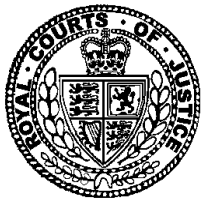

Neutral Citation Number: [2024] EWCA Civ 123

Case No: CA-2022-002366

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
HIS HONOUR JUDGE JARMAN KC
[2022] EWHC 2870 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2024

Before:

LADY JUSTICE KING
LORD JUSTICE BIRSS
and
LADY JUSTICE FALK

- -

Between:

HAFIZUR RAHMAN	**Appellant**
- and –	
MOHAMMED ABDUL MUNIM (1) **LE CHEF PLC (2)**	**Respondents**

- -
- -

Winston Jacob (instructed by **Londonium Solicitors**) for the **Appellant**
Matthew Winn-Smith (instructed by **Lexpert Solicitors LLP**) for the **Respondents**

Hearing date: 31 January 2024

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 14 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Falk:

Introduction

1. This is an appeal against a decision of HHJ Jarman KC, sitting as a High Court judge, in an unfair prejudice petition brought against Mr Mohammed Abdul Munim in relation to a company called Le Chef plc. The appeal is brought by one of the two unsuccessful petitioners, Mr Hafizur Rahman.

2. The petition was one of three claims which were consolidated. The others were a defamation claim by Mr Munim against Mr Rahman and a copyright claim by Mr Rahman against Mr Munim and another company, ARTA Awards Ltd. The judge heard the copyright claim and unfair prejudice petition together and gave directions for the trial of the defamation claim. The copyright claim, like the unfair prejudice petition, was dismissed.

3. Mr Rahman sought permission to appeal from this court. Arnold LJ granted permission on four grounds relating to the unfair prejudice permission but refused permission on five other grounds relating to the copyright claim. The other petitioner, Mr Rifat Ahmed, had previously also obtained permission to appeal against the dismissal of the petition but has since agreed a compromise pursuant to which his appeal has been dismissed without prejudice to that of Mr Rahman.

4. Mr Rahman's appeal seeks to challenge findings of fact made after hearing oral evidence. In granting permission Arnold LJ pointed out the high hurdle faced by such appeals and indicated that he was very dubious that the appeal had a real prospect of success. Nonetheless he was prepared to give Mr Rahman the benefit of the doubt in circumstances where he had decided to grant permission to Mr Ahmed.

The facts in outline

5. Mr Munim is a businessman with a range of interests, including in Asian restaurants and takeaways. Mr Rahman is a graphic designer. For several years prior to Le Chef's incorporation Mr Munim had used Mr Rahman's services to develop designs for use in businesses in which Mr Munim was interested. Mr Ahmed, who has a master's degree in IT, had separately worked with Mr Rahman to develop an online food ordering portal called Smart Restaurant Solutions. The judge found that this business was not as successful as Mr Rahman and Mr Ahmed had hoped and that by early 2014 it was "struggling financially".

6. Mr Munim and Mr Rahman started discussions in early October 2014 about developing an online restaurant ordering system with the trading name Chefonline. Le Chef was incorporated as a private company on 21 October 2014 for that purpose. Its share capital at incorporation comprised 100 shares of £1 each. The initial shareholdings reflected a pre-incorporation agreement between Mr Munim, Mr Rahman and Mr Ahmed, namely that Mr Munim would hold 65 shares, Mr Rahman 25 and Mr Ahmed the remaining 10. Mr Munim was the sole director.

7. The dispute is over what then happened. In essence, Mr Munim's case was that it quickly became clear that the business would need substantially greater investment than initially anticipated, which he agreed to provide on condition that Mr Rahman

transferred 20 of his 25 shares to Mr Munim and Mr Ahmed transferred all of his shares. Mr Munim maintained that agreement was reached in late October 2014, so very shortly after incorporation. The stock transfer forms were dated 31 October 2014 and were each produced in duplicate. Mr Munim claimed that the signed versions were provided to him by Mr Rahman on 10 November 2014. An annual return was filed on 13 November which recorded the transfers.

8. Both Mr Rahman and Mr Ahmed denied that the transfers had been made. Mr Ahmed was in the USA at the time and it was also common ground that he had had no direct contact with Mr Munim in relation to them. A handwriting expert concluded that the signatures on the transfers of Mr Ahmed's shares were not his normal one. Further, Mr Ahmed had emailed Mr Munim on 2 November 2014 asking to be informed when the "company registration, memorandum, shares and other papers will be ready". He had received no reply. He had also emailed both Mr Munim and Mr Rahman on 8 November explaining that he was unable to travel to Bangladesh (where it was intended that a back office should be established for the business) but could work on the development from the USA. Mr Munim replied that he would discuss that with Mr Rahman and revise "our set up plan" accordingly. Thereafter Mr Ahmed had no further engagement with Mr Munim or Le Chef. His case was that, although he did not engage directly with Mr Munim, he believed that Mr Rahman was looking after his interests and had phone calls with him during which the business was discussed.

9. The unfair prejudice petition was based on an alleged breach of Le Chef's articles of association and Mr Munim's duties as a director in registering the transfers.

The judgment

10. The judge concluded that Mr Rahman had signed the stock transfers related to his shares, and that Mr Ahmed had either signed in a different style to his normal one or Mr Rahman had signed on his behalf and with his authority as he was abroad (judgment at [75] and [77]). This was notwithstanding the judge's observations at [76] that Mr Ahmed gave his evidence in "an entirely straightforward and impressive way" and "appeared to be genuine in saying that he had not signed the stock transfer forms or agreed to give away all of his shareholding". The judge concluded that Mr Ahmed must have forgotten what he had done and convinced himself otherwise. He also preferred Mr Munim's account that he had discussed the position with Mr Rahman following the 8 November email exchange, had agreed that it was not viable for Mr Ahmed to work on the project from the USA and that Mr Rahman would talk to Mr Ahmed about "exiting the business" (judgment at [24]).

11. Mr Munim relied among other things on three written resolutions dated 1 November 2014, apparently signed by Mr Munim and Mr Rahman. These each indicated their respective shareholdings as 95% and 5%, corresponding to what they would be (or become) if the share transfers were effective. Mr Rahman said that he did not sign those documents either. There were also later written resolutions where Mr Rahman's denial of his signature was "less emphatic" (judgment at [22]) but where his shareholding was similarly referred to as 5%, together with a shareholders' agreement agreeing to a later restructuring which set out his 5% shareholding in a schedule, and an employment contract. Mr Rahman also denied that he had signed these agreements.

12. The expert handwriting evidence adduced in relation to Mr Rahman's signatures on the stock transfer forms and the other disputed documents considered by the expert was to the effect that there was "limited evidence" that the signatures were Mr Rahman's and it was less likely that they were copies by someone else. The judge concluded that it was likely that the documents had been signed by Mr Rahman (judgment at [20], [37], [39], [42] and [70]). Mr Jacob, for Mr Rahman, challenged the precise scope of the judge's findings on this point. I understood him to accept that they covered the stock transfer forms, the resolutions dated 1 November 2014, the shareholders' agreement and employment contract and at least two of the later shareholders' resolutions. My reading of the judgment as a whole (and in particular [35], [73] and [75]) is that the judge reached the same conclusion in relation to the other disputed shareholder resolutions.

Mr Rahman's case on appeal

13. There are four grounds of appeal, which can be summarised as follows:

    Ground 1: The judge's findings in relation to the stock transfer forms were contrary to the evidence and failed to take critical evidence into account.

    Ground 2: The judge's findings that Mr Rahman signed the resolutions were contrary to the evidence and failed to take critical evidence into account.

    Ground 3: The judge failed to take into account critical evidence in making findings about Mr Munim's credibility.

    Ground 4: The judge failed to understand and consider the relevance of an email sent in April 2017 in which Mr Rahman made clear that he was not aware that his 25% shareholding had been diluted.

14. Mr Jacob's overarching submission was that this case was primarily about the validity of signatures on stock transfer forms and the November 2014 resolutions. There had been an unacceptable lack of cross-examination on that critical issue. The flaws in relation to the purported transfers from Mr Ahmed infected and fatally undermined the conclusion that Mr Rahman had transferred his shares.

15. On ground 1, Mr Jacob focused on the judge's assessment of Mr Ahmed as an impressive witness, failures to put points to him and the significance of contemporary documents.

16. Mr Ahmed had given evidence that his 10% shareholding reflected his work on the predecessor business, in which he had held a 40% share, that he had had phone calls with Mr Munim during the relevant period when the transfer was not mentioned and phone calls thereafter with Mr Rahman about the business. The contemporaneous emails were also inconsistent with Mr Munim's contention that he had reached an agreement about the share transfer during October 2014. Mr Jacob submitted that none of this evidence was properly addressed by the judge. Further, there was no evidential basis to support the conclusion that Mr Ahmed had signed the stock transfer forms or authorised their signature and then forgotten about it.

17. On ground 2, Mr Rahman relied on what was said to be a failure to address an apparent discrepancy between Mr Munim's evidence that the resolutions dated 1 November 2014 were signed at a meeting on that date and his evidence that he did not receive the stock transfer forms until 10 November 2014, such that on 1 November he would not have received confirmation of the revised shareholdings. Mr Rahman also relied on a finding that Mr Rahman was in Bangladesh on the date of one of the later resolutions, in January 2016, which he said the judge failed sufficiently to address in concluding that he probably signed it at some point. This was despite Mr Rahman's evidence that he did not return to the UK until after the resolution had been filed at Companies House, and the fact that it was not put to him that he either attended the relevant meeting or signed the resolution.

18. Ground 3 relates to what is said to be an alleged failure by the judge properly to assess Mr Munim's credibility, taking account not only of conflicts with contemporaneous documents but the fact that it was apparent that he had made inconsistent statements in the defamation and copyright claims about whether Mr Rahman had been a consultant or (as he later said) an employee, and about the signature of the employment contract. Mr Rahman contrasts the judge's assessment of Mr Ahmed as a witness with his willingness to prefer Mr Munim's evidence.

19. Ground 4 asserts that the judge failed to take account of the April 2017 email and the absence of any challenge to it at the time.

Approach to this appeal: legal principles

20. The correct approach to appeals against findings of fact is very well established. It was summarised by Lewison LJ in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2]:

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

21. As explained by Males LJ in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, [2019] 4 WLR 112 ("*Simetra Global*") at [39]-[47], a failure to give adequate reasons that explain why the judge has reached a decision can form the basis of an appeal. The extent to which reasons are required to meet the test of adequacy will depend on the subject matter. The judge should "identify and record those matters which were critical to his decision". Fairness requires that he should also "deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it".

22. The authorities are also replete with references to the significance of contemporaneous documents. In *Simetra Global* Males LJ addressed this at [48] and went on to say at [49]:

> "It is therefore particularly important that, in a case where there are contemporary documents which appear on their face to provide cogent evidence contrary to the conclusion which the judge proposes to reach, he should explain why they are not to be taken at face value or are outweighed by other compelling considerations."

23. Mr Jacob also relied on two further principles. The first is the principle that a party must generally challenge by cross-examination evidence of a witness on a point if they wish to submit that such evidence should not be accepted. This principle was considered in detail by the Supreme Court in *Griffiths v TUI (UK) Ltd* [2023] UKSC 48, [2023] 3 WLR 1204. That case concerned an expert witness but Lord Hodge's judgment considers the scope of the rule more generally.

24. As explained in the passage from *Phipson on Evidence*, 20th ed. cited by Lord Hodge at [42] and approved at [43], the rule "serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence". Lord Hodge observed at [43] that it was a "matter of fairness of the legal proceedings as a whole". He returned to that point later in his judgment, including at [55] where he referred to fairness to the witness and to the party calling them as well as to the integrity of the judicial process, and at [56]-[58] where he considered *Chen v Ng* [2017] UKPC 27, [2017] 5 LRC 462, a case in which the Judicial Committee of the Privy Council had held that the ultimate question was "whether the trial, viewed overall, was fair" and had concluded that it was not. In that case the trial judge had given two reasons for rejecting evidence of Mr Ng on a central issue, neither of which had been put to him. The Board concluded that both reasons could reasonably be expected to have been put to Mr Ng and further that, if they had, he may have given believable evidence that weakened or undermined them. However, the general rule was not absolute and a nuanced approach was required: "the world is not perfect" (*Chen v Ng* at

[52]). Reflecting this, Lord Hodge went on in his judgment in *TUI* to list a number of possible exceptions to the rule.

25. Lord Hodge summarised the position at [70] with the following propositions:

> "(i) The general rule in civil cases, as stated in *Phipson*, 20th ed, para 12-12, is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. That rule extends to both witnesses as to fact and expert witnesses.
>
> (ii) In an adversarial system of justice, the purpose of the rule is to make sure that the trial is fair.
>
> (iii) The rationale of the rule, ie preserving the fairness of the trial, includes fairness to the party who has adduced the evidence of the impugned witness.
>
> (iv) Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy. An expert witness, in particular, may have a strong professional interest in maintaining his or her reputation from a challenge of inaccuracy or inadequacy as well as from a challenge to the expert's honesty.
>
> (v) Maintaining such fairness also includes enabling the judge to make a proper assessment of all the evidence to achieve justice in the cause. The rule is directed to the integrity of the court process itself.
>
> (vi) Cross-examination gives the witness the opportunity to explain or clarify his or her evidence. That opportunity is particularly important when the opposing party intends to accuse the witness of dishonesty, but there is no principled basis for confining the rule to cases of dishonesty.
>
> (vii) The rule should not be applied rigidly. It is not an inflexible rule and there is bound to be some relaxation of the rule, as the current edition of *Phipson* recognises in para 12.12 in sub-paragraphs which follow those which I have quoted in para 42 above. Its application depends upon the circumstances of the case as the criterion is the overall fairness of the trial. Thus, where it would be disproportionate to cross-examine at length or where, as in *Chen v Ng*, the trial judge has set a limit on the time for cross-examination, those circumstances would be relevant considerations in the court's decision on the application of the rule.
>
> (viii) There are also circumstances in which the rule may not apply: see paras 61-68 above for examples of such circumstances."

26. The second (and related) principle relied on by Mr Jacob is that a trial judge should not find for a party on a basis that does not form part of his pleaded case. He relied on *Al-Medenni v Mars UK Ltd* [2005] EWCA Civ 1041 at [21] and the more recent

consideration of the point in *Ali v Dinc* [2022] EWCA Civ 34. In *Ali v Dinc* Birss LJ considered *Al-Medenni* and other cases that addressed the point and then said this at [25]:

> "[25]… These problems are all concerned with the interests of justice and, in particular, with circumstances which cause prejudice to the losing party. The common sort of prejudice which is to be avoided is that a new point has arisen in such a way that the losing party was not given a proper chance to call evidence or ask questions which could have addressed it. That is why the function performed by pleadings, lists of issues and so on, which is to give notice of and define the issues, is an important one; but is also why a judge can always permit a departure from a formally defined case where it is just to do so. It is also why the judge's function is to try the issues the parties have raised before them, rather than to reach a conclusion on the basis of a theory which never formed part of either party's case. By placing the emphasis on prejudice, the point I am making is that the modern approach to the definition of the issues requires judges to adopt a pragmatic approach in line with the overriding objective and not seek to be governed by unnecessary formality, provided always that it is just not to do so.
>
> 26. To decide this appeal the task will be first to identify what case or cases the parties were advancing, second to compare that with the decision the judge made, and third, if need be, to identify what prejudice, if any, may have been caused to the defendants."

27. As with the principle discussed in *TUI*, therefore, the key point is fairness, and more specifically the risk of prejudice. There is no rigid rule that departure from a pleaded case is impermissible. In *Ali v Dinc*, this court concluded that there had been no ambush and that no prejudice had been identified.

Discussion

28. I am satisfied that the judge was entitled to reach the conclusions that he did on the evidence before him in respect of the transfer of shares by Mr Rahman. This is not a case where the judge's conclusions could properly be said to be plainly wrong, and nor is there a sound basis to assert that the judge did not have regard to all the evidence. Further, he gave adequate reasons for his conclusions, which as always need to be read in the context of the judgment as a whole.

29. The judge's conclusion that Mr Rahman had signed the stock transfer forms in respect of his shares had evidential support. It was supported by the evidence of the handwriting expert. It was also supported by the existence of shareholder resolutions and a shareholders' agreement. The judge concluded that the three resolutions dated 1 November 2014 had not only been signed by Mr Rahman but were in the interests of Le Chef and were put into effect: indeed one of them related to a tenancy which was entered into as a deed on the same day, as evidenced by a solicitor's stamp (judgment at [18]). The judge concluded that Mr Rahman had also signed the shareholders' agreement in October 2015 and later shareholder resolutions (as to which see [12.] above). There were a total of nine such resolutions, of which eight had dates in late October 2015. Those eight resolutions each stated "Shareholder 5%" under Mr Rahman's printed name and what was said to be his signature. The judge observed at

[75] that the later resolutions would have "reminded" Mr Rahman of his reduced holding whenever he signed them.

30. Copies of the October 2015 resolutions had been omitted from the bundles. They were provided at our request and we permitted brief further written submissions in relation to them. Mr Jacob submitted that the judge's finding that Mr Rahman was reminded of his reduced holding was impermissible. Only one of the 2015 resolutions had been considered by the expert (in two versions) and Mr Rahman had only been taken to one version of that resolution in cross-examination, and to none of the others. He had also not been asked whether he had recognised that his shareholding was described as 5% when signing the documents.

31. I have considered the relevant part of the transcript. All the resolutions were in the trial bundles. It was explained to Mr Rahman that there were a number of resolutions, in summary what they covered, and that he was being taken to the first one. Mr Rahman had previously said that he could remember signing several documents but could not recall what they were, so it is not surprising that he was asked whether "these documents" could be some of them. His response was non-committal.

32. Ideally, Mr Rahman would have been specifically asked about the references to 5%. However, the judge was obviously entitled (and indeed obliged) to consider the documentary evidence as a whole. It is also apparent that he had in mind Mr Rahman's dyslexia: judgment at [33]. But the references to 5% are very clear, and it was not submitted either at trial or on appeal that Mr Rahman would be unable to discern them. The decisions to provide only certain resolutions to the (jointly appointed) expert and not to take Mr Rahman to every resolution in cross-examination would doubtless have reflected considerations of proportionality and, in the latter case, the time available.

33. In my view the observation by the judge about Mr Rahman being reminded of the reduced holding was not unfair. The resolutions were all in the trial bundle and it was clear what they said. This was not a case where there was a voluminous amount of documentary evidence, and in any event these documents were obviously important. It is also not the case that, if he had been specifically asked, Mr Rahman could reasonably have been expected to have been able to provide additional evidence that undermined what the documents showed.

34. In any event, the evidential support for the transfer of Mr Rahman's shares was not limited to signatures on documents. More fundamentally, the judge found that the business previously developed with Mr Ahmed was in financial difficulty and that it quickly became apparent during late October 2014 that substantially more investment was required in Chefonline than had initially been anticipated. The judge understandably rejected Mr Rahman's case that Mr Munim had agreed to invest "as much money as required" without increasing his 65% shareholding, preferring Mr Munim's recollection on the basis of inherent likelihood (see paras. [12]-[14] and [74]). This was a core finding, because it supported Mr Munim's case that a transfer had been agreed. It provided an understandable commercial rationale for the transfers.

35. Mr Rahman's focus on Mr Ahmed's position rather exposes the weakness of his own case. Whether Mr Ahmed agreed to the transfer of his own shares is of course relevant – not least because Mr Munim's case was that all the shareholders had agreed to the transfers – but it does not bear the weight sought to be placed on it.

36. As far as Mr Ahmed is concerned, the judge obviously took into account his assessment of him as an impressive witness, but he also took into account his lack of engagement with Le Chef after November 2014, noting that if Mr Ahmed had believed that he continued to hold shares then the absence of any enquiry thereafter was surprising. Importantly, and as with Mr Rahman, the judge had also reached adverse conclusions about the position of the predecessor business and the likelihood that Mr Munim would be prepared to invest whatever it took without increasing his shareholding.

37. Mr Jacob submitted that Mr Munim's case was pleaded only on the basis that Mr Ahmed had signed himself, and the alternative that he had authorised Mr Rahman to sign was also not explored in evidence either with Mr Ahmed or Mr Rahman. Mr Rahman had denied signing any of the forms. The alternative canvassed by the judge that Mr Ahmed had signed with a different style had been flagged as a possibility in the expert evidence but was not put to Mr Ahmed. It was pure speculation. Further, the fact that Mr Ahmed was abroad at the relevant time was not addressed.

38. The question that was put to Mr Ahmed in cross-examination was that, in the light of the increased investment required and the fact that he would not be able to lead the development in Bangladesh, "… you then confirmed to Mr Rahman to go ahead with the stock transfer form and you gave your agreement that your shares would be transferred" (which he denied). The cross-examination of Mr Rahman focused principally on Mr Munim's case that an agreement had been reached to transfer the shares and the reasons for that. As regards the stock transfers, it was put to Mr Rahman that he was given unsigned forms, was reminded to return them signed and had responded that he was waiting for Mr Ahmed's. It was also put to him that he had provided the signed stock transfers after Mr Munim made clear that it would not be feasible for Mr Ahmed to work on the project from the USA. In both cases Mr Rahman's response was a denial without elaboration.

39. In my view this was adequate in the context of the present appeal. Of course it would have been preferable if the points identified by Mr Jacob about signature of the forms by or on behalf of Mr Ahmed had been fully explored in cross-examination. It was also far from ideal that the judge referred to two alternative explanations in relation to Mr Ahmed's signature that had not been properly addressed. In addition, it would have been preferable if Mr Ahmed's evidence about subsequent conversations with Mr Rahman about the progress of the business had been explicitly addressed by the judge. If Mr Ahmed had pursued his appeal these failures would have carried weight.

40. However, I cannot identify a lack of fairness or prejudice to Mr Rahman that would justify interfering with the judge's conclusions in respect of him. In particular, I cannot see that further cross-examination of whether Mr Ahmed used a different style or whether Mr Rahman had signed on his behalf could reasonably be expected to have elicited further information either from Mr Rahman or Mr Ahmed that would have materially assisted the judge in determining Mr Rahman's case. The facts are very different to *Al-Medenni*, *Chen v Ng* and *TUI* in that respect, and there has been no prejudice of the kind identified by Birss LJ in *Ali v Dinc*. Mr Rahman had already denied signing any of the forms in his witness statement and had given bare denials to the questions he was asked in cross-examination. It is not plausible that he might have addressed a specific question of whether he had signed on Mr Ahmed's behalf in a different way.

41. As to the email correspondence with Mr Ahmed in early November 2014, it is apparent that the judge considered it in reaching his conclusions. Mr Ahmed was not directly involved in the discussions between Mr Rahman and Mr Munim. The judge had found at [24] that Mr Munim and Mr Rahman had discussed the 8 November email exchange and agreed that Mr Rahman would talk to Mr Ahmed about exiting the business. As the judge noted at [72], Mr Munim's case was that the signed stock transfer forms were only provided on 10 November.

42. Mr Jacob submitted that the fact that the transfers were signed in duplicate was a further indication that there was something untoward. The judge addressed that at [70] and I can see no error in his conclusion that it did not really assist. The existence of duplicates carries no necessary implication as to invalidity or indeed validity. I also reject Mr Jacob's submission that the judge's reasoning as to whether Mr Rahman signed was confused. There is a clear finding at [75] that, on a balance of probabilities, he did. An earlier reference at [22] to the possibility that he did not was at a stage in the judgment when the judge was determining what he termed subsidiary rather than main issues, as he said at [5].

43. Ground 2 raises some of the same issues as ground 1. As Mr Winn-Smith pointed out, the apparent discrepancy between the date of the resolutions said to have been passed on 1 November 2014 and the delivery of the stock transfer forms on 10 November is explicable on the basis that Mr Rahman had already agreed to reduce his shareholding.

44. The judge also expressly recorded at [42] that Mr Rahman was in Bangladesh when one of the later resolutions was signed (a resolution dated 22 January 2016), but found that it gave effect to an intention that Le Chef would become a public company, something "which Mr Rahman accepts was the intention for months beforehand". The petition involved no challenge to that decision and the resolution in question was simply one of a number of documents that the judge was required to consider, including the shareholders' agreement which the judge found that Mr Rahman signed in October 2015 and which also reflected the proposed change (as did one of the other resolutions signed during that month). Again, it would have been preferable if the judge had addressed Mr Rahman's evidence about the January 2016 resolution and the length of his absence from the UK around that date in more detail, but I do not consider that it materially undermines his decision given the other evidence before the judge. The judge was not required to provide an exhaustive analysis of all the evidence.

45. Ground 3 again seeks to focus on Mr Ahmed by comparing the judge's assessment of him with his assessment of Mr Munim, thereby avoiding the uncomfortable truth that Mr Rahman's own credibility, or at least the accuracy of his apparent recollections, was very much in issue. On key points the judge preferred Mr Munim's account to that of Mr Rahman. This included not only his important findings about the financial background in relation to the predecessor business and Mr Rahman's case that Mr Munim agreed to invest on an open-ended basis, but findings adverse to Mr Rahman in relation to the copyright claim (see [50], [65]-[67] and [81]). On the specific question of whether Mr Rahman was a self-employed consultant or an employee, the judge preferred Mr Munim's evidence, concluding based on the documentary evidence and evidence from Le Chef's solicitor that an employment contract had been provided to Mr Rahman and that he had signed it, in contrast to Mr Rahman's case that the employment contract was fabricated ([26], [30]-[40] and [80]). The fact that Mr Rahman was not paid through the company's PAYE system was found to be

attributable to Mr Rahman's unwillingness for that to happen, with Mr Rahman admitting that he had not declared his receipts for tax purposes ([25], [41] and [91]). The judge was not required to address every aspect of what was obviously a confused situation.

46. There is also nothing of substance in ground 4. Mr Rahman highlights one sentence in an email dated 23 April 2017, which principally raises other issues including demanding a salary rise and a company car. The sentence states "I was not aware that my share of 25% will be diluted" before going on to say that he would accept 12.5%. Two days earlier, on 21 April, Mr Rahman had sent another email saying that under the new structure he had "ended up with mere 2.5% instead of the original 25%" and demanding that his shareholding be increased "by further minimum 10% on top of the existing 2.5% at par value". The 2.5% reflected the dilution of Mr Rahman's 5% stake through share issues, as envisaged by the shareholders' agreement and by one of the shareholder resolutions signed in October 2015.

47. The earlier email is clear evidence that Mr Rahman was aware that he then held 2.5% of the shares. As I understand Mr Jacob's submission, he relies on the fact that what Mr Rahman refers to is a reduction from 25% by dilution, rather than a combination of dilution and transfer. I can see the point, but it is apparent from the judgment at [44]-[49] that the judge assessed these emails and the surrounding context in some detail. He returned to the point at [73] where he balanced it against the evidence that Mr Rahman had signed resolutions in the intervening years which referred to a 5% stake, and again at [75]. The judge clearly took what was said in the 23 April email into account. It was a matter for him what weight he put on it. It cannot be said that he failed to understand it or consider its relevance.

Conclusion

48. I would therefore dismiss the appeal.

Lord Justice Birss:

49. I agree.

Lady Justice King:

50. I also agree.