[2020] EWHC 1878 (Ch)

Claim Nos.HC-2014-000361 and BL-2019-000001 (formerly County Court No. E10YY487)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS

CHANCERY DIVISION

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

Date: 15th July 2020

Claim No. HC-2014-000361

BETWEEN:

Claimant BARASA ADELE IDRIS-GOUDARZ

and

Defendant KHOSROW GOUDARZ

AND

Claim No. BL-2019-000001 (formerly County Court No. E10YY487)

BETWEEN:

Claimant KHOSROW GOUDARZ

and

Defendant BARASA ADELE IDRIS-GOUDARZ

JUDGMENT

The Claimant represented by Mr Daniel Isenberg (instructed by Rosenblatt Limited).
The Defendant in person.

Hearing dates: **12th and 13th November 2019**

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.

DEPUTY MASTER HENDERSON

1. This is my judgment following the trial of:
   1.1. An application made by the Claimant in claim No.HC-2014-000361 by an application notice dated 18th October 2018 ("the Application"). The Application is an application to enforce the terms of Deed of Compromise dated 21st November 2014 annexed to a Tomlin Order dated 7th January 2015.
   1.2. Claim No.BL-2019-000001 (formerly County Court No. E10YY487) ("the Claim").

2. In this judgment I refer to the Claimant in Claim No.HC-2014-000361 as Ms Idris-Goudarz. Ms Idris-Goudarz is the Defendant in Claim No.BL-2019-000001 (formerly County Court No. E10YY487). Ms Idris-Goudarz is also referred to in variously in the documents in this matter as "Barasa" or as "Lady Barasa".

3. I refer to the Defendant in Claim No.HC-2014-000361 as Mr Goudarz. Mr Goudarz is the Claimant in Claim No.BL-2019-000001 (formerly County Court No. E10YY487). Mr Goudarz is also referred to variously in the documents in this matter as "Lord Goudarz", Lord K Goudarz", or "Khosrow".

4. Mr Goudarz is the father of Ms Idris-Goudarz.

5. Sherida Ellen Idris-Goudarz ("Mrs Idris-Goudarz") was Mr Goudarz's wife and the mother of Ms Idris-Goudarz. Mrs Idris-Goudarz died on 20th September 2012. One other member of the family featured in the trial. That is Mrs Idris-Goudarz's mother, Mrs Diann Daisy Idris ("Mrs Idris").

6. The Claim Form in Claim No.HC-2014-000361 was issued on 26th September 2014. The Claimant was and remains Ms Idris-Goudarz. The First Defendant was Mr Goudarz. The Second Defendant was Mr Peter Rollin, a solicitor and one of the two proving executors of Mrs Idris-Goudarz's estate. The other proving executor was Mr Goudarz. The Third Defendant was a company called "The Lemon Chocolate Co. Limited" ("the Company").

7. The Particulars of Claim in Claim No.HC-2014-000361 claimed relief under three heads:
   7.1. In respect of the property known as "Crimplesham Hall" ("the Hall").
   7.2. In respect of the following 5 properties and their rents:
      7.2.1. 4, Chervil Walk, Downham Market,
      7.2.2. 15, Burnham Road, Downham Market.
      7.2.3. 16, Stirling Close Downham Market.
      7.2.4. 10, Nene Road, Downham Market.
      7.2.5. 15, Spring Sedge, Downham Market.
   7.3. In respect of an alleged misappropriation of £25,515.31 from joint bank accounts in the names of Ms Idris-Goudarz and Mrs Idris.

7.4. In respect of a loan or loans to the Third Defendant alleged to total £974,738.27.
7.5. In respect of two loans to the Third Defendant alleged to be for £20,000 and £10,000.

8. Following a mediation, claim No.HC-2014-000361 was compromised by the Deed of Compromise dated 21st November 2014 ("the Deed").

9. The Application was dated 18th October 2018 and was issued on 22nd October 2018. By the Application Ms Idris-Goudarz sought the following orders:
   9.1. An order that Mr Goudarz instruct Kenneth Bush Solicitors to pay forthwith to Ms Idris-Goudarz's solicitors the net proceeds of 15, Spring Sedge, Downham Market held by them, together with interest accrued thereon.
   9.2. An order that Mr Goudarz pay such sum as represents the difference between the net proceeds of sale of 15, Spring Sedge, together with interest and the sum of £180,000 together with annual interest at 4%.
   9.3. An order that Mr Goudarz pay Ms Idris-Goudarz's costs of recovering the sums owed under the Deed and, inferentially, an assessment of those costs.
   9.4. An order that Mr Goudarz pay the costs of the Application and, inferentially, a summary assessment of those costs.

10. The Application was supported by a witness statement dated 18th October 2018 of Ms Idris-Goudarz. The essence of Ms Idris-Goudarz's claim in the Application was that she was owed money under the terms of the Deed and that Mr Goudarz had not permitted the net proceeds of sale of 15, Spring Sedge to be paid to her as required by the Deed.

11. Mr Goudarz served a witness statement in answer dated 5th November 2018. The essence of Mr Goudarz's defence to the Application as set out in that statement was that he had "long ago" paid Ms Idris-Goudarz more than he owed her under the Deed and that "last year" (i.e. in 2017) she had told him that they were "all square". In particular he said that the largest sum in his claim was £150,113.50 which he paid over in the course of 2015 and 2016 to repair two properties solely owned by Ms Idris-Goudarz: 18, Tunbridge Lane, Bottisham and 40, Bailey Mews, Cambridge. Mr Goudarz said that Ms Idris-Goudarz told him "at the outset" that "we" should keep all the receipts and invoices and work out what he had paid on her behalf, and offset it against what he owed her.

12. On 7th November 2018 Mr Goudarz issued the Claim in the County Court Money Claims Centre. The Claim originally had reference number E10YY487.

13. Ms Idris-Goudarz's application dated 18th October 2018 came before Deputy Master Bartlett on 27th November 2018. He was informed of the issue of the Claim. He ordered that the Claim be transferred to the High Court, Chancery Division. He ordered the Claim and Ms Idris-Goudarz's application to be re-listed together on the first available date after 2nd December 2018.

14. Subsequent to the transfer of the Claim to the High Court it was given a High Court claim number. That was and remains BL-2019-000001.

15. The directions hearing took place before Master Shuman on 8th May 2019. Master Shuman ordered, amongst other things, that:
    15.1. The Application and the Claim be heard together.
    15.2. Mr Goudarz have permission to serve and file Amended Particulars of Claim, which could also provide a response to the Application.
    15.3. Ms Idris-Goudarz should file and serve her defence to the Claim (and any counterclaim, if so advised) by 4pm on 19th June 2019.
    15.4. The Application and the Claim be tried, with a time estimate of 2 days plus pre-reading of ½ a day, before Master Shuman, if available, commencing on 12th November 2019.

16. In the event the trial took place on 12th and 13th November 2019 before me, not before Master Shuman.

17. Until about 30th October 2019 Mr Goudarz had solicitors and, where appropriate, counsel acting for him in respect of the Claim and the Application. Mr Goudarz's solicitors were Hayes & Storr of Fakenham, Norfolk. They ceased to act for Mr Goudarz on or about 30th October 2019, when they applied to be removed from the record. On 31st October 2019 Deputy Master Linwood made an order declaring that Hayes & Storr had ceased to act for Mr Goudarz and removing them from the record. Nevertheless Hayes & Storr completed the preparation and copying of the trial bundles.

18. At the trial Mr Goudarz was a litigant in person. Ms Idris-Goudarz was represented by solicitors and counsel, Mr Daniel Isenberg.

19. In the course of his cross-examination and at the end of the first day of the trial, Mr Goudarz said that he was not able to read or write. That was not accepted by Ms Idris-Goudarz.

20. None of the documents signed by Mr Goudarz with statements of truth contained on their faces any indication that Mr Goudarz was incapable of reading them or that they had first been read over to him. When Mr Goudarz gave oral evidence on the first day of the trial he appeared to be able at least to identify the documents to which he was referred. His initial evidence after taking the oath and being asked to turn in the trial bundles to the page numbers where the copies of his statements were situated was that he confirmed the truth of what was set out in his witness statements. He did not at that stage say that he could not read them. In paragraph 4 of his second witness statement Mr Goudarz said:
    > "I am Iranian and English is not my first language but I can understand written English and I believe I can make myself understood in spoken English".

21. Under cross-examination by Mr Isenberg, Mr Goudarz said that he could not read or write and that his solicitors read his statement to him before he signed it. Nevertheless it was apparent that Mr Goudarz could get some understanding from the documents he was taken to in the trial bundles even if, as was the case, frequently he appeared to be confused as to exactly what they provided.

22. When pressed by Mr Isenberg in cross-examination about the dates on which various events had occurred by reference to a letter dated 18th April 2019 from Ms Idris-Goudarz's solicitors to his solicitors which complained about a lack of particulars as to dates, Mr Goudarz said that he could not read or write. He said the same later in his cross-examination.

23. Mr Goudarz's witness, Ms Foggett, said in her witness statement: "although I find that he [Mr Goudarz] speaks English well his written English is not too good". Having seen and heard Mr Goudarz give evidence, cross-examine Ms Idris-Goudarz and make submissions, and also having heard Ms Foggett give evidence, I consider that Ms Foggett's assessment is about right. I consider that Mr Goudarz can read and write English to a substantial extent, but not easily or fluently.

24. The written and oral evidence was confused and confusing in a number of respects. In particular as to the dates of relevant or alleged events. Mr Isenberg submitted that this was because Mr Goudarz's evidence was untrue and did not fit with the known facts. One of the difficulties during the trial was identifying fixed points or events in time about which the remainder of the evidence could be fitted or, as Mr Isenberg submitted, could not be fitted. This process was and remains hindered by several of the email chains on particular subjects, at least insofar as they are contained in the trial bundles, fizzling out just before they appear likely to reach a point where they would throw light on what occurred. Also, and more seriously, unredacted copies of bank and credit card statements are missing which would have established relevant receipts and expenditure.

25. Central to the dispute, and a clear fixed point in terms of time and, subject to one exception, obligations is the Deed. The Deed is also the main starting point for the events now in issue. Accordingly I start by considering the Deed and its terms.

26. The Deed was, as I have already stated, dated 21st November 2014.

27. The parties to the Deed were:
    - 27.1. Ms Idris-Goudarz.
    - 27.2. Mr Goudarz, both in his personal capacity and in his capacity as personal representative of Mrs Idris-Goudarz.
    - 27.3. Mr Rollin in his capacity as personal representative of Mrs Idris-Goudarz.
    - 27.4. The Company.

28. The Deed recited, amongst other things, that:
    - 28.1. Mr Goudarz and Mr Rollin were the joint personal representatives of Mrs Idris-Goudarz pursuant to a grant of probate dated 7th October 2013.
    - 28.2. Mr Goudarz owned 76 shares in the Company and that Ms Idris-Goudarz owned the other 24 shares.
    - 28.3. Ms Idris-Goudarz and Mrs Idris-Goudarz's estate were the "legal" owners of the following properties:
        - 28.3.1. 4, Chervil Walk, Downham Market.
        - 28.3.2. Garage 63, De Havilland Gardens, Downham Market.

28.3.3. 15, Burnham Road, Downham Market.
28.3.4. 16, Stirling Close Downham Market.
28.3.5. 10, Nene Road, Downham Market.
28.3.6. 15, Spring Sedge, Downham Market.
28.3.7. The Hall.

28.4. Bank of Scotland Plc t/a Halifax ("Halifax") had issued proceedings seeking, amongst other things, possession of the Hall ("the Possession Claim").

28.5. The Company and Mr Goudarz were subject to a freezing order made by Mr Justice Morgan on 26th September 2014 and continued by Mr Justice Henderson on 3rd October 2014.

29. Paragraph 1 of the Deed provided that the parties to it agreed that its terms were in full and final satisfaction of any and all claims existing as at its date (21st November 2014) as against each other, including, but not limited to any claims by Mrs Idris-Goudarz's estate against Ms Idris-Goudarz and by Ms Idris-Goudarz against the Deceased's estate, "save for any issues relating to chattels as per paragraph 26".

30. Paragraph 26 of the Deed provided that Mr Goudarz agreed to Ms Idris-Goudarz and Mrs Idris attending at the Hall "to discuss the issues of chattels". It provided that Ms Idris-Goudarz and Mrs Idris could "have any personal items" which belonged to them and any additional items that Mr Goudarz agreed to. Finally, it provided that "accordingly" the chattels would fall outside the scope of the settlement agreement.

31. Paragraph 2(1)-(4) of the Deed provided that Mr Goudarz, the Company "or" the Estate (all of which should be jointly and severally liable) should pay to Ms Idris-Goudarz:
    31.1. £200,000 by 4pm on 21st November 2014.
    31.2. £100,000 by 4pm on 14th July 2015.
    31.3. £175,000 by 4pm on 28th October 2015
    31.4. Interest on the above sums at 4% per annum, from the date each payment is due, if payment is made late.

32. Paragraph 2(5) of the Deed provided that Mr Goudarz, the Company "or" the Estate (all of which should be jointly and severally liable) should pay to Ms Idris-Goudarz:
    "All costs and liabilities (including for the avoidance of doubt, legal costs, court fees and disbursements) incurred by Barasa [Ms Idris-Goudarz] in relation to recovering the aforementioned sums or in connection with the preservation or enforcement of her rights and interests pursuant to the charge referred to below if payment is not made in accordance with paragraph 2(1), (2), (3) and (4)."

33. The sums payable under paragraph 2 were defined as the "Secured Liabilities".

34. Paragraph 3 of the Deed provided that as security for the payment and discharge of the Secured Liabilities Mr Goudarz and the Estate charged to Ms Idris-Goudarz by way of legal mortgage their interests in the following properties:
    34.1. 4, Chervil Walk, Downham Market.
    34.2. Garage 63, De Havilland Gardens, Downham Market.

34.3. 15, Burnham Road, Downham Market.
34.4. 16, Stirling Close Downham Market.
34.5. 10, Nene Road, Downham Market.
34.6. 15, Spring Sedge, Downham Market.
34.7. The Hall.
34.8. All buildings and fixtures which were situated on or formed part of the above properties at any time.

35. Paragraph 4 of the Deed provided that Mr Goudarz on his own behalf and on behalf of the Estate would prepare a Land Registry Form AP1 and execute a form CH1 confirming the charge and would deliver the same to Ms Idris-Goudarz's solicitors by 4pm on 21st November 2014.

36. Paragraph 5 of the Deed provided that upon receipt of the first payment of £200,000 and upon receipt of the AP1 and CH1 the parties would sign a consent order discharging the freezing order and that Mr Goudarz should file the same at court.

37. Paragraph 6 of the Deed provided that Mr Goudarz and the Estate might discharge the liabilities imposed in paragraph 2 by the transfers of their interests in the properties to Ms Idris-Goudarz.

38. Paragraph 7 of the Deed provided that upon receipt of the first payment of £200,000 Ms Idris-Goudarz should transfer her 24 shares in the Company to Mr Goudarz. Amongst other things, paragraph 7 also provided that Ms Idris-Goudarz agreed that she had received all payments in respect of her Director's Loan account and that there was no money outstanding to her save in respect of the money outstanding under the terms of the Deed.

39. Paragraph 8 of the Deed provided that the following properties were to be sold "as soon as possible":
    39.1. 4, Chervil Walk, Downham Market.
    39.2. Garage 63, De Havilland Gardens, Downham Market.
    39.3. 15, Burnham Road, Downham Market.
    39.4. 16, Stirling Close Downham Market.
    39.5. 10, Nene Road, Downham Market.
    39.6. 15, Spring Sedge, Downham Market.

40. Paragraph 9 of the Deed provided that the parties should have joint conduct over the sale of the properties, including the choice of estate agents, the method of sale and the sale price. It further provided that:
    > Mr Goudarz and Ms Idris-Goudarz "shall concur in such sale and shall not take any steps to interfere with or prevent such sale. In the event of any dispute as to any aspect of the conduct of the sale, either party may apply to the Court for directions."

41. Paragraph 10 of the Deed provided that any mortgage and costs of sale should be deducted from the proceeds of sale of each property.

42. Paragraph 11 of the Deed provided that the net proceeds of sale should be divided in equal shares between Ms Idris-Goudarz and Mr Goudarz, save that in the event that any money payable under paragraph 2 had not yet been paid, Ms Idris-Goudarz should be entitled to deduct the same in priority to any interest of Mr Goudarz or the Estate.

43. Paragraph 12 of the Deed provided:

> "Prior to the sale, any net rent monies (after deducting mortgage arrears and estate agent fees associated with the rental of the properties) shall be divided in equal shares between [Ms Idris-Goudarz and Mr Goudarz]. Any expenses (such as repair costs) must be agreed in writing beforehand and, if agreed, shall be paid equally by [Mr Goudarz and Ms Idris-Goudarz]."

44. Paragraph 13 of the Deed provided that any net rent monies held by Town & Country Letting Agents Limited should be divided in equal shares between Ms Idris-Goudarz and Mr Goudarz following the completion of the sale.

45. Paragraph 14 of the Deed provided that the parties would agree on "the" managing agent to replace Town & Country.

46. Paragraph 15 of the Deed provided that the Hall should be sold "as soon as possible".

47. Paragraph 16 of the Deed provided that the parties should take "reasonable steps to achieve a private sale of the Hall if possible." It continued: In respect of the mortgage to the Halifax and the possession proceedings [Mr Goudarz and Ms Idris-Goudarz] both agree as follows:

> "(1) To each make an equal payment of half of the outstanding arrears to Halifax;
> (2) The sum of £1,050 per month from the rent of from the flats at Crimplesham Hall shall be paid towards the ongoing Halifax mortgage payments (of £3,515).
> (3) After deducting the rent of £1,050 (or whatever amount may be received by the parties), each party shall pay half of the balance of the Halifax mortgage payments up until 31 October 2015.
>
> Any further contributions by [Ms Idris-Goudarz] after 31 October 2015 shall only be with her written agreement. Further, [Ms Idris-Goudarz] shall only be required to make a contribution to the mortgage arrears or ongoing payments in the event that the payments referred to [in] sub-paragraphs 2(1) and 2(2) above have been made in full."

48. Paragraph 17 of the Deed provided that the parties should have joint conduct of the sale. The estate agents should be Savills of Cambridge unless otherwise agreed in writing. The estate agents should market the Hall forthwith. The parties should accept the marketing price and any offer recommended by the estate agent, unless otherwise agreed by the parties in writing. Mr Goudarz and Ms Idris-Goudarz should concur in such sale and should not take any steps to interfere with or prevent such sale.

49. Paragraph 18 of the Deed provided:

"No further expenses shall be incurred (or if incurred, [be] recoverable from the net proceeds of sale) in relation to the Hall by either party without the prior agreement in writing of the other party. Insurance premiums and, to the extent that any essential repairs are necessary, essential repair costs, shall be paid by the parties in equal shares but only if such expenditure is agreed in writing beforehand."

50. Paragraph 19 of the Deed provided that upon the sale of the Hall the net proceeds of sale, after deducting all sums owing to Halifax, should be divided in equal shares between Ms Idris-Goudarz and Mr Goudarz, save that in the event that any sum had not yet been paid to Ms Idris-Goudarz under paragraph 2 she should be entitled to deduct the same in priority to any interest of Mr Goudarz or the Estate.

51. Paragraph 20 of the Deed provided that Mr Goudarz should allow Ms Idris-Goudarz reasonable access to the Hall.

52. Paragraph 21 of the Deed provided that Mr Goudarz "must" vacate the Hall "as may be reasonably required" by Ms Idris-Goudarz in order to facilitate the sale and marketing of the Hall. The paragraph continued:
"Subject to this, he may remain in Crimplesham Hall until 31 October 2015 (if it has not sold prior to then), …"

53. Paragraph 24 provided:
"If Crimplesham Hall has not been sold by 31 October 2015 then [Mr Goudarz] may remain in Crimplesham Hall for a further year or until it is sold (whichever shall be the earlier) however only if he discharges all the Halifax mortgage payments from 31 October 2015 by himself in full. He shall then be entitled to be reimbursed half of the sum total of his personal contribution (not including the rent from the Crimplesham Hall flats) to the mortgage payments from the net proceeds of sale of Crimplesham Hall when it is sold. For the avoidance of doubt, this is not [to] be used as a reason to delay any or prevent private sale that may otherwise be recommended by the estate agents."

54. Paragraph 25 provided:
"Alternatively, if Crimplesham Hall has not been sold by 31 October 2015 then [Ms Idris-Goudarz and Mr Goudarz] may agree at their sole discretion and only by written agreement to rent Crimplesham Hall out from October 2015 for a time until it is sold. If they do agree then the rent will be paid towards the Halifax mortgage and any shortfall will be shared by the parties in equally."

55. Moving forwards: on or about 21st November 2014 Mr Goudarz paid Ms Idris-Goudarz £200,000 as required by paragraph 2(1) of the Deed.

56. Turning to the Claim. The Amended Particulars of Claim were settled by Mr Strang of counsel. They are signed under a statement of truth by Ms Anissa Hallworth of Mr Goudarz's then solicitors and are dated 29th May 2019. The statement of truth reads as follows:

"The Claimant believes that the facts stated in these Particulars of Claim are true. I am duly authorised by the Claimant to sign this Statement."

57. Thus, the statements in the Amended Particulars of Claim are not the direct statements of Mr Goudarz; nor, except where it is apparent from the context, do the Amended Particulars of Claim indicate the sources of Ms Hallworth's or Mr Goudarz's beliefs as to the truth of the statements. However, Mr Goudarz had exhibited to his statement dated 5th November 2018 a copy of his intended Particulars of Claim. In his statement dated 5th November 2018 he confirmed his belief in the truth of the statements of fact in the Particulars of Claim.

58. Paragraph 7 of the Amended Particulars of Claim states that on "various dates" in 2015 and 2016 the following joint properties were sold raising net proceeds totalling £189,707.08 as set out:

1)	10 Nene Road, Downham Market	£59,582.53
2)	16 Stirling Close, Downham Market	£45,777.68
3)	15 Burnham Road, Downham Market	£56,346.87
4)	4 Chevril Walk, Downham Market	£28,000.00

59. That was admitted by Ms Idris-Goudarz in her Defence except that she alleged that the properties were legally owned by her, and that Mr Goudarz only had a beneficial interest in them as provided by the Deed.

60. There was also agreement on the pleadings that in consequence of those sales Ms Idris-Goudarz received the total £189,707.08 of which half (£94,853.54) was hers and of which the other half (£94,853.54) would have been Mr Goudarz's but went to Ms Idris-Goudarz as a part payment of the sums due under paragraphs 2(2) and 2(3) of the Deed.

61. Paragraph 9 of the Amended Particulars of Claim states that in or around January 2015 Ms Idris-Goudarz approached Mr Goudarz for help in dealing with her two properties: 18, Tunbridge Lane, Bottisham ("18, Tunbridge Lane") and 40 Bailey Mews, Cambridge ("40 Bailey Mews"). Paragraph 10 then states that Mr Goudarz agreed to help Ms Idris-Goudarz and, "by a subsequent oral agreement made in or around February 2015, the parties agreed that [Mr Goudarz] would pay for the repair and refurbishment of the two properties, and these payments would be offset against the debts he owed [Ms Idris-Goudarz] under paragraph 2 of the Deed." In paragraph 10 of the Amended Particulars of Claim the agreement is alleged to have been made by telephone. I refer to this alleged agreement as "the 18 Tunbridge Lane and 40 Bailey Mews agreement".

62. In her Defence, Ms Idris-Goudarz denies those allegations. In paragraph 10 of the Defence Ms Idris-Goudarz, amongst other things, alleges:
    62.1. That in January 2015 there had been no damage to 40, Bailey Mews. The tenants were then *in situ* and damage was only done to the property, or at least was only noticed by Ms Idris-Goudarz on the departure of the tenants in mid-November 2015.

62.2. In January and February 2015 Ms Idris-Goudarz and Mr Goudarz did not speak on the telephone or meet in person; they communicated only via email. Indeed (alleges Ms Idris-Goudarz) Ms Idris-Goudarz and Mr Goudarz did not speak on the telephone or meet in person at all in 2015 until they met in person on 30th October 2015 at the offices of Rollingsons, solicitors.

62.3. Mr Goudarz did not become aware that Ms Idris-Goudarz owned 18, Tunbridge Lane until the meeting on 30th October 2015.

62.4. On 10th August 2015 Mr Goudarz by email to Ms Idris-Goudarz's boyfriend "Rohan", admitted that he still owed Ms Idris-Goudarz £275,000 pursuant to the Deed.

62.5. If, which Ms Idris-Goudarz denies, any agreement was made between Ms Idris-Goudarz and Mr Goudarz, it is not enforceable because there was no intention to create legal obligations between the parties.

62.6. In the further alternative, if there was a legally binding agreement:

62.6.1. Ms Idris-Goudarz's liability to pay extended no further than the amount which Mr Goudarz had personally paid.

62.6.2. It was an implied term of the agreement "so as to give meaning to the intention of the parties and / or it was so obvious that it went without saying, that" without Ms Idris-Goudarz's express consent to the contrary, Mr Goudarz was only to make reasonable payments in respect of any repairs; and Ms Idris-Goudarz would not be liable in respect of any unreasonable or excessive payments.

63. In paragraph 11 of the Amended Particulars of Claim it is alleged that in addition to paying for works of repair and refurbishment, Mr Goudarz paid various bills in relation to 18 Tunbridge Lane and 40 Bailey Mews, including utility bills and council tax. It is alleged that these payments were made on Ms Idris-Goudarz's behalf "and at her request were made under the same agreed arrangement."

64. Paragraph 12 of the Amended Particulars of Claim states that the Appendix to the Amended Particulars of Claim shows a total of £150,113.50 as having been paid under the 18 Tunbridge Lane and 40 Bailey Mews agreement.

65. The Appendix identifies many payments in respect of 18, Tunbridge Lane over the period June 2015 to September 2017. There are page references against each entry in the Appendix and copies of the underlying invoices or bills can be found in the trial bundle. The total alleged in respect of 18, Tunbridge Lane is £134,816.10.

66. Similarly, the Appendix identifies many payments in respect of 40, Bailey Mews over the period from July 2015 to July 2017. There are page references against each entry in the Appendix and the underlying invoices or bills can be found in the trial bundle. The total alleged in respect of 40, Bailey Mews is £15,297.40.

67. The £134,816.10 in respect of 18, Tunbridge Lane and the £15,297.40 in respect of 40, Bailey Mews together make the £150,113.50. This is claimed by Mr Goudarz "as a debt"

and he claims to offset it against any sums he owes Ms Idris-Goudarz under paragraph 2 of the Deed.

68. In her Defence, Ms Idris-Goudarz denies that any repair work or refurbishment took place at 18, Tunbridge Lane or 40, Bailey Mews in 2015. Ms Idris-Goudarz denies that any repair work was pursuant to any enforceable agreement. Ms Idris-Goudarz says that the position was as follows:

    68.1. On 30th October 2015 at a meeting at Rollingsons offices Mr Goudarz told Ms Idris-Goudarz he was terminally ill with cancer.

    68.2. By emails dated 7, 11 and 12 November 2015 Mr Goudarz offered to assist with the repair of 18, Tunbridge Lane for free (including all materials), as a favour to Ms Idris-Goudarz, and with a view to rebuilding their relationship.

    68.3. On 17 November 2015 Mr Goudarz repeated that offer to Ms Idris-Goudarz in person when he met her and her boyfriend at an Iranian restaurant in Olympia. The offer was then extended to include 40 Bailey Mews. Ms Idris-Goudarz alleges that the gist of the words used included:

    > "I trusted the wrong people and so did you. I have done so much damage let me undo the houses damage to make this right. This is my gift to you so I can face your mother when I die. Let me do what I am good at and repair the house, I have a good team."

    68.4. Ms Idris-Goudarz "took her father up on this offer".

    68.5. The arrangement entailed no intention to create legal relations; did not involve Ms Idris-Goudarz taking on obligations to Mr Goudarz and did not give rise to any enforceable contract.

    68.6. In the alternative, if there was a legally binding agreement, Ms Idris-Goudarz's liability to pay extends no further than the amount which Mr Goudarz had personally paid, to be evidenced by receipts and invoices. It was an implied term that without Ms Idris-Goudarz's express consent, Mr Goudarz was only to make reasonable payments in respect of any repair and Ms Idris-Goudarz would not be liable in respect of any unreasonable or excessive payments.

    68.7. On or around the week commencing 4th December 2016, Mr Goudarz told Ms Idris-Goudarz that he was in remission; had debts to pay off, and wanted Ms Idris-Goudarz to give him the money that he had spent on repairs to 18, Tunbridge Lane and 40, Bailey Mews.

    68.8. On or around 10th January 2017 Ms Idris-Goudarz received an insurance payment of £127,500 from NFU Mutual. Mr Goudarz said to Ms Idris-Goudarz that he would accept the transfer to him of the £127,500 in lieu of any money she owed him in relation to what he had spent on repairs to 18, Tunbridge Lane and 40, Bailey Mews.

    68.9. In reliance on that promise, Ms Idris-Goudarz transferred the £127,500 to Mr Goudarz on 23rd January 2017.

69. Ms Idris-Goudarz does not admit the payments which Mr Goudarz says he made in respect of 18, Tunbridge Lane and 40, Bailey Mews. She set out her position in this

regard in a counter-schedule appended to the Defence. The counter-schedule runs to some 13 pages for 18, Tunbridge Lane and 10 pages for 40, Bailey Mews, with between about 6 and 10 entries on each page. Ms Idris-Goudarz's comments on the individual payments vary, but a fair number are to the effect that it is admitted that the payment arises in respect of the property concerned, but that it is not admitted that Mr Goudarz made the payment.

70. After various further denials or non-admissions, in paragraph 18(d) of the Defence Ms Idris-Goudarz pleads in the alternative that she is not liable to Mr Goudarz under any agreement for any amount greater than what reasonably should have been paid, namely £63,600, being £58,600 on 18 Tunbridge Lane and £5,000 on Bailey Mews.

71. In paragraph 18(e) of the Defence Ms Idris-Goudarz alleges that any claim in respect of repairs to 18, Tunbridge Lane or 40 Bailey Mews was discharged by the agreement alleged by her that the £127,500 NFU insurance proceeds would discharge any such liability. Alternatively, that the payment of the £127,500 gave rise to an estoppel preventing Mr Goudarz from making a claim in respect of work to 18, Tunbridge Lane or 40, Bailey Mews.

72. In paragraph 13 of the Amended Particulars of Claim it is alleged that in about June 2015 the parties discussed the sale of 10, Nene Road. It is alleged that they instructed the estate agents Belton Duffy who advised them that the property was worth about £150,000 but would fetch more if it was done up first. It is alleged that after receiving this advice the parties spoke by telephone in around June 2015. Mr Goudarz alleges that Ms Idris-Goudarz suggested that they do up the property and share the cost of repairs. This alleged agreement is referred to as "the Nene Road agreement".

73. In paragraph 14 of the Amended Particulars of Claim it is alleged that Mr Goudarz paid a total of £19,676.47 in respect of the cost of repairs to 10, Nene Road pursuant to the Nene Road agreement. The Appendix to the Amended Particulars of Claim identifies the particular alleged payments over a period from June 2015 to April 2017.

74. In addition Mr Goudarz alleges in paragraph 15 of the Amended Particulars of Claim that he made two payments towards the mortgage on 10 Nene Road. He alleges that he and Ms Idris-Goudarz were jointly liable for these payments. They were £1,714.94 on 2nd December 2014 and £166.53 on 2nd October 2015; making a total of £1,881.47.

75. Mr Goudarz claims £10,778.97, being half the total of the £19,676.47 in respect of repairs and the £1,881.47 in respect of the mortgage, "as a debt" and seeks to offset it against any sums he owes under paragraph 2 of the Deed.

76. In her Defence, Ms Idris-Goudarz does "not admit" that she and Mr Goudarz discussed the sale of 10 Nene Road in about June 2015. She does not admit that Belton Duffy were instructed in relation to any sale of 10 Nene Road in about June 2015. She does not admit that Belton Duffy advised that the property was worth £150,000 but would fetch more if done up first. If they did so, Ms Idris-Goudarz denies that she received such advice

whether by email or otherwise. Ms Idris-Goudarz denies the conversation alleged by Mr Goudarz in respect of 10 Nene Road and denies she entered into the Nene Road agreement.

77. In paragraph 20(d) of her Defence Ms Idris-Goudarz denies that she was obliged to contribute to any expenses or repair costs of 10 Nene Road by reason of paragraph 12 of the Deed and their not having been agreed in advance in writing. Ms Idris-Goudarz also alleges in the alternative that if there was an agreement there was no intent to create legal relations.

78. In her Defence Ms Idris-Goudarz does not admit that beginning in about June 2015 Mr Goudarz oversaw and paid for the repair of 10 Nene Road prior to its sale.

79. In her Defence Ms Idris-Goudarz does not admit the payments allegedly made by Mr Goudarz in respect of 10 Nene Road. She sets out her position in relation to payments in respect of 10 Nene Road in a counter schedule annexed to her Defence. The counter-schedule runs to some 5 pages.

80. In her Defence Ms Idris-Goudarz says that the Particulars of Claim give no basis for the plea of "joint liability" and are "thus embarrassing". I do not agree. In my view it is clear that Mr Goudarz is alleging joint liability for the mortgage debt. Ms Idris-Goudarz goes on in her Defence to allege that "insofar as" she and Mr Goudarz were jointly liable for the mortgage payments, they were also jointly liable to pay the NFU insurance premiums that she paid in respect of 10 Nene Road and 15 Spring Sedge. She alleges that these totalled £2,034.72 for the period from December 2014 to April 2017.

81. In paragraph 17 of the Amended Particulars of Claim it is alleged that the parties entered into the same arrangement in respect of 15, Spring Sedge ("the Spring Sedge Agreement") as in respect of 10 Nene Road. The Spring Sedge Agreement is alleged to have been an agreement that the parties would repair the property and would share equally the cost of doing so. It is alleged to have been entered into orally in or around March 2016. The agreement is alleged to have been made at a meeting at the property attended by Mr Goudarz, Ms Idris-Goudarz and an estate agent from Belton Duffy called "David".

82. The meeting is alleged by Mr Goudarz to have occurred for the purpose of inspecting the property "after the eviction of the tenants". Mr Goudarz alleges that Ms Idris-Goudarz suggested and that he agreed that they should ask John Dow to do up the property and that they should do the same as they had done with 10 Nene Road.

83. In paragraph 21 of her Defence Ms Idris-Goudarz alleges that she did not attend 15 Spring Sedge in March 2016 and had not been earlier in the year, nor, she alleges, did she have a conversation with Mr Goudarz or with David Hardingham from Belton Duffy about 15 Spring Sedge at or around that time. She alleges that she did not inspect the property after the tenants had left. She says that she believes that the tenants left the property in August 2016 and that no damage was caused or, alternatively, noticed, until

then. Further, alleges Ms Idris-Goudarz, she did not meet David Hardingham until after October 2016 and he was not instructed in relation to the sale until 9 March 2017.

84. In paragraph 18 of the Amended Particulars of Claim it is alleged that pursuant to the Spring Sedge Agreement Mr Goudarz, beginning in about March 2016, oversaw and paid a total of £25,538.33 in respect of the costs of repair to 15, Spring Sedge. The Appendix to the Amended Particulars of Claim identifies the particular alleged payments over a period from 3rd March 2016 to 14th May 2017, plus one payment on 14th November 2015.

85. In paragraph 19 of the Amended Particulars of Claim it is alleged that Mr Goudarz paid £650 for estate agents and valuers' fees on 30th March 2016 and £1,085.47 Council tax on 13th March 2017.

86. Mr Goudarz claims £13,636.90, being half the total of the £25,538.33 in respect of repairs, the £650 fees and the £1,085.47 Council tax, "as a debt" and seeks to offset it against any sums he owes under paragraph 2 of the Deed.

87. In her Defence Ms Idris-Goudarz denies that she was obliged to contribute to any expenses or repair costs of 15 Spring Sedge by reason of paragraph 12 of the Deed and their not having been agreed in advance in writing. Ms Idris-Goudarz also alleges in the alternative that if there was an agreement there was no intent to create legal relations or that the terms of any agreement were too vague or, if there was an agreement, that it was an implied term that without her consent Mr Goudarz was only to make reasonable payments in respect of the cost of repairs and Ms Idris-Goudarz would not be liable for any unreasonable or excessive payments.

88. In her Defence Ms Idris-Goudarz does not admit the payments allegedly made by Mr Goudarz in respect of 15 Spring Sedge. She sets out her position in relation to payments in respect of 15 Spring Sedge in a counter schedule annexed to her Defence. The counter-schedule runs to some 6 pages.

89. In the alternative Ms Idris-Goudarz pleads that the total alleged expenditure by Mr Goudarz on 15 Spring Sedge was unreasonable and/or excessive for the repairs done, and the total amount which should reasonably have been paid was £3,850.

90. In paragraph 21 of the Amended Particulars of Claim Mr Goudarz alleges that he kept records in the form of invoices etc of all his expenditure on Ms Idris-Goudarz's properties and on the joint properties and gave copies of them to Ms Idris-Goudarz at regular intervals, approximately every month. In her Defence Ms Idris-Goudarz does not admit the keeping of records by Mr Goudarz and denies that Mr Goudarz gave her copies of any such records on an approximately monthly basis.

91. In paragraph 22 of the Amended Particulars of Claim Mr Goudarz alleges that some of the payments relied on by him were made by his company Sherrieda Limited on his behalf and at his instruction "and therefore with his authority". In her Defence Ms Idris-Goudarz alleges that where any agreement requires payments to be made by Mr Goudarz,

payments made by a corporate entity cannot count as payments made by Mr Goudarz. Ms Idris-Goudarz also alleges that where Mr Goudarz is required to demonstrate or prove loss, she is not liable in respect of any loss suffered by Sherrieda Limited.

92. In paragraphs 23 to 25 of the Amended Particulars of Claim reference is made to paragraph 12 of the Deed which required expenses such as repair costs to be "agreed in writing beforehand". Mr Goudarz's case is that the oral agreements varied the Deed. Alternatively that Ms Idris-Goudarz waived the requirement of prior written agreement or is estopped from relying on paragraph 12 of the Deed by reason of the agreements and Mr Goudarz's reliance on them and carrying out of the works and paying for them. As regards estoppel, Ms Idris-Goudarz's case in her Defence is that there was no or no sufficiently clear and unequivocal representation and that she did not intend Mr C to rely on anything she said which might have amounted to a representation or waiver.

93. Paragraph 26 of the Amended Particulars of Claim explains that at all material times Mr Goudarz was living at Crimplesham Hall ("the Hall"). It explains that the Hall includes 3 flats which were let to tenants, and outbuildings known as the Cottage and the Larder House. These facts are admitted by Ms Idris-Goudarz.

94. In paragraph 28 of the Amended Particulars of Claim Mr Goudarz alleges that in or about July 2015 an oral agreement was made in relation to the Hall ("the Hall Agreement").

95. Mr Goudarz alleges that the occasion for the Hall Agreement was a barbecue at the Hall at which Mr Goudarz and Ms Idris-Goudarz were present. Mr Goudarz alleges that one of the other persons present was John Dow, the builder.

96. Mr Goudarz alleges that he and Ms Idris-Goudarz agreed that they should do up the outbuildings so that they could be let out. He alleges that Ms Idris-Goudarz asked Mr Dow whether he would do the work and that he agreed to do so. Mr Goudarz alleges that the terms of the Hall Agreement were:
    96.1. That they would refurbish the Cottage and the Larder House, sharing the cost equally, and let them out;
    96.2. That they would apply the rent gained towards the mortgage on the Hall;
    96.3. And that they would thenceforward pay an equal share of the outgoings on the Hall, including the mortgage, insurance and utility bills.

97. Mr Goudarz avers that the terms of the Deed were orally varied by the Hall Agreement. Alternatively that Ms Idris-Goudarz waived the requirement in paragraph 18 of the Deed or that Ms Idris-Goudarz is estopped from relying on the provisions of paragraph 18 of the Deed by reason of the Hall Agreement and his carrying out works to the Hall and paying for them.

98. In her Defence Ms Idris-Goudarz denies the making of the Hall Agreement.

99. In paragraph 31 of her Defence Ms Idris-Goudarz makes no admissions as to whether a barbecue took place at the Hall in or about July 2015, and what was said by others at it.

Ms Idris-Goudarz denies that she attended any barbecue and hence that any of what Mr Goudarz alleges took place or was agreed there took place. Further, alleges Ms Idris-Goudarz:

99.1. She was not in the county of Norfolk for the whole of 2015, or thereafter through to 28th May 2016.

99.2. She did not see the builder John Daw from the beginning of June until the end of August 2015.

99.3. By July 2015 Ms Idris-Goudarz had not seen Mr Goudarz in person or spoken to him on the telephone since October 2014 and did not see him or speak to him on the telephone again until 15th October 2015.

100. Ms Idris-Goudarz denies that there was any oral variation of clause 18 of the Deed or any waiver or estoppel.

101. In paragraph 31 of the Amended Particulars of Claim Mr Goudarz alleges that in about August 2015 Ms Idris-Goudarz and he together oversaw works to the Cottage and the Larder House. Mr Goudarz alleges that Ms Idris-Goudarz took an active role in the renovations, choosing fittings, such as a bathroom suite installed in the Cottage in about March 2016, and speaking to builders.

102. That paragraph is denied by Ms Idris-Goudarz in her Defence. Ms Idris-Goudarz alleges that she did not personally attend "on" the Hall until 28th May 2016 and when she did so, the Cottage was already tenanted by Mrs Foggett, and Ms Idris-Goudarz was unable to view the Cottage at that time.

103. In paragraph 32 of the Amended Particulars of Claim Mr Goudarz alleges that he paid a total of £11,037.25 towards the refurbishment of the Cottage and £7,773.16 towards the refurbishment of the Larder House. The Appendix to the Amended Particulars of Claim identifies the particular alleged payments over a period from August 2015 to July 2016 in respect of the Cottage and from August 2015 to April 2017, plus one entry for 13th August 2018 of £93.38 in respect of a hob.

104. In paragraph 38 of her Defence Ms Idris-Goudarz generally makes no admissions as to paragraph 32 of the Amended Particulars of Claim. She sets out her position in respect of the alleged payments in a counter-schedule attached to the Defence.

105. Mr Goudarz claims £9,405.20, being half the total of the £18,810.41 in respect of the refurbishment of the Cottage and the Larder House, "as a debt" and seeks to offset it against any sums he owes under paragraph 2 of the Deed.

106. In paragraph 34 of the Amended Particulars of Claim Mr Goudarz alleges that he has paid each month the balance of the mortgage payments in respect of the Hall, but that Ms Idris-Goudarz has not paid any sum towards her 50% share of those payments, whether in respect of her obligations under paragraph 16(3) of the Deed or her obligations under the Hall Agreement.

107. In paragraph 35 of the Amended Particulars of Claim Mr Goudarz alleges that he calculates Ms Idris-Goudarz's share of those payments in the sum of £52,158.24 as at the end of September 2018 and he claims that sum "as a debt" and seeks to offset it against any sums he owes under paragraph 2 of the Deed.

108. In her Defence Ms Idris-Goudarz does not admit the mortgage payments made by Mr Goudarz. She alleges that she paid £1,111.86 of the mortgage payments every month from 21st November 2014 until and including October 2015, thereby discharging her obligations under paragraph 16(3) of the Deed.

109. Ms Idris-Goudarz alleges that she was not obliged to contribute to mortgage payments from 15th July 2015 onwards, following what she alleges is Mr Goudarz's default in failing to make the payment due under clause 2(2) of the Deed, that is to say the £100,000 due on 14th July 2015.

110. Further, Ms Idris-Goudarz alleges that she did not receive any rental payments from the Hall from November 2014 to date.

111. In paragraph 36 of the Amended Particulars of Claim Mr Goudarz alleges that since the date of the Hall Agreement he has spent a total of £74,979.37 on outgoings and repairs at the Hall. The Appendix to the Amended Particulars of Claim identifies the particular alleged payments over a period from July 2015 to September 2017.

112. Mr Goudarz claims £37,489.68, being half the total of the £74,979.37 in respect of the outgoings and repairs to the Hall "as a debt" and seeks to offset it against any sums he owes under paragraph 2 of the Deed.

113. In her Defence Ms Idris-Goudarz makes no general admission as to the expenditure on the Hall and sets out her position in respect of the alleged payments in a counter-schedule annexed to the Defence. Ms Idris-Goudarz also alleges that, if a Hall Agreement did exist, it did not extend so as to require her to make any payments in respect of refurbishment of the main building of the Hall.

114. One element of the £74,979.37 is also the subject of a separate plea. That is £15,720 which Mr Goudarz alleges that he paid to JD Building Services. What Mr Goudarz alleges in this regard in paragraph 37 of the Amended Particulars of Claim is that:

114.1. In about April 2017 the roof of the Hall was damaged in a storm.

114.2. Mr Goudarz instructed builders, JD Building Services, who presented an invoice for £15,720.

114.3. Mr Goudarz made a claim on the insurer, the NFU.

114.4. Ms Idris-Goudarz was living at the Hall at this time and the policy of insurance on the Hall was in her name.

114.5. The NFU agreed to pay, but paid Ms Idris-Goudarz, not the builders direct.

114.6. Mr Goudarz paid the builders.

114.7. He therefore claims the £15,720 from Ms Idris-Goudarz as a debt, alternatively in restitution, because Ms Idris-Goudarz was thereby unjustly enriched at his expense.

115. In her Defence Ms Idris-Goudarz admits that the roof of the Hall was damaged; though she alleges the damage took place in February, not April 2017. Ms Idris-Goudarz also admits that Mr Goudarz instructed builders to make the necessary repairs and that a claim was made on the insurer (NFU Mutual) in respect of the cost of those repairs. She alleges that she asked Mr Goudarz to make that claim and permitted him to deal directly with the loss adjuster appointed from Cunningham Lindsey.

116. In her Defence Ms Idris-Goudarz denies that the NFU paid her. She alleges that the NFU paid Mr Goudarz a sum of £15,670 by cheque dated 10th July 2017. She alleges that she was not involved in receiving the money from the insurer, nor was she responsible for paying the money on to the builders.

Witnesses and witness statements

117. I heard oral evidence from Mr Goudarz, Mrs Foggett and Ms Idris-Goudarz.

118. Of those three only Mrs Foggett was wholly convincing in all respects. Unfortunately so far as corroborating one party or the other's conflicting versions of events (or non-events), (i) her evidence only addressed very limited aspects of the dispute and (ii) she accepted in cross-examination that the only source of the information or evidence which she provide to the court was Mr Goudarz. Mrs Foggett did give some direct evidence of when she lived or stayed at Crimplesham Hall. That was:

118.1. From about July 2013 to March 2014 Mrs Foggett lived in one of the flats at Crimplesham Hall.

118.2. In and from August 2016 Mrs Foggett lived at "the Cottage" at Crimplesham Hall. In her statements Mrs Foggett said that she lived at the Cottage until to around February "2018". I think that must be a typographical error for 2017 because later in her same statement she says she "went back" to stay in the Cottage for a week beginning on 28th November 2017 and for a week beginning on 8th December 2017.

118.3. Mrs Foggett was asked about those dates in cross-examination. She said she was not at the Hall in 2015, though she went to visit every 4 weeks to dog groom.

119. It is noteworthy that in a piece of litigation where Mr Goudarz's and Ms Idris-Goudarz's evidence was far apart on many important issues, no independent witnesses were called by either party except for Mrs Foggett, who was called by Mr Goudarz. This despite the fact that it is clear from the pleadings, the witness statements and the documents that there were several individuals who could be expected to have been able to give evidence on relevant important issues. Some of the individuals from whom I would have expected to have heard evidence are:

119.1. "Lee" over whose name many of the emails sent using Mr Goudarz's email address are sent.
119.2. Rohan, Ms Idris-Goudarz's boyfriend and fiancé.
119.3. The builder, Mr Dow or Daw, who was alleged to have been present when the Hall Agreement is alleged to have been entered into.

120. Mr Goudarz, or rather his solicitors, served a witness summary in respect of Mr Hardingham of Belton Duffey. Clearly his evidence would have been important in respect of whether or not the Spring Sedge Agreement was made in his presence as alleged by Mr Goudarz. In the event he was not called.

121. Similarly, as I have already mentioned, the documentary evidence was missing various documents or classes of document which would have enabled disputed points of fact to be resolved with ease. On points of factual dispute particular I have in mind:

121.1. That copies of more of the bank statements from both parties than the few which were contained in the trial bundle would have enabled many of the disputes as to who was paid what, by whom and when to be clarified and, where appropriate, resolved.
121.2. That copies of telephone bills might have enabled the parties to and timing of alleged telephone calls to be ascertained.

122. Mr Goudarz's oral evidence was at best very vague or plainly inconsistent with the documents on some important issues. Not only was it vague but it was inconsistent as to some important dates and the relative order of relevant events, as I explain in more detail below. Indeed it is apparent from such documentary evidence as there is and from his own oral evidence that in respect in particular to various agreements or events which he alleged happened in 2015 that they must have happened, if at all, in 2016.

123. When taken by Mr Isenberg in cross-examination to certain emails which were inconsistent with what he was saying in his evidence, on at least one occasion Mr Goudarz simply said or implied that what was said in the emails was incorrect or, alternatively that, suggested Mr Goudarz, Ms Idris-Goudarz had access to his email account and had written the emails in question herself. These were explanations attempted by Mr Goudarz "on the hoof" in the witness box in attempts to extract himself from the corners into which he had been pinned by Mr Isenberg's cross-examination and his evidence.

124. I accept that it possible for one person to have access to and to operate another's email account; but in the present case no such allegation appears to have been made or pursued before Mr Goudarz entered the witness box. Mr Goudarz and his advisers had had copies of the relevant emails for some time before Mr Goudarz's legal advisers ceased to act for him. If the emails were not recognised by Mr Goudarz or his advisers as those of Mr Goudarz or of his agent or amanuensis, "Lee", the point

could have been taken much earlier. It was not. There was no technical evidence as to the meta-data in the emails relied upon. It would have taken an almighty, complex and extended operation to falsify the relevant emails so that they fitted into the relevant chains of emails and more general context, which makes their falsification inherently unlikely. I find that there was no such falsification of emails by Ms Idris-Goudarz. The very fact that such an allegation was made by Mr Goudarz itself weakens his evidence.

125. In assessing the accuracy of Mr Goudarz's evidence I have very much had in mind:

125.1. The fact that English was not his first language.
125.2. His limited ability to read and write English.
125.3. The fact that, as the documentary evidence showed, he had been very ill.

126. Further, from my observation of Mr Goudarz when giving evidence and making his submissions, I consider that whether through illness, old age, sadness, exhaustion or a combination of some or all of those things, he was confused as to dates and times, sometimes as to the order in which various relevant events had taken place and, indeed, sometimes about what event or alleged event he was being asked about. During his cross-examination of Ms Idris-Goudarz and in the course of his closing submissions his case became more of a plea to Ms Idris-Goudarz, his daughter, to accept (and I paraphrase) that having regard to the family history and/or to all the work and expenditure he had incurred in relation to various properties it was not fair or right that he should have to pay her what was payable under the Deed without a counter-balancing allowance or payment being made by her to him in respect of his work and expenditure on the properties.

127. Much of Mr Goudarz's focus appeared to be on periods of time which pre-dated the Deed. This was demonstrated most in his cross-examination of Ms Idris-Goudarz where, despite repeated attempts by me to persuade him to focus on the period after the execution of the Deed and on the facts in issue, he reverted again and again to events which had happened before and leading up to the execution of the Deed.

128. Indeed, particularly towards the end of the trial, from time to time Mr Goudarz did not seem to understand what his case was. Thus, in the course of his submissions after the oral evidence, Mr Goudarz made a number of statements which, if taken literally, effectively destroyed his pleaded case.

129. In broad terms, the thrust of Mr Goudarz's submissions after the evidence was that he or his company paid for various works to various properties. Ms Idris-Goudarz knew he was doing that and never said "no". A particularly striking example was towards the end of Mr Goudarz's reply where he said that he tried to fix Ms Idris-Goudarz's problems, but that she "never said OK, how much?" This on its face was inconsistent with any of the oral agreements alleged in the Amended Particulars of Claim. In the event, for the reasons I give below, I find that the oral agreements alleged either were not made or did not give rise to a contract. However, my concern that Mr Goudarz

might not have expressed himself accurately in that and in similar oral statements is one reason why I reserved judgment. I wished to look at such contemporaneous documents as were included in the trial bundles and to attempt to fix a chronology which would at least assist in determining whether Mr Goudarz's pleaded case or something akin to it was consistent with these documents or whether, indeed, they showed that there was no agreement of the kinds alleged in the Amended Particulars of Claim.

130. Overall, the onus is on Mr Goudarz to establish that there was a relevant agreement or arrangement which released him from his obligation to make the payments required by the Deed. By the end of the trial no clear or coherent case had been established in that regard and my strong view was that Mr Goudarz had simply failed to make out his case. However, particularly in the light of what I have described above as to Mr Goudarz's confusion as to what his case was, I wanted to check that I was not missing something in the documents which would establish his case. That is a second reason why I reserved judgment.

131. My study of the contemporaneous documents has reinforced rather than weakened my impression of a lack of a clear or coherent case for Mr Goudarz.

132. Overall, Mr Goudarz's evidence was of such poor quality and contained so many inconsistencies, that I could not be confident that any uncorroborated statements of his were true.

133. A third reason why I wished to go through the process of looking at such contemporaneous documents as were included in the trial bundles and to attempt to fix a chronology was because when Ms Idris-Goudarz gave her oral evidence she demonstrated an astounding ability to recall and explain the detail of what occurred and when; all of which was consistent with her pleaded case. Ms Idris-Goudarz is undoubtedly an intelligent woman. She was born in 1978. She studied physiology and pharmacology at University College London and medical ethics at the University of Herfordshire. She attended the College of Law in 2001 and trained as a solicitor as Capsticks. She was at Capsticks for about 2 years. Since then she has become a life coach, public speaker, author and complementary therapist.

134. Ms Idris-Goudarz's intelligence and apparent recollection of detail, in conjunction with Mr Isenberg's undoubted abilities very much left me with the impression that two younger and intelligent people were in effect running rings around a confused elderly man. I do not criticise Mr Isenberg for doing that, to a large extent that was his job, but it does mean that in order to do justice it has been necessary for me to do much more in the way of post-judgment reading than would have been necessary had Mr Goudarz been represented by counsel at the trial.

135. I was also concerned that the way Ms Idris-Goudarz's case was pleaded and conducted was over-technical for what was essentially a family dispute about what if anything had been orally agreed and when.

136. One example on the pleadings is at paragraphs 17 and 18 of the Defence dealing with the alleged 40 Bailey Mews agreement. In paragraph 17(a) of the Defence it is denied that Mr Goudarz and Ms Idris-Goudarz entered into the agreement "as alleged or at all". In paragraph 17(b) it is alleged that in the alternative that there was an agreement, there was no intention to create legal obligations. Those are alternative pleas which are consistent with a single set of facts; but no positive suggestion is made as to where or how such an agreement could have been entered into.

137. In paragraph 17(c)(i) it is alleged that if there was a legally binding agreement, then Ms Idris-Goudarz's liability to pay Mr Goudarz extends no further than the amount that the Claimant had (personally) paid, to be evidenced by receipts and invoices. I have some difficulty in understanding how that positive allegation as to the terms of an agreement is consistent with an allegation that there was no agreement at all. However, it is not an insuperable difficulty. If there was a conversation relating to the doing up of 40 Bailey Mews, it is possible that Mr Goudarz volunteered or Ms Idris-Goudarz asked that he produce all receipts and invoices, without there being any contractual agreement. However, as a fallback, if what took place amounted to a contractual agreement and the production of receipts and invoices had been mentioned, then it is possible that a court might find that there was a term as to the production of such documents.

138. In many respects Ms Idris-Goudarz's evidence was so consistent with the documents that I was concerned as to whether it might not represent her re-construction of events to fit the documentary evidence rather than being her recollection of events which had actually taken place (or not taken place). However, the documents speak for themselves. The onus of proof is on Mr Goudarz, and at least to a considerable extent Ms Idris-Goudarz's evidence on the relevant issues is only necessary if and to the extent that Mr Goudarz establishes a *prima facie* case on them.

139. A particular issue which arose on which both parties spent some time was whether, at a young age, Ms Idris-Goudarz had visited a psychiatrist. Mr Goudarz said Ms Idris-Goudarz did. She said she did not. At most this point would go to the credit. It is wholly collateral to any issue which I have to decide. There was no contemporaneous paperwork in relation to it. I make no finding one way or another on the point.

140. There were allegations made by Ms Idris-Goudarz that Mr Goudarz was guilty of violent and threatening behaviour and that he and/or Ms Idris-Goudarz himself had been subject to threats by third parties. All of these were unparticularised and collateral to the issues which I have to decide. I make no findings one way or the other on these points.

141. There is a witness statement made by Ms Idris-Goudarz dated 18th October 2018. This was made in support of her application to enforce the terms of the Deed. It explains that 15 Spring Sedge was sold for some £150,000, but that Mr Goudarz refused to permit the solicitors acting on the sale to release the net proceeds to her.

After reciting some inter-solicitor correspondence, it refers to a letter to her solicitors, Rosenblatts, from Mr Goudarz's then solicitors, Hayes & Storr, dated 9th October 2017.

142. Particular points in the Hayes & Storr letter of 9th October 2017 are the following:

142.1. Until receipt of Rosenblatt's letter of 2nd October 2017 they had been led to believe that Ms Idris-Goudarz was happy to draw a line under the previous agreement and that neither party should owe the other anything.

142.2. The Hayes & Storr letter of 9th October 2017 continues:

> "Our client has confirmed to us that it was agreed between them that our client would not make the exact payments required under the terms of the Deed because our client was making payments on behalf of your client in relation to the various property repairs etc and that these payments were to exceed the payments due. Your client owns a property at 18 Tunbridge Lane, Bottisham which our client advises us was severely damaged after a break in. Our client informs us your client asked our client to assist in carrying out the repair work on the property and that the cost of doing so be deducted from the amount to be paid under the Deed. Our client informs us that he paid approximately £100,000.00 for repairs and materials and evidence of this will follow under separate cover. We are aware that the eventual insurance payout was made directly to your client and our client was not reimbursed for the cost contributions made.
>
> As you correctly state in your letter, the joint properties have now been sold. Our client informs us that your client retained the sale proceeds from all of these sales, the letting agents payment plus the insurance claim payouts which totalled £14,500. Our client also paid approximately £51,000 for the repair works on the jointly owned properties despite your client being obligated to contribute 50% of the same. …
> …
> In addition to the above, our client has also paid approximately £25,000 in repair costs to your client's own property at 40 Bailey Mews …
> …
> Only a few days ago she appeared happy for there to be a clean break between the two with the only focus being the future of the Hall."

143. Paragraph 19 of Ms Idris-Goudarz's statement of 18th October 2018 is an early indication of her approach to the dispute which is, essentially, to say that there were no agreements as to works or payments for them; not to admit the works said to have been done by Mr Goudarz and to say that even if she did owe Mr Goudarz money there was no specific agreement to vary the Deed, so that the sums due under it are still payable. Thus, paragraph 19 reads:

"The Respondent was not entitled to withhold the instruction to release the same [that is the net proceeds of sale of 15, Spring Sedge]. It is telling that, even on the Respondent's own case that there was a variation of the Deed as stated in the letter of 9 October 2017, the Respondent has never sought to aver that we specifically agreed to vary the Deed so to give the Respondent an unconditional right to refuse to provide a joint instruction to release the Nett Proceeds in the event of any uncertainty as to the total amounts outstanding between us. Up until this point the Respondent had always indicated to me that he was happy to release the Nett Proceeds. He knew that I required the money for a deposit on a house and he had told me repeatedly that he was pleased to know that I would be using the monies for this purpose".

144. 15, Spring Sedge was sold at the end of May 2017. The net proceeds of sale amounted to some £150,000. Mr Goudarz by his solicitors refused to permit the net proceeds of sale to be paid to Ms Idris-Goudarz pursuant to the terms of the Deed; claiming that he was entitled to set off the amount of his expenditure on the various properties. In her first statement Ms Idris-Goudarz explains by reference to the relevant correspondence how, so far as she was concerned, this brought matters to a head, and caused her to make the application for payment of the sums which she said were still due to her under the Deed.

All Square Agreement

145. In paragraphs 24-27 of his first statement, Mr Goudarz says that in or before July 2017 he and Ms Idris-Goudarz had confirmed or agreed orally that by reason of what he had spent on her behalf they were all square. He says that this agreement was a different and separate one from the agreements made in 2015 and 2016 about his expenditure on her properties and on the joint properties.

146. Mr Goudarz says that in or around July 2017 solicitors became involved with a view to putting in writing what he thought he and Ms Idris-Goudarz had already confirmed to each other orally.

147. Ms Idris-Goudarz says there was no such agreement. She puts the opposite interpretation on the involvement of solicitors in and after July 2017. She says that if the Deed had already been varied by agreement, there would have been no need to involve solicitors.

148. At this time there had been a rapprochement between Mr Goudarz and Ms Idris-Goudarz. Ms Idris-Goudarz and her boyfriend were living at the Hall. Ms Idris-Goudarz was, as she said under cross-examination, very appreciative of what Mr Goudarz had done, though not to the tune of £150,000. Accordingly I consider that in the summer of 2017 there was a real possibility that a variation of the Deed or new agreement would be entered into.

149. Ms Idris-Goudarz said in cross-examination that they sat down and decided to go to see Amanda Nudds (of Hayes & Storr) about the possibility of varying the agreement.

Ms Idris-Goudarz said they visited Amanda Nudds in May 2017, who said she could not draw up an agreement because she was Mr Goudarz's solicitor. No agreement was reached on that occasion.

150. The contemporaneous email correspondence indicates that at around that time the parties at least had in mind the possibility of their entering into some sort of formal new agreement. Thus:

150.1. In an email dated 26th May 2017 from Sapphire Aldham of Kenneth Bush (the solicitors who were acting for Mr Goudarz and Ms Idris-Goudarz on the sale of 15 Spring Sedge) to Ms Idris-Goudarz, Ms Aldham wrote:

> "Thank you for your email.
> Yes, I too have spoken to Amanda and of course, we will hold on to the funds pending further instructions."

150.2. A copy of the email to which that was a reply and which might well have illuminated why Kenneth Bush were to hold on to the funds is not in the trial bundle.

150.3. In an email dated 1st June 2017 from Ms Idris-Goudarz to Ms Aldham, Ms Idris-Goudarz wrote:

> "After a long meeting with Amanda we are looking to come to a new agreement if one can be agreed and as such it may be a little while before the division of proceeds on [15 Spring Sedge] will be agreed as Amanda has suggested I seek separate representation.
>
> […]
> Currently all funds are due to me via the current Court Order and I am happy for them to stay with you until a way forward has been agreed. […]

150.4. That email shows Ms Idris-Goudarz making a more or less contemporaneous statement to the effect that there was not a new agreement.

150.5. Ms Aldham emailed Ms Idris-Goudarz to ask for an update. Ms Idris-Goudarz replied with an email dated 10th July 2017. Ms Idris-Goudarz wrote, amongst other things, that since the meeting with Amanda Nudds, "the position is to stick to the Court Order unless something else can be agreed."

150.6. In an email dated 13th July 2017 from Ms Idris-Goudarz to Amanda Nudds, Ms Idris-Goudarz referred amongst other things, to what she described as her "father's wish for a new agreement". She said she would need complete financial separation.

150.7. Amanda Nudds must have sent Ms Idris-Goudarz a draft agreement, because in an email dated 29th August 2017 and timed at 18:30 from Ms Idris-Goudarz to Amanda Nudds, copied to Mr Goudarz, Ms Idris-Goudarz thanked Amanda Nudds for the agreement. She said that Mr Goudarz was happy to give her the Hall. She asked Amanda Nudds to confirm that with Mr Goudarz and re-draft the agreement.

150.8. On 6th September 2017 Amanda Nudds emailed Ms Idris-Goudarz, copied to "Tom Spiller" (who appears to have been Ms Idris-Goudarz's then appointed solicitor) to say that she was meeting Mr Goudarz on that day.

150.9. There is an email dated 28th September 2017 timed at 11:13 from Ms Idris-Goudarz to Amanda Nudds, copied to Tom Spiller. This is a long and emotionally charged email. The opening few lines read:

> "This is all getting too much for me.
> My father says he doesn't want to fight and that I can have whatever I want. He has said he potentially wants to live abroad. I have said I want to start a family.
> My father and I discussed it and he said he is happy with my decision to do whatever is necessary to have a family […]
> For me this is:
> 1. Closing the NFU jewellery case
> 2. Sorting the Bottisham rent issues
> 3. Sorting the Bottisham current renovation
> 4. Sorting the Aviva & Crimplesham situation
> 5. Separating myself and my father financially

150.10. There is then an email dated 28th September 2017 timed at 19:48 from Mr Goudarz to Ms Idris-Goudarz, copied to Amanda Nudds. This email mitigates against an "all square" agreement then having been in existence. No such agreement had been mentioned in the earlier emails and it is not mentioned by Mr Goudarz in this email. In this email Mr Goudarz refers to Ms Idris-Goudarz's five points set out above. In relation to "financial separation" Mr Goudarz wrote:

> "Spring Sedge has been sold, but there are outstanding debts for this and other private house sales. Renovations have cost £51K. All outstanding debts in relation to these should be paid from sale of house funds and any remaining profit can then be split equally between ourselves. There have been 3 insurance payouts to date £3600, £4700 and £3550, which have all been paid to yourself alone.
> - Crimplesham , for the past 5 years I have paid the mortgage on my own, £3300 per month, this is paid by monthly private rental payments. Although this offsets the total amount payable I still have to find £2000 per month from my own funds. This equates to £120000 paid by myself over the past 5 years: at present you have not shard this cost.
> To increase private rental income I have refurbished the Cottage and Larger House at a cost to me of £60000.00. Again this cost has not been shared but has increased the overall value of the Crimplesham Estate.
> - Rohan and yourself have lived here for 10 months, in that time neither of you have made any contribution to living expenses or upkeep of the house ie: heating, electric, food."

150.11. In my judgment the language of that last email is inconsistent any pre-existing agreement that the parties were "all square". If such agreement had existed, rather than complaining about Ms Idris-Goudarz's failures to contribute, Mr Goudarz could have simply have said something along the lines of: "we are agreed we are all square, therefore the Spring Sedge proceeds should be divided equally between us, and the only question is how we should sell the Hall."

151. All that material is more than sufficient in itself for me to conclude, as I do, that there was no "all square" agreement, or at least not one which was ever finalised as to its terms.

152. In my judgment that is conclusively confirmed by the fact that no such agreement is alleged in the Amended Particulars of Claim. Such an agreement would be inconsistent with the Amended Particulars of Claim where Mr Goudarz, does not merely claim a set off for his expenditure, but makes a positive claim for the amount of £101,296.03 by which he says his expenditure exceeded what was owed by him under paragraph 2 of the deed. This inconsistency by itself is sufficient in my judgment to prevent Mr Goudarz from relying on an "all square" agreement.

The 18 Tunbridge Lane and 40 Bailey Mews agreement

153. Mr Goudarz's pleaded case is that the agreement was made by telephone in or around February 2015. Ms Idris-Goudarz says that she and Mr Goudarz did not speak on the telephone at all in 2015 until a meeting on 30th October 2015. She also says that in January 2015 there had been no damage to 40, Bailey Mews. The tenants were then *in situ* and damage was only done to the property, or at least was only noticed by Ms Idris-Goudarz, on the departure of the tenants in mid-November 2015. As regards 18 Tunbridge Lane, Ms Idris-Goudarz says that Mr Goudarz only first learnt that she owned this property at a meeting at Rollingsons' offices on 30th October 2015, so there cannot have been an agreement about it earlier in that year.

154. The near contemporaneous email correspondence strongly supports Ms Idris-Goudarz's case that there was no agreement in relation to 40 Bailey Mews or 18 Tunbridge Lane in the first 9 months of 2015. Thus:

154.1. On 1st January 2015 Ms Idris-Goudarz sent in email to Mr Goudarz in which she said, amongst other things: that it was not helpful for them to talk about financial things so she would only answer personal emails from then on. She continued: "All other emails you can still send me but I will forward anything that isn't personal to Pete [solicitor] to deal with". That is hardly consistent with a contemporaneous oral agreement as alleged by Mr Goudarz.

154.2. The emails for the period 1st January 2015 to 31st October 2015 make no mention of repairs or works to Bailey Mews or 18 Tunbridge Lane being needed or appropriate. In contrast they do refer to works to other properties. The first email in the chronological section of the Trial Bundles which mentions 40 Bailey Mews is one dated 3rd November 2015 from Ms Idris-Goudarz to Mr Goudarz in which she asks whether he has considered living at the property. The first reference in that chronological section to 18 Tunbridge Lane is an email dated 6th November 2015 from Ms Idris-Goudarz to Mr Goudarz, where it is referred to as the "surprise" house.

154.3. An email dated 18th November 2015 from Maddie Kuch of the letting agents to Ms Idris-Goudarz states in relation to 40 Bailey Mews that the keys for the property were delivered the previous night and that her colleague Ashley would be going in to take photographs for marketing purposes for letting. This corroborates

Ms Idris-Goudarz's evidence that 40 Bailey Mews remained tenanted until November 2015.

154.4. In an email dated 12th November 2015 from Mr Goudarz to Ms Idris-Goudarz, Mr Goudarz says: "when we meet on the 17th, bring the key for the surprise house, Il go and have a look to see what has to be done. Il fix it up, and make it as nice as it was." In my view that is inconsistent with an agreement in respect of the property having been entered into before that time.

155. It was common ground that there had been a falling out or series of fallings out between Mr Goudarz and Ms Idris-Goudarz over a period of many years. It is clear that their relationship was very complicated and difficult, going back to Ms Idris-Goudarz's childhood with, from time to time, distrust apparent on both sides. Considerable time at the hearing was spent in dealing with this. Despite that I am not in a position to and it is not relevant for me to attempt to determine all the details of this, let alone attempt to apportion blame. What is relevant is that the history of difficulty and distrust existed, and that a period when that difficulty and distrust was particularly severe was the period leading up to Ms Idris-Goudarz's issuing for proceedings against Mr Goudarz in September 2014 and the execution of the Deed on 21st November 2014. There them appears to have been a fairly short period of relative ease in the relationship down until the end of 2014; when I find that a period of serious difficulty and distrust re-emerged and continued until August 2015. A rapprochement began in August 2015 with an email dated 8th August 2015 from Mr Goudarz to Ms Idris-Goudarz in which he said:

> "The time has come and I would like to see you and Granny. Also, separately I would like to come with my accountant and see your solicitor or any solicitor."

156. Ms Idris-Goudarz's boyfriend, Rohan responded, by an email dated 10th August 2015 using Ms Idris-Goudarz's email address asking:

> "When you say the time has come do you mean time is short or you are unwell? Or do you mean you think Barasa and you are ready to meet [?]"

157. Mr Goudarz replied to Rohan at Ms Idris-Goudarz's email address saying:

> "Time has come for both reasons. - … I owe Barasa 275 for the courts, that is separate …"

158. In my view the "275" was clearly a reference to the total of £275,000 which then remained payable under the Deed. That is inconsistent with there having been an agreement earlier in the year that expenditure on 40 Bailey Mews and 18 Tunbridge Lane would be set off against the £275,000.

159. The rapprochement between Mr Goudarz and Ms Idris-Goudarz went so far that in or around the end of September or the beginning of October 2016 Ms Idris-Goudarz and Rohan moved into the Hall. They did not leave until August 2017.

160. The invoices which are stated in the Amended Particulars of Claim to relate to 40 Bailey Mews for the period down to 30th October 2015 do not on their faces show that

they relate to 40 Bailey Mews. They therefore do not corroborate Mr Goudarz's case that there was an agreement in respect of 40 Bailey Mews in early 2015. For example, the document at page 87 on the Bailey Mews schedule of payments is a B&Q till receipt or other printout dated 11th September 2015 showing expenditure of £20 on "Items". Whatever the "Items" were, so far as one can tell from the document at p.87 of the Schedule, they could have been for any property. The document at page 88 on the Schedule is another B&Q receipt. Its date has been cut off. According to the Schedule it should be dated 16th September 2015. It shows expenditure of £306.48 on various building or decorating materials, including £240 on 12 ceramic tiles at £20 each. The document at p.88 does not identify which property the materials are for. Similarly with the other copy documents referred to in the Bailey Mews schedule for the period down to 30th October 2015.

161. According to paragraph 12 of the Amended Particulars of Claim and the terms of the Schedule there referred to, the item at page 86 on the Bailey Mews schedule of payments should be a bill or invoice showing a payment by or on behalf of Mr Goudarz to B&Q of £67.93 for materials. On examination of the document at p.86 it is not a bill or invoice, but an undated B&Q till or other form of print out showing a credit to a Mastercard account of £67.93 for the return of a number of door handles and a door lock. Again with no indication on the face of the document as to the property to which the handles related.

162. Similarly with 18 Tunbridge Lane. The invoices which are stated in the Amended Particulars of Claim to relate to 18 Tunbridge Lane for the period down to 30th October 2015 do not on their faces show that they relate to 18 Tunbridge Lane. They therefore do not corroborate Mr Goudarz's case that there was an agreement in respect of 18 Tunbridge Lane in early 2015.

163. Mr Goudarz's second statement is dated 15th October 2019. In paragraph 2 of this statement he says:

> "I signed the Amended Particulars of Claim in these proceedings and believe the contents to be true. However, now that I have found and gone through some of the emails that passed between me and my daughter I believe that I was mistaken in some of the dates of the agreements between us."

164. In paragraph 3 of his second statement Mr Goudarz gives as an "example" of his having been mistaken as to the dates of the agreements, the alleged 18 Tunbridge Lane and 40 Bailey Mews agreement. He says:

> "I now believe that this happened in late 2015, around November …"

165. I consider that the documentary evidence summarised above shows that if there was any such agreement it was not made in the early part of 2015 or, indeed, until November 2015 at the earliest.

166. In paragraph 41 of his second statement Mr Goudarz says:

"Barasa and I met again for dinner at an Iranian restaurant in Olympia on 17th November 2015 and Rohan was there. I had asked Barasa to bring the keys to 18 Tunbridge Lane with her and she did. We agreed over dinner that I would help her repair it, and 40 Bailey Mews. I note Barasa now claims that I said I would pay for everything. That is not true. I would not have been able to do that as I never had the money to pay for the repairs as well as pay her what I owed her under the Deed. She knew I would never have the money to do both. I offered her my time free of charge. As for payments for materials and contractors, we agreed that anything I paid would count towards my debt to her under the Deed".

167. What Mr Goudarz does not explain in his second statement is:

167.1. Why he made his mistake as to the time of the agreement in the first place.

167.2. Why he changed his case substantially from saying, as he did in his first statement by reference to the Amended Particulars of Claim that the agreement was made by telephone to saying that it was made at dinner at the Iranian restaurant.

167.3. Why he stated that the payments shown in the Bailey Mews and Tunbridge Road schedules to the Amended Particulars of Claim were made pursuant to the agreements when, on his case as put in his second statement, the agreements were not made until after some of those payments had been made.

168. In his oral evidence at one stage Mr Goudarz appeared to revert to the early 2015 timing for the Bailey Mews and Tunbridge Road agreements. He said it was probably a couple of months after "the court", which I take to mean at earliest the service of the proceedings which led to the mediation which in turn resulted in the Deed and at latest the making by the court of the Tomlin order on 7th January 2015. That would put those agreements in early 2015. However, as was put to Mr Goudarz in cross-examination and as the emails of early to mid-2015 show, there was no real possibility of a telephone agreement between Mr Goudarz and Ms Idris-Goudarz then or of them meeting each other on the site of Bailey Mews in or around the early part of 2015.

169. Later in his cross-examination Mr Goudarz said that he did not know 18, Tunbridge Lane existed in January or February 2015 and that he did not see Ms Idris-Goudarz between signing the Deed and the meeting in her solicitors' office on 30th October 2015.

170. Mr Goudarz said that throughout 2014 he and Ms Idris-Goudarz did not speak to each other and at the end of the year they went to mediation. The mediation must have been some time between 26th September 2014 when the Claim Form in HC-2014-000361 was issued and 21st November 2014 when the Deed was executed.

171. Mr Goudarz said that a couple of months after the mediation he saw Ms Idris-Goudarz at her solicitors' office and that a couple of weeks or months later she brought Rohan down to meet him. Even on the assumption that the Deed was executed by Mr Goudarz at Ms Idris-Goudarz's solicitors office a "few" months after the mediation, the emails make it clear that there was no meeting between Mr Goudarz and Rohan in early 2015.

172. It is common ground that there was an agreement or arrangement made between Mr Goudarz and Ms Idris-Goudarz in relation to Mr Goudarz doing work to 40 Bailey Mews and 18 Tunbridge Lane at the Iranian restaurant on 17th November 2015. I have set out above what Mr Goudarz said about it in paragraph 41 of his second statement and what Ms Idris-Goudarz says about this in her Defence. What is not common ground is whether that agreement amounted to a contract and whether it was a term of it that Ms Idris-Goudarz would pay for the materials.

173. The emails dated 7th, 11th and 12th November 2015 relied upon by Ms Idris-Goudarz in her Defence for establishing an express term that Mr Goudarz would pay for the materials do not go that far. On the other hand those emails do support Ms Idris-Goudarz's allegation that the offer was made by Mr Goudarz with a view to rebuilding their relationship. As regards who would pay for materials:

173.1. The email of 7th November 2015 does not mention 40 Bailey Mews at all. That fits with Ms Idris-Goudarz's case that the offer was only extended to 40 Bailey Mews on 17th November 2015 at the Iranian restaurant. As regards 18 Tunbridge Lane (the so-called "surprise house"), all Mr Goudarz says in the email is; "i can get it fixed for you if you would like, then you won't need to worry, I have a good team with me." In my view that is neutral as to payment for materials.

173.2. The 11th November 2015 email does not mention either of the properties or work to them.

173.3. In my view the 12th November 2015 email is also neutral as to who would pay for materials. It only contains the following in relation to work to 18, Tunbridge Lane:

> "When we meet on the 17th, bring the key for the surprise house, il go and have a look to see what has to be done. Il fix it up, and make it as nice as it was. Don't worry, im not dead yet."

174. Ms Idris-Goudarz's case is that on 17th November 2015 Mr Goudarz repeated that offer to Ms Idris-Goudarz in person when he met her and her boyfriend at an Iranian restaurant in Olympia. The offer was then extended to include 40 Bailey Mews. Ms Idris-Goudarz alleges that the gist of the words used included:

> "I trusted the wrong people and so did you. I have done so much damage let me undo the houses damage to make this right. This is my gift to you so I can face your mother when I die. Let me do what I am good at and repair the house, I have a good team."

175. In the highly charged emotional circumstances which existed as between Mr Goudarz and Ms Idris-Goudarz at that time, and having had the benefit of seeing them both in the witness box and otherwise in court I consider that it is very likely that Mr Goudarz would have said something along those lines in the hope of improving his relationship with his daughter and I find that he did so. Whatever Mr Goudarz may have intended by those words, I find that those words could reasonably be supposed by Ms Idris-Goudarz to have been intended to mean that Mr Goudarz would pay for all the materials and contractors' work out of his own resources.

176. The email correspondence supports a case that there was some sort of agreement made on or around 17th November 2015 in relation to 40 Bailey Mews. Thus:

176.1. On 22nd November 2015 Ms Idris-Goudarz emailed the letting agents for 40 Bailey Mews to say that her father was helping her with her house at 40 Bailey Mews.

176.2. On 23rd November 2015 Ms Idris-Goudarz emailed the letting agents for 40 Bailey Mews to say that her father was "just helping with repairs".

176.3. On 23rd November 2015 Ms Idris-Goudarz emailed the letting agents for 40 Bailey Mews in response to an email from them expressing concern at the condition of the carpet and that some repairs were required in the top floor bedroom. Ms Idris-Goudarz's response was that this was exactly what her father was coming to help with and remedy.

177. By the end of November 2015 Mr Goudarz had some involvement with 18 Tunbridge Lane. Thus, there is an email dated 22nd November 2015 from him to Ms Idris-Goudarz in which he sets out a draft of an email for Ms Idris-Goudarz to send to the NFU regarding an insurance claim in respect of 18 Tunbridge Lane.

178. In an email dated 31st January 2016 from Ms Idris-Goudarz to Mr Goudarz, Ms Idris-Goudarz sets out a list of things "to do". Item 2 on that list reads: "Finishing Bottisham to sell as it is or sell done up without losing too much and not risking more money". Item 4 is: "Get nfu for bottisham …". The references to "Bottisham" are to 18 Tunbridge Lane, Bottisham. The fact that Ms Idris-Goudarz appears to have been contemplating selling 18 Tunbridge Lane without doing any more work to it is consistent with there being no obligation on her to accept future work from Mr Goudarz in respect of it. On the other hand the fact that there was an insurance claim in respect of the property makes it more likely that, if Mr Goudarz had to pay for materials or work to make good the insured loss then he would be reimbursed for doing so.

179. A series of emails in February and March 2016 with the NFU's loss adjuster increases that likelihood because it indicates that Ms Idris-Goudarz was going to be paid by the insurers of 18 Tunbridge Lane for the required works of restoration. It appears to me to be unlikely that if, as Mr Goudarz knew, Ms Idris-Goudarz was going to be paid by the NFU for a substantial amount of the work at 18 Tunbridge Lane, he would agree to pay for the materials and contractors' costs. Indeed in those circumstances, an expectation in him that Ms Idris-Goudarz would use the insurance money for the purpose for which the NFU paid it, namely the cost of restoration would appear to me to be eminently reasonable. Particular emails in that regard are the following:

179.1. In an email dated 26th February 2016 from the loss adjuster to Ms Idris-Goudarz, the loss adjuster says that the NFU has accepted liability for the claim. He says that he understands that Ms Idris-Goudarz has made arrangements for a builder to carry out the reinstatement works. He says that there "may still be an opportunity to have Princebuild carry out this work; but, he continues by saying that if Ms Idris-Goudarz's builder has commenced work, then he is sure that the NFU would have no objections.

179.2. In her email in reply dated 1st March 2016 Ms Idris-Goudarz says that the best person to show the loss adjuster around would be her father.

179.3. In an email dated 3rd March 2016 from Ms Idris-Goudarz to the loss adjuster, Ms Idris-Goudarz says:

> "… The family solicitor once removed allowed my father and I to see exactly how things had been miscommunicated. Sad event but we are back to normal … My father has my email address and is in charge of the restoration at Bottisham …"

180. Unfortunately the run of emails on this subject in the trial bundles peters out and the copies which are in the bundle do not show how much the NFU paid in respect of 18 Tunbridge Lane. In her oral evidence Ms Idris-Goudarz said that the NFU agreed liability for 18 Tunbridge Road in the sum of £47,000.

181. Under her cross-examination Ms Idris-Goudarz said that she paid £60,000 for the renovation of 18 Tunbridge Lane. In re-examination she said that 18 Tunbridge Lane had only cost about £47,000 to do up. Whichever figure is correct, that is inconsistent with Mr Goudarz paying for all the work and materials. In this context I note that Mr Goudarz's claim for materials and contractors in respect of 18 Tunbridge Lane totals £134,815.10.

182. In her second statement Ms Idris-Goudarz said that Mr Goudarz's offer was to renovate 18 Tunbridge Lane as a "gift" to her and that the offer extended to 40 Bailey Mews. I accept Ms Idris-Goudarz's evidence in that regard. The circumstances in which the dinner at the Iranian restaurant was held in November 2015 were circumstances where Mr Goudarz was anxious to re-establish good relations with Ms Idris-Goudarz on an emotional or family level. Having seen both Mr Goudarz and Ms Idris-Goudarz in the witness box and in particular the importance which they both attached to their emotional relationship and its problems, an offer by Mr Goudarz to do work for Ms Idris-Goudarz on her properties with no reward other than the improvement of their relations which was likely to result was in my view exactly the sort of loose family arrangement or agreement that they would have been likely to have entered into in mid-November 2015 and I find that that was the agreement or arrangement. It was not a contract. There was no consideration given by Ms Idris-Goudarz. There was no obligation on Mr Goudarz to do or to arrange or pay for any of the work.

183. I find that the question of who should pay for materials or contractors for the work was not discussed or agreed at the dinner at the Iranian restaurant. Mr Goudarz said when under cross-examination that they did not discuss materials. It was afterwards, said Mr Goudarz, that Ms Idris-Goudarz agreed to pay for the materials. That was inconsistent with a contextual reading of paragraph 41 of his second statement, though taking its last sentence in isolation, it would not be.

184. As explained above, Ms Idris-Goudarz's reliance on the emails dated 7th, 11th and 12th November 2015 to establish an express agreement that she would not pay for the

materials is misplaced. Ms Idris-Goudarz did not call Rohan to say whether or not who was to pay for materials was discussed at the dinner.

185. In paragraph 41 and again in paragraph 51 of his second statement Mr Goudarz says that they agreed that anything he paid for materials and contractors would count towards his debt to Ms Idris-Goudarz under the Deed. However, Mr Goudarz's second statement does not give any details of when the agreement in that regard was made.

186. A point consistently made by Mr Goudarz in his written and oral evidence was that he did not have the money to pay for the materials and works and hence that he would not have agreed to pay for them, but would have expected Ms Idris-Goudarz to pay for them or allow them as a set off against what he owed her under the deed. Ms Idris-Goudarz attempted to counter this by saying that Mr Goudarz had the proceeds of a property in Montgomery Road. No details were given of when this property was sold or for how much.

187. On the evidence I find that so far as 18 Tunbridge Lane and 40 Bailey Mews were concerned, Mr Goudarz did expect Ms Idris-Goudarz to pay for the materials and contractors, at least insofar as those costs were substantial, but there was no express agreement to that effect made at the Iranian restaurant. I also find that, except for the acknowledgment which may have been made in respect of the £127,500 NFU payment which I consider below, there was no express agreement to that effect thereafter. The following considerations lead me not to accept Mr Goudarz's evidence in that regard:

187.1. The changes in Mr Goudarz's case on the evidence.

187.2. The vagueness of Mr Goudarz's evidence.

187.3. The lack of explanations for those changes; in particular as to why he made his mistake as to the time of the agreement in the first place; why he changed his case substantially from saying, as he did in his first statement by reference to the Amended Particulars of Claim that the agreement was made by telephone to saying that it was made at dinner at the Iranian restaurant or thereafter.

187.4. The statement in the Amended Particulars of claim confirmed by Mr Goudarz's first statement to the effect that the payments shown in the Bailey Mews and Tunbridge Road schedules to the Amended Particulars of Claim were made pursuant to the agreement when, on his case as put in his second statement, the agreement was not made until after some of those payments had been made.

188. The following considerations lead me not to accept Ms Idris-Goudarz's evidence in that regard:

188.1. Her misplaced reliance on the emails dated 7th, 11th and 12th November 2015.

188.2. Her reliance on the ambiguous words: "let me undo the houses damage to make this right. This is my gift to you so I can face your mother when I die. Let me do what I am good at and repair the house, I have a good team".

188.3. The essentially social nature of the dinner at the Iranian restaurant as she herself alleges

188.4. The fact that she was making a substantial insurance claim in respect of the damage to 18 Tunbridge Lane and could expect to receive a substantial payment in respect of that in due course; the ultimate figure being £47,000.

188.5. Her unexplained failure to call Rohan who was present at the dinner at the Iranian restaurant and who could have been expected to corroborate her version of what took place.

189. I have considered whether, even if there was no an express agreement by Ms Idris-Goudarz to pay for the materials and contractors, such a term or agreement might not be implied or inferred from an agreement that Mr Goudarz would work or arrange the work on Ms Idris-Goudarz's properties. Mr Goudarz accepted in his oral reply submissions in the context of his doing or agreeing to do work to the jointly owned properties or Ms Idris-Goudarz's own properties that Ms Idris-Goudarz "never said OK how much?" It was too loose or vague an arrangement or agreement for it to be possible to imply a term into it that Ms Idris-Goudarz would pay for the materials. From Mr Goudarz's perspective that might have appeared obvious and have led to an expectation that Ms Idris-Goudarz would pay for the materials and contractors. From Ms Idris-Goudarz's perspective the opposite was at least reasonably possible. In my judgment that is the true position as at the time the works began to be done: Mr Goudarz expected to be able to set off the cost against what he owed or would owe Ms Idris-Goudarz under the Deed. Ms G did not expect him to be able to do that as a matter of law or legality, but must have been aware that Mr Goudarz was spending substantial sums on her own properties, even if those sums were not as great as those clamed in the schedules to the Amended Particulars of Claim and notwithstanding that it was she, not he, who was due to receive the £47,000 insurance money from the NFU in respect of 18 Tunbridge Lane.

190. Mr Goudarz's pleaded case is that he claims the payments made by him or his company for the works on the properties "as a debt" and to "offset it" (i.e. the debt) against any sums he owes Ms Idris-Goudarz under the Deed. In my judgment the facts as I have found them in respect of the payments made by Mr Goudarz for work on 40 Bailey Mews and 18 Tunbridge Lane did not give rise to a "debt".

191. I have explained above why in my judgment there was no contract between Mr Goudarz and Ms Idris-Goudarz as to the work. There can therefore have been no contractual basis for a debt.

192. I suggested to Mr Isenberg that doing work on somebody else's property in an expectation of payment might give rise to an entitlement to be paid whichever was the less of the cost of the work and the amount by which the work had increased the value of the property. Mr Isenberg's answers to that suggestion were (i) that was not how Mr Goudarz's pleaded case was put; and (ii) that it was expressly agreed that Mr Goudarz would pay for the works. I accept the first of those points. I have rejected the second of Mr Isenberg's answers on the facts.

193. If the relevant facts had been pleaded and the relevant evidence had been available and appropriately explored, I might have been willing to consider allowing an amendment

to plead a case based on unjust enrichment. But these things were not done. In particular the quantum of a claim for unjust enrichment would be limited to whichever was the lesser of the cost of the works and the increase in the value of the properties which resulted from them. The second of these alternatives was not pleaded and there was no evidence on which I could decide which was the appropriate remedy. Mr Goudarz's case was put on the basis that there was an agreement that Ms Idris-Goudarz would pay for the cost of materials and of the contractors. I have rejected that case on the evidence. Accordingly Mr Goudarz's case that Ms Idris-Goudarz owed him a debt equal to the amount of his (or his company's) expenditure on materials and contractors in respect of the work done on 40 Bailey Mews and 18 Tunbridge Lane fails.

The 10 Nene Road Agreement

194. In paragraph 13 of the Amended Particulars of Claim this is alleged to have been made by telephone in around June 2015; though the claim is only pleaded as a suggestion by Ms Idris-Goudarz that they do up the property and share the cost of repairs. There is no express allegation in the Amended Particulars of Claim that Mr Goudarz agreed to that. However, it is pleaded that pursuant to the agreement Mr Goudarz did work to the property costing a total of £19,676.47. There is no allegation in the Amended Particulars of Claim that there was an express agreement that the amounts spent by Mr Goudarz could be off set as to a half of them or otherwise against the amounts due or to become under the Deed. In respect of the cost of repairs to 10, Nene Road pursuant to the Nene Road agreement the Appendix to the Amended Particulars of Claim identifies the particular alleged payments as having been made over a period from 9th July 2015 to 10th June 2016, with one stray payment of £5.90 for drain cleaner on 26th April 2017.

195. In his second statement Mr Goudarz says that "it was around this time" (a reference back to 15th June 2015) that he and Ms Idris-Goudarz had a discussion by telephone to discuss work on their jointly owned properties, including the Hall. He says there that two things were agreed: first that they would do up 10 Nene Road before selling it and that they would share the cost of doing it up; and second that Ms Idris-Goudarz would be jointly responsible with him for the outgoings on the Hall. He says that they agreed that money spent on those properties would count towards the money he owed her under the Deed.

196. In his second statement Mr Goudarz relies on an email dated 8th July 2015 from Lee on his behalf to Rohan and Ms Idris-Goudarz as supporting his case for an agreement in about June 2015. That email is very short. It reads:

> "Th bathroom at 10 Nene Road really needs to get done. Your father said he doesn't mind he can pay for it? Hope you're doing OK."

197. There is no response in the emails. In his submissions Mr Goudarz said that in respect of 10 Nene Road, Ms Idris-Goudarz "never said no". She said "thank you". She did not say: "I'll pay or anything like that". He then said that he had no choice but to fix it. This puts the suggestion as emanating from Mr Goudarz rather than from Ms Idris-Goudarz as Mr Goudarz put it in his Amended Particulars of Claim.

198. Mr Goudarz's case in relation to the 10 Nene Road agreement suffers from the problem that it relies on two alleged telephone conversations between him and Ms Idris-Goudarz in or around June 2015 which is during a period when, as I have held, there were no telephone conversations between them.

199. In the case of 10 Nene Road, Mr Goudarz does not appear to have changed his case as to the time of the alleged agreement. Ms Idris-Goudarz alleges that some of the payments claimed by him post-date the sale of the property and that no more were necessary after an offer for the property had been received on or before 12th January 2016.

200. In the Schedule of Payments annexed to Ms Idris-Goudarz's Defence it is stated that sale of the property completed in March 2016. A series of emails involving Ms Idris-Goudarz, Mr Goudarz, and the solicitors acting for them on the sale, the solicitors confirm that completion of the sale of 10 Nene Road took place on or before 26th March 2016. Specifically:

200.1. In an email dated 24th March 2016 from Ms Idris-Goudarz to Sapphire Aldham of Kenneth Bush (the solicitors jointly instructed by Ms Idris-Goudarz and Mr Goudarz in respect of the sale) Ms Idris-Goudarz refers to the £275,000 payable under the Deed. She points out that Mr Goudarz did not pay the instalments due in July or October 2015. She states that his share of the proceeds of 16 Stirling Close were used to reduce the sum due. She states that Kenneth Bush are in possession of the balance of the transaction on No.10 Nene Road which will not make up the deficit, nor "will" the sale of 15 Spring Sedge. She says she can confirm that she is entitled to an amount far in excess of the sale of those two houses.

200.2. In an email dated 24th March 2016 timed at 09:38 from Mr Martin of Mr Goudarz's then solicitors to Ms Aldham, copied to Mr Goudarz, Mr Martin says that his firm did not agree to the proceeds of sale being sent to Rollingsons (Ms Idris-Goudarz's then solicitors). He said that these were "subject to an accounting between our respective clients and it may be that your client is not entitled to an amount equivalent to the net proceeds."

200.3. In an email dated 24th March 2016 from Sue Whittaker on behalf of Mr Goudarz to Ms Aldham, copied to Ms Idris-Goudarz, headed "Sale of 10 Nene Road and 15 Burnham Road", Ms Whittaker confirms that the net proceeds from those properties are to go to Ms Idris-Goudarz.

201. There is only the one de minimis payment of £5.90 on 26th April 2017 which is claimed by Mr Goudarz in respect of 10 Nene Road which occurred after March 2016. It is so small that I ignore it (save that it is an example of an unexplained oddity). More significant payments are claimed by Mr Goudarz to have been made by him in respect of 10 Nene Road in January and February 2016. Ms Idris-Goudarz denies or does not admit that these (or most of them) were paid in respect of work at Nene Road. Having looked at the invoices or payment slips, I understand the force of what she says in that regard; but, if any of those payments were made in respect of 10, Nene Road, but only after an offer had been made for the property, in my view on the material before me, it does not follow from the fact that they were paid when they were that they were not paid in respect

of works in respect of 10 Nene Road. Explanations might be that they related to earlier works, or that they related to works which the purchaser expected to be completed before he bought the property.

202. Having regard to the lack of any express assent by Ms Idris-Goudarz, and to what I find to be the absence of the claimed telephone calls in or around June 2015 between Mr Goudarz and Ms Idris-Goudarz, I find that there was no agreement between them at that time as to the work that should be done to 10 Nene Road or as to Mr Goudarz doing it on terms that the cost of doing it was to be shared. I am confirmed in this conclusion by the email dated 10th August 2015 from Mr Goudarz to Rohan at Ms Idris-Goudarz's email address in which Mr Goudarz accepts that he owes Ms Idris-Goudarz £275,000. If, as per the Amended Particulars of Claim and Mr Goudarz's statements, the 10 Nene Road agreement had come into existence in about June 2015, then in August 2015 he would have said that he owed £275,000 less half of what he had already spent on 10 Nene Road and, possibly, what he was going to spend on it. As at 10th August 2015 Mr Goudarz only claims to have spent some £650 on 10 Nene Road; nevertheless that was not insignificant.

203. Indeed in my judgment the email of 10th August 2015 goes further than merely failing to mention the 10 Nene Road agreement; it is positively inconsistent with such an agreement having existed at that time. The relevant parts of the email read (my emboldening):

> "… I owe Barasa 275 for the courts, **that** is separate. As you know, I don't have that kind of money so Il pay **that** as soon as any properties are sold. She will get **that** money first and is nothing to do with my will.
> I recently borrowed 25 from the bank, and 10 of it I sent to barasa last week. If she needs the 15 that is left, let me know … As soon as crimps and other houses are sold, she can have her share and my share as well until the debt is cleared. As you know, that is a separate issue.
> You must know that in the last 3 years I kept all the houses in good condition and repaired them when needed, keeping any pressure away from Barasa and I still do. If Barasa would like to take over, she is more than welcome.
> …
> As you know , I have already paid for the costs of crimps and the other houses. With what I have paid to solicitors since barasa took me to court, I could have paid the mortgages for more than just 4 chevril walk. For both of us it is too late now, whats done is done. We have to salvage what we can."

204. In my judgment the word "that" where highlighted by me in the quoted paragraph shows positively that there was at that stage no intention or agreement as to set off of money spent on works done.

205. Accordingly Mr Goudarz's claim based on an agreement made in or around June 2015 in respect of his expenditure on repairs to 10 Nene Road fails.

206. In addition to his claim in respect of the cost of repairs at 10 Nene Road, Mr Goudarz alleges in paragraph 15 of the Amended Particulars of Claim that he made payments of

£1,714.94 on 2nd December 2014 and £166.53 on 2nd October 2015 towards the mortgage on 10 Nene Road. He alleges that he and Ms Idris-Goudarz were jointly liable for these payments and claims to set off half the amount of them.

207. In paragraph 7 of her Defence Ms Idris-Goudarz alleges that the properties listed at paragraph 8 of the Deed, which included 10 Nene Road, were legally owned by her and that Mr Goudarz only had a beneficial interest in them under the terms of the Deed. In paragraphs 6 and 7 of his Amended Particulars of Claim Mr Goudarz alleges that the properties were jointly owned. Recital D of the Deed recites that Ms Idris-Goudarz "and the Estate" are the legal owners of the properties. The "Estate" does not have legal personality. It cannot have been the legal owner of the properties. At most beneficial interests in the properties were assets of the Estate of which Mr Goudarz was one of the executors. Accordingly I find that as a matter of the technical use of the term Mr Goudarz was not a legal owner of the properties. However, in a more general sense of the term he was legally entitled to equitable interests in them.

208. In paragraph 20(c) of her Defence Ms Idris-Goudarz complains that the basis of the alleged joint liability for the payments is not pleaded. That joint liability might have arisen either by reason of Mr Goudarz or his wife (of whose estate he was an executor) having been a party to the mortgage of 10 Nene Road, or by reason of the terms of the Deed or otherwise.

209. The Deed does not deal expressly with the payment of mortgage instalments or interest in respect of the mortgages other than the mortgage on the Hall. However, clause 10 of the Deed provides that any mortgage shall be deducted from the proceeds of sale. From this I consider that it can be implied that each of Mr Goudarz and Ms Idris-Goudarz was ultimately to be responsible for half the costs of the mortgage payments in respect of the properties (other than the Hall).

210. That appears to have been the approach of the parties. In the course of her cross-examination Ms Idris-Goudarz said that she had paid the NFU insurance and her half of the mortgages. Mr Goudarz then asked Ms Idris-Goudarz about 15 Burnham Road. Ms Idris-Goudarz said that she had paid her portion of Burnham Road. She said that Mr Goudarz had had to make multiple payments in order to catch up. There are a number of emails which confirm this 50:50 approach to the mortgage payments both directly and by their assumption or expectation that the mortgage instalments would be paid out of the rents received.

211. Looking at Mr Goudarz's alleged payment of £1,714.94 on 2nd December 2014 in respect of the 10 Nene Road mortgage:

211.1. In an email dated 28th November 2014 from Ms Idris-Goudarz to Mr Goudarz, Ms Idris-Goudarz explained that she had spoken to the mortgage companies so that in total the amounts owed were: (1) £1,865.04 in respect of 16 Stirling Close; (2) £1,807.68 in respect of 15 Burnham Road; and (3) £1,659.30 in respect of 10 Nene Road. She said she thought "Tim" (the individual at Town & Country, letting agents

for 15 Spring Sedge) had about £2,000 representing accrued rent from 15 Spring Sedge which could be used. She continued:

> "I am happy to pay half and half of the rest each on our cards over the phone on Monday. I would say it will be about £1750 each if Tim pays but I will write it all out …"

211.2. In an email dated 1st December 2014 from Ms Idris-Goudarz to Mr Goudarz, copied to their respective solicitors, Ms Idris-Goudarz repeated the last-mentioned figures for the arrears and set out what she then calculated the arrears would be, after making various allowances, including an addition of £333.06 for the amount due in respect of 10 Nene Road on 4th December 2014. That left (by Ms Idris-Goudarz's calculations) arrears of £1,437.52 in respect of 15 Burnham Road and £1,992.36 in respect of 10 Nene Road. If they spilt that 50:50, she said, that would be £1,714.94 each. She continued:

> "I suggest the easiest way forward is for Kosrow to pay £1714.94 to Godiva Mortgages ie 10 Nene Road and I would then pay £277.42 for Nene Road and £1437.52 for Burnham Road which adds up to the same but is obviously 2 transactions. We are then clear of arrears."

211.3. There is a copy of an HSBC receipt dated 2nd December 2014 showing a payment of £1,714.94 to Godiva Mortgages.

211.4. In an email dated 2nd December 2014 from Mr Goudarz to Ms Idris-Goudarz, Mr Goudarz said that he would pay the mortgage as Ms Idris-Goudarz had asked.

211.5. In an email dated 3rd December 2014 from Ms Idris-Goudarz to Mr Goudarz, Ms Idris-Goudarz said she had paid her part of both mortgages, but they had not had his part yet.

211.6. In an email dated 4th December 2014 from Ms Idris-Goudarz to Mr Goudarz, Ms Idris-Goudarz said that the payments had all cleared and they were up to date on all 4 mortgages.

212. In the light of that correspondence and the lack of any convincing evidence to the contrary, I find that Mr Goudarz did pay£1,714.94 on 2nd December 2014 in respect of the 10 Nene Road mortgage, but that was part of the agreed balancing operation described in the correspondence so that he and Ms Idris-Goudarz should each be treated as having paid half of the arrears on 10 Nene Road and 15 Burnham Road. Therefore Mr Goudarz should only be treated as having paid his half share of the mortgage on 10 Nene Road and he is not entitled to claim any part of the £1,714.94 as a debt or to offset it or half of it against any sums he owed Ms Idris-Goudarz.

213. Moving forwards to nearer the period of the alleged £166.53 payment on 2nd October 2015 towards the mortgage on 10 Nene Road:

213.1. In an email dated 5th August 2015 from Rohan using Ms Idris-Goudarz's email address to Lee using Mr Goudarz's email address, Rohan thanked Lee for letting him know that Mr Goudarz said that he would pay his share of the mortgages.

213.2. In Lee's email in reply, also dated 5th August 2015, he said that Mr Goudarz was happy to pay his share.

213.3. In an email dated 7th August 2015 timed at 0:30 from Lee using Mr Goudarz's email address to Rohan and Ms Idris-Goudarz at Ms Idris-Goudarz's email address, Lee said that they had been trying to sort out the mortgage for 10 Nene Road, but "they" (who I take to mean the mortgagees) would not talk to them.

213.4. In an email dated 7th August 2015 timed at 12:30, Rohan replied saying that Godiva won't accept card payments over the 'phone. He reported that Godiva had said that £832.65 had to be paid by bank transfer.

213.5. In an email dated 7th August 2015 timed at 14:17 from Lee to Rohan, Lee said he had just picked up Mr Goudarz; he tried calling Godiva and they did not talk to him. He continued:

> "If barasa agrees, he would like to tell william h brown to send all the rent to barasa so she can keep on top of things, and maybe take over the selling of the houses. Each month if Barasa is short to pay the mortgages then he can top it up and leave some money with her, and when the houses are sold she can keep the money."

213.6. Godiva was the name of the mortgagees of 10 Nene Road. William H Brown appear to have been the letting or managing agents at the time, though they were subsequently replaced by or changed their name to Sequence Homes. It appears from this that it was contemplated that the mortgage instalments or interest would be paid at least primarily out of the rents received.

213.7. Attached to one of those emails from Rohan were copies of a number of letters, including:

213.7.1. A letter dated 3rd January 2015 from Ms Idris-Goudarz using the 40 Bailey Mews address to Godiva mortgages. In this letter Ms Idris-Goudarz asks Godiva to accept the letter as confirmation that Mr Goudarz had authority to speak to Godiva about the mortgage account "in order to pay his 50% share of the mortgage payments and to be informed about outstanding balances."

213.7.2. A letter dated 3rd July 2015 from Godiva to Ms Idris-Goudarz at the 40 Bailey Mews address stating, amongst other things that the arrears totalled £333.06.

213.8. An email dated 12th August 2015 from Lee to Ms Idris-Goudarz and Rohan stating that Mr Goudarz had just paid Godiva via bank transfer so the 10 Nene Road mortgage was then up to date.

213.9. In an email dated 16th September 2015 from Ms Idris-Goudarz to Peter Gourri, copied to Mr Goudarz, Ms Idris-Goudarz said, amongst other things, that Godiva needed to be paid £333.06 every month on the 1st, which is £166.53 and is for 10 Nene Road. She said Mr Goudarz was currently one month in arrears.

214. I was not taken to and have not found any documentary evidence that Mr Goudarz paid £166.53 to Godiva on 2nd October 2015. There is a copy of Mr Goudarz's HSBC bank statement for the period 26th September to 9th October 2015 in the bundle, but the entries are wholly redacted. Even if Mr Goudarz paid the £166.53 on 2nd October 2015, there is no evidence that the payment represented anything other than his 50% contribution to the instalment then due. I do not allow that claimed £166.53 as debt or a set off.

The Spring Sedge Agreement

215. In the Amended Particulars of Claim Mr Goudarz alleges that the Spring Sedge Agreement was entered into orally in or around March 2016. It is alleged to have been the same arrangement as was entered into in respect of 10 Nene Road. Ms Idris-Goudarz complains in her Defence that this allegation gives insufficient particulars of the terms. I disagree. What is alleged is clear: it is alleged that that it was suggested or agreed that they would do the property up and share the costs of repairs.

216. The agreement is alleged to have been made at a meeting at the property attended by Mr Goudarz, Ms Idris-Goudarz and an estate agent from Belton Duffy called "David" "after the eviction of the tenants". Mr Goudarz alleges that Ms Idris-Goudarz suggested and that he agreed that they should ask John Dow to do up the property and that they should do the same as they had done with 10 Nene Road. In the Amended Particulars of Claim Mr Goudarz alleges that "pursuant to" the Spring Sedge Agreement Mr Goudarz, beginning in about March 2016, oversaw and paid a total of £25,538.33 in respect of the costs of repair to 15, Spring Sedge "as set out the schedule appended to these particulars".

217. The schedule to the Amended Particulars of Claim identifies the particular alleged payments over a period from 3rd March 2016 to 14th May 2017 plus one payment of £199 for an oven on 14th November 2015.

218. In paragraph 19 of the Amended Particulars of Claim it is alleged that Mr Goudarz paid £650 for estate agents and valuers' fees on 30th March 2016 and £1,085.47 Council tax on 13th March 2017.

219. In paragraph 68 of his second statement Mr Goudarz says:
"In my Amended Particulars of Claim, I said that Barasa and I agreed to do up the property at 15 Spring Sedge in about March 2016 at a meeting at the property, after the eviction of the tenants. I now believe that I was mistaken about the date, and that this meeting took place in August, because I believe, having received an email from the estate agent, that the tenant was evicted at the end of July."

220. That date fits more closely with what Ms Idris-Goudarz says as to the tenant being evicted in August 2016. It also fits with what the estate agent, Mr Hardingham said in his email to Mr Goudarz of 29th May 2019. In that email Mr Hardingham said that 15 Spring Sedge was marketed by Belton Duffey from 4th January 2017 and was "sale agreed" on 1st April 2017, the property sale completed on 26th May 2017. The email continued:
"The property was in a very poor state when the long term tenant, Mr Reeve vacated on 27th July 2016. I confirm that it was a joint decision by yourself and Barasa to refurbish the property prior to marketing and that Barasa dealt with the sales process as you where in and out of hospital during that period."

221. Moving the alleged date of the meeting and the vacation of the property forward to the end of July 2016 causes an inconsistency in Mr Goudarz's case. That is because he claims that the following payments were made by him in respect of 15 Spring Sedge on the following dates, all of which preceded 27th July 2016:

221.1. 26th May 2016 - £96 for locks.

221.2. 30th March 2016 - £650 to Belton Duffey. Except that someone has handwritten on a bank record of the payment: "15 Spring Sedge", there is nothing in the exhibited paperwork to link this payment with the property.

221.3. 3rd March 2016 - £3,000 to JD Building Services for stud walls/plasterwork.

221.4. 2nd May 2016 - £772 to Riverside Home Maintenance. The invoice does not identify the property. The works listed on the invoice are preparing, filling and painting 3 bedrooms and the bathroom plus "Rip up carpets" £12 and clean out gutters £25.

222. The locks and the re-decoration might be explained as works which were necessary during the tenancy. Similarly with the oven purchased in November 2015. However, in the absence of any explanation from Mr Goudarz, the £3,000 for stud walls and plasterwork simply does not fit with the repair works not being agreed until August 2016.

223. The purchase of the oven in November 2015 is referred to in a series of emails which I find show that Ms Idris-Goudarz agreed to Mr Goudarz buying it. They are:

223.1. Email dated 7th November 2015 from Mr Goudarz to Ms Idris-Goudarz:
"… regarding 15 spring sedge, they wanted to charge £288 for a new oven. Im going to get an oven from curry's for £120, and I can go with Lee and install it ourselves.
I think the tenants are playing games now, it's one thing after the other, I fixed boiler, fixed the hobs, re-plasterboarded a room and today got a letter from a council home group regarding the tenants complaining about the windows and the damp.
… If you agree I think we should hand them their notice in a couple of months, then fix up the house and sell it."

223.2. Email dated 11th November 2015 from Mr Goudarz to Ms Idris-Goudarz:
"… Re 15 Spring Sedge, I have brought a cooker, which will be delivered in a few days. Now, the tenant says the fridge freezer has packed up, so im going to have to sort that out. This tenant is a pain in the ass, at least it keeps me busy."

223.3. Email dated 12th November 2015 from Ms Idris-Goudarz to Mr Goudarz:
"… -15 spring sedge - thank you for sorting out the oven. If you want to give notice and do it up I agree. …
… how do you like belton Duffey. Should we put all the houses up with them when it's time and we do up no 15"

224. The agreement in respect of the oven has no relation to the agreement alleged in the Amended Particulars of Claim or in Mr Goudarz's second statement. The allegation in the Amended Particulars of Claim is that there was an agreement that works would be done in future in the way of doing up the property; not that an allowance would be made for past expenditure.

225. The last part of the email dated 12th November 2015 from Ms Idris-Goudarz indicates that at that stage her and Mr Goudarz's joint intention was that they would together do up

15 Spring Sedge prior to its sale. Again it does not deal with how the costs of any such doing up were to be funded. The expectation might reasonably have been that they would be shared equally. However, an expectation is different from an agreement.

226. I attach little weight to Ms Idris-Goudarz's point that clause 12 of the Deed required any expenses such as repair costs to be agreed in writing beforehand. If there had been an oral agreement between Mr Goudarz and Ms Idris-Goudarz subsequent to the Deed that they would do up 15 Spring Sedge and share the cost of repairs, my inclination would have been to hold that that agreement was not barred by the second sentence of clause 12 of the Deed which provided that "any expenses (including repair costs) must be agreed in writing beforehand and, if agreed, shall be paid equally by [Mr Goudarz] and [Ms Idris-Goudarz]". That is because an agreement of the kind alleged would have meant that, contrary to clause 8 of the Deed, it would have been agreed that 15 Spring Sedge was not to be sold "as soon as possible"; but was only to be sold after it had been done up. Thus, a new agreement would be made in relation to 15 Spring Sedge which would only incorporate such of the terms of the Deed as were intended to be included in it. On the hypothesis under consideration, they would not have included the last sentence of clause 12. Alternatively, by reason of Mr Goudarz's having expended substantial sums in reliance on the hypothetical agreement, Ms Idris-Goudarz would have been estopped from denying that there was a requirement that the expense were agreed in writing beforehand. Either of those analyses would have taken the case outside the rule laid down by the Supreme Court in *MWB Business Exchange Cenres Ltd v Rock Advertising Ltd* [2018] UKSC 24, [2019] AC 119.

227. Mr Isenberg did not engage substantially in argument with the analysis outlined in the immediately foregoing paragraph. He did not accept it, but he submitted that it could not apply for the simple reason that the evidence did not establish an agreement of the kind on which the analysis is based. I agree with Mr Isenberg that the evidence did not establish that there was an agreement of the kind alleged and therefore there was not one to which the analysis in the immediately foregoing paragraph might apply.

228. Having heard Mr Goudarz in the witness box and in making his submissions, I accept his evidence that he expected that his expenditure on repairs would be brought into account, but his evidence does not satisfy me on the balance of probabilities that there was an agreement in relation to 15 Spring Sedge as alleged by him either in or around March 2016 or in or around August 2016. I do not accept such of Mr Goudarz's evidence as there was that there was an agreement of the kind alleged by him in respect of 15 Spring Sedge for the following reasons:

228.1. The change in Mr Goudarz's case as to when the relevant agreement was entered into.

228.2. The fact that, partly as a result of that change, a number of payments which Mr Goudarz claimed were made in furtherance of that agreement were made before the time when, in his second statement, he said that he entered into it.

228.3. The general unreliability of Mr Goudarz's statements as already indicated by my findings and analysis in relation to the alleged 16 Tunbridge Lane, 40 Bailey Mews and 10 Nene Road Agreements.

228.4. The fact that the third party who Mr Goudarz alleged was present at a meeting at the property when the agreement was allegedly entered into, namely Mr Hardingham, was not called as a witness. A witness summary was served in respect of his possible evidence, but no witness summons was served and he did not give evidence. I would have expected his evidence to corroborate one or other of Mr Goudarz's and Ms Idris-Goudarz's versions of whether or not there was a meeting at 15 Spring Sedge at which all three of them were present.

228.5. The inaccuracies of Mr Goudarz's evidence in the present context in stating (via his first statement) in paragraph 18 of his Amended Particulars of Claim that he paid a total of £25,538.33 for the costs of "repairs" of 15 Spring Sedge as set out in the schedule to the Amended Particulars of Claim. It is clear on their face that some of the items listed in the schedule for 15 Spring Sedge are not items which could possibly relate to repairs pursuant to the alleged agreement (whatever its date). The washing machine referred to above is one such example. A payment of £650 to Belton Duffey for agents' fees is another.

228.6. Mr Goudarz's own statement in his oral submissions that Ms Idris-Goudarz did not say that she would pay for the works; nor did she say that she would not. According to Mr Goudarz in his submissions she said "do the best you can". He submitted that they never discussed the money, but just talked about the problem and solved the problem.

229. Accordingly Mr Goudarz's claim based on an agreement made in or around March 2016 or in or around the end of July 2016 in respect of his expenditure on repairs to 15 Spring Sedge fails.

230. As regards the claim in paragraph 19 of the Amended Particulars of Claim that Mr Goudarz paid £650 for estate agents and valuers' fees on 30th March 2016 and £1,085.47 Council tax on 13th March 2017: A payment of £650 by Mr Goudarz's company, Sherrieda, to Belton Duffey on 30th March 2016 is shown by a copy of a bank record of such a payment being made. The only paper indication that it was in relation to 15 Spring Sedge is that someone has written on it in handwriting: "15 Spring Sedge". It is clearly not a payment in respect of a repair. It is premature to be a payment in respect of the sale of 15 Spring Sedge. Mr Goudarz has not provided any explanation as why the payment was made, or for what purpose. He has not satisfied me that this £650 was a payment in respect of 15 Spring Sedge or one for which he and Ms Idris-Goudarz were jointly liable. Even if it was a payment in respect of 15 Spring Sedge, it could only be in respect of estate agents' fees associated with the rental of the property. As such, it would be within the scope of paragraph 12 of the Deed and should be deducted from the rent monies received from the property. No attempt was made by either party to present me with anything like an accounting in respect of the rent monies, and I am unwilling to make an order in respect of a single payment which ought to be dealt with, if at all, on such an accounting.

231. As regards the £1,085.47 Council Tax alleged by Mr Goudarz to have been paid on 13th March 2017: there is a copy of a Council Tax Bill with an "issue date" of 13th March 2017 in respect of 15 Spring Sedge. It is addressed to Mr Goudarz at Crimplesham Hall. It is in respect of the period 1st April 2017 to 31st March 2018. As already mentioned, the evidence before me is that the sale of 15 Spring Sedge completed on 26th May 2017. Therefore in respect of the period after that, any Council Tax paid for the period 1st April 2017 to 31st March 2018 should have been the purchaser's liability and, if pre-paid by the vendors, should have been brought into account on completion. There was no explanation as to why, with the sale imminent, with 15 Spring Sedge having become "sale agreed" on 1st April 2017, the whole of the £1,085.47 was paid. Nor was there any explanation as to how or why if the bill was only issued on 13th March 2017, Mr Goudarz was able to and chose to pay it on that very date. Mr Goudarz has not satisfied me on the balance of probabilities that he made this payment. Even if it had been made, it would have been one amongst many payments made by him or by Ms Idris-Goudarz in respect of the properties which would have had to have been dealt with if at all on an accounting as to what was due under the Deed, and not as a one off debt owed by one party to the other.

The Crimplesham Hall agreement

232. In paragraph 28 of the Amended Particulars of Claim Mr Goudarz alleges that in or about July 2015 an oral agreement was made in relation to the Hall ("the Hall Agreement").

233. Mr Goudarz alleges that the occasion for the Hall Agreement was a barbecue at the Hall at which Mr Goudarz and Ms Idris-Goudarz were present. Mr Goudarz alleges that one of the other persons present was John Daw, the builder.

234. Mr Goudarz alleges that he and Ms Idris-Goudarz agreed that they should do up the outbuildings so that they could be let out. He alleges that Ms Idris-Goudarz asked Mr Daw whether he would do the work and that he agreed to do so. Mr Goudarz alleges that the terms of the Hall Agreement were:
    234.1. That they would refurbish the Cottage and the Larder House, sharing the cost equally, and let them out;
    234.2. That they would apply the rent gained towards the mortgage on the Hall;
    234.3. And that they would thenceforward pay an equal share of the outgoings on the Hall, including the mortgage, insurance and utility bills.

235. In paragraph 31 of the Amended Particulars of Claim it is alleged that pursuant to the agreement, "and beginning in about August 2015", Mr Goudarz and Ms Idris-Goudarz together oversaw works to the Cottage and the Larder House.

236. Having read the contemporaneous email correspondence and looked at the scheduled particulars of the work allegedly done by Mr Goudarz pursuant to the Hall agreement, it is clear to me that the suggestion that Mr Goudarz and Ms Idris-Goudarz were present at a barbecue in or around July 2015 and entered into the agreement on occasion is clearly

incorrect. It must also be incorrect to say that beginning in about August 2015 "together" they oversaw works to the Cottage and the Larder House.

237. In July 2015 Mr Goudarz and Ms Idris-Goudarz were still estranged, though Mr Goudarz in particular was attempting some sort of a rapprochement through the email correspondence. They did not meet in person until 30th October 2015.

238. In an email dated 20th June 2015 from Lee, using Mr Goudarz's email address, to Rohan at Ms LG's email address, Lee wrote:

> "We … had a big bbq today for Khosrow's birthday […] just a select few .."

239. That is inconsistent with a barbecue at which Ms Idris-Goudarz was present. The emails continue with content which is only consistent with Mr Goudarz and Ms Idris-Goudarz not having met. For example:

239.1. In an email dated 14th July 2015 sent from Mr Goudarz's email address to an email address for Ms Idris-Goudarz it is said:

> "he does not want to fight any more. If you need any houses he can sign them to you or if you want he can sell all the private houses & the Hall and you can keep the money, life is too short …"

239.2. That is inconsistent with Mr Goudarz and Ms Idris-Goudarz having met recently. It is not absolutely inconsistent with the alleged agreement in respect of the Hall, but its content would be surprising if the alleged agreement was already in place. 14th July 2015 was also the date when the second instalment (£100,000) was due under the Deed.

239.3. In an email dated 23rd July 2015 from Lee using Mr Goudarz's email to Ms Idris-Goudarz's email address, Lee wrote: "your father asked me to check in with you as we have not heard from either of you for a while. … your father would like to get the houses sold as quickly as possible so he can pay you the money he owes you…" That is inconsistent with a recent agreement having been made between the parties.

239.4. In an email dated 26th July 2015 from Rohan to Mr Goudarz and Lee, Rohan said that Ms Idris-Goudarz was extremely unwell. He wrote "I know she just wants all the finances to be over so you can start being father and daughter again …" To my mind that is inconsistent with the sort of ongoing relationship that the Hall agreement would have involved.

239.5. After various other emails at the end of July and beginning of August 2015, none of which mentioned the alleged Hall agreement, on 10th August 2015 there was the email in which Mr Goudarz acknowledged owing Ms Idris-Goudarz "275 for the courts". In the same way as that was inconsistent with the other alleged oral agreements that allegedly pre-dated it, in my judgment it is inconsistent with there being a separate agreement in place if the kind alleged by Mr Goudarz in respect of the Hall.

239.6. At around this time there was a dispute as to the application of the net proceeds of sale of 16 Stirling Close. Thus, in an email dated 14th August 2015 from David Martin of NBK solicitors on behalf of Mr Goudarz to Mr Gourri of Rollingsons (Ms Idris-Goudarz's solicitors), Mr Martin wrote:

"With reference to the correspondence from Kenneth Bush regarding our joint instructions as to disposal of the net proceeds of sale [of 16 Stirling Close], it seems to us that the obvious thing to do is to seek your client's [Ms Idris-Goudarz's] confirmation that she agrees that the net proceeds of sale of this property belong to your client [Ms Idris-Goudarz] and our client [Mr Goudarz] in equal shares and that accordingly our client can offer to release his share of the proceeds to your client in reduction of the principal sum owed by your client under the deed of compromise. If you will confirm this proposal, we are instructed to confirm to Kenneth Bush that they may release the whole of the net proceeds of sale to your client via your firm."

"This is without prejudice to any accounting between the parties that is to be done over what has been paid by each towards the mortgage on the property and the outgoings, cost of repairs, insurance or any other payments made specifically in relation to this property. The intention is that at the end of the day, such adjustments will be taken into account when assessing exactly how much of the debt is reduced by this release of funds to your client."

239.7. In my judgment the "without prejudice to any accounting" paragraph of that email was substantially in accordance with the provisions of the Deed. Clauses 10, 11 and 12 of the Deed provided for accounting, albeit that by clause 12 expenses such as repairs were to be agreed in writing beforehand. It does not advance Mr Goudarz's case in respect of the alleged Hall agreement.

239.8. Mr Gourri of Rollingsons responded with two emails to NBK of 20th August 2015; the first timed at 23:22, the second at 23:39. In the first Mr Gourri wrote:

"The simple position is that your client is in default and all the funds should be released to this firm for the unencumbered benefit of our client on this and any other property sale until your client has discharged his liability.

If your client does not, we shall revert the matter to the court for directions and enforcement action. There will be no further delays […]"

239.9. In his second email of 20th August 2015 Mr Gourri wrote that Mr Goudarz must confirm that the funds are released to Ms Idris-Goudarz in their entirety without encumbrance. So far as the hearing bundles are concerned, that is the last of the emails in this chain between the solicitors.

239.10. In an email dated 24th August 2015 timed at 13:31 from Mr Goudarz to Ms Idris-Goudarz, Mr Goudarz wrote, amongst other things:

"When I am back from Sweden we have to make arrangements and set up a meeting between our solicitors.

Also I think we have sold Crimplesham and I have told my solicitor to give you my half of the sale. Regarding other properties, I don't care about them. It is up to you what you want to do with them, as my debt to you will be fully paid after the sale of the hall. You can keep them to rent out or sell them, I don't mind."

239.11. In a second email dated 24th August 2015, this one timed at 15:16 from Mr Goudarz to Ms Idris-Goudarz, copied to their respective solicitors, Mr Gourri and Mr Martin, Mr Goudarz wrote, amongst other things:

"Once Crimplesham is sold, whatever Barasa and I have spent, maintaining and running the Hall will be paid back before splitting the proceeds."

239.12. That was at least partly consistent with the terms of the Deed, albeit that it omitted to refer to the requirement in clause 18 of the Deed that expenditure had to be the subject of prior agreement in writing. What both emails were inconsistent with was any then existing agreement to refurbish the Cottage or the Larder House.

239.13. In my judgment that inconsistency is confirmed by reference to Mr Goudarz's schedules of claimed expenditure on the Cottage and the Larger House.

239.14. As regards the Cottage: Mr Goudarz claims in respect of a number of relatively small items of expenditure in the period 5th August 2015 to 5th November 2015 which Ms Idris-Goudarz admits was expenditure incurred in respect of the Cottage. Mr Goudarz claims a payment to CarpetRight of 15th October 2015 in the sum of £861.80. Ms Idris-Goudarz says that that payment is a duplicate receipt claimed "elsewhere" by Mr Goudarz. Ms Idris-Goudarz may well be correct on that, particularly as it seems odd to me to spend £861.80 on carpet and vinyl some months before, rather than after carrying out builders' works of renovation and repair. Mr Goudarz was not cross-examined as to this and I make no finding on the point. In terms of the timing of the alleged Hall agreement, what is relevant is that the more substantial claims in respect of expenditure on renovations and repairs does not start until March 2016.

239.15. As regards the Larder House: there are 5 relatively small payments claimed by Mr Goudarz which were made in August 2015. Ms Idris-Goudarz only admits that one of those related to the Larder House. That was for £98.38 in respect of a hob. Oddly there is a second claim for a hob for the Larder House for 11th January 2016. Again, Mr Goudarz was not cross-examined about that oddity, and I make no finding in relation to it. In terms of the timing of the alleged Hall agreement, what is relevant is that the more substantial claims in respect of expenditure on renovations and repairs does not really start until October 2016.

240. Moving forwards in respect of the alleged Hall agreement: I pick up the story with the email dated 31st January 2016 from Ms Idris-Goudarz to Mr Goudarz which I have already mentioned which sets out a sets out a list of things "to do". Item 6 on the list was "Sell Crimplesham for a good price and quickly."

241. That email was fairly closely followed by a short email dated 2nd February 2016 from Mr Goudarz to Abby Palmer at the agents, Sequence Homes, copied to Ms Idris-Goudarz. This reads:

"Please take Crimplesham Hall off the market, my daughter and I have decided not to sell, we have an alternate plan."

242. By an email dated 14th March 2016 from Ms Idris-Goudarz to Abby Palmer of Sequence Homes, copied to Mr Goudarz, Ms Idris-Goudarz confirmed that the Hall should be taken off the market. The email reads:

"Further to my father asking you to take our property off the market on 2nd February 2016 as evident from the email below, I have been informed that this has not been done.

> I wish you to remove the property immediately from all marketing and from Rightmove etc… if this cannot be actioned by Tuesday 15th then please could you answer this email explaining why and the proposed time lines for removal and disinstruction.
> I have copied my father in to this email and he is fully aware that I am reiterating his request to cease acting for us."

243. Whatever, the alternate plan referred to by Mr Goudarz was, the fact that the Hall had remained on the market until February 2016 was inconsistent with an agreement to renovate the Cottage and the Larder House for renting out much earlier in or about July 2015.

244. The email dated 28th September 2017 timed at 19:48 which I have quoted from above in relation to the alleged "all square" agreement is also inconsistent with the alleged Hall agreement. Specifically, Mr Goudarz's statement in that email that to increase private rental income he had refurbished the Cottage and the Larder House at a cost to him of £60,000. He said in the email that that cost had not been shared. If the alleged Hall agreement had existed, the refurbishment would have been by Mr Goudarz and Ms Idris-Goudarz; and the cost would have been a cost to both of them.

245. Accordingly I find that the Hall agreement as alleged by Mr Goudarz was not made when or how alleged and that any works which were done to the Cottage or the Larder House were not done pursuant to any such agreement. There may well have been some other agreement or arrangement in relation to the Hall, the Cottage or the Larder House, but there was not an agreement as alleged in the Amended Particulars of Claim.

246. The claim for the refurbishment costs of the Cottage and the Larder House therefore fails.

247. In paragraph 34 of the Amended Particulars of Claim Mr Goudarz alleges that from January 2015 until "the present date" (i.e. in context about the date of issue of Mr Goudarz's proceedings in November 2018) he has paid each month the balance of the mortgage payments in respect of the Hall, but that Ms Idris-Goudarz has not paid any sum towards what Mr Goudarz alleges is "her 50% share" of those payments, whether in respect of her obligations under paragraph 16(3) of the Deed or her obligations pursuant to the alleged Hall agreement. Mr Goudarz calculates Ms Idris-Goudarz's share of those payments as £52,158.24 as at the end of September 2018. He claims that sum as a debt and to offset it against any sums due under the Deed.

248. I have already disposed of the claim based on the alleged Hall Agreement. There was no agreement as alleged so the claim in respect of the mortgage payments insofar as it is based on such an agreement fails.

249. Clause 16(3) of the Deed only covers the period down to 31st October 2015. It provides for each party to pay half the balance of the mortgage payments after deducting the rent of £1,050 (or whatever amount may be received by the parties).

250. Clause 16(2) of the Deed puts the mortgage payments at £3,515 per month. So on that basis, for the 10 months from January to October 2015, assuming the rent and the payments to have stayed the same, the net monthly payments would have been £3,515 minus £1,050, which equals £2,465. 10 months' worth of this payments would amount to £24,650.

251. In paragraph 87 of his second statement Mr Goudarz says that he continued to pay the entire balance of the mortgage instalments due. He said that he was in the process of obtaining an up to date statement of the payments made.

252. Item 75 on Mr Goudarz's list of documents is "Claimant's redacted bank statements showing evidence of mortgage payment". The dates of these are said to be "Various".

253. Pages 903-1000 of the trial bundle contain copies of Mr Goudarz's redacted bank statements. From these it is apparent that in the period January to October 2015 Mr Goudarz made the following payments to the Halifax, all of which I find were payments made by him in respect of the mortgage of the Hall:

Period covered by statement and bank	Amount of payment
17 - 30 January 2015 HSBC	£2,161.86
14 - 27 February 2015 HSBC	£1,636.86
14 - 27 March 2015 HSBC	£1,636.86
11 - 24 April 2015 HSBC	£1,636.86
9 - 22 May 2015 HSBC	£1,636.86
9 - 19 June 2015 HSBC	No payment shown
20 June - 3 July HSBC	£1,636.86
18 - 31 July 2015 HSBC	£1,636.86
15 - 28 August 2015 HSBC	£1,636.86
12 - 25 September 2015 HSBC	£1,636.86
10 - 23 October 2015 HSBC	£1,636.86

254. Clause 24 of the Deed provided that if the Hall had not been sold by 31st October 2015 then Mr Goudarz might remain for a further year or until it was sold "however only if he discharges all the Halifax mortgage payments from 31 October 2015 by himself in full." The clause went on to provide that Mr Goudarz should be reimbursed half of the sum of his personal contribution (not including rent from the Hall flats) from the net proceeds of sale when the Hall was sold.

255. The redacted bank statements show that from 31st October 2015 Mr Goudarz began to pay on average about £3,273.72 per month to the Halifax; that is twice the monthly amount which he was previously paying of £1,636.86 per month. Thus, his redacted HSBC statements show:

Date of payment or period in which it was made	Payment
7 - 20 November 2015	2 X £1,636.86
7 - 20 November 2015	Standing order: £1,636.86
21 November - 4 December 2015	£1,636.86
21 December 2015	£1,636.86
20 January 2016	Standing Order: £1,636.86
25 January 2016	£3,088.14
18 February 2016	£4,010.68
1 March 2016	£1,636.86
26 March - 8 April 2016	Standing Order: £1,636.86
14 April 2016	£1,636.86
18 May 2016	£1,636.86
1 June 2016	Standing Order: £1,636.86
1 June 2016	£1,636.86
18 June - 1 July 2016	Standing order: £3,273.72
Statement missing	
30 July - 12 August 2016	Standing order: £3,273.72
27 August 2016 - 9 September 2016	Standing order: £3,273.72
3 October 2016	Standing order: £3,273.72
1 November 2016	Standing order: £3,273.72
Statements missing	
9 August 2017 - 8 November 2017	3 X standing order payments of £3,273.72
9 November 2017 - 8 February 2018	3 X standing order payments of £3,273.72

256. The monthly figure of £1,636.86 is less than half of the £3,515 figure for the mortgage payments mentioned in the Deed (£3,515 X ½ = £1,757.50). It is considerably less than the £3,515 minus £1,050 rent figures mentioned in the Deed of £2,465. However, I consider that the figures of £1,636.86 and £1,757.50 are so close that against the background that there are no statements from the Halifax and no proper account for the rent, that what Mr Goudarz was doing was paying half the mortgage payments in respect of the period down to 31st October 2015 and thereafter was generally (though not always) paying the full amount of the mortgage payments. This is shown particularly clearly for the periods from 30 July to 1 November 2016 when he was paying £3,273.72

per month. That is exactly twice the £1,636.86 per month which he was paying in the period down to 31st October 2015.

257. That pattern of payments fits exactly with Mr Goudarz's obligations under clauses 16(3) and 24 of the Deed. Down to 31st October 2015 he was to pay half of the mortgage payments. From 31st October 2015 if he was still living at the Hall, which he was, he was to pay the full amounts of the mortgage payments, subject to being reimbursed for 50% of them on out of the net proceeds of sale of the Hall when it was sold.

258. Item 76 on Mr Goudarz's list of documents is an "HSBC Schedules of Payments List". There is such a document in the trial bundle. It is dated 1st June 2016 apparently signed by a Mr Goudarz and stamped with an HSBC stamp dated 1st June 2016 in respect of mandates on a business account of Sherrieda Ltd. This shows one payment of £1,636.86 on 22nd May 2015; 8 of £1,636.86 starting on 20th June 2015; 2 of £1,636.86 starting on 1st March 2016 and 2 of £1,636.86 starting on 1st May 2016. It also shows a mandate for payments of £3,273.72 starting on 1st July 2016. There is no indication on the face of this document who these payments are being made to. From their amounts I infer that they relate to the Halifax mortgage. But, also from their amounts and in the absence of any evidence about them, I infer that they were payments into Mr Goudarz's account so as to enable him to make his payments to the Halifax and do not indicate additional payments by or on behalf of Mr Goudarz to the Halifax.

259. Item 77 on Mr Goudarz's list of documents is described as "Crimplesham Hall - incomings and outgoings" for the period Dec 2014 to Sept 2018. These documents, produced by Mr Goudarz confirm the conclusions drawn by me from the redacted bank statements. Thus, for January 2015 £2,161.86 in respect of a mortgage payment is shown as "money out". For February to August 2015 they show payments out in respect of the mortgage of £1,636.86. For September 2015 through to and including September 2018 they show monthly payments out of £3,273.72 in respect the mortgage.

260. In my judgment the figures for payment to the Halifax show payments made by Mr Goudarz in accordance with the terms of the Deed (possibly with some small irregularities or missing payments) that is to say 50% of the mortgage payments down to 31st October 2015 and the full amount of them thereafter. Contrary to the allegation in paragraph 34 of the Amended Particulars of Claim, I find that Mr Goudarz only paid 50% of the amounts due under the mortgage in respect of the period down to 31st October 2015. In respect of the period thereafter, because he remained at the Hall, he was obliged under the terms of clause 24 of the Deed to pay the full amounts and to be reimbursed for Ms Idris-Goudarz's 50% share of those payments out of the net proceeds of sale as and when the Hall was sold.

261. On the last point, I note that clause 24 of the Deed provides for Mr Goudarz to be able to remain in the Hall for a further year after 31st October 2015 on terms that he discharged the Halifax mortgage in full. He stayed for more than a year after 31st October 2015 and carried on paying the full amount of the mortgage. In my judgment as a matter of interpretation of the Deed, the condition as to Mr Goudarz discharging all the Halifax

mortgage payments in full and only being reimbursed on sale attached to his remaining in the Hall. In my judgment it did not come to an end when he remained in the Hall after 31st October 2016.

262. Thus, all that Mr Goudarz paid in respect of the mortgage of the Hall after 1st January 2015, he paid in accordance with the terms of the Deed. In respect of the payments made by him down to 31st October 2015, he only paid 50% of the payments due to the Halifax, so he has no claim at all to reimbursement in respect of those. Insofar as in the period after 31st October 2015 he has paid the full amounts due to the Halifax, under the terms of the Deed he is entitled to reimbursement of 50% on a sale of the Hall, but that entitlement precludes there being a separate debt or entitlement on which he can sue, and his claim in respect of the mortgage payments fails in its entirety.

263. In paragraph 36 of the Amended Particulars of Claim Mr Goudarz alleges that since the date of the Hall agreement he has spent a total of £74,979.37 on outgoings and repairs at the Hall. I have no doubt that Mr Goudarz spent significant sums on outgoings and repairs at the Hall. However his claim in respect of them as made in these proceedings is based on the alleged Hall agreement which I have already found did not come into existence in or about July 2015 as alleged, and no alternative time for it or its terms has been put forward in this case. Accordingly this claim based on that agreement also fails.

264. Whether any of Mr Goudarz's expenditure on outgoings and repairs at the Hall is within the scope of clauses 18 and 19 of the Deed so that Mr Goudarz can be reimbursed as to 50% of them out of the net proceeds of sale of the Hall or otherwise are not claims which are made by Mr Goudarz in these proceedings and I do not rule on them.

265. In paragraph 37 of the Amended Particulars of Claim Mr Goudarz makes a further or alternative claim in respect of £15,720 paid by him to JD Building Services in respect of work to the roof of the Hall after it was damaged by a storm in about April 2017.

266. Mr Goudarz refers to an invoice from JD Building Services in the total sum of £15,720 at p.73 of the schedule of payments appended to the Amended Particulars of Claim. In fact the reference is to item 73. It is there described as: "J.D. Building Services 09 June 2017 2221".

267. Mr Goudarz alleges that he made a claim upon the insurer, NFU, in respect of that invoice. He alleges that Ms Idris-Goudarz knew and approved of the works being done and the claim being made on the NFU. He points out that she was living at the Hall at that time.

268. Mr Goudarz alleges that the NFU agreed to pay, but paid Ms Idris-Goudarz rather than pay the builders direct. He alleges that Ms Idris-Goudarz did not pay the builders, and he was obliged to do so himself.

269. Mr Goudarz claims the £15,720 from the Ms Idris-Goudarz as a debt, alternatively in restitution because, he alleges, Ms Idris-Goudarz was thereby unjustly enriched at his expense.

270. If Mr Goudarz's case on the facts was established, I can see that there could be force in his case on the law in regard to this claim. However, his case on the facts is challenged by Ms Idris-Goudarz on the simple ground that, so she says, the NFU did not pay her, but paid Mr Goudarz.

271. There is a poor quality copy of an NFU cheque for £15,670 payable to Mr Goudarz in the bundle.

272. Under cross-examination Mr Goudarz maintained his case in regard to the NFU paying for the damage, but his having paid the builder. He said that Ms Idris-Goudarz and Rohan went to the Bahamas and did not pay him.

273. There is an email dated 24 February 2017 from Ms Idris-Goudarz to the Diss agency of the NFU, copied to Mr Goudarz. It is headed "Crimplesham Hall - Storm Damage". In the body of the email Ms Idris-Goudarz refers to a "storm last night" that had damaged the property. She wrote that she was asking her father to deal with the matter with the NFU. This email dates the storm damage as February 2017 rather than about April 2017 as alleged by Mr Goudarz, but nothing turns on that.

274. There is an email dated 18th March 2017 from Mr Goudarz to the Diss agency of the NFU, copied to Ms Idris-Goudarz. It attaches what are described in the email as"2 quotes". The email continues:

> "I am still awaiting quotations for the interior […] but the outside needs addressing and action as an urgent matter due to rain …"

275. Attached to that email are two quotations:

275.1. One from J D Building Services dated 6th March 2017 in the sum of £15,720.00.

275.2. One from DH Construction, undated, for £16,900.

276. In cross-examination in relation to the £15,720 "invoice", Mr Goudarz said that the NFU sent three cheques: One of £3,600 for the inside; one for £13,000 for the Folly and one of £15,500 for the roof. None of those figures tie in with documents, though the £15,500 is quite close to the amount of the £15,670 cheque from the NFU.

277. There is an email dated 14th June 2017 from a Mr Gregory, who was a loss adjuster engaged by the NFU to Mr Goudarz. This is entitled with a reference number and "Folly Roof". In this email Mr Gregory asked for maintenance and repair reports and invoices for the Folly roof.

278. By an email dated 14th June 1017, Lee, on behalf of Mr Goudarz, sent Mr Gregory copies of two documents relating to the Folly and one relating to the storm damage to the Hall.

279. The first relating to the Folly is dated 23rd April 2014 and is for £625. The second in relation to the Folly is dated 2nd June 2016 and is for £415.

280. The document sent by Lee in relation to the Hall was an invoice to Mr Goudarz from J.D Building Service's" dated 9th June 2017. It is numbered #2211. It is for "Storm Damage as per quote". It is for £15,720.

281. There is an email dated 21st June 2017 from Mr Goudarz to Mr Gregory, copied to Ms Idris-Goudarz. In this email Mr Goudarz wrote, amongst other things:

> "… kindly look at the outstanding invoice from the Crimplesham Hall Roof which was sent to you a week ago … I am keen to settle with the builders as they have now chased me about the roof."

282. Mr Gregory replied to Mr Goudarz, copied to Ms Idris-Goudarz by an email dated 23rd June 2017. The particularly relevant parts of this provided:

> "Many thanks for the final account for the repair to the roof of the house, I will ask the insurers to release these funds less the applicable policy excess of £50.00.
> "Regarding the folly repair, we have no objection to you proceedings with these repairs in line with the quotation provided by J.D Building Services in the amount of £9,420.00."

283. There is an email dated 30th June 2017 from Ms Idris-Goudarz to Mr Gregory, copied to Mr Goudarz. In this email Ms Idris-Goudarz says that she was disappointed to see a cheque arrive in both her name and her father's name for £15,670 which they were unable to cash. She said they would like the monies to be paid to one or other of them, "we don't mind which person".

284. That is the last email in that particular chain in the trial bundle. However the bundle does contain a copy of what appears to be a computer screen shot an NFU cheque for £15,670 payable to "Lord K Goudarz", that is to say to Mr Goudarz. One of the many largely unexplained oddities in this case was why this copy of the cheque was disclosed by Ms Idris-Goudarz and not by Mr Goudarz. It is item No.20 in Ms Idris-Goudarz's first list of documents.

285. Neither party has provided unredacted copies of their bank statements for this period. Those should have enabled the question of who received the £15,670 to be resolved with ease. However, on the balance of probabilities and having regard in particular to the existence of the copy cheque payable to Mr Goudarz, I find that the NFU paid the insurance money of £15,670 in respect of the storm damage to the roof of the Hall to Mr Goudarz, not to Ms Idris-Goudarz.

286. If Mr Goudarz paid the builder £15,720, he would have been £50 out of pocket; the £50 representing the excess on the insurance. However, Ms Idris-Goudarz did not receive that £50, so the claim based on her unjust enrichment in respect of the NFU insurance money fails in its entirety on the simple ground that she did not receive the relevant payment from the NFU.

Conclusion on Mr Goudarz's claims

287. It follows from the above that none of Mr Goudarz's claims are made out. I therefore dismiss Claim No. BL-2019-000001 (formerly County Court No. E10YY487).

Ms Idris-Goudarz's claims

288. The effect of Mr Goudarz's Amended Particulars of Claim is that Mr Goudarz accepts that, subject to his claims as to debt and set off, he still owes Ms Idris-Goudarz approximately £180,000 under the terms of the Deed.

289. In paragraph 8 of the Amended Particulars of Claim Mr Goudarz says that the amount of the net proceeds of sale of the properties so far put towards his liability under the Deed is £94,853.54. Using that figure, the capital amount still due under the Deed would be £275,000 minus £94,853.54, which equals £180,146.46. However, Ms Idris-Goudarz is only claiming £180,000 plus interest.

290. Interest is due to Ms Idris-Goudarz under clause 2(4) of the Deed at the rate of 4% per annum from the date on which each payment is due. I do not have any particulars as to the when the net sale proceeds of the jointly owned properties (other than 15 Spring Sedge, the net proceeds of which remain held by Kenneth Bush) were paid to Ms Idris-Goudarz. The material before me therefore is insufficient to enable the interest due to Ms Idris-Goudarz to be calculated.

291. Ms Idris-Goudarz was not challenged on her statement that the net proceeds of sale held by Kenneth Bush were some £150,000. Under the terms of the Deed, half of that amount would be set off against the £180,000 still due under the Deed. Therefore as things stand and pending any sale of the Hall, if all the net proceeds of sale were paid to Ms Idris-Goudarz pursuant to paragraph 11 of the Deed, there would be bound still to be a net balance due to Ms Idris-Goudarz.

292. Kenneth Bush is refusing to transfer the net proceeds of sale of 15 Spring Sedge to Ms Idris-Goudarz without the authority of Mr Goudarz. Mr Goudarz has failed to give that authority, essentially by reason of the claims which he has made in his Amended Particulars of Claim and which I have dismissed. It follows that there is no good reason now for him to withhold that authority. Accordingly in order to enforce paragraph 11 of the Deed under the Tomlin Order dated 7th January 2015 I will make an order substantially to the effect of the order sought by Ms Idris-Goudarz in paragraph 1 of the draft order served with her application notice. That is an order that:

Mr Goudarz do by 4.00 pm on [the date 7 days after handing down of judgment] instruct Kenneth Bush Solicitors, Evershed House, 23-25 King's Street, King's Lynn PE30 1 DU to pay forthwith to the Applicant's Solicitors Rosenblatt Limited of 9-13 St. Andrew Street, London EC4A 3AF in cleared funds the total net proceeds of sale of 15 Spring Sedge, Downham Market PE30 3PP held by them together with any interest accrued thereon.

293. In order to enforce paragraph 2 of the Deed I shall order Mr Goudarz to pay Ms Idris-Goudarz a sum equal to the £180,000 still due under the deed less half the amount of the net proceeds of sale of 15 Spring Sedge receivable by her.

294. In order further to enforce paragraph 2 of the Deed I shall order Mr Goudarz to pay Ms Idris-Goudarz simple interest at 4% per annum on the capital sums which have been outstanding from time to time after they fell due under paragraph 2 of the Deed until payment.

295. This judgment and the above orders which I intend to make will not necessarily end the scope for dispute between the parties. In particular I have in mind what, under the terms of the Deed, deductions, if any, might be made from the proceeds of sale of the Hall in respect of Mr Goudarz's or his company's expenditure on or in relation to it before their division. There are also the other possible accounting points mentioned by me above.

296. In paragraph 3 of the draft order served with her application notice, Ms Idris-Goudarz asks for an order that Mr Goudarz pay her costs of recovering the sums due under the Deed. She also asks for those costs to be assessed.

297. Ms Idris-Goudarz is contractually entitled to those costs under paragraph 2(5) of the Deed.

298. Paragraph 2(5) of the Deed states that it applies to "All costs and liabilities (including for the avoidance of doubt, legal costs, court fees and disbursements)". In my judgment, as Walton J held in a similar context in *Bank of Baroda v Panessar* [1987] Ch 335 at p.355, in this context "All" means just that, and Ms Idris-Goudarz has a contractual entitlement to those costs on an indemnity basis.

299. Part of Ms Idris-Goudarz's costs of recovering the sums due under the Deed, and in all probability by far the larger part of them, will comprise the costs incurred in these proceedings. The costs of these proceedings are in the discretion of the court. However, as the Court of Appeal explained in *Gomba Holdings UK Ltd v Minories Finance Ltd* [1993] Ch 171 at p.194B, where a party has a contractual entitlement to costs, the court's discretion as to costs should normally be exercised so as to reflect that contractual right.

300. I have not yet received or heard submissions on whether and to what extent I should depart from that "normal" manner of exercising my discretion or as to precisely what order for costs I should make. I will make directions in that regard.

301. In paragraph 4 of the draft order served with her application notice, Ms Idris-Goudarz asks for an order that Mr Goudarz pay her costs of her application to enforce the terms of the Deed. These costs appear to me at least to overlap with or duplicate the costs to which paragraph 3 of the draft order applies. I will receive or hear submissions on this, and on any other costs points or points as to the form of the order in accordance with the directions which I shall give in that regard.

Deputy Master Henderson

15th July 2020

ADDENDUM

1. My draft judgment was circulated to Mr Goudarz and to Ms Idris-Goudarz's solicitors and counsel by email dated 17th June 2020, together with directions that, having regard to the Covid 19 restrictions, the overriding objective, CPR 39.2(3)(g) and the nature and effect of the judgment:

   (1) The judgment would be handed down remotely by circulation to the parties' representatives by email and by release to the media and public on request.
   (2) Unless the court ordered otherwise, costs, applications for permission to appeal (if any) and any other consequential matters would be dealt with on written submissions.
   (3) If either party considered that the overriding objective required that submissions on those matters to be made orally, they should request an oral hearing in their written submissions and state in those written submissions why they submitted that an oral hearing was required.
   (4) Written submissions as to costs, permission to appeal (if sought), any other consequential matters and as to an oral hearing must be submitted by both (i) filing on the CE File and (ii) by email by 4.00 pm on 7th July 2020; provided that if Mr Goudarz was unable to effect a CE filing he was excused from doing so, but should still send his submissions by email as directed above.
   (5) The judgment was confidential to Counsel, Solicitors, the parties and, in the case of Mr Goudarz, to his receiver or trustee in bankruptcy (if any) pending handing down.
   (6) Requesting any list of typing corrections and other obvious errors to be submitted in writing via e-mail by 4.00 pm on 7th July 2020, so that changes can be incorporated, if I accepted them, in the handed down judgment.

2. On 30th June 2020 Mr Goudarz sent an email to the court in which he wrote:

   "I have now had opportunity to review the document you sent.
   I disagree with the findings of the judge and wish to appeal against this judgement.
   Please advise me as to how I may commence this process. I would be grateful if you would take into consideration the fact that I am bankrupt and currently without legal representation.
   Please confirm by return that you have received this email."

3. On 7th July 2020 the court received an email with Mr Isenberg's written submissions as to consequential matters and a draft order.

4. On 8th July 2020 the court sent an email to Mr Goudarz, copied to Mr Isenberg, his clerk and Ms Idris-Goudarz's solicitors saying that further to my directions of 17th June 2020 ("the 17th June 2020 Directions"), I directed as follows:
    1. I intended to hand down judgment remotely by circulation to Mr Goudarz and to Ms Idris-Goudarz's representatives by email and by release to the media and public on request.
    2. I intended to effect that handown on Wednesday 15th July 2020 at 10.00am.
    3. If Mr Goudarz wished to appeal, he would need permission to appeal. He could ask me for that permission by way of written submissions as per direction 4 of the 17th June 2020 Directions.
    4. I noted that, except for writing that he wished to appeal, Mr Goudarz had not filed or emailed any written submissions as permitted by direction 4 of the 17th June 2020 Directions. I extended his time for doing so until 4:00 pm on Monday 13th July 2020.
    5. Mr Goudarz had the right, pursuant to rule 52.3(2)(b) of the Civil Procedure Rules, to apply for permission to appeal from the "appeal court" which is this case is a High Court Judge (Business and Property Courts).
    6. Under rule 52.12(1) of the Civil Procedure Rules, any application to a High Court Judge for permission to appeal from my decision must be requested in an appellant's notice.
    7. By paragraph 4.2 of Practice Direction 52A, supplementing Part 52 of the Civil Procedure Rules, any such appellant's notice must be in court form N161.
    8. Under rule 52.12(2) of the Civil Procedure Rules, any such appellant's notice must be filed within 21 days after my decision is handed down or such longer or shorter period as either I or a High Court Judge might order.
    9. Under rule 52.12(3) of the Civil Procedure Rules, any such appellant's notice must be served on the respondent as soon as practicable after it is filed, and in any event not later than 7 days after it is filed.
    10. By paragraph 5 of the 17th June 2020 Directions I had already given permission to Mr Goudarz to disclose the draft judgment to his receiver or trustee in bankruptcy. I directed further that any discussions between or decision by him and his receiver or trustee in bankruptcy as to whether and how to apply for permission to appeal and who by, and the making of any such application and any related application for joinder of Mr Goudarz's receiver or trustee in bankruptcy, were permitted.
    11. If Mr Goudarz or his receiver or trustee in bankruptcy wished to rely on Mr Goudarz's bankruptcy, a copy of the bankruptcy order must be filed in these proceedings and served on Ms Idris-Goudarz's solicitors before 4:00pm on Monday 13th July 2020.

5. So far as I am aware, no further communication has been received by the court from Mr Goudarz and no communication has been received from his receiver or trustee in bankruptcy.

6. My main judgment above has already dealt with the substantive relief. The only consequential matters which need to be dealt with are costs and permission to appeal.

7. Ms Idris-Goudarz's costs of her application to enforce the terms of the Tomlin Order are costs to which clause 2(5) of the Deed applies. I have no doubt but that as regards those costs I should follow *Gomba Holdings UK Ltd v Minories Finance Ltd* [1993] Ch 171 and order those costs to be assessed on the indemnity basis and paid by the Defendant to the Claimant. I so order.

8. I also have no doubt but that as regards the costs of Mr Goudarz's claim, the general rule set out in CPR 44.2 that the unsuccessful party should be ordered to pay the successful party's costs applies. There are no discretionary factors which indicate otherwise. I will order Mr Goudarz to pay Ms Idris-Goudarz's costs of Mr Goudarz's claim.

9. Unless or to the extent that Ms Idris-Goudarz's costs incurred in respect of Mr Goudarz's claim fall within the scope of clause 2(5) of the Deed, I would not order them to be assessed on the indemnity basis. Although Mr Goudarz has lost his claim, in my judgment the claim and its loss were not claims or a loss which were outside the norm so as to justify an indemnity basis assessment.

10. More difficult is the question of whether Ms Idris-Goudarz's costs of Mr Goudarz's claim come within the scope of clause 2(5) of the Deed. Are they costs incurred by her "in relation to recovering" the sums due under the earlier parts of clause 2 within the meaning of that phrase in clause 2(5)?

11. Mr Goudarz's claim included a claim to offset the sums claimed against any sums he owed Ms Idris-Goudarz under clause 2 of the Deed, but otherwise it was an independent claim for sums allegedly due under the various alleged agreements. Looking at the substance, Mr Goudarz's claim was an obstruction to the recovery by Ms Idris-Goudarz of the sums due to her under the Deed. The claim had to be disposed of in order for recovery to take place. However, that would be the case with any crossclaim. In my judgment, construing the words of clause 2(5) in context, they do not extend to the costs of any crossclaim or to the costs of Mr Goudarz's claim. Accordingly I will order Mr Goudarz to pay the costs of his claim on the standard basis.

12. I recognise that it would be administratively more convenient if the costs of the application and of the claim were both assessed on the same basis, but in my judgment, that consideration does not justify ordering Mr Goudarz to pay the costs of his claim on the potentially more onerous indemnity basis. Any question of apportionment of individual items of costs as between Ms Idris-Goudarz's application and the costs of Mr Goudarz's claim will, if it needs to be determined and cannot be agreed, have to be effected by a costs judge.

13. To my mind this is clearly a case for a detailed rather than a summary assessment. The hearing before me lasted for two days, and by reason of my decision as to the different bases of assessment, the assessment process, if needed, will be something which is better suited to an expert costs judge than to a Master or Deputy Master.

14. Mr Isenberg has submitted that I should order a payment on account of costs of £82,657.50, being Ms Idris-Goudarz's budgeted costs for the proceedings as approved on 16 October 2019. Under CPR 44.2(8) I should order payment of a reasonable sum on account of costs. In determining what is reasonable, I bear in mind that on a detailed assessment the costs judge will not depart from the approved amount in the costs budget unless satisfied that there is good reason to do so. I also bear in mind that both parties accept that since the hearing a bankruptcy order or declaration has been made in respect of Mr Goudarz. That means that as a practical matter justice requires that the payment on account of costs should be in an amount which makes the need for Ms Idris-Goudarz to incur the costs of a detailed assessment less imperative. Against those factors I bear in mind that there may be a good reason to depart from the budgeted costs on a detailed assessment either upwards or downwards. Some of the costs

would be assessed on the indemnity basis, and therefore with no reduction for proportionality in comparison with the budgeted costs, which *prima facie* would be a good reason for departure. I consider that that possibility does not wholly outweigh the possibility of some reduction. However, I consider that the possibility of a substantial reduction on assessment is very small.

15. Having regard to those factors and to my knowledge of the case, in my judgment a reasonable sum to order on account of costs is £80,000, and I will so order.

16. As regards permission to appeal: I refuse permission to appeal. This case turned on my assessment of the facts, including the quality or lack of quality of the oral evidence of the witnesses. In my judgment there is no real prospect of an appeal being successful. My refusal of permission to appeal does not prevent an application for permission to appeal from being made to the appeal court which, in this case, is a High Court Judge (Business and Property Courts).

17. Finally, I would add that having regard to what appears to be Mr Goudarz's bankruptcy, I have considered briefly whether I should exercise the jurisdiction under s.285(1) Insolvency Act 1986 to stay these proceedings. I have received no applications or submissions in that regard and in their absence I do not consider that I should do so. This is not a decision that stay may not be appropriate. It is merely a decision that I am not deciding today whether or not to stay the proceedings.

Deputy Master Henderson

15th July 2020