Neutral Citation Number: [2017] EWHC 182 (Ch) **No HC 2015- 002052**

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

Mr M H Rosen QC, sitting as a deputy High Court judge
Thursday 26 January 2017

B E T W E E N:

RICHARD ANDREW CAMPBELL

Claimant

- and -

ROBERT CAMPBELL

Defendant

Mr John Machell QC (instructed under the Bar Public Access Scheme) and
Mr Adil Mohamedbhai (instructed by Dickinson Gleeson)
for the Claimant

Mr Andrew Twigger QC and Ms Narinder Jhittay (instructed by Taylor Wessing)
for the Defendant

Hearing dates: 1, 2, 3, 4, 7, 9 and 10 November 2016

JUDGMENT

Introduction

1. This is a tale of two cities – and of two brothers. The cities are amongst others London and Bangkok and the brothers are Robert Campbell and Richard Andrew Campbell (to whom, with conventionally no disrespect, I will refer as simply "Robert" and "Richard"). For over 20 years from around 1990 they worked together successfully, expanding the jewellery business started by their mother Lucie in London in the 1960s, and which included Bangkok from the late 1980s. At around the beginning of 2012 they fell out bitterly; and this case is but one of many which have resulted.

2. It is common ground that the business in London was carried on by Robert and Richard in partnership under the name Lucie Campbell Limited Partnership ("LCLP") which rented a shop in New Bond Street from a Jersey company, Longton Holdings Limited ("Longton") the shares in which they also own.

3. Other parts of the business were operated through overseas companies - RC Jewellery Trading Co Limited ("RCJL"), Milling Lock Limited ("MLL"), Azure Gold Limited ("AGL") and Lucie Campbell Corporation ("LCC"). Robert and Richard have also traded in their own names, including buying and selling at auctions.

4. RCJL and MLL are Thai companies, RCJL operating a jewellery manufacturing and wholesale business and renting its factory buildings in Bangkok from their owner MLL. AGL is a BVI company whose role was primarily to buy jewellery from RCJL and to sell it on to LCLP and LCC; and LCC was a New York corporation used as a vehicle for the sale of jewellery on a wholesale basis in the USA, supplied primarily by RCJL and AGL, at least until 2011.

5. Robert had control over RCJL, MLL and AGL and variously between 2002 and 2010 arranged for their shares to be registered wholly or in a significant part in the names of his Thai wife Narumol Hotrabhvanon or "Nat" – who at one time worked in RCJL - and their children, all Thai nationals. Richard had day-to-day management over LCLP in London and LCC in New York.

6. The two brothers are in dispute, among other things, as to broadly four interrelated and in some respects overlapping areas:
   (a) whether Richard's and Robert's interests in the partnership (or partnerships) between them are equal at 50/50 or are 49/51 in Robert's favour;
   (b) whether the partnership business and assets extended to the companies in Bangkok, the BVI and the US and/or their shares especially those held by Robert's nominees (Robert contending for some other "co-ownership");
   (c) whether Robert committed various alleged breaches of duty in relation to the companies' shares and in failing to provide information in relation to the ownership and dealings in and involving RJCL, MLL and AGL; and
   (d) whether and if so how the relevant businesses and/or assets, depending on their extent and location, are to be wound up and/or the accounting between the partners (or co-owners) is to be done.

7. The proceedings have a considerable history. The issues to be decided were eventually formulated in a largely agreed list - which I set out with a brief summary of my answers at the end of this judgment - and certain aspects (such as Robert's position regarding winding up) were clarified in the course of the trial, when the documents referred to were for the most part collated in two core bundles.

Some background

8. By way of some brief background facts - the business the subject of these proceedings was originally started by Lucie (born in 1937) who sold antique jewellery in London in the 1960s. Her elder son Robert (born in 1961) began to work for the business in around 1980 and became Lucie's equal partner (without making any capital contribution) under the name "Lucie Campbell".

9. The Lucie Campbell Partnership soon began to sell jewellery which Robert purchased in Thailand, and RCJL was established by him in early 1987 to manufacture jewellery there. Robert moved to live in Bangkok at around that time and had control of RCJL's shares and factory. He married Nat in 1999. The partnership provided the funds needed, and Lucie had an equal 50% share in the Bangkok side.

10. Richard (born 1962, Lucie and Robert's younger son and brother respectively) joined the business following a meeting between the three of them at Lucie's London flat in early 1990. Richard claims that it was agreed at that meeting that he would join as an equal partner in the whole family business including Bangkok and that he and Robert

continued as equal partners in that business after Lucie's retirement in 1997. Richard is now married to an American, Elissa, and lives in Barbados.

11. Robert has maintained however that it was agreed at the meeting in early 1990 that Lucie should retain her partnership share of 50% and Robert and Richard should have 25% each (ie Robert gifted Richard half of his then 50% share); and that following Lucie's retirement their shares should be 51%/49% in his favour. Whilst he claimed that Richard agreed to this provided he "*got [his] share in Bangkok*", his case was that Richard was and never become a partner in respect of Bangkok, in part because of the Thai corporate structures he adopted.

12. As to this latter aspect, Thai law apparently imposed restrictions on the ownership by foreigners of Thai land and Thai company shares. Robert used Thai lawyers, and nominees to hold RCJL's shares and factory, initially with signed blank transfers as regards at least the former, in order to protect Lucie, Robert and Richard. Robert held some shares (consistent with his Thai work permit); Richard also held a small number and became a director of RCJL in 1991.

13. When Lucie retired from the business in 1997, its assets were valued (including the assets in Thailand as valued by Robert) and Lucie was paid out for her share, by payments over 4 years and transfers of some jewellery, retaining a small interest in the business (5% or 10%) in the meantime as security.

14. Robert and Richard continued in the business together and expanded it, enlarging the factory in Bangkok by buying the adjacent land with the business' funds, in part from London, and operating in due course also in Hong Kong, the BVI and New York. Whilst only London maintained formal partnership accounts, Robert would report annually for his drawings from the Bangkok side, and Richard was permitted to drawn up to the same amount.

15. In 1997, purportedly because of changes in the Thai law regarding foreign ownerships, Robert increased and reorganised RCJL's share capital so that among other things 51% were "A" preference shares held by Thai nationals, with only 1/10th of the voting rights and a small non-cumulative dividend; and 49% were "B" ordinary shares, most of them held by Robert and a small number by Richard.

16. In 1998, Robert established AGL to act as an offshore profit centre, buying jewellery from RCJL and selling it to LCPL.

17. In 1998 or early 1999 Robert established or at least started to use MLL, previously a shelf company, to own both the existing and the adjoining new factory buildings in

Bangkok, It seems that he did not have signed blank transfers from the Thai nominee shareholders in respect of MLL (as well now as RCJL). Richard claims to have known nothing of MLL until 2012.

18. In 1999 LCLP was formed under the Limited Partnerships Act 1907 with Robert and Richard as the general partners (thus protecting Lucie from any remaining liability).

19. Whilst the single share in AGL was intended be settled into the Jersey-based "K Trust" of which Richard and Robert were beneficiaries, Robert had it transferred in 2002 to his wife Nat who was (according to Robert) to hold the share for Richard and Robert equally. Richard claims not to have known this at the time.

20. Also in 2002, Richard and Robert established Longton to purchase the long lease of the shop at 26 New Bond Street (used by their business but not, according to Richard and as eventually agreed by Robert, an asset of their partnership). The K Trust was intended to own Longton's shares; but instead Robert did so, eventually (following the Jersey proceedings referred to below) conceding that Richard had an equal interest.

21. In 2005, LCC was established to act as the wholesale arm of the business in the USA, Robert once more holding the shares, but in this case Richard having day-to-day management.

22. In 2007, the nominee Thai shareholders in RCJL were replaced by Nat (and Robert and Nat's three children), again apparently without signed blank transfer forms. Richard was unhappy with this but Robert told him among other things that his interest in RCJL would be protected under his (Robert's) will.

23. In 2010 all the shares in MLL were transferred to Nat and the children, Nat becoming its sole director. Richard again claims that he knew nothing of this or of MLL (that is, a separate Thai company owning RCJL's factory in Bangkok) at the time.

The breakdown in relations

24. From 2011, Richard sought to inquire at to various monies drawn from the business, including loans used for the purchase of a house (called "The Trees") by Robert and Nat, and to have half of the shares in RCJL and Longton transferred to him; but Robert did not respond positively.

25. Instead in 2012, Robert – who had apparently been suffering from severe stress - cut Richard out of his will and then removed him (Richard) as a director of RCJL. Richard

persisted with inquiries as to Robert's dealings, including his sale of a valuable diamond necklace without recording it in the business' stock programme or removing it from the block insurance policy; but this was largely unproductive.

26. In mid-2013, Richard instructed Jersey lawyers Dickinson Gleeson ("DG"), who corresponded with Robert's lawyers, Wragge Lawrence Graham ("WLG"), regarding Richard's alleged interests in Langton, RCJL, MLL, AGL and LCC; but still little or no information was provided. WLG stated for example in a letter dated 29 October 2013 that it "*... does not assist to set out respective positions in correspondence in detail when they are so polarised and the issues keenly felt*".

27. During this period Robert attempted to eliminate Richard's shareholding in RCJL, for example sending notice of a meeting in Thai to Richard's mother-in-law's address in New York so that it could not be acted on in time.

28. The breakdown of the relationship between Richard and Robert and (as Richard would say) Robert's refusal to explain the ownership and dealings of the various parts of the business, but rather to obstruct and exclude Richard, gave rise to various proceedings involving them and others. Following a failed mediation, these included the following.

29. First, in late 2013 Lucie brought English proceedings against Robert, Richard and LCLP, served on Robert in December 2013, seeking an account of monies held and invested by Robert on her behalf, monies loaned to Robert and monies loaned to Robert and Richard in connection with Langton and the jewellery business. These proceedings were settled in 2015 by acceptance of a Part 36 offer from Robert on commercial terms.

30. Secondly, in January 2014 Richard commenced proceedings in Jersey seeking his 50% interest in Longton and in certain loans made to Longton and interest paid by Longton to Robert. After a failed jurisdiction challenge, Robert set out his case in relation to the ownership of Longton, LCLP, RCJL, MLL, AGL and LCC in his Answer dated 3 December 2014. Whilst maintaining that these were all owned between himself and Richard in 51%/49% shares, Robert appears to have consented to a declaration that Richard had a 50% beneficial interest in Longton, as recorded in an Order dated 22 June 2015. Richard's claim that loans from Robert were held on trust for him equally (including loans funded from the jewellery business) was tried in early June 2016 and judgment is awaited.

31. Thirdly in June 2014, following his failure to obtain in correspondence sufficient information regarding AGL, Richard issued *Norwich Pharmacal* disclosure proceedings in the BVI (where AGL was incorporated) and Hong Kong (where it had

bank accounts) and obtained orders which showed among other things that the share in AGL had been transferred out of the K Trust and into Nat's name.

32. Fourthly, Richard's wife Elissa issued proceedings in Thailand to compel the return of her engagement ring containing the "Golconda" diamond, which Robert was to redesign and reset, but which he failed to return despite requests going back several years. Whilst Robert claims no entitlement to retain the ring, he has still kept it, he says, in Hong Kong pending Elissa's Thai proceedings.

The present proceedings

33. The present proceedings were issued on 26 May 2015, Richard having previously denied - despite his contention in Jersey that England was the more convenient forum for the resolution of his dispute with Richard - that the English courts had jurisdiction over the issues Richard had raised. Then, whilst Richard's claim sought the transfer to him of shares in the various companies, Robert brought a counterclaim widening the issues.

34. By the first CMC on 12 November 2015, it was apparent that the Court would have to decide how the relationship between Richard and Robert was to be brought to an end, that is, by winding up and orders for accounts. Whilst the parties agreed that it was an implied term of the agreement between them that they would act in good faith and render to each other true and accurate accounts and full information in relation to the jewellery business and Deputy Master Nurse gave directions for a trial and for an account to be taken, and for the provision of information and disclosure of documents for that purpose.

35. When the case came back before the Chief Master on 18 March 2016 issues as to compliance with the order of 12 November 2015 and otherwise resulted in further orders for Scott Schedules to set out alleged deficiencies in the accounting disclosure and that the parties make proposals to each other as to the winding up of the business.

36. A few days later on 22 March 2016, Henderson J made an interim order requiring Robert to make transfers to Richard of 49% of his B shares in RCJL and his shares LCC, such that it seems (at least to Richard) that the shareholdings in the following companies were then and are now held as follows:-

    (a) RCJL – Nat 29,750 A shares; Sukrit (Robert's stepson) 300 A shares; Alyssa (Robert's daughter) 250 A shares; Andrew (Robert's son) 250 A shares; Robert 14,994 B shares and 50 A shares; Richard 14,406 B shares.

(b) MLL - Nat 5,000 shares; Sukrit 2,500 shares; Alyssa 2,500 shares.

(c) AGL - Nat 1 share.

(d) LCC - Robert 102 shares; Richard 98 shares.

37. On 14 July 2016 Robert's application for permission to appeal out of time in respect of the procedural orders that had been made, including the order of 18 March 2016 requiring proposals as to the winding up. Further directions were then given at a CMC on 21 and 22 July 2016 including specific disclosure by Robert and the statements of case were amended again as regards breach of duty and remedies.

38. Richard's winding up and accounting proposals were set out on 16 September 2016 and Robert's on 30 September 2016. The latter contained little positive in the event that the partnership extended to the overseas companies but Robert amplified on this to some extent in the course of the trial.

39. At the trial the Court heard live evidence from Richard, Robert and a long-serving employee (and at one time proposed partner) in London, Mr Darren Clarke, and had a signed witness statement made by Lucie on 16 August 2012, adduced by way of Civil Evidence Act notice in the light of her sadly deteriorating mental condition.

40. There was also oral evidence by video link from Bangkok of two Thai lawyers, Khun Wirot Poonsuwan for Richard and Khun Bancha Wudiprecha for Robert. Whilst much of that was agreed, where they disagreed I marginally preferred Khun Wirot's opinions (despite the attempted criticisms of him on behalf of Robert), he seeming to me to have more relevant experience and to be more direct and grounded than Khun Bancha, who was short on examples in support of his views when controversial.

41. The relevant events in issue go back over 25 years and neither Richard nor Robert were wholly satisfactory witnesses. Robert manifested all-pervading antipathy for Richard and a complex character, by turns evasive, tendentious and conceivably seeking to mock or provoke his brother (to make a distant analogy, as if Remus vaulting the first walls of Rome).

42. Richard was more considered if more brusque - for example his unilateral writing off of loans owed by LCLP to AGL could not, in my view, be justified - and sometimes made appropriate concessions and corrections; but in my judgment he was not always reliable, in particular as regards what professionals were told (and Richard remembered) relevant to UK tax, which probably led to various of the family's overseas ownership arrangements now in issue.

43. Supporting aspects of Richard's case, Mr Clarke was a straightforward witness but not privy in particular to all the overseas aspects; and Lucie's statement (while made four years ago and when no reason was suggested for her not giving an honest account as between her two sons) did not explain all aspects of her involvement - and was of course untested.

44. However, whilst tax considerations and information to professionals relating to offshore arrangements, not satisfactorily explained by Richard, were important in understanding the offshore aspects, his evidence was generally robust and consistent with most of the documents and common sense, whereas much of Robert's was contradictory and incredible, including the details which he did purported to recall from the 1990 meeting.

45. When unwelcome or inconvenient questions were put to Robert, he often failed and indeed refused to answer or (eventually) gave inconsistent and even self-contradictory answers. Examples were: (a) whether he could remember any RCJL general meetings taking place; (b) whether he had any written communications with his Thai lawyer(s); (c) whether the valuation of assets undertaken in 1997 included the Thai assets (on the basis that they were considered to be partnership assets); and (d) whether he wanted his brother to know of his removal as a director of RCJL.

46. Robert's purported recollection was selective or self-serving or guesswork or obviously false: for example (a) that he did not view his joining his mother's business as a partner as meaning that he had an ownership share in the business; (b) as to the establishment of MLL and changes to its shareholdings; (c) as to his knowledge of the K Trust (as stated in his Amended Answer in Jersey); and (d) that he could not identify the last time AGL had sold or purchased something, even though this is a company he controls.

47. I would also mention that on the last day of the hearing, 10 November 2016, Robert applied to reamend his Defence and Counterclaim (paragraphs 11A and 17), as I understood their effect, so as to withdraw the contention that the single share in AGL, held by Nat from November 2002 in trust for Robert and Richard, was so held in the same proportions (51:49) in which Robert alleged they shared what he had called their "*existing businesses*" including RCJL. It was said that this had been wrong as a matter of law and so required correction.

48. Whilst this was very late and I was not convinced that it did not represent or confirm a major change in Robert's factual case, in the event it makes no real difference as regards my findings. Whether or not now pointless, these reamendments cause no prejudice to Richard and I grant formal permission for them.

Thai law

49. Before turning to the four main areas of dispute (mentioned in the introduction above), I should first summarise some aspects of Thai law regarding foreign ownership of land and shares – as stated by Khun Wirot and Khun Bancha - which was or might be relevant to how RCJL and MLL were organised, and whether Robert acted in the interests of Richard as well as himself, or breached his duties by arranging matters to Richard's detriment and without his full knowledge and consent.

50. Under the Thai Foreign Business Act 1999 ("the FBA"):
    (a) a "foreigner" (which can be a Thai company if 50% or more of its issued share capital is held by non-Thai nationals) is not entitled to undertake certain business activities (including the manufacture and sale of jewellery) without permission from the Board of Investment of Thailand; and
    (b) breach of these restrictions is a criminal offence and they cannot be by-passed by the use of Thai nominees to hold shares in a Thai company on behalf of a non-Thai national.

51. Similarly under the Thai Land Code, a non-Thai national is prohibited from holding Thai land and a company can hold land only if non-Thai nationals hold 49% or less of its issued share capital. Again the use of Thai nominees to hold land on behalf of a non-Thai national is unlawful and a breach carries criminal liability.

52. Although there are these restrictions on the percentage of shares which may be held by non-Thai nationals in a Thai company falling within the scope of the FBA or the Land Code, it is permissible and in some respects common:
    (a) to organise the share capital of a Thai company (through the use of preference shares) so that the majority of the voting rights and the economic rights reside with the non-Thai nationals;
    (b) to arrange the quorum provisions of a Thai company so as to ensure that non-Thai nationals are able to call general meetings without the Thai shareholders being present; and
    (c) for non-Thai shareholders to hold blank share transfer forms in respect of shares held by Thai nationals in a Thai company, so that in practice, the non-Thai shareholders have control over the company.

53. For a time in Spring 2007 there were publicly proposed changes to the relevant Thai law such that it would no longer be possible for foreigners to have the majority of

voting rights in relation to a Thai company, but these were not pursued and were formally withdrawn in the Thai legislature in August 2007.

54. Arrangements regarding holdings by non-Thai shareholders in a Thai company have been rarely investigated, still less enforced, especially for small companies and without specific reasons, and at least outside the tourism industry (in respect of which the Chinese government had apparently complained on behalf of Chinese tourists).

55. Khun Bancha only had one example of a client being investigated for suspected breach of the foreign ownership rules, which related to a very substantial commercial property development opposed by local residents who had complained to the Thai authorities.

56. The position as regards arrangements for ownership of Thai land directly is somewhat different from shares in companies (which may own land). The use of signed blank transfers is less easy because the transferor or his attorney must sign physically at the Thai land registry.

57. In Thai law, there is no equivalent concept to an English trust.

The partnership shares

57. Relations between Robert and Richard were and are governed by English law (albeit in some respects complicated by the overseas companies) and it was not contended otherwise.

58. Section 1(1) of the Partnership Act 1890 provides that "*Partnership is the relationship which subsists between persons carrying on a business in common with a view of profit.*"

59. Section 24 provides that "The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules: (1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm…".

60. It is simplest for me to deal first with the respective shares in the partnership as between Robert and Richard although some of the relevant facts also bear on the next issue which I will address, the scope of that partnership and in particular whether and if so how it included the business, assets and/or shares of the overseas companies.

61. Robert's case as to the partnership shares is dependent on his evidence that at the meeting in 1990 it was orally agreed that Lucie would have a 50% share, whilst Robert and Richard each had a 25% share, and that after Lucie's retirement, Robert's share would be 51% and Richard's 49%. Richard's and Lucie's evidence was that there was an express agreement reached at the meeting in 1990 that Lucie, Robert and Richard would be equal partners.

62. I reject Robert's evidence in this regard and prefer that of Richard and Lucie. Robert claimed to have a very clear detailed recollection of what was said at the meeting (to which he added in his oral evidence) but also claimed to be unable to remember something so basic as whether the word "partner" (to which he appeared to have developed a strong emotional aversion) was ever used. His case in the Amended Answer in Jersey was that there had been an agreement reached that Richard would become a partner of the business, and he could not explain this inconsistency.

63. Robert's evidence that he could clearly remember what was said at the 1990 meeting was at odds with his professed inability to remember other important (and sometimes far more recent) matters, including for example: (a) when he became a partner in the business and whether (as he had claimed in his sixth witness statement) he was already a partner in the business when he went to Bangkok for the first time; (b) that he had executed a will in 2002 and allegedly destroyed it in 2012 (as claimed in his fourth witness statement) despite Richard having specifically asked about Robert's wills; (c) that LCP had been registered as a limited partnership (see paragraph 33(d) of his Defence in Lucie's proceedings; and (d) the changes in respect of MLL's shares in 2010.

64. Robert could provide no pplausible explanations as to, for example: (a) why he had said in his Defence in the proceedings brought by Lucie that he "*was led to believe and understood that the partnership was owned as to 50% by the Claimant and 25% by each of the 1st and 2nd Defendants*" and (b) why it took him about 22 years ever to refer to the agreement which he claimed was reached in 1990. His suggestion that he did not refer to such agreement because he did not have the courage to do so, made no sense to me.

65. There are no documents which support Robert's case, but an array of documents which are contrary to his case and consistent only with Richard's opposing case. For example: (a) from August 1990 onwards, the bank statements for LCP show equal monthly drawings; (b) after the year in which Richard became a partner, the available accounts for LCP (some of which Robert signed) show equal profit shares and, by 31 August 1993, equal current accounts; and (c) a memo prepared by an accountant Mr David

Birns of Cohen Arnold in respect of a meeting on 4 July 1996 at which Richard, Lucie and Robert attended, records that he was told that they shared profits equally.

66. On Lucie's retirement, Mr Bill Wonacott of Ford Bull Watkins (her accountant and LCP's) prepared a note which stated that "*the partners currently share current accounts and profits LC 1/3 RC 1/3 RAC 1/3"* and referred to each of Richard and Robert having a half share of the profits of LCP once Lucie had been paid in full. As Robert accepted in his Re-amended Defence and Counterclaim, it was agreed that Lucie would be paid an amount equal to 1/3rd of the value of the business (including the Thai business). A note by him (regarding the settlor of the K Trust, a Mr David Karmeli) refers to his paying "*the two directors of Lucie Campbell*" i.e. himself and Richard, $83,333 each.

67. Robert periodically informed Richard of the funds which he took from the business (including his salary he took from RCJL) over and above his LCLP drawings, and provided annual reconciliations, so that Richard could draw up to an equivalent amount, and Robert accepted this without any qualification in his oral evidence.

68. Moreover:-

(a) In a fax dated 11 October 2002 to his Thai lawyer Mr Crystal, Robert said that his assets at the time included "50% of the shares in my business (Lucie Campbell Partnership in London)", that Richard was entitled to 50% of Longton and that he was a joint beneficiary of The K Trust (which held the AGL share at the time). I did not believe Robert's oral evidence to the effect that the fax to Mr Crystal was drafted on Richard's instructions and contained untrue statements about the ownership of assets.

(b) In an email dated 25 January 2012 from Robert to another accountant Mr David Moore seeking advice as regards the transfer of Richard's interests in the various entities to a trust (disclosed and admitted in Jersey after the trial there), Robert referred to how "my half of the assets is inextricably linked to his half".

(c) When Richard provided to Robert a memorandum by Mr Birns which suggested a transfer of 50% of the shares in AGL, RCJL and LCC to a trust, Robert did not suggest to Richard that the memorandum was wrong regarding the extent of Richard's interest in the various companies.

69. Mr Clarke, who has worked for the jewellery business in London since 1991 and who was for a long time offered partnership albeit on terms which did not come to fruition, gave firm and credible evidence that Robert told him in 2008 in Richard's presence that he and Richard were equal partners in the business As recently as July 2014, Robert told the Royal Bank of Scotland that he was a "*50/50 partner*" of LCLP.

70. Accordingly, I am satisfied that Robert and Richard were by agreement throughout equal and from Lucie's retirement 50/50 partners, not 51/49 partners. I consider Robert's contentions in that regard at best wishful thinking, based on a false recollection of the origins and conduct of their partnership relationship as regards the family's jewellery business. This was consistent with other common interests, including property transactions (in which Richard had favoured Robert in and around 1990).

71. Robert's evidence as a whole, including his admissions and inconsistencies, did not gainsay the clear and rational picture of an equal partnership which emerged from Richard, Lucie and Mr Clarke's evidence and the documents as a whole. On the contrary, in my judgment, it vindicated it. His adamant opposition to the equality which was key between the parties, arose well after the event, when hostilities broke out and normal relations and common sense broke down.

72. At one point Richard stated that he had "given" Richard half of his (half) share in the Lucie Campbell business in 1990, when Richard had been working in financial trading in the City and did not have his (Robert's) feeling and talent for jewellery: that sense of superiority seems to me to have driven Robert's assertion, after their relationship broke down more than 20 years later, of a 51/49 apportionment of interests in his favour after Lucie's retirement in 1997, which was in truth unfounded in fact or law.

73. On behalf of Richard, it was argued that if he and Robert were not equal partners by reason of an express agreement when Richard joined the business in 1990, such that as from Lucie's retirement they would be 49/51 partners as contended by Robert, such apportionment was varied by their conduct only referrable to a change in shares (see *Khatri v Cooperatieve Central Raiffeisen-Boerenleenbank* [2010] IRLR 715 (CA) and section 19 of the Partnership Act 1890).

74. Richard also sought to contend if necessary for an estoppel by convention and/or representation (see *Process Components Limited v Kason Kek-Gardner Limited* [2016] EWHC 2198 (Ch)) arising from Robert's clear and unequivocal conduct including sharing profits equally (and so signing in the accounts of LCP and LCLP), drawing the same amounts from LCP and LCLP, and advising Richard by emails to extract the same amount of money from the business over and above the LCP/LCLP drawings, on which Richard relied in continuing in the business.

75. There were clearly representations by Robert on which Richard relied, and an ongoing common assumption between him and Richard that they were equal partners. Robert desisted from any contention otherwise because that was the truth (whether or not at times he may have wanted a higher share and desisted from seeking it from "lack of

courage", or because he recognised Richard's equal contribution). The parties' overt conduct for more than 20 years reinforces my findings as to the applicable agreement between them. But were it otherwise, I would have found for a variation or estoppel as submitted in the alternative on behalf of Richard.

The extent of the partnership(s)

76. It is common ground that Richard and Robert carried on the jewellery business in London as partners in LCLP and until service of the Amended Defence and Counterclaim on 12 August 2016, there did not appear any dispute but that the partnership relationship extended beyond the business in the UK.

77. The case advanced by Robert in correspondence and in the Jersey proceedings to the effect that there was a partnership relationship that extended to the companies, can be seen from WLG's letter to DG dated 7 January 2014, in which reference was made to "*…a partnership dispute involving various companies and assets in three different jurisdictions…*"; Robert's Amended Answer dated 28 January 2016; and his trial affidavit dated 5 February 2016.

78. Robert's skeleton for his appeal in the present proceedings before Mr Foxton QC dated 23 June 2016 stated that he had always accepted that an analysis that there is a partnership of which the assets are the shares in RCJL, MLL, AGL and LCC might be correct and that Robert acknowledged the existence of a partnership of this kind in Jersey.

79. Indeed, Robert accepted in his oral evidence before me hat Lucie, he and Richard regarded themselves as partners in relation to the whole of the business, then including Bangkok and the business conducted through RCJL.

80. However, the case at trial on behalf of Robert was that there was never any partnership or partnerships outside London, that is in Bangkok (and later the BVI and New York) as between him and Richard or initially Lucie. It was argued that as a matter of law, a company and a partnership cannot co-exist simultaneously in respect of the same business; and that the partnership or partnerships alleged to have covered RCJL (to include MLL and the factory) and AGL never had any customers, assets or liabilities of its or their own; no partnership accounts were ever prepared; nor did the parties make any calculation aggregating the (different) profits and then dividing them up in the relevant proportions.

81. It was emphasised that from the outset, Robert had the minority shareholding in RCJL not held by Thai nationals and that RCJL bore the initials (RC) of his name and was so identified with him in Bangkok (as one might say the Lucie Campbell Partnership in London had been and remained thus identified with Lucie). RCJL had corporate identity and thus its own customers, and the profits made by RCJL each year were its own profits (just as at some point, profits were also made by Richard trading in his own name, kept in bank accounts in New York).

82. It was also said on behalf of Robert that what the parties thought at the outset was that they each had some interest in the stock, both in London and Bangkok, but that was to do with tangible assets and cash and had nothing to do with profits. Thus they told the accountant Mr Birns in 1996 that the shares in RCJL were all owned by Robert. This not only suited them from a tax point of view, but also reflected what they really thought at the time.

83. Richard's case on the other hand was that the legal effect of the parties' agreement from the beginning and as it evolved was that (a) their partnership (or alternatively partnerships) in the jewellery business extended beyond the London business and included overseas parts conducted through the companies and any jewellery trading undertaken by any of them in their own names; and (b) the assets of the partnership(s) were the business and assets in London and New York, and the shares in RCJL and the factory in Bangkok and the share in AGL (or at least such rights as any of them may have had in relation to the same).

84. The formulation and support for this case has not been without any difficulty, and has had to take into account questions as to proprietary claims, reflective loss and limitation, which I address in relation to relief below.

85. Thus whether the claim was in partnership or in simple contract, and whether there was one partnership or two in respect of (a) the business and assets of the Lucie Campbell Partnership in London and (b) the shares in RCJL and the factory in Bangkok and any further jewellery business carried on by those parties other than through the LC Partnership or RCJL, has somewhat varied between Richard's Particulars of Claim dated 26 May 2015 and amendments, re-amendments and replies eventually dated 28 September and 17 October 2016.

86. At trial, Richard's principal contention was that there was a single partnership, the relevant agreement between the parties evolving over time to encompass the business and assets of the companies through their shares, and Robert's ownership, control and management. I do not consider that any legal or practical issues regarding relief, or the

different ways in which Richard previously put his case, were sufficient to disprove that contention.

87. Richard's argument in principle was that whilst shareholders are not without more in law partners, if the intention and agreement between them personally is that they are partners then there is no difficulty in there being a partnership relationship between persons who are shareholders. The business of the partnership can and will be or include the management of the business conducted through one or more corporate entities - see, for example, *Dymont v Boyden* [2004] EWHC 350 (Ch). Thus for example it is common, in private equity funds, for a limited partnership to own shares in underlying companies.

88. The critical question is simply whether or not the parties intended and agreed to create a partnership and what they intended and agreed in relation to its scope: see for example *Bass Brewers Ltd v Appleby* [1996] PNLR 385 per Millett LJ:

> "*Partnership is defined by s.1 of the Partnership Act 1890 as the "relationship which subsists between persons carrying on a business in common with a view to profit". The existence of a partnership and the scope of the partnership business depend on the terms of any agreement into which the alleged partners have entered and their conduct including the scope of the activity in which they have engaged and their dealings with each other*."

89. In this case, meeting the definition of partnership in section 1 of the 1890 Act, there was (a) a business extending from the manufacture and purchase of jewellery to its sale both wholesale and retail (b) carried on by Lucie (initially) and then Robert and Richard in common in London, Bangkok and elsewhere (c) with a view to profit. The business included the business carried on through companies which Robert owned and/ or controlled and/or managed on behalf of himself, Lucie (initially) and then Robert.

90. Other evidence amply supported Richard's contention that the parties intended and agreed a partnership which extended beyond the business carried on in London, to Bangkok and the BVI and US. Thus:-

(a) Robert accepted in oral evidence that, prior to Richard joining, Lucie had a 50% interest in the Thai business because she was his business partner and that the 1990 discussion about Richard joining the business related to "*the whole entity of the London business and the Bangkok business*".

(b) Robert also eventually accepted that saw themselves as partners in relation to the whole of the business wherever it was conducted and whether through corporate entities or not and also specifically agreed with the proposition that he regarded

LCC and all the "businesses" as being part of the business which he was carrying on with his brother with a view to profiit.

(c) Lucie, Robert and Richard each had a say in all aspects of the business, and Robert and Richard consulted each other in reaching management decisions on numerous occasions accordingly (points towards partner status: see *Blackett-Ord & Haren, Partnership Law* (5th edn) at para 2.34.

(d) When Lucie retired in 1997, the valuation of the business was undertaken (despite Robert's attempts at evasion on this subject in the Lucie Campbell proceedings and in his oral evidence) by reference to all the assets of the jewellery business, including all the assets of the Lucie Campbell Partnership in London and those of RCJL in Bangkok, no distinction being made between them and no discount being applied to the latter (on the basis, for example, that shares in RCJL were held by Thai nationals).

(e) It is common ground that Robert and Richard owed each other a duty of good faith in relation to all their jewellery business (not limited to London, that being "*perhaps the most fundamental obligation which the law imposes on a partner*": and highly indicative of the existence of a partnership relationship: see *Lindley & Banks on Partnership* (19th edn) at paras 16-01 and 2-06.

(f) Robert also accepted that, when he withdrew money from the business in the form of personal expenses, Richard was entitled to take an equivalent amount and they proceeded on the basis that when one made what was effectively a drawing from the business, the other was entitled to make a drawing of an equivalent amount.

(g) RCJL was established using monies from the London business and assets, as was the purchase of the factory buildings in Bangkok and (as Robert admitted in his oral evidence, despite his claim in a previous witness statement that the funding came from RCJL) their refurbishment.

(h) Indeed, the balance sheets of Lucie Campbell Partnership and then LCLP carried forward "*investments*" of £11,900 in connection with RCJL - although Mr Birns' note of the meeting on 17 July 1996 suggests that by then no-one knew (or wanted to say) exactly what that represented.

(i) Robert also made it clear in his oral evidence that the Thai nationals were never intended to have any economic interest in RCJL's business or its factory buildings (owned by MLL).

(j) As regards AGL, it was set up to make a profit offshore from the purchase of jewellery from RCJL and its sale to LCLP and was clearly a "bridge" in a single family business spanning the two. As with LCC and indeed transactions conducted by Robert and Richard in their own names (including auction sales),

all jewellery business operated by the brothers or their companies was treated as within the scope of their partnership.

91. Richard accepts that (however Lucie and Robert may have looked at matters commercially) the companies held assets and traded (with creditors as well as debtors and so forth) in their own right and that, therefore, the partnership did not itself own and trade in its assets, but rather owned the shares in the companies or such rights as the partners had in respect of those shares.

92. It is ironic therefore that it was submitted on behalf of Robert, in an attempt to explain the strong evidence in support of the partnership covering Bangkok, including the valuation on Lucie's retirement, that rather than a partnership extending to business outside London, Lucie, Robert and Richard intended only to share in the companies' assets, that is its stock, raw materials and cash.

93. Robert seeks to characterise Richard's claims as "proprietary, vesting claims" and draws attention to section 2(1) of the 1890 Act which provides: "*Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof*." However, that seems to me a diversion from his personal liabilities to Richard as his long-time partner not only in the UK but also abroad, where (probably for both UK tax and Thai regulatory reasons) Robert had control of ownership though his nominees (or initially in the BVI, through trustees).

94. The suggestion that Lucie (initially) and then Richard were intended, regarded or agreed by Robert as having some type of interest in the overseas companies' assets but were not partners outside London is inherently implausible given that (a) they were engaged in partnership business in London and (b) the businesses in Bangkok and subsequently New York and the BVI, was so connected with that London business and they used raw materials, stock and cash for business worldwide and the family's drawings, overall on an equal basis.

95. In that regard, I was not persuaded by the play sought to be made on behalf of Robert, with Richard's evidence regarding the valuation of listed assets on Lucie's retirement, of which he said: "*it was understood and accepted by all of us that she had a third interest in the assets which I've listed*".

96. Turning to the overseas companies, Robert suggests that Richard's case is unattractive because their ownership by Robert and his Thai nominees was the subject of their conscious decisions based on tax advice and (in the case of Thai companies) the

requirements of local legislation. There is some force in the contention that Richard believed at the time that there were tax advantages in the shares being held other than by himself and his having no legal entitlement - the premise of the "*asset reorganisation*" which he sought in 2011.

97. Among other consequences, Robert submits that because of the Thai law restrictions on ownership by foreigners, Richard did not and never could have had any legal or beneficial interest in (a) 51% of the shares of RCJL or (b) the factory buildings used by RCJL. He knew that; and those assets necessarily fell outside the scope of the agreement made in 1990 and the partnership arising from it. When RCJL's share capital was increased to 60,000 shares in 1997, Robert retained 49% of the shares and as a result of the transfer which he recently made, Richard now holds 49% of that 49%. Robert submits that if and insofar as he retained the 'control' or 'economic benefit' of the 51% of RCJL shares or land, this was not capable of constituting an asset.

98. As for AGL, whilst Robert accepted in oral evidence that it was set up with a view to making profits from the jewellery business, to be shared between Richard and Robert, its single share was originally held by XYZ Ltd, which executed a Declaration of Trust in favour of the K Trust. The Trust Deed of the K Trust seems no longer available, but from some notes made by Mr Birns, the accountant consulted by Richard, it appears to have been a discretionary trust with Jersey trustees, originally settled in 1997 to enable Robert and Richard to invest in properties in the UK together with a Mr Martin Kirk separately from their jewellery business.

99. Robert contends that accordingly the share in AGL was never an asset of any partnership - neither partner held the share in AGL, nor were they trustees of the K Trust. He claims that whether or not the parties understood or fully appreciated the consequences of the share in AGL being placed in a trust cannot change the objective legal position or provide a basis for characterising any property or interest in the share as an asset of the partnership.

100. Further (says Robert):-

(a) While Richard complains about the circumstances in which the K Trust came to an end and the share in and directorship of AGL were transferred to Nat (as confirmed by Steven Parmenter's email to Robert of 12 November 2002), his case is that Nat now holds the share on trust for Robert and himself. But on that basis, says Robert, any relief must be directed at Nat: one beneficiary does not have a cause of action against another beneficiary to compel him to give joint instructions to a trustee.

(b) Moreover, given that the share in AGL was originally held by nominees for the K Trust, Robert submits that there would have to be an examination of the terms of the trust on which Nat now holds the share. Since the K Trust appears to have been a discretionary trust for a range of beneficiaries, Richard would not have any right to have the share, or any new shares, vested in him. And since Richard chose not to join Nat to these proceedings so that these matters could be resolved, the Court can do nothing more at this stage.

(c) Finally, LCC was set up as a joint enterprise between Robert and Richard for the benefit of the businesses already carried on by them. Robert has accepted in these proceedings that LCC's shares were to be held on trust for them in the same proportions in which they shared LCLP and has transferred 49% of the shares to Richard. Robert expressly accepted that the only remaining issue in relation to this part of Richard's claim is, therefore, whether he was entitled to 49% or 50% (and I find for the latter, so that Robert should immediately transfer a further 1% to Richard).

101. I reject these forensic objections as grounds for finding against Richard as regards the scope of his partnership with Robert, which the parties agreed and treated as extending to and including the overseas companies. They did not wish Richard overtly to own or control the shares in and businesses of those companies. Robert, living in Thailand, was trusted to do so on behalf of their partnership. For many years this seemed a successful arrangement for both but at some point Robert decided to exploit his control and Richard's vulnerability, considering himself able and for his own reasons justified in excluding Richard and seeking to appropriate his equal interest.

102. The use of the Thai nominees in particular Nat and their children did and does not relieve Robert of his personal obligations to Richard. Whilst the Thai restrictions on foreign ownership of shares in Thai companies (including Thai land-owning companies) together with Nat's role as owner and director of the AGL share might prevent or complicate proprietary remedies and enforcement, they render Robert's personal obligations all the more important.

103. At the very least Robert, if he did and does not control Nat's role in AGL, had a conflict ion interest. More obviously he does control her and Richard was worse off, or at risk of being worse off, than with third party Thai nominees who had executed signed blank share transfers. Unless Richard gave informed consent to such arrangements, Robert should be treated as taking the risk that Nat would not follow his instructions on behalf of himself and Richard.

104. It was also submitted on behalf of Robert that, whilst Robert did regard Lucie as entitled to part of the business in Thailand (and he agreed with Richard in 1990 that his share "*included Bangkok*"):

(a) that did not mean that he agreed to their being his "*business partners*" in an overall or additional partnership aside from the London partnership;

(b) the Lucie Campbell Partnership in London was the only partnership to which Lucie, Robert and Richard referred according to the accountant Mr Birns' notes of their meeting in July 1996, despite also referring in that meeting to the business being carried on in Bangkok; and

(c) whilst the information used for Mr Wonacott to calculate how much she would be paid was not restricted to the assets and liabilities of the London partnership, the parties do not appear to have sought legal advice or focussed upon Lucie's strict legal entitlement, but aimed more at a fair, commercial deal.

105. With respect, these points seem to me, in context and given the other evidence which I have mentioned, to add little beyond rhetoric. Once it is accepted or established that Lucie (initially) and then Richard were partners of Robert's in London and were entitled to a part or share in the closely connected Bangkok business, Robert's recent insistence that they were not partners because of what they chose to tell UK accountants about their offshore arrangements or because they were not legalistic in their drawings is in truth neither here nor there.

106. On behalf of Robert, it was also sought to stress that the valuation list on Lucie's retirement included (a) the stock of RCJL and the factory buildings in Bangkok, which Richard now accepts cannot have been a partnership asset, and does not mention any shares which Robert (or Richard) held and (b) £1 million "cash" but Richard stated this represented sums which "*had been invested in the South London property business*", that is, not the jewellery business allegedly the subject of the partnership.

107. However, if and insofar as the parties did not distinguish between shares in companies, assets of companies, and other property or investments owned by them jointly and equally, that does not (in my judgment) significantly affect the correct analysis of the legal relations between them now in issue.

108. It was further argued for Robert that the arrangements as to sharing and drawing profits other than from the Lucie Campbell Partnership and then LCLP were not properly pleaded, particularised or proved; and that in that regard and others, there was such uncertainty as to the terms of any worldwide "*super-partnership*" that it cannot be treated as legally binding and given legal effect.

109. Robert claimed that Richard did put forward any proper case as regards the 'profit' with a view to which the parties were allegedly carrying on business in common - a significant omission where the business which is allegedly the subject of the partnership(s) is carried on by corporate entities since:

(a) to treat the assets of a company or profits generated by it as somehow belonging to a partnership would be impermissibly to ignore the separate legal personality of the company;

(b) whilst a partnership might be in the business of investing in shares and sharing the profits of that enterprise (whether through dividends or selling the shares) such a business would not be carrying on the activities of the companies in which the shares were held but would be trading in shares - which was not the business of Robert and Richard in relation to Bangkok or the BVI or New York;

(c) thus, Robert and Richard must have been no more than co-owners of shares, not partners, their business relationship being governed solely by the corporate structures, including the articles of association and the applicable statutory provisions; and

(d) any remuneration paid to them by the companies was for their services as individuals, not the profits of a business carried on by the individual in common with others.

110. These submissions, in my judgment, bypassed or sought to gloss over the essential facts in the present case - that the parties agreed on an equal partnership, on which they each variously drew equally, which encompassed the assets and profits from their personal and corporate business in jewellery, wherever and through whomsoever that took place.

111. That the parties did not produce consolidated accounts of all profits probably resulted from their family trust, relative informality and chosen tax-driven arrangements, and whilst this may cause practical obstacles and limits to relief on the winding up of their partnership, it does not invalidate the analysis of an extended partnership in itself.

112. Thus the partners shared or purportedly shared or were to share (a) in the case of Lucie on retirement, in asset values including Bangkok (b) in the case of AGL, by payments to the K Trust for Robert and Richard's equal benefit and (c) by allowing Richard to draw equivalent amounts to Robert's advised drawings from RCJL. Whether either side failed in the accounting this required will be examined if necessary under the relief which will now be ordered.

113. I am satisfied also that the terms of this partnership (being a relationship by agreement) were sufficiently certain and complete to be enforceable (see *Cayzer v Beddow* [2007] EWCA Civ 644). The assets of the partnership including the value of its shares in the companies (whether held by Robert, Richard, or Robert's nominees including Nat) and the profits made to date are properly the subject of outstanding accounts on each side.

114. In the end, as to these areas of dispute:

(a) I do not consider there is any legal objection in principle as to the existence and scope of a partnership the assets of which are or include the shares in a company or companies, operating a business controlled and/or conducted and/or profited from wholly or in part by the partners or some of them, such that the partners are accountable to each other.

(b) It is all a matter of agreement and unless the company involves some agreement (for example in the form of Articles of Association) binding between the parties and ousting or overriding other agreements between them, those other agreements survive and remain applicable in law.

(c) In the present case, there was no legal inconsistency between the inclusion of RCJL, MLL, AGL and LCC's shares in the assets of the partnership between Robert and Richard, which in my judgment was clearly intended and agreed between them, and the corporate personalities and structures.

(d) The preponderance of the evidence, including Robert's inconsistencies and admissions in his oral evidence, satisfy me that whatever they may have told their accountants and other professionals, Robert and Lucie (initially) and then Richard agreed throughout that the overseas companies and business would be conducted by them in, and as part of their partnership.

(e) The partnership upon which they were agreed carried with it personal obligations between Robert and Richard, including obligations to account for the value of the shares in and any drawings or profits from the companies: the legal ownership of some of the shares in Nat and other Thai nationals on behalf of Robert was not intended to reduce his control or transfer any economic value away from the partnership, and Robert remained accountable to Richard for an equal share with him in the whole.

(f) Robert's attempt to resist any relief against him in respect of the shares in RCJL, MLL and AGL held by his wife and children and other Thai nominees, is based on the arrangements made when he was trusted to have control of those arrangements on behalf of himself and Richard, probably for tax reasons, and which he now seeks to hide behind.

115. As I have already mentioned, the way in which the partnership was arranged and conducted overseas under Robert's control and with Thai nominee owners including principally Nat, and no consolidated accounts, leads to complications as regards questions of breach of duty and relief, to which I now turn.

116. Before doing so however, I should add that even if I were wrong as regards the scope of the partnership as regards RJCL, MLL and AGL (and LCC), I would still seek to wind up relations between Robert and Richard and ensure full and accurate accounting between them as regards their admitted "co-ownership" and on the basis of the admitted fiduciary duties between them.

117. Richard would found the Court's jurisdiction in this regard on cases relating to unregistered associations or friendly societies (such as Re Lead Co's Workmen's Fund Society [1904] 2 Ch 196) dealing with funds belonging to a number of people when there is no statutory basis for dissolving the fund and distributing the assets. Robert would contend that these are far removed from the present case, in which there are overseas companies which can be wound up under the relevant local legislation separately from a partnership in England which is being wound up in the usual way.

118. I would disagree with that objection, which appears to me an artifice consistent with Robert's desire to exploit and hide behind the foreign corporate structures, and a perversion of the parties' former underlying trust.

119. No grounds are put forward to support any expectation of enforcement of Robert's admitted obligations, or justice (and the effective and efficient resolution of their differences) between these parties, through the winding up of the overseas companies of which he has had charge and in which the shares are held by his wife Nat and other nominees. Indeed on what I have learnt of the matter, I have little confidence that this would be achieved, at least without a great deal more delay, expense and animosity.

The alleged breaches of duty

120. It is common ground that Richard and Robert owed each other duties (a) to act in good faith, openly and honestly and (b) to render to each other timely, accurate and full accounts and information within their respective knowledge in relation to the business: see the Re-amended Particulars of Claim para 11b and the Re-amended Defence and Counterclaim para 16. These duties were imposed as a matter of law or as an implied

term of the agreement between them: see section 28 of the 1890 Act and *Lindley & Banks,* Ch 16.

121. Further, partners (as agents) owe each other duties of care in relation to the aspects of the partnership business for which they are responsible: see *Tann v Herrington* [2009] PNLR 22. This amounts to a duty to take reasonable care to protect and preserve the business and its assets for the benefit of the partners.

122. Richard's complaints fall under two related heads. First, he claims that Robert failed to protect his interests (a) in the Bangkok business and assets including the factory through dealings as regards the shares of RCJL and MLL in 1997, 2007 and 2010 and (b) in the BVI business and assets through dealings as regards the share in AGL in 2002.

123. Secondly he claims that Robert has withheld from him information, in particular as regards what has happened as regards the shares, and full accounts as regards overseas business by Robert and the companies under his control. The duty to give information to fellow partners includes a duty to pass on to each other (unasked) any matter affecting the partnership and other information which the other partner needs to know: see *Blackett-Ord & Haren,* para 11-16.

124. Robert admitted in oral evidence that after 2012 he sought to exclude Richard from the overseas businesses because of some (unparticularised) behaviour by Richard which he found unacceptable and even abhorent. That does not mean that the arrangements Robert made as regards RCJL and MLL in 1997 were negligent, or the various transfers to Nat as regards AGL in 2002, as regards RCJL in 2007 and as regards MLL in 2010, were intended deliberately to prejudice Richard, but they are now relied on by Robert as having that effect - that is, as preventing Richard from effective proprietary remedies to vindicate his equal partnership rights on a winding up.

125. Richard contends that Robert was at fault, prejudicing the partnership's assets and Richard's interests without at least the protection of signed blank transfer forms, negligently as regards the reorganisation of RCJL's shares in 1997 and deliberately as regards Nat's ownership of the shares in AGL, RCJL and MLL in 2002, 2007 and 2010. He says that as a result of the various transfers Robert has engineered a situation whereby he controls and has the effective benefit of the Thai business to the exclusion of Richard and also has control of AGL. Indeed Robert's oral evidence was that Nat was supposed to hold the AGL share on behalf of Richard and Robert; but that Nat's

own position is that she is not prepared to cooperate and Robert now has no expectation that she would cooperate.

126. It appears that, despite his previous use of signed blank transfers in Thailand and in the BVI without any problems, Robert did not procure or attempt to procure in the case of AGL, RCJL and MLL in 2002, 2007 and 2010 that the transferees signed such forms. The use of such forms is not unlawful under Thai law and according to Khun Wirot there was no practical risk that the arrangement might be investigated by the Thai authorities; for his part Khun Bancha knew of such forms being used and did not identify (from his 24 years of practice) any case where it turned out to be problematic.

127. The fact that the transferees were Robert's wife and children was no reason not to use signed forms. Robert accepted in his oral evidence that it would have been sensible to obtain signed blank transfer forms from his wife. Robert and his immediate family were protected; Richard was exposed to the risk that, if the relationship between him and Robert broke down, the transferees would (as has happened) side with Robert.

128. Although the changes to RCJL's share structure in 1997, supposedly to protect Robert and Richard as non-Thai nationals, retained the economic value for them as ordinary B shareholders because of their greater votes per shares, the quorum provisions rendered this nugatory since the nominee holders of the preference A shares could block any resolution (rendering the votes irrelevant) by simply not attending a convened meeting (not that there ever were meetings, according to Robert). As Robert is the sole director - having procured the removal of Richard without his knowledge or consent in September 2012 - Richard has no say at all in how RCJL is run.

129. Richard submitted that RCJL's articles ought to have been drafted in a way that provided for the quorum to be set in a way that Richard and Robert could have satisfied without the attendance of the Thai shareholders. Khan Bancha accepted that Thai law required only that shareholders representing at least a quarter of the capital are present to constitute a quorum, and did not identify any problems in practice in quorum provisions which would have permitted the foreign shareholders to call meetings without reference to the Thai shareholders.

130. Robert claims that he obtained legal advice from a Thai lawyer a Mr Crystal as to the changes to RCJL's share structure that were made in 1997, but did not disclose that advice and purported not even to remember whether he read the amended articles (signed by him in both Thai and English).

131. As for AGL, Robert had its single share transferred to Nat in 2002, he said, for her to hold for him and Richard; as for MLL, he caused it to be formed and acquire the Bangkok factory buildings owned and used by RCJL in the jewellery business, with a different share structure to RCJL's (which he accepted in oral evidence would have been safer) and later, in 2010, placed the shares in Nat's name (or their children's); and in each case again he did not arrange signed blank transfer forms.

132. It is not clear that Robert might have told Richard in 1997 or subsequently about MLL as a company separate from RCJL acquiring the factory buildings in Bangkok or what the reason for that separation, in the interests of the partnership, might have been.

133. I am however not satisfied that Robert never mentioned MLL at all to Richard, so that Richard could be said to have known nothing of it all until 2012, since:
    (a) in his oral evidence Richard seemed to have forgotten a number of matters and did not confirm that he knew nothing of MLL but said only that there were no documents showing that he did and he did not recollect the matter being discussed;
    (b) his written evidence in the BVI suggested that he had in fact discussed the establishment of MLL with Robert and his oral evidence did not explain why he did not then mention allegedly not being told of MLL at all;
    (c) he said that he did not raise any issue with Robert when he saw his instructions to his Thai lawyer for a will in 2002, because he did not know MLL held the factory buildings, which is a different point (see below); and
    (d) he instructed Thai lawyers to go to the Land Registry (not directly to the Ministry of Commerce) when making inquiries about the holding of the factory buildings - but that again does not mean that he had not previously heard of MLL.

134. Of greater importance, to my mind, is whether Robert told Richard about the share transfers to Nat in 2002 as regards AGL and to Nat and her children as regards MLL in 2010. In each case, there was no documentary evidence either way and, in the light of Richard's denial, Robert did not purport to remember doing so.

135. It may then be thought that Robert would have had no reason not to tell Richard of the establishment and use of MLL as a similar but separate company acquiring RCJL's factory in 1997, for example: (a) there may have been a good or innocent reason for the use of two companies rather than one and (b) it may not then have been of much significance to Richard and he may have forgotten it, and for that aspect to have merged into the suspicions which took over 15 years later. The difficulty is that no

reason has been advanced as to why, in the interests of Richard as well as Robert, a separate company from RCJL with a different share structure, was necessary.

136. As for the transfer of the single share in AGL to Nat in 2002 and the transfer of the shares in MLL to her and the children in 2010, given among other things Richard's documented unhappiness (when told after the event) regarding the transfers to them in respect of RCJL in 2007 (see the emails between them from 13 to 21 September 2007), it seems to me more likely than not that Robert did not tell Richard that Nat was to hold and indeed held (a) the share in AGL (as from 2002) and (b) with their children, all the shares in MLL (as from 2010).

137. On behalf of Robert, it was submitted that Richard's claim that he procured or permitted share transfers in breach of duty gives rise to no entitlement to relief. Robert says that he had no enforceable rights under Thai law in respect of shares held by and transferred between Thai nominees; and that it was more beneficial to Richard for Robert himself (as regards a small number) and his wife and children (and in one case Kai, a long-term RCJL employee) to hold shares, than unconnected third parties. That submission was unrealistic and, as shown by subsequent events, incorrect.

138. As regards the 2002 transfer of the share in AGL to Nat, I believed Richard in saying that he would have remembered if he had been told that Nat had the share, because this is a "*very important matter*", even though he appeared to have forgotten that the he share had been previously held by the K Trust. I did not trust Robert's purportedly clear recollection that Nat's role was discussed at the time. The parties were in discussions at the time about the acquisition of the New Bond Street shop and may have discussed the need for AGL to open a new bank account, but Richard did not want to be more involved than he had to, as regards the K Trust.

139. Whilst the business relationship seemed constructive at that time, Robert may well have been reticent in consulting Richard as to Nat's part. He may, to use his own phrase, have "*lacked the courage*" to tell Richard that his wife was assuming legal ownership and control of AGL in place of an independent (in this case professional) third party.

140. As for the loss of protection as regards signed blank transfer forms from nominee Thai shareholders, Robert said that they had been part of the overall package of advice that the Thai lawyer Mr Nivet gave him in setting up RCJL but that he considered their use not to guarantee control over the relevant shares, since for example, the transferor might contest the validity of the form and there might be more than one such form in

existence. I considered these suggestions disingenuous. However common or uncommon in practice such forms might be generally in Thailand, Robert had used them for RCJL on Thai legal advice and gave no reason for dispensing with them subsequently.

141. Robert has failed to explain the absence of signed blank transfer forms and against this background, and Robert's tendency to hide behind Thai aspects, I am also sceptical as to the changes in RCJL's share structure which (a) allowed his nominees to block any quorum and (b) were not in fact required by changes in Thai law, since the proposals for change were publicly withdrawn in August 2007, before Robert told Richard in September that they were the reason for the share reorganisation.

142. However whilst the need for Thai nominee shareholders to participate in a quorum exacerbated the lack of signed transfer forms, I doubt that this quorum aspect in itself was deliberate as far as Robert was concerned. Khun Wirot's evidence was that a quorum requirement specified by reference to voting rights had not been accepted by the Thai Ministry of Commerce for decades. It is possible that it was overlooked or that the Thai lawyer such as Mr Nivet might be concerned (if he turned his mind to it) that it would make more possible a risk of investigation under a (tougher) FBA.

143. Whilst the creation of two classes of shares such that the Thai nominees had only a minority of the voting rights was some improvement in theory (and perhaps a wider response by Thai lawyers to the signs of possible "*toughening up*" of the FBA), the loss of signed transfer forms created a risk to Richard's ownership share. It laid the ground for Nat and the children to be put in place without overt control on Richard's behalf, since Robert and Richard's greater voting rights could be defeated by the need for the Thai nominees to participate in a quorum.

144. Accordingly, notwithstanding the submissions forcefully made on behalf of Robert as above, I am satisfied, given (a) his responsibility towards Richard for the Thai business and AGL (b) the way in which he procured dealings in the AGL, RCJL and MLL shares purportedly in favour of his wife and family without Richard's approval and (c) the conflict of interest on the part of Robert and prejudice thereby caused to Richard, that Robert acted in breach of the obligation to take care to protect and preserve the partnership assets (that is, the shares in the companies) and to be open with Richard at the time: this meant seeking Richard's approval on an informed basis and protecting his interest in respect of the risks to his ownership share, especially if there was any potential conflict of interest between them; and Robert did not do so.

145. I dare say that it is likely that Nat and the children do act in accordance with Robert's wishes as regards AGL, and RCJL and MLL. As recently as in October 2015, Robert's lawyers were describing his family members as nominee shareholders - and (strangely) that they were Richard's nominees.

146. Whatever the Thai law on nominee arrangements, and whether Nat and the children have a legal duty under Thai law to act on Robert's and Richard's instructions, Robert's obligations as a partner (under English law) required him to seek that they so act; and his failure to do so but rather his attempt to use their position as shareholders against Richard's interest, and as a way of appropriating for his own benefit the value of AGL, MLL and RCJL and desisting from a full and true account.

147. In summary, Richard was entitled as against Robert to take part in the management of the partnership and Robert was under a duty to inform Richard of (a) the incorporation of MLL and that it acquired the factory buildings; (b) the transfer of the share in AGL from the trustee of the K Trust to Nat; and (c) the corporate changes he procured in respect of RCJL. He was also under a duty to respond truthfully and promptly to reasonable requests for information about the partnership's affairs.

148. In short, in my judgment, Robert committed striking breaches of duty:
    a) Robert failed to provide Richard with basic information about (i) MLL and its acquisition of the Bangkok factory and (ii) AGL and the placing of its share in the name of Nat - information which Richard had to seek elsewhere;
    b) Robert refused to provide Richard with information requested by him in relation to the affairs of RCJL, accepting in oral evidence that he wanted to be obstructive and had no intention of providing his brother with any information, and instead removed him as a director and attempted (unsuccessfully) to remove him as a shareholder in RCJL, without even informing him; and
    c) Robert failed to respond to requests from Richard to clarify the nature of the interest in LCLP, RCJL, MLL, AGL and LCC claimed by him (see the correspondence in Bundle P1 including pp 55-63, 64-66, 96-102, 118-119, 121, 125-126, 128-129, 135-141, 162-177, 219, 230-232, 241-242, 245-249, 263-264 and 266-267). He would not acknowledge Richard's interest and would not provide Richard with documents and financial information even after he accepted that Richard had a 49% partnership share.

149. Whilst the information requested by Richard may be seen as extensive it was necessarily so, and I am unpersuaded that the requests were unreasonable either for that reason or because of any negotiation, mediation or other collateral communications or events involving the parties.

Relief

150. Richard emphasises that this is not a case in which one party simply seeks compensation from the other for breach of duty - the ongoing commercial relationship between Robert and Richard (whether partners as I find, or co-owners as Robert contended) has to be brought to an end; and given that there appears to have been little or no consensual progress since Richard suggestions to resolve matters since 23 February 2012, the (English) court must achieve this; and the extent and quantification of the loss and damage caused to Richard by Robert's breaches of duty depends (to some extent at least) on what winding up orders the Court is minded to make.

151. Thus Richard seeks (a) accounts to find out what Robert and Richard have each received and to secure to Richard a payment that ensures that they have benefited equally; (b) the equal division of the current value (net of liabilities) of the various parts of the business, in cash or *in specie*, the effect of which would be to divide the value of the business between Richard and Robert; and (c) compensation for any loss and damage caused by Robert's breaches of duty not made good by (a) and (b).

152. The partnership(s) between Richard and Robert has/have been dissolved, as stated in the recital to Deputy Master Nurse's order of 12 November 2015. This marks the commencement of its winding up and (subject to agreement or the Court's order) the partnership's management remains in the hands of the partners during its winding up. Normally, in the case of a general dissolution, the duty of the partners is to wind up the business of the firm by realising the partnership assets, paying its creditors and distributing any surplus between the partners: see *Blackett-Ord & Haren*, para 18.1.

153. Section 39 of the 1890 Act provides: "*On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for*

that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm."

154. According to Lord Atkinson in *Hugh Stevenson & Sons Ltd v Aktiengesellschaft fur Caeton* [1918] AC 239, 255: "*The realisation of the assets and their distribution according to the rights so ascertained and declared is a proceeding of an administrative character in which, of two or more modes of procedure, all legitimate, that one may be chosen which is best suited to the special circumstances of the case*."

155. I accept the submissions on behalf of Richard as to the breadth of the Court's powers in this regard, essentially as follows:-

(a) The Court exercises a supervisory jurisdiction over the winding up of partnerships and has a discretionary power to fashion such order as is appropriate in all of the circumstances: Lindley & Banks, para 25-52 and Hurst v Bryk [2002] 1 AC 185, 194.

(b) The Court has power to order a partition or in specie distribution of the assets, and (if necessary) to order an equalisation payment: see Blackett-Ord & Haren, paras 18.42 to 18.50 and Pick v Pick [2007] All ER (D) 318.

(c) In addition, section 14 of the Trusts of Land and Appointment of Trustees Act 1996 also gives the Court the power to order partition of co-owned land, with or without beneficiary consent, and with or without an equalisation payment: see Hopper v Hopper [2008] EWHC 228 (Ch).

(d) The Court has power to make an order that one partner buy out the interest of the other - a so-called Syers v Syers (1876) 1 App Cas 174 order (see Lindley & Banks, paras 23-183 to 23-192) – which may be permissive or compulsory: Mullins v Laughton [2003] Ch 250 and Lindley & Banks, para 23-191.

(e) Where one partner has appropriated an asset for himself, the Court can order that he account for its value: Blackett-Ord & Haren, para 18.41, Such order may relate to the whole or part of a partner's share, although there may be no practical distinction between a partial order and an in specie distribution order: see Lindley & Banks, para 23-190.

(f) The Court's powers are also wide enough to require (by mandatory injunction pursuant to section 37 of the Senior Courts Act 1981) one or more the partners to take particular steps with regard to the partnership assets, where such steps may be necessary to realise, preserve or enhance the value of the assets.

(g) When the Court orders a sale, it has a discretion as to the mode of the sale. In particular, whether there is to be public marketing or simply an auction between

the partners; and, where there is public marketing, whether the partners are to have liberty to bid: see Blackett-Ord & Haren, paras 18.43 and 18.44.

(h) To the extent that one partner contends that another has acted in breach of duty, a claim can only be advanced as part of the taking of an account: the Court determines the net position having taken into account all debits and credits, including any loss caused by a breach of duty: see Hurst v Bryk and Cowan v Wakeling [2008] EWCA Civ 229.

(i) The taking of an account may lead to an order that a party pay a sum of money or transfer an asset to another, but not necessarily. A person to whom another is liable to account has a substantive entitlement to know the state of the account, whether or not that ultimately leads to an order requiring the payment of money or the transfer of assets: see Snell's Equity (33rd edn) paras 20-012 to 20-022, AG v Cocke [1988] Ch 414 and Lindley & Banks paras 23-75 to 23-81.

(j) In the case of co-ownership in an association short of a partnership, but involving duties of mutual trust and confidence, the Court has an inherent power, or a power implied from the terms of the relationship, to make orders to bring it to an end if and when it breaks down for example, by requiring a sale of the assets or steps o wind up any corporate entities: examples cited on behalf of Richard are Re Lead Co's Workmen's Fund Society (mentioned above), Re William Denby & Sons Ltd v Sick and Benevolent Fund [1971] 1 WLR 973 and Baker v West Reading Social Club [2014] EWHC 3033 (Ch).

156. Whilst Richard previously sought legal transfers to him in respect of shares in RCJL, MLL and AGL (as well as LCC), I consider that this is a matter of discretionary remedy rather than legal right (such that Robert was not in breach of duty by failing to effect such transfers). Moreover, that does not appear a simple or practical course, given that Thai law would restrict foreign ownership, the companies are overseas and relevant shares in RCJL and MLL are in the names of Nat and the children.

157. Although interim injunctions could be directed personally at Robert, both in negative (prohibitive) and positive (mandatory) form, foreign enforcement of such injunctions may present difficulty in the absence of cooperation, and the Court is more concerned at this stage with a fair process for final resolution.

158. Richard's revised "winding up and accounting proposals" dated 7 November 2016 involve an *in specie* division of assets such that Richard's interest in RCJL, MLL and AGL be transferred to Robert and Robert's interest in LCLP and LCC be transferred to Richard in each case at valuations to be agreed between the parties or determined by

the Court. That would be prefaced by an accounting from Robert in relation to RCJL, MLL and AGL and from Richard in relation to LCLP and LCC.

159. In my judgment such a process would be just and appropriate in the unusual circumstances of this case, and I do not (on the basis of the parties cross-proposals before me) see any strong reason in principle or practice why it should not be achieved. Robert has in substance, using his wife and children and Thai lawyers, appropriated RCJL, MLL and AGL for himself. He is in *de facto* control of those entities, Richard derives no benefit from them and has no realistic prospect of deriving any benefit from them in the future. The prospect of a fair sale of such companies on the open market, achieving a proper price, does not seem to me promising.

160. As for the accounting, whilst there were annual accounts for LCLP, LCC, and RCJL and MLL, the accounting between Richard and Robert was – as might be expected between brothers successful in business together for so many years – largely informal. It was understood and agreed that each was entitled to share equally in the fruits of their jewellery business wherever it was conducted and regardless of how or by which entity the profit was made, and they purported to account on that basis as evidenced by Robert's annual reconciliations of his drawings.

161. Richard believes that, even before the relationship broke down in 2012, Robert did not, in fact, properly account for the cash and assets he received and his grounds cannot be dismissed at this stage. Since the breakdown in the relationship: (a) no accounting has taken place, save for equal drawings from LCLP and an exchange of accounting documents pursuant to orders made by Deputy Master Nurse and the Chief Master; (b) Robert admitted to making sales to persons competing with LCLP; and (c) Robert has been unwilling to supply information, did not adequately explain various transactions (for example the "*Red Oak*" transactions) and would not provide any details of AGL's recent activities.

162. On his side, Robert's counterclaim also sought a winding up and accounts, albeit limited to LCLP and any personal jewellery transactions by Richard. He drew attention to Richard's evidence:

(a) that "*I kept records of any sales that I made in my own name and I always treated the proceeds as business monies. … In addition, where I was paid a commission on sales, I also treated the money as business money (rather than my own money) for the purposes of the accounting between us*"; and

(b) that he (Richard) had unilaterally carried out a number of transactions (including the writing-off of loans owed by LCLP) because he believed that to be "*prudent*" in the light of his dispute with Robert.

163. It was submitted on behalf of Robert, in my view justifiably so, that transactions of this nature, ought to have been recorded in the partnership accounts and disclosed, and Robert complained that Richard had not done so and that any account ordered should address any such transactions, using the records which Richard says he maintained. Certainly, as Robert says, any amounts owed by LCLP to AGL which were written off by Richard unilaterally, must be restored in the accounts.

164. Robert accepted generally in oral evidence that the parties need to account to each other; and made an affidavit in the Jersey proceedings accepting that the account should take place in England and should relate to the whole of the business, which he confirmed during cross-examination in Jersey.

165. Robert purports not to understand whether there equal entitlement as regards profits and drawings extended to remuneration, personal expenditure and the like so it must be made clear that it did and does. Robert also denies that there are grounds for ordering accounts before open warfare commenced, say around 1 January 2012 but I disagree. There are sufficient suspicions as dealings before then to justify mutual accounts.

166. However, to seek to go back over every item in the last 26 years would be disproportionate and impracticable and I would be minded to limit the accounts, as Richard has suggested to the last 10 years, that is from 1 January 2007 (before the 2007 and 2010 share dealings, and 5 years before open warfare); and also to accept his proposal (which I did not understand to be opposed if accounts are ordered that far back) that these need only identify transactions of US$1,000 or more or prior to 1 January 2010, $50,000 or more.

167. I did not understand Robert to oppose this form of order, if contrary to his submission, mutual accounts were to go that far back. Indeed he sought to contrast it with Richard's previously "*insisting on answers to large numbers of detailed questions about every conceivable transaction, without regard to proportionality*". But if the parties cannot agree the parameters and exact wording, I will do so at the hearing following this judgment, which I direct as below.

168. Before that however I must address another, fundamental legal objection on behalf of Robert: that an order for accounts would, in its application to the companies' assets,

liabilities, profits and losses, offend the rule regarding the legal inability of shareholders recovering for "reflective loss" primarily suffered through wrongdoing against a company.

169. In that regard, reference was made to *Johnson v Gore Wood & Co* [2002] 2 AC 1, 35-6 in which Lord Bingham summarised the basic features of the "no reflective loss" principle as follows:

> "*(1) Where a company suffers loss caused by a breach of duty owed to it, only the company may sue in respect of that loss. No action lies at the suit of a shareholder suing in that capacity and no other to make good a diminution in the value of the shareholder's shareholding where that merely reflects the loss suffered by the company. A claim will not lie by a shareholder to make good a loss which would be made good if the company's assets were replenished through action against the party responsible for the loss, even if the company, acting through its constitutional organs, has declined or failed to make good that loss. ....*
> *(2) Where a company suffers loss but has no cause of action to sue to recover that loss, the shareholder in the company may sue in respect of it (if the shareholder has a cause of action to do so), even though the loss is a diminution in the value of the shareholding. ...*
> *(3) Where a company suffers loss caused by a breach of duty to it, and a shareholder suffers a loss separate and distinct from that suffered by the company caused by breach of a duty independently owed to the shareholder, each may sue to recover the loss caused to it by breach of the duty owed to it but neither may recover loss caused to the other by breach of the duty owed to that other…".*

170. It was submitted for Robert that:-

(a) Sums received by Robert from RCJL were not received by him in his capacity as shareholder, but in his capacity as director having control of the company sufficient to enable him to authorise any payments to himself, whether of remuneration or otherwise.

(b) It does not follow from the fact that Robert owed fiduciary duties to Richard in relation to the shares that he is obliged to account to him for payments he has received in his capacity as director.

(c) While Richard has not alleged that any such payments were wrongful, but if Robert is obliged to account to anybody in respect of them, it is to the company; and if Richard were to allege that such payments were wrongful, he would be unable to recover them himself under "pa*rallel duties*" because of the rule against reflective loss.

(d) Being concerned with the loss relied upon by a claimant and the relation that bears to the company in question, the "no reflective loss" principle is blind as to the type of claim or cause of action being advanced by the claimant: see *Joffe, Minority Shareholders* (5th edn), paras 3.110 to 3.112.

(e) In relation to AGL, there is no property which Robert has received into his control in circumstances sufficient to import an equitable obligation to Richard. Only Nat owes equitable obligations to Richard (as well as Robert) as the trustee of the share. If Robert has received property from AGL, he may be accountable to the company, or possibly to the trustee, not to Richard.

(f) So far as MLL is concerned, there is no evidence that Robert has received any property into his control in circumstances sufficient to import an equitable obligation to account to Richard.

171. I do not accept these submissions, eloquently though they were made. In brief: Robert was Richard's partner as regards the ownership of the shares and the management of the companies; he was and is accountable to him for what he received from the companies as director or otherwise; in relation to AGL, he made Nat a "*trustee*" i.e. procured that she be the sole shareholder and director of AGL, outwith the control of Richard (and allegedly himself) and so breached his personal duties to Richard; and he acted similarly as regards the shares in MLL, which he manages, and is accountable to Richard for their value.

172. Indeed I do not consider that the "no reflective loss" principle has any real application in this case (as it has developed), since the orders which I propose are first for accounting between the parties under the personal duties they owe each other and secondly for an *in specie* division of their partnership and co-owned assets which takes into account the valuations of the companies and do not supplant, usurp or trespass upon any claims which the companies might possibly have against Robert.

173. As for the first stage, the accounting:

(a) Richard and Robert are entitled as between themselves personally, both as partners and pursuant to the admitted implied term of their co-ownership, to know what is the financial state of the constituent parts of their business and how much each of them has received, however a winding up might proceed.

(b) Given the failure of trust between them, it is difficult to see how, without such accounts, their business relationship can be properly brought to an end, whether by further orders or consensually.

(c) Whilst a requirement for separate legal proceedings in Thailand and the BVI, and perhaps New York, might further the animosity between the brothers, and provide for further obstruction, delay, costs and aggravation, it cannot serve justice or any objective resolution of their dispute as before this Court.

174. As for the second stage, what was called in Richard's submissions the "dispositive" stage by way of winding up:

(a) It is not claimed or contended in these proceedings, nor have any grounds been evident to the effect that Robert committed a breach of duty owed to any of the companies and/or that any of the companies suffered loss or damage as a result. I repeat that Richard alleged breaches of duty owed to him personally (that is, under English law) and Robert denied that he has acted wrongfully in any way.

(b) The Court has proceeded on the basis that as far as the companies were concerned, cash and assets received by Robert from them (for which he is, as found, liable to account to Richard) were received lawfully as far as the companies are concerned - reflecting the way in which the family business was carried on.

(c) If Robert (or for example, company creditors) hereafter seeks to contend that he is liable to repay any cash or assets received from the companies, Richard would, it seems, concede that if liable Robert should do so and if Robert accounts to Richard whilst so liable to the company, acting properly as partner, Richard should indemnify him for his half.

175. I should mention that Richard made a further submission in relation to MLL, to the effect that Robert having appropriated the value of the Bangkok factory buildings to himself and/or his family, he must account to the partnership for the value of the benefit he has received, regardless of the fact that the shares in MLL are in the names of Nat and children: see *Lindley & Banks*, para 16-14 and *Lindsley v Woodfull* [2004] 2 BCLC 131. But in my judgment, this should be catered for in the valuation of MLL's shares.

176. As for compensation, Richard claims that he is entitled to recover various costs resulting from Robert's breach of his duty to provide information, in Schedule A to his Re-Amended Particulars of Claim. Whilst these are referred to in his witness statement he has not (as yet) provided any detailed descriptions, break-downs and calculations.

177. It was not agreed between the parties that there should be decided at this trial the issues of what loss and damage resulted from Robert's breaches of duty. Richard's position is that it is not (yet) appropriate because questions of causation and loss are or should be properly the subject of the account.

178. A breach of the duty of good faith, which includes a duty to provide information, gives rise to a claim for damages: see *Blackett-Ord & Haren*, para 14.50. Legal costs can in principle be recovered as damages in a claim and provided that they have been incurred

by reason of the breach of duty rather than in consequence of the claim's prosecution or defence, they are properly categorised as damages rather than costs: see *Friston, Civil Costs* (2nd edn) at 5.28.

179. This extends not only to non-contentious costs incurred by reason of a breach of duty but also to the following:

a) costs have been incurred in foreign proceedings, even if irrecoverable under the procedural rules of the foreign Court, can be claimed as damages in separate proceedings between the same parties in England where the party seeking to recover had a separate cause of action: see Union Discount Co Ltd v Zoller [2002] All ER 693; and

b) costs incurred in proceedings between the now claimant and a third party in previous proceedings can also be claimed as damages: see Hammond v Bussey (1888) 20 QBD 79.

180. On behalf of Robert, various challenges were made to groups of these alleged costs, which he says largely related to unsuccessful attempts by Richard to "*find smoking guns*" and put pressure on him and further in summary as follows:-

(a) *(1) O'Neal Webster (BVI) (2) Robertsons (Hong Kong)* These costs apparently relate to the *Norwich Pharmacal* applications brought against the BVI company which acted as AGL's registered office and agent, and two banks in Hong Kong which provided banking services to AGL. Robert submits that they cannot be attributable to his failure to disclose information, since the classes of documents sought were wider than that which he would have been able and/or obliged to provide and were not required for Richard to vindicate his rights or to protect himself against wrongdoing, especially since he pursued the present proceedings in England.

(b) *(3) Gibson, Dunn & Crutcher (England) (7) Dickinson Gleeson (Jersey) (8) Cooke, Young & Keidan LLP (England)* Robert submits that these costs, apparently relating to steps which were preliminary to these proceedings, are if anything to be treated as costs herein subject to (detaile)d assessment rather than recoverable as damages or equitable compensation.

(c) *(4) Southeast Asia Minerals Trading Limited (Hong Kong)* Robert submits that these costs apparently relate to staff acting as a proxy for Richard at an EGM and obtaining information relating to RCJL and that Richard should not be able to recover the costs of proxies or agents seeking information which he should or could have had as a director of RCJL from 1991 to 2013.

(d) *(5) NNP Group/Sur Novel (Thailand)* These costs apparently relate to undertaking corporate searches and investigations in relation to RCJL and MLL,

"*corporate matters*" and Robert, who submits that there are no particulars to show that any or all of these costs are attributable to any failure by him to provide information which he was obliged to disclose.

(e) *(6) Blumenthal, Richter & Sumet (Thailand)* These costs apparently relate to Richard's removal as a shareholder of RCJL and proceedings in Thailand in that regard. Robert submits that it is at best unclear how or why this follows from his failure to provide information or this Court should award them when this was presumably a matter for the Thai Court.

(f) *(9) Various other costs and expenses* Robert submits that no sufficient particulars have been provided and insofar as these alleged costs and expenses relate to a failed mediation, Richard would not be entitled to recover these as costs within this action: see *Lobster Group Ltd v Heidelberg Graphic Equipment Ltd* [2008] 1 BCLC 722.

181. These points were of varying strength (not least in the light of the principles mentioned above) but should not be further examined now, beyond my finding that *prima facie* Richard suffered real loss and damage as a result of Robert's failure to provide information and detailed questions of causation and quantum should be dealt with in the accounts, inquiries and costs assessments which I will be ordering.

182. As for any other loss and damage allegedly sustained by Robert's dealings with the shares in RCJL, MLL and AGL in breach of his duties to Richard, as in many partnership cases, whether loss has been caused and, if so how much, depends upon what is ordered by way of accounting and winding up.

183. So, in the present case, since the intended effect of my order in relation to the shares in RCJL will be to pass to Richard half the the value of RCJL and half the value Robert has received from RCJL, my provisional view is that Richard will have suffered no remaining recoverable loss as a result of Robert's dealings in relation to those shares. If however the effect is that Richard is left with no more than shares in RCJL which give him no control and from which he can extract no value, then he will have suffered significant loss.

184. The accounts and inquiries to be ordered should therefore encompass the assessment of the costs, expenses and any other loss and damage alleged by Richard to have been caused by Robert's breaches of duty as found above. Richard will have to provide particulars for that purpose, if and insofar as he advances compensation or damages claims taking into account the other orders now to be made in his favour.

185. I turn finally to defences raised by Robert any way of alleged limitation, laches and acquiescence. As to the first of these, he relies on section 5 of the Limitation Act 1980 which provides that an "*action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued*"; and section 23, which provides that an "*action for an account shall not be brought after the expiration of any time limit under this Act which is applicable to the claim which is the basis of the duty to account*".

186. This would mean that a claim based on contract but not in partnership (if the Court finds there is some contractual, non-partnership basis on which Robert would be liable to account and compensate Richard for his breaches prior to 26 May 2009) might be time-barred. However given that Richard's claims were made and succeed in partnership, this is irrelevant.

187. For, as between partners, time in respect of a claim for an account only starts to run under the Limitation Act 1980 once the partnership has terminated: see *Lindley & Banks*, para 23-32. So, since I have found that the relevant duties were owed by Robert to Richard as partners, Richard's claim for breach of duty cannot be time-barred.

188. If this is wrong, Richard submits that the period of limitation in respect of his claims in respect of breaches regarding the shareholdings in RCJL, MLL and AGL prior to 26 May 2009 did not begin to run until he discovered Robert's concealment of those breaches under section 32(1)(b) of the 1980 Act. In that regard, by virtue of section 32(1), time will still run from the point when the claimant could with reasonable diligence have discovered the fact, as to which he bears the burden of proof: see *Paragon Finance v D B Thakarar & Co* [1999] 1 All ER 400.

189. Section 32(2) of the 1980 Act provides that "*deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty*". This requires that the defendant knew (or at the very least ought to have known) that his conduct amounted to a breach of duty: see *McGee, Limitation Periods* (7th edn), paras 20.31-30.34.

190. I would be minded if necessary to find in favour of Richard as regards Robert's deliberate concealment, notwithstanding the submission on behalf of Robert that there is no evidence that he believed he was acting wrongfully in allowing shares to be transferred to Nat, nor that he had any reason to think that the structuring of RCJL

(which had been done on legal advice) was in breach of any duty owed to Richard and that such a case was not put to him.

191. I disagree. Robert adduced no evidence as to legal advice regarding his duties to Richard and on the contrary stated that his Thai lawyer was not aware of his partnership. The case was adequately put to him and he had a fair opportunity to deny wrongdoing including knowledge and concealment of wrongdoing.

192. I accept Richard's submissions that:

(a) the matters of which Robert was under a duty to inform Richard, but deliberately concealed from him, included (i) as regards RCJL, that the share reorganisation as he arranged it in 1997 did not protect Richard and Robert did not have signed blank transfer forms from the Thai nominee shareholders; (ii) as regards MLL, that the factory was owned by a different company in respect of which Nat and the children were shareholders, he did not have signed forms and (from 2010) Nat became the sole director; and (iii) as regards AGL, that the single share and directorship had been transferred to Nat in 2002; and

(b) Richard only discovered these matters recently, between 2012 and 2016 and could not with reasonable diligence have discovered them earlier, since Robert was in control of RCJL, MLL and AGL and, until his relationship with Robert broke down, investigation was not justified; and during that time Robert knew or must have known that Richard was unlikely to discover them.

193. It has, as Robert submits, *" long been recognised that proceedings for an account may be defeated by laches or acquiescence*": see *Lindley & Banks* para 23-20. I regard Robert's reliance on these doctrines as a bar to Richard's claims for breach of duty in this case as misconceived.

194. There was no relevant delay or acquiescence on Richard's part as would bar relief on that ground. As regards laches:

(a) as there is an applicable statutory limitation period for the taking of a partnership account (which starts to run from the date of dissolution), there is arguably no scope for the doctrine of laches: *Hopper v Hopper* [2008] EWHC 228 (Ch) (reversed in part on appeal, but not on this point).

(b) for the doctrine to apply, it must be unjust for the court to give a remedy: see *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221 per Lord Selborne LC. Robert has not advanced any evidence sufficiently identifying real detriment from the remedies otherwise appropriate in this case.

195. That last point as to remedy and the detriment from any delay, including acquiescence, is however subject to the scope and terms of the accounting now to be ordered, as to which the Court of course retains a general discretion: see *Snell*, para 20-15. In that regard Robert refers to *Campbell v Gillespie* [1899] 1 Ch 225, in which Cozens-Hardy J stated that this discretion *"must be exercised upon due consideration of all the facts of the case*" and that since in that case the necessary records were no longer in existence, to "*direct a common account from 1887 to 1896 would be to enable the plaintiff to blackmail the defendant*".

196. It is submitted in that spirit that if there are now insufficient records to disentangle the various transactions, Robert should not be required to provide any better explanations. He refers to that facts that:

(a) Richard's witness statement said: "… *As we trusted each other completely, and whilst there are some documents in the disclosure that record (or at least purport to record) the position between us, we did not keep detailed written records of where money was paid or who had received what. Money was transferred between accounts to where it was needed and we trusted each other that a reconciliation could be agreed if and when required."*; and

(b) the accounts of RCJL have been regularly audited and Richard in his then capacity as a director signed the set of RCJL's accounts dealing with the years ending 31 December 2009 and 2010.

197. Robert submits that, as with the arrangements for ownership of the shares in the companies, the reality is that it suited Richard for there to be no accounts in certain respects. I have however already borne this possibility in mind in my analysis and proposed orders as above, and Robert should not seek further to evade mutual accounting (with the limits indicated) for such or any other reason.

198. I dismiss the notion, which may have motivated some of Robert's wrongdoing, that because Richard trusted Robert to deal with their offshore businesses and maintain and reconcile records in respect of his drawings to enable Richard to take an equal share, he can "pay back" Richard in their falling out by now further concealing the financial position between them.

Conclusions

199. For the reasons set out above, there will be judgment on the claim. Declarations will be made in Richard's favour and accounts will be ordered such that the partnership business can be wound up on the basis that:

(a) Robert will take Richard's interest in respect of RCJL, MLL and AGL and account to him for half the value of and his drawings from those companies and jewellery business in his own name, together with compensation for his breaches of duty owed to Richard as his partner; and

(b) Richard will take Robert's interest in respect of LCLP and LCC and account to him for half the value of LCLP and LCC and his drawings from them and jewellery business in his own name. Save as regards the mutual accounts and distribution i*n specie* to be ordered on the claim, the Counterclaim will be dismissed.

200. There will be a further hearing at which the parties may make submissions as to the precise terms of the order, including consequential directions and costs orders, each party to provide a draft order and skeletons in advance. For the avoidance of doubt:

(a) as requested by Robert, in case necessary, the time for any application for permission to appeal is extended until then and the time for any further application for permission to the Court of Appeal is extended until 21 days thereafter; and

(b) the Court will retain the power to review and vary the distribution *in specie* which I have indicated if and to the extent that the accounting process (including valuations) discloses significant reasons why that would be inappropriate or impractical.

201. I envisage that the accounting process will take place before a Chancery Master, and subject to his or her further directions, will include in the usual way a schedule of objections, challenges and falsifications by the receiving party, with independent accountancy evidence and/or (as Robert has suggested) stock valuations in due course if indeed necessary.

202. For convenience, the answers to the issues listed by the parties, as subjected to the above analysis, can now be stated in short form as follows.

203. Issue (1) At the time of the agreement between Lucie, Richard and Robert in 1990, or in connection with Lucie's retirement, was it agreed (expressly or implicitly) that: (a) they would share the assets and profits of the Business equally; or (b) (while they all remained partners) they would share the assets and profits 50% Lucie, 25% Richard and 25% Robert and (after Lucie's retirement) Richard and Robert would share the assets and profits 49% and 51% respectively? Answer: the answer is (a).

204. Issue (2) What was the legal effect of the agreement? In particular: (a) Were one or more partnerships created in law other than LCLP ? (b) What was the business in common with a view of profit that was being carried out by such partnership or such partnerships ? (c) Were such rights as the partners had in the shares in RCJL and the factory buildings an asset of a partnership between Lucie, Richard and Robert or (after Lucie's retirement) a partnership between Richard and Robert? Answer: there was a single partnership in the business of purchasing, manufacturing and selling jewellery, including that conducted through RCJL at the factory buildings owned by MLL, the shares in both of which companies (among others) were held for the partnership.

205. Issue (3) If the shares in the assets and profits were as Robert contends, has the agreement been varied by conduct such that Richard and Robert are entitled to share assets and profits equally? If not, is Robert estopped from contending that the profit and asset shares are otherwise than equal? Answer: not applicable (but the answer would be Yes to both questions, were Robert's contention not incorrect).

206. (Issue () Is it an implied term of the agreement that: (a) Robert would (at Richard's request) take such steps as may be necessary to procure that 50% the legal ownership of each of the entities making up the Business (currently RCJL, MLL, AGL and LCC) is vested in Richard; and/or (b) Robert would take reasonable care to protect and preserve the assets of such partnership or partnerships as are held to exist? Answer: Robert had to take reasonable care to protect and preserve the shares and their value and Richard was entitled to an equal share therein.

207. Issue (5) As matters currently stand: (a) Are such rights as Richard and Robert have in the A shares and/or B shares in RCJL a partnership asset? (b) Are such rights as Richard and Robert have in the shares in MLL a partnership asset? (c) Is the beneficial interest in the share in AGL a partnership asset? (d) Are the shares in LCC a partnership asset? Answer: to each question, Yes.

208. Issue (6) Is the agreement alleged by Richard too uncertain or incomplete to be legally enforceable ? Answer: No.

209. Issue (7) Did Robert procure the share transfers referred to in paragraph 12A of the Re-amended Particulars of Claim without Richard's knowledge and consent; and, if so, did he thereby commit a breach of duty? Answer (to each question) is Yes.

210. Issue (8) Did Robert procure that the legal owners of the shares in RCJL, MLL and AGL (other than himself and Richard) execute signed and undated and blank share transfers; and, if not, was his failure to do so a breach of duty? Answer: as to (a) not applicable - Robert is not understood to contend that he did so procure; as to (b) – Yes.

211. Issue (9) Did Robert commit a breach of duty in failing to procure that the articles of RCJL were amended to provide that the quorum for the holding of a meeting was to be assessed by reference to the voting rights rather than the number of shares? Answer: Yes.

212. Issue (10) Did Robert commit a breach of duty by failing to procure that: (a) MLL was set up on the same basis as RCJL, namely, with two classes of shares: ordinary shares comprising 49% of the total number of shares in the names of Richard and Robert; and preference shares comprising 51% of the total number of shares, with one vote for every 10 shares and a right only to a non-cumulative dividend of 5 baht per share per year; and (b) the quorum provision in the articles of MLL provide for the quorum for meetings to be determined by reference to voting rights rather than number of shares? Answer: to each question, Yes.

213. Issue (11) Has Robert committed a breach of duty in refusing or failing to join in formal joint instructions in the terms set out in paragraph 12A.4 of the Re-amPoC ? Answer: no.

214. Issue (12) Has Robert committed a breach of duty in failing to procure the transfer of 50% of the shares in RCJL, MLL, AGL and/or LCC to Richard? Answer: not applicable (Richard was an equal partner/owner with Robert in respect of those shares, including those held by Robert's nominees).

215. Issue (13) Did Robert commit a breach of duty in failing to provide the information referred to in paragraph 13 of the Re-amended Particulars of Claim? Answer: Yes.

216. Issue (14) Has Robert acted in breach of duty: (a) in failing to acknowledge Richard's interest in the Business; (b) in failing or refusing to involve Richard in the management of the parts of the Business under Robert's operational control? Answer: to each question, Yes.

217. Issue (15) Have any of the alleged breaches caused any recoverable loss at all (and is such loss recoverable by way of damages and/or equitable compensation)? Answer: Yes, sufficiently to order assessment in the accounts between the parties.

218. Issue (16) Is Richard entitled to recover the reasonable costs (to be assessed) of the matters referred to in paragraph 14 of the Re-amended Particulars of Claim? Answer: Yes if caused by Robert's breaches, in the accounts and subject to the inquiries between the parties

219. (17) What orders should be made for the winding up of the partnership or partnerships? Answer: to be drafted in the light of this judgment.

220. Issue (18) What orders (if any) should be made in respect of the shares in RCJL, MLL, AGL and/or LCC (if they are not assets of a partnership or partnerships)? Is Robert obliged to procure that the legal ownership of the agreed proportion of shares in RCJL, MLL, AGL and LCC which are currently held by third parties be vested in Richard and, if so, should an order be made to that effect? Answer: Robert should transfer a further 1% in LCC from himself to Richard pending final resolution but should not be ordered at this stage to procure that legal ownership of shares in RCJL, MLL and AGL be vested in Richard.

221. Issue (19) What orders for the taking of an account or accounts should be made and what directions should be given, including for the assessment of any loss? Answer: again, to be drafted in the light of this judgment.

222. Issue (20) Has any of the relief to which Richard would otherwise be entitled become barred by the Limitation Act 1980 and/or laches or acquiescence? Answer: No as regards the relief now to be ordered.

223. Issue (21) Is any of the relief sought by Richard barred by the principle against reflective loss? Answer: No.

224. As I have mentioned, there will be a further hearing at which I will consider the draft order(s) and other consequential matters. But I cannot finish this judgment, although probably too long anyway, without saying this.

225. Whilst I am grateful to counsel and solicitors for their presentation and assistance in this matter, the legal battles raging between these two brothers are unedifying,

unpleasant and exceptionally wasteful. They must obviously be inflicting pain and harm on others, as well as themselves. I urge them on both sides, with the assistance of their lawyers, to give peace (of some sort) a chance; and whatever the feelings and obstacles, to make supreme efforts to resolve or at least reduce their remaining differences, before it is too late.