



Neutral Citation Number: [2022] EWHC 2972 (Ch)

Case No: BL-2020-LDS-000056

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (KBD)

The Court House
Oxford Row
Leeds LS1 3BG

Before Her Honour Judge Kelly sitting as a Judge of the High Court

Between :

ENDCAPE LIMITED

Claimant

- and -

MUSGRAVE GENERATORS LIMITED

Defendant

APPROVED JUDGMENT

Neil Cameron (instructed by **Rollits Solicitors**) for the **Claimant**
Pia Dutton (instructed by **Mills & Reeve Solicitors**) for the **Defendant**

Hearing dates: 15, 16 and 17 February 2022
Date draft circulated to the Parties: 21 November 2022
Date handed down: 30 November 2022

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 10:30am on Wednesday 30th November 2022.

Her Honour Judge Kelly

1. This judgment follows the trial of the claim for damages and other remedies in respect of alleged breaches of contract and trespass to goods by Endcape Limited (“the Claimant”) against Musgrave Generators Limited (“the Defendant”).
2. The Claimant was represented by Mr Neil Cameron and the Defendant was represented by Ms Pia Dutton, both of counsel. I had the benefit of skeleton arguments from both counsel before the hearing as well as oral openings from both counsel at the start of trial.

Background

3. The Claimant brought three separate claims against the Defendant. They were referred to during trial as the Interpower stock claim, the Babcock claim and the trespass to goods claim. Before the trial, the parties had come to an agreement in respect of the trespass goods claim and I will deal with that claim no further in this judgment.
4. The Claimant supplies high-end, large generators and spare parts for generators. Previously, Mr Roland Kenneth Hudson (“ Mr Roland Hudson”) , Mrs Evelyn May Hudson (“ Mrs Hudson”) and their son Mr Justin William Hudson (“Mr Justin Hudson”), ran a related company which manufactured generators for the Claimant. That company was called Interpower International Limited (“Interpower”). In 2016, Mr Roland Hudson had been approached by Mr John East (“Mr East”) of Power Continuity Limited (“Power Continuity”) and Interpower quoted for generator sets for an unidentified client of Power Continuity. That client was later identified as Babcock International Limited (“Babcock”).
5. Interpower went into liquidation in 2017. Begbies Traynor were appointed as liquidator and they appointed Eddisons (who provide various professional services including the valuation and auction of business assets, including for companies in liquidation) to dispose of Interpower’s stock and assets. Mr Roland Hudson approached Mr Graham Buckman (“Mr Buckman”), the managing director of the Defendant, with a proposal that the Defendant should purchase Interpower. The

Defendant later came to an arrangement with the liquidators after Interpower went into liquidation.

6. The Claimant claims that on 21 June 2017, there was a meeting attended by Mr Roland Hudson and Mrs Hudson for the Claimant, Mr Buckman for the Defendant, an accountant and a solicitor. At the meeting, an agreement was reached between Mr Roland Hudson for the Claimant and Mr Buckman for the Defendant about the Interpower stock. The terms of that agreement were:

- (1) The Defendant would purchase the Interpower stock from the liquidator.
- (2) Thereafter, the Defendant would pay the Claimant one half of the Defendant's profit on the value of any stock which the Defendant proposed to retain and on the sale price of stock it sold.
- (3) The said profit would be calculated by taking the value of the stock retained or sold and then deducting:
 - (a) the price for the stock which the Defendant paid to the liquidator,
 - (b) the Defendant's costs of putting each item into saleable condition,
 - (c) the cost of transporting the stock to its place of business.

Thereafter, the Defendant used or sold various items of stock to a third party but refused to pay the Claimant's invoice for half of the profit, 50% of the total profit being asserted as £800.69.

7. The Defendant denies that there was any agreement in respect of the Interpower stock and asserts that it purchased all items of stock, including goodwill and intellectual property, from the liquidator in any event.

8. In addition, in its Amended Defence, the Defendant asserted that it was implausible that such an arrangement would have been made between the Claimant and the Defendant in any event. Mr Roland Hudson was a director of Interpower at the date the agreement was purportedly made. He owed directors' duties including to avoid conflicts of interest, not to accept benefits from third parties and to declare any interest in a proposed transactional arrangement to the joint liquidators. As there was no evidence that there was any declaration to the liquidators, it was unlikely any such agreement existed. In her skeleton argument, Ms Dutton went further than the pleaded

case to assert that the inevitable breach of directors' duties would mean that the agreement itself would be unenforceable or void. In addition, she asserted that it was too uncertain because a split was agreed "at some point in the future".

9. As to the Babcock claim, the Claimant's case is that at the same meeting, it was agreed that the Claimant would be entitled to 50% of the profits made by the Defendant on orders placed by customers who had been introduced to the Defendant by the Claimant. The Claimant asserts it introduced Babcock International Limited ("Babcock") to the Defendant and as a result of the introduction, Babcock placed a significant order. The Claimant originally claimed £90,973.30 or such other sum as would be due under the agreement. In the Claimant's skeleton argument, the claim was revised after receipt of the Defendant's most recent figures to £67,318.38 plus VAT representing 50% of the profit achieved on the contract by the Defendant.
10. The Defendant's case in respect of the Babcock claim is that although it was agreed in principle between the Claimant and the Defendant that, from time to time, certain contracts resulting from an order placed by the Claimant and manufactured by the Defendant would give rise to a profit share agreement, there was simply an agreement to enter future negotiations with the Claimant on a case by case basis and nothing more. Although the Defendant agreed that there had been a profit share agreed in respect of two contracts before the Babcock contract, it asserted that Babcock was in fact introduced to it by Power Continuity and its employee/director Mr East. Mr East was then paid a commission by the Defendant in respect of the introduction to Babcock. The Defendant asserted that to have had two broker/introducer agreements would have been absurd. In the alternative, the Defendant said that the only profit in respect of the Babcock contract was £10,338.23 so the maximum claim would be for £5,169.12 in any event.
11. In addition, Ms Dutton's assertions are:
 - (1) the agreement is too uncertain - firstly because the agreement will be binding in perpetuity, and secondly because of difficulties in how you construe what constitutes an "introduction".

- (2) the term pleaded is to introduce a “customer” and not a “broker” to the Defendant, even if the Claimant introduced Mr East and Power Continuity, that will not suffice because it was they who had introduced the customer Babcock.
- (3) there was no intention to create legal relations for the Babcock contract because the Claimant did not raise an order directly with the Defendant.
- (4) further and in any event, although this was not pleaded, when Mr East made his approach to Mr Roland Hudson, the approach was either to him as Interpower or to him in his personal capacity.
12. After the meeting, a draft deed of arrangement was drawn up by the solicitor present at the meeting. It was not in dispute that the draft deed was never executed.
13. I have had the benefit of reading all of the witness statements contained within the bundles, together with the various documents to which I was taken during the course of the trial and directed to in skeleton arguments.
14. During the trial, I had the benefit of written and oral evidence for the Claimant from Mr Roland Hudson, Mrs Hudson and Mr Justin Hudson. For the Defendant, I had the benefit of written and oral evidence from Mr Buckman and Mr Stuart Pickwick (Mr Pickwick”).
15. This is a case which turns substantially on the credibility of the oral evidence, but also on the documentary evidence contained within the trial bundles. I do not propose to rehearse all of the arguments raised, nor all of the evidence referred to during the course of the hearing. However, I record that I read and considered the evidence as a whole, as well as various documents within the trial bundle to which my attention was drawn, in addition to all those arguments before coming to my decision.

The Law

16. Happily, counsel largely agree on the legal principles, even if they disagree whether some of the principles apply on the facts of this case.
17. The parties agree that a director of a company owes fiduciary and statutory duties. Those duties include those set out in sections 171 to 178 of the Companies Act 2006

to the effect that a director must act in the best interests of the company and must not act so as to create a conflict of interest between the director and the company.

18. As to the formation of a complete or legally binding contract, Ms Dutton relied upon Chitty on Contracts (34th Edition) and the case of *Farrar and another v Rylatt and others* [2019] EWCA 1864 to argue that there was not a complete agreement here:
- (1) If parties reach an agreement on essential matters of principle but leave important points unsettled so that their agreement is incomplete, it is not binding.
 - (2) Where parties have agreed simply to negotiate, that is not a binding contract because it is too uncertain.
 - (3) Where an agreement fails to satisfy the requirements of certainty, that defect cannot be cured by implying a term that the parties must continue to negotiate in good faith.
19. I was also referred to the case of *Walford v Miles* [1992] 2 AC 128 and *Morris v Swinton Care and Community Limited* [2018] EWCA Civ 2763 in support of the proposition that where parties leave unresolved an essential matter of an agreement, such as the length of an extended option period, on the basis that the parties would remain free to agree or disagree about that matter later as in the *Morris* case, there was no bargain which the court could enforce.
20. In my judgment, the decision in *Farrar* does not particularly assist me, turning as it does on the facts of the individual cases being appealed including criticism of the way that the judge dealt with evidence and the effect of the fact that an agreement was expressed to be “subject to contract”. I do not accept that there are great similarities to the present case.

The Issues

21. The parties broadly agree on the issues to be determined.
- (1) Was there was an agreement in respect of the Interpower stock?
 - (2) If so, what were the terms of that agreement?
 - (3) If there was such an agreement, is it vitiated by reason of any breach of directors’ duties owed by Mr Roland Hudson to Interpower?
 - (4) Was there a concluded and legally binding agreement for a profit share in respect of client introductions by the Claimant to the Defendant?

- (5) If so, what were the terms of that agreement?
- (6) If applicable, what profit was made by the Defendant following the introduction of Babcock to it by the Claimant?

The Evidence

22. I do not propose to set out all of the evidence which I read and heard, nor the contents of all of the witness statements. It is not necessary to do so. I also remind myself that an honest witness can be a mistaken witness.

Mr Roland Hudson

23. In his witness statement dated 14 January 2022, Mr Roland Hudson described being employed by the Claimant with responsibility for design, sales and estimating. He and his wife started Interpower about 35 years earlier. He described Interpower as having a reputation as the go to manufacturer for large-scale generating sets. The company could provide larger and more complex generator sets than other manufacturers could. The company grew and all went well until around 2016.

24. In 2016, the company was asked to provide five generator sets to a Norwegian company which were intended to be used to supply power to an oil rig which was being decommissioned in the North Sea. The generator sets were built and delivered but the Norwegian company did not pay. Each of the generator sets were worth approximately £550,000.

25. The loss on the Norwegian contract put pressure on the cash flow of Interpower. Interpower was then contracted to build a generator set for a data centre with a build cost of between £300,000 and £400,000. Unfortunately, when the generator set was ready, the company was not ready to receive it and Interpower then went into liquidation.

26. The Claimant was incorporated before Interpower and originally was treated as Mrs Hudson's company. It was always a "supply only" company. Initially, it supplied all sorts of goods to customers. As time went on, Mrs Hudson was getting more enquiries about generator sets and the decision was made to start a manufacturing company.

The Claimant and Interpower were operated as “sister” companies. Mr Roland Hudson described how the Claimant would receive the orders for generator sets and then Interpower would subsequently manufacture them for the Claimant and the Claimant would supply to the end customer.

27. The relationship between the Hudsons and Mr Buckman began in approximately November 2016. Mr Roland Hudson met Mr Buckman at an industry corporate dinner after Mr Buckman had purchased the Defendant. Mr Buckman had no prior experience in the generator industry but saw the purchase of the company as a good opportunity. The generator sets being supplied by the Defendant were of a smaller scale than those manufactured by Interpower. The Hudsons and Mr Buckman and his partner met on a number of occasions and became friendly.
28. When Interpower started to have difficulties, the company accountant suggested getting specialist insolvency advice and recommended Begbies Traynor. Begbies Traynor then advised that Interpower be liquidated. Eddisons, a company associated with Begbies Traynor, had experience of dealing with stock valuation and disposal. Suggestions were made by Mr Roland Hudson of persons who may be interested in buying the stock. No one was interested and Mr Roland Hudson said he would contact Mr Buckman.
29. Mr Buckman was interested and made a number of visits to the factory around late May or early June 2017 to understand the business and inspect the stock. Mr Buckman was interested in purchasing the assets, provided that Roland and Justin Hudson went to work for him. Roland Hudson said he was not interested in going to work for anybody. Justin could make his own arrangements if he wished. Mr Buckman contacted Eddisons to let them know that he was interested in purchasing the stock and assets. A further meeting was therefore arranged on 21 June 2017 (“the meeting”) to discuss the details of the manufacturing process further and any other arrangements between Roland and Justin Hudson and the Defendant.
30. The meeting took place at the shared offices of Interpower and Endcape. It was attended by Mr Roland and Mrs Hudson, Mr Buckman, Mr Stephen Watson

(Interpower's accountant) and Mr Christopher Harrison. Mr Harrison was invited to join the meeting part way through at the suggestion of Mr Watson so that there was somebody to take minutes of the meeting and record what was discussed.

31. At the meeting, Mr Buckman made it clear he was prepared to purchase the stock and assets of Interpower, but he wanted Mr Roland and Mr Justin Hudson to work for the Defendant. Roland Hudson said he did not want to be employed again but would act as a consultant.
32. As to the stock, Roland Hudson said he was not involved in the sale of the stock because that was dealt with between the Defendant and Eddisons. However, Mr Buckman had told Mr Roland Hudson that the stock would be auctioned for £30,000 plus VAT. Mr Roland Hudson was unhappy with that because he viewed the assets and stock as being worth over £400,000. Mr Roland Hudson therefore agreed with Mr Buckman that if Mr Roland Hudson was going to assist Mr Buckman in selling that stock, he wanted to recover his overheads and it was therefore agreed between them that "we would then split the profit margin on any of Musgrave's sales".
33. As to Mr Roland Hudson's role going forward, it was agreed that he would sell generating sets for the Defendant and his payments for doing so as a consultant would be to "split the margin on any contracts for generating sets that I brought in to" the Defendant. It was agreed that the margin would be split 50/50. The split would be made after payment was received from the customer. The cost of the materials and labour would be deducted, as would the shipping costs of the Claimant and whatever was left would then be split.
34. Mr Roland Hudson said he did not see the handwritten copy of the minutes. After the meeting, a document called "draft agreement" was provided by Mr Harrison to Mr Roland Hudson for the parties to sign. That proposed agreement did not reflect what had been agreed at the meeting but added further matters. Mr Roland Hudson then emailed the draft agreement to Mr Buckman on 4 July 2017. Mr Roland Hudson sent a chaser email to Mr Buckman on 19 July 2017 asking if there was anything with

which he did not agree. There was no response and a signed agreement was never received from the Defendant.

35. Following the agreement reached between the parties, Mr Roland Hudson introduced the two contracts. The contracts were referred to as the Jamaica contract and the Bangladesh contract. The Claimant provided an order for generator sets to the Defendant in each contract. In the Jamaica contract, the Defendant was several months late in delivering and initially the generator sets were not to specification. The Claimant then shipped parts to Jamaica to rectify the defect. Initially, the Defendant tried to claim the costs of rectification before splitting the profit. However, eventually, the Defendant accepted that any additional transport costs and overheads were its responsibility to pay out of its 50% share of the profits.
36. On the Bangladesh contract, again the Claimant had an order which it passed to the Defendant. As shipping was described as “extremely expensive”, Roland Hudson said it was important, as part of the specification, to calculate exactly how many shipping containers would be required to ship the generator sets once complete. Unfortunately, when the Defendant built the generator sets, they were not to the Claimant’s specification and design, resulting in three shipping containers instead of one being required to transport the generator sets. Whilst there was initially a dispute, again in the end, the Defendant agreed to pay for the additional shipping costs from its 50% share of the profit.
37. The third contract was the Babcock contract which is the substance of this claim. Mr Roland Hudson maintained that the background to the Babcock contract is important. This is because the initial quote for the Babcock contract had been made by Interpower in around November 2016. Both the Claimant and Interpower had an ongoing relationship with Power Continuity and its employee/director Mr East since the early 2000’s. Power Continuity operated as a broker for generating sets. Mr East would approach the Claimant and Interpower if he had an order for a large and complicated set. At the time Interpower quoted for the Babcock generating set in November 2016, Mr East had not named the company which wanted the generating set. In addition, Mr East said that the company was not yet ready to make the order

and he would keep Mr Roland Hudson in the loop. That was not at all unusual and Mr Roland Hudson said that you may not hear anything further after a tender for two years or so.

38. Mr East contacted Mr Roland Hudson again by email on 25 July 2017 after Interpower had gone into liquidation. Mr East said that the contract was back on and that the tender needed to be re-entered. Mr East asked that Mr Roland Hudson “put a drink in it for him”. He also stated that the company was Babcock and the end user was the Royal Navy submarine service. Mr Roland Hudson explained that Interpower had gone into liquidation as a result of debtors but that he could still tender with the new specifications in the name of the Defendant and it would be built by the Defendant. Mr East said that he had never heard of the Defendant, but those arrangements were fine and the tender should be sent direct to Babcock.
39. Mr Roland Hudson explained the situation to Kim Kingdom at Babcock and later confirmed the situation with Mr East’s wife. The Defendant was asked for a letterhead in order to put the tender in the Defendant’s name. Mr Buckman sent Mr Roland Hudson the letterhead by email. In order to complete the tender, Mr Roland Hudson had to completely re-read the specification and recalculate a number of requirements after speaking with Babcock’s engineers to discuss changes which had been made from the original requirements. The amended tender was submitted to Babcock on 27 July 2017. Mr Roland Hudson also included £10,000 as commission for Mr East. He did not know the circumstances whereby the Defendant later paid Mr East a commission of £16,741.20.
40. In addition, Mr Roland Hudson put together various spreadsheets for the bills and included commission for Mr East. He also negotiated stage payments and payment terms with Babcock including that payment in full would be made before the final element of the work was completed. There were email exchanges between Babcock, Mr East and Roland Hudson regarding the quotation, specification, pricing and terms. Mr Roland Hudson was also asked by the Defendant to respond directly in respect of a number of queries which included dealing with some queries from Justin Hudson.

The Babcock order was received on 23 October 2017. Thereafter, Mr Roland Hudson dealt with a number of small enquiries but his involvement was fairly limited.

41. Unfortunately, there were difficulties with construction and it was delivered five months late. The Claimant then invoiced the Defendant for 50% share of the profit margin. The Defendant withheld payment asserting that Roland Hudson did not introduce either Mr East or Power Continuity to Mr Buckman and in addition, some litigation with Babcock should be paid for before the profit margin was split.
42. Mr Roland Hudson maintained that he had introduced the contract and disputed that any litigation costs should be deducted before the profit was split, as had happened in respect of the two previous contracts which had been introduced to the Defendant.
43. In cross-examination, Mr Roland Hudson accepted that he had never been an employee of the Claimant. The Claimant was treated as a family business and the Claimant and Interpower were treated as sister companies. He said that he did not run the Claimant. He only had contact with the Claimant's customers if there was a technical question which an employee at the Claimant could not answer directly. Although in his witness statement he stated he was employed by the Claimant, Mr Roland Hudson said he was never an employee in fact and never had a salary. He was not given any remuneration at any stage by the Claimant.
44. Mr Roland Hudson explained he had a great deal of knowledge of the engineering industry because he had been working in it for 50 years. Mr Roland Hudson maintained that although Mr Buckman may have contacted Eddisons himself, that was not until after Mr Buckman and Mr Roland Hudson had discussed the stock. Mr Roland Hudson accepted that by early June 2017, everybody anticipated that Interpower would go into liquidation.
45. Mr Roland Hudson was asked questions about the draft deed of arrangement which had been prepared by the solicitor following the 21 June 2017 meeting. Mr Roland Hudson agreed that the stock schedules to that agreement concerning retained stock and saleable stock remained blank and that they were never populated with

information. He also said that neither he nor Mr Buckman had signed the agreement. Mr Roland Hudson thought that the draft deed of arrangement reflected the fact that there had been discussions with Mr Buckman about the Defendant purchasing Interpower's stock and that if the Claimant could assist in selling stock (through Mr Roland Hudson) then both the Claimant and the Defendant needed to make money out of it. It was not an agreed document. The discussions took place after Begbies Traynor had been instructed. In any event, Mr Roland Hudson did not think that the document had been prepared correctly and, in the end, neither he nor Mr Buckman had agreed to it. Their agreement was made at the meeting. In addition to the way this claim was pleaded, Mr Roland Hudson also said that the Claimant would get half the profit if stock was used in a contract introduced by the Claimant.

46. As to the Babcock contract, Mr Roland Hudson agreed that the original tender made to Mr East in October 2016 was valid for 30 days after which it was subject to confirmation. He accepted therefore that it had expired and was not work in progress when Interpower went into liquidation. He also accepted that the contract files after August 2017 belong to the Defendant after they had purchased the trading style etc from the liquidators, apart from those which were signed in relation to the Official Secrets Act.
47. Mr Roland Hudson accepted that he had asked his wife to put the Babcock tender on the Defendant's headed notepaper and he was preparing the documents for the Defendant. He accepted that the document did not say he was acting for the Claimant. He also accepted that he had agreed to work giving consultancy advice from time to time to the Defendant. Mr Roland Hudson was adamant that he did that because it had been specifically agreed that there would be a 50/50 split of the profit for contracts introduced.
48. Mr Roland Hudson accepted that with the Jamaica and the Bangladesh contracts, the Claimant had raised an order directly with the Defendant. He also accepted that he had said to Mr East that he could quote "in the name of Musgrave". However, Mr Roland Hudson also stated that there was a lot more to it than that and a lot more that was said to Mr East. He accepted that he may not have said to Mr East that the

Claimant would be getting a profit. He was also adamant that it was him who got in contact with Mr Buckman and not Mr East. He described the account given by Mr Buckman as a “fairy story”.

49. The recent emails and text messages from Mr East were put to Mr Roland Hudson. He said that the account given there by Mr East was not the truth. The email from Mr East to him on 25 July 2017 showed that Mr East had come to him for a quotation directly in respect of the Babcock order. The fact of putting the quotation in as a Musgrave quotation was discussed with Mr East because the final customer needed manufacturer guarantees which the Claimant could not provide as it did not manufacture. Mr Roland Hudson accepted that the introduction did not happen in the same way as with the Bangladesh and Jamaican contracts. He further accepted that Babcock had emailed the Defendant and Mr East to make enquiries about specifications and that Babcock wanted details about the relationship between Power Continuity and the Defendant.

50. He accepted that Babcock had not been told that the Claimant was working on the project. However, despite the fact that everything was done in the name of the Defendant, the bid, the engineering and all of the finances etc were all done by Mr Roland Hudson and then submitted on the Defendant’s letterhead.

51. Mr Roland Hudson accepted that the Claimant had split the extra costs 50-50 in respect of one of the earlier contracts in order to be fair with the Defendant even though the additional costs were not the fault of the Claimant. Despite the fact that the Claimant had done that to be fair, in cross examination when asked about whether the Claimant and Defendant were just talking or whether there was an agreement, Mr Roland Hudson was adamant that there had been a simple agreement which benefited both the Claimant and Defendant. He had a great deal of experience in the industry and lots of contacts when Mr Buckman did not.

Mrs Hudson

52. In her witness statement dated 13 January 2021, Mrs Hudson explained how she was a director of the Claimant until 2014 and since then ran the accounts for the Claimant.

The Claimant was set up before Interpower as a supply only company. Once Interpower began manufacturing generator sets, the Claimant began to supply more engineering parts including generator sets.

53. Mrs Hudson also described meeting Mr Buckman and his partner on a number of occasions after he had bought the Defendant company. Thereafter, she saw him after Interpower was in liquidation when Mr Buckman expressed an interest in the stock.
54. Mrs Hudson recalled the meeting on 21 June 2017, and she agreed with her husband about who was there. Roland Hudson had explained to her that Mr Harrison had been asked to attend to minute the meeting and record any agreements made between Roland Hudson and Mr Buckman. She recalled that the main topic of conversation was the agreement reached that if Roland Hudson secured a contract for a generator set which the Defendant subsequently manufactured, the profit on the contract was to be split equally between the Claimant and the Defendant. She recalled shipping being discussed during the meeting and agreed with her husband as to which items were to be deducted from the profits before it was split.
55. Mrs Hudson recalled her husband mentioning that Mr Harrison had sent through a draft of an agreement which he had prepared from his notes of the meeting. However, she had not read it. She also supported her husband in asserting that the Jamaica contract, the Bangladesh contract and the Babcock contract were all introduced by Mr Roland Hudson to the Defendant. She and her husband had known Mr East for many years and that he would come to them for anything complex or technical. She supported her husband's account of the circumstances surrounding the Babcock tender. Once the Defendant's letterhead was received, she typed up the tender specification in order for Mr Roland Hudson to send it to Mr East. In the end, Mr East wanted it to be sent directly to Babcock and on 27 July, she emailed the tender directly from the Claimant, on the Defendant's letterhead, directly to Babcock.
56. After the contract had been completed, someone who worked for the Defendant contacted the Hudsons to explain that the Babcock contract had been completed and at that stage, Mrs Hudson sent an invoice to the Defendant for the Claimant's 50%

share of profit (invoice number 12) on 17 April 2018. In fact, the set was not complete and therefore that invoice was credited and later reissued as invoice number 23 on 14 May 2019. It has not been paid.

57. In cross-examination, Mrs Hudson said she had not produced any notes herself of the meeting on 21 June 2017. She accepted that she could not recall very much and she did not recall the stock being discussed. She recalled the discussion being about the two businesses working together. Specifically, she said she was under the impression that there was a 50/50 split of the margin agreed.

58. Mrs Hudson thought that Mr Harrison had become quite confused when he made his notes and prepared the draft agreements when she had looked at what was written. Mrs Hudson agrees that a different process had been used with the Bangladesh and Jamaican contracts than with the Babcock contract. She accepted that the Babcock contract started with Power Continuity but she was adamant that Mr East had given the job to Roland who dealt with the details with Mr Buckman. It was nothing to do with Interpower. The Claimant prepared the quotation on behalf of the Defendant. There was no reason for Babcock to correspond directly with the Claimant.

Mr Justin Hudson

59. Justin Hudson became the managing director of the Claimant in 2018 when Mrs Hudson reached retirement age. Before that, he had worked at Interpower full-time in the office since leaving university as a technical person. At the age of 26, he was made a director and took on more responsibility for the day-to-day running of the company. As his parents became older, he gradually took on more and more responsibility and was managing director when Interpower went into liquidation in 2017. When that happened, the Claimant continued to receive enquiries about generators sets and the Claimant supplied those customers.

60. When Interpower had difficulties and the Defendant was interested in purchasing stock and assets, Mr Justin Hudson said he and his father were quite open with Mr Buckman explaining the difficult position they were in. Although Mr Justin Hudson had met Mr Buckman on a number of occasions looking at the stock and the factory,

Mr Justin Hudson was not present at the meeting on 21 June 2017. However, he said he had been present at various informal meetings and discussions about the fact that the Claimant was receiving enquiries about generator sets and now did not have Interpower to manufacture them. Mr Buckman was keen to increase his business and to manufacture the orders for the Claimant. That was where the discussions began about sharing profit on contracts introduced for the mutual benefit of both the Claimant and Defendant.

61. Although Mr Justin Hudson was not present at the meeting, his father had told him after the meeting that profits on contracts introduced by Roland would be shared equally as had been discussed during the initial discussions.

62. Mr Justin Hudson went to work for the Defendant. He had understood from Mr Buckman that he would be working at Daventry three days a week and working from home two days a week, joining at director level. A package was discussed which was to include things like a company car and assistance with accommodation costs when he was in Daventry. Mr Justin Hudson said when he started, there was no company car, mileage was not paid and he would be asked to find cheaper accommodation than he had located. He was never formally made a director of the company.

63. Mr Justin Hudson was working with the Defendant when the Bangladesh and Jamaican contracts were introduced by the Claimant. He described Mr Roland Hudson tendering for the jobs, producing the specifications and pricing up the jobs then putting a margin on it which the Claimant and Defendant would split. The specifications and details were always copied by email to Mr Buckman. Within the specifications, details were set out showing how the pricing was made up, including details of all of the components so that it could be checked that up-to-date pricing for each component was included within any final quote or tender. Once a final specification and pricing tender had been agreed, if successful, the Claimant would raise an order on the Defendant. Whilst he worked there, Mr Justin Hudson felt that the Defendant poorly managed the ordering and obtaining of equipment in order to complete its orders.

64. Mr Justin Hudson supported his father's account about the background to the Babcock contract stating Mr East initially obtained a quote from Interpower. The first time Mr Buckman met Mr East was when he came to the Defendant's offices and Justin Hudson was there to introduce them. Mr East had rung Mr Justin Hudson, as he was passing after the order had been placed. He wanted to come to meet Mr Buckman and to see the Defendant's factory. The meeting was a general chat to see what the Defendant did and potentially what more business could be brought to the Defendant.
65. Mr Justin Hudson said all of the work in putting together the technical specification and tender was done by his father and then a quotation was sent on the Defendant's letterhead from the Claimant. The quotation included commission of £10,000 for Mr East. Technical questions came back to Mr East who in turn referred those questions to Mr Roland Hudson. Queries were raised by email to Mr East who then forwarded those to Mr Roland Hudson. On occasion, where there were questions to do with some of the Defendant's components, Justin was asked by his father to answer technical questions.
66. When the order was placed, it could not be placed directly with the Claimant because the Claimant did not have, for example, ISO 9000 because it was not a manufacturer itself. As such, it did not therefore have the necessary requirements for Babcock to place the order directly with them. That led to the order being placed directly with the Defendant rather than through the Claimant. The specifications were finalised between Babcock and the Defendant. Mr Justin Hudson dealt with the drafting and technical drawings for the container for the generator because the draughtsman with the Defendants, Steve Grace, did not think it was possible to build a certain size of container, but Interpower had achieved that build in the past.
67. Before this contract, the Defendant did not manufacture its own containers for generators but rather bought them in. Mr Justin Hudson designed the container and agreed it with Babcock. He described there being some resistance from some of the Defendant's workers because they had not built containers before. Mr Justin Hudson felt he had resistance from many people at the Defendant including Mr Buckman. By

the time the build was due to start, the project was already running late as a result of the attitude of the Defendant's workers.

68. In the end, Mr Justin Hudson left the Defendant once the build had got to the point where the generator sets just needed assembling. Despite that, he understood that it still took several more months to finish the build. Mr Justin Hudson understood that the additional litigation and costs between Babcock and the Defendant were as a result of the delay in delivery and not any other reason.
69. Mr Justin Hudson also disputed the claim for overheads as set out by the Defendant. He disputed that Ricardo Costa (a previous employee of Interpower) worked on the Babcock project for 100% of his time and also disputed that he himself worked on the project 80% of his time. They both worked on projects other than the Babcock contract as part of their work. In addition, Justin Hudson could not understand the time claimed for the draughtsman Steve Grace when it was he who produced the manufacturing drawings for the Babcock contract.
70. In cross-examination, Mr Justin Hudson explained that he has been a director of Interpower since 2001. He became managing director of the Claimant in 2010. He was a director of Interpower when it went into liquidation. Mr Buckman had contacted Mr Justin Hudson at the suggestion of Begbies Traynor and Eddisons when Interpower was looking for someone to buy the company. Liquidation was a last resort. He agreed that there were informal discussions and that he was not present at the meeting on 21 June 2017.
71. After the liquidation, Mr Justin Hudson started work at the Defendant in the September 2017. He left in May 2018 having given his notice on 10 April 2018. He was aware that the tender for the Babcock contract went out on behalf of the Defendant. Mr Justin Hudson explained that when the tenders went out for the Bangladesh and Jamaican contracts, tenders were made on the basis that the Claimant was selling its own generators. For both of those contracts, the Claimant did not tell the customers that the generators were the built by the Defendant. In addition, the generators went out badged with the Claimant's identification marks rather than the

Defendant's identification marks. The situation was different for the Babcock contract. Mr Justin Hudson said there his father was selling the Defendant's generators on behalf of the Defendant.

72. On the Babcock contract, Mr Justin Hudson accepted that he had sent information to his father if Mr East had asked for information so that his father was kept in the loop. Mr Justin Hudson was taken to the initial emails after the contract was awarded to the Defendant. It was suggested that it was in fact Mr East who was replying to questions raised by Babcock without input from any of the Hudson family. Mr Justin Hudson denied that, saying the email of 7 September 2017 was word for word the email which he had sent to Mr East answering the questions posed by Babcock.
73. Mr Justin Hudson was then taken to further emails from Babcock dated 28 September 2017 where further questions were asked. The answers given by way of technical clarification were set out in green writing in an email again sent by Mr East. Mr Justin Hudson stated that those answers again had been copied and pasted from an email which his father had sent to Mr East. Mr Justin Hudson accepted that he had forwarded emails to his father at an Interpower email address.
74. Mr Justin Hudson accepted that he had not been working for the Claimant at any time he was employed by the Defendant. Further, he accepted that there was no mention of the Claimant in correspondence between the suppliers because he said his father did not have an Endcape email address until 2018. Mr Justin Hudson did however say that his father had stated that he was working on behalf of the Defendant in respect of the Babcock contract.
75. Mr Justin Hudson also accepted that he had not been part of the initial introduction between Mr East and Babcock to Mr Buckman. He stated that was his father. When pressed as to the method for calculating the split profits, Mr Justin Hudson was adamant that the agreement had been that the Defendant was not entitled to deduct legal costs or overheads. Both the Claimant and Defendant would pick up their own overheads in respect of any contracts and then split the profit on any job which the Claimant brought to the Defendant 50/50. When it was suggested that was unfair

because that would mean apportioning costs between any jobs provided by the Claimant and other customers, Mr Justin Hudson replied it was not unfair because the other customers did not bring work to the Defendant. They just ordered. Mr Justin Hudson did not accept that the Defendant would have to apportion overheads into contract prices in order to make any profit. He said that was not the agreement made between his father and Mr Buckman.

Mr Buckman

76. In his witness statement dated 7 January 2022, Mr Buckman said that he had purchased the Defendant in 2001. He said he knew Interpower and Mr Roland Hudson because Interpower was a direct competitor. He explained that he was contacted by Mr Roland Hudson in the middle of 2017 asking whether the Defendant would be interested in building generator sets for him. That led to a number of long meetings with Mr Roland Hudson at his offices in Pickering.
77. Mr Buckman described Mr Roland Hudson regaling him with stories of huge profits over the years and offering to provide the Defendant and Mr Buckman personally with his considerable experience and knowledge to help us build generating sets. There was however no mention at all that Interpower was in difficulty.
78. Shortly after, Mr Roland Hudson explained that Interpower had lost money as a result of some bad business and he needed to find someone with whom he could cooperate to build generator sets. Mr Buckman said he gradually learned of the severe financial difficulties and large debts of Interpower. He said that evolved into Mr Roland Hudson asking whether he would be interested in buying old stock. The discussions covered the possibility of the Defendant buying spares and equipment at a greatly reduced price from the liquidator. Thereafter, Mr Roland Hudson could help to sell the stock and he could benefit from the Defendant's onward selling of the items including sharing profits. Mr Buckman maintained that these were tentative discussions and there was no agreement to a split profit. The Defendant's factory manager, Mr Pickwick, went to Pickering to view the stock and equipment on 3 June 2017. After viewing the stock and equipment, Mr Pickwick thought that the stock was extremely old and there was nothing of much interest. It would be difficult to reuse or sell the items.

79. There was a further meeting on 21 June 2017. Mr Buckman was surprised that Mr Roland Hudson's solicitor and accountant were present. There were discussions at the meeting about the Defendant buying the name of Interpower International, the goodwill, and everything except the debt. Various ideas were discussed but Mr Buckman asserted that nothing was agreed. He was then sent a draft deed of arrangement which had been drawn up by the solicitor. He said it was completely unacceptable. Many of the clauses had not been discussed at the meeting.
80. As to the alleged agreement of a split of profit following the sale of stock, Mr Buckman agreed that some discussions which he described as "some fanciful thoughts" did take place but no agreement was reached about the stock because it was unknown what additional costs would be required to make the items saleable nor what would be required in order to give warranties in respect of old equipment. In any event, he was dealing with the purchase of stock with the liquidators and not the Claimant. Eventually £33,000 including VAT was paid for the stock and an additional £2500 plus VAT was paid in respect of the intellectual property.
81. Mr Buckman received an email on 19 July 2017 after Interpower had gone into liquidation which noted that a draft agreement had been previously sent and asked whether there was anything with which Mr Buckman did not agree. Mr Buckman asserted that from that message, it was clear that Mr Roland Hudson realised that Mr Buckman would not be happy with the draft agreement. In addition, the liquidator was asserting that anything to do with Interpower should now be discussed with him and not Mr Roland Hudson.
82. Mr Buckman described offering Mr Justin Hudson a job because he needed an experienced general manager. Mr Justin Hudson was employed between 5 September 2017 and 10 May 2018. Mr Buckman agreed that he had offered to employ Mr Roland Hudson as well. However, Mr Buckman asserted that Mr Roland Hudson offered instead to provide his assistance when he could and stated that remuneration would be discussed at the time.

83. Mr Justin Hudson was responsible for incorporating the Interpower website into the Defendant's format and was involved in the design and build of the Babcock generator. However, Mr Buckman said that Mr Justin Hudson was unable to manage the business despite Mr Buckman and the finance manager trying to help and train him. As he was unable to function to the Defendant's satisfaction, he resigned.
84. As to the Babcock contract, Mr Buckman asserted that Mr East had contacted him directly in about July 2017 and it was Mr East who introduced the Defendant to Babcock. The Defendant supplied its quotation dated 27 July 2017 and was awarded the contract. Whilst he understood that the original quotation was done by Interpower, by the time Babcock was ready to proceed, Interpower had ceased trading and the Defendant had bought all of its assets but not the work in progress. Mr Buckman said that he understood that Mr East learned that the Defendant was now the new owner of Interpower's assets. Mr East therefore approached the Defendant to discuss whether it could build the set, rather than having anything more to do with Mr Roland Hudson about whom Mr Buckman said Mr East was "quite disparaging".
85. Mr Buckman exhibited some text messages which he asserted had been received from Mr East in which Mr East asserted that it was his choice with whom the order was placed and that Mr Roland Hudson did not introduce Babcock to the Defendant. Thereafter an email was sent confirming that recollection. The Defendant manufactured and delivered the generator to Babcock and paid 5% of the contract price to Mr East, as was agreed between the two of them.
86. Mr Buckman agreed that on two occasions commission was paid to the Claimant on orders introduced by the Claimant. However, he maintained that Mr Roland Hudson did not introduce Babcock and so the Claimant was not entitled to any fee. There was paperwork evidencing the two orders the Claimant did introduce which is why the Claimant was paid.
87. In cross-examination, Mr Buckman said he did not think there were any errors in his statement. He also said that he understood that there was no restriction placed on the length of the statement and he could have put anything in it which he considered to be

relevant. Since the making of the statement, he thought that further matters of relevance had come to light, despite the fact that his witness statement was only made six months ago.

88. Mr Buckman was asked questions initially about when he was aware of the quote made by Interpower to Power Continuity in 2016 for the Babcock contract. He initially said that he could not say when he was aware of that 2016 tender. He did not remember. He must have known about it at the date he made his statement, or he could not have referred to it. He then said he probably would not have known about it before December 2020.
89. Mr Buckman said that Mr East had contacted him personally by telephone. The Defendant had then supplied a quotation dated 27 July 2017 and then got the contract. He was adamant that Mr Roland Hudson had not contacted him about the Power Continuity opportunity. Mr Buckman was then taken to a letter dated 14 October 2019 from the Defendant's solicitors (at the time) to the Claimant's solicitors. In that letter, the Defendant's then solicitor wrote at paragraph 3:
- “3.1 Whilst it is not disputed that the terms of a profit split were agreed between Interpower's Roland Hudson and our client's Graham Buckman, the terms agreed were that any profit share would only apply to contracts where Mr Hudson had introduced those orders to our client, and any split would relate to profit on those instructions (not to costs or overheads);
- 3.2 Invoice 23 relates to an order placed by Babcock. This was not an order introduced by Mr Hudson (or by Endcape). It was an order which was introduced to our client by Mr East of Power Continuity. Mr East invoiced our client for the commission on the order and this has been paid by our client...”
90. When questioned about this email, Mr Buckman stated that he had nothing to do with it. When it was suggested that he must have, as it was a response to the Claimant's solicitors in relation to this claim, he said that it had been handled by his finance manager, Jo Wade. He said that Jo Wade had not been to see him about the matter. He said that paragraph 3.1 of the email is not correct but paragraph 3.2 was correct. He said he did not know how the wrong information got into the letter. It was being dealt with by his accounts department.

91. When it was suggested to him that his finance manager must have got her information from somewhere, Mr Buckman stated that she would have been aware that there were agreements although not on the Babcock contract. However, he said she certainly did not refer this to him. Even though he dealt with matters with the Claimant, he said he delegated matters to his managers. It was then suggested to Mr Buckman that in order to do their job effectively, the managers would need information from him. Mr Buckman then stated that he thought that Jo Wade had been party to the discussions in 2017. He had not previously mentioned this in his witness statement. He remained adamant that although he had made the agreements and the letter specifically mentioned him, Jo Wade had never referred it to him. He said he thought her wording was “slightly inaccurate” and he then said “she was doing her best without the need to refer it to him”. He had been unaware of the existence of the letter until he had been asked questions about it.
92. Mr Buckman was then asked further questions about the second letter dated 31 October 2019 from his then solicitors. The first numbered paragraph of that letter also admitted that the terms of the profit share agreement were agreed on contracts introduced by Mr Roland Hudson. The dispute between the parties at that stage was again put on the basis that it was Mr East and not Mr Roland Hudson who had introduced Babcock and thus Mr East was entitled to the commission. Mr Buckman said he was not aware of this letter either nor would he expect to be aware of it.
93. When pressed on the matter, he was asked if he agreed that the letters were clear. It was put to Mr Buckman that the letters admitted that there was an agreement but asserted that Mr Roland Hudson had not introduced Babcock. Mr Buckman then said he would not know because he had not read all of the letters. He was invited to read the relevant paragraphs. When the question was asked again, he then agreed that the letters did admit an agreement but said there was no introduction. He also agreed that if the introduction had been made by the Claimant, the agreement would apply and something would be payable.
94. Mr Buckman was next asked questions about the Amended Defence. Again, he said he had never seen it before. He was taken to the statement of truth signed by the

Defendant's solicitor, with authority given to sign it by the Defendant. Mr Buckman maintained that he had not given authority to the solicitor to sign the Amended Defence. He said it was Jo Wade, the finance manager, who had given the authority.

95. Mr Buckman was asked about the accuracy of some of the paragraphs. Mr Buckman confirmed that Mr East contacted the Defendant directly. He denied that Mr Hudson introduced Babcock. When asked about the commission paid to Mr East, he agreed that two instalments of commission had been paid to Mr East when he was taken to the invoices. He was asked if a further instalment was also paid and he said he would not know because all of the matters were dealt with by Jo Wade. Mr Buckman thought that Jo Wade had agreed to pay Mr East and it was nothing to do with him. He did not know when she had agreed to pay the increased commission. He was asked what the commission paid was for. He said it was for introducing the Defendant to Babcock. He then said that was his assumption because he had not in fact been involved in the discussions. There was no email about the agreement from him. He thought there would be one from Jo Wade, although he did not know.

96. Mr Buckman was then taken to two emails between his solicitor and Mr East in April and June 2021 concerning the evidence which Mr East might give in this litigation. In both emails, Mr East set out his understanding which was that Power Continuity negotiated the contract for the Babcock generator which was to be built originally by Interpower. Subsequently, Interpower was sold to the Defendant. Included in the sale was the Babcock contract. All work on the Babcock contract was then carried out by the Defendant who took over the contract. The Defendant built and delivered the generator. Mr East said that the introduction fee was paid to Power Continuity because "Interpower did not exist" and in addition "the Hudson Family never had any involvement with the *contract delivery*" (emphasis added).

97. Mr Buckman said that Mr East was factually incorrect because there was no Babcock contract when the Defendant bought Interpower. Mr Buckman maintained that Mr East introduced the Babcock contract to the Defendant but not until the Defendant had purchased the Interpower assets. He said Mr East was wrong about the Babcock contract being included in the sale. It was put to Mr Buckman that the explanation

given by Mr East appeared to be his justification for getting the commission in respect of the Babcock contract. Mr Buckman said that the commission was rightly paid to Mr East but not at the time of the contract. An enquiry about the Babcock tender might have been live at the time he bought the assets of Interpower, but he would not know. When pressed on the matter, Mr Buckman eventually said that Mr East must have been speaking about something which happened before the liquidation of Interpower. He then changed his mind and said it could also have been an enquiry that Mr East sent later on.

98. Mr Buckman was also asked specifically about the phrase used by Mr East that the Hudson family had “no involvement with the contract delivery”. Mr Buckman said it was semantics but Mr Justin Hudson was working for the Defendant so he did have involvement. When pressed about other members of the Hudson family, Mr Buckman then said he did not understand what was meant by “contract delivery” and asked that to be explained to him. When it was explained that “contract delivery” would mean what happened after the contract was agreed and making sure that the customer got what he ordered, Mr Buckman then said he was looking at delivery and he meant physical delivery to the customer. He was again pressed and asked if he thought Mr East had meant that. He replied “possibly not”. Mr Buckman was again pressed on whether or not the Hudson family did have anything to do with contract delivery and he said that Mr East was incorrect again.

99. Mr Buckman was next taken to an email dated 5 February 2022 from Mr East to him. Mr Buckman agreed that the email suggested that the Defendant’s solicitor had spoken with Mr East. He also agreed that the email suggested Mr East had been told that he was wrong to think that the Babcock order was work in progress. The Defendant did not purchase any work in progress from Interpower. Mr Buckman was asked repeatedly whether it appeared from this email that that the Defendant’s solicitor had told Mr East that the basis for his justification for receiving commission on the Babcock contract was wrong and so Mr East was then advancing a different justification. Mr Buckman did not really answer the questions, stating the difference in wordings were just semantics and he did not think that Mr East was trying to justify his commission in the emails at all.

100. Mr Buckman then said he did not think that Mr East had to justify getting a commission at all. Mr East had rung him and introduced Babcock and therefore, whatever the arrangements Mr East had made with Jo Wade, he was entitled to commission. Mr Buckman then agreed that commission would not be paid for an introduction unless that was agreed between the parties. He said his sole knowledge about what was agreed with Mr East came from emails. He did not know what had been agreed specifically because that was dealt with by his finance manager.
101. Mr Buckman continued to reject the suggestion that the emails were trying to justify increased commission being paid to Mr East. In the end, he agreed that the emails “possibly” read as trying to justify the commission. Mr Buckman then qualified that by saying that Mr East did not need to justify the commission payments to him. Mr Buckman then said that Mr East possibly had misunderstood the situation because Mr Buckman had mentioned to him that the work in progress from Interpower had been left with the liquidator. When asked further questions about the need to write such an email to Mr Buckman, Mr Buckman said that he and Mr East had a lunch and possibly Mr East was trying to clarify the discussion they had. Mr Buckman said “I didn’t want to put words into his mouth”. He then accepted that he had asked Mr East to write the email “to clarify what the situation was”. Although Mr East was willing to write the email, he would not give a witness statement.
102. There were text messages between Mr Buckman and Mr East on 21 December 2021, before that email of 5 January 2022. That email was sent after a meeting, but Mr Buckman said he could not remember what the meeting was for, nor whether it was about this case. The exchange of texts happened after the only lunch they had. Mr Buckman had texted Mr East asking:
“Hi John, it was really good to catch up & I will make some suggestions later tonight. Can you remember did Roland introduce you to MUSGRAVE? How did you discover us for the Babcock job?”.
- Mr East replied:
“I came to you myself
Roland at no time ever mentioned Musgrave’s.

I knew of you and came myself. Roland can throw that suggestion out ✓”.

That text was immediately followed by a further text from Mr East which stated:

“Great chat today

Confidential and mates chatting

It was good”.

103. Mr Buckman agreed that the Defendant had not done any work with Power Continuity before the Babcock contract. He said that he and Mr East did not know each other previously. Their first business was the Babcock contract.

104. Mr Buckman was then taken through the documentation and email traffic concerning the Babcock contract. The initial quote was sent to Babcock by the Defendant in a letter dated 27 July 2017 signed by Mr Buckman. Mr Buckman accepted that the letter and quotation was sent from an Interpower email address to Babcock on 28 July 2017 at 15.51. He further accepted that before that date and time, there had been no document which was a communication directly from the Defendant to Babcock. He also said that he was not aware of any document directly from Mr East to the Defendant before that date and time.

105. Mr Buckman was then taken to the emails sent by Mr East on 25 July 2017 at 14.02 to Roland Hudson. The email read:

“Hi Roland,

Finally Babcock came back to us.

Here is the request for a quotation so I have forwarded it direct to you my friend

You need this.....

Put a drink in it for us if you succeed”.

Mr Buckman said he was not aware of this email before as he was not copied in and he accepted that there was no equivalent document in similar terms to the Defendant.

106. Mr Buckman was next taken to an email sent by him to Roland Hudson on 27 July 2017 at 9.42. Mr Buckman accepted that from the email, it looked like there had been communication between Mr Roland Hudson and Mr Buckman on 26 July, the day after Mr East had sent confirmation about the Babcock contract being ready for a quote. Mr Buckman’s explanation for the contact between himself and Mr Roland Hudson was that the Defendant was in the process of buying Interpower’s assets.

Then he said he could not remember because it was a long time ago and he thought it would have been to do with the purchase of the assets because why else would they meet? He was adamant in his answer that there was no discussion of the Babcock contract on 26 July before then saying that he was not at all confident about that answer he had just given and that he could not really remember.

107. Mr Buckman's explanation for sending a letter head and continuation sheet to Roland Hudson was "probably because he's asked for it". When asked why Mr Roland Hudson would have asked for it, Mr Buckman said to put the Defendant's letter heading on to the quotation. Mr Buckman then accepted that was the only possible explanation given that Mr Roland Hudson drew up the quotation. When it was suggested that it followed that there must have been some discussion about the contract, again Mr Buckman's memory failed him. Mr Buckman then would not accept that was the only sensible explanation. He asserted it was also a credible explanation that he could have been talking about the assets or purchase of the business. Despite the fact that the quotation was drawn up the next day, Mr Buckman would not accept that there had been any discussion about the contract and that he simply could not recall what had happened on 26 July. He agreed that Roland Hudson had drawn up a quotation. He accepted that Mrs Hudson had sent the quotation to Mr East and Babcock although he was unaware of that at the time. He accepted that neither he, nor anybody else at the Defendant, had sent the quotation. He also agreed that Roland Hudson had sent a copy of a quotation to him from an Interpower email address.

108. Mr Buckman was again taken to his witness statement and to his assertion that Mr East contacted him to introduce the Babcock contract. He would not accept that what he had put in his statement was not a fair summary of what had happened. He asserted that it was factually correct and evaded answering questions about the fact that the statement omitted significant detail about how the contract came to the Defendant, stating that he thought there were other issues in the case. He eventually accepted that there could perhaps have been more information put in the statement. He would not accept that the statement was deliberately misleading, even though he accepted that Mr Roland Hudson was involved in the Defendant obtaining the contract and he had not mentioned it because he "did not think it was necessary". In his view, Mr Roland

Hudson was working as Interpower, that was the business which he had purchased, and the Claimant had nothing to do with it. The fact that Mr Roland Hudson was using an Interpower email address meant that he must be working as Interpower, even though the company was in liquidation.

109. Mr Buckman was then taken to emails showing that Mr Buckman had forwarded to both Mr Roland and Mr Justin Hudson the Defendant's registration certificate confirming audit and approval for management standard BS EN ISO 9001:2008 for the manufacture, installation and maintenance of generating sets. Mr Buckman said he could not remember why he had sent the documents to Mr Roland Hudson but he would imagine that it would be so that they could be sent on to Mr East in connection with the Babcock contract.
110. Mr Buckman accepted that queries about the contract specifications came from Babcock to the Defendant and Mr East. Mr Buckman said that he would have passed on the questions to one of his employees to sort out. He would have done that whenever Babcock made enquiries. He could not however remember to whom he had passed those enquiries, but he thought it may have been Steve Grace or Dave Ball. Mr Buckman said he had asked for information and queries to be sent to Mr Roland Hudson because the Defendant had bought the intellectual property of Interpower and Mr Roland Hudson was helping us with that.
111. Mr Buckman said Mr Roland Hudson was providing services to the Defendant. When asked if he would expect to be paid for those services, Mr Buckman said "I expect so". When asked if there was an agreement to pay him, initially Mr Buckman said it was discussed and that something would be agreed when they were putting matters together. He was then pressed as to whether or not there was an agreement. Mr Buckman agreed there was and it was entered into by him for the Defendant. He said he thought the offer was in writing but he could not recall how much it was agreed to pay Mr Roland Hudson. He also accepted that Mr Roland Hudson had never been paid because of the conflict which developed.

112. Mr Buckman accepted that there were ongoing communications between Mr East and Mr Roland Hudson concerning the Babcock contract. He said he was not aware of those at the time and if he had been aware, he would have queried it in respect of commercial communications but not in respect of technical communications. He accepted that some of the queries were commercial and in direct response to a query from Babcock. Mr Buckman was then taken to an email sent by Mr East to Mr Roland Hudson on 16 October 2017 which email forwarded an email which Mr East had received from Babcock. The email subject line was amended to add the words “Private for you (*sic*) eyes Roland”. In that email, commercial details were also set out and Mr East asked Mr Roland Hudson “What do you want to do Roland. What does Graham want to do?????”. When asked about it, Mr Buckman said that he could not account for why Mr East asked those questions to Mr Roland Hudson nor what Mr Roland Hudson would want to do about it.
113. Shortly before the contract was awarded, Mr Buckman accepted that Mr Roland Hudson had been forwarding information to him. He also accepted that the same day information was forwarded, Mr Buckman sent documents concerning the order from Babcock’s to Mr Roland Hudson, just over an hour later. He accepted that this was “pretty much the first thing he had done”. He said that the reason for that was because he thought Mr Roland Hudson will be pleased to see that the Defendant got the order. He also accepted that it was Mr Roland Hudson (and not himself) who sent a copy of the order to Mr East. Mr East replied to Mr Roland Hudson but also copied in Mr Buckman and Mr Justin Hudson, thanking Mr Roland Hudson, and saying it was the beginning of great things for the Defendant.
114. Mr Buckland accepted, based on the documents, that it was fair to say that Mr Roland Hudson was involved throughout the tender process including dealing with many enquiries from Babcock. He also accepted that Mr Roland Hudson was involved throughout the delivery process, although he also asserted that by this point, Mr Justin Hudson was working for the Defendant and therefore Mr Justin Hudson “would have been dealing with all necessary works for delivery”. Having made that assertion, Mr Buckman then could not say why, after the start of November 2017, Mr Roland

Hudson was sending details of materials and prices to employees of the Defendant, copying that information to Mr Justin Hudson and Mr Buckman.

115. Mr Buckman sought to explain away further contact from Mr Roland Hudson about the contract and technical requirements by saying that relations between himself and Mr Roland Hudson at that point were pretty good. Mr Roland Hudson had put together the initial quote in 2016 and so the Defendant was getting his advice. Mr Buckman was then taken to an email dated 23 January 2018 from Mr Roland Hudson to Mr Justin Hudson and copied into Mr Buckman and others. He accepted that it looked like Mr Roland Hudson was still involved in dealing with lots of questions about the project.
116. Mr Buckman was taken back to his witness statement to ask if Mr Buckman thought it was a fair summary about Mr Roland Hudson's involvement given the recent answers he had given which accepted the work done by Mr Roland Hudson. Mr Buckman would not accept that the witness statement read as if Mr Roland Hudson had nothing to do with the Babcock contract, nor would he accept that the way he worded paragraphs 20 to 23 in particular of his witness statement was an unfair and misleading summary. In addition, Mr Buckman would not accept that the email and texts which he had chosen to exhibit to his witness statement were an unrepresentative sample of the correspondence passing between Mr Roland Hudson, Mr East and himself.
117. Mr Buckman continued to maintain that Mr East introduced Babcock directly. He said that was done by telephone which was why there was no written communication. He then said that the texts sent to him by Mr East were supporting evidence.
118. Mr Buckman was then taken through some of the details of the Jamaica contract. He was taken to the invoice sent to the Claimant for payment in respect of this contract. The invoice was disputed and therefore the Defendant put it in the hands of debt collectors. The correspondence between the debt collectors and Mr Roland Hudson was shown to Mr Buckman. Mr Buckman accepted that he could follow the calculations and that they showed that the profit was split 50:50 after deducting costs

from the sale price. He said he was not involved in any of these discussions or this correspondence, but he did accept that the debt collectors (acting on the Defendant's instructions) removed the overheads previously claimed to be deducted as costs to give a higher profit figure on the contract to the Claimant.

119. Mr Buckman asserted that the matter was referred to him and he approved it because he said the Defendant was struggling with cash flow and needed the money. He would not accept that the overheads were queried and then taken out because that was the original agreement. Nor would Mr Buckman accept that if the Defendant was struggling with cash flow, the Defendant would want the additional £6000 claimed originally in the invoice. He justified the reduction by saying that the Defendant was struggling to pay bills and "so I have to take the figures offered to us". He was shown that in fact the offer had come from the Defendant via debt collectors. He then asserted it was not part of "the original agreement".
120. Mr Buckman was next taken to the contract for the Bangladesh contract. He accepted that when the invoice was sent, the Defendant did not even try to invoice for the overheads. Mr Buckman could not explain why that was not done. It was suggested to him that the obvious explanation for why that was done was because the 50:50 split of profit would be calculated by taking the sale price less labour and materials but not overheads. Mr Buckman said "that wasn't the agreement". He was asked if he now accepted there was an agreement and he said "there certainly was". He was asked when that was made and he said "I can't be sure" but he did not think that it was at the 21 June 2017 meeting. Mr Buckman agreed that there was to be a 50:50 split of profit between the Defendant and the Claimant when either the Claimant or Mr Roland Hudson introduced orders. He also accepted that what was agreed was a profit split and not a commission. However, he continued to maintain that overheads should not have been excluded. He also would not accept that the agreement applied equally to the Babcock order as it did to the Jamaica and Bangladesh orders.
121. When it was suggested that Mr Roland Hudson was expecting to be paid for the work he did by way of a profit split, Mr Buckman asserted that there was no agreement for the Babcock job. This was because no order was received directly from the Claimant

as had happened on the other two contracts. Mr Buckman was asked why else Mr Roland Hudson would pass on a valuable invitation to tender from Babcock. Mr Buckman said that Mr Roland Hudson did not know it was valuable in 2016 when he originally quoted. Mr Buckman was reminded of the email from Mr East to Mr Hudson referring to the Babcock opportunity and saying “You need this my friend”. Mr Buckman then said that Interpower was in liquidation so it could not do anything. He would not agree that Mr Roland Hudson had given the Defendant a valuable lead for the work. Mr Buckman asserted that because Mr East was unaware that Interpower was in liquidation, that was the reason the opportunity was passed to Roland Hudson. He would not accept that Mr Roland Hudson had told Mr East of the situation Interpower was in.

122. Mr Buckman accepted that he had paid £30,000 inclusive of VAT for the assets of Interpower. Mr Buckman asserted that was because he wanted the phone lines, email accounts etc but would not accept that the physical assets represented a substantial value within the £30,000 paid. He did however accept that some of those assets had been used in the Bangladesh contract, despite the fact those physical assets had been described as “extremely old”, not of much interest and “difficult to reuse without a great deal of additional work”.

123. Mr Buckman said he was not aware that the Claimant had raised an invoice for half the profit from the use of those assets until he was taken to it. Despite the fact it formed part of the claim itself, he said he was not aware of that. When it was suggested that that answer could not be true because if it was, he could not have read the most basic elements relating to the claim nor put details in his witness statements, Mr Buckman stated that the details did not stand out as being obvious to him.

Mr Stuart Pickwick

124. Mr Pickwick gave evidence about the Interpower stock purchased by the Defendant. He was asked by Mr Buckman to visit Interpower’s Pickering site to view the stock and equipment. He met with Mr Roland Hudson on a couple of occasions when Mr Roland Hudson told him that the stock was worth quite a lot. Mr Pickwick was looking at the stock from the view point of what would be of use in the Defendant’s factory for tooling and bigger welders. He formed the view that there was next to no

tooling stock and anything worth having had already gone. He did not think that the stock was worth buying. Jo Wade prepared a report after Mr Pickwick spoke with her about the visit.

125. Mr Pickwick also commented on a number of emails from which it appears that he was due to make a further visit to the factory on 3 July 2017 to assess the requirements to remove the goods and the timescale to do that. Mr Pickwick said he was confident in his recollection that he only visited the factory once on 3 June 2017 and did not visit again. He also said that the Defendant did not collect the stock and the Claimant arranged for the delivery of it to the Defendant. He was not at the factory when that took place.
126. In cross-examination, Mr Pickwick was taken to an email from Mr Justin Hudson to him dated 30 June 2017 concerning some of the stock. Mr Pickwick could not remember why lots of photos had been sent to him after he had visited rather than beforehand. Mr Pickwick was next taken to an email from Mr Buckman to Mr Roland Hudson dated Sunday, 2 July 2017. In that email, he made a reference to Mr Pickwick visiting the Interpower factory on the Monday morning, that is 3 July 2017. Mr Pickwick said that he only went once but he could not remember the date.
127. Mr Pickwick accepted that he had said that there was not a lot of value in the report about his visit. He said that he went to look to see what could benefit him as the factory manager and was mainly looking at tooling bundles. He did not think there would be much benefit to the Defendant as a lot was covered in dust and did not look in great condition. A lot had been boxed up already and he only had a quick look in the boxes. He accepted that you could use nuts and bolts but he remained of the view there was not much of value.
128. Mr Pickwick also accepted that he could not put a value on items which the Defendant did not use. He said that for example with evaporating fans, they would have no value to him because the Defendant did not use them. In addition, he accepted that there may be equipment which may have a value but he did not know

because he was unsure whether or not it worked. If it did, he accepted that some of the equipment would be worth “a fair bit”.

Assessment of the witnesses

129. I accept the submission made by Mr Cameron in closing submissions that general credibility is worth careful examination in this case because, on the Claimant’s case, this is a relatively simple matter which turns on findings of fact, and those findings are likely to turn on issues of credibility, at least in part. At this point, I remind myself again that an honest witness can nonetheless be a mistaken witness.
130. In my judgment, Mr Roland Hudson was an honest witness, albeit a witness whose memory failed him on occasions. He was plainly doing his best to tell me what he recalled about all of the various matters in dispute. I accept that his memory was not accurate or consistent on all aspects of the claim. As is set out below, I did not find his memory of the terms which he alleged to be concluded agreement in respect of the Interpower stock to be reliable.
131. However, his memory was, I find, significantly more consistent and accurate in relation to the terms of the profit share agreement in respect of customers introduced by him to the Defendant. In addition, in respect of this agreement, his recollection was supported by significant amounts of contemporaneous documentation.
132. As to the other witnesses for the Claimant, Mrs Hudson was plainly angry and irritated when giving her evidence about what had happened between the parties. She was however consistent in her recollection about events and she acknowledged when she simply could not recall specific details. I found her to be a credible and reliable witness. Mr Justin Hudson I also found to be a credible and reliable witness. He readily accepted that he could not give evidence on the key matters concerning this claim because he was not present at the 21 June 2017 meeting. He gave his evidence in a consistent and balanced manner, without significant embellishment nor change of account.

133.I come next to the evidence of Mr Buckman. Mr Cameron submits that Mr Buckman's evidence is simply not credible because, if one takes his evidence at face value, it is astonishing in that he has no recollection of any details of some of the most important aspects of the matters surrounding this case. He has a willingness to delegate important matters to senior staff without any apparent oversight, and without calling any of those people as witnesses to deal with the matters they apparently had delegated to them. He has a completely unsatisfactory ability to express himself and explain the events that happened in his witness statement.

134.Put shortly, I do not accept the evidence of Mr Buckman save where it was not disputed, was in accordance with the probabilities or was supported by the contemporaneous documents. It is not credible that Mr Buckman is as forgetful as he contends. Alternatively, if he is that forgetful, it is not credible that a businessman such as Mr Buckman would not ensure that events concerning contracts and other important matters were recorded in writing at the time. On 25 July 2017, Mr East emailed Mr Roland Hudson offering him the opportunity to quote for the Babcock contract. There was then a meeting between Mr Buckman and Mr Ronald Hudson on 26 July 2017, which meeting is referred to in the email sent by Mr Buckman to Mr Roland Hudson on 27 July 2017. That email attached the Defendant's letterhead and continuation sheet for the purposes of quoting for Babcock.

135.If Mr Buckman is correct that there was no concluded agreement in respect of any introduction, and the Babcock contract was not covered by that pre-existing agreement, the meeting on 26 July 2017 is crucial as to how the Babcock enquiry came about. Yet Mr Buckman says he recalls literally nothing of it. When pressed, he said it might relate to the Interpower stock but he really could not remember. In my judgment, it is not credible that there was no discussion about a substantial new opportunity, both for Mr Roland Hudson and the Claimant as well as for the Defendant. It is also not credible that Mr Buckman remembers nothing about it, in particular when he was sending Mr Roland Hudson the Defendant's letterhead and continuation sheets to use specifically for the Babcock quote.

136. I do not accept that Mr Buckman delegated matters to the extent that he claimed, either generally or in respect of the instructions given to solicitors concerning these proceedings about the Babcock contract. It is difficult to explain away the very clear position set out by the Defendant's former solicitors in correspondence that there was an agreement which had been made between Mr Roland Hudson and Mr Buckman for a profit split when Mr Roland Hudson had introduced clients to the Defendant. Although Mr Buckman sought to distance himself from any instructions given to the solicitor, asserting that his finance manager Jo Wade had perhaps given those instructions, in my judgment that does not assist him. It would be astonishing for her to have given those instructions without seeking any information from him when he was the only person involved in making an oral agreement on behalf of the Defendant.

137. I do not accept any suggestion that Jo Wade was involved in the discussions between Mr Roland Hudson and Mr Buckman which led to the agreement. There is no mention of her involvement in any of the witness statements nor in the contemporaneous documentation. I am entirely satisfied, and I so find, that she was not involved in those discussions. Having made that finding, it follows that the information given to the solicitors about a concluded agreement can only have come from Mr Buckman himself. In my judgment, it is highly unlikely that the solicitors would have misunderstood that aspect of their instructions when the existence of an agreement or not was the central point of this litigation.

138. Even if he had delegated liaising with the solicitors to some degree, I do not accept that he had no oversight nor that he himself did not provide instructions either to the solicitors directly or to Jo Wade (if she was dealing with it). The one person with direct knowledge about the contract and the circumstances surrounding it was Mr Buckman. I do not accept that Mr Buckman did not give instructions to the solicitors as to whether there was an agreement with the Claimant at all, and in particular whether the Babcock contract was covered by that agreement. I find that he did give instructions to his former solicitors, either directly or via delegation, that there was an agreement between the Defendant and the Claimant. The only matter in dispute in relation to the Babcock contract was who introduced Babcock.

139. In addition, I did not find the evidence of Mr Buckman credible concerning why the overheads were taken out from the Jamaican contract when the Defendant's invoice was challenged by the Claimant. I do not accept his explanation as to why the overheads were not even claimed on the Bangladesh contract, especially if, as he claimed, the Defendant was in financial difficulties with cash flow problems.
140. As to Mr Buckman's witness statement and the lack of detail contained within it, I do not accept his evidence that he genuinely thought that it contained a fair and accurate summary of what had taken place between the parties. Even considering the answers which he gave during his oral evidence, his witness statement plainly omitted numerous significant elements and facts concerning the involvement of Mr Roland Hudson in the Babcock contract and how that came about, yet he simply refused to accept that his statement could be misleading. In my judgment, that part of his witness statement gave an incomplete and misleading impression of what had happened, in particular the involvement of Mr Roland Hudson.
141. As to the specifics of the Babcock contract, I reject Mr Buckman's evidence that Mr East introduced that contract to the Defendant. I find that Mr Roland Hudson, on behalf of the Claimant, introduced the contract to the Defendant. I reject Mr Buckman's evidence that this was at best a consultancy agreement between himself and Mr Roland Hudson. As Mr Buckman himself conceded, Mr Roland Hudson would not be working for nothing and yet there was no discussion at all nor any written correspondence about consultancy fees or what Mr Roland Hudson would be paid. The only realistic explanation for that, I find, is that all parties at the time were treating the introduction of the Babcock contract as part of the agreement made between the parties about introductions. No good reason was suggested why Mr Roland Hudson would have passed a valuable opportunity to tender for the Babcock contract to the Defendant in the absence of some benefit to him.
142. I found Mr Pickwick to be a reliable and accurate witness. He answered questions appropriately, making concessions when appropriate, such as when he agreed that if they worked, the fans bought with the stock could be valuable.

Findings**The Interpower stock claim**

143. The first claim concerns the alleged agreement concerning the stock purchased by the Defendant from the liquidator.

144. In my judgment, even before one considers the Defendant's defence concerning a denial of a concluded agreement and the effect of the alleged breaches of directors' duties, the evidence of the Claimant is not adequate to establish on the balance of probabilities that there was a concluded agreement in respect of the stock. Mr Roland Hudson did not contend for an agreement as was pleaded, either in his written evidence or in his oral evidence. In his written evidence, he asserted that the split of profit would be "on any of Musgrave's sales of the stock". In his oral evidence, he said in addition there was an agreement that there would be a split of profit where stock was used in a contract which the Claimant introduced. Neither of those positions are consistent with the pleaded case. Further, he was taken specifically to the pleaded case on this issue and, after a long pause, he said he did not agree with it.

145. Mrs Hudson did not recall any discussion at all about the stock. I accept the observation made by Ms Dutton for the Defendant that it was an unusual arrangement in any event given the sale of the assets and stock of Interpower to the Defendant by the joint liquidators. There was an absence of any degree of consistency by Mr Roland Hudson as to what he asserted the terms were. He specifically disagreed with the pleaded case. Mrs Hudson had no recollection of any discussion about stock. In those circumstances, I dismiss the Claimant's claim in relation to the stock.

146. Having dismissed that element of the claim, it is not necessary to consider the effect, if any, on this litigation of the alleged breach of directors' duties by Mr Roland Hudson.

The Babcock claim

147. I find on the evidence that there was a valid and concluded agreement for a profit split between the Claimant and Defendant when any customer introduced by Mr Roland Hudson on behalf of the Claimant to the Defendant went on to place a profitable order

with the Defendant. It was a simple oral agreement but nonetheless one which was, in my judgment, a concluded and enforceable agreement.

148. I consider it significant that all of the contemporaneous correspondence goes to support the claims of the Claimant and does not support the evidence of Mr Buckman. There is literally nothing in the contemporaneous documentation to support the assertion that Mr East introduced himself directly to Mr Buckman. Nor is there any evidence, direct or indirect, to explain realistically how Mr Roland Hudson became involved in the Babcock contract at all if Mr East introduced the opportunity to tender for it directly to Mr Buckman.

149. The mere fact that a different mechanism was used for this contract, rather than the direct order being placed by the Claimant (as it was for the Jamaican and Bangladesh contracts) does not undermine the existence of the simple agreement between the parties. Nor does it mean that Mr Roland Hudson did not introduce Babcock. There were good reasons why the order was placed directly with the Defendant. Mr Roland Hudson enabled that to happen by obtaining and using the Defendant's letterhead for the quotation, because of Babcock's requirements concerning ISO:9001 certification amongst other things.

150. I also accept the submission made by Mr Cameron in his closing submissions that although he was not called as a witness, the position of Mr East also needs to be considered as part of the factual matrix. Mr East never provided a witness statement. Such evidence as was provided which came directly from him, by way of text and email messages to Mr Buckman in recent times concerning the litigation, was provided without any Civil Evidence Act notice and without any explanation for why he could not be called. Mr Buckman stated that Mr East would not give a witness statement. That may well be right. However, Mr Cameron is of course right that the proper course was to subpoena Mr East to give evidence. It was not acceptable for a witness as integral to these events as Mr East to adduce evidence from him through the back door via text and emails.

151. I accept the submission made by Mr Cameron that each of those documents does appear to be written with the motive of justifying the increased commission paid to Mr East. Initially, in the tender drawn up by Mr Roland Hudson and submitted on behalf of the Defendant, Mr East was due to be paid £10,000 by way of commission. In fact, the invoice shows that Power Continuity was paid £16,951.20 as commission. I have no evidence as to how or why that increased commission was negotiated or paid. Mr Buckman said he did not know and he left that particular matter to his finance manager Jo Wade. I do not have any direct evidence from Jo Wade.

152. Within the factual matrix of this case, it is proper to consider the emails and texts sent by Mr East and his motivation for sending them. His initial explanation to the Defendant's solicitor provided one explanation for his increased commission payment. However, it becomes apparent from further email traffic that when Mr East discovers that his initial explanation and justification for receiving increased commission does not work, because he made a number of incorrect assumptions, his account changes and is directly contradictory to the initial justification and explanation given.

153. I accept the submission that ordinarily, one would expect some degree of email traffic concerning important matters such as the commission to be paid in respect of an order. I also accept that email appears to be the preferred method of communication between the various individuals involved with the Babcock contract, as there is a significant amount of email traffic between Mr Roland Hudson, Mr Buckman and Mr East. However, it is notable by its absence that there is not a single email passing directly between Mr Buckman and Mr East or indeed between Jo Wade and Mr East concerning the increased commission payments at the time they were allegedly being negotiated. There is simply nothing in writing about any negotiations nor increased commission payments to Mr East nor what he was doing to justify that increased payment. That is not credible.

154. In those circumstances, in my judgment I am justified in accepting the invitation made by Mr Cameron to infer on the balance of probabilities that the Defendant and Mr East came to an agreement that Mr East would receive an increased commission and the role

of the Claimant and Mr Roland Hudson would be conveniently forgotten about. As a result, the evidence of Mr Buckman and Mr East is further undermined.

155. I do not accept that semantic arguments concerning what the word “introduce” means and requires renders the agreement uncertain. I do not accept that the fact that the Claimant did not place an order directly with the Defendant, as happened with the Jamaican and Bangladesh contracts, means that the Claimant did not introduce Babcock to the Defendant.

156. I do not accept that the fact that the agreement was an agreement without an end date means it cannot be binding. As Mr Cameron observed, the obligation to pay commission only arose if the customer introduced went on to place an order with the Defendant which resulted in a profit. There was no obligation on the Defendant to accept any orders in the future if the Defendant was unhappy with the agreement reached. I do not accept that it is fanciful to assume that an experienced businessman would commit himself to such a term. It is clear in this case that Mr Buckman was keen to exploit and use the knowledge and 50 years’ experience of Mr Roland Hudson.

157. I also find that Mr Buckman was aware the agreement was being made with the Claimant. He was also aware that Mr Roland Hudson was acting on behalf of the Claimant. Had that not been the agreement, it is likely that there would have been some mention of that during the correspondence. The fact that the invoices submitted were from the Claimant, rather than Mr Roland Hudson, would have been questioned. I reject the submission made by Ms Dutton that this was at best an agreement in principle.

158. I find that the terms of that agreement were that the profit on any order obtained by the Defendant, as a result of an introduction by Mr Roland Hudson (on behalf of the Claimant), would be split 50:50 between the Claimant and the Defendant. I also find that it was agreed that the profit would be calculated by taking the sale price and deducting the materials and labour costs of the Defendant and any shipping costs incurred by the Claimant. The resulting figure would then be split 50:50.

159. In my judgment, the eventual outcome of the split of profit between the Claimant and the Defendant as described above in both the Jamaican and Bangladesh orders supports and provides good evidence for the Claimant's case. In my judgment, the mere fact that the Claimant itself did not raise an order to the Defendant is not fatal to the claim for a split of the profits of the Defendant's fulfilment of the Babcock contract.

160. It is also noteworthy in my judgment that in pre-action correspondence, the existence of the agreement now denied by the Defendant was conceded by the Defendant's then solicitors. The only dispute between the parties then was that the Defendant asserted that Mr East introduced himself directly to the Defendant and the introduction had not been made by Mr Roland Hudson. I have found that Mr East was introduced by Mr Roland Hudson. Further, the existence of an agreement was recognised and accepted by Mr Buckman under cross-examination.

161. In summary, I find the following facts to be proved:

- (1) The Babcock order was introduced by Mr Roland Hudson to the Defendant.
- (2) Mr East contacted Mr Roland Hudson in July 2017. Mr Roland Hudson explained to Mr East that Interpower had gone into liquidation. Mr Roland Hudson explained to Mr East that the Defendant was being used to manufacture orders instead of Interpower. Mr East agreed that was acceptable.
- (3) The Babcock order needed to be placed with a manufacturer who held the ISO 9000 certification. For that reason, as the Claimant did not hold that accreditation, the tender was produced on the letterhead of the Defendant company by Mr Roland Hudson after the letterhead was provided to him by the Defendant for that specific purpose.
- (4) Mr East did not introduce himself directly to Mr Buckman. Mr Roland Hudson introduced Mr East to Mr Buckman.
- (5) The profit from the Babcock contract contended for by Mr Cameron in his skeleton argument was accurately calculated by reference to the most recent figures provided by the Defendant.

162. The answer to the issues in the case are therefore:

Was there was an agreement in respect of the Interpower stock?

163.No.

If so, what were the terms of that agreement?

164.It is not necessary to answer this issue having found there was no agreement.

If there was such an agreement, is it vitiated by reason of any breach of director's duties owed by Mr Roland Hudson to Interpower?

165.It is not necessary to answer this issue having found there was no agreement.

Was there a concluded and legally binding agreement for a profit share in respect of client introductions by the Claimant to the Defendant?

166.Yes.

If so, what were the terms of that agreement?

167.The terms agreed were that when Mr Roland Hudson introduced a customer to the Defendant who went on to place an order for the manufacture and/or supply of generators, the Defendant would pay the Claimant a fee. That fee would be calculated as a split of the profit 50:50. The profit would be calculated by deducting from the price paid by the customer the Defendant's costs of manufacturing comprising the cost of materials and labour and also by deducting the Claimant shipping costs. The balance would then be split 50:50.

168.In my judgment, the agreement as to what was meant by an "introduction" was clearly understood between the parties and included any introduction made by Mr Roland Hudson, even if that introduction also included a further broker who led to the eventual customer. If I am wrong about that, I would in any event have implied a term to that effect in order to give the business efficacy to the contract which the parties intended.

If applicable, what profit was made by the Defendant following the introduction of Babcock?

169.I accept the calculations made by Mr Cameron as set out in his skeleton argument. I find that the total profit, after deduction of the properly deductible costs (which does not include office costs) was £134,636.77, of which 50% is £67,318.38 plus VAT of

£13,463.68 giving a total of £80,782.06. Interest is also recoverable on that figure at the rate pleaded, including interest under the Late Payment of Commercial Debts (Interest) Act 1998.

170.I am grateful to counsel for their very able assistance in this matter.