Neutral Citation Number: [2019] EWHC 90 (Ch)

Case No: HC-2017-001106

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

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

Date: 28/01/2019

Before:

MRS JUSTICE FALK

- -

Between:

SUEDA YUSUF — **Claimant**

- and –

(1) TANJU YUSUF
(2) PEKALP PROPERTIES LIMITED — **Defendants/ Part 20 Claimants**

- and –

(1) SUEDA YUSUF
(2) ASKIN OZERIN — **Part 20 Defendants**

AND

Case No: CR-2018-002869

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

IN THE MATTER OF PEKALP PROPERTIES LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Between:

(1) SUEDA YUSUF
(2) ASKIN OZERIN

Petitioners

- and -

(1) TANJU YUSUF
(2) PEKALP PROPERTIES LIMITED

Respondents

- -
- -

Timothy Evans (instructed by **Seddons**) for the **Claimant and Petitioners**
Hefin Rees QC and Anthony Pavlovich (instructed by **Harper & Odell**) for the **Defendants and Respondents**

Hearing dates: 5 to 17 December 2018

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Approved Judgment

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

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MRS JUSTICE FALK

MRS JUSTICE FALK:

1. This dispute relates to a family owned property company called Pekalp Properties Limited ("PPL"). Tanju Yusuf, the First Defendant, is the son of the Claimant and First Petitioner, Sueda Yusuf. The Second Petitioner, Askin Ozerin, is Sueda's daughter. The other key family members for the purposes of this dispute are Askin's husband Arif Ozerin, and Isfendiyar Yusuf, Sueda's husband and the father of Tanju and Askin. Isfendiyar died in June 2014. For convenience and as Counsel did during the trial, I will refer to each of these family members by their first names throughout.

2. Sueda's initial claim, under reference HC-2017-001106 (the "Chancery action"), sought an order to the effect that she was beneficially entitled to 25% of the shares in PPL and that Tanju should transfer those shares to her, or alternatively that its register of members should be rectified in her favour. Sueda also sought specific performance or damages for breach of an agreement said to have been made between her and Tanju on or around 27 February 2015, under which she alleged that Tanju had agreed to transfer an additional 25% of the shares in PPL to her and had undertaken certain additional obligations, including the transfer of other property.

3. Tanju and PPL defended the claim and brought a Part 20 claim under which they allege that Sueda and Askin hold funds received in connection with the sale of a Cypriot company on trust for PPL, pursuant to the terms of a declaration of trust said to have been entered into in 2003. In the case of Askin an order is also sought requiring her to account for profits made pursuant to an alleged agreement to carry out property development for the benefit of PPL.

4. In March 2018 Sueda and Askin filed a petition in the Companies Court (the "Petition") alleging unfair prejudice, and seeking relief which included ensuring that PPL's share register reflected the percentage ownership claimed by each of them, and requiring Tanju either to purchase their shares in PPL at fair value, or sell his shares to them at fair value, or alternatively that PPL should be wound up. In June 2018 an order was made transferring the Petition to the Business List and requiring it to be managed and tried together with the Chancery action. Where convenient I will refer to Sueda and Askin together as the Petitioners, without drawing a distinction between the Chancery action and Petition.

5. In this judgment, I first summarise the factual background and the parties' assertions. I then discuss the witness evidence before addressing the parties' various claims, which are dealt with in the following order: Sueda's interest in PPL (paragraphs 87 to 97), Askin's relationship with PPL (paragraphs 98 to 102), the Cypriot company dispute (paragraphs 103 to 128), the February 2015 agreement (paragraphs 129 to 134), the Petition (paragraphs 135 to 170) and the appropriate relief (paragraphs 171 to 181). Finally, I deal with an application made on behalf of Tanju after the end of the trial to admit additional evidence (paragraphs 182 to 185). A summary of my conclusions is at paragraph 186.

Background facts and the parties' assertions

Family

6. Sueda was originally from Turkey. Isfendiyar's heritage is Turkish Cypriot. Sueda's marriage to Isfendiyar was arranged, and she travelled to London with him at the age of 15, marrying him in 1964 at the age of 17. Isfendiyar worked as a carpenter, making frames for furniture. Sueda worked from home as a seamstress.

7. Tanju was born in 1967 and Askin in 1968. The family initially lived at Isfendiyar's family's home in London, before moving into a council house a few years later. In the early 1970s Sueda took divorce proceedings under which she was awarded custody and Isfendiyar was required to leave the family home. They subsequently agreed to reconcile. In 1975 Sueda identified and purchased a family home in Essex, using the proceeds of sale of a sweet shop and tobacconist that she had previously acquired with savings from her work. Sueda still lives in this house, which I will refer to as "Falmouth Gardens". The couple also remarried in 1975.

8. During the 1970s Isfendiyar started his own furniture business, having previously worked as an employee. Sueda's evidence was that she provided a significant amount of assistance, including working as a seamstress in the business. This evidence was challenged by Tanju but, to the extent relevant, I conclude that Sueda did do some work in the business in the early years. The business struggled financially for a while, and at one stage in the mid-1980s Sueda acquired and ran a café to boost the family's earnings. This was sold after two or three years, leaving Sueda with about £80,000 which she intended to split between her children. After discussions with them the money was used to acquire and renovate a residential property in London that I shall refer to as "Bromfield Street", converting it into three flats.

9. After finishing university in 1989, Tanju joined his father in the furniture business. His role throughout has been office based, dealing with administration, including responsibility for bookkeeping and the accounts. Isfendiyar's written English was not good and he was poor at paperwork.

10. Askin trained as an architect. She left university in 1991, having married Arif in late 1990. Arif also joined the furniture business at around this time to help Isfendiyar, and worked in the business until March 2014. Arif is from Northern Cyprus and originally met Askin there, through one of Askin's cousins. His role at the business was to work on the manufacturing side with Isfendiyar, handling orders and dealing with clients. He became the assistant factory floor manager and remained in that role until he left in 2014. Arif managed the factory floor when Isfendiyar was away, as he increasingly was in the later years.

11. Isfendiyar and Sueda's marriage was deeply troubled for many years. Sueda was hospitalised with depression during the 1990s and again for significant periods between around 2008 and 2009. She told Isfendiyar that she wanted a divorce in 2009, eventually instructed solicitors in early 2011 and formally instigated divorce proceedings in 2012. Tanju sided with his father and stopped Sueda seeing his children.

12. Sueda's case is that during the divorce proceedings she found out that Falmouth Gardens had been remortgaged in March 2007, at a time when she was in Cyprus. She

also says that it was during those proceedings that she found out that her 25% shareholding in PPL had been transferred to Tanju. She claims that Tanju subsequently admitted to her that he forged her signature on the mortgage documents, and promised to repay the money (he denies this though he says that his father might have used her signature). Tanju's case is that the funds were required in Cyprus to establish a hair salon business which Sueda set up and ran for a short period. Sueda accepted in cross examination that she had spent about £100,000 on the hair salon, but claimed that she used her own savings to do so.

13. On 28 February 2014 Isfendiyar made a will appointing Tanju as his sole executor and leaving the entire estate to him. Askin, Arif and Sueda only became aware of the existence of the will after Isfendiyar's death.

14. During March 2014 an incident occurred at the factory. Arif's version of events was that Tanju was walking round the factory on the phone to his sister Askin (Arif's wife), abusing her in front of Arif and other workers. He refused Arif's request to stop and told him that the business was all Tanju's (rather than Arif receiving a share in it as well, as he was expecting), and that Arif should leave. Arif was provoked into attempting to hit Tanju with a piece of wood. Other workers evidently pulled them apart and Arif immediately left the business and refused to return, despite an attempt by Isfendiyar to get him to do so and an offer from Tanju of a 25% share in the business shortly after Isfendiyar's death. As discussed below, Tanju's version of events was different and he says that there was no offer of a share in the business.

15. At the time of Isfendiyar's death in June 2014, the divorce proceedings had not concluded and no financial award had been made. In addition, as already mentioned, Sueda did not benefit from the will. Once she understood this she took advice from a solicitors' firm called Blavo & Co about whether the will could be challenged.

The Pekalp companies

16. The furniture business was incorporated as Pekalp of London Limited ("Pekalp London") in 1993, on the advice of Mr Zeren Safa, an accountant. Mr Safa's services were originally used by Sueda in connection with her shop in the early 1970s, and he subsequently became the long-standing accountant for the family's businesses as well as for Isfendiyar personally. Mr Safa died in 2016.

17. Pekalp is Sueda's maiden name. That name was also used for a period in the unincorporated business, which had previously traded under other names. The shares in Pekalp London were owned equally by Tanju and Isfendiyar, who were also the directors. Arif was not involved in the incorporation despite working in the business. 100% of the shares are now owned by Tanju.

18. The business grew during the 1990s and a larger property was required. A decision was made to buy rather than rent. A number of potential sites were viewed but the property finally identified was commercial factory and office premises that I will refer to as "Church Road". The acquisition was completed in February 1997. I accept the evidence of Sueda, Askin and Arif that the site, which has a frontage on a main road, was identified with its long-term residential development value in mind as well as being suitable for use by the furniture business, and also that it was a family decision to make

the purchase, with Sueda taking a significant role in persuading Isfendiyar and Tanju that it was worthwhile to purchase rather than to continue renting.

19. Mr Safa advised that a separate company should be created to own Church Road, and this led to the incorporation of PPL, discussed below. Most of the purchase price was funded by mortgages on the property and on Falmouth Gardens.

20. A second operating company, Pekalp of London (Contracts) Limited ("Pekalp Contracts"), was incorporated in 1998 to deal with high-value orders. The shares in this company were owned 40% each by Tanju and Isfendiyar and 20% by Sueda, and following Isfendiyar's death are now owned 80% by Tanju and 20% by Sueda.

PPL: incorporation, shareholdings and management

21. PPL was incorporated in May 1996. The ownership of its share capital is disputed, but it is relatively clear that shortly after incorporation there were 100 £1 shares in issue, with 25 registered in each of the names of Isfendiyar, Sueda, Tanju and Askin. According to annual returns filed at Companies House, these shareholdings remained unchanged until at least 2010. Based on the accounts the issued share capital was increased to £75,100 between 1 June 2000 and 31 May 2001. However, this increase was only reflected in the annual returns filed at Companies House from 2011 onwards. A return filed in March 2011 in respect of the year ended 30 November 2010[1] showed the increased capital and also indicated that "as at" 30 November 2010 Sueda owned no shares, Tanju had 37,550 shares (50% of the total) and Askin and Isfendiyar had 18,775 shares (25%) each. Sueda denies signing any transfer document in relation to her shares. Tanju relies on a letter allegedly signed by Sueda in January 2009 requesting that the 25% shareholding held by her be transferred to Tanju. The authenticity of this document is challenged. No share register for PPL has been located, although it is reasonable to infer that one probably existed originally, and that it recorded the ownership of the initial 100 shares by the four family members. No stock transfer forms, share certificates or any of the documents ordinarily associated with an increase in share capital have been located either.

22. Tanju has been PPL's sole director for most of the company's existence. According to Companies House records, Askin appears to have been a director for about two weeks, from 16 June to 1 July 2006. Isfendiyar seems to have been appointed as a director on 25 June 2006 and appears to have resigned on the same day, although it has also been suggested that he remained a director until 2011. Isfendiyar was PPL's secretary until his death. Tanju's Points of Defence admitted that he and Isfendiyar controlled PPL's affairs jointly until Isfendiyar's death. In practice it seems that Isfendiyar may well have taken the role of a de facto director until his death. Mr Rees, for Tanju and PPL, accepted that Isfendiyar acted as a shadow director.

23. Following Isfendiyar's death, the 25% shareholding held by him in PPL was transferred to Tanju. Probate was obtained on 3 May 2016 and the transfer was made shortly thereafter, on 11 May 2016.

[1] PPL's year end switched from 31 May to 30 November between 2007 and 2008.

PPL: activities

24. As already indicated, PPL was initially established to acquire Church Road. I accept Tanju's evidence that Mr Safa's advice that the property should be held in a separate entity to the trading business was prompted by the risks to which that business was vulnerable (it had recently been exposed to a personal injury claim by a former employee). But I also accept the evidence of Sueda and Askin that PPL was intended to act as a family property investment company, which would also acquire other property.

25. PPL continues to own Church Road. Church Road has been let at all material times to Pekalp London and (since it was established) Pekalp Contracts. It appears that some space at Church Road has also been sub-let.

26. PPL also owns Bromfield Street, having acquired it in 2001 (see below). Two additional properties were purchased by PPL in 2000 and 2001. These properties were identified by Askin and Arif, who organised the renovation and conversion of the properties. Tanju dealt with the finances and paperwork. These properties were sold at a profit. Askin's and Arif's evidence was that they wanted to undertake further developments for PPL but Tanju was not prepared to do so given the extent of the exposure to the Cyprus developments discussed below. The only properties now owned by PPL are Church Road and Bromfield Street.

Bromfield Street

27. The Bromfield Street property was acquired in early 1989, using the £80,000 provided by Sueda (see paragraph 8 above), alongside mortgage finance secured both on that property and on Falmouth Gardens. Neither Askin nor Tanju provided funds for the purchase or renovation.

28. Sueda's evidence was that she intended that Bromfield Street should be owned by Askin and Tanju, although this was not reflected in the Land Registry records. Those show that it was initially bought in Sueda and Tanju's names but was transferred into Sueda's sole name in 1995, and that in May 2001 the property was transferred to PPL for a stated price of £225,000. It is relatively clear that this was done as part of a refinancing exercise. PPL took on additional mortgage debt secured on Bromfield Street and an existing mortgage of £150,000 was discharged. It appears that the intention was to increase the share capital by £75,000 at the same time, and that rather than Sueda receiving that amount on the sale it was applied in increasing the share capital. Sueda does not object to this, on the basis that PPL was intended to be a family property company.

29. Following completion of the renovation in 1990 the flats were rented out. This was managed by Tanju. Initially the rent was paid to Sueda, but from at least June 2000 rents from the top two flats in the property have been paid to PPL. Rent from the basement flat has generally been collected in cash. The Petitioners allege that this rent has not been accounted for. Tanju's response to this was that he has managed the property directly, so saving PPL the expense of management fees, and has used the rent collected as well as Pekalp London staff time to deal with maintenance of Bromfield Street, particularly of the basement flat which has had a long-standing condensation

problem. He claims that in most years the rent from the basement flat was insufficient to cover maintenance costs.

PPL share ownership: general

30. Sueda's and Askin's evidence was that it was intended that PPL would be owned equally by Isfendiyar, Sueda, Tanju, and Askin. Tanju's evidence was that the intention was to split the shares equally between him and his father, but that Askin was given 25% on the basis of an agreement that she would work with the company using her architectural skills, and that it was also agreed that Sueda would hold her 25% on trust for Tanju and would transfer the shares into his name if requested.

Sueda's PPL shares

31. Sueda strongly disputes Tanju's allegation that her shares were owned on trust for him, which she says was raised for the first time in these proceedings. Sueda also denies that Tanju provided any funding for the purchase of Church Road. Her evidence, and that of Askin and Arif, was that PPL was intended to be a family investment company owned equally by the family members.

32. Tanju was not able to produce any documentary evidence supporting the existence of a trust. However, he did produce a letter dated 17 January 2009, apparently from Sueda and addressed to Mr Safa, which stated as follows:

> "Dear Zeren
>
> As discussed on the phone, can you please transfer all my 25% shares in Pekalp Properties Ltd to my son Tanju Yusuf. Please can you do this as soon as possible and I will sign the necessary documentation on my return from Cyprus.
>
> Yours sincerely
>
> Sueda Yusuf"

33. Tanju says that this letter was found among Isfendiyar's papers following his death. It is not clear whether it was ever received by Mr Safa. During the divorce proceedings Sueda asked what had happened to her shares, and Mr Safa informed Sueda's solicitors that she had transferred her shareholding to Tanju on 1 July 2009. When more information was requested Mr Safa suggested that it be sought from Isfendiyar and Tanju. Following Isfendiyar's death Mr Safa was asked about this again by Blavo & Co, and on this occasion he stated that PPL's records showed that Sueda's shares were transferred on 30 November 2010. It is likely that this second date was taken from the annual return for the year ended 30 November 2010 (see above).

Askin's shares in PPL/Mortgage Express

34. Tanju's case is that it was understood that Askin received her shares in PPL in return for providing her services as an architect, which (he says) she largely failed to do in favour of development projects undertaken by her and Arif. He claims that she should account for profits made on those other projects on the basis that they were undertaken on behalf of PPL. He says that Isfendiyar oversaw what was going on with those

projects and Mr Safa dealt with the accounts. Tanju claims that it was always agreed and understood that there would be an account and a "transfer to PPL of those properties retained for investment". NatWest was not prepared to advance further funds to PPL due to the extent of PPL's investment in Cyprus (see below), so the family had to look at alternative lenders and consider taking out loans and undertaking developments in their personal names, but for the benefit of PPL.

35. Askin and Arif strongly deny this. They accept that they have undertaken six projects themselves, buying properties at auction and renovating them. The first related to a property bought by Askin in 1998. Four properties have been retained and are rented out. They used their own funds and mortgaged their own property. Isfendiyar had no involvement, and apart from visiting one property for about 15 minutes did not even know where the properties were. Mr Safa also had no involvement in the accounts until he assisted Askin with a tax issue in 2014.

36. Tanju also makes an allegation in relation to a mortgage offer of £630,000 that PPL received in July 2006 in respect of Bromfield Street, from a company called Mortgage Express. Although the nature of the claim has changed, as currently formulated Tanju is claiming that Askin is required to account for profits made from the use of the funds, because all the transactions were undertaken on behalf of PPL. Askin denies ever receiving such funding, and her case is that the offer would have been obtained in connection with the possibility of PPL borrowing more funds to invest in Northern Cyprus (see further below). She recalled no details but did remember being asked to sign a document agreeing to become a director of PPL, which she was told was a requirement of obtaining additional funds.

Cyprus

37. During 2002 the family identified some potential development land in Girne Lapta in Northern Cyprus. The acquisition took some time to arrange. On advice from Mr Safa a Northern Cypriot company, Pekalp Properties (Cyprus) Limited ("Pekalp Cyprus"), was set up in October 2003 to acquire this land.

38. While this purchase was being arranged, Isfendiyar also bought some additional development land at a different location in Northern Cyprus, Catalkoy, with this purchase also completing in October 2003. He identified the land and went ahead with the purchase without discussing it with other members of the family. Askin was involved in drawing up plans and 10 villas were built. Three of the villas were retained by the family, one for use by Isfendiyar and Sueda (the "Catalkoy villa") and one each for Tanju and Askin.

39. Tanju disagreed with the evidence of the other family members that the Catalkoy development was Isfendiyar's personal project. Tanju maintains that it was carried out on behalf of PPL, and/or undertaken on behalf of Pekalp Cyprus and funded by PPL. He claims that the majority of proceeds went to Pekalp Cyprus and the remainder to PPL. Askin and Arif accept that some proceeds went to PPL but say that the remainder appears to have been received in cash by Isfendiyar.

40. Isfendiyar also took charge of the proposed development at Girne Lapta into a hotel and villas (the "Hotel development").

41. The documentary evidence included copies of three loan agreements entered into by PPL with NatWest. The first, entered into in September 2003, was a loan for £200,000 described as "Cyprus land Loan". It is unclear what this financed. The second was a loan agreement entered into in January 2004 for £1 million, stated to be for the development of land in Girne, Cyprus, and able to be drawn down in instalments. Although somewhat unclear, it seems likely that this loan partly refinanced the existing debt, resulting in a total exposure of the bank of up to £1 million. The third was a loan agreement entered into in July 2006, refinancing existing indebtedness of £1 million and making an additional £490,000 available, also for the development at Girne. The security for the first loan primarily comprised charges over the Church Road and Bromfield Street properties, together with an unlimited cross guarantee from Pekalp London and a joint guarantee for £100,000 from Tanju and Isfendiyar. The second and third loans included the same security but added an unlimited guarantee from Pekalp Contracts.

42. The shares in Pekalp Cyprus were registered in the names of Isfendiyar and Sueda. Sueda insisted on changing the initial shareholdings to ensure that she owned a majority, because she wanted to control what happened to the Hotel development site. In 2012 the shares were transferred to Tanju and Askin. The evidence indicates that that transfer was prompted by Cypriot tax planning, designed to reduce the size of the parents' estates.

43. Tanju claims that the shares in Pekalp Cyprus were held in trust for PPL. He supports this allegation with reference to a document signed on 20 October 2003 (the "Trust Document"), which Sueda says she saw for the first time during these proceedings and which she says does not bear her signature. Tanju's evidence, which I accept, was that NatWest required something of this nature as a condition of making the £1 million loan. The Trust Document appears as an attachment to a document which Tanju described as a business plan, which he says he prepared for NatWest. The content and effect of the Trust Document is discussed further below.

44. Initial development work commenced on the Hotel development but came to a halt with the project unfinished. The precise date that this occurred is disputed. Arif says it was no later than 2006 or possibly 2007, whereas Tanju says it was by the end of 2008.

45. From December 2003 onwards PPL transferred numerous amounts to Cyprus, which Mr Safa recorded under the heading "investments" in its accounts. As at 30 November 2013 the balance was approximately £2.45 million. The most recent balance available, taking account of the receipt of some proceeds from the sale referred to below, is around £1.6 million.

Hotel development sale

46. The (uncompleted) Hotel development was already in the process of being sold when Isfendiyar died. A conditional agreement was entered into in March 2014 to sell either the Hotel development site itself, or the shares in Pekalp Cyprus owning the site, for £5.5m. This agreement expired in May 2014.

47. Following Isfendiyar's death, Tanju wanted to proceed with the sale but needed Askin's and Arif's assistance. He wanted Arif's assistance because Tanju rarely visited Cyprus and was not confident about taking part in business negotiations in Turkish. He needed

Askin's help because she was a shareholder in Pekalp Cyprus. Askin's case is that she and Arif agreed to assist on condition that Sueda was provided for. She wanted Sueda to have a share of the sale proceeds, and Tanju to return Sueda's shares in PPL and pay off the mortgage on Falmouth Gardens. Given the lack of provision in her father's will Askin also required Tanju to provide further funds to Sueda from Isfendiyar's estate, reflecting the fact that the divorce settlement had not been concluded before his death. Sueda wanted a yearly income and also the Catalkoy villa. She also wanted to ensure that Tanju would not end up with any interest in Falmouth Gardens.

48. Tanju's evidence was that it was Askin and Arif who pushed for the sale to go through and took the lead in discussions, although the financial strain of loan repayments related to the Hotel development was enormous and he was also "desperate" for the sale to be finalised. He said that his aim was to have all the proceeds paid to PPL, but Arif and Askin would not agree. The best he could achieve was to ensure that the bulk of the proceeds went into a joint account with Askin which required both of their signatures to release funds. He expected his mother to return the amount she received, but realised that Askin would not return the amount that she received voluntarily and that he would need to take legal action. He says he has kept his share of the proceeds available to pass back to PPL when his mother and sister comply with their obligations, although in the meantime he has used part of the amount to offset a company overdraft.

49. The shares in Pekalp Cyprus were sold on 16 October 2014 to Hayati and Filiz Ozok (the "Ozoks")[2] for a price of £5.5 million, to be paid as to £3 million on completion and the balance through post-dated cheques payable monthly until November 2015. The sale contract specified the amounts of each of these payments to be made to Askin, Tanju and to their joint names. An additional amount of £500,000 was payable if any of the post-dated cheques were defaulted on.

50. There were a number of discussions between Tanju and Askin about the split of the proceeds. Askin's evidence was that the total net sale proceeds of £4.5 million, after an assumed £1 million of expenses and tax, were agreed to be split £1,655,000 to Askin, £905,000 to Tanju, £640,000 to Sueda and £1.3 million to repay an amount that Tanju claimed was owed by Pekalp Cyprus to PPL (a debt that she says Mr Safa confirmed in an amount of £1,249,284, but which until shortly before the sale she had understood from Tanju to be around £1.1 million). Askin said that the larger share for herself, as compared to Tanju, was intended to reflect the fact that Arif had been denied a share of the furniture business.

51. The only provision in the sale agreement in relation to PPL refers to a debt of "approximately" £1.3 million owed by Pekalp Cyprus to PPL, and provides that it will be paid by Askin and Tanju.

52. Askin relies on a series of handwritten notes produced by Tanju, and in particular three pages that he scanned and emailed to her on 14 October 2014, the day before they flew to Cyprus to sign the sale agreement. The basic approach was that Tanju, Askin and Sueda would share the proceeds in the proportions 40:40:20 respectively, after providing for the £1.3 million, expenses and (Cypriot) tax. On one of the pages, labelled

[2] The March agreement was essentially with the same buyer, although only Hayati Ozok was named in that document. As with the March contract, the October agreement contemplated the transfer of either the site itself or Pekalp Cyprus as owner of the site.

"What it should be", the assumed net proceeds of £4.5 million are stated to be split as to £2.1 million "Cyprus", which is then split 40:40:20, and £2.4 million "London", of which £1.3 million is labelled "Bank" and £1.1 million is labelled "Pekalp" and itself split 40:40:20. The total amounts allocated to Askin and Tanju are then stated to be subject to an adjustment as between Askin and Tanju, the effect of which was that she would receive £750,000 more than him. (The actual numbers are a bit more complicated, with some of the complications being dealt with on other pages, but this suffices for present purposes.)

53. The joint account was intended to be used principally for monies due to pay off the £1.3 million, and for Sueda's share of the proceeds. The initial amount received into the joint account was £1,260,000, of which £832,860 was transferred to PPL on 22 October. The first post-dated cheque of £200,000 was also paid into that account in November 2014, and was agreed to be split £80,000 to each of Tanju and Askin and £40,000 to Sueda. There were then supposed to be a further 12 monthly post-dated cheques in the amount of £52,500 each paid into the joint account between December 2014 and November 2015, as well as cheques payable to Askin and Tanju individually. Tanju calculated that £34,702 was required from each of the joint post-dated cheques to eliminate the balance of the £1,249,284 understood to be owed to PPL, and Askin agreed to set up a direct debit for this purpose.

54. The cheques for December and January cleared, but all the subsequent cheques have failed to clear. The total amount outstanding from the Ozoks is £1.75 million (including the additional £500,000 to reflect the default).

55. Askin says that at no stage during the discussions was there any suggestion by Tanju that the Pekalp Cyprus shares were held on trust for PPL, and the first she knew about it was from solicitors' correspondence in 2015.

Settlement: the February 2015 agreement

56. Under pressure from Askin, Tanju had produced an initial proposal to settle matters with Sueda in October 2014, shortly before the sale of Pekalp Cyprus. Askin says that after the sale Tanju then refused to agree to release Sueda's share of the proceeds to her until agreement was reached. He produced a further proposal in February 2015, which was reflected in a document drafted by Tanju's solicitors.

57. This document is expressed to be entered into by Sueda and by Tanju as the personal representative of Isfendiyar. It recites that Tanju is the sole executor and beneficiary, and is a director of Pekalp London, PPL and Pekalp Contracts (defined as the "Pekalp Companies"). It also recites that Sueda had been pursuing divorce proceedings for the last five years and an application for a financial order. The agreement is stated to be in "full and final settlement" of all claims in those proceedings, and/or any claim against Isfendiyar's estate (referred to as the "Estate"), its personal representatives or beneficiaries, "and/or against the Pekalp Companies or its officers".

58. The operative terms require Tanju to ensure that certain actions are carried out "within the period stipulated where possible or once the Estate has been finalised", and to provide an account in relation to the Estate. The specified actions are to:

i) transfer to Sueda 25% of the shares in PPL from the Estate;

ii) transfer to Sueda all the interest presently vested in Tanju in Falmouth Gardens (the "Property"), "and pay the sum of £100,000 towards the outstanding mortgage on the Property in favour of Santander within six months of the date of this agreement, together with the utility bills for the Property". (In fact, Falmouth Gardens was held by Isfendiyar and Sueda on a joint tenancy, so there was no property interest to transfer.);

iii) transfer to Sueda the family summer house located in Catalkoy (this was the Catalkoy villa);

iv) ensure that Sueda received £31,200 per annum by way of dividend or salary from her shareholding in PPL until she wished to sell her shares, the company was liquidated or it or any of its assets were sold, whereupon the proceeds of the sale would be shared proportionately between the shareholders; and

v) hold AGMs of PPL plus three quarterly shareholder meetings.

59. In return, the agreement provided that Sueda would not make any claim against Tanju, the Estate, its personal representatives, the Pekalp Companies or its officers, and make no application under the Inheritance (Provision for Family and Dependants) Act 1975.

60. The agreement did not cover the proceeds of the Hotel development sale. The document also only stated that £100,000 of the mortgage would be paid off, not the entire amount as Sueda had wanted, but she says she agreed to this on the basis that Tanju told her that he would pay the rest when he could.

61. Tanju's case is that he signed a copy of the agreement in front of his solicitor on around 20 February 2015, before driving Sueda to Blavo & Co with a view to her signing it there. However, Blavo & Co advised her not to sign it. Sueda's evidence fits with this. She explains that she was advised that she could get much more and that her solicitor would be negligent to advise her to sign it.

62. Both also accept that, despite this advice, Sueda decided that she did want to enter into the agreement. She signed another copy of the document on 27 February 2015, after seeing a solicitor at another firm (arranged by Tanju through his solicitors). This firm was Haq Hamilton Ltd. Sueda says that she was prepared to sign because Tanju had promised her that he would transfer her share of the Hotel development sale proceeds if she did so. Sueda's case is that Tanju then gave her the copy of the agreement that he had signed previously, and she gave him the one that she had just signed. Tanju says this was not the case and the reason she had a copy signed by him in her possession must be that she had inadvertently picked up that copy when he had driven her to Blavo & Co a week earlier.

63. Neither of these signed copies is dated in the space left for that purpose, although the one with Sueda's signature has a Haq Hamilton stamp with a handwritten date of 27 February 2015. It is also countersigned by a representative of that firm, stating that the signatory was a solicitor and had advised Sueda of the terms and effect of the agreement. Tanju was present with the solicitor when Sueda signed and clearly took possession of a separate "advice note", also stamped by Haq Hamilton. This has the same date of 27 February and is a confirmation signed by Sueda that she had been

advised as to the content of the agreement, that she understood it and that she wished to sign it of her own free will.

64. Apart from the signatures and Haq Hamilton stamp, there are no differences between the document signed by Tanju and the one signed by Sueda at Haq Hamilton. Both of their signatures are countersigned by solicitors. In addition, however, there is a third document also signed by Sueda. This document is slightly different and in my view was an earlier draft. It has both "Without Prejudice" and "Subject to Contract" at the top, although the first of these statements has been crossed out and the deletion is signed by Sueda. The signature page (which has Sueda's signature as well) is also drafted differently and contemplates that Sueda had been advised to seek independent advice, rather than having actually obtained it. Tanju's evidence was that he had printed out a copy of the document at Church Road before going to Haq Hamilton. The most likely explanation is that he incorrectly printed out an earlier version, and that Sueda signed that version at Church Road before going to the solicitors. In contrast the one she signed at Haq Hamilton was emailed to that firm by Tanju's solicitors, and is the correct final version.

65. In the meantime, steps were taken to release funds from the Hotel development sale to Sueda. The documentary evidence shows that by no later than 22 February 2015 both Tanju and Askin had signed an instruction to release £525,000 from the joint account to Sueda's HSBC account in Nicosia. This instruction could not be acted upon because there were insufficient funds in the account. When further funds (in the form of the next expected post-dated cheque) did not materialise because the cheque was returned, revised instructions were issued by Tanju and Askin on 27 February in the amount of £500,000. Those instructions also covered the subsequent release of Sueda's agreed share of further post-dated cheques.

66. Sueda's case is that initially Tanju kept to the terms of the agreement so far as income and expenses were concerned. However, Tanju failed to transfer the shares in PPL and this led to a breakdown in the relationship, which for a time after Isfendiyar's death had been repaired. Instead Isfendiyar's shares were transferred to Tanju. Tanju then stopped paying the bills, the income (equivalent to £600 per week) and the mortgage payments. He has also not paid off £100,000 of the mortgage, transferred the Catalkoy villa or held shareholder meetings of PPL.

67. Tanju's version in cross examination is that he believed he would need to sign the agreement again for it to be valid. As far as he was concerned the agreement with his mother covered not only the terms of the written agreement but an undertaking from her that she would pay the money from the Hotel sale (or at least the £500,000 initially received) to PPL and would assist in ensuring that Askin also accounted for the amount she had received to PPL. He allowed Sueda some time to do this but, when she failed, he stopped performing his side of the bargain.

Witness evidence

68. Eight witnesses of fact provided oral evidence. Sueda, Arif and Askin provided evidence for the Petitioners. For the Defendants, Tanju provided evidence along with Mr Eric Ashong, who is the accountant who took over from Mr Safa, Mr Julian Waller, who at relevant times was employed by NatWest and was the relationship manager in respect of the Pekalp companies, and Mr Dennis Foley and Mr Tamer Salih, who are

two furniture business employees. Short witness statements were also provided by Mr Metin Hakki, a lawyer based in Nicosia who gave evidence about the efficacy of trusts in Northern Cyprus, and by Mr Unsal Gurok, who describes himself as the Certifying Officer of Kyrenia in Northern Cyprus and whose evidence related to the execution of the Trust Document.

69. Sueda was undoubtedly a poor witness. However, I do not think that she was telling deliberate untruths. Rather, if she does not recall something her tendency is vehemently to deny that it occurred, and not to accept that she may simply not remember. Generally, her longer term memory of events in her life seemed reasonable given her age and state of health. However, she clearly has a limited capacity for paperwork, and her understanding of documents she was shown in the witness box, or at least her ability to grasp what any particular document was and what it was saying, was very poor. In my view she is less likely to have recalled documents that she may have been asked to sign rather than other events, including interactions with other family members. She has clearly suffered from significant ill-health over a number of years, which has undoubtedly contributed to her current difficulties to a substantial extent.

70. Arif was in my view a convincing witness. The impression I obtained was of someone who had committed most of his working life to what he considered to be the family business, only to be forced out. I accept his evidence that much of the time he was working at the furniture business he regarded himself, wrongly as it turned out, as a "partner" rather than employee. He accepted low wages on the understanding that profits were being diverted to the Cyprus developments for the benefit of the family. He was not concerned with such details as to who technically owned shares in the furniture business: as far as he was concerned he was a partner in it. It did not matter to him that he had no direct interest in the Cyprus developments, for the same reason. Askin and he also clearly share their finances entirely, so that it makes no difference to him which of them receives any return from the family business. I accept that Arif had understood that, following Isfendiyar's planned retirement from the business, he and Tanju would become 50:50 partners in it. When it started to become clear that that would not be the case he regarded himself as having been "stabbed in the back" by Tanju, which resulted in a complete breakdown of their relationship. It was this, together with Tanju's public abuse of his wife on the phone, that provoked Arif into attempting to attack Tanju in March 2014. I prefer his evidence to that of Tanju on this issue[3]. Whilst that incident clearly should not have occurred, the fact that it did does not mean that Arif's evidence should not be treated as credible against the background of all the other evidence, in particular documentary evidence. The same applies to another incident between Arif and Sueda that Tanju relied on to seek to undermine Arif's evidence.

71. Overall, I also consider that Askin was a good witness, although not quite as strong as Arif. The case is clearly very difficult for her and at times this showed in the way that she tended to interrupt questions. Her anger with Tanju is obvious. However, my assessment overall was that she was seeking to tell the truth. The limited areas where I have not accepted her oral evidence relate to some aspects of evidence in respect of her

[3] Tanju's first witness statement said that he never understood what triggered the attack, but mentioned that Arif had brought up the subject of being made a director of Pekalp London. In cross-examination Tanju said that the row was about Arif asking to become a director and have a company credit card. He denied that there was any discussion of a 50:50 partnership. I found this unconvincing.

mother, in particular the hair salon venture in Cyprus and related events. However, the evidence related to the hair salon was not based on any real knowledge of the events and in reality Askin was to a large extent giving her opinion rather than stating matters of fact. She was also naturally defensive of her mother.

72. Turning to Tanju, I regret to say that I was unable to accept material parts of his evidence. Having listened to his cross examination, my assessment is that the picture painted of him by Askin, and in particular her assessment that she could not trust him and that he is a liar, is justified. This is a man who, for example, freely admitted to giving a bank false information in order to try to negotiate improved terms, and readily accepted that on more than one occasion he has, with a view to getting what he wants from someone, promised to do something of real importance to them, with no actual intention of doing it. This is also a man who was clearly aware that his mother had not completed the financial award process in her divorce proceedings, had been left no provision in her husband's will and (given her age and health issues) was not in a position to work. Although he did provide some level of financial support in the initial period following his father's death, it appears that he largely used funds derived from PPL to do so (albeit possibly partly set off by a dividend in his favour). In these proceedings he also sought to recover from Sueda the amount laid out, including Isfendiyar's funeral expenses which she should never have borne in any event. (Tanju rightly withdrew those particular claims towards the end of cross-examination.) I will deal with individual issues below, but at this stage would simply add the observation that much of Tanju's evidence fastened on events that did or might have occurred, and sought to use them to present a picture designed to fit with his case in these proceedings.

73. Mr Ashong gave helpful evidence explaining the work he had done on PPL's books in connection with these proceedings, and providing valuable assistance in understanding some of the entries in its books and accounts. I accept his evidence. One important point that emerged was that Mr Ashong approached the exercise by seeking to put himself in Mr Safa's shoes, looking at the ledgers and bank statements and working out how Mr Safa arrived at the figures actually included in the year end accounts of PPL. In other words, his object was not to interrogate the accuracy of those accounts but instead to show how they had been arrived at.

74. Mr Waller gave straightforward evidence. It was clear from his evidence that NatWest relied entirely on the UK businesses to service the loans advanced in respect of the Cyprus developments. He confirmed that it would have been very difficult for NatWest to take security over Cypriot shares. In relation to the Trust Document, he evidently did not recall the precise details but thought that the NatWest team who would have been required to sign off the £1 million loan probably required him to get a trust document as a condition of draw down, on the basis that whilst PPL could service the loans it would be insolvent if it was unable to recover the funds invested in Cyprus to repay the principal amount of the debt[4]. On looking at the Trust Document he took it as a statement of intention to put a trust deed in place, and said that he could not recall whether he had seen the actual trust deed.

75. Mr Foley has been an employee of the furniture business since the 1970's. His evidence related largely to Sueda and Arif's roles in the business, and as a witness to the incident in March 2014 that led to Arif leaving the factory. I found him to be an unreliable

[4] I took this to mean insolvent on a balance sheet basis.

witness who had quite possibly been coached, at least as to the content of his witness statement. His witness statement was clearly not in his own words and he contradicted at least one part of it.

76. Mr Salih, another furniture business employee, gave limited evidence primarily about his role in collecting rent from Bromfield Street and undertaking repairs. I accept his evidence.

Expert evidence

77. There were six expert witnesses, two in relation to handwriting, two in relation to property valuation and two in relation to share valuation.

78. The handwriting experts, Ms Ellen Radley for the Petitioners and Dr Audrey Giles for the Defendants, were not required to give oral evidence because their conclusions were reasonably similar, although the strength of their conclusions differed to some extent. Both were of the opinion that the 17 January 2009 letter relating to the transfer of PPL's shares (paragraph 32 above), and the "advice note" signed in connection with the February 2015 agreement (paragraph 63 above) were on a balance of probabilities signed by Sueda, and that the mortgage documents relating to the remortgage of Falmouth Gardens in 2007 were probably not signed by Sueda (in other words, her signature was forged). In relation to the Trust Document, Dr Giles' opinion was that it was genuine, and Ms Radley's opinion was that the position was inconclusive. The differences between the experts related to the provision of different comparison material, with Ms Radley being instructed not to use much of the comparison material used by Dr Giles because of concerns about whether it was genuine.

79. The property valuation experts were Mr Eric Shapiro of Chestertons for the Petitioners and Mr Mark Shaw of Strettons for the Defendants. Their evidence related to the values of Bromfield Street and Church Road. In summary, Mr Shapiro valued Bromfield Street at £1,937,250 and Mr Shaw valued it at £1,620,000. The difference relates to the approach they took, with Mr Shapiro approaching the valuation as one of the entire building valued on a square footage basis, and Mr Shaw valuing each flat individually (as if sold separately). They also disagreed about comparables, with Mr Shapiro relying only on other sales in the immediate locality, and Mr Shaw looking further afield on the basis that there were too few such comparable transactions and they were out of date.

80. There was a more fundamental disagreement about Church Road. The existing use values were £2.7 million for Mr Shapiro and £2.4 million for Mr Shaw. However, I consider these to be academic because there was no real dispute that the age and poor repair of the building meant that any sale would be for some form of re-development. The location of the site and the fact that immediately adjacent land is currently being developed for residential purposes means that residential (rather than industrial) development at the site must, at least, be a real prospect. I do not consider that that was disputed.

81. Mr Shapiro and Mr Shaw provided alternative values on an existing use plus "hope value" for development (without assuming that planning permission was obtained) of £6 million and £2.67 million respectively. The very material difference between these figures is explained by the fact that Mr Shapiro's figure was by reference to an offer

made to purchase the site for that amount by a company called Origin Investors Ltd in October 2018, an offer which the Petitioners say should be accepted.[5] In contrast, Mr Shaw relied on an offer made in March 2018 by Galliard Homes, the developer of the next-door site, of £2.7 million (a reduction from an earlier offer of £4.3 million).

82. Mr Shaw thought that the offer from Origin could not be relied on. Mr Shapiro thought that the offer from Galliard did not reflect the opinion of other developers who had also shown interest, notwithstanding the fact that the site had not been marketed. As regards Origin's offer, he had been very sceptical but had seen a reference from their solicitors, a firm with which he was familiar, as evidence of their bona fides. In his opinion it would be foolhardy not to take that offer into account when it could have been tested readily. If Origin were in fact prepared to pay that figure then that would be the best evidence of market value.

83. Share valuation evidence was provided by Mr Gavin Pearson of Quantuma LLP for the Petitioners and Mr Stephen Skeels of Mazars LLP for the Defendants. They agreed that PPL's shares should be valued using an assets based approach. There were significant differences as to what PPL's net assets were, given the differences of opinion between the property valuation experts and the various financial adjustments that Mr Pearson and Mr Skeels had been instructed to make in relation to the Cyprus sale proceeds and other matters the subject of this dispute, but once those disputes are determined these differences should be eliminated.

84. The remaining differences related to the treatment of tax and other costs that would arise on a sale of PPL's assets, and (more significantly) the level of discount that should be applied in valuing a non-controlling shareholding. In relation to tax, Mr Pearson made an allowance for 50% of the expected tax and costs (on the basis that it was unclear whether there would in fact be a sale of the assets rather than PPL's shares), whereas Mr Skeels provided for 100% of the tax and made no allowance for other costs, although he accepted that they should be treated in the same way as tax.

85. On the question of discount, Mr Skeels applied a 75% discount for a 25% shareholding and a 60% discount for a 50% shareholding. His report stated that these percentages applied to purchases made by a third party rather than by an existing shareholder, and also stated that a transfer of 50% to an existing 25% shareholder would attract no discount because a fully controlling 75% stake would be held following the acquisition. His oral evidence, however, appeared to be inconsistent with this because he suggested that a purchase of 50% by an existing 50% shareholder would (or at least could) still attract a discount of 60%.

86. Mr Pearson applied no discount on the basis that the Petitioners claimed that PPL is a quasi-partnership, such that no discount was appropriate. If this was not the case then he considered that the discounts put forward by Mr Skeels were too high, particularly for a property company (a point he said was supported by an ACCA[6] fact sheet issued in 2011), and that a 10% discount might be reasonable for a 50% shareholding, and a 25% discount for a 25% shareholding. Whilst Mr Skeels recognised these percentages, I understood him to say that the discounts he used reflected the fact that the remaining

[5] Origin has offered either £6 million unconditionally or £7.35 million conditional on planning permission, suggesting that they are confident of the likelihood of permission being obtained.
[6] The Association of Chartered Certified Accountants.

shares are assumed to be held by family members with a 25% stake each (or possibly 50%), and effectively that a third party's valuation would depend on the particular identity and interests of those other shareholders.

Discussion

Sueda's interest in PPL

87. I have no hesitation in concluding that Tanju has not established that Sueda's original 25% shareholding in PPL was held on trust for him. In my view she received the shares beneficially. I do not accept Tanju's explanation that the shares were put in Sueda's name to "lift her mood" during a period of depression. That makes little sense if Sueda was simply to be a bare trustee. If Tanju did have any discussion with Sueda as he suggested he did when the company was established, the most it resulted in was an informal understanding that Sueda would transfer shares to Tanju in the future if he so requested. Any such understanding could not be, and would not have been intended to be, legally binding.

88. I note that whilst the shares may have been put in Sueda's name on Mr Safa's advice with tax in mind (as Tanju also suggested), that is also not consistent with them being held on a bare trust. A bare trust would simply be looked through for tax purposes, with the beneficial owner being treated as owning the shares.

89. I need say no more about this other than to note that Tanju rather compromised his case in cross examination by accepting that the "trust" he was alleging existed would not prevent Sueda from being entitled to any dividends on the shares while she held them. This is consistent with a contemplated future transfer of shares, but not with a bare trust.

90. The evidence in respect of the disputed transfer in 2009 is clearly limited and unsatisfactory. Based on Mr Safa's apparent general disregard for the need for any proper corporate documentation, I infer that there was no formal share transfer, and no share register was written up to record the transfer[7]. This is consistent with the fact that when asked about it subsequently, he gave two different dates for the transfer (see paragraph 33 above).

91. However, I have concluded that the 17 January 2009 letter described at paragraph 32 above was more likely than not signed by Sueda. Her ill health at the time and poor grasp of paperwork provide explanations for her having forgotten the document, or (possibly) not appreciating what it was. It is possible that she was misled into signing it, but a more likely explanation is that until recently she has placed no real importance on which family member holds which shares in the family business. It is of some relevance that the shares were not included in her statement of assets in connection with her divorce proceedings (Form E), although I think this carries somewhat less weight: her undisputed shareholding in Pekalp Contracts is not mentioned either. Mr Rees also relied on a witness statement Sueda provided in the divorce proceedings in December 2012 which referred to changing "the shareholdings and status of the business…with a view to benefiting the children and reducing the marital assets", but I have concluded

[7] Mr Ashong has recently attempted to create a share register, but this is based solely on the annual returns at Companies House, for example recording the share capital increase in 2010 rather than 2001 and the transfer by Sueda also in 2010.

that this comment related to the transfers that Isfendiyar and Sueda each made of the shares in Pekalp Cyprus, and not to a transfer of PPL shares by Sueda.

92. As to whether the letter was legally effective as a transfer, Mr Rees pointed out that PPL's Articles permitted a transfer of fully paid shares executed by the transferor "in any…form which the directors may approve". He submitted that Tanju as sole director (presumably along with Isfendiyar, if he was a director) must be taken to have approved the document, and that *Palmer's Company Law* at 6.431 and *Nisbet v Shepherd* [1994] 1 BCLC 300 (CA) supported the argument that, taking account of the lapse of time, Sueda as the transferor cannot now complain about irregularities in the document, including the fact that it appears to contemplate a separate formal transfer.

93. I have concluded that the 17 January 2009 letter was not an effective transfer of shares. It is an instruction to prepare transfer documentation which the writer intends to sign at a later date, and not a transfer. It does not state the number of shares to be transferred, and given the absence of any share register or proper records of share allotments it is not straightforward to determine the answer to that question. There is no indication of whether the transfer is intended as a gift or whether some consideration is to be paid. There is also no evidence that it was actually approved by Tanju, who was either the sole director or a director with Isfendiyar: Tanju's evidence was that he had discovered the letter among his father's papers only when preparing for these proceedings. The letter he found was the signed original rather than a copy, which also raises a significant doubt about whether the letter ever even made its way to Mr Safa, to whom Tanju appears to have sought to delegate all formalities in relation to the company (non-receipt by Mr Safa might also help explain why he gave differing accounts of the date of transfer). In all the circumstances, there is insufficient evidence to conclude that the director or directors approved the letter as a form of transfer.

94. It is clear that a "proper instrument of transfer" for the purposes of section 770 Companies Act 2006[8] is a document that is capable of being stamped (*Palmer* at 6.432). In *Nisbet v Shepherd* a conventional stock transfer form was executed, but it was undated, did not state the consideration or the parties' addresses, and was not signed by the transferee. However, the company had registered the transfer and at least seven years had elapsed since during which the transferee, who was now challenging the transfer, had been content to record himself as the sole shareholder in the annual return. The Court of Appeal held that in those circumstances it was too late to impeach the transfer unless it was invalidated by statute, which it was not because it was suitable for stamping. The defects were mere irregularities, and the consideration could be added.

95. This case is very different. The letter is no more than an instruction to transfer which contemplates the execution of a further document, and there is no evidence that the directors, or at least Tanju, approved it as a transfer. Whatever Sueda thought at the time, by the stage of the divorce proceedings she was also questioning where her shares had gone.

96. Accordingly, Sueda remains entitled to a 25% interest in PPL.

[8] Section 770 provides, subject to irrelevant exceptions, that a company may not register a transfer of shares unless a proper instrument of transfer has been delivered to it.

97. I have also concluded that what Sueda and Tanju (and to some extent Askin) were discussing between the summer of 2014 and February 2015 was the "return" of this 25% shareholding. This is evident from some of the text messages between Askin and Tanju. I do not accept Sueda's evidence that it was ever agreed or contemplated that she would receive not only that 25% but a further 25% from Isfendiyar's estate. As discussed below, I have concluded that a binding agreement was entered into between Sueda and Tanju in February 2015 but I do not accept that this entitled her to anything more than a 25% interest in the company in total. Mr Evans helpfully accepted this in closing submissions. The reason why the agreement refers to shares from Isfendiyar's estate rather than shares from Tanju is that this allowed the estate to benefit from the inter-spousal exemption from inheritance tax in respect of the value of the shares (in other words, Tanju as the sole beneficiary effectively saved tax). I would suggest that Tanju might have avoided some of the difficulties he now faces if he had been clearer about what was going on rather than waiting until detailed cross-examination to explain that that was why the agreement referred to shares from the estate.

Askin's shares in PPL/Mortgage Express/£200,000 loan

98. Tanju's claim that Askin received her shares in PPL on condition that she provided services, and that she was obliged to account for profits from development projects, is hopeless. I accept Askin's evidence that this was a family property investment company[9], and Askin no more received shares in PPL on some kind of condition about working for the business than Tanju did. Tanju's evidence on this issue was vague and unconvincing. I also accept Askin's evidence that, in fact, she and Arif did do projects for the company and wanted to do more, and that other projects were undertaken by herself and Arif personally.

99. In addition, I accept Askin's evidence that she never received the benefit of a loan of £630,000 from Mortgage Express. I do not accept Tanju's evidence that it was arranged for her benefit. He relied on the fact that she was temporarily made a director in connection with the loan, but I have concluded that the most likely explanation for that was that it was a requirement of the lender in order for PPL to obtain the offer, and that it most likely applied to all shareholders. This is supported by the fact that the annual return for that year indicates a temporary transfer of Sueda's shares to the other shareholders (there is no evidence that she was aware of this). That transfer, which if it occurred at all I regard as a transfer of bare legal title, would be explicable if there was a desire to avoid making her a director. Tanju's other evidence on this issue was inconsistent and unclear.

100. Contrary to Tanju's evidence, I have concluded that the Mortgage Express offer was obtained because Tanju was trying to arrange more funds for Cyprus and was seeking to obtain the best rate. The offer was received by PPL (in practice this meant Tanju, who handled the paperwork) on the same date in July 2006 as PPL agreed to borrow the final £490,000 from NatWest at a slightly lower rate of interest. There is no evidence that the offer was received by Askin or Arif. I infer that Tanju simply accepted the NatWest offer in preference to the Mortgage Express offer, which was not pursued.

[9] This is supported by the way that Bromfield Street, previously owned by Sueda, was introduced into PPL, as well as by the other UK development work that the company undertook in the early years.

101. In summary, Askin has no requirement to account in respect of any of the development projects which she and Arif undertook in their own names, which were the result of their own efforts and which they funded.

102. It is also convenient to deal here with a further allegation made by Tanju during the proceedings[10], namely that Askin had borrowed £200,000 from PPL in 2006 and had not repaid it. Askin and Arif's evidence was that this was a repayment by PPL of £200,000 that they had temporarily advanced to Pekalp London around three months earlier, while it was overdrawn. They had borrowed the money to purchase a property at auction, which had not proceeded, and were waiting to find another property. In the meantime, they were prepared to assist Pekalp London in avoiding overdraft charges. I accept this evidence. PPL's repayment of the loan on behalf of Pekalp London should be treated either as reducing any then existing intercompany payable owed by PPL to Pekalp London, or to the extent that no payable existed, as creating an amount payable by Pekalp London to PPL.

Shares in Pekalp Cyprus: the Trust Document and the sale

103. The Trust Document is a one page document headed "Trust Deed/Agreement". It reads as follows:

> "Prepare a trust deed/agreement to show that:
>
> (1) The land etc. known as… situated in Girne-Lapta registered numbers… owned by Pekalp Properties Cyprus Ltd are held in trust and for the benefit Pekalp Properties Ltd (company incorporated in England) of [address inserted].
>
> (2) The issued share capital of Pekalp Properties Cyprus Ltd totalling 500 shares of 100,000,000 TL held by Isfendiyar Pekalp and Sueda Yusuf in the ratio 3:2[11] are held in trust and for the benefit of Pekalp Properties Ltd (company incorporated in England) of [address inserted].
>
> Dated this trust deed/agreement 17 of October 2003[12].
>
> Signed m [sic] behalf Pekalp Properties Cyprus Ltd.
>
> Isfendiyar Pekalp [identity card number inserted in manuscript] Director
>
> Sueda Yusuf [passport number inserted in manuscript] Secretary"

[10] This allegation appeared not to be pursued at the trial, but neither was it clearly withdrawn. I have therefore addressed it.

[11] By the date of the share transfer in 2012 Sueda held just over 51% of the shares. It seems that the proportionate shareholdings changed at some point.

[12] Although 17 October is typed on the document it was actually signed on 20 October.

104. There follow signature blocks for Isfendiyar and Sueda. The document is witnessed by Mr Gurok.

105. There are a number of oddities. First, the document appears to be written as an instruction, but it is not stated to whom. Secondly, it purports to deal both with the land and with the shares in the company which the family say was incorporated to hold the land, and the shares of which were ultimately sold as the means of transferring the land to the Ozoks. Thirdly, although Tanju's case is that the effect of this document was that his parents owned the Pekalp Cyprus shares on trust for PPL, in fact they do not appear to be signing in a personal capacity, but rather as director and secretary on behalf of Pekalp Cyprus. Signing in that manner makes sense in relation to paragraph (1) but not paragraph (2).[13]

106. Mr Hakki's evidence was that English law principles of equity apply in Northern Cyprus, and that the applicable company law principles are almost identical to the Companies Act 1948. I accept this. He also expressed the opinion that, if the first line of the document was ignored, it was a declaration of trust.

107. I have concluded that it is more likely than not that Sueda did sign the Trust Document and has forgotten that she did so. It is clear from the inclusion of passport and identity card numbers that Mr Gurok took steps to confirm identities before he witnessed Isfendiyar and Sueda's signatures. I have also concluded that the Trust Document was prepared and executed solely in order to meet NatWest's requirements. Despite its deficiencies, it obviously achieved that aim.

108. I do not, however, consider that the family placed any other significance on the Trust Document. Any "trust" over the land itself has been completely ignored: no one is suggesting that Pekalp Cyprus did not own the land when the company was sold in 2014. Significantly, I also consider it more likely than not that the Trust Document was ignored when Isfendiyar and Sueda transferred their shares to their children in 2012, and I do not accept Tanju's evidence to the contrary. If English law equitable principles applied in Northern Cyprus, as Mr Hakki says that they do, then it is hard to see why any estate planning would be required, because if there was a valid trust then Isfendiyar and Sueda would have had nothing of value to transfer.

109. My overall conclusion from the evidence is that, even if a trust over the shares in Pekalp Cyprus was seriously contemplated (which is doubtful), the document was defective in achieving that, not only because it is stated to be an instruction but also because it was not signed by Isfendiyar and Sueda in their personal capacities. The funds advanced by PPL to Pekalp Cyprus were in reality loans to finance the development work rather than equity investments.

110. Mr Rees submitted that the Trust Document satisfied the "three certainties", certainty of intention, subject-matter and object (*Lewin on Trusts*, 19th ed. at 4-002 onwards). The second and third of these requirements were obviously satisfied. In relation to the first, Mr Rees submitted that the intention to create a trust was clear from the formal

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[13] A more minor oddity is that, while there are references to a deed, it appears not to be executed as such, at least in the English law sense of execution and delivery. However, this does not affect its potential efficacy as a trust.

language and witnessed signatures, and the background that the bank required it. There was imperative language making Sueda and Isfendiyar's intentions clear.

111. *Lewin on Trusts* refers at paragraph 4-005 to a number of cases where precatory words were treated as amounting to a declaration of trust, although it comments that earlier cases to that effect would not necessarily be followed now. I note that most of the cases concerned wills, where of course no additional action by the testator could have been contemplated. In contrast, the wording of the Trust Document is an instruction to prepare a document or documents which can only have been intended to have been signed by Isfendiyar and Sueda, not only as officers of Pekalp Cyprus but also in their personal capacities as holders of the shares. The question is one of intention, and I have concluded that the Trust Document does not demonstrate an intention to create a trust at the time it was signed, but only an intention to sign some future document or documents, which it appears was or were never prepared.

112. If I am wrong about this, the parties' behaviour thereafter (including that of all the individuals who were at any time directors or shareholders of PPL) was inconsistent with the continued existence of a trust. If any trust had been created, it had disappeared by 2012 when, as shown by Sueda's witness statement in the divorce proceedings[14], Isfendiyar and Sueda clearly considered that they were transferring something of value to their children. In any event any trust had certainly disappeared by the date of the sale in 2014.

113. In reaching this conclusion, I have taken into account the fact that I was shown some documents indicating that Tanju and Mr Safa had stated in the divorce proceedings that PPL owned Pekalp Cyprus, and the fact that Mr Safa chose to label funds advanced to Cyprus as "investments" in PPL's accounts. I do not consider that these statements were consistent with the family's, or indeed Mr Safa's, actions. For an example of the latter, it appears from Mr Ashong's evidence that the original purchase monies for the Hotel development land transferred from PPL to Pekalp Cyprus were allocated by Mr Safa to PPL's "stakeholder account", rather than being treated as a PPL expense or included in the "investment" figure, and that the same applied to what appears to have been the original subscription price for the Pekalp Cyprus shares, which was apparently attributed to Sueda and set off against a dividend posted to that account. The stakeholder account is discussed further below, but the key point is that amounts were so allocated when they were regarded as expenses of family members rather than as proper expenses of PPL. In addition, the amounts provided by PPL to Pekalp Cyprus were clearly recorded in the books of Pekalp Cyprus as a debt owed to PPL rather than as an equity investment by it, and Mr Safa appeared to accept this treatment: see further below.

114. In any event it is clear that at the time of the sale in 2014 all family members with any shareholding interest in PPL had agreed that, subject only to the £1.3 million thought to be owed to PPL, all the proceeds would be received and retained by Tanju and Askin as the shareholders, with them then agreeing to pass some of the proceeds to Sueda.

115. I agree with Mr Evans that, if there was a valid trust, it was capable of being broken by PPL, and that PPL should be treated as having done so under the *Duomatic* principle[15]. Effectively, it would have made a distribution of its rights under the trust. Those rights

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[14] See paragraph 91 above.
[15] *Re Duomatic Ltd* [1969] 2 Ch 365.

had no book value in its accounts and for all relevant years PPL had positive distributable reserves. It would have been entitled to distribute its rights by a conventional dividend in specie (see section 845 of the Companies Act 2006). Although there are limitations to the *Duomatic* principle, those relate to cases where the statute, or potentially the company's Articles, require certain steps, such as a prescribed procedure, to be followed, for the benefit of parties other than the sanctioning members, for example creditors, officers or future members (see the discussion in *Palmer's* at 7.4 and the useful analysis of the authorities in *Dashfield v Davidson* [2008] B.C.C 222). The procedures necessary to declare a valid dividend are included for the benefit of existing members, and in this case all the family members interested in PPL agreed to the distribution of the proceeds.

116. Mr Rees also suggested that the "self-dealing rule" disabled Sueda or Askin, as trustees, from acquiring trust property. However, that rule has no application if the beneficiary concurs in the transaction: see *Lewin on Trusts*, 19th ed. at 20-107 and 20-140.

117. I also do not accept Mr Rees' alternative submission that Sueda and Askin have been unjustly enriched by the receipt of sums to PPL's detriment, because Tanju agreed to the distributions under duress and/or because the basis of the distributions was that the sums would remain PPL's. Tanju's evidence that he was under duress is not consistent with the documentary evidence, in particular the contemporaneous text messages between him and Askin. There is also no evidence that Tanju was under immediate pressure to repay the bank loans. That assertion appears to be inconsistent with the manner of division of the sale proceeds, which involved PPL relying on post-dated cheques to recover a substantial proportion of the amount allocated to it, despite there being sufficient proceeds at completion to pay the full amount. Even if Tanju was under pressure, there appears to be no reason why the Bromfield Street property could not have been sold to pay off the bank. The reality is that Tanju was keen to sell the Hotel development. The pressure put on him by Askin and Arif was not illegitimate[16]. Against the background of the lack of provision for Sueda in Isfendiyar's will and the circumstances in which Arif left the business it was also not particularly surprising. Tanju had a real choice. If he considered that PPL and not Askin or Sueda were entitled to the proceeds then he could have refused to cooperate and, if necessary, he could have taken legal action against Askin to prevent a breach of trust. He took no such action.

118. Tanju's case that the funds should be returned to PPL is undermined by the contemporaneous text messages between him and Askin and by his own retention of his share of the proceeds. Tanju's case is further undermined by evidence he gave in cross-examination in relation to the February 2015 agreement. This evidence was that what he was seeking to recover on behalf of PPL extended only to the £500,000 received by Sueda and £1,209,376[17] received by Askin. However, there is unpaid sale consideration of £1.75m, which is the subject of an ongoing dispute in Cyprus. There was also a deposit in respect of a casino licence application relating to the Hotel development which has been refunded and which was shared between Tanju and Askin in agreed proportions as recently as June 2017. These amounts are briefly covered in the final paragraph of the Part 20 claim with an assertion that they are subject to a constructive trust. However, as indicated Tanju's evidence was not consistent with this.

[16] See *Goff & Jones* 9th ed. at 10.54-10.79.

[17] This comprises £1,042,500 she received from the initial £3m and a total of £166,876 received from post-dated cheques.

It is also noteworthy that the instructions Tanju and Askin issued on 27 February 2015 in relation to the joint account covered not only the release of the £500,000 to be paid immediately to Sueda, but also the release to Sueda of her agreed portion of the instalments of the price that were due to be received after that date.

119. I accept Askin's evidence that at no stage during the sales process did Tanju suggest that the proceeds would belong to PPL, beyond the £1.3 million provided for in the sale agreement. He did attempt to suggest at one stage during the negotiations that the money would need to go via PPL first before being distributed to the family members, but she did not believe him or trust that if the money went into PPL (or either of the UK trading companies) he would then still ensure that she and Sueda received their agreed shares, so she insisted on payment direct to her and Tanju. I do not accept the suggestion that she had confused the amount due from PPL to the bank with the amount owed by Pekalp Cyprus to PPL: she had simply been led to understand that they were both in roughly the same amount. I also do not accept Mr Rees' suggestion that she was confused about the existence of the intercompany payables owed by PPL to Pekalp London and Pekalp Cyprus. Rather, there is no evidence that Tanju and she discussed them.

120. The first time it was suggested that Askin had any obligation to account for the proceeds she had received was in solicitors' correspondence in October 2015. I think it is most likely that it was raised then as a response to the issues Askin's solicitors had started to raise about irregularities in PPL, and because by that stage Tanju had finally understood from Mr Safa that, if additional proceeds were not paid to PPL, there would be a significant problem with PPL's accounts since it would not have recovered a material part of its "investment" of over £2.4 million in Cyprus.

121. The documentary evidence included an email sent by Mr Safa to Tanju on 2 July 2014, attaching a letter he had prepared, dated the same date, for Tanju to send on PPL's letterhead to the accountants for Pekalp Cyprus. This letter referred to the fact that the accountants had acted for Pekalp Cyprus (the "Company") since incorporation, and that as they were aware the bulk of the funds to finance the developments had come from PPL. It continues:

> "I see that you have an amount in excess of TL 4 million showing on the accounts of the Company as at 31/12/2013 but in fact the amount owing by Pekalp Properties Cyprus Ltd to Pekalp Properties Ltd (UK) as at present date is £2,435,435 and this sum must be settled from the sale proceeds of the assets of the Company before any payment is made to the shareholders of the Company.
>
> I would appreciate if you could make the Solicitors acting in the sale transaction to be aware of this."

122. At the time 4 million Turkish Lira would have been worth about £1.1 million. The figure of £2,435,435 corresponds precisely to the book value of PPL's "investment" in respect of Cyprus in its accounts as at 30 November 2012, which I infer was the latest figure that Mr Safa had available.

123. It does not appear that this letter was received by the Cypriot accountants in 2014. Instead there is a letter from those accountants dated 18 July 2017 confirming that the amount owing was £2,435,435 as of October 2014 and saying that the bookkeeping error "has now been revised and corrected". The covering email of the same date says "Further to your letter received dated 2 July 2014, the amount owing…has now been corrected…". There was no evidence as to whether the accountants still acted for Pekalp Cyprus at the time of this later letter.

124. This correspondence is interesting for a number of reasons. First, there is no indication at all that any part the balance of the sale proceeds above the £2.4 million figure must go to or be held for PPL. PPL is simply presented as a creditor, and not an equity investor, in respect of that figure. The letter was prepared by Mr Safa who evidently had more of a grasp of the detail than any of the family members. Secondly, it indicates that the sum shown as owing in Pekalp Cyprus's books was around £1.1 million, consistent with what Askin thought the number was until shortly before the sale, when she was told it was nearer £1.3 million. Finally, it is apparent that Tanju was being advised prior to the sale that there was a concern that the debt figure in the books of Pekalp Cyprus was wrong. He was being told that PPL had sent £2.4 million not £1.3 million to Cyprus. Yet it is clear that he did not ensure that this was addressed in the sale contract.

125. The evidence in respect of the amount outstanding between Pekalp Cyprus and PPL is clearly unsatisfactory. However, it is clear that Tanju led Askin to believe that the figure was around £1.3 million (in fact £1,249,284, see paragraph 50 above), and I also accept her evidence that the Cypriot accountants attended meetings discussing the sale contract, which they were aware contained the £1.3 million figure, and that they at no stage indicated that it was wrong. Similarly, the Ozoks and their advisers would undoubtedly have inspected the books of Pekalp Cyprus and would have satisfied themselves about the level of the debt.

126. I have concluded that Mr Safa grouped all payments sent by PPL to Cyprus together and labelled them as investments, whatever their purpose and whoever actually benefited from them in Cyprus. The books of Pekalp Cyprus recorded the amounts properly received by it, and I have concluded on the evidence that at the date of sale this amount was £1,249,284[18]. The balance was received and spent by Isfendiyar, whether on the Catalkoy villa development (as to which see below), personal expenditure or other matters including, it seems, Sueda's hair salon venture and (it appears) other business interests that Isfendiyar may have had. Whilst it is of course possible that some of the cash was spent on the Hotel development, there is no evidence to show this. The consequences of this conclusion are discussed further below, in the context of the Petition.

127. I should note here that the Petitioners accept that the effect of the sale agreement is that Askin and Tanju took on a commitment to ensure that PPL was repaid the debt owed to it by Pekalp Cyprus, and that given the Ozoks' default they have a liability to account

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[18] The only evidence I was shown that demonstrated expenditure by Pekalp Cyprus on the Hotel development was a summary of payments apparently made to a company called Sercem Developments and said to total around £1.28 million. I understood these payments to have been for such construction works as were undertaken at the site. The final invoice, or possibly payment, was dated 1 April 2007, which is also consistent with Arif's evidence about when the development work ceased.

to PPL (on a 50:50 basis) for £347,020, being the balance of the amount owed of £1,249,284, of which £902,264 has already been paid from the proceeds of sale.

128. In summary, I have concluded that no trust attached to the Pekalp Cyprus shares sold by Askin and Tanju in 2014, and that the proceeds of sale are therefore not held in trust for PPL. Askin and Tanju are entitled to the proceeds, subject to an obligation to account to PPL for the balance of the £1,249,284 owed by Pekalp Cyprus to PPL and to the agreement that Tanju and Askin entered into to pay Sueda £500,000, together with the additional amounts from the post-dated cheques referred to in the instructions given to the bank on 27 February 2015 (paragraph 65 above). Tanju's Part 20 claim accordingly fails.

The February 2015 agreement

129. I have concluded that Sueda and Tanju reached a binding agreement on 27 February 2015. I prefer Sueda's evidence that Tanju provided her with a copy of his signed version on that date, and that she gave him hers. I consider that Tanju ultimately accepted in cross examination that he had reached a deal with Sueda on 27 February, and do not accept that it was dependent on Sueda returning funds from the Pekalp Cyprus sale. I do not accept Tanju's suggestion that the deal was not effective because they signed different versions of the document and his version needed to be signed again. The text in the versions they signed is in fact identical.

130. I have concluded that Tanju was withholding distribution of Hotel development sale proceeds to his mother pending her agreement, but that he was prepared to set the release of the funds in train at some point on or shortly before 22 February 2015, once it was clear that she was going to agree to his terms. When she had finally signed, he also issued the revised instructions authorising the release of £500,000 and additional amounts from the joint account.

131. I do not accept Tanju's evidence that the written agreement was part of a wider agreement under which Sueda promised to return the money, or to get Askin to do so. That makes no sense, and is inconsistent with Askin's as well as Sueda's evidence. Tanju claims that reaching agreement with Sueda was dependent on the *return* of the funds, but if it was agreed that she would not benefit from the funds then he would simply refuse to agree to release the funds to her in the first place. Tanju's pleaded case also differed in material respects to his oral evidence, the former claiming that he withdrew his offer immediately after Sueda obtained advice from Blavo & Co.

132. I do not accept Tanju's explanation that the reason that the return of the Cyprus money was not included in the written agreement was because he did not want his sister to see it. That in itself is inconsistent with the supposed commitment from Sueda to persuade Askin to return her share of the funds. The Cyprus sale proceeds were linked to the agreement, but only in the sense that Tanju was prepared to release funds to his mother having secured her agreement to the written terms.

133. I do not consider it to be material that the copies signed are undated, and that each party signed a separate copy without any express provision for signature in counterparts. To the extent that any legal formality was required, that would have related to the agreement to transfer land, under section 2 of the Law of Property (Miscellaneous

Provisions) Act 1989. However, the minimum requirements in that section are in any event satisfied: the terms are set out in writing in a document signed by each party.

134. Accordingly, Tanju is bound by the agreement. As already discussed, it does not require him to transfer a 25% interest over and above the 25% interest to which Sueda has always been entitled. However, he is required to transfer the Catalkoy villa, pay off £100,000 of the mortgage and perform the other obligations. An order of specific performance is appropriate in respect of the transfer of the villa. In respect of the other matters I propose to award damages in an amount to be assessed. In determining the amount of the damages, I accept Mr Evans' submission that the obligation to pay utility bills was not limited to arrears of bills as at the date of the agreement, but was intended to be a continuing obligation for so long as Sueda resided at Falmouth Gardens. That is in my view the better interpretation of the wording and is also consistent with the purpose of the agreement to make provision for Sueda in the absence of a financial award on divorce or provision for her in Isfendiyar's will.

The Petition[19]

135. Section 994(1) Companies Act 2006 ("CA 2006") permits a member of a company to petition the court for an order on the ground:

> "(a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
>
> (b) that an actual or proposed act or omission of the company…is or would be so prejudicial."

136. Under section 996(1) CA 2006, if the court is satisfied that a petition is well-founded it may:

> "…make such order as it thinks fit for giving relief in respect of the matters complained of."

Section 996(2) contains a non-exhaustive list of the types of order that can be made, including regulating the company's affairs in the future, requiring it to take action or desist from doing so, and providing for the purchase of shares by other members or by the company.

137. I should briefly address a submission by Mr Rees that, if Sueda and Tanju reached a binding agreement in February 2015, then under its terms she would be precluded from bringing the Petition, because she had agreed not to make any claim against Tanju, PPL or its officers. Whilst the wording is broad, the agreement is entered into by Tanju in his capacity as personal representative, in the context of the incomplete divorce proceedings and the possibility of a claim under the Inheritance (Provision for Family and Dependants) Act 1975. On balance, I agree with Mr Evans that the Petition is not caught by the terms of that provision, which was aimed at preventing claims in

[19] The relief sought by the Petitioners included, in the alternative, that PPL be wound up on just and equitable grounds pursuant to section 122(1)(g) of the Insolvency Act 1986. In view of my conclusions on the Petition I have not addressed this.

connection with Isfendiyar's estate. However, the point is academic because Askin's ability to petition the court is clearly not restricted by the agreement.

138. There was no real dispute about the well-established principles that apply in determining whether there is unfair prejudice in the conduct of a company's affairs. For example, the concept of "affairs of the company" and members' "interests" are broadly construed, the latter potentially extending beyond financial interests and in some cases covering matters such as infringements of the Companies Act. Material breaches of directors' duties can be unfairly prejudicial, most obviously using the company's money for personal expenditure and not accounting for it, as can acts involving bad faith or an illegitimate ulterior purpose on the part of the directors[20]. The words "unfairly prejudicial" are wide and must be applied flexibly to meet the circumstances of the case. However, the conduct must be both unfair and prejudicial. The concept of "fairness" must also be applied judicially, based on equitable principles. There is no such thing as a no-fault divorce in this context, so it is not enough that trust and confidence have broken down (*O'Neill v Phillips* [1999] 1 WLR 1092).

139. I have no doubt that the affairs of PPL have been conducted in a manner unfairly prejudicial to Askin and Sueda. I deal below, in turn, with failures to comply with basic corporate requirements, financial irregularities, and finally with a failure to engage on the question of whether a sale of Church Road is in PPL's interests.

Accounts, general meetings and corporate "housekeeping"

140. There has clearly been a failure to provide financial information[21] or call general meetings[22], and a failure to deal with share allotments and transfers properly (including a complete failure to keep or update a share register). Shareholders have not even been informed about dividends apparently recorded in PPL's books: of seven annual dividends recorded, Askin appears to have received her share of only two. I accept Mr Evans' submission that, whilst some of these omissions would not by themselves be prejudicial, their cumulative effect was unfairly prejudicial. In particular, depriving members of the opportunity to consider the affairs of the company, or otherwise to know what was going on, is prejudicial to their interests: see *Re a Company, ex parte Shooter* [1990] BCLC 384 at 393d, per Harman J.

141. In this case the management of PPL, in the form of Tanju and (during his lifetime) Isfendiyar, ran the company for their own benefit and ensured that Askin at least was not properly informed about its affairs. As a result, because she trusted them, she did not take steps to challenge what was being done until a relatively late stage. The management also permitted such poor compliance with fundamental corporate

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[20] On the last point, see *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 18b.

[21] This includes a complete failure to lay accounts before the company in general meeting pursuant to section 241 Companies Act 1985, and since that was repealed a failure to send a copy of the accounts to each member under section 423 Companies Act 2006. Mr Rees' submission that the accounts were available at Companies House neither addresses the point that Sueda and Askin would not have been aware of that at the relevant time, nor the point that for a number of years abbreviated accounts were filed. I also do not accept that the fact that the accounts may have been available at Church Road or at Mr Safa's office was sufficient: they should have been drawn to the members' attention.

[22] Section 366 Companies Act 1985 required companies to hold AGMs. This could be dispensed with by resolution under section 379A (see section 366A) but there was no evidence that any such resolution was agreed. For private companies this obligation no longer applies following the introduction of the Companies Act 2006.

housekeeping that it was not even clear who the shareholders were or how many shares they each held. These failures need to be addressed, including by passing appropriate resolutions to establish the issued share capital as £75,100 (reflecting the intended share capital increase at the date Bromfield Street was acquired)[23] and creating a share register showing that Sueda and Askin each hold 18,775 shares and Tanju holds 37,550.

Financial irregularities: Cyprus

142. However, Askin and Sueda do not need to rely solely on these failures. The most obvious prejudicial behaviour to date relates to the use of company money and appropriate accounting in respect of it. The largest single example of this relates to the Cyprus "investment", a significant proportion of which was diverted to Isfendiyar personally, with Tanju failing to take any steps to challenge his father or keep proper records of what the funds were spent on[24]. I do not accept Mr Rees' submission that Isfendiyar was simply controlling Tanju as a shadow director and that Tanju was not in a position to micro-manage what Isfendiyar did in Cyprus. The evidence shows that Tanju simply authorised the transfer of funds when requested, rather than turning his mind to whether the expenditure was proper expenditure by PPL or, even if authorised, whether it needed to be treated differently, such as a loan to Isfendiyar for personal expenses.

143. A number of other specific issues are dealt with below in respect of which an account will be required, but it is convenient to deal first with a general issue relating to how amounts not relating to PPL's business were accounted for, and to make some general comments about the appropriate method of accounting as between the parties.

Director's ("stakeholder") account

144. Between around 2003 and 2014 PPL's accounts included a "director's" account among current liabilities. Mr Ashong described this as a "stakeholder account". He said that prior to 2003 there was a similar account within "other creditors" in PPL's accounts.

145. Mr Ashong's evidence, which I accept, is that surplus funds from the furniture business which were received by PPL from Pekalp London and Pekalp Contracts, other than amounts recorded as intercompany loans, were recorded in the stakeholder account along with other amounts such as dividends declared[25] by PPL and amounts received from family members. Payments made by PPL that were not identified by Mr Safa as relating to PPL's business were booked to the same account, reducing the amount treated as owed by PPL. Mr Ashong explained that amounts treated as paid into this account were repayable by PPL (consistently with the account being treated as a creditor item), but in the case of Pekalp London and Pekalp Contracts the amounts were owed to the shareholders of those companies and not to the companies themselves. As

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[23] Under PPL's Articles, shares could be issued for the first five years of its life without shareholder authority. That five year period expired a few days after Bromfield Street was acquired, so it was not essential that shareholder consent was obtained at the time.

[24] Tanju's evidence was that he had kept a detailed spreadsheet, but this was not in evidence and I have significant doubts about whether, even if it was, it would actually have shown what funds were spent on, rather than (more generically) what amounts were sent to Cyprus and on what dates. I did not detect from Tanju's evidence that he had any real interest in determining what the money was spent on.

[25] It would be more accurate to say dividends treated by Mr Safa as declared for accounting purposes, since there is no evidence that dividends were ever properly declared, and it does not appear that Tanju as the director took any notice of such details.

I understood it, Mr Ashong distinguished these amounts from the intercompany payables that were owed to Pekalp London and Pekalp Contracts by reference to the way in which they were accounted for by those companies, most obviously where they were offset against dividends treated as declared by those companies, or treated as loans by those companies to their own stakeholders. For example, assume Pekalp London declared a dividend of £100,000. It could have paid that dividend to its shareholders and they could in turn have advanced the same amount to PPL. Instead, the cash was transferred direct to PPL and recorded in the stakeholder account as an amount owed by PPL.

146. There are significant defects in this arrangement. Most obviously, it draws no distinction between the different stakeholders. I am prepared to accept Tanju's evidence that he did at one stage raise this point with Mr Safa, but he clearly did not press it and insist, as he should have done, on proper accounting as between the family members so that PPL's position in respect of, and obligations to, each of them was clear. Amounts paid to PPL and recorded in the account have not been allocated to the family member making the contribution, and so payments made out of the account, which have undoubtedly been largely for the benefit of Isfendiyar and Tanju[26], have wrongly been borne in part by Askin and Sueda. The correct accounting of dividends treated as paid by PPL, Pekalp London and Pekalp Contracts should reflect that Askin and Sueda were each a 25% shareholder in PPL and that Sueda was a 20% shareholder in Pekalp Contracts. Amounts booked to the account as received from family members otherwise than in respect of dividends also need to be accounted for to the extent that the funds received were paid out otherwise than for the benefit of the family member concerned.

147. A further difficulty is that PPL appears to have made payments otherwise than for business purposes that have not been recorded in the stakeholder account, both for periods when the account existed, and subsequently. These need to be accounted for as well. I have already referred to the most significant instance, relating to funds sent to Cyprus, but the Petitioners have identified a number of other examples. Mr Ashong has not made any corrections in respect of these items, because the way in which he has approached his task is to demonstrate how the figures included in the year end accounts were arrived at, rather than to interrogate the accuracy of those accounts.

Appropriate accounting between the parties

148. In determining the appropriate accounting between the parties, I have concluded that no practical distinction needs to be drawn between Isfendiyar and Tanju. Tanju is the sole executor and beneficiary of Isfendiyar's estate, and has also been PPL's director and effective controller (either alone or jointly with his father) at all material times. In particular, it is clear from the evidence that it was Tanju that controlled PPL's financial affairs, and (for example) directly facilitated or authorised all transfers of funds to Cyprus without making any attempt to recover them. As the sole beneficiary under his father's will, Tanju also benefited to the extent that Isfendiyar used PPL's money rather than his own, because use of his own funds would have diminished the size of the estate available to Tanju. As both the controller and effective beneficiary, the only just and equitable approach is for Tanju to account for all amounts appropriated by Isfendiyar.

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[26] The amounts expended include a significant contribution to the purchase of Tanju's family home, personal tax bills of Tanju and Isfendiyar, legal expenses incurred by Isfendiyar on the divorce proceedings, and other unidentified items.

This includes the balance of the Cyprus "investment" over and above the amount that I have found was recorded in the books of Pekalp Cyprus (see paragraph 126 above).

149. The position is a little less straightforward in respect of Sueda. It is likely that at least some of the funds transferred to Cyprus, or other cash appropriated from PPL as discussed below, was spent by her or for her benefit. Tanju has also pointed to amounts he paid for her benefit from PPL. To the extent that these cannot be attributed to dividends on her shareholding in Pekalp Contracts or PPL, or to other funds that Sueda introduced to PPL, they must in my view be regarded as expenditure that Isfendiyar or, following his death Tanju, chose to make on her behalf from their own funds. In other words, those amounts must be included in the amounts to be accounted for by Tanju (for himself and in respect of Isfendiyar). Any other approach would not reflect the fact that the other shareholders, Sueda and Askin, had no control over the company's finances and no knowledge of its affairs. In reality, they were gifts by Tanju (or financial support by Isfendiyar for his wife during his lifetime) from funds that they had chosen to appropriate from the company.

150. A specific issue was raised in respect of Sueda's hair salon venture. The refinancing of Falmouth Gardens in March 2007 (paragraph 12 above) raised £250,000. The funds raised, net of the amount required to repay the existing debt, were transferred to Sueda's bank account (which Tanju had authority to deal with while she was ill), and the bulk of the money (£140,000) was then transferred on to PPL. PPL in turn made a payment of £110,027 to Pekalp Cyprus.

151. I have concluded from the documentary evidence that, although Sueda did not sign the documents remortgaging Falmouth Gardens, she did spend £100,000 of the proceeds on the hair salon business, rather than using her own savings. In these circumstances it is not appropriate to require Tanju to account for that part of the funds sent to Cyprus. Instead, £100,000 of the £140,000 paid into PPL from the remortgage should be treated as funds spent on her behalf.

152. There are also a number of amounts that have not been identified or explained, including cash payments and, for example, amounts labelled "Anglo-Turkish Investments". The Petitioners contend that many of the cash payments are likely to have been used to pay wages on behalf of Pekalp London. Given his control of the financial affairs, the onus is on Tanju to show to what extent any of these amounts can properly be attributed to PPL's business, or to Askin or (subject to the points in the preceding paragraphs) Sueda. To the extent that this cannot be demonstrated they must be included in the amounts for which Tanju is required to account, either personally or (where Pekalp London has benefited) through Pekalp London, of which he is the sole shareholder.

Salaries

153. From 2003 onwards a salary was paid by PPL to Tanju's wife. This was changed in 2015 so that it is now Tanju rather than his wife who receives the salary. I do not accept Tanju's evidence that he had explained to other family members that he (or his wife) was drawing a salary from PPL. He claimed in cross examination that the salary was paid on the advice of Mr Safa, that his wife received it for tax reasons and that he stopped that arrangement once the family complained, and that his salary from Pekalp London was reduced to reflect the salary from PPL. He also suggested that Mr Safa

proposed it as an alternative to Pekalp London charging PPL for the use of office facilities.

154. I do not accept that Tanju's salary was reduced. That assertion was not supported by any documentary evidence or reflected in any of his witness statements, which tell a different (and conflicting) story, including saying at one stage that his wife actually did work in the business. The reality is that Tanju simply assumed he was entitled to a salary, and arranged for one to be paid. I appreciate that he may have relied on Mr Safa and that he may have had his father's agreement to it, but he did not obtain the agreement of Askin or Sueda.

155. There is no general principle that a director is entitled to a salary: *Gore-Browne on Companies*, 45th ed. at 13[14]. PPL adopted Table A as its Articles (subject to irrelevant modifications), and Article 82 provides that the directors "shall be entitled to such remuneration as the company may by ordinary resolution determine". No such resolution was passed, and there was no unanimous agreement under the *Duomatic* principle. Accordingly, Tanju must account to PPL for the gross salaries paid.

156. I accept that PPL was able to use the office facilities at Church Road and that it was not invoiced by Pekalp London for a share of overheads. In principle it might be regarded as "fair" to make some provision for this. However, I am not satisfied that a direct receipt of salary by Tanju or his wife can be justified on that basis. The correct approach would have been for Pekalp London to have made an appropriate charge to PPL, but no such charge was made. Furthermore, costs not associated with the Cyprus "investment", much of which I have concluded is not properly attributable to PPL's loan to Pekalp Cyprus, are likely to have been limited. PPL was essentially being used as a convenient collecting point for surplus funds from Pekalp London and Pekalp Contracts, before sending those funds to Cyprus, and there is no real justification for it bearing costs associated with that.

Basement flat rent

157. I accept the evidence of Askin and Arif that the basement flat at Bromfield Street has been let for most of the period that the property has been held by the family and/or PPL, except for around four months when damp treatment works were undertaken. I do not accept Tanju's evidence that the flat was empty for a lot of time. Apart from those works I have concluded that repair expenditure on Bromfield Street has been relatively modest, and generally paid for using a company credit card. Tanju also confirmed in cross-examination that figures he was shown by Mr Evans in respect of repairs in samples of PPL's accounts were in line with his expectations. I do not accept Tanju's assertion that the rent from the basement flat was routinely used for maintenance purposes, or that it was insufficient to cover the maintenance costs in most years.

158. It is clear from the evidence that most, but probably not all, of the rent from the basement flat was collected in cash. This was supported by Mr Salih's evidence. Even if the rent figure was in the region of £700-£800 per month as suggested by Tanju rather than in excess of £1000 as suggested by Arif, this could amount to approaching £10,000 per year. To the extent that it has not been recorded in PPL's books it has been appropriated either by Isfendiyar or Tanju, and must be accounted for.

Legal expenses

159. The Petitioners have raised a legitimate concern that PPL appears to have borne most of the legal costs incurred in respect of the Chancery action, substantially in excess of the amount properly attributable to PPL. Tanju is clearly required to account for any such excess. PPL appears also to have paid costs associated with the Petition, although on the final day of the trial I was provided with a witness statement by Tanju's solicitor (Reza Hussein of Harper & Odell) undertaking to ensure that a full account would be taken at the conclusion of the case and that no sums in respect of the Petition would (ultimately, it seems) be borne from PPL funds. This witness statement made no reference to the costs of the Chancery action.

160. This issue should be relatively straightforward to determine given the cost budgets filed at Court and bills rendered by Tanju's solicitors, which he authorised them to release during cross-examination. However, to be clear, PPL should not be bearing costs of the Petition (at any stage) and should only bear costs of the Chancery action insofar as they properly relate to its Part 20 claim. PPL is only a party to Sueda's claim in the Chancery action because the relief sought includes rectification of the register: Tanju is the sole effective defendant. These principles have not been adhered to, at least to date. These points are of course also subject to the terms of any award of costs that may be made in these proceedings.

Catalkoy development

161. I am satisfied that the Catalkoy site was owned and developed by Isfendiyar as a personal project. The site was in his name, and he chose to give two of the completed villas to his children, retaining one for use by him and Sueda. Although the sale proceeds of two of the villas were received by PPL (in the form of a number of stage payments), that was because they were sold to English purchasers who wanted to transfer funds in the UK and were provided with PPL's details for that purpose. These receipts by PPL should be treated as amounts to which Isfendiyar was entitled. In practice, to the extent that the amounts have not already been taken into account in calculating the Cyprus "investment" figure, this will reduce the amount Tanju must account for in respect of it. This is accepted by the Petitioners.

162. Mr Rees submitted that the conclusion that the Catalkoy development was Isfendiyar's personal project disregards the fact that sale proceeds of other villas were received by Pekalp Cyprus. Although there was evidence of other sales, the contracts were obviously concluded by Isfendiyar as the seller. The question of the receipt of sale proceeds by Pekalp Cyprus was the subject of the application to admit additional evidence which I have dealt with at the end of this judgment. As explained there, evidence that sale proceeds were received by Pekalp Cyprus does not of itself demonstrate that the project was not Isfendiyar's. More importantly, it cannot assist Tanju in relation to PPL, except to the extent that he can demonstrate that the proceeds were returned to PPL and have not already been applied in reducing the Cyprus "investment" in PPL's books.

Church Road rent

163. There is no written lease governing the occupation of Church Road. The amount of rent charged by PPL has varied significantly, in a manner decided by Tanju. There has been

no attempt to align the rent with an independently determined fair market rent. Instead, Tanju's evidence was that his approach was to start with a rent of around £74,000 per year, which he said was agreed when the property was acquired, and increase that amount by around 10% every four years or so. However, he said that the burden of the Cyprus developments meant that the rent was adjusted, being increased when required (so that in the years ended 30 November 2012, 30 November 2013 and 30 November 2014 it was £112,800 per annum), and subsequently being decreased substantially with a view (he said) to recouping the excessive rent increases. The Petitioners say that, in fact, £112,800 is no greater than the market rent, so that overall rent has been materially undercharged. They point in support of this to a valuation prepared by a local firm, Upsdales, on Tanju's instructions in June 2017, which suggested that £110,000 per annum, which it had been informed was the current rent, was reasonable.

164. I agree with the Petitioners that, in principle, and bearing in mind the different shareholding interests in each company, PPL should have charged a market rent. Tanju gave no consideration to his duties as a director to promote the success of PPL for the benefit of its members as a whole, and to avoid conflicts of interest[27]. Undercharged rent should be accounted for.

The intercompany payables

165. No interest has been charged on the intercompany payables owed by PPL to Pekalp London or Pekalp Contracts. Tanju's evidence was that he had intended to charge interest when PPL's finances permitted it. I considered whether, consistently with the requirement that a fair market rent is paid, it would be appropriate to recognise that an amount should be allowed in respect of interest on these payables, once those payables have been adjusted appropriately to reflect the correct treatment of other amounts (including the £200,000 referred to in paragraph 102 above[28]). I prefer Mr Evans' submission that it would not be. No interest has been charged in fact. If Tanju's assertion was correct then interest should have been accrued in the accounts, even if payment was to be deferred until PPL had adequate cash resources to pay it. But no interest was accrued.

166. I have also taken account of the fact that the evidence indicates that at least a significant proportion of the funds were advanced not for the benefit of PPL but as a means of transmitting surplus funds to Cyprus for use by Isfendiyar personally. In other words, the advances were not made for the purposes of PPL's business and in reality it did not benefit from the funds.

167. I do not, however, agree with a more radical submission made by Mr Evans that the agreement reached in relation to the Hotel development sale meant that the intercompany payables owed by PPL to Pekalp London and Pekalp Contracts should be treated as extinguished. This submission was based on Tanju's oral evidence that the £1.1 million labelled "Pekalp" on the "What it should be" handwritten note (see paragraph 52 above) was a reference to the intercompany payables owed by PPL, and that what Tanju had in mind was that that portion of the sale proceeds would be applied

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[27] Sections 172 and 175 Companies Act 2006.

[28] The Petitioners also maintain that there should be an additional adjustment of £110,000, representing amounts repaid to Pekalp London but not taken into account in the amount shown as due. This will also need to be agreed or determined in the accounting process.

to repay those payables and in turn used to pay dividends from Pekalp London and Pekalp Contracts, which he would ensure were shared in the agreed proportions between family members. Tanju denied that that arrangement had been implemented, and there was no evidence to show that it was. Moreover, it would in my view be inequitable (and a windfall for Askin and Sueda) to treat the intercompany payables as eliminated whilst also requiring Tanju to account for the amounts sent to Cyprus over and above the amount that I have found was recorded in the books of Pekalp Cyprus. PPL's financial affairs are appropriately regularised if funds spent otherwise than for legitimate business purposes are reimbursed and other amounts are accounted for as described in this judgment.

Sale of Church Road

168. There is no indication that Tanju has actually engaged with the question of whether a sale of Church Road is in the interests of PPL. It was clear from the evidence of both property valuation experts that the £6 million offer from Origin would, if genuine, be a very attractive one. I accept the evidence of Mr Shapiro that the obvious thing to do would be to test the offer by sending out a contract and seeking a substantial deposit at the point of exchange. PPL would then have protection if the purchaser could not complete (most obviously through a failure to arrange debt finance, which Origin has indicated it would do between exchange and completion). If Tanju really believed that the Church Road property is only worth what Mr Shaw has said it is, then it seems inexplicable from PPL's perspective not to pursue Origin's offer while it remains available: it would be too good to miss. However, Tanju did not engage with this and the focus of his case in relation to Origin's offer was to try to challenge its bona fides, and suggest that the fact that it may have been prompted by enquiries made by Askin and Arif meant that it should somehow be disregarded.

169. Tanju's real motivation became somewhat clearer during cross-examination, and it showed a conflict of interest between his position as director of PPL and his role as director and shareholder of Pekalp London and Pekalp Contracts. In summary, he wants to delay any sale of the factory until he chooses to retire from the trading business. It was clear that he wants to control the timing and terms of any sale. He also suggested that a sale could be very disruptive to the trading operation, and potentially result in the loss of jobs, but he produced no evidence demonstrating that relocation would be difficult.

170. I am satisfied that Tanju's current approach to the question of selling Church Road is not consistent with his duty as a director to promote the success of PPL for the benefit of its members as a whole, or his duty to avoid conflicts of interest.

The appropriate relief

171. Where unfairly prejudicial conduct is found to exist, the Court has a wide discretion to grant such relief as it considers fair and equitable in all the circumstances[29]. The Court must consider the range of possible remedies available and choose the one which in its assessment is most likely to remedy the unfair prejudice and deal fairly with the situation that has occurred[30]. The jurisdiction is also prospective in nature, with the

[29] *Re Bird Precision Bellows Ltd* [1986] Ch 658 at 669D.
[30] *Grace v Biagioli* [2006] B.C.C. 85 at [74].

position being assessed at the date of the hearing rather than at the date of presentation of the petition[31].

172. The relief claimed in the Petition included regularising the issued share capital and establishing a register of members showing the true shareholdings, requiring an account to address financial irregularities, and ordering either a purchase by Tanju of the Petitioners' shares or a sale by Tanju of his shares to them, in either case with no discount for a minority holding. At the hearing, Mr Evans submitted that the key remedy in the circumstances that now exist should be a sale of Church Road (and, potentially, Bromfield Street as well) following which it would be straightforward for there to be a purchase or sale of shares, with little scope for dispute about their value.

173. Mr Evans also submitted that, in any event, no discount on a sale of shares was appropriate on the basis that PPL was a quasi-partnership, and that even if that was not correct it would be unfair to permit Tanju to benefit from a discount in buying out Askin and Sueda, since he would be benefiting from his own defaults.

174. Mr Rees submitted that by seeking an order for the sale of Church Road, the Petitioners were seeking relief that was not sought in the Petition (leaving aside a general claim to "further or other relief"), and he suggested that as a result an order for sale would not be relief "in respect of the matters complained of" within section 996(1). Mr Rees did not press the point, and I think he was right not to do so. The £6 million offer on Church Road was received well after the Petition was filed, and by the date of the hearing the failure to pursue that offer was clearly being complained about. The question of the sale of Church Road was included in the agreed list of issues for the trial. Section 994 is also not restricted to unfairly prejudicial conduct that has already occurred, but extends to conduct that is continuing at the date of the hearing, or even proposed conduct (*Re Kenyon Swansea Ltd* [1987] BCLC 514 at 521).

175. I have concluded that in this case fair and equitable relief must involve a process that allows the sale of Church Road at the best price that can be obtained in the circumstances. This will involve, as a minimum, a proper testing of Origin's offer. Realistically this is the only way of resolving the issue of the property's value, about which the parties and experts are fundamentally disagreed. In particular, I consider that it would be inequitable for Tanju to purchase Askin and Sueda's shares at a value which disregards Origin's offer. Whilst that is no doubt what he would prefer, it would then leave him able to exploit the full development potential of Church Road at his leisure. I do not accept in this context that the offer Tanju received from Galliard Homes in March 2018 represents the best offer that could be obtained. The background to this offer was not explained but Mr Shapiro gave convincing evidence that it was heavily focused on negative aspects, including a minor flying freehold issue affecting the rear of the site which he described as a complete "red herring" that would not affect the scale of any development. Other developers apart from Origin and Galliard have also shown an interest, and that has not been tested either.

176. I have considered Tanju's concern that a sale of Church Road could be very disruptive to the trading operation, and potentially result in a loss of jobs. It has not been established whether the business would be able to relocate in the immediate area. However, as already indicated Tanju produced no evidence demonstrating that

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[31] *Grace v Biagioli* at [73].

relocation would be difficult, and it is apparent to me that it has simply not been explored. It is also clear from the evidence that before it was based at Church Road the business moved on a number of occasions: Mr Foley's witness statement referred to four other sites he had worked at with Isfendiyar and indicated that this was not a complete list. I appreciate that the business would have been smaller at that time, but it does indicate that relocation must, in principle, be feasible without extreme disruption.

177. In a normal situation a sale of Church Road would involve a full marketing process, and (as I understand it from the expert evidence) consideration of whether it would be in PPL's interests to take additional steps, including undertaking a full development appraisal (with the involvement of architects and other professionals such as quantity surveyors) and testing the planning situation with the local authority via a pre-application. Ordinarily it would also be appropriate to consider whether the best course to take would be a sale that is conditional on planning permission being obtained. However, this is not a normal situation given the break down in relationships and the deadlock in PPL that arises from my decision (with Tanju owning 50% and Sueda and Askin also owning 50% between them).

178. I will hear submissions at a further hearing as to the precise form of an order for sale, but before then I urge the parties or their representatives to make a real effort to agree the terms, in a spirit of co-operation that has so far proved elusive. I would envisage that the order will make provision governing the sale process, including the appointment of a third party to deal with it and ensuring that it cannot be stalled by deadlock or by behaviour that is not in PPL's interests, provide for a minimum price and also fix an earliest completion date, by which time the trading business will need to have relocated. As regards relocation, I am also prepared to hear submissions about whether and to what extent it is appropriate to make an allowance to Pekalp London and Pekalp Contracts towards reasonable costs of relocation. Any such amounts will need to be properly costed and justified.

179. I will also hear submissions as to whether the order for sale should extend to Bromfield Street. This is likely to depend on whether one or more of the parties wishes to retain it at a value acceptable to the other party or parties. In view of its possible sale, I am not reaching a final decision as to its value now, beyond indicating that both experts had some valid points to make as to the basis of valuation to be used and the appropriate comparables. In particular, it seemed to me that Mr Shapiro was correct to approach the task as a valuation of the entire building, and whilst I accepted Mr Shaw's concern that the comparables Mr Shapiro had used were old, I also doubted the appropriateness of a number of the comparables Mr Shaw used, in particular of sales of individual flats at auction or in different types of property, or located some distance away.

180. Assuming a sale of Church Road (and, if appropriate, Bromfield Street) a sale of shares between the parties will be straightforward[32]. Treating Sueda and Askin as a single "block", a purchase by either party will result in a 100% shareholding. In those circumstances any discount would in my view be quite inappropriate, whether or not PPL is currently a quasi-partnership and whichever party makes the purchase. I do not accept that, on the basis of Mr Skeels' oral evidence, a purchase of 50% by an existing 50% shareholder should still attract a discount of 60%. As mentioned above, that evidence was inconsistent with the statement in Mr Skeels' report that a transfer of 50%

[32] Of course, the parties could alternatively agree a winding up as the best way forward.

to an existing 25% shareholder would attract no discount because a fully controlling 75% stake would be held following the acquisition. But in any event requiring a discount in these circumstances would simply be unfair to the selling party, since the purchaser would either be buying a "cash box" or shares in a company with cash and one asset (Bromfield Street) which that party had chosen to retain.[33]

181. In determining the value of the shares, an asset basis of valuation is obviously appropriate. Account must be taken of PPL's liabilities as well as its assets, as determined in the light of the account that will be required following this judgment. Full tax must be allowed in respect of any asset sold or to be sold. If Bromfield Street is not to be sold I would provide for 50% of the tax and costs of sale, in line with Mr Pearson's evidence.

Application to admit further evidence

182. Following the conclusion of the trial, Tanju's solicitors filed an application seeking permission to rely on a further witness statement produced by Tanju, dated 20 December 2018, or alternatively to admit in evidence the documents exhibited to that statement, so far as not already in evidence. This evidence related to the sale of villas at Catalkoy and (according to Tanju's solicitors) was aimed at addressing a point raised during closing submissions about a lack of information about those sales in the trial bundles. The documents comprised sales contracts with five purchasers (four of which had been included in the bundles), certain (incomplete) bank statements for Pekalp Cyprus (much of which had been included in the bundles, although not all in the same format), an attachment seeking to demonstrate which entries on those bank statements represented sale proceeds received by Pekalp Cyprus, and a newly produced document from Mr Ashong aimed at showing that sale proceeds for the villas received by PPL were accounted for as part of the Cyprus "investment". I provided an opportunity to the Petitioners to respond, and this resulted in a further witness statement provided by a partner at their solicitors, Seddons.

183. I considered both the application and the Petitioners' response. I accept Seddons' explanations for not including documents in the trial bundles. There is no principle that all disclosed documents should be so included. Paragraph 3.2 of Practice Direction 39A refers to other "necessary" documents (in addition to witness statements, pleadings and other documents of the kind listed in that paragraph). Seddons had provided Harper & Odell with the opportunity to comment on the content of the trial bundles and to identify any documents that they wished to add. It was also open to the Defendants to object to Seddons' approach and introduce disclosed documents during the course of the trial. In my view this application was made too late.

184. In any event, I do not consider that the new material assists or is required for the purposes of this decision. To the extent that it indicates that certain sale proceeds of the villas were received by Pekalp Cyprus, that does not of itself demonstrate that those proceeds, together with the apparently material additional proceeds not covered by the evidence, were not ultimately received by Isfendiyar[34], and it certainly does not

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[33] There is no inflexible rule that minority shareholdings in companies that are not quasi-partnerships must be valued at a discount: see *Re Sunrise Radio* [2010] 1 BCLC 367 at [290] to [308].

[34] The fact that the sale of the Hotel development site was structured as either a sale of the shares in Pekalp Cyprus or the site itself for the same price indicates that there was no surplus cash or other assets in the company when it was sold.

demonstrate that the proceeds were received by PPL. As stated in paragraph 162 above, except to the extent that Tanju can show that the proceeds were returned to PPL and have not already been applied in reducing the Cyprus "investment" in PPL's books, those proceeds cannot reduce the amount which is required to be accounted for.

185. As regards sale proceeds that were received by PPL (as to which see paragraph 161 above), it is not necessary to address the additional analysis produced by Mr Ashong for the purposes of this decision. However, I note the point made on behalf of the Petitioners that it appears to conflict with the schedule of investment attached to the Defence and Counterclaim.

Summary

186. In summary:

i) Sueda is and has always been entitled to a 25% shareholding in PPL.

ii) Askin is not required to account for development profits to PPL.

iii) The 2003 Trust Document did not create a valid trust. Even if it did, any such trust had fallen away by the date of the sale of Pekalp Cyprus in 2014. The proceeds of sale are therefore not held on trust for PPL.

iv) Pekalp Cyprus owed £1,249,284 to PPL at the date of sale, and Tanju and Askin must account for the balance of this. The remainder of PPL's "investment" in Cyprus must be accounted for by Tanju, but (subject to some adjustments) the intercompany payables owed to Pekalp London and Pekalp Contracts remain payable.

v) A binding agreement was reached between Tanju and Sueda in February 2015, which must be performed by Tanju insofar as it relates to the Catalkoy villa, with other breaches being assessed in damages.

vi) The Petitioners have succeeded in demonstrating unfairly prejudicial conduct. An account is required to address financial irregularities and the relief ordered will include a process that allows the sale of Church Road at the best price that can be obtained in the circumstances, followed by a sale of shares between the parties.