



Neutral Citation Number: [2022] EWHC 1747 (Ch)

Claim No: PT-2021-000159

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

**IN THE MATTER OF THE TRUSTS OF LAND AND APPOINTMENT OF TRUSTEES  
ACT 1996**

**AND IN THE MATTER OF THE TRUSTEE ACT 1925**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: 8 July 2022

**Before:**

**TRIBUNAL JUDGE NICHOLAS ALEKSANDER**  
**(SITTING AS A JUDGE OF THE HIGH COURT)**

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**Between:**

**MR NARENDRA KUMAR PATEL**

**Claimant**

**- and -**

**(1) MR GURDIAL SINGH MANN**  
**(2) FALCON INVESTMENT LTD (in administration)**  
**(Company number 06996144)**  
**(3) FALCON DEVELOPMENT (UK) LTD (Company**  
**number 09061336)**

**Defendants**

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**PATRICK ROLFE (instructed by Laytons LLP) appeared for the Claimant**

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**RICHARD HENDRON** (instructed through the public access scheme) appeared for  
the **First** and **Third Defendants**  
**The Second Defendant not present nor represented**

Hearing dates: 14 June to 16 June 2022

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**Approved Judgment**

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

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**This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 8 July 2022 at 10:30am.**

**TRIBUNAL JUDGE NICHOLAS ALEKSANDER:**

1. This trial is concerned with the ownership of the freehold of 28-32 Berrylands Road, Surbiton, KT5 8RA (“the Properties”) of which the third defendant, Falcon Developments (UK) Ltd (“D3”), is the registered proprietor. D3 was, at least until quite recently, wholly owned and controlled by Mr Mann, the first defendant.
2. The main issue in dispute is the terms of an oral agreement concluded in early 2014 for the purchase of the Properties. The claimant, Mr Narendra Patel (in this judgment, references to “Mr Patel” are to the Claimant; I refer to his brother as Mr Mahesh Patel) asserts that he agreed to acquire the Properties jointly with the first defendant, Mr Mann, with a view to their potential redevelopment – each contributing 50% of the costs, and owning the property in equal shares. Mr Mann asserts that the agreement was that the Properties would be purchased by a “special purpose vehicle” (“SPV”), with each contributing 50% of the costs, and each owning 50% of the SPV’s shares.
3. In summary, Mr Patel seeks:
  - i) a declaration that the Properties are held on trust for himself and Mr Mann (or one of the other defendants), as tenants in common in equal shares;
  - ii) an order that he be appointed trustee of the Properties either solely or jointly with D3, and that the Properties be vested in their names;
  - iii) an order that the Properties be sold; and
  - iv) a declaration that Mr Patel is entitled to be discharged and exonerated from all liabilities in respect of all charges registered against the Properties.

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## Administration of Falcon Investment Ltd ("D2")

4. D2 was placed in administration on 28 February 2022 (after the current claim was issued). Accordingly, D2 has the benefit of a moratorium, which includes a stay in respect of legal proceedings against it (paragraph 43(6), Schedule B1, Insolvency Act 1986). The stay can be lifted with the consent of the administrator, or with the permission of the Court. On 13 June 2022, RSW Law, solicitors for D2's administrator, wrote to Mr Patel's solicitors as follows:

In reliance on the documentation relating to the Proceedings provided by you to [the administrator] and Mr Mann's confirmation to [the administrator] that the Proceedings do not concern [D2], [the administrator] has not been made aware that [D2] has any beneficial interest in the Properties. However, you are no doubt aware that [D2] has an interest in the neighbouring property 34 Berrylands Road, Surbiton.

5. In an exchange of emails later that day, the administrator consented to the continuation of the claim against D2 in the following terms, to which Mr Patel agreed:
- i) The relief sought by Mr Patel against D2 is limited to D2 being bound by any declaration that the Court makes regarding the beneficial and legal ownership of the Properties;
  - ii) Mr Patel does not pursue any order for costs and/or any other form of relief against either administrator or D2 in relation to these proceedings; and
  - iii) Neither D2 nor the administrator are required to actively participate in these proceedings including the trial of these proceedings.

**Background facts**

6. Before turning to the issues in dispute, it is helpful to set out the background facts, which are largely undisputed.

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7. The Properties were built in the 1840s as a parade of three shops with flats above. The three shops have been amalgamated into one supermarket and off-licence, which has been owned and operated by Mr Patel and his brother, Mr Mahesh Patel, since 1985. The supermarket business was undertaken initially through their company Berrylands Limited, but more recently through their company MKP Enterprise Limited.
8. The freehold of the Properties is registered at HM Land Registry under two titles:
  - i) 28-30 Berrylands Road is registered with title SY315928; and
  - ii) 32 Berrylands Road is registered with title SY157194.
9. The freehold of the Properties was owned by Nutting Investments Limited (“NIL”), and Berrylands Limited leased the ground floor of the Properties. In 2005, Berrylands Limited took a headlease of the whole of the Properties, including the three flats above the supermarket. On 12 August 2013, Mr Patel and his brother took a new headlease of the whole of the Properties, but this time in their personal names (“the Headlease”). The Headlease provides that until 28 September 2017, the rent is £37,250 per annum payable quarterly in advance and is subject to review for the final four years of the term. In practice it appears that rent was paid in monthly instalments. It also appears that the rent was not increased for the final four years.
10. The term of the Headlease was for eight years from 25 March 2013, so it expired on 24 March 2021. Although no renewal of the Headlease has been agreed, as it benefits from security of tenure under the Landlord and Tenant Act 1954, the brothers continue in occupation in accordance with their rights under that Act.
11. Two of the flats are let to employees of the supermarket. The third flat is used as an office for the supermarket business and for storage.

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12. The brothers have attempted on many occasions to buy the freehold reversion to the Properties from NIL, but NIL was not prepared to sell.
13. Mr Mann, through his company, D2, has been engaged in property development for many years. In 2012, D2 purchased 34 Berrylands Road, which is next door to the Properties. This was redeveloped as a mixed development of flats and retail on the ground floor. Mr Niederberger was the project manager for this redevelopment. Mr Niederberger had been engaged by Mr Mann and D2 to act as project manager on a number of property developments. It is not entirely clear whether Mr Niederberger was an employee of D2, or was engaged as an independent contractor – but, at the relevant times, he was the only individual – other than Mr Mann – who was working for D2, and he was allocated a D2 email address.
14. During the course of the development, issues arose in relation to the party wall between 34 and 32 Berrylands Road. It appears that the surveys that were undertaken revealed very serious structural problems in 32 Berrylands Road. In the course of the party wall negotiations, Mr Mann suggested to NIL that a possible solution was for him to buy the freeholds of the Properties.
15. Mr Niederberger was a regular visitor to Mr Patel's supermarket whilst project managing the development next door. It seems that in Spring 2014 Mr Patel learned of the proposed sale of the freehold by NIL, and he raised this with Mr Niederberger when next he visited the supermarket. Mr Patel explained to Mr Niederberger that he and his brother had been trying to buy the freehold from NIL for many years. Mr Niederberger told Mr Patel that Mr Mann was always looking for investors, and Mr Patel said that he would be interested in buying the freehold with Mr Mann.

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16. In consequence of this conversation, Mr Niederberger introduced Mr Patel to Mr Mann. There followed a number of discussions between Mr Mann and Mr Patel about redeveloping the Properties. Exactly what was agreed between Mr Mann and Mr Patel is disputed. Their agreement was oral and never reduced to writing. Mr Niederberger's unchallenged evidence was that he had worked for five years with Mr Mann on projects within the Indian community, and many deals were done on the basis of "a handshake and trust".
  
17. It is not disputed that both parties acknowledged that the structural condition of the existing building was so poor that it would have to be demolished, and a new building constructed (Mr Mann's evidence was that there was "no way we could fix the building"). The new building would be a mixed development of flats with retail premises on the ground floor. But the number of stories that the new building would have was not agreed (although Mr Mann's evidence was that he thought it would be a similar height to the development at 34), nor the number of flats in the development. There was no timescale for the development (other than it would not start before the development at 34 had finished), and no agreement as to the likely costs. In the course of cross-examination, Mr Mann's evidence was that his discussions with Mr Patel proceeded on the basis that redevelopment was possible but that no thought had been given to the possibility that redevelopment might not be possible, and he acknowledged that "anything could change", and that if redevelopment did not occur, he and Mr Patel would be left as co-owners of the Properties.
  
18. In the course of extensive cross-examination, Mr Mann acknowledged that an oral agreement must have been concluded with Mr Patel by 2 May 2014, because on that date Mr Patel arranged for the transfer of £15,000 to D2's bank account, being the first

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instalment of Mr Patel's contribution towards the purchase cost of the freehold of the Properties. Mr Patel says that Mr Niederberger gave him details of a bank account for the payment, and he transferred the funds to that account, without knowing the name of the account holder. Mr Mann says that the reason the funds were paid into D2's bank account was because D3 (the SPV entity) did not have a bank account of its own.

19. D3 was incorporated on 29 May 2014, under the name "Surbiton Phase Two Ltd", but this name was later changed to Falcon Development (UK) Ltd.
20. Over the period from July 2014 to March 2015 Mr Patel arranged for further instalment payments to be made into D2's account. Mr Patel's evidence is that he arranged the transfer of £500,000 in total to D2's bank account, although he was not able provide documentary evidence in respect of one instalment of £10,000. Mr Mann does not dispute that £500,000 was received and I find that £500,000 was paid into D2's bank account by or on behalf of Mr Patel in instalments between May 2014 and March 2015.
21. It seems that discussions continued, and there was a meeting on 15 July attended by Mr Mann, Mr Niederberger, and Mr Patel. Mr Patel had been asking for "something in writing", and on 16 July 2014 Mr Niederberger emailed Mr Patel with "bullet points" arising from the discussion at that meeting. This email is the only documentary evidence that reflects any of the terms of the agreement reached between the parties, and for that reason I set it out in full:

Sent: Wednesday, July 16, 2014 at 11:35 AM  
From: "Falcon Investment Ltd" <falconinvestmentltd@gmail.com>  
To: naresh@email.com  
Subject: Surbiton Agreement

Dear Naresh

as discussed yesterday here is the bullet points which will form the basis of our agreement. Please let me know if you would like to add anything else.



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best regards  
Klaus

Surbiton Phase 2 Development

Bullet Points

- |  |   |                       |
|--|---|-----------------------|
| - Purchase price for 28-32 Berrylands Road |   | £ 900,000.00          |
| - Stamp duty and legal cost                |   | £ 40,000.00           |
| - Initial estimate for planning cost       |   | £ 60,000.00           |
| - <b>Total initial cost estimate</b>       |   | <b>£ 1,000,000.00</b> |
| - Agreed cost share (input)                | 50% Falcon Investment Ltd                   | £ 500,000.00          |
| - Dtto                                     | 50% Naresh Patel                            | £ 500,000.00          |
| - After completion of purchase             | 50% of the rents to be paid to Falcon       |                       |
| - Dtto                                     | 50% of the rents to be retained by N. Patel |                       |
| - Profit share 50%                         | goes to Falcon Investment Ltd.              |                       |
| - Profit share 50%                         | goes to Naresh Patel as follows             |                       |

New shop to be valued and given for agreed value to N. Patel, the remaining profit share to be paid in cash.

- Falcon Investment will be fully responsible for the project management.

This covers the main points, anything else let me know.

regards

Klaus

\*\*\*\* FALCON INVESTMENT \*\*\*\*

127 Harlington Road West, Feltham, Middlesex TW14 0JG

22. Whilst Mr Mann was in discussions with Mr Patel, he was also pursuing a loan facility with Coutts. Mr Mann's application for the facility, and the facility terms were not produced in evidence, but Savills' (valuers instructed by Coutts) valuation dated 25 June 2014, and Colemans-ctts's (solicitors acting on the purchase) certificate of title and undertakings, both dated 15 August 2014, were disclosed. Savills valued the

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freehold of the Properties, on the basis of full vacant possession, at £900,000 (although I note that in fact the Properties were not subject to vacant possession and were subject to the Headlease). Annexed to the valuation were Coutts' instructions to Savills, which state that Coutts' client (the borrower) is "[Mr Mann] (borrower entity to be confirmed)", and that the "contact name" is Mr Mann or Mr Niederberger. The amount of the facility is stated as "TBC estimated £540k". From the terms of Colemans-ctts's undertaking, it appears that Coutts' loan facility was secured by a legal charge and debenture given by D3 (the purchaser of the Properties), and that Mr Mann also gave a personal guarantee. Copies of these documents were not provided to Mr Patel.

23. Colemans-ctts prepared a completion statement (headed "Financial Statement") for the purchase of the Properties, which is dated 15 August 2014. It is addressed to D3 under its then name "Surbiton Phase Two Limited":

**FINANCIAL STATEMENT**

Amount paid on account		508.40
Amount received from you for deposit for exchange of contracts		75,000.00
Amount paid to your Seller's Solicitors on exchange of contracts	75,000.00	
Amount paid to your Seller's Solicitors on completion of your purchase (purchase price less £90,000 deposit - £15,000 non-refundable – apportionment of rent £3980.13 PLUS payment of party wall fees contribution £6054.96)	812,074.83	
Net loan released		£533,495.00
Search Pack	571.30	
Stamp Duty	36,000.00	
Land Registry Fees	270.00	
Our costs and disbursements in connection with your purchase as per account annexed	3,430.27	
Money due by you		318,343.00
	£927,346.40	927,346.40

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24. On 22 August 2014 the purchase was completed, and D3 was registered at HM Land Registry as the sole registered proprietor of both freehold titles with effect from 3 September 2014.
25. Mr Patel did not receive a copy of Colemans-ctts's completion statement until after completion. His evidence is that he cannot remember exactly when he received a copy, but it was probably provided to him by Mr Niederberger in response to a request to Mr Mann for evidence that the freeholds had been registered in his (Mr Patel's) name.
26. Mr Patel's undisputed evidence is that in May 2015, he paid £13,968 to D2 in respect of 50% of the rent that had accrued from completion. Thereafter, he paid £1550 (namely, half the monthly rent due under the Headlease) to D2's account.
27. In June 2016, the Coutts loan was refinanced with United Trust Bank, the registered charges in favour of Coutts were released and new charges in favour of United Trust Bank were given over the Properties by D3. It appears that other entities controlled by Mr Mann also borrowed from United Trust Bank, as in 2019 United Trust Bank appointed fixed charge receivers over the Properties in respect of a deterioration in the loan-to-value ratio of investment properties owned by other entities controlled by Mr Mann.
28. In August 2016, Mr Mann asked Mr Patel to pay the rents into a different bank account (it later emerged that this was an account in the name of Mann Investments Limited ("MIL")), instead of D2's account, which Mr Patel did.
29. In June 2018, Mr Mann asked Mr Patel to pay 100% of the rent due under the Headlease, on the understanding that he would immediately refund 50% back to Mr Patel. During the course of cross-examination, Mr Hendron put it to Mr Patel that the

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reason Mr Mann asked for payment of 100% of the rent was that Mr Mann “moved money around in order to obtain funding”. Mr Patel’s response was that Mr Mann had told him that he had to show the bank that “proper rent” was being paid, and he denied that he was complicit in Mr Mann “breaking rules” in order to obtain finance - rather he had been asked to pay 100% of the rent in order that Mr Mann could show that he was in good standing with the bank. In any event, Mr Patel paid 100% of the rents to MIL until March 2019, when the refund of 50% stops. At that point Mr Patel reverts to paying 50% of the rent.

30. On 3 May 2019 fixed charge receivers (partners in Allsop) were appointed by United Trust Bank over the Properties. In consequence of the appointment of the receivers, Mr Patel stopped paying rent to MIL, and paid the rent to the receivers instead.
31. In August 2019, Mr Mann undertook a further refinancing exercise with BridgeCo Limited, and D3 borrowed £801,500 from them. The entirety of these borrowings were paid to United Trust Bank. United Trust Bank released their charges, and the receivers ceased acting. A debenture and legal charge were registered on 27 August 2019 in the name of BridgeCo Limited against the freehold title for 28-30 Berrylands Road (title number SY315928), but no charge was registered against the freehold title for 32 Berrylands Road (title number SY157194).
32. The claim in respect of the current proceedings was issued on 23 February 2021. On the same date, unilateral notices in the name of Mr Patel were registered against both freehold titles. Mr Rolfe’s explanation was that Mr Patel wanted to protect his position by registering a unilateral notice, but needed to commence legal proceedings in order to do so. He therefore had to commence the legal proceedings in order to be able to register the unilateral notice. He did not comply with the pre-action protocol (by writing

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a letter before action before issuing the claim) as this could have alerted Mr Mann to the prospective registration of the unilateral notices. However, in the light of the fact that no letter before action had been written, Mr Patel consented to an extension of time for the defendants to lodge their acknowledgment of service.

33. On 21 February 2022, form AP01 was filed at Companies House to confirm the appointment of Mr Patel as a director of D3 with effect from that date. It is agreed that Mr Patel did not consent to act as a director of D3, and form TM01 was filed at Companies House on 9 June 2022 confirming the termination of Mr Patel's appointment, not with effect from the purported date of appointment, but with effect from 9 June 2022.
34. On 24 February 2022, form CS01 was electronically filed at Companies House recording that as at 22 February 2022, 51 ordinary shares are held in D3 by Mr Mann, 35 ordinary shares by Mr Patel, and 14 ordinary shares by MKP Enterprise Limited. It is agreed that neither Mr Patel nor MKP Enterprise Limited consented to the issue or transfer of shares in D3 to them.

**Witnesses**

35. The comments made by Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [\[2013\] EWHC 3560](#) at [15-23] and in *Blue v Ashley* [\[2017\] EWHC 1928 \(Comm\)](#) at [65-70] about oral agreements and the unreliability or fallibility of human memory were not cited to me, but they are well known and do not need to be repeated.
36. The best approach in these kinds of cases is to base factual findings primarily on the documentary evidence. However, in this case, the documentary evidence is very thin indeed. The only document evidencing the terms of the agreement is an email dated 16

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July 2014 which sets out some of, what Mr Niederberger called, the “important bits” of the agreement reached between the parties. However, it does not address all of the important terms. In making findings, I therefore need to take account of the light shed on this email in the course of cross-examination, including the motivation of the parties and the commercial context. But I recognise that eight years have passed since the agreement was made, and that it is inevitable that the memories of witnesses are fallible.

37. Mr Patel, Mr Niederberger, Mr Mahesh Patel (Mr Patel’s brother and the co-owner of the supermarket), and Mr David Pullen (a longstanding friend of Mr Patel and his family) gave evidence on behalf of the claimant, and Mr Mann gave evidence on behalf of himself and D3.
38. Although Mr Patel had been in business for 25 years (running the supermarket), and said that he was not naïve when it came to doing business, the impression that he gave when giving evidence was that, in reality, he was a somewhat naïve businessperson. Mr Niederberger described him as being straightforward and honest. Whilst I acknowledge and accept Mr Niederberger’s evidence that it was common practice in the Indian community to do deals on the basis of a handshake and trust, the fact that Mr Patel was prepared to pay £500,000 to Mr Mann (or to companies under Mr Mann’s control) without the terms of their deal having been committed to writing (other than the sketchy email exchange of July 2014, a few months after the first payment was made) strikes me as surprising - even after taking account of the presumption of trust within the Indian community.
39. This impression of naivety is reinforced by Mr Patel’s own evidence. Although he said that he was in charge of his business and in charge of the accounting (and understood accounts), he also said that he did not understand spreadsheets, and left these to

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accountants. I would have expected an experienced businessperson who understood accounts and was in charge of the accounting for the business to have at least a basic understanding of spreadsheets. Mr Patel was cross-examined by Mr Hendron about the potential benefits of doing business through companies, and even though Mr Patel had been involved in about seven companies, he did not appear to be aware of any of their potential benefits. When asked why his supermarket business was not conducted as a sole trader, his answer was that he had been advised to use a company, and I infer that he did not know the reasons behind that advice. He was cross-examined about the use of an SPV to buy the Properties because of its tax advantages and providing limited liability, to which his answers were that he didn't know.

40. The evidence of Mr Pullen also illustrates Mr Patel's lack of knowledge about companies. Whilst I would not expect the owner of a small business to be familiar with the intricacies of corporate insolvency procedures, I would expect that they would appreciate that when an insolvency professional has been appointed, it is likely that assets of the business will be sold in order to recover the funds owed to the lender appointing her. But it is apparent from Mr Pullen's evidence that Mr Patel did not appreciate that a potential consequence of the appointment of receivers by United Trust Bank was that the Properties were likely to be sold.
41. What is very clear from Mr Patel's evidence is that he had no experience of property development, and he knew this – and was relying on the experience and advice of Mr Mann and Mr Niederberger as regards any potential development of the Properties.
42. Not only had Mr Patel no previous experience in property development, but it is apparent that he had little knowledge or experience of conveyancing processes more generally - for example, from the evidence before me it appears that Mr Patel was

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prepared to transfer £500,000 to Mr Mann without ever having seen Colemans-ctts's report on title. Mr Hendron asked him why, if he expected his name to be on the title, he had not engaged in the conveyancing process. Mr Patel acknowledged that he had not provided any evidence of his identity to Mr Mann (to pass to Colemans-ctts for anti-money laundering purposes), nor had he signed any conveyancing documents or land registry applications. Mr Patel said that Mr Mann led him to believe that his name would be placed on the title "as soon as the title deeds were issued", and that notwithstanding that he had not executed any of the conveyancing documents, his evidence was that he expected his name to be on the title as soon as the Properties had been purchased, I infer that he was not aware that he would have needed to have signed the conveyancing transaction documents if this was to happen.

43. From Mr Patel's evidence it appears that his main concern was that his name would be on "the title deeds" -which I infer to mean being registered as a proprietor of the freehold of the Properties. I accept Mr Rolfe's submission that Mr Patel's motivation in wanting to be a co-owner of the Properties was to protect his supermarket business, rather than the prospect of sharing in any profits from the development of the Properties. This is consistent with Mr Patel's evidence that, although he had discussed the potential development with Mr Mann, unless and until his name appeared on the title, he was not prepared to engage in progressing the development of the Properties. His evidence was that nothing concrete was ever agreed about developing the Properties is consistent with Mr Mann's evidence about the development project.
44. In contrast, Mr Mann is an experienced and clever property businessman. He used to own an estate agency business. As well as being engaged in property development since 1999, he also had a portfolio of investment properties. His evidence was that he had



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dealt with at least five development projects valued at between £2m and £3m, and over 20 smaller projects. His own evidence was that he “juggled finances” and Mr Hendron put it to Mr Patel that he must have been aware that Mr Mann “would move money around in order to obtain financing” and would “break rules” to obtain financing.

45. That Mr Mann “moved money around” is apparent from Mr Mann’s use of the funds contributed by Mr Patel towards the purchase of the freehold of the properties. It is obvious from the Coleman-ctts’s completion statement that not all of the money contributed by Mr Patel had been utilised in the purchase of the freeholds, and Mr Mann was unable to explain what happened to the excess. Mr Mann acknowledged that D3 borrowed £801,000 on the security of the Properties from BridgeCo in August 2019 and that United Trust Bank “took the money” to repay not only D3’s borrowings, but also borrowings incurred by other entities owned by Mr Mann.
46. Mr Niederberger’s evidence was that he did not like Mr Mann’s business practices, and towards the end of 2014 he told Mr Mann that he could not tolerate working for Mr Mann any more, and shortly thereafter, in circumstances that are not entirely clear, he stopped working for Mr Mann. Mr Mann challenges the reliability of Mr Niederberger’s evidence for the reasons discussed below.
47. But even if I were to ignore Mr Niederberger’s evidence relating to Mr Mann’s business practices, the documentary evidence shows that not all of Mr Patel’s contribution was used to fund the purchase of the Properties, and that Mr Mann was unable to explain what happened to the excess. In addition, the Properties were used as security for borrowings that were applied to support Mr Mann’s other businesses. The implication from Mr Hendron’s questioning of Mr Patel is that Mr Mann was prepared to “break

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rules” in order to obtain bank finance. These are not the practices of an ethical and honest businessman.

48. In contrast, whilst I find that Mr Patel was naïve and ignorant of property matters, I find that he was fundamentally honest and straightforward. I find that Mr Mann exploited Mr Patel’s naivety and ignorance of property matters to his own personal advantage. Where the evidence of Mr Patel and Mr Mann are in conflict, I am generally more inclined to believe Mr Patel over Mr Mann.
49. Mr Niederberger is an experienced property development manager, and had been engaged by Mr Mann to project manage various property development projects undertaken by D2 and other companies in which Mr Mann had an interest. Towards the end of 2014 there was a falling out between Mr Mann and Mr Niederberger. There is no evidence before me relating to these circumstances, but references were made in the course of cross-examination of Mr Niederberger to various disputes, including a case in which Mr Niederberger was a witness against Mr Mann, and litigation in the High Court between Mr Mann and Mr Niederberger (in which judgment was awarded against Mr Niederberger). For these reasons, Mr Hendron submits that Mr Niederberger’s evidence should not be regarded as reliable. However, in the light of my findings as to the utilisation of Mr Patel’s contributions by Mr Mann and his companies, I consider that Mr Niederberger’s assessment of Mr Mann’s business practices as being “intolerable” to be accurate. Overall, I found Mr Niederberger to be a straightforward witness, whose evidence was consistent with the documentary evidence, and I find his evidence to be reliable and credible.
50. Mahesh Patel is Mr Patel’s brother and is the co-owner of the supermarket business. Mahesh Patel and Mr Patel are the joint owners of the Headlease. Mahesh Patel used to

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manage the supermarket until 2005, when he moved to the USA and where he runs a lighting company. Although Mr Patel and Mahesh Patel had previously unsuccessfully attempted to buy the Properties from NIL, Mr Patel had not involved Mahesh Patel in the decision to enter into an agreement to purchase the Properties with Mr Mann and his companies. Mahesh Patel first learned about the agreement in 2015, after Mr Patel had paid £500,000 to D2. Mahesh Patel was therefore not able to provide any evidence about the circumstances in which the agreement was reached. But Mahesh Patel confirmed that Mr Patel had told him that he wanted his name to be on the deeds. Mahesh Patel was concerned about the absence of any written agreement, and he pressed his brother to get confirmation of the terms of the agreement in writing, and that his name should be put onto the title.

51. Most of Mahesh Patel's evidence relates to an attempt in 2020 to reach a settlement with Mr Mann in relation to this dispute, in order to allow Mitesh Patel (the supermarket manager) to buy the supermarket business from Mr Mann and Mahesh Patel. As no agreement was reached with Mr Mann for the grant of a new lease of the supermarket, the sale of the supermarket business did not go ahead. Whilst I found Mahesh Patel to be a reliable and credible witness, he was not a direct witness to the circumstances in which the agreement relating to the purchase of the Properties was reached, and therefore his evidence was largely irrelevant to the issues before me.
52. Mr Pullen, prior to his retirement, was a qualified accountant specialising in insolvency and working at Cork Gully, the well-known insolvency practice. Mr Pullen was a longstanding friend of Mr Patel and his family. Mr Pullen first became aware of the purchase of the Properties in 2014 when he was shopping in the supermarket and Mr Patel introduced him to Mr Mann. Mr Pullen had no further involvement with the issues

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in this claim until May 2019, when Mr Patel visited Mr Pullen to ask about the appointment of the fixed charge receiver. Mr Pullen advised Mr Patel that he had been very naïve and foolish not to have involved solicitors in his dealings with Mr Mann. There was a meeting with Mr Pullen, Mr Patel, and Mr Mann on 24 May 2019 to discuss the situation and explore what could be done. Mr Pullen's evidence, which was not challenged, was that Mr Mann explained that he had 12 to 15 properties in his portfolio, and United Trust Bank had appointed receivers over approximately 10 of them. Although Mr Patel was adamant that he wanted his name on the title, Mr Mann was anxious that Mr Patel did not take any action as it might ruin his negotiations with a new lender (Mr Pullen's evidence was that they were unaware at the time that the new lender was BridgeCo). They also discussed the possibility of the Properties being vested in a company, with Mr Patel being both a shareholder and director. Mr Pullen's evidence was that discussion was not a confirmation of the existing agreement, but was rather a proposal to settle the dispute. The proposal was conditional on the charge on the Properties being removed (which would be necessary anyway to get rid of the receivers), and the arrangements being reviewed and documented properly by solicitors. However, nothing was agreed. There was a further meeting between Mr Pullen, Mr Patel, and Mr Mann on 31 July 2019, but Mr Pullen describes it as unproductive. Whilst I found Mr Pullen to be a reliable and credible witness, he was not a direct witness to the circumstances in which the agreement relating to the purchase of the Properties was reached, and therefore his evidence was irrelevant to the terms of the agreement. However his evidence corroborates the circumstances relating to the appointment of the fixed charge receivers and the refinancing exercise undertaken with BridgeCo.

Approved Judgment**Issues in dispute**The date on which it was agreed to buy the Properties

53. Mr Rolfe submits that the agreement for the purchase of the freehold of the Properties must have been made on or before 2 May 2014, which is the date on which Mr Patel arranged the first payment of £15,000 into D2's bank account. He submits that the agreement was oral. Mr Hendron did not challenge these submissions. I agree with Mr Rolfe, and I find that an oral agreement to purchase the freehold of the Properties must have been made by 2 May 2014 at the latest.

The parties to the agreement

54. The evidence of Mr Mann and Mr Patel are in conflict. Mr Mann asserts that the contracting parties are D3 and Mr Patel. Mr Patel asserts that he entered into an agreement with Mr Mann, and not a company.
55. Mr Hendron submits that the parties to the agreement are Mr Patel and D3. He referred me to the email of 16 July 2014, which is the only documentary evidence that relates to the terms of the agreement. Although this email was sent a few months after the agreement was concluded, all parties agree that this email summarises what Mr Niederberger described in his evidence as the "important bits" of the agreement. Mr Hendron submits that this email was sent at a time when the relationship between the parties were amicable, and the content of the email was never challenged by Mr Patel. For these reasons, the email should carry great weight. Mr Hendron submits that the email shows that the parties to the agreement are Mr Patel (to whom the email is addressed) and one of Mr Mann's companies (from whom the email is sent). Mr Hendron notes that there are six references to D2 in this email: (i) the "from" line in the header, (ii) the signature block, (iii) the reference to 50% of rents being paid to D2 after

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completion, (iv) the reference to the cost share being 50% from D2, (v) the reference to the profit share being allocated as to 50% to D2, and (vi) the reference to D2 acting as project manager.

56. However, Mr Hendron notes Mr Mann's evidence that the reference to D2 in the body of the email were an error, as the proposal was that the project would be undertaken through an SPV (in this case, D3), and the references to D2 should have been references to D3. Mr Mann when cross-examined referred to the cross-heading in the email "Surbiton Phase 2 Development" and said that this was a reference to D3 (whose name at the time was "Surbiton Phase Two Ltd"). But in any event, there is no mention in the email of Mr Mann. All of this indicates, says Mr Hendron, that Mr Patel was dealing with a company and not Mr Mann, and that the company he was contracting with was D3.
57. In support of this submission, Mr Hendron refers to Mr Mann's evidence - that he always acted through companies, and never as an individual. If he had acted in his own name in relation to the Properties, that would have been a radical departure from his previous practice. In his witness statement Mr Mann says this is because it is more tax efficient to do so, although in the course of cross-examination he said that it was because of the benefits of limited liability given by companies. In the course of cross-examination, Mr Mann said that he had a few meetings with Mr Patel prior to completion of the purchase, and that he told Mr Patel that the Properties would be purchased through D3 at one of these meetings, and that nothing was hidden from Mr Patel.

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58. Mr Hendron submits that Mr Patel acknowledged that he had been involved in seven companies, and it was therefore inconceivable that he was ignorant of the benefits of operating through a company.
59. Mr Niederberger's evidence corroborated the fact that Mr Mann undertook property development through companies, primarily through D2 – although he could not confirm whether title to the land being developed was vested in D3 as he never had sight of the “title deeds”.
60. Mr Hendron noted that Mr Patel's interactions relating to the purchase of the Properties were initially with Mr Niederberger, whom Mr Patel believed was an employee of D2. Mr Hendron submits that there is no evidence that Mr Patel was doing business with Mr Mann as an individual, rather than with a company.
61. Mr Hendron also submits that Mr Patel has a financial interest in claiming that his agreement is with Mr Mann, rather than with D2, given that D2 is insolvent and in administration.
62. Mr Rolfe submits that there can only be three possibilities:
- i) *D3 and Mr Patel*: Mr Rolfe submits that D3 could not have been a party to the agreement, as it was not incorporated until 29 May 2014, subsequent to the agreement having been made. In response to my questioning, he also submitted that the agreement could not have been novated to D3 following its incorporation, as Mr Patel would have had to have been a party to the novation agreement, and there was no evidence of such a novation agreement (nor any suggestion by the defendants that there had been a novation).

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- ii) *D2 and Mr Patel*: Mr Rolfe submits that D2 was not a party to the agreement. He notes that Mr Mann had disavowed any involvement of D2 in the purchase of the Properties and drew my attention to the Acknowledgement of Service filed by D2 which stated that “I intend to contest this claim as [D2] has no interest whatsoever in [D3] and has nothing to do with this matter”. I also note that in his witness statement, Mr Mann says “[D2] should not be a part of [Mr Patel’s] claim as it has no involvement in this matter whatsoever” and that “[Mr Patel] was also aware that [D2] is entirely unrelated to [D3] and the claim”. The administrator of D2, in the letter of 13 June 2022 from his solicitor to Mr Patel’s solicitor, states he is not aware of any beneficial interest that D2 might have in the Properties. Mr Rolfe submits that in these circumstances, it is not open for the defendants to argue that D2 was the party to the agreement.

As regards the payment of Mr Patel’s contributions to the purchase price into D2’s bank account, Mr Rolfe submits that this does not indicate that D2 was a contracting party. Rather (a) this was the account into which Mr Niederberger told him to pay the money, and (b) he was not aware at the time that it was in fact an account in D2’s name. The reason that the money was paid into D2’s account, was only as a matter of convenience to Mr Mann – Mr Mann’s evidence was that this was because D2’s bank account was the only one that was available.

Mr Rolfe submits that nothing turns on the “sender” line and the signature block in the 16 July 2014 email – this just reflects the email address that was allocated to Mr Niederberger, and nothing more. Nor is there anything in the documentary evidence that indicates that the references to D2 in the body of the email were a



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mistake, and should have been references to D3 (which had been incorporated by this time). Mr Rolfe submits that the cross-heading “Surbiton Phase 2 Development” was a reference to the name given to the project for the redevelopment of the Properties, and not a reference to D3.

He submits that the references in the body of the email to D2 do not imply that D2 is necessarily a party to the agreement – it is possible for Mr Mann to be the party to the agreement, but for the agreement to provide that D2 would be the person effectively designated by him to hold his interest in the Properties (and to be the person contributing on his behalf to the costs, and sharing in the profits).

- iii) *Mr Mann and Mr Patel*: Mr Rolfe submits that as Mr Patel’s interactions were with Mr Mann, it was Mr Mann with whom he contracted. This is supported by the fact that, as neither D2 nor D3 could be parties to the agreement, it could only be Mr Mann and Mr Patel that are the parties to the agreement. Mr Rolfe submitted that Mr Mann was cavalier with his business arrangements – so, for example, in 2016 Mr Mann switched the payment of rents from being made to D2 to being made to MIL. This, says Mr Rolfe, was not an accident, and smacks of Mr Mann, as the controller of various entities, picking and choosing between them. But in the end, says Mr Rolfe, all roads lead back to Mr Mann, and this indicates that it is Mr Mann who is the principal with whom Mr Patel contracts. Whilst Mr Mann may have nominated D3 to hold his interest in the Properties, and to be the borrower from Coutts, Mr Rolfe notes that Mr Mann gives a personal guarantee to Coutts for the loan.

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63. The respective evidence of Mr Mann and Mr Patel is in conflict. Neither Mr Mahesh Patel nor Mr Pullen's evidence was relevant to either the parties or the terms of the agreement. Mr Niederberger's relationship with Mr Mann was, at the very least, strained, and Mr Hendron submits that in consequence his evidence is not independent and is unreliable.
64. In resolving this conflict, I have considered such documentary evidence as there is, the commercial context, and the motivation of the parties, and I have given these greater weight than the witness evidence of Mr Mann, Mr Patel, and Mr Niederberger.
65. I agree with Mr Rolfe that Mr Patel could not have contracted with D3, and I so find. It had not been incorporated at the time the agreement was concluded, and there is no evidence of any kind (nor any submission by Mr Hendron) that the agreement was subsequently novated to D3.
66. The email of 16 July 2014 is the only documentary evidence as to the terms of the agreement. It was sent after the agreement was concluded, and is therefore evidence of the terms, rather than being the terms. It was described by Mr Niederberger as being "bullet points" which set out the "important bits", and that the parties ought to have gone on to prepare a detailed legal agreement in order to avoid the misunderstandings that have in fact arisen.
67. Mr Hendon submissions emphasised Mr Niederberger's importance in the running of D2, describing him as Mr Mann's right hand man. He noted that Mr Niederberger was stated in Coutts instructions to Savills to be (with Mr Mann) their contact with the borrower, and Mr Hendron submits that this indicates that Mr Niederberger was involved in Mr Mann's financial arrangements. And as it was Mr Niederberger who

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drafted the email, the mistake in its referencing D2, and not D3, was not one made by Mr Mann.

68. Mr Niederberger's evidence was that it was not his place to decide anything – rather he discussed matters with both Mr Patel and Mr Mann, and it was up to them to reach agreement. Mr Mann confirmed that he had reviewed and approved this email before it had been sent. Mr Niederberger's evidence was that he had no power to sign documents relating to the financing of Mr Mann's projects, and whilst he might have knowledge of Mr Mann's attempts to raise finance, he had no power in relation to that fund raising. He also stated that whilst he might be "kept in the loop" on finance, this was only when it suited Mr Mann. The reference to him being a "contact" for the purposes of the Savills valuation was probably because he was best placed to arrange for Savills to inspect the Properties, as he was working on D2's development project next door.
69. The email of 16 July 2014 does, at first glance, appear to indicate that Mr Patel was contracting with D2. However, when examined in more detail, the references in it to D2 do not necessarily point to D2 being the contracting party. First, the fact that the "sender" line at the top of the email, and the signature block at the bottom of the email reference D2 are a function of Mr Niederberger having been allocated a "D2" email address by Mr Mann, rather than that the email was sent on behalf of D2. I find that it therefore does not follow from the references to D2 in the sender and signature blocks that Mr Patel had contracted with D2. And whilst I believe Mr Mann when he says that he only does business through companies because of the limited liability that this provides, this does not rule out the possibility that Mr Mann enters into property development agreements in his own name, but that he nominates a company under his control to be the vehicle through which he holds his share of the Properties. Although

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there are references in the body of the email to D2 being the entity that contributes to the cost of the project and benefiting from the profits, it therefore does not necessarily follow that D2 was the contracting party. I am also unconvinced that the reference to Surbiton Phase 2 Development in the cross-heading is a reference to D3, not least because, at the time, it's name did not include the word "development". I find that the cross-heading is a reference to the project for the intended development at the Properties.

70. I find that nothing turns on the fact that (at least initially), Mr Patel's main contact was through Mr Niederberger and that Mr Patel may have been aware that Mr Niederberger was working for D2. Even though Mr Niederberger was described by Mr Hendron as being Mr Mann's "right hand man", he was not acting as principal, and was not authorised to bind Mr Mann or his companies, other than in relation to the day-to-day management of the various development projects on which he was working. He was acting at all material times on the instructions of Mr Mann, and ultimately Mr Patel engaged with Mr Mann in finalising the terms of the agreement.
71. The acknowledgment of service filed by D2 (before it went into administration) disavows any involvement of D2 in the Properties. This is supported by the evidence of Mr Mann in his witness statement which states:

Before I address the various issues with the Claimant's claim, I wish to make it clear from the outset that the Claimant should not have included the Second Defendant as a defendant to this claim. The Second Defendant to this claim is a separate company which has no involvement with or relevance to this claim whatsoever, save that I am also a director for the Second Defendant. I do not understand why the Claimant has issued the claim against the Second Defendant given that the Properties are owned by the Third Defendant and that the Second Defendant has no involvement with the Properties.

72. The correspondence from the administrator of D2 disavows any legal or beneficial ownership interest of D2 in the Properties.

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73. I find Mr Hendron's submissions to be unconvincing. He submits that the references to D2 in the body of the 16 July email were made in error, and ought to be references to D3. Mr Mann's evidence was that this was a mistake made by Mr Niederberger, who was the author of the emails. However, Mr Mann acknowledged that these emails were reviewed and approved by him before they were sent, so I find that any error (if there was one) cannot be placed at Mr Niederberger's door.
74. D3 could not have been a party to the agreement, as it was not incorporated at the relevant time. Mr Hendron does not submit that the agreement was concluded by someone else, and subsequently novated to D3, and there is no evidence to support such a contention anyway.
75. Mr Mann's own evidence is, and D2's acknowledgment of service state, that D2 had no involvement in this matter. So, Mr Hendron's submissions that D2 was the party is inconsistent with his own client's evidence.
76. Mr Hendron also seeks to cast doubt on Mr Patel's evidence that he contracted with Mr Mann by noting that D2 is now in administration, and it would therefore be to Mr Patel's advantage if he had contracted with Mr Mann. But I note that D2 was not in administration at the time Mr Patel filed his claim, and so the fact that D2 is now in administration could not have been within his contemplation at the time the claim was filed.
77. Weighing all the evidence, I find that Mr Patel had not contracted with D2.
78. It follows from these findings that Mr Patel can only have contracted with Mr Mann, and I so find. Whilst the email of 16 July 2014 was sent by Mr Niederberger (using his only email address, being under the name of D2), Mr Mann confirmed that he only sent

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it after Mr Mann had reviewed and approved it. And whilst Mr Niederberger introduced Mr Patel to Mr Mann, and attended some of the meetings relating to the Properties, I find that at all times he was acting as the representative of his principal, Mr Mann. I find that the fact that the 16 July email makes references to D2 is not inconsistent with Mr Mann being the party to the agreement, as it was always open to him to designate another person under his control to be the registered owner of his interest in the Properties and to undertake his obligations (and receive his benefits) on his behalf.

Terms of the Agreement

79. Mr Patel claims that the principal terms agreed with Mr Mann were as follows:
- i) Mr Mann and Mr Patel would each contribute £500,000 towards meeting the costs of purchasing the Properties (including stamp duty, legal costs, and an initial estimate for planning advice).
  - ii) the Properties, once purchased, would be registered in the joint names of Mr Patel and Mr Mann.
  - iii) the Properties would not be subject to any charges.
  - iv) Following purchase, Mr Patel would pay Mr Mann 50% of the rent payable under the Headlease, and Mr Patel would retain the other 50%.
  - v) Any profit arising in respect of the development of the Properties would be split equally. Mr Mann had assured Mr Patel that he would be able to obtain finance to fund the costs of the development, and that, in practice, Mr Patel would not need to contribute anything to the costs of the development.

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- vi) Whilst the parties had discussed proposals for the development of the Properties following completion of the Purchase, they had not finalized and concluded any agreement in relation to the development. Any agreement for the redevelopment would only be concluded after the Properties had been purchased - save that any development would include a new shop for Mr Patel's business on the ground floor, and that shop would be let to Mr Patel's business at a market rent to be agreed.
  - vii) Whilst Mr Mann and Mr Niederberger would be responsible for the day-to-day management of the redevelopment project, ultimate decision making would be subject to the agreement of both Mr Mann and Mr Patel.
80. In his witness statement, Mr Mann claims that the terms of the agreement were as follows:
- i) Mr Mann and Mr Patel would make equal financial contributions in order to purchase the Properties for £500,000 each, and thereafter fund the development project.
  - ii) The Properties would be purchased through a special purpose vehicle company and the development carried out through that vehicle.
  - iii) Because of Mr Mann's experience of property development, Mr Mann would have full and unfettered control of the development.
  - iv) All associated costs and expenses would be shared on a 50:50 basis.
  - v) All rental income from the commercial and residential units would be split on a 50:50 basis.

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vi) Upon completion of the development and subsequent sale of the Properties, the Mr Mann and Mr Patel would each be entitled to 50% of the net profits.

81. As with the determination of the parties to the agreement, in resolving the differences between the positions of the parties I have placed greater weight on the documentary evidence as there is, the commercial context, and the motivation of the parties, than the witness evidence of Mr Mann, Mr Patel, and Mr Niederberger. The witness evidence of Mr Mahash Patel and Mr Pullen was not relevant to these issues.

82. The 16 July 2014 email sets out some of the important terms of the agreement. But it does not directly address who will be the registered owners of the Properties, and whether the Properties would be owned and developed through an SPV.

*SPV*

83. In his evidence, Mr Mann says that he spoke to Mr Patel several times about the need for the Properties to be held by an SPV because of tax benefits and in order to limit liability. Mr Patel, when cross-examined on this point was firm that he had always insisted on his name being on the title deeds.

84. Mr Mann says that the fact that the Properties were to be held and developed through an SPV is apparent from the face of the 16 July 2014 email, given its references to D2 (although, I note, that Mr Mann says that the reference to D2 was a mistake, and it should have said D3 in the body of the email). He refers also to the cross heading in the email which is “Surbiton Phase 2 Development”, which he says is a reference to the name of D3 at the time it was incorporated.

85. Mr Patel says that there is no express reference in the email to the registration of the title, as the email summarised the discussion that took place on 15 July, and the



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discussion did not address title registration. As regards the cross heading, Mr Rolfe submits that this is a reference to the title of the project for the redevelopment of the Properties, rather than to D3.

86. Mr Hendron submits that there is no mention in the email of either Mr Patel's or Mr Mann's name being on the title. However, D2 is mentioned expressly in the email, and the evidence is that Mr Mann undertakes his business activities through companies and not personally. There is also evidence that Mr Patel does business through companies. Mr Hendron submits that it is inconceivable that Mr Patel is unaware of the advantages of doing business through companies. He submits that the intention of both Mr Patel and Mr Mann was that the Properties were to be owned by an SPV, and that the SPV would undertake the development. An SPV had been incorporated (D3), and its then name was included in the cross heading in the email, and the references to D2 in the email were a mistake and should have been references to D3.
87. Mr Hendron, in his closing submissions, described the terms of the agreement in relation to the SPV as being "vague". I pressed him on this point, and (after taking instructions) he said that the agreement was that the parties would be 50/50 shareholders in the SPV – and that Mr Mann's contribution to the SPV was the Coutts loan and the costs of the advice from the architect and suchlike.
88. Mr Rolfe submits that the 16 July email makes no reference to an SPV – it is limited to the allocation of income and expenses (and ultimately profits). There is no reference to the allotment of shares, and whilst Mr Hendron and Mr Mann might say that the references to D2 were a mistake, and ought to have been references to D3, there is no suggestion of that in any of the evidence. In any event, the terms of the email are inconsistent with the use of an SPV, as the participants would be entitled to 50% of the

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equity in the SPV company, and would not have a direct entitlement to 50% of the underlying income arising from the Properties (such as rent).

89. Mr Rolfe also submits that the reference to Surbiton Phase 2 Development as a cross heading can only have been to the name of the project, and not as a reference to D3 – otherwise why would the body of the email refer to D2 and not “Surbiton Phase 2 Limited”.
90. Mr Patel was referred in the course of cross-examination to the Colemans-ctts completion statement, and asked why, when he received this, did he not question the references to the Coutts loan, and the fact that the statement was addressed to D3. Mr Hendron implied that the fact that Mr Patel did not question this indicated that Mr Patel had consented to the Properties being registered in the name of D3, and to the Coutts loan being charged against the Properties. However, Mr Patel’s response was that he did question the title when he received the statement, and that he was assured by Mr Mann that Mr Mann would sort this out – in other words would arrange for Mr Patel’s name to be registered as a proprietor. Mr Patel’s evidence was that he did not appreciate at the time that the Coutts loan was secured against the Properties, and I accept that unless you are familiar with conveyancing processes (and I have found that Mr Patel was not) it is not necessarily obvious from the completion statement that Coutts loan was secured against the Properties.
91. Mr Rolfe submits that Mr Patel had not participated in the purchase of the Properties as a development opportunity, rather his interest was in preserving his family business, which had traded from the Properties for many years. So, from Mr Patel’s perspective, his commercial interest was to acquire the freehold in order to safeguard the supermarket business, rather than to acquire shares in a property development company.

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Mr Patel's main objective was therefore to be "on the title deeds". Mr Rolfe submits that at no time did Mr Mann challenge Mr Patel on this issue. Whenever Mr Patel raised the question of the title with Mr Mann, the response was that Mr Mann would "sort it out" rather than a denial of Mr Patel's entitlement to be registered as a proprietor of the Properties.

92. Mr Hendron's submissions as regards the terms of the agreement reached between the parties was that they were "vague", and it was only when pressed that he took instructions and gave an outline of the basis on which the parties were alleged to have agreed how D3 was to be capitalised. This was the first time that the defendants had put forward a positive case as to how they asserted that D3 was to be capitalised. I note also that Mr Mann made no offer for Mr Patel be issued or transferred shares in D3 until well after the dispute arose. And when he caused Mr Patel and MKP Enterprise Limited to be registered as shareholders, he gave them less than 50% of the equity. I find Mr Hendron's submissions unconvincing.
93. Whilst the email of 16 July 2014 makes no express reference to the registration of the title to the Properties (whether in the name of an SPV or in the joint names of the respective parties), I find that the terms of the email are not consistent with the Properties being registered in the name of an SPV, but they are consistent with the Properties being registered in the joint names of Mr Mann (or a company under his control) and Mr Patel. If an SPV was to be the owner and developer, the rights of Mr Mann and Mr Patel would be as shareholders in the SPV, and they would not have a direct relationship with the Properties. For example, if the Properties were to be registered in the name of D3 (as an SPV) 100% of the rents would be paid to the SPV

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- which is inconsistent with 59% of the rents being retained (as stated in the email) by Mr Patel and 50% being paid to a company under Mr Mann's control.

94. I also find that the simplicity of the email in addressing the allocation of costs and profits tends to suggest that the Properties are directly owned by the parties, rather than through an SPV. If an SPV was to be involved, there would need to be provisions addressing the capitalisation of the SPV and the allocation of shareholdings and shareholder rights.
95. I also agree with Mr Rolfe, and have found, that the reference in the cross heading is to the name of the project, and not to the name of D3.
96. Whilst I accept that Mr Mann might well have tried to persuade Mr Patel of the advantages of holding the Properties and undertaking the development through an SPV, I find that Mr Patel was fixated on his name being on the title, and that this is consistent with his commercial objective – which was to preserve the ability of his supermarket business to trade from the Premises, rather than to profit from a development of the Properties.
97. I find that the parties had agreed that the title to the Properties would be registered in the joint names of Mr Patel and Mr Mann (or a company under Mr Mann's control).

*Rents*

98. The 16 July 2014 email provides as follows in relation to rents received following completion of the purchase of the Properties:

- After completion of purchase	50% of the rents to be paid to Falcon
- Dtto	50% of the rents to be retained by N. Patel

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99. In practice, Mr Patel (at least initially) paid 50% of the Headlease rent to D2's bank account (as directed by Mr Mann), and withheld the other 50%. This is consistent with Mr Patel being the joint owner of the Properties, as he would, at least from a commercial perspective, be paying 50% of the rents to himself.
100. However, Mr Mann asserts that the reference to rents in these paragraphs of the email refer not just to the rent payable under the Headlease, but also to the rents received by Mr Patel and his brother Mahesh Patel from the flats. Mr Mann asserts that he is entitled to half of the rents passing in respect of the two flats that are let. However, no formal counterclaim to this effect has been made.
101. The flats are let to employees of Mr Patel under assured shorthold tenancies. Mr Mann's evidence was that he was unaware that the employees were paying rent to Mr Patel and his brother, until he was required to approve a new assured shorthold tenancy. But as soon as he became aware of this fact, he asserted his right to be paid half of the passing rents under these tenancies.
102. Mr Mann's evidence was that once he came aboard, the Headlease "fell away", as he and Mr Patel were now both investors in the Properties. He asserts that the terms of the agreement were that they would each be entitled to half of the rents passing – including the rents passing on the flats as well as the rents for the supermarket.
103. Great emphasis was placed by Mr Hendron on the use of the word "rents" (in the plural) in the email as indicating that this must mean the rents payable in respect of more than one lease – and must therefore refer to the rents paid for the flats as well as the rent paid for the Headlease.

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104. Mr Niederberger's evidence was that when he drafted the email, he was referring to the fact that rent was payable on the Headlease in successive periods – so that over the life of the Headlease, “rents” would be payable.
105. I find that the reference to “rents” in the email of 16 July can only be to the rent being paid in respect of the Headlease, and that it does not include rent payable to Mr Patel and his brother in respect of tenancies of the flats. Mr Mann's evidence that the Headlease falls away as a consequence of the acquisition by him (or an entity controlled by him) makes no legal nor commercial sense.
106. From a commercial perspective, Mr Mann's claim would result in an element of double counting – as the amount of the rent on the Headlease reflects the fact that the property that is subject to the Headlease includes the supermarket and the flats. If the residential element is to be taken out of the scope of the Headlease, as a commercial matter, the rent payable for the remainder of the leased property (namely the supermarket and the flat used as an office) would need to be reduced.
107. I note that the clause 2 of the Headlease provides for the payment of the “rents” (plural) as set out in the second schedule – and that schedule makes provision only for the payment of £37,250 per annum (or as reviewed in the final four years). So, the reference to “rents” in the email is consistent with the drafting of the Headlease – although I suspect that this is more by luck than judgment.
108. I find that the agreement reached between the parties was that Mr Mann (or his company) would receive 50% of the rent payable under the Headlease (namely £37,250 per annum), and that Mr Patel would retain 50%. I find that Mr Mann has no entitlement to any share of the rents payable by the under-tenants to Mr Patel and his brother.

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109. Mr Patel acknowledged that there had been discussions with Mr Mann about the possible shape that the development of the Properties might take. But his evidence was that no formal agreement relating to the development had ever been concluded, and that he would not conclude any such agreement until after his name was “on the deeds”.
110. In the course of cross-examination, Mr Mann acknowledged that no agreement had been reached on the number of flats to be included in the development, the number of floors (although he thought it would be similar to his development next door), and the overall cost. Mr Mann confirmed that any development of the Properties would only start after his development next door had finished and planning consent had been obtained (and there was always some uncertainty about planning). He also confirmed that there had been no discussion about the overall timescale.
111. Mr Mann was also asked what would happen if for any reason development was not possible. Mr Mann’s response was that this had not been discussed, and that he had never thought about it. He acknowledged that in these circumstances he would be left as a co-owner of the Properties with Mr Patel.
112. I find that no agreement had been reached between the parties as to any development of the Properties following completion of the purchase of the freehold. Whilst there was a broad intention to develop the Properties, any agreement to do so was an “agreement to agree”, and therefore not legally enforceable.

Payments by Mr Patel and borrowings by Mr Mann

113. Mr Mann accepts that he is responsible for the loans taken out and charged against the Properties, and that he should exonerate Mr Patel in respect of them. Nonetheless, I

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consider that it is appropriate to set out the background to these loans, as it has a bearing on any order that I make.

114. Mr Patel's evidence is that Mr Niederberger provided him with the bank account details for the payments he agreed to make towards the purchase of the Properties. His evidence was that he did not know at the time that the account into which he made payments was in the name of D2, and not Mr Mann. Mr Mann's evidence is that the payments were made into D2's account because D3 did not, at the relevant times, have a bank account in its name.
115. Colemans-ctts's completion statement shows that the Properties were purchased in the name of D3 using funding from a loan facility from Coutts, with the balance being transferred into their client account from a source under the control of Mr Mann. Taking account of all disbursements, including legal costs, registration fees, stamp taxes, the completion statement shows that the total costs incurred in purchasing the Properties was £927,346.40, 50% of which is £463,673.20.
116. Mr Mann confirmed that the £533,495 recorded in the completion statement as "net loan released" was the amount borrowed by D3 from Coutts, and that this was secured by a charge over the Properties and his personal guarantee. Mr Mann was asked why D3 borrowed more than 50% of the purchase price, and his response was that he was "not sure", Coutts "did the working out" and would not have given him "more than he required", but that he could not recall why the amount was £533,495 – perhaps it reflected stamp duty and legal costs. However, it is clear from the completion statement that even taking account of all disbursements and expenses, the amount borrowed from Coutts exceeded Mr Mann's 50% share of the total costs.



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117. After taking account of the Coutts loan of £533,495, that left £393,851.40 that required to be funded for the purchase of the Properties. The completion statement shows that at the date of the statement £318,343 cash was required to be transferred to Coleman's-cotts to effect completion, after having taken into account previous receipts and payments. Mr Mann (or D2) had received £480,000 from Mr Patel by the time completion of the purchase of the Properties was to take place (and was to receive a further £20,000 subsequently). Mr Mann was asked what he did with the difference between the amount contributed by Mr Patel and the cash required for completion. Mr Mann's response was that he "can't answer". When pressed, he was unable to give any explanation as to what had happened to the difference. He was taken to the balance sheet of D3 for 31 May 2015 which showed that D3 had no cash at bank or in hand. Mr Mann's response was that "I don't understand this. I am not an accountant, and I rely on accountants." Mr Mann's attention was drawn to his signature (as the sole director) on the balance sheet as having approved the accounts. Mr Mann responded by saying "I am not an accountant. I don't understand these figures." Mr Mann was also asked about "other creditors" of £470,000 shown in the notes to D3's balance sheet. Mr Mann's response was that he was "not sure" to what this amount related, as there was only one bank loan and no other creditor.
118. The Coutts loan was repaid, and a replacement loan taken out with United Trust Bank in June 2016. I find that the replacement loan must have been for the same amount as the Coutts loan, as the various notes and line items in D3's balance sheets relating to the bank loans remain unchanged as at 31 May 2017, 31 May 2018, and 31 May 2019.
119. In relation to the replacement of Coutts by United Trust Bank, Mr Mann was asked whether he had offered the Properties as security to United Trust Bank as comfort for

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the borrowings that he had incurred on other developments (not being undertaken by D3). Mr Mann said that United Trust Bank “loaned money to me and replaced Coutts”. He said that they wanted to help him “on this development” (namely the development of the Properties), but that later – apparently because of breaches of loan-to-value covenants in other facilities - they forced the sale of shops in the personal ownership of Mr Mann and appointed partners in Allsop as fixed-charge receivers over the Properties. Mr Mann denied that his personal loans were cross-collateralised over the loan and fixed charge over the Properties, and said that D3 was never in default of its obligations, and that United Trust Bank was not entitled to appoint a fixed-charge receivers over the Properties. There is no evidence as to the terms of the United Trust Bank loan, but I consider that it is unlikely that an individual in professional practice (such as a partner in Allsop) would be prepared to be appointed as a receiver over an asset without having reviewed the terms of the relevant fixed charge and satisfied herself that an event of default had occurred entitling the chargee to appoint her. The fact that the receivers’ appointment was only terminated following the repayment of the United Trust Bank loan supports this conclusion, and I find that it is more likely than not that United Trust Bank’s loan to D3 was cross-collateralised with other borrowings incurred by other entities controlled by Mr Mann.

120. In August 2019, D3 borrowed £801,000 from BridgeCo, which was used to pay down the United Trust Bank loan. The 31 May 2020 financial statements of D3 continue to show tangible fixed assets (land and buildings at cost) at £945,145. However, the long-term creditors had increased to £1,354,664, which comprised entirely bank loans.

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121. Only “micro-entity” financial statements were disclosed for the year ended 31 May 2021, so the break-down of current assets and creditors was not available. However, long term creditors had increased to £1,378,709.
122. Mr Mann was questioned about the repayment of the United Trust Bank loan with the £801,500 loan from BridgeCo. He confirmed that £801,500 had been borrowed from BridgeCo by D3, as he “had to get rid of UTB”. Of the total BridgeCo borrowings, £540,000 was used to repay D3’s borrowings with United Trust Bank. Mr Mann was asked how the balance of £330,000 was used. Mr Mann confirmed that United Trust Bank were owed nearly £800,000 in aggregate by himself and his companies, and that United Trust Bank “took the money”. He said that he had to take out a loan in D3 in order to save the company, otherwise United Trust Bank would have sold the Properties. I find that Mr Mann procured that D3 borrowed against the security of the Properties, and that the amount borrowed was used not only to pay down the amount owed by D3 to United Trust Bank, but also borrowings incurred by other entities controlled by Mr Mann.

**Trust of Land**

123. Mr Rolfe submits that D3 holds the Properties on trust for Mr Patel as to a half share, either under a common intention constructive trust, or a presumed resulting trust.
124. In the light of my findings as to the terms of the agreement between the parties, I find that there is a common intention constructive trust over the Properties for the benefit of Mr Patel as to a half share. But even if I am wrong in my findings relating to the agreement, there would be a presumed resulting trust in the light of Mr Patel’s contribution of 50% of the purchase price. I find that D3 holds the Properties on trust for Mr Patel as to a half share.

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125. Section 41, Trustee Act 1925 gives the Court the power to appoint an additional trustee whenever it is expedient to do so, and it is found inexpedient, difficult, or impractical to do so without the Court's assistance. The Court has power to make a vesting order consequential on that appointment.
126. Mr Mann has refused to register Mr Patel as a proprietor of the Properties. I have found that Mr Mann has obtained borrowings for his own personal benefit against the security of the Properties. In these circumstances, I find that it is expedient to appoint Mr Patel as an additional trustee and registered proprietor, not only to give effect to the agreement between the parties, but to protect Mr Patel's interest.

**Sale**

127. Section 14(2) Trusts of Land and Appointment of Trustees Act 1996 gives the Court power to order a sale of the Properties. The parties are agreed that it is no longer feasible to proceed with a development of the Properties, and that there is no practical alternative in current circumstances but for the Properties to be sold. However the manner in which the sale should be carried out is disputed.
128. It is agreed that the sale should be by auction, but that a sale by private treaty may take place with the agreement of both Mr Patel and Mr Mann. It is also agreed that Mr Mann and Mr Patel can bid at the auction (having notified the auctioneers of their intention to do so).
129. What is not agreed is the mechanism for the appointment of the auctioneers and estate agents, the date and place of the auction, the number of lots, and any reserve price.
130. Mr Rolfe submits that Mr Patel should be responsible for the conduct of the sale, and in particular should be responsible for the choice and appointment of the auctioneers

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and estate agents, with Mr Mann having a right to apply to the Court in the event of any disagreement as to the conduct of the sale. Mr Rolfe submits that Mr Patel no longer has any trust or confidence in Mr Mann in consequence of his failure to vest the Properties in his name and the revelation that he had been using the Properties as security for his own personal benefit.

131. Mr Hendron submits that Mr Patel should not have unfettered discretion as to the conduct of the sale, the appointment of the auctioneers and estate agents, the date and place of the auction, the number of lots, and any reserve price.
132. Various suggestions were made as to how the sale should be conducted, including decision making by an expert appointed by the President of the RICS, or Mr Mann putting forward a panel of three reputable auctioneers and estate agents, from which Mr Patel could choose one. However the parties were unable to reach agreement on these issues at the hearing. Mr Rolfe and Mr Hendron agreed that they would seek to reach agreement on the form of the order for the sale of the Properties, and file an agreed draft (if agreement could be reached).

**D3's statutory registers**

133. At the end of February 2002, Mr Patel and MKP Enterprise Limited were purportedly registered as shareholders of D3, and Mr Patel was purportedly appointed as a director of D3.
134. It is agreed that these actions were taken without the consent of Mr Patel and MKP Enterprise Limited. Both D3 and Mr Mann acknowledge that the statutory registers of D3 need to be rectified, and that corresponding amendments will need to be made to the records relating to D3 at Companies House. Mr Patel has applied under s1096 and

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s125 Companies Act 2006 for appropriate relief. In addition, D3 will need to rectify its register of directors. Mr Mann and D3 have consented to an order being made to give this effect.

**Disposal**

135. For the reasons given, I find in favour of the Claimant and will grant the relief sought, namely:

- i) a declaration that the Properties are held on trust for Mr Patel and D3, as tenants in common in equal shares;
- ii) an order that Mr Patel be appointed trustee of the Properties jointly with D3, and that the Properties be vested in their names;
- iii) an order that the Properties be sold;
- iv) a declaration that Mr Patel is entitled to be discharged and exonerated from all liabilities in respect of all charges registered against the Properties;
- v) a declaration that Mr Patel is not and has never been a director of D3, and that neither Mr Patel nor MKP Enterprise Limited are, nor have ever been, shareholders of D3,
- vi) a direction that the Registrar of Companies shall rectify her register of D3 accordingly, and
- vii) an order that D3 shall rectify its register of members and register of directors accordingly.

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136. At the hearing, I had invited the parties to seek agree the form of the order for sale. I understand that although Mr Patel's solicitors have sought agreement on the form of the order with Mr Hendron, no response has been received by them from him, despite reminding him that a response is due. In these circumstances, in the absence of any comments on the draft from Mr Mann and D3 despite having been given the opportunity to do so, I approve the form of the order submitted on behalf of Mr Patel.

**Costs**

137. Mr Hendron submits that Mr Patel "jumped the gun" by his failure to comply with the pre-action protocol, and his failure to issue a letter before action. The parties were engaged in a dialogue seeking to reach agreement on a compromise when Mr Patel issued his claim - there was nothing that suddenly occurred to justify issuing the claim, or which might suggest that Mr Mann would act to their detriment in relation to the Properties. Mr Hendron submits that Mr Mann had sought to resolve the dispute without recourse to the Courts, but it was only at the eleventh hour that mediation was arranged. As Mr Patel had jumped the gun, costs should not follow the event.

138. Mr Rolfe submits that Mr Patel had to bring the claim to vindicate his rights. He acknowledges that Mr Patel did "jump the gun", but had to do so in order to register a unilateral notice against the Properties as a pending land claim. As soon as the unilateral notice was issued, Mr Patel paused proceedings in order to allow time to reach a settlement. If a settlement had been reached, and Mr Mann had consented to Mr Patel being registered as proprietor and consented to a sale, there might have been merit in Mr Hendron's submissions. However, the claim had to be fought out in Court – and without a trial there would have been no resolution. Mr Rolfe submits that the evidence

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showed that Mr Mann treated the Properties as his own, and that it was necessary for Mr Patel to protect his position by registering a unilateral notice.

139. Whilst I note that the pre-action protocol had not been followed by Mr Patel, I consider that this was justified by the circumstances of this case – namely Mr Patel needed to file the claim in order to be able to register a unilateral notice against the titles to the Properties as a pending land action. The fact that Mr Mann had used the Properties for his own personal benefit justified taking this action to protect Mr Patel’s position. I find that Mr Mann was not prejudiced by Mr Patel’s failure to follow the pre-action protocol in the particular circumstances of this case, as Mr Patel “paused” the proceedings in order to allow for settlement negotiations to continue and for ADR to take place. I agree with Mr Rolfe that if this claim had settled at that point, Mr Hendron’s submissions might have carried weight. But the claim was not settled and was only resolved after a full trial.
140. I therefore find that Mr Patel is entitled to his costs on the standard basis.