Neutral Citation Number: [2025] EWHC 480 (Ch)

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester M60 9DJ
Date handed down: 4 March 2025

Before:

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

Case No: CR-2022-MAN-001069

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF BURDETTS COACHES LIMITED
Between:

SHEILA BURDETT **Petitioner**

- and -

(1) DAVID WILLIAM BURDETT
(2) BURDETTS COACHES LIMITED **Defendants**

Case No: PT-2024-MAN-000168

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

DAVID WILLIAM BURDETT
(In his personal capacity and as sole beneficiary and as personal representative of the Estate of Joyce Mary Burdett Deceased)

Claimant

and

SHEILA BURDETT
(In her personal capacity and as sole beneficiary and as personal representative of the Estate of Kenneth Jeffrey Burdett (Deceased)

Defendant

- -

Martin Budworth (instructed by **BRM Law Limited, Sheffield**) for **Sheila Burdett**
Stephen Connolly (instructed by **CMP Legal, Chesterfield & Best Solicitors, Sheffield**) for **David Burdett**

Hearing dates: 3, 4, 5, 6, 9 December 2024
Supplemental written submissions 13 December 2024
Draft judgment circulated: 12 February 2025

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APPROVED JUDGMENT

Remote hand-down: This judgment was handed down remotely at 10am on 4 March 2025 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:

Introduction and summary of decision

1. This is my judgment following the trial of a preliminary issue in case CR-2022-MAN-001069 (**the unfair prejudice claim**) and of case L80LS019 (**the 72 High Street claim**).

2. Both cases and claims involve disputes between the two principal protagonists, Sheila Burdett, the widow of the late Jeffrey Burdett, and David Burdett, his brother. The unfair prejudice claim relates to the affairs of a family company, Burdetts Coaches Limited (**Burdetts**), of which Jeffrey and David were the two directors and the two equal shareholders at the time of Jeffrey's death. The 72 High Street claim relates to the property of that name at Mosborough, Sheffield, which was Jeffrey and Sheila's family home at the time of his death and of which Jeffrey was the registered legal proprietor.

3. As regards the unfair prejudice claim the preliminary issue, as directed by DJ Richmond, is "whether or not there has been unfair prejudice suffered by the Petitioner". In substance, therefore, this is the trial of liability on the unfair prejudice claim, with all questions of relief being left over to a further trial.

4. It is an unusual feature of the unfair prejudice claim that David relies on a series of minutes of directors' meetings in his defence which are signed by him alone. In closing submissions it was, entirely realistically, acknowledged by Mr Budworth on behalf of Sheila that if these minutes are genuine, and the agreements they purport to evidence effective, they effectively dispose of her unfair prejudice claim. Indeed, the last such minute, being an ostensible record of a meeting on 13/11/15, two days before Jeffrey died, is potentially fatal to the claim by itself, since it records an apparent agreement that, in the event of Jeffrey's death, his shareholding in Burdetts should be transferred to David. If that is effective, then Sheila cannot claim to have inherited Jeffrey's shareholding on his death and, hence, cannot pursue the unfair prejudice claim on any basis which would entitle her to substantive relief.

5. In her petition Sheila pleaded a detailed case as to why she disputed the authenticity of these minutes. Most of the assertions, if true, amount to an implicit suggestion of forgery. However, no doubt properly conscious of counsel's professional allegations in relation to pleading an allegation of fraud, forgery was not expressly pleaded on the basis of the information then available. Sheila did, however, seek to reserve the right post inspection of the original minutes and post obtaining expert evidence to amend the petition to allege that they were false and forged. For reasons which I shall explain, neither the inspection process nor the expert evidence was conclusive as regards

authenticity. In the event, at no time prior to trial did Sheila amend to plead a positive case of forgery or fraud.

6. Nonetheless, in Mr Budworth's written opening it was alleged that "the suite of minutes has been a dishonest attempt to rewrite history". That cannot have come as any real surprise to David, who had come to court with evidence to meet this allegation which, in reality, flowed inevitably from the particulars of non-authenticity pleaded in the Petition. As Mr Budworth pithily put it, there is barely a cigarette paper between authenticity and forgery in this case.

7. In the circumstances, when Mr Connolly objected to Mr Budworth putting a case of forgery to David in cross-examination, after hearing argument I exercised my discretion to allow him to do so. This was notwithstanding that in my view Sheila ought to have made it clearer at an earlier stage, whether by amendment of the petition or by way of formal letter, that she would be putting this positive case at trial. In my ruling I held that, in the particular circumstances of this case, a proper application of the overriding objective pointed to my deciding the case on the merits, with the allegations having been tested in evidence, rather than on a technical point as to the difference between a notice to prove and a positive case of forgery. In arriving at my ruling I was greatly assisted by the judgment of Joanne Wicks KC (sitting as a deputy High Court Judge) in *Lemos v Church Bay Trust Company Limited* [2023] EWHC 2384 (Ch), in which she referred to two earlier decided cases, one of Norris J and the other of the Court of Appeal, as well as adding her own helpful observations.

8. In making my decision in relation to these disputed documents I bear in mind that, whilst I must decide all of the issues in this case on the balance of probabilities, an allegation of deliberate forgery of documents to support his defence to the unfair prejudice claim is a serious allegation made against David, as are the allegations of complicity made against David's wife, Niki, and his former partner, Dawn. There is no suggestion that any of these individuals have a criminal record or have otherwise committed other conduct amounting to serious dishonesty (leaving aside the various allegations made in relation to this case). I should, therefore, take into account the inherent probabilities that they would have done so in this case when making my decision on this issue: *In Re B (Children)* [2008] UKHL 35. I also bear in mind that the answer may be different in relation to different disputed documents.

9. As regards the 72 High Street claim, David has not produced any one contemporaneous document to evidence an agreement or acknowledgment by Jeffrey that he held 72 High Street on trust for David and their late parents. Thus, the same issues as to forgery do not arise and the question falls to be determined in accordance with conventional trust principles.

10. Turning briefly to procedural issues, the unfair prejudice claim was issued first, in Manchester (for no obvious reason, so far as I can see, given that the company, the parties and their solicitors are all Sheffield based) and has proceeded here without apparent objection or judicial intervention. The property claim was issued in Leeds but transferred to Manchester in August 2024, because it was obviously sensible that the two cases should be tried together. Nonetheless, on a proper application of paragraph 2.3(1) of *Practice Direction 57AA – Business and Property Courts*, the unfair prejudice claim should have been transferred to the Leeds Business and Property Court rather than the 72 High Street claim transferred to the Manchester Business and Property Court. The reason why that did not happen is most probably that by that stage the unfair prejudice claim had already come to trial in Manchester in April 2024, but had been adjourned by HHJ Cadwallader (sitting as a High Court Judge) on the basis of David's failure to comply with his disclosure obligations. Whilst he had clearly hoped that it could have been re-listed before him, that proved not to be possible in the trial window allocated, with the result that it was listed before me in December 2024, with an increased time estimate to reflect the fact that the two claims were now to be determined at the same time.

11. After a day's pre-reading, I heard evidence from the witnesses identified below over four days and then had a day of oral closing submissions before adjourning to produce this judgment, whilst also giving Mr Connolly the opportunity to provide supplemental written submissions in relation to two discrete applications made by Mr Budworth in the course of his closing oral submissions. I am extremely grateful to both counsel for their detailed and helpful submissions and for conducting cross-examination, in a case which raised strong emotions in Sheila and David, in a way which firmly put their responsive client's cases but did not unnecessarily fan the flames of those strong emotions.

12. My decision, in summary, is that: (a) Sheila fails in relation to the unfair prejudice claim; and (b) David fails in relation to the 72 High Street claim.

13. When I explored this as a possible outcome with counsel in closing submissions, perhaps unsurprisingly – given that their respectively clients would obviously have preferred to win on both claims - neither approached it with any particular enthusiasm. Indeed, Mr Budworth went so far as to submit that it was not open to me, because it was not either party's pleaded case. It is, however, a finding which I am perfectly entitled to make on my assessment of the evidence and the likely probabilities. Moreover, in my judgment it provides the most likely explanation for why there was no falling out between Jeffrey and David whilst the former was still alive, apart of course from their obvious brotherly affection. That is that they both knew and accepted that, because David and their parents - Fred and Joyce, had been generous in enabling Jeffrey to buy this very handsome property as a home for Sheila and him to live in, using surplus funds from Burdetts and from the family, David and his family would be entitled to receive the most benefit from further surplus funds generated from Burdetts as and when the time came.

14. I begin my reasons with what is a summary of the significant events in relation to both claims. After summarising the pleaded cases, making reference to the witnesses, and setting out my assessment in relation to the disputed documents (including my ruling on the unheralded strike-out applications made by Mr Budworth in closing submissions), I move on to determine the relevant issues in the chronological order in which they arise. Despite doing so in this way, I should make clear that: (a) I have had full regard to all of the points made in relation to all of the issues when making my decision in relation to each disputed fact or allegation; (b) although the two claims have, for obvious reasons, been treated separately, I have approached them on the basis that in a family business and property case such as this it is difficult, if not impossible, to divorce family considerations from business considerations or to decide the separate claims in a vacuum one from the other. Thus, as will be seen, my conclusions on one issue inform my conclusions on the other, even though I have dealt with them in separate sections.

15. In the usual way, on circulation of my judgment in draft I invited the parties to provide lists of typographical and other errors and omissions before handing down judgment in final form. Mr Connolly's were entirely appropriate. It does not appear that Sheila's were drafted by Mr Budworth; they were certainly not signed by him. Given their nature, Mr Connolly asked for, and I allowed him, a right of response. In his response, he rightly submitted that "save in a very small number of instances, Sheila's note does not correct typographical or other obvious errors. Rather, it seeks, impermissibly, to re-argue the case [with] no regard … to either the commentary in the White Book, Vol. 1 at 40.2.3 and 40.2.4 or to the dicta from cases therein referred to such as *Royal Brompton Hospital NHS Trust v Hammond* [2001] EWCA Civ 778 at [11], *Egan v Motor Services (Bath) Limited* [2007] EWCA Civ 1002 at [49] to [51] and *George v Cannell* [2022] EWCA Civ 1067 at [24]". Whoever was responsible for drafting these submissions, as well as being entirely inappropriate they have proved a pointless waste of time and money and, regardless of the ultimate order I shall make in relation to costs, I will listen sympathetically to any application by David that the costs of this exercise should be his in any event.

Chronology of significant events

16. I begin with a chronology of the important events, introducing the persons and companies who feature most heavily in the case. Others will be introduced as and where needed. As with most family business disputes where many parties share the same surname, I will refer to them by their first name only.

17. Jeffrey and David were born in 1952 and 1954 respectively. Their parents were the late Fred Burdett (Fred) and the late Joyce Burdett (Joyce).

18. Burdetts was set up by Fred after the war as a taxi and then a coach business, initially in a small way and gradually expanding. Fred enjoyed driving the coaches and the interaction with passengers. Joyce, as well as bringing up the two boys, worked tirelessly in the office, operating the telephone, managing bookings and dealing with office finance and administration. Both Jeffrey and David went into the family business which, eventually, became a partnership between the three men, with Joyce an informal, but very much fully involved, fourth partner. Jeffrey, who was the elder, inherited his father's love of coaches, enjoying driving them and the interaction with passengers, and generally looking after them. David inherited his mother's ability with finance and administration. Their respective roles in the business came to align with their natural inclinations. It appears that Jeffrey was not inclined to involve himself with decisions in relation to financial and administrative matters, both because he trusted David and because he was not sufficiently interested to want to get involved in the detail himself.

19. In 1975 Fred and Joyce acquired their house at 68 Station Road, Mosborough, which was bought by the business although seemingly registered in their own names. As David said in a message to Sheila, referring to this, Burdetts was able to make use of accountancy services to "give us an awful lot of flexibility when it came to money".

20. In 1998, on the advice of Mr Rhodes of Rhodes Clarke, their then accountants, they decided to incorporate their business. Burdetts was formed, with the three men becoming directors and equal shareholders. The business was run from 8 Station Road, where the office was, with the yard being close by. It appears that usual practice was to have family breakfasts around the kitchen table, once the early morning work had been completed, at which time the day's business was discussed, as were other important business matters, time permitting.

21. The four family members clearly had a "special bond and relationship", as David described it in the message to Sheila referred to above. As he also said, their approach seems to have been that the money generated by the business should be used for and kept within the family, so that any money which was not needed by Fred and Joyce or by Jeffrey and David should be passed down to the next generation. Whilst Jeffrey did not have any children of his own, he was still in agreement with this approach, not least because: (a) he had a very good relationship with David and his boys, especially Connor, David's eldest son; (b) he and Sheila had an undocumented understanding that their property was informally divided between that which would go to his family when he died and that which would go to her family when she died.

22. It is not surprising, against this backdrop, that it is common ground that Burdetts was a classic "quasi-partnership" company (as explained by the House of Lords in *Ebrahimi v Westbourne Galleries* [1973] AC 360).

23. Post incorporation, the family continued to instruct Rhodes Clarke to produce the company accounts and to give the usual advice in relation to financial matters connected with the family business. David says that they were advised by Mr Rhodes to keep records of any important decisions. However, the only uncontentious minute which David has been able to disclose concerns a resolution from 31/3/03 to declare a dividend. It appears that this would have been prepared by the accountants

as part of their year-end work. Burdetts' year end was 31 March, so that where I refer for example to YE2006 that is a reference to the year ending 31/3/06.

24. According to David, in an explanation which he gave for the first time in oral evidence, he put important minutes into a file in a safe in the Burdetts' office. He says that this is where he found the disputed minutes, which he disclosed pre-action. His evidence was that other minutes, such as the 2003 dividend minute just referred to, were not regarded by him as sufficiently important to put into the file in the safe, and were put into various other files in the office. He says that by the time he was ordered to conduct a thorough search of the office in April 2024 he was unable to find any other minutes elsewhere.

25. Returning to the chronology, David had also incorporated another company, Ashley Travel Limited (**Ashley**), as a separate business with a man known as Andrew Powell, where each were directors of and equal shareholders in Ashley. This was a smaller business, which operated principally in the coach holiday business, which Burdetts was not really involved in. It operated from adjoining premises to Burdetts, and there is no suggestion that David in any way concealed his role in this business from the others or that they ever objected to him doing so. His evidence was that he only went into the Ashley business by himself because his parents were not interested and because Jeffrey was not interested either.

26. Sheila was from another local family, the Marper family. Jeffrey and Sheila had enjoyed a brief relationship some time previously but began a more serious relationship in 1999, when he moved into the property at 2 Station Road which she had bought in 1997 and renovated with her own funds. They did not have any children, either separately or before they resumed their relationship in 1999. Given their ages in 1999, they would not have expected to have children by that time. They married on 29/5/07. Neither made a will before Jeffrey's death. They enjoyed a contented life together, pursuing their separate and their mutual interests.

27. As I have already said, Jeffrey was not very interested in business or financial matters and did not want to bring the affairs of the business home to discuss them with Sheila, nor did he want to talk to her about the detail of the family relationships. He preferred to enjoy his life pursuing his various interests, especially antique collecting with Sheila and fishing with his friends. He was not very interested in amassing money or property. He liked money for what he could buy with it, for himself and for others, and he had a generous nature. Sheila gave the example of his being bequeathed a modest property from a friend. He gave half of the proceeds to a relative of the friend who he thought deserved it and needed it more than he did and spent the rest on a car for Sheila.

28. Sheila also said, and I accept, that he wanted a nice house as a home to live in, rather than because it represented wealth or might appreciate in value.

29. Sheila also always understood that David controlled the Burdetts' finances, which was plainly the case. This is consistent with David's role in the financial side of the business, and also with the documentary evidence before me showing that David, for example, would move money between Burdetts bank accounts and personal family interest bearing savings accounts in order to obtain the best interest rates available.

30. David married young his first wife, Helen and they had a daughter together in 1982, Emma.

31. David then had a relationship with Dawn Campbell and they had a son together in 1995, Connor. David has always had a close relationship with Connor, as did Jeffrey, and David has also always got on well with Dawn, who gave evidence on his behalf, principally in relation to the November 2015 minute discussed in detail below.

32. David then had a relationship with Niki and they had two sons together, Jack in 2002 and Alexander in 2005. They married in 2007. In November 2007 David made an "off-the-shelf" will, appointing Niki as executor and sole beneficiary if she should survive him for more than 28 days, otherwise to his four children in equal shares.

33. David was always more interested in business and finance and in amassing money and property than Jeffrey was. This observation is not intended as any criticism of him. He illustrated this in evidence by saying how whilst Jeffrey was never interested in buying a house of his own, living at home with his parents until he moved in with Sheila, he bought a house early, and then added to it by judicious purchases of adjoining property, before selling off the property (then known as 30 Ashley Lane, Killamarsh) for £590,000 in January 2006.

34. There is no evidence as to how he financed these property acquisitions, whether directly from money provided by Burdetts or from money paid to him by Burdetts as wages or dividend, but there is no evidence that it could have come – whether directly or indirectly – from any other source. It may also have come in part from Ashley, but its accounts for the financial years leading up to the purchase of 72 High Street do not show anything more than modest profits. In cross-examination David said that he very much left the Ashley business to Mr Powell and his wife and he concentrated on Burdetts.

35. The passage of time makes it difficult to know how David did finance these acquisitions, although he has not attempted to try to do so. The particular complication is that David was, as I have said, in the habit of opening interest-bearing accounts in his own name to obtain good interest rates and then transferring Burdetts' (and, later, Thornbridge's) funds into these accounts for the same purposes, in circumstances where his evidence was that banks and building societies were not keen to allow companies to open these high interest-bearing accounts. Thus, in relation to a number of transactions investigated in cross-examination, funds left Burdetts or Thornbridge and were then transferred into one and then another account owned by David. Although David insisted that all of these transactions had to be, and were, checked and reconciled by the accountants at year end, there is no clear evidence about this from any documentation which either David or the accountants have been able to produce. In at least one case the sale proceeds of a Thornbridge property (Flat 7, Parkside) were paid out into David's personal account. In March 2019 monies were transferred from Thornbridge to David and then to another company of which David was a director.

36. More specifically, there is no clear evidence as to the source and destination of the funds which he says he introduced from his own personal monies, representing part of the proceeds of sale of 30 Ashley Lane, to purchase 72 High Street. I will address this later in more detail when I deal with the claim relating to 72 High Street.

37. On 9/2/05 Fred resigned as director, stepping back from the business to retire. The first disputed minute of meeting dates from 31/1/05 and is recorded as being attended by all three men in the Burdetts office. It refers to Fred's resignation. It also refers to 96 new shares being issued and allotted equally between Jeffrey and David, so that they had 49 each and Fred only one. This also happened at this time. It also refers to discussions about the future of the business, with a decision that the most attractive option was a sale or merger of the business with Ashley over a period of time. It was on the basis that Fred agreed to retire and relinquish his equal interest in Burdetts. The minute also records that Jeffrey was less inclined than David to carry on for much further. This may well be because he had to deal with a long term diagnosis of diabetes. It may also be because he was intrinsically less interested in growing the business or with the need to generate income than was David.

38. It is David's evidence, confirmed by Dawn, that his practice was to make handwritten notes at or after these meetings, which he would then provide to her and she would type up, using her work

computer at her office at the accountancy firm where she worked, as a favour to him. That is what they say happened after this and the later meetings.

39. Nothing happened very quickly in relation to the sale to Ashley following this meeting. There was no particular reason for the delay, according to David in cross-examination. He said that it just took a long time because it was an important decision for everyone, not least Andy Powell and his wife Sue Powell, who needed to agree to the terms of the ultimate agreement and, in particular, the financial risks and commitments they were undertaking.

40. In the meantime, in 2005, Sheila and Jeffrey had decided to find a larger house to live in.

41. Jeffrey eventually purchased 72 High Street in his own name, completion taking place on 24/3/06. My consideration and conclusions as to the circumstances in which 72 High Street came to be acquired will be addressed separately below.

42. However, as a matter of record, it is common ground that the purchase price of £230,000 (together with extras and expenses totalling £240,744.59) was provided as follows: (a) £160,000, by a Halifax banker draft from David from funds in his Halifax bank account (b) £57,589.59, by a Halifax banker draft by Fred and Joyce from funds in their bank account; and (c) the balance from funds introduced by Jeffrey from a loan taken out by him for that purpose.

43. It is also common ground that there was no declaration of trust produced or executed at the time. Perhaps unsurprisingly given the passage of time, no-one has obtained the conveyancing file of the solicitors who dealt with the purchase or called a member of that practice as a witness. There is no evidence as to whether anyone has made enquiries. There is no suggestion that there is anything on the accountants' files relating to this purchase. In short, there is a paucity of independent contemporaneous evidence as to whether it was intended that Jeffrey should be the sole beneficial as well as the sole legal owner or whether he should hold it on trust and, if so, for whom and on what basis.

44. In tandem with the protracted purchase of 72 High Street, the equally delayed agreement with Ashley was also proceeding. In that regard, the second disputed minute of meeting dates from 25/1/06. The meeting is recorded as being attended by Jeffrey and David at the accountant's office, with Mr Rhodes being present to explain the YE2005 accounts to them before they signed them off. It records an agreement, approved by both Jeffrey and David as directors, that Ashley had agreed to take over Burdetts on the basis of purchasing its coach fleet over six years, but having the immediate use of them and paying rent for them until each was purchased. Jeffrey was to become a director of Ashley as well as David, but not a shareholder. Burdetts' office telephone number was to be maintained to ensure that repeat business was not lost. As recorded in the minute, the effect of this transaction would be that Burdetts would stop trading as at YE2006.

45. On 28/3/06 the two companies entered into an agreement to hire the coaches. As David said, it is plainly based on a pro forma from a third party source and, hence, is not particularly apt for the actual transaction which had been agreed upon. Nonetheless, in broad terms it is consistent with the minute of meeting of 25/1/06 and is not alleged to have been a forgery or – if it is – there is no evidential basis for the suggestion. The reference to the insurance value of the vehicles being hired is plainly an extrapolation of the monthly hire fee and the period of hire and does not in my view indicate that the overall purchase price was artificially depressed.

46. In evidence, Sheila accepted that Jeffrey would probably have known the value of the Burdetts' coaches, although she did not know whether he had actually been involved in valuing them for the purposes of the agreement. She did not suggest that he had ever complained to her that the coaches had been sold at an undervalue and there is no objective evidence that they were. It became clear from her cross-examination that there was no logical basis for the valuation of £900,000 she had

placed on them in the petition. She had suggested that she had been told by a friend of Jeffrey's after his death that "they got £1m for their coaches" but, after some probing, it transpired that the person in question was the man who they had purchased 72 High Street from, who had no more reason than anyone else to know the true position.

47. In one message Sheila said to David that "Jeffrey was not deaf or daft as you know". This is an indication that, although Jeffrey was not particularly interested in the financial details, he was not ignorant about what was happening in terms of the family business and its finances.

48. As Mr Budworth submitted, the relevance of all this is that, at the same time as Jeffrey and Sheila were purchasing 72 High Street, Jeffrey and David (and, I can reasonably infer, Fred and Joyce) knew that Burdetts was asset rich, and could expect to become cash rich over the next few years, assuming Ashley did indeed purchase the coaches under the agreement. They also knew that Burdetts did not need the cash for its own business purposes, because it was no longer trading. In his first trial witness statement at [98] David confirmed this, saying that "because of the deal with Ashley and BCL's success in the previous years, BCL was a cash rich company".

49. The agreement with Ashley would give both Jeffrey and David a continuing income, from their position as directors and employees of Ashley, but Jeffrey would not share in any profits generated by Ashley. It would therefore have been reasonable in my view for the four to conceive that it might be fair for Jeffrey to receive an immediate payout from Burdetts to enable him to acquire 72 High Street without David receiving an equivalent immediate payout, given the prospect of further substantial monies coming into Burdetts which would be free for further distribution.

50. In cross-examination David was asked about entries in the accounts which appeared to show the sale and hire payments due from Ashley being set off against supplies provided by Ashley, so as to significantly reduce the actual payments made by Ashley, when the same supplies were not obviously shown in the equivalent Ashley accounts (although the position is complicated by the fact that Ashley had a different year end and also had different accountants). David was unable to explain this, but suggested that the accountants would not have approved the accounts if there was this discrepancy.

51. It was suggested to him that since Jeffrey was referred to in the related party disclosures section of Burdetts' accounts, erroneously, as a shareholder as well as a director of Ashley, this might have been passed by the accountants as just a convenient way of reducing the actual amount paid to Burdetts. He denied this. This was not a pleaded allegation of unfair prejudice, and it had not been investigated in detail. Whilst ostensibly concerning, it would in my judgment be unfair to David to make a positive finding that he was involved in a deliberate breach of director's duty in this respect, in circumstances where it may well be that this could be explained by reference to a fuller analysis of the accounts.

52. It was also suggested to David that the agreement with Ashley contained nothing for goodwill. However, as David said, part of the agreement involved Jeffrey being taken on by Ashley as an additional director with them both receiving £25,000 p.a. as salary. Additionally, Burdetts continued to earn money on referrals. Ultimately, if I accept, as I do, David's evidence, which is consistent with the minute of meeting if genuine, that this was the only realistic and best offer available for Burdetts, there can be no sensible basis for saying that David ought to have secured a further substantial payment for goodwill and breached his duty as director in failing to do so. Again, it must be remembered that Jeffrey was involved in the decision and that Fred and Joyce were still involved, even if not formally, so that it is unlikely that they would have sanctioned what was thought at the time to be an unfairly prejudicial arrangement.

53. The third disputed minute of meeting dates from 30/1/08 and relates to the next disputed issue, namely the loan to Thornbridge. As with the previous disputed minute, the immediate context was the sign-off of the relevant YE accounts, in this case YE2007. It records that in advance of the meeting Mr Rhodes took Jeffrey and David through the YE2007 accounts, which were agreed and signed off. The minute then records Mr Rhodes advising the directors that it "may be a good idea" to form a new limited company, to be controlled by family members, to invest surplus cash in property or bonds and make funds available for release at short notice, for example for care for Fred or to support Jeffrey and David as newly married men.

54. It ostensibly records a discussion about what would happen if either Jeffrey or David died. David is recorded as saying that "if he died anything he had would ultimately be passed down to his children, but he had made a will anyway". This is consistent with his evidence at trial.

55. Jeffrey is recorded as saying that "he had no children and no will and if something happened to him it would pass to his wife which he didn't think was fair and he didn't want this to happen. Both directors agreed that if something happened to KJB then all assets belonging to BCLtd should be protected for the benefit of the Burdett family and their heirs only and they asked for this to be recorded in the minutes".

56. It was then recorded that "a new company should be incorporated before 31st March 2008, to be owned and controlled by DWB and his family members, to make investments of any kind using funds provided by BCLtd in the form of a long term loan to support and be for the exclusive benefit of Fred, Joyce Mary, Kenneth Jeffrey and David William Burdett and their heirs only".

57. On 29/3/08 Thornbridge was incorporated, with David and Niki being appointed as directors and equal shareholders. In the absence of the 30/1/08 minute the omission of Jeffrey as director and equal shareholder of Thornbridge instead of Niki would undoubtedly have been odd. David's explanation is that the minute reflects the reality of the situation, which is that Jeffrey did not want Sheila to inherit his share of the Burdett family assets and, because of his closeness to his family, including David's boys and especially Connor (David's daughter seems not to have figured), was happy for everything which was not needed by their parents or themselves for their own needs during their lives to go to them. David's evidence was that Jeffrey did not want to be a director or shareholder of Thornbridge and was perfectly happy for him and Niki to take on that role.

58. However, it is not disputed that Jeffrey was interested in the property investment idea and was also useful because he was good with his hands and doing general property maintenance and DIY. According to Sheila he talked about we, meaning the family, buying properties. This is consistent with the agreement that the property investments would be held for the benefit of the family. It indicates in my view that Jeffrey was happy with the arrangement in the belief that the business was for the benefit of the family.

59. A further reason, identified by David, is that in order to obtain funds for investment David and Niki had to provide their personal properties as security, because (on David's case) Jeffrey had no house to provide as security. However, it is worth observing that if – as is David's case – he, Fred and Joyce were the beneficial owners of 72 High Street from the outset, it might be thought surprising that it was not transferred to Thornbridge after its formation and provided as security, or at least provided by Jeffrey as security. That would be just as straightforward - and less onerous to David and Niki - than the £200,000 which was obtained from Nat West bank in July 2008, subject to personal guarantees from both, supported by a charge over her personal property, as well as a debenture from Thornbridge.

60. The fact that this did not happen is in my view more consistent with David believing that 72 High Street was not part of the family investment portfolio.

61. It also is consistent with Jeffrey viewing 72 High Street as his house which he did not wish to risk in property investment. That is also consistent with his being happy not to be a director of or shareholder in Thornbridge.

62. Sheila said that Jeffrey never talked to her about his not being a director or shareholder of Thornbridge, which is why she assumed that he was. She also gave evidence that when she spoke to Mr Churm (the accountant at Sutton McGrath Hartley Ltd ("**SMH**") which had taken over Mr Rhodes' practice in 2012 following his retirement) he said that he was surprised to learn that Jeffrey was not a shareholder in Thornbridge. Mr Churm disputed this. It does seem unlikely that Mr Churm would have been unaware of this fact, since SMH prepared Thornbridge's accounts. The most probable explanation in my view is that Mr Churm had temporarily forgotten this during the conversation when he spoke to Sheila.

63. The agreement recorded in the minute of meeting was, on David's case, put into effect by a further minute of a meeting held on 4/4/08 at Fred and Joyce's house, with Jeffrey and David present as directors and Fred present as shareholder and Joyce as a guest and minute taker. On this occasion no accountant was present. The minutes record a "lengthy conversation" after which it was agreed that "all the work, effort and sacrifices made by all four people at the meeting in building up the assets of each and every business over the last sixty years or so should be protected in all and every way possible and these assets should ultimately be preserved for the exclusive benefit of all those present at the meeting and their heirs only", and that "by supporting Thornbridge Estates Limited in this way and because the new company would be controlled by family members only then funds could be made available to support them all in retirement, in old age and care in later life if ever needed". On that basis it was agreed by the member that "£600,000 should be made available to Thornbridge Estates Limited under the terms of the loan agreement".

64. The Loan Agreement was then duly signed by David on behalf of Burdetts and Niki on behalf of Thornbridge on the same date. Burdetts agreed to loan £600,000 to Thornbridge for 50 years, with a (minimal) interest of £400 p.a. being payable and the principal and interest being repaid no later than the expiry of the 50 years.

65. David's evidence was that the reason why the 50 year term was set was that there was never any intention that these monies should ever revert to the four of them but equally it was not to be regarded as an outright gift, which might cause tax difficulties, and that if necessary the question as to what to do about the loan could be dealt with in the distant future by his three sons who, it was expected, would control Burdetts as well by that stage if it was still active.

66. Later that year, in November 2008, Jeffrey's appointment as a director of Ashley was terminated. It appears that he did not get on well with Andy Powell and eventually decided he could no longer work with him. That left Jeffrey with no income. According to Sheila, after a delay David arranged for Jeffrey to begin receiving £600 per month by way of remuneration from Burdetts. The accounts prepared by SMH for YE2012 to YE2015 record dividends allocated to Jeffrey and David which, on their face, indicate that Jeffrey received large amounts, in excess of that received by David. However, in cross-examination Mr Churm accepted that these allocations were notional rather than actual and reflected the most tax-efficient way of allocating dividend.

67. It is common ground that on 13/2/09 Sheila's property at 2 Station Road was purchased by Thornbridge for £112,000. Sheila claims that it had been valued at £135,000, so that she had agreed to sell it at an undervalue. She said that this was on the basis of an agreement that she and Jeffrey would receive the rental income from the property (it had an existing tenant by this stage) because David was receiving the rental income from Thornbridge's property at Westfield Crescent. There is a disagreement as to whether this was the basis for the agreement and whether it was time limited for four years, as David says (on the basis, according to him, that this would have enabled the amount of

the undervalue to be recouped within that period), or was indefinite, as Sheila says. This is not a pleaded issue in the case, and Sheila agrees that whatever the agreement was, and whether or not it was legally enforceable, it was varied later anyway in 2017 (the fact that it was not varied earlier in 2013, during Jeffrey's lifetime, may tend to support Sheila's case on this point). Nonetheless, the end result of the agreement was that Jeffrey and Sheila received a substantial cash injection using Thornbridge funds as well as a reasonable rental income.

68. Of course, the downside was that Sheila sold what was her only substantial asset and only property. If David's case in relation to 72 High Street is to be accepted, she gave up that security in return for an undocumented (and possibly unenforceable) promise that she would be allowed to live in 72 High Street until she died. Whilst that is not completely implausible in the context of the family dynamic, in my view it is far more likely that she and Jeffrey would only have agreed to this had they both believed that Jeffrey was the full owner of 72 High Street, albeit on the basis that both had also agreed and it was known within the family that if Sheila outlived him she would honour his agreement that it would be left to the Burdett family when she died.

69. In October 2011 Fred, who had been diagnosed with cancer some year previously, died. After his death Thornbridge purchased a bungalow at 89b High Street for Joyce to live in rent free until she died in 2018. That conduct is consistent with the basis on which Thornbridge was said to have been set up.

70. In November 2015 Jeffrey was assisting David with clearing out a Thornbridge property, 3 Parkside, in preparation for its sale. On 12 November he had felt unwell during his walk home from visiting Joyce. Nonetheless, he decided to assist David the following day. There is a disagreement about whether or not David was aware before 13 November that Jeffrey had been feeling unwell. This is probably due to an underlying and unresolved question as to whether going over to do manual work in any way contributed to his death. I do not need to resolve this dispute, which is not relevant to any issue in the case, and do not do so. It would have been entirely typical of Jeffrey, from what I have heard about him, to minimise any symptoms rather than to let down his brother.

71. David's case is that on returning to David's home they began a discussion about the future, prompted by this illness episode, and the discussion ended up with a formal directors' meeting at which Niki was present and took a rough handwritten note, which she then wrote up as a detailed neat handwritten note, which in turn was then typed up by Dawn at some later stage.

72. It was recorded that it had been agreed that Burdetts should be closed down once practical after it had stopped trading, but that things had slipped and this had not been attended to even after Burdetts had ceased providing a referral service to Ashley because of family events and sentimentality. It was recorded as agreed that Burdetts should now be dissolved. Significantly, after repeating the previous agreement about preserving the Burdetts' assets for surviving members and heirs, it was also recorded that "if any serving director should die or become incapable of carrying out their duties before the Company was formally dissolved then their individual shareholding in the Company should, in the case of KJB be transferred to DWB and in the case of DWB be transferred to his son Connor Burdett, who was currently studying at university".

73. Two days' later, Jeffrey was taken ill and died. Notwithstanding his diabetes and his episode of ill-health days before, this came as a complete surprise to everyone, all of whom were naturally devastated by his untimely death. They all supported each other in their grief and there were no initial signs of disagreement. However, there was an early indication of problems to come in relation to David's unhappiness with the inscription of Jeffrey's headstone as chosen by Sheila. I will not lengthen this judgment by referring to such personal issues, save to observe that David did at times choose to bring them up in correspondence with Sheila when the relationship became more contentious.

74. At an early stage Sheila thought of moving into a smaller property. There is no suggestion that David said that she could not use the sale proceeds of 72 High Street to do so. According to Sheila he said that "the money will still be there", meaning it did not matter what happened to the house as long as the proceeds were still intact, but in the end she did not proceed with this idea and I do not consider that anything turns on this.

75. Jeffrey had never made any will. Sheila applied for letters of administration as his wife which was granted on 29/6/16. David was critical of Sheila for making the application without reference to him or Joyce, making repeated reference to this in his evidence. Whilst it is true that he could have helped her with providing some of the necessary financial information, his annoyance seems disproportionate and, in my view, indicates some early nervousness at potentially losing control of family financial matters given this indication of Sheila's independence in making her own decisions. Sheila included in the statement of assets what she clearly believed was Jeffrey's 50% existing shareholding in Burdetts, valued at £150,000, which, according to her, was taken from the then filed accounts at Companies House.

76. David was also critical of her decision to register 72 High Street in her name shortly afterwards, on 14/7/16. She said she had discussed this with Joyce and said she still always planned leave it to the three boys in fulfilment of her promise to Jeffrey. The contemporaneous email messages show that in August 2016 she told David she had made an appointment to see a solicitors to draft a will in which she would do so. This provoked a response from David dated 8/8/16 which is relevant to the case he is now advancing and, as material, reads: "I know the house is a difficult one because it was paid for with my Mother and Fathers and my money. It was put in Jeffrey's name simply because it was, and why not, as a son and brother none of us had or have an issue with that and of course none of us knew that Jeffrey was going to die way before his time". It is clear that he was unhappy with the idea of losing control over 72 High Street. A further clue to his thinking emerges from his later email on 10/8/16 where he said that his hope was to incorporate 72 High Street into Thornbridge for the benefit of the three boys when they were old enough to act sensibly.

77. This does record David saying that he put his (rather than Burdetts' money) towards buying the house. However, he consciously does not give a clear explanation as to why it was put in Jeffrey's name. Pertinently, he does not suggest that there was any agreement that they, not Jeffrey, owned it beneficially.

78. In my view, this communication is consistent with it having been understood in 2005-6 that 72 High Street would be held by Jeffrey in his own right, albeit on the agreed footing that at some stage, either by gift by him during his lifetime or on his death as an unmarried man who had not made a will in favour of Sheila, it would go to the family and, in due course, to the benefit of the three boys when it was judged that the time was right in accordance with the "family benefit" agreement recorded in the disputed minutes of meetings.

79. It appears that Sheila did make a will leaving 72 High Street to David, but to the three boys if he died before her, whereas later she made a replacement will simply leaving it to the three boys. There is no evidence that she has ever made a will leaving it to her family.

80. In late 2016 (I am satisfied from SMH's internal documents that this was the date) it was agreed between David and SMH that Burdetts should be closed down, on the basis that it was effectively dormant, with no real assets other than the 50 year loan to Thornbridge and monies recorded notionally in the accounts as profits brought forward, and there was no point in incurring ongoing charges to keep it alive. I accept Mr Churm's evidence that this was not progressed until later, in summer 2017 onwards, because by late 2016 there was insufficient time before the YE2006 filing deadline to take the necessary first steps.

81. In July 2017 David arranged for SMH to prepare a stock transfer form (**STF**) for Sheila to sign as Jeffrey's personal representative to transfer his shareholding in Burdetts to David. He did so, and this produced a strong reaction from Sheila, who clearly believed that David was trying to get her to sign over Jeffrey's share in jointly owned property. This produced a furious and, it must be said, unpleasantly expressed response from David. From that time onwards a very serious rift opened up between David and Sheila. At one stage, in 2020, Sheila reported David to the police on the basis that he had attempted to steal the shares. Although Mr Budworth has suggested that the communications passing between David and SMH and his response to the police are inconsistent with the 13/11/15 minute of meeting being genuine, I am not persuaded of this. In my view it is not altogether surprising that there was a lack of clarity as to the effect of the minute of meeting at that time, before the matter became contentious and lawyers were involved on both sides.

82. That is because the wording used in the 13/11/25 minute of meeting refers to Jeffrey's shareholding being "transferred" to David in the event of his death or incapacity. It does not use words such as "transferred automatically". It follows that it may well have been regarded as necessary for the shareholding to be transferred and Sheila as his personal representative would be the person who needed to effect such transfer on behalf of his estate. It thus follows in my judgment that it is not obviously inconsistent with the minute for SMH to produce and for David to send the STF in July 2017 for her to sign.

83. That said, since the confirmation statement submitted by David for Burdetts and received by Companies House on 11 April 2017 refers to him as the person with significant control (**PSC**), which could only apply if he held 75% of the shareholding "directly or indirectly", it must have been thought that the 13/11/15 minute of meeting gave him immediate indirect control even before any STF was signed.

84. In the meantime, SMH was continuing work on the plan to wind down Burdetts. In cross-examination Mr Churm was taken to various entries appearing to record decisions not to declare dividend and to allocate Jeffrey's DLA to David. Whilst this might otherwise have appeared prejudicial to Jeffrey, Mr Churm's explanation, which I accept, was that most of these entries related to notional amounts anyway, produced on the basis of the most tax efficient planning considerations rather than there being actual cash reserves available for distribution. Further, assuming that the 13/11/15 minute of meeting is genuine, Jeffrey had already agreed that after his death his shareholding should be transferred to David.

85. On 31/5/18 Joyce died. Her estate passed to David. The return of estate information submitted by him on 13/5/22 answered "no" to the question whether she had the right to receive the benefit from any assets held in a trust that were treated as part of her estate for Inheritance Tax purposes and no to the further question whether there were assets held in trust for her benefit during her lifetime. Although David was not cross-examined about this, it does appear inconsistent with an argument that she had a beneficial interest in 72 High Street representing the amount paid by her and Fred to the purchase price. It also declared cash assets of £215,173 and valuations of the office property at 8 Station Road of £196,000 and her house at 72 High Street at £57,590.

86. David has not attempted to explain how the cash assets in particular came into her hands since 2006.

87. In 2018 David attempted to persuade Sheila to execute a Deed of Trust to ensure that she could not deal inconsistently with 72 High Street, but she was unwilling to do so, despite David instructing solicitors on his behalf, who wrote on 20/6/18 that the property was bought for him by the family "as a loan for life".

88. On 12 September 2018 Sheila's then solicitors, Taylor & Emmett LLP, wrote to David's solicitors, making a claim in relation to the 50% shareholding in Burdetts and rejecting any claim in relation to

72 High Street. On David's instructions they declined to correspond in relation to the shareholding issue.

89. David instructed SMH to produce a notice to dissolve Burdetts in July 2019. Because Sheila was monitoring Companies House she became aware of it and objected, hence the company remains in existence. Sheila characterises this as a blatant attempt by David to stymie the unfair prejudice claim. In my judgment that was not the motive, but it is indicative of David considering that he could do what he liked in relation to what he regarded as Burdett family affairs, without reference to Sheila and any rights which she might assert.

90. Matters became more contentious in relation to 72 High Street in late 2021 / early 2022 when Sheila decided to re-mortgage the property, according to her to raise funds to purchase two smaller properties, one to live in and one to provide rental income. Her explanation was that this would not break her promise to Jeffrey, because she would still have left the two properties to the three boys in her will. However, she did not inform David of her intention to do this and, when he discovered, he lodged a priority search over 72 High Street at the Land Registry, which effectively prevented the transaction from proceeding. In the applications as drafted by his solicitors, which he renewed on a periodic basis until he finally lodged an application to enter a restriction, relying on his asserted beneficial interest, he stated that this was in respect of an intended purchase of the property. That was plainly untrue. In cross-examination he suggested that this was a decision made by his solicitors and not by him, but I consider it unlikely that he was not advised of the options and agreed with the approach.

91. Sheila instructed Lupton Fawcett LLP to act in relation to the proposed unfair prejudice claim (the same fee-earner is still her solicitor, albeit having subsequently transferred to her current firm). They wrote a detailed letter of claim (**LOC**) to David, setting out her allegations in substantially the same form as they were eventually pleaded.

92. David instructed CMP Legal to act in relation to the unfair prejudice claim. They wrote a detailed letter of response (**LOR**) on 10/6/22. This began with a narrative statement of the relevant chronology, referring to and attaching copies of the disputed documents as they did so.

93. Sheila's solicitors responded querying why these documents had not been disclosed to her previous solicitors. In cross-examination David said that he had decided not to engage in relation to the complaints in relation to Burdetts, because he did not want to instruct his then solicitors (who he said were essentially conveyancing solicitors) to become involved in this or to have to instruct new solicitors or otherwise to encourage Sheila to take that complaint any further. In all of the circumstances that explanation seems credible, even though it is clearly the case that David was not telling the truth in his Defence when it was pleaded on his behalf that he had not seen the correspondence at the time.

94. There is no need to refer to the further extensive correspondence between solicitors prior to the issue of the unfair prejudice claim or the 72 High Street claim. The only point which is worth making is that at no time did David's solicitors say that the disputed documents had been located in the safe in the Burdetts' office, even though there was correspondence from them saying that the office generally was in such a messy state that it was not reasonable to expect David to search it for other documents. It may also be observed, however, that at no time were they asked where the disputed documents had been found.

The pleaded cases

95. The pleaded cases are lengthy and detailed but may be summarised. I shall attempt to summarise first the pleaded cases in relation to the unfair prejudice claim and second in relation to the 72 High Street claim.

96. In relation to the unfair prejudice claim, Sheila claims on the basis that on Jeffrey's death his shareholding in Burdetts was transferred to her by operation of law, so that she is entitled to bring this petition. Subject to his argument as to the effect of the 13/11/15 meeting, David accepts this. It is common ground that Sheila is entitled to make claims which could have been advanced by Jeffrey prior to his death, but equally that David is entitled to rely on defences which he could have raised against Jeffrey had he made the same claim before his death.

97. It is also common ground that Burdetts was a typical family business company which can properly be described as a quasi-partnership. As Mr Connolly put it in his opening submissions, it was operated on a common understanding as to such matters as: (1) an entitlement to be, and expectation of being, involved in the management of the business; (2) decisions being made and being implemented informally; (3) the business being a family business and being founded and operated on the basis of mutual trust and confidence; and (4) the business being run, built and developed with the intention of passing it down on the retirement of the directors / shareholders to the next generations of the family, including their heirs.

98. The first allegation relates to the disposal of Burdetts' assets and business to Ashley. The second allegation relates to the incorporation of Thornbridge and its use of Burdetts' assets to purchase investment properties. The global allegation in these respects, summarised in paragraph 18, is that such arrangements were of no substantial benefit to Burdetts or all of its shareholders and, instead, were of substantial benefit to Ashley and its shareholders (including David) and to Thornbridge and its shareholders, David and Niki.

99. The next allegation is that in spring 2017 David attempted to acquire Jeffrey's shares from Sheila for no value by misrepresenting that they had no value, when they did have value by reference to the then current accounts of Burdetts.

100. The immediate difficulties with this allegation are: (1) first, that it relates to a shareholding in Burdetts, rather than to the affairs of Burdetts as a company, so that it would not be justiciable in an unfair prejudice petition (see the authorities recently referred to by ICC Judge Barber in *Brierley v Howe* [2024] EWHC 2789 (Ch)) and; (2) second, that the attempt was not successful, since Sheila refused to sign the proffered STF, so that it is not clear (nor pleaded) what the prejudicial consequences of this allegation might be.

101. The final allegation is that from 2010 onwards Burdetts' shareholders' funds were depleted by David. However, the YE figure for the eight years from YE2010 to YE2018 shows only a relatively modest depreciation, from £540,051 to £323,425, whereas by YE19 the figure was nil. Since it is further pleaded that the YE figure for Thornbridge's liability to Burdetts in YE2018 reduced by £345,301 (from £668,726 to £323,424) and in YE2019 from £323,424 to nil, it is plain that the focus of this complaint must be on the last two years. Further, although Sheila said that she might apply for permission to amend the petition to allege that the statutory accounts were not accurate, she has not done so. The reductions in the last two years were the result of the steps undertaken to write off the monies due from Thornbridge under the long term agreement and, generally, to put Burdetts in a position where it could legally be dissolved.

102. The overriding allegation is that the effect of these matters is that Burdetts disposed of all of its assets and business to others and received nothing in return. In short, as Mr Budworth put it more colloquially, Burdetts was "hollowed out" by David for the benefit of himself and his family and with no reference to the interests of Jeffrey and Sheila, with the final allegation being said to be how it achieved this without Sheila's consent even after she had refused to sign the STF.

103. There is a further allegation that in April 2017 the confirmation statement filed at Companies House stated that David had been registered on 30/6/16 as a person with significant control (**PWSC**) when,

in fact, he only held 50% of the shareholding, with Sheila holding the remaining 50%. It is not clear or pleaded what the prejudicial consequences of this allegation could be.

104. It is also complained that in August 2019 David filed an application to dissolve Burdetts from the Register without notifying Sheila. However, since it is also pleaded that Sheila became aware of this and objected, so that no action was taken by Companies House to dissolve the company, again it is not clear or pleaded what the prejudicial consequences of this allegation could be.

105. As to the 13/11/15 agreement as alleged by David, it was pleaded that the agreement was: (a) not supported by consideration and, hence, not binding in contract; (b) not binding in equity; and, in any event (c) time-barred. Unparticularised allegations of acquiescence, lack of clean hands and estoppel were also pleaded.

106. A further allegation, added by amendment, relates to the source of the £160,000 transferred by David to part finance the acquisition of 72 High Street. Whilst it is coherent as an allegation that, if it was treated by David as a legitimate payment from Burdetts to him personally, that was wrongful, the alternative complaint, that it was wrongful for it to be used as a part payment for 72 High Street is more difficult to understand, given that Sheila's positive case in the 72 High Street claim is that this represented a legitimate payment out of Burdetts' surplus funds, directed and/or sanctioned by Fred and Joyce and David, to enable Jeffrey to be provided with his own house.

107. It is also pleaded that David's conduct as regards the hollowing-out amounted to breaches of his director's duties to Burdetts.

108. It is also pleaded that, by reason of the above, Thornbridge holds the properties acquired by Thornbridge on trust for Burdetts. It is not clear how this claim can be made in an unfair prejudice claim, where Thornbridge is not a defendant and where no application for permission has been made, or granted, to bring the claim as a derivative claim. This claim has not been pursued before me at trial, so that I propose to say no more about it. If appears to be pleaded as something to be taken into account when the question of relief and quantification of the value of Sheila's shareholding is to be undertaken, if the claim reached that stage.

109. Finally, I record that Sheila also recorded in her pleading her intention to bring a claim under the *Inheritance (Provision for Family and Dependants) Act 1975* in the event that this court finds that David is, as he contends, the legal and/or beneficial owner of Jeffrey's shareholding in Burdetts. I need say no more about that in this judgment.

110. As regards the 72 High Street claim, David pleads his case on the basis of the agreement he says was reached between himself, his parents and Jeffrey in 2006 or on the basis of the payments made to purchase it. He pleads that, in accordance with the agreement, these payments were not made as gifts but "with the intention that the Claimant and his parents would own the Property subject to a life interest in Jeffrey' s favour; (or in the alternative, that the beneficial ownership of the Property would reflect the contributions to the purchase price)". He says that there was a further agreement in 2007 that Sheila should be allowed to live in the property for life, in the event that Jeffrey predeceased her. In the circumstances, he says that Jeffrey held 72 High Street on trust for David and his parents (and, after their deaths, for him alone) pursuant to the agreement or, alternatively, by way of resulting trust as to 94.6%, representing the share of the purchase price contributed by David, Fred and Joyce.

111. In the alternative, he pleads a case on the basis that the amounts advanced were advanced as loans repayable on demand, with demand having been made on 18/5/23.

The witnesses

112. I refer to and adopt with gratitude the recent analysis of Cockerill J in *Jaffe v Greybull Capital* LLP [2024] EWHC 2534 (Comm) (at paragraphs 195 to 201) referring to frequently cited cases, such as Gestmin and Simetra, as well as the recent lecture given by Sir Andrew Popplewell ("Judging Truth from Memory"), in relation to the proper approach to fact-finding, by reference to the contemporaneous documents and by reference to the reliability of witness recollection, especially in Business and Property Court cases. I also bear in mind that the Gestmin / Simetra approach does not relieve the court of the need to make factual findings based on all of the evidence and, in particular, if the sworn evidence of a witness is to disbelieved, why that it so. I also bear in mind that the same approach should not necessarily apply with full force in non-commercial cases, where it is not to be expected that all of the detailed interactions would be recorded in documents: *Martin v Kogan* [2019] EWCA Civ 1645 at paragraphs 88 and 89 (Floyd LJ, giving the judgment of the court).

113. As is all too frequent in inter-family business relationship breakdown cases such as this, I have been faced with witnesses who are fundamentally honest, decent people, but who find it very difficult to be objective when giving evidence because of the strong feelings which they have and the pressure of being involved in a bitter dispute and in entrenched litigation for an extended period.

114. It follows in my judgment that the safest course in this case is to place most reliance on such reliable contemporaneous documentary evidence as there is. That is more problematic in this case however than in many other cases, because: (a) the dispute over the authenticity of the key documents produced by David; and (b) the disputed events in question relate to the affairs of a family, and its relatively informal and lightly documented business and property transactions going back for around 20 years, where they tended to use legal and accountancy services for transactional rather than advisory purposes. Thus, it is not surprising that there is not the same fully documented record of communications, shedding light of what was agreed, than there would be in more heavily documented commercial disputes. I should be careful therefore not to draw adverse inferences from the failure to provide a full documentary record but, equally, I should not accept oral evidence from witnesses when, in my assessment, that evidence is: (a) not consistent with the evidence which is available; (b) not consistent with the absence of such further evidence which might reasonably be expected to be available if their evidence was reliable; or (c) not consistent with my assessment of the likely probabilities.

115. Sheila had the added difficulty that she had no direct involvement in the business or in the inter-family discussions. Her source of contemporaneous knowledge of events was almost entirely what she had been told by Jeffrey. That, however, was subject to the further difficulty that, as I have already recorded, Jeffrey did not generally care to bring the family business, financial or personal affairs home with him, so that she often only learned about such matters from passing remarks.

116. Sheila had worked for much of her life in an accountancy practice, but as a secretary and, thus, with limited direct knowledge of or experience in business or financial matters. She is, however, in my assessment a shrewd woman who has had to fend for herself for much of her life and an understandable desire to have a house of her own to live in and income of her own to live on. She in not afraid of legal disputes, as was prepared to bring legal proceedings against one of her sisters arising out of a dispute arising from the death and will of her late father. She is not afraid to speak her own mind, in one text message to David on that topic describing her sister as a "viper".

117. She is also capable of harbouring grudges, as exemplified by her reference to her sister and her subsequent approach to David and Niki. Once she came to believe that she – as Jeffrey's widow – was being lied to by David, she never forgave him and is unwilling to believe anything good of him. That is underlain by her feeling that David was always able to manipulate Jeffrey when he was alive and that David and Niki have done better out of the family business than did Jeffrey and now her as his widow. This, in particular, has coloured her recollection of details to a significant extent and

made her believe that almost everything which David did was done with the intention of doing Jeffrey and now her out of their rightful entitlements. She is unwilling in my judgment to accept that at the time Jeffrey was, for his own perfectly good reasons, quite relaxed about what David was doing and happy to go along with it on an informed basis.

118. For all of these reasons, I am unable to place any significant weight on the detail of her evidence. However, as against the above comments, I acknowledge that she was, in general, prepared to make appropriate concessions and had not come to court to tell deliberate untruths. Hence, I am prepared to accept some of her evidence, where it seems to me to be credible and consistent with other reliable evidence and my assessment of the inherent probabilities.

119. David is plainly an intelligent, organised and careful person. He gave evidence in a controlled and, mostly, restrained way. That was also true of most of his contemporaneous messages to Sheila and others. However, particularly in some of his messages but also sometimes in his evidence, his feelings of anger at Sheila surfaced, which in my assessment go beyond the mere frustration of being involved in this dispute. A particularly unpleasant example was his transparent attempt to link his threat to remove the headstone for Jeffrey, which Sheila had designed and paid for, unless she agreed to his demands. There are plainly deeper underlying hostilities related to their separate relationships with Jeffrey. My assessment is that David feels a strong need to be in control, particularly as regards financial matters, and especially in relation to the family finances, and has reacted strongly to not having been able to persuade Sheila to act in accordance with his wishes. His evidence was not always consistent or credible. I do not consider in the circumstances that I can place complete confidence in the reliability of his evidence and have to test it on important matters against the other reliable evidence and my assessment of the inherent probabilities.

120. So far as Niki is concerned, her position in relation to this litigation is completely aligned with that of David. It is plain that she has no more sympathy for Sheila than he does and she has the same motive to support his case as he does to assert it. She did seek to deny receiving benefits from Thornbridge, when recent disclosure made clear that she had received regular payments, but even then sought to minimise them. I therefore place little independent weight on her evidence insofar as it might otherwise be said to provide support for David's evidence.

121. On the crucial point of her evidence of her involvement in the 13/11/15 meeting, it is undoubtedly initially surprising that she preferred to handwrite her perfected note of the 13/11/15 meeting, taken from her handwritten rough contemporaneous notes, to allow Dawn to type it up later, rather than to type it out. My strong suspicion is that what really happened is that she ended up writing down longhand what David effectively dictated to her after the meeting, based on his recollection at the time in addition to her contemporaneous rough notes, which is why it reads very similarly to his previous minutes. However, in the end, there was little otherwise to support an allegation that she was complicit in a deliberate attempt to concoct a forged account of a meeting which did not happen or, if it did, did not result in the agreements recorded in those minutes.

122. So far as Dawn is concerned, in his closing submissions Mr Budworth submitted that she "more or less giggled her whole way through her evidence [which is] often a sure sign of nervousness about the truth of the account". I do not agree with that analysis. She seemed to me to be a little nervous, but fundamentally honest, for example being quite willing to admit when asked that one paragraph of her witness statement was not accurate, in a way which I found to have been open and candid. The one aspect of her evidence I found more surprising related to the evidence that she had not even understood when typing the 13/11/15 minute of meeting that it related to an agreement which in part concerned her son, Connor, but in the end I am not persuaded that this is a sufficiently strong basis for holding her to be untruthful or unreliable in respect of that minute, let alone the others.

123. So far as Mr Churm, the accountant, is concerned, in closing submissions Mr Connolly submitted that I should accept his evidence as reliable on the basis that he was a professional person, an independent witness and a reliable historian. I accept that his evidence, where supported by the contemporaneous documentation, including his firm's internal notes, is reliable, however I was not always completely persuaded by his oral evidence where it was not so supported (for example, in relation to his evidence that he could recall being informed at the time by David of the 13/11/15 meeting). Further, given that David was his firm's client, and given that for a period of time his firm (and he in particular) had been plagued by repeated contact from Sheila with requests for information, I do not think that he can be regarded as completely independent.

124. Persons who also figure but from whom I did not hear include the following.

125. Mr Powell of Ashley. Mr Budworth submitted that I should draw an adverse inference against David from his failure to call him as a witness. However, in my view there is nothing specific, whether identified by Sheila or otherwise, of such critical importance to the case which leads to the conclusion that it must have been obvious that David would need to call him as a witness. In my judgment it is not appropriate to draw any adverse inference nor, even, in relation to what matters it is said that the inference should be drawn. If, for example, it is said that I should draw the inference that he was complicit with David in a deliberate campaign to hollow out Burdetts financially in favour of Ashley, I would have expected that to have been specifically pleaded and evidenced, but that is not the case.

126. Mr Rhodes of Rhodes Clarke. Similarly, Mr Budworth submitted that I should draw an adverse inference against David from his failure to call Mr Rhodes as a witness. It appears that Mr Rhodes is now retired but otherwise able to be called. However, given that: (a) David had disclosed SMH's file, which included the documents passed to them by Rhodes Clarke; (b) Mr Rhodes is not employed by David or any company under his control, nor is there any evidence that he is hostile to Sheila or was hostile to Jeffrey, so that he could have been approached by Sheila's advisers to provide a witness statement or been witness summonsed by them; (c) in my view there is nothing specific, whether identified by Sheila or otherwise, of such critical importance to the case from which it might be said that it was obvious that David would need to call him as a witness to deal with such matters.

127. I may have been assisted by any evidence which Mr Rhodes could have provided in relation to his role, if any, in relation to the production of Burdetts' board minutes and his recollection, if any, of David's role in such regard. However, it is inherently unlikely that he could have given specific evidence about specific meetings. In the end, either party could have called him to give evidence as to whether he had any recollection of the particular disputed minutes of meetings where he is recorded as being present, but neither did so. The most that I would go is to say that insofar as there is no evidence from him as to his general recollection, the absence of such evidence does not assist David's case.

128. Overall, however, it does not seem to me to be appropriate, given the absence of evidence that David has deliberately kept him away from the court, to draw any adverse inference.

129. The only caveat to that conclusion is that I may have been assisted by any evidence which Mr Rhodes could have provided in relation to the £160,000 provided by David which was used to part pay for 72 High Street. I accept that due to the passage of time it is doubtful that he would have any specific recollection outside of any documents in the Rhodes Clarke file, of which none have been identified as relevant to this issue. However, he might have been able to give evidence to confirm or otherwise David's evidence that all of the transfers from Burdetts to David were all fully investigated and reconciled during the audit process for each financial year. The absence of such evidence assists Sheila rather than David.

The disputed documents and Sheila's submissions on strike-out

130. I shall say something about the minutes in general and then turn to the specific details of each disputed minute.

131. All five minutes are typed up in a similar, but not identical, format. That is consistent with them having been typed up by the same person. Having examined the original documents, there is nothing of particular note in their physical appearance. The paper is a typical mass produced photocopy paper, but each is not exactly the same shade of white, consistent with their having been printed out on a different date. They are all in a clean and undamaged condition. Their appearance is consistent with their having been produced on an office computer, printed out on an office copier, placed into a secure file and left there.

132. Nonetheless, as Mr Budworth observed, Sheila has been unable to test their authenticity by reference to any electronic metadata for the documents, given Dawn's evidence that she deleted the files from her office computer once she had printed out the minutes. However, if her account is genuine, it makes perfect sense that she would not have wanted to retain personal files on a company computer.

133. The only handwritten original which has been retained is the neat handwritten note made by Niki from her rough notes of the 13/11/15 meeting. She explained that this was her practice from her time as a teacher when making notes of meetings which she attended. She said that she did this because she was not particularly adept at using a computer for typing which explains why, on her account, she did not use the home computer for that task. That explanation seemed rather surprising to me, given her age and occupation, but there is no evidence to contradict this explanation. Nor did she explain why she had kept her neat handwritten notes once the typed version had been produced, but she was not specifically asked about this. She did not explain why she had been asked to take these notes in the first place, but again she was not specifically asked about this.

134. I have already observed that the notes of this meeting tend to follow the same general drafting style as the notes of the previous meetings which is, at first blush, surprising if all but one were produced by David from his own notes. As regards the notes made by Joyce on 4/4/08, when asked David said that Joyce had taken the notes but he wrote the minutes up and then gave them to Dawn for typing. This seems a credible explanation to me which, as I have said, is also the most likely explanation for the minutes produced from Niki's rough notes having the same style.

135. When I refer to the same general drafting style, I mean that they all followed the same format of: (a) stating that they were minutes of a meeting of directors of Burdetts at a specified address and at a specified date and time; (b) identifying those present, that David was appointed chairman, that due notice had been given and a quorum was present; (c) stating the purpose of the meeting; (d) recording – in a similarly conversational and relatively lengthy style - the discussion and the reasons for reaching the decisions made; (e) stating the resolution(s) agreed upon; (f) concluding by stating that there was no further business and the meeting was closed (in all but one case stating the time of the closing); and finally (g) being signed off by David, but by no-one else.

136. When I asked David how he had known how to produce these minutes, which are similar in format but markedly different in their detail and conversational style from the far more laconic version of the only other minute of a meeting of directors dating from 31/3/03, apparently produced by the accountants to declare a dividend for YE2003, he said that he had followed the style of a minute he had seen before. Although he did not give any details, he was not specifically asked about this. Since it is apparent that these notes could not have been made verbatim with the meeting, given their length and finished style, it would appear that David must have adopted the same approach as Niki, i.e. using rough notes to prepare a fair handwritten note which he then gave to Dawn to type up. Since there is evidence of his being able to type equally lengthy letters, it is not immediately obvious

why he should not have produced these minutes himself on a computer, but again he was not specifically asked why he did not do so.

137. It is fair to say that the apparent coincidence of all of these minutes of meetings, all relevant to the issues in the unfair prejudice claim, all very similar in format and style, despite being apparently being produced by three separate individuals, in circumstances where none are signed by Jeffrey or capable of being cross-checked by reference to metadata, and where – with the sole exception of the 31/3/03 minute - no others are available, does raise a serious question as to their authenticity. There are a number of points made for and against, which I have considered with some care.

138. In his witness statement David said that on the incorporation of Burdetts they had been advised by Mr Rhodes that "if there were any big decisions made, that we had to keep a record of this and prepare minutes". He says this is why he started taking minutes, although it is of note that he did not appear to start doing so until almost 7 years later, although it may be observed that there is no evidence of any important decisions being taken before the ones under consideration.

139. He says that the first 31/1/05 meeting represented, in effect, the finalisation and formalisation of a decision which had already been made. He says that the decision to allot more shares was made for tax reasons on Mr Rhodes' advice, which it is known duly happened. The meeting also refers to Fred's decision to resign, which also duly happened on 9/2/05.

140. It may also be observed that there is little in this minute which is of real relevance to the key issues in the unfair prejudice claim. Whilst it records the decision in principle to sell or merge the business with Ashley, as indicated nothing happened to progress that decision for a further year. It may be said, therefore, that there is no obvious motive for David to forge this minute. It does seem reasonable that David would at the time have considered it necessary to make this minute, to record the important decisions consequent on Fred's decision to retire, namely his resignation and the allotment of more shares to give Jeffrey and David an enhanced equal shareholding and to confer a tax benefit on Fred. In short, there is nothing in the minute which stands out as suspicious and there are perfectly reasonable and innocent explanations for it having been produced when it was. Whilst it can always be said that this is explained by David, as a careful and intelligent man, wanting to cover his tracks, this appears on my assessment of him to be an implausible suggestion.

141. As to the minute of the second meeting on 25/1/06, it records that the meeting took place at Rhodes Clarke's offices and Mr Rhodes being present whilst the YE2006 accounts were explained and signed off. Again, it may be observed that if these were forged then David would be taking a risk in referring to this meeting taking place at the accountants' office and in Mr Rhodes' presence. Sheila accepted in cross-examination that Jeffrey would attend the accountants' offices once a year, although she did not know why. She also accepted that she knew that Ashley took over Burdetts' business as from around 1 April 2006.

142. Further, again there is nothing of obvious significance in the minutes so far as the unfair prejudice claim is concerned. It contains a record of the circumstances of the discussions regarding the agreed takeover by Ashley of the Burdetts' business and the reasons why the eventual arrangement for the sale and hire of the coach fleet had been arrived and how it would work and why it was acceptable. It does not, however, for example say anything about the fact that although Jeffrey was to become a director of Ashley and receive a salary he was not to become a shareholder. It does not say anything around Jeffrey approving the terms of hire and sale of the coaches, notwithstanding that in the letter of claim Sheila's then solicitors had asked for full details of this transaction. Thus, its value as a forgery is distinctly limited, save only that it confirms that in general terms Jeffrey was happy with the proposed transaction. However, since there is no contemporaneous evidence which suggests that he was unhappy, this appears an unlikely explanation for it being a forgery.

143. Nor is there any contemporaneous evidence to suggest that Jeffrey was unaware that he did not have a shareholding in Ashley or that he believed the coaches were being sold or hired at an undervalue. David has provided details of the agreement made with Ashley for the sale and hire of the coaches in his replies to requests for further information and there is no objective evidence from Sheila to show that the terms were commercially unfavourable to Burdetts. As I have said, Sheila suggested in her witness statement that an unidentified friend of Jeffrey had told her at one point that £1 million had been paid by Ashley, but that is unevidenced and implausible.

144. As to the third disputed minute of meeting, that dated 30/1/08, again the meeting is recorded as taking place at the offices of Rhodes Clarke and its stated purpose is to sign off the YE2007 accounts and in addition to "consider advice given to the directors of Burdetts by Rhodes Clarke". The minute also records that on this occasion Mr Rhodes remained after the accounts had been approved to advise how to deal with the current and future surplus cash in the company post the Ashley transaction and to suggest forming a new limited company to invest that surplus cash. Again, therefore, if these minutes were forged in 2022 David would appear to be taking an unnecessary risk in recording Mr Rhodes' presence and his advice. That is particularly so in respect of the discussion and agreement that if something happened to Jeffrey then all assets belonging to Burdetts should be protected for the benefit of the Burdett family and their heirs only and for this to be recorded in the minutes.

145. The reference in the minutes to David having made a will anyway is consistent with the will, disclosed at my request during the course of the trial, made less than 3 months previously in November 2007. It is of note that David does not appear to see the inconsistency between his implicitly trusting Niki to carry out the "family heirs only" agreement and his unwillingness to trust Sheila to do the same. Whilst there is of course the obvious difference that Niki is the mother of two of the three boys, it does not appear to have crossed David's mind that she might not have the same attachment to his two elder children, let alone that she might subsequently re-marry or fall out with her two sons or otherwise decide not to fulfil his wishes. Nonetheless, the reference in the minute to the will which had just been made provides support for its being a genuine contemporaneous document.

146. Finally, and in the same way as previously, the minute does not purport to record an agreement that Jeffrey should be neither a director nor a shareholder of the proposed new investment company or the terms on which funds were to be introduced. To that extent it may also be seen as a rather pointless forgery, if that is was it was, especially since the next disputed minute of meeting comes only just over two months later, on 4/4/08, which in itself is internally consistent with the advice from Mr Rhodes, recorded in the 30/1/08 meeting, to incorporate the new company before the coming year end.

147. As to the minute of the 4/4/08 meeting, it is worth noting that it post-dates the formation of Thornbridge on 29/03/08 (2 days before YE2008) and the appointment of David and Niki as joint directors and shareholders and, thus, excluding Jeffrey from ownership or control. Again, if this was a retrospective forgery in 2022, one questions why the meeting is not recorded as taking place before that date and why it makes no reference to the fact that it was discussed and agreed that Jeffrey was not to be a director or shareholder.

148. There is also the curiosity that Fred and Joyce are recorded as attending, with Fred being recorded as a shareholder (which he still was) and Joyce as a guest and minute taker. Although Mr Budworth suggested that this was possibly a clever attempt to add apparent verisimilitude to David's case, this seems rather too sophisticated in my view to be a likely explanation.

149. The stated purpose of the meeting was said to be to authorise the loan agreement under which Burdetts was to loan £600,000 as and when required by Thornbridge. The minute makes no

reference, however, to the terms of the loan agreement and, in particular, to the 50 year term and the low interest rate, both of which are matters the subject of complaint by Sheila.

150. The loan agreement is recorded as having been signed on the same date, by David on behalf of Burdetts and by Niki on behalf of Thornbridge. It has the same font and format as the minutes of the meetings, but is in a different style, being a mix of formal legal drafting and the "house" style of the minutes. This is consistent with David's evidence that he adapted it from a loan agreement which he had obtained. It also explains why there are discrepancies between the agreed facility as recorded in the minutes and its actual terms; for example it records what appears to have been one loan of £600,000 with interest payable on the full amount at the end of the term, rather than the "as and when required" facility referred to in the minutes.

151. Although Mr Budworth made much of the discrepancy between the 50 year term of the loan agreement and the subsequent YE accounts, which consistently showed the amounts as falling due within a year, that seems to me to be more consistent with the "cock up" theory of events than conspiracy. There is evidence that the loan agreement was within the file transferred from Rhodes Clarke to SMH, which would be inconsistent with its having been forged in 2022. Mr Churm explained that he had not seen the loan agreement, even though it was within the file, and had just used the same code as had Mr Rhodes to show the liability as falling due within the year. Mr Churm was also cross-examined about whether Burdetts could properly later have written off the loan agreement, but that does not seem to me to be relevant to the issue of its genuineness.

152. Again, therefore, if the minute and the loan agreement were both prepared as forgeries with the intention of dovetailing the two, the process undertaken did not obviously achieve that objective.

153. Before turning to the 13/11/15 minute, it is worth standing back at this point and concluding that my strong impression so far is that these previous minutes are genuine contemporaneous documents. In addition to the points already made, given that the minutes were disclosed in response to the LOC from Lupton Fawcett, it is worth noting that in paragraph 24 of the LOC Lupton Fawcett challenged David to state whether his interest as a director / shareholder in Ashley and Thornbridge had been declared at the meetings as required under the Companies Act and the Articles. If these minutes had been forged as a defensive response to this LOC, one might have expected David to ensure that this potential hole in his case was plugged in the forged minutes.

154. It is also worth saying that if these minutes were forgeries, since there is evidence that David was able to type up notes himself, his decision to involve Dawn in that forgery, which might well amount to a criminal conspiracy, would have been a very high risk thing to do, both for David to propose and for her to accept. Whilst Mr Budworth has emphasised the advantage to David of being able to use this explanation to say that there are no electronic copies from which metadata can be examined, this seems somewhat speculative given that: (a) it assumes that David would have had knowledge at the time of the alleged forgery that he would be obliged to disclose the minutes of meeting in their electronic native form in civil litigation; (b) if David had been aware of this, it would have been far safer for him simply to have said that he typed the minutes on an old home computer which he later disposed of; (c) it extends the circle of deceit to someone who had nothing personal to gain from being a party to it, and who might have later repented and landed David in very serious trouble. Finally, whilst I acknowledge the possible motive of Dawn's seeking to ensure that her son, Connor, receives his full share of any value in Thornbridge in due course, that is unlikely in my view to persuade her, as someone of seemingly good character, to take such a risk. Her indignant refutation of that suggestion was convincing in my view.

155. I have taken into account Mr Budworth's strenuous criticisms of David's evidence, emerging only in the course of cross-examination, as to the circumstances in which these documents came to be stored and then retrieved in 2022. As to this, as I have said the disputed minutes were referred to for the

first time in David's solicitors' (**CMP's**) LOR of 10 June 2022. Mr Budworth submits that it is both surprising and suspicious that the 13/11/15 minutes at least were not produced previously. I am not convinced that it is so surprising. It is clear that David was unwilling to engage with Sheila's complaints about Burdetts' affairs, and I can see why he may have taken the view that silence was the better course in the hope that Sheila would give up. It is also the case that the 13/11/15 minutes, whilst obviously providing powerful support for David's case, are not cast iron proof.

156. When Lupton Fawcett responded, expressing surprise that the minutes had not been produced before this, and asking for further disclosure and an explanation, CMP stated that the documents had been provided to them by David and that "due to the passage of time, there are only limited documents (which have been provided) available in relation to BCL". They explained, enclosing photographs, that the offices at 8 Station Road were untouched, but used for storing junk, that there may be other documents there, but that it would be a considerable task, which would be unreasonable and disproportionate, to search for them. Although they did not say that David had found the disputed documents in a file in a safe in the office, the omission is not necessarily surprising still less sinister. CMP addressed in detail the specific disclosure requests made.

157. It is true that David did not explain where he had found the disputed documents in his witness statements. But it is also true that he was not specifically asked until cross-examination about this. His explanation in cross-examination was that he had put these minutes, which he knew were important, into a file which was kept in the office safe, as and when they were produced. He accepted that there were no other minutes in the file or the safe and said that he had only found the 2003 minute in the office when he had been asked to conduct a further search by the order made when the trial was adjourned in April 2024.

158. When asked about the disclosure of the minute of meeting from 2003, he said that at the time he assumed that there was no prospect of other minutes existing and that he had either not seen them or forgotten about them from 20 years ago. He said that there were no others to his knowledge, and that although there "would have been internal ones, accountants or bank loans", but that he wouldn't have seen them even if they existed. It seems to me that he was accepting that other minutes of meetings may well have been produced by the accountants in relation to other dividends, or by the bank in relation to approving bank loans, but even if he had seen them at the time he had not thought them sufficiently important to put in the minutes file and had, therefore, not seen them in his searches.

159. In further cross-examination he was asked about the events following the disclosure order made by DJ Banks on 29/9/23, in which he was required to carry out a search for various documents including, by paragraph 1.2.2: "Any typed minutes or manuscript notes of board meetings held by [Burdetts] which have not been previously disclosed". By paragraph 1.4 of the order it was provided that, in the event that he could not do so, he was to make a witness statement providing "details of the searches undertaken, the reasons why the documents cannot be provided and confirmation of whether the documents ever existed". By paragraph 1.5 it was provided that in default his defence should be struck out and he would be "debarred from defending the issue of whether or not there has been unfair prejudice suffered by [Sheila]".

160. His witness statement made 13/10/23 made in response said that he had conducted a physical search at 8 Station Road over around six visits between September 2022 and early March 2023 and a further search in July 2023. In relation to paragraph 1.2.2 he said that: "Save for those already disclosed, there are no more typed minutes or manuscript notes of board meetings held by [Burdetts]".

161. At a further hearing before DJ Banks on 18/4/24 this response, as well as other alleged disclosure failings, was considered. It was recorded in the order that the statement made above was ambiguous but that his then counsel confirmed to the court on instructions that "no further minutes (than those

already disclosed) have ever existed". In the circumstances the judge declared himself satisfied that David had substantially complied with paragraph 1.4 and, thus, that the debarring order made had not taken effect.

162. In David's further disclosure list made after the adjournment of the trial in April 2024 he said that "No further minutes or manuscript notes of board meetings held by the [Burdetts] other (than those already disclosed) have ever existed".

163. In my judgment David was undoubtedly blasé both in his compliance with the disclosure orders made and in his response to questions about this in cross-examination. He ought to have made it clear in his response to the disclosure orders and applications that he could not say with complete certainty whether any further minutes had ever existed in relation to such matters as authorising dividends and bank loans but, having taken steps to locate any such minutes both via physical searches and with the accountants, he had been unable to do so. He ought to have accepted this in his evidence, rather than trying to argue against it.

164. In my view this rather blasé approach reflected his considerable irritation that he had been ordered to conduct these further searches in 2023 and 2024, which had involved him in considerable time and effort in searching through the office and finding little or nothing of significance, rather than because he had deliberately failed to comply or because there was something more sinister concealed in the office which he did not want to disclose.

165. I do not believe that he made deliberately false statements knowing that they were untrue, let alone that there were other relevant minutes for which he had failed to conduct a proper search. I am satisfied that it was an honest, if careless, mistake. He had not come across any other minutes of meetings in his searches and had forgotten that there may well have been others produced by the accountants or the bank which would have been signed and returned but whose existence (or previous existence) ought strictly to have been disclosed, even if they added nothing (as I am satisfied that they would not have done) to the case.

166. I therefore turn to the 13/11/15 minute of meeting.

167. I have already said that it is similar in house style to the previous meetings, yet no explanation was offered by David or Niki as to how that could have happened, given where the previous notes were kept. Whilst that is initially suspicious, since neither was specifically asked about this I cannot make any assessment of what they might have said if they had been asked. If I have to choose between that similarity being indicative of forgery or of David sitting down with Niki some time after the meeting and using her rough notes as a starting point to produce what was in effect a dictated note, I am more inclined to the latter. I appreciate that this explanation was not the subject of evidence from either David or Niki, but I can see why in the context of the allegation of its not being genuine they might not have wanted to volunteer that explanation. It also appears broadly consistent with the explanation David gave in relation to how Joyce's initial record was used to produce the minutes of the 4/4/08 meeting and is also consistent with his desire to be in control of financial and related affairs.

168. The minute purports to record a previous agreement that Burdetts should be closed down once practicable after it had ceased trading, but that the reasons for not doing so, both practical and sentimental, had long gone, so that it should be dissolved once the last YE accounts had been produced. Although there is no reference in the previous minutes of meetings to this agreement, it is plainly an agreement which was a sensible one to have made and there is no obvious reason that it is something about which David and Jeffrey would not have agreed. The reality is that the loan to Thornbridge had nil, or at most minimal, value given the 50 year term, which I have concluded was genuine and, insofar as there were any other balance sheet assets, they were not represented by

concrete saleable assets. The further stated reason given, to avoid the need to pay around £1,500 p.a. in accountancy fees alone, was obviously sensible as well. It is consistent with David's desire for his and the family financial affairs to be kept in good order and to save money.

169. The repetition of the earlier agreement in relation to the use of the Burdetts' assets for the immediate family and their heirs would not be surprising, given the repeated references to this in the previous minutes of meetings.

170. As to the recorded agreement that if either Jeffrey or David was to die or become incapable of performing their duties pre-dissolution then their shareholding should be transferred to David or Connor respectively, I can see why Sheila might think that this appears to show surprising foresight as to what in fact happened because of her objection to David's later unilateral attempt to dissolve the company. However, as against this, the previous reference in the minute of meeting to the need to dissolve Burdetts makes good sense, for the reasons already explained, so that returning to the subject in this context is more explicable than if it had come out of the blue.

171. Further, it is noteworthy that the agreement as recorded was not just in relation to Jeffrey but in relation to David as well. Making Connor the transferee of David's shareholding if he died appears to be consistent with Jeffrey's regard for Connor and his then age. Both this, and the further reference to the two brothers agreeing that Connor had sufficient knowledge to be able to continue and to complete the dissolution process if he was asked to do so, seems to me to be indicative of genuineness. There was no need to include this unnecessary detail if it was a forgery in 2022. It would have been perfectly explicable, in the context of this meeting and this discussion being precipitated by Jeffrey's health scare, for the minute only needing to refer to what would happen to Jeffrey's shareholding. Indeed, the further reference to either becoming incapable is a surprising reference if at the time this minute was produced as a conscious forgery in 2022 everyone involved in it already knew that Jeffrey had died only two days after the meeting.

172. Again, I appreciate that the counter-argument is that this was David being very clever and adding verisimilitude. But in my judgment that is not David's style. He is a blunt man who does not in my view, being frank, have the sophistication to go about things in this way.

173. In the end, on the basis of a close analysis of the text used against the known facts and the inherent probabilities, I am not persuaded that this is a forgery.

174. I bear in mind the fact that neither Niki nor Dawn were able, when asked, to date with any confidence when the neat handwritten note or the typed up version was produced. However, both were clear that it was after Jeffrey's death and, indeed, in early 2016 after his funeral had taken place. If this was a forgery, one might expect that Niki would have been keen to say that it was written up before Jeffrey's death.

175. I also acknowledge the force of the argument that, however uninterested Dawn might have been in the content of documents she was asked to type for work or even for Burdetts' general business affairs, she would have taken note when reference was made to Jeffrey and his ill-health, and even more so to her son, Connor, especially in circumstances where Jeffrey had only recently died. As against that, she did explain that to her, as a touch typist, she would just type the words without really considering their content, and that by this stage she had moved on from the Burdetts family and was simply not that interested in their financial affairs. In conclusion, I am not satisfied that there is a sufficient basis for me to disbelieve that evidence, especially when the witness was being asked to recollect events from 2015, when she had not been asked about them at the time or for some considerable time subsequently.

176. In the circumstances, I do not have to engage with the more difficult question as to whether I can also safely place weight on Mr Churm's evidence as to whether he became aware of the agreement

reached or saw the minute of meeting before 2022. Mr Connolly sought to place considerable reliance on this point, because he was – for understandable forensic reasons - keen to portray Mr Churm as a disinterested reliable professional witnesses upon whose evidence the court could place significant weight. Whilst I accept that this is the case generally, I do not feel able to make the same assessment in relation to this particular point, primarily because it was not something which he had referred to in his witness statement and he only gave this evidence for the first time in cross-examination, in circumstances where there was nothing in his contemporaneous communications or notes which showed that he was aware of this.

177. I must still however consider the point made by Mr Budworth, with some force, to the effect that it was inconceivable that David would have taken the actions which he did after relations with Sheila deteriorated, and prior to 2022 when the minute was produced, had he always known that he had the minute and could have shown it to Sheila to stop her complaints in her tracks.

178. It cannot be disputed that there were many occasions when David could have referred to the existence of the 13/11/15 meeting and to the minute of that meeting before he did, either directly or through instructing his accountants or his solicitors to do so. David's explanation why he did not is that he did not search for the minutes in the safe in the office until after he received the letter of claim. He was not asked whether he had recalled the existence of the minutes generally, or the minutes of the 13/11/15 meeting in particular, over the period from 2015 to 2022. However, it is worth bearing in mind that this is a lengthy time period, where this was plainly not the only matter occupying David's time and attention. Apart from family and business affairs in general, that period included the ill-health and the subsequent death of his mother. There is no reason to think he had any particular reason to visit the old Burdetts' office and search the file for minutes. I can also understand why, even if he did recollect it, he may have had a certain reluctance to disclose it to Sheila once the relationship became hostile. Whilst I put this factor into the balance in Sheila's favour, I do not think that it tips the balance in favour of the minute being a forgery.

179. Finally in this respect, it is also relevant in my judgment that David has never produced, nor sought to rely upon, any record of any agreement, whether by way of minute of directors' meeting or otherwise, in relation to the trust agreement contended for over 72 High Street. If David had been determined to forge documents which supported his case in every important respect, one might query why he did not do so in relation to 72 High Street. I appreciate that it might be argued that the trust agreement in relation to 72 High Street might not have been an obvious subject for a Burdetts directors' meeting. But it could, for example, quite naturally have been included in the minutes for 30/1/08 on the basis that as part of the "family funds" agreement David, Fred and Joyce had already made available their own funds to Jeffrey to enable him to purchase 72 High Street, on the basis that it was held on trust to them so that it could be handed down to their heirs on their death. Alternatively, it could have been presented a record of an agreement between the four members of the Burdett family.

180. The absence of such a record thus supports David's argument as to the genuineness of the disputed documents. It also, however, tends to weaken his case in relation to 72 High Street since, if David was sufficiently organised to create and maintain a documentary record of matters relating to the Burdett family funds in relation to the affairs of Burdetts and Thornbridge, there is no good reason why he should not have done likewise in relation to 72 High Street. Indeed, one might go further and question why he did not seek to have 72 High Street transferred to Thornbridge if, as he says, it was always known and agreed by everyone, including Jeffrey, that it was owned beneficially by the other family members.

181. That is enough to deal with the issue of the genuineness of the minutes, which is such an important – not to say crucial - part of the unfair prejudice case. However, in closing submissions, Mr Budworth

made, for the first time, and without a formal application or advance informal notice, two submissions, both to the effect that I should strike out or summarily dismiss David's defence to the unfair prejudice claim without proceeding to determine it on the merits.

182. The first was on the basis that David's evidence in cross-examination had shown that he must have consciously breached the earlier order made by DJ Banks in relation to disclosure which, if that had been known at the time, would have resulted in the unless order made by DJ Banks coming into effect.

183. The second was on the basis that if I found that David had forged the disputed documents, then I should strike out his defence as an abuse of process, applying the approach of the Court of Appeal in *Arrow Nominees Inc v Blackledge* [2000] 2 B.C.L.C. 167, CA.

184. I intend no individual criticism of Mr Budworth when I say that, in my view, making applications seeking such significant relief at such a late stage, without any formal application or informal notice and without heralding the intention to do so at any time prior, is to be deprecated unless the circumstances are such as to properly justify such a course.

185. Here, the submissions based on *Arrows* could have been made on a contingent basis from the very start. To make such a submission in closing submissions is even less attractive in circumstances where, as I have said, Sheila's representatives did not even state explicitly that this allegation was being made, let alone plead it, until it was first put in cross-examination. Whilst it is true that the submissions based on breach of the unless order could not have been made until David had given the evidence which he did in cross-examination, that evidence was given on the afternoon of day two of the trial, so that Sheila's advisers had two further full days of court time to digest, as well as the weekend before the court resumed for closing submissions, to decide whether or not to advance this case. In any event, if it had always been intended that this submission would be made if that is what the evidence revealed, then that should have been made clear at the outset, so that David would have been able to address the point in advance.

186. In such circumstances it would have been open to me simply to decline to entertain the applications on the basis of lack of notice. However, in order to seek to deal with the point fairly, I invited Mr Connolly to produce supplementary written submissions post the end of oral submissions on the basis that I would address the applications in this written judgment to the extent I considered appropriate, seeking further submissions from the parties if I considered that to be necessary.

187. Given my conclusions in relation to forgery, there is no need for me to consider the submission based on the *Arrow* line of authority further, let alone to lengthen this judgment by reference to the guiding authority on the point from the UK Supreme Court in *Summers v Fairclough Homes Limited* [2012] UKSC 26; [2012] 1 WLR 2004.

188. As to the allegation of breach of the unless order, I have already found that David did not make deliberately false statements knowing that they were untrue, and I have not found that there were other relevant minutes for which he had failed to conduct a proper search. I am satisfied that it was an honest, if careless, mistake. In the circumstances, there is no proper or principled basis for my seeking to re-open the determination made by DJ Banks in the course of this trial, on the basis of an application of the principles expounded by the Court of Appeal in *Tibbles v SIG Plc* [2012] EWCA Civ 518; [2012] 1 W.L.R. 2591, to which I was referred by Mr Connolly in his written submissions. It is worth repeating in this respect that had Sheila's representatives alerted David's representatives to their (contingent) intention to argue this point at trial – as they should have done if they had thought about doing so in advance of trial – it would have been possible for David to have addressed it by way of supplementary witness statement and, if necessary, conducting a yet further search, and rather than by being ambushed by the point in cross-examination and in closing submissions.

72 High Street

189. I consider the history of the purchase of 72 High Street and the evidence about the circumstances in which it was purchased before referring to the relevant law and stating my conclusions.

190. Sheila's evidence is that by 2005 they had agreed that 2 Station Road was too small for the two of them and Jeffrey first attempted to interest her in a larger house, a bungalow, in South Street. She says they viewed it and discussed it. She produced a contemporaneous note of her assessment of what work was needed and how much it would cost. She says that Jeffrey made an unsuccessful bid for the property in the first half of 2005. She says that they then became interested in another house, 72 High Street, which was a substantial stone detached house with a workshop and ample parking, next to 2 Station Road as well as to the Burdetts' premises at 8 Station Road and to Fred and Joyce's house at 68 Station Road. Sheila has handwritten "June 2005" on the sales brochure to record when she picked it up. The asking price was £280,000. By 30 September 2005 the asking price had been reduced to £249,995. It appears that Jeffrey became interested in it about this time, according to Sheila because he was concerned that if anyone else purchased it they might wish to remove the electrical gate which he had installed which would hinder vehicular access to 2 Station Road.

191. David says that it was in November 2005 that the family first started to discuss purchasing the property. Sheila did not disagree, but made the point that the family would have been discussing the previous potential property at South Street before that anyway. David does not mention this previous property. He does have a motive for pushing back the family's first discussion to later in 2005, as appears later, although the contrary is also true as regards Sheila. I prefer Sheila's evidence about this. She included it in her witness statement and produced the note, albeit undated, recording the estimated costs of renovating South Street.

192. David also says that the motive was to ensure that Jeffrey had his own property if his relationship with Sheila fell apart and he had to leave her house, as had happened before. He also says that the family was interested in acquiring all the properties in this particular area. These motives do not seem to me to be particularly plausible, since: (a) by this time Jeffrey and Sheila were far more mature than when they were first in a relationship and had been together for six years with no evidence of marital disharmony; and (b) there was no obvious reason for the family to acquire this property just because of its location. In any event, neither is inconsistent with the intention being for Jeffrey to own the property outright.

193. Sheila agreed that it was bought for Jeffrey and not for her, although making the point that if they had not been in an established relationship by that stage he would not have wanted to buy it and live in it by himself. She also says that she was told by Jeffrey that she could live there for as long as she wanted if he died. She accepts that she did not have similar discussions with the rest of the family. She says that she was told by Jeffrey that David had said that the money was there to buy it. She agreed that Jeffrey did not say whether that was a reference to money from Burdetts or from the rest of the family's own resources. She said that she believed that 72 High Street belonged to Jeffrey both legally and beneficially. She was never told and did not believe that he was only to have a life interest in it.

194. She said that Jeffrey had told her that Fred had said to him that "If we are giving you all this money, then you have to leave a clock to Connor". This was a reference to a valuable clock owned by Jeffrey. She said that she believed that the rest of the money had come from Burdetts via David.

195. It is worth noting that by this time Fred and Joyce were well-established in their home at 68 Station Road (acquired with business money, see above). David's evidence was that they would never have given Jeffrey the money which they put into the property because it was their whole life savings. However, as I have said, the return of information about Joyce's estate produced by David after

Joyce's death in 2018 showed cash assets of £215,173 as well as other substantial assets. In my judgment this casts significant doubt on David's evidence that the monies contributed by Fred and Joyce to its purchase were their only life savings, given that he was unable to provide evidence of this assertion, other than the two building society savings accounts showing the source of this money. These, as Mr Budworth observed, could by no means be regarded as conclusive as to their overall asset position at that stage, especially in the absence of an explanation as to how the £200,000 od had been accumulated since 2006.

196. By this time in 2005 David had already acquired and, in January 2006, sold his first house for £590,000, for which he received £574,531.04 after deduction of expenses and the charge to his bank of £12,449.45.

197. David said that Jeffrey had never previously been interested in buying a property. It is not clear from the evidence whether Jeffrey and David had always received exactly the same overall benefits from Burdetts or whether they had received what the four agreed that each should have to reflect their particular needs. There is no compelling evidence, for example, that Jeffrey had a lavish lifestyle, so that although he and David received exactly the same Jeffrey always spent whatever he had on what he wanted, whereas David was more frugal and would save and invest everything he had once he had paid for essentials.

198. The Burdetts accounts may not be a very helpful guide as to what each brother actually received because, in the message to Sheila referred to above in the context of Fred and Joyce purchasing their house at 68 Station Road, David said that "some accountants are quite imaginative and/or 'liberal' with their accounting methods as long as the end result can be justified with HMRC" and that "at the same time, while the accounts should reflect the current situation, figures can be made to suit the purpose and loan accounts, drawings et al may say one thing but the actual reality may be different". I have no doubt that this reflected the reality as to how the family operated Burdetts, using their accountants to ensure that what they regarded as family assets were used as they agreed for the benefit of individual family members, including monies earned by Burdetts, and shown in the accounts to produce the most tax-efficient outcome.

199. In his evidence, Mr Churm said that the directors loan account (**DLA**) figures for Jeffrey and David in the Burdetts accounts were not necessarily a reflection of actual payments in and out, as opposed to reflecting the most tax-efficient treatment.

200. It is also worth noting that Burdetts' balance sheet for YE2006 (YE2005 figures in brackets) showed net current assets of £132,051 (£12,425) and total net assets (and thus shareholders' funds) of £599,540 (£590,818), which included a net book value of tangible assets of £596,583 (£766,099). This appears to have been largely the value of its fleet of coaches. It also generated a profit of £52,999 (£11,880) after directors' benefits of £31,200 (being remuneration shown as paid to David) (£55,963) but before taxation.

201. In comparison, the Burdetts' balance sheet for YE2007 (which is when it ceased trading) showed net current assets of £199,917 and total net assets of £553,305. The net book value of tangible assets had decreased to £421,454. It generated a loss of £41,693 before taxation, with no directors' benefits. There was also a significantly higher volume of inter-company dealings as between Burdetts and Ashley from the previous year, not all of which is consistent with the accounts for Ashley for the comparable period (the position is complicated because Ashley's accounts were prepared by different accountants and to a different year-end).

202. On the face of these two sets of accounts, there are no substantial payments to Jeffrey or David recorded. However, they do not show figures for DLA. Further, they do not specifically record the four payments from Burdetts to David totalling £160,000 which are admitted by David and which

were paid by way of four sequential cheques credited into David's account as follows: (1) £50,000.00 on 11 July 2005; (2) £32,000.00 on 12 August 2005; (3) £68,000.00 on 6 April 2006; and (4) £10,000.00 on 4 May 2006.

203. The cheque for £160,000 to the solicitors handling the purchase was debited from another of David's accounts on 20 March 2024. The payments of £68,000 and £10,000 were then paid into this account on the dates stated above

204. Before turning to the details of David's explanation, it is worth noting David's overriding point that: (a) if these payments had been intended to be legitimate payments to Jeffrey to enable him to acquire 72 High Street, then that would have been shown in the accounts as against Jeffrey; (b) if these payments had been intended to be legitimate payments to him to enable him to finance the acquisition of 72 High Street, then that would have been shown in the accounts as against him; (c) if these payments had not been legitimate or reversed by contra payments, then the accountants would have required them to have been recorded legitimately, by way of debit to the relevant DLA or otherwise.

205. However, in the light of the evidence as to how David was able to deal with and transfer monies in and out of Burdetts as he thought fit, and in the light of "flexible approach" referred to by David in his message to Sheila, it seems to me that it would have been perfectly easy for David to instruct Rhodes Clarke to adopt such an approach to the Burdetts accounts to show the payments made to enable Jeffrey to acquire 72 High Street as having been paid to the directors / shareholders by way of dividend or DLA or otherwise suitably explained in the accounts. In the absence of full details of the account preparation process and in the absence of evidence from Mr Rhodes it is not possible for me to conclude that these payments could not have been used to enable Jeffrey to finance the purchase of 72 High Street.

206. Further, in my judgment this conclusion is consistent with the position as known to the family at the time.

207. Thus, in tandem with the process of purchasing 72 High Street, the sale of the Burdetts' business to Ashley was proceeding. On any view, it was known to all that the sale (and interim hire) of the coach fleet to Ashley would produce a very healthy cash injection into Burdetts. There is no suggestion that Fred and Joyce or David needed funds for personal property acquisitions at this stage. The formation of Thornbridge was 2 years in the future. In the circumstances, it is not remotely surprising that the agreement as to the use of the monies accumulated in Burdetts through the efforts of the family should justify the other three in agreeing that sufficient spare funds to enable Jeffrey to purchase 72 High Street could be provided from the spare funds available to Burdetts, especially when it was known that more would be coming into Burdetts in the near future which would be available for the investment for the benefit of the family and in particular its heirs, who were all of course David's children.

208. It seems to me to be entirely plausible that the rest of the family were happy to support Jeffrey in obtaining what was a very suitable property of his own, close to his parents' house and to his place of work, at a time where for historical reasons he had no property of his own and where there was money in Burdetts available for the purpose.

209. It is also undeniable, as I raised in closing submissions, that there was an obvious advantage in terms of Capital Gains Tax (**CGT**) in the property being owned by Jeffrey, given that he did not already have his own private residence.

210. I fully accept that the family, including Jeffrey, would not have wanted the property to be transferred into the joint names of Sheila and Jeffrey. She does not suggest that they wanted her to inherit the property if Jeffrey should predecease her. However, since at that time they were not married, that

was not a problem, since if Jeffrey died before her the property would revert to the rest of the family on an intestacy. Given the level of inter-family trust, there is no suggestion that they were worried about Jeffrey making a will in her favour. Thus, there was no obvious reason for the family to discuss, let alone reach any agreement, either that 72 High Street would be held by Jeffrey on trust for the rest of the family or that the monies used to finance it would be regarded as a loan. If that had been the agreement there is no reason to think that David especially would not have been alert to have the transaction, whichever it was, documented. As I have indicated, in my view the negative tax consequences of there being a declaration of trust would have featured in David's mind especially. The same is true if a commercial interest-bearing loan agreement was formalised.

211. It is true that these points were not expressly put to David in cross-examination. However, they are relevant to my overall assessment of the motivations of the parties for doing what they did, albeit not conclusive.

212. David argues that the first two payments in July and August 2005 cannot possibly have been related to the purchase of 72 High Street, given that by this stage there was not even any agreement subject to contract and completion was as much as 8 months away.

213. Sheila's answer is that at this stage she and Jeffrey were interested in the property on South Street and, on her evidence, they had put in a sealed bid, so that the payments could have been made on the assumption that this transaction might take place. Mr Connolly submits that this is pure speculation, completely implausible, and indicative of Sheila scratching around to find evidence to support her case and, having found these four separate payments totalling £160,000, seeking to construct a narrative to fit her case.

214. David also argues that the two payments in April and May 2006 post-date the payment of the £160,000 on 20 March 2006. Sheila's answer is that it is a reasonable explanation that these payments were delayed to take place after YE2006 to make it easier for the £160,000 to be divided between the two separate financial years.

215. In my judgment Sheila's case, although speculative, is not wholly implausible. This is particularly in the context of: (a) David having advanced inconsistent explanations about these payments; and (b) David's habit of moving excess monies from Burdetts into personal accounts.

216. As to his inconsistent explanations, in his Reply to Sheila's defence in the 72 High Street claim, David had pleaded in terms that the four payments into his account identified by Sheila as representing funds provided by Burdetts to fund the purchase of 72 High Street "had no connection with the purchase" and, instead, were "legitimate payments made by Burdetts to [David] and were signed off by Jeffrey". He did not plead the purpose or justification for the first two payments, but did plead that the second two payments were "later used to purchase 4 fixed rate bonds for £20,000 for or on behalf of Burdetts".

217. However, in his trial witness statement at [139(b)] he stated that the first two payments were "personal money that I had paid into this account". He said that the £80,000 used to part fund the purchase had come not from these two payments but from a payment into his account in that sum from the sale of his property Killamarsh in January 2006. He said that the later two payments represented "money from Ashley … coming in [to Burdetts] and starting to build up and so I paid this into [my] Halifax account".

218. In cross-examination David was unable to explain these discrepancies in any way I found convincing. He did accept that they had all been paid to him from Burdetts, but was unable to provide a proper explanation or confirmation from the Burdetts' accounts or from any reconstructed audit trail. As Mr Budworth submitted in his closing speaking note, it does not appear from the YE2006 accounts that David's explanation in paragraph 14 of his fourth witness statement, that the

two payments made in that year were a combination of drawings, dividends, and repayment for monies he had loaned to Burdetts during previous years, is consistent with the figures appearing in the accounts (especially if the drawings and dividend were received equally by himself and Jeffrey). There is no evidence from Mr Rhodes to explain or confirm what he says.

219. The difficulty for David is that he appears to have transferred funds from Burdetts to his account where they became intermingled with his own funds. Whilst he now says that these four payments were completely unrelated to the purchase of 72 High Street and were all for other reasons or purposes, this is not a case where it can be said in relation to any specific payment that it is followed in close succession by the same specific sum being paid out to a destination which can be proved to be for Burdetts' benefit. Nor can he show that they all represent payments made by him from Burdetts as salary or dividend or, even, loan credited to his DLA. There is also the oddity that these cheques were all consecutive, even though paid into his account at significantly different times. It appears that this is because no other cheques were drawn on Burdetts' account in the intervening period, which itself indicates that these payments had an unusual purpose, which has not been the subject of an audit trail by David.

220. Instead, Sheila's legal representatives have attempted to do so via the bank statement disclosure which has now taken place and which show that in respect of the first two payments they were speedily transferred into his personal account (ending 9464) and then (less £2,000) speedily out to newly opened personal account (ending 5292). The payment of £80,000, said to be the sale proceeds of Killamarsh, was also paid into this account by another circuitous route on 07/02/06. The total of £160,000 was then used to provide the conveyancing solicitors with the funds from David to acquire 72 High Street on 20/03/06, after which the two further payments of £68,000 and £10,000 are paid into that account on 06/04/06 and 04/05/06 respectively. There are then further transactions which do not clearly show what happens to these payments, save that £80,000 may have been used to purchase bonds in David's name.

221. Again, similar arguments and counter-arguments apply. In cross-examination David made the point that if all of these payments were intended to be from Burdetts to enable Jeffrey to purchase 72 High Street, it would have been far easier to pay them directly into his account. That point, although ostensibly powerful, ignores in my view the evidence that David was in the habit of controlling the Burdetts' and family finances, one reason being to enable him to secure the highest interest rate for spare monies. There is no evidence that Jeffrey would have done the same. Hence, it does not seem to me to be at all implausible that David decided to move funds from the Burdetts' account to his own account to earmark it for the purchase of a property for Jeffrey and, in the meantime, to obtain a return on that money, to transfer it in consecutive financial years for tax reasons and, above all, to keep control over it to ensure that Jeffrey only acquired a property which the rest of the family agreed was suitable for the twin purposes of Jeffrey having his own home to live in with Sheila and, in due course following his death, as a long term family investment.

222. There are also a further significant inconsistency in David's account. In his detailed letter before action, written by his solicitors on his behalf, it is said that the sums contributed by Fred and Joyce and David were "lifetime loans" and not a gift. It was not alleged that Jeffrey held 72 High Street on trust for them. This is directly inconsistent with his primary case and no explanation for the difference has been provided.

223. In the end, what satisfies me that Sheila has proved her case on this particular issue on the balance of probabilities are the combination of the following points: (a) the fact that the four payments do total £160,000 on consecutive cheques, in the context of there being no other cheque payments from Burdetts over the period in question, so that whilst this could be coincidence it is still unusual; (b) David's inconsistent explanations for these payments; and (c) the evidence which shows that David

was financially sophisticated and might well have been able to plan and implement this transaction, and the best way of showing it in the company accounts, well in advance. Finally, and significantly, it fits better in my judgment with the totality of the evidence about the way in which the family operated and how it dealt with monies accumulated from the success of Burdetts.

224. Accepting that the £80,000 paid into the account on 07/02/06 was from the proceeds of sale of Killamarsh, that does not mean that this was not simply a short term solution to enable 72 High Street to be acquired at that time and for the remaining funds from Burdetts to be paid to David to make up his personal shortfall in the new financial year when David judged the time right to do so.

225. When it was put to David in cross-examination that the money was available to the family and was gifted to Jeffrey as the first son, his answer was to deny it, adding the rhetorical question "what happens to the second born then?". In my judgment this actually explains what happened, which is that at the time Fred, Joyce and David were content for money which came from Burdetts, directly or indirectly, to be used to buy Jeffrey a house, on the basis that the family business was doing well, that both David and Fred and Joyce had houses of their own which had been funded (in whole in part) from Burdetts – albeit that David was in the process of selling his house for a healthy profit – that they could afford it, because it afforded tax advantages, and finally because it would come back to the family in due course anyway. It was also envisaged that David would also get the same treatment in due course, given the anticipated sale to Ashley and the expectation that Burdetts would have substantial surplus funds to provide to David for investment and to go to the next generation in due course, which is precisely what happened in relation to Thornbridge.

226. However, because of Jeffrey's subsequent marriage to Sheila and the falling out between David and Sheila, with David being unwilling to trust Sheila to leave 72 High Street to his sons in her will, he has now convinced himself that this was never a gift, because he wants to obtain immediate ownership of the property to safeguard the equity in it for his sons.

227. I should also add that even if I had not been satisfied that the £160,000 had come from Burdetts via these four specific payments, that would not have led me to find in David's favour on this essential point. If the funds had, as David says, come from his own resources, including the sale proceeds of 30 Ashley Lane, that is not inconsistent with him intending the payment as a gift to Jeffrey on the basis that: (a) this was a family transaction, by which the rest of the family were willing to give Jeffrey money earned (in substance) from the family business to enable him to acquire 72 High Street; (b) in circumstances where: (i) it was known that the family funds would be benefitting from the sale / merger with Ashley, which would benefit David over Jeffrey given David's equal ownership of Ashley; (ii) it was always the plan that Burdetts' surplus funds would be used to fund a family investment portfolio, which would benefit David and, in due course, his sons; and (iii) in 2005-06 the confident expectation was that in due course 72 High Street would come back into the family portfolio and, hence, eventually, to David's sons, without the risk of CGT being payable on any increase in value.

228. Further, as I have already indicated, in Sheila's favour are the absence of any contemporaneous documentary evidence that a trust was intended and agreed, together with the absence of any subsequent transfer at any time before Jeffrey's death to Thornbridge, whether in the context of David seeking to use it as security for Thornbridge's borrowing (as he might well have preferred to do if he was its beneficial owner) or otherwise.

229. I turn now to the alleged 2007 agreement. This is in the context of Jeffrey and Sheila having married in May 2007. That of course had the effect that if Jeffrey predeceased Sheila she would, in the absence of a will, inherit his estate.

230. David's case and evidence is that it was this which led to Jeffrey asking the rest of the family that Sheila be given the right to live in 72 High Street for the rest of her life if he died before her, and they agreed but on the "sole condition" that this did not change the beneficial interest. Sheila denied that this had been agreed at this time, saying that it had been agreed at the time of the purchase. In my judgment Sheila's evidence makes more sense. Jeffrey would have wanted to ensure that before his marriage Sheila would not be evicted from the property if he died before her, even though he had not and did not want to make a will leaving the property to her or giving her a life interest in it. In contrast, David's evidence appears designed to retrospectively deal with the difficulty created to his case by Jeffrey having married Sheila after acquiring 72 High Street.

231. Sheila's evidence was that she was not told of any conversations regarding 72 High Street between Jeffrey and the Burdett family as a result of the marriage. She says that Jeffrey only ever asked that if he predeceased her that when she died 72 High Street, or whatever property she then lived in, should be left to the Burdett family. She says that this was in the context that they had agreed that their own possessions would go back to their own family, whichever died first. In short, they were trusting that the survivor, whichever it was, would ensure that they made a will to ensure that this would happen. She explained that the reference to another property was in the context that they had discussed that she would want to downsize if Jeffrey died before her, so that agreement would extend to any replacement property as well.

232. Again, I prefer Sheila's evidence on this point. Again, it makes more sense in the context of the change in their legal status post marriage and Jeffrey being concerned, without going to the trouble of having to make wills, that the monetary value of 72 High Street would go to the Burdett family once Sheila no longer needed that property or any replacement to live in.

233. Finally, it is appropriate to cross-refer to the allegations in the unfair prejudice claim in relation to the formation of and loan to Thornbridge. If, as I have found, Jeffrey both believed that he was and indeed was the full legal and beneficial owner of 72 High Street, then it makes far more sense that he should have been willing to agree to the remaining surplus funds in Burdetts being loaned – and effectively gifted – to a company owned and controlled by David and Niki, on the basis that it would be their vehicle to use for the benefit of the next generation. The same is true of Fred and Joyce, who were present at the 4/4/08 meeting when this was agreed. The evidence is that they did all agree and this in turn, in my judgment, supports Sheila's case in relation to 72 High Street.

234. I have not thus far referred to the relevant legal principles, because as both counsel accepted this is a case which turns on the facts.

235. In relation to David's case based on constructive trust, a convenient summary of the law appears in *Snell's Equity 35th edition* at paragraph 24-049 ff. It must of course be borne in mind that this is not the classic case of a common intention constructive trust of a shared home as between cohabiting partners. It is a hybrid case of a house being purchased in the sole name of one family member where the vast majority of the purchase price has been provided by the other family members.

236. The starting point is that equity follows the law, and the beneficial ownership of the property is held in the same way as the registered legal estate in the property. Thus, the burden falls upon David to displace that presumption.

237. Here, David relies upon an actual discussion between the family members about their beneficial entitlements to the property (see paragraph 24-052). However, on my factual findings there was no such discussion. Instead, it was discussed and agreed that the monies should be provided by David, Fred and Joyce by way of gift to Jeffrey. This also precludes a finding of an inferred agreement (paragraph 24-053).

238. In relation to David's alternative case based on resulting trust, again a convenient summary of the law appears in *Snell's Equity 35th edition*, this time at paragraph 25-003 ff, where the position (as relevant to this case) is summarised thus by reference to the quotation from *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] A.C. 669 at 708–709, per Lord Browne-Wilkinson: "Where A … pays (wholly or in part) for the purchase of property which is vested in B alone … there is a presumption that A did not intend to make a gift to B: the … property is held on trust for A (if he is the sole provider of the money) ..."

239. It continues: "The facts giving rise to the presumption of a resulting trust are that A transfers property to B for which B provides no consideration. The trust arises by operation of law to give effect to presumption that A did not intend B to take the property beneficially. The presumption can be rebutted by proof that A did in fact intend B to take the property as beneficial owner. This intent may be established by direct evidence, or to a degree by reliance on the presumption of advancement". As to the presumption of advancement: "The presumption of advancement sometimes applies to transfers between parties where it may be readily inferred that A would have intended to make a gift to B. It is found therefore where A is under an equitable obligation to support or make provision for B. An example is where A is the father of B. It is, in effect, a counter-presumption which provides prima facie evidence about A's intentions as to where the beneficial interest in the property should lie. Its effect is to negative any initial presumption that the transfer creates a resulting trust".

240. Again, the starting point is my factual finding there was no such discussion as alleged by David. Instead, it was discussed and agreed that the monies should be provided by David, Fred and Joyce by way of gift to Jeffrey. This finding precludes a finding of resulting trust. In the circumstances, there is no need to consider the presumption of advancement. In any event, given the relationship between the four family members, including their age and financial circumstances, it would not be appropriate to decide this case on the basis of any such presumption.

241. If, however, I was wrong about the position as between David and Jeffrey in relation to the £160,000 he funded, in any event I would still have been ready to conclude that the monies provided by Fred and Joyce were nonetheless intended as a gift, in circumstances where I do not accept David's evidence that they were using their life savings to finance the purchase of 72 High Street. In such a case I would have found that David has a beneficial interest only in relation to the proportion of the £160,0000 he provided for the purchase price. However, that is not a finding which I should make given my actual findings of fact.

242. For the same reasons, there is no factual basis to support David's further alternative case that the amount provided was a loan.

The unfair prejudice claim – Sheila's standing and justification to bring the claim

243. This was addressed in paragraphs 59 – 62 of Mr Connolly's opening submissions, which raise matters of law which are, in my judgment, fatal to Sheila's unfair prejudice claim on the basis of my finding as to the genuineness of the 13/11/15 minute of meeting and the agreement made at that meeting as recorded in that minute.

244. Mr Connolly rightly concedes that Sheila has standing to present the unfair prejudice petition pursuant to section 994(2) of the 2006 Act, on the footing that she is the executor of the estate of Jeffrey and is thus a person to whom his shares in Burdetts have been transferred or transmitted by operation of law.

245. However, he submits that under the agreement reached between David and Jeffrey on 13/11/15 what ought to have happened was that Jeffrey's shares should have been transferred by Sheila as his executor to David to complete the dissolution of Burdetts. He submits that, regardless of the legal

enforceability of this agreement, if it had been implemented by Sheila in accordance with the agreement made between David and Jeffrey then it must inevitably have followed that: (a) she would have had no standing to bring this unfair prejudice claim; and (b) she could not possibly have made good any claim for unfair prejudice, in circumstances where Jeffrey and David had agreed that Burdetts should be dissolved.

246. In my judgment there is no real answer to these points. It might have been different if the evidence had revealed that the matters relied upon by Sheila in relation to the conduct of the affairs of Burdetts as regards the sale to Ashley and/or the loan agreement with Thornbridge had been made out, including allegations that the true nature of the transactions had been deliberately concealed from Jeffrey, so that he entered into the agreement on 13/11/15 in ignorance of the true position. In such a case it might have been pleaded and contended that his entry into that later agreement was procured through a continuing non-disclosure, so that it should still be open to Sheila to argue unfair prejudice in respect of those transactions. However, for the reasons identified both above and below, I am satisfied that this is not the case and that Jeffrey was happy to agree the sale to Ashley and the loan agreement with Thornbridge with full knowledge of the features which made them – at least apparently - disadvantageous to him.

247. That conclusion means that Sheila's unfair prejudice claim must fail on this basis alone.

248. I should however also address, briefly, David's alternative submissions as they are relevant to his counterclaim.

249. In short, David advances a case based on a trust or on a contract.

250. It does not seem to me that what was agreed represented an oral declaration of trust in favour of David in respect of Jeffrey's shares, as David alleges. It was an agreement that if Jeffrey should die (or become incapable) before Burdetts was dissolved then his shareholding should be transferred to David, whereas if the same happened to David his shareholding should be transferred to Connor It follows in my judgment that it could not have taken effect as a trust, and if it took effect at all it took effect as a contract.

251. As to that, Sheila has pleaded that the terms were contractually uncertain. I do not accept this. Regardless of any other agreement reached as recorded in the minute of meeting, this specific agreement seems to me to be perfectly certain. Although it is said that there was no agreement reached as to the consideration I do not accept this submission. It is clear that the consideration was agreed at nil.

252. Sheila has also pleaded that there was no valuable consideration. However, as Mr Connolly submits, the mutual promises would readily suffice as consideration (see *Chitty on Contracts, 35th Edition* at 6-008 and 6-009). Jeffrey agreed to confer a benefit on David (by agreeing to transfer his shares to him for nil consideration) and David agreed to act to his detriment (by agreeing to transfer his shares to Connor) in the event of their respective death. In both cases, the essential point is that this agreement would bind the personal representatives of Jeffrey or David (as the case may be) in the event of their death, so that the agreement could be carried though as agreed regardless of the wishes of the personal representative whoever that might be.

253. There is no reason why the contract should not be specifically performed. Although limitation is relied upon, the counterclaim was pleaded in December 2022, within 6 years from 2017 when Sheila was asked and refused to sign the STF.

254. In the circumstances, I am satisfied that David is entitled to an order on his counterclaim that Sheila transfer Jeffrey's shares in Burdetts to David for nil consideration.

The allegations relating to Ashley Travel Limited

255. For the reasons identified above, there is no cogent evidence of any unfairness in the sale to Ashley other than the admitted fact that Jeffrey was not a shareholder in Ashley and nor did he become one as part of the transaction. Sheila had suggested in her witness statement that she believed Jeffrey was unaware that David was a shareholder in Ashley, but she had no positive evidence for that suggestion and I reject it. It is improbable in my judgment that Jeffrey was unaware that David had an interest in Ashley, given that it operated from essentially the same premises and Jeffrey worked alongside Andy Powell for an extended period.

256. There is no evidence that Jeffrey had any wish to become a shareholder. Instead, he seems to have been perfectly happy with the arrangement as it was. As he is recorded as saying in the 31/1/05 meeting he was "beginning to feel the effects of his diabetes more and more but was still ok for a few more years yet". It follows that the transaction could not sensibly be regarded as having been unfairly prejudicial to Jeffrey in such circumstances.

257. There is no evidence that the transaction as a whole was at an undervalue, when one adds to the payment terms for the coaches (as to which there is no evidence that they were undervalued anyway) the fact that both David and Jeffrey were to become and did become employed directors, receiving a perfectly reasonable income, and the further fact that Burdetts continued in existence and received payment for contracts booked through Burdetts.

258. If the sale terms had been obviously skewed and unfair one would have expected Fred and Joyce to have objected even if he did not, given that they still had a broader family interest in Burdetts, but there is no evidence that they did. The reasons behind the decision to enter into the agreement on the terms identified in the minute of meeting of 25/1/06 are explained in the minutes and are not intrinsically surprising or obviously unfairly prejudicial to Jeffrey.

259. Insofar as there are any pleaded allegations that the proper procedural requirements were not followed (for example, formal disclosure by David of his shareholding in Ashley), as Mr Connolly submits the decision was made by David and Jeffrey as the sole directors and shareholders of Burdetts, in circumstances where they were aware of the relevant facts, so that the *Duomatic* principle applies (see *Re Duomatic Limited* [1969] 2 Ch 365 at 373, as explained by Neuberger J in *EIC Services Limited v Phipps* [2003] EWCA 1507 (Ch) at 121 and 122.

260. I thus dismiss these allegations.

The allegations relating to Thornbridge Estates Limited

261. I reach essentially the same conclusions in relation to the Thornbridge allegations as I do in relation to the Ashley allegations. In short, if this had been a transaction forced on Jeffrey as an objecting shareholder it would obviously have been unfairly prejudicial to him for Burdetts to agree to lend a substantial sum to Thornbridge on non-commercial terms, in circumstances where Jeffrey was to have no interest in or control over Thornbridge.

262. However, in my judgment Jeffrey was fully aware of the fact that he was neither to become a director nor a shareholder of Thornbridge, but was nonetheless happy with the arrangement, because he was in full agreement with the principle of the surplus funds accumulated by Burdetts being used in property investment for the benefit of the existing family if needed and then for the benefit of the next generation, including Connor of whom he was particularly fond. Jeffrey was happy to trust David and did not need the reassurance of being a shareholder or the responsibility of being a director. He probably also perceived that this would ensure that if and when he died there would be no basis for Sheila or her family to make any claim to what he clearly regarded as Burdetts family assets. It follows that the transaction was not unfairly prejudicial to him and, insofar as necessary, the *Duomatic* principle applies, with the result there can be no complaint by Sheila.

263. This conclusion is fortified by my finding that Jeffrey was, by this stage, the true beneficial as well as the legal owner of 72 High Street, so that he had even less reason to complain than he might otherwise have done.

264. It also follows that it is irrelevant, even if proved, that David adopted the same liberal approach in relation to the transfer and mingling of Thornbridge funds with his own personal funds as he did in respect of Burdetts. These are not in any event pleaded allegations. Further and in any event, if - as I have found - Jeffrey had given his informed consent to the Thornbridge transaction, on the basis that he was willing to cede control and ownership of the Burdetts' funds loaned to Thornbridge as a company owned and run by David and Niki, for the long term benefit of the next generation of the Burdetts family, then he could not have claimed to have been unfairly prejudiced, even if David and Niki effectively treated it as their own company, and even if they failed to properly document or account for any funds transferred from Thornbridge to their own use. There is no suggestion that there was ever a time where Jeffrey had a need for funds which could only have come from Thornbridge and which David refused to give him. Jeffrey was essentially happy to assist David with the Thornbridge business because that is what he liked to do and it was, in the wider sense, a Burdetts family business. Furthermore, given the terms of the loan agreement as between Burdetts and Thornbridge, under which Burdetts never had any realistic prospect of repayment of the loan, Jeffrey could not have claimed to have been unfairly prejudiced in his capacity as shareholder in Burdetts by such conduct, even if it did happen.

The remaining allegations of unfair prejudice

265. I am satisfied that it cannot credibly be contended that the complaints about David's attempts to persuade Sheila to sign the STF or his – failed – attempt to dissolve it can be viewed as unfairly prejudicial.

266. I am also satisfied that the complaint about the writing off of the loan to Thornbridge cannot amount to unfairly prejudicial conduct. The reality is that since it was, as I have found, a genuine 50 year loan, then even if there was ever a realistic possibility of it being repaid in 50 years' time, that was never going to produce a benefit to Jeffrey in his lifetime and, hence, cannot be used to found a relevant allegation of unfair prejudice.

267. Finally, whilst in other cases it might have been argued that the manner in which Burdetts' accounts were manipulated in YE2018 and YE2019 to reduce the shareholder funds from £323,435 to nil and by reducing the debtors from £668,726 to nil was unfairly prejudicial, I am satisfied that this was not the case here. That is because I am satisfied that: (a) this was not done on the basis that sums which would otherwise have been paid to the Sheila as Jeffrey's executor were diverted to David, directly or indirectly, as opposed to being done as a clearing out exercise to enable Burdetts to be dissolved as agreed on 13/11/15 in circumstances where these funds and debtors were never the subject of hard realisable assets; and (b) by this time David ought to have been registered as shareholder in place of Jeffrey in any event in accordance with the agreement on 13/11/15.