Neutral Citation Number: [2011] EWHC 672 (Ch)

Case No: 8BM30210

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 29 March 2011

Before :

HHJ DAVID COOKE

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Between :

Keith Moore	**Claimant**
- and -	
Frances Margaret Williamson (1), Jason Peter Fretwell (2) and Jewelbetter Derby Limited (3)	**Defendant**

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- -

Lord Marks QC (instructed by **Else Solicitors LLP**) for the **Claimant**
Richard Hedley (instructed by **Freeth Cartwright LLP**) for the **Defendants**

Hearing dates: 10-14 May, 15 October, 25 November, 14 December 2010

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Approved Judgment

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

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HHJ DAVID COOKE

HHJ David Cooke:

1. The third defendant, Jewelbetter Derby Limited, is a private limited company incorporated on 30 April 2002. It has carried on business as a building and property development company in succession, to put it neutrally, to a different company called Jewelbetter Limited. In these proceedings, Jewelbetter Limited has been referred to as "JB1" and Jewelbetter Derby Limited as "JB2", and I will adopt those terms in this judgment. At all material times JB2 has had an issued share capital of two shares of £1 each, of which one has been registered in the name of the first defendant, Mrs Williamson, and the other in the name of the second defendant, Jason Fretwell. Jason Fretwell is Mrs Williamson's son; for brevity and clarity in this judgment, without intending any lack of respect, I will refer to him, as I will to a number of other members of the families of the claimant and Mrs Williamson, by his first name. For much of the material time, Jason has been the sole registered director of JB2, and Mrs Williamson the company secretary, though she has more recently been appointed a director as well.

2. The claimant, Mr Moore, makes a number of claims in his re-amended Particulars of Claim, of which by far the most important is that he is entitled to the entire beneficial interest in the share in JB2 held by Jason, pursuant to an express written, alternatively oral, declaration of trust or, in the further alternative, a proprietary estoppel. If so he would be an equal shareholder with Mrs Williamson. With the agreement of the parties, I made an order on 15 March 2010 defining issues for the trial, of which that was the first. The second, which has occupied a considerable part of the evidence, was whether Mrs Williamson and/or Jason have misapplied funds belonging to JB2 in the course of a number of transactions listed in paragraph 13 of the re-amended Particulars of Claim. Any loss suffered in those transactions would of course be a loss to JB2 and not directly to Mr Moore, but the parties agreed that findings were required in relation to those transactions, partly because they would bear on the credibility of the witnesses in the case, and partly because, if Mr Moore is successful in his claim to a 50% beneficial interest in the share capital of JB2 it is inevitable that there will be further proceedings between these parties in which he will seek relief for any misapplication of funds which may be established.

3. The other issues were, by common consent, of much less importance, and related to Mr Moore's allegations of debts due to him by Mrs Williamson and JB2, a claim for reimbursement by JB2 of sums which Mr Moore alleged he had spent on its behalf, and a claim for return of personal property which Mr Moore alleged that Mrs Williamson had wrongfully retained. I deal with them at the end of this judgment.

4. I begin with an abbreviated, though still regrettably lengthy, summary of background facts in order to set the scene and identify some of the relevant areas of factual dispute between the parties, without for the moment descending too far into those disputed areas.

    i) Prior to 1990 Mr Moore ran a housebuilding company called KFM Developments Limited (which was involved in housing developments on the East Coast), and a separate company KFM Estates Limited ("KFME"). KFME was established by Mr Moore with a Mr Roy Carter for the purposes of a housing development at Chaddesden, Derby.

    ii) At this time that Mr Moore was married to Sylvia Moore, and Mrs Williamson was married to Mr Marcus Reid. In 1989, Mrs Williamson went to work as

company secretary at KFME, and it seems clear that she has played the major role in the administration of the various companies that have been in existence since that date. It appears that Mr Moore and Mrs Williamson began a personal relationship at some point in the early 1990s (the exact time is not material) which they maintained, albeit on an intermittent and sometimes stormy basis, until (as I shall find) September 2007.

iii) In 1990, it appears that KFME was under some financial pressure in relation to its development at Chaddesden; its bankers (NatWest) reduced its facilities and both Mr Moore and Mr Carter remortgaged their houses to inject additional funds.

iv) At about the same time in 1990 Mr Moore had identified a new development opportunity in Allestree, Derby which was to become known as "Quarndon Heights". Broadly speaking, it would involve purchasing part of the rear gardens of a number of houses fronting onto Kedleston Road (a good quality residential area) and constructing on the plots acquired a new road parallel to Kedleston Road, with new houses along that road. It was also necessary to make an access road between Kedleston Road and the new development.

v) There was no bank finance available to KFME to pursue this project, and in July 1990 a new company, JB1, was acquired. Its first annual return, filed in July 1991, showed that of the 100 issued shares initially 30 were held by Mr Carter, 40 by Mr Moore and 30 by Marcus Reid. All three were shown as directors, with Mrs Williamson as company secretary.

vi) JB1 raised borrowings from Barclays bank, introduced by Mrs Williamson, and commenced work on what was known as phase 1, involving the purchase of an initial group of garden plots to enable the construction of the access road and six new houses. The new access road was achieved by purchasing two adjacent properties (458 and 460 Kedlestone Road) and reselling them having retained sufficient land between them for the access road, together with the rear part of the gardens for the new development. It was envisaged that in due course the new road could be extended to the north (where it was called Quarndon Heights) and south (called Quarndon View), purchasing additional garden plots in each direction and potentially taking the number of new houses built up to about 60.

vii) As well as the funding introduced from Barclays, it appears that such resources as were available to KFME were used indirectly, because that company was employed as a building contractor at the Quarndon Heights site but not paid promptly for the work that it and its subcontractors did. JB1 was allowed to run up a substantial unpaid intercompany debt for the value of this work. According to Mr Moore's witness statement (5A/7/32) this debt would be in excess of £80,000 at any one time, which JB1 was unable to pay.

viii) The financial pressure seems to have been at least a contributing factor in JB1 entering into a form of joint-venture agreement with another developer, CW Clowes (Investments) Ltd ("CWC"). One set of discussions in 1992 led to heads of terms but no concluded agreement, but subsequently an agreement was entered into in April 1993, the gist of which was that CWC would fund the development of the next batch of properties at Quarndon Heights, paying JB1 a fixed price of £60,000 to build each property and 50% of the profit on

resale (which profit was expected to be £100,000 for each property). CWC acquired effective control of the site by purchasing from JB1 ransom strips which had been retained at the north and south ends of the new road as it then stood, without which it would not be possible to have access to any extensions of that road.

ix) Although JB1 did construct a number of further properties under this arrangement, it came to an end in July 1994 when CWC served notice to terminate, alleging breaches of contract in relation to the quality of the construction works. This brought to an end not only JB1's entitlement to build further houses at the site, but also its entitlement to share in the development profit on their resale.

x) In October 1994 JB1 commenced proceedings (later transferred to this court) against the solicitors who acted for them in relation to the Quarndon Heights site and the joint-venture agreement ("EWC"). The solicitors were said to have been negligent in two principal respects:

a) in failing to ensure that when the properties at 458 and 460 Kedleston Road were sold on, sufficient land was retained to construct a visibility splay at each side of the new access road where it joined Kedleston Road. It does seem however that Mr Moore and Mrs Williamson were fully aware of the need to retain control of the visibility splay areas, and one of them ended up owned by Marcus Reid (who bought the reduced plot of 460 Kedleston Road) with the other being owned by Mr Moore's father, Frank Moore (who it appears acquired it for just under £10,000 in 1995); and

b) in failing to ensure that the joint-venture agreement was so drafted that the obligation to construct new properties on the site was severable from the entitlement to receive part of the development profits on the resale. Had it been so drafted, it was said, JB1 would have retained its entitlement to share in those development profits even if it gave up its role as constructor, or was sacked for alleged breach as in fact happened.

In a witness statement served for the purpose of those proceedings, Mrs Williamson put the losses suffered by JB1 at just over £1.1 million (5A/230/59).

xi) The termination of the joint-venture arrangement, and a dispute over amounts said to be due from CWC for work done to date, meant that JB1 was not continuing with work at the Quarndon Heights site and had no funds available to pursue any other opportunities. It became effectively dormant from the latter part of 1994, save for pursuing the EWC litigation, and had to raise funds from its shareholders and connected parties in order to do that. Precisely who contributed these funds, and in what amount, is in dispute.

xii) KFME was also in financial difficulties, and went into liquidation in 1994. Mr Moore sought to present this as a consequence of the termination of the joint-venture agreement with CWC, and a decision to concentrate resources on JB1 in order to pursue the EWC litigation, leaving "relatively small debts of approximately £40,000". However, as Mr Hedley established in cross-

examination (transcript, day 2, p83) KFME was put into receivership by its bank as a result of problems at the Chaddesden site (no doubt these may have been contributed to by lack of cash flow from JB1) on 1 June 1994 and went into compulsory liquidation the following day, with liabilities to trade creditors which the receivers estimated (3A/27) at £81,705. In addition it had liabilities owed to its directors, Mr Moore Mr Carter and Mrs Williamson, stated to be £270,000. Further, although Mr Moore initially denied it, it was shown that the receivers and liquidators had not been told about any money that might have been owed by JB1 to KFME for work done at Quarndon Heights. Mr Moore accepted that this was a deliberate omission to prevent a claim being made against JB1. It also appears that it was agreed at the time that the amounts outstanding to the directors of KFME would in due course be paid to them by JB1.

xiii) Also in 1994, divorce proceedings began between Mr Moore and his wife. It was Mr Moore's case that this led to anxiety on the part of those third parties who were providing funds for the EWC litigation that Mrs Moore might obtain control of his shares in JB1, as a result of which he agreed, at some point in 1996, to transfer all but one of the shares owned by him to Mrs Williamson, on terms that she would hold them on his behalf. According to Mr Moore (and Mrs Moore also gave evidence to a similar effect) this arrangement was throughout known to and agreed by Mrs Moore.

xiv) At some point, Mrs Williamson transferred all the shares she held in JB1 to her son Jason. The records are confused and I will need to go into them in more detail in due course. Mrs Williamson's case is that this transfer took place in October 1997, in consideration of funding that Jason was providing to JB1 for the EWC litigation. Mr Moore's case is that she told him that it was because she was going through a divorce from Marcus Reid at the time and in order to protect her shares from Mr Reid, and that both she and Jason agreed that the shares originally transferred by Mr Moore would still be held on trust for him.

xv) In July 1999 the EWC litigation ended successfully with a judgment in favour of JB1 for damages of £320,000 and a costs order eventually quantified at £106,000. Part of the proceeds was used to pay some of the individuals who had provided funding for the litigation; other amounts were paid to Barclays to discharge their security over the assets of JB1. According to Mr Moore (5A/12/59) this left a surplus of approximately £100,000, but he filed an affidavit in the divorce proceedings (in response to an application on behalf of Mrs Moore for an injunction to prevent disposal of the proceeds) stating that he had no interest in this amount because all the shares in JB1 were now held by Jason. In due course in March 2001 a final order was made in the ancillary relief proceedings awarding Mrs Moore a mere £2500.

xvi) The availability of funds from the litigation meant that JB1 could recommence development work, and negotiations were reopened with CWC with a view to taking some further part in the Quarndon Heights site. It is clear that the trump card that JB1 had to play in these negotiations was the ability to control the land required to construct visibility splays at the entrance to Quarndon Heights, without which the Council would not grant permission for the extension of the new road to enable new plots to be developed. One of these pieces of land, it will be recalled, was owned by Marcus Reid. The other was

by now held by Mr Moore's mother, Joan Moore, following the death of her husband Frank. She gave evidence (5A/223) that CWC had previously offered her £100,000 for this small piece of land but she agreed to sell it for only £1 to CWC in 2000 as part of an arrangement under which CWC gave JB1 options to acquire four plots for development at Quarndon Heights (5A/13).

xvii) The personal relationship between Mr Moore and Mrs Williamson became very strained in late 2000, and in January 2001 solicitors on his behalf wrote claiming that he was entitled to 60% of the share capital of JB1, notwithstanding that it was all (except for one share) held by Jason and that he was simultaneously maintaining in the divorce proceedings that he had no such interest. He also claimed an interest in Mrs Williamson's house. According to Mr Moore, there were discussions relating to buying out his interest, but no agreement was reached. He continued to work in JB1's business, notwithstanding the personal difficulties between himself and Mrs Williamson. He made a further loan to JB1 in October 2001 of some £38,000 from the proceeds of sale of his former matrimonial home, which JB1 needed to proceed with Quarndon Heights and other projects. His case is that he asked Jason on a number of occasions to transfer back the shares held on his behalf, and Jason agreed to do so but Mrs Williamson would not let him.

xviii) One undoubted difficulty in the way of Mr Moore holding shares in JB1 was that the NHBC objected to his having any involvement in the company as director or shareholder, as a result of claims which had arisen in relation to houses built by KFME. In January 2003 the NHBC refused to register JB1 under its scheme (which would be essential for it to sell residential properties) while Mr Moore remained a shareholder, as a result of which he transferred his only remaining share to Jason. Mr Moore's case is that Mrs Williamson used the attitude of the NHBC as one of a number of pretexts why Jason should not transfer shares back to him, but she and Jason continued to accept that Jason would hold the shares on his behalf while presenting to the outside world a position that would satisfy the NHBC.

xix) According to Mr Moore, at the time when he transferred the final share to Jason, Mrs Williamson drew up a written agreement stating that Jason was to hold Mr Moore's shares on trust for him and would return them whenever he was requested to do so, which document was signed by Jason (witnessed by Mrs Williamson) and dated 1 March 2003 (5A/16/79).

xx) Mrs Williamson and Jason maintain that there never was any trust arrangement, Jason was always the beneficial owner of the shares originally transferred from Mr Moore, and Mr Moore agreed to transfer the one share he retained, which was valueless, so as genuinely to cease to have any interest at all in the company as the NHBC required. They deny that any written agreement recording a trust arrangement ever existed.

xxi) In April 2002, Mrs Williamson caused a new company, JB2, to be incorporated, with two shares issued, one of which was held by herself and the other by Jason. She accepts that she did not tell Mr Moore about this at the time, or for a considerable time afterwards. On her account, it was nothing to do with him as he did not own any interest in JB1 and was working as a mere employee of the company.

xxii) Work on the various projects however continued in the name of JB1. It is Mr Moore's case that he found out about the existence of JB2 at some point in the summer of 2004, when Mrs Williamson told him that JB1 was in financial difficulties because of a substantial and unexpected demand from the Inland Revenue for tax on the damages received from EWC, and that it would be best to close down JB1 and transfer the business to the new company, JB2. On his account, she assured him that he would be beneficially entitled to 50% of that company, as he had been with JB1. He did not know what steps were taken to transfer the business across, all of that being arranged by Mrs Williamson.

xxiii) The evidence was that some £400,000 in cash which originated from the sale by JB1 of Plot 43, Quarndon Heights (10/87) was transferred by Mrs Williamson to an account on behalf of JB2 (9C/797). Her case now is that she was entitled to the money because of amounts owed to her on directors loan account by JB1, although she accepts that there is no documentary evidence of any such loan account. I note that at the time, she expressly denied any intention to transfer these proceeds to JB2 (6C/41), though that is precisely what she then did. The only documented transfer of assets from JB1 to JB2 was of land at Quarndon Heights comprised in a number of titles, the main part of which was apparently Plot 44 Quarndon Heights. These were valued at £110,000 and purchased by JB2 at that price (6C/49). It was paid out of the £400,000 previously transferred from JB1 (10/71).

xxiv) It appears that JB2 simply carried on where JB1 left off, taking over the employees, equipment, vehicles and projects that JB1 had. Quite how this was achieved is obscure; certainly there was no asset sale agreement or consideration paid for transfer of assets other than plot 44. Mrs Williamson's evidence was that insofar as JB1 had any potential interest in other plots at Quarndon Heights or projects elsewhere, it was no more than incomplete arrangements for options or to acquire land, which had been negotiated to varying extents but not reduced to writing, and that JB2 took over the negotiations and entered into agreements with the relevant landowners in its own name.

xxv) One such project, which turned into the single most valuable transaction ever undertaken by any of the relevant parties, was the opportunity to purchase some land at Vendace Drive, Lochmaben in Scotland. The parties are in dispute about how this opportunity arose, and I will need to refer to it in more detail in due course. For the moment it is sufficient to note that a parcel comprising two building plots and the ownership of the access road to them (Vendace Drive) was being offered for sale by a Mr George Hann, a solicitor, who held a charge over the land, apparently for fees due to him. The property was on the market, it would appear, in February 2004 (6A/24) and terms must have been fairly quickly agreed, in principle, for the land to be bought by JB1. By at least May 2004, solicitors instructed on behalf of JB1 were in correspondence with Mr Hann about the proposed purchase (see the file note dated 26 May 2004 at 6A/19 and the letter at 6A/13). However by 12 August 2004 Mrs Williamson was writing to the Scottish solicitors urging that the transaction should be formalised without delay (6A/10), concluding her letter "Please note the name on the contract will be Jewelbetter Derby Limited…" and providing JB2's company number. The solicitors accepted this without

question and a purchase contract was entered into by JB2 in October 2004 (6A/29), for a consideration of £160,000.

xxvi) Ownership of Vendace Drive also gave access to a large field owned by some local farmers. After fairly lengthy negotiations, JB2 was granted an option to acquire the field dated 2 April 2007 (6A/34) and promptly entered into an agreement dated 3 August 2007 to resell the field, with that access (but retaining the two original building plots) to Taylor Wimpey for residential development (6A/63). The consideration for the sale was £2,655,500 which, after deducting the cost of acquiring the field, produced a net sum of just under £1,413,000. That amount was paid into an account in the name of JB2 held at Close Brothers bank in London. There are a number of issues of disputed fact relating to the use made of those proceeds. Substantial amounts went towards the acquisition of properties in America, the ownership of which is in dispute between the parties, although those particular disputes do not form part of the issues I am required to determine in his proceedings.

xxvii) On Mr Moore's account, he continued to press Jason for the transfer of the share in JB2 held on his behalf, and in June 2005 had a meeting with Jason at Jason's home. Jason refused to sign a share transfer form, but did make and sign a manuscript endorsement on the trust agreement dated 1 March 2003 to the effect that it also applied to the share in JB2. Jason's wife, Linda Fretwell, was said to have witnessed the signature of this endorsement. Mr Moore has not been able to produce this document; he says that it was left between the pages of his personal diary at Mrs Williamson's property when he left on the final breakdown of their personal relationship in September 2007. Mrs Williamson and Jason of course denied the existence of the document, let alone any amendment to it.

xxviii) It is common ground that the business relationship between the parties came to an end on 14 September 2007. They disagree about precisely what triggered this breakdown, but I am satisfied that at least a substantial part of the reason was that Mrs Williamson discovered at or about that date that Wendy Tillotson, a woman with whom Mr Moore had had a relationship (on his account between 2002 and 2004 whilst he was not in a personal relationship with Mrs Williamson) had become pregnant by him and given birth to a child, which unfortunately did not survive. Mr Moore's account is that Ms Tillotson miscarried at about three months gestation, but Mrs Williamson does not accept this. This discovery caused a furious jealous reaction by Mrs Williamson that was testified to by many of the witnesses who knew the parties at the time and which, I am satisfied, has led to the deeply bitter personal animosity that she has shown to him since then and which was abundantly apparent throughout her evidence.

5. Mr Moore's case in essence is that throughout the period in which JB2 has been trading he has been regarded, and acknowledged, by all parties as being an equal principal and owner of it with Mrs Williamson, and that this state of affairs followed naturally on from the position with JB1, where (at least since 1994) as between the parties to this litigation he was accepted as being an equal beneficial owner with Mrs Williamson. Although there was a great deal of disputed factual evidence in relation to events while JB1 was trading, they are not directly the subject matter of the present case. The evidence in relation to ownership of shares in JB1 is relevant however

because it affects the credibility of the witnesses, and because any findings made on that evidence will support or undermine Mr Moore's claim that there was an essential continuity of ownership from JB1 to JB2. The evidence in relation to transactions undertaken during JB1's period of operation is also relevant to assessment of credibility and the overall manner in which the parties conducted their business operations, and also because it forms an essential precursor to any attempt to understand the highly complex and interlinked series of property transactions which have been pursued, and particularly those which are now criticised as involving improper use of the funds of JB2.

The Principal witnesses and their conduct of business

6. Before turning to the facts in more detail, it is appropriate to record some observations on the general nature of the way in which the affairs of the two companies were conducted, and my impressions of Mr Moore and Mrs Williamson as witnesses. These are derived from the totality of the oral and documentary evidence.

7. It has been difficult to gain a coherent picture of these business activities because of the high degree of complexity and interdependence of the various transactions entered into. To some extent no doubt this is inevitable in a relatively small property development business of this sort; it is necessary to assemble packages of land, options and rights in order to enable any development to proceed, and funding the whole process requires either substantial capital, which this business never had, or a degree of juggling resources available from sources such as the shareholders, bank borrowings, credit from suppliers and any sales that can be made. But in the case of the two Jewelbetter companies matters have been made much more difficult by two principal factors.

8. The first of these is what appears to be an almost total absence of proper records kept for the companies themselves. There has been a very substantial amount of documentation produced for the purpose of this litigation, but for the most part it originates from (and in large measure had to be obtained from) third parties. There is no doubt that it was Mrs Williamson who was primarily responsible for administration within the companies, and therefore that in so far as proper records do not exist, that is principally her fault. It is clear that this situation has been the case throughout the operation of the companies, and I have come to the firm conclusion that it represents a deliberate policy on Mrs Williamson's part in order to make it difficult to penetrate the affairs of the companies. This extended to making deliberately untrue statements in such records as were prepared.

9. An outstanding example of this is the fact that although JB2 made a gross profit of over £1.4 million from the Lochmaben transaction and paid that amount into the account at Close Brothers in August 2007, neither the profit made nor the balance held on that account were shown in the company's accounts for the relevant period. Those accounts are for the 12 months ended 30 April 2008 and appear in volume 8B at page 598. They are stated to have been signed by Mrs Williamson having been approved by the board on 8 December 2009. By that date she had been appointed a director along with Jason, and he accepted that he was also responsible for providing the information from which the accountant had prepared these accounts. They show turnover for the year of just under £500,000 which plainly cannot include the land sold at Lochmaben for £2.6 million, no bank deposits (and indeed creditors including bank borrowings of some £133,000). Mrs Williamson and Jason attempted to explain

this on the basis that they must have inadvertently omitted to tell the accountants about these transactions and failed to check the accounts sufficiently carefully when produced by them. I do not accept that for a moment and have no doubt that they intended to conceal the entirety of the Lochmaben transaction from the records, and particularly from the tax authorities.

10. There has been an extensive investigation by HMRC into the affairs of the Jewelbetter companies which, it is clear, has been made very much more difficult by the absence of records, the failure particularly of Mrs Williamson to provide explanations for transactions when requested of her and discrepancies between the explanations she has provided and such hard information as has been obtained by HMRC. In this connection it is sufficient to note a series of letters from HMRC in 2006 pointing out discrepancies in the information given to them and the minutes of meeting held on 14 March 2006 between two HMRC representatives and an accountant instructed by Mrs Williamson, which are marked in manuscript by Mrs Williamson's representatives to note that in a number of respects Mrs Williamson accepted that answers she had given were lies (6A, pp 257,236,231).

11. Mrs Williamson was asked about an incident in which, according to her, she had put together a box of records relevant to JB1, telephoned the relevant HMRC office and arranged for them to be left outside her door and collected by HMRC. She said that HMRC had failed to arrange collection and afterwards denied knowledge of the telephone call. The box of records had disappeared; she said she presumed that they might have been cleared away with other rubbish by her daughter Alexandra whose house was on the same site. This account would have been difficult to believe in any circumstances. It became impossible when Alexandra was asked about it and appeared to know nothing about it or her supposed role in the loss of these records although the episode, if genuine, would have been an important one that she would have been asked about by her mother, and would have recalled. I came to the view that this story was fabricated to explain the failure to provide records which either never existed or had been destroyed by Mrs Williamson. HMRC obviously took the same view; see volume 6A at page 248.

12. The second is the way in which assets and funds have been moved backwards and forwards between the companies and individuals, in particular Mr Moore and Mrs Williamson, and members of Mrs Williamson's family. This has involved the transfer of properties into and out of the companies, and payment of monies that were clearly due to the companies into personal accounts of the individuals involved, followed by payments from those accounts which were undocumented but said to represent expenditure on behalf of the companies. Both sides attempted to explain these transactions, characterising specific transactions and payments as being either for the benefit of the companies or the individuals as appeared to suit their cases. It is clear that Mrs Williamson in particular, and Mr Moore to a considerable extent, observed no distinction between the funds of the company and their own personal assets.

Mrs Williamson

13. Mrs Williamson, in my view, was a thoroughly unreliable witness. She was plainly intelligent and able to recall when she wished, in minute detail, the extremely complex series of transactions in which these two companies were involved over many years. In many instances however, the explanations she gave turned out to be incomplete or inaccurate, and it was only when the other evidence, particularly documentary evidence, emerged which she felt obliged to explain that she would seek

to fill in the gaps. She was, as I said above, principally responsible for the fact that the companies themselves provided next to nothing in the way of reliable documentary evidence of their transactions. On her own account, substantial amounts of the companies' money moved in and out of bank accounts in her name, and the names of her relatives. However she resisted requests for disclosure of relevant bank accounts, and did not comply with orders for their production when they were made. Much material emerged only when third party disclosure orders were made against the relevant banks, with which they largely complied.

14. Again, the Lochmaben transaction provides an outstanding example. In her second witness statement, dated 23 March 2010, Mrs Williamson dealt with this transaction at paragraph 13. She first gave her account of how the purchase of the two building plots and Vendace Drive for £160,000 came about, and then said:

> "[JB2] subsequently applied for and obtained planning permission and then sold the land to George Wimpey, the well-known housebuilders, for £1 million, not £3.2 million as Keith has suggested. Keith had nothing to do with any part of the transaction. "

15. In cross-examination (transcript, day four, beginning at page 107) Mrs Williamson began by confirming that there had been a sale at £1 million, realising a profit of £840,000 after the costs of acquisition of £160,000. It had to be dragged out of her, in the light of documents that have emerged since her witness statement, that, in addition to the purchase of the initial plots for £160,000 from Mr Hann there had been a subsequent purchase or option over the land owned by the adjoining farmers, that the sale on to George Wimpey was for a stated consideration of some £2.6 million not £1 million, and that even after that sale the company had retained the two building plots it had originally acquired, and options over other parts of the farmers' land. I did not believe her attempt to explain this as a misunderstanding of the questions put to her, or that she had, as she said, forgotten about the transaction with the farmers that took so long to negotiate.

16. The documents obtained from solicitors in Scotland also showed that far from having nothing to do with the transaction, Mr Moore had signed, together with Mrs Williamson, a note of a crucial meeting at which they agreed to grant options over their land to JB2. In an attempt to explain this away, Mrs Williamson said that Mr Moore had travelled with her to Scotland when she went to view the land because at the time "we were an item" and that he had "witnessed" the meeting, signing the note of it merely in order that everyone who was present should do so.

17. In fact it is apparent from the documents disclosed that:

    i) Mrs Williamson was aware of the development potential of the adjoining field and that access to it was controlled by ownership of Vendace Drive from the beginning of the transaction in 2004 (6C/16). It was recognised explicitly in the sales particulars (6C/22). She told the Scottish solicitors that the potential value of this access was why she was prepared to pay "so much" for the building plots. It clearly was not a matter she would have forgotten about when she made her witness statement.

    ii) The negotiating meeting referred to was held on 9 June 2006. Mr Moore is named as one of the four people attending (the others were Mrs Williamson

and two of the three farmers, but not Jason Fretwell, although he was a director). All four have signed each page of the notes (apparently emphasising the importance of them) with Mr Moore being the first named signatory. This does not suggest he was present merely as a witness.

iii) No part of the transaction involved a sale at a figure of £1 million. There was nothing about which she could have been confused when she asserted that the sale to George Wimpey was a figure of £1 million.

18. I concluded that Mrs Williamson's description of this transaction was not the result of an innocent mistake or confusion, but positively dishonest in an attempt to minimise the true value of the transaction and Mr Moore's involvement in it.

19. Mrs Williamson's cavalier attitude to record-keeping and willingness to produce documents showing what she wanted to portray, irrespective of the facts, was shown by the production of the annual returns filed by her on behalf of JB1 purportedly showing changes in the holdings of its issued share capital.

i) Initially, the annual returns showed 100 issued shares, which were held as to 30 by Mr Carter, 30 by Mr Reid and 40 by Mr Moore. (1991 return, 2A/16). There are no documents to show whether any proper steps were in fact taken to issue any shares other than the two subscribers' shares.

ii) The annual return for 1994 however (2A/118) showed the share capital massively increased to 144,612 shares, of which 30 were said to be held by Mr Carter, 30 by Mr Reid, 72,246 by Mrs Williamson and 72,306 (50%) by Mr Moore. There is no record of any transfer of shares by Mr Reid to Mrs Williamson, although it is not impossible that he may have made such a transfer. There is no record of any resolution for the issue of further shares, and no register of members, register of allotments, return of allotments to Companies House or share certificates to show that they ever were issued. Recently, a set of accounts for the year ended 31 July 1993 has been produced showing (11/207) under the heading "Called Up Share Capital- Allotted, issued and fully paid" a figure of 100 ordinary shares, and a further figure of 144,492 described as "loans to be capitalised". This figure obviously relates to, though it is not quite the same as, the number of shares recorded in the Annual Return as apparently existing. These accounts were signed by Mrs Williamson and Mr Moore, but, in this context, I do not doubt his evidence that he simply signed what Mrs Williamson put in front of him and that she was responsible for the content.

iii) The same number and division of shares were shown in the annual return filed in 1995. However the annual return for 1996 (2A/253) showed a total issued share capital of only £1000, of which 999 shares were said to be held by Mrs Williamson and one by Mr Moore. Mrs Williamson produced a note in her own diary purportedly recording an Annual General Meeting on 14 August 1996 attended by herself and Mr Moore and a decision that she should "purchase the remaining 998 shares at £1 each as she has financed the legal costs etc against EWC and she will continue to do so". There is no other evidence that such a meeting took place. The apparent premise is that Mrs Williamson and Mr Moore already hold one share each and she is to acquire a further 998 presently unissued shares. This leaves unexplained:

a) what happened to the 100 shares originally said to exist, if the issued capital was now only two shares. In one of her witness statements Mrs Williamson said that she thought the original intention had only been to issue two shares, one to herself and one to Mr Moore. That cannot have been what she truly thought; she prepared herself the annual returns showing the ownership of the 100 shares, even amending the first of them in manuscript so that her own name, which she had originally inserted as the holder of 30 shares, was crossed out and replaced by that of her husband Marcus Reid. Furthermore, when she was trying to get Mr Carter to give up his interest and position, she did not at any point say to him that he was not in fact a shareholder.

b) what happened to Mr Reid's shares, it being implicit if there were only two shares that he had not made any transfer to Mrs Williamson. Solicitors on behalf of Mr Reid threatened proceedings in 1999 over what they referred to as "false annual returns which purport to show our client's shareholding diminishing from 30% to nil, in circumstances where our client has never effected a transfer of his shareholding. In addition, it is alleged that those returns purport to remove our client as a director of your client company when our client has not in fact been effectively removed by resolution or resignation."

c) what happened to Mr Carter's shares. In his evidence, Mr Carter denied ever signing any share transfer form, although he said that at one point a share transfer form had been produced purportedly but not in fact signed by him, implying that it was forged when he was in dispute with Mrs Williamson and being pressed to resign as a director of the company

d) what happened to the 144,000 odd shares said to have been issued two years previously

e) how Mr Moore's shareholding reduced from 40 shares (or 72,306) to one share

It does however seem clear that whatever other purposes Mrs Williamson had in presenting these returns, between 1994 and 1996 she considered Mr Moore to be a 50% shareholder in JB1.

iv) Mrs Williamson filed a return of allotment dated 6 February 1997 (2A/264) in which she backdated the issue of 998 shares to herself to 14 August 1991.

v) The annual returns for 1997, 1998 and 1999 continued to show Mrs Williamson holding 999 of the 1000 issued shares. However in the annual return for the year 2000, Mrs Williamson recorded that she had transferred all of those shares to Jason, as long ago as 24 October 1997. She disclosed a share transfer form with that date (2A/276), which appears not to have been backdated because it bears a Stamp Duty stamp with the date of 28 October 1997. If it was genuine, there is no explanation as to why Mrs Williamson should have continued to file annual returns showing herself as the shareholder.

vi) I do not accept that these unexplained changes in the apparent issued share capital of the company came about from any confusion on Mrs Williamson's part. The most likely explanation would seem to be that when she came to be in dispute with Mr Carter it suited her to appear to have diluted his shareholding to a negligible amount and she therefore instructed the accountants to prepare a set of accounts showing an intended capitalisation of loan accounts and later prepared an annual return showing that such a capitalisation had taken place when in fact it had not. A couple of years later, she chose a different course and simply wrote the shares apparently previously held by Mr Carter (and Mr Reid and Mr Moore), as well as those supposedly issued by way of capitaisation, out of existence by filing an annual return showing a different picture.

vii) I suspect that it is possible that Mrs Williamson may have felt able to do this because although she had told Mr Moore, Mr Carter and Mr Reid that shares had been issued in their names, and prepared annual returns to that effect, she may never in fact have completed any paperwork or taken any of the steps required in law to issue any shares beyond the two subscribers shares. Those were issued to company incorporation agents who no doubt, when the company was purchased "off-the-shelf", handed over their share certificates and share transfer forms, which may have been signed in blank. Certainly none of the other apparent shareholders has ever been able to produce a share certificate.

20. These matters are but a few of the instances in which it was, in my view, shown that Mrs Williamson gave evidence that she knew to be untrue. They also show that she was quite capable of manipulation by concocting documents to suit her purposes. When caught out in her lies in cross-examination she was almost invariably not prepared to admit that she had not told the truth, or that she had changed her story, but continued to bluster. Her evidence in my view could not be relied upon to any degree in a matter in which it might be against her interests to tell the truth, unless supported by other reliable and independent evidence.

Mr Moore

21. Mr Moore's general credibility as a witness was scarcely any greater. I have referred above to his dishonesty in concealing from the liquidator of KFME what may have been a substantial claim against JB1. I am satisfied also that the arrangements that he now says were put in place for his shareholding in JB1 to be apparently "transferred" to Mrs Williamson but in reality held on trust for him were made for the purpose of presenting deliberately dishonest evidence in his divorce proceedings from Mrs Sylvia Moore. His case now is that when the divorce was in progress the various individuals who had put up funds to JB1 for the purposes of the EWC litigation were concerned that Sylvia Moore might obtain control of his shareholding in JB1. He says that it was to reassure those investors, rather than to protect his own interests, that he arranged for his shareholding to be held by Mrs Williamson. He says that all this was disclosed to Sylvia Moore and she agreed with it at the time. Insofar as her solicitors sought information about his interest in the company, he says that they were doing so effectively as a matter of formality but Mrs Moore did not really want or expect to obtain access to any funds through this process.

22. This suggestion is simply not credible in the light of the contemporary documentation. It is plain that Sylvia Moore's solicitors in the divorce pressed repeatedly for

information and documentation about the interest which they allege Mr Moore had in JB1, did not accept his denials of any such interest or his explanation about the supposed transfer to Mrs Williamson and went to the extent of seeking an injunction to preserve any interest he might have had in the proceeds of the litigation when it was successfully concluded. Mr Moore responded to all of that, energetically maintaining that he had no interest in JB1 or its assets. There is nothing in this documentation to indicate that it was being pursued simply as a matter of formality, indeed every indication that it was the perfectly genuine pursuit by wife of assets which she believed her husband to be concealing behind a facade of bogus transactions.

23. Had it been intended that the apparent transfer of ownership was simply a temporary measure to prevent the divorce from interfering with the progress of the EWC litigation, there would have been no reason to keep it up once that litigation was concluded. The "investors", as they were referred to, could have been paid off out of the proceeds received and, if it was Mr Moore's genuine intention to provide for Sylvia Moore and his children out of the balance remaining, he could have done so. Instead, he resisted the injunction application, filing more evidence maintaining the line he now denies, including a statement of means dated 25 October 1999 referring to the purchase of 998 shares by Mrs Williamson in 1996 in return for having funded the EWC litigation and the transfer by Mrs Williamson to Jason in October 1997 in consideration of his allegedly taking over the provision of funding. In that statement he said "proceeds from the litigation are in control of the majority shareholder Jason Fretwell. I have had no money from this litigation whatsoever." (2B/319). Sylvia Moore continued to pursue the allegation that Mr Moore had an interest in JB1 and the proceeds of the litigation notwithstanding what he said well into the year 2000, her solicitors sending a detailed questionnaire seeking information about his finances and assets to which Mr Moore responded in what must have been a deliberately obstructive manner. Sylvia Moore swore an affidavit in support of an application for disclosure of further documents relating to any interest Mr Moore may have had, in October 2000 (2B/53). As late as May 2001, Mr Moore served a witness statement in the divorce proceedings (2B/387) maintaining that he only ever had one share in JB1, that the other 999 shares belonged to Mrs Williamson and that he had no financial assets and had received no benefit from the EWC litigation. He fought the ancillary relief to a final hearing on the same basis. In his skeleton argument for that hearing (2B/395; he was acting in person) Mr Moore said that the proceeds of the litigation were insufficient to cover JB1's liabilities and that neither he nor Mrs Williamson had benefited any way from the damages awarded. All of this is contrary to his present position and none of it fits in the slightest way with the suggestion that he colluded with Sylvia Moore to protect the proceeds of litigation for the benefit of "investors" in EWC.

24. At the same time as he was denying any interest in JB1 for the purposes of the divorce, solicitors acting on behalf of Mr Moore were putting forward a claim by him against Mrs Williamson to establish just such an interest. They wrote a letter dated 2 January 2001 (2B/377) which included the following:

> " Secondly there is the matter of our client's interest in Jewelbetter Limited. There appear to be several complications with regard to the company and it would appear that the current position 'on paper' may not properly reflect what the actual legal position was intended to be.

> It seems clear that this company was originally formed by you and our client to carry out building development and we are instructed that it was originally intended to be owned 60% by our client and 40% by yourself. However… only two shares were actually issued, one to you and one to our client. When it subsequently became necessary to borrow money from your son, Jason Fretwell, in order to complete the litigation which you had brought against EWC it seems that shares were issued to your son resulting… in there currently being 999 shares issued to him and only one to our client.
>
> His understanding was the issue of shares to your son was only a temporary expedient designed to ensure that he would have security for the money he had advanced (approximately £28,000) to pay the barrister's fees for the trial against EWC.
>
> Our client has advanced by way of loan a figure which he believes to be currently in the region of £225,000… "

25. In this letter, therefore, and presumably on instructions from Mr Moore, Mr Moore's interest in Jewelbetter was promoted from the 40% which he appears to have had initially, to 60%. No basis is given for the alleged intention that he should have 60%, and when asked about it before me Mr Moore seemed to accept that it was a negotiating figure. The letter appears to accept that Jason had provided some funding towards the EWC litigation, although his present position is that Jason did not provide and could not have provided any such funding. The letter asserts that he had lent £225,000 to JB1 which if true would certainly have been an asset required to have been disclosed in the matrimonial proceedings.

26. Mr Moore called evidence by Sylvia Moore in the present proceedings, in which she supported his position that notwithstanding the appearance of all the contemporary documents, she had in fact known all along that Mr Moore retained an interest in JB1, and agreed with him that she would not lay claim to it in the divorce. The apparently vigorous pursuit of such an interest in the face of Mr Moore's denials was, she said, only to spite Mrs Williamson.

27. Mr Moore accepted that the evidence he had given in the divorce case was untrue to his knowledge. I do not believe the explanation he has now offered and am satisfied that his real motive was to deceive Sylvia Moore, her solicitors and the court as to the assets he considered himself to hold, for the purpose of defeating her ancilliary relief claim. Nor do I believe that Sylvia Moore went along with this at the time; on the contrary she suspected the truth and did everything she could to bring it out, but was frustrated by Mr Moore's lies and obfuscations. I am satisfied that the evidence that she gave in these proceedings to the contrary was not true; I presume that her purpose in giving it was to provide assistance to Mr Moore in obtaining some assets from Mrs Williamson and her family, from which Sylvia Moore now hopes to benefit. She presumably has been promised by Mr Moore that she will do so.

28. Mr Moore thus appears as a person who was prepared to make arrangements to defeat his wife's claims and lie in court proceedings about them, while at the same time presenting an inconsistent claim against Mrs Williamson which he also exaggerated for the purpose of negotiation, and is now prepared to persuade his former wife to come to court to give evidence on his behalf that they both know is false.

29. I have little doubt that whilst Mr Moore considered that he and Mrs Williamson were essentially acting together in the conduct of the affairs of JB1 and JB2 he was prepared to go along with the way in which the affairs of those companies were conducted and presented to (or concealed from) outsiders. Insofar as he is now seeking to "lift the lid" on some of these transactions it is not because he objected to them in principle at the time but because he has now fallen out with Mrs Williamson. Whilst he is eager to show evidence of wrongdoing by Mrs Williamson and her family, he is equally keen to deny or minimise any fault on his own behalf, and, in my view, his evidence also requires to be treated with great caution unless supported by persuasive independent evidence.

Jason Fretwell

30. Jason Fretwell, in my view, had very little involvement in the day-to-day affairs of either of the Jewelbetter companies. He participated in transactions and signed documents primarily at the direction of his mother, Mrs Williamson, no doubt with a view to obtaining the considerable personal benefits which, as will emerge, she sought to steer his way. He does not appear to have given any great independent consideration to his role as a director and, for instance, had no credible explanation to give about the accounts of JB2 which he had signed but which disclosed nothing about the Lochmaben transaction or the cash that it had produced. His evidence in relation to the companies and their affairs was, in my view, no more and no less than his mother wanted him to say and adds nothing by way of independent support to Mrs Williamson's own evidence.

Perceived ownership of JB1

31. I refer in this section to the perception of ownership of shares in JB1, because of the exceptional degree of obscurity about whether any shares other than the two subscribers shares ever were properly issued, and if so what happened to those which appeared to be held by Mr Carter, Mr Reid and Mr Moore. What is relevant to the motives and intentions of the parties is what they (rightly or wrongly) considered the position to be at the time, rather than whether they (principally Mrs Williamson) had taken the correct steps to implement their wishes.

32. Mrs Williamson's case is that Mr Moore was, certainly for the latter years of the existence of JB1, nothing more than an employee paid a relatively small wage (£2-£300 per week). Mr Moore's case is that on the contrary he was effectively an equal owner of the business, taking the major part of the executive function in relation to the building operations although administrative and financial matters were dealt with by Mrs Williamson. He was content to be presented at an employee at a low wage for various reasons, including minimising the demands on the company's cash flow and presenting an appearance of poverty in his divorce proceedings. He did so however relying on building up the value of the company in which he had an interest.

33. On these matters there was a substantial amount of independent evidence, overwhelmingly supporting Mr Moore's position. Some circumstantial evidence is to be found in the fact that Mr Moore continued to be shown as a director on JB1's business letter paper even when he had resigned as a director and, apparently, ceased to be a shareholder. Mrs Williamson's explanation that she had not got around to ordering new notepaper did not carry conviction; she was clearly able to do so

promptly when the business began to be carried on by JB2, a change that she initiated and regarded as important.

Witness evidence

34. Amongst the witness evidence, I found that given by Mr Terrence Morgan compelling. He is a chartered surveyor, a former officer of the local branch of the RICS and former chairman of the Derbyshire Federation of Small Businesses. His surveying company, Morgan & Co, acted for both Jewelbetter companies since at least 2003, and he counted both Mr Moore and Mrs Williamson as personal friends as well as business clients, having known them since at least 1998. In the business capacity, Mr Morgan acted in relation to the negotiations for purchase for a substantial number of properties at the Quarndon Heights site and elsewhere from 2003 onwards, negotiating with landowners and dealing with their solicitors, and also corresponding with the solicitors acting for Jewelbetter. He was clearly in a position to see at first hand the way the Jewelbetter business was operated. In his witness statement (5A/82) he said amongst other things:

> " I hold Keith in high esteem as a very good quality local builder. I have recommended him to client of Morgan & Co and I have always regarded Keith as the driving force behind Jewelbetter.
>
> I have always known Keith and Frances as business partners and owners of Jewelbetter limited. My correspondence and records show that I was not aware of the change in either the name or identity of Jewelbetter Limited … to Jewelbetter Derby Limited… in my mind there was no difference between the two companies.
>
> I have always considered JB1 and JB2 to be Keith and Frances' businesses throughout 2003 to 2007 inclusive and beyond. Ongoing operations were always dealt with by Keith and Frances in the same manner. Keith handled the day-to-day site management and Frances dealt with the bookkeeping and accounting side of things. "

35. Mr Morgan gave evidence that he had recommended "Jewelbetter-Keith Moore" as the builder on a substantial project, the obvious implication being that he was regarded as a principal in the business and not a mere employee. He said that he had taken instructions from, and reported to, both Mr Moore and Mrs Williamson, and produced a substantial amount of correspondence addressed to both of them, dealing with matters which were appropriate for someone with a senior executive status, and not a relatively low wage employee. He clearly regarded both Mr Moore and Mrs Williamson as his clients, and as the owners of the business. He dealt with them both in the same manner without any change over the period of apparent change in shareholdings and the transfer to JB2 (of which he was unaware at the time).

36. Mr Morgan was able to give evidence directly relevant to Mr Moore's allegations that Jason had frequently acknowledged that he was holding half the shares in JB2 on behalf of Mr Moore. Mr Morgan and his then girlfriend were among a party of 23 people who went on holiday together in December 2004. The others included Mr Moore and Mrs Williamson, who were then together as a couple although apparently

they had a serious row, which was not an uncommon occurrence, during the course of the holiday. Jason Fretwell and his wife were there, as were other friends and members of the families of Mrs Williamson and Mr Moore, including Mr Philip Sanderson, who also gave evidence. Mr Morgan's witness statement included the following:

> " in my presence and in a number of conversations, Keith made direct reference to his share in Jewelbetter Derby Limited. Jason Fretwell responded by saying that he would hand over his share which was owned by Keith provided his mum (Frances Williamson) let him. This came up in more than one conversation. Keith was saying that he owned 50% of Jewelbetter during that holiday. Both Jason and Frances acknowledged this on more than one occasion. "

37. Pressed on this account in cross-examination, Mr Morgan accepted that there may not have been a specific reference to "Jewelbetter Derby Limited" but only to "Jewelbetter". He was not aware of the difference at the time and regarded the business as all being one. It was suggested to him that Jason might have been talking about the single share in JB1 that Mr Moore had transferred to him. Mr Morgan was however clear that what was under discussion was an interest in the active trading business at that time, which can only have been JB2 because, as Mr Moore and Jason well knew but Mr Morgan did not, JB1 had ceased to trade in the summer of 2004.

38. Mr Morgan in my view was an honest witness doing his best to assist the court, and I accept his evidence.

39. There were then a number of matters which Mr Moore relied on as demonstrating that he and people connected with him had acted in relation to JB1 in a way which they would not have done if he had been a mere employee. One of these which seems to me particularly telling came from the evidence of Mr Moore's mother, Joan Moore. She provided a witness statement (5A/221) and gave evidence by telephone, being too infirm to attend court in person. Her evidence dealt principally with a number of conversations she had with Jason both before and after the final rupture between Mr Moore and Mrs Williamson in 2007. She was on personal friendly terms with Jason and discussed the disagreement between Mr Moore and Mrs Williamson with him on a number of occasions when he was at her house in connection with measuring up for, and subsequently fitting, a new kitchen at her house over a period of a couple of weeks in the early part of 2007. In one of those conversations she said that she had asked Jason about repayment of a sum of £50,000 which her husband Frank had lent to JB1 to pay suppliers and assist with EWC litigation. She told him that she was still upset at having sold the land for the visibility splay, which her husband had purchased and regarded as security to ensure that his loans would be repaid, for only one pound. She said that she had previously been offered £100,000 by CWC for that land, but had been persuaded to sell it to JB1 because Keith had told her that it would enable JB1 to negotiate a deal to continue to develop Quarndon Heights, and Mrs Williamson had promised that she would pay the money back once JB1 had commenced building again.

40. Mrs Moore was not challenged on that part of her evidence. It is consistent with documents recently disclosed which show that Mrs Moore got as far as instructing solicitors to sell the visibility splay to CWC for £100,000 in April 2000 (10/42) and that in June of the same year solicitors for CWC were proposing terms of settlement

between CWC and JB1 which would require that "your client needs to give all necessary permissions and/or convey to Derby City Council splay lands under their control and under the control of the Moore family at no cost" (10/44). The solicitors (who were acting for JB1 on the instructions, it is clear, of both Mr Moore and Mrs Williamson) wrote to Mrs Moore about the sale of the splay saying that …"to assist Keith's business, the tiny piece of land forming a visibility splay… was purchased in your late husband's name about six years ago, and you know that plans are now well advanced for the sale or surrender of that piece of land… I think you understand that following subsequent negotiations between your son's firm and [CWC] a wider agreement has been reached… whereby [CWC] will pull out of the Quarndon Heights development on terms which are concessionary to Keith's firm, and in exchange the visibility splay will be transferred to [CWC] at nominal consideration." Mrs Moore was very properly advised that she should take independent advice before agreeing to this transaction, which it appears that she did. It must be assumed that she was able to satisfy the solicitor advising her that she had a good reason for giving away her valuable interest.

41. Mrs Moore's evidence clearly supports Mr Moore's contention that he would not have persuaded her to sell land with a great ransom value for a nominal amount, unless it was to benefit a company that he had an interest in. The solicitor's letter referring to JB1 as "your son's firm" and "Keith's firm" make it clear that he was regarded as being an owner of JB1. Furthermore it supports his evidence that Mrs Williamson was actively involved in this persuasion. The sale took place long after the time when Mr Moore had apparently ceased to have any more than a nominal shareholding in JB1 and, according to what Mrs Williamson now says, become a mere employee. It must also be highly unlikely that Mr Moore's father would have lent £50,000 to the company unless it was to benefit his son's interest, although it is not clear from Mrs Moore's evidence whether those loans took place before or after Mr Moore apparently divested himself of his shares, so I draw no additional inference from the fact that those loans were made.

42. Mrs Moore was pressed in cross-examination about other things she said that Jason had told her in the course of their conversations. These were that she had spoken to Jason in 2005, on an occasion when Mr Moore had come to stay with her having separated temporarily from Mrs Williamson. Jason had come to visit and told Mr Moore that Mrs Williamson was furious about having found Mr Moore's son Darren working on one of the Jewelbetter sites, something she had previously forbidden. Mrs Moore said "I asked him about the shares and he said that he would hand them back once his mother had calmed down. I had no reason not to believe Jason at this time". She referred to another occasion when measuring up for the new kitchen at the beginning of 2007, when Mr Moore and Mrs Williamson were again separated, when she said "we discussed Keith's shares and again Jason said would give Keith back his shares as Keith and his mother had separated… I did wonder when he was going to give the shares back as I know Keith had been asking for them to be returned for some time." In March, when Jason came to be paid "I again asked when everything was going to be sorted out business wise between Keith and his mother and when he was going to give Keith his shares back. Jason told me that he had tried to talk to his mother about it that she had said that he was not to do anything until she told him to do so." On a later occasion "in September 2007 I telephoned Jason Fretwell and we discussed the breakup between Frances Williamson and Keith… Jason confirmed to me that I was not to worry about Keith because he was going to hand back the shares he was holding in Jewelbetter Derby Limited on Keith's behalf… as a result of the

breakup Jason Fretwell said to me that it was only fair that Keith and his mother split everything 50-50 and each go their separate ways."

43. Mrs Moore was not shaken in cross-examination, and I accept her evidence.

44. I also heard evidence from Mr Michael Moore, brother of Keith Moore. He had made a personal loan to his brother to buy a property called Osmaston garage. He also said that he had lent £44,000 to JB1, to assist with its cash flow and particularly to finance the EWC litigation. He was clear that he lent the money to the company because his brother owned half of it. No specific dates were given, but it was clear that some of these loans must have been made after 1996 and therefore after Mr Moore apparently ceased to be a significant shareholder. Mrs Williamson was closely involved in these arrangements, having received the money from him and promised him repeatedly that it would be repaid when the litigation came to an end. However, when that happened, she had only paid him £20,000 and said that the company could not afford to pay him the rest. She had made an arrangement to pay him at the rate of £140 per week, which was put through the books as if he were an employee. Those payments had continued after the transfer to JB2, but stopped sometime in 2005 when he was still owed approximately £15,000. He blamed Mrs Williamson for stopping the payments. He also was very upset about the fact that his father had lent the company £50,000, which he could ill afford, but Mrs Williamson had not allowed this to be repaid.

45. Michael Moore gave evidence in his witness statement about numerous conversations in which he had been assured by Mrs Williamson, usually after some argument had taken place between her and Keith Moore, that all the money the Moore family had put in would be repaid. He referred to two specific conversations with Jason Fretwell in which the shares had been mentioned, one in 2005 when "I brought up the situation with Keith and his mother saying that I just wanted Keith to have his shares back, for me to be repaid my loan monies and for everything to be sorted out. Jason agreed with me and said he wanted to hand back the shares but was afraid of his mother and what she might [do]. He did however assure me that I would be repaid." On a later occasion in early 2006 when Jason was doing some work at Michael Moore's house "we discussed the volatile relationship between Keith and his mother. We got round to talking about Keith's shares and he said he wanted to hand them over to Keith but his mother wouldn't let him." On a separate occasion later in 2006 Jason was again working at Michael Moore's house and "Jason said that he would hand over the shares to Keith if it were not for his mother. On this occasion he also said that he would repay me if he could but at the time there was no money in Jewelbetter Derby Limited to do this."

46. It was put to Michael Moore that he had made no loans to Jewelbetter and that none of these conversations had taken place, but he robustly maintained his position. I believed him, and accept his evidence.

Introduction of the Lochmaben transaction

47. Mr Moore also said that he had relied upon his having an ownership interest in JB1, and later in JB2, in introducing the Lochmaben transaction to JB1, and later allowing the benefit of it to be taken by JB2. There was a substantial dispute on the facts as to who was responsible for introducing the Lochmaben opportunity. Mr Moore's position was that he and his friend Philip Sanderson had found out about the possibility of acquiring land from Mr Hann when they were doing some work at Mr Hann's house in Scotland. They were there because Mr Hann's daughter, Virginia,

was at the time Mr Sanderson's girlfriend. Mr Moore said that he had made Mrs Williamson aware of the opportunity, and that they had all agreed that it would be pursued and that any profit resulting would be divided four ways between Mr Moore, Mrs Williamson, Mr Sanderson and Virginia Hann. A document to that effect had been drawn up by Mr Hann, signed by them all and kept by Mrs Williamson. When this litigation began, Mr Sanderson contacted Mr Hann and asked for a copy of the document. Mr Hann responded with a very guarded letter (2C/657) denying that he had ever acted for Mr Sanderson or "produced any legal document with any reference to your friend Keith" but saying "I sent an outline document to Virginia for her to obtain the opinion of an English solicitor but it was never intended to be signed and was only in regard to Virginia's interest. Frances was not a director of Jewelbetter at the time so if she signed something I don't suppose it would be binding. I did not keep a copy as it has been done on my home computer. I cannot remember the content." Mr Sanderson gave evidence supporting Mr Moore's version.

48. Mrs Williamson's account, supported by Virginia Hann who is now separated from and in dispute with Mr Sanderson, was that Virginia Hann had introduced the opportunity to Mrs Williamson, who was her best friend. Miss Hann said that she had never wanted or expected to have any interest in the project or profit made from it. When Mr Hann was served with a witness summons to give evidence on behalf of Mr Moore he responded with an angry letter (6B/559) denying that he had ever met Mr Moore until after the land was sold to JB1 and accusing Mr Moore of having asked him to lie on his behalf in giving evidence. In that letter he said "it would appear your client is of the opinion that myself (sic) and my daughter have received some financial reward from Jewelbetter following the sale of Vendace Drive. This is a total figment of his imagination and is defamatory and if he persists along this line I will need to take matters further."

49. There was a strong conflict of evidence on this matter, and little of it that could be said to be firm. Mr Moore and Mr Sanderson said that they had found out about the possible purchase when doing work at Mr Hann's house, but Mr Hann said in his later letter that this had been in 2005 (Mr Sanderson agreed with this in his oral evidence), which would have been after the purchase had taken place. Virginia Hann's denial of any expectation of an interest in the transaction does not sit well with her father's earlier letter appearing to acknowledge that a document had been prepared for the purpose of protecting her interest. If she had been expected to derive some benefit from the transaction, that might have been embarrassing to Mr Hann given the capacity in which he was setting the property. Mrs Williamson's evidence to the effect that the opportunity was introduced to her rather than Mr Moore would not be reliable on its own, and although it was supported by Virginia Hann, I have doubts over the reliability of that evidence, partly for the reasons given above and partly because of the collateral motive she may have in relation to her dispute with Mr Sanderson.

50. In my view, there is sufficient other evidence available for me to determine the matters that are in issue before me without having to resolve the question of who first introduced the Lochmaben transaction, and accordingly I do not make any findings of fact in that respect.

Funding the EWC litigation

51. The supposed reason for Mrs Williamson becoming the dominant shareholder in JB1, and later for her transferring all of her shares to Jason, was the provision of funding to

carry on the EWC litigation. It is quite clear from all the evidence that obtaining this funding proved difficult, and it had to be scraped together from various sources. There are however no records whatsoever to show what funding was provided by whom. No records belonging to JB1 have been produced, and nor have any been obtained from the solicitors who acted in the litigation. Mrs Williamson's evidence has been that it was all provided by her, or by herself and her mother, but there are no documents to support that. She denied that any funding had been provided by Mr Moore, Keith Moore or Frank Moore, but I am satisfied that they each did provide some funding and that Mrs Williamson was not telling the truth when she denied it. At a later stage, it is said that Jason provided a vital element of funding, as a result of which Mrs Williamson felt it appropriate to transfer the entire shareholding in the company beneficially to him. If Jason provided any such funding, the source of it is unclear. Mrs Williamson at first said that it had come from selling two properties that he owned. When she was referred to documents showing that these properties were sold many years after litigation concluded, she changed tack and said instead that it came from mortgaging them. Jason's own evidence however was that he had provided funding from jobs on which he worked for cash, asking his customers to pay the money direct to the company. He had no records of any such amounts, and of course any such income did not appear in his accounts produced for tax purposes for the relevant periods. Whether Jason did or did not provide any funding, I do not believe that it could have represented a genuine reason for transferring all of the shares in the company to him. No such favour had after all been conferred on any of the other individuals who provided any funding, and the likelihood of Mrs Williamson giving away any prospect of receiving a benefit from damages which she was putting at over £1m can in my view safely be regarded as zero.

52. Furthermore, when Mrs Linda Fretwell (Jason's wife) gave evidence she said that it was her understanding that although Jason had shares in JB1 in his name, the company was in fact owned by Mr Moore and Mrs Williamson. Had there been any genuine intention that Jason should be the sole owner of JB1, his wife would of course be expected to know of it.

Conclusions as to perceived ownership of JB1

53. Standing back and looking at all this evidence, in my view a sufficiently clear picture emerges as to how Mr Moore and Mrs Williamson considered the underlying ownership of shares in JB1 to be, up to the time when the business was transferred to JB2. They clearly (rightly or wrongly) both regarded Mr Reid and Mr Carter as having been removed from the picture, by one means or another. Mr Moore was not regarded as a mere employee, but as an owner with an equal share with Mrs Williamson. Were it otherwise, he would not have continued to provide funds himself to support the EWC litigation, nor would he have persuaded his brother Michael Moore to do so. Mrs Williamson, I am satisfied, joined in persuading Michael Moore to make his investment and must have done so on the basis that he was supporting a company in which his brother had an equal interest. Even more significantly, I am satisfied that Mrs Williamson played a leading role in persuading Mrs Joan Moore to sacrifice her ownership of the visibility splay land for the benefit of the interest that her son had in JB1. Although Mrs Moore had her own interest to protect in that her late husband had lent £50,000 to JB1, if that was all she was seeking to secure she would have been much better off accepting the cash offer of £100,000 from CWC.

54. It may well be that Mr Moore did not make any actual transfer of shares to Jason other than the one share which he eventually transferred to satisfy the requirements of the NHBC. If (as I surmise) the other 39 (or 72,305) shares which at different times were shown in the annual returns as held by him were never in fact properly issued, all that means is that in order to downplay his assets in his divorce he colluded with Mrs Williamson in allowing her to create records showing that he held one share and she held 999. Given the surrounding circumstances, I accept Mr Moore's evidence that this was done on the basis of a common understanding that she would hold 498 of those shares on trust for him. When those shares came to be transferred to Jason, I do not think it likely at all that Mrs Williamson intended the 500 shares that she considered she held on her own behalf to become beneficially owned by Jason, although of course that is not directly in issue in these proceedings. In my view, the explanation that she was seeking to isolate her assets from claims by Marcus Reid is much more likely. At all events, insofar as Mrs Williamson was transferring 498 shares considered to be held on trust for Mr Moore, I have no doubt that Jason was aware of the circumstances and acquired the shares with knowledge that they were to be considered as held for Mr Moore.

Ownership of shares in JB2

55. What is at stake in these proceedings is the beneficial ownership of the single share in JB2 presently held by Jason. On the evidence, he acquired that share in 2002 when Mrs Williamson caused JB2 to be incorporated. The evidence was that this was not discussed with Mr Moore at the time, so there cannot have been any common understanding or agreement at that time that Jason would hold his share on trust for Mr Moore. If any such understanding or agreement is to be found, it must be one which subsequently came into existence, either in connection with or after the transfer of the business from JB1 to JB2.

Transfer of business to JB2

56. Mrs Williamson's evidence was that she had decided to run the business down in JB1 and make a fresh start in JB2. She tied herself in knots in cross-examination, maintaining that she had transferred all of her 999 shares in JB1 beneficially to Jason in 1997 in order to reward him for funding the EWC litigation, but then arranged to transfer the business to JB2, a company in which Jason apparently had only a 50% interest. She denied that she had allowed JB1 to go into insolvency to get away from creditors she did not wish to pay, maintaining that all JB1's creditors had in fact been paid. She had to admit however that some of the trade creditors were paid by JB2, and that a claim by HMRC, apparently for tax of £192,000, had not been paid. She said that she (meaning JB1) had not the money to pay, nor the energy to contest that claim through the courts. She gave inconsistent evidence about whether this claim emerged before or after the transfer of assets. In my view it is more likely that it was before. It also seems clear that, had she wished to do so, there would have been sufficient money available to pay the HMRC claim, because as noted above she transferred approximately £400,000 in cash belonging to JB1 into an account controlled by her (9B/797). Of this, £110,000 was paid back to JB1 as the price for the transfer of plot 44, Quarndon Heights and other retained land there. The balance would have been sufficient to pay the HMRC claim, had Mrs Williamson been minded to do so.

57. Mrs Williamson's reason given for transferring those funds to herself was that she considered that she was owed at least that amount on director's loan account from JB1 as a result of various monies that she said she had introduced into the company during the period of its trading. She had no record however of any such directors loan account and could make only general assertions as to what she had paid into the company to give rise to any debt due to her. The letters obtained from solicitors' files show a number of airy assertions by Mrs Williamson that the use of company funds in connection with personal transactions (for herself and Mr Moore) was justified because of balances on loan account, and that she could or would produce documentary evidence of them, but there is no evidence that she ever did so.

58. In fact it appears that far from JB1 owing her money, she had incurred a substantial debt due to it on loan account, having drawn out much more than anything she had paid in. At the end of their investigation into her tax affairs HMRC wrote Mrs Williamson a letter dated 27 August 2009 (6A/142) recording their finding that Mrs Williamson had an overdrawn account with JB1 amounting to £278,584. Plainly, in the course of that investigation, she had the opportunity to provide satisfactory evidence to HMRC of the amounts which she now says she had paid into the company, but she cannot have been able to do so. For her explanation that JB1 owed her monies in excess of £400,000 to be true, she would have to have been entitled to credits on the loan account of some £678,000. In my view, the possibility that she would be entitled to such credits without their existing any evidence of any kind of the transactions giving rise to them is fanciful.

59. I conclude that when the time came to abandon JB1 and its creditors Mrs Williamson simply took all of the cash available for her own benefit, used part of it to pay JB1 with its own money for the one asset (Plot 44 and associated land) that could not be stripped from it without leaving a record and concocted a story of loans to the company to justify herself when the facts emerged. How far Mr Moore was involved in this is not clear; Mrs Williamson took the lead but there is to say the least no evidence that Mr Moore objected in any way to what was done.

60. When the business came to be transferred to JB2, it seems clear from the evidence that this was accomplished without any change being apparent in its method of operation. As with JB1, Mr Moore was shown as a director on the letterheading as a director although he was not formally appointed as such. I have referred above to the evidence of Mr Morgan, who despite being closely involved in its transactions at the time, was not aware of the change of corporate identity till much later on. He continued to deal with both Mr Moore and Mrs Williamson in exactly the same way. As he said "I have no doubt whatsoever that Keith and Frances were equal partners in the business of JB1 and JB2 throughout the relevant period that I dealt with them." Mr Moore continued to be in charge of building operations on site and sales negotiations with customers, exactly as he had before (see the evidence referred to below). This strongly suggests that Mr Moore was content to allow the business in which he and Mrs Williamson considered he had an equal share to be transferred to the new company, and to continue to be involved in running it as he had been with JB1. His evidence therefore that he was expressly assured by Mrs Williamson and Jason that Jason would hold half the share capital in the new company on behalf of Mr Moore is thus inherently credible.

Other witness evidence as to ownership

61. I have referred above to evidence given by Mr Morgan, Michael Moore and Mrs Joan Moore of direct acknowledgements or assurances given to that effect by Jason after JB2 began to trade. There was a substantial amount of further witness evidence dealing either with similar assurances, or with statements made by Mrs Williamson after the final breakdown of relations between herself and Mr Moore to the effect that she had offered him £1 million to buy out his interest in the company, which she plainly would not have done if, as she now claims, he was no more than an employee. That evidence was as follows:

    i) Mr Jonathan Lyttle is a financial advisor and estate agent, and a personal friend of Mr Moore for more than 20 years. The Jewelbetter companies have done building work over a number of years for Mr Lyttle, his mother and companies that he controls. He said that his understanding was that Mr Moore was the managing director of Jewelbetter responsible for its day-to-day management and matters relating to its building sites and operations. Mrs Williamson was the company secretary. He too was not aware at the time of the transfer to JB2 and saw no change in its operation. In October 2007, a few weeks after the final split, he had spoken to Mrs Williamson at a leaving party for a mutual friend at a public house. Mrs Williamson had discussed the disputes that had arisen between herself and Mr Moore and "Frances volunteered to me that she had offered to pay Keith £1 million by way of settlement for his shares in their company and that Keith had rejected her offer." It was suggested to him, as it was to other witnesses, that what Mrs Williamson had said was that she would be willing to pay £1 million to get Keith Moore out of her life, the implication being that this was simply an expression of frustration and anger, and not an acknowledgment that he had an interest in the business worth £1m. Mr Lyttle however firmly denied this. He said also that he had spoken to Jason on the same occasion, who did not wish to get involved in the dispute between his mother and Mr Moore "however Jason did say he was willing to give Keith his shares back. Jason also told me that he was aware of the £1 million offer Frances had made to Keith and that Keith had rejected this." I accept Mr Lyttle's evidence.

    ii) Mr Peter Eite is a chartered surveyor and quantity surveyor who has known Mr Moore for approximately 25 years and Mrs Williamson for about 12 years. He has worked as a quantity surveyor for both the Jewelbetter companies, assisting in the EWC litigation and in land transactions. He also knows Jason Fretwell whom he described in his witness statement as "a competent joiner specialising in the installation of PVC windows. He has carried out minor works on his own account installing new windows for me." In October 2007 he met Jason who was quoting for some more work and they discussed the falling out between Mr Moore and Mrs Williamson. He said in his witness statement "I asked Jason why he had transferred the share he held for Keith in Jewelbetter Derby Limited to his mother. He replied that his mother had threatened to kill herself if he did not transfer the share over." In fact of course Jason had not transferred a share in JB2 to Mrs Williamson. In cross-examination Mr Eite referred to this incident on the basis that what was under discussion was the fact that Jason had not transferred the share to Mr Moore despite having agreed to do so, and Jason saying that he wanted to transfer it that his mother had threatened to kill herself if he did so. He was not pressed

about the apparent conflict with his witness statement, which I assume was a mistake. It seems a strange mistake to have made, and would have caused me to have doubts about Mr Eite's evidence, if it stood alone. However it does not.

iii) Mr Sanderson also gave evidence of a number of occasions on which Jason was said to have admitted to him that he held shares in JB2 on behalf of Mr Moore. As with Mr Eite however, I place less reliance on Mr Sanderson's evidence because of discrepancies between what he said in oral evidence and his witness statement. In particular, his witness statement at paragraph 16 clearly stated that he and Mr Moore and come across the possibility of acquiring the land that Mr Hann was selling in 2005, when working at Mr Hann's house repairing flood damage, when it was apparent that JB1 had been involved in making an offer to acquire this land from Mr Hann almost a year earlier in 2004. In his oral evidence he sought to stress the distinction between the first part of the transaction, in which Vendace Drive and the building plots had been acquired from Mr Hann, and the second stage, namely negotiations with the farmers over purchase of the adjoining field. He suggested that his witness statement had been referring to the second stage, but that was clearly not the case. Furthermore at paragraph 18 of his witness statement he said that Mr Moore had persuaded him to allow 'Jewelbetter' to become involved in the transaction at the time when they were negotiating with the farmers, i.e. the second stage, but it was clear from the documents that JB1 and later JB2 had been involved in the first stage. Mr Sanderson did not in my view explain these discrepancies satisfactorily, and I prefer to base my decision on the evidence of other witnesses.

iv) Mrs Doreen Oldershaw gave evidence for Mr Moore. She and her husband bought one of the houses at Quarndon Heights in 2006. In her witness statement she said that she had been interest in the site and visited it with a view to buying for at least five years before the purchase was eventually completed, i.e. from about 2001. Throughout that period she regarded Mr Moore as the man in charge of the affairs of Jewelbetter. She said "certainly at Quarndon Heights he made all the decisions concerning sales and the building of the properties. I had very little if any contact with Frances Williamson." In October 2007 she was at a coffee morning at the home of one of her neighbours, Mrs Schofield when "Mrs Williamson turned up and seemed to just take over the coffee morning by telling all present about the breakdown in her relationship with Keith Moore. In my presence and in the presence of three others… Mrs Williamson said that she had offered Keith £1 million for his share in Jewelbetter Derby Limited and that he had refused the offer." In cross-examination, she too emphatically rejected the suggestion that what Mrs Williamson had said was that she would be willing to pay million pounds to get Keith Moore out of her life, and confirmed that what had been referred to was an offer to buy his share in the company. I have no hesitation in accepting Mrs Oldershaw's evidence.

v) Mrs Pamela Merrington gave evidence that she was also at the coffee morning in October 2007 at Mrs Schofield's house. Mrs Williamson was telling everybody about her breakup with Keith Moore, and had said that she was offering Mr Moore £1 million. This was slightly different from what Mrs Oldershaw had said, which was that offer of £1 million had been made. It was

put to Mrs Merrington that what Mrs Williamson was saying was that she would pay million pounds to get Keith Moore out of her life, to which she responded "I do not think so, really. She said that the business was closing and Keith was no longer part of it, and that she was going to offer him a million pounds because she had received £3 million from a site that they had both sold in Scotland." Although Mrs Merrington did not refer to this being an offer specifically for Mr Moore's share in the company, in the context of the enormous personal anger that Mrs Williamson was expressing against Mr Moore on this occasion, it is not credible that she could have been talking about an ex- gratia offer to share part of her own wealth from the Loch Maben transaction with him. It must in my view have been in recognition that he had some sort of right or interest which would have to be bought out. I accept Mrs Merrington's evidence. Insofar as her recollection is in different terms to that of Mrs Oldershaw, it may be that they heard different remarks, or simply that their recollection is not the same. It matters not; the import is clear and the same in both cases.

vi) Mr David Mosley and his wife also bought a property at Quarndon Heights, in their case in November 2004. He was aware that both Mr Moore and Mrs Williamson were shown as directors on the letter heading of JB1. He had initially dealt with JB1, but by the time he came to complete his purchase, the property he was interested in had been transferred from JB1 to Mr Moore personally, and it was from Mr Moore that the purchase eventually took place. Mr Mosley was asked for his understanding as to why this had happened and said that he understood that the property had been transferred to Mr Moore because "he had taken a loan out on behalf of the company". In his witness statement he said "I understood it to be that the companies were run by Keith and Frances. Keith was certainly in charge on site. From what I understood responsibility for different areas of work in Jewelbetter Ltd and Jewelbetter Derby Limited was shared between Keith and Frances Williamson. Keith was involved in the day-to-day management of the site and building work with Frances Williamson responsible for accounts and paperwork. To any observer it was always easy to see that it was Keith who was in charge of operations… I was aware that at some point late in 2007 Keith was no longer on site very much. Once Keith was no longer involved at Quarndon Heights, I became very concerned at the obvious lack of progress on the site … I do recall that in October 2007 at a neighbour's farewell party… Frances Williamson told me that she had offered Keith £1 million in settlement for his share in Jewelbetter Derby Ltd but that he had turned it down." Mr Mosley was absolutely clear in cross-examination that what had been said to him was that an offer has been made to acquire Mr Moore's share in the company, and not a flippant remark to the effect that Mrs Williamson would be prepared to pay money to get Mr Moore out of her life. Again, I have no hesitation in accepting Mr Mosley's evidence. It would appear that the occasion he referred to was not the ladies coffee morning attended by Mrs Merrington and Mrs Oldershaw, so that Mrs Williamson made similar remarks on two separate occasions. That makes it less likely that she can have been misheard, or been saying something wild and unintended in her anger at Mr Moore.

62. In fact it is not Mr Moore's evidence that Mrs Williamson had made him an offer to buy his interest for £1m. So I must conclude that although Mrs Williamson told the various witnesses she had made such an offer, she had not actually done so.

Presumably she wanted to portray herself to them in the best light having regard to the personal dispute between herself and Mr Moore. But it seems to me the implication of what she said is that she recognised that he had an interest, and wanted people to believe she had offered to buy it out, rather than that she invented the interest. After all, had the position been that Mr Moore had no interest, she could have put herself in an even more favourable light by making that clear and telling her friends that despite what Mr Moore had done she was making him a generous ex gratia offer.

Jason Fretwell and family members

63. Jason Fretwell's evidence was that he had been the sole beneficial owner of shares in JB1 from 2003 until it ceased trading, and the beneficial owner of 999 of the 1000 issued shares from as early as 1997. As I have set out above, I do not accept that that is the truth. So far as JB2 is concerned, he said that it was considered appropriate that he should have a half share in it because he and his mother were considering going into business together. They had not done so as yet, because he was sufficiently engaged in carrying on his own business (known as JAY). That does not ring true given that the information provided about JAY is that it is a small business dealing with joinery and the installation of items such as kitchens and doors. Such accounts as have been produced show annual turnover of only a few thousand pounds and minimal profits. Even if there has been a degree of under recording of income for evasion of tax, there is nothing to suggest that Jason has either the skills or experience to play a substantial part in a property development business or, if he had, a good reason to hold back from becoming involved in it in order to carry on JAY.

64. Seeking to make good the inconsistency that had been exposed by the apparent transfer of a business of which he owned 100% to a company in which he had only a 50% shareholding, he said that this had been considered appropriate because his mother was raising substantial funds by way of mortgage of her house in order to fund the commencement of business of JB2. Such a reason had not been suggested in any of his previous witness statements, or those of Mrs Williamson.

65. When Jason was asked about the conversations attested to by various witnesses in which he was said to have assured Mr Moore that he would "give back" his shares, he at first said that the witnesses must have been confused and that any reference had been to the one share in JB1 which Mr Moore had transferred to him. The witnesses, he said, did not know that there had been a transfer of business from JB1 to JB2. That explanation however was not credible; the conversations referred to all took place after the date of the business transfer when JB1 had ceased to trade and, in some cases after the date on which it went into liquidation. Whether or not the witnesses knew about the business transfer, there would have been absolutely no point in Jason and Mr Moore discussing the transfer of a single share in the company which they both knew to be defunct. He went on to deny that he had ever promised to transfer any shares to Mr Moore anyway, maintaining that all he had said was that the two of them could have a meeting at which it could be discussed. That it seemed to me was completely inconsistent with maintaining that what they had been discussing in the first place was a share in JB1. If Mr Moore had, for some strange reason, asked that a valueless share in that company should be transferred back to him, Jason would have had no reason to dissemble and put it off to a later meeting.

66. When taken through the evidence of the various witnesses who said they recalled conversations with Jason in which he had promised to give Mr Moore "his" shares back, Jason seemed uncomfortable and evasive. He shrank from saying that these

witnesses, some of whom had been his close personal friends, were not telling the truth. At one point, he said that he had been aware that his mother had made an offer to Mr Moore (which was quite contrary to her evidence) although he said that he had not heard the figure of £1 million mentioned. He accepted that Mr Lyttle, who had referred to the figure of £1 million, might have been right. But he then said that he could not remember whether it was an offer to buy out Mr Moore's interest, or a payment to get him out of his mother's life.

67. Jason had clearly been close both to Mr Moore (who was the best man at his wedding) and to his mother Mrs Joan Moore. He acknowledged the occasions on which he had been doing work at her house and had discussed matters between his mother and Mr Moore. When referred to Mrs Moore's evidence that Jason had promised to give Mr Moore back his shares, he said that he thought she was not aware that the business had come to be carried on by JB2, and must have been referring to shares in JB1. The following exchange took place between Jason and Lord Marks (Day 6 p 64):

> "A: … She didn't know the situation with Jewelbetter Derby. She obviously thought that the Jewelbetter shares carried on to Jewelbetter Derby.
>
> Q So do you believe she thought you merely held half of Jewelbetter, the original one, JB1, in trust for Keith?
>
> A Originally she knew that I did. I do not think she knew about the goings on all the way down."

So Jason was acknowledging that there was a point at which he held half of the shares in JB1 in trust for Mr Moore. But this was quite contrary to his earlier evidence, and that of Mrs Williamson, that when she transferred 999 shares in JB1 to Jason he held those shares beneficially, and that when Mr Moore transferred the one remaining share to Jason he acquired that beneficially as well. This was in my view a revealing slip.

Conclusions as to oral trust

68. Mr Moore's primary case of course is that there was an express written declaration of trust. I will come to that in a moment. But his secondary case is that there is an express oral declaration of trust to be found in statements allegedly made by Jason to Mr Moore on various occasions to the effect that he was holding the one share in JB2 that was registered in his name on behalf of Mr Moore. The question for me is simply whether on the balance of probabilities Mr Moore's evidence that such statements were made, or Jason Fretwell's denial, represents the truth. It is not suggested that, if the statements were made, they were not sufficient to give rise to a valid trust of the share.

69. Having regard to all the evidence I have referred to above, notwithstanding my general reservations about Mr Moore's reliability as a witness, I am satisfied that his evidence on this issue is to be preferred. It is overwhelmingly corroborated by the evidence of the other witnesses and the circumstantial evidence of the background in which the affairs of JB1 were conducted and, as I have found, was considered to have been owned equally by Mr Moore and Mrs Williamson. Mr Hedley submitted that it was unlikely that having gone to the trouble of setting up JB2 as a company held between Mrs Williamson and Jason, they would make a gift of half of it to Mr Moore.

It may have been the case that Mrs Wiiliamson originally set up JB2 in 2002 with the intention of cutting Mr Moore out of the business; they were on bad terms at the time. But she did not do so then, he remained involved and they were on better terms by 2004 when the transfer in fact occurred.

70. When the business was transferred to JB2, I am satisfied on the balance of probabilities that the ownership of shares in that company must have been intended to maintain the same position, with one share being held directly by Mrs Williamson and the other, which had previously been beneficially held by Jason when JB2 was simply a non trading shelf company, being now acknowledged by him to be held on behalf of Mr Moore. I find therefore that in recognition of that position Jason did make express oral statements to Mr Moore sufficient to constitute a trust of the share in his favour.

Written declaration of trust

71. I am not, however, satisfied that the written declaration of trust referred to by Mr Moore, on which he relies for his primary case, ever existed. Mr Moore's case as put at trial, and as set out in the re-amended Particulars of Claim, was that a written declaration of trust was produced dated 1 March 2003 relating to shares in JB1, which was amended to refer to the share in JB2 in June 2005 at a meeting between Mr Moore and Jason, in the presence of by Jason's wife Linda Fretwell. The document itself has not been produced; Mr Moore alleges that it has gone missing after being left by him between the pages of his diary at Mrs Williamson's house when he was expelled in September 2007. However, Mr Moore has not always asserted the existence of such a document.

i) He seems to have instructed solicitors (not those presently acting) almost immediately after the final separation and they wrote (2C/848) on 2 October 2007 asserting that Jason held a share in JB2 on trust for Mr Moore, but making no mention of a written document, as they surely would have if Mr Moore had told them about it.

ii) Mr Moore changed solicitors shortly thereafter, and the new solicitors (again not those presently acting) wrote a further letter of claim dated 26 February 2008 (2C/608). This letter asserted that when in March 2003 Mr Moore resigned as a director and transferred his one remaining share in JB1 to Jason there was an agreement that, on conclusion of Mrs Williamson's divorce, "Mrs Williamson and our client would again hold a 50% interest each in JB1". There was no mention however of a written acknowledgement of such trust at that date.

iii) Later on in the same letter, the solicitors stated that on the transfer of assets to JB2 there was an express agreement that Jason would hold his share in that company on trust for Mr Moore which "was eventually documented in a written agreement signed by our client and Jason Fretwell. This written document was created in June 2005." This of course is not consistent with the document having already existed since 2003 but being amended in June 2005.

iv) The original Particulars of Claim were served in May 2008, and took the same line, ie an oral agreement in March 2003 and a written agreement in June 2005. This was not changed in the Reply served in August of that year. The present case first emerged in Mr Moore's first witness statement dated 23 March 2010, although it was not reflected in the amended Particulars of Claim

served at about the same time. The re- amended Particulars of Claim were served in order to make the pleaded case correspond with this evidence.

72. The only people (other than the parties) alleged to have seen this document were Linda Fretwell, who denied that it existed, and a Mr Mervyn Jackson. Mr Jackson is a retired painter and decorator who gave evidence by telephone from his home in Cyprus. His evidence was that he had known Mr Moore for a number of years, and rented a property from him in the period immediately before he moved to Cyprus. That move took place in June 2005, and at a farewell drink at a pub in that month Mr Moore had shown him the document, signed by himself and Jason, saying that he was pleased to have as it acknowledged the ownership of the share, something that Mr Moore had been trying to have established for some time. However, although Mr Jackson said when asked that he recalled the document clearly, when he was asked any question about its content, he tended to refer to what was in his statement rather than what was in the document. He said that he had seen the signatures on it, but when I asked him whether he had read the document he at first said that he had not. When I then asked him how he knew that it referred to a share in Jewelbetter Derby Limited, he said that he "must have" read it. I do not doubt that Mr Jackson was giving his evidence to the best of his recollection, but it seemed to me that that recollection was somewhat poor, and may well have been influenced by what was said to him at the time of drawing up his statement in March 2010, almost 5 years after the incident itself. His evidence, in my judgment, would not be sufficient corroboration for me to accept the evidence of Mr Moore in this respect.

73. Jason Fretwell also denied, vehemently, that any such document had existed either in 2003 or 2005. I am bound to say that this was one of the few parts of his evidence that seemed to me to carry conviction.

74. For those reasons, I reject the case based on a written declaration of trust, although I have found for Mr Moore on his first alternative case of an oral declaration. That finding makes it unnecessary for me to consider the further alternative case based on proprietary estoppel.

Improper use of company funds

75. The second set of issues relates to the allegedly improper use of corporate funds of JB1 or JB2 in relation to particular transactions that resulted in various properties or their proceeds of sale ending up in the hands of Mrs Williamson or persons connected with her. These are based on paragraph 13(1) of the re-amended Particulars of Claim, which reads as follows:

> " the first and/or second defendant wrongfully used or purported to use the assets and monies of Jewelbetter Limited and later the third defendant to purchase or acquire properties that were put in the names of the defendants or members of their family or their associates. If and in so far as such assets were properly the assets of Jewelbetter Ltd prior to August 2004, they would have become assets of the third defendant in August 2004 as a result of the agreement for the transfer of assets then reached as set out above. The Claimant is aware of

> the following properties being so purchased [*there then follows a list of 10 properties*]"

76. Before dealing with the individual properties referred to, I wish to make clear that in so far as I state any conclusions of fact in relation to properties or other assets of JB1, that does not imply a finding that any interest JB1 had in such assets was effectively transferred to JB2 in August 2004 as pleaded or at any other time. Insofar as any arrangement was made for any assets to be so transferred, it cannot have been an arrangement that included the assets now under discussion, because Mrs Williamson's position at the time was that JB1 had no interest in those assets. Further, there is no evidence that any proper consideration was paid for the transfer of any assets of JB1 other than Plot 44 and the associated retained land at Quarndon Heights, and indeed every indication that there was no consideration at all.

77. JB1 is in liquidation, and the liquidator has taken no part in these proceedings. Nothing I say in these proceedings about that company or its assets is in any way binding upon him. Bearing in mind that limitation, and having reached my conclusions about the beneficial ownership of shares in JB2 without having to refer to these transactions, I have considered whether I ought to express any conclusions on them at all. In the end I have come to the view that I should do so, partly because of the time, forensic effort and cost which the parties have invested in presenting their cases upon them, but also because the evidence has, as was anticipated, assisted me in forming the views that I have about the general credibility of the various witnesses and their mode of business operation. I should also say, before turning to the individual properties themselves, that because of the way in which these transactions have been conducted, the extreme difficulty of getting hold of evidence which is in any way reliable and indeed the strong impression that I have that the evidence so far obtained is incomplete, such conclusions as I have been able to reach must be regarded as limited to the evidence so far presented and may have to be revisited in the event of further proceedings, even between the same parties, should additional evidence emerge.

36 Derby Road, Borrowash

78. This property was purchased from unconnected parties in 1998 by Mrs Williamson's daughter Alexandra Fretwell. The price was £38,000, and she obtained a mortgage on the basis that it was to be a residential property, in the amount of £35,000. In fact, Alexandra never lived there, although it was given as her address in her witness statements (she said this was a mistake) and contrary to the information given by Mrs Williamson to HMRC in their tax enquiry. It consists of three buildings which, as Alexandra acknowledged, were in very poor condition and little more than shells when she acquired it. They were converted and let, predominantly to commercial tenants although it appears that there may have been a residential tenant using the upstairs of one of the properties for a period. At present, the properties produce a combined rental income of some £17,000 per annum.

79. Alexandra was cross-examined about any use of JB1's funds that may have been made towards the purchase or conversion of the property. Since the mortgage did not cover the full acquisition cost, there must have been a deposit of about £3000 paid, and no doubt some legal and other associated costs. Alexandra accepted that she could not have paid this herself at the time, as she was employed only as a part-time delivery

driver earning about £125 per week. She said that her mother had lent her this money. It was clear from her evidence that she drew no distinction between her mother and the company (JB1). A substantial amount of work must have been done for the conversion. Alexandra denied that any part of this had been done by JB1, saying that Philip Sanderson had done part of it in exchange for having the use of part of the property at a reduced rent for a year, and other work had been done by herself, her boyfriend at the time, Jason and Mr Moore. She did however say that there had been some bills received in connection with the work, which she gave straight to her mother.

80. It seems a likely inference that the £3000 and any other amounts that had to be paid to third parties came out of the funds of JB1, and that it would also have provided any materials used. There is of course no documentary evidence now available to show this, or to help in determining the amount. Even if this is so, however, it seems to me that the result is only that JB1 may be entitled to make a claim to recover the value of its assets which have been used in this way, against Mrs Williamson, or Alexandra, or both. Any such claim would not affect the ownership of the property by Alexandra.

81. In September 2004, Alexandra remortgaged the property for £135,000. After paying off the original mortgage, she had a sum of £94,000 available which, according to her witness statement, she paid by way of loan to JB2. In her oral evidence, however, she said she had given this to her mother, drawing no distinction between the two. Mrs Williamson's evidence was that this amount was lent to JB2 and used as part of the funding for the purchase by that company of the garden at 482 Kedleston Road (Mr Moore simultaneously bought the house). There is some support for this in the documentation received from the solicitors acting at the time (8A/162).

82. Insofar as Alexandra did provide this money to JB2, on the evidence available it was her own money and would have given rise to a debt due to her by JB2.

New house at the rear of 36 Derby Road

83. This property is also referred to as 32B Derby Road. It is a new house, occupied by Alexandra and built on land adjacent to Mrs Williamson's house at 34A Derby Road. The land is in the ownership of Mrs Williamson, although as between the two of them the house is regarded as being Alexandra's. It is accepted that the new house built there has been constructed by JB2 at its expense. There are no records to show what this cost is, nor is there any expert valuation evidence which might help in establishing it.

84. The evidence of Mrs Williamson and Alexandra was that the construction of this house was regarded as repaying Alexandra's £94,000 loan, referred to above. Mr Moore asserts that the value of the work and materials provided by JB2 is substantially in excess of £94,000. His evidence is that the cost would be of the order of £170,000, but he has no documentary or other evidence to rely on to support his own experience. Alexandra and Mrs Williamson, equally without any supporting evidence to rely on, assert that it would not have been more than £100,000. They accept that it is a very large house, but say that the materials used were of a cheap quality.

85. In my judgment, the unsupported evidence of these witnesses would not be sufficient for me to come to a safe conclusion either way. I decline therefore to make a finding

as to whether there has, or has not, been a misapplication of assets of JB2 in the construction of this property.

33 South Street Derby and development plot behind

86. This property is not one of those listed in para 13(1) of the Particulars of Claim, but it is necessary to consider its ownership in order to reach conclusions about other properties that are so listed.

87. Ownership of the property at 33 South Street is complex. The site that was eventually sold was assembled from a number of sources. South Street and Ponsonby Terrace are two streets that meet at a right angle. In 1987, Mrs Williamson's husband Marcus Reid acquired a house at 51 Ponsonby Terrace (7B/309). In 1988, he purchased at the adjacent house, number 52 (7B/313). It appears he may also have owned No 53 at some point, but later sold it. No 51 and 52 had long rear gardens. At about the same time, Mr Reid acquired a plot of land behind numbers 49 and 50 Ponsonby Terrace (7B/306) and adjoining the garden of No 51. It appears that in 1989 he divided off the back part of the gardens of numbers 51 and 52, selling on the houses themselves and retaining most of their gardens to add to the development plot behind Nos. 49 and 50. This development plot was referred to sometimes as "the land behind South Street" and at other times as "the land behind Ponsonby Terrace". Any development on it required however that an access be made to one or other of Ponsonby Terrace or South Street.

88. According to Mr Moore, the intention was that the plot would be developed by JB1, and he tried to acquire access over a site adjacent to 33 South Street containing a number of derelict garages, but was outbid by CWC. The potential development plot thus remained landlocked. In June 2002, in the course of the divorce proceedings between herself and Mr Reid, Mrs Williamson caused a caution to be entered on the register of title of all the properties making up the development plot.

89. Mr Moore formed the alternative plan of acquiring the house at 33 South Street. It had a large back garden which adjoined what had been the rear part of the garden of 52 Ponsonby Terrace (see the plan at 7B/328). The idea was to demolish the house at number 33 to provide the access, with its garden being used to enlarge the development plot still further. According to Mr Moore, the house at 33 South Street was purchased in 2001 for £60,000 in the name of Jason Fretwell but on trust for JB1, with a deposit of £20,000 being paid by JB1 and the balance borrowed on a buy to let mortgage in Jason's name but paid for by JB1 (5A/14). There does not appear to be any documentary evidence showing whether JB1 paid these amounts, though it would not be surprising if it had done so. If the property was in fact let to a tenant (it is not clear whether it was let; although Jason was living elsewhere at the time the solicitors acting wrote to him referring to it as 'presumably unoccupied'- see 8A/67) then presumably the rents received will have made a contribution but at no cost to Jason himself.

90. The development plot behind South Street was sold by Marcus Reid to Jason in August 2001 for £3000. According to Mrs Williamson and Jason, this transaction took place at a favourable price as part of the divorce settlement between herself and Mr Reid, and the consideration was paid by Jason. According to Mr Moore, the price was paid by JB1, and the land was acquired by Jason on trust for JB1 just as the house was. There is again no documentary evidence showing the source of the £3000. Jason said in cross-examination (day 6 p73) that it had come from the proceeds of sale

of another property owned by him, 142 Meadow Lane. However the completion statement for that sale and a letter dated 15 March 2001 sent to the solicitors instructing them what to do with the proceeds (8A/40-41) show that this was not so. It appears from those documents and other correspondence from the solicitors' file at the time that the land at South Street was still in the ownership of Marcus Reid, although it was anticipated that it would be transferred to Jason. Jason authorised the solicitors to pay £5000 from the proceeds of sale of 142 Meadow Lane to Barclays bank to clear debts owed by his mother and procure the release of a charge over the land at South Street securing that debt. He promised to send them separately a banker's draft for £3000 in order that the purchase of the land could proceed. He was specifically advised about the risks to him of paying to release the charge over the land before it had been transferred to him.

91. It thus appears that Jason did provide £5000 from what on the face of it was his own money. This was said to form part of the cost of acquisition of the land at South Street, even though its immediate purpose was to pay liabilities owed by Mrs Williamson, because the effect was that Jason was able to acquire a clear title to the land. That proposition however seems to me to be doubtful; even if the land had been acquired subject to the charge it would have been no less valuable because Mrs Williamson would have been obliged to pay off her own liabilities to Barclays, and once she had done so that the land would be released from the charge in any event. The £3000 was shown in the solicitors' client ledger (8A/306) as paid on 10 April, the entry being marked "From Clien/F030801" which seems to be a transfer from client account on another matter, possibly in the name of Jason ('F' denoting the first letter of the client's name and 030801 the matter number; the files for the purchase and sale of the South Street land were designated F03802 and F03803 respectively). But even if the immediate source of the money was another matter in Jason's name, that would not be a reliable indicator of the ultimate source of funds.

92. Mr Moore relied on the evidence of Mr Morgan (who acted in relation to the sale of the land) and a number of contemporary documents, to show that the combined site at South Street was considered to be held on trust for JB1. The documents were as follows:

i) A letter from Mr Morgan dated 26 March 2002 to the solicitors for a proposed purchaser (5A/97), in which he said "I act on behalf of Mr Keith Moore and Mrs Frances Reid…. in connection with their proposal to sell the above land to your clients… You will note from the enclosed heads of terms that the vendor is a Mr Jason Fretwell. The title to the land lies with Mr Fretwell, who is the son of my client Mrs Reid. For personal reasons Mrs Reid has placed the title in his name." That sale did not proceed.

ii) The heads of terms document produced by Mr Morgan at the same time (5A/98) named the vendor as "Jewelbetter Ltd (Mr Jason Fretwell)".

iii) A letter and file note from the solicitors acting in the sale dated 31 May and 13 June 2002 (8A/72 and 66) showing that they were taking instructions from Mr Moore and Mrs Williamson to withdraw from negotiations with one potential purchaser, send a contract to another, and then withdraw the papers from that purchaser as well. The note concluded "I asked her to get Jason (as it is his transaction) to fax me, confirming that I am to withdraw the papers from [the purchaser]"

iv) After that sale went off, the solicitors acting wrote to Mrs Williamson and Mr Moore about their abortive charges. The letter (10/52) is dated 9 August 2002 and addressed to "Mrs FM Reid and Mr K Moore, Jewelbetter Ltd". It deals with a number of matters relating to Quarndon Heights and property transactions which obviously involve the business of JB1. It goes on to say "finally, we have the work carried out at Ponsonby Terrace, nominally in Jason's name, but really on behalf of Jewelbetter….". It is clear from this letter that the intention was to charge the professional fees to JB1 on the grounds that the work was considered as being done for JB1.

v) When the eventual sale was concluded in September 2003, Mr Morgan addressed his invoice to "Mr K Moore and F Reid" (8A/49). His evidence was that it was paid by JB1, but in fact it appears to have been paid by the solicitors out of the completion monies (8A/48). The solicitors addressed their invoice to Jason (8A/47) and it too was paid from the completion monies.

93. It was put to Mr Morgan in cross-examination that he had not in fact been told by Mrs Williamson that she had "placed" the property in Jason's name for tax purposes. He said:

> "No. It is what I was told. I was told by Frances at the time that some of the properties were held in her son's name"

94. It is certainly the case that when dealing with the sale the solicitors sent all the documents to Jason for signature with letters formally recording their advice and requiring his instructions. Jason was cross-examined about the documents appearing to show that in reality the instructions about the sale process for coming from Mr Moore and Mrs Williamson, and he maintained that in doing so his mother was acting on his behalf and to protect his interests, and that Mr Moore was involved as he was his mother's domestic partner.

95. It seems to me however clear from the evidence of Mr Morgan and the documents obtained from the solicitors file that both Mr Morgan and the solicitor regarded the real principals in the transaction as being Mr Moore and Mrs Williamson, and that they in turn were regarded as conducting it on behalf of JB1. I accept Mr Morgan's evidence and find that he was told that the property had been put in to Jason's name at the direction of Mrs Williamson. This is not inconsistent with the possibility that the land behind South Street was sold by Mr Reid at an undervalue in connection with the divorce; if Mrs Williamson did not want to take the land in her own name she may just as well have intended to confer the potential benefit on JB1, in which she had an interest, as on her son Jason. She must have told both Mr Morgan and the solicitor at the time that it was intended to benefit JB1. If she had intended that Jason would be the true beneficiary, there would seem to be no reason why she could not have told the professionals that this was the case.

96. This supports Mr Moore's evidence that the ultimate source of the payments made to acquire the land was JB1 and not Jason. As I said above, there is no documentary evidence as to the source of any of these payments save for the £5000 paid by Jason from 142 Meadow Lane which, for the reasons I have given, I do not regard as in truth part of the purchase price. Given the extent to which Mrs Williamson used company funds to pay for assets acquired in the names of herself and her family, it is plausible that she will have done so on this occasion as well. On the balance of probability, in my judgment, JB1 provided all the cost of acquisition of 33 South

Street and the land behind, Mrs Williamson told Jason as she did the professionals involved that it was being put in his name on behalf of JB1, and he agreed to acquire it on that basis.

97. On the evidence before me, then, I find that the property at 33 South Street and the land behind it, and the proceeds of sale of that property, belonged beneficially to JB1 and not to Jason.

32 and 32A Derby Road

98. I take this property out of order as findings in relation to it also bear on later transactions. Mrs Williamson's purchase of 32 and 32 A Derby Road appears to have taken place in March 2004. The price was £180,000, of which it is not in dispute that approximately £25,000 was paid in two amounts from accounts in the name of JB1. Mrs Williamson's case is that the remainder was lent to her by Jason. It came from an account in Jason's name held at the Nationwide Building Society, from which a sum of £154,845 was paid out on 11 February 2004 (6A/216). There is however a dispute about the ownership of the money in that account.

99. Mr Moore's position is that it came from the proceeds of sale of 33, South Street and therefore belonged to JB1. That sale completed on 5 September 2003 and realised a net figure of £241,489 (8A/49). Although this property was registered in Jason's name, for the reasons given above I have accepted Mr Moore's case that Jason held it on trust for JB1. The proceeds of sale were credited to Jason's Nationwide account, which previously had a negligible balance, a few days later (6A/214). However by the end of December 2003, various payments out of the account had reduced the balance to £16,214. It is Jason's case that £139,350 of these payments were made to JB1 or on its behalf, and represented loans by him to JB1. Jason prepared a schedule of these (6A/212).

100. The remainder is accounted for by two payments totalling £85,978, which both Jason and Mrs Williamson had said in their witness statements had been paid to clear Mrs Williamson's mortgage on her then home. In oral evidence on day 7 however (p 79) Mrs Williamson changed her account; she said that these payments were made to acquire land at Swarkestone Bridge, which was purchased at that time in the joint names of herself and Mr Moore for a price of £100,000 (4/116). She said that the company (which must mean JB1) had paid a deposit of £20,000 and the balance of £80,000, plus costs and stamp duty, had come from Jason's account. Of the earlier version, that the payments had been to clear her mortgage, she said "I have guessed that. But now I have been through the documents… I was incorrect". If she is right in the new account, it supports the suggestion that Jason held the South Street property for JB1. Had the proceeds been his own, he would not be likely to have bought a property in part for Mr Moore from them, or if he had he certainly would remember it. It is more likely that he did what his mother (and perhaps Mr Moore) told him to with the proceeds, and that she (or they) saw no difficulty in using JB1's money to buy property in her name and Mr Moore's.

101. On 23 January 2004, JB1 paid £140,000 into Jason's Nationwide account. This came from the price received on sale by JB1 of plot 42, Quarndon Heights, described in the completion statement (6A/166) as "payment for Jason Fretwell". This was said to be repayment of Jason's loans of £139,350 referred to above.

102. On the basis of my findings above however, all these transactions involved funds belonging to JB1 and not Jason. The proceeds of 33 South Street belonged to JB1 even though they were paid into Jason's Nationwide account. The payment by Jason to clear Mrs Williamson's mortgage (or to buy the land at Swarkestone Bridge) represented use of JB1's money and not his own. Accepting for these purposes that he paid £139,350 to JB1 or on its behalf, he did so using JB1's own money and not by way of loan. Jason was not therefore entitled to the sum of £140,000 paid to his Nationwide account by JB1 in purported repayment of those loans, and the money in that account after that payment was entirely JB1's. The payment of £155,585 then made from the Nationwide account to Mrs Williamson to fund the purchase of 32 and 32A Derby Road therefore also represented use of JB1's money and not a loan by Jason.

103. It follows that the purchase of 32 and 32A Derby Road was wholly funded by money that belonged to JB1. I have rejected above Mrs Williamson's contention that she was entitled to receive money from JB1 by way of repayment of director's loans made by her to the company. The payments made for her benefit were not accounted for on any proper basis, eg as remuneration, distribution or loan. They therefore represent a misapplication of JB1's funds.

104. On the basis of these findings, JB1 might pursue claims against Mrs Williamson, including a tracing claim. Until it does so however, it seems to me that the legal and beneficial ownership of 32 and 32A Derby Road remain vested in Mrs Williamson.

Mrs Williamson's Director's loan account with JB2

105. Before dealing with the other impugned transactions I turn to examine the state of account between Mrs Williamson and JB2, since her explanation for many of the payments made depends on her contention that substantial amounts were at all times outstanding to her by JB2 on director's loan account. As with JB1, this is made extremely difficult because she has not kept any record of that account, and it must be reconstituted from the source documents so far as practicable. These consist in large part of the bank statements that were (mostly) not disclosed by her, but obtained by third party disclosure orders against the banks. She identified various amounts she said would give rise to credits in her favour in her last witness statement (5B/613). I consider these below, but whatever view is taken of the credits claimed, it would not be safe, in my view, to conclude that the evidence reveals all the amounts that might be debited to such an account, there being for instance no documentary evidence of the nature of any of the payments made from JB2's own account and every reason to think that Mrs Williamson might be liable to use company funds for her own benefit when it suited her.

106. The credits Mrs Williamson claimed to her director's loan account can be broken down as follows:

    i) Proceeds from two remortgages of 32 and 32A Derby Road, amounting in round terms to £140,000. The first was in respect of No 32A, in June 2004, and realised £59,563. The second, in respect of No 32, was much later in July 2008 and raised £79,764. Her evidence, which was not accepted, was that she paid the proceeds to JB2.

a) The proceeds of the first remortgage were paid to a personal account of Mrs Williamson at RBS on 3 June 2004 (a/c ending 542, see 9A/298). From there almost all was paid to a second account in Mrs Williamson's name (a/c ending 144, see 9A/263), but returned to account 542 in a series of transfers up to 30 July. The statements on account 542 show that the whole proceeds had been spent within two months, in a series of payments most of which do not appear to be for any business purpose. Mrs Williamson identified in her late statement (5B/613) a number of transactions that she said were for JB2's business as follows:

   i) One payment of £20,000 made to open an account in the name of JB2 on 11 June 2004 (a/c ending 221, see 9B/530). From there it was paid out within days to meet a number of cheques which must all have been written more or less at once; there being no indication what they were for.

   ii) Two cash drawings of £2,923 each which she said were for wages. There is no supporting evidence for this.

   iii) Five payments of various amounts totalling £25,808 (of which £13,800 was drawn in cash) said to be for 'merchant accounts', though she could not recall which or what they were for. There is no supporting evidence for these, and nothing to indicate why she identified these but not others as being for business purposes.

b) The second remortgage monies were paid into JB2's account no 221 at RBS, and went to reduce its overdraft.

c) Of the remortgage monies therefore just under £100,000 can be shown to have been paid to JB2. The only evidence for the other payments, totalling just over £31,600, is Mrs Williamson's unsupported word, which I do not regard as reliable. The balance of about £7,000 is unaccounted for. Mrs Williamson's written evidence that she paid the whole of the remortgage monies to the company was, at best, a misleading elision of the facts.

d) I find therefore that the credit to Mrs Williamson's loan account for these mortgage borrowings is, in round terms, £100,000.

ii) The £400,000 paid by JB1 on the transfer of its assets, which Mrs Williamson claimed to have been repayment by JB1 of monies it owed her, and the advance by her of the same money to JB2. For the reasons given above I reject this claim; receipt of this money may well expose JB2 to a claim by the liquidator of JB1 but it does not give rise to any debt owed by JB2 to Mrs Williamson.

iii) Proceeds of a remortgage of her house at 34A Derby Road in October 2004 to fund the purchase of 482 Kedlestone Rd. It appears that this realised (in round terms) £300,000 (8A/162) which was applied towards the monies due on completion, and should be accepted as an advance to the company. I note in passing that although this transaction was structured as being a purchase of the

house in the name of Mr Moore and the simultaneous acquisition of the garden in the name of JB2, the whole price would seem to have been funded by JB2, partly from funds raised by Mrs Williamson and partly from Alexandra's remortgage of 36 Derby Road, referred to above. Mr Moore's claim that he was personally beneficially entitled to the house is not in issue in these proceedings (I refer to it briefly below), but if it is correct that the purchase was funded by Mrs Williamson and her family through JB2, that supports Mr Moore's claim that he was regarded as an equal beneficial owner of JB2, since I cannot imagine Mrs Williamson being willing to apply funds of her family and JB2 in support of an exercise in value extraction in Mr Moore's favour were it otherwise.

iv) Alex's remortgage proceeds, also applied to purchase 482 Kedlestone Rd. I leave these out of account however since this advance (which in any event was by her and not Mrs Williamson) was accepted to have been repaid by the construction of a house for her as described above.

v) A further remortgage of 34A Derby Road in November 2005 raised £194,681.91 (6C/82). This amount was paid to Mrs Williamson's personal account No 144 (9A/266) and from there to her other account No 542 in various amounts. From that account she identified six payments totalling £88,500 made into JB2's account No 221 (9B/539). These payments were made, though not it appears by direct transfer between the two accounts. They are shown as cash withdrawals from the personal account and virtually simultaneous cash credits to the company account at the same branch. Mrs Williamson was not asked about this; I observe that it in contrast to a cheque or bank transfer, the mechanism chosen has the effect that the record of the payment in does not show the account from which the funds originated, and vice versa.

vi) Three further payments made from Mrs Williamson's account 542 totalling £8400 were said to be wages. There is no supporting evidence for this assertion and I do not accept it as reliable.

107. The credits to Mrs Williamson's notional director's loan account that I would accept as made out are therefore (in round terms) £100,000 + £300,000 + £88,500 = £488,500.

17 Betony Road, Stapenhill, Burton on Trent

108. This property was purchased by Jason Fretwell from unconnected parties on 7 December 2007, for a stated price of £320,000 (4/154). Mrs Williamson in her witness statement (5B/394, confirmed by Jason in his own witness statement at 5B/384) accepted that the funds for this purchase had been provided by JB2. It was shown when the bank statements were produced that the bulk of this at least, a figure of £311,475, was paid by JB2 from the proceeds of the Lochmaben transaction held in the Close Brothers account (9B/847). Mrs Williamson described this as a short term loan, and her position (and that of Jason) is that it has been "repaid in full in the first half of 2008". This is said to have taken place as follows:

> " Jason had lent me the sum of £154,000 to purchase 32 and 32A Derby Road. I subsequently remortgaged both properties, raising the sum of £140,000. Instead of repaying that to Jason,

> I advanced that sum to [JB2]. When he was purchasing Betony Road, [JB2] in effect repaid £100,000 of the advance I had made to it of £154,000 (sic, sc £140,000) which I directed to be paid to Jason to whom I owed that that sum of money. It also advanced the additional sum of £200,000 to Jason to enable him to complete the purchase, which he repaid to JB2 when he remortgaged Betony Road, in May 2008. "

These transactions, if accurately described, would mean that of the amounts paid by JB2, £100,000 was not in fact a loan to Jason, but partial repayment of loans made to JB2 by Mrs Williamson. Jason would have repaid £200,000 lent to him. They would still leave £20,000 (or possibly £11,475) unaccounted for (it was suggested that the price may in fact £302,000 and the Land Registry stated price was an error, but this seems to be speculation). It is not, however, accepted that these transactions were as Mrs Williamson portrayed them.

109. As to the £100,000, for the reasons given above, it was JB1's money (and not Jason's) that was paid to Mrs Williamson to purchase 32 and 32A Derby Road. Mrs Williamson did not owe Jason £154,000. She may well face a claim on behalf of JB1 in respect of the misuse of its funds. But (absent a tracing claim) the monies raised on the remortgage of 32 and 32A Derby Road belonged to Mrs Williamson. I have found above that they give rise to a credit of £100,000 (and not £140,000) in her favour on her loan account with JB2. She would therefore have been entitled to require JB2 to apply that amount in making an advance to Jason.

110. As to the balance, which she refers to as £200,000 but is in fact at least £211,475, it is accepted that Jason remortgaged 17 Betony Road, receiving proceeds of £199,536 into his account on 7 May 2008 (9A/230). From that account £200,000 was paid out on 12 August, not however to JB2 but to a newly opened personal account of Mrs Williamson at Bank of Scotland (9B/779). When questioned about these entries Jason and Mrs Williamson accepted it had been wrong to say that the £200,000 had been paid to JB2, but maintained that payment to Mrs Williamson amounted to the same thing, either because JB2 already owed Mrs Williamson substantial amounts on loan account, or she ended up using the money paid to her to pay to JB2, or on its behalf. Pressed again about the statement that £200,000 had been repaid, Mrs Williamson modified her evidence and said "well the majority of it was" (Day 7 p55). She said in fact she had paid it to herself hoping to get back some of the money JB2 owed her, but ended up putting most of it back into the company. At best, her earlier statement that Jason had repaid £200,000 to the company was again an elision of the truth. In my judgment it was more likely an example of her regarding the company's finances and her own as interchangeable, and something she felt she would not have to explain further in the absence of any records.

111. The £200,000 was all paid out of Mrs Williamson's account by the end of September 2008. There are three categories of payment:

i) Round sum amounts paid to the account of JB2 totalling £126,000.

ii) Various items of either £5019.50 or £10,019.50 described as 'International Payments'. These are, it seems to me, most unlikely to be payments on behalf of JB2 and probably represent amounts connected with the properties acquired in the names of Mrs Williamson or Mr Moore in America.

iii) Two cash withdrawals of £40,025 and £10,019.50 recorded on 8 August 2008.

a) The second is in an amount identical to one of the International Payments and Mrs Williamson herself suggested that it was most likely for the same purpose. She said she thought it was to do with the construction of a boat dock at the Bay Boulevard property, though it seems unlikely that part payments for construction work would be in such consistent amounts.

b) The larger amount was said to be for payments made in cash to numerous subcontractors who had removed, over a period of several weeks, a large mound of waste material at the Quarndon Heights site. I regard that explanation as not credible. Mrs Williamson accepted that such waste removal would be required by law to be done by licensed operators and properly documented, but that no records of it existed. It is not impossible that she could have arranged for it to be done by unlicensed cowboy tippers paid on a cash basis, but if so I think it highly unlikely that they would have all waited for payment for the several weeks she said the operation took, and then been paid on the same day.

112. I conclude then that of the £200,000 remortgage monies raised by Jason, only £126,000 has been shown to be paid to JB2. The balance must be taken to have been applied for Mrs Williamson's benefit.

113. On the evidence I have, there was sufficient credit balance available to Mrs Williamson on director's loan account to apply in making an advance to Jason to buy 17 Betony Road. Although Mrs Williamson has not accounted for it in that way in the books of JB2, on the face of it she would be entitled to do so. The advance was, in round terms, £311,000. The net debit to Mrs Williamson's notional loan account, after the payment of £126,000 by Jason, would be £185,000, leaving a balance in her favour of £303,500 (£488,500 – 185,000).

132 Stanton Road Sandiacre

114. This is a property owned by Mrs Williamson's mother, Peggy Williamson. In February 2009, part of the garden was sold to Jason's wife Linda Fretwell, according to the transfer at HMLR (4/7) for a consideration of £20,000. According to Mr Moore's witness statement (5A/37) the true price was £75,000, and JB2 paid £25,000 by way of deposit. There is however no documentary evidence to back up the assertion of that payment, which I therefore regard as not established.

115. JB2 applied (and presumably paid) for planning permission to develop the site (2C/687). That in itself would not be a misuse of its funds, as no doubt it would have been the intended developer. Mr Moore's case at trial was that the apparent price of £20,000 was reimbursed to Linda from JB2's account in March 2009 (9B/563).

116. Linda's and Jason's evidence was that the true price was not £20,000 or £75,000 but £50,000. Jason could not explain why the Land Registry record had been falsified, but said that the undeclared £30,000 had been paid separately "as a family matter". It is said to have come, much earlier, from the proceeds of sale of another property in Linda's name (151 Meadow Lane) or possibly from remortgaging that property. There

were no documents in evidence relating to that transaction, so this cannot be verified, but in any event it does not show any misuse of company funds.

117. Jason's evidence was that although JB2 had paid £20,000 to Linda in March 2009, this was not to fund the purchase of this land, but to reimburse him, or Linda, for amounts previously lent by them. The only documentary evidence of such payments would appear to be a partial statement on Linda's account at Abbey National (7B/289) which shows a payment out of £30,000 on 20 October 2008, appearing to correspond with a payment into JB2's account on the same day (9B/559). Mr Hedley submitted in closing that therefore on the face of it Linda had lent JB2 £30,000 and received back £20,000.

118. This may very well be an incomplete account of the movements of funds between JB2's and Linda's accounts. To the extent that it is incomplete, that is the responsibility of the defendants, as the necessary documents and financial records are in their control, or that of their family members, and they have failed to provide them. But on the evidence available, I am not able to conclude that any misuse of company funds has been established in connection with Linda's purchase of this plot.

4404 Trouble Creek Road

119. This is a property in Florida, owned by a Florida Corporation, Pasco Land and Development LLC. In October 2007 Mrs Williamson caused a payment of £75,555 to be made from JB2's Close Brothers account, with a view to acquiring the corporation. She accepts that this should be debited to her loan account. It appears (though this is not relevant to the issues before me) that the money may have been lost because the corporation's interest in the property has subsequently been forfeited (4/259). Given the evidence of credits available on Mrs Williamson's loan account, she would have been entitled to draw this amount without misusing company funds. The effect would be to reduce the balance available to (in round terms) £228,000 (£303,500 – £75,500).

1 The Crest, Darley Abbey

120. By early 2009, JB2 was looking to dispose of its remaining land at Quarndon Heights. This seems to have consisted of three houses (Plot 55, Plot 47 and plot 48) and a miscellaneous parcel of retained land. A sale of plot 55 was agreed at £583,680, part of which was to be satisfied by taking a house at 1 The Crest in part exchange. The allowance initially agreed was £293,680, but Mrs Williamson agreed to increase this just before contracts were exchanged, to £325,000. The solicitor acting for JB2 sent an email expressing concern that this reduced the equality money receivable by JB2, and meant it would be selling on at a loss (8A/152).

121. It was originally intended that 1 The Crest be sold to Jason. Initially he was to buy direct from the vendors, but Mrs Williamson changed this plan (8A/207). It appears the original intention was to show the sale price of 1 The Crest at £209,000 (or possibly £219,000) and the sale price of Plot 55 as £499,000, but the solicitors acting advised that these were too low to be credible and would be regarded as fraudulent (8A/206). As a result it seems that an amount just over £80,000 was added to each, and Mrs Williamson agreed that JB2 would pay the extra stamp duty resulting. It seems that the motivation for Jason to purchase the property may have been that it was identified as a development opportunity; it occupies a large corner plot and there was mention of demolishing it to build flats (8A/199).

122. Jason applied on 3 February 2009 for a mortgage of £255,000 stating an intended purchase price of £300,000 (8A/494), but that did not proceed, Mrs Williamson saying that the mortgage had been refused. Instead it was sold to a Mr Kalminder Juttla. This had evidently been agreed in principle very quickly since she gave his name to the solicitors on 20 February 2009 (8A/140). Contracts were exchanged on 22 May with completion on 28 May 2009, for a stated price of £300,000 (8A/132) said to be made up of a 'holding deposit' of £10,000 already received by JB2, a further deposit of £40,000 said to have been paid on exchange to JB2, and £250,000 payable on completion.

123. Mr Moore suspects that this transaction is a sham, and Mr Juttla has acquired as nominee for Mrs Williamson. His suspicions are based on the following:

i) There is no evidence of payment of the 'holding deposit' of £10,000. It did not pass through either of the solicitors acting.

ii) Mr Juttla was at the time of the purchase (and still is) staying at Mrs Williamson's house at 34A Derby Road as a lodger

iii) Although the £40,000 deposit was paid through solicitors on exchange on 22 May, substantially all of it (£37,326) was paid back to Mr Juttla immediately after completion on 28 May (9B/564).

iv) Mr Juttla has not moved in to the property. Instead it is let to a Ms Madume. On enquiry by Mr Moore, Ms Madume said her landlord is Mrs Williamson, and she has never heard of Mr Juttla.

124. Mrs Williamson's first account (5B/547) was that the property had been taken in part exchange for £300,000 (which appears to have been the amount of a valuation at the time, see below). She said JB2 had received the net proceeds of (disregarding costs) £250,000 on completion of the sale to Mr Juttla. She said the holding deposit had been paid to her. She referred to the further deposit of £40,000 as having been paid to JB2's solicitors on exchange. She said nothing about it being refunded to Mr Juttla after completion. She said "I have read Keith's comments about it being let out, which I understand it is. It is let however by Mr Juttla as the landlord and not by me and I have no further involvement with it". She accepted in cross examination that this account conveyed the impression that the whole price of £300,000 had been received.

125. In her seventh witness statement, made after the bank statements had been disclosed, she presented a different picture (5B/620). She said that after he had been lodging with her for some time Mr Juttla expressed an interest in getting back on the property ladder, and she had offered him 1 The Crest "which has a tenant, Mrs Madume, and which JB2 was struggling to sell". He had not been sure he could raise the whole £300,000. "About a week before the sale was completed he showed me a funds statement he had received from his solicitors, showing that taking into account his mortgage, stamp duty and legal fees, the further sum of £37,306 would be required from him. I said I would arrange for that to be paid back as soon as the purchase had been completed… [T]he property was rented at the time to Mrs Madume. Mr Juttla's intention is that he will move into the property as soon as Mrs Madume indicates she intends to leave…in the meantime…it was agreed that I would continue to receive the rent from Mrs Madume in order not to disturb the standing order arrangement… whereby [her rent is paid into my account at Natwest]. Mr Juttla pays rent to me for lodging of £100 pw which I deduct from that sum. I pay the balance to him in cash."

126. The funds statement said to have been produced by Mr Juttla was not in evidence. Mr Juttla was not called to give evidence himself, although he would appear still to be living at Mrs Williamson's house and on friendly terms with her. Having initially distanced herself from letting arrangements said to be between Mr Juttla and Ms Madume, she was now saying that she had herself let the property prior to sale to Mr Juttla, and agreed with him to continue these arrangements indefinitely after the sale.

127. In cross examination, Mrs Williamson said that JB2 had been desperate to sell and she had given Mr Juttla a cash back incentive to get the sale completed. If it had not been she would have had to lay all the men off at JB2. She initially said she remembered all the financial details, but when asked why she had not previously disclosed the cashback arrangement said "Because I didn't have all the documentary evidence in front of me. Now I have." I do not believe this is something she would have forgotten, and conclude that she would not have disclosed it if the bank statements had not emerged and revealed it.

128. Mrs Williamson has an account at Natwest under the trading name 'Luxury Lets'. Despite the title, it does not appear to be a business account with any regular stream of rental income. It does however show a single payment of £422.50 on 27 May 2009 (the day before completion of the sale) from a property management company with a reference 'The Crest', and beginning one month after that a series of automated credits of £825 from Ms Madume. These presumably represent rent in advance, in which case it appears that the property may have been agreed to be let at or about the time of completion of the sale to Mr Juttla, but with Ms Madume taking occupation a couple of weeks after that date.

129. I do not find Mrs Williamson's account credible, particularly given her concealment of the facts and substantial change of position. It is hard to believe that if Mr Juttla was an arms length purchaser and he were taking over as landlord he would not wish to ensure his name was known to his tenant, or that the arrangements for payment of rent, which must have been negotiated after the property had been agreed to be sold to him and at best can only have been in place for a few days, could not be transferred to him. Mr Juttla's name came on the scene within days of a proposal to transfer the property to Jason falling through because his mortgage was refused. He presumably was not going to live there, so it must have been intended that he would rent it out and make a profit, and no doubt in due course realise any development potential.

130. There is no mention of the tenancy or the cashback on the sale documentation, which raises the question whether they were concealed from Mr Juttla's mortgagee. If Mr Juttla was going to be short of funds by £37,000 at completion, it is not explained how he was able to fund the deposit of £40 or £50,000. Although JB2's account was overdrawn at the time of the sale, it was not so desperate for the cash for its own purposes that it needed to retain the proceeds; instead they were paid out within a short time to Alexandra and used by her to fund a further purchase from the company, as appears below. If Mrs Willamson pays cash back regularly to Mr Juttla, she was not able to point to any series of withdrawals from which she does so. There is no evidence of any valuation of the property, or any attempt by JB2 to sell it on the open market.

131. It is more likely, in my judgment, that Mrs Williamson intended to transfer the property to Jason, probably without any payment other than what could be raised on mortgage. That fell through and she instead used Mr Juttla as a nominee to raise funds from a mortgage lender, with the same intention to let it out at a profit. It seems likely

that she has some arrangement with him to return the property to herself when called on, as I doubt very much if she would intend to transfer an asset and opportunity for future development profit to a mere lodger. Mr Juttla may have borrowed on a residential mortgage, concealing the intention to let the property and perhaps obtaining a higher loan to value offer, with the undisclosed cashback arrangement having the effect of enabling the whole of the price actually paid to be obtained from the mortgage lender. The transaction is very similar in structure to the arrangement made to put 33 South Street in Jason's name, and other transactions as will appear below.

132. A full explanation cannot be arrived at without further evidence. If the above is correct, there must for instance also be an arrangement for JB2 or Mrs Williamson to pay Mr Juttla's mortgage, but no such payments have been identified from the bank statements in evidence. This transaction amply illustrates Mrs Williamson's approach to business, and may give rise to a liability on her to account for any profits she has made. JB2 no doubt needed to dispose of the property to raise cash, but it does appear that it may have lost financially, as the property at the Crest would seem to have been valued at £300,000 (8A/206) and also to have represented a development opportunity diverted to Mrs Williamson.

24 Quarndon Heights (Plot 47)

133. This property, together with Plot 48 and the parcel of retained land, was eventually sold to another development company in December 2009 for a combined £900,000 (of which £400,000 was attributed to Plot 47).

134. In October 2008 JB2 mortgaged it, borrowing £300,000 (net £269,000). The loan was repayable within 6 months, but it is evident that JB2 had no funds to repay. On 12 June 2009 it was sold to Alexandra at a stated price of £498,000. The sale had clearly been planned for some months since Mrs Williamson told her solicitor of it in February (8A/140). Part of the price (approximately £255,000) was raised on mortgage in Alexandra's name. Part was funded by a transfer of £162,514 made to Alexandra by JB2 on 1 June. It seems that completion was planned for 5 June but was held up because of shortage of funds. Mrs Williamson told her solicitors on 5 June that Alexandra had £100,000 in her account but could not get it transferred to her solicitor that day. She (Mrs Williamson) was willing to complete and allow the balance to be paid later. The solicitors acting for JB2 were concerned that this might represent a mortgage fraud by Alexandra, with JB2 funding the purchase from the proceeds it received (8A/189). They threatened to make a disclosure under the money laundering regulations if the balance was not received by Monday 8 June, but allowed the transaction to proceed.

135. They were right to be worried. Alexandra did not have the money to complete and JB2 was indeed funding the transaction. In addition to the £162,000 it had already paid to Alexandra, JB2 paid a further £40,000 on 8 June (9B/565) to Alexandra's account, which she presumably passed on to her solicitor.

136. The net proceeds of completion after paying the bridging loan came back to JB2 on 12 June and amounted to £181,653. JB2 had avoided enforcement action by the bridging lender, but had effectively given away its asset to Alexandra and suffered a cash loss of just over £21,000 as well.

137. When Alexandra sold the property in December she realised a net amount of £132,830, which she said was paid into an account in her personal name. A statement has been produced, but it excludes the date of payment in so that the arrival of the funds, and payment out of the first £13,700 of them, cannot be seen (7A/194). The starting balance of £119,130 has been subsequently paid out in a series of payments in round sum amounts by internet transfer to another account in Alexandra's name. From there it has been paid out in various amounts predominantly for purchases at builders merchants. Alexandra was not able to say what these were for, but they had been paid at her mother's direction and she assumed they were for JB2's business. Mrs Williamson said that this was a convenient arrangement to pay money on behalf of JB2 as Alexandra's husband had a debit card on the account and could use it to but materials for JB2.

138. Mrs Williamson's first explanations of this transaction were on the basis that the sale to Alexandra was an effective one which had resulted in a balance due from Alexandra to JB2 of £262,494 (5B/547). Cross examined about this, she said that the company had subsequently received the whole amount when the property was sold. Clearly this could not be so as, at best, only £132,000 came back after that sale, which would leave Alexandra owing JB2 another £130,000. In her final statement made after the bank statements had been disclosed Mrs Williamson re- explained the transaction as one where Alexandra "would in effect hold the property for JB2 on a short term basis while I tried to find a buyer in the open market" and that "£500,000… was the price necessary to enable Alex to obtain a mortgage… for £260,000".

139. The new explanation has the advantage that the apparent loss on resale would have been incurred on behalf of JB2 as its agent, although it does admit necessarily that the whole transaction was a sham, fraudulently presented to the mortgage lender. At best, this transaction is another example of Mrs Williamson arranging to place assets into the name of a family member for the purpose of arranging funding on behalf of the company. It appears that where such arrangements turn out to be profitable (as with 33 South Street) she maintains the asset was beneficially transferred. Where a loss is incurred, as here, she treats it as falling on the company. There does appear to have been a pressing need for cash to repay the bridging loan, so making every allowance in Mrs Williamson's favour, an urgent refinancing by whatever means may have been required. At best however, the method chosen has resulted in proceeds of £132,000 being unsatisfactorily accounted for.

26 Quarndon Heights (Plot 48)

140. This property was sold to Mrs Williamson on 22 September 2009, for a stated price of £500,000. This, together with stamp duty and costs of £16,000 was said to have been satisfied by debit against her loan account. In June Mrs Williamson had told her solicitor that the property in her opinion was worth £725,000 (and it appears there was previously an offer for that amount from an unconnected purchaser, though that did not proceed). It seems her first intention was to transfer it from the company to herself at a figure of £725,000, and then on to Jason at £495,000, involving a gift from herself to him (8A/265). Later she instructed the solicitor acting that the transfer from the company to her would be at £500,000, said to represent the cost of the land and construction, but that she would not pay for the 'profit'. This can only mean that she was not prepared to pay a price that would enable the company to make the profit it would have done if the property had been sold for what she considered its true value to be. The solicitor was concerned that the sale involved a gift to Mrs Williamson by

the company (8A/259 and 263). The solicitor discussed with the company accountant how this would appear, given that she had been told by Mrs Williamson that the property was worth £725,000. His answer appears to have been straightforward: "The client will say it's worth £500,000" (8A/261).

141. At all events, the transaction as documented involved a debit to Mrs Williamson's loan account of £516,000. This substantially exceeds the amount (£228,000) that, on the evidence I have, can safely be credited to that account. The debit balance of £288,000 resulting would be a debt payable by her to the company. If the property was in fact worth more than £500,000 at the time, the company may have further claims against her.

142. Mrs Williamson then set about selling the property, but it seems she was not able to do so, presumably because the housing market was still poor. In October 2009 it seems it was being advertised for £695,000 (7B/526), but Mrs Williamson had instructed her solicitor to sell it 'to one of her sons' for £500,000 (7B/525). That sale did not proceed. The price eventually attributed to this property on its sale to the developers was £400,000, and the net proceeds received by Mrs Williamson were £330,799 (7B/479). This figure seems surprisingly low. No doubt it may be partly explained because the purchaser was a developer looking to make a profit himself. It is fair to say that Mr Moore regards this figure as suspicious. When Mrs Williamson was asked about it, she at first said that the developer had paid more than £400,000 (Day 7 p105) but when shown the completion statement she backtracked and said that only the amount shown on it, ie the £400,000, had been paid. This can only enhance suspicion. But in the end the position is that no positive evidence was brought to show that £400,000 does not in fact represent the true consideration paid.

143. It was not Mrs Williamson's case that she was acting as agent or nominee for JB2 in holding and disposing of this property. To the extent that she has made a loss therefore, it falls on her and cannot be taken as reducing her liability on loan account. It is fair to note that she did pay a tax bill for JB2 out of the proceeds of sale however, which would entitle her to a credit of £65,172 (7B/479). The net debit balance on her loan account would therefore be reduced from £288,000 to, in round terms, £223,000.

144. I note in passing that the parcel of retained land sold in conjunction with Plots 47 and 48 was sold at a stated price of £100,000 (8A/84) but some £60,000 of that was paid by the purchaser, before contracts had even been exchanged, into Alexandra's personal account. This would be unusual in an arms length transaction. The justification given for payment to Alexandra's account rather than one of JB2's was that JB2's own account was at the time frozen because of a winding up petition issued by Mr Moore, and Alexandra used the money to pay off supporting creditors. I say no more about this transaction, having refused a late application to amend the Particulars of Claim to include it in the list of those impugned.

145. I also refused an amendment to include the use of the Loch Maben monies in the list of impugned transactions. In relation to those monies therefore I propose to say little. It is not disputed that substantial amounts have been paid to acquire two properties in the USA, (Trouble Creek Road, referred to above, and Bay Boulevard) the ownership of which is in dispute between Mrs Williamson and Mr Moore. Mrs Williamson also has another property refereed to as 210 Tenth Avenue. Bay Boulevard was purchased in Mr Moore's sole name. One of the matters that attended their falling out in 2007 was that she presented to him a document referred to as a 'quit claim deed', prepared by American lawyers, by which he would transfer the Bay Boulevard property into

joint names (2C/842). She has since alleged however that this property is entirely beneficially owned by her, seeking in cross examination to give a convoluted and unconvincing explanation of the inconsistency in her position by saying that 'I have got equitable title and Keith has got bare title' (Day 5 p 130).

146. On the basis of her position she asserted in her final witness statement that payments made by JB2 of £222,971 were made in connection with that property and should be debited to her loan account (5B/616). In cross examination she accepted that in fact £82,000 of this related to Trouble Creek Road or Tenth Avenue (day 7 p16). I have already taken into account £75,500 of that amount above in relation to Trouble Creek Road, so the additional debit to Mrs Williamson's loan account would be (in round terms) £147,500 (£222,971 - £75,500), resulting in a debit balance of £370,500 (£223,000 + £147,500). In addition there are three payments in 2007 out of the Close Brothers account (which held the Loch Maben proceeds) which have not been accounted for: £125,000 on 7 August, £145,000 on 9 August and £109,701 on 1 October (9A/48). If these turn out to have been also applied for Mrs Williamson's benefit, the debit balance would rise further, to (in round terms) £750,000.

147. I mention briefly also Mr Moore's purchases of two properties:

i) Plot 41 Quarndon Heights, also known as No 11, which he bought from JB1 for £250,000 with the aid of a mortgage. The property was intended to be sold to a Mr & Mrs Mosley for £289,000 but they were delaying completion and the purpose of the sale to Mr Moore seems to have been effectively to obtain bridging finance. It appears that all the costs of the mortgage were paid by JB1 or JB2. He was stated to have paid a deposit of £37,500, which in turn was said in the documents at the time to have been a gift to him by Mrs Williamson, but there is no evidence that she in fact produced any money and according to Mr Moore (Day 2 p149) it came from the company and so presumably moved round in a circle. When this property came to be sold, Mr Moore retained the whole net proceeds, some £283,000 (2B/489). The mortgage was not repaid, but the lender's security was transferred to the house at 482 Kedlestone Rd (2B/485).

ii) The house at 482, Kedlestone Road. He acquired this in conjunction with JB2's acquisition of the garden for redevelopment. The price paid to the vendors appears to have been funded entirely by JB2 since although the property was charged by way of mortgage, that charge was a transfer of the unredeemed mortgage from Plot 41 (see above) and would not have raised any fresh funds. When No 482 was sold, Mr Moore again received the whole net sale proceeds, this time some £31,536 (2C/870).

These transactions are not in issue in this litigation, but were dealt with in the evidence. Mr Moore's position is that he is beneficially entitled to the proceeds received, and that insofar as he subsequently paid them to or for the benefit of JB2, he is entitled to credit on his director's loan account. Mrs Williamson's is that he acquired the properties acting as a vehicle for raising funds on behalf of the companies, so that the effect of the series of transactions is that the proceeds belong to JB2 and do not give rise to loans by Mr Moore. Thus the transactions are a near mirror image of those complained about by Mr Moore, and the respective positions are neatly reversed to suit the case. Since they are not in issue, I make no finding about them.

Other Issues

148. There are in addition four specific matters which were acknowledged to be minor in the overall context. The first concerns rent paid by the tenant of property at Osmaston Garage, owned by Mr Moore.

i) Mr Moore alleges that between 1998 and 2002, the rents were collected by Mrs Williamson, and should be paid by her to him. In fact the evidence of the tenant (Mr Carver, 5A/156) is that at Mr Moore's request he paid the rent to Mrs Williamson to be used by her to fund the EWC litigation. This may well have entitled Mr Moore to repayment from JB1, but not to the relief he seeks against Mrs Williamson personally.

ii) After 2002, rent was paid to Mr Moore but it is pleaded that between 2002 and 2005 one third of the rent payable was foregone in return for free servicing of JB2's vehicles, and that Mrs Williamson promised that in return JB2 would pay Mr Moore that amount when it could be afforded. JB2 was not trading until some time in 2004, so for the most part this arrangement must have been with JB1 and not JB2 as pleaded. Whichever company it was for the time being, it could only give rise to a liability on the part of the company and not Mrs Williamson. Mr Carver's evidence is that he also serviced vehicles owned by Mrs Williamson and her family, but that is not part of the pleaded claim. The issue defined for trial concerns only the liability of Mrs Williamson, which would be nil. So far as JB2 is concerned, and doing the best I can with this evidence, I find that an amount equal to one third of one year's rent (£80pw x 52 x 1/3 = £1386) is owed to Mr Moore by JB2.

149. The second issue is in relation to an amount of £14,500 which it is accepted Mr Moore paid to Mrs Williamson in December 2005. It came from the proceeds of sale by him of part of his interest in Osmaston Garage, and was used by her to pay arrears of mortgage on her property at 34A Derby Road. Mr Moore's position (as set out in the Re-amended Particulars of Claim) is that it represents a personal loan repayable by Mrs Williamson. She contends that it is to be set against money owed by Mr Moore to JB2, by reason of JB2 having paid £20,000 to Michael Moore in repayment of money he had lent to Mr Moore to purchase the garage in the first place. In his evidence, Michael Moore accepted that he had received £20,000 from JB1 (not JB2) out of the proceeds of the EWC litigation. His evidence was unclear as to whether the payment related to his loan to Mr Moore, or his loans to JB1 to fund the litigation. It matters not because on either basis that payment was therefore irrelevant to what happened in 2005 (though I acknowledge that both Mrs Williamson and Mr Moore have, when it suited them but without any legal justification, treated their loan accounts with JB1 and JB2 as continuing single accounts).

150. Mr Moore says that he was promised the £14,500 would be repaid by JB2 when it could be afforded, and at one stage his solicitors demanded repayment from JB2 (not Mrs Williamson personally). I have found that this mortgage was raised by Mrs Williamson to lend monies to JB2 to fund the purchase of 482 Kedlestone Road. Mr Moore himself referred to the payment as being to help Mrs Williamson and JB2. The effect of this seems to me to be that the costs of this borrowing were to be borne by JB2, and insofar as Mr Moore lent money for that purpose it would be repayable by JB2 and not Mrs Williamson personally. As re- amended, the claim for this amount is made only against Mrs Williamson, and so must be dismissed.

151. The third issue is in relation to reimbursement claimed by Mr Moore from JB2 for the amount he spent in buying and running a Renault van, used in JB2's business. It is accepted that he paid £4,913 to buy it (which he had borrowed from his mother) and paid tax and insurance of £604. Mrs Williamson's case is that any claim against JB2 for this amount was given up when Mr Moore signed a document (5B/507) dated 11 September 2007 recording that he had paid an amount of £35,753 from the sale of his matrimonial home to JB1, and going on to say "[JB2] hereby forward the sum of £44,084.22 by telegraphic transfer to [solicitors] for the purchase of Gisbourne Crescent on behalf of Keith Moore. This representing full payment of all loans made by Keith Moore to [JB2]. I Keith Moore accept this money as full and final settlement as detailed above". The loan referred to was of course to JB1 not JB2, though here as elsewhere the parties (wrongly) treated any balance owed by JB1 as carrying forward into a debt owed by JB2. Mr Moore's evidence, which I accept, is that this was signed when he was desperate for money to complete a property purchase, had been promised payment from what was considered due on his loan account by Mrs Williamson, but she then insisted that he sign this before he received anything. It was of course at the very time of the final breakdown between them. Once he had signed it, she refused in any event to make the payment promised and he had to obtain the funds needed from elsewhere.

152. There are many objections to holding Mr Moore bound by this document. For one thing, it does not even purport to be a genuine compromise of disputed claims, and insofar as it would amount to a mere waiver of debt on payment of a lesser amount it would be ineffective at law for lack of consideration. For another, if it were to be treated as a settlement, it would be construed strictly against the interest of the party seeking protection under it and, in my view, the acknowledgment that Mr Moore was to 'accept this money as full and final settlement' is to be interpreted as meaning that any settlement was conditional on payment as promised, and that payment was never made.

153. For these reasons I reject the defence and find that Mr Moore is entitled to reimbursement of £5,517 from JB2 in this respect. I should say that insofar as I have found that JB2 is indebted to Mr Moore for various sums, it does not necessarily follow that he is entitled to an order for payment; there may well be other items to be taken into account between him and the company.

154. Finally, there are claims for the return of various paperwork and items said to have been left at 34A Derby Road when Mr Moore left in September 2007. This was scarcely dealt with in the evidence, but insofar as it was, there was a straight conflict between the two principal witnesses, Mrs Williamson denying that any of the requested items were at her property. Having regard to the view I have taken of the relative reliability of these two witnesses, on balance I prefer Mr Moore's evidence on this issue and find that they were so left and Mr Moore is entitled to an order for delivery up.