Neutral Citation Number: [2016] EWHC 735 (Ch)

Claim No: HC-2014-3187

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
RE: WILLOW COURT (HARROW) LIMITED (Company No 03307963)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 April 2016

Before:

RICHARD SPEARMAN Q.C.
(sitting as a Deputy Judge of the Chancery Division)

- -

Between:

(1) ALEX THIEN PAU CHONG
(2) MRUDULA PATEL
(3) PRATAPRAYLAKHMIDAS KHAGRAM and PRAVINA PRATAPRAY KHAGRAM
(4) YASMIN CHEHABI
Claimants

- and -

RATNA ALEXANDER
Defendant

- and -

WILLOW COURT (HARROW) LIMITED
Part 20 Defendant

Wendy Parker (instructed by J.E. Kennedy & Co) for the Claimants

Tom Carpenter-Leitch (instructed by Forsters LLP) for the Defendant

Hearing dates: 18-22 January 2016

RICHARD SPEARMAN Q.C.:

Introduction

1. This case concerns disputes, which form part of a long and unhappy history which has resulted in many other proceedings, between the long leaseholders of various flats in a small block in Harrow called Willow Court. The Claimants, for whom Ms Parker appeared, are the long leaseholders of flat 3 (Mr Chong), flat 6 (Mrs Patel), flat 8 (Mr and Mrs Khagram) and flat 9 (Mrs Chehabi). The Defendant, whose real name is Mrs Bhambani but who is also known by the name in which she has been sued (Mrs Alexander), and for whom Mr Carpenter-Leitch appeared, is the long leaseholder of flat 4. The Part 20 Defendant (the Company) is the owner of the freehold of the block. There is also in existence a management company called Willow Court Management Company (1985) Limited (the Management Company). I shall adopt this terminology, although when quoting documents I may use the terminology which they contain (even if that results in describing the same individuals differently at different times).

The issues on the claim

2. According to the Particulars of Claim, the Claimants seek the following relief:

   (i) *"An order requiring the Defendant to concur in and to take in a timeous manner all reasonable steps necessary to secure the transfer and register the Transfer of the shares from Mr and Mrs Budhdev, formerly of Flat 5 Willow Court, to Mr Shah in accordance with the executed stock transfer form"* (paragraph 8.1) ("the Transfer of Shares Issue").

   (ii) *"A declaration that the Defendant's refusal to consent (at an extraordinary general meeting (EGM) of the Company convened by the Claimants pursuant to section 303 of the Companies Act 2006, which meeting was held on 10 December 2013) to the appointment of the Claimants and each of them as directors (the Claimants and each of them being members of the Company) pursuant to Article 15 of the Company's Memorandum and Articles of Association, is unreasonable; alternatively, that the conditions attached to that refusal, subsequently notified to the Claimants in March 2014 are unreasonable; and, that the Claimants are entitled to lawfully requisition such a meeting without regard to the conditions asserted by the Defendant; and, to appoint the Claimants as the said directors in accordance with Article 15, aforesaid"* (paragraph 8.2) ("the Appointment of Directors Issue").

(iii) *"Such Orders as may be necessary to secure that the Claimants and their agents have access to the Register of Members of the Company"* (paragraph 8.3) ("the Register of Members Issue").

(iv) *"An order that the Defendant pays the costs of and incidental to this application"* and *"Such further or other relief as appropriate"* (paragraphs 8.4 and 8.5).

3. By the time of the hearing in front of me, it was common ground that the shares which form the subject of the Transfer of Shares Issue had been transferred to the sometime long leaseholder of flat 5 (Mr Shah), and that Mrs Alexander had exhibited a copy of the Register of Members of the Company to one of her witness statements in these proceedings and had therefore afforded the Claimants access to that Register. Accordingly, all that remained for me to decide in respect of the Transfer of Shares Issue and the Register of Members Issue was who should pay the costs of those issues.

4. In addition, in circumstances which are discussed in greater detail below, the Appointment of Directors Issue was resolved in the course of the trial. Therefore, by the end of the trial all I had to decide in respect of that issue was the question of costs.

The issues on the counterclaim

5. According to paragraph 21 of her Counterclaim, Mrs Alexander seeks the following relief:

(i) Declarations that:

(a) the Acquisition Agreement is binding upon the Claimants, Mrs Alexander and the Company;

(b) each holder of a block of 10 shares has been since 1997, and is now, entitled to enjoy the freeholder's financial rights in respect of one associated flat and in particular (aa) the Claimants in respect of flats 3, 6, 8 and 9 respectively and (bb) Mrs Alexander in respect of flats 1, 2, 4, 7 and 10;

(c) Mrs Alexander is entitled to receive for herself all future ground rents and lease extension premia in respect of flats 1, 2, 7 and 10; and

(d) the Company holds the freehold of the block for itself and for the parties upon trust in the above terms.

(ii) Further declarations that the Annual General Meeting of the Company held on 13 February 2014:

(a) was quorate; and

(b) validly passed the resolutions appearing in the minutes of that meeting.

(iii) *"Such further or other relief as the Court may deem appropriate"* and *"Costs*".

6. The claims for relief made by Mrs Alexander require some explanation.

7. There are 10 flats at Willow Court. These flats were let from 1985 under 99 year leases. Those leases included provision for the Management Company, which was to lease the common parts of the block and to manage the block, and in which each long leaseholder was to hold, and still does hold, 10% of the share capital.

8. In or about 1996, an opportunity arose for the leaseholders to purchase the freehold of the block, and the Company was established for this purpose. However, 5 of those leaseholders were unable or unwilling to contribute to the funds which were needed to finance that purchase (although it seems that they were willing to express an interest in the purchase in order to achieve the percentage required to trigger the leaseholders' entitlement to purchase the freehold). Mrs Alexander agreed to make up the shortfall. In the result, Mrs Alexander contributed 60% of the purchase monies, and she was allotted 60 of the 100 issued and allotted shares in the Company. The 4 other long leaseholders who contributed to that purchase were the then leaseholders of flats 5, 6, 8 and 9, and they each contributed 10% of the purchase price and were each allotted 10 of those shares. By these means, the freehold was acquired by the Company in March 1997.

9. The trial bundles include the current Memorandum and Articles of Association of the Company, which are stated to have been adopted by Special Resolution passed on 5 February 1997, and a copy of that Special Resolution, which is signed by R. Bhambhani as Chairman, and which is stated to have been passed at an Extraordinary General Meeting of the Company which was duly convened and held on that date.

10. Those Articles of Association of the Company include the following:

> *"5. The only persons eligible to be members of the Company shall be the subscribers to these Articles and the lessees of Flats contained in the property known as Willow Court, Fulbeck Way, Harrow, HA2 6LH (hereinafter called "the Building") or their Personal Representatives and their Successors in title. Save as aforesaid no shares may be allotted or issued except with the previous sanction of a Special Resolution of the Company in General Meeting.*
>
> *6. Shares shall be transferred and may only be transferred upon or immediately before a change in the ownership of the Flat in respect of which they are held and to the person becoming or about to become upon such change the owner of the Flat.*

7. The price to be paid on the transfer of shares shall in default of agreement between the Transferor and the Transferee be the nominal value of such shares.

8. If the holder of a share refuses or neglects to transfer it in accordance with these Articles the Chairman for the time being of the directors, or, failing him, one of the Directors duly nominated by resolution of the Board for that purpose, shall forthwith be deemed to be the duly appointed Attorney of that holder with full power in his name and on his behalf to execute complete and deliver a transfer of the share to the person to whom it should be transferred thereunder and the Company may receive and give a good discharge for the purchase money and enter the name of the Transferee in the Register of Members as the holder by transfer of that share.

9. If more than one person is jointly the owner of a Flat those persons shall jointly hold the corresponding share in the Company but shall have only one vote in right of such share whether as members or Directors which shall be cast by the Holder whose name first appears in the Register of Members …

11. In the event of a permitted holder ceasing to be a tenant of a flat contained in the Building (a) he shall not be entitled to exercise any of the powers of a member of the Company (b) he shall cease to be a Director of the Company and (c) in default of his executing a transfer of his share within one month after such event the Directors may authorise some person to transfer the share to any other person qualified to be the permitted holder thereof

…

13. The number of Directors shall not be less than one nor more than seven … The qualification shall be the holding of one share in the Company …

15. The provisions of Table A as to appointment rotation and removal of Director (sic) shall not apply. All the members of the Company for the time being shall be its Directors … provided also that any one of any two or more joint holders of a share shall be entitled to hold office at any one time …

17. The quorum necessary for the transaction of the business of the Directors shall be two …"

11. The trial bundles also include a document which is entitled "Special Resolution", is dated 29 September 1999, and is signed by R. Bhambani as director and M. Patel as Secretary. The validity of this is in issue, and is discussed further below. According to that Special Resolution, two changes were made to the Articles of the Company. First, Article 6 was omitted. Second, Article 7 was replaced with the following wording:

> *"The price to be paid on the transfer of shares shall in default of agreement between the transferor and the transferee be determined by a surveyor appointed by the Board and the costs are to be borne equally by the owner of the shares and the purchaser and in the event of the purchaser not wishing to*

purchase the shares after they have been valued by the surveyor appointed by the Board the shares shall be transferred to the existing shareholders for the sum of £1,750".

12. Mrs Alexander's pleaded case is that, in connection with the establishment of the Company and the purchase of the freehold of Willow Court, an agreement ("the Acquisition Agreement") was made in or about March 1997 between the Claimants or their predecessors and her, which was partially recorded in writing in April 1997, that:

    (i) Each 10% shareholding in the Company notionally represented the financial rights of the freeholder under the long residential leases to one of the 10 flats.

    (ii) The 4 leaseholders of flats 5, 6, 8 and 9 who each held 10% of the shares in the Company would enjoy the freeholder's financial rights relating to their respective flats.

    (iii) Mrs Alexander would enjoy the freeholder's financial rights in respect of, first, the 10% shareholding in the Company associated with flat 4, of which she herself was the lessee, and, second, the 10% shareholding in the Company associated with each of flats 1, 2, 3, 7 and 10, the lessees of which were not shareholders in the Company.

13. Mrs Alexander further contends that, in accordance with the Acquisition Agreement:

    (i) *"After the acquisition of the freehold in 1997 neither the Claimants or their predecessors nor [she] have paid any ground rent under their leases - instead enjoying for themselves this right of the freeholder in respect of their flats".*

    (ii) *"[She] has collected, or has attempted to collect, for herself, ground rent due in respect of the freeholder's financial interests which she enjoys in respect of flats 1, 2, 7 and 10 and also flat 5 for some period".*

    (iii) *"In or around 24 November 2004 [she] sold and transferred 10 of her shares in the Company to the lessee of flat 3".*

    (iv) *"In or around 2008 lease extensions of 999 years of the 5 participating lessees (being the Claimants or their predecessors and [Mrs Alexander] - flats 3, 4, 6, 8 and 9) and of flat 5 were granted by [her] as sole director of the Company. No premium was required or was paid in respect of these lease extensions because under the Acquisition Agreement each of these lessees, being also the holder of the 10 shares associated with their own flat, was entitled to receive for themselves any such premium".*

(v) *"Accordingly, as at 24 November 2004 [Mrs Alexander] held 50 shares in the Company, the Claimants or their predecessors held 40 shares in the Company and the lessee of flat 5 held 10 shares".*

14. The document Mrs Alexander relies upon in support of her case that the Acquisition Agreement was "partially recorded in writing in April 1997" comprises a single page. At the top is typed the name of the Company and the address of "4, Willow Court" (i.e. Mrs Alexander's flat). Beneath the text are five lines of typewriting which comprise the word "SIGNED" on the left, followed by a succession of dots, and then, on the right, the word "DATED", followed by more dots. Above the first line of dots which appear next to the word "SIGNED" is the signature "R Bhambani" and underneath that line are typed the words "MISS R BHAMBANI". Above and beneath the subsequent lines there appear the following signatures and the following typed words: "R J Paleja" and "MRS R PALEJA"; "M Ladhani" and "MRS Y CHEHABI" (accompanied by the letters "pp" in manuscript); "C A Russell" and "MS C A RUSSELL"; and "M Patel" and "MRS M PATEL". Above the successive lines of dots which appear next to the word "DATED" are the following dates, written in manuscript: "11-4-97"; "12-4-97"; "13/4/97"; "14.4.97" and "11-4-97". A copy of the document is include at page 1 of exhibit "RA1" to the first witness statement of Mrs Alexander, and it is convenient to refer to the document hereafter as "RA1/1". The typewritten text of RA1/1 reads as follows:

> *"We write to confirm that the above Company acquired the freehold of Willow Court from A & L M Mattey on the 25 March 1997. The Shareholders in the above Company are Miss R Bhambhani, Ms C A Russell, Mrs Y Chehabi, Mrs R Paleja and Mrs M Patel.*
>
> *Miss R Bhambhani has acquired 6 of the 10 Shares in the Company, and it has been agreed by her fellow Shareholders in the Company, that Ground Rents collectable from Flats 1-10 Willow Court (excluding the Ground Rent payable by Shareholders in Willow Court (Harrow) Limited), should be payable to Miss R Bhambhani personally".*

15. It is also convenient at this stage to refer to the following further documents:

(i) A "With Compliments" slip from Colin Dean, Property Consultants, endorsed (in manuscript) with the date "8-4-97" and these words: "Miss Bhambhani" and *"Would you please be kind enough to sign the enclosed document where indicated and then pass on to your fellow shareholders for their signature".*

(ii) A letter dated 13 April 1997 from Miss Bhambhani to Mr Ayling of Colin Dean which states *"Thank you for your letter dated 8th April, 1977, and the papers concerning the purchase"* and which goes on to ask Mr Ayling to obtain settlement of the sum of £125 that is recoupable from the sellers of the freehold in respect of *"the proportion of the ground rent paid in advance from the date of completion i.e. 25th March, 1997, to 25th June".*

(iii) A letter dated 20 May 1997 from Mr Ayling to Miss Bhambhani, which states that Colin Dean have retained the £12.50 due to Miss Chehabi as they have her bank details and that a cheque for £112.50 is enclosed, and asking Miss Bhambhani to pay £12.50 in cash to each of C Edwards, Mrs Patel and Mrs Paleja *"as you offered to [do] in your letter of the 14 May 1997".*

16. So far as concerns the meeting on 13 February 2014, the Claimants contend that this was ineffective because it was inquorate under Regulation 40 of Table A in light of the fact that "*the only member of the Company who attended was the Defendant*" (see [6] of the Amended Reply). Regulation 40 forms part of the Articles and provides that: *"No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum."*

17. Mrs Alexander's position, as explained in Mr Carpenter-Leitch's opening submissions, is that (a) she voted 20 of her 60 shares herself (or possibly 10 of her 50 shares if the shares relating to Mr Shah's flat should be treated differently, which she contends they should not) but split her remaining 40 shares into 4 blocks of 10 shares each; (b) these 4 blocks were identified by the numbers of the flats to which they, notionally, related (i.e. flats 1, 2, 7 and 10), with Mrs Alexander's voting being in respect of flat 4 (her own flat) and also flat 5 (Mr Shah's flat); and (c) Mrs Alexander and the 4 proxy holders attended in person and passed the requisite resolutions.

18. Mr Carpenter-Leitch contended that it is uncontroversial that blocks of shares may be identified by reference to the flat numbers to which they notionally relate and this is reflected in Article 9 which refers to joint owners of a flat holding "*the corresponding share in the Company*" (emphasis added). He also contended that provided there was no attempt to duplicate the shareholdings and vote them twice, the precise identification of which 10 of Mrs Alexander's shares were voted by each proxy is immaterial. He pointed out that the requirement in Regulations 40 is for "two persons entitled to vote" and not "two members". He argued that each of (a) Mrs Alexander and (b) the proxyholders (but only in respect of other identified shares) was "a person entitled to vote" at the meeting and that it was therefore quorate in accordance with Regulation 40.

The presentation of the rival cases

19. There were a number of features of the way in which the case was prepared for trial and presented at trial which increased the difficulty of resolving the issues which I am called upon to decide. They also exacerbated the risk of losing sight of the wood for the trees. They included problems with the way in which the claim had been pleaded, issues about the contents of the witness statements, serious allegations that a number of documents upon which Mrs Alexander relies had been forged (apparently by her, or at her instigation), and a process of rolling disclosure which continued up to, during, and even after the 5 days of the trial hearing. I address these matters further below.

20. So far as concerns the challenge to the authenticity of documents, as a result of a hearing before Birss J and the directions given by him the Claimants were required to set out their case at that time in an Amended Reply (dated 13 March 2015). However, that was not the limit of their challenge to the authenticity of documents disclosed by Mrs Alexander. For example, by notice dated 11 January 2016 the Claimants' solicitors gave notice that they required Mrs Alexander to prove at trial *"All of the documents referred to in a CPR 31 statement [served by Mrs Alexander] dated [8 January 2016]".* The relevant paragraphs of the Claimants' Amended Reply plead as follows:

> *"2C. As to the documents specified below the Second Claimant, the Fourth Claimant, and Mrs Renu Paleja all deny signing (whether personally or as agent) the original or any copied version of the original of those documents. The Claimants and Mrs Paleja assert that the five documents (as specified below) are forgeries in that none of them has been signed by the Second Claimant, or the Fourth Claimant's agent, or Mrs Paleja as purports to appear from the copy versions of those documents exhibited at RA1/1 and RA1/2 of the Defendant's witness statement dated 27/06/2014 or those exhibited at RA2/1 and RA2/3 and RA2/28 of the Defendant's witness statement dated 10/11/2014 which versions are the only versions of these five documents which the Defendant has produced in this matter.*
>
> *2D. The Claimants and Mrs Paleja assert that the five documents identified in 2C above are forgeries because, in the copy versions that the Defendant has now produced of those documents up to 10/11/2014, they (individually or collectively) "tell a lie" about themselves in that those documents purport to have been signed by the Second Claimant, or the Fourth Claimant's agent, or Mrs Paleja in circumstances where those persons deny ever having signed (or ever having authorised the signing of) those documents originally or otherwise; and* ***further*** *that while the signatures as shown on each of the five documents referred to above either of the Second Claimant, or the Fourth Claimant's agent, or Mrs Paleja may be their signatures, those signatures, as they appear on the five documents as aforesaid, appear to have been appended onto each of the five documents as aforesaid by persons unknown.*
>
> *2E. Notice pursuant to CPR 32.19 – The Claimants give notice in accordance with CPR 32.19 that they require the documents referred to and specified in 2C. above to be proved at the trial."*

The witnesses

21. For the Claimants, I heard evidence from the following witnesses. I do not propose to refer to all of that evidence, especially in light of the considerations that some of their evidence was not relevant to any of the issues which I have to decide, and that, in view of the way in which the proceedings unfolded, the relevance of much of their evidence either fell away completely or became relevant only as to costs. I intend to mention only those aspects which seem to me to be of most relevance to the substantive issues

which remain live. It is also intend at this stage to indicate my findings on the central allegations of forgery, and why I have reached those findings on all the evidence.

22. Mr Kennedy, who is a partner in the Claimants' solicitors. Although he was challenged to some effect about some of the language used in his witness statement when rehearsing the history of dealings between the Claimants and Mrs Alexander (for example, as to whether his use of expressions such as "deadlock" and "defining moment" were accurate), overall he was a fair and reliable witness.

23. Mrs Budhdev and Mr Budhdev, who bought flat 5 from Mrs Devani in late 2007/early 2008, and who sold it to Mr Shah in 2010. They were younger than many of the other witnesses who were called, and struck me as business-like, straightforward and honest.

24. However, it does not follow that all their evidence is correct. For example, I accept that Mrs Budhdev was honest in saying that she would not sign documents relating to their flat alone and without Mr Budhdev signing also. This is relevant because it is her evidence that she and her husband extended the term of their lease without payment of any premium, and that she met Mrs Alexander on or about 5 January 2008 to collect the document which was material to that extension. The trial bundles include a copy of RA1/1 which purports be signed by Mrs Budhdev on "5-1-08" in place of being signed by Mrs Paleja on "12-4-97", and which bears manuscript endorsements which include the words *"Mrs Budhdev signed this on the day of the meeting"*. Mrs Budhdev accepted that this copy of RA1/1 contained her signature, but she said that she had no reason to sign it, and no understanding that Mrs Alexander was collecting ground rent in respect of the non-shareholder flats. There is therefore a conflict between, on the one hand, Mrs Budhdev's evidence, and, on the other hand, the appearance of what seems to be her signature on this copy of RA1/1. Faced with this conflict, and in spite of Mrs Alexander's inability to produce the original of any version of RA1/1, I have little hesitation in concluding that it is far more probable that Mrs Budhdev did sign this copy of RA1/1 as Mrs Alexander alleges than that it is a forged document. My assessment (having considered all the evidence before me) is that Mrs Alexander would have had neither the propensity nor the means to transpose Mrs Budhdev's signature on to this document, and nor is the suggestion that this signature was somehow transposed supported by any forensic evidence. I also bear in mind that the payment of ground rents by the non-shareholder flats involved modest sums, and what I infer was an amicable and trusting relationship between Mrs Budhdev and Mrs Alexander in 2008.

25. Mrs Paleja, who sold flat 5 to Mrs Devani in 1997 (moving out in January 1998). She did not give me her age, but Mrs Ladhani put it at about 65 years. Mrs Paleja was asked to recall matters which occurred many years ago, and it unsurprising that her recollection was imperfect or in some respects non-existent. For example, she told me *"I don't recall discussions about the purchase of the freehold at all"* and (inaccurately) that *"I paid £1,500 roughly [for my shares], I'm not too sure"*. I accept that Mrs Paleja

was giving honest answers when she said that she had not signed, and would not have signed, RA1/1, and that she did not sign the letter dated 9 May 1999. However, I am unable to accept that these parts of her evidence were accurate, for the like reasons as apply in respect of Mrs Budhdev's evidence above and Mrs Ladhani's evidence below. I return below to her evidence to the effect that she would not have been involved at all with the residents of the block or their affairs in 1999, which I am also unable to accept.

26. Mr Khagram, who bought flat 8 with his wife in 2011. He was in his early 60s. He agreed that the contents of his witness statement were substantially the same as those of the witness statements of Mr Shah, Mr Chong and Mrs Patel, but he denied that words had been put into his mouth. He said that he had first seen RA1/1 in 2013. The relevance of other parts of his evidence (for example, as to aspects of the conduct of some tenants) fell away during the course of the hearing.

27. Mr Shah, who owned flat 5 from 2010 until he completed a sale of it in July 2015. For reasons explained below, I was not impressed by the fact that he had signed a witness statement in the terms that he did, but in any event by the time of the hearing his evidence was not relevant to any issue of substance which I was required to decide.

28. Mrs Patel, who bought flat 6 in September 1995 and who still owns it. She did not give me her age, but Mrs Ladhani put it at about 75 years. Broadly speaking, the same observations apply to her evidence as apply to that of Mrs Paleja. In answer to a number of questions, Mrs Patel said that she could not remember. With regard to both RA1/1 and the letter dated 9 May 1999, she said *"It is my signature, but I don't remember that document/this letter".* She said (incorrectly) that she had paid roughly £1,000 to £1,200 for her shares in the Company. That shows her memory is imperfect. She confirmed that she had not paid anything for the extension of her lease. As to ground rent, Mrs Patel said that *"According to the Articles we should be paying ground rent to the Company"*, but she also said that *"I sent ground rent to Mrs Alexander, but she sent it back, and Neil Evans said that I did not have to pay it any more".*

29. Ms Compton. As the contents of her witness statement were not challenged, and were in any event of peripheral importance, I consider that calling her served little purpose.

30. Mr Chong, who bought flat 3 in 2003, and who bought 10 shares in the Company from Mrs Alexander in 2004 (according to her evidence, these shares were sold and transferred on 24 November 2011), for which he paid £1,250. He accepted that extending his lease was a valuable benefit to him, and that he would normally expect to pay a premium. He accepted that he had not paid anything for the extension of his lease, saying that *"four of us did the same thing".* When asked about the letter from Mr McEntee dated 12 January 2009 (which is referred to further below), Mr Chong said that he had paid his ground rent up to 2008 and he said of the demand for payment of the sum of £200 to him which was included in that letter that *"I'm not sure that this is*

properly classed as ground rent". Although Mr Chong plainly had firm views about Mrs Alexander and differences of opinion with Mrs Alexander (for example, about whether it was reasonable for him to work from home and have parcels delivered *"every now and then"* which were *"occasionally"* left in the common parts of the block), I did not consider that this made him an unreliable witness overall. However, I do not regard his answers concerning this letter as satisfactory, as they seem to me to contradict the letter, which I accept to have been written by Mr McEntee on his behalf.

31. Mrs Ladhani, who held a power of attorney of her sister, Mrs Chehabi, and dealt with all matters concerning flat 8 on behalf of her sister. Mrs Ladhani described herself as a book-keeper turned accountant, and told me that she is older than her sister, who is aged 62. She said that there was no discussion that shareholders in the Company would not have to pay ground rent, and no discussion that they could extend their leases without payment: *"All that was discussed was that the leaseholders were buying the freehold and that they would have the chance to become shareholders"*. When asked about documents dating back to 1996, Mrs Ladhani said that she would not have been party to some of the events of that time because her sister only bought flat 8 in 1996 – completing in March 1996 and moving in to the flat in June 1996. She said that she had never disputed that what purports to be her signature on RA1/1 is in fact her signature, and that the date which appears next to that signature is in her handwriting. However, she said that as soon as RA1/1 came to her attention (which was in 2013) she took the step of writing the letter dated 16 September 2013 (discussed further below); and that she was being diplomatic in that letter because she did not want to say in her first communication on the subject that her signature on RA1/1 had been forged. She said that ground rent had not been paid up to 2000 because the Company was dormant; that it was paid from 2000 to 2007 by her and Mrs Patel and all the other leaseholders; that *"In 2007 was the first time we realised that ground rent should not have been paid"* and that *"Four years' ground rent that we had paid had to be refunded".*

32. Mrs Ladhani accepted that in 2008 her sister's lease was extended without payment, but she denied that this was in accordance with any agreement that had been made in 1997: *"We found out that Mrs Behbani had extended her lease. One of us stumbled across it. Five of us got together. I personally did not find out about this or speak to Mr Evans. [But] he said this has happened, and he told us that we had the right to do this for no premium".* Later on, she said: *"The extension of the leases reduced the value of the freehold of the Company. I knew the Company was not recovering any money for that extension. We went for it because it was a privilege given to shareholders. We did not seek to have Mrs Alexander's extension revoked. I knew that the right to grant the extension was the Company's right … My sister purchased a 10 per cent shareholding because she thought it would increase the value of her lease, and for no other reason".*

33. I found Mrs Ladhani an impressive witness. I have no doubt that she gave her evidence honestly, and in the main I accept it. However, it does not follow that everything she

said is right. In light of the contemporary documents, discussed further below, I consider that it is more likely than not that there were discussions about the possibility that shareholders in the Company would not have to pay ground rent and could extend their leases without payment, and that Mrs Ladhani has forgotten this after all these years. However, that does not mean that there was necessarily any concluded agreement about these matters. Also, there is a tension between the assertion that everyone paid ground rent from 2000 to 2007 and her acceptance that only 4 years' ground rent had to be refunded, which suggests they cannot both be right. More importantly, having considered all the evidence, I am unable to accept that Mrs Ladhani's signature on RA1/1 was forged. As set out elsewhere in this judgment, the only person who can realistically be said to have had a motive for producing such a forgery is Mrs Alexander, and I am wholly unpersuaded either that she had the disposition or that she or someone acting on her behalf had the means to accomplish any such forgery. None of the Claimants' witnesses identified other documents which they had signed and dated and from which their signatures and the accompanying dates might have been transposed on to RA1/1. Nor was any explanation offered as to how a transposition on to the dotted lines in RA1/1 might have been effected without leaving any trace. Moreover, it appears from the contemporary documents that RA1/1 was sent to Mrs Alexander in April 1997, and I consider it is far more likely than not that, having obtained it then, she would have got others to sign it at the time, as she claims she did.

34. Mrs Chehabi was taken ill while attending court and waiting to give evidence, and was taken to hospital experiencing symptoms of a heart attack. This would appear to be an unhappy illustration of the pressures to which individuals may be subjected due to unfortunate litigation of the present kind. In the result, although her witness statement was put in evidence, Mrs Chehabi did not give oral evidence.

35. Mrs Alexander was the only witness who was called on her behalf. She is 79 years old. She has a BA degree from the University of Karachi, a BSc in Mathematics from Westfield College, and she also obtained a Certificate in Education. She married in 1960, but is now a widow. She has a son and a daughter. Her daughter is the joint owner of flat 4 but also has her own home. She was a teacher of Mathematics and English until she took early retirement in about 1980 or 1982. She said that she was known both as Mrs Alexander and as Mrs Bhambhani. She said that she had decided to change her name to Mrs Alexander in order to get interviews for work (because at that time, due to racism, she would not get interviews using her real name), that she changed her name back to Mrs Bhambhani when she retired, and that in 2008 she changed her name to Mrs Alexander for convenience. I do not understand these changes to have been effected formally, but merely to relate to how Mrs Alexander chose to describe herself. This narrative is relevant because at one stage it formed part of the Claimants' case that certain documents were not authentic because they referred

to her as "Mrs Alexander" at a time when she was not known by that name. However, that part of their case was undermined by this explanation, which I accept as truthful.

36. Mrs Alexander said that, to begin with, neither she nor any of the other long leaseholders had any idea how to run a company. The 5 long leaseholders whose shares she had were paying ground rent to her until Mr Devani came along and said that it had to go to the Company: *"He was a lot of trouble"*. That meant that it was necessary to open a bank account, which previously had not been done because the shareholders were trying to save money. She and Mrs Patel chose National Westminster Bank because it gave them free handling. Mrs Alexander was told that the Company had to have an accountant if it had a bank account, and those events and the advice of the accountant led to her writing the letter dated 2 December 2000 (discussed below).

37. Mrs Alexander said that after 2008, when the shareholders in the Company extended their leases, she went back to being paid ground rent personally, on the basis that there was no point in people paying money into the bank account of the Company only for that money to then be paid to her. She claimed that she had produced RA1/1 to tenants (other than Ms Compton) before 2013. Sometimes people paid her and sometimes not.

38. Mrs Alexander said that Mrs Budhdev had signed the version of RA1/1 which appears to bear Mrs Budhdev's signature. She said that Mrs Budhdev came down (to flat 4) in the evening. Mr Budhdev was not there. She said that the note on that version of RA1/1 is in her handwriting, and that she had written that note after 27 April 2014.

39. Mrs Alexander denied that Mrs Paleja had ceased to attend meetings (or participate in the affairs of the Company) after she had sold her flat. She said that she was not aware of the provisions of the Articles at the time when Mrs Paleja sold her flat.

40. She said that the text of RA1/1 was proposed by Colin Dean, that the shareholders all did what they were told, and that she must have sent RA1/1 back to Colin Dean. As an explanation as to why Mrs Alexander did not retain the (fully signed) original of RA1/1 this appears to me to make sense, and I accept that this is probably what happened.

41. Mrs Alexander is a strong personality. When giving evidence, she seemed determined to get her case across, and was unwilling to confine herself to answering the questions which were asked of her in cross-examination, in spite of being asked to do so more than once. Partly for this reason, some aspects of her evidence were not entirely easy to shape into a coherent whole. In addition, she made reference to documents which were not in the trial bundles, and then produced some further documents late in the day, although in other instances she was unable to produce further documents which she said she had or believed that she had. All this did not assist her in my eyes. Nevertheless, I did not consider that Mrs Alexander was in any way a dishonest witness, and I was wholly unpersuaded that any documents she produced were forged or not authentic.

42. I consider that entrenched positions, and no little hostility, have given rise to all those involved in the current dispute having difficulty in separating what they are able to state as matters of fact with candour and confidence from what they would like to think took place or what they have come to think took place (in each instance because it suits their case in the current litigation). Some measure of the tensions which exist within the unhappy environment of the block, and a glimpse of the issues which will not be resolved by this litigation, can be gleaned from Mrs Alexander's assertion that Mr West had attacked her twice, such that she had to call the police, and that he had threatened her two months before the hearing, and that he or another tenant in the block had said that he hoped that she would get cancer. I make no findings as to whether these claims are true. The fact that they have been made is sufficient to make the point. For these reasons, I have sought to find or test the truth by considering contemporary documents.

Expert evidence

43. The Claimants disputed the authenticity of some of the documents upon which Mrs Alexander relies. This resulted in an Order of Birss J requiring the Claimants to plead their case in that regard in their Reply, and in an expert's report of Anthony Stockton dated 3 September 2015. This is a joint expert's report, although it seems that it was obtained at the suggestion of Mrs Alexander, which the Claimants initially resisted.

44. That report examined copies of three documents, namely (a) RA1/1, (b) the letter to Mr Lemer of Arthur & Co dated 9 May 1999 which is referred to further below, and (c) another version of RA1/1, which bears a stamp from Watford County Court, which purports be signed by Mrs Budhdev on "5-1-08" instead of being signed by Mrs Paleja on "12-4-97", and which bears manuscript endorsements which include the words *"Mrs Budhdev signed this on the day of the meeting".* The summary of findings in that report is that *"Whilst based on the material examined there is no evidence to suggest that the signatures on [these documents] have been transposed on to these documents from other sources, the evidence is essentially inconclusive".*

45. The same author produced a further report dated 19 November 2015, in which he answered some further questions. Those answers include the statements that, in respect of RA1/1, *"There is no obvious misalignment of the typing or the dotted lines associated with the signatures"* and that *"These observations are part of the reason why I have concluded that there is no evidence to suggest that the signatures have been inserted on to the document by a cut and paste method from another source(s)".*

Key documents

46. In addition to RA1/1 and contemporary documents mentioned in [15] above, the documents which I consider to be of importance include the following.

47. First, a letter with enclosure dated 25 March 1996 from Colin Dean to Miss Bhambhani. This letter rehearsed that the original freehold owner of the block had sold the freehold interest to Mr and Mrs Mattey, in apparent violation of the right of first refusal of the long leaseholders, who were stated to be entitled to require the freehold to be sold to them provided that *"75% of the flat owners … act collectively".* The letter enclosed a sheet setting out questions and answers which *"may help you in your deliberations as to whether you should be considering the purchase of the freehold of your block of flats".* At paragraph 1(iv) this sheet stated: *"GROUND RENT. As Owners of the Freehold, you can elect not to collect Ground Rent from the "Freehold Shareholders" yet still collect from those who do not participate in the purchase".* At paragraph 1(v) it stated: *"LEASE EXTENSIONS. As the length of your lease decreases, some Residents may wish to extend their leases (often back to 99 years). Usually a premium is charged for this by the Freeholder (which can be thousands of pounds) but as "Freehold Shareholders" you will be able to extend your own leases at no cost (except solicitors' charges) yet charge a premium to those who do not participate in the purchase".* At paragraph 3 it stated: *"WOULD THIS MEAN WE HAD "FREEHOLD FLATS"? No, it would be disadvantageous if your individual flats were Freehold. You would not, for example, be able to require your neighbour to contribute to the Service Charge Fund or to keep his property in good condition etc. To avoid these problems, all persons contributing to the purchase would become Shareholders in a new "Limited" Company and this Company would own the Freehold. <u>Your</u> flat will remain Leasehold but <u>you</u> will own a share of the Freehold of the Building".* The language of these documents is such that one would expect their contents to be discussed at the time amongst all those who were considering whether the freehold should be acquired.

48. Second, the minutes of an AGM of the Management Company held on 16 October 1996 which record those present as comprising *"Chris Edwards – Flat 8, Miss Paleja – Flat 5, Mrs Patel – Flat 6, Emma Brady – Flat 7, Miss Bhambhani – Flat 4 and Dean Ayling – Colin Dean Property Consultants"* with apologies from *"Mr and Mrs Parsons – Flat 2 and Mr and Mrs Chehabi – Flat 9".* Under the heading "Freehold" the minutes record that *"The matter of the freehold was discussed and a number of issues were raised and considered. It was resolved by the meeting that if the current offer of £5,000 which had been put to the freeholder should be refused then Colin Dean will be authorised to offer the sum of £6,000".* (In fact, it appears from a completion statement included in the trial bundles that the total costs attributable to each 10 per cent shareholding, including fees, were about £700; and Mrs Alexander paid about £4,200).

49. Third, there are letters in identical terms dated 8 April 1997 from Colin Dean (Mr Ayling) to, first, Mr Bardawil at flat 1 and, second, Miss Brady at flat 7 which state the following: the freehold of the block was acquired by the Company on 25 March 1997; the next ground rent due is payable on 25 June 1997 in the sum of £50; this may be paid to the Company, whose registered office is flat 4; and *"the cheque should be payable to Miss R Bhambhani, since she has acquired a controlling interest in this Company".*

There is also a copy document in the trial bundles which is largely illegible, but which appears to be a standard form letter dated 27 June 1997 from Miss R Bhambhani to other leaseholders in the block asking for cheques for ground rent to be made payable to her on the basis that *"Your lessor is Miss R. Bhambhani".*

50. Fourth, the minutes of an AGM of the Company held on 16 July 1997 in flat 6, and accordingly hosted by Mrs Patel. The minutes record that Mrs Patel, Mrs Alexander, Ms Russell and Mrs Chehabi were present, but Mrs Paleja was absent. They also record that the Company did not have a bank account, and that, having considered the likely costs associated with opening and operating such an account, the members voted against opening one. The minutes continue: *"As the ground rent to be collected from five lessees was Miss Bhambhani's money, it was agreed for cheques to be made payable to 'Miss Bhambhani'. A letter to this effect was signed by all the members. Mrs Paleja would be asked to sign later. Miss Bhambhani had managed to get £125 over charged by the previous Company Owners. She gave a cheque for £12.50 to each member according to their shares".* The minutes also record that Mrs Alexander was elected as the sole director of the Company and that Mrs Patel was elected as the Secretary of the Company.

51. Fifth, the minutes of an AGM of the Company held on 9 May 1999 in flat 4. These record that, in order to avoid various problems which are rehearsed in the opening paragraphs, Mrs Alexander proposed the following resolution, which was seconded by Mrs Paleja: *"The Freehold Shares to be sold with the flat and at market value. If the purchaser of the flat did not wish to buy the shares, then the owner would be obliged to sell the shares to any Shareholder of the Company at the price of £1,750".* The minutes state that this resolution was carried unanimously, and that *"Miss Bhambhani was to instruct the Solicitor to make it legal".*

52. Sixth, a letter dated 9 May 1999 addressed to Mr Lemer at Arthur & Co (a firm of solicitors) stating that the signatories, as shareholders in the Company *"would like you to act on our behalf as per the instructions of Mrs R. Alexander, Director".* The copy of this letter in the trial bundles bears what purport to be the signatures of Mrs Alexander, Mrs Patel, and Mrs Paleja. Under the typewritten words "Mrs Y. Chehabi" the word "absent" is written in manuscript. Under the typewritten words "Miss E. Ducasse" there is written in manuscript on one version the word "Flat 8" and on another version (produced belatedly by Mrs Alexander) the words "absent" and "80% signed".

53. Seventh, the minutes of an EGM of the Company held on 19 September 1999, apparently attended by Mrs Alexander, Mrs Paleja, Mrs Patel and Mrs Chehabi, but with Ms Russell being absent, which record that Mrs Alexander *"passed round the minutes and the legally worded document prepared by Mr Lemer, to change the Regulation 7. These were approved by the members of the Company. Copy of the Resolution would be posted to all the members, once made legal to attach to their book of Articles and Memorandum of the Company".* There is also a notice dated 29

September 1999 of an EGM of the Company to be held on 28 October 1999 for the purpose of considering and if thought fit passing a resolution in the terms quoted in [11] above. The copy of that notice contained in the trial bundles appears to have been signed by Mrs Alexander and by Mrs Chehabi, Mrs Paleja and Mrs Patel, all on 28 October 1999. There is also a letter dated 1 November 1999 from Arthur & Co to Companies House concerning the Company which states: *"We now enclose a Special Resolution together with a copy for your use altering the articles of the above company".*

54. Eighth, a letter dated 12 January 2009 to Mrs Alexander from Mr McEntee, which is expressed to have been written on behalf of 5 shareholders in the Company, namely Mr McEntee and Mr Chong, Mrs Patel, Mrs Chehabi and Mr and Mrs Budhdev. This states *"In October 2008, ground rent was demanded from each of us in order to complete the new lease extension. Even though ground rent is not payable by shareholders, we each decided to pay the amount demanded just so that we could complete, and claim the amounts back at a later date. I enclose a copy of a letter to Mrs Patel from Neal Evans clearly stating that shareholders do not pay ground rent".* The letter went on to demand repayment of £100 to Mr McEntee and repayment of £200 to each of the other 4 shareholders on whose behalf the letter was written. It ends by stating "cc N. Evans".

55. Ninth, there are a significant number of other documents relating to the payment of ground rent. I will not prolong this judgment by rehearsing their contents in any detail. Suffice it to say that they appear to me to show that for many years Mrs Alexander demanded ground rent from those leaseholders who did not have shares in the Company, and that they paid her ground rent (although not always promptly or in full, and on occasion not without protest). They also suggest that until about 2 December 2000 Mrs Alexander and her fellow shareholders in the Company did not pay ground rent. On that date, however, Mrs Alexander wrote to Mrs Devani (flat 5), Mrs Patel (flat 6) and Mr and Mrs Chehabi (flat 9) (and to herself) stating that she had been advised by a firm of accountants that since the Company had been forced to open a bank account it was no longer a dormant company, and that henceforth *"ALL the Leaseholders, including ourselves, have to pay ground rent and all other charges applicable according to the lease".* Thereafter, the statements relating to the Company's bank account in 2001 and 2002 appear to record that payments of ground rent were made to the Company. There are documents showing that ground rent was demanded from, and paid on behalf of, Mrs Chehabi between December 2000 and 2004. There is also a document bearing the Company's letterhead dated 23 November 2004 signed "R.Bhambhani" which records the receipt of two sums of £50 from Mr Chong in respect of ground rent for the years 2003-2004 and 2004-2005. It seems likely that the perceived need for the Company to open a bank account arose because some leaseholders resisted Mrs Alexander's claim that she (as opposed to the Company) was entitled to be paid ground rent. That is certainly the position in later years, when it appears that the Company once again did not have a bank account, and when (by way

of illustration) it also appears from letters from Mr West of flat 10 dated 10 October 2007, 20 September 2013 and 24 February 2014, and from an Order made in Watford County Court on 1 August 2014 and dated 14 August 2014 whereby proceedings that Mrs Alexander brought against Mr West were dismissed, that payments of ground rent were either made to her under protest or were withheld on the basis that ground rent was owed to the Company and not to her personally. However, whether paid to Mrs Alexander or not, it would appear from some late disclosure made by her and from her evidence at trial that she obtained the benefit of ground rents which she claimed to be due to her by setting off such sums against the liability which she would otherwise have had to pay service charges: see the demand for £150 made of her on 9 June 1998, on which document there is written *"Paid from Ground Rents. Bardawil, Palmer, West. 9/9/98 (transferred funds from ground rent)"*.

56. Tenth, a letter from Mrs Ladhani to Mrs Alexander dated 16 September 2013, which states with regard to RA1/1 and the further version of RA1/1which bears a stamp from Watford County Court that *"This letter is a polite request on behalf of Mrs Patel and myself [being the only two remaining signatories of the attached documents] for sight of the original of these documents, bearing our original signatures. We do not recall signing such a document and need to refresh our memories".* In similar vein, there is a letter from the Claimants' solicitors to Mrs Alexander's solicitors dated 8 January 2014 which states with regard to the letter dated 9 May 1999 that *"neither Mrs Chehabi nor Mrs Patel can recall signing this letter. Please therefore arrange for Messrs Arthur & Co to produce the original thereof to your firm".*

The Transfer of Shares Issue

The Claimants' case

57. Paragraph 3 of the Particulars of Claim pleads that: *"The full details relating to this Claim are comprehensively set out in the Witness Statement of Mr Joseph Edward Kennedy, dated the 29 April 2014 and served herewith"*. This is a reference to the first witness statement of Mr Kennedy, who is a partner in the Claimants' solicitors. That witness statement is 24 pages long, and exhibit "JEK1" to it contains some 623 pages. Ms Parker suggested that this was a standard, or at least acceptable, form of pleading in a claim of this type (which began as a Part 8 claim, but which has been continued as a Part 7 claim after it became apparent that the case involved disputes of fact, in accordance with the Order of Mr Registrar Derrett dated 2 September 2014).

58. In paragraphs 2 and 3 of the Defence and Counterclaim, objection was taken to this form of pleading. Among other things, Mrs Alexander contended that (a) as the Claimants had elected to serve Particulars of Claim, that statement of case should be taken as setting out a concise summary of the facts and matters upon which the Claimants rely in support of their claim for the relief sought by them, (b) in the event that, by reference to Mr Kennedy's first witness statement, the Claimants were seeking

to rely on other matters, they should specify those other matters with full particularity, (c) in the meantime, as Mrs Alexander was unable to identify any such other matters, she could neither admit nor deny the same, and (d) Mrs Alexander would set out her case in answer to any wider matters upon the Claimants complying with point (b).

59. In my view, those objections were well founded. Ms Parker was unable to point to any provision in the Civil Procedure Rules, the notes to those Rules, or any material Practice Direction, or to cite any decided case, which supported her argument to the contrary. Nevertheless, in light of their stance that their case was properly pleaded, the Claimants took no steps to address those objections, whether by amendment of the Particulars of Claim, the provision of Further Information, or in any other way.

60. The Claimants' pleaded case at paragraphs 4 and 5 of the Particulars of Claim is as follows:

> *"4. [The Company] … was formed in 1997 to acquire the freehold in Willow Court and it did acquire that freehold for some £6,000 subject to the 10 occupation leases. Between the Company's formation and 2008 the 100 shares in the company were allocated as to 50% to Mrs Alexander and 50% to the other 999 year long lease tenants as shown in the freehold title referred to below. In 2010, Mr Shah acquired his flat, Flat 5 Willow Court, his assignor also being a 10% shareholder in the company, as well as being a 999 year leaseholder. In 2010 the assignor transferred both the lease and the shareholding to Mr Shah. Mrs Alexander (the then sole director of the Company) asserted that the Company has not only declined to deal with the transfer of the 10% shareholding to Mr Shah but that that holding has in fact been transferred [to] Mrs Alexander, personally, thus giving Mrs Alexander a 60% interest rather than the 50% interest in the Company.*
>
> *5. Mrs Alexander has repeatedly failed and or refused to transfer the shareholding to Mr Shah in accordance with the executed share transfer notwithstanding repeated requests for her to do so. The Claimants maintain that Mrs Alexander is entitled to 50 shares in the Company and not the 60 shares that Mrs Alexander maintains that she owns."*

61. According to their witness statements, Mr and Mrs Budhdev bought flat 5 in 2008 and sold it to Mr Shah in 2010. However, their witness statements do not deal with the transfer to Mr Shah of the 10 shares in the Company that had been allotted to them, which lies at the heart of the Transfer of Shares Issue, but instead deal with other issues in these proceedings. Their evidence as to the transfer had to be elicited at trial.

62. Mr Shah does deal with that transfer in his witness statements. However, he does so in a manner which is largely tendentious and argumentative.

63. In his first witness statement, Mr Shah refers to Mr Kennedy's witness statement. Mr Shah then says (at paragraph 4) (sic): *"At to the two issues namely:- (i) the 10 shares in the freehold company of which should have been allotted to Mr Minul Shah, our co-tenant in 5,Willow Court and (ii) the appointment of the four Claimants as the new additional directors to the Defendant who is also currently acts as sole director, I believe those two claims are well-founded"*. By themselves, assertions like these have little, if any, evidential value, although they are capable of laying the ground for substantive evidence on issues of fact in the following text. In my judgment, however, there is no substantive evidence on the Transfer of Shares Issue in the remainder of Mr Shah's first witness statement. Instead, what one sees (at paragraph 8) is the following:

> *"As to the 10 shares which I claim in the freehold company, there are, it seems to me, two issues about those shares as follows:- (i) firstly, my right to have those 10 shares in the freehold company; and, (ii) secondly, the matter for the freehold company itself to have and maintain completed records of its shareholders of which I am undoubtedly a shareholder bearing in mind that, when in November 2010 I acquired flat 5, there was also transferred to me 10 shares in the freehold company as part of the consideration paid for the purchase of flat 5."*

64. Moreover, the text of Mr Shah's witness statement, including the typographical error ("At" instead of "As"), is replicated in a number of the other witness statements served on behalf of the Claimants. This repetition of the same text suggests that the witness statements do not contain the witnesses' own evidence. The failure to correct the typographical error suggests that the witnesses have not read their statements with care. The point is particularly striking in Mr Shah's case, because instead of referring to *"me"* he refers to himself as *"Mr Minul Shah, our co-tenant in 5, Willow Court"*.

65. In Mr Shah's second witness statement, he states (correctly) that he is not a party to the present proceedings. Further, it is apparent from the remainder of that witness statement that his case is that (a) he became entitled to be allotted 10 shares in the Company in November 2010 (b) it did not become apparent until receipt of Mrs Alexander's witness statement dated 27 June 2014 (which exhibited a full copy of that Register) that Mr Shah had not been named in the Register of Members of the Company and (c) it was only in March 2015 that Mrs Alexander provided Mr Shah with formal evidence of the transfer of shares to him in the form of a share certificate in his name. However, even these factual matters, and certainly much of the remainder of the text, are cast in terms which suggest that Mr Shah is commenting on the contents of documents produced by other people of which he has no direct knowledge, or is making forensic arguments. In addition, Mr Shah's evidence raises complaints which form no part of any claim before me. The following extracts should suffice to illustrate these points:

> *"6. … something which according to paragraph 7 of the Particulars of Claim filed herein the Claimants had formally been requesting since March 2013.*
>
> *11. I await with interest whatever explanation the Defendant is prepared to give in order at least to clarify her extraordinary unilateral conduct in misappropriating my 10 shares in the face of well recorded protest by myself, my solicitors Messrs Vymans, and the Claimants solicitors over the above mentioned four and a half year period.*
>
> *12. For the avoidance of doubt, I believe that it may be alleged on behalf of Mrs Alexander that she is an individual "standing up against the tyranny of a majority" the majority being the other nine tenants of Willow Court. If and to the extent that this is alleged on behalf of Mrs Alexander, both as a company director and in her individual capacity, as tenant, has caused me and my family a great deal of unnecessary and unwarranted stress, distress, and, expense. Her behaviour has cast a shadow over my home."*

66. Although paragraph 3.1 of Mr Kennedy's first witness statement refers to further explanation as to the respective positions of parties being given "below", he does not return to the topic in that statement. At paragraph 3.1, he explains the declaration which the Claimants seek in respect of the Transfer of Shares Issue in the following terms:

> *"… [the Company] has a total share capital of 100 divided into 100 shares of which the four Claimants have 40 shares or 10 shares each. As to the remaining 60 shares, while the Defendant claims to be entitled to the entirety of that 60 shareholding, the Claimants maintain that the Defendant is entitled to 50 only of those shares. The parties' relevant position in relation to the remaining disputed 10 shares is explained below. If (as will be asserted by the Claimants) that dispute is resolved in favour of Mr Shah of flat 5 Willow Court, those 10 shares it is submitted should be ordered to be transferred to him with the result that the Defendant will be able to show only a 50% holding in the Company with the remaining 50% being held by the Claimants and Mr Shah, i.e. deadlock. That is the first of the applications made herein for declaratory relief."*

67. Ms Parker submitted that: (a) Mrs Alexander had failed to explain why she transferred shares from her name into the name of Mr Shah in 2015 when the factual matrix relating to the share transfer had remained the same since Mr Shah purchased flat 5 in 2010; (b) Mrs Alexander's behaviour in this regard had been wholly unreasonable; and (c) if and to the extent that Mrs Alexander did not consider that an effective stock transfer form had been presented in support of a transfer to Mr Shah, she could and should have written explaining her concerns, but had instead chosen not to do so.

68. Ms Parker also submitted that the documents disclosed by Mrs Alexander did not support her case that she had paid £1,750 for these shares.

Mrs Alexander's case

69. Mrs Alexander's pleaded case concerning the Transfer of Shares Issue is as follows:

(i) It is admitted that Mr and Mrs Budhdev, the assignors to Mr Shah, transferred the lease of flat 5 to Mr Shah.

(ii) It is denied that the 10 shares of Mr and Mrs Budhdev were transferred to Mr Shah.

(iii) It is denied that Mrs Alexander asserted that the Company had declined to deal with the transfer.

(iv) It is admitted and averred that the 10 shares of Mr and Mrs Budhdev became registered in Mrs Alexander's name in the Company's Register of Members and that she is the registered holder of 60% of the Company's shares.

(v) Although it is admitted that Mrs Alexander has refused to transfer to Mr Shah the 10 shares formerly owned by Mr and Mrs Budhdev, it is denied that the Claimants have any cause of action as against her in that regard for the following principal reasons: (a) the Claimants have not sought to rectify the Register of Members, whether under section 125 of the Companies Act 2006 or otherwise, and the Company is not party to the Claim; (b) it appears that the Claimants' case is that 10 of the shares registered to Mrs Alexander ought in fact to be registered in the name of Mr Shah or, perhaps, Mr and Mrs Budhdev (in each case in respect of flat 5) and yet neither Mr Shah nor Mr and Mrs Budhdev are parties to the Claimants' claim; and (c) in the absence of a claim to rectification, whether under section 125 or otherwise, or claims made by Mr Shah or Mr and Mrs Budhdev, the Claimants do not have any cause of action.

(vi) In any event the Claimants appear to assert that Mrs Alexander, as sole director of the Company, does not have the requisite authority to act on its behalf. The Claimants by making such assertions, and whether or not they are correct, cannot in equity also assert the contrary position that she is responsible for effecting alterations in the Register of Members, or are estopped from so doing.

70. Mrs Alexander's evidence at paragraph 11 of her first witness statement is as follows:

"After Mr & Mrs Budhdev sold Flat 5 to Mr Shah, neither the Budhdevs nor Mr Shah sent a transfer certificate or a share certificate nor any letter requesting the transfer. Nor did Mr Shah respond to two letters I sent to him concerning the matter. I therefore acquired the shares for £1,750 which I had paid to the Company. The shares were not offered to the other shareholders because they already owed money to the Company for their share of the costs incurred in running the Company, which they refused to pay."

71. Mr Carpenter-Leitch's closing submissions were to the following effect:

(i) Mrs Alexander had transferred the material shares to Mr Shah in March 2015.

(ii) The material Stock Transfer Form was not received by Mrs Alexander at the relevant time, but only much later. This was the unchallenged evidence of Mrs Alexander in paragraph 11 of her first witness statement. It was also the evidence of Mr Shah: he was unable to identify precisely by whom or when the Form was supposedly sent to Mrs Alexander or the Company; and although he suggested that Alan Ross solicitors had sent it to Wilson Hawkins (who were the managing agents for the Management Company, not the Company) who then forwarded it to Mrs Alexander, he could not point to any covering letter or direct evidence of that forwarding.

(iii) In any event, the Stock Transfer Form was defective such that Mrs Alexander would not have been obliged to act upon it, because (a) it named the transferee as "Ms Minul Shah", whereas the incoming long leaseholder was Mr Shah and the shares could not be transferred to a person who is not a long leaseholder; (b) it was expressed to transfer only 1 share, and not 10 shares; and (c) the Stamp Duty declaration was unsigned.

(iv) Article 11 of the Articles was engaged because (a) an executed transfer was not delivered to Mrs Alexander (or the Company) within 1 month of the transfer of the lease, and (b) Mrs Alexander was a person qualified to be the holder of the shares.

(v) Mrs Alexander's evidence that she paid the Company £1750 for these shares by way of set off against sums owed to her by the Company should be accepted. It was conceded that Mrs Alexander was unable to identify the transaction in the red cash book which she kept, and which she disclosed partly in advance of trial and fully during the course of the trial, and that little weight could be placed on the notebook extracts which comprise items 4 and 5 in the supplemental disclosure which she provided on 26 January 2016 (which include the words *"Interest total £1,695 paid from the £1,700 of Shah's shares"* and *"Refund of price paid for shares on 27-1-12, flat 5 (by card) £50"*). It was submitted, however, that the thrust of her evidence is clear and cogent: she paid for the running and expenses of the Company over many years through director's

loans; this resulted in a loan balance due to her of many tens of thousands of pounds; and the payment for the shares was by way of a contra against this loan.

(vi) The pleaded claim and the relief sought are inappropriate in circumstances where neither Mr Shah nor Mr and Mrs Budhdev are parties to the proceedings, and there is no claim to rectify the Register of Members of the Company.

Discussion

72. In my opinion, the clear purpose and effect of the Articles, as originally framed, is that upon a change of ownership in the flat in respect of which any shares in the Company are held those shares should be transferred to the new owner. That is the meaning of Article 6, and, in my view, the expression *"the person to whom it should be transferred thereunder [i.e. under these Articles]"* in Article 8 means *"the new owner of the relevant flat"*; and the expression *"any other person qualified to be the permitted holder thereof"* in Article 11 should be read as meaning *"the new owner of the relevant flat"* because otherwise it would produce results which are inconsistent with Article 6.

73. If (as Mrs Alexander contends) the Articles were changed by Special Resolution dated 29 September 1999, and assuming (without deciding) that meaning could still be given to the reference in Article 8 to shares being transferred *"in accordance with these Articles"* and to the expression in Article 8 *"the person to whom it should be transferred thereunder"*, then, in principle, Mr and Mrs Budhdev's shares in the Company could have been transferred to any other long leaseholder in the block.

74. However, in accordance with the new form of Article 7 which is alleged to have been introduced as a result of that Special Resolution, the price to be paid on this transfer should have been agreed between Mr and Mrs Budhdev and the transferee, or in default of agreement between Mr and Mrs Budhdev and the transferee it should have been determined by a surveyor appointed by the Board. It is only if the prospective purchaser does not wish to purchase the shares after those steps have been taken that the shares are to be transferred for £1,750, and they are then to be transferred not to the prospective purchaser but *"to the existing shareholders"*. It is not suggested that any of these provisions were put into effect so far as concerns Mr and Mrs Budhdev's shares.

75. These points were taken in substance in a letter from Mr Shah to Mrs Alexander dated 5 October 2013, and accord with a letter from Mr Bhudhdev to Mr Shah dated 11 November 2013, both of which are included in exhibit "JEK1". I do not suggest that these points have not previously been mentioned elsewhere, and I make no finding as to when Mrs Alexander first saw those letters. However, they show the points are not new.

76. Accordingly, whichever version of the Articles is operative, I consider that Mrs Alexander had no lawful basis for transferring Mr and Mrs Budhdev's shares into her

name, whether on payment of £1,750 or at all. In those circumstances, it is unnecessary for me to decide whether any such payment was made as Mrs Alexander contends, and I decline to attempt to resolve that issue. In light of her case as to how she made that payment, this exercise would involve deciding whether and to what extent there were sums due to Mrs Alexander against which her liability to make that payment could be set off. That would involve a wide ranging enquiry over territory to which no detailed attention has been given, and it would be wholly inappropriate to embark upon it.

77. On the other side of the coin, the pleaded case against Mrs Alexander is that she has *"repeatedly failed and or refused to transfer the shareholding to Mr Shah in accordance with the executed share transfer notwithstanding repeated requests for her to do so"*. The relief sought against her is an order requiring her to take all reasonable steps necessary to secure and register the transfer of shares from Mr and Mrs Budhdev to Mr Shah *"in accordance with the executed stock transfer form"*.

78. However, I consider that the Stock Transfer Form which was completed by Mr and Mrs Bhudhev in 2010 could not have been effective to transfer their 10 shares in the Company to Mr Shah. I am unimpressed by the mis-description of Mr Shah as "Ms Shah", or by the suggestion that the transfer was invalidated because the Stamp Duty declaration was not signed. However, the Form related to only 1 share, and I am unable to see how it could have been effective to transfer 10 shares. In addition, on the evidence before me, this Form was not sent to Mrs Alexander or the Company at the material time. In these circumstances, it is hard to lay the blame at her door for the fact that the shares were not transferred to Mr Shah. In any event, the pleaded case that Mrs Alexander came to meet is one of not giving effect to *"the executed transfer form"*, and I consider that it is clear from paragraphs 4 and 5 of the Particulars of Claim and from paragraph 8 of Mr Shah's first witness statement that the transfer which is relied upon by the Claimants in this regard is one which is alleged to have been made in 2010. For that reason, it does not assist the Claimants to point out, as Ms Parker did after I had circulated this judgment in draft, that included at pages 404-408 of "JEK1" is a letter from the Claimants' solicitors to Mrs Alexander dated 6 February 2014 and included at page 410 of "JEK1" is (in the words of that letter) a *"Stock transfer form undated Mr and Mrs R D Budhdev to Minul Shah"* which does in this instance relate to 10 shares.

79. Finally, the Claimants may have an interest in establishing the true extent of Mrs Alexander's shareholding, and in seeking appropriate declarations. But that is not the relief that they have chosen to seek. I am not persuaded that they have standing to seek, as they claim, any mandatory order requiring shares to be transferred to Mr Shah. That may be relief which Mr Shah could claim, but he has not chosen to make such a claim.

80. The like points apply to the Claimants' claim for the transfer to Mr Shah (or, now, his successor in title to the leasehold of flat 5) to be registered, because transfer and

registration stand or fall together. In addition, it seems to me that there is something in (at least) the points made by Mr Carpenter-Leitch concerning the absence of proper parties to the claim. On the other hand, where the thrust of Mrs Alexander's case is that she is the properly appointed sole director of the Company, that she has properly maintained control of the Register, and that she has sought at all times to act responsibly and in accordance with the true rights of the Company and its members, I consider that her willingness to take points about the absence of a claim for rectification and so forth instead of being prepared simply to agree to correct the Register so that it reflects the true current shareholdings in the Company does not reflect well on her.

81. Nevertheless, in light of my ruling on the Appointment of Directors Issue, it seems to me that the Claimants should soon be in a position to ensure that the Register is brought up to date, even if Mrs Alexander persists in her hitherto unhelpful stance concerning this matter. I therefore propose to say no more about the technical merits of that stance.

82. In these circumstances, and having regard also to what I consider to be unsatisfactory features of the way in which the Claimants' case has been pleaded and of the evidence adduced in support of that case, I have reached the conclusion that the appropriate order is that each side should bear their own costs of the Transfer of Shares Issue.

The Appointment of Directors Issue

The Claimants' case

83. Paragraph 1 of the Particulars of Claim pleads that Mr Chong is "of" flat 3, Mrs Patel is "of" flat 6, Mr and Mrs Khagram are "of" flat 8, and Mrs Chehabi is *"of 54 Kewferry Road, Northwood, Middlesex, Greater London HA6 2PG"*. Mrs Chehabi is in fact the owner of the leasehold interest in flat 9, although she was abroad from 1996 to 2009, and all matters relating to her flat were dealt with by her sister, Mrs Ladhani.

84. Paragraph 4 of the Particulars of Claim is quoted above. It includes a plea that *"Between the Company's formation and 2008 the 100 shares in the company were allocated as to 50% to Mrs Alexander and 50% to the other 999 year long lease tenants as shown in the freehold title referred to below"*. However, there is no reference to any freehold title "below", and neither in paragraph 4 nor at any other place in the pleading is it alleged that the Claimants are shareholders in the Company. In my view, this is not a formality, not least because the date on which and the means by which the Claimants became shareholders is not straightforward (in short, it seems that the leaseholders of flats 5, 6, 8 and 9 each participated in the original subscription of shares; that the leaseholder of flat 3, Mr Chong, acquired a 10 per cent shareholding by transfer from Mrs Alexander in 2004; and that the shares relating to flat 5 subsequently became the subject of the saga set out above). Accordingly, and although the material facts may be gleaned from Mr Kennedy's first witness statement, in my judgment the Particulars of

Claim do not lay the ground for saying that the Claimants are eligible to become directors of the Company in accordance with Article 15 of its Articles of Association.

85. Paragraphs 6, 7 and 8 of the Particulars of Claim plead:

> *"6. By letter dated 26th November 2013 the Claimants' solicitors wrote to Mrs Alexander and gave her notice that the Requisitionists, namely the Claimants, intended to requisition a meeting to appoint directors of the Company, in accordance with Article 15 of the Articles of the Company at a meeting to be convened for that purpose on the 10th December 2013 as detailed in the notice of meeting and agenda for the meeting on the 10th December 2013.*
>
> *7. Mrs Alexander was also requested to provide, by return, either reasonable facilities for inspection, or copies of, the current Register of Members of the Company as previously requested in correspondence with her former solicitors, Forsters, and repeated in a letter to Mrs Alexander dated 22/01/2014. The letter dated the 26th November 2013 indicated that, to the extent that it may become necessary to do so, the Claimants would make application to court for an order by to enforce Article 15 and for an order pursuant to section 117(5) of the Companies Act 2006, and such other consequential relief, including costs, as may be appropriate to the claim.*
>
> *8. Accordingly, the Claimants claim relief in the following terms …*
>
> 8.2 *A declaration that the Defendant's refusal to consent (at an extraordinary general meeting (EGM) of the Company convened by the Claimants pursuant to section 303 of the Companies Act 2006, which meeting was held on 10 December 2013) to the appointment of the Claimants and each of them as directors (the Claimants and each of them being members of the Company) pursuant to Article 15 of the Company's Memorandum and Articles of Association, is unreasonable; alternatively, that the conditions attached to that refusal, subsequently notified to the Claimants in March 2014 are unreasonable; and, that the Claimants are entitled to lawfully requisition such a meeting without regard to the conditions asserted by the Defendant; and, to appoint the Claimants as the said directors in accordance with Article 15, aforesaid."*

86. The point was taken in paragraph 6 of the Defence and Counterclaim that the alleged letter dated 26 November 2013 did not exist: it was asserted that Mrs Alexander had been unable to locate any such letter, and that no copy of it was included in exhibit "JEK1" to the first witness statement of Mr Kennedy. However, it was accepted that a notice of requisition dated 22 October 2013 had been received by Mrs Alexander.

87. The Claimants took no steps to address these points, whether by amendment of the Particulars of Claim or by pleading more than a general traverse to them in their Reply.

88. At trial, it emerged that the Claimants were relying on a letter dated 22 (not 26) November 2013 addressed to the Company for the attention of Mrs Alexander as sole director, which was contained in exhibit "JEK1" at pages 245-246. That letter referred to the requisition by the Claimants (in the case of Mrs Chehabi, by her attorney Mrs Ladhani pursuant to a power of attorney dated 5 September 2013) dated 22 October 2013 for an EGM of the Company for the purposes (among others) of considering the appointment of the Claimants as directors of the Company and of considering and (if thought fit) passing a resolution that they *"be appointed directors of the Company with immediate effect pursuant to [Article 15] in addition to the existing two company member directors (one of which is the undersigned) there being no other eligible appointees".* That letter also stated (among other things) that the Claimants *"have a formal right granted [by the Articles] to be appointed directors which Articles also provide for the maximum number of directors to be seven".* Further, that letter stated that unless Mrs Alexander undertook in writing not to exercise whatever voting power she claimed to have in the Company so as to prevent the appointment of the Claimants as directors in accordance with their requisition, they would apply for an injunction, relying on the authority of *Clemens v Clemens Bros Ltd & Anr* [1976] 2 All ER 268.

89. That letter elicited two letters in response from solicitors then instructed by Mrs Alexander, each dated 2 December 2013. The first stated (among other things) that Mrs Alexander *"cannot give you the assurance you seek in your letter of 22 November 2013 where there are clearly issues arising between our client and your clients as members of the Company. The majority cannot use their power to unfairly exclude any member from management. Further, we believe that Section 168 always gives shareholders the right to remove Directors. This right is inalienable".* The second is headed "Without Prejudice Save as to Costs", but it has been put in evidence before me without objection by either side. It included the following: *"We consider that there are a number of issues that need to be resolved both in relation to the Company and also the on-going management of Willow Court. It appears that the best and most cost effective way to consider and resolve all of these matters is for the parties to agree to mediate".* It stated that Mrs Alexander was happy to proceed with mediation, to agree to share the costs of the mediator with the Claimants, and to agree a list of issues beforehand.

90. There then followed a meeting on 3 December 2013, which was attended by Mr Chong, Mr Khagram, Mr Kennedy and another solicitor from the same firm (Mr C. Kennedy) who held proxies for Mrs Patel and Mrs Chehabi, and Mrs Alexander. There is a dispute as to some of what occurred at that meeting, and in particular as to whether Mrs Alexander was excluded from part of it, but in substance it was adjourned for 7 days.

91. Also on 3 December 2013, the Claimants' solicitors wrote to Mrs Alexander's solicitors asking for her stance as to (a) what is the continuing objection to transferring 10 shares in the Company to Mr Shah, (b) what is the continuing objection to the 4 requisitionists being appointed directors of the Company having regard to Article 15, and (c) a list of

issues for mediation which had been suggested in a letter from the Claimants' solicitors dated 2 December 2013. It was stated that if her stance disclosed anything reasonably capable of going to mediation then mediation could be exhausted before the Claimants proceeded with litigation as intimated in the letter from their solicitors of 22 November.

92. Mrs Alexander's solicitors replied by letter dated 6 December 2013. Among other things, they stated that, in light of the fact that the Claimants' solicitors were not instructed by Mr Shah, it was inappropriate to answer the request concerning Mr Shah's shareholding in advance of the mediation, and they suggested the list of issues to be made the subject of mediation should be wider than those proposed by the Claimants' solicitors. As it was common ground that one issue which ought to be made the subject of mediation related to Mr Shah's shareholding, they suggested that Mr Shah would have to be a party to the mediation. They also suggested that the Management Company would have to be a party. They observed: *"We are well aware that this dispute has been on-going for a number of years. Therefore, we do hope that the parties can agree to proceed to a mediation in an effort to resolve all outstanding matters and to provide a platform for future relations".* They stated that if the Claimants were unwilling to proceed to mediation on the basis outlined in that letter, then the Claimants would need to issue and serve unfair prejudice proceedings, and that, in that event, their letter might be shown to the court on the question of costs.

93. Further correspondence ensued on 6, 9 and 10 December 2013. Also, the adjourned EGM was held on 10 December 2013. The upshot can be gleaned from a letter from the Claimants' solicitors to Mrs Alexander's solicitors dated 11 December. The following principal points emerge: (a) the Claimants would only agree to mediation of three issues (namely (1) whether Mr Shah was entitled to have 10 shares in the Company transferred to him by Mr and Mrs Bhudhdev; (2) whether Mrs Alexander was entitled to retain those same 10 shares; and (3) whether the 4 requisitionists were entitled to be appointed as directors of the Company under Article 15); (b) the Claimants did not know why Mrs Alexander was objecting to the implementation of Article 15, because at the EGM convened on 10 December she had opposed their appointment without giving any reason; (c) the Claimants were not constrained to issuing an unfair prejudice petition, and were entitled to insist on observance and performance of Article 15; and (d) unless Mrs Alexander indicated within 3 days that she was prepared to consent to mediation on the above three issues, Counsel would be instructed to prepare the proceedings referred to in the letter of 22 November to ensure compliance with Article 15.

94. Mrs Alexander's solicitors replied by letter dated 13 December 2013, stating that there had been no breach of Article 15. The letter continued:

> *"... the article merely creates a qualification to be appointed, or an entitlement to stand for election, as a director and not an automatic right. Therefore, any decision*

to appoint a director can ultimately be determined by the majority shareholder i.e. our client – as can the removal of any director. If the other members of the Company consider that this unfairly prejudices their position as members, for example by unfairly excluding them from management, they are within their right to issue an unfair prejudice petition. However, as we have previously made clear, our client would defend such a claim on the basis of your clients' conduct to date and as a result that any exclusion is not "unfair" in any sense".

95. The letter also took the points that, pursuant to Table A, even if Mrs Alexander was not, as she claimed, a 60% shareholder in the Company, nevertheless as a 50% shareholder and the sole director, she would be entitled to call a general meeting, to be made the chairman of that meeting, and in the event of a deadlock to exercise a casting vote.

96. This is merely a snapshot of the material correspondence. The letters I have mentioned are interspersed with other letters, the correspondence continued in letters dated 16, 17 and 18 December 2013, and the differences between the parties continued to be debated well into the following year. The relevant documents occupy many pages in the trial bundles. However, I will mention only two further matters.

97. First, the minutes of an AGM or purported AGM of the Company held on 13 February 2014 record that Mrs Alexander's objection to the appointment of other shareholders as directors was based upon the individuals in question breaching the covenants in their leases and the Schedule to those leases, and that her stance was that their appointment should be subject to the conditions that they (a) did not commit such breaches, (b) paid their share of the Company's annual expenses, and (c) *"Are not abusive and make false statements".*

98. Second, the minutes of the adjourned meeting which had been held on 10 December 2013 were agreed on 12 March 2014, and record at item 10 that *"Upon Mrs Alexander objecting to the appointment of the four directors then, consequently the Chairman [i.e. Mr Chong, although Mrs Alexander disputed his appointment] entered a result of "not carried" in relation to each of the motions proposing to appoint the new directors".*

Mrs Alexander's case

99. Some aspects of this case have already been mentioned in the preceding paragraphs.

100. In paragraphs 6 and 12 of the Defence, it was pleaded on Mrs Alexander's behalf that:

(1) The meetings on 3 December 2013 and 10 December 2013 were not properly conducted or validly held because Mrs Alexander was wrongfully excluded at the outset of the purported meeting of 3 December 2013 during which time Mr Chong was wrongfully appointed as the purported chairman of both that meeting and the adjourned meeting, and the meetings were both therefore invalid and ineffective.

(2) Regardless of the validity of those meetings, the resolutions proposed by the Claimants were not passed.

(3) The basis upon which the relief identified at paragraph 8.2 of the Particulars of Claim was claimed was not understood, and in the absence of further particulars the Claimants' entitlement to that relief was denied.

(4) In any event, it was denied (a) that Mrs Alexander's conduct was unreasonable; (b) that her conduct as a shareholder, reasonable or not, provided the Claimants with any recognisable cause of action against her; (c) that the conditions identified by her were unreasonable; (d) that, reasonable or not, those conditions provided the Claimants with any recognisable cause of action against her.

(5) While it was admitted that the Claimants were entitled, in certain circumstances, to lawfully requisition an EGM of the Company, it was denied that Mrs Alexander's conditions had or could have prevented the same.

(6) It was denied that the Claimants are entitled to appoint themselves as directors of the Company, on the basis that (a) such appointment might be made by a requisite resolution at a lawfully convened meeting of the members of the Company, (b) no such resolution had been passed, (c) the meeting held on 10 December 2013 had not, in fact, appointed the Claimants or any of them as directors of the Company, and (d) in particular, whatever might be the case in respect of the ownership of the 10 shares formerly owned by Mr Budhdev of flat 5, the will and votes of the majority (i.e. Mrs Alexander's holding of 50 shares admitted by the Claimants) exceeded the will and votes of the Claimants' total of 40 shares at that meeting.

101. In his written opening submissions, Mr Carpenter-Leitch re-iterated that Mrs Alexander's case that the legal basis of a claim for a declaration that her conduct was "unreasonable" was not understood, that as a shareholder she was entitled to vote as she thought fit, and that in any event her case was that her refusal was "reasonable". He argued that if the issue of "reasonableness" had to be determined then the volume of evidence which would have to be considered would be substantially increased, that the proportionate approach would be to allow that evidence to be tested only if it was relevant, and that this, in turn, depended upon the legal basis for the declaration sought.

102. In response to these arguments, the Claimants, through Ms Parker, did not indicate that they were willing to give up any part of their pleaded case. On that basis, and as no trial of any preliminary issue had been suggested, let alone ordered, at any stage of this litigation, it did not seem to me to be appropriate to attempt to resolve the merits of this aspect of the Claimants' case before any evidence had been called, no matter how much superficial attraction the points made by Mr Carpenter-Leitch might appear to have.

Developments during the hearing

103. During the course of the hearing, I suggested that the true meaning and effect of Article 15 of the Articles of Association of the Company is that (in circumstances where, in the events which have happened, the total number of persons eligible to be appointed as directors did not exceed the limit of 7 stipulated in Article 13) each of the Claimants was entitled to be a director of the Company, and that (contrary to Mrs Alexander's case as initially advanced before me) Article 15 did not merely set out a criterion for qualification to be a director, because that criterion was already contained in Article 13. In other words, Article 15 provides that (subject to the Article 13 limit of 7, and, no doubt, to whether any person is disqualified by law from being a director) *"All the members of the Company for the time being shall be its Directors"* not that *"All the members of the Company for the time being shall be eligible to be its Directors".* I also suggested that, as Mrs Alexander had agreed to these Articles, she was bound by them.

104. These suggestions were based on the premise that the applicable legal principles are as set out in my judgment in *Cosmetic Warriors Ltd & Anor v Gerrie & Anor* [2015] EWHC 3718 (Ch) at [7]-[27], and that they include the following.

105. The articles of association are a statutory contract between the members and between each member and the company. They must be construed in accordance with the ordinary principles that apply to the interpretation of any contract: *Folkes Group Plc v Alexander* [2002] 2 BCLC 252. The correct approach was summarised in *Arnold v Britton* [2015] UKSC 36, [2015] 2 WLR 1593 by Lord Neuberger PSC at [15] (omitting citation):

> *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean' … And it does so by focussing on the meaning of the relevant words … in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."*

106. Because articles of association are business documents, they should be construed in a manner tending to business efficacy and, if necessary, terms will be implied in the articles in order to make them work: *Tett v Phoenix Property and Investment Co Ltd* [1986] BCLC 149. As stated in *Palmer's Company Law* ("*Palmer"*) at para 2.1112:

> *"Articles of association are commercial documents. They should not be interpreted as meticulously as, e.g. conveyances. In interpreting them, the maxim ut res magis valeat quam pereat should be applied which, in the words*

of Vaisey J, "directs us to validate if possible." Thus, Jenkins LJ said in Holmes v Keyes *[1959] Ch. 199:*

"I think that the articles of association of the company should be regarded as a business document and should be construed so as to give them reasonable business efficacy, where a construction tending to that result is admissible on the language of the articles, in preference to a result which would or might prove unworkable. …""

107. Further, because the articles of association are public documents which can affect third parties, the observations of Lewison LJ in *Cherry Tree Investments Ltd v Landmain Ltd* [2013] Ch 305 at [99], made in relation to a registered charge, are in point:

"Whatever it means, it has always meant what it means. A contract cannot mean one thing when it is made and another thing following court proceedings. Nor, in my judgment, can it mean one thing to some people (e.g. the parties to it) and another thing to others who might be affected by it. … We are not, in my judgment, seeking to ascertain "what the parties intended to agree" but what the instrument means."

108. So far as concerns the implication of terms, in *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10, [2009] 1 WLR 1988 Lord Hoffmann explained:

"21. It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean. It will be noticed from Lord Pearson's speech [i.e. in Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board [1973] 1 WLR 601, at 609] that this question can be reformulated in various ways which a court may find helpful in providing an answer – the implied term must "go without saying", it must be "necessary to give business efficacy to the contract" and so on – but these are not in the Board's opinion to be treated as different or additional tests. There is only one question: is that what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?...

26. In BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 180 CLR 266, 282-283 Lord Simon of Glaisdale, giving the advice of the majority of the Board, said that it was "not ... necessary to review exhaustively the authorities on the implication of a term in a contract" but that the following conditions ("which may overlap") must be satisfied: "(1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying' (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract".

> *27. The Board considers that this list is best regarded, not as series of independent tests which must each be surmounted, but rather as a collection of different ways in which judges have tried to express the central idea that the proposed implied term must spell out what the contract actually means, or in which they have explained why they did not think that it did so. The Board has already discussed the significance of "necessary to give business efficacy" and "goes without saying". As for the other formulations, the fact that the proposed implied term would be inequitable or unreasonable, or contradict what the parties have expressly said, or is incapable of clear expression, are all good reasons for saying that a reasonable man would not have understood that to be what the instrument meant."*

109. In *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Limited & Anr* [2015] UKSC 72, [2015] 3 WLR 1843, Lord Neuberger PSC, speaking for the majority of the Supreme Court, reviewed the cases concerning implied terms, including *BP Refinery (Westernport) Pty Ltd v President, Councillors and Ratepayers of the Shire of Hastings* (1977) 52 ALJR 20, [1977] UKPC 13, *Philips Electronique Grand Public SA v British Sky Broadcasting Ltd* [1995] EMLR 472, and *The APJ Priti* [1987] 2 Lloyd's Rep 37. Lord Neuberger then said at [21]:

> *"In my judgment, the judicial observations so far considered represent a clear, consistent and principled approach. It could be dangerous to reformulate the principles, but I would add six comments on the summary given by Lord Simon in BP Refinery as extended by Sir Thomas Bingham in Philips and exemplified in The APJ Priti. First, in Equitable Life Assurance Society v Hyman [2002] 1 AC 408, 459, Lord Steyn rightly observed that the implication of a term was "not critically dependent on proof of an actual intention of the parties" when negotiating the contract. If one approaches the question by reference to what the parties would have agreed, one is not strictly concerned with the hypothetical answer of the actual parties, but with that of notional reasonable people in the position of the parties at the time at which they were contracting. Secondly, a term should not be implied into a detailed commercial contract merely because it appears fair or merely because one considers that the parties would have agreed it if it had been suggested to them. Those are necessary but not sufficient grounds for including a term. However, and thirdly, it is questionable whether Lord Simon's first requirement, reasonableness and equitableness, will usually, if ever, add anything: if a term satisfies the other requirements, it is hard to think that it would not be reasonable and equitable. Fourthly, as Lord Hoffmann I think suggested in Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988, para 27, although Lord Simon's requirements are otherwise cumulative, I would accept that business necessity and obviousness, his second and third requirements, can be alternatives in the sense that only one of them needs to be satisfied, although I suspect that in practice it would be a rare case where only one of those two requirements would be satisfied. Fifthly, if one approaches the issue by reference to the officious bystander, it is "vital to*

formulate the question to be posed by [him] with the utmost care", to quote from Lewison, The Interpretation of Contracts 5th ed (2011), para 6.09. Sixthly, necessity for business efficacy involves a value judgment. It is rightly common ground on this appeal that the test is not one of "absolute necessity", not least because the necessity is judged by reference to business efficacy. It may well be that a more helpful way of putting Lord Simon's second requirement is, as suggested by Lord Sumption in argument, that a term can only be implied if, without the term, the contract would lack commercial or practical coherence."

110. Lord Neuberger then went on to discuss the exposition of Lord Hoffmann in *Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10, [2009] 1 WLR 1988. Lord Neuberger made the following points at [23]-[34]:

"23 First, the notion that a term will be implied if a reasonable reader of the contract, knowing all its provisions and the surrounding circumstances, would understand it to be implied is quite acceptable, provided that (i) the reasonable reader is treated as reading the contract at the time it was made and (ii) he would consider the term to be so obvious as to go without saying or to be necessary for business efficacy. (The difference between what the reasonable reader would understand and what the parties, acting reasonably, would agree, appears to me to be a notional distinction without a practical difference.) The first proviso emphasises that the question whether a term is implied is to be judged at the date the contract is made. The second proviso is important because otherwise Lord Hoffmann's formulation may be interpreted as suggesting that reasonableness is a sufficient ground for implying a term ...

24 It is necessary to emphasise that there has been no dilution of the requirements which have to be satisfied before a term will be implied, because it is apparent that Belize Telecom has been interpreted by both academic lawyers and judges as having changed the law ...

25 The second point to be made about what was said in Belize Telecom concerns the suggestion that the process of implying a term is part of the exercise of interpretation ... Whether or not one agrees with that approach as a matter of principle must depend on what precisely one understands by the word "construction".

26 I accept that both (i) construing the words which the parties have used in their contract and (ii) implying terms into the contract, involve determining the scope and meaning of the contract. However, Lord Hoffmann's analysis in Belize Telecom could obscure the fact that construing the words used and implying additional words are different processes governed by different rules.

27 Of course, it is fair to say that the factors to be taken into account on an issue of construction, namely the words used in the contract, the surrounding circumstances known to both parties at the time of the contract, commercial common sense, and the reasonable reader or reasonable parties, are also

taken into account on an issue of implication. However, that does not mean that the exercise of implication should be properly classified as part of the exercise of interpretation, let alone that it should be carried out at the same time as interpretation. When one is implying a term or a phrase, one is not construing words, as the words to be implied are ex hypothesi not there to be construed; and to speak of construing the contract as a whole, including the implied terms, is not helpful, not least because it begs the question as to what construction actually means in this context.

28 *In most, possibly all, disputes about whether a term should be implied into a contract, it is only after the process of construing the express words is complete that the issue of an implied term falls to be considered. Until one has decided what the parties have expressly agreed, it is difficult to see how one can set about deciding whether a term should be implied and if so what term. This appeal is just such a case. Further, given that it is a cardinal rule that no term can be implied into a contract if it contradicts an express term, it would seem logically to follow that, until the express terms of a contract have been construed, it is, at least normally, not sensibly possible to decide whether a further term should be implied. Having said that, I accept Lord Carnwath's point in para 71 to the extent that in some cases it could conceivably be appropriate to reconsider the interpretation of the express terms of a contract once one has decided whether to imply a term, but, even if that is right, it does not alter the fact that the express terms of a contract must be interpreted before one can consider any question of implication.*

29 *In any event, the process of implication involves a rather different exercise from that of construction. As Sir Thomas Bingham trenchantly explained in Philips at p 481:*

> *"The courts' usual role in contractual interpretation is, by resolving ambiguities or reconciling apparent inconsistencies, to attribute the true meaning to the language in which the parties themselves have expressed their contract. The implication of contract terms involves a different and altogether more ambitious undertaking: the interpolation of terms to deal with matters for which, ex hypothesi, the parties themselves have made no provision. It is because the implication of terms is so potentially intrusive that the law imposes strict constraints on the exercise of this extraordinary power." ...*

31 *It is true that Belize Telecom was a unanimous decision of the Judicial Committee of the Privy Council and that the judgment was given by Lord Hoffmann, whose contributions in so many areas of law have been outstanding. However, it is apparent that Lord Hoffmann's observations in Belize Telecom, paras 17-27 are open to more than one interpretation on the two points identified in paras 23-24 and 25-30 above, and that some of those interpretations are wrong in law. In those circumstances, the right course for us to take is to say that those observations should*

henceforth be treated as a characteristically inspired discussion rather than authoritative guidance on the law of implied terms."

111. In *Investors Compensation Scheme Limited v West Bromwich Building Society* [1998] 1 WLR 896, Lord Hoffmann at 912-913 summarised the principles by which contractual documents are construed in terms which included the following:

> *"(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*
>
> *(2) …Subject to the requirement that it should have been reasonably available to the parties and to the exception [that the law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent], it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man."*

112. *Palmer* states at para 2.1115:

> *"Although the courts' approach to the construction of the words used in the articles of association may be a liberal one, that liberality does not extend to the implication of terms into the articles, where such implication is not derived purely from a consideration of the language used in the articles. On the contrary, an implication based on a consideration of extrinsic evidence, in order to give the articles business efficacy, is not permissible. This is because the articles are a statutory contract which is registered and upon which potential shareholders are entitled to rely in its registered form. For the same reason it is not possible to have the articles rectified. It is, however, permissible for a court to imply a term into articles of association in order to give business efficacy to those articles."*

113. Having considered these authorities and other authorities (including *Bratton Seymour Service Co Ltd v Oxborough* [1992] BCC 471, *HSBC Bank Middle East v Clarke* [2006] UKPC 31, *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 WLR 1101, and *Cherry Tree Investments Ltd v Landmain Ltd* [2013] Ch 305), in *Cosmetic Warriors Ltd & Anor v Gerrie & Anor* [2015] EWHC 3718 (Ch) I concluded at [26] that:

> *"… the cases establish that (a) there is no absolute prohibition on considering extrinsic material for the purpose of interpreting the articles of association of a company; (b) however, the admissible background for the purposes of construction is limited to what any reader of the articles would reasonably be supposed to know; and (c) in contrast, an implication based on extrinsic evidence of which only a limited number of people would have known is impermissible."*

114. When confronted with this suggestion, Mr Carpenter-Leitch indicated that Mrs Alexander would not contest the Claimants' case if it was to be put on that basis. In the result, Ms Parker put forward the following wording of an alternative declaration which her clients would ask the Court to make: *"A declaration that the Claimants and each of them are entitled to be appointed a Director of the Company in accordance with the said Articles of Association".* I am not certain that it will be appropriate to make a declaration in that precise form, but that is a matter of detail which can be resolved in the Order giving effect to this judgment.

115. In addition, by letter dated 26 January 2016, the current long leaseholders of flat 5, Mr and Mrs Kapadia, stated that they agreed to be bound by any declaration made by the Court concerning the construction of Article 15 or the appointment of the Claimants and each them as directors of the Company. On the face of it, this letter dealt with another point which cropped up during the hearing, concerning the availability of declaratory relief when not all interested parties had been joined to the proceedings.

116. In the result, the concession having been made by Mrs Alexander as set out above that the Claimants were entitled to relief to this effect, the argument became one as to costs.

The Claimants' closing submissions

117. In her closing submissions, Ms Parker accepted that where a case has not been pleaded correctly and needs to be amended at a late stage, the party who requires leave to amend is at risk of an adverse order for costs. Nevertheless, costs are in the discretion of the Court, and that discretion falls to be exercised in light of the facts of each particular case. Ms Parker referred to *Beoco Ltd v Alfa Laval Co Ltd* [1995] QB 137, *Gold v Mincoff Science & Gold* [2004] EWHC 2036 (Ch), and *Begum v Birmingham City Council* [2015] EWCA Civ 386, and to the following discussion of these cases in note 17.3.4 to Part 17 of the CPR:

> *"The fact that a pleading had been amended could sometimes affect the orders for costs which the court would make at trial: "As a general rule, where a plaintiff makes a late amendment, as here, which substantially alters the case the defendant has to meet and without which the action will fail, the defendant is entitled to the costs of the action down to the date of the amendment" (per Stuart-Smith L.J. in Beoco Ltd v Alfa Laval Co Ltd [1995] Q.B. 137). However, the decision whether to make such an order for costs is sometimes best left for consideration by the court post-trial; at the amendment stage it may not be possible to determine the viability of the unamended case (Chadwick v Hollingsworth (No.2) [2010] EWHC 2718 (QB)).*
>
> *In Begum v Birmingham City Council [2015] EWCA Civ 386, the claim originally raised causes of action in negligence and misrepresentation only. Some twelve months before trial the claim was amended to allege also a breach of statutory duty. At trial the claimant prevailed as to the amended claim only and the trial judge awarded the costs prior to amendment to the defendants. This part of the trial*

judge's order was reversed on appeal: the pleaded claims for negligence, misrepresentation and breach of statutory duty were merely different labels applied to the same underlying facts. The case the defendants had to meet was essentially the same before and after the claimant's amendment, unlike the position in Beoco Ltd v Alfa Laval Co Ltd [1995] Q.B. 137 where the claimant's late amendment had substantially altered the case the defendant had to meet and the defendant had been prejudiced by a lack of opportunity to make settlement offers (i.e. a payment into court). In Begum the costs prior to amendment were awarded to the claimant limited to 85 per cent to take account of the fact that pursuing the original, unsuccessful, claims had increased her costs overall.

In Gold v Mincoff Science & Gold [2004] EWHC 2036, Ch, the claimant made an amendment at trial (in reply to a limitation defence, which reply the defendants had anticipated some months earlier when making offers to settle): had the amendment been made earlier, the claimant would have been awarded 85 per cent of his costs; because of the real possibility that the late amendment had prejudiced the defendants, Neuberger J. awarded the claimant only 62.5 per cent of his costs up to the date of the amendment and 85 per cent thereafter."

118. Ms Parker submitted that, in the present case: (1) the starting point is that the Claimants are the successful parties; (2) any late amendment to their case did not give rise to a substantial alteration to the case which Mrs Alexander had to meet; (3) any deficiency in their pleading did not lead to a serious increase in the amount of work which was required to deal with their claim; (3) the Claimants' case based on the construction of Article 15 is not new, and was ventilated in correspondence between October 2013 and March 2014, which is to be found between pages 232 and 388 of exhibit "JEK1"; (4) in all the circumstances, Mrs Alexander *"was well aware of the declaration sought – that is the appointment of the Claimants and each of them as directors pursuant to Article 15"*; (5) moreover, Mrs Alexander accepted in her Defence that she *"had received the requisite letter – that dated the 22nd November 2013 – which clearly set out the grounds of the requisition and [the] relief sought"*; (6) nevertheless, Mrs Alexander opposed the appointment of the Claimants as directors on the basis that as the majority shareholder she had the right to vote against it, alternatively on grounds of their behaviour; (7) it is at the very least a matter of speculation as to what would have happened if that case had been pleaded from the outset, or at least much earlier than the trial in January 2016; and (8) in all the circumstances, it would not be correct to order a substantial proportion of the costs against the Claimants in spite of the fact that they have succeeded on this Issue, and, on the contrary, they should be ordered their costs in relation to the same.

Mrs Alexander's closing submissions

119. Mr Carpenter-Leitch submitted that:

(1) The Claimants' pleaded case, based on "unreasonable refusal", was bound to fail.

(2) Mrs Alexander was entitled to take that formulation of the Claimants' case as their deliberate and considered statement of their case, because the issue of its viability had been raised both in correspondence and in Mrs Alexander's pleaded Defence, and yet the Claimants had persisted in that case without seeking to amend it.

(3) The "usual rule" that the Defendant is entitled to costs up to the date when an amendment in made to put the Claimants' case in order should therefore apply.

(4) This "usual rule" should be contrasted with what happened in *Cutting v Islam* [2014] EWHC 1515 (QB); [2014] 4 Costs L.O. 652, because is that case the amendment had not substantially altered the case which the Defendant had to meet – whereas in the present case the opposite is true.

Discussion

120. On the one hand, I accept Ms Parker's submissions to following effect. First, the starting point is that the Claimants are the successful parties. Second, the Claimants' case based on the construction of Article 15 had been ventilated in the correspondence. Third, there appears to be no reason to doubt that Mrs Alexander had received the letter dated 22 November 2013, the contents of which I have summarised above – although it is wrong to say that Mrs Alexander accepts this in her Defence, where what she accepts is receiving a different letter, namely that dated 22 October 2013. Fourth, Mrs Alexander nevertheless opposed the appointment of the Claimants as directors on the basis that as the majority shareholder she had the right to vote against it, alternatively on grounds of their behaviour. I also accept that, both separately and cumulatively, these factors tend to suggest that Mrs Alexander should pay the costs of this Issue.

121. On the other hand, I am unable to accept either (a) that the way in which the Claimants formulated and pursued their pleaded case did not lead to a serious increase in the amount of work which was required to deal with their claim or (b) that late amendment to their case did not give rise to a substantial alteration to the case which Mrs Alexander had to meet. On the contrary, in my judgment, the focus (in the Claimants' pleaded case) on whether and to what extent Mrs Alexander had acted reasonably greatly increased the territory which had to be covered in the preparation for trial and at the trial itself, and, by the same token, the costs of both sides. It may seem hard to hold it against the Claimants that they set out to grapple with Mrs Alexander's case on a premise that she herself had suggested, namely that she had valid grounds as a matter of fact for opposing their appointment as Directors. Nevertheless, the formulation of their pleaded case was a matter for them, and it appears to me that if they had concentrated on the construction of the Articles, then this claim should have been capable of being disposed of in accordance with the Part 8 procedure, or by way summary judgment. Ms Parker submitted in her closing arguments that the only allegations concerning conduct arose when the Claimants' witnesses were cross-examined or when Mrs Alexander

gave evidence. If and to the extent that is intended to suggest that the costs of these matters should be laid at Mrs Alexander's door, I consider that this is entirely unreal: the Claimants had already made these issues part of their case in pleadings and witness statements; accordingly, the fact that the Claimants added nothing about them in oral evidence is beside the point. That having occurred, Mrs Alexander had to address them.

122. As to what else would have happened if a case based on the correct interpretation of Article 15 had been pleaded from the outset, or at least much earlier than the trial in January 2016, this appears to me to be unclear. However, the fact that Mrs Alexander indicated that she would not resist a claim that was put on that basis almost as soon as the point was raised provides grounds for thinking that, with the benefit of legal advice, she would have accepted much earlier than the trial that she should not resist this claim.

123. Although I consider that there has been a substantial alteration to the Claimants' case, I am not persuaded that without a late amendment the claim would have failed, because (a) within the Claimants' pleading is the concept that, in accordance with Article 15, they are entitled to requisition a meeting for the purpose of having themselves appointed as directors of the Company, and to be appointed as directors; and (b) by the end of the trial, all the material which was necessary to determine that case would have been deployed and considered by the court, such that I doubt that it would have been unjust to Mrs Alexander to uphold that claim if it had merit. In my judgment, the problems here are more to the effect that (a) the Claimants' original case has resulted in the real issue being clouded and the costs being increased and (b) there is a real possibility that these matters have prejudiced Mrs Alexander, not only because they resulted in the perception that the true case against her was one to which she had a good defence but also because contesting that pleaded case caused her to run up extra costs.

124. In all the circumstances, including that the Claimants have succeeded on this Issue at the end of the day, I do not consider that it would be correct to make an order for costs against them. However, nor do I consider that it would be right to order Mrs Alexander to pay their costs. While she is to blame for this case having to be brought at all, and while she is the person who first raised issues concerning their conduct in this context, they are the ones who pleaded and pursued a case based on issues which greatly increased both sides' costs of the proceedings and which, for the reasons given by Mr Carpenter-Leitch, could not and would not have been determinative of their rights. I conclude that the right order is that both sides should bear their own costs of this Issue.

The Register of Members Issue

The Claimants' case

125. Ms Parker referred to Articles 8 and 11. Ms Parker submitted that Mrs Alexander had never provided any explanation for having produced a copy of the Register with her

first witness statement in these proceedings (dated 27 June 2014). Ms Parker referred to the correspondence contained in "JEK1". Those letters made clear that Mrs Alexander's then solicitors had asked the Claimants' solicitors to suggest dates for inspection, that by letter dated 15 January 2014 the Claimants' solicitors had suggested such dates, that Mrs Alexander's then solicitors had not responded to these suggested dates, and that the Claimants' solicitors had chased by asking for those dates to be confirmed or for alternatives to be suggested, saying that in the absence of a positive response *"we shall assume that you are unwilling to accommodate our member clients' request and proceed thereafter without further reference to you on this issue".* Further, and among other things, by letter dated 6 February 2014 the Claimants' solicitors wrote *"... you have not supplied the company's Register of Members in accordance with sections 113 to 121 inclusive of the Companies Act 2006 ... you have never supplied or made available for inspection any register of members of the Company ... You must now do so without delay".* Ms Parker submitted that Mrs Alexander was well aware of her obligation to provide fellow members of the Company with a copy of the Register of Members, and that the Claimants should be awarded their costs of this Issue.

Mrs Alexander's case

126. Mr Carpenter-Leitch made the following principal submissions:

(1) Ever since, without admission, Mrs Alexander provided a copy of the Register with her first witness statement, this matter has been live only as to costs.

(2) The Claimants' pleaded case is that a requirement for production of a copy was made in a letter dated 26 November 2013. Mrs Alexander's pleaded Defence raised the point that this letter had not been received by her and had not been exhibited to the witness statement in support of the claim. During the trial, and in the context of the typographical error of "26" instead of "22" discussed above, it had been suggested that the request had been made in a letter dated 22 November 2013. However, this was plainly wrong. The Claimants' true case ultimately appeared to be that the notification arose from a letter dated 1 March 2013.

(3) The Claimants ought not to be allowed to amend the Particulars of Claim to plead reliance on the letter dated 1 March 2013. No good reason had been advanced for the amendment: the matter was squarely raised by Mrs Alexander, and had not been corrected by the Claimants. The balance of justice should take into account that there is no longer any substantive issue between the parties – there is merely an issue as to costs. If the prejudice to Mrs Alexander of the amendment was to be compensated in costs, the costs issue would be resolved in her favour anyway.

(4) In any event the notification relied upon is non-compliant or ineffective for the following reasons:

a. The letter dated 1 March 2013 did not include payment of copying fees or undertake to pay them. That this is so and is intentional is confirmed by a later letter dated 22 March 2013, which appears to confuse inspection with copying. By s116(2) of the Companies Act 2006 copies of the Register may be sought *"on payment of such fee as may be prescribed"*. The fees are prescribed by Regulation 3 of the Companies (Fees for Inspection and Copying of Company Records) Regulations 2007/2612, which sets an amount based on the number of pages together with the Company's reasonable costs of complying. Without payment of the fee the demand is defective and unenforceable.

b. The demand dated 1 March 2013 is defective on its face in that:

    i. It does not comply with s116(4)d) of the Companies Act 2006 in stating whether the copies will be disclosed to any other person, and if so go on to specify other matters.

    ii. It does not clearly provide evidence of the authority of the person seeking the copies – it purports to be written on behalf of Mrs Chehabi by solicitors acting on her behalf, but apparently relies upon an email authority from Mrs Chehabi dated 26 February 2013 to found the request. However, the relevant email authority is not from Mrs Chehabi but from Mrs Ladhani. The demand therefore leaves in doubt who the person seeking the Register was, as required by s116(4)(a) of the Companies Act 2006.

c. The requirements of s116 of the Companies Act 2006 are on the Company not on Mrs Alexander personally. The Claimants' pleaded case does not make the allegation against Mrs Alexander as a director of the Company, but in her personal capacity. The Claim is against Mrs Alexander, not the Company. There is no proper claim or relief pleaded against Mrs Alexander.

Discussion

127. It is understandable that Ms Parker should place reliance on the correspondence that she has drawn to my attention. This is another area in which a request which was entirely understandable and of modest ambit was made of Mrs Alexander. This request seemed at one point to be capable of amicable resolution, regardless of whether it was technically in order. Indeed, a ready resolution to this request appears at one time to have been positively suggested by Mrs Alexander's then solicitors.

128. At the same time, and in keeping with a pattern which also applies, in my judgment, to their other pleaded claims discussed above, whatever basic merit the Claimants' case may have had has become clouded and diluted by inaccuracies in the pleadings.

129. I have quoted paragraphs 6 and 7 of the Particulars of Claim above. In my judgment, they set out a pleaded case that a letter dated 26 November 2013 (corrected at trial to 22 November 2013) is relied upon as containing an appropriate request for inspection of the Register. The reference to *"repeated in a letter to Mrs Alexander dated 22/02/2014"* does not assist the Claimants in any event, because, if my understanding is correct, the letter dated 22 February 2014 is not alleged to contain any request upon which the present claim against Mrs Alexander can be founded. Instead, it emerged at trial that the Claimants' true case depends on a letter dated 1 March 2013, which is not mentioned in the Particulars of Claim, but which is exhibited at pp138-141 in "JEK1".

130. In these circumstances, I agree with Mr Carpenter-Leitch's submissions to the effect that (1) the Claimants need permission to amend their pleaded case and (2) if they were to seek permission (which they do not yet appear to have done) it ought, in the exercise of my discretion, to be refused because (a) no good reason has been put forward as to why it should be granted at this late stage and (b) it either cannot be compensated in costs (because it will have the effect that Mrs Alexander is facing a claim that she has not previously been required to face, and at a stage when the trial has taken place) or, if it can, that will have the effect that the Claimants are required to bear the costs of and occasioned by the amendment, which will equal or exceed the costs that are in issue.

131. That conclusion makes it less important for me to determine Mr Carpenter-Leitch's other points, and I am reluctant to do so unless I need to, (a) because I would be doing so without the benefit of submissions from Ms Parker on these particular points and (b) as a matter of proportionality, having regard to the considerations that all that is now at stake on this Issue is costs, and that it seems likely to me that only modest costs will be attributable to this Issue. As at present advised, however, and while I am not to be taken as agreeing with everything he argues, it seems to me that there is force in these points.

132. In the result, I consider that the correct outcome is that each side should pay their own costs of this Issue. On the one hand, the Claimants have succeeded in obtaining what they were claiming, albeit, on Mrs Alexander's case, only by reason of a concession that she was not required to make. At the same time, while Mrs Alexander may be entitled to rely on deficiencies in their pleaded case and in their demands for access to the contents of the Register, it is unattractive for her to do so when, as it seems to me, and looking at matters in the round, her case involves relying upon, or at least recognising, that none of the long leaseholders were versed in company law, and that many aspects of the business of the Company were conducted, not least by her, informally and perhaps irregularly but (as she would say) in good faith. On the other hand, the deficiencies in the Claimants' pleaded case, and, as at present advised, in their demands contained in correspondence, are not technical or minor, but, on the contrary, are serious and significant, and go to the root of whether any relief is available to them.

Mrs Alexander's claims based on the Acquisition Agreement

Mrs Alexander's case

133. I have summarised the key elements of these claims above.

134. The heart of the matter, as set out in Mr Carpenter-Leitch's written submissions, is that Mrs Alexander contends that an agreement was made (which is binding on the Claimants and the Company) that she should enjoy the financial rights of the freeholder relating to flats 1, 2, 7 and 10, such that while the legal interest in the freehold remains vested in the Company she nevertheless has a limited beneficial interest in that freehold under a constructive trust which entitles her (in respect of each of those flats) to receive (or waive) (a) ground rent and (b) any premium payable on extension of the lease.

135. In his closing submissions, Mr Carpenter-Leitch amplified Mrs Alexander's position as follows:

    (1) The long leases of residential flats may be extended in one of two ways: (a) by agreement with the landlord (and payment of any premium agreed); and (b) by a notice under the Leasehold Reform Housing and Urban Development Act 1993 (limited to an extension of 90 years at a peppercorn) with the premium agreed or determined by the First Tier Property Tribunal ("FTT").

    (2) Long leaseholders may also join together collectively to "enfranchise" their block by forcing the freeholder to sell the freehold to them (usually using a nominee purchaser company set up for that purpose by the participating tenants) under the Leasehold Reform Housing and Urban Development Act 1993. At least 50% of the leaseholders must participate. In default of agreement of the price to be paid then that is determined by the FTT. The price payable in this instance would be made up of three elements (ignoring any value in the lease of the common parts): (a) the value of the landlord's reversionary interest in the Flats with 999 years extended leases; (b) the value of the landlord's reversionary interest in the Flats with 99 years (from 1985) un-extended leases; and (c) any development value (such as where additional flats may be built above the existing flats or where there is potential to develop within the grounds).

    (3) The value of a reversionary interest is determined using established formulae, and principally the market of the flat, the unexpired term of the lease and the ground rent payable. The value of a reversion of a 999 year lease at a peppercorn (i.e. (a) above) will be very small tending towards zero. The value of a lease with a very short length remaining at a rising ground rent (i.e. (b) above) will be substantial.

    (4) Mrs Alexander asserts that her "share of the freehold" for flats 1, 2, 7 and 10 encompasses (b) above as it is the commuted value of the landlord's financial rights in the reversion of those flats. Upon a sale that part of the freeholder's financial rights are reduced to a monetary sum.

136. Mrs Alexander's evidence in support of this case is contained in [5]-[8] of her first witness statement:

> *"5 In 1997 I identified the opportunity to purchase the freehold of the Block. I made all the arrangements with the solicitors and agents. It was agreed that the shareholders would keep the ground rent and income relating to their own flats — and as I had bought the extra 50 shares which none of the others wanted I would keep the ground rent and income relating to the other flats whose owners did not become shareholders. I now understand that this may seem unorthodox, but that is the agreement we all reached. We all signed a document recording that agreement which appears at page 1 of RA1.*
>
> *6 From the outset it was agreed between me and the other shareholders in the Company that I should run the Company on my own. They were not interested in running the Company and, because I had 60% of it and the right to collect ground rent from those who were not members, it had the largest and most direct stake. We also signed a letter in May 1999 to this effect which was sent to Mr Lemer of Arthur & Co so that he would act on my instructions — see pages 2 and 3 of RA1.*
>
> *7 Since the acquisition of the freehold in 1997 until now I have run the Company virtually on my own. I did have assistance from a company secretary at the outset until about 2000. The day-to-day expenses were minimal and were met by the ground rent of the communal parts. If there was any shortfall I paid it myself. There was never any difficulty with this arrangement until around 2009, after the issues of breach of covenant and forfeiture had been raised by me, when the Claimants or their predecessors started to ask me to appoint them as directors. For the reasons set out below I do not think that the Claimants are entitled to be directors nor do I want them to be directors because I think that would [not] be in the Company's best interests. I have always relied upon the agreements made in 1997 and 1999 and the understanding that there was between me and the shareholders at that time that I would, and was entitled to, run the Company.*
>
> *8 When, at my suggestion, the shareholders each decided to extend our own leases to 999 years it was again agreed, as a repetition of the agreement and understanding we had previously had, that each shareholder would extend their own lease without a payment but that I would get the payment in respect of any of the other leases whose owners were not shareholders. These leases are now down to 69 years and the payment which would be due to me on their extension is increasing."*

137. Mrs Alexander contends that RA1/1 is genuine and was signed by various individuals as appears on the face of the document whereas the Claimants contend that it is a forgery because signatures which appear genuine have been applied to the document without the consent of the purported signatories. Mr Carpenter-Leitch (echoing in part certain observations that I made at the conclusion of the evidence and making points which are reflected in part in the findings that I have made on this topic) submitted that Mrs Alexander's case should be preferred for the following principal reasons:

(1) Her case is consistent with contemporary documents, namely in particular (a) the "With Compliments" slip dated 8 April 1997 which is referred to at [15(i)] above and (b) the minutes of the meeting of 16 July 1997.

(2) If the document had been forged it is inexplicable that the text is not more convincingly in favour of Mrs Alexander's case – her case is that it records part of what had been agreed, but if she had forged the document it might have been expected that she would have forged something more comprehensive.

(3) The forensic evidence is inconclusive but finds no evidence of forgery.

(4) It is difficult to see how the alleged forgery could have been effected – given particularly the spread over dotted lines of both signatures and dates.

(5) The Claimants' witnesses did not initially state that they had not signed RA1/1, but sought the original to "refresh their memories" as they could not recall signing it. If they had definite memories that RA1/1 had not been signed then sight of a purported original would be irrelevant.

(6) The supposed signatories are being asked to remember what they may or may not have signed in 1997, which is some 19 years ago, and (a) it is difficult for anyone to positively recall what they signed 19 years ago; (b) the relevant actions were taken by individuals in a non-professional context in that they were dealing with their own properties; (c) furthermore, the amounts involved for each of them to purchase their respective shares (about £700) were not large; (d) accordingly, they had no particular need to attach great importance to details of the acquisition and the details of the shares; and (e) the written evidence of the relevant witnesses is merely copied from that of other witnesses and its weight reduced accordingly.

(7) The Claimants' witnesses appear to take the general approach that they did not sign RA1/1 because they would not have signed away the Company's rights, rather than that they can positively recall not having signed it.

(8) The allegation of fraud in relation to the letter dated 9 May 1999 undermines the credibility of the witnesses in relation to RA1/1. In this regard, the Claimants continue to deny the authenticity of the letter dated 9 May 1999, but the original of that document has now been found, and, on that basis, it appears inherently unlikely to be a forgery, particularly as Mrs Patel has not denied signing it.

(9) The Claimants' case that the relevant signatories did not sign can only be an allegation of fraud against the person who has produced RA1/1 and relies upon it and to whose benefit it is, namely Mrs Alexander. In accordance with *Re B* [2008] UKHL 35; [2009] 1 AC 11 the principle to be applied is that there is only one civil standard of proof, and that, when assessing the probabilities, the court must have in mind as a factor (to the extent only that is appropriate in each particular case) that in general, the more serious the allegation, the less likely it is that the event occurred, and so the stronger should be the evidence before it is concluded

that the allegation has been established on the balance of probability. The evidence on each issue must, of course, be assessed within the setting of the entire evidence. In the present case, it is far more likely that the Claimants' witnesses are reconstructing the position from a belief that they would not have signed RA1/1 rather than positively recalling that they did not do so; and that their memories are, after all these years and in light of the welter of documents, simply faulty.

(10) The latest documents disclosed by Mrs Alexander touch upon the credibility of the Claimants' witnesses and the reliability of their recollections. Document 1 is a letter from E.M. Collins, solicitors, dated 9 May 2000. It is addressed to "Ms Bhambhani", is entitled "Claim by Ms Devani" and begins *"I refer to your recent visit to my office with Ms Paleja"*, although the immediately following text has been redacted. Document 2 is a letter from Mrs Paleja dated 9 May 1999 addressed to the then director of the Company which begins: *"I confirm that I will NOT sell my shares of the Company to Miss S. Devani"*. Mr Carpenter-Leitch submitted that these documents are relevant to the credibility and the reliability of the recollections of Mrs Alexander and Mrs Paleja. Document 3 (a letter from Arthur & Co dated 9 September 1997 concerning the management company's ground rent) is argued to be relevant to the credibility of Mrs Alexander, on the basis that her recollection during her evidence at trial of an extraneous detail from 1997 supports her ability to recall other matters from that time.

138. Mr Carpenter-Leitch contended that the following matters supported the conclusion that the Acquisition Agreement was made around 1997:

(1) A number of the witnesses at trial spoke in terms of having acquired their flats on the basis that they had a "share of the freehold" before 2008. While these statements were not unequivocal, they were clearly intended to refer to something more than having simply acquired a share in the company which owned the freehold. He submitted that this conclusion is supported by the extensions of various leases without payment being made in 2008.

(2) The contemporaneous documents of March 1996 show that various potential benefits concerning "Ground Rent" and "Lease Extensions" were being discussed. He suggested that where, as happened, the contributions to the purchase price of the freehold of the block were not split equally between those participating in the purchase, it is highly likely that there would have been some agreement to deal with this variation to the original structure proposed.

(3) RA1/1 and the minutes of 16 July 1977. Mr Carpenter-Leitch asked: if there was no agreement as to ground rents, why should apportioned ground rents of £12.50 have been repaid to participating shareholders (or 6 times this sum to Mrs Alexander) instead of those sums being retained by the Company? Further, it appeared to be common ground that ground rents were not paid by the participating shareholders between 1997 and 2000.

(4) Although, at first sight, this is contradicted by the change which occurred in 2000, when Mrs Alexander received the advice set out in her letter dated 2 December 2000, this change is explicable on the basis that she was not well versed in how to run the Company and that she was simply doing (on advice) what she then thought was required of her in order to enable the Company to meet its running costs and be run in a lawful manner.

(5) The letter from Mr McEntee dated 12 January 2009. Mr Carpenter-Leitch argued that (a) the arrangement that "ground rent is not payable by shareholders" does not arise from the constitution of the Company or the long leases (pre-extension), and so can only arise from some other agreement, and (b) the Claimants cannot approbate and reprobate, and having demanded a return of ground rent on the basis that the pre-existing agreement was that "ground rent is not payable by shareholders" cannot now seek to say that there was and is no such agreement.

(6) The lease extensions in 2008 were clearly detrimental to the Company in that, on the face of it, the Company was entitled to charge a premium. Further, in the absence of the agreement alleged by Mrs Alexander, the premium would not only be payable to the Company but would also be distributed to her disproportionately in accordance with her shareholding in the Company, and it was therefore detrimental to her but advantageous to the Claimants to avoid paying any premium. Once again the Claimants cannot approbate and reprobate. They could not properly take the lease extensions without any payment of premium save on the basis of the Acquisition Agreement, because on their case as advanced at trial they had no right to have free extensions and they knew (as Mrs Ladhani admitted in evidence) that Mrs Alexander could not grant them free extensions. Having acted in this way, they cannot be heard to deny the Acquisition Agreement simply because it now suits them to do so.

(7) Mrs Alexander's case that she was to receive not only the ground rents but also the lease premia associated with flats 1, 2, 3, 7 and 10 is consistent with what happened in 2004 when Mrs Alexander sold shares in the Company to Mr Chong at a premium on the basis that he would then be entitled to extend the lease of flat 3 for no extra payment. This is also consistent with the evidence and makes sound common sense in the context of the parties' likely understanding of the position at the time. Accordingly, the terms of the agreement now admitted by the Claimants appear to be that a leaseholder holding 10 shares in the Company is entitled as of right to extend his lease to 999 years at a peppercorn. The Claimants' case appears to be that this arrangement was arrived at in 2008, because the lease extension of all the shareholders took place at that time.

(8) Mr Carpenter-Leitch submitted that: (a) these concessions reveal that there is indeed some arrangement regarding shares in the Company (over and above the Company's constitution or the ordinary rights of shareholders) which entitles the

holder of those shares to some enforceable benefit; (b) in line with what that benefit appears to be, Mrs Alexander has the right to sell the shares which relate to flats other her own flat together with the transmissible right to extend to 999 years for free, and if another leaseholder becomes the shareholder then they acquire the right extend to 999 years for free; (c) such an arrangement now admitted is clearly detrimental to the Company for the reasons already given above; (d) such an arrangement can only take effect as a binding right as a constructive trust over the Company's interest in the freehold, to which the shareholders have assented unanimously; (e) the differences between the parties then come down to (i) when the arrangement was created; (ii) whether the arrangement only applies to lease extension premia (or value) and not ground rents pending extension; and (iii) whether the arrangement only has the effect described when triggered by way of a "voluntary" lease extension following a transfer of the relevant shares - or whether it also requires the payment of any premium on a forced extension or as an apportionment of the enfranchisement price; and (f) it must follow that the Company is bound by the agreement if it is known to affect the Company's interests (as must be the case, whether in 1997 or 2008) and if it was agreed by all the shareholders unanimously (in which regard Mr Carpenter-Leitch relied upon *Kim v Chasewood Park Residents Ltd* [2013] EWCA Civ 239, [2013] HLR 24 and *Panayotov v Falmouth House Freehold Ltd* [2012] EWCA Civ 1174, or, in the alternative, *Banner Homes Holdings Ltd v Luff Developments Ltd* [2000] Ch. 372, [2000] 2 WLR 772 and what he called "a classic "*Pallant v Morgan* ([1953] Ch 43)" constructive trust").

139. Mr Carpenter-Leitch submitted that if was to be held that the arrangement arose only in 2008 upon the extension of the shareholders' leases then:

    (1) A strict *Pallant v Morgan* equity might not be possible as it is not arising upon the acquisition of the property (see *Cobbe v Yeomans Row Management Ltd & Ors* [2005] EWHC 266 (Ch), [2005] 2 P & CR DG1, [2005] NPC 29, [2005] WTLR 625).

    (2) A proprietary estoppel with the same effect as to lease extensions premia and enfranchisement can still arise in that the parties have reached an agreement as to the arrangement which Mrs Alexander relied upon to her detriment and at the encouragement of the Claimants (in allowing the extensions of the Claimants to proceed without payment to the Company in which she would benefit pro-rata to her shares).

The Claimants' case

140. I have summarised key elements of the evidence of the Claimants' witnesses above, and have explained that it is their case that RA1/1 and other documents are forged.

141. Ms Parker submitted that Mrs Alexander had not deposed to the circumstances of how signatures came to be written on RA1/1. If and to the extent that there was anything in this point at any stage, I consider that it had been met by the conclusion of the trial.

142. Ms Parker submitted that there is an inconsistency between the dates on which signatures appear to have been written on RA1/1 and the contents of the minutes of the meeting dated 16 July 1997, on the basis that the letter referred to in those minutes must have been consequential on an agreement having been reached at that meeting (and no earlier). I reject that submission. I consider that there is no such inconsistency. In my view, the minutes make perfect sense if they are read as recording an agreement that already exists, and recording also the signing of a letter which reflects that agreement. Even if no such letter can now be produced by Mrs Alexander that does not mean that it did not exist, or that the reference to a letter must be taken as a reference to RA1/1.

143. Ms Parker submitted that the documentary evidence in support of Mrs Alexander's case was lacking or unsatisfactory. In particular, no minutes had been disclosed of a meeting at which Mrs Budhdev signed a version of RA1/1, and Mrs Alexander had been unable to produce the original of any version of RA1/1 or to say when and in what circumstances and on how many occasions copies had been made of versions of RA1/1. I do not find these points persuasive. I attach more importance to the points discussed above which have caused me to reach the conclusion that Mrs Budhdev did sign RA1/1.

144. Ms Parker also sought to attack the authenticity of RA1/1 by attacking the authenticity of the other documents identified in the Amended Reply. With regard to the minutes and letter each dated 9 May 1999, Ms Parker relied on Mrs Paleja's evidence to the effect that she was no longer a shareholder in the Company at this date, had no dispute with Mrs Devani (although this is discussed in the minutes), did not attend any meeting of the Company, and did not keep in touch with other residents after she moved away from the block. Mrs Paleja also stated in evidence that she had no recollection of visiting a firm of solicitors in Pinner. In my judgment, and notwithstanding Ms Parker's submissions to the contrary, that evidence is contradicted by Documents 1 and 2 above, which formed the subject of belated disclosure by Mrs Alexander. The fact that part of Document 1 has been redacted does limit what can be got out of it, but it nevertheless shows contact between Mrs Paleja and Mrs Alexander, and some dispute between Mrs Paleja and Mrs Divani, continuing into 2000. The fact that Document 2 may not be consistent with a stock transfer form signed by Mrs Paleja does not negate its contents, and it is a surprising coincidence that it is dated 9 May 1999 - the very date of the meeting and the letter of which, according to her, Mrs Paleja had no knowledge.

145. Ms Parker also made a sustained attack on the authenticity and reliability of the documents relating to the Special Resolution to change the Articles of the Company. As part of that attack, she submitted that Mrs Alexander had failed to produce any credible supporting documents to support her claim. I reject that attack. In my judgment, the language of the Special Resolution is consistent with the claim, which is contained in

the minutes dated 19 September 1999 that a *"legally worded document [had been] prepared by Mr Lemer"*, and the letter from Arthur & Co to Companies House is a credible supporting document which suggests that the Special Resolution was passed. These events were also foreshadowed in the minutes of the meeting dated 9 May 1999. The alternative seems to me to be a complex case in which Mrs Alexander, acting without the involvement of others such as Mrs Patel and Mrs Paleja, embarked on an elaborate fabrication of documents and corresponded over time with solicitors on a false basis, having laid the ground in May 1999 for actions which she took in September and October 1999. I consider that this is a most improbable scenario.

146. Ms Parker submitted that, in any event, RA1/1 does not purport to record any agreement to the effect that Mrs Alexander should be entitled to the benefit of any premium obtained upon the extension of the lease of any flat in the block. That is plainly correct, and, in my judgment, is an important point on this aspect of the case.

147. In addition to the evidence of the Claimants' witnesses that ground rents were not paid to Mrs Alexander (as Ms Parker submits would have happened if RA1/1 had truly been agreed), Ms Parker submitted that the Company's filed accounts do not support Mrs Alexander's case, because they do not show that ground rents which were paid to the Company were re-directed to Mrs Alexander.

148. Ms Parker also submitted that the agreement alleged by Mrs Alexander was not effective in law. The freehold is vested in the Company. The Memorandum and Articles of Association of the Company did not authorise its affairs to be managed in the manner suggested by Mrs Alexander, and they had not been made the subject of any valid amendment or alteration. The shareholders could not unilaterally divest the Company of its interest (or any part of its interest) in the freehold, and any transfer of an interest in land would need to be made in writing in accordance with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. The same applies to an agreement which varies an existing contract for sale. The effect of a contract not complying with section 2 is that it will be a nullity, and neither side can seek specific performance of it: *Keay v Morris Homes (West Midlands) Ltd* [2012] EWCA Civ 900.

149. Ms Parker submitted that there is a complete lack of evidence to support any consensus between the parties necessary to create any trust as alleged by Mrs Alexander or at all.

150. Ms Parker submitted that although Mrs Alexander had given evidence of numerous discussions concerning the acquisition of the freehold, any such discussions could not and did not bind the Company and/or create any such trust. In her closing written submissions she submitted: *"There was no evidence given to the effect that any of these discussions had taken place after the acquisition … of the freehold by the Company, or at any time after those involved in the debate had become members and/or shareholders, or that agreement had been reached after the incorporation of the Company and/or prior to the acquisition of the freehold. There had been no ratification*

by directors. There was no evidence produced or given by Mrs Alexander as to any concluded agreement prior to the first meeting of the Company on the 16th July 1997".

Discussion

151. I have set out above my responses to many of the submissions that were made to me.

152. I find that RA1/1 was signed by the individuals whose signatures appear on it on the dates which appear next to their names, and that it records an agreement which had been made between those individuals on some date between 25 March 1996 (when Colin Dean wrote explaining the implications of the leaseholders in the block acquiring the freehold) and 16 October 1996 (when a meeting was held at which it was resolved to proceed with an offer for the purchase). I consider that by the latter date (a) agreement was probably reached between the eventual subscribers for shares in the Company as to how the proposed purchase monies of up to £6,000 (excluding costs) would be raised, (b) it had probably been agreed by those same individuals that these monies would be raised by Mrs Alexander contributing 60% of the total and the 4 other leaseholders who were prepared to make a contribution each contributing 10%, and (c) it is more likely than not that it had been agreed by those individuals that the acquisition would be made through the medium of a company and that each financial contributor would be allotted shares in proportion to their respective contributions.

153. However, it would not matter if some or all of these matters were not agreed until a later date, although I consider it unlikely that they were not agreed until about March 1997, by which time the first EGM of the Company appears already to have been held on 5 February 1997. In my judgment, whenever the agreement was made, the essence of it was that, in consideration for Mrs Alexander agreeing to pay the sums which (all things being equal) would have been contributed by the leaseholders who were not interested in participating in the acquisition, the leaseholders who were interested in participating in the acquisition agreed that Mrs Alexander should be entitled to receive the ground rents which were payable by the non-participating leaseholders in accordance with their leases. In my view, that is the agreement which Colin Dean were asked to record in writing, and that is what they sought to record in RA1/1.

154. I accept that it was never the intention of anyone that Mrs Alexander personally should become the lessor of the non-participating leaseholders, and that (in the absence of an assignment of the relevant rights of the freeholder to her) as between her on the one hand and the non-participating leaseholders on the other hand the latter's legal obligations involved paying ground rents to the freeholder. That is a point which was taken at times by the non-participating leaseholders after the Company acquired the freehold, and is one reason why such ground rents were at times paid to the Company.

155. However, I see no reason as a matter of legal principle why the participating leaseholders should not have been able to make an enforceable agreement to the above effect, nor any reason (if it was made) why the court should not give effect to it after the incorporation of the Company and the acquisition of the freehold by the Company.

On the premise that all those who were to become shareholders in the Company made such an agreement, and Mrs Alexander acted in accordance with it and to her detriment by contributing 60% of the necessary funds, and the same individuals signed RA1/1 after the Company had been incorporated and when (between them) they owned all the shares in the Company in order to confirm the existence and terms of the agreement, it seems to me that there would be regrettable gap in the law if the court could not assist Mrs Alexander to obtain the benefit of that bargain if others sought to deny it to her.

156. In my judgment, the cases recognise that a constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property ("O") to assert O's beneficial interest in the property and deny the beneficial interest of another ("A"). One example of such circumstances is where O does not receive the property in O's own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by A. O's possession of the property is coloured from the first by the trust by means of which O obtained it, and any subsequent appropriation of the property to O's own use is a breach of that trust. Well-known examples of such a constructive trust include *Pallant v Morgan* [1953] Ch 43 (where the defendant sought to keep for himself property which the plaintiff trusted him to buy for both parties). In these cases A alleges that the circumstances in which O obtained control make it unconscionable for O thereafter to assert a beneficial interest in the property. Another way of expressing the matter is to say that where A has to the knowledge of O acted on the basis that A has or will obtain an interest in property, and A has acted to A's detriment in reliance on that belief, equity acts on the conscience of O to prevent O from acting in an unconscionable manner by defeating the common intention. Another formulation is made up of two elements: first, at any time prior to acquisition of the property an agreement, arrangement or understanding reached between O and A that the property is to be shared beneficially; second, after a finding to this effect is made it will only be necessary for the person asserting a claim to a beneficial interest (i.e. A) against the person entitled to the legal estate (i.e. O) to show that A has acted to A's detriment or significantly altered A's his position in reliance on the agreement in order to give rise to a constructive trust. See the discussion in *Banner Homes Holdings Ltd v Luff Developments Ltd* [2000] Ch 372 of cases such as *Grant v Edwards* [1986] Ch 638, *Lloyds Bank Plc v Rosset* [1991] 1 AC 107, *Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400, and *Yaxley v Gotts* [1999] 3 WLR 1217.

157. In the present case, if the participating shareholders had acquired the freehold personally in their own names, and Mrs Alexander was asserting a beneficial interest in the freehold on the basis that she had contributed to the costs of acquisition, it seems to me that these cases would be of direct application. However, the freehold was not acquired in the personal names of the participating shareholders but through the medium of the Company, and Mrs Alexander is not asserting a beneficial interest in the freehold but is instead asserting a right to enjoy certain financial rights of the freeholder. The existence of the Company and the effect of her claim on third parties

who were not signatories to RA1/1 (such as Mr Chong and Mr and Mrs Khagram, who appear to have acquired their leases and their shareholdings without notice of its terms) cannot be ignored and is, in my judgment, fatal to her claim that incoming funds to which the Company is legally entitled are held on constructive trust for her.

158. The issue in *Panayotov v Falmouth House Freehold Ltd* [2012] EWCA Civ 1174 was whether monies received by a newly incorporated company which had been set up for the purpose of acquiring the freehold in a block of flats and paid by one of the leaseholders who participated in that acquisition were or were not a loan. There was no issue as to whether the transaction in question had been made between that individual and the company. I do not consider that this case is of any assistance to Mrs Alexander.

159. The same applies to *Kim v Chasewood Park Residents Ltd* [2013] EWCA Civ 239, [2013] HLR 24. That case concerned the extent to which representations had been made to a couple who were "freehold purchase participators" by a letter which preceded the incorporation of the relevant company, but which had been repeated after that company had been incorporated in a manner which was conceded to be binding on that company. See [6] of the judgment of Patten LJ, speaking for the Court of Appeal:

> *"The next document which she received was a circular letter of 9th February 2007 headed "Freehold Purchase Update". Copies of this letter were sent to each of the tenants who had previously expressed an interest in participating in the purchase of the "freehold". By this time events had moved on. The Residents' Association had set up the respondent company ("the Company") to acquire the reversion and, if successful, to act as the managing agent for the block. Mr Tibbett was one of the first directors and Mr Stavronidis became the company secretary. The 9th February letter (although in the name of the Residents' Association) was sent with the authority of Mr Tibbett and the other directors and they accept that the Company is responsible for its contents."*

160. I accept that the agreement that Mrs Alexander alleges to have been made in respect of ground rents was made, but it seems to me that it takes effect as a personal obligation of those who were parties to it, that it does not bind any of their successors unless and until (as I have found occurred in the case of Mrs Budhdev) they agree to be bound by it, that it does not bind the Company in law because it was not a party to it, and that it does not bind the Company in equity unless all the shareholders for the time being have agreed to it (at which stage not only may their consciences require them to cast their votes so as to ensure that incoming monies are distributed to Mrs Alexander in accordance with their personal obligations to her, but also, if they decline to do so, equity may intervene to impose obligations on the Company for her benefit). If only some of the shareholders for the time being have personal obligations to Mrs Alexander, it seems to me that those obligations may require them to vote their shares in one way, but there can be no question of obligations being imposed on the Company.

161. I have reached this conclusion without the need to rely upon the history of payments of ground rent, which is riddled with uncertainty and open to more than one interpretation.

If and to the extent that ground rents were paid to Mrs Alexander that may or may not reflect what people understood to be her entitlement (for example, because there was no one else to whom payment could be made when the Company had no bank account). Conversely, if and to the extent that ground rents were not paid to her that may or may not reflect what people understood to be her lack of entitlement (for example, because she caused payments to be made to the Company on the basis of advice which was wrong or which she misunderstood). If it was necessary or appropriate to have regard to this history, however, I consider that, on balance, it would weigh in her favour.

162. In any event, I reject Mrs Alexander's case so far as it concerns an alleged entitlement to lease premia. In my judgment, the most telling point in this regard is that RA1/1 makes no mention of lease premia but instead mentions only ground rents. If any arrangement or agreement had been made which went beyond ground rents, I consider that it is highly improbable that Mrs Alexander would not have communicated that to Colin Dean, that Colin Dean would have drafted RA1/1 in the terms they did, and that neither Mrs Alexander nor the other signatories would have picked up this deficiency in RA1/1 at the time.

163. I also note that this is consistent with [5] of Mrs Alexander's first witness statement, which refers to an agreement relating to "ground rent and income" and states that RA1/1 recorded "the agreement we all reached". Although [8] of that witness statement refers to an agreement conferring on her an entitlement to lease premia that is alleged to have been made some years later as "a repetition of the agreement and understanding we had previously had", that does not accord with the contents of RA1/1. On the contrary, this evidence has about it an air of extrapolation and re-interpretation. I consider that Mrs Alexander has persuaded herself, incorrectly, that an arrangement conferring a personal entitlement on her to lease premia was discussed and agreed.

164. As a 60% (now 50%) shareholder in the Company, Mrs Alexander will be entitled to participate to a larger extent than any other member of the Company in any premia which may be paid upon further extensions of the leases of non-shareholders. It is one thing for her to have negotiated, and for the other leaseholders who were contributing to the cost of acquisition of the freehold to have agreed, that in exchange for the enhanced financial contribution she made to those costs she should have an entitlement to 100% of the ground rents payable by the non-participating leaseholders, but quite another for her to have negotiated and for them to have agreed a 100% entitlement to lease premia.

165. Nor do I consider that the later history is only consistent with Mrs Alexander's case. It is correct that the effect of the grant of free lease extensions in 2008 was detrimental to both the Company and Mrs Alexander in that, on the face of it, the Company was entitled to charge premia, and if it had received premia Mrs Alexander could have expected a distribution to her in proportion with her shareholding in the Company. However, it does not follow that the Claimants could not properly take the lease extensions without any payment of premia save on the basis of the Acquisition

Agreement. One very live possibility is that, as envisaged in the Colin Dean document of 25 March 1996, the "Freehold Shareholders" agreed that they could extend their own leases without payment of premia while charging a premium (payable to the Company) to those who did not participate in the purchase of the freehold. This is not far removed from Mrs Ladhani's evidence that what happened in 2008 is that Mrs Alexander extended her lease without paying a premium and the other "Freehold Shareholders" decided to do the same. To the extent that Mrs Alexander's case involves establishing on the balance of probabilities that her version of what happened in 2008 is correct and this version is not, I do not consider that Mrs Alexander has discharged that burden.

166. In addition, I do not find Mr Carpenter-Leitch's arguments based on what happened in 2004 when Mrs Alexander sold shares in the Company to Mr Chong at all convincing. It seems to me more likely than not that nobody gave proper thought to the rights and wrongs of this transaction at the time, and that in any event it was not expressed to be or considered to be a reflection of the alleged Acquisition Agreement. I do not consider that it is possible to extrapolate from these events the proposition that the Claimants accept that there is an agreement in place in accordance with which a leaseholder holding 10 shares in the Company is entitled as of right to extend his or her lease to 999 years at a peppercorn – although Mr Carpenter-Leitch contends that this was conceded by Ms Parker's opening submissions. But even if that is right, I do not see that it supports Mrs Alexander's case about the Acquisition Agreement. It is one thing to say that a 10% shareholding carries such a right – the implication being that Mrs Alexander may be able to sell her shares to any leaseholder who is interested for a price which approximates to the premium that would be payable on extension of the relevant lease. It is another thing to say that if a leaseholder who is not a shareholder wants to extend his or her lease then any premium payable must be paid to Mrs Alexander personally. I have not understood it to be part of her case concerning the Acquisition Agreement that she would be obliged to transfer 10 shares to anyone who wants to extend their lease.

167. Nor do I consider that the arrangement that Mr Carpenter-Leitch claims can be extrapolated from what occurred with Mr Chong can only take effect as a binding right as a constructive trust over the Company's interest in the freehold, to which the shareholders have assented unanimously. In my view, it could take effect (if it existed) as a right attached to any 10% shareholding. That would be consistent with all the shareholders extending their leases in 2008 without payment of premia. It does not follow to my mind that if a premium falls to be paid it is subject to a constructive trust.

168. If, as I have found, the alleged Acquisition Agreement was not made in or about 1997, I do not consider that it is open to Mrs Alexander on her pleaded case to rely on an arrangement or agreement that was made in 2008. In any event, I do not think that this (belatedly suggested) alternative case is made out on the evidence (as discussed above).

169. There may also be legal problems with this suggested alternative case, but I shall not prolong this judgment by discussing them when that is not essential.

170. For all these reasons, I consider that Mrs Alexander's case is not without some merit, but the form of relief which she seeks is inappropriate and ought not to be granted.

Mrs Alexander's claims concerning the meeting on 13 February 2014

Mrs Alexander's case

171. By way on introduction, Mr Carpenter-Leitch submitted as follows. There is no evidential dispute: Mrs Alexander appointed other individuals in respect of 4 blocks of 10 of her shares, which shares were identified by reference to the flat numbers corresponding to them. Further, for the future, the Board will in all likelihood be controlled by the Claimants and they will be able to propose company resolutions with prospective effect. The relevance of the issue is as to validating past acts of Mrs Alexander and the Company. Whether or not a meeting consisting of a shareholder and proxyholders for different shares held by the same shareholder is quorate must depend upon the Articles and/or the Companies Act 2006.

172. Mr Carpenter-Leitch then referred to Regulations 40 and 59 (which are derived from the relevant Table A):

> *"No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum."* (his emphasis)
>
> *"On a poll votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion."*

173. Next, he referred to section 324 of the Companies Act 2006:

> *"Rights to appoint proxies*
>
> *(1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.*
>
> *(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him, or (as the case may be) to a different £10, or multiple of £10, of stock held by him."*

174. Accordingly, Mr Carpenter-Leitch submitted that:

(1) As shareholder, Mrs Alexander is entitled to split her shareholding and appoint a person or a number of people as proxyholder(s) in respect of the split shareholding.

(2) As shareholder, she is also entitled to attend herself in respect of other shares where a proxyholder has not been appointed.

(3) Each of (a) the original shareholder and (b) the proxyholders is a "person entitled to vote" at the meeting (although, of course, only in respect of different shares).

(4) The meeting was therefore quorate under Regulation 40.

175. Mr Carpenter-Leitch added that Mrs Alexander's attendance at the meeting in respect only of shares for which a proxy had not been appointed did not serve to terminate or obviate the proxies granted over other shares, and could not do so unless and until Mrs Alexander had also attempted to vote in respect of the same shares over which proxies had been granted. In support of these propositions, he relied upon *Cousins v International Brick* [1931] 2 Ch 90 and, in particular, the following passages:

> Lawrence LJ at 102 and 103:
>
> "*It is not suggested that the shareholder is not entitled to attend the meeting, but it is said that he cannot vote personally at it after he has given a proxy unless that proxy has been duly revoked before the meeting in accordance with article 76.*"
>
> *"The learned judge was, I think, clearly right in holding that none of these considerations apply when a share-holder, after having given a proxy, comes to a meeting himself and exercises his right to vote in person. In such a case the proxy cannot be used and there is no necessity to inquire whether it was validly given in the first instance or whether it has since been revoked. In my opinion therefore article 76 has no application to the case where a shareholder attends the meeting and votes in person."*
>
> Romer LJ at 103:
>
> *"It was no doubt contemplated by article 76 that the proxy was to be revoked by notice in writing, but when a shareholder appears at the meeting and says he prefers to vote in person, he is not revoking the proxy previously given, but doing an act which does away with the necessity of the proxy ever being exercised at all. A proxy is always subject to an understanding that the shareholder giving it does not elect to give his vote in person and when he in fact gives a vote in person he is not revoking the proxy but taking a step which obviates the necessity of the proxy being used at all."*

176. He also submitted that it is self-evident that the intention of Mrs Alexander in attending in person was not to revoke or obviate her proxies, because they had been created expressly and openly with the intention of forming a qualifying quorum. As between Mrs Alexander and her proxy holders there was no revocation of their status, and the Company cannot object to their attendance and voting.

177. He observed that section 318 of the Companies Act 2006 may apply in some cases, but that it does not apply in the present case:

> *"Quorum at meetings*
>
> *(1)In the case of a company limited by shares or guarantee and having only one member, one qualifying person present at a meeting is a quorum.*

(2)In any other case, subject to the provisions of the company's articles, two qualifying persons present at a meeting are a quorum, unless—

(a) each is a qualifying person only because he is authorised under section 323 to act as the representative of a corporation in relation to the meeting, and they are representatives of the same corporation; or

(b) each is a qualifying person only because he is appointed as proxy of a member in relation to the meeting, and they are proxies of the same member.

(3)For the purposes of this section a "qualifying person" means—

(a) an individual who is a member of the company,

(b) a person authorised under section 323 (representation of corporations at meetings) to act as the representative of a corporation in relation to the meeting, or

(c) a person appointed as proxy of a member in relation to the meeting." (his emphasis)

178. Mr Carpenter-Leitch argued that section 318 is disapplied in the present case because the provisions for a quorum in the Articles of the Company take priority under section 318(2). He submitted that even if section 318 were not disapplied, a literal reading of section 318(2)b) is that it prevents a member forming a quorum consisting solely of that member's two proxyholders. In the present case, however, section 318 does not prevent the formation of a quorum of the member and a proxyholder for that same member as they are each individually "qualifying persons"; and the exception in section 318(2)b) does not apply as the member is not a proxyholder for herself.

The Claimants' case

179. Ms Parker submitted that:

(1) Mrs Alexander was the only member of the Company present at the meeting, the others being her proxies.

(2) Mrs Alexander's attendance in person revoked her proxies (see *Cousins v International Brick* [1931] 2 Ch 90) and indeed the proxy from issued by her in this case states as much.

(3) Accordingly, the meeting was not quorate.

(4) Mrs Alexander was relying upon a novel proposition, which is not supported by any authority, that, as a member of the Company, she was entitled to split her shareholding, designate non-members as proxies for some shares within that shareholding, and thereby enable those non-members to attend in respect of those shares and vote at a meeting, at the same time as she is exercising her right as a member to vote on the same motion proposed by her at the meeting.

(5) In principle, if that was right, Mrs Alexander could have appointed not 4 proxies but, it would seem, any number up to 59 (as well as attending to vote herself).

(6) This is not the regime designated in the Articles, Table A and the contract entered into by the parties as members of the Company.

180. Ms Parker also referred to correspondence included in "JEK1", from which it appeared that Mrs Alexander's solicitors expressed the possibility of the interpretation now advanced by Mr Carpenter-Leitch in notably qualified terms, and in which the Claimants' solicitors made plain that they disagreed with that interpretation, and why.

Discussion

181. I consider that Ms Parker's submissions are right and that Mr Carpenter-Leitch's submissions are flawed. In my view, Regulation 40 contemplates that each of the minimum of two persons attending a meeting is either a member of the Company or the proxy of a member of the Company, and not that two persons attending can constitute a quorum if one is a member and the other is a proxy for that same member. I consider that this is in keeping with *Cousins v International Brick* [1931] 2 Ch 90, which was concerned with whether advance notice of revocation of a proxy was required in order to enable a member to attend and vote in person, and which seems to me to have treated it as axiomatic that if the member does attend and vote in person then any vote tendered by the proxy cannot be recognised in addition to the personal vote of the member. In my view, any other approach would be a recipe for confusion and potential abuse. There could be scope for endless argument, about whether, as between a member and a proxy, it had been the intention of the member that, upon the attendance of the member to vote in person, that would "obviate or revoke her proxies" (adopting the language used by Mr Carpenter-Leitch). In addition, if it was open to a member to take the course suggested by Mr Carpenter-Leitch, anyone with multiple shares could take up a disproportionate amount of time at any meeting by giving proxies to as many people as the member has shares and getting them all to speak and vote as well as the member.

182. For these reasons, I decide this issue in favour of the Claimants.

The costs of the counterclaim

183. Mrs Alexander has been partly successful on the main element of her counterclaim, but not to the extent that she is entitled to declarations in the form she seeks. She has failed on a large part of that element and on her second head of claim, although it seems to me that the costs attributable to that second head are likely to be modest. At the same time, the Claimants have failed on a number of serious allegations which were made against Mrs Alexander, which appear to me to have been pursued if not initiated without proper foundation, and which have undoubtedly resulted in substantial complication of the present proceedings and in a substantial increase in costs.

184. My present inclination is that the right order in all the circumstances is that there should no order as to the costs of the counterclaim. I also confess that I am presently of the view that this is likely to be in the interests of both sides, because any other order that I may be persuaded to make is likely to take account of the factors summarised above,

and it seems to me that the parties may live to regret the costs involved in anything other than straightforward costs proceedings.

185. However, I will hear further submissions on these matters if the parties so wish. I also make clear that in the event that any offers have been made under Part 36 or Without Prejudice Save as to Costs about which I have not been informed, then, obviously, I have not taken them into account. Anything said about costs above is subject to that.

Conclusion

186. I invite Counsel to endeavour to agree a form of order which reflects the above rulings. I will hear submissions on any points on which they are unable to agree, and on any other issues such as costs and permission to appeal, either when judgment is handed down, or at some other convenient date.