have been signed off without my father’s consent. No board meeting took place on the 19<sup>th</sup> March 2013 and if it did so, it was not with my father present. I require details of how the figures have been obtained...”.
274. The only records provided by the Sidhus in relation to income received by ASL are in the form of daily handwritten sheets prepared by Mrs Sidhu in the period September 2017 to September 2019. In light of the fact that it is common ground that ASL has been operating entirely as a cash business since around January 2016 and that, even before that date, much of its business was conducted in cash, and given the absence of disclosure to which I have referred (or any adequate explanation from the Sidhus), I accept the Bahias’ submission that I am entitled to infer that not all of the cash takings were recorded or put through the tills. In my judgment, Mr Grunberg’s report provides me with a reasonable basis on which to make such an inference for the reasons I set out below.

*Mr Grunberg’s evidence*

275. Mr Grunberg concludes in his report that “significant cash balances remain unaccounted for as at 30 September 2019”. He points to ASL’s reliance on cash receipts and payments, the use of large estimates and the absence of sufficient supporting accounting records. In his view there have been poor financial controls over ASL’s cash taking. He expresses the opinion, which I accept, that in his experience, such practices are normally intended to avoid transparency and can hide the true results of a business. I do not consider that these conclusions were in any way undermined in cross examination.
276. Mr Grunberg points out in his report that, having regard to its annual accounts, the turnover for ASL dropped from £291,178 at the year ended 30 September 2009 to £83,030 in the year ended 30 September 2019. However, there is simply no credible explanation for this decrease and in my judgment there is no credible

evidence to corroborate the Sidhus' explanation that the Off Licence was outdated, increasingly unprofitable and losing out to its local competitors.

277. The Sidhus produced a couple of photos of the interior of the Off Licence but these dated from after it was closed and told me nothing about the success or otherwise of the business, or indeed the stock that it carried prior to its closure. Andy produced a table of premises to which he said "new licences have been granted within 5-6 mins walk" from the Off Licence since 2009, but this was entirely misleading – giving the impression that numerous new competitors had sprung up since 2009, despite the fact that on analysis several of these competitors had always sold liquor since well before 2009 and several were no longer trading (indeed a petrol station included in the list which has long since been demolished and turned into flats). A schedule produced by Andy purporting to show ASL's annual income and retained earnings was also misleading in failing to apportion expenses between those incurred at the Off Licence and at 136 High Road and in failing to reflect the retained earnings shown in the company accounts.
278. Mr Grunberg recommended in his report that the parties agree that an independent party or member of Grunberg & Co staff be permitted to monitor the level of daily business being conducted during a minimum period of 2 weeks in order to ascertain, or at least obtain a good understanding of, the likely trade and the mechanisms used for recording cash receipts, a suggestion that tied in with earlier suggestions made by Teacher Stern that a receiver be put into the business to manage its affairs. However, this was never agreed to by the Sidhus, who suggested (inexplicably given the money they must have been spending on legal fees) that it would be too expensive. Alternative discussions about installing CCTV or permitting Mr Bahia to attend to monitor the Off Licence appear never to have come to anything. In short, Mr Grunberg was left to piece together the financial history of ASL over the relevant period from the available records provided to him.
279. Having carried out an analysis of the statutory accounts, the nominal ledger, VAT Excel spreadsheets, a few P60s, copies of bank statements and some additional disclosure provided by the Sidhus (as mentioned above) Mr Grunberg concludes that there are various unexplained sums in the ASL accounts. I deal with these in the following paragraphs, setting out my analysis on each:

*Unjustified Expenses*

- i) Manual journals and postings were made when finalising the accounts (usually in round sums) which do not appear in the expenses summarised within the Excel VAT summaries. These expenses, which are for unexplained purchases, pensions, travelling, cleaning, computers, repairs and sundry items are unsupported by documentation of any kind. They are set out in table 6.1 to Mr Grunberg's report and amount to £90,171.41 for the years September 2009 to September 2019, less £4,640 to take account of 3 invoices for repairs identified by Mr Grunberg and addressed in his corrections – i.e. £85,531.41.
- ii) In my judgment, with one exception, these expenses (which appear to have been notified to the accountants orally and which would not be accepted by

HMRC) do not stand up to scrutiny. The Sidhus have given no adequate explanation for these figures, including why the vast majority are in round numbers and why there are no documents evidencing them. In his conclusion, Mr Grunberg records that “It is possible that the company’s expenditure has been overstated, resulting in an understatement of net profits” and I find, on balance, that expenditure has indeed been overstated. By way of example:

- a) Cleaning: I note that no expenses were claimed in this manner for cleaning between 2009 and 2011, but from 2012 onwards figures for cleaning were notified to the accountant at year end in the sum of £1,040 per annum, increasing to in excess of £1,700 per annum in 2018. ASL’s VAT excel analysis shows significantly lower sums being claimed for cleaning in each year, which Mr Grunberg considered were then duplicated by the year-end figures. When it was put to Mr Grunberg in cross examination that he could not know this, he said that “From my analysis, it seems unusual that some costs are reported to the bookkeeper on a regular basis and included within the VAT accounts, VAT summaries, whereas other costs are round sums that appear to be reported at year end”. Whilst he could not be certain that the sums had been duplicated that was “[m]ainly because I have not been provided with any supporting documentation to substantiate these figures”. Andy accepted under cross examination that, with the exception of one occasion, he knew nothing about any cleaning expenses at the Off Licence, although he tried to suggest that some expenses may have related to 136 High Road, a suggestion which I reject as being inherently unlikely given the nature of that property.
- b) Travel: Travel expenses are claimed in astonishing amounts from 2009 onwards (beginning at £1,040 in 2009 and by 2012 more than doubling to £3,780, with a maximum figure of £4,850 in 2014) at a time when Mr Sidhu was said to be too ill to drive and according to Andy only went to 136 High Road “from time to time” in a van or taxi. When asked about travel by her husband on behalf of ASL, Mrs Sidhu’s initial reaction was “Travelled to where?”, although she then appeared to claim that the travel expenses reflected travel between 136 High Road and 8 King Street. However, this was a round trip journey of approximately 14 miles and could not possibly account for the sums claimed, particularly given Mrs Sidhu’s admission that Mr Sidhu “only used to go there very occasionally”. Under cross examination, Mr Grunberg made the following point about this, which I accept: “given the sums involved here, especially when you’re exceeding £4,000 which is equivalent to 10,000 miles, you’d expect there to be significant documentation because this is an area that the Revenue would definitely question if they were to look at these accounts. So when you’re looking at this level of estimates or transactions, it does strike me as unusual”.
- c) Repairs: Figures for repairs were provided orally to the accountants at year end for the years 2013 onwards, for the most part in round

sums and sometimes described purely as “miscellaneous expenses”. Mr Grunberg confirmed in cross examination that he would have expected to see supporting invoices and that he would also have expected to see VAT associated with at least some of these repairs and so the fact that they were put through as a journal entry at year end was “unusual”. Andy was unable to justify these repairs or the alleged computer expenses.

- iii) The exception appears to me to be the pensions payments included in Mr Grunberg’s table for the years 2009-2011 in the sum of £3,600. These are shown in the nominal ledgers as being payments for an “Abbey Life Pension” (2009), for a “Pension Scheme” (2010) and for an “ALAC Auto Pension Scheme” (2011). Mr Grunberg said he could not confirm to whom the payments related but he confirmed in cross examination by reference to the 2009 nominal ledger that the payment “appears to have been a bank payment”. Whilst this answer was not explored further and it was not entirely clear how Mr Grunberg had arrived at this view, a “bank payment” seems to me to be rather different from expenses which have been paid in cash without any supporting evidence. Mr Temmink appeared to accept in closing that the fact that these payments were “bank payments” might be “significant”.
- iv) In the circumstances, I find that the sum of £3,600 should therefore be excluded from the figure for unexplained expenses, leaving a total figure for unexplained and overstated expenses of **£81,931.41**.

*Unjustified Cash Wages*

- v) Between September 2009 and September 2019, casual wages have been shown as paid in the nominal ledgers without such wages having been reported to HMRC. Mrs Sidhu was asked about this in cross examination but was unable to justify the difference between the sums recorded by ASL and the sums reported to HMRC. Mr Grunberg identifies the difference in the sum of £74,338.22 (following a correction) at 7.1 of his report. He notes that all wages were paid in cash and there appears to have been no payroll scheme. He observes that “without a full set of payslips, timesheets or similar supporting evidence, I am unable to confirm the existence of all the employees and their level of salary entitlement”.
- vi) Other than the evidence of Mrs Sidhu, the only available evidence about wages is from Mr Kumar, who confirms that from 2011 to 2020 (with the exception of a period between 2016 and 2017) he regularly worked in the Off Licence, and that he was paid for his work in cash. I accept this evidence which seems to me also to fit the probabilities, and I note that there are two invoices from Mr Kumar for the periods October 2017 to September 2018 (in the sum of £6,003) and October 2018-September 2019 (in the sum of £6,165) evidencing the payments he received in those two years. In respect of the latter payment, Mr Grunberg added this sum to his figure for subcontractor wages by way of a correction to his table at 7.1. However, in circumstances where I accept that Mr Kumar was paid these sums, they should not, in my judgment, be factored into any determination

as to the extent to which wages figures may have been overstated in the ASL accounts (even if it is right to include them in a table which merely represents the difference between wages declared in the accounts and wages declared in the P60s, as Mr Grunberg has done). I have accordingly removed the figure of £6,165 from the £74,338.22 identified by Mr Grunberg to return to the original figure of £68,173.22 in the table at 7.1 in his report.

- vii) I also consider that it is more than likely that the difference between the wages shown in the accounts and the wages identified in the P60s in the years when Mr Kumar was working (i.e. 2011-2015) is partly to be explained by wages paid to Mr Kumar in cash. I was not specifically addressed on this by Mr Clarke beyond submitting that I should allow the figure for wages, but having regard to what Mr Kumar was earning between 2017 and 2019 it seems to me to be probable that he was also earning something in the region of £6,000 per annum in earlier years. This cannot be an exact science, but assuming further cash payments to Mr Kumar of approximately £30,000 over the five years from 2011-2015, I infer that the wages have been overstated in the sum of £68,173.22-£30,000, i.e. **£38,173.22**.

*Mrs Sidhu's Wages*

- viii) Mr Grunberg points out that there appears to be no justification for the dramatic increase in the rate of wages in 2018 and 2019 when the P60s record wages at levels of £29,000 and £30,000 respectively (as against wages of considerably less than half those figures in earlier years). Mr Grunberg says that these figures are at odds with the historic salaries paid and the apparent reduction in turnover. In the year to 30 September 2019, wages exceeded the Gross Profits recorded in the sum of approximately £22,000. The P60s for the years ending September 2016 to September 2019 show wages being paid to Mrs Sidhu in the sums of £4,000, £9,000, £29,000 and £30,000 respectively. These figures do not entirely accord with Mrs Sidhu's written evidence (for example, she denied in her statement having received any wages from ASL in 2016), but given Mrs Sidhu's entirely inconsistent evidence about her income, I accept that the P60s are accurate.
- ix) However, the Bahias claim that the figures shown in the P60s were unauthorised and that the Sidhus must account to ASL for the total sum of £72,000. This is a claim they make having regard to the evidence contained in Mr Grunberg's report, but it is not a claim on which Mr Grunberg comments specifically and nor does it appear to be a claim that is directly anticipated by the terms of Inquiry 7. However, I did not understand the Sidhus to take any point about this claim being outside the scope of the inquiry (in contrast to a point they made about missing wages recorded as having been paid to Mr Bahia). Instead, the Sidhu's response (as is apparent from the Scott Schedule, but was not included in their written closing submissions) is that (i) wages were authorised by Mr Sidhu "director with management control as agreed by Mr Bahia"; and (ii) this claim is duplicative in that the wages to which it relates are already covered by the missing wages claim referred to above.

- x) I reject this response. I have already dealt with the fact that Board meetings were not being held and I can see no basis on which Mr Sidhu, as director of a limited company, had authority to authorise payments to his wife without obtaining the consent of Mr Bahia, which he plainly did not have. He certainly could not have done so after his death. As for the question of duplication, I can see no basis for the Sidhus' complaint. Aside from the fact that the point was not put squarely to Mr Grunberg in cross examination, it is clear from the table at 7.1 of his report that the figure of £74,338.22 (or £68,173.22 before his correction) was the difference between the wages reported in the accounts and the wages reported to HMRC in accordance with the P60 forms. In other words, that figure did not include the P60 wages.
- xi) I agree with the Bahias that those wages appear to be unauthorised and that the Sidhus must account to ASL for **£72,000**.

*Other Missing Cash*

- xii) A net amount of cash which has not been banked or expensed over the period September 2009 to September 2019 of £219,471.63. So as to avoid duplication, the Bahias deduct from this figure the separate sums claimed of £85,531.41 and £74,338.22 identified above, to arrive at an outstanding figure for missing cash of **£59,602**.

*The SIDHU licence plate*

- xiii) Mr Grunberg records in his report that he has seen no evidence of the cost of a licence plate with the registration number "SIDHU" being posted to Mr Sidhu's director's loan account. This is an issue that was originally included under Inquiry 8, but was moved into Inquiry 7 by the Bahias owing to the fact that it is common ground that the numberplate was purchased by ASL for £45,552.50 on 4 November 1998 and that Mr Sidhu therefore owed ASL this sum.
- xiv) Mr Bahia's evidence, which I accept, is that he knew about this payment at the time and was assured by Mr Sidhu that he would repay ASL. It is also common ground that £15,900 was transferred by the Sidhu family into the ASL account in part payment (as evidenced by a handwritten note to this effect on an ASL bank statement), leaving an outstanding balance of £29,652.50. There appears to be no evidence that this sum was ever repaid to ASL but the accounts for 1999 and 2000 do not suggest that it remained outstanding; the figure of £29,652.50 was certainly not posted to Mr Sidhu's loan account (as Mr Grunberg remarks).
- xv) It is Mr Bahia's evidence that he withdrew £30,000 from the Partnership account ending 5658 on 24 May 2010 in order to balance the position as between himself and Mr Sidhu such that, as he said in cross examination, the debt was "wiped out" – an admission on which the Sidhus rely. Although account ending 5658 was in the names of the Partners, it appears to have been used for ASL business, as Andy confirmed in cross-examination and as is clear from various contemporaneous documents. Had



this not been the case, I am unclear as to how the withdrawal of the £30,000 by Mr Bahia could have been recorded in the books of ASL (as it was) as a director's loan. In his witness statement Mr Bahia recorded a complicated analysis of other withdrawals made by Mr Sidhu from Partnership accounts, but whether these were correct or not, I cannot see that they affect the question of whether Mr Bahia ever received reimbursement for the licence plate (which is the way he puts this claim in his statement).

- xvi) Although Mr Bahia regarded the £30,000 he withdrew in 2010 as wiping out the imbalance between himself and Mr Sidhu, I agree with Mr Temmink that in fact, from an accounting perspective, there appears to have been no real "balancing" of the position because the £30,000 taken by Mr Bahia was recorded in the books of ASL as a director's loan (unlike the £30,000 that remained outstanding from Mr Sidhu). However, I observe that this does require me to treat the account ending 5658 as an ASL account – a finding which has ramifications in respect of a claim made by the Bahias under Inquiry 8.
- xvii) In the circumstances I find that the Sidhus must account for the sum of **£29,652.50**.

*Sidhu Personal Expenditure*

- xviii) Evidence of substantial personal expenditure incurred by Mr Sidhu and/or members of the Sidhu family which was paid for by ASL and appears to have been partially posted to his director's loan account. Mr Clarke did not deal with these payments separately in his closing skeleton, but in the Scott Schedule the Sidhus said this about these sums: "Mr Sidhu's director's account was debited with the sums claimed. In the event credit is disallowed, the debit will remain". No arguments were advanced as to why the credits should not be disallowed. Accordingly, I find that the following sums (identified by Mr Grunberg) should be disallowed:
- a) In the year ending 2011, ASL paid for Mr Sidhu's personal use of light and heat, council tax, life assurance, private healthcare and Sky TV in the sum of **£4,848.60**.
  - b) In the year ending 2012, ASL paid for Mr Sidhu's personal use of light and heat, council tax, life assurance and Sky TV in the sum of **£2,915.28**.
  - c) In the tax years 2015/16, 2016/17 and 2017/18, payments were made by ASL for Mr Sidhu's personal life assurance policies which were not attributed to his director's loan account in the total sum of **£1,496.52** – i.e. £498.84 per annum.
  - d) In the tax year 2017/18, ASL attributed 20% of its payments for light and heat (**£1,048.01**) to Mr Sidhu's personal use but, unlike in previous years, this was not attributed to Mr Sidhu's director's loan account.

e) In the year ending 2019 accounts, two further payments for life assurance were assigned to Mr Sidhu in the sum of **£248.92**.

xix) I reject the Sidhu's case that because these sums (or some of these sums) were debited to Mr Sidhu's director's loan account this is a non-issue. As Mr Temmink rightly says, these sums are reflected as having been paid in ASL's balance sheet and, in circumstances where Mr Sidhu was not entitled to the benefit of the money, then that money remains unaccounted for. In any event, it is clear from Mr Grunberg's report that it is his view on the available evidence that Mr Sidhu's director's loan account understated the amounts he owed to ASL.

280. Having regard to the findings made above, I consider that the Sidhus must account to ASL in respect of Inquiry 7 in the sum of **£291,916.46**.

## **INQUIRY 8**

### **The Terms of the Inquiry**

281. Inquiry 8 is in the following terms

“An inquiry (8) into the use of the Partnership and Company bank accounts pleaded at paragraph 20 of the Amended Particulars of Claim and the payments particularised at subparagraphs 21.1 – 21.5 of the Re-Amended Particulars of Claim ranging between late 2008 and 2015.”

### **Factual Background**

282. In short, it is the Bahias' case that various of the partnership and ASL accounts show unexplained movements of money to accounts owned or operated by the Sidhus and that insofar as specific transactions have been identified, these must be accounted for.

283. The reference in the Inquiry to 21.5 is an error – there are in fact only four subparagraphs to paragraph 21 of the Re-Amended Particulars of Claim. Paragraph 21.4 pleads that on 20 August 2015, the sum of £47,587 was paid by HSBC into a Natwest Account number 78576075 (a partnership account), by way of a redress payment relating to a Partnership loan and interest rate hedging swap which was mis-sold by the bank. The payment of the sum was arranged by Mr Sidhu who, on 20 July 2015 accepted an offer of redress from HSBC purportedly for and on behalf of both himself and Mr Bahia. On 3 September 2015, the sum was paid out of the Natwest Account by Mr Sidhu. This was discovered by Mr Bahia in around May 2018 and it is now accepted by the Sidhus that the sum of **£47,587** needs to be accounted for.

284. Paragraphs 21.1-21.3 of the Re-Amended Particulars of Claim each plead further transactions which are disputed. In addition, the Bahias complain about various individual transactions which were identified in Annex 8 of the Re-Amended Particulars of Claim and on which the parties join issue in the Scott Schedule. I

address these individual transactions below by reference to the relevant Partnership/ASL account.

*Santander 02495409 (a Partnership Account)*

285. There are 16 separate transactions involving this account which are in issue. None is for more than £6,500, but I must deal with them each in turn. I do so below, setting out briefly my reasoning:

- i) It is common ground that an amount of £2,800 was paid out of this account to Tarinder Sidhu (Mrs Dhaliwal) on 15 February 1988. However, in light of a handwritten note on her bank statement reading “PD 14/9/88 SHOP”, it is the Sidhus’ case that this money was repaid to Mr Bahia on 14 September 1988. This is supported by the first statement of Mrs Dhaliwal who says that the money was borrowed for new windows in an investment property and was repaid in full by cheque handed to Mr Bahia in the Off Licence, evidence which she confirmed under cross examination. Although there is no contemporaneous documentary evidence to support such repayment (other than the bank statement for Tarinder Sidhu dated 26 September 1988 which shows a cheque being paid out in the sum of £2,800 on 20 September 1988 and the handwritten note, but does not show its destination), I accept Mrs Dhaliwal’s evidence about this. Mr Temmink pointed out that Mr Bahia was not cross examined in relation to this transaction, but I can see no specific evidence in either of his statements referring to it. I reject this claim by the Bahias.
- ii) Contemporaneous evidence in the form of a bank statement and a cheque stub show a payment out of the Partnership account to TS Sidhu on 6 November 1989. The Sidhus say that this sum was later reimbursed as part of a payment of £32,000 made from Mr Sidhu’s personal account in August 1994. However, there is no evidence of the £32,000 payment ever crediting a Partnership account, an ASL account or a personal account of Mr Bahia and Mr Bahia was not cross examined about this transaction. I reject Andy’s reliance upon a handwritten note which he says evidences a reconciliation exercise carried out by Mr Bahia and includes the £5,000 sum. There is no evidence to corroborate Andy’s analysis and Mr Bahia’s evidence about this note was that it was merely a “list of expenditures”, which to my mind appears probable. The figure of **£5,000** must be accounted for by the Sidhus.
- iii) Contemporaneous evidence in the form of a bank statement and a cheque stub show a payment out of the Partnership account to Tarinder Sidhu on 19 June 1989 in the sum of £3,600. The Sidhus deny that this was paid in to Tarinder Sidhu’s account, pointing to a bank statement from the same period which shows no such payment in. In her first witness statement, Mrs Dhaliwal maintained that she had not received this sum (or any sum) in June 1989, evidence which she repeated under cross examination, rejecting the suggestion that she was mistaken: “No, I had a proper look to make sure that I didn’t receive it, and I don’t recall receiving it”. It was not put to Mrs Dhaliwal that she might have had another account into which the cheque could have been paid, or that the cheque could have been endorsed in favour

of someone else (points that were made for the first time by the Bahias in the Scott Schedule produced for closing submissions). Mr Bahia gave no evidence on the topic. In the circumstances, I accept Mrs Dhaliwal's evidence and consider that she is likely to have remembered receiving payment of such a relatively large sum of money. I reject this claim by the Bahias.

- iv) A cheque stub dated 14 January 1992 shows £4,000 being paid to "TS Sidhu Midland 15 Aylmer Road". Given that 15 Aylmer Road is owned by the Sidhus, the Bahias say that this must have been a payment for Mr Sidhu's benefit. Andy accepted in cross examination that the cheque evidenced a payment towards Aylmer Road although he sought to maintain that it was part of a larger sum that had been reconciled in respect of mortgage payments. I reject his case on that. There is no contemporaneous evidence of a repayment. The figure of **£4,000** must be accounted for by the Sidhus.
- v) A cheque stub dated 31 January 1992 shows £6,000 being paid to "Gurmit", Mr Bahia's sister. The cheque stub includes the word "Return" and then possibly the word "Borrow" or "Borrowed" and then "TS Sidhu". It was Mr Bahia's evidence, which I accept, that money was loaned by his sister to Mr Sidhu at a time when Mr Sidhu was in financial trouble and thus the Bahias maintain that this cheque stub evidences the payment of the money back. Andy was unable to gainsay this evidence and I find that this is consistent with the inherent probabilities and that the figure of **£6,000** must be accounted for by the Sidhus.
- vi) A bank statement dated 15 February 1994 shows three cheque payments out of the account in the sums of £2,500, £1,500 and £2,500 respectively. Owing to a handwritten note beside the payments on the statement, they appear to have been bankers drafts. Mr Bahia's evidence, which I accept, is that these were further repayments of loans made by others to Mr Sidhu owing to his financial difficulties with HMRC at this time. The Scott Schedule indicates that the Sidhus rely simply upon the absence of any reference to these cheques in the handwritten list of expenses prepared by Mr Bahia to which I have already referred. However, I am not sure that the Sidhus are right about this – an entry at the bottom of that list appears to refer to the same sums (albeit by reference to a date of 19.2.94 and a reference to "Daljit mother"). Indeed Andy tried to rely on this in cross examination to suggest that these figures had been the subject of a reconciliation. I reject the Sidhus' various explanations. It again appears that Mr Sidhu was using the Partnership account to repay personal loans and, in the circumstances, the Sidhus must account for the figure of **£6,500** in total in relation to these three payments.
- vii) A bank statement dated 15 September 1997 shows a sum of £6,000 being paid by cheque out of the account. A cheque stub evidences that the payment was to "Mohan Singh", Mr Bahia's brother. Mr Bahia's evidence in cross examination, which I accept, was that "This money is borrowed by Mr Sidhu because he had a financial problem in 1991/1992, a big problem" and that Mr Bahia had helped Mr Sidhu "in the borrowing of the money". It again appears that Mr Sidhu was using the Partnership account to repay

personal loans and, in the circumstances (including that Andy accepted in cross examination that he had no other explanation for this payment), the Sidhus must account for the figure of **£6,000** in total in relation to these three payments.

- viii) A cheque stub dated 27 January 1998 evidences a payment out of the account to Mr Sidhu. Absent evidence of a repayment by Mr Sidhu and in circumstances where Andy acknowledged in cross examination that there was no explanation for this payment, I find that the Sidhus must account for the figure of **£1,000**.
- ix) A bank statement dated 15 July 1998 shows a transfer out of the account to Mr Sidhu's personal account in the sum of £2,450.79. The Sidhus contend that this was reimbursement to Mr Sidhu for the payment of accountant's fees and they rely upon a cheque stub dated merely "10/6" which appears to include two different forms of handwriting, says "Joint A/C fee £2,435.50" and identifies the payee as "Jolly & Co". Beneath this stub, another has been copied by Andy dated 22.6.98, upon which he relies in asserting that the former cheque stub dates back to 1998. I reject Andy's case on this, which appears to me to be a clear example of an attempt to find evidence which might explain otherwise unexplained payments to his father. The cheque stub on which he relies shows no year and is not even for the same amount as the transfer to Mr Sidhu. In any event there was plenty of money in the account at that time to pay the relevant sum. Accordingly, I find that the Sidhus must account for the figure of **£2,450.79**.
- x) A bank statement dated 15 August 1999 shows a cheque payment of £1,019.90. The relevant cheque stub records that the payee is "Jolly & Co" and that the payment concerns "T Sidhu Property". Andy accepted in cross examination that the cheque stub appeared to show Mr Sidhu using partnership monies to pay his accountancy fees personally. Somewhat ironically in the circumstances, I note that the Sidhus' entry in the Scott Schedule for this cheque includes "unable to investigate as no docs". I find that the Sidhus must account for the figure of **£1,019.90**.
- xi) A bank statement for the period 16 February 2002 to 16 March 2002 shows a cheque payment on 13 March 2002 in the sum of £6,500. The relevant cheque stub records the payee as "TS Sidhu". The Sidhus explanation for this appears to be that it reflects a "complicated process of netting off" put to Mr Bahia during cross examination; in particular it was suggested that a cheque to Mr Bahia for a tax payment in the sum of £8,602 in February 2002 was related to the payment of £6,500 to Mr Sidhu. Mr Clarke explained that "the two represent drawings from the partnership is what Mr Sidhu will say if he's asked" and "[t]hese two payments net each other off". Mr Bahia denied this suggestion and in cross examination, Andy was unable to explain why the two amounts shown in these separate cheques were different and he accepted that he had effectively looked for a payment out to Mr Bahia and assumed it was linked. In the Scott Schedule, the Sidhus gave an entirely different explanation, suggesting that this sum was reimbursement for a payment by Mr Sidhu of rates for 44-46 King Street. I reject this new case which appears to rely upon an email from Mr Sheth

dated 12 August 2019 which has been cut and pasted by Andy and which contains a figure for rates for the tax year 2009-2010 of only £2,659.06. In any event, I suspect that there is an error in the Scott Schedule at this point, owing to the fact that the next sum claimed is a sum of £2,659.06. Whatever the position, I reject the various explanations given by the Sidhus which again appear to me to exemplify a desire to come up with an answer to the Bahias' claims. I find that the Sidhus must account for the figure of **£6,500**.

xii) A cheque dated 1 February 2010 is made out to Mr Sidhu in the sum of £2,659.06. The Sidhus' explanation appears to be that this sum was reimbursement for the payment by Mr Sidhu of the rates for 44-46 King Street. However, I reject this case in circumstances where the 12 August 2019 email on which the Sidhus rely has been cut and pasted by Andy and does not in any event describe the payment to Mr Sidhu as a reimbursement (in contrast to other entries in the email). I find that the Sidhus must account for the figure of **£2,659.06**.

xiii) A cheque dated 1 March 2010 is made out to Andy (in his own handwriting) in the sum of £1,035. Andy contends that this is reimbursement for the payment of rates by him in respect of 47 Stroud Green, again as evidenced by the 12 August 2019 email from Mr Sheth. However, aside from the issues with this email to which I have already referred, the reference in the email to a rate refund in respect of 47 Stroud Green makes no mention of any particular sum of money and it became clear during Andy's cross examination that he had simply "assumed" a correlation. I regard it as highly improbable that Andy would have been paying the rates on one of the Partnership properties from his own funds and I also note that the property revenue account for 47 Stroud Green for the year ended 5<sup>th</sup> April 2010 shows no payment in respect of rates. Andy has produced no other documentary evidence to support his version of events. I find that the Sidhus must account for the figure of **£1,035**.

xiv) A cheque dated 21 May 2010 is made out to Mr Sidhu in the sum of £2,020. Again, the Sidhus suggest that this is a reimbursement for various items identified in the 12 August 2019 email from Mr Sheth. They point to the following text in the email:

"24/05/2010 £2020 – This was paid to Mr TS Sidhu as it was for reimbursement of Builders 13 Damsonwood £400; Carpet 13 Damsonwood £500; Builder 46 King Street £400; Door and Lock shutter for 46 King Street £720. Total comes to £2020."

I reject this case. The email has been cut and pasted by Andy and no contemporaneous documents of any kind have been disclosed to support the proposition that the expenses identified in the email were paid by Mr Sidhu. Further, I can see nothing in the property revenue account for the year ended 5 April 2011 to support the proposition that £2,020 was paid in respect of refurbishment works. I find that the Sidhus must account for the figure of **£2,020**.

*Santander 0784170 (A Partnership Account)*

286. There is only one transaction in issue in relation to this account. It concerns a cheque drawn on the account in favour of Mr Sidhu on 30 December 1987 in the sum of £7,000. In circumstances where there are no contemporaneous documents to explain the payment and Andy put forward no explanation in cross examination, I find that the Sidhus must account for the figure of **£7,000**.

*HSBC 91131281 (An ASL Account)*

287. There are two outstanding transactions in issue in relation to this account:

- i) A cheque stub dated 20 June 1990 records a “CASH” payment to “Tara”. It is partially completed in Mr Bahia’s handwriting. The Sidhus contend that this arose in connection with a payment to a gentleman known as Tara Dyal, who had provided cash of £2,000 to Mr Sidhu in return for a cheque in the same amount. Mr Bahia said in cross examination that he did not know “who this cash went to”. Andy’s evidence struck me as an extraordinary and very unlikely suggestion. Much more likely is that this cheque is made out to Mr Sidhu and that the reference to “Tara” is to Mr Sidhu. There are no contemporaneous documents evidencing a repayment of this sum. Accordingly I find that the Sidhus must account to ASL for the figure of **£2,000**.
- ii) A cheque stub dated 25 May 1995 records a payment in the sum of £1,025 to either to “Dokal JS Heating” or “Dokal TS Heating” – it is not entirely clear as the cheque stub appears to have been changed. The Bahias say this is a payment by Mr Sidhu (“TS”) for heating at one of his personal properties; the Sidhus contend that this is a payment by Mr Bahia (“JS” as in JSB) in respect of a new house purchased in September 1994. This was put to Mr Bahia in cross examination, but he denied it. I reject the suggestion that, even if the cheque stub says “Dokal JS Heating”, that is a reference to Mr Bahia. I note Mr Bahia’s unchallenged evidence that the cheque stub is in Mr Sidhu’s handwriting and I infer (in the absence of any contemporaneous documents) that this was a payment made by Mr Sidhu in respect of one of his personal properties. I find that the Sidhus must account to ASL for the figure of **£1,025**.

*Barclays 60815969 (A Partnership Account)*

288. There is only one transaction in issue in relation to this account. A cheque stub dated 4 April 1988 records a payment in the sum of £6,000 with the following narrative: “£6,000 transfer from Barclays to A Star Rent A/C to T.S Sidhu”. The Sidhus’ case is that this was a part payment for the costs of purchasing 2 The Broadway. But the costs figures relied upon by the Sidhus do not add up to £6,000 and Andy accepted in cross examination that the only correlation between the cheque stub and the figures on which he was relying was temporal: “It’s in the same time period”. I agree with the point made by Mr Temmink during his cross examination of Andy that the Sidhus’ explanation is a story that Andy has invented in order to try to explain the cheque stub. In the circumstances, and given the absence of any contemporaneous documents evidencing that the sum was repaid to the Partnership account, I find that the Sidhus must account to ASL for the figure of **£6,000**.

289. I now turn to address the three outstanding issues raised in paragraph 21 of the Re-Amended Particulars of Claim.
290. Paragraph 21.1 pleads that in late 2008, Mr Sidhu transferred £12,025 from the Santander Account No 78335658 (which they maintain was a Partnership Account) into the ASL trading account. The Bahias say they do not know what this transfer was for but Mr Bahia says he raised the matter with Mr Sidhu in 2012 and was informed that Mr Sidhu had returned the monies to the Partnership. The Bahias say that they have now discovered that is not the case. The Sidhus respond that this was in fact an inter-company transfer because the Santander account was in fact an ASL account at the relevant time.
291. From the available documents in the bundle, I am bound to say that the Sidhus appear to be right about this (a point I have already made in considering the claim in relation to the licence plate). Although the account name is “Mr Tara S Sidhu & Mr Jaswinder S Bahia” the account appears to have been treated as an ASL account with transactions being shown in the ASL ledgers in respect of the same. Although I do not place significant weight on it, I note also that in a statement provided in July 2020, Mr Sheth confirmed this state of affairs. Paragraph 78(2) of the Defence pleads that the transfer was required because ASL’s HSBC account was overdrawn at the time, but whether that explanation is correct or not (and the Bahias say that it is not) makes no difference in my judgment.
292. Where I have accepted that the Bahias’ claim in relation to the licence plate succeeds owing to a directors loan relating to a withdrawal from this account, it would be inconsistent for me to accede to the Bahias’ claim in relation to this transfer. It may very well be that the Partners mixed up their dealings with these various accounts, using them for different things, but, doing the best I can I must take a consistent approach. I reject the claim made in paragraph 21.1 of the Re-Amended Particulars of Claim.
293. Paragraph 21.2 of the Re-Amended Particulars of Claim pleads that on 17 November 2009, a cheque for £17,132 in respect of 99-101 High Road was deposited into HSBC Account No 51164538 (a Partnership Account) and that on 27 May 2010, Mr Sidhu transferred £17,316.29 out of that account and then closed it on the 23 June 2010. The Sidhus’ case on this, as explained in their closing skeleton, is that this payment falls by the wayside for the same reasons as the licence plate, i.e. Mr Sidhu was entitled to take this money because Mr Bahia had withdrawn £30,000 in May 2010. I reject this case which is wholly inconsistent with the withdrawal of £30,000 being shown in the director’s loan account of ASL. I note, however, that Andy admits that the cheque was paid out by his father and, in the circumstances, in my judgment the Sidhus must account for **£17,316.29**.
294. Paragraph 21.3 of the Re-Amended Particulars of Claim pleads that on 20 January 2012, Mr Sidhu transferred £2,843.45 from Santander Account No. 02495409 (a Partnership Account) into the ASL trading account. It is said that Mr Sidhu never provided an explanation for this payment. Paragraph 80 of the Defence denies that no explanation was ever given, asserting that Mr Bahia was told that the monies had been used to meet expenses of the Partnership at 44-48 King Street and that the balance transferred on 20 January 2012 was to redress that payment.



In cross examination Andy clarified that this was intended to be a reference to expenses at the commercial unit on the ground floor of 44-48 King Street. There is no contemporaneous evidence to establish one way or the other what happened to this payment and there is no evidence that it was misappropriated by Mr Sidhu. A payment from a partnership account into the ASL account is not sufficient without more for me to find that the Sidhus must account for this sum.

295. Taking my findings in relation to the individual transaction, the admitted sum of £47,587.61 and my findings in relation to paragraphs 21.1 to 21.3 of the Re-Amended Particulars of Claim, the Sidhus must account for a total figure of **£125,113.65**.

## **INQUIRY 9**

### **The Terms of the Inquiry**

296. Inquiry 9 is in the following terms:

“An inquiry (9) into the withdrawal and payments made from Partnership funds to meet the Deceased’s mortgage repayments for his property known as 15 Aylmer Road, London N2 0PL in periods during 1989 and 1992 and 2001 and 2003.”

### **Factual Background**

297. In 1987 Mr Sidhu purchased 15 Aylmer Road, East Finchley (“**Aylmer Road**”) in his sole name. Aylmer Road is a substantial property in an affluent area of London.
298. The Bahias’ evidence is that, between 2017 and 2019 when Hardeep and Teacher Stern were investigating the Partnership finances, they discovered through “painstaking analysis” that monies used to pay the mortgage on Aylmer Road had not been paid back to the Partnership by the Sidhus. Mr Bahia accepts he knew that monies were being used to pay the mortgage on Aylmer Road, but he says that he had been told by Mr Sidhu that the money would be paid back and that he trusted him to do so, evidence which I accept as being entirely probable, given the apparently good relations between the Partners at this time.
299. Between the years 1989-1992 and 2001-2003, it is admitted by the Sidhus that the Partnership made payments in respect of the mortgage on Aylmer Road, but it is denied that the sums were not restored to the Partnership and it is said that in respect of the later period, there was an agreement that the Partnership would meet the interest.

*Payments made between 10 May 1989 and 4 September 1992 from Abbey National Account 02495409*

300. The Bahias contend that the Sidhus are liable to account to the Partnership in the total sum of £61,516.17 for this period. The payments are all evidenced by cheque stubs identifying payments for “15 Aylmer Road”. In one case there is a payment for “Aylmer Road LM Windows” in the sum of £7,500 made on 10 May

1989 and in another a payment for “Rates 15 Aylmer Road” in the sum of £3,329.59 on 25 September 1989. All the remaining 18 payments appear to be mortgage payments.

301. This claim was pleaded at paragraph 22 of the Re-Amended Particulars of Claim and responded to by the Sidhus in paragraph 84(9) of their Amended Defence and Counterclaim which pleads simply that “the sums withdrawn or paid to the Deceased were owing to the Deceased due to personal payments specifically made in or for the Partnership”. This is a vague pleading which provides no particulars as to the personal payments made by Mr Sidhu on which reliance is placed.
302. However, this case was fleshed out in Andy’s first statement. Andy’s evidence is that in the late 1980s/early 1990s interest rates were high and both Partners were in default on mortgages on Partnership property and on their own current accounts. In particular, Andy says that the sum of £58,000 was owed in respect of two Partnership accounts which were overdrawn. Andy says he was told about this in the mid-1990s by Mr Sidhu, who said that Mr Bahia was unable to pay any of this money off and so Mr Sidhu had decided to sell 128 High Road for £205,000 “to bail the Partnership out” (128 High Road being a property that was unencumbered and solely owned by Mr Sidhu). Andy says that the proceeds of that sale were used to pay off Mr Sidhu’s own bank debts of £106,000 together with the debts owed by the Partnership (namely £26,000 and £32,000 paid respectively to the Ealing and Luton branches of Midland Bank) and that Mr Sidhu told him that “as a result of [Mr Bahia] owing [Mr Sidhu] half of £58,000, it was agreed in a conversation in January 1991 between the partners that the monthly mortgage payments for the Deceased’s solely owned property at 15 Aylmer Road...would be paid from the Partnership’s bank account, namely Abbey account 0295409, until the debt was repaid”.
303. Pausing there, I note that there is some evidence to corroborate Andy’s general case that the Partnership was suffering financial hardship. Mr Raminder Sidhu confirmed the financial pressures that the Partnership was facing in the late 1980s and the sale of Mr Sidhu’s own property to ease that pressure. A letter dated 18 October 1990 from a firm of estate agents to Mr Sidhu confirms that he has accepted an offer on 128 High Road in the sum of £205,000 and that there is an understanding that completion will take place by 31 December 1990. Furthermore, a Midland Bank statement from 1990 evidences that the Partnership was overdrawn to the tune of circa £25,000 and that on 18 January 1991 a transfer into that account was made in the sum of £26,000. Mr Bahia’s recollection in cross examination was that Mr Sidhu was himself in financial difficulties at around this time, and the fact that Andy admits that the sale of the property at 128 High Road was also used to pay off Mr Sidhu’s own debts appears to be consistent with this.
304. Whilst I therefore accept the general case referred to above, I note the absence of evidence to corroborate Andy’s more detailed case. There is no documentary evidence showing what the payment of £26,000 was for or where it came from and Mr Bahia was unable to help during his oral evidence. There is no bank statement evidencing the £32,000 payment that Andy says was also made, as Andy accepted in cross examination.

305. Furthermore, Mr Raminder Singh gave no evidence in support of the alleged agreement referred to by Andy and this agreement was not pleaded in the Amended Defence and Counterclaim. Given my findings as to Andy's credibility, I am inclined to agree with the Bahias that this is a significant omission which casts doubt on the veracity of Andy's evidence. If he really remembers a conversation with his father in the mid-1990s during which he was told about this agreement, why was it not mentioned in the pleading?
306. The Sidhus rely upon two separate handwritten documents to further support their case:
- i) The first can only be described as notes made on scraps of paper which appear to have been torn or extracted from a complete page in a lined notebook. These notes are said to have been written by the Midland Bank Manager and it is suggested that they show a calculation by him as to the outstanding figure owed by the Partnership of £58,000 (by reference to the figures of £26,000 and £32,000). The Bahias challenge the authenticity of these notes, saying it is wholly unclear what they are, where they have come from, who made them and why they have ended up on a torn and crumpled condition unless they were torn from a page that contained other relevant material. Andy's evidence about them in cross examination was wholly unconvincing; he said the notes had been in his father's possession and he had been told they had been written by a bank manager but he could offer no explanation as to why the notes would be in his father's possession and he had not been at the meeting he said had taken place with the bank manager. Given the state of the notes and the fact that I can see no reason why Mr Sidhu would have had handwritten notes from a bank manager in his possession, I reject the Sidhus' case that the notes are "plainly original and genuine". I cannot determine what they are, who wrote them, when they were written and where they came from and for that reason I cannot safely attach weight to them.
  - ii) The second document consists of a double sided sheet of handwritten columns of dates and figures. The Sidhus contend that these are reconciliation notes written by Mr Bahia and/or Mr Sidhu in 1992 showing that after the mortgage payments had been taken into account, Mr Bahia still owed Mr Sidhu £1,743, having regard to the £58,000 payment that Mr Sidhu had made in respect of the Partnership debts. When the original of this document was produced by Andy in court, it established that the document was a copy of a copy, that it appeared to have been stitched together, that the calculations were inaccurate and that it included notes made in different colour inks. Furthermore, the version produced by Andy in court was different from the version in the trial bundle because he had added his own pencil notes to it. Given the condition of the notes and without any knowledge as to the circumstances of their creation, I cannot accept that they are probative of anything and they were in any event undermined in cross examination (a point I shall return to below). It is clear that Andy had certainly added some of his own notes to this document (writing "wrong" next to one entry) I am not at all confident as to what other involvement he had in its genesis.

307. In circumstances where I cannot rely on the two documents referred to above, I have no documentary evidence to corroborate Andy's case as to the existence of the alleged agreement made in 1991 that mortgage payments on Aylmer Road would be made from the Partnership accounts until the £58,000 injected into the Partnership by Mr Sidhu had been paid off.
308. Furthermore, in my judgment, the cross examination of Andy exposed serious flaws in his case. Despite accepting in his statement that his father had substantial outstanding debts, Andy refused to accept in cross examination that his father had been in financial difficulties in the early 1990s, saying he did not know, although he then appeared to accept that Mr Sidhu had taken loans from the Partnership to pay debts owed to HMRC. Andy was forced to accept that the figure of £4,000 included in the so-called reconciliation document could not possibly be included in the total that had been identified as owing in respect of Aylmer Road, an admission which undermined his evidence that there had been a reconciliation.
309. In the circumstances, I find that there is no evidence whatever that Mr Sidhu paid the sum of £58,000 (or any part thereof) to the Partnership and no evidence of any alleged agreement between Mr Bahia and Mr Sidhu (which in any event would have post-dated the payments made between May 1989 and December 1990). Far more plausible is Mr Bahia's case that Mr Sidhu used partnership money to pay his mortgage instalments at Aylmer Road on the understanding that it would be returned. However, there is no evidence that it was returned. I accept Hardeep's evidence that having carried out his enquiries he was satisfied that there was "absolutely no evidence of any repayment" and I accept Mr Bahia's case that he trusted Mr Sidhu and was not aware how much money had been taken from the Partnership. The alleged reconciliation document relied upon by the Sidhus is not a reconciliation at all but is quite possibly a document that was created after the event to try to support the elaborate story concocted by Andy.
310. The Sidhus must account to the Partnership for the sum of **£61,516.17**.

*Payments made during 2001 and 2002*

311. The Bahias contend that the Sidhus are liable to account to the Partnership in the total sum of £60,690.20 for this period. The evidence in the form of bank statements show payments of sums on a monthly basis between December 2001 and September 2002 from the Greatways 8324 account. With the exception of the first and last of these payments, the sum paid is consistently £6,311.73. The Sidhus accept that the Partnership made these payments.
312. The Sidhus' case, as set out in paragraph 84 of their Amended Defence and Counterclaim, is that Aylmer Road was mortgaged in or about December 2001 for the sum of £575,000 with the intention that these monies would be used for the acquisition by the Partnership of Bolham Dene Nursing Home and that "Pending completion of the acquisition of that property, the facility monies were held on deposit in accounts of the Partnership and the Greatway Partnership". In the circumstances, the Sidhus say that it was agreed that "the interest payments (but not capital) required to the lender with regards to the facility monies would be paid by and from an account of the Partnership".

313. On completion of the purchase of Bolham Dene Nursing Home, in about March 2002, the facility monies were not required, but the Sidhus say that because they were kept on deposit, it was agreed that the interest payable would continue to be paid by the Partnership. However, this arrangement ceased in September 2002 and “it was agreed that pending the accountants’ calculation of the amount of interest properly to be paid by the Partnership, [Mr Sidhu] would bear the costs of the same”. Thereafter, on about 20 September 2002, Mr Sidhu paid Mr Bahia £20,000 (£19,000 by cheque and £1,000 in cash) and Mr Sidhu authorised Mr Bahia to withdraw the balance on 5 September 2002, which he did. Further, Mr Bahia withdrew additional sums from the Partnership bank account 0295409 on 11 November 2002. The Sidhus contend that the respective obligations of the Partners in relation to the interest costs that had been borne by the Partnership were then mistakenly addressed by the accountants in 2005, who produced an inaccurate statement.
314. I reject this case, which is not borne out by the contemporaneous evidence and was undermined during the cross examination of Andy.
315. First, the evidence of the bank statements appears to show that the facility monies in the sum of £575,000 were paid into the Partnership account on 31 October 2001 before being transferred immediately to a Greatway account and then, on the following day, transferred to Mr Sidhu’s personal bank account. Indeed, the Sidhus accepted in closing that (contrary to Andy’s written evidence) the monies appear to have been transferred to Mr Sidhu. In the circumstances, it is wholly unclear why the Partnership would have been required to pay interest on Aylmer Road for many months in circumstances where it was not gaining the benefit of the money. The pleading in the Defence and Counterclaim to this effect appears to be inaccurate and Andy’s written evidence that “the monies had effectively been loaned by [Mr Sidhu] to the Partnership in case they were required for completion” does not make sense. His evidence in cross examination that the money was available to the Partnership for as long as the nursing home had not completed, was also wrong. A letter from HSBC to TSS dated 6 November 2001 evidences a transfer out of his account of £529,000 and it appears that it was to this account that the £575,000 had been transferred. Andy accepted that this payment out comprised the bulk of the Aylmer Road monies.
316. Second, it is clear that the £575,000 was not needed for the purchase of Bolham Dene Nursing Home in any event, because, as Andy accepted in cross examination there were sufficient funds available to the Partnership from elsewhere.
317. Third, Andy’s evidence that both Partners must have signed off the direct debit for transfer of the facility money was undermined in cross examination, when it was put to him that the mandate for the relevant bank account was not one which required both partners to sign and he confessed that he could not recall that and did not know (notwithstanding his written evidence).
318. Fourth, the two documents said by the Sidhus to support the proposition that the facility money was intended for the purchase of Bolham Dene Nursing Home are both marked in hand by Andy “Accountants Notes”. He denied having prepared the documents himself but he was unable to explain when they were produced or

why. He said that the accountant “would have wrote these notes at the time” and “would have forwarded a copy”. The first (typed) document is headed “Notes” and says “Please Note that Mr Sidhu and Mr Bahia borrowed three loans for nursing home...3<sup>rd</sup> one was secured on 15 Aylmer Road Property up to 2<sup>nd</sup> September 2002”. However, the loan here referred to was not in fact used for the nursing home, in circumstances I have already identified above. The document is undated and it is unclear to whom it is addressed or for what purpose it was created (even assuming that it is an accountant’s Note). Andy was unable to explain in cross examination why it had been forwarded to him or why it had been prepared by the accountant. He said it would have been sent by post. The second document is in spreadsheet form and Andy’s evidence was that it “would have been for year end 5 April accountant’s notes” and that it “would have been forwarded to me or my father in probably January 2004”. However, Andy did not know when it had been created and nor did he remember when he had written the words “Accountants Notes” on the top. His evidence was that both documents had been found in the back of “the Tiger Moth file”, i.e. a file relating to a pub purchased in Chatham in around 2003. I agree with Mr Temmink that these documents are odd, that their provenance is unclear and I consider that I cannot be certain that Andy’s explanation for them is accurate. I do not consider that I can safely place any weight on them.

319. Fifth, Andy relied upon handwritten calculations in a Payment History Enquiry in support of his evidence that Mr Bahia had asked his father for the mortgage payments to stop in June 2002 and that it had taken until the end of August 2002 to re-mortgage Aylmer Road at a cost of a further £18,935.19 in instalments. The document includes a handwritten calculation (said to have been added by Mr Sidhu although there is a dispute about some of the handwriting on the document) which arrives at the figure of £59,091.33, the total sum Andy says was paid by the Partnership in instalments – although in his witness statement, Andy pointed out that this was an error and should have been £58,091.33). The authenticity of this document was challenged by the Bahias and I am not prepared to attach any weight to it. Andy did not provide an original for inspection and it appears that some information may have been blanked out or covered and written over. Furthermore, in his witness statement Andy contended that “it appears to have been agreed that the Claimant would be liable for £20,000 and the Deceased would repay the balance (which would in some way reflect the delays in the Deceased sorting out the rearrangements of the mortgage)”. There is nothing in this document to support such a proposition (which makes little sense) and indeed in cross examination Andy asserted that his statement was mistake and that in fact what had happened, as evidenced by the calculation on the document, was that his father was liable to return £40,000 to the Partnership and that rather than paying that sum to the Partnership he had paid half to Mr Bahia directly in the form of a £19,000 cheque and a £1,000 payment in cash. Again this document does not in any event support such a proposition.
320. Sixth, there is no evidence of a cheque being paid to Mr Bahia in the sum of £19,000, or of a payment in cash of £1,000 being made to him. A bank statement from Mr Sidhu’s personal HSBC account has been disclosed evidencing a cheque payment on 20 September 2002 in the sum of £19,000, but it does not identify the payee and Andy accepted in cross examination that he could not prove the

payment had been made to Mr Bahia. Mr Bahia denied that he had received a cheque for £19,000, just as he denied receipt of £1,000 in cash. A cheque stub on which the Sidhus relied dated 15 September 2002 and showing a payment of £19,000 appeared to identify the payee as “Bahia”, but the original payee appears to have been rubbed out and written over, as was clear from sight of the original. The Bahias challenge the authenticity of this cheque stub and I accept that it appears to have been altered by Andy, who admitted that it was his writing on the cheque. I can place no reliance upon it whatever and I note that it was not relied upon in the Sidhus’ closing submissions. There could be no sensible reason for paying £1,000 over separately in cash, although Andy sought to suggest that this might have been done because of a mistake in the calculation on the Payment History Enquiry. Essentially it became clear that his evidence was simply an attempt to come up with a story which would provide him with a defence.

321. Seventh, Andy’s written evidence was that the remaining balance of £19,091.33 was to be taken by Mr Bahia from the Partnership to balance the books. He relies upon a list of transactions from account ending 5409 showing a withdrawal of £19,386.33 by one of the Partners in November 2002, which he says must have been Mr Bahia. In the circumstances he says that the mortgage monies paid out by the Partnership were reconciled as between the Partners. However, there is no evidence whatever that this figure was paid to Mr Bahia (who denies its receipt) and in any event the figure does not tally with the balance of £19,091.33 identified in the calculation on the Payment History Enquiry. I note and accept Hardeep’s evidence that Mr Sheth had informed him orally in June 2020 that the payee in respect of the withdrawal of £19,386.33 was recorded as “unidentified”. Like Hardeep, I cannot see how Andy could possibly have determined that Mr Bahia must have received this payment.
322. Eighth, the story in the previous paragraph is not in any event the story originally advanced by the Sidhus in the Amended Defence and Counterclaim and in a Response to a Request for Further Information. Originally, the Sidhus said that Mr Bahia had withdrawn the balance on about 5 September 2002 in the sum of £19,979.90 (which it appears Andy must have identified from bank statements in his possession). However, Mr Bahia was in possession of the cheque stub for this transaction which shows that it was made out to WLW, a wholesaler called West London Wines. Instead of simply admitting he was mistaken about this, Andy tried to explain it away by suggesting that the accountant had told him that the cheque had not been allocated and so he had proceeded on the advice of the accountant. I have little doubt that the original story around this cheque was created to fit around the narrative Andy wished to advance in relation to the Aylmer Road mortgage payments, but that he then had to change that narrative upon being caught out.
323. Ninth, contrary to the Sidhus’ pleaded case, the Partnership paid both the capital and the interest on this mortgage, as is evidenced by an Equity Release Loan Agreement for Aylmer Road which shows monthly payments of £6,311.73.
324. Tenth, a Note apparently prepared by the Partnership’s accountants in 2006 as part of a larger document which has not been disclosed appears to record the interest payments over a period of only February to August 2002 and suggests that Mr Bahia owed 50% of £13,259.41 to Mr Sidhu, namely £6,629.71. The

assertion in this note that the Aylmer Road residence “was secured on nursing home” is inaccurate. I cannot rely on this document.

325. I agree with the Bahias that this Inquiry exemplifies Andy’s:

- i) Reliance upon altered documents and documents whose provenance is very unclear;
- ii) Reliance upon a manufactured story to make the numbers on scraps of paper fit his narrative;
- iii) Attempts to alter his evidence upon obvious errors in it being exposed;
- iv) Failure to provide complete documentary evidence to prove that Mr Sidhu made payments to Mr Bahia, as alleged;
- v) Preparedness to blame the accountants for an obvious error (in relation to the payee of a cheque payment).

326. Notwithstanding that his cross examination appeared, in my judgment, to establish that the Sidhus’ position on this aspect of Inquiry 9 was untenable and that the facility monies had never really been available for use by the Partnership because they had been transferred immediately to Mr Sidhu, Andy refused to back down from his unsustainable position. Instead he sought to present an entirely dishonest picture to the court.

327. Accordingly, I find that the Sidhus must account to the Partnership in respect of this period in the sum of **£60,690.20**.

### **Conclusion on Inquiry 9**

328. The Sidhus must account to the Partnership in the total sum of **£122,206.37**, i.e. the total sum of the payments made by the Partnership to discharge the borrowings of Mr Sidhu over Aylmer Road.

## **INQUIRY 10**

### **The Terms of the Inquiry**

329. Inquiry 10 is in the following terms:

“An inquiry (10) as to such sums which may be due to the Partnership from the Defendant as a result of any tax liabilities of the Deceased which were discharged from Partnership funds between 1972 and February 2010.”

### **Factual Background**

330. The Bahia’s case, as set out in the Re-Amended Particulars of Claim, is that between 1972 and February 2010, it was the practice of the Partners to discharge personal tax liabilities out of ASL and Partnership assets. However, the Bahias say that it was the practice of Mr Sidhu to take more money from the Partnership



in respect of his tax liabilities than Mr Bahia and that at no stage have the Partnership accounts dealt adequately with this practice and no reconciliation has been conducted. In Annex 9 to the Re-Amended Particulars of Claim the amount repayable to the Partnership by the Sidhus was estimated at £288,339.74. During the course of the trial and in light of concessions made by Mr Bahia this sum has been revised down to £245,447.

331. In their Amended Defence and Counterclaim, the Sidhus denied that there was any material difference between the Partners' use of ASL and Partnership assets to discharge personal tax liabilities and they asserted that there were regular reconciliations (including cash sums) between the Partners. In particular, they relied upon a reconciliation carried out by the accountants in mid/late 2006 together with further reconciliations in February 2007, January 2008 and February 2009.
332. In Andy's first statement, he identified a new story to support the case that the tax payments had been fully reconciled, asserting that "The Partners appeared to have agreed that only [Mr Bahia] would be paid a wage of £12,000pa from [ASL], despite previously acknowledging he spent minimal time here... There appears to be no other basis for this decision other than to rebalance the partners' drawings". By his fourth statement, Andy had developed this story, recounting a conversation with Mr Sidhu during which he had been told that only Mr Bahia was receiving a wage from ASL (despite not working at the Off Licence) because "his tax bill was higher in January 2003 and it would also assist ASL in reducing profits/tax and help add national contributions for [Mr Bahia's] pension contributions. [Mr Bahia had said to [Mr Sidhu] he had deposited a cheque of £15,000 of his own money in the joint account as part reconciliation for January 2003 but it was not enough." Mrs Sidhu's statement prepared in December 2021 supports this version of events asserting that she saw Mr Bahia "take wages/money on a weekly basis from ASL" and that this went on until March 2010 when it was stopped by Mr Sidhu.
333. Dealing first with the Sidhu's case on reconciliations, the Sidhus rely on various documents, including handwritten notes on scraps of paper. Notwithstanding the terms of their Amended Defence and Counterclaim, the Sidhus do not appear to rely upon the reconciliation carried out by the Partnership's accountants in mid/late 2006 for the years 2001/2002 to 2005/2006 which shows that Mr Sidhu owed Mr Bahia £39,772.11, a sum that Mr Bahia says in his statement has not been paid. In my judgment, the "reconciliations" on which they do rely, are most unlikely to be true reconciliations and one such document is no more than scribbled calculations on the front, and back of an envelope, whose authenticity is challenged by the Bahias. Insofar as that envelope is concerned, I do not know its provenance or when it was created, although it is clear that Andy has added his own notes to it. I do not consider that I can attach any weight to it. As for the other documents specifically relied upon by the Sidhus in closing:
  - i) One document shows columns of handwritten entries which Mr Bahia accepts were written by him, including two entries for 1992 of £19,230.25 and £14,337.50 respectively, which each have the words "Sidhu Tax" written next to them;

- ii) One document suggests that the Bahias may have agreed at some point that they owed a sum of £13,076 for tax, although this is denied by Mr Bahia in his statement;
  - iii) One document shows scribbled calculations which appear to have been torn from elsewhere, but make no mention of tax reconciliations.
334. In my judgment, these documents establish no more than that tax was being paid out of Partnership accounts for the Partners. They certainly do not show, as Mr Clarke submitted in closing that “all tax sums were reconciled over the years and as such nothing is owing”. On the contrary, the available evidence tends to suggest that Mr Sidhu was paying substantial sums in tax from the accounts (more than was being paid by Mr Bahia) and that (at least for the period 2002-2006) Mr Sidhu owed a substantial sum of money to Mr Bahia, evidence which supports the Bahias’ case.
335. Insofar as the Sidhus belatedly seek to rely on a story about the payment of wages to Mr Bahia as a device to re-balance the books, I reject this story. It is clear that the accountants recorded wages as having been paid to the Partners over many years. I accept Mr Temmink’s submission that there is no evidence of a new approach being taken in 2003 to balance up an existing imbalance of drawings in relation to tax and the figures for directors’ remuneration in the accounts did not vary, as the drawings did. Accordingly the Sidhus’ case that an agreement was entered into in January 2003 to pay only Mr Bahia a wage of £12,000 from ASL, cannot possibly be true. In any event that case is wholly inconsistent with the Sidhus’ case, as set out in the Scott Schedule, that as at 1 February 2002, the Sidhus were in fact owed £192,033 by the Bahias. No attempt was made to try to reconcile these two divergent positions.
336. I reject the evidence of Andy and Mrs Sidhu that Mr Bahia was paid in cash “for decades” in respect of wages in connection with a business in which he was not involved. Mr Bahia consistently denied that he had received any wage from ASL after about 2002 and Andy accepted in cross examination that there was not a single cheque or bank transfer evidencing payment of wages to Mr Bahia by ASL. Not only was this story developed over time, but it also strikes me as inherently improbable. It is wholly unclear why a wage would have been paid by ASL to Mr Bahia to balance up drawings made by Mr Sidhu from Partnership accounts and also unclear why the Partners would have considered it sensible to reduce the availability of distributable profits from ASL to them both as shareholders in this way. I consider that Andy and Mrs Sidhu were both lying about this with a view to bolstering their case.
337. Insofar as individual tax drawings are disputed in the Scott Schedule (and setting to one side the entries said to reflect “JSB ASL wages”, which I have rejected as set out above), I start from the premise that the Sidhus have sought to advance a false case in order to hide the amounts for which they must account. However, I deal with each individual disputed entry briefly as follows:
- i) Payment of £35,000 on 13 July 1988 evidenced by a deposit slip which appeared to show a payment into a Barclays account. Mr Bahia denied the suggestion that his handwriting was on the slip and could not say whose

writing it was. His evidence, which was not challenged, was that he had never had a Barclays account. In cross examination he was clear that he had not received this sum. In the circumstances, I reject the Sidhu's case that the court should "make an allowance" in their favour in respect of this payment.

- ii) Payment of £34,000 on 29 August 1991 evidenced by a cheque stub made out to "Inland Revenue". It was put to Mr Bahia that the word underneath "Inland Revenue" was "Tax" but he said it looked like "TAR", and I agree. On balance I accept the Bahias' case that in circumstances where there was an agreed withdrawal by Mr Bahia of £19,250 on 28 August 1991 to pay his tax, it is inherently likely that this sum was withdrawn by Mr Sidhu to pay his tax bill. I reject the Sidhus' case that the figure of £34,001 for "Tax paid" in the accounts of ASL for the year ending 30 September 1991 must be this payment of £34,000. Aside from the difference of £1 between the two figures there is no evidence as to when or how the ASL tax payment of £34,001 was made.
- iii) Payments of £19,230 and £14,338 on 12 May 1992 and 30 September 1992 respectively. These are evidenced on the document prepared by Mr Bahia to which I have already referred which sets out columns of figures and includes the words "Sidhu Tax" next to each of these entries. The Sidhus' case on this appears to be that there must have been an undocumented reconciliation in cash "at some point". I reject that case. Mr Bahia's evidence is that he was never reimbursed in respect of these sums and there is no documentary evidence to suggest that he was.
- iv) Payment of £32,000 on 8 August 1994. This payment is evidenced by an Abbey National payment book which Andy says related to Mr Sidhu's own account with Abbey National. The book simply refers to a cheque for £32,000 without identifying the payee. Mr Bahia denies ever receiving this money and it is wholly unclear why Mr Sidhu would have been paying Mr Bahia's tax from his own account. Absent evidence of receipt of this sum by Mr Bahia, it is much more likely, in my judgment, that Mr Sidhu was entering into a transaction involving his own account which was unrelated to the Partnership.
- v) Payments of £7,000 and £7,500 made by cheque on 13 March 1995 and 30 June 1995 respectively from the Greatway account. Mr Bahia's written evidence was that although his handwriting appeared on these cheques and although they each referred to the payee as the Inland Revenue, nonetheless, they did not evidence payments of tax by him and he considered it possible that they related to Greatway's tax liability. However, in cross examination he accepted that he did not know whether this was the case. When it was put to him that he had no reason to believe that one of these cheques was for Mr Sidhu's tax liability he responded "I cannot say anything unless there are tax papers" and later "It can be Sidhu's, it can be mine too". In light of Mr Bahia's entirely frank answers, I do not consider that it would be appropriate to credit the Bahias for these sums (and I note that the Bahias have not claimed a credit for these sums in the Scott Schedule). I note that the word "Bahia" appears to have been added to each cheque in pencil,

apparently by Andy. These cheques were the subject of the Bahias' notice to prove documents and I reject any suggestion that the Sidhus have proved that these cheques related to payments made in respect of Mr Bahia's tax.

- vi) Payments of £5,000, £5,000, £5,000 and £8,239 all made by cheque on 19 June 1995, 20 July 1995, 31 July 1995 and 8 September 1995 respectively from the Greatway account. Mr Bahia assumed that these were penalties for late payment of tax but doubted that he would have allowed substantial penalties in the sum of £23,239.44 to be charged. He points to a letter from the Inland Revenue dated 18 October 1995 identifying that his tax liability for drawings from Greatway was £23,892. He says that he expects his drawings from Greatway for the previous year would have been similar and that he does not accept that these fines "were only the late filing of my tax returns". Under cross examination, Mr Bahia accepted that it was possible that the accountant had been dealing with these payments and, in light of the wording on the cheque stub for £8,239 ("Inland Revenue Enforcement Office for JS Bahia") he accepted that it was a payment to the enforcement office on his behalf ("I agree with it because it clearly says that"). However, where "JSB" appeared to have been written on the other cheques by someone else, Mr Bahia was not prepared to make any concession. In the circumstances, I find that the sum of £8,239 was paid towards Mr Bahia's tax and must be taken into account in arriving at the Bahias' final figure. As for the remaining cheques, I cannot find, as I am invited to do by the Sidhus, that the overwhelming probability is that they were all written together for Mr Bahia's liability arising as a result of enforcement issues. Equally likely, it seems to me is that some related to Mr Sidhu.
- vii) Payment of £27,765.09 made by cheque on 26 October 1995. The cheque is made payable to "Inland Revenue BAHIA". Mr Bahia's evidence is that this is not a payment for his tax liability and the Sidhus do not appear to suggest otherwise in their closing submissions, noting merely that Mr Bahia concedes that it is possibly for Greatway and that the Bahias do not seek to credit this sum against Mr Sidhu. I note that this cheque was the subject of the Bahia's Notice to Prove documents owing to the fact that the word "Bahia" appears to have been written by Andy in pencil. I reject any suggestion that the Sidhus have proved that this cheque related to a payment made in respect of Mr Bahia's tax.
- viii) Payment of £12,892.70 made by cheque on 27 February 1996 to "Inland Revenue J.S.Bahia". Although marked as disputed in the Scott Schedule, it appears to be accepted that this cheque did relate to a payment made in respect of Mr Bahia's tax, because the Bahias have given credit for this sum in their overall calculation.
- ix) Payments of £4,270 and £4,000 made on 26 March 1996 and 25 April 1996. The Sidhus suggest that these payments were made in respect of Mr Bahia's tax, but there is no evidence in relation to the same and they were not dealt with separately in closing submissions. The Bahias have correctly not sought to credit these sums against the Sidhus in their calculation.

- x) Payment of £20,000 by cheque dated 16 August 1994, as evidenced on an Abbey National bank statement. There is nothing on the bank statement to indicate what this cheque was for and certainly no evidence that it was a payment in respect of Mr Bahia's tax. The Bahias have correctly not sought to credit this sum against the Sidhus in their calculation.
- xi) Payment of £13,076 by cheque "Pre-1998", apparently according to notes created by Andy. Mr Bahia says that this was the repayment of a loan owed by Mr Sidhu in respect of the payment of his tax. However, there is insufficient evidence on which to find one way or the other what this relates to. Mr Bahia provides a detailed explanation in his statement, but it is unsupported by documentary evidence and I find it difficult to accept that he can have remembered the details set out in his statement so long after the event. However, I reject the suggestion by the Sidhus that this represented a payment of tax on behalf of the Bahias and I agree that the Bahias have correctly not sought to credit this sum against the Sidhus in their calculation.
- xii) Payments of £26,899 in cash "Pre-1998", £65,500 in cash "Post-98" and £10,000 in cash on 1 February 2002 again apparently according to notes created by Andy. I reject the Sidhus' suggestion that these were balancing payments for tax made in favour of Mr Bahia. There is no evidence to support such suggestion. The Bahias have correctly not sought to credit these sums against the Sidhus in their calculation.
- xiii) Payment of £20,000 by cheque on 31 July 1998, as evidenced by an Abbey National Bank statement. There is no evidence that this payment was made in respect of Mr Bahia's tax, as is suggested by the Sidhus. The Bahias have correctly not sought to credit this sum against the Sidhus in their calculation.
- xiv) Transfer on 10 February 2003 by Mr Sidhu of £15,000 "To Abbey Joint with J.S. Bahia". The Sidhus' case on this appears to be that there is no reason for this payment other than on the basis it would be used as a balancing payment in respect of tax. I reject this case, for which there is no evidence whatsoever. I note that this cheque was the subject of the Bahia's Notice to Prove documents owing to the fact that the words "Tax Reconciliation" have been written on the cheque stub in pencil apparently by Andy. I reject any suggestion that the Sidhus have proved that this cheque related to a payment made in respect of Mr Bahia's tax or as a balancing payment.
- xv) Payment on 21 February 2007 by cheque as evidenced in a joint bank statement. The words "Tax Reconciliation" have been written on the statement together with the initials "JSB" and it appears to be the Sidhus' case that there could be no reason for this payment other than as part of a tax reconciliation. However, absent any evidence that this sum was paid to Mr Bahia, I reject the Sidhus' case.

## **Conclusion on Inquiry 10**

338. In all the circumstances set out above, I find that the Sidhus must account to the Partnership in the sum of **£237,208** (£245,447-£8,239).

## **INQUIRY 11**

### **The Terms of the Inquiry**

339. Inquiry 11 is in the following terms:

“An Inquiry (11) as to whether the Claimant wrongfully introduced monies belonging to the Partnership and/or the Second Defendant into the Greatway Partnership between 6 April 2003 and July 2013 and, where relevant, whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation”.

340. This Inquiry has been conceded in full by the Sidhus and there is nothing further for the court to decide. This Inquiry is dismissed.

## **INQUIRY 12**

### **The Terms of the Inquiry**

341. Inquiry 12 is in the following terms:

“An inquiry (12) as to whether the Claimant failed to account to the Partnership for rents received in relation to 44A and 48A King Street (including the Kiosk) between August 2004 and February 2009 and, where relevant, whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation. In considering whether the First Defendant should be granted the relief he seeks, whether the copy of the Diary relied upon by the First Defendant has been altered by the Deceased and/or the First Defendant to conceal (i) properly recorded expenses; (ii) the collection of rent by the Deceased; (iii) withdrawals made by the First Defendant; and/or (iv) monies withdrawn by the Deceased with the dishonest intention of formulating a false claim to reopen settled accounts and/or wrongfully claim adjustments from the Claimant in these proceedings. Further, whether the First Defendant and/or the Deceased’s conduct amounts to an abuse of process or otherwise precludes the Defendant from seeking such inquiries.”

342. This Inquiry is connected with Inquiry 6 in that it concerns 44A-48A King Street, but relates to an earlier period, i.e. August 2004-February 2009. However, in this period, both Partners signed annual property accounts, confirming the accuracy of their content. Accordingly, whilst it is common ground that the property accounts reflect incorrect figures, the Bahias contend that the Sidhus cannot now re-open an agreed position and/or cannot complain in the face of consent from both Partners. The Bahias say that, in any event, for each of the relevant years Mr Sidhu was fully aware of the rental position, involved in collecting rent, had access to the Diary in which rental receipts were recorded and yet nonetheless

signed off the accounts on a known and agreed incorrect basis. This was because Mr Sidhu had suggested that the rent collected be used to pay for Partnership expenses across all the Partnership properties, a suggestion which Mr Bahia was prepared to go along with because he trusted Mr Sidhu.

343. I accept the Bahias' case in this regard, which in my judgment is supported by the contemporaneous evidence, including the evidence of Mr Saini. Documents establishing the Sidhus' continuing involvement from 2004 onwards at 44-48 King Street include:

- i) A letter dated 16 July 2004 to Mr and Mrs Ahmed demanding payment of rent in respect of 44A King Street and threatening legal proceedings. The letter is signed by both Partners and appears to have been witnessed by Andy. It has been sent from 8 King Street on behalf of both Partners.
- ii) An Assured Shorthold Tenancy agreement for 48A King Street dated 30 August 2007 identifying both Partners as Landlord and signed by Mr Sidhu only in the presence of Andy.
- iii) A section 8 Notice seeking possession of a bedsit at 48A King Street dated 30 June 2008 and signed by Mr Sidhu only. The notice provides the telephone number for 8 King Street and sets out details of the arrears of rent.
- iv) Particulars of Claim for Possession in respect of a bedsit at 48A King Street, completed by Andy, setting out details of the tenancy and the arrears and signed by Mr Sidhu on 24 July 2008.

344. Under cross examination, Andy was forced to accept that his father had collected rents from these properties between 2004 and 2007 and although he tried to insist otherwise, it seems very likely that he and his father were able to issue the Particulars of Claim for Possession referred to above because they had access to details as to what rents were due and from whom. There is certainly no evidence that Mr Bahia concealed any rental income from Mr Sidhu. Indeed Andy was also forced to accept that in circumstances where his father had collected rent in 2005 and 2006 he must have known that the accounts for that year (which showed no rent or inaccurate figures for rent) were wrong, but that nevertheless he had approved those accounts together with Mr Bahia. He also "wholeheartedly" agreed that if the court accepts that Mr Sidhu had the Diary or had access to the Diary it is plain that he can have had no issue with the figures in the accounts before he died.

### **The Diary**

345. The Diary is subject to the Bahias' Notice to Prove documents. The Diary was almost entirely handwritten by Mr Bahia and contains handwritten notes of rent collected from the tenants at 44A and 48A King Street (including from the greengrocers and from a tenant selling mobile phone cards from a kiosk on the ground floor within the Greatway store) in the years 2004 to 2009. The Bahias say that Mr Sidhu had always been aware of the existence and content of the Diary, that he and Mr Bahia would regularly review entries together and that they

would from time to time update the Diary together. Mr Bahia's evidence is that the Diary was handed to Mr Sidhu in or around early 2009 (at his request), so as to enable him to undertake an analysis of the rental income. The Sidhus dispute this and Andy says that he found the Diary in (largely) its present condition in September 2018.

346. The Sidhus rely on the Diary in support of the proposition that the Bahias were in sole control of the collection of rents at these properties and recorded those rents in manuscript in the Diary. Further, that (whilst the Sidhus knew and approved of the various lettings) the Bahias alone understood that the rental figures that were recorded in the property accounts over the relevant years were not disclosed to the accountant and had been severely understated.
347. I examined the Diary carefully in court, comparing it with the photocopied pages that Mr Bahia confirms he kept when he handed the Diary to Mr Sidhu in 2009. Notwithstanding the Sidhus' case, I think it highly unlikely given the good relationship between the Partners during this period and the content of the original Diary as kept by Mr Bahia that Mr Sidhu was not aware of the existence of the Diary before 2009 and even more unlikely that Andy found it in its present condition (i.e. changed from the condition it was in when it was handed over by Mr Bahia to Mr Sidhu). Andy's evidence is that he found the Diary at 8 King Street and that shortly after its discovery he took it to hospital to show to his father who was "extremely surprised as he said he had been asking for this information for years". This just does not ring true and I fail to see why the Diary would have been on the 8 King Street premises had it not been handed over by Mr Bahia to Mr Sidhu, as he says, in 2009. The photocopied version of the Diary includes some 34 entries referring to Mr Sidhu receiving rents on behalf of the Partnership (contrary to the Sidhus' case) together with entries noting Andy's name next to expenses. These entries are all consistent with the Bahias' case that the Diary was not a secret and that Mr Bahia recorded rental collections made by Mr Sidhu in the Diary by identifying him by name. Yet these entries were all removed from the version of the Diary in the Sidhus' possession.
348. I have no doubt that the Diary has been altered and tampered with by the Sidhus (and in all likelihood by Andy) in order to seek to downplay the Sidhus' involvement in the collection of rent at 44A and 48A King Street and thereby to try to entangle Mr Bahia in a narrative that turns on only the Bahias appreciating that the rental figures contained in the property accounts were wrong. At the time the Diary was disclosed to the Bahias' solicitors by the Sidhus, it seems that the Sidhus were not aware that the Bahias had in fact retained a photocopy of the Diary and so did not realise that any changes they made to the Diary would be readily identified. They have been caught red-handed in a lie. Changes to the Diary include:
- i) The name "Sidhu" has been changed into numbers to create the misleading impression that more rent have been collected from the tenants than was actually the case;
  - ii) The name "Sidhu" has been crossed out;
  - iii) The name "Sidhu" has been rubbed out so as to leave blank entries;



- iv) Pages containing expenses have been removed from the Diary;
  - v) One half of a page has been removed and stuck on top of another page so as to conceal expenses. The remaining half of the torn page has been removed entirely along with the opposite page also containing a list of expenses;
  - vi) Between the disclosure by the Sidhus of a copy of the Diary on 8 March 2019 and the inspection of the original Diary undertaken on 16 May 2019, the Diary was further deliberately altered insofar as further entries (for March 2006, on the page for 26 December) have been rubbed out, with the result that there is a hole in the paper. The Diary was in the custody of the Sidhus during this period.
  - vii) Pages containing Andy's name have been removed so as to conceal his involvement and knowledge of the tenants and the use of rent collected.
349. Andy sought in his written evidence to underplay the changes made to the Diary, suggesting that he had made entries only in pencil and for his own purposes. He was forced to accept that "it looks like there were alterations made to the Diary in between [Mr Bahia] having photocopied it and me finding [it]", but he denied any knowledge of how these had occurred. He accepted that a hole had appeared in the 30 December 2002 page whilst the Diary was in his possession but again said that he did not know how this happened. I find that this was all just a rather desperate attempt on Andy's part to conceal what he had done.
350. I agree with Mr Temmink that this is a serious and deliberate deceit designed to falsify evidence in these proceedings. Andy lied about his actions when giving evidence and persisted in presenting what is a knowingly false claim to the court. In his written evidence Andy insisted that neither he, nor Mr Sidhu, had managed or collected cash rents from the residential accommodation at 44A King Street from late 2004/early 2005, but that this was done by Mr Bahia or Hardeep. This was patently untrue, as the documentary evidence to which I have referred and the evidence of Mr Saini clearly establishes (aside from Mr Bahia's own evidence).

### **Conclusion on Inquiry 12**

351. In the circumstances, I deny the Sidhus the relief they seek under this Inquiry. Mr Sidhu was plainly aware of the rent that had been collected in respect of these properties and, in circumstances where it did not feature in the property accounts, I consider that it was likely Mr Sidhu who took the decision not to report the rent to the accountants. If this were not the case, then I fail to see why the Sidhus would have resorted to the elaborate deception involving the Diary. I understand Mr Clarke to accept that on findings of this nature, the doctrine of settled accounts operates to prevent the Sidhus from seeking an account.
352. Further and in any event, I am inclined to agree with the Bahias that the Sidhus' conduct disentitles them to seek to obtain equitable relief from the court. They have not come before the court with clean hands and I consider there to be a close connection between their dishonest conduct and the relief sought. They were

seeking to derive advantage from making changes to the Diary and, in the circumstances, it would be unjust to grant them relief (see *Snell's Equity* (34<sup>th</sup> Edition) at 5-010 and *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2017] EWCA Civ 1567 per Lord Briggs and Hamblen LJ at [170]-[171]).

## **INQUIRY 13**

### **Terms of the Inquiry**

353. Inquiry 13 is in the following terms:

“An inquiry (13) as to whether the Claimant failed to account to the Partnership for rents received from 2 and 2A The Broadway between January 2006 and 2013 and, where relevant, whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation.”

### **Factual Background**

354. It will be noted that there is overlap between this Inquiry and the Inquiry at 4(v) above, although this Inquiry also concerns 2a The Broadway.

355. Mr Bahia's evidence, which I accept, is that from 2009, he collected the rent from the tenants at 2a The Broadway until the end of December 2013 and that he would normally deposit this in a Natwest account number ended 6533.

356. The specific sums that it is alleged by Andy were not accounted for are set out in the Scott Schedule, but I reject the Sidhus' case on this Inquiry, which appears to me to be no more than an exercise in “tit for tat”. The Sidhus' closing submissions said only that “the same evidence [as for Inquiry 4(v)] is relied upon in support of the Sidhu's claim to an account” and recognised that “[e]ssentially this is a matter for the court to determine on the witnesses”. I have already made clear that I accept the Bahias evidence as to this issue over that of the Sidhus.

357. Further and in any event, the majority of the entries in the Scott Schedule were not pleaded by the Sidhus and/or were not put to Mr Bahia in cross examination. Where Mr Bahia was questioned about cheque stubs he rejected the suggestion that it was his handwriting on the counterfoil – evidence which I accept.

358. I agree with Mr Temmink that this claim has no real substance and does not represent a genuine claim.

### **Conclusion on Inquiry 13**

359. Inquiry 13 is dismissed.

## **INQUIRY 14**

### **Terms of the Inquiry**

360. Inquiry 14 is in the following terms:

“An inquiry (14) as to whether the Part 20 Claimants received various distributions provided for in partnership accounts between 2000 and 2012, including figures expressly provided for in year-end accounts for 2003 to 2007 and, where relevant, whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation.”

### **Factual Background to the Inquiry**

361. It is common ground that the Greatway Partnership accounts for the years ending 2003-2007 each record that the four partners received drawings in various amounts. Mrs Sidhu says, however, that although neither she, nor Mr Sidhu, ever received the recorded drawings, Mr and Mrs Bahia must have done so. The high point of her case on this under cross examination came during the following exchange with Mr Temmink:

“Q. None of the partners took drawings from the Greatway Partnership did they?

A. My husband and I didn't receive anything, but I don't know about the rest”.

362. This evidence is wholly insufficient to support a claim that the Bahias received unauthorised distributions and I find that the Sidhus cannot satisfy their evidential burden on this Inquiry. There is no contemporaneous documentary evidence to support the Sidhus' contention and I consider it to be much more likely that at a time when relations were good, it was agreed between the Partners that none of them would take the drawings shown in the accounts.

363. I observe that Mrs Sidhu's evidence on the Gateway Partnership accounts was in any event nonsensical: she denied signing off on the accounts and then when she was shown her signature on one example, she suggested that it had somehow been added to the accounts.

364. Insofar as the Sidhus' closing submissions contend that “This inquiry rests upon the court accepting Andy's evidence and his belief that the Bahias received the posted drawings notwithstanding their denials...”, I do not accept Andy's evidence for all of the reasons I have already given.

### **Conclusion on Inquiry 14**

365. Inquiry 14 is dismissed.

## **INQUIRY 15**

### **Terms of the Inquiry**

366. Inquiry 15 is in the following terms:

“An Inquiry (15) as to whether the Deceased’s capital account was on 30 November 2003 wrongly debited £11,000 for the purchase of a Jaguar vehicle for the Defendant and whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation.”

367. In circumstances where this Inquiry was conceded by the Sidhus shortly before the start of trial, it is dismissed.

## **INQUIRY 16**

### **Terms of the Inquiry**

368. Inquiry 16 is in the following terms:

“An Inquiry (16) as to whether sums deposited into the Greatway Account between November 2005 and August 2017 belonged to the Greatway Partnership and ought to be included in its accounts and, where relevant, whether any settled accounts should be re-opened, surcharged and falsified on the basis of material error, concealment or misrepresentation”.

369. In light of my judgment on the morning of Day 3 of the trial, I direct that (in accordance with the suggestion of Mr Temmink) there be an Inquiry into the expenses of the Greatway Partnership for the period 2007 to 2013 limited to expenses only and, within the expenses, to issues that have already been pleaded in these proceedings.

370. During his closing submissions, Mr Clarke sought to widen the scope of this future Inquiry so as to permit the possibility that it might cover issues that have not yet been identified between the parties. I reject such an approach. As I remarked at the time, it is in neither side’s interests to have yet another substantial dispute at some time in the future and, in circumstances where both sides should have attended this trial in a position where they were able to deal with Inquiry 16, I fail to see why they should be given a second chance to come up with yet further matters that have not been identified to date.

## **INQUIRY 17**

### **Terms of the Inquiry**

371. Inquiry 17 is in the following terms:

“An inquiry (17) as to whether the Part 20 Defendants failed to account to the Greatway Partnership on cessation of trading on or about 13 December 2012 for various chattels belonging to the partnership.”

372. It is common ground that Mr Bahia must account to the Greatway Partnership for the sum of £6,266.97 in respect of stock that was left at the Greatway supermarket when it was closed in about December 2012.
373. However, there remains a dispute over whether Mr Bahia must also account for (i) shelving in the sum of £3,500, which it is alleged he sold without accounting to the Greatway Partnership; and (ii) a van which it is alleged was sold by Mr Bahia (for a sum that is now put at £12,000 by the Sidhus) again without accounting to the Greatway Partnership.
374. I reject the Sidhus' case in respect of the shelving for the following reasons:
- i) I do not doubt Mr Raminder Singh's evidence that he arranged for a Sri Lankan retailer from Reading to purchase the shelving. However, he was not involved in the negotiations and has no direct evidence as to what then took place. Andy's evidence that the shelves were sold by Mr Bahia is purely hearsay and is said to have come from Mrs Sidhu, whose evidence does not even address this topic.
  - ii) There is no evidence that the sale in fact came off and Mr Bahia's evidence is that although there was a potential buyer at a price of £900, that offer was rejected owing to the possibility of an alternative buyer who was prepared to pay £3,500. In the event, that sale did not take place and the shelving had to be disposed of so as to give vacant possession to the new tenant.
  - iii) In my judgment it is far more likely that Mr Bahia is telling the truth about this. He has already conceded that he needs to account for remaining stock and I have no reason to suppose that he would lie about the shelving. Andy's evidence on the other hand is not reliable.
375. As for the van, I asked Mr Clarke in closing where the figure of £12,000 came from and he confirmed that it was purely "[Andy's] belief as to its value". There is no evidence whatever that the van was worth anything like this figure of £12,000 and I note that the partnership accountants attributed a value of only £1,069 to the van in the accounts in 2012.
376. In any event, Mr Bahia's evidence is that he did not sell the van but instead gave it to Mr Hanifa since the cost of repairing it and making it roadworthy was more than its value at the time the Greatway Partnership came to an end. Having regard to the probabilities, it appears to me to be far more likely that Mr Bahia is telling the truth about this. Andy appears to have come up with a wholly unsubstantiated figure for value and, in the circumstances, I do not consider his evidence that the van must have been sold to be credible.

### **Conclusion on Inquiry 17**

377. Mr Bahia must account to the Greatway Partnership for the sum of **£6,266.97** but the Inquiry is otherwise dismissed.