Neutral Citation Number: [2023] EWHC 2109 (Ch)

Case Nos: BL-2021-000641 and BL-2021-002114

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

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

Date: 25 August 2023

Before :

Tom Smith KC
(Sitting as a Deputy Judge of the High Court)

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Between:

(1) PAUL RICHARD KNELL
(2) PETER GERALD KNELL
(3) MARCHGALE LIMITED
(4) LANGNELL LIMITED **Claimants**

- and –

ERIC VAN LOO **Defendant**

And Between:

(1) PAUL RICHARD KNELL
(2) PETER GERALD KNELL **Petitioners**

- and –

(1) ERIC VAN LOO
(2) PAUL CORNELIUS FELIX MARIA VLEK
(3) FRANKLIN GEORGE VAN BEUNINGEN
(4) ABRAHAM VAN IDDENKINGE
(5) PETER BISHTON
(6) MILLER TURNER INVESTMENT MANAGEMENT LIMITED
(7) BDI (NEDERLAND) BV

Respondents

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Jessica Brooke (instructed by **Clintons**) for the **Claimants and the Petitioners**
Ali Reza Sinai (instructed by **Rix and Kay**) for the **Defendant and the First to Fourth and Seventh Respondents**

The Fifth and Sixth Respondents did not appear and were not represented

Hearing dates: 15-16, 19-23 June 2023

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JUDGMENT

Tom Smith KC :

A. Introduction

1. This is the trial of (1) a petition dated 17 March 2021 presented under section 994 of the Companies Act 2006 ("**the 2006 Act**") by Paul Knell and Peter Knell alleging that the affairs of Miller Turner Investment Management Limited ("**MTIM**") have been and are being conducted in an unfairly prejudicial manner ("**the Petition**"), and (2) a Part 7 claim made by claim form dated 16 April 2021 by Paul Knell, Peter Knell, Marchgale Ltd ("**Marchgale**") and Langnell Ltd ("**Langnell**") as Part 7 Claimants against Eric van Loo as Defendant alleging damages for breach of an alleged joint venture agreement and for breach of fiduciary duty ("**the Part 7 Claim**"). For ease of reference, in this judgment I will refer to the Petitioners and Part 7 Claimants collectively as "the Claimants".

2. In general terms, the disputes between the parties relate to an alleged joint venture in respect of two development sites: the first in Bridgwater, Somerset; and the second in Buxton, Derbyshire. The Claimants contend that there was a joint venture between the Knells and Mr van Loo in relation to the development of these sites, and that MTIM, which was the asset manager of the sites, was entitled to certain fees. They say that Mr van Loo failed to procure funding for the developments in breach of the alleged joint venture and that this was unfairly prejudicial conduct. The Claimants also complain of the Knells' removal as directors of MTIM. The Knells claim an order for the purchase of their shares in MTIM and/or the Claimants seek damages from Mr van Loo. These claims are denied by Mr van Loo.

3. The trial took place from 15 June 2023 to 23 June 2023. I heard evidence from five witnesses of fact: Paul Knell, Peter Knell, Geoffrey Revell, Mr van Loo and Abraham van Iddenkinge. Expert evidence as to the value of the Knells' shares in MTIM was given by a single joint expert, Moira Hindson of Moore Kingston Smith LLP. None of the parties required her to attend the trial for questioning.

B. The Facts

Initial Steps

4. Paul Knell met Mr van Loo in around 1994 and they worked together on certain commercial property investments in London. Mr van Loo is a Dutch businessman who invests in property and who also arranges for other investors, mainly Dutch, to invest in property. Paul Knell is a property developer with a background in architecture.

5. MTIM was incorporated on 2 December 1996. Paul Knell was appointed as a director of MTIM on its incorporation. Mr van Loo was appointed as a director on 22 January 1997. The ultimate shareholders at that time were Mr van Loo, Mathile Brandts and Gerard Brandts, with the shares held by Investerings Matt Schappij Randstadelijk Vastgoed B.V, the Dutch holding company of Mr van Loo and the Brandts, who were based in the Netherlands.

6. In October 1998 MTIM entered into a one-year tenancy agreement of a residential penthouse apartment at 33 Savile Row, London, W1. This was for the use of Mr van Loo when in London, although Mr van Loo says that it was also used by MTIM for meetings. The rental payments for the Savile Row penthouse were funded by BDI (Nederland) BV ("**BDI**"), which paid the rent via MTIM. These payments were treated as loans to MTIM which accrued interest. This resulted in MTIM owing a debt to BDI. The oral witness evidence of Paul and Peter Knell was that the debt accrued interest at a rate of 11% compounded annually, although I did not see any documentary evidence to support that and I make no finding in that respect. BDI is owned by a Dutch foundation, the ultimate beneficiary of which is Mr van Loo.

7. In the period from 1997 MTIM was involved in some initial property investments which were sold at a profit in 2000/2001. In addition, Paul Knell and Mr van Loo were also involved in a development project in Bridgwater, Somerset known as Express Park. This project was introduced by Paul Knell and funded, at least in part, by Mr van Loo and a group of Dutch investors. A separate company, Express Park Development Company Limited ("**EPDC**"), was formed to manage that development. Paul Knell and Mr van

Loo were both shareholders in this company (with 33% and 67% shareholdings respectively). EPDC also went on to develop a number of other successful projects.

8. In 2000 Geoffrey Revell was appointed as the commercial director of EPDC.

9. In 2003, Mr van Loo's company, BDI, bought out the shares in MTIM owned by the Brandts. It appears this was transfer was not however formalised until 2009. At that point, BDI became the sole shareholder in MTIM.

10. The property assets of EPDC were sold in around 2007 to a Dutch company, Trammell Crow Netherlands. In order to facilitate the sale, Paul Knell says that he gave up his 33% shareholding in EPDC in return for a payment of £500,000 from Mr van Loo. However, he says that this payment was delayed and that in the event he was paid only £350,000. I accept Paul Knell's evidence on these points.

11. Following the sale of the property assets of Express Park, MTIM ceased to undertake any property activity. It continued to retain and finance the lease for the Saville Row apartment, although more recently it appears that the lease may have been transferred into Mr van Loo's own name.

The Bridgwater Project

12. In late 2008 and early 2009, a further development opportunity in Bridgwater arose in relation to land near Junction 24 off the M5 motorway. This is referred to as the "Bridgwater Project".

13. This particular opportunity was introduced by Mr Revell to Mr van Loo. Mr Revell's evidence, which I accept, was that he was offered a 10% shareholding in the project by Mr van Loo. Mr Revell then in turn suggested to Mr van Loo that Paul Knell should become involved in the project.

14. In his witness statement (paragraph 16), Paul Knell said that the position was that in late 2008 and early 2009 he had conversations with Mr van Loo about reactivating MTIM to undertake new property development opportunities. He says that he had in mind several

possible projects including the Bridgwater Project. This seeks to give a somewhat different impression to the evidence of Mr Revell who was clear that it was he who introduced the Bridgwater Project to Mr van Loo and agreed the initial proposal for a 10% shareholding. To the extent that there is any difference between the evidence of Mr Revell and Mr Knell on this point, I prefer the evidence of Mr Revell.

15. MTIM negotiated and obtained land option agreements for the Bridgwater Project with two local farmers, Richard Brewer of West Lyng Farm, West Lyng, Taunton, Somerset, and Brian Foxwell of Dawes Farm, Taunton Road, North Petherton, Bridgwater, Somerset. The costs for obtaining these options were paid by MTIM**,** using funds received from BDI; and these costs were added to MTIM's loan account with BDI. The two option agreements were entered into by MTIM on 19 November 2009 with Mr Foxwell ("**Foxwell Option**") and on 27 November 2009 with Mr Brewer ("**Brewer 1 Option**"):

    a. The Foxwell Option was at a price of £225,000 for 73 acres of land (payable in instalments), with a term of 5 years, and the price for the land on the exercise of the option was £7,000,000 (index linked). The option could be extended for a further 5 years for the sum of £225,000.

    b. The Brewer 1 Option was at a price of £40,000 for 10.5 acres of land. The option was for a term of 5 years, and the price for the land on the exercise of the option was £800,000. The option could be extended for a further 5 years for the sum of £40,000**.**

16. However, it appears that that the ownership structure for the Bridgwater Project still remained unsettled at this time.

17. In this respect, on 22 December 2009 Mr Revell sent a memorandum to Mr van Loo, copied to Mr Knell. The special purpose vehicle for the Bridgwater Project was a company called Bridgwater Gateway Limited ("**BGL**"), which had been incorporated in October 2009 with Paul Knell and Mr Revell as the initial directors. The memorandum sent by Mr Revell stated:

> "*You have kindly offered a participation in future projects which would allow me to start to grow my equity involvement which has always been my aim but at this stage I would like to create a parity between Paul and I to cement what has become a very strong working relationship. In this light can I suggest that he and I share the 10% involvement on a 50:50 basis, so the basic principle would be that Paul and I would be granted a 5% participation in each project but in order to assist you with funding we would not necessarily need a shareholding*."

18. Mr Revell proposed that the options and work in progress be transferred to BGL, and that Mr Knell and Mr Revell would each receive 2.5% of the shares in BGL. It was also proposed that, in addition, there would be certain fees and performance payments payable against certain development milestones. It appears to have been intended that those fees would be paid to Mr Knell's and Mr Revell's respective service companies on a 50/50 basis. It was said that the figures were based on gross proceeds, and that MTIM would charge for project management costs.

19. However, it is common ground this was not the structure which was in fact adopted. Rather, the structure which was settled on was that BGL, which acquired and owned the land, was to be 100% owned by Mr van Loo and other investors. This was because Mr van Loo needed to have the equity in BGL available in order to raise funds from his investors. Mr Revell said in his evidence that he was quite happy to have a management agreement and a profit share rather than a shareholding.

20. The sole shareholder in BGL was J24 International BV ("**J24**"). The ultimate shareholders in J24 were Mr van Loo and certain other, mainly Dutch, investors. These included two individuals, Arnoud Backer and Pierre de Vos. Some of the investors appear to have held their interests in J24 through Gateway Investments BV ("**Gateway Investments**"). Mr van Loo appears to have held his own interest in J24 through a company called Oldenhoeck BV ("**Oldenhoeck**") as shareholder.

21. Instead of having shareholdings in BGL, the arrangement which was settled on was that Mr Knell and Mr Revell would receive their profit shares through MTIM. Thereafter, an asset management agreement for the Bridgwater Project was entered into between

MTIM and BGL on 26 February 2010 ("**the Bridgwater AMA**"). Under the terms of the Bridgwater AMA, MTIM was entitled to various fees; I return to this below. In addition, the shareholdings in MTIM were to be adjusted through the issue of further shares such that BDI then held 51% of the shares, with Mr Revell having 25% and Mr Knell 24%. In the event, it does not appear that the actual issue and allotment of the shares took place until November 2015: see further below.

22. Paul Knell says that it was agreed that his and Mr Revell's share of the profits would be achieved via payments made to MTIM from BGL on the development and land sales of an amount of 10% of the purchase price, whether freehold, leasehold or a capital sale of shares, and that it was agreed that the disposal fee would be paid whenever there was a transfer of a plot of land, or share sale.

23. Paul Knell also said in his witness statement (paragraph 23) that it was expressly agreed with Mr van Loo that BGL's payments to MTIM would be "ring-fenced" in MTIM, and would not be used to repay the existing loan owed by MTIM to BDI, which included the funds used to pay the rent on the Savile Row penthouse. It is also said that the development loans which MTIM would receive from BDI to fund the Bridgwater project would also be ring-fenced, as it was Mr van Loo and his Dutch investors who were to fund the total project development costs. This is disputed by Mr van Loo. I return to this point below.

24. Finally, it is also said by the Claimants that it was agreed that Mr Knell and Mr Revell would provide consultancy services to MTIM through their respective service companies. Mr Knell's service company is Marchgale and it entered into a consultancy agreement with MTIM on 1 January 2010 ("**the Marchgale Consultancy Agreement**"). Marchgale is the Third Claimant in the Part 7 Claim. The term of the Marchgale Consultancy Agreement ran to 25 December 2015. The monthly fee due under the agreement increased incrementally from £10,838 per calendar month in 2010 to £13,500 per calendar month in 2015.

25. The Foxwell Option and the Brewer 1 Option were then assigned by MTIM to BGL on 26 February 2010. The sums due under the Options were, however, paid by MTIM, financed by monies loaned to MTIM by BDI.

26. The same day (26 February 2010), a Board meeting of MTIM took place at which it was agreed to issue and allot 49 new shares in MTIM to BDI, 25 to Mr Revell and 24 to Paul Knell.

27. At some point in 2010, a business plan was then produced for the Bridgwater Project including a proposal referred to as "Scheme B". The plan was that the plot would be developed partly for commercial use, and partly for residential use. The estimated costs were just under £20 million, and gross income was projected at £46 million. The projected timeframe for the project was four years.

28. On 6 January 2011 MTIM entered into a second option agreement with Mr Brewer in relation to land at the site for a price of £50,000 ("**Brewer 2 Option**"). The term of the option was for five years and the exercise price was £841,600. The option could be extended for a further five years for a price of £50,000. Again, the option price was financed by way of lending made available to MTIM by BDI.

29. On 1 August 2011 Peter Knell became employed by MTIM as its finance director.

30. On 8 July 2012 Mr Revell produced an update for the Bridgwater Project in which he reported that substantial progress had been made over the previous three months and that they were in line with the timetable and budgets and were "*making good progress on the necessary technical issues and receiving significant and exciting interest in the project from potential occupiers*". It was said that the relevant planning permission had been issued (which I assume meant the application for planning permission) and that the section 106 agreement was being signed by all the necessary parties. On 12 July 2012 a meeting took place with the shareholders in J24 in Amsterdam. It was reported that the project was still within budget.

31. The Bridgwater Project was divided into two phases comprising the original Foxwell and Brewer Options. Phase 1 was for commercial premises and Phase 2 was for residential. On 24 December 2012 the outline planning permission for Phase 1 of the development was issued by Sedgemoor District Council.

32. On 24 December 2012 a further update was provided to the J24 shareholders. The tone of the update was upbeat referring to the grant of the outline planning permission and discussions with potential occupiers of the site. It was said that it was the intention of management to apply for Phase 2 planning permission immediately after the six week appeal period for Phase 1 had expired. The update also stated:

> "*According to the contract, the Miller Turner success fee is a 10% carry on the net result, which means if for example the net result for the project and shareholders is £20 million, the costs for Miller Turner are £2 million*."

Compass House

33. One of the parts of land adjacent to the land which was the subject of the Foxwell and Brewer Options is land called Compass House. This was owned by another farmer, Mr Hawkins. Part of this land (a L shaped strip) (ST303282) was purchased by BGL on 17 December 2012 for approximately £500,000 in order to provide access to the main site. The terms of that agreement allowed Mr Hawkins to repurchase the site back for £1 if certain conditions were not met within 20 months. Those conditions, which required certain progress to have been made in relation to the development, were not in fact satisfied by the end of the 20 month period.

34. This then required further negotiations to be undertaken with Mr Hawkins. Indeed, the witnesses agreed that the effect of the conditions not having been met was that the L shaped strip in effect became a "ransom strip". The result of this was that the remainder of the land (ST166890) was then purchased by Compass House Bridgwater Ltd ("**Compass House Bridgwater**") in December 2014. The purchase price of approximately £1.6 million appears to have been funded by a further Dutch investor, Marinus Verwoert, secured by a charge over the property. This lending was then repaid in 2015 when further funding was introduced.

35. It was suggested by the Respondents that the initial purchase of the L shaped strip was not sufficient to provide adequate access to the Bridgwater site, and that, as a result, it was necessary to purchase the remainder of the land from Mr Hawkins. Paul Knell however disagreed with this in his evidence. In my judgment, although the evidence is

not entirely clear, it is more likely that the Claimants are right that the additional land had to be purchased because of the leverage which Mr Hawkins had gained as a result of the right which he had to repurchase the L shaped strip for £1 in light of the relevant conditions not having been satisfied in the 20 month period.

36. The land on title ST166890 has since been leased by Compass House Bridgwater to Premier Inn and a Premier Inn hotel has been constructed. For these purposes, it appears that Premier Inn may have been granted certain rights over or in relation to the L shaped strip (ST303282).

The Buxton Project

37. In early 2009 Mr Knell was also made aware of a possible development opportunity in Buxton through a developer he knew. The sites were at Staden Lane and at Cowdale Quarry, located just outside of Buxton, in the Peak District. Staden Lane had water extraction rights from a borehole on the Staden Lane land next to a water bottling plant and yard known as Rockhead House. Cowdale Quarry had access to an adjacent spring called Rockhead Spring. The Staden Lane borehole and the Rockhead Spring had connected licences whereby groundwater from the Staden Lane borehole had to be used to compensate for any loss of water entering the River Wye due to abstractions from the Rockhead Spring.

38. The sites and water extraction rights were owned by Paul Hockenhull or his company, Hockenhull Enterprises Antigua Limited ("**Hockenhull Enterprises**").

39. It is not disputed that this opportunity was introduced by Paul Knell to Mr van Loo. Mr Knell says that it was agreed that it could form part of the joint venture on the same terms as the agreement for the Bridgwater Project. In other words, Mr van Loo would be responsible for raising the funding for the project, and Mr Knell and Mr Revell would manage it through MTIM. That is disputed by Mr van Loo.

40. There was an original proposal for Nestle, the owner and distributor of the Buxton water brand, to use the site for an expansion of its operations. For these purposes, a single page business plan was prepared showing possible income (before costs) of £9.7 million.

However, this proposal did not come to fruition as Nestle decided instead to use an alternative site.

41. Paul Knell says that, after Nestle pulled out, the Rockhead House site was identified as a location which could be utilised to attract another water bottling company, and that business plans were put together for Staden Lane and Cowdale Quarry. It is said that the plan was to apply for planning permission to develop Cowdale Quarry into a water bottling production and warehouse site, and to purchase the land and the water extraction rights for Rockhead Spring. It is also said that the intention was to purchase the Staden Lane property and the water extraction rights located there, and to develop a glass bottling production line for the hotel market.

42. A series of companies were incorporated for the purposes of the Buxton Project. These included a Dutch company, Buxton Investment Holdings BV ("**BIH**") and a number of English companies, Express Park Buxton Limited ("**EPB**"), Express Park Buxton 1 Limited ("**EPB1**"), Express Park Buxton 2 Limited ("**EPB2**"), Express Park Buxton 3 Limited ("**EPB3**") and Cowdale Development Company Limited. Mr van Loo was the principal beneficial owner of BIH; it appears that there may have been some other investors who held small shareholdings. Paul Knell was appointed as a director of EPB on 25 September 2009 and subsequently of the other English Buxton companies.

43. On 18 September 2009 EPB entered into an agreement with Hockenhull Enterprises to acquire a half share in the Cowdale Quarry site for £495,000 ("**the 2009 Sale Agreement**"). Completion under the agreement was conditional on heads of terms being entered into with Nestle or a written indication for approval of a planning application for development of the quarry for a facility for Nestle by a longstop date of 31 March 2010. The longstop date was subsequently amended to 31 December 2010 and then to 31 December 2013.

44. On 8 January 2010 MTIM and EPB entered into an asset management agreement for the Buxton Project ("**the Buxton AMA**"). The terms of the Buxton AMA are similar to those of the Bridgwater AMA. However, there are some differences in the fees provided for by Schedule 2 of the agreement. I return to this below.

45. It appears that around this time a single page "*3 year business plan*" was produced. This projected net income of £5,645,000 over a three year period for the proposed development. This was apparently based on the site being sold for use as a bottling facility, with some additional income being generated by sale of stone and other land.

46. On 16 October 2012 Express Park Buxton 2 Limited ("**EPB2**") entered into an option agreement with Hockenhull Enterprises in relation to the land and water abstraction rights at Staden Lane and Cowdale Quarry ("**the 2012 Option Agreement**"). On the same day Express Park Buxton 1 Limited ("**EPB1**") purchased Rockhead House for £350,000.

47. In 2012 an application for planning permission was made in relation to Cowdale Quarry. This was not however successful. According to Paul Knell, the Planning Inspector however indicated that if an alternative tunnel access to the site was adopted then it was likely that a planning consent would be granted.

48. There were also discussions which took place with an Italian natural mineral water company, Mangiatorella, in relation to a potential joint venture arrangement. In April 2012 MTIM proposed draft heads of terms to Mangiatorella. However, this proposal did not in the event come to anything.

49. On 16 January 2014 an information memorandum was produced for BIH for the purpose of enabling Mr van Loo to try and sell some of his shares in BIH. The information memorandum envisaged the development of the Rockhead House land and the creation of a bottled water brand called "Rockhead". One of the pages of the information memorandum appears to attribute an enterprise value to BIH of £23 million as at 1 December 2013, based on estimates of future cashflows from the project. The Claimants sought to rely on this and I return to this below in the context of remedy.

50. By May 2015, it appears that Paul Hockenhull had died, and his interests were now in the hands of his estate. On 26 May 2015 Paul Knell sent an email to Mr van Loo with some thoughts on the likely costs involved to purchase Cowdale Quarry and possibly the water rights. The email referred to a valuation for the land with planning consent for a bottling plant of £2.8 million. However, it does not appear that this was progressed.

51. On 31 December 2018 Hockenhull Enterprises entered into a sale agreement with Nestle Waters UK Limited ("**Nestle**") under which it sold Staden Lane, Cowdale Quarry and the water extraction rights to Nestle for £3.4 million.

52. On 5 February 2019 a deed of release was entered into between Hockenhull Enterprises and EPB to release the 2009 Sale Agreement and 2012 Option Agreement. This was in consideration for the sum of £1.7 million to be paid by Hockenhull Enterprises to EBP.

53. On 27 May 2020 Rockhead House was sold for £575,000.

Alleged Variation of the Joint Venture

54. It is said by the Claimants that in 2013 it was agreed that Peter Knell would join the joint venture for both the Bridgwater and Buxton Projects, and that it was then agreed with Mr van Loo that Paul Knell's and Mr Revell's shareholdings in MTIM would be adjusted down in order to provide Peter with an 11 % shareholding in MTIM.

55. Peter Knell was appointed as a director of MTIM on 1 June 2013. The actual issue and allotment of the shares in MTIM did not take place until November 2015. At that point, 98 additional ordinary shares of £1 each were issued: 49 shares were issued and allotted to BDI, 19 to Paul Knell, 19 to Mr Revell and 11 to Peter Knell. The effect of this is that BDI then had a 51% shareholding in MTIM, Paul Knell 19%, Mr Revell 19% and Peter Knell 11%.

56. It is also said that it was agreed that Peter Knell would provide consultancy services to MTIM through his own service company, Langnell Limited ("**Langnell**"). Langnell entered into a consultancy agreement with MTIM on 1 February 2014 ("**the Langnell Consultancy Agreement**"). Langnell is the Fourth Claimant in the Part 7 Claim. The term of the Langnell Consultancy Agreement was until 25 December 2016.

57. In the course of the trial, reference was made to a meeting on 11 March 2013 between the Knells, Mr Revell and Mr van Loo at which it is said that Mr van Loo referred to the Knells as "partners". In my judgment, no real weight can be placed on this. It appears

that this was a single comment made as part of the goodbye exchanges at the end of the meeting; I do not see that it can be taken from this that Mr van Loo was agreeing that the Knells were his partners in any legal sense.

Progress of the developments

58. The Claimants then say that, in breach of the alleged joint venture, Mr van Loo failed to fund or procure funding for the two projects. They say that funding was raised by Mr van Loo from Dutch investors, but that this was used for the purposes of other projects. It is said that, as a result, the Bridgewater Project remained stalled for many years.

59. It is clear that there were difficulties and delays in raising funding for the Bridgwater Project. The minutes of a meeting of the directors of MTIM of 17 June 2013 record that it was decided to delay signing a highways agreement, whilst certainty of funding was established. Mr van Loo agreed in his evidence that certain commitments were being delayed, whilst the right funding was being sought. Mr van Loo said that they were constantly working on funding. He explained that there was in a way a vicious circle because the ability to raise funding depended on the ability to demonstrate to existing or potential investors that there were potential purchasers or other interested parties which in turn depended on the development having been progressed which in turn required funding. He said:

> "*So, obviously we would have liked to be able to do the roundabout works asap, but in order to get sufficient funding for that element we needed to demonstrate that there were also parties that would take part of the land*."

60. It appears that at around this time some of the investors in J24 were also becoming dissatisfied with the state of progress on the project. On 12 August 2013 Mr Backer sent an email to Mr van Loo and Lucas Broekveldt requesting a more extensive update on the state of the development. Mr van Loo agreed in his evidence that Mr Backer and Mr de Vos became keen to get out of the project.

61. On 27 June 2014 Mr Revell prepared an update for the shareholders (which I infer was for the shareholders in J24) which reported that a number of steps in relation to Phase 1

of the development had been achieved, including the installation of the initial infrastructure (which, according to Paul Knell, was the roadway for the first 70 metres into the site to the first roundabout), that a highways agreement had been completed subject to funding, and that improved terms for the acquisition of the land from Messrs Brewer and Foxwell were in negotiation. The update suggested that further funding of approximately £10.4 million was required in order to maintain momentum.

62. Mr Backer responded to the update by sending an email saying that the number one issue was funding and that this needed to be discussed.

63. On 30 June 2014 a meeting of the shareholders in J24 and Gateway Investments took place in Amsterdam. Mr Revell indicated that funding was required in order to proceed with the development. It appears that at this time contact was being made with external funders with a view to raising funding for the development. According to Paul Knell, at this point some of the Dutch investors who had originally provided funding were getting cold feet because the project had not been moving forward. The contacts approached for funding included WMS Commercial and Redrock Commercial Finance.

64. On 24 October 2014, as part of the fund raising exercise, Alder King produced a valuation of Phase 1 of the Bridgwater Project. This valued Phase 1 at £6 million. In an email of the same day to Mr Backer, Mr Revell stated this he thought that this was an understatement of what was actually achievable. In an earlier email of the same day to Mr Backer, Mr de Vos and Mr van Loo, Mr Revell referred to the funding difficulties and said:

> "*I do regret raising these issues in this manner but I do feel that just as in August with the Compass deadline and against the advice that your directors have been providing in the clearest terms since 2013, we are in danger of destroying the opportunities to progress this project through lack of funding and decisive action*."

65. On 29 October 2014 an update for the shareholders in J24 recorded that agreement had reached with Mr Hawkins for the Compass House site at an asking price of £1.6 million, and that it had been decided to extend the options with Foxwell and Brewer for five

years. It was stated that the purchase of Compass House was to be achieved by shareholder funding of €2.5 million provided to Compass House Bridgwater. A total request for funding of £1.85 million was made of the shareholders, including the money required to extend the two options. It is common ground that the funding required in order to purchase Compass House had not been envisaged at the start of the project as something which would likely be required.

66. On 30 October 2014 Mr Backer emailed Ben de Jonge, an associate of Mr van Loo, proposing some terms for an exit by Mr Backer and Mr de Vos from the project.

67. In November 2014 fees were paid in order to extend the Brewer 1 and Foxwell Options and then again in November 2015 to further extend the Foxwell Option. The Brewer 2 Option was extended in January 2016.

68. An update memorandum of 26 November 2014 produced by Ben de Jonge records the funding problems, and noted that the project was being put on the market by two parties: by Ben de Jonge in order to raise money for a proposed acquisition of the interests of certain of the investors in J24, and by Mr Backer and Mr de Vos to try and obtain finance or joint venture partners for the project.

69. On 9 January 2015 Peter Knell emailed Mr van Loo asking if the parent companies could confirm when funding would be provided. On 22 January 2015 the Knells and Mr Revell sent a memorandum to J24, BIH and BDI saying that if, within seven days, certain confirmations as to funding were not forthcoming then the directors of MTIM would need to formally meet to review MTIM's solvency and potentially seek the appointment of an administrator. By a further memorandum of the same date addressed to J24 and BDI the Knells and Mr Revell said that they were investigating various strategies to enable the Bridgwater Project to proceed on an incremental basis by achieving the initial access and roadway.

70. It is clear that during this period EPB and the Buxton Project were also suffering similar issues from a shortage of funding. These funding difficulties included an apparent inability to pay the rates due on Staden Lane.

71. On 21 April 2015 a meeting took place between Mr van Loo, Ben de Jonge, Paul Knell, Peter Knell and Geoffrey Revell at New Bond Street. It was said that the purpose of this meeting was, inter alia, to clarify "*shareholding structures in the Netherlands*" and funding arrangements. It is clear that the issues with the lack of funding would have been discussed.

72. At the start of May 2015, matters then escalated. On 5 May 2015 Goodman Derrick solicitors, on behalf of Paul Knell, Peter Knell and Geoffrey Revell as directors of BGL, then wrote to J24. It was said that J24 had agreed to provide funding to BGL in order to facilitate the development of the Bridgwater Project. In this context, reference was made to the asset management fees said to be due to MTIM under the Bridgwater AMA. However, it was said that this sum was not included in the funding request since MTIM, as a related entity, was not expected to take steps to recover this sum, at least in the immediate future.

73. On 8 May 2015 a meeting then took place at Goodman Derrick's offices attended by Paul Knell, Peter Knell and Mr Revell and by Mr van Loo. At that meeting, Mr van Loo explained that there was a proposed restructuring which would involve Gateway 24 BV ("**G24**") raising new funding from outside investors which it would then use to acquire the shares in J24 which were not currently owned by entities controlled by Mr van Loo. The entities controlled by Mr van Loo which held shares in J24 would also transfer their own existing shareholdings in J24 to G24. It was said that the intention was to raise approximately a further £10 million for working capital for the project.

74. The note of the meeting records the following proposal:

> "*The issue by Gateway 24 BV of new shares to third party investors. This would result in Gateway 24 BV being owned in the following proportions: Oldenhoeck Holding BV (itself 100% owned by EVL): 32%; outside investors: 68%. The outside investors would be subscribing for new shares in Gateway 24 BV for a total sum of approximately GBP 10 million.*
>
> *Gateway 24 BV would use the new equity funding to acquire the 68% of the issued shares in J24 BV which are not owned by Oldenhoeck BV or other entities*

controlled by EVL. The consideration for the acquisition by Gateway 24 BV is approximately GBP 7.2 million.

At the same time, Oldenhoeck BV would transfer its 30% shareholding in J24 BV, and other EVL-controlled entities would transfer remaining shares in J24 BV, to Gateway 24 BV.

As a consequence of the above steps, Gateway 24 BV will become the 100% shareholder in J24 BV, which will continue to own 100% of BGL. In addition, Gateway 24 BV will have additional funds of approximately GBP 2.8 million which are earmarked for the BGL development."

75. It was said that this restructuring was scheduled to complete on 19 May 2015.

76. According to the note of the meeting, Peter Knell asked whether Mr van Loo approved of BGL continuing to engage MTIM as its asset manager, to which Mr van Loo said that there was no incentive from his perspective to change the current situation. Accordingly, Peter Knell agreed to produce an updated asset management agreement which would be treated as having taken effect (between BGL and MTIM) from the termination of the prior agreement on 31 December 2014. It appears however that there was no firm agreement for a new AMA by this time, as Paul Knell accepted in his evidence.

77. On 8 May 2015 Peter Knell duly sent a draft updated AMA to Mr van Loo.

78. On 20 May 2015 BGL, acting by Paul Knell, Peter Knell and Geoffrey Revell, sent a demand to J24 for funding of £1,080,000 to meet a demand for such sum which had been received by BGL from MTIL. This sum represented the £15,000 per month asset management fee said to be payable under the Bridgwater AMA over the five year term of the agreement plus VAT. This followed an invoice dated 20 May 2015 for this sum issued by MTIM to BGL. The Respondents criticise this action as precipitate; the Claimants say that it was appropriate given that the restructuring had not taken place by the 19 May deadline which had previously been mentioned by Mr van Loo. In my judgment, the Knells were entitled to take this step given the funding difficulties, although it clearly contributed to the breakdown in the relationship between the parties.

Transfer of shares in J24

79. In August 2015, all of the shares in BGL's parent company, J24, which were not already held by G24 were acquired by it. BGL was informed of the sale by a letter from G24, an undated draft of which may have been sent in August 2015 with a signed version then sent on 9 October 2015. The letter explained that:

> "*Gateway 24 B.V. has raised GBP 18 mln in total of which approximately GBP 8.3 mln has been used to acquire the shares as stated above and the remainder of the funds (approximately GBP 9.7 mln) will be applied to i) acquire approximately 90 acres of land, held under various option agreements by Bridgwater Gateway Ltd, ii) to invest in the infrastructure and iii) to pay for all the expenses and expenditures that will be incurred.*"

80. Accordingly, the effect of the transaction was that new funding of £18 million was raised of which £8.3 million was used to acquire shares of certain of the existing investors and £9.7 million was to be used as new funding for the development. It appears that the existing investors who exited at this stage included Mr Backer and Mr de Vos. In this evidence, Mr van Loo said that he could not remember whether or not they exited with any form of profit on their original investments. I found that evidence surprising and I do not accept it; in my judgment, the terms on which Mr Backer and Mr de Vos exited the project would have been a matter of keen consideration and negotiation at the time.

81. Erik Kaman was appointed as the project manager for the new shareholders.

82. G24 was said to be owned by eight individual investors including Mr van Loo. At that stage, it appears that Mr van Loo's vehicle, Oldenhoeck, had a 29% shareholding in G24. It also appears that the position then changed subsequently. In this respect, I was also shown a document setting out the shareholders in G24 as at 17 June 2019, which include a number of individuals and corporate vehicles, including Miller Turner Group BV (as to 9.7%), which also appears to be an entity associated with Mr van Loo and through which he has subsequently held his interest in G24. Mr van Loo's current interest in G24, held through Miller Turner Group BV, is 5.25%.

83. As to the other companies in the group structure, G24 in turn holds 100% of the shares in Compass House Bridgwater. J24 holds 100% of the shares in Bridgwater Gateway Industrial Limited. As noted above, Compass House Bridgwater owns the Compass House land on which Premier Inn now has a lease for a hotel.

Subsequent Developments: Autumn 2015

84. On 2 September 2015 a meeting took place at the Washington Hotel in Mayfair between the Knells, Mr van Loo and Mr de Jonge. The Claimants' case is that it was agreed on this occasion that the Bridgwater AMA would be extended for a further five years with an increased monthly asset management fee of £55,000 per month. Paul Knell's evidence was different: he said that at this time a new AMA was still in the process of being put in place. Peter Knell says that Mr van Loo and Mr de Jonge gave instructions to draft an updated Bridgwater AMA for a further five years, with the monthly fee increased to £55,000. I address below the question of whether a new Bridgwater AMA was agreed between the parties.

85. On 5 October 2015 Peter Knell sent a funding request from BGL to Mr van Loo. The total funding request was for £1,055,695. This request excluded the £1,080,000 which had been said to be due to MTIM from BGL in respect of asset management fees.

86. On 12 October 2015 Peter Knell sent an email to Mr de Jonge attaching a Word version of the draft AMA for BGL. The letter asked for Mr De Jonge's comments and feedback for Paul and Peter Knell and Mr Revell to review.

87. On 20 October 2015 Mr Revell wrote to Erik Kaman, who represented the new investors, outlining a number of outstanding challenges with the development. A number of outstanding matters were identified including in relation to the acquisition of the freehold land interests for Phase 1. The update also explained the need to make a detailed application for planning permission by 12 December 2015 and that there was a dispute with the planning authority over the "nuclear restriction clause" for the site (a provision restricting use of the site to services relating to the construction of the new Hinkley Point nuclear power station). The update also stated that there was a further

issue pending with regards to the capacity of access to the site. It was also noted that the initial planning permission application for Phase 2 had been refused, essentially on the grounds of prematurity.

88. The introduction of the new shareholders clearly led to tensions. Mr Revell said this in his evidence:

> "*Yes. The issue arose -- and the problems came up because there wasn't the money available internally within BDI or which ever it was and therefore third party shareholders needed to be brought in. Those third party shareholders had different ideas. There were times when they were certainly very difficult, they made Eric's life very difficult as well, and they wanted to interfere and become involved and decide how we handled things*."

89. Also on 20 October 2015 Mr de Jonge emailed Mr Revell asking for a revised funding request without MTIM and aged creditors so that they could convince Mr Kaman. This led Mr Revell to express his frustration in a further email of the same date:

> "*I know it has been taken out of your hands but it is very disappointing that what you promised last week is now in the gift of EK and that the goodwill we have shown in working without payment in the past three months is now being dishonoured and thrown back in our faces. I paid for my train ticket and lunch yesterday, including EvL and EK, yet he is questioning our due payment. Something has gone terribly wrong here, mugging might be suitable description.*"

90. On 21 October 2015 Mr Revell emailed Mr Kaman complaining about the lack of action, and attaching a revised funding request. It was said that it was necessary to pay outstanding creditors in order to avoid adverse actions being taken. It was said that the UK directors and their consultants had been working on goodwill alone for some time and that this was not acceptable. It is clear that, by this point, there was a fairly acute lack of funding affecting the Bridgwater Project and the tone of the correspondence was becoming increasingly strident.

91. In November 2015 Mr Kaman produced an update for the G24 shareholders in which he stated that the team in the UK was strongly guided by the past and that work had suffered as a result. It was suggested that communications were difficult and appointments cancelled. It was said that it might be necessary to change some of the people. Again, this indicates that there was tension and unhappiness in the relationship between the Knells and the new shareholders.

92. Following this, on 2 December 2015 Clintons, acting on behalf of MTIM, wrote to BGL demanding payment of the sum of £1,080,000 in respect of the asset management fees. Paul Knell said in his evidence that at this point the Knells had realised that there was never going to be a working relationship with the new shareholders. That is consistent with the story told by the contemporary documents. The Clintons letter was responded to by an undated letter from G24 and J24 indicating that the debt would be set off against the loan advanced by BDI to MTIM. It was noted that this resulted in a net balance being owed by MTIM to BDI.

93. The same day (2 December 2015) Goodman Derrick, on behalf of BGL, wrote a lengthy letter to J24. The letter referred again to BGL's funding requirements. It said that, although since August 2015 there had undoubtedly been an improved flow of funding, many of the chronic issues still remained. It also stated that it had been agreed that a new asset management agreement would be entered into with effect from August 2015 and that a monthly fee calculated at cost, which would normally be a minimum of £55,000 (plus VAT), would be payable by BGL to MTIM, commencing in August 2015. It is however disputed by the Respondents that any such agreement had been agreed.

94. A response to the 2 December letters from Goodman Derrick and Clintons was sent by Mr Kaman (on behalf of G24 and J24) and Mr van Loo and Mr de Jonge (on behalf of BDI) to the directors of MTIM. The letter proposed settling MTIM's claim against BGL by way of set-off against part of MTIM's debt to BDI. The letter did not directly respond to the request for funding, but merely noted that the Bridgwater AMA had expired and said that the directors of BGL had been repeatedly informed about the funds that were available in G24.

95. On 4 December 2015 Mr Kaman produced an update to shareholders on the project which covered various matters. On the MTIM management team, it stated (in part repeating what had been stated in one of the earlier updates):

> "*The team in the UK is strongly guided by the past and the work suffers as a result. Communication is difficult and appointments are cancelled. We may have to change some of the people (financially and operationally). The change can be difficult, but we are convinced that if this is necessary, it is better for the future of the project*."

96. On 18 December 2015 BGL wrote to G24, J24 and BDI responding to their letter. In relation to funding, the letter noted that it was helpful to have received an undertaking from G24 to support BGL for the next 12 months following the signing of its 2014 accounts. It was also noted that BGL had received the draft loan agreement from G24 and that some points in relation to this would be raised in separate communication. In relation to the debt owed by BGL, the letter commented that it was not seen how it could be proper for MTIM to agree to such a transaction. The letter also stated that, although the new AMA had not been confirmed in writing, it had been agreed in August 2015 by the then directors of G24.

2016: Continuing Deterioration in the Relationship

97. On 8 January 2016 Mr van Iddekinge wrote to Peter Knell stating that the majority directors of MTIM did not agree with the management fee of £55,000 per month and so did not agree with the booked charges for this fee for December 2015. This letter followed a meeting which had taken place in Bristol on 7 January 2016.

98. On 11 January 2016 Mr Kaman then wrote in response to BGL's letter of 18 December 2015. The letter indicated that there was now sufficient information and funding to finalise the 2016 budget proposal and to submit it for approval but that this was subject to the execution of a loan agreement, and that G24 was awaiting feedback on the draft agreement which had been provided. It was noted that an inter-company debt was owed by BGL to MTIM but it had been agreed between the shareholders of G24 and BDI that any amount of BGL's debts above £3.7 million would be assumed by Oldenhoeck. The

letter set out two proposals for implementing this arrangement. The letter also stated that no new AMA had been agreed and that such an agreement was not necessary. The letter stated that: "*I believe that considering the developments of the Company and the requirements for the realisation of the project a reorganizational change will be necessary in the best interests of the Company*".

99. On 15 January 2016 Clintons, on behalf of MTIM, then wrote to BGL saying that there had been a failure to comply with the Pre-Action Protocol and that, unless a response was forthcoming within seven days, proceedings would be issued.

100. On 18 January 2016 Mr Kaman wrote a further update to the G24 shareholders in which he said that the relationship was difficult. On 19 January 2016 Mr Kaman responded to Clintons referring to the meeting which had taken place on 7 January, and his letter of 11 January, and noting that a settlement proposal had been made.

101. On 20 January 2016 Clintons wrote to Mr Kaman at J24 again demanding payment of the £900,000 plus VAT for management fees said to be due to MTIM, and threatening the issue of court proceedings.

102. On 15 February 2016 Mr Kaman prepared a further update for the shareholders in G24. The update stated little progress had been made during January "*because the English management is very much obstructive*". It noted that it had not been possible to settle the claim made by MTIM. Mr Kaman referred to an administrative backlog, and stated that the 2014 financial statements for BGL had not been finished due to opposition from English management. This was presumably a reference to Paul and Peter Knell.

103. On 17 March 2016 Mr Kaman prepared a further update for shareholders which recorded that:

> "*The course of events in February was characterized by still a complex course of events in order to simplify the management structure. At the moment it is a case between BDI and Miller Turner, with Bridgwater being held hostage because the MTIM management thinks it can better achieve its personal goals. The solutions proposed by BDI/G24 and coordinated with lawyers are being*

held up in implementation due to the slow decision making at BDI. This costs a significant amount of time and money. It is important to keep the balance right as one of the English management members is instrumental in the progress of the Bridgwater project"

104. It also stated:

"*As stated several times, the relationship with the English management is complex. An account of GBP 900k is still open from the asset manager Miller Turner Investment Management (MTIM) for which MTIM has filed a claim with the shareholder of Bridgwater, J24 and its parent company G24. Note in this regard that the directors of MTIM are the same persons as the directors of Bridgwater and therefore have a conflict of interest in the project. We have made reasonable proposals to solve this, but we have not been able to find MTIM for this. It no longer seems possible to aim for a settlement. So other steps need to be taken to resolve this, at least for the Bridgwater project. This requires the cooperation of BDI. Unfortunately, this one has to wait for the time being. We are assisted by an English lawyer to take legal action but time and costs continue. Ultimately, we will have to enter into a conversation about a settlement thereof*."

105. The update also stated that the new AMA was ready, but that they were waiting to sign until all management matters had been resolved.

106. On 17 March 2016 further directors were appointed to BGL by a shareholder resolution passed by J24: Erik Kaman, William Knoest, Johannes van der Valk and Gateway Investments.

107. On 24 March 2016 Clintons then wrote to Mr van Loo and others on behalf of Paul Knell, Peter Knell and Mr Revell in their capacity as shareholders in MTIM. In this letter, a claim was outlined by MTIM against BGL for damages in respect of the disposal fee which it is said would be due to MTIM under the new Bridgewater AMA which it was said had been agreed. This claim was put in the sum of £4.6 million, being 10% of the gross income of £46 million for the Bridgewater Project projected under Scheme B.

The Respondents point out that there was no direct claim outlined by Clintons against Mr van Loo under the alleged oral joint venture agreement.

108. At the end of March, Paul Knell and Peter Knell resigned as directors of BGL, EPB, EPB1 and EPB2.

Appointment of Further Directors to MTIM

109. On 28 April 2016 further directors (Paul Vlek, Franklin van Beuningen and Mr van Iddekinge) were appointed to MTIM by a shareholder resolution passed by BDI. This was presumably done on the instructions of Mr van Loo. A number of further steps were then taken.

110. By a loan agreement dated 10 June 2016 BDI then made a £5 million loan facility available to MTIM. Similar loan agreements were entered by BDI with EPB (for £3 million) and EPB1 (for £1 million). The minutes for the MTM Board meeting of 10 June 2016 record that the balances under the loans were £4.52 million, £2.058 million and £0.605 million respectively. The addendum to the loan facility agreement between BDI and MTIM puts the balance as at 10 June 2016 at a slightly lower amount of £4,399,360. The loan facility agreement is governed by Dutch law. I note that it does not contain any provision prohibiting assignments of the loan or any part of the loan, and no evidence of Dutch law was adduced suggesting that assignments of all or part of the loan were not possible or that any such assignments required the consent of the borrower.

111. On 29 June 2016 G24 and Oldenhoeck entered into a "Setting Agreement" to resolve a dispute which had arisen as to the level of debts of BGL following the acquisition of G24's shares by the new shareholders in August 2015. BGL's debts above the level of £3.7 million were to be borne by Oldenhoeck. It was also said that there was to be a settlement of the unpaid management fees of MTIM against the claim against MTIM assigned to BGL. This was clearly a reference to an assignment of part of BDI's loan to MTIM.

112. It appears that the relationship between the Knells and Mr van Loo and the Dutch investors thereafter deteriorated further. On 21 July 2016 Paul Knell emailed Mr Bishton, Mr van Loo and Mr van Iddekinge stating that, due to legal action by the minority shareholders in MTIM against the majority shareholders, they were unable to release any data on the Buxton projects at that time. The Respondents say that Paul Knell was being obstructive. In my judgment, there is some force in this criticism.

113. On 30 August 2016 Ian Jewson, the planning consultant for the Buxton Project, emailed Mr van Iddekinge stating that he had received an instruction from Paul Knell not to release or engage on any matters regarding the Buxton Projects due to conflicts of interest and pending legal actions. This followed an email which Mr van Iddekinge had written to Mr Jewson on 25 August asking for information.

114. On 1 September 2016 BDI wrote to MTIM complaining that MTIM was preventing the Buxton companies from conducting their business, and that this was a material breach of the Buxton AMA. It was said that, in the absence of confirmation that MTIM would refrain from such behaviour, then the AMA would be terminated for default effective 15 September 2016. The same day Mr van Iddekinge wrote to Paul Knell querying invoices from Marchgale which had been recorded in MTIM's books and accounts and an entry for £50,000 director fees for "Paul Knell Project". Paul Knell responded to this email on 8 September 2016 explaining the invoices essentially on the basis that services were still being provided by MTIM under the AMAs using Mr Knell's consultancy services. Mr Knell said in his evidence that by this time the relationship between the parties had become "scrappy" and to an extent unprofessional on both sides.

115. By a notice dated 20 September 2016 BDI then assigned £2.1 million of the debt under the loan to MTIM to BGL and by a second notice BDI assigned £900,000 of the loan debt to EPB. These amounts were then used to set off BGL's and EPB's respective debts owed to MTIM.

116. On 20 October 2016 there was a Board meeting of MTIM at which the notices of assignment and the questions of acknowledgment of the assignments and set off of the claims were discussed. The draft minutes record the Knells and Mr Revell objecting to the assignments and set offs as being in breach of a joint venture agreement. There was

also discussion of the proposed transfer of the Brewer 2 Option from MTIM to BGL which was also objected to by the Knells and Mr Revell. The meeting concluded without the assignments and proposed set-offs being approved. In an email dated 27 October 2017 following the meeting Paul Knell reiterated his opposition to the assignments, the set-offs and the transfer of the Brewer 2 Option.

117. At a further Board meeting of MTIM held on 1 November 2016, the majority of the Board then resolved to acknowledge the assignments and to approve the set-offs. It was also acknowledged that the AMAs had been terminated effective as of 31 March 2016. It was also resolved to transfer the Brewer 2 option to BGL for no consideration. Paul Knell, Peter Knell and Mr Revell dissented from the resolutions passed at this Board meeting. During the meeting there was discussion about the existence of a joint venture agreement; the minutes record that it was confirmed that no written joint venture agreement existed. They further record that the reference to a joint venture agreement in the 20 October minutes was "*to an overall commitment of the Members of the Company set out in a letter*".

118. On 6 December 2016 BGL wrote to MTIM summarising the financial position between the two companies. It was said that the total amount due to MTIM of £1,387,446 under the Bridgwater AMA from 2009 until August 2015 had been set off against the assigned loan of £2,100,000, and that BGL wished to receive a credit note for £578,400. One of the points made by the Claimants was that, although this set-off was purportedly effected and the relevant amounts owed by BGL (and EPB) to MTIM were treated in the accounts as having been discharged, there was no corresponding reduction recorded in MTIM's accounts of its liability under the loan to BDI.

2017

119. On 9 January 2017 Paul Knell sent an email to Mr van Iddekinge. Amongst other things, Mr Knell said that the minority shareholders wished for MTIM to invoice BGL for a fee of £1.8 million said to be due to MTIM following the August 2015 refinancing. This fee appears to have been calculated as 10% of £18 million, being the total funds introduced as part of the refinancing, and was said to be due under the Bridgwater AMA in connection with a "Disposal". This was the first time that this particular claim had been

made. Mr Knell also complained that the steps outlined in the 6 December 2016 letter from BGL were detrimental to MTIM.

120. Further emails then passed between Paul Knell and Mr van Iddekinge with an increasing irate tone. On 16 January 2017 Mr van Iddekinge emailed Mr Knell saying that he was well aware of the circumstances and "*so let's stop playing games*". On 17 January 2017 there was a further exchange where Paul Knell stated that it had been agreed that MTIM would invoice BGL £55,000 per month under the AMA. Mr van Iddekinge responded that the £55,000 was to include all costs with no additional pass-through of expenses, that the expenses were to be paid by BGL directly and that MTIM was therefore only entitled to invoice the expenses for Mr Revell and Paul and Peter Knell.

121. On 16 March 2017 there was a further MTIM Board meeting. The majority of the Board rejected the Knells' request that MTIM issue an invoice to BGL for the sum of £1.8 million said to be due under the Bridgwater AMA.

122. On 3 May 2017 Paul Knell emailed Mr van Iddekinge saying, amongst other things, that he, and others described as "*the MTIM Co-directors*", proposed to invoice BGL for £1.8 million said to be due to MTIM for the forward sale of the Bridgwater Project. This was repeated in a further email sent by Mr Knell to Mr van Iddekinge on 26 May 2017. The exchanges became heated and on 27 June 2017 Paul Knell emailed Mr van Iddekinge saying that "*Your emails are just non responses and are just stupid ...*". In fact, Mr Knell proceeded to cause an invoice for the £1.8 million be issued purportedly by MTIM to BGL. On 29 June 2017 Mr van Iddekinge then wrote to Mr Kaman saying that the invoice was not approved or supported by the Board of MTIM. I accept the Respondents' submission that Mr Knell did not have authority to cause this invoice to be issued in the name of MTIM. Mr Knell accepted that he knew that he did not have the Board's authority to cause the invoice to be issued in the name of MTIM.

123. A further issue also appears to have arisen out of the fact that Paul Knell was continuing to invoice MTIM for the fees under the Marchgale Consultancy Agreement, notwithstanding that the terms of this agreement had expired (on 25 December 2015) and the AMAs had either come to an end (in the case of the Bridgwater AMA) or been terminated (in the case of the Buxton AMA, with effect from 31 March 2016). MTIM,

through Mr van Iddekinge, was disputing these invoices. Mr Knell's position was, and is, that he continued to provide services notwithstanding the expiry or termination of the agreements. On 15 January 2018 Mr van Iddekinge wrote to Mr Knell stating that the Marchgale Consultancy Agreement had terminated on 31 December 2015, that final payment was made in relation to the Bridgwater Project at the end of March 2016 and that no further services had been provided in relation to the projects.

Removal of the Knells

124. The Knells were removed as directors of MTIM by a shareholders' resolution passed on 10 October 2017, passed on the vote of BDI as the majority shareholder. Mr Revell abstained and Paul Knell and Peter Knell voted against. The record of the meetings records Mr Revell as saying that the situation clearly shows the gap between the parties and that the momentum for negotiating went a long time ago.

Present status of the Bridgwater Project

125. The present status of the Bridgwater Project is that the development has still not been completed. Information about the present status of the project is contained in a letter from BGL dated 8 June 2023 which was included in the trial bundle. The Claimants say that this letter is a witness statement in disguise and that it cannot be relied on. However, I do not see that there is any reason not to take the letter as giving an accurate account of the current position.

126. Full planning consent for Phase 1 was obtained after 2015 and the infrastructure was essentially complete by 2018. It is said that all the plots are now serviced and ready for marketing to commercial users. The construction of five warehouses on Phase 1 was completed in around August 2020 when they were let out to commercial tenants. The five warehouses were let out on 10 year leases, with no premium, at a combined rent of £230,000 per year. There is also a Costa Coffee establishment that was developed and leased by BGL at a rent of £60,000 p.a.

127. Since August 2020, five further warehouses have been built on Phase 1 in January 2023. Two of those warehouses were let out in February 2023 on 10 year leases for around

£50,000 and £52,000 rent per year, with no premiums. One of those leases has a five year break clause.

128. Phase 2 was sold by BGL to BoKlok, a residential property developer, in around July 2022 as a freehold plot for £13.81 million. BoKlok intends to build both private and affordable social housing after planning approval is obtained. It is said that BGL now has no further interest in the development of Phase 2.

129. There is also now a further phase, Phase 3, which involves further land acquired from Mr Brewer under another option entered into in 2017 and exercised in 2022. The freehold sale of Phase 3 by BGL took place pursuant to contracts exchanged with Vistry Partnership in 2022 for a conditional sale of £11.2 million. Vistry intends to build approximately 150 houses on the land for private sale and has applied for planning consent. The sale is conditional on planning consent being granted. It is anticipated that planning consent will be obtained in November 2024 when the sale will complete. If the sale completes, BGL will then have no further interest in the development of Phase 3.

130. The Premier Inn hotel is on the Compass House land. As described above, this land was purchased through Compass House Bridgwater, whose shares are wholly owned by G24. The lease was granted by Compass House Bridgwater as lessor to Premier Inn Hotels Limited as lessee and Whitbread Group plc as guarantor on 5 July 2019 for 25 years with initial annual rent of £480,000 subject to review. No premium was paid. Although BGL shared some of the infrastructure construction costs of Compass House, BGL has no interest in the Compass House land or the Premier Inn lease.

131. Thereafter G24 sold its interest in Compass House Bridgwater to two of the existing shareholders on 30 April 2020 for £10.26 million. As a result, G24 no longer has any interest in Compass House or the Premier Inn hotel.

132. MTIM is presently dormant. The directors still include Mr van Loo. No Board meetings are presently being held.

<u>Second to Fifth Respondents</u>

133. At this stage it is appropriate to comment on the position of the other Respondents to the Petition. The Second to Fourth Respondents to the Petition were directors of MTIM from 17 March 2016 to 19 April 2018 (in the case of the Second and Third Respondents) and 12 June 2020 (in the case of the Fourth Respondent). The Second to Fourth Respondents were represented in the proceedings alongside Mr van Loo and BDI and took the same position. I was informed at the start of the trial that the Second Respondent had passed away in June 2022, although no application was made to amend the pleadings in order to reflect this.

134. It is pleaded in the Petition that the Fifth Respondent was a director, alternatively de facto director of MTIM from 16 March 2017. The Fifth Respondent did not participate in the proceedings. The Claimants did not develop any case against the Fifth Respondent.

135. In opening, the Claimants indicated that part of the relief they were claiming in the Petition were orders against the Second to Fourth Respondents personally for compensation for loss arising from the alleged unfair prejudice. As I understand it, the basis for this was that it was said that the Court had jurisdiction to grant such relief as part of its powers to grant relief under the unfair prejudice jurisdiction. When I asked where that claim for relief against the Second to Fourth Respondents had been pleaded, it was suggested that it was covered by paragraph (6) of the Prayer to the Petition which seeks "*Further or other alternative relief as the Court thinks fit*".

136. I do not however consider that this is a proper or satisfactory basis for asserting a substantial personal claim for damages against the Second to Fourth Respondents. There is no indication in the Petition that such a claim was being pursued, and the Petition contains no particulars of such a claim. I therefore do not consider that the Second to Fourth Respondents have had proper notice of any such claim. I therefore hold that that it is not open to the Claimants to pursue this claim against the Second to Fourth Respondents.

137. In any event, even if the claim had been properly pleaded, then I would not have awarded damages against any of the Second to Fourth Respondents for the reasons explained below.

C. The Witnesses

138. I turn now to comment on the witnesses whom I heard give evidence.

139. Paul Knell was, in my judgment, a broadly honest witness. However, his oral evidence was in a number of places unclear and imprecise and was not at all times consistent with his witness statement. One important example of this was his evidence as to the alleged "ring fencing" term said to have been part of the joint venture said to have been formed with Mr van Loo. In other places, he was inclined to adopt a position, and to place a spin on events, in order to benefit his own case. One example of this was his exaggeration of his involvement in the genesis of the Bridgwater Project, where it is clear from Mr Revell's evidence that it was Mr Revell who was the initiator of this opportunity.

140. Peter Knell came across as a competent and articulate witness. However, I got the firm impression that he was very concerned to ensure that the Claimants' case was put across and at times his answers strayed into the realms of advocacy. He was not in any event involved in the discussions regarding the joint venture which took place in 2009 and 2010. The Claimants criticised the limited nature of the cross-examination undertaken by the Respondents of Peter Knell, as compared with Paul Knell. However, I do not think that there is anything in this point; the parts of Peter Knell's witness statement which were not simply based on the contemporary documents were relatively limited.

141. Geoffrey Revell was a good witness who gave clear answers to the questions put to him. He was clearly discomfited by being in the middle of the dispute between the Knells and Mr van Loo but he sought to assist and I consider that his evidence was fair and independent. The Claimants criticised the limited cross-examination undertaken by the Respondents of Mr Revell; I consider that there is more force in this criticism. I gained the clear impression that the Respondents wished to avoid Mr Revell giving oral evidence on areas where they anticipated his answers would or might be unhelpful. However, in circumstances where Mr Revell's witness statement was before the Court and where he was able to answer the questions asked of him by the Court, it is clear what his evidence was on the key issues. I accept that evidence.

142. Mr van Loo was not an entirely satisfactory witness. He claimed a lack of knowledge about matters with which, in my judgment, he would have been well familiar. These included: a claimed lack of knowledge as to whether the reduction in his own interest in BGL up to 2013 resulted from sales of shares by him; whether Mr Backer and Mr de Vos had in fact exited from the project in August 2015; and whether, if they did so, they had exited receiving a profit on their original investments. On these matters, I felt that Mr van Loo was evasive.

143. His evidence therefore needs to be treated with some caution. However, when evaluated in light of the contemporary documents, I consider that his evidence in other areas was truthful, particularly as to what he perceived was the true nature of the alleged joint venture between himself, the Knells, and Mr Revell.

144. Finally, Mr van Iddekinge was an honest witness who sought to answer the questions put to him. I accept his evidence.

D. The AMAs

145. At this point it is convenient to turn to the terms of the AMAs. I refer below principally to the Bridgwater AMA; the terms of the Buxton AMA are in broadly the same terms subject to some differences which I deal with specifically below. The AMAs were prepared by Tim Lake of Stepien Lake solicitors.

146. Pursuant to Clause 3, the parties agreed to undertake the management of the proposed development. Under Clause 4, they agreed to meet to review process and to consider the objectives. MTIM agreed to prepare the Budget (as defined) and to submit this for approval by BGL.

147. Pursuant to Clause 5.1, each party was required to co-operate with the other party and to act in fairness and in good faith and to keep the other party adequately informed of all material matters arising in respect of the Asset Management business.

148. Under Clause 7, MTIM was to provide the Asset Management Services as set out in Schedule 1 and BGL was to pay MTIM the fees calculated and payable in accordance with Schedule 2. Schedule 2 of the Bridgwater AMA provided for four types of fee to be potentially payable:

> *"Asset Management Fee: £15,000 plus value added tax per month from the Effective Date until the date that is 3 months after practical completion of the Development, or earlier by mutual if agreement payable monthly in advance.*
>
> *Carried Interest: The Manager shall be entitled to a fee equivalent to 10% of the Sale Proceeds in relation to all Disposals which sum shall be paid together with VAT within 30 days after legal completion of the relevant Disposal.*
>
> *Additional Construction Management Fee: In the event that the Asset Management overseas plot units construction for end users or for leasehold transactions an additional fee will be payable, upon agreement by both parties.*
>
> *Rental Management Fee: For rents collected by the Asset Manager 2.5% of the rent shall be paid as a management and collection fee upon receipt of the relevant rental payment from the relevant tenant.*"

149. Paul Knell's evidence was that the asset management fees were not claimed by MTIM from BGL during the currency of the Bridgwater AMA. However, as noted above, they were claimed on behalf of MTIM during 2015 once the AMA had terminated and the relationship between the Knells and Mr van Loo and the new investors had deteriorated. It is not entirely clear why the asset management fees were not demanded by MTIM from BGL during the term of the Bridgwater AMA but it seems likely that it was simply because BGL lacked the funds to pay them and because MTIM was being funded in the meantime through the loans from BDI. The asset management fees due under the AMA were, however, accrued in the books and records of MTIM and BGL.

150. "*Disposal*" is defined as follows:

- *"a sale, transfer or exchange of the freehold interest in whole of the Development (including a sale by way of a sale of the shares in the company owning the Development); or*

- *the grant of a lease (or the entering into of an agreement for lease) of the whole or any part of the Development at a premium and reserving less than the open market rent of the Development;*

- *and in either case with the intention of realising capital value from the Development"*

151. "*Sale Proceeds*" are defined as:

> "*the aggregate of the net proceeds (after deduction of all costs directly associated with the Disposal) arising from a Disposal excluding VAT*"

152. Clause 8 imposed an obligation on BGL to provide funding in relation to all necessary and reasonable expenditure in relation to the Development. This was to be provided in accordance with annual budgets:

> "*8.1 The Owner will in accordance with the Budget provide Funding for Expenditure, and for the avoidance of doubt, the Owner agrees to meet all necessary and reasonable Expenditure in respect to the Development:*
>
> *8.1.1 depending on the status of the Development and the strategy the Owner has chosen to adopt in respect to the Development, to where appropriate, either, provide the necessary funds to complete the Development, or to do what is reasonably necessary to have the Development ready for Disposal;*

> *8.1.2 And to generally commit sufficient funds to allow the Manager to satisfactorily perform the Asset Management Services it is required to perform under this Agreement, and subject to the Owners objectives under clause 8.2.1, to either undertake a Disposal or to complete the development of the site, and undertake the sale or the lease of the Units.*
>
> *8.1.3 The parties agree that there shall be quarterly reviews of the Budget and business plan."*

153. The Claimants also rely on the definition of "*Expenditure*" which was defined as meaning "*all sums properly expended or reasonably estimated to be expended by or on behalf of the Owner in relation to the development, financing or management of the Development and in the marketing, letting and sale of the Development*".

154. Paul Knell's evidence was that the parties did operate Clause 8.1 and that Budgets, as defined in the AMA, were provided to BGL. Mr van Loo's own evidence was that there were many budgets produced.

155. Clause 9 provides that "*If the Owner at any time decides to sell the Development as a whole, the timing and manner of the Disposal of the Development shall be at the discretion of the Owner, but the Owner shall consult with the Manager before proceeding with any Disposal*."

156. Clause 14 provides that nothing in the agreement (or any of the arrangements contemplated thereby) was to be deemed to constitute a partnership between the Parties nor, save as expressly set out in the agreement, constitute any party the agent of any other party for any purpose.

157. Clause 16.1 provided that:

> "*The Asset Management and this agreement will terminate on the Expiry Date, unless the Parties agree otherwise and as soon as reasonably practicable after such termination, the Owner shall use all reasonable*

endeavours to complete a Disposal. The provisions of clause 9 shall (to the extent appropriate) apply to any such Disposal."

158. Clause 16.2 is also potentially important. It provided:

"*Notwithstanding termination of the Asset Management pursuant to Clause 16.1 the provisions of this Agreement shall (to the extent applicable) continue until all fees owing to the Manager under this Agreement have been paid*."

159. The Expiry Date for the Bridgwater AMA was 1 January 2015 and for the Buxton AMA was 1 January 2017.

160. Schedule 2 of the Buxton AMA differed from that of the Bridgwater AMA and provided as follows:

"*The owner shall pay the Asset Manager £10,000 per calendar [month], the monthly fee shall be reviewed annually at every anniversary date with the owner. It is agreed that the monthly fee shall be reviewed upwards only, over the length of this contract.*

Asset Management Fee

£10,000 plus value added tax per month from the Effective Date until the date that is 3 months after practical completion of the Development, or if earlier the Exit Date payable monthly in advance.

In the event that Development site is sold on to a third party then all parties shall meet to agree such Asset Management Fee as is reasonable under the circumstances in terms of a sale fee or further monthly management fee.

Additional Construction Management Fee

In the event that the Asset Management Services are required in the construction of the Development, regarding the construction of the

infrastructure, access road or buildings then the parties shall meet to agree such Asset Management Fee as is reasonable under the circumstances."

161. The Claimants say that the AMAs are very poorly drafted contracts with a number of internal inconsistencies. It is fair to say that the Buxton AMA, in particular, does contain some clear drafting errors (see, for example, the definition of "*Development*"). There are also some, less serious, errors in the Bridgwater AMA (see, for example, Clause 8.1.2 which refers to a Clause 8.2.1 which does not exist). I agree that these points have to be borne in mind when construing the agreements.

Issues between the parties as to the AMAs

162. There are a number of issues between the parties as to the correct interpretation of the terms of the AMAs and as to their application to the facts of this case. It is convenient to deal with these issues as at this stage.

The meaning of "Disposal"

163. The first issue concerns the meaning of "Disposal" for the purposes of MTIM's entitlement to fees under Schedule 2. The Respondents say that a Disposal only occurs on a disposal of all of the Development so that an entitlement to the 10% carried interest fee only arises at this point. The Claimants say that this is wrong and that a Disposal also occurs on a disposal of any one or more freehold plots comprised within the Development.

164. As noted above, Schedule 2 provides that MTIM is entitled to "*a fee equivalent to 10% of the Sale Proceeds in relation to all Disposals which sum shall be paid together with VAT within 30 days after legal completion of the relevant Disposal". "Disposal"* is then defined in the way set out in paragraph 150 above.

165. The literal terms of the definition of "Disposal" clearly favour the Respondents' construction since they refer expressly to a sale, transfer or exchange of the freehold in whole of the development. However, the Claimants make a number of points: (a) they say that it makes little sense for a grant of a lease of part of the Development to be a

Disposal but for a sale of part of the freehold not to be; (b) they say that the final part of the definition of "Disposal" makes clear that the overall intention was to capture transactions intended to realise capital value from the Development; (c) they say that Clause 3.2(e) contemplates that there might be multiple "Disposals"; (d) and they also say that Clauses 6.3 and 16.1 convey that a "Disposal" includes a sale of part of the freehold land comprising the Development.

166. In my judgment, the third and fourth points do not advance the Claimants' argument since those clauses are equally consistent with "Disposal" bearing the meaning contended for by the Respondents. On the other hand, the first and second points made by the Claimants do have force.

167. From a commercial perspective, it would be odd if the definition of Disposal did not extend to a disposal of freehold plots making up part of the Development. If this was the position, BGL would be strongly incentivised to effect such sales in order to avoid fees being incurred to MTIM, and MTIM would conversely be incentivised to avoid any disposals taking place this way, even if this was the best way of realising the maximum value. It would also be odd if BGL could avoid any fees being paid to MTIM in respect of the 10% carried interest by effecting disposals piecemeal through a series of sales, rather than through a single disposal.

168. In my judgment, it is also difficult to understand why a lease or agreement for lease of part of the Development would be a "Disposal", but not a sale of part of the freehold land. Equally, there appears to be no good explanation why a sale of part of the freehold should not be a "Disposal" in circumstances where such a transaction is intended to realise capital value from the Development.

169. The principles of contractual interpretation are well known and have been set out in a number of authorities. It is clear that, as a part of the process of interpretation, the Court has power to correct obvious mistakes in the way in which the parties have expressed their intentions in the written agreement (see Lewison, *The Interpretation of Contracts*, 7th ed., at 9.01-9.17). However, the Court must be satisfied both as to the fact of the mistake and the nature of the correction required (*Arnold v Britton* [2015] AC 1619 at [78] per Lord Hodge). For these purposes, the Court is entitled to have regard to the

background and context of the agreement (*Generali Italia SpA v Pelagic Fisheries Corporation* [2020] EWHC 1228 (Comm) per Foxton J).

170. In my judgment, the present case is a case where the Court can safely conclude that a mistake has occurred in the drafting of the agreement and what the nature of that mistake is. Specifically, it appears that the words "*or any part"* were omitted by the draftsman from the first limb of the definition of "Disposal", such language having been correctly included in the second limb of the definition. In my judgment, the first limb of the definition of "Disposal" is to be read as meaning "*"a sale, transfer or exchange of the freehold interest in whole or any part of the Development …".*

The meaning of "Development"

171. The second issue of interpretation which arises in relation to the Bridgwater AMA concerns the meaning of "Development". The context of this issue is the Claimants' contention that both Compass House and further parts of the Bridgwater Project beyond Phases 1 and 2 (including, in particular, Phase 3) fall within the scope of "Development".

172. In the Bridgwater AMA, "*Development*" is defined simply as "*the land adjacent to Junction 24 of the M5 Motorway, Bridgwater, Somerset*". On its face, that is extremely broad and clearly must be read subject to some form of limitation. For these purposes, it is necessary to have regard to the surrounding factual matrix in order to understand what the term would have meant to a reasonable person with the background knowledge of the parties at the time of entry into the Bridgwater AMA.

173. As to this, at the time of entry into the Bridgwater AMA, the Foxwell and Brewer 1 Options had been entered into (in November 2009). In addition, it appears that it would always have been contemplated that the "L shaped strip" would be required for access to the site. In my judgment, a reasonable party with the background knowledge of the parties would have understood this to form the core site which was the subject of the "Development".

174. In these circumstances, in my judgment, the Compass House site does not form of the "Development" as defined in the Bridgwater AMA. At the time of entry into the Bridgwater AMA, it was clearly not contemplated that this land would be acquired to form part of the development; to the contrary, it was thought that this land was *not* required and all that was needed was the L shaped strip. As it subsequently turned out, that was wrong and it was in fact necessary for the land to be bought and this was done through separate arrangements, as described above. However, this does not mean that it fell within the intended scope of the "Development" at the time when the Bridgwater AMA was entered into.

175. The position in relation to the land which comprises the Brewer 2 Option is however different. The Brewer 2 Option was entered into on 6 January 2011 subsequent to the date of the Bridgwater AMA. However, the option would plainly have been under negotiation and discussion for some period prior to this time, probably for a number of months. It is also noteworthy that the Brewer 2 Option was granted to MTIM which strongly suggests that it was regarded as forming part of, and being subject to, the existing arrangements involving MTIM and BGL. I also note from a plan of the Bridgwater Project (dated October 2011) that, as well as being adjacent to the Brewer 1 and Foxwell land, the Brewer 2 land appears to be dependent on those sites for access.

176. The evidence in relation to Phase 3 of the Development was relatively scarce. As noted above, according to the letter from BGL of 8 June 2023, the relevant land was acquired pursuant to another option agreed with Mr Brewer which was granted in 2017 and then exercised in 2022. This land has then been the subject of a conditional sale to Vistry. The acquisition of this land clearly took place a number of years after the entry into, and indeed expiry of, the Bridgwater AMA. It also does not, for example, appear to have formed part of the Scheme B plan. In these circumstances, although referred to as Phase 3, it is difficult to see that this falls within the concept of the Development as understood by the parties when the Bridgwater AMA was entered into in 2011.

177. For all these reasons, in my judgment, the definition of "Development" in the Bridgwater AMA does include the land which was subject to the Brewer 2 Option, but not the Compass House land or Phase 3 of the Development.

The meaning of Clause 16.2

178. The next question of interpretation concerns Clause 16.2. As noted above, that provides that, even if the Bridgwater AMA is terminated, then the provision of the agreement "*to the extent applicable*" continue in force until all fees owing to MTIM under the agreement have been paid. On one view, this means so long as any fees remain outstanding to MTIM then MTIM is entitled to a 10% carried interest fee on any disposal, and its entitlement to the monthly asset management fees would continue in effect. The other view is that this is simply intended to keep in place the mechanical provisions of the agreement (e.g. Clauses 10 through to 23) until MTIM had been paid in full.

179. This issue turns on what is meant by the wording "*to the extent applicable*" in Clause 16.2. The language is ambiguous and, read literally, it is capable of either of the interpretations identified in the preceding paragraph of this judgment. However, looked at commercially, it seems to me that it is unlikely that this was intended to preserve in force all of the substantive provisions of the agreement, notwithstanding termination, for so long as any fees remained outstanding to MTIM. In particular, it would be odd if MTIM was to continue to receive the asset management fee of £15,000 per month in circumstances where the agreement had been terminated and asset management services were in fact no longer being provided by MTIM. In addition, it would make little sense for the substantive provisions of the agreement which imposed obligations on MTIM to provide asset management services to continue to apply. Finally, so far as the entitlement to the carried interest fee is concerned, it appears that this was intended to be met by the obligation under Clause 16.1 to use reasonable endeavours to effect a Disposal of the whole Development, rather than MTIM having a continuing right post-termination under Clause 16.2 to fees on individual disposals of parts of the Development as and when they were made.

180. For these reasons, I conclude that, on its true construction, Clause 16.2 does not confer on MTIM any continuing entitlement to further fees post-termination of the AMA simply because some existing fees remain outstanding to it. However, importantly, MTIM does

have the rights under Clause 16.1 of the AMAs. I return to these below in the context of remedy.

181. This does then raise the question how subsequent disposals are to be treated in circumstances where the AMA is terminated but BGL fails to comply with its obligation under Clause 16.1 and proceeds to make one or more "Disposals", within the meaning of the AMA as explained above, of all or parts of the Development. In my judgment, the answer to this is that such disposals fall to be taken into account as providing good evidence of the value of the relevant parts of the Development which would have been achieved had BGL complied with its obligation under Clause 16.1.

The Buxton AMA

182. Finally, it is necessary to deal with a specific point in relation to the Buxton AMA. Unlike the Bridgwater AMA, the Buxton AMA does not specify any particular fee payable on a Disposal, but simply states:

> "*In the event that the Development site is sold on to a third party then all parties shall meet to agree such Asset Management Fee as is reasonable under the circumstances in terms of a sale or further monthly management fee*."

183. No such fee was in fact ever agreed, but the Claimants say that the Court should determine that a reasonable fee is 10% of the sale proceeds in line with the Bridgwater AMA.

184. It might be said that this part of the Buxton AMA simply amounts to an agreement to agree and, as such, would be unenforceable for uncertainty. However, where (as here) the price to be agreed is a fair price then the agreement will be capable of enforcement (see *Lewison* at 8.121 citing *Corson v Rhuddlan Borough Council* (1990) 59 P&CR 185). In the present case, the parties have expressly stated that the fee to be agreed is a reasonable fee. I agree with the Claimants that in all the circumstances a reasonable fee would be 10% of the sale proceeds, as was expressly provided for by the parties in the Bridgwater AMA.

E. The Alleged Joint Venture

185. Having dealt with the AMAs and the issues of contractual interpretation which were in dispute in relation to those agreements, it is convenient to turn to the Claimants' case on the alleged joint venture. The Claimants say that this agreement was made orally between Paul Knell, Mr Revell and Mr van Loo.

186. It is said by the Claimants that the key terms were that Mr van Loo would fund the projects and Paul Knell and Geoffrey Revell (and later also Peter Knell) would be entitled to develop those projects. It is said that it was agreed that the Knells and Mr Revell would be directors of the Bridgwater and Buxton corporate vehicles and also of MTIM and that, by this mechanism, they would have control over those projects. They were to receive fees, including success fees, and the mechanism by which these success fees were received was by having the interest in the management company, MTIM. It is said that it was agreed that MTIM receive funding by loans from its parent, BDI, for tax efficiency but that such loans would not be taken into account for determining the Knells' (and Mr Revell's) entitlement to a share of the fees received. Nor would the existing loans contained in MTIM, a substantial chunk of which it is said had been incurred for the personal benefit of Mr van Loo, be taken into account for these purposes.

187. The Claimants' case is that that the alleged joint venture was partially, but not completely, executed by the two AMAs. They say that the AMAs were only the mechanism by which part of the joint venture was carried out and that there were other terms which were agreed between the parties but which are not reflected in the terms of the AMAs, including that the Knells would be directors of MTIM, BGL and EPB and so would control those developments.

188. In terms of alleged breaches of the joint venture, the Claimants assert the following matters:

    a. First, the alleged failure on behalf of Mr van Loo to fund both the Buxton and Bridgwater Projects. It is said that the Bridgwater Project had really not even

started by the time the Knells were excluded. The Foxwell and Brewer Options were for five years, and had to be extended at the last possible moment in November 2014. The offsite infrastructure had not been started at that point.

b. Secondly, Mr van Loo's act to remove the Knells from the board of MTIM and to appoint the Second to Fourth Respondents as directors. It is said that this was a breach of the term which obliged the Knells to be involved in the management of MTIM. It is also said that the new directors were and are in a position of conflict between the interests of MTIM and their association with Mr van Loo.

c. Thirdly, the refusal by Mr van Loo, who controlled the board of MTIM, to recover the outstanding management fees said to be due from BGL and EPB under the AMAs.

d. Fourthly, the acceptance on behalf of MTIM of the assignment of the BDI debt. It is said that MTIM had grounds to challenge that assignment because much of that debt arose as a result of spending expended for the personal benefit of Mr van Loo.

e. Fifthly, the agreement on behalf of MTIM to set off the assigned debts against the debts owing to it.

f. Sixthly, the failure by BGL to pay to MTIM a disposal fee said to be due on the transfer of the shares in J24 on 19 August 2015.

g. Seventhly, the failure to enforce the new Bridgwater AMA, which it was said had been agreed between the parties.

h. Finally, the termination of the AMAs, of the Consultancy Agreements and the Petitioners' director appointments.

189. In opening, the Claimants also confirmed that they were maintaining their claims that the First to Fifth Respondents had acted in breach of their fiduciary duties to MTIM. In paragraph (1) of the Prayer to the Petition, a declaration is sought that the First to Fifth Respondents had acted in breach of their fiduciary duties to MTIM. That is put principally on the basis that they were under a conflict of interest and that they failed to act in the best interests of MTIM.

190. The Claimants however indicated in opening that they did not pursue the claim, which had been pleaded at paragraphs 36 to 38 and 49 of the Particulars of Claim in the Part 7 Claim, that Mr van Loo owed fiduciary duties to the Claimants pursuant to the alleged joint venture. They do, however, contend that the alleged (oral) joint venture agreement between the Knells and Mr van Loo included an obligation to act in good faith.

The Alleged Joint Venture Agreement and its Terms

191. In my judgment, the first question to determine is whether there was a legally binding joint venture agreement as alleged by the Claimants.

192. In the Petition and the Particulars of Claim, the Claimants plead an extensive oral agreement comprising 13 different terms. Essentially the same alleged oral agreement was alleged in the letter before action dated 6 December 2018 sent on behalf of Paul and Peter Knell. The Claimants rely on the fact that in the response to that letter from Rix & Kay dated 8 March 2019 most of the alleged terms were stated to be agreed. In cross-examination, Mr van Loo accepted that the Rix & Kay letter agreeing those terms was written on his instructions.

193. In addition, in the course of cross-examination, the alleged terms of the joint venture were put to Mr van Loo and in a number of cases he accepted these were terms of the agreement. However, this evidence needs to be treated with some care since it was also clear that it was Mr van Loo's evidence that, whatever might have been originally agreed, this was subsequently superseded by the written AMAs. He said that "*there were no oral terms, other than what was translated within the AMAs*" and that the oral agreement resulted in the AMAs. He said that "*we had AMAs that regulated the way that we would work*", and he made the point that relationship between the parties

changed and, once other investors were going to be involved on his side, it was necessary that it was very clear where the responsibilities of the parties lay. He said that for each of the projects that the parties undertook specific agreements were drafted and agreed.

194. Moreover, there are questions as to whether any "*agreement*" which was originally made orally between the parties was in effect "*subject to contract*" and whether there was an intention to enter into legally binding arrangements at that stage, or whether it was always contemplated that any "*agreement*" would be formalised in written agreements. In this respect, one question is whether any oral "*agreement*" was in the nature of a heads of terms.

195. In these circumstances, contrary to the Claimants' submissions, I do not consider that it is simply as straightforward as proceeding on the basis that there was an "*agreement*" and that Mr van Loo admitted the terms of such agreement as alleged by the Claimants. Rather, in my judgment, it is necessary to consider all the relevant evidence in order to ascertain, objectively, whether there was an intention to create legal relations in relation to the oral agreement alleged by the Claimants and/or whether any such agreement was superseded by the subsequent entry into the AMAs.

196. As to this, it is clear that a number of discussions took place between Paul Knell, Mr Revell and Mr van Loo. Mr Revell described a series of meetings held at a location in Bond Street at which matters were discussed and agreed. He also gave the following evidence:

> "*I certainly don't want to complicate or give a very long answer. A joint venture agreement if you were entering into it with third parties you didn't know, you would want to create a lot of legal documentation and you need to button it right down. Eric, Paul and I, as I say, were good friends, we had worked together for a long time and we had a strong relationship. I would certainly say -- and I believe Eric would have said it at times and Paul would have done -- that we were working in joint venture, but if you ask me did we have a formal joint venture agreement of any sort, no*."

197. So that evidence was to the effect that Paul Knell, Mr Revell and Mr van Loo were "*working in joint venture*" but did not have any formal joint venture agreement.

198. As to the relationship between the joint venture and the AMAs, Mr Revell said this:

> "*My clear, quick, straightforward view on that is the asset management agreements were there in essence to ensure that the fees were paid and those were the fees to Paul's company and Revprop and then (inaudible). The joint venture, although there were clauses in the asset management agreements about the responsibility of BDI to provide funding, the joint venture was still implied. The asset management agreement was about getting paid the fees and the Miller Turner connection -- the mechanism, I think I would call it really, whereby Eric was letting a debt build up in Miller Turner whilst paying us, that could be used elsewhere in the business to offset, et cetera. I have to say I -- I have probably always been the fairly practical one at the other end and obviously we have had a lot of expertise in the business to be able to handle those things, but Miller Turner was a machine, it was a mechanism in effect. Although it did of course have the fundamental issue that it owned the freeholds*."

199. In his evidence, Paul Knell appeared to agree that the terms of the joint venture were meant to be included in the AMAs. He also said in his evidence that the AMA reflected the joint venture in the terms of the 10% return. He also said that the joint venture was represented by the AMAs in terms of revenue. The overall tenor of Mr Knell's evidence appeared to be that the terms of the joint venture in relation to the Bridgwater and Buxton Projects were largely reflected in the terms of the written AMAs which were entered into.

200. As noted above, Mr van Loo's own evidence was essentially to the effect that any oral agreement was subsequently superseded by the written AMAs and it was those agreements which recorded the actual agreement between the parties.

201. Finally, although the documentary evidence relating to this part of the case is scant, there is Mr Revell's memorandum of 22 December 2009 which was sent to Mr van Loo. In

my judgment, the nature and contents of this document does lend support to the view that the exercise which the parties were engaged on at this stage was in the nature of agreeing heads of terms, rather than binding legal agreements.

202. Against this context, it is then helpful to consider some of the specific terms of the oral agreement, as alleged by the Claimants.

Funding Obligation

203. One of the key aspects of the Claimant's case on the alleged oral joint venture agreement is that Mr van Loo assumed a personal obligation to procure that he and his fellow investors would provide sufficient funding to carry out the development. As a matter of initial impression, this alleged term is striking. This is because, in substance, it would amount to Mr van Loo having assumed a personal guarantee of the provision of adequate funding for the development. It is not, for example, said that the obligation was merely to use reasonable endeavours to seek to obtain funding; rather, the Claimants say that Mr van Loo had agreed to be personally liable for the provision of the necessary funding.

204. At the outset, there are a number of reasons why it might be thought unlikely that Mr van Loo would agree to assume a legally binding personal obligation of this nature:

a. The amount of funding required appears to have been wholly unclear at this stage. It would depend on the scale and nature of the development which, in turn, would depend on matters such as the scope of any planning permission and the estimated costs. All of these matters appear to have been wholly undetermined and were uncertain at the time when the alleged oral agreement was entered into.

b. Similarly, the timescale in which the funding was likely to be required appears to have been unclear and undecided at this stage.

c. Mr van Loo's ability to provide funding appears always to have been dependent on his ability to raise investment from investors (predominantly in Holland), and the willingness of such investors to invest and the terms on

which they were prepared to do so appear to have been unsettled at this stage. My impression was that in some ways he acted as a middle man or conduit between the Dutch investors and the property projects in the UK.

d. Finally, it is unclear from a commercial perspective why Mr van Loo would agree to assume all the risk and downside associated with the assumption of such a personal obligation in circumstances where Paul Knell and Mr Revell do not appear to have been assuming any corresponding risk themselves.

205. I also note that the pleaded term of the oral joint venture agreement relating to funding refers to the Bridgwater AMA, notwithstanding that (as I understand it) this had not been entered into at the time when it is said that the oral joint venture agreement had been concluded.

206. So far as the evidence is concerned, Mr Revell pointed out that property development was a "*moving feast*". He also commented that even at the present time the project was not complete, although he said that good progress had been made recently. That reinforces the point that at the time that the alleged oral agreement was said to have been entered into the actual amount and timing of funding which would be required was entirely uncertain.

207. Mr van Loo gave the following evidence in cross-examination:

"*Q. Right what about the part about funding: that you and your investors would provide sufficient funding to the Bridgwater company to enable it to carry out the development without undue delays; do you accept that?*

A. Not -- not without restrictions.

Q. What do you say those restrictions were?

A. Well, for example, these projects run over a fairly long period of time and

> *the economic criteria change -- could be changing dramatically. So you cannot -- you cannot take this for an unrestricted timetable*."

208. In my judgment, the point which Mr van Loo was making, namely, that any decision to provide funding would depend on the economic criteria applicable at the time, such as the amount of funding required, the likely timescale for the investment and the estimated return on the investment, makes commercial sense. On the other hand, it would have made little commercial sense for Mr van Loo to have accepted a personal open-ended obligation to provide funding in an indeterminate amount and over an indeterminate period at a time when none of these matters were known.

209. Mr van Loo said that he accepted that he was to fund the development, but then clarified his answer to indicate that by "*he*" he meant the company that he represented. Later in his evidence he said that "*our companies are the responsible parties*". He did not accept that he was personally liable to fund. He also said later in relation to the funding of the Buxton Development that any funding obligation was "*with restrictions*" being "*the normal restrictions that whatever had to be funded should make economic sense*".

210. Mr van Loo also pointed out that a development which started out as a three year project could easily turn out to be 10 years. He said that it was absolutely not the case that BDI or its associated companies had agreed to a fixed time schedule for providing funds.

211. I accept Mr van Loo's evidence on these points.

212. The other point which it is necessary to have in mind is that the Bridgwater AMA did itself specifically deal with the question of funding in Clause 8.1. In doing so, it provided that BGL was to provide the funding for the Development. Moreover, the mechanic which was adopted was for the funding to be provided in accordance with Budgets (as defined), and BGL had a right of approval in relation to the Budgets (see Clause 4.2). In this way, the obligation of BGL to provide funding was qualified.

213. The Claimants are therefore forced to say that there were two parallel funding obligations in place: a personal funding obligation of Mr van Loo under the alleged oral joint venture agreement, and the funding obligation of BGL under the express terms of

Clause 8.1 of the Bridgwater Agreement. But that then itself gives rise to a number of further questions. For example, if the funding obligation of BGL is qualified by reference to the agreed Budget, then is the same true of the funding obligation of Mr van Loo personally. And, if not, why not?

214. Overall, I am of the clear view that there was no separate legally binding contractual obligation assumed by Mr van Loo personally to procure the provision of funding for the Development. At most, there was an understanding or expectation on the part of Paul Knell, Mr Revell and Mr van Loo that the responsibility for trying to find funding would fall to Mr van Loo. However, it was always anticipated and understood that the availability of such funding and the terms on which it was to be provided would need to be agreed with the relevant investors. I therefore reject the Claimants' case on the alleged oral funding term as part of the alleged oral joint venture agreement.

Treatment of the debt owed to BDI

215. One of the other key terms of the alleged oral joint venture agreement is as to the treatment of the debt owed by MTIM to BDI. In the Particulars of Claim, this term was pleaded as follows:

> "*For the purposes of determining their equity in MTIM, the pre-existing debt to BDI and any future loan indebtedness of MTIM to BDI arising as a result of the financing of the Saville Row Flat or the intended tax losses or otherwise than in the normal commercial course of business, would be debited solely to BDI's interest in the company to be offset on realisation of the Bridgwater project development value, so that the First Claimant and Mr Revell would still receive (between them) 5% of the net sale proceeds of the development through their interests in MTIM regardless of such increased indebtedness to BDI*"

216. In his witness statement, Paul Knell said this:

> "*It was expressly agreed with Eric that BGL's payments to MTIM would be ring-fenced in MTIM, and not used to repay Eric's old existing company loans*

within MTIM, which included funds used to pay the rent on the Savile Row penthouse. The development loans which MTIM would receive from BDI to fund the Bridgwater project would also be ring-fenced, as it was Eric and his Dutch investors who were to fund the total project development costs."

217. Paul Knell said in his evidence that the previous debts within Miller Turner were supposed to be ring-fenced and that any income from the project was to be ring-fenced as well.

218. Mr Knell also explained that BGL did not have a bank account. As a result, various costs were incurred through MTIM instead of through BGL. Those costs were, in turn, funded by lending from BDI to MTIM. As I understand it, Mr Knell's evidence was that these parts of the loans were properly attributable to BGL, not to MTIM. He said this:

"*They should have been transferred out to Bridgwater Gateway because the funds were spent on Bridgwater Gateway and the only reason the funds didn't come into Bridgwater Gateway is because it didn't have a bank account*."

219. In addition, it appears that the loan funding from BDI to MTIM was also used to fund the consultancy fees made to the consultancy companies of Paul and Peter Knell and Mr Revell. Mr Knell's oral evidence was that these fees were to be funded by the loan from BDI and would be repaid to BDI from the proceeds of any sale of the development. In this respect, he said:

"*As far as I understood our relationship with Eric under the AMA -- I may have it wrong -- is that the costs associated in paying Geoff Revell's fee, management fee, and my Marchgale fee would come out of the income and be repaid to BDI from the income we receive from the sales within the project or lettings, et cetera. The £15,000 per month was an entitlement which would not be included in that BDI loan for financing our monthly fees. That's how I understand it, rightly or wrongly -- to try and clarify the situation.*

Q. When was this agreement reached with Mr van Loo?

A. That's my understanding of the AMA."

220. As I understand it, this evidence was to the effect that those parts of the loan from BDI which had been used to fund the payment of the consultancy fees would be repaid from MTIM's share of the sale proceeds received from BGL. This point was not expressly made in either the witness statements or the pleadings; it might be said to be consistent with the pleaded term on the basis that such lending was incurred by MTIM in the "*normal commercial course of business*". However, this point highlights that the alleged term pleaded by the Claimants is one of some complexity, which itself tends to militate against it having been the subject of an undocumented oral agreement.

221. In his witness statement (paragraph 24), Peter Knell said that it was agreed that the loans owed by MTIM to BDI used to fund the Bridgwater Project were to be accounted for and deducted from Mr van Loo's distributions and that this was also the case for historical expenditure including, in particular, in relation to the Saville Row apartment. He said in his evidence that this was communicated to him at the point where he was invited to join the joint venture as he raised the debt owed by MTIM at that point. It was not clear from his evidence what the agreement, if any, was said to have been in relation to the funding advanced by BDI which was used to fund the consultancy fees.

222. Mr Revell gave the following evidence:

"*JUDGE SMITH: But again is that something you recall sitting round and discussing between the three of you and agreeing with each other?*

A. What I will say is I do remember there was some heat about the Saville Row flat and that that was a cost and there were challenges -- I think there was an issue with the landlord at one point. I wasn't involved with it myself, but I think there was some concern that Saville Row was a burden on Miller Turner investments, yes."

223. He also said:

> "*A. No, I don't think it was done implicitly. I would have expected it of Eric because of the relationship we had and the way we were handling ourselves, but I cannot say that I remember it being dealt with expressly.*"

Although the transcript uses the word "implicitly", my notes record Mr Revell as having said "explicitly".

224. For his part, Mr van Loo was taken in cross-examination to paragraph 7(l) of the Clintons letter before action and was asked whether he accepted that. He said yes and that in broad terms it seemed correct. However, as with other parts of his evidence, it was difficult to discern whether he was accepting that there was a legally binding agreement to this effect or whether this simply some kind of understanding or expectation as to how matters might be worked out in due course.

225. There are few contemporary documents which bear on this point. The minutes of the 26 February 2010 Board meeting of MTIM state as follows (at para. 4.4):

> "*Once BDI (Nederland) BV shareholders company loans, that are current as at 31 December 2009, are repaid then all the company profits will be paid on and in accordance with the shareholding held by that party. All payments except monthly Management fee payments from Bridgwater Gateway Ltd, re Junction 24 project, and Express Park Buxton Ltd, re Cowdale Buxton project, will be shared on the new shareholding, as indicated under item 3 above*."

226. However, the first sentence of this suggests that the BDI loan would be repaid first before any distributions were made to the shareholders in MTIM. This appears to be inconsistent with the Claimants' case. The second sentence then appears to suggest that the monthly management fee payments due from BGL would not be distributed to shareholders. In their closing submissions, the Claimants said that this was for the reason that the monthly management fees were to fund MTIM's expenses. This part may be consistent with the view expressed by Paul Knell in his oral evidence that the part of the BDI loan which was used to fund the payments under the Consultancy Agreements would be repaid from the income received by MTIM from BGL

227. There is also some evidence that in financial information that was produced at the time the 10% fee which would be due to MTIM on any disposal was treated as being 10% of gross proceeds. This appears from information which was provided to potential funders in around May 2014 and a 2014 budget produced for BGL.

228. Overall, in my judgment, the evidence does not support the existence of the term as alleged by the Claimants. Having heard all the witnesses and taken into account the context and the contemporary documents, I consider that the most probable position is that as stated by Mr Revell in his oral evidence, namely, that the matter was not expressly discussed or agreed, but rather that there was some form of expectation on the part of Paul Knell and Mr Revell that in due course there would be some kind of agreement reached in order to deal with the BDI loan so that at least parts of that loan fell onto Mr van Loo's share of MTIM's income from the sale proceeds.

229. I therefore reject the Claimants' case that there was a legally binding contractual term, as part of an oral joint venture agreement, as pleaded in the Petition and the Particulars of Claim, relating to the treatment of the BDI loan. However, I do find that there was some form of (not contractually binding) expectation and understanding on the part of Paul Knell and Mr Revell that the BDI loan would be dealt with as part of the division of any income received by MTIM from a sale of the development. This is potentially relevant to the unfair prejudice issue and in particular the question of remedy to which I return below.

Directorships

230. A further part of the oral joint venture agreement as alleged by the Claimants relates to the directorships of the relevant companies. The Claimants say that it was agreed that Paul Knell and Mr Revell would be appointed as directors of the Bridgwater and Buxton development companies. So far as MTIM is concerned, it is said that it was agreed that Paul Knell, Mr Revell and Mr van Loo would be directors together with such other directors as they might agree from time to time. It is also said that this agreement was then subsequently expanded also to include Peter Knell when he joined the joint venture.

231. In my judgment, there was a clear expectation and understanding on the part of the Knells (and indeed Mr Revell and Mr van Loo) that they would each have the right to act as directors of, and participate in the management of, the relevant companies. However, it does not follow that there was a legally binding contractual term to this effect forming part of an oral joint venture agreement concluded between the parties.

Other Alleged Terms

232. Other alleged terms of the oral joint venture agreement, specifically the alleged terms as to MTIM's entitlement to fees, and as to the provision of consultancy services by the Knells and by Mr Revell, were clearly the subject of subsequent formal written agreements: the AMAs and the Consultancy Agreements. This indicates either that it was never intended that any oral "agreement" on these points would itself be legally binding in the nature of the contract or that any initial oral agreement on these points was superseded by the subsequent written agreements. In either case, this militates against there being any continuing oral joint venture agreement containing these terms.

Overall

233. Overall, my conclusions on the alleged oral joint venture agreement as alleged by the Claimants are as follows:

    a. I do not consider that there was an oral joint venture agreement concluded between Paul Knell, Mr Revell and Mr van Loo which was intended to be legally binding, as alleged by the Claimants. I consider that there was an initial agreement or understanding but that was not itself intended to be a legally binding contract. Rather, it was in the nature of a heads of terms, and it was always contemplated by the parties that subsequent written agreements would be entered into.

    b. A number of the terms of the alleged oral joint venture agreement were in fact the subject of subsequent agreements: the entitlement of MTIM to fees which was the subject of the AMAs and the provision by the Knells and Mr Revell of consultancy services which were the subject of the Consultancy Agreements.

In addition, so far as the shareholdings in MTIM are concerned, those were subsequently allotted in accordance with the intentions of the parties.

c. I do not consider that there was any contractual obligation assumed by Mr van Loo personally that he would procure the provision of sufficient funding for the developments. At most, there was an understanding that attempts to raise funding would be within Mr van Loo's area of responsibility. The relevant contractual obligation in relation to the provision of funding was, however, dealt with the relevant provisions of the AMAs, and subject to the terms of those agreements.

d. I do also not consider that there was any contractual term agreed by the parties as to the treatment of the debt owed by MTIM to BDI under the BDI loan. I accept that Paul Knell and Mr Revell held an expectation and understanding that some kind of arrangement would be agreed to deal equitably with the historic indebtedness which had been incurred by MTIM to BDI. However, I do not consider that any legally binding agreement was concluded in this respect.

e. So far as the directorships and management of MTIM and the development companies (BGL and EPB) are concerned, I accept that the Knells and Mr Revell had an expectation and understanding that they would be entitled to be directors of, and to participate in the management of, these companies. However, again, I do not consider that any legally binding agreement was concluded between the parties in this respect.

234. Overall, therefore, I reject the Claimants' case on the alleged oral joint venture agreement. My findings as to the expectations and understanding of the Knells and Mr Revell are however relevant to the unfair prejudice petition which I deal with further below.

F. The Part 7 Claim

235. I turn next to the Part 7 Claim. In the Part 7 Claim claims are made against Mr van Loo claiming damages for breach of the alleged oral joint venture agreement and for breach of fiduciary duty. As noted above, the Claimants indicated in opening that they did not pursue the claim that Mr van Loo owed fiduciary duties to the Claimants pursuant to the alleged joint venture.

236. The Part 7 Claim against Mr van Loo for breaches of the alleged oral joint venture agreement rests on the Claimants' case that there was such a legally binding agreement concluded between Paul Knell, Mr Revell and Mr van Loo (and subsequently Peter Knell) with the terms they allege. However, I have rejected that case for the reasons which I have explained above. It follows that the Part 7 Claim falls to be dismissed.

G. Unfair Prejudice

237. I turn next to the Petition. As noted above, the Petition was presented by Paul Knell and Peter Knell under section 994 of the 2006 Act and alleges that the affairs of MTIM are being conducted in an unfairly prejudicial manner.

238. It is important at the outset to have in mind the terms of section 994(1):

> "*A member of a company may apply to the court by petition for an order under this Part on the ground—*
>
> (a) *that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*
>
> (b) *that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial*."

239. Accordingly, under (a) the focus is on the conduct of the company's affairs and under (b) the focus is on an act or omission of the company. The petitioner must demonstrate that

the relevant conduct or act or omission is both prejudicial but also unfairly so.

240. In opening the case, the Claimants identified the following matters which they relied on by way of alleged unfair prejudice:

a. the failure by Mr van Loo to fund both the Bridgwater and Buxton Projects;

b. the steps taken by Mr van Loo (through BDI) to remove the Knells as directors of MTIM and to appoint the Second to Fourth Respondents as directors;

c. the failure by MTIM under its directors to recover the management fees owed by BGL and EPB, including the acceptance on behalf of MTIM of the assignment of the BDI debt to BGL and an agreement on the part of MTIM to set off that debt;

d. the failure by MTIM to investigate and pursue other rights of action against BGL/EPB, specifically under clause 16.1 of the AMAs and in relation to the disposal fee said to be due following the August 2015 transaction;

e. the failure to enforce the alleged new Bridgwater AMA which it is said was agreed in September 2015; and

f. the termination of the AMAs and the Consultancy Agreements.

Alleged failure to fund by Mr van Loo

241. I can deal with the first matter which is relied on by the Claimants shortly. I have already found that Mr van Loo was under no personal obligation to fund, or procure funding for, the projects. At most, there was an understanding that attempts to raise funding were within his sphere of responsibility. In my judgment therefore, the first matter relied on by the Claimants does not constitute unfairly prejudicial conduct for the purposes of section 994 of the 2006 Act.

242. As explained above, the contractual funding obligation was contained in the terms of the AMAs, and subject to the conditions and qualifications set out there. The Claimants

included within their allegations of unfair prejudice contentions that the Respondents had refused or failed to cause MTIM to take steps against BGL and EPB for their failures to fulfil their funding obligations under the AMAs. However, no case was developed by the Claimants at trial to explain how BGL and EPB were in breach of any such obligations. In particular, it was not explained how BGL or EPB had failed to provide funding in accordance with an applicable Budget, which had been approved in accordance with the relevant AMA.

243. In the circumstances, I am unable to conclude that either BGL or EPB were in fact in breach of any obligation under the relevant AMA to provide funding. As such, I do not consider that any failure on the part of the Respondents to take steps against BGL or EPB to enforce any obligation on the part of those companies under the relevant AMA to provide funding is capable of amounting to unfair prejudice for the purposes of section 994.

Removal of the Knells as Directors of MTIM

244. The second matter relied on by the Claimants concerns the removal of the Knells as directors of MTIM and, prior to that, the appointment of the Second to Fourth Respondents as directors of MTIM. As noted above, the Knells were removed as directors of MTIM by a shareholder resolution passed by BDI, as majority shareholder, on 10 October 2017.

245. I have already found that there was a clear expectation and understanding on the part of the Knells that they would each have the right to act as directors, and participate in the management, of MTIM, albeit there is no legally binding contractual term to this effect forming part of an oral joint venture agreement. On its face, their removal as directors and exclusion from the management of MTIM was contrary to this expectation and understanding.

246. Although it is correct that BDI had the legal right to remove the Knells as directors of MTIM, one of the instances in which there may be unfairly prejudicial conduct is where it is inequitable for a shareholder to exercise his strict legal rights because of an expectation and understanding between the parties. A classic example of this is whether

a shareholder had an understanding or expectation that he would be entitled to be a director of, and involved in the management of, the company in question: see *Re Westbourne Galleries* [1973] AC 360 cited by the House of Lords in *O'Neill v Phillips* [1999] 1 WLR 1092. In the latter case, Lord Hoffmann said this (at p.1102):

> "*I gave as an example the standard case in which shareholders have entered into association upon the understanding that each of them who has ventured his capital will also participate in the management of the company. In such a case it will usually be considered unjust, inequitable or unfair for a majority to use their voting power to exclude a member from participation in the management without giving him the opportunity to remove his capital upon reasonable terms*."

247. And at p.1107B-C:

> "*Usually, however, the majority shareholder will want to put an end to the association. In such a case, it will almost always be unfair for the minority shareholder to be excluded without an offer to buy his shares or make some other fair arrangement*."

248. In my judgment, this applies equally in the present case.

249. The Respondents say that the removal of the Knells as directors was justified and that it was not unfair to remove them. They point to what they say was the obstructive behaviour of Paul Knell in particular, and the steps taken to issue an invoice to BGL for the management fees without having the authority to do so. However, in my judgment, these matters were consequential on the breakdown in the relationship between the parties and, at least in part, resulted from what the Knells no doubt considered to be their exclusion from the management of MTIM. I do not consider that they mean that the removal of the Knells as directors of MTIM was either justified or not unfair.

250. I therefore find that there was unfairly prejudicial conduct as a result of the removal of the Knells as directors of MTIM and their exclusion from the management of MTIM.

251. As such, it is strictly unnecessary to decide whether the appointment of the Second to Fourth Respondents as directors of MTIM was also unfairly prejudicial conduct. However, in my judgment, this was also unfairly prejudicial conduct. This is because I accept the Claimants' case that the expectation and understanding was that they would be able to control the management of MTIM, at least to the extent of their agreement being required for the appointment of any further directors. This is consistent with the commercial function of MTIM which was, in essence, to act as a vehicle through which asset management services would be provided by the Claimants and Mr Revell and through which they would collect their returns from the projects.

Failure to recover the management fees; assignment and set-off

252. The next matter relied on by the Claimants is the alleged refusal or failure of the board of MTIM to recover outstanding management fees from BGL and EPB.

253. As a starting point, I accept that BGL owed MTIM management fees under the Bridgwater AMA. The amount owing was £1,080,000 (including VAT). Similarly, I accept that asset management fees were owing by EPB to MTIM under the terms of the Buxton AMA.

254. As explained above, these debts were discharged by way of assignments by BDI to each of BGL and EPB of part of the loan indebtedness owed by MTIM to BDI which was then set off by BGL and EPB against the management fees owed by them to MTIM. The Claimants do not, however, contend any of these steps were legally ineffective. As noted above, the BDI loan agreement did not contain any restriction on assignment of whole or part of the loan, and it was not suggested to me that the assignments were not legally effective. Similarly, it was not suggested that BGL and EPB could not then effectively assert rights of set off by applying the assigned parts of the loan against the management fees owing to MTIM.

255. As such, I find that the relevant management fees which were owed to MTIM by BGL and EPB were discharged by way of set-off asserted by BGL and EPB.

256. Furthermore, the steps taken in respect of the assignment and the set-off did not, in my judgment, necessarily require any involvement on the part of MTIM. BDI was at liberty to assign all or any of its rights in respect of the loan to BGL and EPB without MTIM's consent or involvement. Similarly, BGL and EPB were then at liberty to assert rights of set-off relying on the assigned rights in respect of the loan again without MTIM's consent or involvement. Although it is true that MTIM's board purported to "approve" the set-offs, this was not necessary as a matter of law since, if MTIM had sued BGL to recover the debt, then BGL could unilaterally have asserted a legal set-off as a defence to the claim in any event. This would not have required any consent or approval from MTIM. As a matter of strict analysis, it may be the case that the approval of MTIM meant that the arrangement took effect as a contractual set-off by agreement, but in my judgment that is not material in circumstances where, if MTIM had sued BGL/EPB for the sums due, then BGL and EPB could have asserted legal set-offs in response to such claims without needing the consent, agreement or approval of MTIM.

257. It was also not said by the Claimants that there was some expectation or understanding between the shareholders in MTIM that might have prevented BDI from assigning its rights in respect of the BDI loan. To the contrary, as explained above, my understanding of the evidence of Paul Knell, in particular, was that he accepted that BDI was entitled to recover, from income received by MTIM from BGL/EPB, that part of its loan which had been used to fund the costs and expenses of MTIM, being principally the fees paid out under the Consultancy Agreements.

258. In these circumstances, I do not see how the assignments and set-offs can amount to unfair prejudice in respect of the conduct of the affairs of MTIM. In short, BDI, BGL and EPB were at liberty to take these steps without any need for MTIM's involvement.

259. The Claimants say that these steps were taken because Mr van Loo had an interest in discharging the debt owed by BGL to MTIM in order to avoid difficulties with the new investors in BGL who had not been aware of the existence of this debt when they made their investments in August 2015. I accept that this may well have been the motivation behind Mr van Loo causing BDI, BGL and EPB to take these steps. However, in circumstances where these steps could have been carried out without any involvement on the part of MTIM, and where there was no restriction on BDI assigning its rights in

respect of the loan, I do not see this means that what was done amounts to unfair prejudice for the purposes of section 994.

Failure to investigate and pursue other rights of action against BGL/EPB

260. The next matter relied on by the Claimants as constituting unfairly prejudicial conduct is the alleged failure by MTIM to investigate and pursue other rights of action against BGL and EPB, specifically under clause 16.1 of the AMAs and in relation to the disposal fee said to be due following the August 2015 transaction.

261. It is convenient to start with the August 2015 transaction. The facts relating to that transaction have been set out above. In essence, the effect of the transaction was that new funding of £18 million was raised by G24 of which £8.3 million was used to acquire shares in J24 of certain of the existing investors and £9.7 million was to be used as new funding for the development. It appears that the existing investors who exited at this stage included Mr Backer and Mr de Vos. Accordingly, in part, there was a disposal by some investors of their shares in J24.

262. However, as noted above, the Bridgwater AMA had terminated on 31 December 2014. I have already held that the effect of Clause 16.2 of the Bridgwater AMA was not to continue the substantive provisions of the AMA notwithstanding its termination. I also find below that no new Bridgwater AMA was entered into and, in any event, on the Claimants' own case such agreement was not agreed until September 2015. As such, it follows that, at the time of the August 2015 transaction, the regime under the Bridgwater AMA dealing with "Disposals" and entitling MTIM to a fee on any such "Disposal" was not in effect.

263. In any event, I am not satisfied that the August 2015 transaction would have constituted a "Disposal" as defined in the Bridgwater AMA. As noted above, the definition of "Disposal" includes "*a sale, transfer or exchange of the freehold interest in whole of the Development (including a sale by way of a sale of the shares in the company owning the Development)*". Accordingly, it would capture a sale of the shares in BGL (including, in my judgment, a partial sale of the shares). However, on a literal reading, it would not apply to a sale of shares in any company above BGL in the structure, including J24.

Moreover, it is not obvious why BGL should have to pay a fee resulting from a disposal of shares made higher up in the corporate structure, in circumstances where BGL may have had no part to play in the transaction and may have received no part of the proceeds resulting from it.

264. Apart from that, it is clear from the final bullet point of the definition of "Disposal" that it was intended to capture a transaction which released capital value from the development itself. That would clearly include a sale of the development, whether by way of sale of the land or the sale of the shares in the company which owned the development. However, in my view, it would not necessarily capture a transaction which was intended to raise further finance in order to fund the ongoing development. It would not therefore, in my judgment, for example, apply to the issue of further equity or the injection of further loan funding.

265. In my judgment, the August 2015 transaction was in the nature of a refinancing designed to raise further funding for the Bridgwater Project, rather than a transaction designed to realise capital value from the development. It is true that, as part of the transaction, certain shareholders appeared to have disposed of their interests in J24, and it is possible that they may have done so at a profit (I noted above the unsatisfactory nature of Mr van Loo's evidence at this point). However, I consider that this was incidental to the principal purpose of the transaction which was to raise fresh funding for the project by bringing in new investors. For these reasons, I would have concluded in any event that the August 2015 transaction was not a "Disposal" as defined. Even if this is wrong, then I consider that the amount of any "Disposal" could only be the amount paid for the shares being acquired (£8.3 million) rather than the total £18 million figure.

266. Given that MTIM had no entitlement under any extant AMA to any fee on any "Disposal" made as at August 2015, then I do not see that it can constitute unfair prejudice for MTIM having failed to investigate and pursue any such claim. I therefore reject the Claimants' case on this point.

267. I also note that at the MTIM Board meeting of 16 March 2017 the majority of the directors decided that MTIM would not act to claim a 10% fee arising from the August 2015 transaction. Mr van Iddekinge said that he did not believe a payment was due

because no profits had been made and there had only been changes in the ownership structure. I am not satisfied that the first point was necessarily correct; it is possible that Mr Backer and Mr de Vos may have made some profit, and Mr van Loo was evasive on this point. However, the second point appears to reflect the point which I have already made above, namely, that the August 2015 transaction was in the nature of a refinancing transaction rather than a transaction designed to realise capital value from the Bridgwater Project. As such, it appears to me that the directors of MTIM did consider whether or not to bring this claim and their conclusions were conclusions that a reasonable director could have reached.

268. The position in relation to Clause 16.1 of the Bridgwater AMA is, however, different. As explained above, following the termination of the AMA, MTIM had rights under Clause 16.1 for all reasonable endeavours to be used to complete a "Disposal" of the Development, to which the provisions of Clause 9 of the AMA dealing with entitlement to fees would apply.

269. It is clear that no such Disposal of the Development has in fact been completed, and there is no evidence that BGL has used all its reasonable endeavours to try and effect such a Disposal following the termination of the Bridgwater AMA. Indeed, there is no evidence that BGL has taken any steps at all in this regard and I so find. Neither Mr van Loo or Mr van Iddekinge in their evidence suggested that it had done so. As such, *prima facie*, MTIM has a claim against BGL for breach of Clause 16.1 of the Bridgwater AMA.

270. Moreover, there is no evidence that the directors of MTIM have taken any steps to investigate or pursue this claim, and again I so find. This is notwithstanding that the claim would appear to prima facie have merit and be valuable in circumstances where the Bridgewater Project as a whole appears to be valuable. Moreover, the claim would appear to represent MTIM's principal asset.

271. The reasons why the directors of MTIM have not investigated and pursued this claim are unclear. Mr van Iddekinge did not deal with the point at all in his witness statement. Nor did Mr van Loo. The Claimants say that the directors are under a conflict of interest

because of their association with Mr van Loo and Mr van Loo's other interests in the Bridgwater Project, including in BGL.

272. However, having heard evidence from Mr van Iddekinge, I am not satisfied that this was the case, at least so far as the Second to Fourth Respondents are concerned. It appears to me from Mr van Iddekinge's evidence and the contemporary documents that Mr van Iddekinge did approach his duties as a director of MTIM in a conscientious and proper way and sought to act in the best interests of MTIM. Based on the evidence, there is no reason to think that the position was any different in relation to the Third and Fourth Respondents.

273. Nevertheless, it is clear that the directors of MTIM have in fact failed to properly consider, investigate and pursue a claim against BGL for breach of Clause 16.1 of the Bridgwater AMA. Ultimately, in my judgment, the reasons for this omission do not matter; the unfair prejudice to the Knells results simply from the fact that the directors of MTIM have in fact taken no steps in this regard in relation to what appears to be MTIM's principal asset from which the Knells as shareholders in MTIM would benefit. However, to the extent that it is relevant, then in my judgment the reasons for this omission are that the relationship between the MTIM directors and the Knells had deteriorated to such an extent that the MTIM directors had come to see the Knells as the "opposition" and were therefore focussed on defending MTIM from claims and assertions made by the Knells, rather than on considering what claims and rights MTIM might have in relation to the Bridgwater Project from which the Knells might benefit.

274. In any event, I conclude that the omission of the directors of MTIM to properly consider, investigate and pursue a claim against BGL for breach of Clause 16.1 of the Bridgwater AMA also amounts to unfairly prejudicial conduct for the purposes of section 994.

275. In principle, the same points are capable of being made in relation to MTIM's rights against EPB under Clause 16.1 of the Buxton AMA. However, for reasons explained below, I do not consider that the evidence demonstrates that the Buxton Project had the value argued for by the Claimants. Overall, it appears that the Buxton Project was not successful. Indeed, in the case of the Buxton Project it is difficult to see that there was any cohesive "Development" as such, which could be the subject of a "Disposal" as

envisaged by Clause 16.1 of the Buxton AMA. I do not therefore consider that any failure by the directors of MTIM to investigate and pursue a claim under Clause 16.1 of the AMA is in these circumstances capable of amounting to unfairly prejudicial conduct.

Failure to enforce the alleged new Bridgwater AMA

276. The Claimants also contend that the failure by MTIM to enforce the terms of the new Bridgwater AMA which they say was entered into was unfairly prejudicial conduct.

277. The first question which arises in relation to this contention is whether the new Bridgwater AMA was in fact entered into as the Claimants contend. It is clear that no written agreement was executed. The Claimants' case is nonetheless that the agreement was made at a meeting on 2 September 2015 at the Washington Hotel. As I understand it, the key terms of the alleged new agreement were that MTIM would receive a monthly asset management fee of £55,000 per month (increased from £15,000) and that there would be a further five year term from 2015.

278. In his oral evidence, Paul Knell did not entirely support this case. He said that agreement was reached "*in the discussions*" but "*I'm not going to say it was totally agreed in the Washington hotel*". He said that "*[i]t wasn't agreed with the new shareholders but certainly I felt it was agreed with Eric and Ben, yes*" and "*it was certainly our view that we had an arrangement*".

279. He then said in relation to the question of whether an agreement had been reached:

> "*As I perceived it at that time in terms, I believe the arrangement had been agreed. It's just the question of amending the document to suit Ben de Jonge, who was overseeing it at that time, and Peter and then it would be given to Tim Lake to finalise the document*."

280. For his part, Mr van Loo's evidence was that he did not recall whether agreement had been reached on a new AMA at the 2 September 2015 meeting. However, he denied that an oral agreement had been reached between the parties that the Bridgwater AMA would continue on terms that MTIM would receive £55,000 per month. In his witness

statement evidence, Peter Knell stated that he was instructed by Mr van Loo and Mr de Jonge to produce an updated asset management agreement, but he does not say that such an agreement was actually agreed between the parties. He says that, in any event, MTIM continued to perform its duties under the Bridgwater AMA.

281. So far as the documents are concerned, on 12 October 2015 Peter Knell sent an email to Mr de Jonge attaching a Word version of the draft AMA for BGL and MTIM. It is clear from the covering email that Peter Knell did not consider that agreement had been reached on all the terms of the agreement since he asked for comments and feedback on the draft. As well as the provisions relating to fees, a key provision clearly concerned the proposed term of the new agreement: the draft provided for a five year term from 1 August 2015. It is not clear whether there was ever any response to this email; certainly, no concluded agreement was executed.

282. Shortly thereafter the relationship between the Knells and the new shareholders broke down. As noted above, on 8 January 2016 Mr van Iddekinge wrote to Peter Knell stating that they did not agree with the management fee of £55,000 per month and did not agree with the booked charges for this fee for December 2015.

283. The minutes of the 1 November 2016 Board meeting of MTIM refer to the majority directors acknowledging termination of the Bridgwater AMA effective as of 31 March 2016. However, it is unclear whether this is a reference to a new Bridgwater AMA or alternatively a reference to the original Bridgwater AMA which was either mistakenly understood to have continued in effect post 31 December 2014 or was treated as having so continued. Based on the surrounding documents (in particular, BGL's letter of 6 December 2016 to MTIM), in my judgment it is more likely that the minutes were referring to the original Bridgwater AMA which was either mistakenly understood as having continued or was treated as such.

284. Taken together, in my judgment, the evidence does not support the Claimants' case that a new AMA for Bridgwater was entered into with a new five year term from 2015 and under which MTIM would receive a fee of £55,000 per month. It appears that some form of outline agreement in principle may have been reached between Mr van Loo, Mr de Jonge and Paul Knell at the meeting on 2 September 2015. However, it also appears

to have been understood that this would be subject to the terms of a written agreement being agreed and executed. In addition, the parties understood that the agreement of the new shareholders in BGL (represented by Mr Kaman) would also be required. In the event, the terms of the written agreement were never settled and the agreement of the new shareholders was never forthcoming.

285. In any event, I doubt whether it was in fact ever contemplated that MTIM would receive a flat fee of £55,000 per month. As noted above, Schedule 2 to the draft agreement enclosed with Peter Knell's email of 12 October 2015 in fact contemplated that that MTIM would be entitled to invoice for its costs actually incurred with no mark-up, and that such invoices were expected not to be less than £55,000 per month. That is different from an entitlement to a management fee of £55,000 per month.

286. I therefore reject the Claimants' case that a new AMA in relation to Bridgwater was entered into in or around September 2015.

287. I accept the Claimants' evidence that MTIM did in fact continue to provide services to BGL following the expiry of the Bridgwater AMA. This was acknowledged in BGL's letter to MTIM of 6 December 2016. That letter also acknowledged and accepted that MTIM would have a claim against BGL for the costs and expenses actually incurred by MTIM. However, the same letter also indicated that this claim would also be discharged by way of set-off against that part of the BDI loan which had been assigned to BGL. For the reasons explained above, this approach was open to BGL as a matter of law and in my judgment meant that MTIM's claim against BGL for the costs and expenses incurred by it in providing services following the expiry of the Bridgwater AMA was discharged.

Termination of the AMAs and the Consultancy Agreements

288. Next, the Claimants also rely on the termination of the AMAs and the Consultancy Agreements.

289. So far as the AMAs are concerned, the Bridgwater AMA expired on 31 December 2014 and the Buxton AMA was due to expire on 31 December 2016. It is common ground, however, that the Buxton AMA was terminated with effect from 31 March 2016. It is the

Claimants' position that the new Bridgwater AMA was entered into in September 2015 and that this was also terminated with effect from 31 March 2016. However, I have rejected the Claimants' case that a new AMA was entered into in relation to Bridgwater. It follows that the complaint about the termination of the AMAs can only apply to the Buxton AMA, the original Bridgwater AMA having already expired by its terms.

290. So far as the Consultancy Agreements are concerned, the term of the Marchgale Consultancy Agreement expired on 25 December 2015. The Langnell Consultancy Agreement was terminated by Langnell itself on 6 December 2016 on the grounds of repudiatory breach. As such, the two Consultancy Agreements were not in fact terminated by MTIM and, for this reason alone, this cannot constitute unfairly prejudicial conduct for the purposes of section 994.

291. That leaves the termination of the Buxton AMA. In principle, the act of MTIM in agreeing to the termination of the Buxton AMA could be capable of amounting to unfair prejudice (see section 994(1)(b)). However, I do not consider that the termination of the Buxton AMA amounted to unfair prejudice on the facts of this case. It is clear that by 2016 little or no progress had been made on the Buxton Project. In my view, it was rational for MTIM and EPB to come to the mutual conclusion that there was little benefit in MTIM continuing to provide services under the Buxton AMA and for EPB to continue paying for any such services. I do not therefore consider that the termination of the Buxton AMA amounted to unfair prejudice for the purposes of section 994.

Failure to cause MTIM to pay Employment Tribunal Award

292. Finally, some reference was also made in the course of the evidence and submissions to the fact that MTIM had failed to pay an Employment Tribunal Award made in favour of Peter Knell. In my judgment, this does not itself amount to unfair prejudice for the purposes of section 994. The Award is owed to Peter Knell in his capacity as a creditor of MTIM, and he has the usual remedies available to any creditor of a company who wishes to try and enforce payment of a debt owed to by him that company. Those remedies do not however include the unfair prejudice remedy available under section 994.

Conclusion

293. In conclusion, whilst I reject a number of the instances of unfairly prejudicial alleged by the Claimants, I find that there has been unfairly prejudicial conduct for the purposes of section 994 by reason of their exclusion from directorships and management of MTIM and by reason of MTIM's failure to investigate and, if appropriate, pursue claims against BGL under Clause 16.1 of the Bridgwater AMA.

H. Remedy

294. In light of my conclusions on the question of unfair prejudice, it is therefore necessary to consider the question of remedy.

Remedy in principle

295. Under section 996(1) of the 2006 Act, if the court is satisfied that a petition under Part 30 of the 2006 Act is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of. Under section 996(2), without prejudice to the generality of this, the court's order may (inter alia) provide for the purchase of the shares of any members of the company by other members or by the company itself. For the reasons explained above, whilst I have not accepted a number of the allegations made by the Claimants, I am satisfied that the Petition is well founded in relation to those allegations which I have accepted.

296. In the Petition, the Knells claim an order that BDI be ordered to purchase their shares in MTIM at a price to be determined by the Court. I am satisfied that it is appropriate for such an order to be made. I deal with the question of the price below.

Personal monetary remedy against First to Fourth Respondents

297. In their closing submissions, the Claimants submitted that the Court had a very wide discretion when determining the remedy to award following the demonstration of unfair prejudice and that it should also be ordered that each of the First to Fourth Respondents to the Petition pay a sum equal to the Knells' alleged loss as set out in the Claimants'

Schedule of Loss. The Claimants said that they were concerned that, if a buy-out order was made against BDI, this might not be satisfied on enforcement. The Claimants say that this is justified by the unfair prejudice complained of in the present case which consists of blatant acts of self-interest to the significant harm of the Knells, and their exclusion from a multi-million pound development.

298. However, in the case of the Second to Fourth Respondents, I have already held that no claim for this relief was pleaded in the Petition. The same applies in relation to this claim for relief against Mr van Loo personally. Although I accept that the Court has a wide discretion as to the relief which may be ordered under section 996 on an unfair prejudice petition, I do not consider that it would be a proper exercise of that discretion to order personal remedies against individuals in circumstances where a claim for such relief has not been properly foreshadowed in the petition. To the contrary, in my view, it is unsatisfactory for a claim for a remedy seeking millions of pounds personally from individuals to be raised belatedly in this way. For this reason alone, I would decline to make any orders for relief personally against the First to Fourth Respondents

299. But, in any event, even if the claim for this remedy had been properly foreshadowed in the Petition, then I would not have made any such order in the present case. The Claimants' Schedule of Loss includes a number of heads of claimed loss. As to these:

a. The first part of the Schedule (Section B) relates to the buy-out order which is sought against BDI.

b. The second part of the Schedule (Section C) relates to loss allegedly suffered by the Knells as shareholders in MTIM. However, these losses are reflective of losses suffered by MTIM and any claim by the Knells in respect of these losses is barred by the principle barring recovery of reflective loss (*Sevilleja v Marex Financial* [2021] AC 39). Indeed, the Claimants recognise that this claimed head of loss overlaps with the claimed buy-out order. Moreover, I am not in any case satisfied that these claimed heads of loss said to have been suffered by MTIM are properly attributable to any breaches of duty or misconduct by the First to Fourth Respondents so as to make it just for orders

to be made against them personally. Further, various of the heads of claimed loss are not established for reasons already explained above and below:

i. the management fees which were owing under the Bridgwater and Buxton AMAs were discharged by set-off;

ii. no new Bridgwater AMA was in fact entered into;

iii. the August 2015 transaction was not a "Disposal" which took place at a time when an extant AMA was in place;

iv. the Compass House land is not within the scope of the "Development" for the purposes of the Bridgwater AMA; and

v. the business plan for the Buxton Project is not a reliable basis for assessing any likely profits from that project.

c. The third, fourth and fifth parts of the Schedule (Sections D, E and F) relate to unpaid consultancy fees. However, any such claim belongs to Marchgale and Langnell and not to the Knells, and would be a claim by those companies against MTIM.

d. The sixth part of the Schedule (Section G) relates to an unpaid judgment from the Employment Tribunal in favour of Peter Knell. However, that judgment is against MTIM. The basis on which it is said that it ought to be paid by the First to Fourth Respondents personally was not explained by the Claimants. In my judgment, there is no proper basis for this.

e. Finally, the remaining material parts of the Schedule (Section H and I) relate to alleged loss of earnings by Peter Knell. Again, this is a claim which would lie against MTIM, not against the First to Fourth Respondents personally. In any event, the claim against MTIM for loss of earnings was not explained or substantiated.

300. For all these reasons, I reject the claim for a personal monetary remedy against the First to Fourth Respondents.

Declaratory relief for breach of duty

301. The Petition also claims a declaration that the First to Fifth Respondents have acted in breach of their fiduciary duties to MTIM.

302. The essence of the case advanced by the Claimants in this respect was that the First to Fourth Respondents were under conflicts of interest because of Mr van Loo's other interests and that, because of such conflict, the First to Fourth Respondents acted in the interests of Mr van Loo and not in the best interests of MTIM. So far as the Second to Fourth Respondents are concerned, it is said that they were doing Mr van Loo's bidding and that they failed to exercise independent judgment in relation to MTIM's affairs.

303. However, as indicated above, I disagree with these contentions. At trial, there was little focus on the Second or Third Respondents (the Second Respondent now being deceased in any event). Mr van Iddekinge, however, gave evidence. On the basis of his evidence and the contemporary documents, I am satisfied that he exercised independent judgment in relation to his role as a director of MTIM and sought to act in MTIM's best interests. I do not consider that the evidence supports the Claimants' contention that he was merely doing Mr van Loo's bidding. There is no reason to consider that the position was in anyway different so far as the Second and Third Respondents are concerned.

304. I have already dealt above specifically with the Claimants' allegations in relation to the assignments of parts of the BDI loan and then the set-offs asserted by BGL and EPB. I do not consider that these matters involved any breach of duty by the relevant directors.

305. It was said by the Claimants that Mr van Iddekinge was under a conflict of interest because he had a competing directorship as a director of BDI. The submissions at trial did not address the question of whether any such conflict had been authorised by the directors of MTIM (see section 175(4)(b) of the 2006 Act) (although the Respondents did not suggest that this was the case) or waived or ratified (formally or informally) by MTIM's shareholders, or whether the situation was covered by any provision of MTIM's

articles of association. Mr van Loo was also a director of BDI as well as being a director of MTIM, but this would have been well known by all concerned at the time and so it seems very likely that any conflict of interest in his case would have been informally consented to by the shareholders in MTIM. In the circumstances, I am not satisfied that Mr van Iddekinge was in breach of the duty in section 175 of the 2006 Act to avoid conflicts of interest simply as a result of his being a director of BDI, as well as of MTIM.

306. The Claimants correctly point out that, in the case of multiple directorships, a director remains subject to all the duties owed to each company, including the duty to act in good faith in the best interests of each company, even if the conflict is authorised (*In re Plus Group Ltd v Pyke* [2002] EWCA Civ 370). However, I am not satisfied that the evidence shows that Mr van Iddekinge failed to comply with these duties.

307. The one area where I consider the directors of MTIM might be open to criticism is in relation to the failure to consider MTIM's rights under Clause 16.1 of the Bridgwater AMA against BGL. That might be said to have been a breach of the relevant directors' duties to exercise reasonable care, skill and diligence and/or to act in good faith in the way most likely to promote the success of the company. The point was put to Mr van Iddekinge in cross-examination, but the questions and answers became somewhat unclear. Aside from this, the reasons, if any, for the directors not investigating any claim under Clause 16.1 against MTIM were not explored in any detail during the trial.

308. In any case, it is in any event not clear what useful purpose would necessarily be served by making the declaration sought by the Claimants. The relief which I am prepared to grant under section 996 consequent on the Petition is not dependent on any such declaration being made.

309. For all these reasons, I refuse the claim for the declaration in relation to the alleged breaches of duty by the First to Fifth Respondents.

310. As noted above, the Fifth Respondent did not participate in the proceedings. No case of breach of duty by him was advanced by the Claimants. For the avoidance of doubt, I dismiss those parts of the Petition which advanced allegations against and sought relief relating to the Fifth Respondent.

Price

311. I turn now to the question of the price to be paid by BDI for the Knells' shares in MTIM ("the Shares") pursuant to the buy-out order.

312. In the normal way, the starting point is to determine the market value of the Shares. In the present case, the expert evidence has approached this question by reference to the net assets of MTIM.

313. The Claimants contend that no minority discount should be applied to the valuation of the shares. I accept that submission. In my judgment, MTIM is either a quasi-partnership or sufficiently analogous to a quasi-partnership that it would be inappropriate to apply a minority discount: see *Re Bird Precision Bellows Ltd* [1984] Ch 419, 429h-430f; *CVC/Opportunity Equity Partners Ltd v Demarco Almeida* [2002] BCLC 108, [41]-[42].

314. I also accept the Claimants' submission that the determination of the price can take into account, where appropriate, the effects of any unfairly prejudicial conduct.

315. So far as valuation date is concerned, the starting point is that the valuation should as close as possible to the date of the purchase, although in order to achieve fairness it may be necessary for some other date to be adopted (*Profinance Trust SA v Gladstone* [2002] 1 BCLC 141 at [60]). In the present case, I do not see any good reason to depart from that starting point. The expert evidence values the Shares on seven dates, the last of which is the first date of trial window (12 June 2023). I therefore hold that the Shares should be valued as at that date.

The Expert Evidence

316. As noted above, expert evidence as to the value of the Shares was given by a single joint expert, Moira Hindson of Moore Kingston Smith LLP.

Net assets methodology

317. For the purposes of the relevant valuation date of 12 June 2023, Ms Hindson has adopted a net assets valuation methodology (see paragraph 3.8.17 of her report). I agree that a net assets valuation methodology is in principle appropriate in the present case.

318. A net assets valuation requires an assessment of the company's assets and its liabilities as at the relevant valuation date. So far as assets are concerned, based on my conclusions above, MTIM's assets consist of its rights under Clause 16.1 of the AMAs. For these purposes, in my judgment, it is appropriate to proceed on the basis that MTIM has a valid claim against BGL under Clause 16.1 of the Bridgwater AMA. Thus, MTIM's asset is its entitlement to damages against BGL for breach of Clause 16.1 of that agreement.

Buxton Project

319. However, I do not consider that the same applies in relation to the Buxton Project. Based on the evidence, it is clear that the Buxton Project was not successful. It does not appear that any development was in fact carried out.

320. As noted above, the Buxton Project appears to have concluded with the land and associated rights simply being sold off. In December 2018, Staden Lane, Cowdale Quarry and the water extraction rights were sold to Nestle for £3.4 million and it appears that EPB received £1.7 million of this in return for the release of its rights. Rockhead House was then sold in May 2020.

321. Mr van Loo's evidence on this point was that the Buxton Project was not a success, principally due to planning and other water bottling restrictions at the site which could not be overcome and that the land was ultimately sold to Nestle with an overall loss. I accept that evidence, which in my judgment is consistent with the contemporary documents.

322. The Claimants' case in relation to the Buxton Project rested principally on some of the material which had projected some of the possible returns for the project. This included the "*3 year business plan*" and then a subsequent January 2014 information

memorandum, which was apparently produced for BIH for the purpose of enabling Mr van Loo to try and sell some of his shares in BIH. The information memorandum envisaged the development of the Rockhead House land and the creation of a bottled water brand called "Rockhead". One of the pages of the information memorandum appears to attribute an enterprise value to BIH of £23 million as at 1 December 2013, based on estimates of future cashflows from the project.

323. However, I do not consider that any safe reliance can be placed on this valuation or on the earlier "*3 year business plan*", given the lack of any evidence as to whether or not the projected cashflows were likely to be achievable. I consider that these materials were merely illustrative in nature in indicating possible returns from the project, but they do not provide any basis for concluding that the project in fact had such a valuation. Whether the projected cashflows would be realisable depended on a variety of factors; and in fact it is clear that these potential cashflows were not achieved and that the project was not successful. I also note, in relation to the information memorandum, that an enterprise valuation necessarily does not take into account the debt and other investment which would need to be assumed by BIH in order to carry out the project.

324. Overall, I do not see that there is any basis for considering that MTIM would have a claim of any value against EPB for breach of Clause 16.1 of the Buxton AMA. As such, in my judgment, there is no basis for attributing any value to the Buxton Project for the purposes of valuing the Shares.

Assets – Bridgwater Project

325. As explained above, so far as the Bridgwater Project is concerned, MTIM's asset is its entitlement to damages from BGL for breach of Clause 16.1. I proceed on the basis that BGL would be able to meet that damages award in full. It was not suggested to me by either the Claimants or the Respondents that I should proceed on any other basis for the purposes of valuing the Shares in MTIM.

326. In principle, the quantum of the damages which MTIM is entitled to for breach of Clause 16.1 would correspond to 10% of the Sale Proceeds of the Development, being the amount which would have been realised on a Disposal of the Development. The Sale

Proceeds, as defined in the Bridgwater AMA, are the net proceeds less all costs directly associated with the Disposal. The net proceeds correspond to the market value of the Development.

327. I have not, however, been provided with any evidence by either the Claimants or the Respondents about the likely disposal costs on a Disposal of the Development. In these circumstances, I invite the parties to agree a figure for the likely disposal costs, failing which I will hear further argument on the point.

Assets - the Expert Evidence

328. As noted above, Ms Hindson has valued the Shares in MTIM on a net assets basis. In further detail, in her original report, in addition to valuing the actual net assets held by MTIM at the relevant valuation dates, she incorporated any future expected income which would have been reasonably expected by a third party prospective purchaser of the Shares at those dates. Since the actual and expected income would have occurred in the future, she discounted the expected future cash flows to their present value applying what she considered to be a suitable discount rate. This approach appears to be premised on the assumption that, notwithstanding the termination of the AMAs, MTIM would have an ongoing entitlement to fees on Disposals, as and when they were made.

329. This approach does not, however, in my judgment, reflect the actual nature of MTIM's asset. As explained above, following termination of the AMAs, MTIM's asset was its chose of action under Clause 16.1 of the Bridgwater AMA. For the purposes of valuing that asset, it is appropriate to proceed on the basis that as, at the valuation date of 12 June 2023, MTIM had a valid claim against BGL for damages for breach of Clause 16.1. Such damages are to be assessed on the hypothesis that a Disposal of the Development had taken place, with MTIM then being entitled to a fee in accordance with Schedule 2 to the AMA.

330. The question is what price a third party purchaser would have paid for the Development assuming a Disposal of the Development pursuant to Clause 16.1. For these purposes, in accordance with my findings above, the Development does not include the Compass House land or Phase 3 of the Development.

331. So far as Phase 1 of the Development is concerned, as explained above, the available evidence indicates that the land has not been sold, but rather that a total of 10 warehouses have been built, a number of which have been let out to tenants. In addition, there is a Costa Coffee establishment which has been let. It also appears that there is a further area of commercial land which has not yet been developed (as explained by Paul Knell in his witness statement at paragraphs 71 and 72).

332. The difficulty which arises is that Ms Hindson has in her report approached the matter on the basis on MTIM would be entitled to a 10% share of the income from the warehouses. However, in my judgment, the correct approach is to assess what price would likely have been achieved on a hypothetical sale of Phase 1 of the Development. This question is not directly addressed in the evidence.

333. There is in the evidence a valuation of Phase 1 produced by Alder King LLP in October 2014 which indicated a market value (net land value) of £6 million (based on a gross value of £12.825 million then deducting infrastructure costs and a developer's profit), and a later valuation of June 2018 produced by Cushman & Wakefield. This indicated a market value for Phase 1 of £15.5 million. However, it also appears that this valuation includes within it the Premier Inn hotel and the Compass House land which I have concluded above do not form part of the Development as defined in the Bridgwater AMA. The value of the hotel and the relevant land would need to be deducted from the Cushman & Wakefield valuation. Cushman & Wakefield valued the completed hotel at £9.8 million as part of the overall valuation for Phase 1 of £15.5 million, which implies a valuation for the remaining part of the site of £5.7 million. A disposal of Phase 1 for £5.7 million would have entitled MTIM to a fee of £570,000, subject to the deduction of likely disposal costs.

334. My provisional view is that, on the evidence which is available, this represents the fee to which MTIM would have been entitled to on a hypothetical disposal of Phase 1. However, given that the submissions did not specifically address this point, I consider that the appropriate course is for me to hear further argument from the parties as to the correct value to be attributed to the likely sale proceeds for Phase 1 in a hypothetical sale.

335. Phase 2 was sold by BGL to BoKlok, a residential property developer, in around July 2022 as a freehold plot for £13.81 million. (This differs from the assumption made by Ms Hindson that it was sold for £20 million.) In my judgment, it is reasonable to take this figure as representing the likely net proceeds of disposal of Phase 2 if it had been sold. On this basis, subject to the deduction of the likely disposal costs, MTIM would have been entitled to a fee of £1.381 million.

336. There is also Phase 3. As noted above, this land was sold by BGL in 2022 to the Vistry Partnership for a purchase price of £11.2 million conditional on planning consent being granted. It is anticipated that planning consent will be obtained in November 2024. I have concluded above that Phase 3 does not fall within the scope of the "Development" in the Bridgwater AMA and it therefore does not fall to be taken into account for the purposes of valuing MTIM's rights under Clause 16.1 of the AMA and thus the Shares.

337. Even if I was wrong about this, the likely net proceeds of disposal of Phase 3 if it had been sold would have been £11.2 million, but subject to a discount to reflect the likelihood of planning permission being granted. I did not, however, receive any submissions or evidence on the likelihood of planning permission being forthcoming, nor is this addressed by Ms Hindson (no doubt as a result of the very late stage at which the information about this sale was produced by the Respondents). Accordingly, even if I had concluded that Phase 3 did fall within the concept of the "Development", then it would have been necessary for further evidence to be filed to deal with its value. Given the late stage at the which BGL's letter of 8 June 2023 was produced by the Respondents, I would have been inclined to give permission for such evidence. However, since I have concluded that Phase 3 does not fall within the Development the issue does not arise.

338. For the avoidance of doubt, in accordance with my findings above, MTIM's assets do not include any entitlement to any fee in connection with the August 2015 transaction. Nor do I consider it appropriate to rely on any of the earlier business plans applicable to the Bridgwater Project, such as the Scheme B plan (see paragraph 107 above). This plan indicated a possible future return which might have been possible depending on what

course was taken and how matters developed, but I do not consider that it represents evidence of the actual value of the Development.

339. I determined above that the date of valuation of the Shares should be 12 June 2023. However, there is also a further question as to the date by reference to which the damages for breach of the Clause 16.1 obligation would be assessed. By its terms, the obligation fell to be performed "*as soon as reasonably practicable*" after the termination of the Bridgwater AMA on 31 December 2014. As such, it is reasonable to assume that, if the Clause 16.1 obligation had been performed, any Disposal of the Development would likely have taken place during 2015.

340. On the other hand, MTIM has not as of yet brought any action against BGL for breach of Clause 16.1. If such a claim was to be brought now, then in assessing the likely sale proceeds from a hypothetical disposal in 2015, the Court would be entitled to take into account what had subsequently happened insofar as this was relevant to assessing the likely sale proceeds which would have been achieved from a hypothetical disposal in 2015 (see *The Golden Victory* [2007] 2 AC 353). In this respect, *prima facie*, the subsequent disposal of Phase 2 to BoKok is evidence which is relevant to an assessment of the value which might have been achieved from a disposal of Phase 2 at an earlier date.

341. Further, in the context of the flexible unfair prejudice remedy under section 994, I consider that the Court is in any event entitled to take into account all the evidence before it at the trial. This would also enable the Court to take into account the evidence of subsequent transactions in relation to the Development which occurred after 2015 but before the date of the trial. This is particularly the case where, as in the present case, the responsibility for the fact that MTIM has not to date brought proceedings against BGL for breach of Clause 16.1 lies at the door of the Respondents.

342. For these reasons, my provisional view is that it makes no difference in practice in the present case whether the date by reference to which the damages for breach of the

Clause 16.1 obligation is assessed is 2015 or June 2023 since, even if the former is adopted as the relevant date for this purpose, the Court is nevertheless entitled to take into account the relevant events which occurred after this date but before the date of the trial. However, given that I did not receive submissions on this point during the trial, I will permit the parties to make further submissions on this issue.

343. Finally, for completeness, I would add that it was not suggested by the Respondents that no value should be attributed to MTIM's claim against BGL on the basis that any claim would now be time-barred. If any such argument had been made, then I would have held that, for the purposes of the remedy under section 996, BDI is not entitled to rely on the failure by MTIM to pursue any such claim, particularly where this was itself unfairly prejudicial conduct (see paragraph 274 above).

The Respondents' "single Disposal" point

344. The Respondents also advance a further argument. This was that Clause 16.1 only entitled MTIM to damages in respect of a single post-termination Disposal. As I understand it, it was then sought to be argued that, as a result, MTIM's claim under Clause 16.1 of the Bridgwater AMA could not extend to damages in respect of both Phases 1 and 2 of Development. This was said to be because a disposal of Phase 2 (to BoKlok) has already taken place, but there has been no disposal of Phase 1.

345. In my judgment, this point is misconceived. MTIM's claim is for damages for breach of Clause 16.1 of the Bridgwater AMA. This required all reasonable endeavours to be used by BGL to complete a Disposal of the Development as soon as reasonably practicable after the termination of the AMA. In assessing the quantum of such damages, it is therefore necessary to proceed on the hypothesis that the contractual obligation had been complied with, namely, that all reasonable endeavours had been used by BGL to effect a Disposal of the entire Development comprising both Phases 1 and 2.

346. It follows that MTIM would be entitled to damages for breach of this obligation as it applies in relation to the entire Development. The subsequent sale of Phase 2 to BoKok

provides good evidence of the likely value of that part of the Development. However, it does not have the effect of qualifying or limiting MTIM's entitlement to damages to only Phase 2 or Phase 1.

Liabilities

347. Ms Hindson was instructed for the purposes of her valuation to ignore the indebtedness of MTIM to BDI. As to this, I have found above that the set-offs were effective to discharge the relevant parts of the loan assigned to BGL and EPB respectively. It follows that these parts of the loan which was owed by MTIM to BDI are to be treated as having been discharged.

348. So far as the remaining balance of the loan is concerned, I consider that the part of the loan which is attributable to the Saville Row flat should be excluded from MTIM's liabilities for the purposes of valuing the Shares. In my judgment, the Saville Row flat was principally for Mr van Loo's personal use and it is consistent with the understanding and expectations of the parties that the costs attributable to the flat should not fall against the Knells' interest in MTIM.

349. In my judgment, the fairest approach which should be adopted is as follows:

a. The BDI loan should be treated as comprising two parts: the part attributable to the costs of the Saville Row flat ("the Saville Row Balance"); and the remaining balance ("the Remaining Balance");

b. The set-offs against the debts owed by BGL and EPB are to be treated as having been applied in the first instance against the Remaining Balance and, only if such balance insufficient, then as against the Saville Row Balance;

c. For the purposes of then valuing the Shares, the Saville Row Balance is to be excluded as a liability of MTIM, but any part of the Remaining Balance not discharged by the set-offs is to be included as a liability of MTIM for these purposes.

350. Although paragraph 13 of the Order of Deputy Master Francis of 13 March 2022 directed the expert to value the Shares ignoring all of the indebtedness of MTIM to BDI, this is not in my judgment the correct approach. Moreover, I do not consider that the terms of that Order can compel the Court at trial to reach a conclusion which the Court does not consider appropriate having had the benefit of hearing all the evidence and argument.

Conclusion

351. I have in the paragraphs of this judgment above sought to determine as many of the issues as possible which are relevant for determining the value of the Shares for the purposes of the buy-out order which I propose to make. However, it will be necessary to hear further submissions from the parties on certain matters identified above, including the likely disposal costs and the likely proceeds from a disposal of Phase 1 of the Development.

I. Conclusions

352. In conclusion:

a. I dismiss the Part 7 Claim;

b. I will make an order on the Petition that BDI purchase the Knells' shares in MTIM;

c. I will hear further submissions on the specific issues identified above as to the value to be attributed to the shares for these purposes;

d. I reject the claim for a personal monetary remedy against any of the First to Fourth Respondents.