Neutral Citation Number: [2024] EWHC2876 (Ch)

Case No: CR-2021-00742

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**INSOLVENCY AND COMPANIES LIST (ChD)**
**IN THE MATTER OF MICROLOGIC PROPERTY HOLDINGS LIMITED (CRN.03959109)**
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

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

Date: 15/11/2024

**Before** :

**ICC JUDGE PRENTIS**

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**Between :**

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| **JAGJIT SINGH GILL** | **Petitioner** |
| **- and -** | |
| **1. AMARJEET SINGH GILL** | **Respondents** |
| **2. TARLOCHAN SINGH GILL** | |
| **3. MICROLOGIC PROPERTY HOLDINGS LIMITED** | |

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**OLIVIA CHAFFIN-LAIRD** (instructed by Direct Access) for the Petitioner
The **FIRST AND SECOND RESPONDENTS** appeared in person

Hearing dates: 14-18 October 2024

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# JUDGMENT

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**ICC JUDGE PRENTIS :**

## Introduction

1. Jagjit Singh Gill, Amarjeet Singh Gill and Tarlochan Singh Gill are brothers, born respectively in 1963, 1962 and 1960 and, as they have been throughout trial, generally known as Jack, Sam and Rick. In brotherly ways they have had serious disagreements one with another. This is the trial of Jack's petition brought in respect of one of their companies, Micrologic Property Holdings Limited (the "Company"), seeking its winding-up on a just and equitable basis, or that his brothers be ordered to buy him out, they having conducted the Company's affairs in a manner unfairly prejudicial to him.

## Law

2. There was no disagreement as to this, and it can be put shortly.

3. By section 994(1) of the *Companies Act 2006*:

> "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)…".
>
> By section 996(1)
>
> "If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of".
>
> Section 996(2) then gives examples of relief including at (e) provision "for the purchase of the shares of any members of the company by other members of the company…".

4. To engage the relief there must be conduct of the company's affairs which has caused a member as such to be prejudiced in a way which is unfair.

5. While prejudice will often be financial, it need not be; but it must be of some substance. As Hoffmann LJ said in *Re Saul D Harrison & Sons plc* [1994] BCC 475, 489 "trivial or technical infringements of the articles were not intended to give rise to petitions under s.459". In a similar vein, there will be no prejudice in a procedural failing where, had the procedure been carried through properly, the same result would have inured: *Re OS3 Distribution Ltd* [2017] EWHC 2621 (Ch).

6. In *O'Neill v Phillips* [1999] 1 WLR 1092 Lord Hoffmann stated that "a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted". Those terms will be found in articles of association, which may themselves be negated, qualified, or expanded by proven and enforceable alternative agreements.

7. Those alternative agreements may be such as to constitute the arrangement between the parties a quasi-partnership. In *Re Edwardian Group Ltd* [2018] EWHC 1715 (Ch) Fancourt J reviewed the classic authority of *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, 379-380 with its elements indicative of such a relationship, while at [127] observing that "it is salutary to remind oneself that the initial question on such a petition must be whether the conduct of which complaint is made was in accordance with the articles of association. It if was, then the allegation of some inconsistent obligation or right needs to be carefully scrutinised". In *Ebrahimi* Lord Wilberforce's typical elements for the "superimposition of equitable considerations" included "an association formed or continued on the basis of a personal relationship, involving mutual confidence"; "an agreement, or understanding, that all, or some (for there may be 'sleeping' members) of the shareholders shall participate in the conduct of the business"; and a "restriction upon the transfer of the members' interest in the company- so that, if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere".

8. The remedy under s.996 is flexible, but must be fair and proportionate given the findings of liability. Its basis may extend beyond what has been formally pleaded into conclusions as to other matters which are fairly to be made after

trial. Further, in *Profinance Trust SA v Gladstone* [2001] EWCA Civ 1031, [2002] 1 WLR 1024 the Court of Appeal found at [31] that the then-equivalent of s.996 gave jurisdiction to make an award of interest on the price under a share purchase order, albeit that "It is… a power which should be exercised with great caution… If a petitioner seeking an order for the purchase of his shares contends… that they should be valued at a relatively early date but then augmented by the equivalent of interest, he must put forward that claim clearly and persuade the court by evidence that it is the only way, or the best way, to a fair result… Unless a petitioner is asking for no more than simple interest at a normal rate he should also put before the court evidence on which the court can decide what amount (if any) to allow": [32].

9. By section 125(2) of the *Insolvency Act 1986*:

"If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it of opinion-

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioner and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy".

10. In *Lau v Chu* [2020] UKPC 24, [2020] 1 WLR 4656 the Board through the judgment of Lord Briggs identified "two related but distinct situations, which may or may not overlap" in which a just and equitable winding up may be ordered: the first, a "functional deadlock" at board or shareholder level [14]; the second "where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between the participating members" [15], whereby the winding up remedy would be "the response of equity to a state of

affairs between individuals who agreed to work together on the basis of mutual trust and confidence where that trust and confidence has completely gone": [17].

11. It will be a question for the particular facts of a petition whether a buy-out order available under its proven unfair prejudice is an alternative remedy to the proven availability on it of a winding-up order, and whether it is unreasonable for the petitioner to continue to prefer the latter.

## Witnesses

12. Jack was his own sole witness, cross-examined by Sam with some assistance from Rick. Despite their relations, it was conducted with respectful moderation on all sides.

13. Sam was the Respondents' primary witness, cross-examined comprehensively by Miss Chaffin-Laird. There were no questions either for Rick or for Ahsan Also Pijlman, whose short statement addressed matters at the connected company, Micrologic Computer Services Limited ("MCSL"), and who therefore did not attend.

14. Likewise, there being no questions for them, there was no attendance by either of the experts, Jonathan Harris the property valuer, and Robert Parry, the share valuer. Their reports and supplementary answers have, though, been of great assistance to the parties and to the court.

15. As demonstrated in his evidence and presentation, as well as by the email strings to which Miss Chaffin-Laird took him, Sam is the dominant character among the brothers. Without any false modesty he regards himself as much the most able, and successful, businessman among the three; and it is he who was proactive with suggestions for the Company and its business, telling his brothers what the particular problem was, how he proposed to deal with it, and expecting them to agree; occasional disagreement would usually bring threats that to its and their ill he would withdraw from the Company and leave it to the others to run. Another side to his confidence was that he could not see success certainly

in Jack's achievements, or mark the efforts of others who had contributed to the Company's.

16. For his part, Jack took pride in the trading of MCSL, which he had primarily run, over a number of years, and its ability to open up the possibilities of the Company acquiring the sites at 232 Edgware Road, and 17 and 19 Dawley Road, through MCSL's having been the leaseholder.

17. Both were plainly intelligent men who also, as brothers, had the niggling ability to irritate and frustrate the other. As I observed at the end of closing, it is no task of this court to decide who was right and who wrong on all the points along the way, because it is not necessary to the determination of the petition; and because, as a result, while the evidence has touched on some aspects, it has not been directed at those matters in such a way as to allow any safe conclusions. Both Jack and Sam have come to their own view of the other, and of the facts which have brought them here, and their conclusions were maintained with a degree of obduracy. For that reason, I treat the evidence of both with a degree of caution. However, I should also note that it was Sam who showed a certain flexibility in conceding that, as we will see below, a critical element of his and Rick's defence was unmaintainable, being that at the time of Jack's removal the Company was no longer a quasi-partnership.

## Findings on liability

18. For about 17 years before the incorporation of MCSL on 18 May 1998, Jack had worked for Wickes Building Supplies Limited, the last 10 years as a merchant/ buyer in the Harrow head office. From about 1995, its business changing, he was looking for something else.

19. At that time both Sam and Rick were working at Heathrow, Sam for British Airways as a project manager, Rick for American Airlines as a technician.

20. MCSL was founded to operate within the IT industry, selling computers and related services. Aside from the agents, the three brothers were the only

directors from incorporation until Sam's resignation on 31 December 2007 and Rick's on 1 December 2015, and together with some other family members they were the shareholders. Jack dealt with purchasing, stock control, returns and marketing, Sam IT delivery, and Rick assembly and delivery of complete desktops and laptops, as well as repair. All agree it grew rapidly in its first five years, and was successful. In 2001 it took a 10-year lease on 17 and 19 Dawley Road, Hayes (which were next to each other), and in 2002 a lease on 232 Edgware Road. Jack said that it came to pay dividends averaging £75,000 a year.

21. Despite other family members holding shares, the brothers are agreed that MCSL was founded as a quasi-partnership between themselves, based on mutual trust and confidence, in which all were to be equal directors and shareholders, and to gain equal benefit including by the taking of a monthly salary and dividends once it had made sufficient profit. Jack said that he had created the name, but conceded that the others had then agreed to it. He also confirmed that within the agreement that there should be equal management and benefit the brothers' roles were distinct, and that the time they could devote to MCSL would vary as each had other jobs.

22. That template was one which carried over into the Company. It was originally incorporated as an adjunct to MCSL, to provide IT services related to the nascent internet. On incorporation on 29 March 2000 it was therefore called Amazingsites Internet Services Limited, albeit it was dormant for three years and never traded as such. Again, aside from the agent the only directors have been the brothers, and the only change the resignation of Jack recorded at Companies House as having occurred on 2 March 2020. Each holds one of the three £1 issued shares. Again, it is agreed that the Company was founded as a quasi-partnership between the three, founded on mutual trust and confidence and for their equal benefit and each with the "same degree and extent of rights of management and control", as the amended petition puts it. That was despite its article 19, which permitted it by ordinary resolution on special notice to remove any director "notwithstanding anything in these Articles or in any agreement between the Company and such Director". It was also despite, as the

amended points of defence have it, Jack making a "minimal contribution to the business, confined to communicating with tenants and suppliers". Jack denied that but, whatever, it indicates an important characteristic of this quasi-partnership which was that it was such despite the anticipated and actual variable input of each brother; that had to be so, because each had their own skills but also their other jobs or businesses. It is also why, aside from its not being pleaded, Miss Chaffin-Laird's submission in closing that there was a positive obligation on each brother to do what they could to enhance the value of the Company's properties cannot be accepted. As had already been demonstrated with MCSL, the anticipation was that there would be times when one or more brothers would be more involved than the other or others; and times when they might not be involved at all.

23. The Company was activated and renamed in order to acquire the freehold of 232 Edgware Road. MCSL had been trading out of the shop and basement under its lease, and continued to do so, but the purchase was of the whole building including the two flats and maisonette above. Although the opportunity came through MCSL, as it was a distinct business with its own accounting treatment, the accountants, GMG Roberts, who were the MCSL and Company accountants throughout, recommended use of a separate company. The Company paid £997,000 for the building, aided by a £150,000 loan from MCSL, which was repaid in 2007. The purchase through the Company was, as Sam put it, an investment for all their futures. They also intended to expand the portfolio for their mutual benefit.

24. That intention remained through the purchases of the Company's various properties, and that despite the deterioration in their relationship. After the January 2006 acquisition of 15 Dawley Road, the next along from 17, and the cornerplot, introduced by Rick who was on excellent terms with the owner of the cornershop business, there was a crisis that summer, Sam and Rick saying they "found it very difficult to work with [Jack]… largely as a result of [his] argumentative and confrontational attitude" towards them, and their "concerns… as to the quality of his decision-making". MCSL was no longer

the success it was, and Jack's idea of an additional shop in the High Street, Slough, had not traded well.

25. On 30 May 2006 Sam wrote to his brothers.

"As already mentioned please take this as confirmation that I will resign as director and leave [MCSL] on 31st December 2006. I will stay on as a director in the meantime until I have taken further advice.

Please also be aware that I will be staying as a director of [the Company] and therefore will be fully involved in the day to day running of this company up to and after 31st December 2006. This includes raising any finance, adding to the property portfolio, making any changes to existing leases, selecting of new tenants, etc.

There are a number of issues to be resolved such as existing personal guarantees, etc…".

26. The quasi-partnerships were therefore not interlinked. Nor did the relationship crisis in respect of MCSL necessarily affect that in respect of the Company, probably aided by the fluidity of involvement.

27. Sam said he wrote the letter because as a businessman he could see a lot of competition for MCSL, including from such names as Amazon and PC World; it needed to change: part of the business at Edgware Road was the provision of internet access; Jack and Rick did not agree with his approach; he felt constrained, so wanted to devote this time to something different, his large self-build.

28. While in fact he later withdrew his decision to leave, he said because the business was in trouble and he did want to help his brothers so he gave it another year, there was more to this crisis in relationship. By an agreement of 30 June 2006 Sam and Rick agreed to sell their MCSL shares to Jack. Jack complains that they immediately rescinded the agreement, they say because he had breached conditions. Whatever, their next step was at a meeting on 5 July 2006 to terminate Jack's directorship both of MCSL and of the Company. Jack

objected. Their mother and sister stepped in. On 18 July their sister Jaswant Dhariwal, known as Jessie, wrote to them

"As you three are not reaching to any meaningful or fair decision that is equal to the three of you, so therefore, Mum and I suggest the following".

29. This was a valuation of the Company's 232 Edgware Road and 15 Dawley Road properties, and of MCSL, with the intent that Jack would keep 15 Dawley Road and the retail side of MCSL, and the others 232 Edgware Road and the support side of MCSL, making a balancing payment as well. While recommending that option, the email ended:

"If the above is not suitable, then mum and I suggest that you sell both businesses… and share the money equally and start fresh".

30. The equality of interests is indisputable.

31. Neither option was adopted. For the moment the brothers made up their differences, perhaps following a mediation arranged through Hamid Mehdyoun of GMG Roberts, and on 25 July 2006 Jack was reinstated as director, Sam writing, in revisionist mode, that "Neither Rick nor myself have taken any steps to terminate either position. For the avoidance of doubt, we would not undertake any such steps without first following due process".

32. That last phrase carries the confirmation that Sam and Rick were then aware, and surely as a result were later, that there was a process to be followed for the removal of a director to be effective.

33. On 16 July 2007 Sam again told his brothers that he would leave at the end of the year. "I can assure both of you that there will [be] no change of heart this time no matter what". There wasn't: Sam remained of the view that Jack was unable "to learn and move on from his mistakes and make changes to the business as the industry and market changed". Rick took over his tech support role, and he and Jack bought his MCSL shares, each paying £7,500. Jack divided his shareholding so that his wife and he held a quarter each, but he controlled hers. Jack and Rick's ownership of MCSL continues to date, despite

this petition and Rick's averral that since 2016 Jack has failed to send him any accounts, and from 2016 has filed erroneous PWSC returns at Companies House.

34. The amended points of defence aver that following his departure from MCSL, Sam also "took a step back from any active management role at the Company, and focussed his attention on other business matters", such that "Between 2008 and 2015, [Jack] and [Rick] continued in business as quasi-partners in MCSL and the Company", adding "albeit that [Jack's] contribution to the business of the Company remained minimal, as he focussed his attention on MCSL". That last point is one which resurfaces in their analysis of the next period, and will be addressed again below. The former point, taking Sam out of the quasi-partnership in respect of the Company, is not consistent either with his own witness statement, or the other evidence, or with his position at trial, and is to be rejected.

35. As already seen, his stepping back would not by itself terminate the quasi-partnership, with its contemplation of varied roles and degrees of assistance. Further, as with his 30 May 2006 resignation from MCSL, his 16 July 2007 letter specified that he was to remain a director and shareholder of the Company. His witness statement says of this email that he "wanted to play an active role in the management" of the Company, but "Requests by me to be fully included with the management of [the Company] were largely ignored. Between 8/09/2008 and 10/12/15 I exchanged only 197 emails with Jack and Rick"; "Pretty much" ignored as well were his requests for monthly management accounts and regular director and shareholder meetings. But he "allowed" the others to carry on. "Although not an ideal solution, it did allow me to pursue other projects". He thought their running of the Company over this period was "more like a hobby than a serious enterprise": the first floor Edgware Road flat was converted, and some rotten windows replaced; as also windows in the 15 Dawley Road flat.

36. Between these lines there is, then, ongoing albeit reduced involvement in the Company. In his amended points of reply Jack agrees that over this period Sam "devoted little time on the management", which he and Rick were undertaking.

I am sure that shared general impression is right, but the only board minutes we have are for a meeting on 28 March 2008 at which it is recorded as "discussed… actioned and agreed" that Sam "will setup and oversee the management of the Company] on a professional basis and run it till end of 2008. [Jack] will take over this role for the year 2009"; that all directors will have debit cards "to manage" the Company, and can "claim any incurred expenses with [its] management… via timesheets on a monthly basis". In March 2010 they were all discussing a £20 per hour rate for directors, and in September 2011 Jack circulated them all with a proposed purchase of 17 and 19 Dawley Road. In April 2012 Sam was still involved enough to offer to buy out some or all of his brothers' shares, so the Company could "be run efficiently, maximize its return on its current assets and to provide clear leadership and direction for future strategy". On 15 May 2012 Sam was sending an email typical of his tone and approach, "Just to bring you up to date, after careful consideration I have decided not to proceed with the purchase of [17 and 19 Dawley Road] and look to invest elsewhere". He told them he had informed the seller.

37. So Sam's withdrawal from MCSL and pulling back from the Company did not upset the quasi-partnership agreements as to the latter.

38. 2015 brought another crisis in relations between Jack and Rick at MCSL, and a consequent alteration at the Company. On 1 December 2015 Rick resigned as a director of MCSL following what he regarded as "scurrilous and unwarranted allegations… including … of dishonesty" made against him by Jack concerning an MCSL customer, Porcelain Tiles. Jack was upset that Rick had fallen out with them, as they were a significant buyer of computers. The result was that Jack could no longer tolerate being in the same room as Rick. While still shareholders together in MCSL, their differences remain to date.

39. This rupture obviously affected the Company too, and Sam acted. On 8 December 2015 he wrote:

"Rick/ Jack

From 1st Jan 2016 I will take over the management of MPHL for the next 12 months, this includes day to [day] running of the business. This will give all

and the business breathing space to discuss and agree on future management of the business by all concerned.

The priority in the New Years will be to

1. Ensure monthly cash flow spreadsheets are available to all
2. 3 monthly Directors meeting are in place
3. Investigate actively to acquire funds to purchase 17/19 Dawley Road in the first 3 months of 2016
4. Ensure all properties are achieving market rents
5. Ensure all maintenance is unto date

Got any thoughts please get back to me.

Sam."

40. Jack replied the same evening.

"I have no problem with that, I am going to be very busy just try[ing] to keep Micrologic Computers afloat."

41. He also told Sam that the tenants of the 2nd floor flat at Edgware Road were not paying their rent, and needed evicting; and that the offices there needed converting into a flat. "I have a folder from the flat conversion on the 1st floor if required". The tenants of the 15 Dawley Road flat also needing evicting for not paying their rent. Sam's involvement with the Company had indeed become slight.

42. Sam says his was a "professional decision" to "take immediate and full control and management of the company", to protect it from "financial chaos", to "protect my personal guarantee", and to "ensure all shareholders value was not impacted". He says he found neglected properties and threats from the bailiffs over unpaid council tax.

43. What is important in these events is that they are the foundation for the plea in the amended points of defence that it was at this point that Jack "voluntarily withdrew from any right to participate in the management of the Company at this time", although he remained as a director "out of deference to the parties' mother", and that

"Accordingly, since 2016, although he has remained a director on paper, [he] has had no expectation of involvement in the management or day-to-day control of the Company and has not sought to exercise any such function. It is denied that the Company has [from then] operated as a quasi-partnership business".

44. As already mentioned, that cornerstone of their defence was withdrawn by Sam and Rick; by Sam at the end of his cross-examination on the point, and by them both during their closing.

45. Even without such concession, the evidence against that being a correct scenario was overwhelming. It was one contrary to the terms of Sam's 8 December 2015 missive which while referring to his taking over the management for 12 months also gave among the priorities monthly directors' meetings, monthly accounting spreadsheets, and contemplated the time being used to "agree on future management". This was no more than another example of one among the three taking charge.

46. Further, although Jack had seen how Sam removed himself from MCSL, he never said he was doing the same.

47. And it is not clear why, if the terms of the 8 December missive removed Jack, it did not also remove Rick.

48. And notably it was in January 2017 when each brother began to receive remuneration at least notionally as a director of the Company, and did so initially taking an equal monthly amount of £1,000.

49. The position is also incompatible with a number of emails passing from Sam to his brothers.

50. On 26 May 2016 he wrote to Rick, cc'd to Jack: "You either let me manage and run this business the way I think it should be done or I am happy to hand this back to you both". In another of the same day we have "I did not choose to take on this role… but had no choice after the events of last year between the two of you… I'm not choosing to do this because I have nothing else to do, I have put my personal projects on hold… I will perform this role till the end of December

2016, you need to decide before then which of you will take over and for how long? Final note, please be in no doubt that my role and working with you in MPHL is a marriage of convenience, nothing more".

51. When on 23 August 2016 Sam asked who was to take over for 2017, Rick replied that he was happy for it to be Jack (which may show that Sam's view that Rick would be content to be in a room with Jack, but not vice versa, was right).

52. On 29 August 2016 Sam circulated financial projections for the Company once it had acquired 17 and 19 Dawley Road, and proposals for structuring remuneration between PAYE and dividend for the best tax efficiency. "In order to pay zero tax on the above, partners will need to be on MPHLTD payroll". Whether used deliberately or not, "partners" is a striking word to describe the brothers in the context of a relatively formal communication.

53. On 4 November 2016 Sam was writing to his brothers about the potential acquisitions in Dawley Road. He tells them he thinks other investments would yield "a better return in the long run but I will go with the majority decision". For all his one-man style, he usually recognised that decisions were ultimately for the board.

54. As directors of the Company, the three had resolved to buy 17 and 19 Dawley Road, completing on 17 January 2017 with the benefit of a £1.725m loan from Bank of Cyprus (which later became Cynergy Bank) for which each had to give a personal guarantee as well.

55. On 22 August 2017 Sam wrote to the building consultant to inform him of the outcome of the discussions all three had had about the works at, by now, 15-19 Dawley Road.

56. The three also decided in 2019 that the Company should acquire 38 Waltham Avenue, Hayes, a three-bedroom semi-detached house. It was bought on 7 June 2019 on a two-year fixed mortgage backed again by a personal guarantee from each.

57. That same day Sam set out his plans. At 19.17 that evening he confirmed to his brothers that Waltham Avenue had been bought; required some work; would be ready at the end of the month, and let for £1,450 plus bills. The mortgage payments would be around £675 a month. It had gone online the day before, and there had already been 25 calls to view. The Company's annual income would increase as a result from £219,000 to £236,000, and net profit from £43,000 to £53,000.

58. At 19.42 he sent his brothers what has been called the "5-year plan", after its heading.

"MPHLTD 5 year plan

- Gain planning permission for Hayes Site.
- Construct new enlarge warehouse at rear of 15/17/19 Dawley Road. Make changes at Land Registry to make this a separate unit from 15 Dawley Road, separate titles.
- Major renovation of flats above shops, including adding a room and ensuite in the roof space. Add metal stairs and walkway at rear for new entrances at first-floor level.
- Enlarge shops when stairs to flats are removed.
- Makes changes at Land Registry to separate the flats from shops, at Dawley Road and 232, separate titles.
- Convert 38 Waltham Ave into 3 flats. Makes changes at Land Registry for separate titles.
- Purchase forecourts in front of 17/19 Dawley Road.
- Convert top floor flat at 232 into 2 separate units.
- Refinance existing loan for a further 5 years for a sum of £2M, repay mortgage at 38 Waltham Avenue.

The above is what we need to achieve.

Once the company worth reaches approx. £7.5M I will table a motion that the Directors take a vote (majority vote) to sell the company, pay off the loan of approx. £2M and tax liability of approx. £1.5M. This should leave each shareholder a tidy sum to retire on.

Comments/ suggestions?

Sam".

59. On 10 June Jack replied:

"The plan looks good, however I would like to propose the following 2 points;

Building a house/ bungalow at the rear of 15 Dawley Road will add more value.

Would like to investigate the sale to a major developer of 15/17/19 Dawley Road and see how that would benefit the company.

Please reply with any comments to the above.

Thx Jack".

60. In his witness statement Jack said that, as would be expected, "These were something that we had all discussed about many times in the past and therefore it was agreed by all, and we know it would add considerable rental income, increasing the company's assets and add value to [it]".

61. With the purchase of 38 Waltham Avenue the Company had amassed a substantial property portfolio, with significant development potential. As recorded in Mr Harris's report, separate applications for permission to develop each of 15-19 Dawley Road had been refused on 28 November 2017. Under the 5-year plan a further application had been made covering all three together.

62. So Sam was right to acknowledge in his cross-examination that after 2015, and contrary to their amended points of defence, he had run the Company with the assistance of Rick and Jack. That he would see Rick to discuss matters while only dealing electronically with Jack, keeping him "in the loop", and that Jack's role was in his view "minimal", does not matter: the directors continued to take the strategic decisions, in a not untypical informal family-company way. He was also right to agree that there was nothing there destructive of the quasi-partnership arrangements; and that they therefore continued after 2015.

63. However, the moderating influences were no longer present. Jessie died in March 2016, and their mother on 20 September 2018. Jack says that their

mother's death "was the catalyst to relationships breaking down within the whole Gill family"; he is speaking more widely than the brothers. Sam's written evidence notes that while in respect of her wishes he and Rick tried to "work [with] and accommodate Jack with the Company… this became untenable as time went on".

64. Perhaps with the events of 2006 in mind, on 12 February 2020 Sam spoke to Mr Mehdyoun, senior partner at the accountants and to him a family friend, to seek advice on dismissing Jack as a director. That advice must have been to look at the articles, because the next day Sam, copied to Rick, emailed him to say he had found article 19, and asked for a recommendation of a lawyer "who specialises in this field". Mr Mehdyoun dissuaded him from the latter, on the grounds of expense; confirmed that "Shareholders appoint or remove directors"; and observed that "What you have read in the Articles is really for large companies with numerous/ different directors and shareholders. In a small family company, matters are decided by a simple telephone call".

65. That was advice which Sam took. On 28 February 2020 he thanked Mr Mehdyoun "for detail explanation and I feel comfortable moving forward on this basis". He told him that he and Rick, as directors, had voted to remove Jack as director as from 1 March 2020. "Can you update Company House and notify any other entities or persons to this effect that fall within your firms remit".

66. Even leaving aside the quasi-partnership, this was plainly not compliant with section 168 of the *Companies Act 2006*, nor with article 19. Sam's protestation in his evidence that the dismissal "did not follow a predefined process as in most companies because it was a quasi-partnership between family members" does not assist.

67. At 16.21 that Friday afternoon Sam, copied to Rick, sent Jack this email, headed "Director's role".

"Dear Jack,

I'm writing to inform you that as of 1st March 2020, you will no longer be a Director of Micrologic Property Holdings Ltd. The decision was not taken

lightly but is in the best interest of the company. In the last 4 years you have played little or no active role in the running or managing off the company assets. The decision was made [by] myself and seconded by Rick.

From 1st April 2020, your net PAYE payment will be reduced from £1100.00 a month to £500.00. This is subject to change in the future. This amount is paid to all 3 of us as a base monthly payment. It is topped up to £1100.00 net to reflect the Directors role and for the ongoing contributions made by each towards the maintenance and upkeep of company's properties. I'm paid a further remuneration for the role that I hold, administrative management of the company on a day to day basis, plan and delivery of growth and increasing the balance sheet value.

You still remain a 33% shareholder of the company and will be entitled to any future share of dividends paid. The company will inform all parties to which you have given personal guarantees of these changes.

Kind regards,

Sam Gill".

68. Despite the legal, and one might think family, obligations, this removal was unheralded and Jack was shocked not only by it but by its effects: he required this ongoing income to help him pay for his own long-running building works at home in Iver, started in September 2017.

69. He objected straightaway, and maintained his objections throughout the year.

70. On 2 March he reminded Sam that his nomination to take over day-to-day management of the Company was "to include a fair and non-biased approach"; yet his brothers had collaborated secretly against him. He suggested calling a directors' meeting to discuss whatever issues there might be.

71. By 10 March he was telling his brothers that the vote was "null and void", which drew Sam's reply that "I made the decision to remove you from the role, it is in the best interest of the company going forward. No meetings, either at Director level [or] shareholders level had taken place therefore you have not been

excluded", which was a remarkable line of argument. He added, correctly, that "As a shareholder you will still benefit from the company's growth and increase in value", and referred to the 5-year plan and its intention to benefit all shareholders in the long term; and said, counter-intuitively, "You may still be required to play a role in its future growth".

72. On 26 March Jack reminded Sam that he had "no authority or mandate to make a decision of this magnitude", and on 29 April raised the procedural failings with Mr Mehdyoun, who urged a philosophical view.

73. He had in the meantime, on 6 April, sent Sam a detailed list of "urgent points" concerning the effect of Covid on the Company. Having, as he acknowledged in cross-examination, known of the procedural error in failing to requisition a meeting since receipt of a 16 April email from Jack, Sam said, which I accept, that it was an exceptionally busy time for him with his businesses, with the coming of Covid. However, the simple task of informing Jack that his removal had been unconstitutional and ineffective was not done.

74. Instead, Jack's many months of justifiably complaining correspondence drew nothing until a 22 September 2020 letter, on formal Company paper and signed by Sam and Rick, "offering you the opportunity to resign forthwith", which at least tacitly acknowledged that his removal had not been effective. It continued: "arguing about your directorship is somewhat pointless as a majority vote was taken to remove you from the role"; his inability to accept his removal had "become a distraction to the efficient running of the company", and they suggested that a Tony Wollenberg be appointed mediator. "Should you not with to accept any of the options, the company will put in place steps to dismiss you as a Director. Your only recourse will then be to take the company to court [of] which you are still and will remain a shareholder".

75. They also told him that he needed "to accept that there has been an irretrievable breakdown in the working relationship". That was true, and is surely why they did not formally restore his directorship.

76. By email of 5 October Jack confirmed "I have no intention of resigning", going on to refer to section 994, and that the Company "was always intended to be

operated as a partnership… it was always agreed that I would be a director in order to play a significant role in running the company as well as having access to all financial and trading information".

77. On 18 October notice of a special meeting on 16 November was circulated, at which the shareholders would consider the removal of Jack. Jack maintained that the resolution, which passed, was again invalid, because of confusion over timings of the virtual meeting. Sam and Rick took advice from Mark Laffety at DPH Legal, whose view was that the resolution was validly passed, but that a further meeting should be held. Jack did not attend the 18 January 2021 meeting which all agree removed him. As he said, rightly, his presence would have made no difference.

78. Sam and Rick have come to recognise that Jack remained a quasi-partner at the date of his removal, but have made no admission as to it being unfairly prejudicial. The unfairness, though, is manifest: his removal was a plain breach of the quasi-partnership agreements by which all were to have equal rights to management of and benefit from the Company. A belief that his removal was in the best interests of the Company was irrelevant unless, for example, because of incapacity. In fact, neither Sam nor Rick has ever specified exactly what it was which led them to that conclusion.

79. Jack speculates that his removal was consequent on the obtaining of planning permission on 15-19 Dawley Road on 18 February 2020; it was "with a view to depriving him of full knowledge of and/ or involvement in and/ or profit from a lucrative property development" as the amended petition has it. Sam and Rick's response, that Sam had talked to Mr Mehdyoun 6 days before does not by itself meet the point: as Jack says, the planning application was a lengthy process, and its outcome fairly certain because the earlier failed individual permissions had indicated what was required for success, and there had been no "minded to refuse" communications. The obtaining of permission is the only identified factor which has changed. But to dress it up as the reason for removal, rather than the immediate cause, is to overstate the position, not only because the removal was a culmination of fraternal disagreements, but because Jack overstates its dastardly consequences. It is one of the unexplained oddities, and

one which points to the main cause for removal being the clash of characters, that terminating Jack's directorship meant more work for the others, whether on the Dawley Road or other properties; and, moreover, more work not only for their benefit, but Jack's. He retained his shareholding. He would benefit from the capital uplift in the Company, and any dividends declared. Financially, his only deprivation was in the modest directors' remuneration, although that was of particular importance to him at the time.

80. As to prejudice, one can begin with Jack being deprived of the oversight which it was agreed he should have over the Company, which represented an important asset for him, and his own investment of time and money. The oversight was not only over investment, but risk: Sam's 1 January 2016 return to the Company was in part because of his concern over his own guarantee. Allied to this, Jack's access to the Company's bank accounts and statements was terminated on 10 April 2020; and on the same date his Company email address was removed: he was no longer able to communicate as a director of the Company. Neither was he now one of the directors approving or not the Company's statutory accounts: those to 31 March 2020 were approved in June by the board, not including him despite the knowledge by then that his removal had been illegitimate. In the circumstances of the Company and of the quasi-partnership agreements, this was substantial prejudice.

81. Prejudice, albeit minor and affecting them all, was suffered in another guarantee-connected way in Jack's removal. Lendinvest BTL Limited held a charge backed by personal guarantees for its lending to the Company for the 7 June 2019 acquisition of 38 Waltham Avenue. On 5 March 2020 Sam wrote to inform it of Jack's removal. The response he received on 9 March was that that was a breach of the loan agreement, albeit "We will not take any further action at the moment". It reiterated that Jack "is not released from his personal guarantee". So the Company as a whole suffered from Jack's removal without the consent of Lendinvest through risk of enforcement of the breach. It must be added that by an email of the same day Lendinvest indicated that the current debt was about "250k-£225k" and that it might be able to release Jack if all agreed, so the prejudice is largely theoretical, especially as its December 2021

valuation was between £405,000 and £420,000. I should also add that I have not heard any evidence that Jack has now been released from this guarantee, unlike that for Cynergy Bank. The 2022 refinancing of its loan for £1.6m was on terms that only Sam and Rick need give personal guarantees; so, though remaining a shareholder, Jack was released.

82. The other substantial prejudice to Jack was that contrary to their agreement, from February 2021 he no longer received the same drawings through remuneration as his brothers: he was sent his P45 on 25 February 2021, and from that month received nothing. As already seen, remuneration was to be divided between PAYE and dividends to try to achieve the least-tax-paying solution for the three. It was also, as Rick confirms in his witness statement, "not in exchange for any services" provided to the Company. How it was dealt with, even after Jack's departure, is exampled by an 11 August 2022 email from Sam to Rick: there was insufficient money in the Company's current account to pay anticipated bills that month and in the future, so they are to reduce their wages to an affordable £2,600 per month each. This flexibility was assisted by no brother having a written contract of employment.

83. From January 2017, when the Company started to pay, all brothers had received £1,000 a month. Sam's was topped up as recognition for his managing the Company, but modestly: in April 2018 he was taking an extra £550 a month, and from July that year an extra £600. So Mr Parry records that for the 31 March year ends 2018 to 2021, total salaries paid to the directors were, respectively, £58,000, £64,000, £55,000 and £45,000. Over the same years there were dividends paid of £15,000 in 2018 and 2019, and £6,000 in 2020 and 2021, since when none have been paid.

84. However characterised, these were essentially payments by way of a disbursement of available funds, the disbursement, in accordance with their agreement, being equal. It was therefore prejudicial to Jack not to receive his share of them, Sam and Rick's continuing.

85. Aside from the prejudice, there is also a sense that the reduction in remuneration was treated by Sam as a weapon in their psychological war. This was not really

remuneration at all, but it now suited Sam to treat it as such, and at a time when he had at least some inkling that Jack's financial situation was hard. The 28 February 2020 removal letter told him that his remuneration would be reduced to £500 a month, which was now to be treated as the base monthly payment, while Sam and Rick would as directors receive £1,100 (and Sam £600 on top of that). Aside from the payslips which would tell Jack that actually he continued to be paid £1,100 for February and March, then £1,048 from April, and which I am satisfied he must have seen, income being of deep concern to him at the time, the next he knew was that on 22 March 2020 Sam told him his receipts would be reduced by 50% for April through to June, because of Covid and "some commercial tenants… are unable to make rents payments as due". Not surprisingly, as it was the last figure communicated to him directly, Jack understood that meant his £500 was being halved. It is also notable that, as appeared from his cross-examination, Sam's email was misleading: tenants were not unable to pay, but expressing concern about their ability to pay.

86. Covid did intervene. On 16 April Sam told Jack and Rick that the Company would be claiming under the Coronavirus Job Retention Scheme, at 80% for 3 months unless extended; and told Jack that after that he would receive nothing. That was followed up on 24 April, Sam telling the others that an application had been made, but that Jack would receive nothing from July. On 23 August he told Jack his last payment would be in August. Although some of the uncertainty was out of Sam's hands, he could and should have explained matters clearly and openly to Jack, rather than communicating partial information, especially as one of his management mantras was "information is king".

87. Thrown into this, at least into Jack's witness statement rather than his petition, where it appears only as a free-floating element of compensation, is a complaint that Sam and Rick have "refused to pay dividends". That bare statement is not sufficient to ground prejudice. Jack may well complain that no dividends were paid since 25 January 2021, but that was true for everyone. Further, while the dividends were properly declared, they were, as we have seen, part of a flexible process of disbursement. Jack can point to his email of 20 April 2020 to Sam and Rick, shortly after his removal, within Covid, at a time when he is

financially struggling, by which he observed that "With approx. £140k in the bank and gross profit of 20k per month I strongly belief that the Company can more than afford a one-time payment in Dividend to all shareholders off £20k for 2019/20. Rick, what are your thoughts on this? Sam, do you agree?". As Sam said, with the Covid risks to its rental stream and its obligations under its borrowing agreements, it was hardly the time to start distributing its cash. There is nothing separate in this point.

88. The monetary consequences of the remuneration prejudice will be addressed below.

89. There was other, minor, financial prejudice caused by later wrongful acts of Sam and Rick, without the oversight of Jack, which have been at the expense of the Company. It expended £36,702 on legal fees of the petition, presented on 26 April 2021, before express prohibition by my CCMC order of 21 September 2021. The relevant solicitors were acting for the Company, but in the usual way it had no separate interest. The matter had not been clearly explained to Sam and Rick, and these sums are admitted. There was prejudice to Jack in their disbursement at least until their repayment by Sam's wife on 25 August 2022.

90. Also admittedly prejudicial was the disbursement of £1,500 to Osbournes, Sam's solicitors dealing with issues in their Mother's probate; and that of £7,479 to Jung & Co, the solicitors under her will. A similar payment to Grace & Co was attributed to Sam's director's loan account, so does not come into account.

91. Those are the relevant matters, but I cannot leave the remaining contents of the petition without comment. On 17 March 2023 Deputy ICC Judge Schaffer struck out parts of it, but allowed other amendments, which were to be "amplified in further witness statements"; and Marcus Smith J refused permission to appeal. The amended petition ranges wide in its other allegations of prejudice; the wider, because the grounds are rarely particularised, and the witness evidence forthcoming does not assist. Their baroque manner of expression I take to reflect Jack's upset, which is not itself a ground of prejudice; but they also demonstrate a fastidious and narrow-minded pursuit of every

conceivable category of financial compensation for his wrongful removal and the perceived differentials between his position and that of his brothers.

92. To take an example of one of the emotional grounds, it is pleaded that Sam and Rick have made "untrue generic, and unparticularised pejorative and stigmatising allegations against [Jack], perpetuated herein, for example, that it is not possible to work with [him]". The one particular given of this ground is all the more extraordinary as the breakdown in working relations is admitted by Jack and is the basis for his claim to wind-up the Company.

93. There is then the Scott Schedule. At the CMC before Deputy ICC Judge Schaffer on 28 July 2023 he permitted the creation of a Scott Schedule by which Jack could contest items of Company expenditure since 2 March 2020 in excess of £250. At trial we did not get beyond the first item, a 27 April 2020 online payment to Costco of £334.95. Sam and Rick said this was for "Fire extinguishers for 232 Edgware Road building- common areas". Jack's response was: "Remain contested- Over Expenditure to reduce profits". With minor variations, that was the reply to each of the next 110 items except for four, which Jack accepted, and the five which Sam and Rick accepted, being the payments already mentioned to various solicitors concerning the probate. Jack told the court he could not accept the £334.95 as he did not know whether the Edgware Road fire extinguishers required replacement in April 2020.

94. The Scott Schedule was rightly withdrawn. What its relevance ever was was unclear, Jack confirming that it was not intended as the otherwise ungiven particulars of the pleaded unfairly prejudicial conduct item (o), "clandestinely drawing down illegitimate payments from the company credit card and/ or for purposes unconnected with the conduct of the [Company's] business".

95. Further, although put, lightly, in cross-examination, Jack has no pleaded case that the Company was deliberately run down to reduce profit and therefore the amount payable by Sam and Rick on any buy-out order, whether at some point after removal, or after intimation of proceedings, or otherwise; let alone a case which gives the necessary detailed particulars of such allegation. The closest the amended petition comes is item (t), alleging that Sam and Rick have been

"violating their fiduciary duties by improperly taking steps to deplete [Jack's] share of income by funding their personal or non-business liabilities, such as substantial legal fees and/ or probate costs, out of the [Company]". Those last have been addressed above. So, that only the first two bullets of the 5-year plan have presently been completed is irrelevant. Actually, as Mr Parry's report shows, the Company's profits increased in each year from 2018 to 2021, from a negative £8,000 to positives £27,000, £53,000 and £82,000; and its net assets also increased each year, from £505,000, to £517,000, £564,000 and £640,000. So after Jack's purported removal on 1 March 2020 actually the Company's position improved substantially. While expenditure increased in the year end 2022 for the rational reasons Sam explained, it is also apparent from Mr Parry's report that the Company's value again increased between 18 January 2021 and 29 March 2022.

96. On occasion, Jack's obduracy also causes him to be blind to the obvious. Item (v) is "it is understood that [Sam] and/ or [Rick] have procured the taking out of a loan in the sum of £50,000 by the Company, a decision in respect of which, to his prejudice, [Jack] had no say, but which was capable of increasing the risk of a call on [his] guarantees". This mysterious loan, of which Jack surely knew the date, was, as he also surely at the least suspected given his investigations of the Coronavirus Job Retention Scheme, nothing more than a bounceback loan, at moderate interest and with no guarantees required. He could make the simple point that he was not consulted about it, but instead fashions it as some evil plot.

97. There is no need to say more about the other largely unparticularised items of prejudice. Save as above, they are not made out, and do not affect the relief.

## Relief

98. The appropriate relief has been set up from the earliest stages of the petition.

99. At the CCMC before me on 21 September 2021 the parties had largely agreed the order, including that there should be a single joint valuer of the Company's properties and of its shares, it being specified in respect of each that the "valuer

shall act as an expert and not as arbitrator and the determination shall be final and binding on the parties". Those valuations were to be produced as at the removal date, 18 January 2021, and the report dates. Jack was then, as he has been for much of the petition, represented by Marc Beaumont; and although I cannot recall the details of the CCMC it is not difficult to see lying behind this agreement his pro-ADR approach, and a worthy attempt in a petition without large allegations of mispropriety and concerning an economically relatively simple company to have settled as much as possible before the mediation, for which there was a stay. Those directions were effectively extended, by consent, by order of Deputy ICC Judge Agnello QC of 23 February 2022, with the stay until 16 May.

100. Mr Harris provided his report on 14 December 2021, Mr Parry his on 29 March 2022.

101. Mr Harris's report provided valuations for the properties at the two dates on two different bases: an "Open Market Value" and a "forced sale" value. As he records, he sought further instructions on these points, as neither is a current RICS Valuation Standard term.

102. Treating the former as "Market Value", he analysed in accordance with the Red Book

"The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties have acted knowledgeably, prudently, and without compulsion".

103. The latter by agreement was treated as a marketing period of 3 months.

104. On those bases, he gave the value of 232 Edgware Road as £1,861,000 at the first date, and £2,050,000 at the later. The restricted marketing period made no difference, as it was probable that it would be auctioned anyway given its nature of an investment property.

105. 15-19 Dawley Road were valued at £1,360,000, rising to £1,460,000; £1,250,000 and £1,350,000 on the restricted basis.

106. 38 Waltham Avenue had values of £405,000 and £420,000; £390,000 and £405,000 on the restricted basis.

107. These figures were one data-set in Mr Parry's report, albeit he checked them against evidence of changes in the market since Mr Harris's report. I will come back to his methodology below, but he was valuing Jack's shares "as on an arm's-length sale between a willing seller and a willing buyer". His conclusions were that at the removal date Jack's shares were worth £581,000 on a non-discounted going concern basis, and £465,000 discounted; and £514,000 and £488,000 on a break-up basis. As at the date of his report the going concern value was £656,000 non-discounted and £525,000 discounted; and £576,000 and £547,000 break-up.

108. The parties are agreed that these figures and these dates are binding on them. Further, Sam and Rick agree that the appropriate measure is that of a going-concern; non-discounted; and on the latest valuation date, 29 March 2022. Were it contentious, that is here manifestly the correct measure given the nature of the Company and the unfair prejudice.

109. All parties are also understandably keen to end their lingering relationship in the Company.

110. There was a difference between Miss Chaffin-Laird's skeleton and her expression of Jack's closing position. The skeleton had sought just and equitable winding up as an alternative to a buy-out order; by closing, it was the preferred relief if the buy-out order were not to include all the additional elements as to remuneration and development profit which Jack wished.

111. The findings above found the ability to grant relief on the just and equitable part of the petition: this is not a case of deadlock, but is one where the three partners have lost trust and confidence in each other, to the extent that one has been wrongly excluded. However, the early and agreed instruction of the experts shows that the parties always expected that if relief be granted it be by way of a

share purchase order; otherwise that time and expense was wasted. Further, although there has been mention of a liquidator's ability to investigate, it is not clear into what; and insofar as there have been small misdealings with the Company's property, they have been addressed by the evidence at trial. This is not, then, a case in which there is an obvious benefit in the appointment of a liquidator; and that would need to be present where there is an obvious disbenefit, being the additional expense to the detriment of each brother. In short, pursuit of a winding-up when a full-value buy-out order at a date agreed by the parties can be made, would be s.125(2) unreasonable; and whatever views Jack may have on the value, he will necessarily receive what the court finds is full value.

112. It follows that the appropriate relief is that, on specific terms to be addressed at the consequentials hearing, Sam and Rick should buy the entirety of Jack's interest in the Company as at 29 March 2022 at the price of £656,000, together with the amounts addressed below.

113. The first of those is interest. The parties are bound to the latest valuation date. More time than was then anticipated has passed. Effectively, Jack has been kept out of his money since then. This seems to me a clear case in which interest should therefore be ordered on top of the purchase price; and in principle that interest ought to run until Sam and Rick make payment for the shares. Interest rates have swung over the period, which makes me think that 3% would be too low. Miss Chaffin-Laird suggested a range of 5-6%; and 5% seems to me right.

114. Next comes the first of the big-ticket items, Jack's claim for "Unpaid salary (to be set off against any sum awarded in Claim No.330382/2021 at the Watford Employment Tribunal)"; and "Payment to bring [Jack] into line with increased dividend of [Sam and Rick] since October 2021- £1,960 x 11 mths (P's dividend ceased in February 2021 and R1 and R2 have tripled their dividend payments in October 2021)".

115. At the time of the amendment, those were quantified separately at £55,000 and £21,450. Miss Chaffin-Laird's skeleton referred to a spreadsheet prepared by Jack with a single figure updated to March 2024 of £90,831; and in closing she

provided Jack's contemporaneous figure of £109,031, based on an ongoing monthly increment of £2,600.

116. The true basis of this claim must be ascertained.

117. As is now recognised by Jack, there is no separate figure for dividends: no dividends have been declared since January 2021, but this was with remuneration a blended figure allowing equal disbursements.

118. That points to the next issue, which is how disbursements should be calculated. Jack says he should receive the same as his brothers have received. On the evidence, that is not right. They should receive the same, being the same proportion of the total disbursement, excluding Sam's uplift. So, to take February 2020, Sam received £1,399, Rick £910. It is the amount of Rick's receipt which quantifies the common element; Sam received £489 separately. What Jack ought to have received is not £910, but one-third of the common elements of £1,820: £606.66.

119. Next, should that payment extend to the present day?

120. If it should then it would be subject to the off-set of whatever Jack has been earning in place of the work he would have done at the Company. He started a job at Fujitsu in Bracknell on 14 June 2021. We do not have the details, but he says it is "modestly paid work… to compensate for the loss of salary".

121. But whether it should turns on for what Jack is receiving value on the sale of his shares.

122. It will be recalled that Mr Parry's report was on a willing arm's length sale basis: the £656,000 is what such a buyer would pay on a non-discounted going concern basis. As to methodology, Mr Parry noted that:

> "Property holding or investment companies are generally valued on a cost basis, being an assessment of their assets, net of liabilities. This is because property companies primarily derive value from the use of existing assets, i.e. the ownership of property, rather than trading activities".

123. He continued:

> "Additionally, the primary assets of property companies, the land or buildings that they own, are often themselves valued on the basis of the expected future income they will generate, whether by sale or on the basis of rental yield. Valuing a property company on a market or income basis therefore risks duplicating or double-counting value which has already been captured in the valuation of its property assets".

124. That last is an important sentence.

125. Mr Parry therefore considered "that the appropriate way to value MPHL, a property company, is a Cost Approach. This assesses the value of the business by reference to its fixed and current assets, less current and long term liabilities. Such an approach therefore requires the market value of a company's properties to be identified… as well as taking account of other assets and liabilities… [which] may include assets and liabilities which are not recorded within a company's balance sheet… including taking account of contingent assets and liabilities".

126. Later, he returned to the nature of a cost approach valuation, which

> "considers the assets and liabilities of a company in terms of their replacement cost, i.e. the price which a buyer would have to pay to acquire an identical asset (or settle an identical liability)".

127. He then considered the Company's balance sheet, and Mr Harris's valuation; and what else should fall within the balance sheet; and arrived at his valuation.

128. As already seen, Mr Harris's was an open market valuation. He considered separately the valuation approach for each property.

129. For 232 Edgware Road it was

> "an investment method. This involves considering the current lettings against prevalent market rates, and applying a capitalisation rate. The terms of the existing lettings are also considered against the obligations they may impose".

130. That for 15-19 Dawley Road required more analysis because of the 18 February 2020 planning permission, which "must be begun before expiry of three years namely 18 February 2023". He noted that the expiry dates on the leases to the retail premises "do provide an obstacle to implementation of the planning permission fully"; but it would be possible to commence work short of demolition to the warehouse behind, to "trigger… the consent". With that, he divided the potential works. Stage 1 was the redevelopment of 15B to provide a new storage unit, which would have to be after the lease ended in May 2024, but which would be permitted because of the pre-expiry works (whatever they might be). This was "relatively straightforward because the value delivered by the scheme is clear". Stage 2 would be the remainder and "would be more difficult", the lease on the cornershop not expiring until 14 August 2029. 17 and 19 Dawley Road would fall vacant in February 2023, unless an earlier deal on unknown terms were done, but there would be questions over viability: given their setting the new flats would be directed at the lettings market at a time when there is "a great deal of new, modern high quality residential development" locally, against which they would have to be discounted; but the rental margin between existing state and renovated state would be "relatively small". If both Stages were able to proceed together then aggregate value would be £290,000 and £1,215,000; but if not the Stage 2's "must then be discounted to reflect the holding costs over the period until vacant possession, potential risk of cost and delay and the cost of holding elements of the buildings empty to line up development. I find it difficult to anticipate a purchaser being prepared to proceed on that basis".

131. So for Stage 2 the investment basis would again be appropriate. For the developable Stage 1 there would be a residual valuation. "The starting point to the residual valuation is to consider the likely value of the future property- gross development value. From this I deduct the various costs of development, namely, purchase and sale costs; construction expenditure, professional fees and contingencies and finally make an allowance for interest, any other known costs and a suitable profit. The balance or 'residual' is the amount that a buyer could afford to pay for the land or site and is therefore its Market Value".

132. So, £290,000 was the value of Stage 1; and £1,070,000 the rest of the Dawley Road development, for which Mr Harris showed his workings: ascertaining an aggregate annual rent and applying an appropriate gross income yield.

133. As a residential property, 38 Waltham Avenue was valued "by comparison to the earlier sale or letting of similar properties in the appropriate locality. Due to the uniqueness of all property, it is necessary to make subjective adjustments for location" and then a list of others; "As the property is let, the market traditionally applies a discount that reflects the fact that the majority of residential property is owner occupied and possession would be delayed. In parallel there is a professional and buy to let investor market that seeks income yield but will invariably wish to pay a discount to the vacant possession value".

134. On 13 April 2022 Jack asked formal questions of Mr Parry to which he replied on 4 May. The relevant ones concerned goodwill. He was asked why he had omitted it.

"Goodwill has not been omitted. The goodwill of a company represents the difference between its market value and the value of its underlying net assets.

This is a property company, so the value of its goodwill is reflected in the value of its owned properties. These are primarily taken into account in the Harris Report…

As noted at paragraph 3.8 of my Report, [the Company] has confirmed that all income and costs in FY22 relate to its core property business. Based on the evidence I have seen, I have not identified that [it] has any other source of material 'goodwill' in excess of that reflected in the property values".

135. Asked if his figure for the Company's annual income of £75,000-£100,000 enabled him to value goodwill, Mr Parry said:

"The income-generation of [the Company] comes from its properties. These properties, as discussed in the Harris report and at paragraph 4.8 of my Report, are primarily valued on the basis of their future income generation.

On this basis, any goodwill attributable to [the Company] as a result of its property portfolio is already taken into account in the value of the property portfolio in the Harris Report".

136. On 14 February 2024 Mr Harris answered joint questions on hope value in relation to the 5-year plan. He noted there was no RICS definition, but

"Conceptually, hope value is generally considered to be an amount that a purchaser is prepared to pay over and above the value in current or existing use, because of a belief that the land may be developed or enhanced more valuably in the future. It would be wrong, however, to see it as a distinct, defined and separate amount to Market Value that should somehow be added to it… Market Value will reflect any existing planning permissions already obtained at that valuation date together with the prospect of obtaining a different planning permission. Crucially, in the latter circumstances, it also reflects the risk of failure to obtain such a consent. Similarly, it is the valuer's task to reflect the possibility that different buyers might have different aspirations or opinions as to what might be those development proposals and reflect them… Accordingly, any opinion of Market Value reported in accordance with the RICS definitions in the Red Book inherently and fundamentally reflect hope value".

So there was no change to his valuation.

137. It is therefore absolutely clear from the reports of each expert that the share value represents all value: past, present, future, contingent; just as would be expected on a commercial sale. It follows that Jack's claim to remuneration ends on the valuation date of his shares, 29 March 2022. From that date his remuneration is inextricably bound up within the value he is to receive. Put the other way, were the purchaser of his shares obliged additionally to pay him remuneration for some post-acquisition period, there would be a concomitant discount to the price to be paid.

138. Sam and Rick ought therefore to pay to Jack an additional sum representing his share of the base remuneration from February 2021 until, for convenience, the end of March 2022; that is, 14 months. They have caused themselves to over-receive that balance from the Company, when they ought to have caused it to

be paid to Jack. There is therefore no conceptual difficulty on this petition in ordering them, rather than the Company, to make reimbursement.

139. Again, given the time passed I think that interest ought to accrue on each monthly payment at a rate of 5%.

140. The last of the big items is the profit to be made on the Company's developments. As pleaded it "has real prospects of making a substantial profit from development of its properties, one third of which should be the beneficial entitlement" of Jack.

141. This is then calculated at £156,000 in the following terms.

> "Profit on development (Dawley Road) is £467,000- one third= £156,000 see Mr Harris report sub-paras 30.4 and 30.12, which assume third party developer profit after development of £290,000 and £1,215,000, with that developer making a profit of £117,386 and £349,824; but the [Company] will carry out the building work itself, so one-third of £117,386 and £349,824 needs to be added back to the value of the project. That figure should not have been a deduction from the valuation".

142. Jack feels very strongly about this part of his compensatory claim; strongly enough, he said, to have rejected Sam and Rick's very full open offer through their then solicitors, Stevens & Bolton, on 17 August 2022, because nothing for this element was within it: it was for £780,000 plus costs, and included the £656,000, all claimed sums for salary, and other items including interest.

143. Again, a bare plea that Jack should receive profits after the date of valuation of his shares is without foundation: both experts confirm that their anticipation is already accounted for. Instead he would have to establish some separate right.

144. He pleads no grounds to establish any beneficial entitlement to this money separate to his interest in the Company's shares; and Miss Chaffin-Laird correctly did not pursue that line (the pleading is not hers).

145. In her skeleton she submitted that "Mr Harris erroneously offset developers profit… when calculating the value of shares; in fact the development would be

undertaken by the brothers in the usual way with the effect all profit would be distributed equally between the three brothers". That, too, is not open to Jack: the experts' reports are binding and there is no basis suggested to set aside that nature. Indeed, Mr Harris would not have been answering the questions put were he to have considered this factor personal to the brothers.

146. By closing this was put forward not as a statement that Mr Harris was wrong, but that following on from his conclusions, and separate from them, this was a case whereby Sam and Rick would receive additional value from the transaction for which they ought to compensate Jack, because they would not in fact pay a developer's profit and/ or because in fact the three had always carried out the projects themselves; and in either scenario, Jack was therefore entitled to an uplift of one-third of that profit.

147. There are a number of reasons why this must be rejected.

148. First, as a matter of scope, Mr Harris's valuation did not include developer's profit for the Stage 2 element at all. Nor did his valuations of 232 Edgware Road and 38 Waltham Avenue. It was irrelevant to the respective bases of valuation. Jack's argument could only run in respect of the Stage 1 part of Dawley Road. I therefore exclude the £349,824 add back for Stage 2; and the figures he gives, entirely unsupported by any evidence at all, of £58,000 for 38 Waltham Avenue "once planning permission granted, based on a £175,000 increment", and £85,000 for the "Edgware Road maisonette conversion into 2 flats- estimated profit".

149. Next, as already described, the experts' reports were deliberately to be binding to aid settlement between the parties. Each expert has provided their opinion on the exact basis required. Were this personal factor intended to be part of Mr Harris's task as part of this litigation, then it ought to have been in his instructions; and it is contrary to the agreed basis now to seek to introduce a different calculation of figures on the fundamental question of share value.

150. Leaving that aside, Jack's claim is posited on the developer's profit being a deduction which the willing buyer would make from likely future developed value, being a payment to be made to a third party. The brothers had previously

carried out work on properties because it saved them money; as Sam confirmed, their charges were less than they would have paid other professionals. But what that indicates is that their work was not without cost; as Sam explained, aside from anything else, working at the Company took time which they would otherwise spend on their other projects and businesses: a valuable opportunity cost. Jack's critical difficulty with his claim to wipe out the developer's profit in respect of Stage 1 is that the brothers', or Sam and Rick's, work in stead of the developer's was not itself without cost; and at the end of trial he has no figure for that because Mr Harris was never asked to address it. Perhaps to repeat myself, Mr Harris's figure is the allowance made by a third party purchaser for developer's profit; that cannot be equated with the figure which Sam or Rick would pay for the shares with the intent that they would themselves carry out the developer's role.

151. Further, all this is even assuming that all the other development deductions applied by Mr Harris, for example construction costs, would be the same for Sam and Rick as for the notional professional developer or third party purchaser. That is most unlikely. And once one begins to factor in personal characteristics there would be the questions Sam indicated: over appetite for risk given the market at the end of March 2022; and ability to fund; and indeed, with all respect, at their ages the likelihood of their being physically capable of doing the development.

152. As those questions indicate, whether Sam and Rick would do the works at all, even Stage 1, is an issue; and I am not satisfied that Jack has proved that they would, despite their previous practice and skills. Sam's view of the Dawley Road site as a whole was that they would not undertake it, and had never agreed that they would. Although they had experience, and he particularly so with his Big Purple development company, this was of a different magnitude. As with the rest of the site, Stage 1 involved demolition and construction on a quick turnaround basis, as it could only be carried out once the tenant vacated; and with the tenant went an income stream which went towards the substantial borrowing costs. This was not an easy, leisurely development.

153. Further, it is certainly not clear to me that Sam and Rick would put in this work and carry the personal risk, being the guarantors for the Cynergy Bank borrowing, if they were paying above market rate for what was intended to be an investment property.

154. Finally, it is not clear to me why, having paid market value, Sam and Rick ought not to deal with Dawley Road as they wish. Jack has been bought out. He has no further part. He cannot rely on a counterfactual that but for his removal he would be assisting his brothers in this work, as a fundamental part of his case is that their relationship is broken. Without that, it is obviously unfair that he should take a benefit of one-third of work which they, and not he, are on this hypothesis undertaking. It is also worth bearing in mind that in receiving market value he is receiving, as at 29 March 2022, more than he would on his alternative of a winding-up because the liquidators' fees are not being imposed; and that is so even if that liquidator marketed the properties over a full rather than limited period.

155. I therefore dismiss Jack's separate claims to any part of the development profit or developer's profit.

156. The other additions to the purchase price are small.

157. Jack ought to be compensated as to £12,234, being one-third of the £36,702 paid wrongly in legal fees on the petition. That sum was repaid, but only after Mr Parry's valuation; so he treated them as an expense and they were therefore deducted from the value. I note he did so expressly subject to the proviso that an adjustment would need to be made if, as is now the case, they ought to have been excluded. The effect of the repayment between Sam's wife and the Company is a matter for them.

158. There is also the admitted £500, being one-third of the payment to Osbournes.

159. The £7,479 paid to Jung & Co was repaid on 3 March 2022. It is therefore within Mr Parry's valuation, and no separate order should be made.

160. Interest at the same rate of 5% should run on the £12,234 and the £500 from 29 March 2022.

161. On terms to be settled at the consequentials hearing, which will also consider any effect which offers between the parties may have as to costs or interest, I will order that Sam and Rick purchase Jack's shares in the Company as at 29 March 2022 at the price of £656,000; together with the sums of £12,234 and £500; and with a figure for compensatory remuneration for the period February 2021 to March 2022; and with interest at 5% on each of those sums from the date they fell due. There must also be provision for Jack to be indemnified by Sam and Rick as to his guarantee in respect of 38 Waltham Avenue, if his release cannot be procured.