Neutral Citation Number: [2023] EWHC 1433 (Ch)

Part 7 Claim No: BL-2023-MAN-000016

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)
Between:

USMAN HUSSAIN MALIK

Applicant

-and-

MAHBOOB HUSSAIN

Respondent

Part 8 Claim No: CL-2023-MAN-000270

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
COMPANIES LIST (Ch D)
Between:

USMAN HUSSAIN MALIK

Claimant

and

(1) NUSRAT MALIK
(2) MAHBOOB HUSSAIN JUNIOR
(3) R N RESTAURANT (STOCKPORT) LIMITED

Defendants

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ
Date: 14 June 2023

Before:

HIS HONOUR JUDGE STEPHEN DAVIES
SITTING AS A JUDGE OF THE HIGH COURT

Patrick Lawrence KC and Andrew Blake
(instructed by Needle Partners, Solicitors, Leeds LS7) for the Claimant in both actions
Alexander Learmonth KC and Amit Karia
(instructed by Key Solicitors, Birmingham B66) for the First Defendant in the Part 8 action
Tina Ranales-Cotos
(instructed by Clarion Solicitors, Leeds LS1) for the Defendant in the Part 7 action and the Second Defendant in the Part 8 action
Catherine Gibaud KC
(instructed by HMA Law Solicitors, Birmingham B1) for the Third Defendant in the Part 8 action

Hearing dates: 15 and 16 May 2023
Draft judgment circulated: 31 May 2023

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APPROVED JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10:30am on 14 June 2023 by circulation to the parties or their representatives by email and by release to The National Archives. I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

His Honour Judge Stephen Davies

His Honour Judge Stephen Davies:

A. Introduction and summary of my decision

1. I will refer to the parties involved in the applications which were argued before me on 15 and 16 May 2023 as follows:

   (1) "**Usman**": Mr Usman Malik. The Claimant in the Part 7 action BL-2023-MAN-000016, formerly D30MA278 ("**the Part 7 claim**") and the Part 8 action CR-2023-MAN-000270 ("**the Part 8 claim**")

   (2) "**Nusrat**": Mrs Nusrat Malik. The First Defendant in the Part 8 claim.

   (3) "**Mahboob**": Mr Mahboob Hussain. The sole Defendant in the Part 7 claim and the Second Defendant in the Part 8 claim.

   (4) "**The Company**": R N Restaurant (Stockport) Limited. The Third Defendant in the Part 8 claim.

2. This is the fourth substantive judgment I have given in this dispute. The most recent previous judgment, however, is that of the Court of Appeal handed down on 11 January 2023 ([2023] EWCA Civ 2). The judgment of Phillips LJ (with whom Peter Jackson LJ agreed) contains, at paragraphs 9 to 15, a convenient summary both of the underlying facts and of the two substantive judgments which I gave (a) on liability in August 2020 ([2020] EWHC 2334 (Ch)); and (b) on the taking of the partnership account in May 2021 ([2021] EWHC 1405 (Ch)). The judgment of the Court of Appeal also explains that, contrary to my finding in my third substantive unreported judgment given in October 2021, Usman was indeed entitled to acquire the 50% shareholding in the Company of 50 shares ("**the sale shares**"), held as to 25% each by Tariq[1] and Mahboob, pursuant to the operation of the court-ordered sale mechanism which followed my second substantive judgment.

3. As a result of that judgment and the consequential order of the Court of Appeal sealed on 12 January 2023 Usman was given 7 days from presentation of sale contracts capable of execution and

[1] Tariq Malik: Usman's father and Nusrat's husband (from whom she is separated). See paragraph 11 of my judgment in 2020 [EWHC] 2334 (Ch) for a summary of the relevant members of the Malik and Hussain families as they appeared at the time.

exchange to acquire the sale shares. Given the difficulties which had led to my third judgment and the successful appeal to the Court of Appeal, provision was made for what was intended to be a speedy determination of any disputes as to the form and contents of the sale contracts and supervision of the sale process.

4. As will surprise no-one familiar with the history of this case, disputes did indeed arise and, pursuant to an application made by Usman on 27 January 2023, the matter came before me – as the judge nominated by the Court of Appeal to deal with such matters if I was available - on 15 February 2023. At that hearing it became apparent that the matters in dispute involved substantive and not merely drafting issues which could not fairly be dealt with without a further application, exchange of evidence and submissions. Accordingly, at the invitation of Mr Lawrence KC for Usman, I adjourned the hearing and gave directions to enable all such matters to be determined at this current hearing. The intention was to allow ample time and opportunity to enable all matters in dispute relevant to the conclusion of the sale process, procedural and substantive, to be determined at one hearing.

5. Perhaps also unsurprisingly, matters have mushroomed further since then and I must now determine the following applications:

   (1) Usman's original application dated 27 January 2023 in the Part 7 claim, seeking a determination of the disagreements between Usman and Mahboob as to the form and contents of the sale contracts for the sale of the property and the 50 shares ("**Usman's sale contracts terms application**").

   (2) Usman's application dated 1 March 2023 in the Part 7 claim, seeking declaratory relief in relation to Mahboob's holding of the 50 shares until Usman is registered as their holder ("**Usman's sale shares application**")

   (3) Usman's Part 8 action dated 3 March 2023, seeking (in its amended form) declaratory and other relief as regards his claim to the legal ownership of the 2 shares currently registered in Nusrat's name ("**Usman's two shares application**")

   (4) The application made by the Company in its acknowledgement of service in the Part 8 claim, seeking declaratory relief as regards the effect of and obligation to register the 50 shares in the Company currently registered in the names of Mahboob and Tariq ("**the Company's sale shares application**")

   (5) The application made by Nusrat in her acknowledgement of service in the Part 8 claim, seeking declaratory and other relief as to her claim to the beneficial ownership of the two shares ("**Nusrat's two shares application**")

   (6) The application dated 5 May 2023 made by Nusrat for injunctive relief in the Part 8 claim, seeking injunctive relief in the event that the Court accedes to the Usman two shares application so that the Company registers him as the holder of the 2 shares ("**Nusrat's injunction application**").

6. It is worthwhile beginning by explaining what, in my judgment, is really in play here. It is no secret that Mahboob, supported by Nusrat and by her other son Asad, as well as by the other members of the two families (and, thus, including the current directors who comprise Asad, Mahboob's son Mohammed Waqaas, and his son-in-law Mian Usman ("**Mian**")), are vehemently opposed to Usman taking control of the Company. Although there has been some attempt in submissions to persuade me that they have different positions and different interests and are not acting in concert, this is so clearly contrary to their position throughout and to the reality of their stance at the hearing that I am satisfied beyond any doubt that they are acting in concert. I will refer to this grouping

collectively as **the Mahboob faction**. They appear to believe that Usman is now in league with Tariq, who they fear would be perfectly happy to see the Company fail for personal vindictive reasons. They also[2] appear to believe that the two Manchester businessmen who Usman accepts are providing him with financial support to acquire the sale shares will actively involve themselves in the running of the Company to its detriment.

7. The Mahboob faction have identified two ways in which Usman can be blocked in his undoubted desire to take control of the Company.

8. The first arises from Article 6 of the Company's Articles of Association which provides, so far as relevant, that: "Any share may be transferred by a member to his or her spouse or lineal descendant and any share of a deceased member may be transferred to any such relation as aforesaid of the deceased member. Save as aforesaid the Directors, in their absolute discretion and without assigning any reason therefor, may decline to register the transfer of any share whether or not it is a fully paid share…."

9. It is common ground that although Usman meets the lineal descendant qualification in relation to the 25 shares originally owned by Tariq (transferred to Mahboob, albeit wrongfully, as the Court of Appeal have now decided, pursuant to the forced sale which occurred between my third judgment and the successful appeal) he does not meet that qualification in relation to the 25 shares owned by Mahboob. Thus, although the Company's position as put forward by the directors is to suggest that it is neutral, it is plain beyond argument that the current directors will not register the transfer of Mahboob's 25 shares to Usman. On that basis, he will not have a voting majority of the Company shareholding and will not, therefore, secure control of the Company.

10. Usman acknowledges the difficulty in relation to the 25 shares posed by Article 6. He has, however, identified a way around that difficulty. He contends that once the sale contracts have been exchanged and completed and once payment has been made, then pending registration Mahboob will hold all of the 50 shares currently registered in his name on a bare trust for Usman as purchaser and must, therefore, comply with Usman's directions as to the exercise of all rights attaching to the shares, including all voting rights. Usman contends that on this basis it is open to him to require Mahboob to vote those shares in accordance with his direction in favour of a resolution to be proposed at a general meeting of shareholders to remove the current directors and to replace them with directors proposed by him who, he reasonably expects, will exercise the discretion to register the transfer of the 25 shares originally held by Mahboob to him. Achieving the objective of ensuring that Mahboob cannot block this strategy is the principal subject of Usman's sale contracts terms application and Usman's sale shares application.

11. I am satisfied that the Mahboob faction's blocking strategy must fail, for the reasons given in this judgment.

12. However, the Mahboob faction have erected a further roadblock in an attempt to prevent Usman from gaining control of the Company. This is the dispute about the two shares. As I identified in my previous judgments, at a much earlier stage in the history of the Company, when Mahboob and Tariq were still co-operating, they each transferred 25 of their 50 shares in the Company to their respective wives, Mirza and Nusrat, which were duly registered in their names. Although Tariq

[2] It is not entirely clear to me how these two beliefs are consistent, but this judgment is not the place to investigate that question.

challenged these transfers, I held in my first judgment that the transfers, intended to achieve legitimate tax savings, were valid and effective to pass the full legal title and the beneficial interest in the shares. At a later stage, in 2016, when the relationship between Tariq and everyone else (including Usman) had broken down, Nusrat transferred 4 of her 25 shares, 2 to Asad and 2 to Usman, which were duly registered in their names. At the time of the first trial it was not suggested either by Nusrat or by Asad (Usman did not give evidence, but was represented by the same solicitors and counsel) that these were anything other than fully effective transactions which passed the full legal title and beneficial interest in the shares.

13. As I observed in my second judgment, and as was never challenged at the time before me or later before the Court of Appeal, the impact of the transfer to Usman was that if he could obtain full control, including – crucially - registration of the 50 shares, his additional two shares would give him a slender but sufficient majority control of the Company. This was particularly significant because by this time it appeared to be clear that Usman had indeed transferred allegiance back to Tariq. I allowed him, as well as other third parties, to bid for the 50% shareholding in the Company which I decided was held by Mahboob and Tariq as partnership assets, albeit on the basis that the sale mechanism should make clear that the vendors gave no guarantee that the shares would be registered by the Company.

14. As now appears, shortly after the hearing before the Court of Appeal in July 2022 the then directors of the Company, acting in response to a demand made by Nusrat's solicitors, registered a transfer of those two shares (as well as the 2 shares held by Asad) back from Usman to Nusrat. I will have to refer later to some of the details behind this action. Although the position of the Company as put forward by its current directors will need more consideration later, the end result of this registration is that, unless reversed, Usman will not achieve overall control of the Company even if he succeeds in securing the purchase and registration of the 50% shareholding.

15. It is to surmount these two obstacles to achieving control of the Company which Usman seeks to achieve by his applications and it is to forestall him from so doing which the Mahboob faction seek to achieve via their defence to Usman's applications and via the Nusrat two shares application and the Nusrat injunction application.

16. For the reasons which I shall give I am satisfied that, whilst I accept that Nusrat must be allowed to have her claim in relation to the two shares determined at a trial – albeit through a speedy trial process - Usman ought to be allowed to have the Company register rectified in the meantime so as to show him as the registered owner of the two shares and to exercise all of the rights, including the voting rights, associated with those shares, unrestrained by any injunction. However, in order to set some limit on what he can do pending the determination of the two shares claim, in order to avoid being made the subject of the injunction he must give three undertakings to the court. They are as follows:

    (1) Not to effect or attempt to effect any transfer, sale, charge, disposal of by him or other dealing by him with[3] the sale shares or the two shares or any registration of any such transfer pending the final order giving effect to the determination of Nusrat's two shares claim or until further order.

    (2) To abide by any order which the court may subsequently make, in the event that Nusrat's two shares application succeeds, requiring him to take all such steps as the court may direct with a

[3] The draft judgment limited this undertaking to a transfer of the shares but, following further submissions, I have been persuaded that it should be extended to some degree as above in relation to the shares for the reasons identified in the concluding section of this judgment.

view to putting the parties in the position which would have obtained had he not been the registered owner of the two shares from the date of rectification of the Company register to the date of the final order giving effect to the determination of Nusrat's two shares claim.

(3) To give Nusrat at least 14 days' notice of any intention to sell, charge, dispose of or otherwise deal with the whole or any substantial part of the business or the undertaking of the Company[4] or the property[5] from the date of completion.

If Usman had not been willing to give such undertakings[6] then I would have granted an injunction in the terms sought by Nusrat. That is because, although I could grant an injunction in the terms of the first and third undertakings, I do not consider that I could properly grant an injunction in the terms of the second undertaking, but that seems to me to be reasonably necessary to prevent the risk of permanent and irreversible damage to Nusrat, especially bearing in mind that she appears still to be the beneficial owner of the 21 shares which she has transferred to Asad.

17. My reasons appear below. In order to provide this judgment as soon as possible, so as to enable matters to move forward as speedily as practicable, I have avoided including unnecessary detail, including detail which is already available in the earlier judgments to which I have referred and extensive citation from or discussion of the numerous authorities to which I was referred.

B. Usman's sale contracts terms application and Usman's sale shares application

18. It is convenient to consider these applications together because they raise a connected issue, namely Usman's argument that as a matter of law he is entitled to exercise control over the 50 sale shares in the period between completion and payment on the one hand and registration of the transfer of shares in the Company register on the other. Usman's case is that whilst his preference is to achieve this objective by means of the inclusion of a power of attorney in the sale documents, if the court is not willing to include a power of attorney he would be satisfied with the alternative of a declaration.

19. Although it initially appeared that Usman's argument might not have been accepted by Mahboob, in circumstances where at the February hearing the dispute appeared to have been raised only tangentially, in the context of the argument about the power of attorney rather than the straight legal issue, it became apparent at this hearing that neither Mahboob (nor the Company nor Nusrat) felt able to challenge the correctness of Usman's legal argument or, insofar as they did so, in a way which I found at all convincing.

20. In their written submissions, which were not challenged and which I accept as accurately stating the law, Mr Lawrence KC and Mr Blake put it thus:

"(1) Upon formation of a valid contract for sale, the vendor becomes a trustee for the purchaser, to whom beneficial ownership passes. The vendor retains a right to the purchase money and a lien on the asset for the security of the purchase money pending payment: *Lysaght v Edwards* (1876) 2 Ch D 499 at 506. This analysis applies as much to a sale of shares in a private

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4 The draft judgment limited this undertaking to dealings with the property but, following further submissions, I have been persuaded that it should be extended to cover the business and undertaking of the Company, again for the reasons given in the concluding section of this judgment.

5 This is the commercial property from which the Company trades which is held in the names of Mahboob and Tariq and is also to be sold to Usman under the sale process,

6 Following receipt of my draft judgment Usman indicated that he was willing to give all such undertakings.

company as to a sale of land: see *Michaels v Harley House (Marylebone) Ltd* [2000] Ch. 104; *Musselwhite v CH Musselwhite & Son Ltd* [1962] Ch. 964.

(2) Just as a seller of land is entitled to retain possession as security for the price until payment, the vendor of shares retains equitable rights attaching to those shares for that same period and purpose (i.e., a vendor's lien): *Lewin on Trusts* (20th ed) at [4-011]. It follows that, until payment, the vendor may exercise voting rights attaching to the shares independently of the purchaser but in a fiduciary capacity and as custodian for the purchaser: *Michaels v Harley House (Marylebone) Ltd* [2000] Ch. 104.

(3) More to the point on the facts of this case, following payment, the vendor ceases to hold those equitable rights. The trust in favour of the purchaser becomes unqualified and control vests fully in the purchaser as beneficial owner.

(4) Accordingly, following payment, the vendor is a bare trustee for the purchaser: *Wall v Bright* (1820) 1 Jac. & W. 494 at [503]. It follows that the purchaser may, in his absolute discretion, direct the vendor as to the manner in which it must exercise the rights attaching to the shares: *Re Piccadilly Radio plc* [1989] BCLC 683 at 696e; *Buckley on the Companies Act* (looseleaf, 15th ed) at ¶242; *Gore-Browne on Companies* (looseleaf, 45th ed) at ¶23[8B].

(5) Separately, and in addition, following payment for the shares, the vendor must not do anything to prevent the purchaser from obtaining the full benefit of the transfer: *Hooper v Herts* [1906] 1 Ch 549, *Buckley on the Companies Act* (looseleaf, 15th ed) at [242]."

21. In closing oral submissions they also referred me to the decision of the Court of Appeal in *in re Rose* [1952] 1 Ch. 499 where, at p.518, Evershed M.R. said this:

> "If the deceased had in truth transferred the whole of his interest in these shares so far as he could transfer the same, including such right as he could pass to his transferee to be placed on the register in respect of the shares, the question arises, what beneficial interest had he then left? The answer can only be, in my view, that he had no beneficial interest left whatever : his only remaining interest consisted in the fact that his name still stood on the register as holder of the shares; but having parted in fact with the whole of his beneficial interest, he could not, in my view, assert any, beneficial title by virtue of his position as registered holder. In other words, in my view the effect of these transactions, having regard to the form and the operation of the transfers, the nature of the property transferred, and the necessity for registration in order to perfect the legal title, coupled with the discretionary power on the part of the directors to withhold registration, must be that, pending registration, the deceased was in the position of a trustee of the legal title in the shares for the transferees …
>
> In my view, in order to arrive at a right conclusion in this case, it is necessary to keep clear and distinct the position as between transferor and transferee and the position as between transferee and the company. It is, no doubt, true that the rights conferred by shares are all rights against the company, and it is no doubt true that, in the case of a company with ordinary regulations, no person can exercise his rights as a shareholder vis-a-vis the company or be recognized by the company as a member unless and until he is placed on the register of members. … In my view, a transfer under seal in the form appropriate under the company's regulations, coupled with delivery of the transfer and certificate to the transferee, does suffice, as between transferor and transferee, to constitute the transferee the beneficial owner of the

> shares, and the circumstance that the transferee must do a further act in the form of applying for and obtaining registration in order to get in and perfect his legal title, having been equipped by the transferor with all that is necessary to enable him to do so, does not prevent the transfer from operating, in accordance with its terms as between the transferor and transferee, and making the transferee the beneficial owner."

22. In her reply, Ms Ranales-Cotos advanced a submission that allowing Usman to exercise these rights pending registration would be illegitimate because it would allow Usman to circumvent the restriction of Article 6 by removing the board immediately on completion. However, as Mr Lawrence convincingly argued in response, this objection is misconceived, because using the undoubted power to replace the board does not circumvent Article 6, since the new board would still have to make a decision under Article 6 whether or not to register the transfer and would be subject to the same duties when making that decision as are the current board. Article 6 is not, therefore, circumvented by removing and replacing the current board of directors and, if Usman is entitled to direct Mahboob to vote at his direction, he is not obliged to do so other than solely in accordance with his own perception of his own best interests. As Mr Lawrence emphasised, the members of a company acting by majority in general meeting have a statutory right pursuant to s.168 Companies Act 2006 to remove its directors as they wish, and it is simply not possible to construe Article 6 as in some way overriding or qualifying that unfettered right.

23. The simple truth, in my judgment, is that whilst the Mahboob faction do not, for perfectly understandable reasons so far as they are concerned, like this legal position they are unable to advance any sensible basis for contesting it.

24. Insofar as there was any suggestion that, because the court has a discretion to make or to decline to grant declarations, there is any proper basis for declining to do so in this case, I reject it. It is readily apparent that all those involved in this dispute are determined to do what they can to obtain the outcome they wish for. Unless a declaration has been made in the Part 7 claim which makes it clear what he has to do, I have no doubt that Mahboob will seek to avoid or to delay in complying with his legal duty. Indeed, that was clearly behind his argument that it is sufficient for the sale contract to include a further assurance clause which obliged both parties to "do all such further things as may properly and reasonably be requested … to carry out, evidence and give effect to the provisions of and the matters contemplated by this agreement [including] any request properly and reasonably made by the Buyer to Mahboob in respect of the exercise of any rights in connection with the Sale Shares in the period between Completion and any registration of the transfer of the Sale Shares to the Buyer in the Company's register of members". As Mr Lawrence submitted, it is plain and obvious that Mahboob would not regard it as either proper or reasonable to be required to vote for the removal of the current board and, thus would not do so unless compelled to do so. Although Ms Ranales-Cotos submitted that there would be sufficient protection because the clause went on to provide that any dispute about a refusal should be referred to me (or some other Manchester Business and Property Court judge) for urgent decision, that would introduce further opportunity for delay and argument. Indeed, it is obvious that the reason why Mahboob wanted the word "reasonably" to be inserted was because it would, at least arguably, give him a discretion to refuse to vote as directed notwithstanding that on the strict legal analysis he has no right to refuse to do so, no matter how reasonable that might appear to him (or, indeed, to others).

25. It follows, I am satisfied, that Usman is entitled to the declarations sought in the sale shares application namely that, upon payment to Mahboob of the purchase price for the 50 sale shares and until such time if any as Usman may be registered as the holder of those shares:

(1) Mahboob will hold the 50 sale shares as bare trustee for Usman;

(2) Accordingly, Mahboob will be required to exercise the voting rights and all other rights attaching to the 50 sale shares, including (for the avoidance of doubt) such rights as may be conferred on the holder of those shares pursuant to the Companies Act 2006, as Usman may direct; and

(3) Mahboob will not be permitted to do anything to prevent Usman from obtaining the full benefit of the transfer.

26. I must next address Usman's argument that even with the benefit of a declaration in his favour there is still scope for delay and argument because, if he requires Mahboob to call for a general meeting to remove and replace the existing board, and if Mahboob does so, not only would there be scope for argument as to whether he was entitled to do so (especially if he was either not the registered owner of the two shares or subject to an injunction as sought by Nusrat) but also, if Mahboob failed to vote at that meeting as directed notwithstanding the terms of the declaration, Usman would have to return to court to seek an injunction before calling a further general meeting and, even then, there would be the risk of non-compliance and the need for a committal application. Whilst the latter may be a risk which even the parties in this case would not wish to face, I agree that it is entirely feasible that Mahboob would seek to delay right up until the stage before that. It is not always possible either for me (or some other judge) to be available for an urgent hearing at any time and there is, I accept, a real risk of delay. As is submitted on Usman's behalf, with considerable force, it has taken three months even to get to this point, so there is good reason for including a suitable power of attorney in the sale contract if otherwise appropriate and suitable.

27. In their submissions, Mr Lawrence KC and Mr Blake referred me to the following materials in support of their argument that the inclusion of a power of attorney in a commercial contract for the sale of shares is common market practice: *Stilton, Sale of Shares and Business: Law, Practice and Agreements* (6th ed) at 8-33; *Butterworths Corporate Law Service* CT [5.125]; *Butterworths Corporate Law Service Corporate Precedents* – 8 Share Sale Agreement, clause 11 and *Share purchase agreements*: overview (PLC) and Transfer of shares (PLC). None of this was disputed and the proposition is clearly correct.

28. Ms Ranales-Cotos submitted in reply that the crucial difference between the usual case and this is that this is not a free or voluntary share sale contract. She also drew my attention to the fact that in my third judgment I had indicated that in my view what had been contemplated by me was that the contracts should be far more limited in content than those which the parties had proceeded to produce and negotiate. She did, however, acknowledge that Phillips LJ had observed in his judgment at paragraph 48(ii) that, in his view, the proposal by Usman's solicitors for clauses relating to "proper corporate governance and control was understandable". She reminded me that at the last hearing in February 2023 I had expressed the view that the court should be very cautious before including provisions which might go beyond the strict legal position as it now stood, for fear of creating fresh substantive obligations when there are currently none. She also submitted that the operative clause 1 of the power of attorney as proposed by Usman gave full and unrestricted powers including, at least potentially, the power to bring an action in Mahboob's name with no provision for an indemnity in respect of any liability incurred. She also submitted that clause 2, delegation by corporate attorney, was completely unnecessary given that Usman was to be the attorney.

29. In responding, Mr Lawrence acknowledged that these concerns were justified and, insofar as the court considered that suitable revisions needed to be made, Usman would not object, whilst maintaining his case as to the need for the core provision.

30. I am satisfied, for essentially the reasons already given, that in the context of the very unusual circumstances of this case, it is both proper and reasonable to include a power of attorney in the share sale contract. However, it should be limited to what is properly and reasonably necessary to address the specific issues which are the subject of the current application, and avoid the inadvertent inclusion of new substantive obligations which go beyond the existing legal position.

31. Thus, in my draft judgment I indicated that in my view the power of attorney should be reworded as follows. I did however indicate that I would hear brief submissions on any specific points before this was embodied in an order, since some of these points were not canvased in argument, and I have done so, with the result that a further sub-paragraph 1.1.5 should be added to the version in the draft, for reasons addressed for convenience in the concluding section of this judgment:

(a) Clause 1 should be reworded as follows:

"1.1 The Principal appoints Usman Hussain Malik of 472, Hale Road, Altrincham, WA15 8XT as his attorney (Attorney), with full power to exercise the following rights in relation to the 50 Ordinary shares of £1.00 each (Shares) in R N Restaurant (Stockport) Limited (Company Number: 04521791) (Company) registered in the name of the Principal as the Attorney:

1.1.1 receiving notice of, attending and voting at any general meeting of the shareholders of the Company, including meetings of the members of any particular class of shareholder, and all or any adjournments of such meetings, or signing any resolution as registered holder of the Shares;

1.1.2 signing any resolution as registered holder of the Shares;

1.1.3 completing and returning proxy cards, consents to short notice and any other documents required to be signed by the registered holder of the Shares;

1.1.4 dealing with and giving directions as to any moneys, securities, benefits, documents, notices or other communications (in whatever form) arising by right of the Shares or received in connection with the Shares from the Company or any other person.

1.1.5 making any request pursuant to section 303 of the Companies Act 2006, taking any consequential step(s) pursuant to section 305 of the Companies Act 2006 and giving any notice pursuant to sections 168 and/or 312 of the Companies Act 2006, in each case as registered holder of the Shares."

(b) Clauses 2, 5 and 6 are unnecessary and clause 4.1.4 should be deleted.

32. There are two further small matters to resolve as regards the share sale contract. The first is whether there the inclusions of the words "and reasonably" and "and reasonable" should be included in the further assurances clause. Given that this does not impinge on the power of attorney or the declaration and thus relates only to matters of detail not yet the subject of any dispute I am satisfied that they should.

33. The second is whether there should be included in the "seller deliverables" a written form of resignation as director from Mahboob with an effective date of 13 July 2023 together with a written acknowledgement that he has no claim against the Company arising out of his position as or ceasing be a director. I agree with Ms Ranales-Cotos that both provisions are unnecessary and inappropriate given that: (a) it is plain that the first only arises from what was a concern about the timing of the relevant resignation emails, explained as innocent and caused by Mahboob being in

transit between different time zones at the time, with no doubt about the true position so far as the Company records are concerned; (b) it would be unfair for Mahboob to lose any opportunity to make a claim arising from his position as or ceasing to be a director, given that there is no general release of claims as part of this involuntary release process and given that Mahboob's resignation as director was not something which was required as part of my judgment or order.

34. Everything else is, as I understand it, agreed, in relation to the share sale agreement and the property contract, so that this concludes this section of the judgment.

C. The Company's sale shares application

35. It is convenient to begin by setting out the declarations which – as amended at the hearing – the Company invites the court to make:

> "1. Pursuant to Article 6 of the Company's Articles of Association ("Article 6") where any share is purported to be transferred (including under any sale agreement or mechanism) by a member of the Company to anyone other than his or her spouse or lineal descendant, the directors of the Company have an absolute discretion (exercising their powers for the purposes for which they are conferred, and acting at all times in good faith in what they consider to be in the interests of the Company and/or most likely to promote the success of the Company for the benefit of its members as a whole) to decline to register the transfer of any share whether or not it is a fully paid up share; and that
>
> 2. In relation to the proposed sale of the 50 ordinary shares of £1 each in the capital of the Company, any purported transfer by the Second Defendant, Mahboob Hussain Junior ("Mahboob"), of the 25 ordinary shares of £1 each legally and beneficially held originally by Mahboob ("the Mahboob Shares") to the Claimant, ("Usman") would not be a transfer to a spouse or lineal descendant of Mahboob and therefore engages the absolute discretion of the directors of the Company under Article 6, as set out at paragraph (1) above, whereas any purported transfer by Mahboob to Usman of the remaining 25 ordinary shares of £1 each legally and beneficially held originally by Tariq Mahmood Malik ("Tariq") would be, as a matter of substance (see judgment of Court of Appeal in Malik v Hussain and others [2023] EWCA Civ 2 at 60(iv)), a transfer from Tariq to his lineal descendant, Usman."

36. In his responsive submissions Mr Lawrence remained opposed to declaration (1) but had no particular objection to declaration (2) so long as the words "and therefore engages the absolute discretion of the directors of the Company under Article 6, as set out at paragraph (1) above" were removed.

37. Declaration (2) was amended during the course of the hearing to reflect Usman's objection (and my endorsement of that objection) that because, as originally drafted, it made no reference to the position as regards the transfer of the 25 shares previously held by Tariq, it was one-sided. On that basis, and because it seems to me that one of the reasons for this hearing is to introduce as much legal certainty going forwards as is both proper and appropriate, I am satisfied that this declaration should be made in its amended form. That is because it will ensure that, whichever directors come to make this decision, they will at least know which shares are subject to which considerations, which is particularly important given that under Article 6 as drafted there is no obligation to give reasons for the decision.

38. Declaration (1) was also amended during the course of the hearing to reflect Usman's objection (and my endorsement of that objection) that because, as originally drafted, it made no reference to the separate duty on directors under s.171 Companies Act 2006 to exercise powers only for the purposes for which they are conferred, it did not include that important duty as well as the duty under s.172 to which it did refer. However, Mr Lawrence maintained his further objections that it would be not only unnecessary, but wrong in principle and positively dangerous, for the court to be persuaded to give directors a potted summary of the legal basis as to how they should approach their decision-making function, when it was difficult to see what real benefit was to be achieved by so doing and when Usman's natural suspicion, based on the way in which the Company acting by its directors had approached this case, was that it was intended simply to provide comfort to the existing directors as regards their settled intention to refuse to register any transfer of the 25 shares always held by Mahboob.

39. To shorten matters, it is sufficient to say that I agree with this point, for the reasons given by Mr Lawrence. I am satisfied that declaration (1) does not achieve the objective of giving proper and appropriate guidance in any way which is of utility and, to the contrary, involves a real risk of making things worse. This is, in summary, for the following reasons:

(a) Even with the addition of the reference to the s.171 duty, declaration (1) is not necessarily a full and complete statement of all of the relevant legal considerations to which directors must have regard in appropriate cases when exercising their decision making powers. There is no express reference to the full panoply of fiduciary obligations which may be engaged, for example the duty to avoid any conflict of interest. Whilst it might be possible to revise the existing draft and, thereby, produce a version which covered every conceivable possibly relevant duty, it is difficult to see how this would assist anyone in this case or, indeed, in any case.

(b) Article 6 is clear in its terms as to the task of the directors as regards the decision whether or not to register shares which do not fall within the category of spouse or lineal descendant. The key considerations for the directors must be the factual circumstances of the particular case as to whether or not it is appropriate, having regard to reasonably well-settled and understood principles governing their role as directors, to exercise what is expressly described as an absolute discretion.

(c) I accept Mr Lawrence's submission that, in the absence of any good reason for believing that the directors need guidance as to their legal duties as directors as to which there is any dispute, there are good grounds for believing that this declaration is sought in a misguided attempt to seek to provide a fig-leaf of judicial comfort for the current board if they are ever asked to exercise their discretion to refuse registration of the 25 shares, which it is quite plain from the evidence which they have submitted that it is their intention to do if they think that they can. As I will explain below, their conduct in connection with their registration of the two shares back to Nusrat in August 2022, their resolute refusal to provide any full and candid explanation or any contemporaneous documentation which would explain their basis for acting as they did, the obvious conclusion that they were motivated by a determination to prefer the Mahboob faction case in so acting, combined with their failure to provide any apology for acting – as they plainly did – contrary to their legal duties as directors in that respect, and their continued unwillingness to make good that mistake at the first available

opportunity, is all compelling evidence of their partiality, which the court should take no steps to encourage.

D. Usman's two shares application

40. Initially it appeared that Usman's application sought a declaration that he remained legal and beneficial owner of the two shares. The application as drafted sought a simple declaration that he remained the holder of the two shares and his witness statement in support said, at paragraph 2, that he was seeking a declaration that he remained the legal and beneficial owner of the two shares. However, as a result of submissions before, and the order made by, HHJ Hodge KC (sitting as a High Court Judge) on 14 April 2023 the application notice was amended to make clear that he was only seeking a declaration that he remained the holder of the legal title to the two shares.

41. The effect of this amendment has led to a simplification of this aspect at least of the application. As summarised in the written opening submissions for Usman, it is common ground that: (a) Nusrat transferred the two shares to Usman in 2016 and the transfer was recorded in the Company's register of members, thereby perfecting legal title in Usman's name; (b) on 9 August 2016 the register was marked up on 9 August 2022 to record that Usman had transferred those two shares back to Nusrat (as had Asad his two shares); (c) that entry is accepted to be factually inaccurate, because Usman has never entered into any such transaction or signed or agreed to any such transfer.

42. By s.125(1) of the *Companies Act 2006*: "If (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members…the person aggrieved … may apply to the court for rectification of the register". Under s.125(2) the court may either refuse the application or may order rectification of the register. Under s.125(3) the company may, on such application, "decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register".

43. Whilst I will deal with Nusrat's case below, it is clear that she accepts that she did sign a document transferring the two shares to Usman albeit that she now contends that in the circumstances in which she signed the document the effect is either that he held the shares on trust for her (and must now transfer legal title back to her) or that the transfer is liable to be set aside due to undue influence or misrepresentation. However, it is clear and common ground that the register is concerned only with legal and not beneficial title and not with claims which have been asserted but not been admitted or adjudicated. Thus: (a) s.126 of the Companies Act 2006 provides "No notice of any trust, expressed, implied or constructive, shall be entered on the register of members of a company registered in England and Wales ..."; and (b) as Usman contends, Nusrat could not be registered as the holder of the 2 shares unless and until she has established the relief which she seeks such as would justify her in being recognised as the legal and beneficial owner of those shares. In the latter respect, I was referred to the judgment of Lord Collins in *Nilon Limited v Royal Westminster Investments SA* [2015] UKPC 2, [2015] 3 All ER 372 where at paragraph 51 he stated, having considered the authorities: "In the view of the Board, proceedings for rectification can only be brought where the applicant has a right to registration by virtue of a valid transfer of legal title, and not merely a prospective claim against the company dependent on the conversion of an equitable right to a legal title by an order for specific performance of a contract". Accordingly, it is not open to the board of directors of a company to rectify what they may believe was an error in the

contents of the register. Their proper course is to make an application to the court under s.125: see *Palmers Company's Law* (looseleaf) at ¶7.120 and paragraph 89 of the judgment of Arden LJ in *Re Coroin Ltd* [2013] EWCA Civ 781 ("The register of members could only properly be rectified by an order of the court under its statutory jurisdiction to rectify the register of members contained in section 125 of the CA 2006".)

44. When I pressed Ms Gibaud KC about the basis on which the board of directors purported to record the transfer from Usman to Nusrat in August 2022 she referred me to s.770 Companies Act 2006, which provides under (1) that "A company may not register a transfer of shares in or debentures of the company unless– (a) a proper instrument of transfer has been delivered to it…" and under (2) that this "does not affect any power of the company to register as shareholder or debenture holder a person to whom the right to any shares in or debentures of the company has been transmitted by operation of law". It is clear that (1) cannot apply in the absence of any evidential foundation for such an argument, which Ms Gibaud did not advance. Although Ms Gibaud suggested that it was possible that (2) might apply I was referred, through the industry of Mr Blake, to *Buckley on the Companies Act* (looseleaf, 15th ed) at [1624], which stated that: "Transmission involves a devolution of shares or debentures by law as opposed to a transfer which is by act of the parties and occurs on the death or bankruptcy of a member or debenture holder". It is obvious, therefore, that this cannot have provided any basis for what happened here and, in fairness to Ms Gibaud, she did not positively contend that it did.

45. In the circumstances, it is plain that the board had no proper basis for altering the register and that the register ought to be rectified under s.125(1). The only submission to the contrary was that, given the case advanced by Nusrat, the proper course was to defer making an order for rectification until such time as her claim has been determined, on the basis that the claim fell within the category of a question relating to title arising as between Usman and Nusrat. However, there are two objections in my view to this argument:

    (1) First, it is contrary to the approach of Lord Collins in *Nilon*, to the effect that claims such as those which Nusrat seeks to advance are not properly the subject of a rectification application.

    (2) Second, on the merits, on Nusrat's case she first asserted her case in 2021 and again in 2022 without receiving any reply at all, let alone any admission from Usman. However, she did not raise it as an issue in legal proceedings until her acknowledgement of service in Usman's Part 8 claim. Instead, she sought to persuade the board to alter the register, notwithstanding that she was in receipt of legal advice from independent solicitors in 2021 and in 2022 and, assuming such advice was competent, ought to have known that in order to obtain rectification of the register she would need to obtain a voluntary transfer from or a judgment against Usman.

46. Even though I ventilated in submissions an accelerated timetable for the resolution of Nusrat's claim, that would realistically take at least 3 months to bring to trial. There is no good reason why the court should not order rectification of the register in the meantime, because that would put the position back to where it ought to have been from August 2022 onwards and where it should remain unless and until such time as Nusrat might establish her claim. Usman ought not in the meantime to be prevented from exercising the rights which he ought to enjoy as registered owner of the two shares.

47. As already indicated, I consider that the directors of the board who purported to record a non-existent transfer in August 2022 and who have failed to acknowledge their error or explain the basis

for their decision ought not to expect that the court would simply allow matters to drift, any more than it would allow Nusrat to do so. The relevant chronology is as follows:

48. On 4 October 2021 solicitors then instructed by Nusrat emailed a letter to Usman, contending that: (a) the original agreement in 2016 was for a transfer conditional upon his acting in accordance with her wishes; (b) Usman had breached this condition by acting with Tariq; (c) legal title did not pass because there was no share transfer form and no record of the transfer in the Company's books; and (d) in the circumstances she retained the shareholding and had asked the Company to "rectify the filings at Companies House". Usman was asked to acknowledge receipt and take independent legal advice. He did not do so. His case is that he did not receive the email. That is something which I cannot determine. There is no evidence from the Company to say that if it did receive a request from Nusrat it was taken further at this stage.

49. Nothing further of any relevance occurred until on 21 July 2022 new solicitors instructed by Nusrat emailed a further letter to Usman, contending that: (a) the two shares had been given by Nusrat in 2016 for him to hold on trust; (b) Usman had breached the terms of the trust, so that Nusrat was now revoking the trust; (c) there was never any intention to pass legal title. They said they had been instructed to rectify the entries at Companies House. Again Usman did not reply and says he did not receive the email. Again that is something I cannot determine at this stage. However, what is significant is that on the same day the same solicitors wrote a similar letter to the Company's directors, requesting them to show the shares as in Nusrat's name. They chased a reply in surprisingly aggressive terms, given that there was no apparent hostility between Nusrat and the then board, on 4 August 2022.

50. Mian says that the board discussed the letter on 25 July 2022, decided that they needed to take independent legal advice and did so, saying that: (a) "we had discussions with the lawyers and provided them all the information the company had about the share transfer for them to give us advice"; (b) we received advice; (c) we held a meeting on 9 August 2022; (d) "it was decided in that meeting that the records of the Company had to be changed to reflect what the Company understood to be the correct position on the shareholding and that the Company would write to all parties informing them of the mistake concerning the transfer of the shares and the corrective actions taken by the Company". He does not provide any more details as to what information was provided, what advice was given and what the mistake was.

51. The resolution itself is no more informative, simply stating that: "The information submitted in the latest confirmation statement to the Companies House is incorrect. The true position is that Mrs Nusrat Malik holds four shares in R N Restaurant (Stockport) Ltd, Asad Ali Malik only holds 21 shares[7] and Usman Hussain Malik doesn't hold any shares in the Company". The letter to Usman dated 10 August 2022 (which again Usman says he did not receive, although there is a Post Office receipt which indicates that it was received at the house which he and his family share with Nusrat, said something different from what had been asserted by Nusrat's solicitors, which was that: "The board was notified by representatives of Mrs Malik, that shares have been transferred to yourself and your brother Mr Asad Malik, without her consent. We have carried out our own investigation and received independent legal advice, the board has resolved to rectify the entries that were made without authorisation by the Company, on the Companies House portal".

[7] This apparently is now subject to a separate order made in the financial remedy proceedings ongoing as between Tariq and Nusrat.

52. This reference to a transfer without consent is inconsistent with what was said by Nusrat's solicitors. It also appears to be inconsistent with the document, seemingly produced by Usman and agreed by Asad, and undoubtedly signed by Nusrat on 29 September 2016, which read that: "I, Nusrat Tariq Malik, would like to confirm that in consideration of my love and affection for my two sons namely Asad Ali Malik and Usman Hussain Malik, I hereby gift 2% of the share capital to each of my two sons in Nawaab Restaurant (Stockport) Ltd respectively. Therefore, leaving me with 21% of the company's share capital only. I hereby authorise the transfer of the above please." The transfer was included in the confirmation statement filed at Companies House on 29 September 2016.

53. The end result of all of this, it seems to me, is that the board has signally failed to explain on what basis they took the decision which they did. They have also signally failed to explain on what basis they considered, seemingly with the benefit of legal advice, that they could have decided to record a transfer from Usman to Nusrat of the two shares on 9 August 2022 when they could have had no basis for any belief that there had been a transfer. Despite Ms Gibaud's attempts to explain the position, the simple fact is that they have neither volunteered a factually and legally coherent explanation for their actions nor even acknowledged that it was plainly wrong to act in the way that they did based on the information they had received from Nusrat's solicitors, even taking it as correct.

54. The obvious conclusion is that the board of directors, being key members of the Mahboob faction, have acted (and continue to act) with the intention of bolstering the continuing opposition to Usman's attempts to take control of the Company. This is made even more clear by the contents of Mian's second witness statement, which explains – or at least purports to justify – that continuing opposition. Whether the board are right or wrong in their views of Usman and the impact of any takeover on the Company is not a matter for me in this judgment. However, their clearly expressed view fundamentally undermines their repeated protestation that they are neutral in the continuing disputes which – at least notionally – ought only to involve Usman as buyer and Mahboob, Mirza and Nusrat in their capacity as existing members and not the board.

55. In opening written submissions and again in oral submissions Mr Lawrence made clear that it was Usman's case that in these circumstances the directors have acted wholly inconsistently with their professed assurance that they would "continue to adopt a neutral stance in the dispute between the shareholders" and "will not incur any expense in "promoting the position of one or other party". I have to say that I agree. It seems to me on the basis of the evidence which I have seen to have been quite wrong for the board of directors to have caused the Company to incur the no doubt significant expenditure it has incurred in connection with the Part 8 claim and the applications.

56. Finally, and briefly, I should refer to Mahboob's position in relation to the Part 8 action. His case is that he should never have been joined as a defendant to the Part 8 action, in circumstances where he resigned as a director in July 2022 and makes no claim to any interest in the 2 shares. Whilst both these points are accepted by Usman as representing the current overt position his case is that, given the obvious and close connection between the disputes about the 50 shares and the two shares and given that it is plain – as I have indeed concluded is undoubtedly the case – that it is the Mahboob faction as a whole, including Mahboob of course, which is orchestrating the overall resistance to the Usman takeover, it was prudent to ensure that he was joined to the action to give him the opportunity to make representations and, if not, to be bound by the outcome. He also notes that the costs of joining Mahboob and of Mahboob's reluctant participation are minimal compared to the costs incurred by Mahboob in relation to the Part 7 claim.

57. I agree with all these submissions. Mahboob has never offered any explanation of his decision to resign as director in July 2022 and it is impossible to say that he might not find another way to resurrect this argument if not bound by the determination. Accordingly, since I am asked to decide the point, I am satisfied that Mahboob should remain joined to the proceedings (albeit under no obligation to file or serve evidence or take any other active steps in the action unless he wishes to do so). On that basis I am also satisfied that whilst, if he maintains a disinterested position, there is no basis for awarding costs against him, nor is there any basis for awarding him his costs, indemnity or otherwise, of his involvement up to and including this hearing.

E. Nusrat's two shares application and Nusrat's injunction application

58. I now turn to the last of the matters which have been ventilated before me at this hearing.

59. In her acknowledgement of service to Usman's Part 8 claim Nusrat indicated that she sought a different remedy, namely a declaration that Usman held and holds the two shares on trust for her and that they have at all material times belonged beneficially to her.

60. Although there is some difference between Nusrat and Usman as to whether it is permissible to introduce a claim such as this by way of an acknowledgement of service to a Part 8 claim, the parties are both agreed with my view, as expressed at the hearing, that this is a claim which needs to be determined as speedily as possible[8]. Although Usman firmly contests this claim, submitting that it represents a complete volte face from the evidence given by Nusrat (and indeed by Asad) at the first trial, and is plainly a device employed by the Mahboob faction in an attempt to prevent him from taking control of the Company, by the time of oral reply submissions it was not said by Mr Lawrence that it is so hopelessly weak or abusive that it should be summarily struck out. That approach is in my view entirely sensible and realistic because, whilst I share his concerns about the inconsistency between her current case and her previous stance and because it may very well be that – unless a proper explanation is given for the change of position and evidence – it is doomed to fail on the merits and/or as an abuse of process, that is not something which can properly be determined summarily at this stage.

61. It follows that it is necessary to consider and to determine Nusrat's application for an injunction on its merits. In their impressive written and oral submissions Mr Learmonth KC and Mr Karia for Nusrat submitted that what was being sought was a "low-key injunction" pending the determination of Nusrat's claim, which would prevent Usman from using the two shares together with the right to direct the voting of the 50 shares pending registration to "appoint and remove directors, not only allowing [him] to run the business on a day-to-day level, but to effect [irreversible changes] in the very nature of the Company" by means of the new board registering as new members persons who did not come anywhere near to meeting the Article 6 spouse or lineal descendant criteria.

62. The injunction as sought as explained by Nusrat:

[8] At the hearing I indicated a provisional view for the following timetable: (a) Nusrat to file serve Points of Claim; witness evidence in support, together with all documents relied upon and any known adverse documents, within 28 days; (b) Usman to respond with Points of Defence and the same supporting documents within a further 28 days; (c) Nusrat to respond with Points of Reply and any further supporting documents within a further 14 days and the case to be listed for trial on the first available date after 3 months, and both parties indicated their provisional view that although this was a tight and challenging timetable it could be met.

(1) requires the Company and Usman to give notice of any shareholder meeting to Nusrat as if she was still a shareholder (and of any resolutions to be moved). This is to enable her to consider whether she has any views on how she would wish the votes attaching to the two shares to be exercised in relation to such resolutions.

(2) seeks to holds the ring as regards members' resolutions. If Nusrat gives a direction on how the voting rights of the two shares are to be exercised (as opposed to all of Usman's shares), then Usman must comply as regards those two shares (or seek a court direction), otherwise he and anyone who has received shares from Usman are not allowed to exercising their voting rights. If Nusrat does not give such direction within a specified period of time (10 days), then Usman or his successors can vote as they chose. In the unlikely event that there is a disagreement about day-to-day business, the Court could resolve it.

63. It is explained that whilst this would also restrict the use of the 50 shares in such circumstances, that is necessary because if the votes associated with the two shares are not used at all, Usman's 50 of the remaining 98 shares will still be a majority shareholding.

64. It is submitted that Nusrat has proper grounds for concern that Usman and the Manchester businessmen investors behind him will act in such a way. As to the substantive basis for such fear, the first is the fear that Usman will use the voting rights to change the board of directors and that is, of course, precisely what Usman does wish to do. The second is the fear that Usman will be compelled by the Manchester businessmen to make themselves directors and shareholders in order to exercise control over the Company. This seems to me to be essentially speculative. There is no particular reason to think that this is likely to happen but I accept that it is at least possible, given that the evidence indicates that without their financial assistance Usman would be unable to acquire the 50 shares (and, presumably, the working capital to run the restaurant business), especially in the absence of any evidence from Usman or the Manchester businessmen in question which clarifies or proves by exhibiting the relevant loan documentation the nature of the financial support they are providing and its terms.

65. However, it is worth observing at the outset that in my view the application ought to be viewed through the prism that, since the alteration of the Company register by the board in July 2022 was unlawful and is now to be rectified, this is a case where: (a) Usman is to be treated as having been the registered legal holder of the two shares since 2016; (b) Nusrat is in the position of a claimant now seeking to assert that she is the beneficial owner and ought to be held to be the legal owner as well; (c) Nusrat is thus in the position of a claimant in such circumstances seeking to restrain the exercise of Usman of his undoubted rights as legal registered owner of the two shares pending the determination of Nusrat's claim. It follows, and in my view this is a very important consideration, that the status quo is properly to be regarded as being a position where Usman is entitled to deal with the two shares as legal registered owner because, to regard the status quo as being the position which has obtained from July 2022, would be to reward Nusrat and the board for seeking, and allowing, respectively, a remedy, i.e. registration of the two shares in Nusrat's name, to which she was simply not entitled without a prior transfer or unqualified admission by Usman or a determination by the court.

66. There is no dispute that the usual principles applicable to the grant or refusal of an application for an interim injunction apply, as stated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, HL(E). Mr Lawrence referred me for a convenient summary to the decision of the Privy Council in *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd* [2009] 1 WLR 1405, where Lord Hoffman, giving the opinion of the Board, summarised the relevant principles at paragraphs 16 to

19, making clear that they applied as much to prohibitory as to mandatory injunctions. In particular, he emphasised that: (a) the basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other; and (b) all relevant matters should be taken into account including, in an appropriate case, the court's opinion of the relative strength of the parties' cases.

67. The starting point is whether or not there is a serious question to be tried. In their written opening submissions Mr Lawrence KC and Mr Blake contended that there was no serious question to be tried. In summary, they submitted that Nusrat's case is wholly inconsistent with (1) her evidence at the first trial; (2) the position advanced on her behalf at the first trial; and (3) the basis upon which both this court and the Court of Appeal proceeded at all material times, namely that Usman was the legal and beneficial owner of the two shares and that at no time until she made this application has Nusrat ever disclosed either to this court or the Court of Appeal that she would contend to the contrary. They submitted that the case now advanced is so implausible that the court can determine at this interlocutory stage that there is no serious issue to be tried. They also submitted that in any event, it constitutes an abusive attempt to approbate and reprobate, which is simply not open to her in view of the clear and consistent statements to the contrary made in the first trial.

68. So far as the latter submission is concerned, in his closing submissions Mr Lawrence very properly indicated, in the light of the production by Mr Learmonth of two further authorities, namely the decision of the Court of Appeal in *LA Micro Group (UK) v LA Micro Group* [2021] EWCA Civ 1429, [2022] 1 WLR 336, as summarised and explained by Bacon J in *Malik v Malik* [2023] EWHC 59 (Ch), that he was not inviting me to determine the abuse point against Nusrat at this point. That is because in short, as summarised by Bacon J at paragraph 41 of her judgment, the principle as set out by the Court of Appeal in *LA Micro* is that: "where a party's stance in earlier proceedings was a reason for the judgment or order obtained by that party in those proceedings, and it would in all the circumstances be unjust to allow the party to resile from that position, the court will hold the party to that position (§22). That must be approached by means of a "broad, merits-based assessment". It is material to that assessment to consider whether it is apparent that the earlier decision was obtained on the footing of, or because of, the stance taken by the party in the earlier proceedings (§26)". As Mr Lawrence realistically recognised, the facts of this case are not – at least at this stage – sufficiently clear-cut for the court to make a final determination of what must be a broad, merits-based assessment at this stage.

69. At least one reason for this is the change from the position which pertained at the beginning of the hearing, when Mr Lawrence was able to submit that there was no sufficient admissible evidence to support Nusrat's case. That is because Nusrat's witness statement was plainly non-compliant with the requirements of CPR Part 22 and PD 22 and CPR Part 32 and PD 32, in that the statement of truth was not made in Nusrat's own language and the body of the witness statement was not drafted in her own language and accompanied by a translation.

70. These requirements, and the relevant guidance in the King's Bench and Chancery Guides, are set out and discussed in the judgment of Garnham J in *Correia v Williams* [2022] EWHC 2824 (KB) at paragraphs 17 to 23 and the effect is analysed at paragraphs 32 to 50. There is, however, no need for me to further lengthen this judgment by referring to the relevant requirements and approach here, because overnight Nusrat was able to provide a witness statement from Mr Ishrat Mehmoob, a senior associate in the firm instructed by her and the person who assisted her to make the statement, which – although not answering all of Mr Lawrence's concerns – provided sufficient explanation and assurance to permit me to have regard to the contents of Nusrat's witness statement, at least for

the purposes of this hearing. I say no more about it because it is possible that it may be the subject of further consideration at the trial of Nusrat's claim, which may well take place before me, so it is better if I say as little as possible.

71. I adopt the same approach to the question whether or not Nusrat's case raises a serious question to be tried. In short, as I have already indicated and as Mr Lawrence convincingly demonstrated, Nusrat's case is inconsistent with the position which was advanced by all of the defendants (including her) at the first trial as regards the transfer of the shares and – despite Mr Learmonth's valiant attempts to suggest that there was no such inconsistency – with the clear gist and natural meaning of the evidence which she gave at the first trial, both in her witness statement and in her oral evidence. It was also, and even more clearly, inconsistent with Asad's evidence on the point. (Usman did not give evidence at the first trial.)

72. However, Nusrat's witness statement provides at least some explanation as to why she said what she said in her witness statement (although not perhaps why she said what she said in her oral evidence). Moreover, her witness statement does provide a detailed account of her case and her evidence as to the circumstances in which she says she came to agree to give the two shares to Usman (and the further two to Asad) on trust for the purposes of enabling them – instead of her – to support Mahboob and remove Tariq as director and in which she came to sign the document confirming what – on its face – appears to be an unconditional transfer of the shares. Her explanation as to why she transferred the shares is not obviously incapable of belief, although it does not at least at first blush provide any compelling explanation as to why she would have thought it so important to retain the beneficial interest in 4 shares from the 25 shares which she had been gifted by Tariq some years before solely, as I found, for tax savings reasons.

73. It is also fair to say that there is no contemporaneous document as yet produced which is itself so seriously inconsistent with her evidence as to render that evidence obviously incapable of belief. The timing of her raising the issue in 2021 is consistent with her evidence that it was at this time that it became apparent that Usman had changed sides in the dispute. Whilst Usman denies receipt of the correspondence from her solicitors and from the board in 2021 and 2022 to which I have referred above, the fact that she did raise this issue at this time is also broadly consistent with her case.

74. Finally, the legal analysis advanced on her behalf by Mr Learmonth as to how her factual case affords her a defence in law, whether on the basis of a conditional transfer creating a trust, or undue influence, or misrepresentation, is not obviously a hopeless one.

75. In the circumstances, it seems to me that the case passes the threshold of raising a serious question to be tried. However, standing back, it must nonetheless be said that in my view it faces a number of significant obstacles, as explained above, and my provisional assessment of the strength of her case is that it is a relatively weak one and that it is at least equally plausible that it is being advanced as a last ditch attempt to scupper Usman gaining control of the Company.

76. I must therefore consider the balance of convenience. As I have said, it is clear that Usman will replace the existing directors if he can use the two shares to give him a voting majority. The new directors will clearly be ones who Usman believes will follow his wishes. I accept that it is at least a possibility that the new directors may include one or both of his investors. I accept that there is clearly also at least a risk that he will transfer some or all of his shareholding to the investors in the

expectation that the new board will register the transfer. Mr Learmonth submitted that all of this risked effecting a serious and irreversible change to the nature and character of the Company. I agree that if these changes were made that would indeed be the position.

77. Mr Lawrence submitted that nonetheless Nusrat cannot rely, in the context of this risk, on the case being advanced, in particular by the Company, that this would amount to a change in the fundamental basis on which the Company was set up as a joint venture between the two men, Tariq and Mahboob, and their families. I agree with this. In the absence of a shareholders' agreement and/or relevant pre-emption provisions the shareholders are perfectly entitled to exercise their rights as they wish so long as they can do so within the scope of the Articles. I also accept that Nusrat is not entitled to assert any risk of financial prejudice to the other shareholders.

78. Mr Lawrence submitted that if the risk of financial prejudice was measured, as he said it should, by the value of her two shares, it could not be regarded as substantial given the essentially modest valuation of the Company. Whilst not disputing this, Mr Learmonth riposted that if one took into account, as he said I should, the potential impact on the value of her full shareholding which, assuming that this is the full 25 shares originally gifted to her by Tariq, the potential claim was much more substantial and far beyond any ability which Usman currently has to pay. I agree that Nusrat is entitled to argue that if, as she says, she is in reality the true owner of 25 of the shares, then she is entitled to rely upon the risk of financial prejudice to the entirety of those shares when considering the risk of serious and irreversible harm.

79. Mr Lawrence submitted that there are no particular grounds for considering that the value of her shareholding would be reduced even if the events which she puts forward as likely to happen materialised. His point is that there is no suggestion that Usman or those behind him have any reason to run the business on anything other than profitable lines. Mr Learmonth refers to the risk that, if Tariq is behind this, there is evidence that he has expressed a desire to ruin the business rather than allow Mahboob to take it over. However, this seems to me to be inconsistent with the evidence that Usman is backed by two investors who are putting their own money into the venture. That does not indicate that this is a plan to destroy the Company. I accept that it is always possible for those who control but only part own a company to structure its affairs so that they receive more reward from payments other than dividend. However, again this is essentially speculative.

80. Putting all this together, the conclusion I reach is that there is undoubtedly a risk of serious and irreversible harm to Nusrat if there is no restriction on what Usman may do, but that the risk is far from being as high and as serious as she contends.

81. Nonetheless, the evidence is that Usman has little if anything by way of current assets from which he could discharge any order for damages in the event that there was no injunction and Nusrat was vindicated in her claim and she did suffer harm in the meantime. It is accepted that he is no longer employed by the business (albeit he says he was unfairly dismissed and in pursuing a claim in that respect) and that he is without substantial assets. Mr Lawrence submitted that nonetheless he would, on completion, acquire not only the 50% shareholding but also the property, which has a substantial value and which could provide a source from which to satisfy any judgment. Although it is subject to an existing charge in Mahboob's favour, it is agreed that this is to be removed on completion. Mr Lawrence indicated that Usman was prepared to give an undertaking to give Nusrat 14 days' notice of any intention to sell, charge, dispose of or otherwise deal with the property. He submitted that although the property was, of course, being acquired with financial assistance from Usman's investors, that would not give them any priority over any other claims as regards that

property in the absence of security, which is not currently stipulated for and would in any event be covered by the undertaking.

82. Mr Learmonth submitted that this was unsatisfactory, for a number of reasons, including that: (a) there was no evidence as to the arrangements with the investors; (b) since the purchase would not complete immediately, there would be no asset cover in the meantime; (c) in the absence of a proposal to give a first legal charge over the property, at best Nusrat would be an unsecured creditor in the event of a claim; (d) since the business operates from the property, if Nusrat had to enforce any claim against the property it would have the effect of jeopardising the business and, thus, the value of her shares.

83. Whilst it seems to me that points (a), (b) and (d) are not of great weight, given that: (a) the undertaking would cover this anyway (i.e. Usman could not give them security without either first complying with or, if not, breaching the undertaking); (b) there is no real prospect of Nusrat being in a position where she would need to enforce any claim in the short term (i.e. without first establishing her two shares claim and quantifying any damages claim); and (d) there is no reason why any purchaser would wish to evict the business as a tenant, I accept that point (c) is undoubtedly a potential risk, in that if it all went wrong for Usman it is possible that there might be other claims.

84. In conclusion, therefore, on balance there is clearly a risk of some serious and irreversible damage to Nusrat in such circumstances, but it is not as serious either in terms of risk or in terms of amount of irrecoverable loss as is contended by Nusrat.

85. Turning then to the risk of serious and irreversible harm to Usman if I granted the injunction and Nusrat did not succeed in her claim, Mr Learmonth submitted that the only prejudice would be that Usman would be delayed in progressing his plans for the takeover of the Company until such time as Nusrat's claim was determined. He submitted that the prejudice identified by Mr Lawrence in his skeleton argument was prejudice which would arise only if Usman was obstructed permanently or for a substantial period, neither of which was likely, especially given the speedy timetable which I indicated I was inclined to direct for the determination of Nusrat's claim. He submitted that there was no evidence that Usman would suffer any serious and irreversible damage if Usman was restrained in the meantime by the proposed injunction. In particular, he observed that Usman had not suggested let alone adduced any evidence that his investors would withdraw support in such a case.

86. I accept that Usman had not made out a claim that he would suffer specified serious and irreversible financial harm if an injunction was granted and Nusrat's claim was determined against her. However, into the balance it must also be recognised that: (a) it is not entirely possible to identify all of the possible categories of harm which might be suffered in a case such as this, where both parties have shown themselves ingenious in finding ways to achieve their desired result, through fair means or (arguably) foul; (b) a further period of time during which Usman is restrained from having the full benefit of what he is entitled, under the implementation of the sale mechanism and the decision of the Court of Appeal, is itself not justified in terms of the maintenance of the status quo.

87. In summary, this is not a case where it is plain and obvious which party would suffer worse serious and irreversible harm depending on whether the injunction is granted or refused. On balance it is

more likely that Nusrat would suffer serious and irreversible harm, but it is not as high as is contended by her, especially given the undertaking offered by Usman. In the circumstances it is also proper for me to take into account my provisional assessment of the strength of her case, i.e. that it is a relatively weak one and that it is at least equally plausible that it is being advanced as a last ditch attempt to scupper Usman gaining control of the Company rather than as a genuine claim advanced by Nusrat in her own interest.

88. I must, therefore, exercise my discretion by reference to all of the relevant circumstances to which my attention has been drawn. For the reasons I have already identified, there is a powerful argument to the effect that the starting point and a major consideration ought to be that Usman should be entitled to exercise his rights as legal owner of the two shares which it had always been understood – at least by reference to the evidence adduced and judgments given in the proceedings – that he was. In my judgment, so long as reasonable protections can be built in to prevent Usman from using the overall voting power which he would have as a 52% majority shareholder to make permanent and irreversible changes to the Company and which would provide Nusrat with at least some comfort that there would some asset against which she could seek to enforce any judgment in her favour, the balance of convenience lies in favour of refusing an injunction.

89. I am satisfied that the reasonable protections to which Nusrat is entitled in the circumstances are the provision of the following undertakings by Usman (as modified from the original undertakings as identified in the draft judgment as identified in paragraph 16 above and for the reasons explained there and in the concluding section of this judgment):

(1) Not to effect or attempt to effect any transfer, sale, charge, disposal of by him or other dealing by him with the sale shares or the two shares or any registration of any such transfer pending the final order giving effect to the determination of Nusrat's two shares claim or until further order.

(2) To abide by any order which the court may subsequently make, in the event that Nusrat's two shares application succeeds, requiring him to take all such steps as the court may direct with a view to putting the parties in the position which would have obtained had he not been the registered owner of the two shares from the date of rectification of the Company register to the date of the final order giving effect to the determination of Nusrat's two shares claim.

(3) To give Nusrat at least 14 days' notice of any intention to sell, charge, dispose of or otherwise deal with the whole or any substantial part of the business or the undertaking of the Company[9] or the property from the date of completion.

90. As I stated in section A when announcing my conclusions, whilst I could make an injunction in the terms of the first undertaking, and whilst Usman has offered an undertaking in the terms of the third undertaking, I do not consider that I could grant an injunction in the terms of the second undertaking, but that it is reasonably necessary to prevent the risk of permanent and irreversible damage to Nusrat, so that failing which there should be an injunction in the terms sought.

F. Consequential matters

91. At the time of sending out this judgment in draft I allowed the parties to provide submissions and reply submissions in relation to: (a) the terms of the order to be made to give effect to this judgment

[9] The draft judgment limited this undertaking to dealings with the property but, following further submissions, I have been persuaded that it should be extended to cover the business and undertaking of the Company, again for the reasons given in the concluding section of this judgment.

once Usman had decided whether or not he was willing to give undertakings as required; (b) any costs orders sought (including any request for any payment on account – since the hearing lasted 2 days I indicated that I did not propose to summarily assess costs); (c) and any other relevant matters, such as proposed directions for the determination of Nusrat's two shares claim, insofar as they differ from those suggested by me at the hearing and recorded in this judgment, or any application for permission to appeal. I indicated that I would then hand down judgment in the absence of the parties and make an appropriate order dealing with all outstanding matters.

92. I also indicated my provisional view as regards costs, which was that (without affecting any costs orders already made):

(1) As between Usman and Mahboob, the costs of Usman's sale contracts terms application and Usman's sale shares application should be borne by Mahboob as the substantially unsuccessful party.

(3) As between Usman and Nusrat, the costs of Usman's two shares application, Nusrat's two shares application and Nusrat's injunction application should be costs in Nusrat's two shares application given that both parties have achieved some success and the fairest outcome is that the ultimately unsuccessful party on the substantive issue should pay the costs of the applications.

(4) As between Usman and the Company, Usman as the substantially successful party should have his costs of the Company's sale shares application. The more relevant issue is whether and if so what order should be made as to whether or not these costs, and indeed the Company's own costs, should be borne by the Company or by the current board members personally, as to which I leave it to Usman to decide whether or not to seek such an order and if so the jurisdiction and grounds upon which he seeks it.

93. I received submissions from all parties, for which I am grateful. I address them briefly as follows and following, for convenience, the order in which they appear in the draft order.

94. The first issue concerned the scope of the undertakings which Nusrat submitted Usman must give. Nusrat submitted that undertaking (2) should be bolstered to prevent Usman from making irreversible changes by entering into transactions without notifying the other party of this provision by including the following wording at the end: "… and to that end, in respect of any transaction outside the ordinary course of business for him or the Company, to notify any counterparty of the terms of this undertaking and only transact on terms that may be rescinded if the court so orders". Usman submitted that this goes well beyond what I had decided was necessary and also introduced an unnecessarily far-reaching limitation on Usman's ability to act which was also unacceptably uncertain as to what was in the ordinary course of the Company's business. Whilst overall I agree with Usman on these points, I do accept that there is a need to bolster the scope of the undertaking to prevent Usman from entering into any potentially irreversible dealings with the two shares and the sale shares and to prevent him from causing the Company to sell all or a substantial part of its business and undertaking pending the determination of Nusrat's two shares application.

95. A second and to some extent connected issue arose in relation to whether or not the order should include a provision, common in many injunction orders, specifying that it is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of the undertakings and warning that any person doing so may be imprisoned, fined or have their assets seized. Usman contends that it goes beyond what is required in an order of this kind, and may give the reader the impression that the Court has formed a view that breach of the undertakings is a realistic possibility.

I do not agree. In the context of the history of this case there is at least a risk that Usman might enter into transactions with third parties in breach of the undertaking on the basis that the reward was worth the risk, whereas if they are on notice of this potential consequence they are more likely not to take that risk.

96. There is a modest issue as to the length of the trial required for Nusrat's two shares application. It is a little difficult to say at present, since the extent of oral evidence needed is unclear. However, since at the very least it will require evidence from Nusrat, Usman, probably Asad and quite likely other members of the two families and those involved with the families and the business, and will require some consideration of what was said at the previous trial, as well as legal submissions, I consider that the safe course is to list for three days to include a half day pre-reading so that the hearing will commence at 2pm on day 1.

97. The Company seeks permission to appeal. In fact, however, on my reading of Ms Gibaud's submissions, the appeal for which permission is sought is not against my decision on the Company's sale shares application as contained in paragraphs 7 and 8 of the order, but against certain factual findings made in relation to the conduct of the current board of directors which may be relevant when I come to consider Usman's application for a third party costs order against those current board members in accordance with the directions contained in paragraph 14 of the order, where they are referred to as the Costs Defendants. I do not consider that any appeal by the Company against such findings would have any real prospect of success, given the evidence which was placed before me and which in my view amply justified the findings I made without the need for oral evidence. I do, however, acknowledge that it might be thought unfair if it transpired that the Costs Defendants became subject to an adverse third party costs determination and, on seeking to appeal, were met with an objection that they had in some way lost the right to do so because they had not sought to appeal these findings. Whilst it seems to me that this is unlikely to happen, not least because I would need to consider and determine on their merits Ms Gibaud's submissions on these points at the hearing listed to deal with the application against the Costs Defendants, I can see that in order to guard against such possible prejudice it is appropriate to include a provision in the order extending the time for any such appeal by the Company and/or the Costs Defendants and making it clear that the Costs Defendants may seek permission to appeal against such findings at that stage.

98. Finally, I must address the remaining dispute as to the precise terms of the power of attorney, addressed in paragraphs 26 to 31 above. As I have already indicated, I have accepted Usman's submission that there should be a new additional clause 1.1.5 which has the effect of allowing Usman to exercise Mahboob's right to requisition a general meeting of the Company for the purpose of removing and replacing its board of directors since, pursuant to s. 303 of the Companies Act 2006, members representing at least 5% of the company may require the directors to call a general meeting. Without a power of attorney Usman would have to require Mahboob to do so in accordance with the declaration to be made, whereas with the power of attorney he does not need to do so or to take enforcement action if he failed or refused. As I said in paragraph 30 above, the test I set and applied was whether what is sought is properly and reasonably necessary to address the specific issues which are the subject of the current application. In my view, consistently with my findings above this further sub-clause does satisfy that test and does not run the risk of the inadvertent creation of new substantive rights or obligations.

99. As is submitted on behalf of Usman, what happened was that I deleted the existing draft clause 1.1.5, which conferred the right of "…otherwise executing, delivering and doing all deeds,

instruments and acts in the Principal's name insofar as may be done in the Principal's capacity as registered holder of the Shares", because that general catch-all did not seem to me to satisfy the test I had set. That would however have included the specific right now sought. Given that Usman has now identified that there is a need for this specific right, I am satisfied that it should be included in the power of attorney.

100. I come to deal finally with the question of costs where there are some substantial disagreements as between the parties and which I address in turn.

101. As between Usman and Mahboob, my provisional view was that the costs of Usman's sale contracts terms application and Usman's sale shares application should be borne by Mahboob as the substantially unsuccessful party. Unsurprisingly, Usman is content with this and seeks an interim payment on account of costs in the sum of £30,000.

102. Ms Ranales-Cotos realistically accepts on behalf of Mahboob that Usman was the successful party as regards Usman's sale shares application, but disputes that Usman was the successful party as regards Usman's sale contracts terms application. She also contends that Usman should not recover all of his costs of Usman's sale contracts terms application and submits that the appropriate order as between Mahboob and Usman is either that there shall be no order as to costs in relation to Usman's sale contracts terms application and Mahboob shall pay Usman's costs of Usman's sale shares application on the standard basis to be assessed if not agreed or Mahboob shall pay 25% of Usman's costs of Usman's sale contracts terms application and 75% of Usman's costs of Usman's sale shares application on the standard basis to be assessed if not agreed.

103. Notwithstanding Ms Ranales-Cotos' able submissions, it is apparent that Usman was the successful party in relation to both applications, at least so far as the most substantial expenditure on costs is concerned. As I said in section A of this judgment, the key issue in relation to both applications was whether or not Mahboob could seek to avoid having to comply with what Usman identified was his obligation as bare trustee of the sale shares to comply with Usman's instructions in relation to the exercise of the powers associated with the ownership of those shares without the scope for further dispute and/or delay. On that key issue Mahboob has failed, both in relation to the declaration and in relation to the power of attorney.

104. I do however accept Ms Ranales-Cotos' submissions that: (a) Usman was not successful in relation to every argument in relation to the full scope of the power of attorney; (b) Usman was not successful in relation to every argument in relation to the terms of the sale contracts; and (c) the disputes as to the property sale contract were compromised in the end but with a process of give and take by both. On balance I accept Mahboob's submission that it would be wrong not to reflect that to some extent. However: (a) I do not consider that either party was acting so unreasonably in relation to the specific areas of dispute as to justify a departure from the starting point; and (b) I do not consider that these remaining disputes would have led to anything like the time and cost which have been incurred had it not been for the fact that Mahboob was unwilling to concede the fundamental point that he no longer had the right to control the voting and other rights associated with the shares and, hence, could not by this means block the removal and replacement of the current board.

105. Given that in my view it would be an impossible exercise to separate out the costs of the two applications from each other, standing back in my judgment the appropriate result is that Usman

should receive 80% of his costs of both applications from Mahboob. I am satisfied that a payment on account of such costs of £30,000 is entirely reasonable and justified.

106. As between Usman and the Company, Usman, has as already stated, already intimated his intention to make and seek a third party costs order against the current board directors to compel them to pay both his costs and the Company's costs of Usman's two shares application and the Company's share sales application and has produced a draft application which he will issue once the approved judgment has been handed down and which is the subject of directions in the order. In the circumstances no further order is sought as between Usman and the Company in relation to these applications.

107. As between Usman and Nusrat, my provisional view was that the costs of Usman's two shares application, Nusrat's two shares application and Nusrat's injunction application should be costs in Nusrat's two shares application, given that both parties have achieved some success and the fairest outcome is that the ultimately unsuccessful party on the substantive issue should pay the costs of the applications.

108. Usman did not oppose such an order. He referred me to authority (*Digby v Melford Capital Partners (Holdings) LLP* [2020] EWCA Civ 1647 at [35]-[36]) for the well-established principle that the normal (albeit not invariable) order in a case where the court makes a decision on an application for an interim injunction is that costs should be reserved. He did not seek to persuade me away from my provisional view that in this case the costs of these applications as between Usman and Nusrat should be costs in Nusrat's two shares application, since that will decide the key question as to whether Usman or Nusrat is right as to who is actually the true owner of the two shares, and that in a case such as this the ultimate winner should recover his or her costs of the interlocutory process.

109. Nusrat contended that there were particular factors here which justified a different order. In particular she contended that: (a) if Usman had stated clearly in a pre-action letter that his only claim was that he was the legal owner of the two shares she would have conceded it and he should have to bear the costs of the Usman two shares' application in consequence; (b) Usman abandoned or lost the major points raised in defence of the injunction application, namely serious question to be tried, abuse of process, irremediable harm to either and adequacy of damages and, thus, that Usman should pay her costs of the injunction application.

110. Usman replied by submitting that in fact: (a) Nusrat did not achieve her primary overall objective of seeking to persuade the court to block Usman from taking control even in the short term; (b) Nusrat did not achieve her secondary overall objective of obtain a far more wide-ranging injunction that that sought and, in particular, one which would have prevented Usman from using the voting rights attached to the two shares to prevent Usman from replacing the current board of directors; (c) Usman succeeded in persuading me to require significantly less swingeing undertakings, particularly in the context of his success on the Usman two shares application and my overall conclusion that Nusrat's claim is a relatively weak one and that it was at least equally plausible that was being advanced as a last ditch attempt to scupper Usman gaining control of the Company. I accept all these points as well as Usman's further point that it was not as clear as Nusrat now suggests that she always – and would always – have conceded the legal right to the two shares and Usman's right to immediate rectification of the register had this been asserted in pre-action correspondence from the outset.

111. In the circumstances, I am satisfied that the appropriate order in relation to these applications is costs in case.