Neutral Citation Number: [2019] EWHC 311 (Ch)

Case No: C31BS358
Petition No. 225 of 2017

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
BUSINESS LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street
Bristol BS1 6GR

Date: 27/02/2019

Before :

MR JUSTICE BIRSS

- -

Between :

Romana Sudicka	**Claimant**
- and -	
(1) Steven Charles Morgan	
(2) AGL Accountants Ltd	
(3) David John Cotton	**Defendants**

AND
IN THE MATTER OF AGL ACCOUNTANTS LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006
Between:

Romana Sudicka	
	Petitioner
-and-	
(1) Steven Charles Morgan	
(2) David John Cotton	
(3) Ian Glen Garton	
(4) Charles Steven Crocker	
(5) AGL Accountants Ltd	
	Respondents

- -

Thomas Graham (instructed by **BP Collins**) for the **Claimant/Petitioner**
Steven Morgan represented himself
David Hassall of **Hassall Law** for **David Cotton**
Andrew Marsden instructed by direct access for **Ian Garton** and **Charles Crocker**
The company was not represented

Hearing dates: 23rd, 26th to 30th November 2018

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Approved Judgment

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

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MR JUSTICE BIRSS

Mr Justice Birss :

Introduction

1. This dispute is about accountancy businesses in South Devon. The claimant/petitioner Ms Romana Sudicka contends she is entitled to 50% of the shares in the company AGL Accountants Ltd with the other 50% held by the first defendant/first respondent Mr Steven Morgan. It is convenient to refer to that company as AGLK. The K refers to Kingsbridge in Devon, which is the location of the company's business.

2. Another company is called AGL Accounting Ltd. That was an accountancy business in Teignmouth. That company is owned more or less 50:50 by Ms Sudicka and Mr Morgan. It is referred to as AGLT. Mr Morgan himself also has a sole trader practice named AGL, Chartered Accountants. It was originally a partnership but the other partners retired some years ago. The sole trader practice and its predecessor firms will be called AGLST. Historically that practice was based in Plymouth. Kingsbridge is about 20 miles east of Plymouth and Teignmouth is about 30 miles further east from Kingsbridge.

3. As well as a business relationship Ms Sudicka and Mr Morgan had a personal relationship. It started in 2009 about six months after Ms Sudicka began working for the Plymouth partnership. She contends that in 2015, when the personal relationship came to an end, he denied that her shareholding was as large as 50% and excluded her from the company. Ms Sudicka also contends that this behaviour by Mr Morgan is a breach of the terms of a shareholders' agreement signed on 16th June 2011 and other agreements. Mr Morgan denies that Ms Sudicka holds or was entitled to 50% of AGLK. He contends that her ownership of shares in AGLK was much lower and that after the personal relationship ended she received everything she was entitled to. He denies breach of contract.

4. Ms Sudicka also brings this claim against the third defendant/second respondent Mr David Cotton. He had carried on his profession as a chartered accountant in Kingsbridge for AGLK and its predecessor businesses. He was a shareholder in AGLK. Being close to retirement or semi-retired he did not wish to be and was not a director in the company. Ms Sudicka contends he was party to an agreement on 6th September 2012 between herself, Mr Morgan and Mr Cotton whereby Mr Cotton agreed to transfer his shares in AGLK to her. He denies any such agreement.

5. The Claim Form in the Part 7 proceedings was issued on 9th December 2016. On 30th January 2017 HHJ McCahill QC granted an interim injunction. The purpose of the

injunction was to hold the ring pending trial and prevent what Ms Sudicka contended was the destruction of the business of the company. Mr Morgan's appeal against Judge McCahill's order was dismissed by the Court of Appeal.

6. Ian Garton and Charles Crocker were appointed directors of AGLK on 27th July and 11th August 2017 respectively, Mr Morgan says on the advice of insolvency practitioners. Under their stewardship the affairs of the company were wound up. Ms Sudicka says that Mr Morgan in effect transferred the company's entire business, including most staff and customers to himself as a sole trader. Today in Kingsbridge an accountancy business is still in existence in Mr Morgan's name (AGLST) and with Mr Cotton as a member of staff. Its trading name was until July 2018 AGL, Chartered Accountants. It is now Morgan Accountants.

7. By November 2017 the transfer to AGLST was effectively complete. The petition was presented on 22nd November 2017. In addition to Mr Morgan and Mr Cotton, the petition names Mr Garton and Mr Crocker as respondents. All the respondents deny any liability.

8. The company went into liquidation on 14th February 2018.

9. The Part 7 claim was essentially for breach of various agreements about the shareholdings to which both she and Mr Morgan were parties, including Mr Cotton, and for declarations about the true state of the shareholdings. The petition is brought under s994 of the Companies Act 1986 as an unfair prejudice petition. The relief sought by Ms Sudicka in these proceedings as a whole is for the defendants/respondents to pay her a sum equal to the value of her 50% shareholding in AGLK at the relevant time, which is March 2015, just before Mr Morgan's alleged wrongdoing started. She contends that the value of the company was £450,000. The defendants/respondents' case is that the value at that time was less than half that amount.

10. I will approach the judgment by first addressing my impressions of the factual witnesses, then addressing the law and then working through a narrative of the events. Then I will address the value of the company, including the accounting experts. Finally I will run through the issues identified in a list of issues prepared by Ms Sudicka's counsel and then deal with remedies. I refer to the petitioner/claimant as Ms Sudicka and to the defendants/respondents collectively as the respondents unless there is a need to distinguish between the individuals.

The witnesses

11. Ms Sudicka's evidence explained what happened, from her point of view. On the whole Ms Sudicka was a good witness. She had a detailed grasp of the materials and events and used it to answer questions clearly and precisely. Her evidence was broadly consistent with the documents. However I do not accept everything she says. She cares passionately about this case and feels strongly that she is the wronged party. On at least one important issue (what took place on 6th September 2012) I am not satisfied her evidence is accurate.

12. Andy Hayman and Chris Hocking were fact witnesses called by Ms Sudicka. Mr Hayman had worked as an accountant for AGLT. His work included taking care of

formalities for both AGLT and AGLK. His evidence supported aspects of Ms Sudicka's account relating to what documents were drawn up and what was filed at Companies House. Mr Hayman was a good witness and gave truthful evidence. Mr Hocking was a friend of Ms Sudicka and had known her since she came to England. He became involved in these events because he lent money. His evidence supported Ms Sudicka's case.

13. Mr Morgan represented himself. He is a highly intelligent person and was able to undertake the task of representing himself. He presents himself as the wronged party, who believes in truth of his story and in the appropriateness of his behaviour. Counsel for Ms Sudicka submitted he was manipulative. Emails were put to him which he sent to Ms Sudicka and to Mr Crocker which commented on Ms Sudicka. Counsel submitted these presented another aggressive side to Mr Morgan's personality. I agree. They show that Mr Morgan has a highly manipulative side to his character. I listened carefully to Mr Morgan's evidence and his submissions. I am not prepared to accept his word unless it is supported by a document.

14. The case presented on Mr Cotton's behalf by Mr Hassall is that Mr Cotton is now a relatively elderly person and that at all times he just wanted to serve the clients of the accountancy practice in Kingsbridge to which he has devoted his life. These points are correct but they are not the whole story. In my judgment Mr Cotton is and always has been a sophisticated and intelligent professional who has been the heart of a profitable accountancy practice for many years. He has also been much closer to Mr Morgan at all relevant times than the impression now sought to be conveyed. I believe his oral evidence was truthful but documents prepared in his name were not reliable. He allowed Mr Morgan to present written materials on his behalf for much of these proceedings and took no care himself about their contents.

Mr Garton and Mr Crocker

15. When the trial began neither Mr Garton nor Mr Crocker were represented nor were either of them present when the case was called on. It emerged that Mr Marsden of counsel had a watching brief on behalf of all three of Mr Morgan, Mr Garton and Mr Crocker but no instructions to make submissions. Shortly before trial Mr Crocker had unsuccessfully applied to adjourn the trial. Mr Crocker then filed a witness statement dated 27th November 2018 which explained his non-attendance due to his health problems. His ill health relates to his back. He suffers from a prolapsed disc and rheumatoid arthritis. These are explained in an annexed letter from his surgeon. Mr Crocker clearly has unpleasant symptoms but the evidence does not satisfy me that he could not have participated in this trial to a much greater extent than he did.

16. Mr Crocker asked for his witness statement dated 13th August 2018 to be admitted uncross-examined, recognising that the weight it would be given will be a matter for the court. I will admit the statement however I will give it no weight when it deals with any disputed matters.

17. On the day when Mr Garton was due to give evidence he attended court and at the same time Mr Marsden announced that he was now instructed by Mr Garton and Mr Crocker to represent them from that point on until the end of closing submissions.

18. Mr Garton's oral evidence was essentially a truthful witness save for one vital point. That was the question of the extent to which he was acting under Mr Morgan's instructions. I deal with that below.

The law

19. This dispute involves contract law, some equitable principles relating to an arrangement between Mr Morgan and Ms Sudicka about the small amount of shares held to satisfy the ICAEW, company law and the law relating to unfair prejudice.

20. There was no dispute about contract law at all. As regards equitable principles, the only major issue was not a point about the law of equity but an issue of whether shares could be held on trust given the company's Articles of Association. I will address that in context. As regards company law, there were issues such as what is needed for a shareholder's meeting to be quorate and whether the proposed buy back of Mr Cotton's shares complied with the Companies Act. However I was not addressed in detail orally on any of this and there is no need to deal with it in detail.

21. There was no dispute that a director owed duties to promote the success of the company, to exercise independent judgment, to exercise reasonable skill, care and diligence, and to avoid conflicts of interest.

22. Section 994 in Part 30 of the Companies Act 2006 provides:

> (1) A member of a company may apply to the court by petition for an order under this Part on the ground–
>
> (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself); or
>
> (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be prejudicial.
>
> *[…]*

23. I was referred to the commentary on remedies for unfair prejudice in the textbook Joffe (5th Ed) 6.01 onwards. The authors refer to the judgment of Lewison J (as he then was) in ***Neath Rugby Ltd (No 2)*** [2008] BCC 390, [202] in which he held that for a petition to be well founded the petitioner must establish three things:

i) That the acts or omissions which are complained about consist in the management of the affairs of the company;

ii) That the conduct of those affairs has caused prejudice to the person's interests as a member of the company;

iii) That the prejudice is unfair.

24. Only two points of principle arose in this context to which my attention was drawn. First was the distinction articulated by Harman J in ***Re Unisoft Group Ltd (No 3)*** [1994] BCLC 609 between the act of a shareholder, such as in voting at a meeting and the act of the company itself. It is the latter which must be prejudicial to the petitioner in order to found a claim. Second was the matter of whether the relationship between the members was such as to be called a quasi-partnership so that equitable principles might be superimposed onto their legal relationship. I was referred to the extract from the speech of Lord Wilberforce in ***Ebrahimi v Westbourne Galleries*** [1973] AC 360 quoted in Joffe at 6.104-6.105.

25. The court's powers, if it is satisfied the petition is well founded, are set out in s996. They are expressed in very wide terms in sub-section (1). One specific power, in s996(2)(e) is to provide for the purchase of the shares of any members of the company by other members or by the company itself.

The narrative

26. Ms Sudicka was born in the Czech Republic. Before completing a degree in accountancy there she came to England in 2005. She started work as a carer for Mr Hocking, who is tetraplegic. She learnt English and rather than return to the Czech Republic to finish her degree Ms Sudicka took a degree in Accounting and Finance at Plymouth University. She also, in her words, lived for a few months in a romance with Mr Hocking.

27. She started working for what became AGLST (then called Atkey Goodman) in Plymouth in June 2009. Mr Morgan was one of the partners. The other partners were Steven Heath and Sean Donovan. The same three individuals owned two other accountancy businesses, Fisher Bell (South West) Ltd in Teignmouth which later became AGLT and Michael Locke & Co Ltd in Kingsbridge which later became AGLK.

28. In December 2009 Ms Sudicka and Mr Morgan started a personal relationship. He was at that time still married. In February 2010 Mr Morgan told Ms Sudicka that his wife was having a baby. Ms Sudicka was upset but, after a brief hiatus, the relationship started again.

29. By the summer of 2010 Ms Sudicka was managing the Teignmouth office of AGLT. No doubt when that started she was acting under the close direction of Mr Morgan but I find that she became a competent manager in her own right. By the end of 2010 Ms Sudicka and Mr Morgan were cohabiting in a flat in Teignmouth.

The 2011 Shareholders' Agreement

30. The businesses were in financial difficulties for a number of reasons including the financial crisis, an interest rate swap deal which had not gone well and debts to HMRC. AGL's bankers Royal Bank of Scotland decided in August 2011 that AGL should be moved into RBS's Global Restructuring Group (GRG). The GRG has attracted considerable notoriety but its role in this case is indirect. The GRG team calculated the total debt to be about £1 million. The building from which the Kingsbridge practice operated had been purchased by Messrs Morgan, Heath and

Donovan for £500,000 but was now valued at £250,000. The interest rate swap debt was £183,000.

31. On 16th June 2011 a shareholders' agreement was signed relating to the company carrying on the Kingsbridge practice, AGLK. The parties to that agreement were the existing shareholders (Mr Morgan, Mr Heath and Mr Donovan) and Ms Sudicka and Mr Cotton. Ms Sudicka purchased 11% of the shares for £45,000 from the existing shareholders and Mr Cotton purchased 16.5% of the shares for £60,000. That was based on an approximate value of the company of £400,000. The existing shareholders each retained 24.166%.

32. Each of Mr Morgan, Mr Heath, Mr Donovan and Ms Sudicka would be directors (or could appoint a nominee). Mr Cotton would not be a director but by clause 2.2 he was entitled to notice of all directors' meetings and to attend Board meetings as an observer with the right to speak but not vote.

33. By Clause 2.4 the shareholders agreed that save with their written consent the company would not do various things including issue shares, give guarantees, or borrow money in excess of £10,000. Clause 2.5 provided for a buy back of Mr Cotton's shares at the price he paid for them on the fifth anniversary of the agreement. The company was to "repurchase" them.

34. By Clause 3.1 the shareholders were to procure, forthwith on execution of the agreement, that Articles of Association in the form annexed to the agreement would be adopted by the company in place of its current articles.

35. By Clause 5.1 the shareholders acknowledged a debt of £30,000 owed by the company to Mr Cotton. It would not bear interest until 1st July 2012 but after that it would, and would be repaid monthly with the capital sum being repaid as £750 per month for 40 months.

36. Clause 8.1 made provisions concerning deadlock. The parties would negotiate in good faith to resolve disputes of fundamental importance to the future of the company but if agreement could not be achieved a shareholder could serve notice to purchase all the shares of the other shareholders.

37. There is an entire agreement clause in 9.1 and a no partnership clause in 12. By clause 14 the shareholders agreed to conduct all transactions between the company and themselves, or any other company controlled by them, in good faith. By clause 16.1 the agreement could only be varied by an instrument in writing signed by each of the shareholders.

The 2011 Asset Purchase Agreement

38. At the same time as the 2011 Shareholders' Agreement which related to AGLK, an asset purchase agreement was entered into (although I am not aware I have seen a signed copy). The details are not relevant. The 2011 Asset Purchase Agreement had the effect of demerging the Teignmouth practice from the Kingsbridge practice (they had hitherto been merged) and left Ms Sudicka and Mr Morgan with 50% each of the shares in AGLT. At this point Ms Sudicka was a director of both AGLT and AGLK.

After signed the June 2011 agreements

39. It is clear that Mr Morgan instructed the relevant solicitors, Ashfords, to ensure the new articles of association of AGLK were adopted. In fact that never happened. Although it is not clear why not, it is clear that the fact it did not happen was not a deliberate decision by the shareholders (nor do I find it was a ploy by Mr Morgan or anyone else). It was Mr Morgan's responsibility. It was simply forgotten about. I find that the articles were not adopted and that Mr Morgan is in breach of the shareholders agreement as a result. But I doubt this matters. If it ever did matter, Mr Morgan would not be able to take advantage of that breach to the detriment of any other shareholder. If need be another shareholder, such as Ms Sudicka, could require the articles to be adopted.

40. In July 2011 Ms Sudicka and Mr Morgan moved in together into the house Forest Lodge in Lydford. That was Mr Morgan's former matrimonial home.

41. In September 2011 Ms Sudicka and Mr Morgan entered into an agreement concerning the shares in the Teignmouth company AGLT. The problem was that under the rules of the Institute of Chartered Accountants of England and Wales (ICAEW) for a company to call itself a chartered accountancy practice, chartered accountants had to hold more than 50% of the shares. Ms Sudicka was not a chartered accountant. Ms Sudicka transferred 1% of her shares to Mr Morgan so that she held 49% and he held 51% but the agreement provided that:

> "The parties to this Agreement have agreed to enter into this Agreement for the purposes of satisfying the criteria of the Institute of Chartered Accountants of England and Wales (ICAEW) in order to register the company as chartered accountants.
>
> Both parties to this Agreement have agreed that equal shareholding of 50%/50% and the associated rights and obligations apply for all purposes other than the ICAEW registration condition, i.e. each party to this Agreement holds the share capital of £1.50 represented by 150 shares of £0.01 each for all purposes apart from the above mentioned ICAEW registration condition."

42. The annual return for AGLT reported the shareholdings as 51%/49%.

43. Concerning the Kingsbridge practice, in November 2011 Mr Morgan became client manager for that practice. In December Mr Morgan acquired Mr Heath's shares in AGLK and Mr Heath also left the Plymouth partnership. Mr Heath resigned as a director of AGLK. So at this stage Mr Morgan now held 48.33% of the shares in AGLK.

44. By February / March 2012 Mr Donovan, who had been extremely unhappy with the situation relating to RBS and following the departure of Mr Heath, was removed as a director of AGLK. He remained a shareholder.

45. In April 2012 Mr Morgan and Ms Sudicka discussed a need for Ms Sudicka to transfer 2% worth of her shares in AGLK to Mr Morgan. The purpose of that was the same as for AGLT, in other words to make it seem that Mr Morgan had more than 50% of the shares in order to satisfy ICAEW requirements but for all other purposes to leave Ms Sudicka's and Mr Morgan's shareholdings undisturbed. Precisely what happened is disputed. Ms Sudicka did transfer 2% of the shares to Mr Morgan (that is 204 shares of £0.01). Documents were prepared including an agreement for AGLK and a new agreement for AGLT which included a provision as follows:

> "The original transfer of shares was made to satisfy the criteria of [*the ICAEW*] in order to register the company as chartered accountants. If any breakdown arises it is agreed that the [*204 for AGLK, 3 for AGLT*] ordinary £0.01 shares originally transferred to Steven Morgan will be transferred back to Romana Sudicka immediately."

46. On Ms Sudicka's behalf it is contended that Mr Morgan held the 2% shares in AGLK (and for that matter the corresponding shares in AGLT) on trust for Ms Sudicka; although Mr Morgan held the legal title, Ms Sudicka was the beneficial owner. Mr Morgan denied this. He alleged the AGLK shares were a gift. I reject the idea that this transfer was a gift. The surrounding circumstances, including emails and other documents, are ample evidence from which to infer that both Mr Morgan and Ms Sudicka intended that Mr Morgan would hold the legal title in the transferred shares but that for all purposes other than presenting a state of affairs to the ICAEW, Ms Sudicka was to be treated as if she still had the benefit of the shares she transferred to Mr Morgan. If a breakdown arose, he would be obliged to transfer them back to Ms Sudicka. Mr Morgan held them on trust for her. That applies to both AGLK and AGLT.

47. There was a point that the original articles of the company (which were still the articles since the new ones were never adopted) meant shares could not be held on trust. That is not right. What the provision which Mr Morgan referred to means is that beneficial ownership of shares would not be reflected on the shareholders' register. It would only reflect the legal title.

The September 2012 agreement

48. The financial difficulties and pressure from RBS continued. For AGLT, starting in May 2012 Ms Sudicka lent the company £30,000 (or £35,000) which removed the overdraft facility and after that AGLT was able to move its banking from RBS to Lloyds.

49. Also in May, Mr Morgan was divorced from his former wife.

50. In July 2012 Mr Donovan resigned from the Plymouth firm (now AGLST). From this time Mr Morgan behaved as if he owned or controlled Mr Donovan's shares in AGLK. Mr Donovan effectively ceased to have any involvement in any relevant events.

51. As regards AGLK, by July 2012 Mr Cotton had offered to lend £100,000 to the company and discussions were taking place with Lloyds and RBS to pay off RBS and

transfer the banking facilities to Lloyds. On 8th August 2012 Mr Cotton withdrew his offer. This was clearly unexpected as far as Ms Sudicka and Mr Morgan were concerned and caused real difficulties. A related problem was that Lloyds wanted personal guarantees from all shareholders (i.e. Ms Sudicka, Mr Morgan and Mr Cotton) but Mr Cotton refused to sign a guarantee.

52. As a digression, also in this period all the staff in AGLST, AGLK and AGLT were told that they would in future be formally employed by a new company which Mr Morgan had set up called AGL Personnel Ltd (AGLPE).

53. In late August 2012 Ms Sudicka persuaded her friend Mr Hocking to lend £90,000 to AGLK to help it out of its difficulties. The money was paid by Mr Hocking to Ms Sudicka and ultimately to AGLK. Although it was shown in AGLK's books as a director's loan from Ms Sudicka, it was at that time clearly a loan from Mr Hocking to the company.

54. On 6th September 2012 a meeting took place and a document was signed. Ms Sudicka relies on the document as recording an agreement between herself, Mr Morgan and Mr Cotton. This is an important episode. Ms Sudicka's case is that as a result of the agreement Mr Cotton ceased to be a shareholder in AGLK. She also says that she and Mr Morgan agreed that Mr Cotton's shares (or a holding equivalent to it) was then to be transferred or allotted to her. Mr Cotton denies any knowledge of the idea that his shares (or an equivalent amount) would go to Ms Sudicka. The effect in terms of shares if Ms Sudicka is right would then be that she held legal title to 25.5% (being her initial 11% stake less the 2% transferred to Mr Morgan on trust to satisfy the ICAEW requirement plus the 16.5% holding of Mr Cotton).

55. Ms Sudicka says that what happened was that she met with Mr Morgan first (at the Kingsbridge office). She calls that first meeting a board meeting (they were the only directors of AGLK). They discussed a letter which had been procured from Lloyds Bank addressed to the two of them from Patrick Jenkins, the relationship manager. Then Mr Morgan took the letter and the document and went into another office to speak to Mr Cotton. Mr Cotton signed the document. Ms Sudicka was not present. Mr Morgan came back to Ms Sudicka and she then signed it. That is Ms Sudicka's case.

56. Mr Morgan and Mr Cotton do not agree. Mr Morgan agrees he had a preliminary meeting with Ms Sudicka but then all three met together and signed the document. Mr Cotton also says that Mr Cotton never read the Lloyds's bank letter. Notably in her original Particulars of Claim Ms Sudicka stated that the meeting involved all three people but she was adamant in cross-examination that the events occurred in the way she now asserts.

57. Mr Cotton also says that he was brow beaten into signing and only signed the document under duress and unfair pressure so he is not bound by the agreement in the document and was not party to any wider agreement. Mr Morgan's evidence supports Mr Cotton in that he says that at the meeting Ms Sudicka was responsible for putting strong pressure on Mr Cotton to sign. He also says that Mr Cotton did not read the Lloyds' letter.

58. Both Mr Morgan and Mr Cotton also say that in any event it was not possible for the company to buy back Mr Cotton's shares in these circumstances. The buy back was void for failure to comply with the Companies Act 2006.

59. To address these issues I will first deal with what is clear on the evidence. The document in full provides:

> "AGL Accountants Ltd
>
> Present Romana Sudicka, Steven Morgan, David Cotton
>
> Meeting of the directors @ 89 Fore Street Kingsbridge
>
> 6th September 2012
>
> The company wishes to exercise the option to buy back the shares held by David Cotton immediately at the total price of £…… [*figure in manuscript: 50,000*]
>
> The existing shareholders have the right to exercise this option in June 2016 but for the purposes of bank financing and therefore the survival of the company wish to do so immediately.
>
> Please see attached letter for Lloyds Bank
>
> I David Cotton agree to the sale of my 16.5% shareholding to the company for the sum of £…… [*figure in manuscript: 50,000*]
>
> I further agree that the sum owing be placed on a loan with repayment to be in ~~June 2016~~ [*date in manuscript: 3/9/2016*].
>
> Interest will be paid at the rate of 2% over base rate.
>
> [*signatures of Mr Morgan, Mr Cotton and Ms Sudicka*]
>
> [*beside the signatures in manuscript: £750 per month on £30,000 to be repaid monthly starting 1/1/2013 until repaid – no interest to be paid]*"

60. The Lloyds Bank letter is addressed to Ms Sudicka and Mr Morgan, is dated 6th September 2012, and is signed by Mr Jenkins. Mr Jenkins had a good relationship with Mr Morgan and that may have contributed to the preparation of the letter. There is also an unsigned draft of that letter in the bundles. In the letter Lloyds Bank notes that Mr Cotton does not want to offer security, withdraws the bank's offer of banking facilities and acknowledges that Mr Cotton's actions have put great strain on the future plans for Kingsbridge. The letter discusses refinancing and the position of Mr Morgan's wife (whose permission would be needed for a charge over the former marital home). The letter then states:

> "I am extremely pleased, therefore, that Romana has now offered to help the company again. Her investment in the company in this case will be substantial, and, as such, her risk exposure will be very high. I understand that with David's unwillingness to support the company at this time, this will mean that you will require a buy back of his shares and this is a matter for yourselves to agree with him but seems sensible in the circumstances. Furthermore, following the fiasco which highlighted the risk level of this venture to us as bankers, it would seem sensible that the directors are in possession of the entire share capital of the company. I am aware that a share option agreement is in place enabling the company to purchase David's shares in c. 4 years' time in any case. You may wish to approach David now to facilitate the purchase of his shares which will enable us to move forward. David, should take his own advice on the subject but clearly we want to see a "joined up" management process going forward."

61. After the 6th September meeting a number of relevant things happened. Ms Sudicka executed a guarantee to Lloyds for an overdraft for AGLK of £25,000. The funds from Mr Hocking were transferred to the company in a series of transfers organised by Ms Sudicka starting on 7th September (£25,000 worth), two further sums of £25,000 on 10th and 11th September and the final £15,000 on 16th October. RBS were paid off by AGLK and banking transferred to Lloyds.

62. On 13th October Ms Sudicka sent an email to staff (copied to a number of people including Mr Morgan and Mr Cotton) which referred to various matters but included a reference in relation to AGLK of "RS acquisition of shares from David C".

63. A number of documents were submitted electronically to Companies House on 27 November 2012 for AGLK. They include an Annual Return which shows the shareholdings as:

> Heath – nil
>
> Donovan 2465 shares (i.e.24.167%)
>
> Morgan 5134 shares (i.e. 50.333%)
>
> Cotton – nil
>
> Sudicka 2601 shares (i.e. 25.5%)

64. Further documents were also filed at Companies House: an SH03 Return of Purchase of Own Shares giving notice of the purchase by the company of 1683 shares (including payment of £250 stamp duty (0.5% of £50,000)) and an SH01 Return of Allotment of Shares giving notice of allotment of 1683 shares.

65. The above is not every single piece of evidence which bears on the issues concerning what was agreed and what happened in summer 2012, but it covers the major issues. There are a number of things to disentangle.

66. I start from the end. First the documents submitted to Companies House. Although Mr Morgan sought to downplay his involvement, in my judgment he was the person giving instructions for these documents to be prepared and filed. Whatever was done was done at his direction and with his knowledge. It is manifest and I find that what is stated in the Annual Return about the respective shareholdings represents what, as between Mr Morgan and Ms Sudicka, these two individuals agreed would take place and thought would be the effect of what they were doing. The overall effect was agreed and intended to be that Mr Cotton's 16.5% shareholding would effectively be transferred to Ms Sudicka. They thought the mechanism by which this would happen would be by Mr Cotton's shares being bought back by the company and fresh shares allotted to Ms Sudicka. I find that 1683 fresh shares were allotted to Ms Sudicka at the time.

67. Turning to the meeting itself. I find that Ms Sudicka was present when Mr Cotton signed the document. Ms Sudicka and Mr Morgan met first and discussed the Lloyds letter. Then they both went to see Mr Cotton and met him. All three of them then signed the document together. Ms Sudicka has convinced herself that things happened in the manner she asserted at trial but she is mistaken. It does not matter but I think she has convinced herself because the document refers to a directors meeting and she knows Mr Cotton was not a director.

68. On the other hand I was not persuaded by Mr Morgan and Mr Cotton's testimony that Mr Cotton did not read the Lloyds letter. In my judgment it is much more likely than not that he did read it (perhaps the unsigned draft). At its lowest the only other credible possibility is that he knew, because he was told, that a key part of what was proposed to save the business involved a fresh investment into the company which was being orchestrated by Ms Sudicka (i.e. the loan from Mr Hocking). That is what the Lloyds letter refers to as her substantial investment. Whether Mr Cotton knew it was money from Mr Hocking does not matter. In any event I find Mr Cotton was fully aware of the existence of the investment and had the opportunity to read the letter if he had cared to. He could not now complain about any lack of knowledge of its contents.

69. I reject Mr Cotton's case about duress or being unfairly pressurised at the meeting. Although Mr Cotton is not a young man, in my judgment he was and remains a sophisticated individual well versed in business dealings and able to look after his interests. He did not need to be told to take independent advice if he had wished to. It is true that a buy back had not been mentioned before but his signature on the 6th September 2012 document represented his agreement to its terms. It is also true that at least one staff member (Caroline Sweby) had left in July 2012. There is evidence that Ms Sudicka was regarded as domineering by some (although not all) of the staff. In terms of motive, I accept the submission made by counsel on Mr Cotton's behalf that his primary concern always has been his clients in Kingsbridge (and the staff). Mr Cotton agreed to his shares being bought back in this way, as a change from the position under the 2011 agreement, because he thought that it was a necessary step in the overall arrangements required to allow the company through which the Kingsbridge practice operated to go forward and was in the best interests of the staff and clients. The buy back at that point would mean that all shareholders (i.e. not including Mr Cotton) would be able to give the bank personal guarantees. There was

indeed pressure at the meeting on 6th September but it was the pressure placed on the company by the GRG and was felt by all three shareholders.

70. In addition I am not persuaded by Mr Morgan's self serving attempt to say that all the pressure on Mr Cotton came from Ms Sudicka. Nor do I accept Mr Cotton's evidence that Ms Sudicka so dominated Mr Morgan that she exercised total control over him at that time (or at all). Mr Morgan is another sophisticated individual, well versed in business. He was never dominated by Ms Sudicka in any business affairs.

71. Did Mr Cotton know about the agreement between Ms Sudicka and Mr Morgan that Ms Sudicka would in effect end up with Mr Cotton's 16.5% shareholding? That aspect is not stated in the 6th September document and I find he was not told about it at the meeting. I find Ms Sudicka and Mr Morgan, who were responsible for the content of the document, had already agreed between them that this would happen and deliberately did not tell Mr Cotton about that aspect. The 13th October email shows that once Mr Cotton had agreed to sell back his shares, there was no reason to hide the fact that Ms Sudicka would acquire his shares. Emails to Mr Cotton were read by Lisa Bond in the Kingsbridge office rather than by Mr Cotton himself (he was not a user of email). She was copied into the 13th October email as well. If it matters, and I do not believe it does, I would hold that Mr Cotton was, by October 2012, aware of the fact that Ms Sudicka was in effect going to acquire his shares (no doubt mechanistically by the shares being bought back and fresh shares allotted).

72. In terms of legal effects, I hold that there were two interrelated agreements, a first one to which Mr Morgan, Mr Cotton and Ms Sudicka were parties and which is embodied in the document and a second one to which only Mr Morgan and Ms Sudicka were parties. The second agreement was not in writing.

73. The first agreement was a variation of the terms of the 2011 shareholders' agreement. Mr Cotton was giving up his shareholding early in order to secure the investment in the company. As part of that he agreed to adjust the terms of his original loan to the company. The second agreement was between Ms Sudicka and Mr Morgan whereby once Mr Cotton had agreed to sell his shareholding back to the company and once the loan from Mr Hocking procured by Ms Sudicka had gone into the company, an equivalent shareholding to what had been Mr Cotton's would be allotted to her. The fact that Mr Donovan was not involved in either agreement does not undermine its effectiveness as between the relevant individuals – Mr Morgan, Ms Sudicka and, for the first agreement Mr Cotton. If it is necessary to do so I would find that at all material times by 6th September 2012, as a result of the dealings between Mr Morgan and Mr Donovan, the latter's shares were held beneficially by Mr Morgan.

74. No attempt was made to explain how the purported buy back of Mr Cotton's shares could avoid being void for non-compliance with s658(2)(b) of the Companies Act 2006. Ms Sudicka counsel relied on the ***Duomatic*** principle to validate the action on the basis that all shareholders unanimously agreed. I was not addressed orally in any detail on any of this and I prefer not to examine that issue. The reason why not is because I am satisfied both Mr Cotton and Mr Morgan are estopped, as between them and Ms Sudicka, from denying that Mr Cotton's shares were bought back in the period between September and November 2012. All three acted on the basis that this would be and had been done. Mr Cotton was paid on that basis. He never thought he held any shares until summer of 2015. In the meantime dividends were paid on the

basis that the shareholders did not include Mr Cotton. Later events (see below) also occurred on the understanding between Ms Sudicka and Mr Morgan that they were the only shareholders. There is no reason to deny Ms Sudicka equitable relief in relation to that estoppel now.

75. To conclude, by the end of 2012, as far as Mr Morgan, Mr Cotton and Ms Sudicka were concerned, the shares in AGLK were as set out in the 2012 annual return. In fact Mr Cotton's share had not been bought back but otherwise, and subject to the point about the 2% shareholding held to satisfy ICAEW requirements, that return was accurate.

Events in 2013

76. On 25th January 2013 Mr Donovan's shares in AGLK were transferred to Mr Morgan. From this time Mr Donovan ceases to have any relevance in this case.

77. On 28th February 2013 a handwritten note signed by Mr Morgan to Mr Cotton was pushed under the door of Mr Cotton's office in Kingsbridge. It is headed "AGL self employment" and asks Mr Cotton to "accept our decision with dignity" and says "Do not fight against it." The letter states that from 1st March he will be paid for 2 ½ days work and the balance will be treated as capital repayment. He must begin to hand over staff to new client managers and ends "Do not upset the staff by discussing this, we do appreciate the work you do but are aware that recently the stress caused some elevation in blood pressure."

78. Mr Morgan and Ms Sudicka are clearly the "we" referred to in the letter. Ms Sudicka says she was unaware of the note but agrees she was aware that Mr Cotton was asked by Mr Morgan to reduce his hours from 5 days to 2.5 days and that his consultancy fees were reduced from £4,000 to £2,000. At that time Mr Cotton had been receiving a monthly payment of £4,000 and that sum would continue to be paid but from then on £2,000 represented fees and £2,000 capital repayments.

79. In his Defence Mr Cotton pleaded that the letter was another aspect of unfair pressure being placed on him. His evidence was that he thought the letter was a joke. He was adamant that he continued to work 5 days a week (subject to some later health problems). I accept that as a matter of fact he did continue to do up to 5 days per week as he contends, but in my judgment he knew that he was only going to be paid fees for half that time. He did this because, in the end, he loves his job and wants to help his very long standing clients in Kingsbridge. I infer Mr Cotton did not need the money. There are also later internal company records broadly consistent with Mr Cotton working less than 5 days per week and being paid £24,000 per year (i.e. 12 x £2,000). Mr Cotton treated the payment as £2,000 for fees and £2,000 for capital repayment in his tax returns. In my judgment he did that because that is what they were. I am not persuaded any of this amounted to unfair pressure placed on him at all. At the risk of repetition I found Mr Cotton be a sophisticated person who understood what he was doing. I hold that from March 2013 half of the £4,000 per month paid to Mr Cotton was capital repayment to him.

80. In July 2013 Mr Hocking requested that he be repaid the outstanding balance of his loan (which was then £45,000). AGLK was able to pay £15,000 to Mr Hocking and did so but it did not have sufficient funds to pay the remainder. Instead what was

discussed between Ms Sudicka and Mr Morgan – who were the only directors of AGLK at the time and who were, as far as they were concerned, the only shareholders in the company – was that Ms Sudicka would pay the £30,000 the balance owing to Mr Hocking herself. Then, what had been the loan from Mr Hocking to the company would now be treated as coming from Ms Sudicka to the company as a payment for further shares. There were a series of emails about this on 25th July between Mr Morgan and Ms Sudicka. Mr Morgan notes that without her input the entire AGL group would have folded and offers, in return for £30,000 consideration, to transfer 22% shares in the company to Ms Sudicka "to keep within ICAEW rules" and to sign a similar document to the one they have for AGLT relating to "the additional 1%". There are further emails between the two but nothing in writing expressly records Ms Sudicka accepting the proposal.

81. Ms Sudicka's case is that although there were difficulties between the two of them at the time, she accepted the offer in discussions with him at the time. Mr Morgan's case is that there was only ever an offer in the email and it was never accepted, indeed a later email the same day should be understood as a rejection of it. He says that there was a dispute between Ms Sudicka and Mr Hocking (I accept there was), that by the time of his offer email Ms Sudicka had already been substituted for Mr Hocking as the lender to the company and that he only offered the 22% to calm her down because she became irrational after her dispute with Mr Hocking.

82. The words in the emails are capable of being read either way and it is right to note that no formal shareholders' agreement was drawn up at this time. All the same it is worth looking at what happened at the same time and afterwards. Ms Sudicka repaid most of the loan to Mr Hocking on the 25th July (and the balance the following day). Later on there is clear evidence that Mr Morgan and Ms Sudicka were each operating on the basis that the shares were transferred and their respective shareholdings were as Ms Sudicka contends:

    i) there is an email from Mr Morgan to Ms Sudicka on 6th September 2013 explaining that he has voted a dividend of £30,000 to each of them equally, saying that it "reflects our revised shareholding of 51%/49%" and there are corresponding dividend vouchers making that good. I infer that the equal amount of the dividend reflects the fact that beneficially Mr Morgan was treating Ms Sudicka as a 50% shareholder with him holding the other 50% beneficially. In order to produce an equal £30,000 dividend to each of them, the amount of the dividend per share (given that the two were presented as have 51%/49%) was adjusted accordingly in the two vouchers.

    ii) There are communications between Mr Morgan and Mr Hayman in October 2013 discussing how the existing share structure was to be changed to holdings which correspond to 51%/49%. As part of that Mr Hayman asks Mr Morgan whether this means Mr Donovan's shares have therefore originally been transferred to Mr Morgan and then part transferred from Mr Morgan to Ms Sudicka. Mr Morgan replies - yes.

    iii) Mr Hayman's evidence, which I accept, was that in the communications between him and Mr Morgan, he asked him to prepare stock transfer forms, stamp duty forms and minutes to record the changes in the shareholding. Mr Hayman does not know what happened to the stock transfer forms.

iv) The 2014 annual return shows the shareholders as 51% Mr Morgan and 49% Ms Sudicka.

83. There is evidence which purports to be to the contrary, such as a copy of the company's Register of Members and Share Ledger. On the face of that document the holdings as at the time of what purports to be the last entries are 7599 for Mr Morgan by an entry 23/1/13 showing a transfer from Mr Donovan, 1683 for Mr Cotton (showing no trace of a buy back) and 918 for Ms Sudicka (being 1122 on 16/6/11 less 204 on 16/4/12). In percentage terms that would be Mr Morgan 74.5%, Mr Cotton 16.5% and Ms Sudicka 9%. I am not satisfied that the document is reliable. Mr Hayman says (and I accept) that Mr Morgan took the register away from him in 2015. Ms Sudicka explained and I accept that the register for AGLK, which was kept at AGLT's premises, was removed by Mr Morgan in April 2015 after the dispute with Ms Sudicka began.

84. I find that Mr Morgan did agree with Ms Sudicka, in July 2013, that in return for her investment which would be a sum equivalent to the balance of Mr Hocking's loan she would be given shares in AGLK with the end result that the two of them in substance held 50% of the shares each. The holding would be presented as 49% for Ms Sudicka and 51% for Mr Morgan because the difference between that and 50:50 reflected the familiar ICAEW requirement.

85. Were the shares actually transferred? There is no share certificate in existence. However it is more likely than not that Mr Morgan would have executed the transfer forms he had specifically asked Mr Hayman to draw up. There was no reason not to at the time. I find that the shares were transferred to Ms Sudicka.

86. From July 2013 on and throughout 2014 the company's business and the relationship between Ms Sudicka and Mr Morgan both continued. In February 2014 the office building in Kingsbridge was sold at a substantial loss to the purchasers (Messrs Morgan, Heath and Donovan). Another equal dividend was paid to both Mr Morgan and Ms Sudicka on 9th June 2014.

Early 2015 – the relationship founders

87. The relationship between Ms Sudicka and Mr Morgan ended in Feb/March 2015. There was bitterness on both sides. Ms Sudicka moved out of Forest Lodge and slept for some time in the Teignmouth offices of AGLT. As mentioned already, in April 2015 Mr Morgan removed AGLK files from the Teignmouth offices. There were discussions between the two individuals by email which included references to the possibility of Ms Sudicka going to the Czech Republic. On 2nd June 2015 another equal dividend of £4,000 was paid to the two of them, organised by Mr Morgan.

88. On 12th June 2015 Mr Morgan and Ms Sudicka had a heated discussion. In it Mr Morgan said "you better check your shareholding". Ms Sudicka sent an email to Mr Morgan later that day which is consistent with her case that she believed the two of them owned AGLK 50/50 in the same way as they owned AGLT. Mr Morgan's response indicates that he had the same view about AGLT as Ms Sudicka (i.e. that in public her holding is presented as 49% but as between them he agreed it was 50%). However for AGLK Mr Morgan's response was in effect that all Ms Sudicka held was 11%. That was on the basis that he agreed she did acquire 11%, he also agreed she

was supposed to have received Mr Cotton's 16.5% but he said the paperwork was not done; and relating to final amount of shares agreed in 2013 in return for the £30,000 from Ms Sudicka, he said that she said that her £30,000 was a sum to purchase shares but it was recorded as a loan and so was not effective to buy the shares. He invited Ms Sudicka to check with Mr Hayman.

89. It is plain that this stance represented a denial by Mr Morgan of a position he had agreed to, accepted and acted upon previously. This change was spurred on by the breakdown in the couple's relationship. At this time it seems Mr Morgan took advice from solicitors. They no doubt advised, correctly, that the share buy back of Mr Cotton's shares was ineffective in law.

90. The email exchanges between Mr Morgan and Ms Sudicka continued in June. Ms Sudicka called Mr Morgan a liar. Given what he was now saying about her shareholdings, that was justified.

91. On 16th June 2015 Mr Morgan wrote a detailed email to Ms Sudicka and on 17th June she replied by annotating Mr Morgan's original message. Under the heading "with regard to businesses" Mr Morgan wrote (i) of AGLT that Ms Sudicka had a 49% shareholding but a 50% beneficial interest and (ii) of AGLK Ms Sudicka started with 11% (not 11.5%) then he said "Company bought back DC shares for £50K increasing debt in company and reducing issued share capital … agreed to gift these to you for arranging Chris loan" and then referred to agreeing to increase her shareholding when she paid the final £30,000 of Mr Hocking's loan but said that the final paperwork had not been completed and "only document is the filed annual return showing shares of 4996 being 49%".

92. On 20th June Mr Morgan wrote to Ms Sudicka "Are you feeling okay in the head and that is a serious question?". Ms Sudicka's counsel suggested this was an example, along with later emails, of a manipulative side to Mr Morgan's character.

93. On 22nd June 2015 acting on his own Mr Morgan transferred £70,000 of AGLK's money to himself. He claimed at the time he was acting to protect the company's position, to ensure the staff would be paid and based on what he said was a concern that Ms Sudicka would "clean out the bank account". That explanation will not do. The couple had clearly fallen out but there was no objective reason to think Ms Sudicka was going to remove money from the company improperly. On the contrary it was Mr Morgan who did that by taking the £70,000 for himself. This was a clear breach of his director's duties. It is true that there was some suggestion that Ms Sudicka might visit the Czech Republic for a short time but that was seized upon by Mr Morgan as an excuse for contending she was going to leave permanently.

94. On the same day Mr Morgan told Ms Sudicka that she would receive notice of her removal as a director of AGLK (28 days notice would be required) unless she resigned beforehand. She did not do so and asked on what basis this was happening.

95. Later that day Ms Sudicka wrote to Mr Morgan "are you going to take more funds from the businesses to maximise the overdraft level and then leave me liable for it?". His response included: "I knew you would overreact, just calm down and we can work it all out rather than upsetting the staff". In my judgment Ms Sudicka was not overreacting in the circumstances. Mr Morgan's stance by email was disingenuous.

He had no intention of working together with her at all. He was trying to exert pressure on Ms Sudicka.

96. On 30th June 2015 Mr Morgan sent an instruction to Ms Sudicka to process staff payroll for AGLK. She emailed the bank, copied to Mr Morgan, raising concerns that the personal guarantees remained in place but the £70,000 he had taken had not been returned. Later Ms Sudicka emailed Mr Morgan to say that she intended to visit AGLK. He replied:

> "If you persist I will remove you as a director from [*AGLK*], I had hoped that we could reach a sensible way forward without me taking such harsh measures. Then I will ban you from entering the premises and if need be can obtain an injunction. These are not idle threats I have handled many boardroom disputes and by that I mean director disputes.
>
> I cannot allow you to damage that business with unpleasantness. I have not answered the hundreds of emails, you sent me 30 the other morning, My proposal which you annotated and I further annotated should be sufficient to work from?
>
> So I respectfully ask you not to go there for the month of July, which should give us time to reach a solution with the businesses that satisfies us both.
>
> Please be nice in your response."

97. Ms Sudicka's response asks about the formal removal process and says that she will continue to visit AGLK until the notice of removal takes effect. The tone of the email is civil. The next day Mr Morgan sent an email to Ms Sudicka with the subject "Personal highly" which starts as follows:

> "Morning
>
> Serious question are you mentally ill? I know you are on antidepressants have bulhemia but is it worse? I can't understand your behaviour no wonder you have no actual friends in your life Or are your actions all premeditated starting back in 2009?
>
> *[…]*"

98. The reason for setting this out is because at face value many of Mr Morgan's other emails read as reasonable in tone. This one however bears on counsel's submission that Mr Morgan was manipulative in his relationship with Ms Sudicka, at least from this period. In my judgment Ms Sudicka's counsel is correct.

99. I find that at this time Ms Sudicka was a competent director of the two companies AGLT and AGLK from which accountancy practices were run and had been for some years. The problems between her and the staff from 2015 and afterwards, were due to

a significant extent to the undermining of her relationship with staff by Mr Morgan and his behaviour. Mr Morgan also said that in the years prior to 2015, half the staff had left due to harsh treatment by Ms Sudicka which he had allowed. I do not accept it is that simple. To the extent staff left due to any harsh treatment before 2015 rather than for any other reason, both Ms Sudicka and Mr Morgan were equally to blame for that.

100. The email discussions continue in July, addressing payments and payroll. Mr Morgan arranged two payments of £4,000 each to Mr Morgan and Ms Sudicka. He described than as directors' loan account withdrawals, as he put it "regardless of shareholdings!". Part of the discussion involved Ms Sudicka trying to hold Mr Morgan to what she thought was an agreement between them that he would use part of the £70,000 he had taken to pay the staff. He never did that.

101. On 8th July Mr Morgan gave formal notice to Ms Sudicka of a resolution to be proposed at a general meeting on 7th August 2015 to remove her as a director.

102. On 29th July in what were described as "way forward proposals" Mr Morgan repeated his stance that the only shareholding properly held by Ms Sudicka in AGLK was 11%.

103. On 31st July Ms Sudicka emailed Mr Morgan stating that she would run the payroll to pay AGLT staff from reserves but would not pay AGLK staff because he had not provided funds for the June 2015 wages from the £70,000 he had taken. Mr Morgan responded that he had organised the payment of the AGLK staff. A few days later Mr Morgan sought to portray to the staff at AGLK a situation in which Ms Sudicka was the cause of problems with the payroll and he was solving them and ensuring the staff were paid. That was not a fair picture of what was happening. The problems were Mr Morgan's fault.

104. In early August Ms Sudicka tried to remove her belongings from Forest Lodge. This led to more conflict. The police became involved. Nothing in this case turns on that.

105. There is an email dated 3rd August from a member of staff at Lloyds Bank which states that Mr Morgan had said he would repay the £70,000 and notes that "the bank has no way of enforcing this". Mr Morgan has never repaid that money. He did put an entry in his director's loan account for £70,000 but he never had any proper basis for that.

106. On 6th August Ms Sudicka emailed Mr Morgan to say that there were no grounds for removing her as a director and that she would not attend the meeting on 7th August 2015 as there was no point and he had already decided what would happen.

The 7th August 2015 meeting

107. There are two relevant documents relating to a meeting which took place on 7th August. One is a minute. It records that a general meeting of members of AGLK took place at the office in Kingsbridge at 10am on 7th August 2015, that present was Mr Morgan and that a resolution was passed removing Ms Sudicka as director. The minute is signed by Mr Morgan. The other document is a proxy form signed by Mr Cotton appointing Mr Morgan as his proxy and directing him to vote in favour of

removing Ms Sudicka as director. The form bears Mr Cotton's signature and is dated 7th August 2015.

108. In the Particulars of Claim in the Part 7 action Ms Sudicka's case was pleaded on two grounds. First the notice of the general meeting was invalid because if Mr Morgan was purporting to exercise the right of directors to call a general meeting then it was necessary to first call a board meeting to enable directors to make that decision but no such meeting took place, and without Ms Sudicka such a meeting would be inquorate. Second if the meeting was a shareholder's meeting it was inquorate because the quorum for a shareholders meeting was two, and only one shareholder attended. The case was pleaded that there were only two shareholders, Mr Morgan and Ms Sudicka.

109. In Mr Morgan's Defence on the first point, the case pleaded was that Ms Sudicka had actual notice and indicated she was not going to attend. The Defence denied any irregularity and argued in the alternative that if there was an irregularity the court would not grant a remedy to an individual shareholder on the basis of an irregularity which flies in the face of the will of the majority.

110. As regard the second point Mr Morgan's Defence pleads that Mr Morgan and Mr Cotton were present at the shareholder's meeting and that Mr Cotton appointed Mr Morgan to attend. The Defence argued that the meeting was not inquorate because Mr Cotton's proxy counts towards the quorum but in any event Mr Cotton physically attended the meeting.

111. Mr Cotton's Defence did not address the notice but as regards the meeting the Defence pleads that Mr Cotton attended the meeting and voted to remove Ms Sudicka as director and also gave Mr Morgan his proxy.

112. Mr Morgan's witness statement calls the meeting on 7th August a board meeting (rather than a shareholder's meeting). For a lay witness that would be a minor matter but it is notable that Mr Morgan places emphasis on his status as a chartered accountant. He says (paragraph 103) that Mr Cotton was present. He says the removal of Ms Sudicka as director was a preventative measure and that he had:

> "reasonable grounds to suspect [Ms Sudicka] may cause damage to the company. [Ms Sudicka] was demonstrating a deteriorating mental state, she had moved into the offices of [AGLT] in Teignmouth where there was no washing facilities. [She] had threatened not to pay staff their monthly salary, harassed staff, informed third parties of our disputes, and indicated an unwillingness to have any contact with me leaving board meetings impossible. It was my view [Ms Sudicka] was causing irreversible damage."

113. In cross-examination an email dated 20th August 2015 from Mr Morgan to Ms Sudicka was put to Mr Morgan. In it Mr Morgan states that the only shareholder in attendance at the meeting was himself. There is no mention of Mr Cotton or of a proxy. Mr Morgan's response was that he did say that, but it was not true. He said that if Ms Sudicka had been aware that Mr Cotton had been present, she would have attacked him. Counsel put to Mr Morgan that he had never said this before and that this was a lie. Mr Morgan maintained his oral testimony. As regards Mr Morgan's

belief at that time about Mr Cotton's position as a shareholder, counsel also put to him that the idea that Mr Morgan at that time thought that Mr Cotton was a shareholder was inconsistent with what Mr Morgan himself had said in the 15th June 2015 email which referred to the buy back of Mr Cotton's shares. Mr Morgan did not accept that he did not then believe Mr Cotton was a shareholder. It was put to him that there was no such proxy.

114. Mr Cotton's evidence in his witness statement was that he had no part in the argument between Ms Sudicka and Mr Morgan at that time but that, at that time, he was told by Mr Morgan that (i) he, Mr Cotton, was a shareholder and that (ii) Ms Sudicka was blocking payments to the staff. He said he was asked to and did sign a proxy. He did that to ensure the staff would be paid. In his statement Mr Cotton did not say anything about attending the meeting on 7th August.

115. In his oral evidence Mr Cotton said he had not been at the meeting. He said that Mr Morgan asked him to sign the proxy after the meeting. He maintained he went to the office later in the day. When asked about his Defence (which pleads he was present) it became clear that Mr Cotton left his Defence to Mr Morgan and his solicitors. Mr Cotton maintained he had signed the proxy because Mr Morgan told him he was a shareholder. He thought it was for the good of the firm.

116. In terms of the primary facts, I find that what happened on 7th August is that Mr Cotton did not attend the meeting on 7th August. Mr Cotton did sign the proxy form but he did that after the meeting had taken place. That explains why the minute of the meeting does not mention any proxy. It is speculative to attempt to attribute a motive to Mr Morgan in doing this, but if necessary to do so I would hold it was because at that time he may well not have intended to tell Ms Sudicka about Mr Cotton's involvement, not to protect Mr Cotton but as an insurance policy for the future. Mr Morgan was going to hold the idea of using Mr Cotton's proxy in reserve. Mr Morgan's evidence about the 7th August 2015 meeting is not reliable.

117. I am not persuaded that the notice should be held to be ineffective for the general meeting, given the actual notice Ms Sudicka had. However I find that the meeting itself was not quorate. The only shareholder in attendance was Mr Morgan. Ms Sudicka was a shareholder (irrespective of the argument about the extent of her shareholding) but not present. Even if Mr Cotton was a shareholder, he had not given a proxy to Mr Morgan for the meeting. Accordingly Ms Sudicka was not validly removed as a director of AGLK in August 2015.

118. In seeking to remove Ms Sudicka as a director Mr Morgan was not acting to further the company's interests. On the contrary he was acting to further his own interests in his dispute with his former emotional partner. He had no reasonable grounds to remove her.

After the August 2015 general meeting

119. The interactions and disagreements between Mr Morgan and Ms Sudicka continued from October 2015 onwards, particular about payroll but also dividends and the software licence for the company's SAGE accounting software.

120. In November 2015 Mr Morgan attempted unilaterally to have AGLK pay Ms Sudicka the £30,000 sum which corresponded to the remainder of Mr Hocking's loan. This was part of Mr Morgan's attempt to deny that he and Ms Sudicka had agreed to her receiving shares in 2013. On 18th November Ms Sudicka said to Mr Morgan that this attempt to call it a loan was another step in his fraudulent behaviour. That was a fair characterisation of what was going on.

121. Also in November Mr Morgan arranged for Ms Sudicka to be removed from the AGLK bank mandate and rescinded Ms Sudicka's authority to use AGLK's credit card. On 23rd of that month he arranged for the submission of the 2015 annual return for AGLK. In it Mr Morgan is shown as having 7,395 shares (72.5%) and Ms Sudicka 2,805 shares (27.5%). This bears comparison with the 2014 return which showed 5,204/51% and 4,996/49% respectively. Note there is no reference there to Mr Cotton having shares.

122. In December 2015 Ms Sudicka approached Companies House but was told that Companies House cannot assist concerning a shareholding dispute.

123. Until January 2016 Ms Sudicka had had access to AGLK SAGE accounting software information but that ceased at this point until the court order in April 2018. Ms Sudicka raised with Mr Morgan a point that he had wrongly characterised certain payments to her as "DLA" (director loan account) payments rather than dividends. He did not agree.

124. In April 2016 Mr Morgan wrote to Ms Sudicka in terms asserting that her shareholding in AGLK was 11%. As the purported board of AGLK, in that month Mr Morgan declared a dividend of 50p per share and issued dividends to Ms Sudicka on the basis that she held 11%. Six further dividends were issued on that basis in 2016.

125. In May Ms Sudicka reported Mr Morgan to the police Action for Fraud department. The police met her in June. He was contacted by the police in August and interviewed under caution in September. They later explained their view that it was a civil matter.

126. In July 2016 and for the first time since 2012, a dividend document for AGLK was issued purporting to show Mr Cotton as a shareholder (issued by Mr Morgan). Also in July the AGLK website was suspended by Mr Morgan. He also arranged for AGL Management Consulting (AGLMC), a company he had set up in 2011/12, to take out an 800 client subscription for an accounting package software licence (to be paid by AGLK). Mr Morgan says nothing changed regarding the software licence, Ms Sudicka says this was done in secret. I do not have to resolve that particular issue.

127. In October 2016 the arguments continued, the focus now being on allegations of issues about a risk of data deletion by Mr Morgan and attempts to restrict Ms Sudicka's access to electronic data. On 7th October 2016 Ms Sudicka's letter of claim was sent to Mr Morgan and Mr Cotton.

128. In November 2016 Mr Morgan wrote to the AGLK staff explaining that while they were at that time employed by AGLPE, he wanted to transfer them to AGLST. The transfer took place so that from November the staff were employed by AGLST and

subcontracted to AGLK. Also in November Mr Morgan's then solicitors wrote in response to the letter of claim. One aspect was that they admitted that the removal of Ms Sudicka as director had been ineffective because of defects with the notice. Later that month Ms Sudicka filed an online form at Companies House reappointing herself as director of AGLK.

129. On 1st December 2016 Mr Morgan transferred £10,000 from AGLK to AGLMC.

130. The Part 7 claim form was issued on 9th December 2016. On 30th January 2017 HHJ McCahill QC heard Ms Sudicka's application for an injunction against Mr Morgan to preserve the company's business pending the dispute and for access to information about the management of the company. The injunction was granted.

131. On 6th June 2017, despite his solicitors having accepted seven months earlier that Ms Sudicka's removal as a director had been defective, Mr Morgan filed a notice of termination of Ms Sudicka's directorship of AGLK at Companies House. On the same day Mr Morgan's solicitors wrote asserting that in fact Ms Sudicka had been validly removed as a director in August 2015. This was on the basis that the quorum for the meeting was two and that Mr Morgan and Mr Cotton were present (and referring to Mr Cotton's proxy).

The departure of Mr Morgan and appointment of Mr Garton and Mr Crocker

132. According to Mr Morgan, in July 2017 he resigned as a director of AGLK and was replaced by Mr Garton and Mr Crocker. There is no dispute that Mr Garton was appointed a director on 27th July, that Mr Morgan purported to resign as a director on 31st July 2017, and that Mr Crocker was appointed on 11th August 2017.

133. Messrs Garton and Crocker were friends of Mr Morgan's. He was also their accountant. Mr Garton works in premises in Plymouth converting vans into campervans. He is the owner of the business and I do not doubt it is successful. He is not an accountant nor is there any evidence he has ever worked in or run a professional services business. He was asked to undertake this role because of his friendship with Mr Morgan. Having heard the evidence of both Mr Garton and Mr Morgan, I infer that in all probability Mr Morgan also thought that Mr Garton would be likely to do what Mr Morgan told him to do. I infer the same was true of Mr Crocker, whose business experience is in a packaging company.

134. There is a minute of a board meeting by Mr Morgan alone on 26th July 2017. The minute refers to concerns about AGLK's solvency including amongst other things an inability to remunerate the director for work, travel costs and software, the court's injunction restricting payments and the need to fund legal costs for the action. There are references to sickness of key staff, Mr Cotton and Lisa Bond. Insolvency advice has been taken from the firm Kirks. There is a reference to the possibility of selling the client base to a third party but this is likely to cost a minimum of £45,000 and to lead to poor recovery of WIP (work in progress) and debtors.

135. The minute then records "AGL sole trader to withdraw staff services from 1st August 2017". By this time the staff at AGLK were employed by AGLST, which is of course Mr Morgan himself. This sentence therefore records that Mr Morgan is going to withdraw staff services from the company of which he is a director.

136. The minute then refers to the forthcoming appointment of Messrs Garton and Crocker. It states that Mr Morgan has agreed to assist Mr Garton with billing for work and administration and that he has agreed to defer a substantial debt he claims the company owes him (£160,000) allowing preference to other creditors. The minute then states that it is anticipated all creditors will be paid, allowing for a return for shareholders on liquidation, while this would not be the case "under a formal pre-pack or other insolvency procedure".

137. The minute then ends with the issue of how clients of the firm will be approached, stating:-

> "Clients of the firm will be informed in accordance with ICAEW helpsheet: 'changes in the constitution of the firm'
>
> Client letter:
>
> We write to inform you that Steven Morgan FCA, will cease to be a director of the firm AGL Accountants Ltd [*i.e. AGLK*] from 31st July 2017. David Cotton FCA, and the rest of the team will no longer provide services to AGL Accountants Ltd.
>
> Mr Morgan and David Cotton and the rest of the team will continue to practice from Duke Chambers under Mr Morgan's practice AGL, Chartered Accountants [*i.e. AGLST*]. We recognise that as David Cotton and the team have handled your affairs in the past that you may wish for them to continue to act for you. We shall therefore assume, unless you advise us to the contrary, that this represents your wishes."

138. The scheme set out in this minute was implemented over the next few months. A client letter along the lines set out was sent to all AGLK clients. It was sent by Mr Morgan himself. A substantial number of them, although not all, are now clients of AGLST. The letter was calculated by Mr Morgan to strongly encourage clients to move to the new entity and to present the new entity as a continuation of the business of AGLK. Mr Morgan sought to justify the letter on the basis of ICAEW guidance but, unsurprisingly, the guidance does not do so. The best that can be said is that he used some phrases relevant to different circumstances. That is no justification.

139. The staff ceased to provide their services to AGLK and most, but not all, now do so for AGLST. Mr Cotton in particular, who was very ill in the summer of 2017 and later in 2018, ceased to provide his services to AGLK and now provides the same services, in many cases for the same clients, to AGLST. The fees owed to AGLK were brought in and debts were paid. On 4th January 2018 Mr Garton resigned as a director. Mr Crocker did so in early February 2018 and later that month AGLK was put into liquidation.

140. From August 2017 the business and assets of AGLK were systematically stripped out of the company and transferred to AGLST. The individuals responsible for this were all three of Mr Garton, Mr Crocker and Mr Morgan. All three of them denied it but I do not accept those denials. It was put to Mr Garton that Mr Morgan directed him (and Mr Crocker) what to do. Mr Garton denied that, saying that "we asked for his

advice". I do not accept that characterisation of what was going on. Mr Garton did understand that his function was to appear to be independent of Mr Morgan and when the question was asked directly, he denied he was not independent. But nothing of any substance was ever done by Mr Garton or Mr Crocker as a director of AGLK without a direction from Mr Morgan albeit couched as advice or a suggestion.

141. I do not reach this conclusion simply because Messrs Garton and Crocker always happened to accept whatever Mr Morgan suggested, although that on its own is relevant. I draw this inference from the evidence as a whole, including the oral testimony of Mr Morgan and Mr Garton, the tenor of email communications and what happened in practice. There was never any significant sign of independence of action shown by either of them. All the major decisions about what was going to happen had been made by Mr Morgan before either of Mr Garton or Mr Crocker were appointed directors. They simply went along with the prearranged scheme without any thought. They made no effort to act independently of Mr Morgan. They did not take their own legal advice. They did not question how the company had come to be in the predicament it was in, nor did they question whether there was anything untoward in the clients moving to become clients of Mr Morgan's sole trader practice. If anything unusual happened they would go to Mr Morgan. Messrs Garton and Crocker saw it that all they had to do was get in the outstanding fees. The fees were indeed brought in (£130,000 brought in and £70,000 billed for work in progress). However to the extent it matters I do not accept that this was due to any particular effort on the part of Messrs Garton or Crocker. For example it is hardly surprising that a client who had moved to AGLST and was interacting with the same staff as hitherto, should pay their outstanding bill (which happened to be AGLK).

142. Another feature of what took place was billing by AGLST for the staff costs when they worked at AGLK. The sums billed to AGLK increased for no good reason from 1st November 2016 when he employed the staff via AGLST. Ms Sudicka became aware of them in the summer of 2017. I have not had my attention drawn to any convincing justification for the increases from Mr Morgan. The effect was that more money was taken out of the company and paid directly to AGLST, with the result that Mr Morgan benefitted personally (since he is AGLST). After the draft judgment was circulated Mr Morgan addressed this paragraph, stating that the withdrawal of monies was restricted by the injunction to the actual payments made to subcontract staff irrespective of their employer, plus VAT and that a profit element was invoiced to reflect the risk of redundancy liability but not paid. I am not convinced by that justification for the increase, but it is right to record that if the money was not paid then Mr Morgan will not have received it.

143. Each of Mr Garton and Mr Crocker was paid (net) £1,000 per month, rising to £2,500 per month in October 2017. Mr Crocker's witness statement absurdly describes this a "low monthly wage". These payments were excessive and far more than directors acting properly would have paid themselves for the work which was actually done. Their cavalier attitude was illustrated when counsel attempted a simple reconciliation of the payments made by the company to Mr Garton. This showed that there was a substantial overpayment to Mr Garton even in terms of what was being paid. That is because the payments must have been in advance but he received a payment for the month of January on 6th January 2018 even though he resigned on 4th January. He had no explanation for this.

144. Once Mr Morgan had resigned as a director the ICAEW rules meant that AGLK could not describe itself as a chartered accountancy firm. Mr Garton claimed that Mr Crocker had made some effort to see if another chartered accountant could be found who might prepared to be involved. I doubt this evidence was invented but I infer that whatever efforts were made were desultory at best and more likely a fig leaf.

145. I do not accept that the alleged insolvency of AGLK provides any justification for what went on. If AGLK really was insolvent on any basis as at July 2017 that could only have been on account of breaches of his director's duties by Mr Morgan such as the withdrawal of staff services provided by AGLST and his previous removal of £70,000 and his inflated charges to the company for his services.

146. I find that in practice, despite his resignation, Mr Morgan remained closely involved in and effectively in control of the company at all times. He was a de facto director of the company.

The end of AGLK

147. By the time AGLK was liquidated in February 2018, most of what had been its business as of July 2017, an accountancy practice in Kingsbridge, was being carried on by Mr Morgan himself as AGLST. The value of the shares in AGLK was effectively nil.

The value of AGLK in spring 2015

148. Each side called a valuation expert. Ms Sudicka called Jon Dodge of Walton Dodge Forensic. He is a chartered accountant and has many years experience of share and business valuation. The respondents to the petition (Mr Morgan, Mr Cotton, Mr Garton and Mr Crocker) together called Alison Watts of Thomas Westcott Chartered Accountants. She is also a chartered accountant with many years experience of share and business valuation. There were efforts by both sides to suggest that the expert called by their side was better qualified in various ways than the rival expert, based on factors such as more experience in the South West or more experience of valuing professional service companies. I was not convinced any of the factors relied on were of sufficient weight to justify preferring one expert over the other. They were all minor.

149. The experts met and produced a joint statement summarising their views and the points of difference. In court their oral evidence was conducted as a concurrent evidence session or "hot tub". This involved taking series of topics which were the major points in issue. Each witness had the opportunity to express a view about the topic and counsel and the parties had a chance to ask questions on that topic (and going to expertise generally). I also was able to ask question to clarify matters. For this sort of evidence it was a very effective way of proceeding. From the point of view of the judge, the issues were dealt with logically and both expert's views expressed clearly. Common ground emerged on points of detail as well as a clear illumination of what the disagreement was. As best I can tell the whole exercise took up less time than sequential cross-examination would have.

150. The experts agreed that the appropriate basis for valuation of the company is by reference to a composite valuation approach based on gross recurring fees (GRF) and profitability:

i) GRF should be identified by reference to historic fees generated by the practice and should represent a reasonable estimate of likely future maintainable fees at the date of valuation. An appropriate multiple should be applied to GRF to determine a gross recurring fee based valuation of the practice;

ii) The appropriate measure of profitability is EBITDA. To determine an appropriate valuation EBITDA adjustments have to be made to establish a normalised level of profitability as a reasonable assessment of the future maintainable profits of the business. Once an adjusted EBITDA has been identified one applies a weighted average approach to determine a reasonable assessment of future maintainable profits.

151. The two valuations (determined by a GRF multiple and a profit multiple) should be cross-referenced as a cross-check.

152. Specific factors which should be taken into account for both kinds of valuation include: the nature of the work undertaken by the practice, the sustainability of revenues, the concentration of client relationships in one individual (Mr Cotton) and the extent to which this might impact the risk of client loss, the risk profile of the practice including the age profile of the client base, historic trend of revenue as regards future sustainability and profitability, and the geographic location of the business. Market valuation trends are relevant. Open market transactions often have a claw back clause as a protection for the acquirer of the business against sudden loss of revenue from the change in ownership. Open market transactions may or may not involve acquisition of shares in a corporate practice.

153. There is a substantial difference between the experts' views about the valuation of AGLK. Mr Dodge's view was that the correct valuation of the company at 31st March 2015 was £450,000. That was based on a GRF approach (which produced a valuation of £450,000) while taking into account an EBITDA approach which produced £448,000. Ms Watts' view was that the correct valuation of the company at 31st March 2015 was between £136,000 and £155,000. That was the sum produced by her approach to GRF and taking into account her EBITDA approach which produced £265,000.

154. In terms of GRF, the differences between the two experts can be seen in the following table:

	Dodge	*Watts*	
Gross recurring fees:	450,000	374,000	
Fee multiple	1.00	0.65	[*or 0.70*]
GRF valuation	450,000	243,100	
Clawback		(37,400)	
Goodwill based valuation	450,000	205,700	
(Based on WIP adjusted fee multiple after clawback)			
Value of WIP		31,000	
Adjusted goodwill value inc WIP		236,700	
Total asset based adjustments excl WIP		(100,418)	
Final valuation (rounded)	£450,000	£136,000	[*or £155,000*]

155. Using a multiple of 0.70 Ms Watts' figures, which are otherwise the same, produce the rounded GRF valuation of £155,000.

156. It can be seen therefore that on the GRF valuation there are three issues: what should the figure for gross recurring fees be? What multiple should be applied (which may include dealing with clawback)? And what adjustment should be made (if any)?

157. In terms of EBITDA, the differences between the two experts can be seen in the following table:

	Dodge	*Watts*
EBITDA:	160,000	106,000
Multiple	2.8	2.5
Earnings based on valuation of goodwill	*£448,000*	*£265,000*

158. The major difference is as to the correct figure for EBITDA. There is also a lesser dispute about the magnitude of the multiple.

159. I start with the determination of gross recurring fees itself. Both experts produced their figures by analysing historic revenues and making adjustments. Both approaches involve judgment and so the number chosen will not be the same as any actual figure. Mr Dodge's approach was based on a weighted average during the two years up to 31 March 2015 and taking into account the mix of practice types and the spread across the client base. His figure of £450k is somewhat less than the figure he used for fees receivable in 2014 (£458k) and somewhat higher than the figure for 2015 (£431k). Ms Watts' figure was derived from the gross fee income in the five years 2011 to 2015. She took into account only fees from clients who had been billed in three out of the last five years and excluded fees from specialist work, then making an allowance for an estimate of the recurring fee level that might come from those clients. In the five years analysed by Ms Watts the figures she used for the total revenues billed to clients (ex VAT) were £537k, £575k, £547k, £519k, and £447k respectively.

160. Overall, I prefer Mr Dodge's approach to that of Ms Watts because Ms Watts' approach produces a figure (£374k) which is consistently substantially lower than the

actual total billed revenues. I understand her reasons for making the adjustments she does but in my judgment Mr Dodge's method is preferable. A difference from actual billed revenues is not significant but the consistency of the difference in Ms Watts' approach causes me to prefer Mr Dodge's method. I find the figure for GRF should be £450,000.

161. In terms of the multiple (for both GRF and EBITDA), the experts were essentially agreed about the factors which were relevant to setting an appropriate multiple, such as fee growth over the period, the age profile of key staff (esp. Mr Cotton) and clients, and bad debts. They were exercising their professional judgment about the risk to the future fee income, based on those factors. As I have said already, I was not persuaded that the differences in their experience really accounts for any major differences in their views. In my judgment the evidence shows that there is simply room for different genuinely held views on issue of this kind. Mr Dodge's view was that multiples of 0.8 to 1.2 were found with a willing buyer and seller and in this case the risk to the income stream was a balanced one. Ms Watts' view of risk was somewhat higher than that, particularly given the age profile of the clients and the position of Mr Cotton.

162. I am not satisfied a separate adjustment for clawback would be used in this case. Rather a willing buyer and seller would take risk into account in the multiple. In my judgment Mr Dodge's view slightly understates the risk a willing buyer would consider viewing the nature of this business but Ms Watts' approach somewhat overstates the risk too, especially in the years immediately after a purchase. The approach which seems to me to be the fairest is to take a figure for each multiple which is between the figures from each expert. I also take into account evidence that Mr Morgan himself gave at the interim stage. This referred to using a multiple of 1.1 - 1.2 to value businesses of this kind.

163. I find the multiple for GRF which best reflects the circumstances will be 0.90 (90%) and the multiple for EBITDA will be 2.7.

164. Ms Watts' approach to GRF is on the basis that a purchaser would not buy the shares of the company and all existing assets and liabilities but would purchase certain assets (goodwill and work in progress at 85% of book value) and the business. This approach is taken because the buyer would regard the purchase as high risk for a number of reasons. These are summarised in para 5.1.2 of her report. They are: non-trading financial liabilities (loans and funds owed to previous partners), the previous financial difficulties of the company, the repossession of the premises in Kingsbridge, the reliance on Mr Cotton, a potential tax liability if Mr Cotton is assessed as an employee and the aging of the debtors.

165. Mr Dodge did not agree with this approach. His view was that as the tangible assets and liabilities of the practice were broadly equal as at March 2015 the underlying asset base of the practice should neither add nor detract from its value as at that date. Therefore it is not necessary to assume assets would realise less than their net book value as included in the practice accounts. His assessment of risk has been mentioned already.

166. In my judgment Ms Watts' approach to risk is too pessimistic. There had been financial difficulties but by 2015 the business was on a secure footing. Also despite

the difficulties (financial and with the premises) the company had been earning a fairly steady turnover for the previous five years. The position of Mr Cotton is a risk but a purchaser would take that risk into account in setting the multiple. I find that a willing purchaser would take Mr Dodge's approach to assets.

167. Separately on work in progress Mr Dodge did not believe a work in progress adjustment was needed because the approach in the accounts had been to take a prudent view by reducing the level of work in progress at each annual accounting date. I accept that opinion. No adjustment needs to be made for work in progress.

168. Ms Watts also made an adjustment for bad debts. Mr Dodge accepted that an adjustment for bad debts would be made if they were significant, but he did not accept the figure used by Ms Watts. Mr Dodge said that historically the bad debts had been low and bad debts recorded between 2015 and 2017 were £340. Ms Watts replied that there can be difficulties getting in debts when a business is sold. I accept that on sale there might turn out to be more bad debts than when a services business like this is trading continuously but I find that for valuation purposes the risk of bad debts in this business would not be regarded as significant.

169. Based on these decisions, it seems to me that the consequences are that a valuation based on GRF would be:

GRF	£450,000
Multiple	0.90
Asset and WIP adjustments	none
Bad debts adjustment	nil
Valuation	*£405,000*

170. I turn to EBITDA. Both experts calculated EBITDA by taking figures reported in the accounts and making adjustments for factors such as adding back in depreciation and for a management fee and also making further adjustments. Save for a point on Mr Dodge's adjustments for salaries in 2015, the differences between the two (including Ms Watts' other criticisms of other adjustment made by Mr Dodge) seemed to me not to reflect differences in principle but rather to reflect a range of reasonable opinions.

171. Mr Dodge's adjustment for salaries in the accounts for the year to 31st March 2015 was the most significant adjustment made by Mr Dodge but not Ms Watts. The cost of salaries in that year was £224,859 which includes two round figure charges of £100,000 made by AGLPE to AGLK. Mr Dodge sought to work out what the actual salary costs were but Ms Watts did not agree with this since AGLK did not employ the staff, rather they were sub-contracted from AGLPE and so the figure used in the statutory accounts of AGLK should be employed. Ms Watts also said that the figure used produced a sensible accrual gross profit consistent with historical figures whereas without it the gross profit would be 90% which was clearly wrong. I accept Ms Watts' criticism of Mr Dodge's approach to salary cost adjustment. Her cross-check of the gross-profit figure was convincing support for her point.

172. I do not have a figure for what Mr Dodge's EBITDA would be after the adjustment I have rejected. It would obviously be lower than £160,000 but I infer more than Ms Watts' £106,000. With the multiple I have determined for EBITDA of 2.7, that

produces a lower bound figure of £286,000 (from Ms Watts). The multiple applied to Mr Dodge's figure I have rejected would produce £432,000. To get a feel for the results, if Mr Dodge's EBITDA derived without the salary adjustment was £130,000, the resulting figure would be £351,000.

173. I have considered whether I should defer reaching a conclusion on valuation until I know what Mr Dodge's recalculated EBITDA figure would be. However given the figures I now have and since, in the end, both expert's valuations were based on using the GRF, with the EBITDA value as a cross-check, it is not necessary to wait for recalculated numbers. On any view the EBITDA figures are likely to be lower than the £405,000 produced by GRF but not a figure so different from the GRF valuation so as to indicate that it was flawed.

174. I find that as at 31st March 2015 the company's value was £405,000. I am fortified in that conclusion by the fact that the company was thought to be worth £400,000 in 2011 when the shareholder's agreement was signed.

Findings based on list of issues

175. A convenient list of issues was provided by counsel for Ms Sudicka. It was divided into issues arising on the Part 7 claim and on the petition. Although today the dispute is really about the petition, it is convenient to approach the issues this way. Some of this is repetition of points already covered in the narrative but it is convenient to deal with everything here. A reference to the number of the issue in the list will be included.

Issues in the Part 7 proceedings

176. [1] As to the articles of association which were supposed to be adopted following the 2011 agreemnent: they were not adopted and Mr Morgan is in breach of the 2011 shareholders agreement for failing to procure their adoption. Contrary to Mr Morgan's pleaded case, neither the company nor its members consented or acquiesced to the company continuing to operate under the original articles. Ms Sudicka sought an order for specific performance requiring a resolution and adoption. As things now stand it is not clear to me that this would serve any useful purpose.

177. [2] The transfer of 2% of the shares in AGLK from Ms Sudicka to Mr Morgan to satisfy the ICAEW requirement. This was not a gift from Ms Sudicka to Mr Morgan. At all material times after April 2012 he held them on trust for Ms Sudicka. She was the beneficial owner.

178. [3] There were two agreements in the summer of 2012. There was a first agreement binding on all three of Ms Sudicka, Mr Morgan and Mr Cotton whereby in return for the loan from Mr Hocking (procured by Ms Sudicka) and her personal guarantee in respect of AGLK's liabilities to Lloyds Bank, AGLK would buy back Mr Cotton's 1,683 shares and Mr Cotton would receive £50,000 on different terms from the way he would have received it pursuant to the terms of the 2011 agreement. There was also a second agreement between Mr Morgan and Ms Sudicka, on the footing that following the implementation of the first agreement, they were in substance the only shareholders in AGLK, that AGLK would issue 1683 shares to Ms Sudicka, in effect causing what were Mr Cotton's shares to pass to Ms Sudicka. One way of looking at

consideration for this second agreement was the cooperation of Mr Morgan and Ms Sudicka to procure Mr Cotton's agreement to the first agreement.

179. [3.1] Part of Ms Sudicka's case is that the loan from Mr Hocking was a loan from Mr Hocking to her and then from her to the company. I do not accept that. It was a loan from Mr Hocking to the company.

180. [3.2] Part of the defendants' case in the Part 7 claim was that the personal guarantee by Ms Sudicka was entered into not because of the 2012 agreement but because Lloyds Bank required it. Lloyds Bank did want it but Ms Sudicka's provision of the guarantee, after Mr Cotton had pulled put, was part of her agreement to the terms in 2012.

181. [3.3] The terms on which 1683 shares would be issued to Ms Sudicka was not a gift, it was a term in the second agreement.

182. [3.4] The agreement of Mr Cotton to the first 2012 agreement was not procured by duress or unfair pressure. It should not be set aside.

183. [3.4.1- 3.4.4] I have dealt with the failed buy back of Mr Cotton's shares above and also the shares allotted to Ms Sudicka.

184. [3.4.5] This issue relates to relief and I will deal with it at the end.

185. [3.5] Mr Morgan and Ms Sudicka agreed that Ms Sudicka be allotted 1683 shares in 2012. It would not have been a gift to Ms Sudicka. Such an agreement would have been contrary to clause 2.4 of the 2011 Shareholders Agreement and so would have required a variation in writing (clause 16.1) before it was executed but by that time the only relevant shareholders beneficially were Mr Morgan and Ms Sudicka and that could have been done.

186. [4]/[4.1] – [4.3] I have dealt with the 2013 agreement above.

187. [5] After the personal relationship between Ms Sudicka and Mr Morgan ended, Mr Morgan's actions were not simply intended to protect AGLK from Ms Sudicka, as he contended. He was acting to oust her from the company.

188. [6] The transfer to Mr Morgan of £70,000 on 22nd June 2015 was on his own instructions. It was wrong and a breach of his duties as a director of the company. It was not a loan. Mr Morgan did not genuinely fear that Ms Sudicka would abscond with the money and preventing that was not his motive for taking the money. He took it to deprive the company of it.

189. [7] The purported removal of Ms Sudicka in August 2015 was not effective for the reasons already given.

Findings on the Part 7 claim – conclusion

190. In April 2015 Mr Morgan started excluding Ms Sudicka from the company. At that time in law three individuals held shares, Mr Morgan, Ms Sudicka and Mr Cotton (because the buy back was ineffective).

191. Working out the numbers of shares to which legal title was held by the various individuals at this time is not simple. Doing my best, it is:

    i) Mr Cotton 1,683 (failed buy back)

    ii) Mr Morgan 5,204 (51% of 10,200 shares)

    iii) Ms Sudicka 4,996 (49% of 10,200 shares)

192. However, irrespective of the legal title, as between Mr Cotton and the other two, he has no right to assert that he holds any shares at all, nor does Mr Morgan have any right to assert to Ms Sudicka that Mr Cotton holds any shares. As between Mr Morgan and Ms Sudicka, Mr Morgan has no right to deny that she is beneficially entitled to 50% of the shares in the company nor to claim any right to act on the basis that he holds a larger shareholding that her, save only in relation to the ICAEW (which is irrelevant).

Findings in relation to the petition

193. [8] Counsel for Ms Sudicka and counsel for Mr Cotton submitted that the company was a quasi-partnership. Mr Morgan's defence denies that that is so, pointing to clause 12 of the 2011 Shareholders Agreement which expressly provides that there is no partnership between the shareholders. I was not addressed in any detail on this. In my judgment, despite the terms of clause 12, by the time Mr Heath had left and Mr Donovan ceased to be involved in March 2012 the relationship between the remaining shareholders of AGLK (i.e. Mr Morgan, Ms Sudicka and Mr Cotton) did amount to a quasi-partnership. It was a small business. Of the three members, two were directors and, in the case of Mr Cotton, although not a director he was entitled to attend board meetings and exert an influence by expressing his views. There was a relationship of trust and confidence between the members.

194. [9] Ms Sudicka relied on seven acts said to be unfairly prejudicial to her interests as a member. Taking them in turn:

    i) The failure to register the articles after the 2011 agreement was (in part) an act of the company. It could have been prejudicial to Ms Sudicka although overall I doubt it matters.

    ii) The failure by Mr Morgan to honour the basis on which he held a small number of Ms Sudicka's shares to satisfy the requirements of the ICAEW seems to me to be an act of Mr Morgan. It is prejudicial but not an act of the company.

    iii) The failure to implement the 2012 agreements, by failing to buy back Mr Cotton's shares, was an act (or omission) of the company. It does or at least could prejudice Ms Sudicka' interests as shareholder since it tends to reduce the relative size of her shareholding.

    iv) If I had found that Mr Morgan had not executed the stock transfer pursuant to the 2013 agreement then it would be prejudicial to Ms Sudicka but does not seem to me to be an act or omission of the company.

v) The transfer of £70,000 to Mr Morgan was an act of the company and clear prejudice to Ms Sudicka.

vi) (and (vii)) The purported removal of Ms Sudicka as director in 2015 was prejudicial to Ms Sudicka but it was the act of Mr Morgan as a shareholder. I do not see how it was an act of the company.

195. [10] The purpose of the injunction was to preserve the status quo and prevent assets and value being depleted. It singularly failed in that respect, owing to the actions of Mr Morgan, Mr Garton and Mr Crocker.

196. [11. 11.1-11.5] Mr Morgan, for his personal benefit as AGLST, sought to divert AGLK's business and clients to himself. He did this directly by arranging for the company to send the client letter described above. This was a clear breach of his director's duties.

197. Ms Sudicka contended that Mr Morgan also rendered AGLK worthless. I agree. He did that in a number of ways, including the following. First by purporting to resign as director knowing that that would mean the ICAEW rules prevented AGLK from being a chartered accountancy business. Second by installing Mr Garton and Mr Crocker as directors. They were each wholly unsuitable to be the directors of a professional services firm, even if all they really had to do was get in the debts (which was what Mr Morgan's scheme purported to have them do).

198. [11.2] The events after Mr Morgan purported to resign on 31st July 2017 amounted to the working out of the scheme which Mr Morgan had already planned and set up before he purported to resign. That in itself was a breach of his duties. [11.3] In any event he remained a de facto or shadow director of AGLK.

199. [11.4] Mr Garton and Mr Crocker knowingly assisted Mr Morgan in the working out of his scheme to transfer the business to himself. They acted in breach of their duties as directors. The activities of AGLK under the directorship of these two individuals amounted to the conduct of the affairs of the company in a manner prejudicial to the interests of Ms Sudicka as shareholder. The company of which she was a shareholder was stripped of its value.

200. [11.5] I will deal with Mr Cotton's involvement below.

201. [12] Mr Morgan concealed the AGLK book keeping files from Ms Sudicka and, after the court's injunction, he set up a second SAGE account. I infer that the true purpose for doing all this was to prevent information passing to Ms Sudicka. That was to help exclude Ms Sudicka from the affairs of the company and for no other purpose. There was also a dispute about the provision of bank statements (issue [13]) but as far as I am aware it is not necessary to resolve it.

202. The following acts, some of which have been mentioned already, also amount to the conduct of the company's affairs in a manner prejudicial to Ms Sudicka as a shareholder:

i) [14] The transfer of the staff to AGLST in 2016 and overcharging by AGLST for their work at AGLK;

ii) [15] Mr Morgan transferred certain software licences for software used by AGLK to another company he controlled. Although a minor matter overall, there was no justification for this at the time it was done and I find it was part of Mr Morgan's scheme to destroy AGLK;

iii) [16] The second removal of Ms Sudicka as a director in June 2017 is pleaded as an act of unfair prejudice. It was, because she was entitled to be a director, but I believe nothing much turns on it.

iv) [17] The diversion of clients of AGLK to AGLST was an act of unfair prejudice in the conduct of the company's affairs. It is not clear it was pleaded as such but the respondents would not be prejudiced in these proceedings by considering it that way.

203. [18] I decline to consider the validity of the appointments of Mr Garton or Mr Crocker because I am not aware it has a bearing on anything I have to decide. Mr Morgan, as a director, procured the appointment of both individuals. This amounted to the conduct of the company's affairs in a manner prejudicial to Ms Sudicka as a shareholder. So also were the following further activities:

i) The excessive pay to Mr Garton and Mr Crocker [19];

ii) The purported resignation of Mr Morgan to facilitate his scheme to strip AGLK of its assets and business and his continuation of his scheme after that as a de facto director [20];

iii) The termination of Ms Sudicka's AGLK email account and the company's Microsoft Office 365 licence [24].

204. [21] Ms Sudicka contended that monthly sums paid by Mr Morgan to himself after 2015 were excessive and not genuinely for accountancy services or any services rendered to the company. The payments until a date which may be October 2016 or earlier were £537.50 per month and after that the monthly sum as £5,000. I am sure the £5,000 per month was entirely unjustified, a breach of his director's duties, and part of the conduct of the company's affairs in a manner prejudicial to Ms Sudicka as a shareholder. I am not had my attention drawn to any evidence establishing that the earlier figure of £537.50 per month was unjustified.

205. There was a dispute about the website ([23]), about the bank account in the period after July 2017 ([25]) and about refusal of access to information about AGLK on dates in October-November 2017 [28]. In the overall scheme of things these are not a major part of the case and I decline to make findings in relation to them.

206. There was a point ([26]) whether AGLK was entitled to some of the money paid to Mr Morgan and other former directors (Mr Donovan and Mr Heath) arising from settlement of the RBS interest rate miss-selling claim. I am not satisfied any funds which belonged to AGLK or to which AGLK had a claim have been diverted.

207. AGLK paid legal fees for Mr Morgan's defence of the Part 7 claim brought against him by Ms Sudicka ([27]). That amounted to the conduct of the company's affairs in a manner prejudicial to Ms Sudicka as a shareholder.

Conclusion of findings on the petition

208. I have accepted much but not all of Ms Sudicka's case on the petition. What I have accepted amounts to a litany of events which involve the management of the affairs of the company orchestrated by Mr Morgan. That conduct was prejudicial to Ms Sudicka as a shareholder and that prejudice is plainly unfair. I am satisfied that all three limbs described in ***Neath Rugby Ltd (No 2)*** are made out.

The remedy

209. Having found that Ms Sudicka's case is essentially proved, I turn to consider the appropriate remedy. The relevant point in time to consider the matter is April 2015 after their relationship had ended and at the point Mr Morgan began the acts complained of. At that time Ms Sudicka was a shareholder with legal title to a substantial shareholding in the company AGLK. She was beneficially entitled to 50% of the company. Its value at that point was £405,000. Mr Morgan is personally responsible for the unfair prejudice suffered by Ms Sudicka as a shareholder of that company, whose value is now nil. Nothing in Ms Sudicka's conduct would justify a departure from what I would regard as the appropriate remedy in those circumstances, i.e. to order him to purchase her 50% beneficial interest in the company for £202,500. I will hear the parties as to the exact terms on which that order should be made.

210. Counsel on Mr Garton's and Mr Crocker's behalf pointed out (i) that they had not sent the letter to clients in July/August 2017 and (ii) that there was no evidence or suggestion that they had been involved in persuading Mr Cotton to move from AGLK to AGLST. I accept that and so to that extent they are less culpable than Mr Morgan, but that does not mean they bear no responsibility. They personally bear a significant share of the responsibility for the demise of AGLK. Counsel also referred to the insolvency advice that AGLK was insolvent before they were appointed. I do not accept that is an excuse for their conduct. If the company was truly insolvent that was due entirely to the actions of Mr Morgan while he was a de jure director and which they knew about. It never occurred to Mr Garton or Crocker to consider or investigate any of this. Given the existence of the injunction, without the involvement of Messrs Garton and Crocker, I doubt Mr Morgan would have been able or willing to do what he did from July 2017 onwards in order to take the business for himself.

211. I am satisfied that their actions are so connected with the unfairly prejudicial conduct that it would be just to order a remedy against them. Overall I find that they should be jointly and severally liable with Mr Morgan. The extent of that liability is addressed below.

212. Turning to Mr Cotton, as it happens he is in fact a member of the company and so s996(2)(e) applies to him.

213. In terms of the quasi-partnership analysis, in the period when no-one thought Mr Cotton was a shareholder, he could not be said to be a member of any quasi-partnership. I will take that period as from 6th September 2012 until 7th August 2015. However from the meeting on 7th August 2015 onwards Mr Cotton knew that Mr Morgan was saying he still held shares. Mr Cotton later received dividends, orchestrated by Mr Morgan, on the basis that he was a shareholder. I hold that the equitable obligations of trust and confidence owed by Mr Cotton to the other

members (Ms Sudicka and Mr Morgan) prior to 6th September 2012 resumed from 7th August 2015 onwards.

214. Counsel for Mr Cotton submitted that he should not be liable to Ms Sudicka. In summary the reasons were as follows. He was never a director. He was pressurised into the 6th September 2012 agreement by Mr Morgan and Ms Sudicka. He was unaware that his shares which were to be bought back were to go to Ms Sudicka. He was unaware of the 2013 agreement between Ms Sudicka and Mr Morgan. When things started going wrong in 2015, he acted in the best interests of the staff and the clients to protect them. It was not a personal issue with Ms Sudicka. He granted the proxy to Mr Morgan in 2015 because he thought, because Mr Morgan told him, that it was necessary to enable the staff to be paid. As for 2017, he was severely ill and treated for cancer in periods in 2017 (in hospital in May, June, July and August 2017 and February and March 2018). He did not take part in the demise of AGLK.

215. I do not accept the whole of these submissions. I accept that Mr Cotton did not know all the details of whatever the arrangements about shares were between Ms Sudicka and Mr Morgan. However on his behalf Lisa Bond did receive emails in which aspects of this were explained and I am sure she told Mr Cotton about it. He will have been unaware of the details but in my judgment by early 2015 Mr Cotton will have been aware that the AGLK, the company running the business he worked for and which he had built up for decades, was owned broadly 50:50 by Mr Morgan and Ms Sudicka. I am sure it is true that Mr Cotton wanted to ensure the staff were paid when he signed the proxy but he did it after the meeting, as he explained in his oral evidence, and he must have known that at the time. So he knew the proxy was not straightforward and he must have understood that by taking this approach he was taking Mr Morgan's side. He did not, so far as I have been shown, make any effort to find out what Ms Sudicka's side of the story might be or who was right. Of more significance is what happened in 2017. I take into account Mr Cotton's illness. If he had done nothing at all in that period then that might be one thing. However in that period he was prepared to stop working for AGLK and start working for Mr Morgan personally as AGLST. Mr Cotton's move to AGLST was crucial (as the valuation experts opinions effectively indicate). I very much doubt Mr Morgan could have moved so much of the business to himself without Mr Cotton's willing participation. That applies to the clients and to the staff. He was a willing participant in the transfer of the business. At that time he also thought he was a shareholder in the company along with Ms Sudicka. Despite all of this there is no evidence Mr Cotton asked any questions about what was going on or why.

216. I find that Mr Cotton's actions were so connected with the unfairly prejudicial conduct that it would be just to order a remedy against him. I am quite satisfied Mr Cotton bears sufficient responsibility for the prejudice to Ms Sudicka, and its unfairness, that he should be jointly and severally liable with Mr Morgan, Mr Garton and Mr Crocker.

217. I turn to consider the extent of the liability of Messrs Garton, Crocker and Cotton. By s996(1), if the petition is well founded, the court may "make such order as it thinks fit for giving relief in respect of the matters complained of". It seems to me that this power is wide enough to allow the court to adjust the extent of liability of the various respondents by reference to the overall circumstances. No doubt in most cases the respondent shareholder(s) will be liable to buy out the petitioner's shares for their full

value and nothing further needs to be done. In this case that addresses the position of Mr Morgan. However also in this case I have found other individuals to be liable whose position relative to the company was different and whose involvement in the unfair prejudice itself was also different.

218. Turning to Mr Garton and Mr Crocker, they were not shareholders but they were directors, while Mr Cotton was not a director although he did unexpectedly turn out to hold some shares. All three were willing participants in the events of 2017 but neither Mr Garton nor Mr Crocker were involved prior to that. Mr Cotton's involvement before that was limited to the proxy, albeit that was not a trivial episode. The shares he turned out still to hold after 2012 were a smaller share that Mr Morgan's or Ms Sudicka's.

219. It seems to me that since what Mr Garton and Mr Crocker did was a clear breach of their director's duties, it is fair to make them liable to the full extent of loss flowing from that breach. Accordingly the extent of their liability for the sum due to Ms Sudicka should be the same as Mr Morgan's.

220. In relation to Mr Cotton, he is liable either as a shareholder responsible for acts of unfair prejudice or as a result of equitable duties arising as a member of a quasi-partnership due to that shareholding. Either way the extent of his liability alongside Mr Morgan for buying out Ms Sudicka seems to me to be something which ought to be in proportion to the relative shareholdings of Mr Morgan and Mr Cotton. Mr Cotton's shareholding is essentially one third of Mr Morgan's. In my judgment the extent of Mr Cotton's liability with Mr Morgan (and Messrs Garton and Crocker) should be one third of the sum due. That is £67,500.

Conclusion

221. I find the bulk of Ms Sudicka's case proved. She is entitled to be paid £202,500, being half the value of the company AGL Accountants Ltd (AGLK). Mr Morgan is liable for the whole of that sum. Mr Garton and Mr Crocker are jointly and severally liable with Mr Morgan for the whole of that sum. Mr Cotton is jointly and severally liable with Mr Morgan, Mr Garton and Mr Crocker for one third of that sum, i.e. £67,500.