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Case No: PT-2018-000293, CR-2018-004897

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE (CH D)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2020

Before :

Tom Leech QC (sitting as a Judge of the Chancery Division)

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Between :

NICOLA OBERMAN	**Claimant**
-- and –	
(1) SHAUN COLLINS **(2) BLUEGEN LIMITED**	**Defendants**

- -

Hearing Dates: 19-22 October, 9 and 12 November 2020

- -

Mr Jack Watson (instructed by **Payne Hicks Beach**) for the **Claimant**
Mr Robert Deacon and **Ms Stephanie Wookey** (instructed by **Bower Cotton Hamilton LLP**) for the **Defendants**

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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.

Tom Leech QC :

I. Introduction

1. In this judgment I will refer to the Claimant as "**Ms Oberman**", the First Defendant as "**Mr Collins**" and the Second Defendant as "**Bluegen**". It follows the trial of consolidated proceedings brought by Ms Oberman for a declaration that she is beneficially entitled to 50% of a number of properties held by the Defendants either under a common intention constructive trust or a partnership and for relief under sections 994 and 996 of the Companies Act 2006 on the grounds of unfair prejudice.

2. The first claim was commenced by a Claim Form dated 13 April 2018 and issued under CPR Part 7 (the "**Part 7 Claim**") and the second claim was commenced by petition dated 14 June 2018 (the "**Petition**") (as required under the Companies (Unfair Prejudice Applications) Proceedings Rules 2009). By Order dated 14 November 2019 the two claims were consolidated by Deputy Master Henderson and transferred to the Property, Trusts and Probate List.

3. Between July 1995 and December 2015 Ms Oberman and Mr Collins were in a long term relationship. In June 1996 their first child, Imogen, was born and in July 2000 their second child, Ethan, was born. On 16 September 1996 Bluegen was incorporated and registered under company registration no. 03249978 with a nominal share capital of 100 £1 ordinary shares. The company's name was derived from Imogen's given names, Imogen Blue. It was common ground that 51 £1 shares were issued to Mr Collins and 2 £1 shares to Ms Oberman, who was also appointed to be the company secretary.

4. On 1 September 2001 a further 47 £1 shares were issued to Ms Oberman and she was appointed to be a director of Bluegen together with Mr Collins. There was a dispute about the reasons for the issue of these shares. But it is common ground that since 2001 Mr Collins has been the registered holder of 51 £1 shares, Ms Oberman the registered holder of 49 £1 shares and that both Mr Collins and Ms Oberman have been directors of the company.

5. This dispute relates to 41 properties which are identified in the Appendix to this judgment (a "**Property**" or the "**Properties**"). The Appendix is based upon the agreed table of Properties which was put before the Court. Most were purchased before the relationship between Ms Oberman and Mr Collins came to an end although some were purchased later (and a number of leases were granted over existing Properties). The Properties fall into five categories and I will use the following definitions to refer to them:

   i) "**The Oberman Property**": is 207 Greenhaven Drive which is listed as Property No. 1 in the Appendix and is registered in the sole name of Ms Oberman.

   ii) "**The Joint Properties**": are listed as Property No. 2 to Property No. 8 in the Appendix and are registered in the joint names of both Ms Oberman and Mr Collins. They include 1 Clarenden Place, which is Ms Oberman's home.

   iii) "**The Bluegen Properties**": are listed as Property No. 9 to Property No. 18 in the Appendix and are registered in the name of Bluegen.

   iv) "**The Bluegen (SC) Properties**" are listed as Property No. 19 to Property No. 29 in the Appendix and are registered in the name of Mr Collins alone. They include a number of leases granted to him by Bluegen at 49 Elmdene Road and 251 Eltham High Street.

   v) "**The Collins Properties**": are listed in the Appendix as Property No. 30 to Property No. 41 and are also registered in the name of Mr Collins alone. They include 11 Wedgewood Court which is Mr Collins' home.

6. In this judgment I will use the term "**Property**" to describe any property which was acquired in the name of Ms Oberman, Mr Collins, their joint names or Bluegen and whenever it was bought or sold. Both parties gave evidence about the purchase and sale of a number of Properties apart from those listed in the Appendix and the purchase and sale of some of those Properties was relevant to some of the issues which I had to determine.

7. By the beginning of the trial the parties had helpfully narrowed the issues between them. Although she is the registered proprietor of the Oberman Property, Ms Oberman accepted that she held it on trust for herself and Mr Collins. For his part, Mr Collins accepted that the Joint Properties were held on trust for himself and Ms Oberman in equal shares and that he held the Bluegen (SC) Properties on trust for Bluegen. He also accepted that Ms Oberman was both the legal and beneficial owner of 49% of the shares in Bluegen. The principal issue between the parties over the ownership of the Properties, therefore, was whether Mr Collins was the absolute owner of the Collins Properties or whether he held on them on trust for himself and Ms Oberman.

8. On 14 August 2008 a second company, Thamesmead Lettings & Management Ltd ("**Thamesmead**"), was incorporated and registered under company registration no. 06673360 with a nominal share capital of 110 £1 shares. Ms Oberman was initially the holder of a majority of the shares but by a share transfer dated 24 September 2014 she transferred her 60 shares to Mr Collins. It was also common ground that until 31 August 2014 Ms Oberman was a director of Thamesmead and that after that date Mr Collins became the sole director.

9. On 18 March 2009 a third company, Blue Letts Ltd ("**Blue Letts**"), was incorporated and registered under company registration no. 06851635 with a nominal share capital of 1 £1 share. It was also common ground that Mr Collins was the legal and beneficial owner of the single share in Blue Letts and the sole director of the company. The financial arrangements between Bluegen and Blue Letts was one of the sources of Ms Oberman's complaint about Mr Collins' conduct.

10. At the Pre Trial Review on 11 September 2020 it was agreed that I should defer the question of expert evidence in relation to the valuation of Ms Oberman's shares in Bluegen until after the trial and revisit it then. It was also agreed that I would decide the Part 7 Claim and the question of liability on the Petition together with such factual findings and further directions as to valuation as I considered appropriate: see paragraphs 7 to 9 of the order.

11. Mr Collins also claimed that a number of the Collins Property were held beneficially for third parties. Mr Jack Watson, who appeared for Ms Oberman, proposed in closing submissions that the Court should adopt the following course if she was successful:

    i) The Court should declare Ms Oberman's interests in the Properties save for those in which Mr Collins claimed that third parties had an interest: 6 Barn End Drive (Property No. 31), 2 Chestnut House (Property No. 32) and 17 Hill View Drive (Property No. 36) (the "**Third Party Properties**").

    ii) A three month period should be given for the third parties who claimed an interest in the Third Party Properties to (a) notify their claims to Ms Oberman's solicitors and (b) if the claim was not agreed, to issue a claim to recognise their interests.

12. Mr Robert Deacon and Ms Stephanie Wookey, who appeared for Mr Collins, initially submitted that I should find in favour of Mr Collins on this issue and this remained their position in closing submissions. In the event I did not hear cross-examination on the ownership of the Third Party Properties and I return to the resolution of this issue below.

II. Background

13. In 1995 Mr Collins and Ms Oberman met and their relationship began. Ms Oberman was living at the time in a flat which she owned at 129 Wessex Drive Erith DA8 3AH and Mr Collins was living in a flat at 4 Warren Avenue Bromley BR1 4BW. They moved in together shortly before Imogen was born on 14 June 1996.

14. In late 1996, and after the incorporation of Bluegen, Mr Collins was convicted of false accounting and sentenced to six months in prison. He served a prison sentence of three months between January 1997 and March or April 1997. Before he went to prison, a property was purchased in Ivydale Road Bromley and registered in Ms Oberman's sole name which was later refurbished and sold

for approximately £60,000. At or about this time a second property in Endwell Road was also acquired.

15. Whilst he was in prison Mr Collins sent a number of handwritten letters to Ms Oberman (most of which were undated). She relied on the entire correspondence but the following extracts provide examples of the statements which Mr Collins made to her at the time:

> "There will be much to do and organise when I return and hopefully if your mum has the baby for a couple of hours we will go through everything so we know where we stand and what to do. One of my main aims will be to get out and find another flat or house to refurbish like Ivydale and then for you to finish work and get paid a salary or for me to give you money each month. I think we should have a decent car between us but that will not be the most important thing. I am actually getting very excited about doing so much together…..".
>
> "…..I am sorry that I keep writing to you asking you to remember and do things on a business front. I am sure that you have had enough….."
>
> "While I am thinking about it, it is important that you stay in contact with Stacey because the MBNA & Access will soon be screaming for their money, the breakdown is as follows: i) 2 months interests currently outstanding on both, ii) the remaining capital sum to be paid, iii) 5k to be paid on sale of Ondine, iv) 2k to be paid on this previously paid to S Smith. Being Sods Law by the time I get out Ondine will still be on the market."
>
> "….Still at the same time we must push on with future business, which brings me to Endwell Road. As I said on the telephone today try to speak firstly to Mark Dowding and get him to confirm that this person if his definitely wants to buy the property for 50-55k (try the higher) and that it is cash….."
>
> "Firstly, if you need money just take it. a) TF £500.00 to my barclays a/c from your Midland. This will cover the mortgage until the rent cheque turns up from Capitol letters. Tell Robert what's happened. This way there will be no problem with my Barclays A/C going O/D. b) Chase Mark Dowding re monies owed. £4,350……"
>
> "Speak to Mark Atkinson from Walter Saunders. Tell him what's happened. Tell him that you can deal with Endwell Road as you are the Comp. Sec. of Bluegen and that you are looking to turn the contract from 40k to 50k. Stacey said he wants to speak to him about it as well about buying Endwell."
>
> "I was also thinking of the Bluegen account. We have no headed paper at the moment and I wondered if you get time over the next

> month or so, why don't you get the guy who does letterheads to put some together for us to see what they look like."
>
> "I have now spoken to you this evening and I do feel that should [sic] stop work when I get back and that you can work if you want to. Now that the company is up and running I think that you can take a wage from me this is something I am totally in favour of as I feel Imogen should spend as much time with us and be settled as you said…."
>
> "I think that it will be important to chat and agree everything between us I so much want for our family to be strong and successful."
>
> "I know you have probably thought of this already but perhaps you should try the citizens advise [sic] again to see what your entitlements are. If the worst comes to the worst you will have to pay your mum and dad all the money in the Midland that we borrowed for the company!....."

16. After his release from prison Mr Collins came to live with Ms Oberman. In 1998 or 1999 Mr Collins and Ms Oberman purchased 124 Park Crescent Erith DA8 3DZ as their family home although the property was registered in Ms Oberman's sole name. It was common ground that the reason why it was registered in Ms Oberman's name was that it would be difficult for Mr Collins to obtain a mortgage.

17. In her witness statement Ms Oberman stated that the balance of the proceeds of sale after the mortgage loan came from the proceeds of sale of Wessex Drive and Warren Avenue. She could not recall the amount realised from the sale of Wessex Drive and it was put to her that it was a modest sum. In his witness statement Mr Collins stated that he paid the deposit of £52,000 and he also stated orally that Ivydale Road "had £53,000 in it".

18. Ms Oberman originally worked in her father's printing business doing secretarial work. She went back to work for a short period of time after Ethan was born and stopped working at the end of 2002 to care for the children. In 2006 Mr Collins and Ms Oberman separated although they were reconciled after a period of eight months. It was Ms Oberman's evidence that she agreed to take Mr Collins back on the basis that she would become more involved in the property business.

19. Between 1997 and 2008 Mr Collins worked with Mr Stacey Main and Mr Lee Amis, who had formed a company, Main Amis Estates Ltd ("**Main Amis**"). They operated an estate and letting agent's business collecting rents and servicing properties on behalf of landlords. In 2008 Main Amis went into liquidation and Mr Collins incorporated Thamesmead which traded as "**TM Estates**" and carried on a similar business.

20. On 5 October 2005 272 Greenhaven Drive (Property No. 35) was purchased in the name of Mr Collins and on 24 October 2005 207 Greenhaven Drive (Property No. 1) was purchased in the name of Ms Oberman. On 31 May 2006 and 2 June 2006 152 Greenhaven Drive (Property No. 34) and 116 Greenhaven Drive (Property No. 33) were purchased in the name of Mr Collins. The price paid for each property was £138,500.

21. On 2 August 2007 1 Clarenden Place (Property No. 2) was purchased in the name of Mr Collins and Ms Oberman for £500,000 following the sale of 124 Park Crescent. It became the family home in which Mr Collins and Ms Oberman lived with their children until the breakdown of their relationship and it still remains Ms Oberman's home. Mr Collins accepted that the equity from the sale of 124 Park Crescent was used as the deposit for 1 Clarenden Place.

22. On 22 April 2008 21A Redbourne Drive (Property No. 38) was purchased in the name of Mr Collins for a purchase price of £117,500. A memorandum of sale dated 7 January 2008 stated that the original purchasers were to be Mr Collins and Ms Oberman. An online application form to the Bank of Ireland was completed in the name of Mr Collins alone (although it showed that mortgage payments were to be made out of the joint account of Mr Collins and Ms Oberman at First Direct).

23. By letter dated 25 February 2008 Mr Collins and Ms Oberman also wrote to Mr Paul Shephard (who appears to have been a mortgage broker) under the caption 21A Redbourne Drive stating: "Further to our recent conversation regarding our purchase of the above noted five properties and how we would like to construct the deal." Between 31 March 2008 and 22 April 2008 and in addition to 21A Redbourne Drive five other Properties, 5A, 9A, 11A, 13A and 19A Redbourne

Drive (Property No. 4 to Property No. 8) were acquired in the joint names of Mr Collins and Ms Oberman. The price paid for each property was £117,500 and three of the completions took place on 22 April 2008 (the same day as 21A Redbourne Drive itself). On 6 June 2008 182 Congleton Grove (Property No. 3) was also acquired in the joint names of Mr Collins and Mr Oberman for £150,000.

24. Following the collapse of Main Amis and the formation of Thamesmead the number of Properties acquired by Mr Collins and Ms Oberman continued to grow. For example, under cover of a letter dated 8 May 2009 Harris Ingram, a firm of estate agents, wrote to Mr Collins and Ms Oberman enclosing a memorandum of sale for the purchase of 15A Redbourne Drive (Property No. 30). However, by letter dated 24 July 2009 Mr Andrew Currie of Walter Saunders, Mr Collins' solicitors, wrote to Mr Collins and Ms Oberman confirming that the Property had been registered in the name of Bluegen and enclosing an official copy of the register.

25. On or about 10 November 2009 Walter Saunders sent Mr Collins a bill showing that 15A Redbourne Drive had been transferred into his sole name. On the same day Mr Collins charged the Property to the NatWest to secure a loan for £86,250 and £85,559.25 was credited to Mr Collins' First Direct personal bank account. Although the Property was originally purchased in the name of Bluegen and then transferred into Mr Collins sole name, rent statements from Thamesmead in 2013 were being addressed to both Mr Collins and Ms Oberman. Moreover, Mr Collins recorded that the Property was jointly owned with Ms Oberman in his tax return for the year ended 5 April 2015.

26. Thamesmead also began to produce a series of spreadsheets for Mr Collins identifying the Properties which it managed on his behalf. The spreadsheets set out the legal ownership of each Property, the identity of the lender, the current valuation, the amount of the mortgage and the rental income. An early version, which must have been produced soon after the original purchase of 15A Redbourne Drive, showed that Mr Collins, Ms Oberman and Bluegen owned sixteen properties between them with a total value of £2,395,000 and a rental income of £150,000. The "Ownership" column contained the following entry

for 15A Redbourne Drive: "Bluegen/Coll/Obe". It also confirmed that 15A Redbourne Drive was the first property purchased in the name of Bluegen rather than in the name of Ms Oberman, Mr Collins or their joint names.

27. By March 2013 the number of Properties and their value had increased considerably. Under cover of an email dated 19 March 2013 Ms Chelsea Brown, who was described as an "Admin Assistant" at Thamesmead, sent a spreadsheet to Mr Collins which she described as "Overlook A.xlsx". The subject line of her email was "Portfolio". Mr Collins was unable to explain what was meant by "Overlook" but his evidence was that these spreadsheets were prepared by Thamesmead for his then accountant, Mr Malcolm Grimes, for the purpose of preparing the accounts of Bluegen, Thamesmead, Blue Letts and Mr Collins personally. Unfortunately, Mr Grimes died in 2015.

28. The spreadsheet dated 19 March 2013 showed that the Properties which Bluegen, Mr Collins and Ms Oberman held between them had a value of £4,905,000, a rental income of £193,015.32, mortgage costs of £93,350 and other costs of £40,158. A later spreadsheet dated 17 September 2013 showed that they now held 26 Properties with a total value of £5,410,000.

29. By email dated 18 May 2014 Mr Collins wrote to Ms Mandy Gill of Promise Solutions, an intermediary, explaining how this had been achieved. In the first paragraph he described Bluegen as "our primary business vehicle especially active for the last three years". He continued:

> "In 2008 TM Estates was set up. An Estate agency for residential lettings and sales. It has been the vehicle for both Nikki and I and many of our clients with their properties. The collapse of the housing market in 2008 and its gradual increase to its current position, we have worked tirelessly to maintain a strong position with this business, which has some 150 managed properties and a regular sales portfolio."
>
> "In 2009 Blue Letts property maintenance was incorporated in order maintain [sic] the managed properties of TM Estates and more recently the conversion of properties owned by Bluegen Limited. It now actively works as contractors for large property management companies and now employs over fifteen CIS employees. Blue Letts currently rents a lock up/yard at the cost of £10,000 per annum."

30. By email dated 5 June 2014 Mr Collins also wrote to Mr Richard Turnill of Glenny, a commercial agent. He gave a brief history of TM Estates, Blue Letts, Bluegen and a company called Just Legal Ltd. He continued as follows:

> "Private rental portfolio. I and my partner nikki oberman who is co-director of Bluegen own in excess of twenty residential properties which are managed, maintained, and sold by all of the above."

31. On 22 October 2008 Mr Collins had made a will leaving his entire estate to Ms Oberman (and on the same day she had made a will in similar terms). On 23 September 2014 and the day before Ms Oberman transferred her shares in Thamesmead to Mr Collins at his request, he sent her an email. After giving her some detailed information about various projects, he stated as follows:

> "I would ask to meet with you to discuss these and all the properties further to work out a proposal/plan to move forward so our children and us are secure Nik as far as I am concerned this has all been purchased for the benefit of both of us irrespective of whether they have been purchased in my name, your name, joint name or in Bluegens. I feel this was demonstrated by the way we worded our will. I am happy to take any steps that we can to put your mind at rest and therefore putting our families best interest and securing our financial future."

32. Under cover of an email dated 18 November 2014 Ms Alison Armstrong, who kept the books and prepared the internal accounts for Thamesmead, Bluegen and Blue Letts, sent an updated spreadsheet to a Mr David Szadorski with a copy to Mr Collins. It now contained thirty-three Properties with a total value of £8,240,000, equity of £3,037,058.51 (after deduction of the outstanding mortgage debts), monthly rental income of £29,362.50 and monthly mortgage payments of £14,467.66. The entry for 15A Redbourne Drive in the ownership column stated that it was owned by Mr Collins and Ms Oberman jointly. In the subject line of her covering email Ms Armstrong described it as a "Property Portfolio" and then stated: "Please find attached the most recent property portfolio list for Shaun/Bluegen."

33. On 4 February 2014 Bluegen completed the purchase of the freehold of 49 Elmdene Road (Property No. 18) for £180,000. On 19 December 2014 Bluegen

granted long leases of Flats 1 to 3, 49 Elmdene Road (Property No. 19 to No. 21) to Mr Collins personally. I was not taken to the leases themselves although the agreed table of Properties recorded that they were granted for nil consideration and Mr Deacon did not challenge this. The completion statement in the trial bundle shows that he charged the three flats to Kent Reliance Banking Services for a total net mortgage advance of £478,689. Walter Saunders' fee note for these transactions described them in the following way:

> "Professional fees in connection with the refinance of the three flats at the above property to include drafting and preparation of three leases and the dealing with the mortgagees solicitors…"

34. Under cover of an email dated 6 February 2015 Ms Armstrong sent an "updated portfolio spreadsheet" to the NatWest. In the covering email she referred to a number of new Properties. These included 1A Northumberland Close (Property No. 9) which had been acquired in the name of Bluegen on 21 March 2014 as the "Royal Oak Office" for the various companies. They also included 59 Sweyn Road (Property No. 12) which was acquired in the name of Bluegen on 8 January 2015 and Redbourne Drive Communal (Property No. 10) which was also acquired in the name of Bluegen (although completion or registration did not finally take place until 9 March 2016).

35. In December 2015 the personal relationship between Mr Collins and Ms Oberman came to an end. In an undated text which the parties accepted was sent in early 2016 Mr Collins wrote to Ms Oberman giving her the following assurance:

> "I have said that we can split the house in your favour, 50/50 on portfolio, less me settling the car, and splitting Bluegen equally from our share."

36. By email dated 21 March 2016 Mr Collins also wrote to Mr Andrew Wilson of Simpson Wreford & Co, who had taken over from Mr Grimes as Mr Collins' accountant and the accountant for the various companies, stating that he would supply Mr Wilson with the following information:

> "I will also supply you the following: 1. The chronological purchase and sale inventory of all properties that I, Nikki or

> Bluegen have been involved in since 2005. (This period is notably around the demise of Mains Amis Estates, the start of Nikki and my portfolio. The evolvement of Bluegen/(SC under the guise, capitalising of Bluegen. 2. A proposal to Nikki in relation to the sale of the entirety of all properties (including all related debts, and the estimated timescales and reasons involved)."

37. On 12 April 2016 there were a series of email exchanges between Mr Collins and Ms Oberman. In an email timed at 13.20 Mr Collins set out some detailed proposals and at 13.56 Ms Oberman replied asking: "So I can take that as an official offer to take to the solicitors? You have not mentioned how you propose to spilt [sic] the properties percentage wise wether [sic] personal or Bluegen." At 14.10 Mr Collins replied: "The properties would be 50/50% of your and my profit."

38. Later on 12 April 2016 at 18.28 Ms Oberman wrote back to Ms Collins stating that a meeting was needed to discuss both the Bluegen and personal Properties. She also stated that she had no idea what was going on and that: "you seem to be transferring Bluegen properties to your sole name and putting charges against others which I did not agree to and have no knowledge of". At 18.51 Mr Collins replied asking for dates and at 19.30 Ms Oberman wrote back stating as follows:

> "I cannot make sense of some of the files, why monies come from one account then another account pays the monthly mortgage etc. As you say I know nothing, I am asking you to explain them to me, there is no need to become so defensive. I told you I was unwilling to buy Eltham High street, you went ahead charging properties fir [sic] the mortgage."

39. By email dated 17 May 2016 Mr Collins wrote to Mr Wilson again setting out some detailed proposals in relation to a number of the Properties. He began the email in the following way:

> "Trying to keep everything as simplistic as possible. I'm happy to split all assets 50% each, following the settlement of any loan charge and any JV ventures…..The following properties are either in sole or joint names and have no external investors to consider."

40. The list of Properties which Mr Collins gave in this email included not only the Joint Properties and the Oberman Property but also six Collins Properties: 15A Redbourne Drive (Property No. 30), 116 Greenhaven Drive (Property No. 33), 152 Greenhaven Drive (Property No. 34), 272 Greenhaven Drive (Property No. 35), 1A Redbourne Drive (Property No. 37) and 21A Redbourne Drive (Property No. 38). Following the list he stated: "Therefore from the sale of each of these we will both receive 50%."

41. By email dated 2 June 2016 Ms Oberman wrote to Ms Armstrong asking her to provide the trial balance figures for her accountant. By letter dated 2 August 2016 she wrote again about the accounts this time to Mr Collins himself:

> "As we agreed at our meeting on 23rd May regular management information would be provided. The deadline for submitting Bluegen Limited accounts was 30th June 2016 and I anticipated receiving final statutory and management accounts from that point. However, we are at the stage where we still have only draft year end accounts and no management accounts.
>
> In light of this I am now going to exercise my right under s476 of Companies Act 2006 and require an audit of Bluegen's statutory accounts for the year ended 30th September 2016. This is purely a protective measure on my part. Should I receive accurate, timely and meaningful information going forward I will be more than willing to retract my request for an audit of Bluegen Limited."

42. By email dated 17 October 2016 Ms Oberman wrote to Mr Collins again this time complaining that she had received no information about an open day relating to a Property called 43 Whernside Close. After a further exchange Mr Collins wrote back stating as follows:

> "Andrew Wilson has the relevant paperwork now, for all companies, these need to be collated, queries answered and then we can meet. I assume that it would be prudent to send everything to john cordner for him to digest and then you my [sic] even try to put a settlement proposal without meeting. I am sure there will be questions prior to that. We are getting to a conclusion re the accounts."

43. Ms Oberman replied confirming that she wanted Mr Collins to send the available financial information to Mr Cordner, her accountant. Mr Collins did

not supply this information although Mr Cordner later visited the office and a number of the Properties in September or October 2018.

44. Following the termination of the relationship Mr Collins continued to buy and sell Properties in his sole name. In particular:

i) On 21 December 2016 he completed the sale of a Property called 17 Voyagers Close for £100,000.

ii) On 1 March 2017 he also completed the purchase of 10 Brasted Close (Property No. 41) for a price of £357,500 of which £236,066 was raised by mortgage.

iii) On 13 April 2017 he sold the second floor flat at 43 Whernside Close for £200,000 and after repaying the mortgage and the costs of the transaction he received the net balance of £120,309.07.

iv) On 19 May 2017 Mr Collins sold a Property called 70 Princess Anne Way for £270,000.

v) On 15 December 2017 Mr Collins completed the purchase of 26 Beaconsfield Road (Property No. 40) for a price of £355,000.

45. On 3 April 2017 Ms Oberman's solicitors, Payne Hicks Beach ("**PHB**"), served a detailed Letter of Claim upon Mr Collins' solicitors, Bower Cotton Solicitors LLP (now Bower Cotton Hamilton LLP ("**BCH**")). They asserted that Ms Oberman was entitled to an order for sale of the Properties under the Trusts of Land and Appointment of Trustees Act 1996. They also requested that Mr Collins provide Ms Oberman with a range of financial information.

46. By letter dated 2 August 2017 PHB wrote to BCH asking again for financial information. They also asked for an explanation for the sale of 70 Princess Anne Way and evidence of the way in which the proceeds of sale had been applied. By letter dated 14 August 2017 Ms Oberman also wrote to Mr Collins as follows:

> "As I have not been receiving regular management accounts for the business nor am I being kept informed of the financial

> dealings of Bluegen Limited and given the fact that the request for an audit of the Bluegen Limited accounts for the year ended 30 September 2016 appears to have been ignored, I feel compelled to request an audit of the Bluegen Limited accounts for the year ended 30 September 2017. This is my right under s476 of Companies Act 2006."

47. In 2017 HMRC undertook some form of investigation into Mr Collins' tax affairs. By email dated 18 September 2017 he wrote to Ms Janice Starling of HMRC providing the following information:

> "I note that there is a query in relation to the monies transferred to myself from TM&L with the narrative wages. I would like to point out that this was not wages but just payments being made to me in relation to various investments that ultimately would then be used towards the growth of Bluegen/personal portfolio. I would state that my account had been crudely used as a coordinating account. Unfortunately the nature of the business and more so the way I have tried to organise them has caused this situation. In hindsight it has been a messy arrangement, but within this the companies and portfolio have grown significantly…….
>
> In relation to the investors within the company they are as follows Alan Cooper, Colin Carr, Mrs Carol Ryder, Mrs Phyliss Monham, Mr David Ryder, Mr Ashley Harber, Mr Tom Dennington, Mr Neil Dayton, Mr Ike M'Bamali, Mr Ian Brookes and most recently Mr Steve Walker."

48. Mr Collins ended this email by stating that he would provide the dates of the investments and on 27 November 2017 he wrote to Ms Starling again stating that Mrs Ryder, his mother, had invested £40,000 in 2015, Mr Harber had invested £60,000 in 2013 and Mr Stephen Walker had invested £100,000 in 2017.

49. In July 2017 Ms Oberman applied to register a number of restrictions in the title registers of the Collins Properties and the Bluegen SC Properties. A copy of the application dated 17 July 2017 to register a restriction against the title to 6 Barn End Drive (Property No. 31) was included in the trial bundle and I was told that a number of restrictions had been registered against the titles to Flats 1 to 3, 49 Elmdene Road (Property No. 19 to Property No. 21). I was also told that a number of the applications are still pending before the Land Tribunal.

50. On 24 July 2017 Bluegen was registered as the freehold of 251 Eltham High Street (Property No. 17). It is common ground that Mr Collins arranged for Bluegen to grant him leases of the three flats although it is unclear when they were finally completed. At all events, completion statements and a credit advice from HSBC show that on 26 July 2017 he mortgaged each flat to a different lender and that Walter Saunders paid the net balance of £36,546.60 into Bluegen's bank account.

51. Ms Oberman's application to the Land Registry prevented Mr Collins from registering the charges and by email dated 23 September 2017 Mr Collins wrote to her asking her to permit them to be registered. He explained the background as follows:

> "This site was originally two adjoining shops with a self contained four bedroom flat situated above. Following the design and planning of this site we had approved 2 x 1 bedroom flats, 1 x 2 bed flat and a shop to the front including a large basement office area. The money to purchase was mainly made up of mint bridging and considerable funds have been spent developing the site and paying for all other affiliated costs. The target for this site is the same as 49 Elmdene and to create four new leases and retain the freehold. We have already re financed the three flats which cleared the bridging finance however due to your request at land registry to block any movement on the properties you have registered an interest you have created a legal issue with the mortgages being registered and notably I cannot draw down the funds I have had approved in relation to the shop which will stop the development of the sites at whitebeam and sweyn which in turn is damaging the company."

52. Mr Collins stated that he was prepared to agree to certain safeguards and BCH followed up his email by writing to PHB. By letter dated 20 October 2017 PHB replied stating as follows:

> "You will recall that our firm earlier this year sought undertakings from your client in relation to the properties which he failed to provide. In his recent email Mr Collins has now indicated that he would be willing to provide a written undertaking to our client. Accordingly, in the event Mr Collins provides undertakings as attached to this letter, our client would be willing to withdraw her application made in relation to 251 Eltham High Street and in relation to all of the properties owned by Bluegen Limited….."

53. The letter enclosed a detailed set of undertakings. By letters dated 5 November 2017 BCH replied to PHB's letters dated 2 August 2017 and 20 October 2017 and provided some financial information. In their second letter BCH stated that Mr Collins did not accept that Ms Oberman owned 49% of Bluegen. They also declined to give any undertakings on his behalf.

54. By letter dated 15 November 2017 PHB replied stating that Ms Oberman was prepared to withdraw the applications to the Land Registry in return for Mr Collins providing an undertaking that he would not do anything to cause a reduction in the value of Bluegen whilst the dispute was ongoing. By letter dated 17 November 2017 (but wrongly dated 26 April 2017) Mr Collins agreed to give an undertaking in the following form:

> "I, Shaun Collins, hereby undertake not to dispose of or reduce the value post development (this undertaking not prohibiting in any way the on-going development of any site owned by Bluegen Limited) of any of the assets held by Bluegen Limited until the dispute between us is resolved or determined by the Court."

55. By letter also dated 17 November 2017 PHB replied immediately stating that this undertaking was accepted. It appears from the correspondence Mr Collins did not provide the undertaking until 22 December 2017 (although nothing turns on the date on which he did so). He also gave an undertaking in respect of 251 Eltham High Street (Property No. 17). It was dated 19 December 2017 and in the following form:

> "I will not make any dispositions of whatever nature, or encumber 251 Eltham High Street without first notifying and obtaining the written consent of Nicola Oberman, with this undertaking remaining in effect until the dispute between us is resolved or determined by the Court."

56. By letter dated 21 March 2018 PHB wrote to BCH once more raising concerns about Mr Collins' failure to agree to an audit and by letter dated 12 July 2018 they wrote again stating as follows:

> "Our client has always been willing to meet, or consent to her advisors meeting, your client and/or his advisors. However, such a meeting has necessarily been conditional on the provision of

> further information by your client. To date your client has been unwilling to properly engage with the very reasonable disclosure requests we have made on behalf of our client. This has been in circumstances where our client as a director of Bluegen is entitled to the information which has been sought."

57. By letter dated 24 August 2018 BCH offered to give undertakings on behalf of Mr Collins in respect of 1A Redbourne Drive (Property No. 37), 15A Redbourne Drive (Property No. 30), 116 Greenhaven Drive (Property No. 33) and 152 Greenhaven Drive (Property No. 34). Ms Oberman agreed to accept those undertakings each of which was dated 5 September 2018 and in the same form as the earlier undertaking given by Mr Collins in relation to 251 Eltham High Street.

58. Between 27 November 2018 and 10 January 2019 Mr Collins granted a legal charge over each these Properties to the Aldermore Bank plc. Under cover of a letter dated 30 May 2019 BCH sent PHB copies of the completion statements which showed that Mr Collins had charged the four Properties to secure the following additional sums:

    i) *1A Redbourne Drive*: £53,749.39;

    ii) *15A Redbourne Drive*: £85,082.56;

    iii) *116 Greenhaven Drive*: £120,793.81; and

    iv) *152 Greenhaven Drive*: £123,711.34.

59. In their covering letter BCH stated that these funds had been "injected into Bluegen by way of a director's loan". However, in his witness statement Mr Collins accepted that these funds had been used to settle debts of Bluegen and Blue Letts. He also accepted that they "contributed towards residential mortgage payments and everyday living expenses" for both 11 Wedgewood Place and 1 Clarenden Place.

60. It is unnecessary for me to refer in detail to the correspondence between PHB and BCH during the course of the litigation. However, I should refer to a letter dated 6 May 2020 in which BCH dealt in detail with the disclosure of financial

information. In particular, they stated as follows in respect of both Blue Letts and Thamesmead:

> "Schedule of all transactions with Bluegen Limited from the year ending March 2016 to the year ending March 2019 and YTD 2020, outlining which property each transaction related to. This should be on excel: The requested documentation does not exist."

61. In late 2018 Thamesmead ceased to trade. Mr Collins claimed that this and later financial problems were caused by Ms Oberman's applications to register restrictions which had prevented him from raising further finance. He was taken through the solicitors' correspondence in some detail to demonstrate that Ms Oberman and her solicitors had responded promptly and that she had acted reasonably by offering to accept undertakings. In the event, it was unnecessary for me to determine whether either of the parties was to blame and, if so, where the fault lay in relation to this correspondence.

III. The Witnesses

Ms Oberman

62. I found Ms Oberman a reliable witness whose evidence I could accept. Two features of her evidence led me to this conclusion: first, although Ivydale Road was registered in her sole name and it would have been in her interests to claim that she had an interest in it, she admitted without any prevarication that she did not provide any funds and simply followed Mr Collins' instructions from prison. She also accepted that Mr Collins contributed the entire proceeds of sale of Ivydale Road towards 124 Park Crescent.

63. Secondly, she did not embellish the discussions which she had with Mr Collins about the ownership of the Properties. She accepted that she could not remember them in detail and described their conversations in the most general terms (as I describe below) even though those conversations were the foundation of her claim both that there was a partnership and to a common intention constructive trust.

64. Mr Deacon submitted that I should approach her evidence with care because her witness statement had not been prepared solely in her own words (as she accepted) and a number of detailed points about the documents had been put in her mouth. He referred me to the ruling by Peter Smith J in the *Farepak Litigation* at [42] to [47] and to *Leopard v Robinson* [2020] EWHC 2928 where the point was forcefully made that a witness statement should not be a document created in the language of lawyers by lawyers.

65. I accept that there might well have been grounds to strike out parts of Ms Oberman's statement although Mr Deacon, sensibly in my view, did not hold up the trial and dealt with the point in closing submissions. Moreover, I doubt whether Ms Oberman's statement would comply with CPR Practice Direction 57AC and the Statement of Best Practice (when they come into force). However, I came to the conclusion that the way in which Ms Oberman's statement was prepared did not cast any real doubt on her reliability or credibility as a witness. But I took care to rely on the general evidence which Ms Oberman gave in her witness statement unaided by documents and (where possible) on the oral evidence which she gave in her own words.

Mr Collins

66. I did not find Mr Collins a reliable or convincing witness. The evidence which he gave in his witness statement was inconsistent with key documents and he failed to address some of those documents at all. For example, he made no reference to the letters which he had sent to Ms Oberman from prison or the written assurances which he had given to her later. On a number of occasions he also gave evidence which was inconsistent with his witness statement and had to accept that his written evidence was mistaken. I bear in mind that a witness is not required to deal with every document which might be put to him or her in cross-examination and that a witness may well make mistakes without being untruthful. But these were key points and he could not explain the errors.

67. I also found Mr Collins an unsatisfactory witness for a number of other reasons: first, Mr Collins freely admitted that he made a decision to ignore the undertakings which he had given to Ms Oberman even though he knew that they

were legal obligations. Again, I accept that not every breach of contract makes the contract breaker an untruthful witness. But in this case he gave formal undertakings on legal advice which he chose to break when it suited him.

68. Secondly, Mr Collins relied on a loan agreement for £35,000 which was expressed to be made between Bluegen and Ms Nikki Barton, Mr Collins' new partner, and bore the date 1 April 2017. Both Mr Collins and Ms Barton had signed the agreement and dated it that day. When he came to give evidence Mr Collins had to accept that it could not have been created any earlier than January 2018. Moreover, Mr Collins did not mention this document at all in his own witness statement. I reached the conclusion that the document was intended to mislead Ms Oberman and her solicitors and, ultimately, the Court.

69. Thirdly, Mr Collins relied on a number of invoices which were submitted by Blue Letts to Bluegen. One of these invoices was issued to transfer a loss from Blue Letts to Bluegen and involved issuing a new invoice charging Bluegen for the same work twice. He also relied on a series of recent invoices dated 27 May 2020 which were issued by Blue Letts to Bluegen. I formed the view that Mr Collins had issued these invoices both to inflate the cost of the works and to justify Blue Letts charging substantial sums to Bluegen for which there was no paper trail.

70. Fourthly, Mr Collins' approach to disclosure also cast considerable doubt on his evidence. He signed a statement of truth confirming that he had complied with his disclosure obligations after disclosing only 18 pages of emails. When this was put to him, he tried to explain it away by saying that he was waiting for PHB to ask questions which he would have answered. In substance, he was not prepared to disclose documents unless compelled to do so (as the history of these proceedings amply demonstrates). For example, Mr Collins could have obtained Walter Saunders conveyancing files from the Law Society (which had intervened in the practice). But he did not do so. Mr Collins claimed that he had not been asked to obtain them even though this had been specifically raised at the Pre Trial Review. I have no doubt that Mr Collins was fully aware of his disclosure obligations but chose to ignore them.

Ms Barton

71. Ms Barton gave evidence remotely by Skype link. The laptop or phone on which she was giving evidence was not stable and at one point the link froze. Nevertheless, I formed the strong view that she was prepared to say whatever Mr Collins asked her to. Since her evidence was only relevant to a single issue, namely, whether she had made a loan of £35,000 to Bluegen I deal with it in more detail in that context.

Other Witnesses

72. Mr Collins also called Ms Carol Ryder and Mr Ashley Harber to give evidence about loans which Mr Collins claimed they had made to Bluegen. He also called Mr Mark Saunders to give evidence about his interest in 6 Barn End Drive (Property No. 31) and 17 Hill View Drive (Property No. 36) and the work which Ms Oberman had done for the business. In the event, he was not asked about his interest in the two Properties and Mr Watson did not challenge his evidence or the evidence of Ms Ryder and Mr Harber. I therefore accept that evidence.

IV. The Issues

73. The parties agreed a list of issues in relation to both the Part 7 Claim and the Petition. I give my decision and reasons in relation to the Part 7 Claim issues in section V and my decision and reasons in relation to the Petition issues in section VI. Those issues were as follows:

The Part 7 Claim

(1) Between 1997 and 2016 did Mr Collins and Ms Oberman participate in a shared business endeavour with a view to profit concentrating on the acquisition of the Properties?

(2) If so: (a) How was it formed? (b) What were its terms? (c) What were its assets? (d) Was Bluegen a part of it?

(3) Were the Properties held in the parties' names acquired on behalf of the partnership and therefore held on trust for Mr Collins and Ms Oberman jointly and equally?

(4) Was it the parties' common intention (either by express agreement or inferred from their conduct) that all of the Properties acquired during and after the parties' relationship would be held for them jointly and equally?

(5) Alternatively, did Mr Collins represent that the Joint Properties and the Collins Properties irrespective of their legal ownership were held on behalf of the parties jointly and equally?

(6) Did Ms Oberman understand from what she had been told by Mr Collins that irrespective of their legal ownership the Collins Properties were held on trust for Mr Collins and Ms Oberman jointly and equally?

(7) Did Ms Oberman rely upon her understanding and/or what she had been told by Mr Collins to her detriment?

(8) Are the Collins Properties and/or Properties No. 17, No. 24, No. 40 and No. 41 (which were acquired after the termination of the relationship) held on constructive trust for Mr Collins and Ms Oberman jointly and equally?

(9) Alternatively, is Mr Collins estopped from denying that the Collins Properties were held on trust for himself and Ms Oberman jointly and equally?

(10) Does Ms Oberman have a 50% interest in the Properties and, if so, which ones?

(11) Should those Properties (if any) which are owned jointly and equally be sold and 50% of the proceeds of sale paid to Ms Oberman?

(12) Is Mr Collins required to account to Ms Oberman in respect of 50% of all sums deriving from the Properties and, if so, should this include 50% of the amount credited to the Blue Letts loan account?

The Unfair Prejudice Petition

(13) Was Bluegen operated as a quasi-partnership?

(14) Did Ms Oberman have a legitimate expectation that: (a) she would be entitled to participate in the management of the company; (b) that she would be consulted on significant decisions; and (c) insofar as any decisions were taken, they would be in the best interests of her and the company?

(15) Has Mr Collins excluded Ms Collins from the management of Bluegen by: (a) failing to supply information and countermanding Ms Oberman's request for an audit? (b) taking decisions without informing consulting or seeking consent or approval from Ms Oberman? (c) causing Bluegen[1] to incur improper liabilities to Blue Letts? (d) transferring Properties out of Bluegen? (e) Granting leases to himself in breach of fiduciary duty?

(16) Were these matters or any combination of them unfairly prejudicial to Ms Oberman's interests as a member of Bluegen.

(17) Is Ms Oberman entitled to an order that Mr Collins purchase her shares in Bluegen?

(18) For the purposes of determining the buyout price: (a) Are the leases over Flats 1, 2 and 3 of Elmdene Road owned by Bluegen? (b) Were the sums paid or said to be owing by Blue Letts properly incurred? (c) Were the following loans genuinely made and/or advanced and/or used for the benefit of Bluegen: (i) Ms Barton: £35,000[2]? (ii) C Ryder: £40,000? (iii) Danny Sans: £98,000? (iv) Ashley Harber: £115,855.72? (v) S Walker: £20,000? (vi) J Clark: £6,000?

V. The Part 7 Claim

[1] The agreed list of issues incorrectly states "Blue Letts" and I have corrected it to Bluegen.
[2] The agreed list of issues referred to "Mr Collins £25,243.87" but made no reference to the loan of £35,000 which Ms Barton is alleged to have made. I have corrected it to refer to the loan alleged to have been made to Ms Barton.

(1) Between 1997 and 2016 did the parties participate in a shared business endeavour with a view of profit?

74. In her witness statement Ms Oberman accepted that there was no "formal corporate arrangement (for example by way of a signed partnership agreement)" but that she believed that she and Mr Collins were "partners in the business". She explained the basis for that belief as follows:

> "It was understood and expressly agreed between Shaun and I that the entire Portfolio was for our joint and equal benefit regardless of the legal ownership of each property, which was fluid and depended on the manner in which Shaun thought it would be most straightforward to obtain a mortgage. This was discussed between us on numerous occasions. Plainly, given that we were a couple, we did not enter into a formal contract recording that because I trusted Shaun and we had come to a clear agreement as to how the properties would ultimately be owned and how we would jointly benefit."

75. In cross-examination Ms Oberman accepted that the legal term "partnership" was not used. When asked to explain how she and Mr Collins spoke of the relationship between themselves she described the kind of business matters which they might discuss and that when they spoke about their business relationship, they said: "That it was for both of us and for our futures."

76. Mr Collins' evidence was that there was no discussion of a partnership (whether it related to Properties in his sole name, joint names, Bluegen's name or the Oberman Property). He also said that at no stage during their relationship did the parties discuss pooling their assets together with the intention of pursuing a shared business endeavour. He continued (my emphasis):

> "During our relationship, the Claimant and I did not at any stage share any such common intention as to the property portfolio. **We never discussed my business venture as being a joint business between us**, I made all the day-to-day decisions in respect of the Second Defendant, which included the acquisition, development and financing, and sale of all its assets made up of the properties which formed part of the accounts. In respect of my own personal property portfolio, again I did not consult or discuss with the Claimant my plans for these properties."

77. Mr Collins was taken to two of the letters which he sent to Ms Oberman from prison. When he was taken to the letter in which he asked Ms Oberman to speak to Mr Atkinson of Walter Saunders, his solicitors, he accepted that he discussed business with Ms Oberman and asked her to take steps to assist him and, in particular, to negotiate the sale of Endwell Road. But he would not accept that he and Ms Oberman were engaged in a joint endeavour or that Bluegen was the vehicle for it:

> "Q. And when you are talking about Bluegen, you are talking about it as a shared endeavour; not as your business but as something you do together? A. No, I think I referred to her as company secretary, didn't I? Q. Yes. A. Okay. So she's company secretary. Yes, so it's a shared endeavour? A. No, it's not a shared endeavour."

78. He was then taken to the letter in which he stated that it was "important to chat and agree everything between us". Again, he did not accept that Bluegen was a shared or joint endeavour:

> "Q. So again you are referring to Bluegen as "we", something you are doing together. A. As in Bluegen and I or -- Nikki is a company secretary, yes, so yes, it's a company -- Q. Yes, so you were doing it together. A. No, I was doing the Bluegen itself; she was a company secretary. Q. Again, the reason why you are reassuring her that you need to chat and agree everything between you is because this was a joint endeavour. A. No, it wasn't a joint endeavour."

79. However, when he was taken to an email exchange with a Mr Johnson of a company called Outsourcery Ltd dated 25 April 2016 in which he described Ms Oberman as his "business partner" Mr Collins accepted that he saw her as his business partner in relation to Bluegen. When it was put to him that this was evidence was inconsistent with his witness statement and, in particular, the statement in bold in [76] (above), Mr Collins also accepted this.

80. Nevertheless, after he had made this concession Mr Collins attempted to row back from it and suggested that he gave Ms Oberman a 49% share in Bluegen out of love and affection rather than because it was a joint business venture. Given his earlier concession I reject this evidence. It was inconsistent with his letters from prison and his description of Ms Oberman as his business partner.

It was also inconsistent with his later evidence that he transferred the shares on the advice of his accountant and to reduce the tax payable on her director's remuneration. I find therefore that Mr Collins transferred 47 shares in Bluegen in recognition of the fact that Bluegen was a shared or joint business endeavour.

81. In his closing submissions Mr Watson accepted that there was no formal partnership agreement but submitted that there was "ample evidence" of an agreement for a partnership. I reject that submission for the following reasons:

i) In cross-examination Ms Oberman fairly accepted that there was no express agreement for a partnership and that the term was not used. Nor did she suggest that there was any discussion of the matters emphasised by Mr Deacon and Ms Wookey in their closing submissions: sharing of losses, mutual agency, dissolution.

ii) Moreover, Ms Oberman adduced no evidence of what Mr Deacon described as the "usual" evidence of a partnership: accounts, advertisements, agreements and other documents, bills, circulars, meetings and tax returns. It was common ground that the parties had a joint bank account but it was not expressed to be a partnership account and was explicable by the fact that they were living together.

iii) Both counsel reminded me that it is possible to imply the existence of a partnership from conduct: see *Greville v Venables* [2007] EWCA Civ 878. However, in that case the Court of Appeal rejected the argument that there was an implied partnership and Pill LJ cited from *Blackpool and Fylde Aero Club Ltd v Blackpool Borough Council* [1990] 1 WLR 1195 at 202 where Bingham LJ had stated that such agreements are "not to be lightly implied": see [38] to [40]. He had also identified the following test:

> "Having examined what the parties said and did, the court must be able to conclude with confidence both that the parties intended to create contractual relations and that the agreement was to the effect contended for."

iv) In the present case the parties chose to organise their business relationship through Bluegen, a limited company, and I cannot conclude with confidence that they intended to create a legally binding contract which went beyond the relationship of shareholders and directors far less that they intended to enter into the legal relationship of partners.

82. In the light of this conclusion, it is unnecessary for me to consider issues (2) and (3) or Mr Deacon's objection that the claim that there was an implied partnership was inadequately pleaded. In fairness to Mr Watson, he did not press the partnership claim in closing and put it very much as an alternative to the claim that there was a common intention constructive trust (to which I now turn).

(4) Was it the parties' common intention (either by express agreement or inferred from their conduct) that the Properties would be held for them jointly and equally?

(a) The collapse of Main Amis

83. I have found that in 1996 the parties incorporated or acquired Bluegen as the vehicle for their joint business venture. However, it is one of the unusual features of this case that neither they nor Bluegen began to acquire a substantial number of Properties until over decade later. Mr Collins' evidence was that what provided the opportunity to acquire and build up a portfolio of Properties was the collapse of Main Amis. Mr Collins described this a number of times in cross-examination. For example, he gave the following evidence:

> "Back in 1997 we set up an estate agency, built up this business in an area that was getting developed, the whole of that Thames waterfront area, and properties were becoming -- some of the cheaper properties were becoming available. And then we set up an agreement between the three of us to buy properties in whatever format we could, but under the guise of Mains development. And then what happened in 2008 when the market collapsed, the estate agency just fell apart and effectively whoever owned the properties, whatever name they were in, you just took control of it, otherwise if I'd have left that in the hands of Stacey and Lee, they wouldn't have paid the mortgages and debts would have been registered against myself, in Nikki's name, in joint names, so we just took control of it."

(b) Legal Ownership

84. The first issue which I have to decide is what significance the parties attributed to the legal ownership of the Properties and, in particular, to the fact that Mr Collins was registered as the legal proprietor of the Collins Properties. In her oral evidence Ms Oberman could recall no specific discussions about the Collins Properties (as Mr Deacon and Ms Wookey pointed out in closing submissions). Nevertheless, she said a number of times that she drew no distinction between any of the Properties and regarded them as a single portfolio or, as she put it, a "big pot". For example, she said this:

> "A. But we didn't have specific discussions, it was all for our benefit, it all just went into essentially a big pot because it was all together, wasn't it? It didn't exist without the other bit of it."

85. When Ms Oberman was asked why individual Properties were put in the name of Mr Collins or her name or joint names, she said that her understanding was that this was done to obtain the best mortgage deals. When Mr Deacon suggested to her that Mr Collins had never given this explanation to her, her evidence was as follows:

> "Q. But this is important. In relation to the properties in his sole name, he never said, "This is going into my name because it is going to be difficult to get a mortgage in joint names"? A. Not difficult, no. I didn't say because it would be difficult, it was what the best deal was and how that was at the time with various lenders. Q. What do you mean by the best deal? A. The best interest rate, the less commission to pay to -- Q. What difference does it make whether it is in joint names or sole name? A. What difference does it make whether it's in joint names or sole name? It doesn't to me. Q. No, to get a mortgage, what difference does it make to the mortgage, whether it is joint names or sole name? I mean, the point I am making to you is this. It didn't happen that Shaun said "This is going into my name because it is easier to get a mortgage"? A. I don't think it even happened that Shaun said "This is going into my name". Q. What I am trying to get to is you knew these properties were going into Shaun's name and you knew that some of them had gone into your joint names? A. The portfolio? Q. Yes, the properties, and what you call the portfolio. But what I am putting to you is the properties that went into Shaun's name, you knew that that had happened and you were quite content for that to happen and there was no reason given to you that it had to be Shaun's name rather than the sole

> name of Shaun? A. I was quite content for it to happen because, as far as I was aware, everything was in a pot and it was for both of us."

86. In the Amended Defence Mr Collins accepted that Properties "were held or transferred into different names as dictated by the need to finance the properties and to meet the requirements of each lender". He also accepted this was not "intended to affect the beneficial interest therein" although his case was that he was the beneficial owner of all the Properties. In his witness statement he gave evidence to the same effect:

> "Properties within my portfolio were held or transferred into different names based upon the need to refinance the properties and the requirements of each lender in turn."

87. In cross-examination, however, he withdrew that admission and stated that if he was choosing to buy property for himself it would be in his own name. When it was put to him that this evidence was inconsistent with his witness statement he gave the following explanation:

> "MR WATSON: Why is none of that in your witness statement, Mr Collins? A. I think you'll find that's in lots of information that we've given to PHB over the last three and a half years. There's an awful lot of information that we've sat down, we've asked repeatedly for you -- sorry, not you personally -- for PHB and Nikki to sit round a table for me to explain that on various occasions, and that's been declined, constantly. Q. Mr Collins, I suggest the reason it's not in your witness statement is because it's not true. A. It is true. Q. Now, in terms of the decision to put properties into your name versus the decision to put properties into joint names, so into your sole name or into the name of your name and my client's -- A. Yes. Q. -- do you accept that that was dictated by the need to obtain finance? A. No, absolutely not."

88. I do not accept Mr Collins' evidence on this issue. It was inconsistent both with his pleaded case and the evidence which he gave in his witness statement. It was also inconsistent with the contemporaneous documents and, in particular, the spreadsheets dated 19 March 2013, 18 November 2014 and 6 February 2015 prepared and sent by Ms Brown and Ms Armstrong to Mr Collins and the NatWest. The covering emails described the Properties as a single "Portfolio"

irrespective of their ownership and the financial information in the spreadsheets was presented in the same way.

89. Moreover, Mr Collins' conduct in relation to the acquisition of a number of Properties was inconsistent with his evidence that if he was choosing to buy Properties for himself, he did so in his own name. He accepted that 17 Voyagers Close was transferred into his sole name although the Property was originally intended to bought by Bluegen and Bluegen had paid the deposit. He was also taken to the memorandum of sale, correspondence and mortgage application for 21A Redbourne Drive (Property No. 38) which showed that it was originally intended to be purchased in joint names. But when asked why it was registered in his name he said: "I couldn't tell you."

90. Finally, he was taken to the documents relating to 15A Redbourne Drive (Property No. 30). The memorandum of sale showed that it was originally intended to be purchased in joint names although it was first registered in the name of Bluegen and later transferred into Mr Collins' sole name. Despite this, Mr Collins and Ms Oberman were described as the owners in all of the spreadsheets dated 19 March 2013, 17 September 2013, 18 November 2014 and 6 February 2015 and Mr Collins told Mr Wilson, his accountant, that Bluegen was the beneficial owner.

91. Mr Collins initially denied that 15A Redbourne Drive was intended to be bought in joint names. But when he was shown the memorandum of sale, he had to accept that it was a possibility. Moreover, when he was taken to an email dated 28 January 2015 he could not explain why he was intending to enclose land in Bluegen's name for the use of 15A Redbourne Drive which was in his name. Nor could he explain why Blue Letts had charged Bluegen £10,224.45 (plus VAT) for work done to 15A Redbourne Drive on 25 February 2015.

92. I find therefore that at all times between 2008 and 2015 the Properties were treated as part of a single portfolio in common ownership irrespective of whether they were registered in the name of Bluegen, the sole name of Mr Collins or Ms Oberman or in their joint names. I also find that they were transferred into the name of Bluegen or into sole or joint names based upon the

need to finance or refinance the properties and the requirements of each lender (as Mr Collins had originally accepted in his witness statement).

(c) Beneficial Ownership

93. The second issue which I have to decide is who the beneficial owner of the Properties was intended to be. I have found that Bluegen was intended to be the joint or shared business endeavour of the parties and that all of the Properties were treated as a single portfolio in common ownership irrespective of their legal owners or registered proprietors. These findings clearly support the evidence which Ms Oberman gave both in her witness statement and orally that it was expressly agreed that the entire portfolio of Properties was acquired for their joint and equal benefit regardless of the legal ownership of each property.

94. Support for Ms Oberman's evidence was also provided by a number of statements which Mr Collins made to her by text or email both before and after the end of their relationship. In particular:

i) In the email dated 23 September 2014 which he sent to Ms Oberman before asking her to transfer her shares in Thamesmead to him, Mr Collins assured her that: "this has all been purchased for the benefit of both of us irrespective of whether they have been purchased in my name, your name, joint name or in Bluegens [sic]".

ii) In his text from early 2016 Mr Collins also offered to split the Properties "50/50 on portfolio" and "splitting Bluegen equally from our share".

iii) By email dated 5 April 2016 Mr Collins stated: "You brought up the fact about being married I would be paying half, I have agreed this all along."

iv) By email dated 12 April 2016 Mr Collins stated that: "the properties would be 50/50% of your and my profit".

v) By email dated 17 May 2016 Mr Collins wrote to Mr Wilson copying in Ms Oberman his accountant stating that "I am happy to split all assets 50% each, following the settlement of any loan, charge and any JV ventures."

vi) By email dated 24 October 2016 Mr Collins stated: "I am working this every day of which you will have an equal share as I!!!! As I have repeatedly said if the money was in a bank account we would be sharing equally."

vii) By email dated 7 November 2016, Mr Collins stated: "I have maintained all along that I will split our share of any monies equally…you will be paid what you are entitled to, an equal amount as I."

95. When he was asked about these documents Mr Collins began by suggesting that he must have been referring to the Joint Properties only. When he was taken to the email dated 23 September 2014 he accepted that he must have been referring to all of the Properties. But his evidence was that his statement was no more than a reflection of the offer which he had been prepared to make before the litigation for the benefit of Ms Oberman and their children:

> "JUDGE LEECH: So what did you mean by that sentence? A. Just -- if it's been bought for the benefit of the children, or for Nikki's benefit, and Nikki's benefit, when the original offer was made to Nikki, she was going -- I think the offer was a substantial offer and was quite -- and was fair. So it was being bought for her benefit as well. I'm not saying the percentage, which way it was, or what percentage I'm to be given, or what percentage the children is to be given, but it has been for the benefit from that."

96. He was then asked about his email dated 17 May 2016 to Mr Wilson in which he stated that he was happy to split "all assets 50 percent each" and then listed a number of the Collins Properties as well as the Joint Properties. His evidence was very similar:

> "Q. So you are agreeing that all of those properties would be sold and you would 50 per cent each. A. That's what I'm saying there, yes. Q. Are those all joint names properties? A. No, they've got sole names as well. Q. Yes. Some of them are in your sole name. A. That is in 2016 before the aggressive court case started which has made it absolutely impossible to carry on that way. Q. I suggest at this point you are viewing all of the properties -- A. No, I'm not viewing them all -- Q. Let me finish the question. Whether they're in your name or in joint names, as being jointly owned. A. No, I'm not viewing them that way. What I'm saying is they're my properties, they're mine and I will give them from there, and I will split the proceeds. At that time. That time was

> before £800,000 worth of fees have been spent and damage has been done to the businesses and the individual portfolios, and people, namely the children. Q And I suggest that the reason you've now changed your position is because of this litigation. You initially -- No, the financial implications, yes. Because it's not obtainable anymore. The damage that has been caused to this portfolio has only -- the only reason I am still here and haven't folded is just doggedness, trying to keep it together, and for the benefit of the children."

97. I accept that parties often make settlement offers to avoid litigation even where they do not represent the true legal position. I also accept that Mr Collins genuinely wished at the time to provide for Ms Oberman and their children. However, this cannot provide the explanation for the statement in his email dated 23 September 2014 because it is common ground that the relationship did not come to an end until well over a year later. In my judgment, Mr Collins made that statement because it reflected the intention of the parties and he made the offers in 2016 because they reflected Ms Oberman's entitlement to an equal share in the Properties.

98. I accept Ms Oberman's evidence, therefore, and I find that it was the common intention of the parties that the portfolio of Properties acquired in the name of Bluegen and their joint and sole names were to be held on behalf of Mr Collins and Ms Oberman jointly and equally. I also find that this was the subject of express agreement between the parties. Having made this finding, I will use the term "**Portfolio**" as shorthand to refer to the portfolio of Properties which Bluegen, Mr Collins and Ms Oberman held between them and which were recorded in the spreadsheets produced by or for Thamesmead.

(5) Alternatively, did Mr Collins represent that the Joint Properties and the Collins Properties irrespective of their legal ownership were held on behalf of the parties jointly and equally?

99. In his email dated 23 September 2014 Mr Collins represented to Ms Oberman that the Portfolio had been purchased for the benefit of both of them irrespective of legal ownership and in the other emails which I have quoted in [94] (above) Mr Collins represented to Ms Oberman that she had an equal or 50% share.

100. Mr Collins accepted that he did not generally favour written agreements. In my judgment, his emails reflected the representations which Mr Collins made orally to Ms Oberman throughout their relationship to assure or re-assure her of her beneficial interest in the Properties. I, therefore, find that Mr Collins represented to Ms Oberman that the entire Portfolio and, in particular, the Joint Properties and the Collins Properties were held on behalf of the parties jointly and equally irrespective of their legal ownership.

(6) Did Ms Oberman understand from what she had been told by Mr Collins that irrespective of their legal ownership the Collins Properties were held on trust for Mr Collins and Ms Oberman jointly and equally?

101. I have accepted Ms Oberman's evidence that it was expressly agreed that the Portfolio was acquired for the joint and equal benefit of both parties regardless of the legal ownership of each property. I, therefore, find that she understood from Mr Collins that the entire Portfolio and, in particular, the Collins Properties were held for them both jointly and equally irrespective of their legal ownership.

(7) Did Ms Oberman rely upon her understanding and/what she had been told by Mr Collins to her detriment?

102. Ms Oberman gave evidence that she relied upon the common understanding that she had an equal share in the Portfolio in three ways: (a) direct financial contributions, (b) her own personal work or labour and (c) by giving Mr Collins control over the rents and proceeds of sale of Properties which he used to grow the Portfolio. I deal with each in turn.

(a) Financial Contributions

103. *Ivydale Road*: Although Ms Oberman was registered as the legal proprietor of Ivydale Road, she described it as "a property that was turned while Shaun was in prison" and said that she simply followed Mr Collins' instructions in relation to the transaction. She also accepted that she did not provide any funds for its purchase. Mr Collins' evidence was that the proceeds of sale were £53,000 and that they were used to fund the purchase of Park Crescent (together with the proceeds of Endwell Road). For the purposes of assessing Ms Oberman's detrimental reliance, therefore, I ignore Ivydale Road and treat the proceeds of sale as a contribution by Mr Collins.

104. *Wessex Drive*: Before her relationship with Mr Collins began, Ms Oberman purchased Wessex Drive and it was her evidence that it was sold in about 1999 and that the proceeds of sale went into the "shared pot". It was put to her twice that these funds were not used for the purchase of Properties but on Park Crescent (the first family home). Her responses were as follows:

> "Q. None of the money from that flat, that small amount of money you got, went towards any portfolio, did it? A. I gave it to Shaun, so I presume it went to the portfolio. Q. But there was no portfolio when the flat was sold. The flat was sold, wasn't it, in 1999? A. Yes. Q. So there was no portfolio. A. But I gave it to Shaun, so I presumed it would be used for future endeavours. Q. But what future endeavours? There were no endeavours. A. Bluegen, Bluegen was obviously existing then. Q. But Bluegen, you had hardly any shareholding in Bluegen. You had 1 per cent. A. But I think when I did give Shaun the money, I think I have said that in my statement that it may have gone towards the refurbishment of Park Crescent. It may well have done, but Park Crescent was purchased in 1998 and that was a property you lived in, wasn't it? A. No, not originally, no. Q. But you did live in it? A. Yes, but not in 1998. Q. You see, I suggest that was not part of any portfolio, Park Crescent. There was no portfolio, I have made the point. A. Okay."

> "Q. Paragraph 27, you refer to a Wessex Drive, which was your property at the time you met Shaun. I have dealt with that in saying that was a very small amount of money because it was owned with a housing association. A. I've got no idea of how much it was. Q. Yes. I mean, on any view, the money went into your family home, not to a joint venture or anything like that. That's right, isn't it? A. Yes. Q. When you say in paragraph 27: "[You] sold it around 1999 and the proceeds went into a shared pot and I understand they were invested in other properties, including the refurbishment of Park Crescent ..." It wasn't invested in other properties, was it? A. Not at that time, but everything went into a shared pot with any financial gains or -- Q. What you are saying there is that that was invested in other properties and that is not correct, that is not true? A. Not at that time."

105. In his oral evidence Mr Collins accepted that Ms Oberman gave him the proceeds of sale of Wessex Drive. He suggested that the sum in question was about £5,000 and that, if anything, it went towards the purchase of Park Crescent. He also suggested that the refurbishment works which he paid for were about £100,000.

106. In closing Mr Deacon and Ms Wookey submitted that I should ignore the financial contribution which Ms Oberman made from the proceeds of sale of Wessex Drive because she conceded that were used to fund the purchase of Park Crescent. I reject that submission. Mr Collins accepted that Ms Oberman gave the money to him and I accept her evidence that she did so in reliance on the understanding that her assets would be pooled with Mr Collins' assets as part of the "shared pot" to purchase Properties.

107. *Other Funds*: It was also Ms Oberman's evidence that Mr Collins came to live with her on his release from prison and she supported him, that in 2004 her parents advanced £8,000 which she gave to Mr Collins for use in the Portfolio and that in 2013 her parents advanced a further £20,000. Mr Collins accepted that Ms Oberman's parents provided £20,000 but that she insisted that it should be repaid after their relationship came to an end. However, he denied the contribution of £8,000 or that she gave him any other money.

108. I accept Ms Oberman's evidence that her parents advanced £8,000 and that she supported Mr Collins on his release from prison. The contemporary documents supported her case that her parents advanced money to Mr Collins from time to time. One of his prison letters referred to "money in the Midland that we borrowed for the company" and an email which he sent to Ms Oberman on 16 August 2013 referred to a joint account in the name of Ms Oberman and her mother from which he would borrow and return funds.

109. Mr Deacon submitted that I should reject Ms Oberman's evidence because the payment of £8,000 was not specifically pleaded in paragraph 4 of the Reply. However, in that paragraph Ms Oberman was giving examples in answer to Mr Collins' case in the Amended Defence that she introduced "no independent personal monies to the businesses". That paragraph was not expressed to be exhaustive and, in any event, Mr Collins' own evidence was inconsistent with the Amended Defence because he had to concede that Ms Oberman's parents advanced £20,000.

(b) Personal Work

110. It was also Ms Oberman's evidence that over time she carried out a significant amount of work for the business including: (a) getting quotes in relation to work being done; (b) seeing what needed to be done on Properties which were being refurbished; (c) checking Properties before tenants moved in and preparing the inventory; and (d) checking the properties after the tenants moved out and preparing a "move-out" report (and she produced a written example).

111. Ms Oberman also explained orally that she cleaned Properties, prepared inventories, selected kitchens, bathrooms and flooring, sourced materials and dealt with suppliers, chose blinds, paint colours for the walls and dealt with contractors. She also stated that she carried out the entire refurbishment for a number of Collins Properties for which she received no payment: 26 Tideslea Tower (which has now been sold), 152 Greenhaven Drive (Property No. 34) and 272 Greenhaven Drive (Property No. 35).

112. Mr Deacon suggested to Ms Oberman that she must have been paid for the work and she accepted that she would have been paid for some of it although she would only have been paid "very low figures". He also suggested to her that the work which she did was very minor or limited and that she "walked off the job" in relation to 251 Eltham High Street. However, Mr Saunders accepted that Ms Oberman was involved in the refurbishment of 26 Tideslea Tower and another Property at St Nicholas Road. He also accepted that she did not abandon the project at 251 Eltham High Street but involved her brother because of its complexity.

113. The evidence on this point was inevitably anecdotal and impressionistic. But I do not accept that Ms Oberman was significantly overstating her personal efforts and even on Mr Collins' case the work which she put in was more than minimal. I find, therefore, that Ms Oberman made a material personal contribution to the management, maintenance and refurbishment of the Portfolio (including a number of Collins Properties) for which she was not paid (or fully paid).

(c) Rents and Sale Proceeds

114. *Ms Oberman's Case:* Mr Deacon and Ms Wookey took a pleading point on this issue with which I deal first. Ms Oberman's pleaded case was that she relied on the common understanding to her detriment because she did not insist upon the Portfolio being run as a commercial business venture and there being a formal separation of interests. In paragraph 32(4) of the Amended Particulars of Claim her case was put this way:

> "Ms Oberman relied on those representations to her detriment by, inter alia: (i) Taking no steps to verify the ownership of the properties; (ii) Taking no steps to record her beneficial interest in the property or to seek to have the properties transferred into the Couple's joint names; (iii) Permitting existing properties bought in the parties' joint names including the property at 1 Clarenden Road (i.e. the family home) to be used as collateral for such purposes; (iv) Permitting the rental income from jointly owned properties to be applied towards the purchase and maintenance of the Properties; (v) Permitting Bluegen to incur liabilities (in particular to Blue Letts) in respect of Collins properties; (vi) Not drawing any income from those jointly owned properties; (vii) Taking no steps to deal with the property at 207 Greenhaven Drive London SE28 8FU which was in her name but she believed was held pursuant to the Partnership; (viii) Taking no steps to restrict the use of the assets."

115. Mr Deacon and Ms Wookey submitted that Ms Oberman's case was insufficiently or inadequately pleaded because all of these matters were consistent with the parties having no common understanding that Ms Oberman was to have a beneficial interest in the Properties. In his oral submissions Mr Deacon also took me carefully through Ms Oberman's pleaded case to make good his point.

116. I accept Mr Deacon's submission that Ms Oberman's inaction was consistent with the parties having no common intention or understanding that she should have an interest in the Portfolio. But I reject his submission that her failure to take action to protect her interests is not capable of amounting to detrimental reliance as a matter of pleading. It all depends on the evidence. I have found that the parties had a common intention that Ms Oberman should have a 50% interest and if Ms Oberman took no action because she relied on that common intention and her inaction was prejudicial to her interests, then in my judgment

that inaction was capable of amounting to detrimental reliance. I turn therefore to the evidence.

117. *The Evidence:* Mr Collins' evidence was that he did not pay Mr Main or Mr Amis for any of the Properties when Main Amis collapsed. He was asked whether he had reached any agreement with them in 2008 and he stated that they just agreed to go their separate ways:

> "I was just -- I just needed to take control of the situation for the benefit of myself and Nikki, the family, everything really, because it was -- it was a really difficult time, and trying to negotiate with the other two guys was simply difficult. So much so, we ended up back in court with them afterwards anyway. JUDGE LEECH: With Main and Amis? A. Yes, I actually ended up here, yes, but that's another story. JUDGE LEECH: Sorry Mr Watson. MR WATSON: But you accept that these properties are part of the portfolio now? You don't say that Mr Main and Mr Amis – A. No, no, no, they -- they don't have any -- they've never asked for anything. Like I've never asked for anything of theirs. Q. And you don't exhibit a Mains and Amis agreement to your witness statement, do you? A. No. Q. Have you disclosed one? A. No. I have not spoken to them since 2009."

118. It was common ground, therefore, that the principal financial commitment made by Bluegen and the parties individually after 2008 was to repay the existing mortgage loans secured on the Joint Properties and the Collins Properties. It was also common ground that the capital and expenses injected into the Portfolio consisted of the proceeds of sale of individual Properties and the rents which were used to pay for the costs of the maintenance of the Properties and for running the business.

119. The contemporaneous documents support this conclusion. The spreadsheets show that from 2013 the Oberman Property and all of the Joint Properties were mortgaged to a number of different lenders. It appeared to be common ground that Ms Oberman was personally liable to repay the loans secured on those Properties and, if it was not common ground, I so find. When Properties were bought in Ms Oberman's name either under the original agreement with Mr Main and Mr Amis or indeed later, it was no doubt Mr Collins' intention to pay the mortgage instalments out of the rents. But he did not suggest that Ms

Oberman would have been able to avoid personal liability in the event of any default.

120. Ms Oberman also assumed financial obligations in relation to a number of the Collins Properties. I was taken to documents showing that she assumed liability for loans relating to 21A Redbourne Drive (Property No. 38) and 272 Greenhaven Drive (Property No. 35) and Mr Collins accepted that for a period (at least) the mortgage payments were made out of the parties' joint account at First Direct. He also accepted that Ms Oberman provided personal guarantees for loans made to Bluegen.

121. In paragraphs 54 and 56 of her witness statement Ms Oberman stated that she allowed Mr Collins to control the Portfolio and its rental income on the basis of their common intention or understanding:

> "Again, I was content for Shaun to take control of the rental income for so long as we were together on the basis that we owned the properties jointly and therefore the funds were being reinvested for the benefit of both of us……I accept that I did not, throughout our relationship have detailed knowledge of how each property was held. I did not insist upon a rigid separation or record of our respective interests because I always understood that the properties were held jointly and equally for our benefit, whether through Bluegen or otherwise. Again, had it been suggested that the Portfolio was not owned jointly and equally, I would have insisted upon a far more rigid separation of our interests."

122. It was suggested to Ms Oberman, however, that she took no action to protect her interests because the Portfolio did not produce a profit or surplus and because she had no interest in it. She firmly rejected this suggestion:

> "You say in paragraph 54 about rental income being reinvested. This is no doubt a matter that Shaun will deal with when he is questioned, but what I am putting to you is that actually the rental income didn't even cover the mortgages. Would you have known that at the time? A. Obviously the rents may be behind, they may - unless you give me a snapshot of at the time, I can't really comment, can I? Q. I am going to ask you in general terms because -- but can I put this: you were aware, weren't you, this was not generating big money, was it? A. It was obviously generating money though. Q. I would say it was very touch and go, but it was, you know, borrowing money and having

> difficulties. But the main point is that the rental income was not surplus. A. I would disagree on that. I am sure it must have been, subject to obviously what the expenses were. Because the mortgages were more than the rents -- again I know that is a really simplistic view, but it is. There's the mortgages, and there's the rents coming in, so -- Q. The simple point is this -- A. So it's generating an income. Q. -- Shaun's case, he says this was not a case of rental income being used to reinvest to acquire further properties. I mean, if you say there was a surplus, did you say to Shaun, "Where is my 50 per cent"? A. No, because again it was all for both of us and he did the financial things. And I trusted him to do so and act on -- well, yes, act for both of us because we were together."

123. When the same issue was raised with him, Mr Collins did not accept that the Portfolio was profitable at all. He was taken to the spreadsheet for 18 November 2014 which showed that it had a net value of £3,037,058.51 and that the monthly rental income was double the monthly mortgage repayments. But he suggested that it did not reflect the true position because it did not include additional costs, tenant defaults and rental voids. He also claimed that there were accounting records in existence which would demonstrate that the Portfolio made no profit:

> "A. No, the actual accounts at the end of each year because -- if Andrew Wilson could have been brought here he would have been, but he has cancer so that's difficult. Every single property that is under Bluegen Limited, whether it's Bluegen Limited owned or Shaun Collins Bluegen, are in the accounts. All the rents that go in and all the mortgage payments that go out. That is accounted for within those accounts. JUDGE LEECH: Also expenses and -- A. Bluegen's a company, so it will have IT costs, phone costs -- JUDGE LEECH: I was thinking about the individual properties. A. And individually. If they are flats, they have service charges and ground rents. There will be miscellaneous gas safety certificates, electrical reports. Currently, at the moment, obviously down at Thamesmead you have to have a landlord's licence. That's £600. So you have to pay -- there's all these expenditures to keep going through, and that is why, rental-wise, they don't make profit."

124. I reject Mr Collins' evidence that the Portfolio was unprofitable. His tax return for the year ended 5 April 2017 showed that each of the Collins Properties made a profit and in his email to Ms Starling dated 18 September 2017 he explained that the rental income was applied towards the growth of the Portfolio. He described "payments being made to me in relation to various investments that

ultimately would then be used towards the growth of Bluegen/personal portfolio". He also stated that his personal bank account "had been crudely used as a coordinating account".

125. Moreover, Mr Collins was unable to produce the accounting information which he said would show that the Portfolio did not make a profit. I return to the provision of financial information in the context of the unfair prejudice petition. But if that information had existed, it ought to have been easy for him or Ms Armstrong to produce it or, if they did not have easy access to it, to obtain it from Mr Wilson's firm (whether or not he was ill).

126. I am satisfied that Ms Oberman relied on the common understanding that she would have a 50% beneficial interest in the Portfolio by assuming liability for the mortgage loans in relation to the Joint Properties and Collins Properties and executing personal guarantees to secure the liabilities of Bluegen. I am also satisfied that Ms Oberman would not have agreed either to assume those liabilities or to Mr Collins taking control of the rental income from the Portfolio if she had not believed that she owned it jointly and equally with him and trusted him to look after her interests. Indeed, when the relationship broke down she asked immediately for management information and an audit.

127. Finally, I am satisfied that Ms Oberman acted in this way to her detriment. Mr Collins did not account to her for any of the rents or profits from the Portfolio and she received no dividends from Bluegen. Moreover, the current value of the Portfolio reflects Ms Oberman's 50% share of the rents and profits which she did not receive but which were used by Mr Collins to repay the outstanding mortgages and buy new Properties (more recently in his own name rather than in joint names or the name of Bluegen).

(8) *Are the Collins Properties and/or Properties No. 17, No. 24, No. 40 and No. 41 which were acquired after the termination of the relationship held on constructive trust for Mr Collins and Ms Oberman jointly and equally?*

(a) The Law

128. *Common Intention*: The general principles were not in dispute and I take them from *Lewin on Trusts* 20th ed (2020) at 10—062 and 10—063 (upon which both counsel relied):

> "A constructive trust arises in connection with the acquisition by one party of a legal title to property whenever that party has so conducted himself that it would be inequitable to allow him to deny to another party a beneficial interest in the property acquired. This will be so where (i) there was a common intention that both parties should have a beneficial interest either at the date of acquisition or at a later date and (ii) the claimant has acted to his detriment in the belief that by so acting he was acquiring a beneficial interest.
>
> *Questions to be considered*
>
> (1) Does the case fall within the domestic consumer context, such that the common intention doctrine applies?
>
> (2) Is there evidence of an actual common intention, in the form of an agreement, arrangement or understanding between the parties that the beneficial ownership should not follow the legal ownership, either at the date when the property was first acquired or at some later date?
>
> (3) In the absence of such a common intention, can an agreement, arrangement or understanding to this effect be inferred from the parties' conduct?
>
> (4) Has the claimant relied to his detriment on the common intention relied upon?
>
> (5) If there is an actual common intention, does it extend, either expressly or by inference, to the shares in which the property is to be beneficially owned?
>
> (6) If the common intention does not extend to the shares in which the property is to be beneficially owned, what is a fair share having regard to the whole course of the parties' dealing in relation to the property, and to both financial contributions and other factors?"

129. In both sole name and joint names cases the person ("**C**") seeking to displace the presumption that the beneficial ownership of property is the same as the legal ownership will bear the burden of doing so. Further, the evidential burden upon C in a sole name case is greater where there has been no financial contribution to the acquisition of the property: see *Lewin* (above) at 10—072.

130. Mr Watson submitted that it is doubtful that there is a rule that the common intention doctrine only applies in the domestic consumer context: see (1) (above). He submitted that the better view is that it may be more difficult to establish such a trust in the commercial context but there are likely to be hybrid cases (for example family run businesses) where the rules of equity are equally applicable. I accept that submission and Mr Deacon did not argue that the doctrine could not apply in the present case.

131. Both parties agreed that there was a difference between cases of express agreement (see (2)) and cases where such an agreement must be inferred from conduct (see (3)). In relation to express agreement both parties relied on *Lloyds Bank Plc v Rosset* [1991] 1 AC 107 at 132E–F where Lord Bridge of Harwich stated as follows:

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel."

132. Mr Watson also submitted (and I accept) that the meaning of words in the context of a common intention is to be deduced objectively and in the context of the parties' conduct. For a statement of this principle see, e.g., *Jones v Kernott* [2012] 1 AC 766 at [46] (Lord Walker):

> "The primary search must always be for what the parties actually intended, to be deduced objectively from their words and their actions. If that can be discovered, then, as Mr Nicholas Strauss QC pointed out in the High Court, it is not open to a court to

> impose a solution upon them in contradiction to those intentions, merely because the court considers it fair to do so."

133. Mr Deacon submitted that a separate analysis was required for each individual Property and that it was necessary for Ms Oberman to establish an express agreement or common intention (to be inferred from conduct) that she would have a beneficial interest in each one. I reject that submission. I can see no reason why the common intention doctrine should not apply to a portfolio of properties even one fluctuating over time provided that the trust satisfies the requirements for the essential validity of a private trust. See *Lewin* (above) at 5—001:

> "For the creation of the legal relationship of trustee and beneficiary to take place, certain essential conditions must be satisfied. For a trust to be valid and enforced by the court under its equitable jurisdiction, there must first be an intention to create a trust, together with certainty of both subject-matter and objects. Every non-charitable trust must be for the benefit of identifiable individuals, or a purpose which such individuals can apply to the court to enforce."

134. Moreover, even if it is not possible to give effect to a common intention constructive trust of a portfolio of properties, the Court can give effect to a common intention constructive trust of each individual Property by drawing the inference that the parties intended to acquire it in equal shares from their express agreement in relation to the portfolio more generally and their subsequent conduct in relation to the use of the rents and profits and proceeds of sale.

135. *Detriment*: In an express agreement case C must demonstrate some element of detriment in reliance upon the belief that they had or would acquire a beneficial interest in the relevant property. It need not consist of expenditure of money or some other quantifiable financial detriment and it is enough that the C has changed position in some substantial way in reliance on the common intention so that repudiation of the common intention by D would be unconscionable: see *Lewin* (above) at 10—069.

136. Mr Deacon also submitted that it was necessary for Ms Oberman to establish conduct whether directly or indirectly referable to the purchase of each

individual Property which could only be explained on the basis that she had a beneficial interest in it. In support of this submission he relied upon *Grant v Edwards* [1986] Ch 638 and, in particular, the judgments of Nourse and Mustill LJJ.

137. I do not accept that submission either. *Grant v Edwards* was not concerned with an express agreement or more than one property. Moreover, it is clear that both Nourse LJ and Mustill LJ considered that the detriment had to be referable to the common intention not the property by the way they formulated the question: see 652D and 654B. Finally, Sir Nicolas Browne-Wilkinson V-C made it clear that the test for detriment was wider than Mr Deacon had submitted when he stated this at 657A-D:

> "In many cases of the present sort, it is impossible to say whether or not the claimant would have done the acts relied on as a detriment even if she thought she had no interest in the house. Setting up house together, having a baby, making payments to general housekeeping expenses (not strictly necessary to enable the mortgage to be paid) may all be referable to the mutual love and affection of the parties and not specifically referable to the claimant's belief that she has an interest in the house. As at present advised, once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is, in my judgment, sufficient detriment to qualify. The acts do not have to be inherently referable to the house: see *Jones (A. E.) v. Jones (F. W.)* [1977] 1 W.L.R. 438 and *Pascoe v. Turner* [1979] 1 W.L.R. 431 . The holding out to the claimant that she had a beneficial interest in the house is an act of such a nature as to be part of the inducement to her to do the acts relied on. Accordingly, in the absence of evidence to the contrary, the right inference is that the claimant acted in reliance on such holding out and the burden lies on the legal owner to show that she did not do so: see *Greasley v. Cooke* [1980] 1 W.L.R. 1306."

138. *Unconscionability*: Mr Deacon submitted that it was not unconscionable to deny Ms Oberman an interest in the Collins Properties and that she was more than adequately compensated by her share of the Joint Properties and her shares in Bluegen. The authorities do not suggest that the Court has a wide discretion either to grant relief or in relation to the scope of that relief once the requirements for a common intention constructive trust are met. But in any event

I deal with the issue in the context of proprietary estoppel (below) and if it is necessary for me to do so, I reject Mr Deacon's submission for the same reasons.

(b) The Portfolio

139. Mr Deacon submitted that this was a case in which Ms Oberman made no financial contribution to the purchase of the Collins Properties and that there was a greater evidential burden upon Ms Oberman. I reject that submission. I have found that Ms Oberman made a financial contribution to the creation of the Portfolio: see [104] to [109]; and that she assumed financial obligations in relation to the purchase of some of the Collins Properties: see [120]. But in any event I am satisfied that Ms Oberman satisfied that higher evidential burden by adducing clear documentary evidence of the parties' common intention: see [94].

140. I have found that it was the common intention of the parties that the portfolio of Properties acquired in the name of Bluegen and their joint and sole names were to be held on behalf of Mr Collins and Ms Oberman jointly and equally. I have also found that Ms Oberman relied on that common intention to her detriment by (a) her financial commitment, (b) working in the business and (c) by assuming financial liabilities in relation to the Portfolio and giving control over it to Mr Collins. In my judgment, these findings are sufficient as a matter of law to give rise to a common intention constructive trust of the Properties in the Portfolio.

141. Mr Deacon did not submit that such a trust would fail for lack of essential validity and in my judgment it was possible at all times prior to the termination of the parties' relationship to identify with certainty the Properties in the Portfolio. However, if this conclusion is wrong I find that there was a common intention constructive trust in relation to each Property in the Portfolio. I do so by drawing the inference from their express agreement that the parties had a common intention that they would own each such Property jointly and equally and their subsequent conduct in treating them as part of the Portfolio.

(c) 251 Eltham High Street (Property No. 17 and No. 26 to No. 29)

142. I turn now to the Properties acquired by Mr Collins after his relationship with Ms Oberman came to an end. On 24 July 2017 the freehold of 251 Eltham High Street was acquired by Bluegen and at some time thereafter Bluegen granted leases of the three flats and the shop to Mr Collins personally. Mr Collins accepted that these properties "form part of the accounts" of Bluegen in his witness statement. Mr Deacon and Ms Wookey also accepted in their opening submissions that Mr Collins held these Properties on trust for Bluegen. I can see no reason, therefore, why these Properties should not be treated as assets of Bluegen even though they were acquired after the personal relationship between Mr Collins and Ms Oberman had come to an end (and Mr Deacon did not submit otherwise).

(d) 111 Whitebeam Avenue (Property No. 24)

143. On 6 April 2016 111 Whitebeam was acquired for £398,000 and transferred into the sole name of Mr Collins. This Property falls into the same category as 251 Eltham High Street and Mr Collins accepted that he held it on trust for Bluegen. I therefore treat it as an asset of Bluegen in the same way.

(e) 26 Beaconsfield Road (Property No. 40)

144. On 14 December 2018 26 Beaconsfield Road was purchased for £355,000 and transferred into the sole name of Mr Collins. By letter dated 31 July 2020 BCH wrote to PHB stating that the beneficial owner of the Property was Mr John Dennington but also stating that the source of funds was a Property called 11 Shepherds Lane which had been registered in joint names (as Mr Collins confirmed).

145. In cross-examination Mr Collins stated that this was a mistake and that the Property was acquired with the proceeds of sale of 70 Princess Alice Way which was registered in the sole name of Mr Collins. In his Amended Defence, however, Mr Collins admitted that this Property was sold and its proceeds were invested in Bluegen. He also accepted that a sum of £5,000 which Ms Barton claimed to have lent to Bluegen was used to fund the purchase price.

146. It is impossible for me to assess on the basis of this material whether 26 Beaconsfield Drive was purchased using funds derived from the sale of 11 Shepherds Lane or 70 Princess Alice Way and, if so, the extent of any interest which Bluegen or Ms Oberman may have in the Property. For the reasons set out below I will order Mr Collins to account for the receipts and outgoings from all of the Properties in the Portfolio. That account will include the proceeds of sale of 11 Shepherds Lane and 70 Princess Alice Way. It will also include an account of the funds used to purchase 26 Beaconsfield Road.

(d) 10 Brasted Close (Property No. 41)

147. On 1 March 2017 10 Brasted Close was purchased for £357,500. In their letter dated 31 July 2020 BCH stated that the beneficial owners of the Property were Ms Charlotte Hicks and Mr Michael Butler, that Mr Steve Walker provided £100,000 and that Mr Collins raised the balance of the purchase price by a mortgage from the Birmingham Midshires. In his witness statement Mr Collins confirmed that Ms Hicks and Mr Butler were the beneficial owners. In cross-examination, however, Mr Collins accepted that the sum of £16,766.37 which was derived from the sale of 17 Voyager's Close (which was a Collins Property) was used to acquire 10 Brasted Close.

148. Again, it is impossible for me to assess on the basis of this material whether 10 Brasted Close was purchased using funds derived from the sale of 17 Voyager's Close and, if so, the extent of any interest which Ms Oberman may have in the Property. The account which I will order Mr Collins to provide will also include the proceeds of sale of 17 Voyager's Close and the funds used to purchase 10 Brasted Close.

(9) Alternatively, is Mr Collins estopped from denying that the Collins Properties were held on trust for Mr Collins and Ms Oberman jointly and equally?

149. Mr Deacon submitted that the proprietary estoppel claim added nothing to the constructive trust claim: see *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752 at [16] (Lord Scott). Ordinarily, I would agree. However, if I am wrong and it is not possible to create a common intention constructive trust of a fluctuating portfolio of properties, then the proprietary estoppel claim assumes

a very real importance. Mr Deacon did not submit (and rightly in my view) that the same objection applied to the doctrine of proprietary estoppel and there is an obvious analogy between the promise of a share in a portfolio of assets and the promise of a share in an estate.

150. I have found that Mr Collins represented to Ms Oberman that the Joint Properties and the Collins Properties were held on behalf of the parties jointly and equally irrespective of their legal ownership. I have also found that Ms Oberman relied to her detriment on the common understanding that she had such an interest in those Properties in three different ways. In my judgment that is sufficient to raise an equity: see *Davies v Davies* [2016] EWCA Civ 463 at [38] and, in particular, propositions (ii) and (v) (Lewison LJ).

151. In my judgment, the proportionate way to satisfy the equity is by awarding Ms Oberman a 50% interest in the Portfolio (apart from those Properties held by Bluegen). Mr Collins assured her that she would have such an interest and although it is possible that there was an imbalance between their initial financial contributions, Ms Oberman's evidence (which I accept) was that: "I gave him all that I had." Moreover, the detrimental reliance which she placed on Mr Collins' assurances thereafter was lasting and substantial. Finally, it would be unjust now to deny Ms Oberman her full share in the Portfolio when its value reflects the rents and profits which Mr Collins reinvested in it and which belonged to both parties equally.

(10) Does Ms Oberman have a 50% interest in the Properties and, if so, which ones?

152. In the light of the findings which I have made on issues (1) to (9) I find that Ms Oberman has a 50% interest in the Oberman Property, the Joint Properties and the Collins Properties apart from the Third Party Properties (which I deal with separately below) and I will make a declaration to that effect. For the purposes of the account, I will also declare that Ms Oberman had a 50% share in 11 Shepherd's Lane, 17 Voyager's Close and 70 Princess Alice Way and that she was (and is) entitled to a 50% share in their proceeds of sale.

153. Both parties accepted that the Bluegen Properties and the Bluegen (SC) Properties should be treated as assets of Bluegen. If it is necessary for me to do

so, I will declare that Mr Collins holds the Bluegen (SC) Properties on trust for Bluegen. If there is any dispute between the parties in relation to any other Properties which formed part of the Portfolio but have now been sold, I will give the parties permission to apply to me to resolve it. There was a suggestion in evidence that 182 Congleton Grove (Property No. 3) had now been sold. Moreover, the Agreed Summary of Properties which Mr Watson produced and which formed the basis for the Appendix to this judgment stated that 62 Well Hall Road (Property No. 13) had also been sold. Neither point was pursued in evidence.

(11) Should those Properties (if any) which are owned jointly and equally be sold and 50% of the proceeds of sale paid to Ms Oberman?

154. I did not hear argument on whether it would be appropriate to order a sale of any of the Properties (and, if so, on what terms). Moreover, in closing submissions Mr Deacon made it clear that Mr Collins opposed an order for sale. In those circumstances, I will make no order but give Ms Oberman permission to apply for an order for sale and for further directions in relation to conduct of any sales.

(12) Is Mr Collins required to account to Ms Oberman in respect of 50% of all sums deriving from the Properties and, if so, should this include 50% of the amount credited to the Blue Letts Loan Account?

(a) General

155. As both a trustee holding and managing the Properties on behalf of Ms Oberman and Bluegen and a director of Bluegen itself, I would normally have had no difficulty in reaching the conclusion that Mr Collins was acting in a fiduciary capacity and had a substantive obligation to account to both of them. However, Mr Watson properly drew my attention to *Wilcox v Tait* [2006] EWCA Civ 1867 in which the Court of Appeal held that the obligation is not automatic and depends on the intention of the parties. Jonathan Parker LJ stated this (at [74] and [75]):

> "Hence in an ordinary cohabitation case equitable accounting is only likely to come into play in respect of the period following the termination of the relationship between the co-owners.

> However, there can be no absolute rule as to that. I do not, for my part, understand Judge Behrens in *Clarke v Harlowe* to be going any further than that. It is, after all, in the nature of the concept of equitable accounting that there can be no hard and fast rule or "principle" that in a habitation case equitable accountability commences at any particular date. What is the appropriate date for the commencement of equitable accounting, assuming it is appropriate at all, must depend upon the facts of each case."

156. Mr Watson submitted that it was appropriate to order Mr Collins to account for: (a) sums acquired by way of mortgage on the Portfolio; (b) rental payments made from the Portfolio; and (c) the proceeds of sale from the Portfolio. He also asked the Court to make an order that Mr Collins should pay Ms Oberman 50% of such sums. I will in principle make such an order but I will give the parties permission to apply to me to determine the precise form of any order and for directions as to how the account should be taken.

157. Mr Watson did not identify a date for the commencement of the equitable account and I understood him to be asking for an order requiring Mr Collins to provide an account for the whole period of his relationship with Ms Oberman. I am in principle prepared to order an account for the period both before and after the termination of the parties' relationship. Given that Mr Collins stated in evidence that individual accounts were kept of the income and expenditure from each Property (see [123]), I would be inclined to order an account from 2005 when the earliest Properties were acquired. However, before doing so, I will give Mr Deacon an opportunity to make further submissions on the commencement date (if he wishes to do so).

(b) Blue Letts

158. Ms Oberman also claimed that Mr Collins' director's loan account with Blue Letts represented rents from the Portfolio which he had paid to Blue Letts in breach of trust. Schedule B to the Amended Particulars of Claim consisted of a schedule of payments which showed that the total amount which Mr Collins had lent to Blue Letts was £1,267,087.97. It also showed that the sources of the funds (where known) were as follows:

i) Mr Collins' First Direct account;

ii) Bluegen's HSBC account; and

iii) Thamesmead's NatWest account.

159. Mr Collins was taken to the SAGE printout for his loan account dated 8 August 2020 which showed that the balance was £1,058,874.05. He was also taken to three entries dated 13 and 16 November 2015 each for £10,000 with a narrative of "Loan from Bluegen". Schedule B confirmed that these sums were paid to Blue Letts from Bluegen's HSBC account. When he was asked why sums paid by Bluegen should be treated as a loan by him to Blue Letts, Mr Collins could give no explanation and tried to distance himself from these entries: "I don't actually deal with Sage and I don't touch the accounts at all."

160. Mr Collins was also taken to bank statements for his personal First Direct account which showed that on 3 March 2015 the proceeds of sale of 11 Shepherds Lane totalling £70,389.98 were paid into that account and that on 6 and 11 March 2015 two payments of £10,000 were paid to Blue Letts. The bank statements also showed a number of regular payments from Thamesmead into his personal account. Mr Collins did not accept, however, that these payments were rents from Properties in the Portfolio:

> "Q. Now it's possible, isn't it, that some of that money came from renters? A. No. Q. Why not? A. Because as I've mentioned to you already, rentals don't make profits. Q. No, but -- all the rentals comes into Thamesmead's account, yes? A. I didn't transfer any rental payment into my First Direct account for my personal use, so I could then transfer it to a loan account. Rental payments cover mortgage payments. they cover service charges, they cover works that were carried out on the properties, ground rents and any expenses for the business. Because people have to be paid their wages, computers, phones, IT, for photocopying."

161. I reject this evidence. Mr Collins produced no accounts or other evidence to identify the source of the funds which he advanced to Blue Letts and he did not explain how he was able to make payments totalling in excess of £1.2m to Blue Letts if (as he maintained) the Portfolio was unprofitable and unable to meet its costs. I find that on the balance of probabilities the source of most of these funds

was either Bluegen or the rents from the other Properties and that Mr Collins arranged for payment of them to Blue Letts in breach of trust.

162. Mr Watson submitted that Ms Oberman ought to be entitled to 50% of the sums advanced by Mr Collins to Blue Letts or, if the Court was not prepared to direct an immediate payment, then the Court should order an account and that Ms Oberman should be entitled to 50% of the rental proceeds paid to Blue Letts except where the funds were reinvested in the Portfolio.

163. I accept Mr Watson's alternative submission. As a trustee of the rents and profits of the Oberman Property, the Joint Properties and the Collins Properties the burden is on Mr Collins to show that he did not misapply the rents and profits of the Portfolio by diverting them to Blue Letts. However, in my judgment Mr Collins ought to be given an opportunity to provide an account for the funds advanced to Blue Letts and, if he is able to do so, to establish that they were not paid out of the rents or proceeds of sale of the Portfolio or that they were properly re-invested in the Portfolio.

164. I will, therefore, order Mr Collins to account for the payments made to Blue Letts shown on his director's loan account and, in particular, to identify the bank account out of which each payment was made, the source of the funds and if the source was the rents and profits of the Oberman Property, the Joint Properties or the Collins Properties whether they were then re-invested in the Portfolio. I will also order that Mr Collins pay to Ms Oberman 50% of any sums which he paid to Blue Letts in breach of trust and which were not re-invested. I deal with sums advanced by Bluegen in the context of the unfair prejudice petition (below).

VI. The Unfair Prejudice Petition

(13) Was Bluegen operated as a quasi-partnership?

165. Since 2001 Mr Collins and Ms Oberman have owned 51% and 49% of the shares in Bluegen respectively. They have also been directors of the company and Ms Oberman has been the secretary. Although it has filed annual returns and accounts Bluegen has been run informally. There was no shareholders'

agreement and neither party suggested that there were any formal shareholders' or directors' meetings. Furthermore, neither party relied on Bluegen's Articles of Association and indeed they were not in evidence. It was almost as if they were irrelevant.

166. Although I have found that there was no partnership under the 1890 Act I have found that Mr Collins transferred 47 shares in Bluegen in recognition of the fact that Bluegen was a shared or joint business endeavour. Although Ms Oberman accepted that the legal term and the word were not used, she stated: "We were a partnership weren't we? We were living together and we were in business together." I have already set out Mr Collins' evidence in which he said he treated her as his business partner in Bluegen.

167. Ms Oberman accepted that she was not involved in all aspects of management. She also accepted that she did not see mortgage documents or find the Properties. But she said she was involved in management generally and asked in 2014 to become more involved in day to day management. When it was put to her that she did not challenge the use of the rents she answered as follows:

> "Q. Shaun's case, he says this was not a case of rental income being used to reinvest to acquire further properties. I mean, if you say there was a surplus, did you say to Shaun, "Where is my 50 per cent"? A. No, because again it was all for both of us and he did the financial things. And I trusted him to do so and act on -- well, yes, act for both of us because we were together."

168. There was an issue between the parties whether Mr Collins had provided Ms Oberman with information about 182 Congleton Grove (Property No. 3). In dealing with that issue Mr Collins accepted that he provided her with information on a regular basis from the early days:

> "A. She was kept up to date on numerous occasions. We had these conversations on a regular basis at that time, because that was in the early days. We were trying to clear off the home mortgage at Clarenden Place. That's a mortgage I've still been paying for for the last five years while not living there. Q. Why did she say, "You didn't inform me of the open day or any subsequent offers"? A. Because she was aware. That's incorrect. She was completely aware. In fact, she agreed the sale on Congleton Grove and then subsequently, after the people -- after

> we got the tenants out of the property and made it vacant for the new buyers, she then pulled out."

169. There is no exhaustive definition of a "quasi-partnership" which will give rise equitable constraints upon the exercise of the rights and powers of shareholders. Although the issue has been debated in many authorities, it is only necessary for me to refer one or two of them. In *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 Lord Wilberforce identified the following characteristics of a quasi-partnership at 379:

> "It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business; (iii) restriction on the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere."

170. In *Re Edwardian Group Ltd* [2019] 1 BCLC 171 Fancourt J asked himself what as a matter of law would qualify a quasi-partnership. After citing the passage from *Ebrahimi v Westbourne Galleries Ltd* (above) he stated this at [127]:

> "Where equitable considerations of the kind identified by Lord Wilberforce apply, a court is likely to find that, although the conduct of the company was lawful according to its constitution, nevertheless the contravention of the special underlying obligation was a wrong done to some or all of the members that justifies the grant of relief. Nevertheless, it is salutary to remind oneself that the initial question on such a petition must be whether the conduct of which complaint is made was in accordance with the articles of association. If it was, then the allegation of some inconsistent obligation or right needs to be carefully scrutinised: In re *Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 17-18, per Hoffmann LJ. It is also pertinent to add

> that there must be something in the nature of the 'special underlying obligation' or the circumstances in which it arises that makes it enforceable in equity at the suit of the petitioner. An unenforceable agreement or understanding will not suffice: there must be something that makes it unconscionable for those controlling the company to disregard the agreement or understanding, and that will generally be found where there is mutuality between the shareholders as to the benefit and burden of the obligation, or some detrimental reliance or change of position that makes it inequitable to deny the obligation."

171. Finally, it is clear that equitable constraints on the exercise of strict legal rights may arise not only at the beginning but during the course of the parties' relationship although it is also necessary for the petitioner to show that he or she relied on the new arrangements. In *Re Guidezone Ltd* [2000] 2 BCLC 321 Jonathan Parker J said this at [175]:

> "Applying traditional equitable principles, equity will not hold the majority to an agreement, promise or understanding which is not enforceable at law unless and until the minority has acted in reliance on it. In the case of an agreement, promise or understanding made or reached when the company was formed, that requirement will almost always be fulfilled, in that the minority will have acted on the agreement, promise or understanding in entering into association with the majority and taking the minority stake. But the same cannot be said of agreements, promises or understandings made or reached subsequently, which are not themselves enforceable at law. In such a case, the majority will not as a general rule be regarded in equity as having acted contrary to good faith unless and until it has allowed the minority to act in reliance on such an agreement, promise or understanding. Absent some special circumstances, it will only be at that point, and not before, that equity will intervene by providing a remedy to the minority which is not available at law."

172. Bluegen was, in my judgment, a quasi-partnership from (at least) 2001. It is highly likely that it involved an association formed on the basis of a personal relationship of mutual confidence. But at all events it was continued on that basis when Ms Oberman became the owner of 49% of the shares and a director of the company. It also involved an agreement or understanding that both she and Mr Collins would participate in the conduct of the business. Finally, Mr Collins did not suggest that Ms Oberman could easily sell her shares (whether to him or a third party). At all events, he has made no offer to acquire them.

(14) Did Ms Oberman have a legitimate expectation that: (a) she would be entitled to participate in the management of the company; (b) that she would be consulted on significant decisions; and (c) insofar as any decisions were taken, they would be in the best interests of her and the company?

173. I also hold that Ms Oberman had a legitimate expectation that she would be entitled to participate in the management of the company and consulted on significant decisions. I do so for the following reasons:

i) I accept Mr Collins' evidence that he involved Ms Oberman in the management of Bluegen from the early days. That conduct over a long period of time gave rise to a reasonable expectation of both participation and consultation.

ii) I also accept Ms Oberman's evidence that she trusted Mr Collins in relation to financial matters and did not insist on the distribution of profits from the Bluegen or Bluegen SC Properties. In correspondence one of her complaints was Bluegen's failure to distribute dividends and the accounts for the years ended 30 September 2016, 2017 and 2018 recorded that none were paid. Indeed, they recorded that the company had made losses (a point to which I return).

iii) The relationship between the parties and her reliance on it made the expectation of participation and consultation a legitimate one. Put another way, Ms Oberman's reliance to her detriment upon her mutual relationship of confidence with Mr Collins imposed an equitable obligation upon him to give effect to that expectation.

iv) I have considered whether the fact that Ms Oberman did not choose Properties or see mortgage documents or deal with the finance prevents such a legitimate expectation arising. In my judgment, it does not. A shareholder may have a legitimate expectation of being consulted in relation to major decisions even though he or she is not involved in day to day management: see Hollington on Shareholders Rights 9th ed (2020) at 7—50 citing *Re Elgindata* [1991] BCLC 959 (Warner J).

v) But in any event Ms Oberman was (and is) a director and she asked to become involved in day to day management in 2014 and before the relationship came to an end. Mr Collins did not suggest that she was not entitled to do so.

174. It is also important that at the end of 2015 the mutual relationship of trust and confidence between the parties broke down. Mr Watson did not rely upon this as a reason by itself for making an order requiring Mr Collins to buy Ms Oberman's shares and rightly so: see *O'Neill v Phillips* [1999] 1 WLR 1092 at 1104C to 1105B (dealing with "No-fault divorce"). However, in my judgment the breakdown in the relationship did impose an obligation upon Mr Collins to provide sufficient information to Ms Oberman to enable her to participate fully in Bluegen's management as a director and to make informed decisions as a shareholder. It was not reasonable to expect her to remain a shareholder and director otherwise.

175. Finally, I also hold that Ms Oberman had a legitimate expectation that any decisions which Mr Collins took on behalf of Bluegen would be in its best interests. Such a legitimate expectation does not depend on the finding that Bluegen was a quasi-partnership. Mr Collins owed a statutory duty to promote its success under section 172 of the Act and any shareholder is legitimately entitled to expect that a director will comply with that duty. Moreover, a breach or breaches of that duty may justify relief under section 996: see, e.g., *Atlasview Ltd v Brightview Ltd* [2004] EWHC 1056 (Ch) at [61] (Jonathan Crow).

(15) Has Mr Collins excluded Ms Collins from the management of Bluegen?

(a) Failure to supply information and refusal of an audit

176. From April 2016 to November 2017 Ms Oberman and PHB made detailed and sustained requests for financial information relating to the affairs of Bluegen. Ms Oberman also asked for an audit. Although BCH provided some information, Mr Collins accepted that he had not provided management accounts (as he had agreed) and that he had not given instructions for an audit:

> "Q. Do you know why there were no management accounts? A. We don't do management accounts for the company. Q. She says: "In light of this I am now going to exercise my right under section 476 of the Companies Act and require an audit of Bluegen statutory accounts for the year ended 30 September 2016. Should I receive accurate, timely and meaningful information going forward, I would be more than willing to retract my request for an audit of Bluegen Limited." That audit never took place, did it? A. Not that I'm aware of, no. Q. Why not? A. There was no money to do it. Q. I suggest that's wrong, Mr Collins. I suggest there was money to do an audit but you didn't want an audit. A. I suggest you're incorrect, on the basis there isn't any money in the account, and there hasn't been a lot of money in that account for the last three years, four years."

177. On a number of occasions Mr Collins defended his failure to provide information or carry out an audit by saying that Ms Oberman refused to sit round a table with him. For example, he had this exchange with Mr Watson shortly after giving the evidence above:

> "Q. But you accept in relation to Bluegen she's entitled to information? A. Yes, but she has been made aware of information and, as I've repeatedly said, you refuse to sit round the table to discuss any of this anyway."

178. Mr Watson submitted that this was a reference to attempts to meet to settle the dispute (including a failed mediation) and Mr Deacon did not suggest otherwise. I am satisfied that this did not excuse Mr Collins' failure to provide Ms Oberman with management information or to carry out an audit. In particular, it did not excuse his failure to comply with a request under section 475 of the Companies Act 2006 which provides as follows:

> "(1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 475(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year. (2) The notice must be given by– (a) members representing not less in total than 10% in nominal value of the company's issued share capital, or any class of it, or (b) if the company does not have a share capital, not less than 10% in number of the members of the company. (3) The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year."

179. The section is headed "Right of members to require audit" and Mr Collins ignored Ms Oberman's statutory right. I also reject Mr Collins' reason for failing to instruct auditors to carry out an audit and I find that the real reason was because he did not want an audit and was concerned about what it would reveal.

180. Finally, Ms Oberman gave evidence (which I accept) that Mr Collins physically prevented her from having access to the office to examine the books and records of Bluegen:

> "Why do you say he excluded you from the management after you split? A. Because he wouldn't let me into the office and, yes, he didn't let me do anything like that, to look at any paperwork or to get involved any further. Q. He says he did let you, you could have done what you wanted? A. I think that's contrary to belief. There's lots of correspondence that says that he didn't. And when I actually did go into the office once, he said he was going to call the police, in 2016."

(b) <u>taking decisions without Ms Oberman's consent or approval</u>

181. Ms Oberman's evidence was that Mr Collins arranged for Bluegen to enter into the following transactions without consulting her or obtaining her consent or approval:

i) On 21 December 2016 Bluegen sold 26 Greenhaven Drive to Greenwich LBC.

ii) On 13 April 2017 Bluegen sold the second floor flat at 43 Whernside Close for £200,000.

iii) On 19 December 2014 Bluegen granted 125 year leases of Flats 1 to 3, 49 Elmdene Road (Property No. 19 to No. 21) to Mr Collins for nil consideration and he borrowed substantial sums on the security of those leases.

iv) Bluegen is the owner of the freehold of 58 St Nicholas Road (Property No. 16). On 4 June 2014 Mr Collins acquired the ground floor flat with the benefit of a loan from the Birmingham Midshires. During 2015 he

surrendered the lease and on 30 September 2015 Bluegen sold the ground floor flat for £276,000 (probably by granting a new lease). The completion statement shows that £151,624.56 was due to Bluegen on completion.

v) On 24 July 2017 Bluegen acquired the freehold of 251 Eltham High Street and thereafter granted leases to Mr Collins of Flats 251A to 251C and the shop on the ground and lower ground floor.

182. Mr Collins accepted that Bluegen went ahead with the purchase of 251 Eltham High Street against Ms Oberman's wishes although he maintained that if Bluegen had not done so it would have lost a substantial deposit. He also accepted that he did not consult Ms Oberman or obtain her consent to the sale of the ground floor flat at 58 St Nicholas Road. He also admitted that the balance of £151,624.56 was credited to his director's loan account as a loan by him to the company despite the fact that the sum was due to Bluegen. When this was put to him, he claimed it was a mistake by his accountant.

183. It was, however, his evidence that Ms Oberman was aware both of the long leases at 49 Elmdene Road and the sale of the second floor flat at 43 Whernside Close. I prefer Ms Oberman's evidence on this issue. Mr Collins accepted that when he mortgaged the leasehold properties at 49 Elmdene Road he did so in his own name and did not inform the lenders that they belonged to Bluegen. I consider it highly unlikely that he would have consulted Ms Oberman about the grant of the leases if this is what he had intended to do.

(c) <u>causing Bluegen to incur improper liabilities to Blue Letts</u>

184. Blue Letts is wholly owned by Mr Collins. Its annual report and accounts for the year ended 31 March 2018 shows that it had an average of one employee and that as at that date it had trade debtors of £1,104,312 and creditors of £1,073,249. The debtors and prepayments schedule accompanying the accounts showed that debtors figure consisted entirely of sums due from Bluegen. The creditors schedule showed that the principal creditor of Blue Letts was Mr Collins himself whose loan account showed that Blue Letts owed him £795,532. (By 8 August 2020 the balance had increased to £1,058,874.05: see [159]).

185. In his witness statement Mr Collins described Blue Letts as a construction company whose main work initially came from maintenance work on behalf of landlords from Thamesmead but following the purchase of 49 Elmdene Road (which took place on 2 April 2014) it carried out works on behalf of Bluegen as well as building contracts on behalf of third parties.

186. Bluegen's accounts for the years ended 30 September 2016, 30 September 2017 and 30 September 2018 all record that it made losses. Nevertheless, the creditors' loan schedule records that as at 31 September 2018 the sums which it owed to Blue Letts had increased to £1,518,241. If the figures for debtors in the Blue Letts accounts are accurate, then the amount which Bluegen owed to Blue Letts had increased by £413,929 between 31 March 2018 and 31 September 2018.

187. Section 175 requires a director to avoid a situation in which he or she has, or can have, a direct or indirect interest that conflicts with, or possibly may conflict with, the interests of the company:

> "(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity). (3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company. (4) This duty is not infringed– (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or (b) if the matter has been authorised by the directors. (5) Authorisation may be given by the directors– (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors; or (b) where the company is a public company and its constitution includes provision enabling the directors to authorise the matter, by the matter being proposed to and authorised by them in accordance with the constitution. (6) The authorisation is effective only if– (a) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director, and (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted. (7) Any

> reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties."

188. Mr Collins accepted that he understood his duties as a director of Bluegen and that there was a potential conflict between the interests of Bluegen and Blue Letts (and, therefore, his duties to both of them). When he was asked what he had done to prevent such a conflict arising, he admitted that he had done nothing. He did not suggest that he had taken legal advice. Nor did he suggest that he asked for or obtained the informed consent or authorisation of Ms Oberman to incur debts or liabilities on behalf of Bluegen to Blue Letts exceeding £1.5m and it was not suggested to her that she gave her consent or authorised them for the purposes of section 175 of the Companies Act 2006.

189. Ms Oberman accepted that she was aware of Blue Letts and that she assumed to begin with that it was carrying out general maintenance work. She later became aware that it was undertaking refurbishment and development work although she was never aware of the specifics. She accepted that she knew that Blue Letts was charging for work but said that she did not know the specific amounts which it was charging and that Mr Collins handled the negotiations. It was not put to her that she was aware of any of the following matters:

    i) Although Blue Letts had only one employee and engaged sub-contractors to carry out the work, Mr Collins permitted it to charge Bluegen a profit element on the works which it undertook.

    ii) Blue Letts completed work on Elmdene Road in 2014 and invoiced Bluegen for £263,880. However, on 27 May 2020 Mr Collins submitted an invoice for the same work totalling £439,330.56. Mr Collins accepted that he submitted this invoice on the basis that the revised figure was the value of the works calculated by reference to 2019 prices rather than their actual cost at 2014 prices.

    iii) Blue Letts carried out work to 111 Whitebeam Avenue (Property No. 24) and charged Bluegen £306,000. Mr Collins accepted that this exceeded the current equity in the Property.

iv) By email dated 19 January 2018 Mr Collins wrote to Mr Wilson stating that Blue Letts' proposed accounts showed a loss of £152,459 and suggesting that it should cover those losses by submitting an invoice for £155,000 to Bluegen. Mr Collins described this as an "*interim invoice*" for work on 251 Eltham High Street. He did not deny that Blue Letts had charged Bluegen twice for the same work.

v) By email dated 26 July 2018 Mr Collins forwarded a spreadsheet to Mr Wilson showing that the cost of works carried out for Bluegen. It also contained a column showing that the "amended" cost of the works as at 31 March 2018 was £1,475,025.44. As I have stated above, the final figure as shown in Bluegen's accounts for the year ended 31 September 2018 was £1,518,241.

vi) In their letter dated 6 May 2020 BCH stated that no documents existed for the transactions between Bluegen and Blue Letts for the period since 2016. Nevertheless, Mr Collins produced a series of invoices dated 27 May 2020 from Blue Letts to Bluegen for total sums which had now increased to £1,608,876.91.

190. Although he would not accept it, I find that Mr Collins was deliberately inflating the sums due to Blue Letts at the expense of Bluegen. He accepted that Blue Letts was charging Bluegen a profit and that it was claiming the "value" of the work and services at 2019 prices not their actual cost. He also had to accept that Blue Letts issued an invoice twice for the same work and charged £155,000 to Bluegen in order to pass on its losses. Finally, he could not explain how or why payments made by Bluegen to Blue Letts could be treated as loans by him as opposed to repayments by Bluegen. In my judgment, the obvious purpose was to enable him to extract funds from Bluegen for himself through Blue Letts without the knowledge or approval of Ms Oberman.

(d) <u>transferring Properties out of Bluegen</u>

191. I have already set out under (b) (above) the Properties which Mr Collins transferred out of Bluegen without consulting Ms Oberman or obtaining her approval.

(e) Granting leases to himself in breach of fiduciary duty

192. I have also found that Mr Collins arranged for Bluegen to grant long leases of Flats 1 to 3, 49 Elmdene Road (Property No. 19 to Property No. 21) to himself for nil consideration and that he charged them for his own personal benefit. This was a paradigm breach of fiduciary duty and Mr Deacon did not suggest otherwise.

(16) Were these matters or any combination of them unfairly prejudicial to Ms Oberman's interests as a member of Bluegen?

193. I find that Mr Collins conducted the affairs of Bluegen in a manner which was unfairly prejudicial to Ms Oberman's interests as a member of Bluegen in all of the respects set out in (a) to (e) (above). In particular:

i) I find that Mr Collins' conduct in relation to matters (c) and (e) (i.e. the Blue Letts loan and the grant of leases) involved him "stripping out the company's assets". In *Atlasview Ltd v Brightview Ltd* (above) Mr Jonathan Crow held that this was the "classic example" of conduct to justify relief under section 459 of the Companies Act 1985: see [60] and [61].

ii) I also find that Mr Collins' conduct in relation to matter (a) (i.e. the failure to provide Ms Oberman with information or to carry out an audit or to permit her access to the office) was unfairly prejudicial to her interests because it prevented her from discovering how Mr Collins was conducting Bluegen's affairs and, in particular, what he had done with its assets.

iii) Finally, I find that Mr Collins' conduct in relation to all of the matters (a) to (e) were unfairly prejudicial because that conduct was "corrosive of good administration and trust between shareholders and directors": see *Re Edwardian Group Ltd* (above) at [339].

(17) Is Ms Oberman entitled to an order that Mr Collins purchase her shares in Bluegen?

194. In my judgment, the natural relief to grant is an order that Mr Collins should purchase Ms Oberman's shares in Bluegen. The company has only two shareholders and directors and once the relationship between them had come to an end Mr Collins conducted its affairs with the purpose of stripping the value out of Bluegen and depriving Ms Oberman's shares of their value.

195. I accept Mr Watson's submission that in valuing the shares there should be no minority discount because this was a quasi-partnership company: see *O'Neill v Phillips* (above) at 1107D. I also accept his submission that the Court will in general value the shares as if the unfairly prejudicial conduct had not taken place. Mr Watson placed reliance on *Hollington* (above) at 8—59:

> "The court will, in general, value the shares as if the unfairly prejudicial conduct had not taken place: *Scottish Cooperative Wholesale Society v Meyer* [1959] A.C. 324 at 364. The simplest method of achieving this may be, depending on the circumstances, to value the shares as at a convenient date shortly before the unfairly prejudicial conduct began. It may not always be appropriate to back-date the valuation in this way (see the section on "Date of valuation" at para.8-60 below), in which case a specific allowance may, where practicable, have to be made in the valuation for the unfairly prejudicial conduct. For example, in *Lloyd v Casey* [2002] 1 B.C.L.C. 454 Ch D, where the court had ordered the majority to buy out the minority because of excessive drawings from the company, the court directed that in ascertaining the price the assets of the company should be treated as increased by an amount equal to the excessive level of such drawings [107]."

196. I accept this as an accurate statement of the approach which the Court should adopt. It would obviously be unjust if the Court were to order a valuation of the company without making allowances for the very conduct which was unfairly prejudicial to Ms Oberman in the first place and would have the effect of permitting Mr Collins to keep the assets which he has stripped out of Bluegen. In the present case the parties did not ask me to fix the valuation date and, if necessary, I will hear further submissions on that issue. But given the discrete adjustments which Ms Oberman asks me to make to the valuation of her shares, I approach issue (18) on the basis that, where possible, a specific allowance for those adjustments should be made.

(18) For the purposes of determining the buyout price, should any of the following adjustments be made?

(a) Are the leases over Flats 1 to 3, 49 Elmdene Road Property No. 19 to Property No. 21) owned by Bluegen?

197. In *Keech v Sandford* (1726) Sel Cas t King 61 (25 ER 223) the trustee of a lease of Romford Market applied for a renewal of the lease for the benefit of the infant beneficiary but when it was refused the trustee obtained a renewal of it for himself. Lord King LC held that the trustee must hold the lease on trust for the infant. It seems to me that the Court should approach the value of Bluegen on the same basis. Accordingly, I direct that Bluegen will be treated as if it were the beneficial owner of Flats 1 to 3, 49 Elmdene Road.

(b) Were the sums paid or said to be owing to Blue Letts properly incurred?

198. Mr Watson submitted that the debt or debts owed by Bluegen to Blue Letts should be discounted entirely. I accept that submission. Section 178 of the Companies Act 2006 provides that the consequences of a breach of section 175 are the same as would apply if the corresponding common law rule or equitable principle applied. If Ms Oberman had brought a derivative claim on behalf of Bluegen, she could have obtained the following relief: (a) rescission of the contracts between Blue Letts and Bluegen, (b) restoration of the company's property and (c) equitable compensation.

199. I have considered whether it would be appropriate to order an inquiry into the true value of any work carried out for the benefit of Bluegen (or its Properties) and to add the total figure back to the value of Bluegen. In the event, I have decided to discount the amount which Bluegen owed to Blue Letts in full for the following reasons:

i) Mr Collins did not argue that an allowance should be made or make any attempt to prove what the true cost of the work carried out to the Bluegen or Bluegen (SC) Properties were. He had an opportunity to do so.

ii) I accept Mr Watson's submission that it is extremely difficult to assess what is said to be due. Based on his disclosure, it seems unlikely that Mr

Collins will be able to produce most (if not all) of the records showing what was paid to the sub-contractors who carried out the work.

iii) I have ordered Mr Collins to account for the payments made to Blue Letts shown on his director's loan account and to pay to Ms Oberman 50% of the sums which he paid to Blue Letts out of the rents or proceeds of the Properties in joint or sole names: see [164] (above). Ms Oberman did not ask me to make a similar order in relation to Bluegen and I do not propose to do so. It seems to me that justice (of a rough sort) will be done because it is highly likely that Bluegen funded the payments which Blue Letts paid to sub-contractors and third parties out of the rents from the Portfolio.

iv) It seems to me that it will simply extend the dispute between the parties if I permit Mr Collins to re-open the Blue Letts loan and attempt to justify it as part of the valuation exercise. Finality requires that a line should be drawn under this issue.

(c) Were the specified loans genuinely made and/or advanced and/or used for the benefit of Bluegen?

200. It was Ms Oberman's case that Mr Collins also conducted the affairs of Bluegen in a manner which was unfairly prejudicial to her interests by assuming liability on its behalf to a number of third parties for a series of loans which were either never made or not paid to Bluegen or used for its benefit. The relevant creditors and the amount of each loan were as follows:

i) Ms Nikki Barton: £35,000;

ii) Mrs Carol Ryder: £40,000;

iii) Mr Danny Sans: £98,000;

iv) Mr Ashley Harber: £115,855.72;

v) Mr S Walker: £20,000; and

vi) Mr J Clark: £6,000.

201. In both opening and closing submissions I raised the question whether it was appropriate to decide whether these loans were made and, if so, whether the funds were paid to Bluegen or used for its benefit given that the individual creditors are not parties. However, Mr Watson satisfied me that I could decide whether the loans were made and, if so, whether they were paid to Bluegen or used for its benefit. I say this for the following reasons:

i) This is not a debt claim and any findings which I make will not be binding on Bluegen's creditors. In deciding whether to discount the identified loans, the Court is engaged in an exercise to determine the terms on which Ms Oberman's shares should be valued. It will remain open to the individual creditors to pursue their claims against Bluegen.

ii) Mr Watson drew an analogy with the falsification of entries in a trustee's accounts for loans made by third parties. The Court may disallow or falsify an entry on the basis that the trustee should not have borrowed the money or incurred a particular expense. But this will not prevent the creditor from pursuing the trustee. It will only prevent the trustee from obtaining an indemnity for that liability out of the trust funds or assets. Although not quite exact, I found this analogy a helpful one.

iii) If Mr Collins accepted liability to a third party or recorded a loan in Bluegen's accounts and that loan was never made or the funds were never paid to Bluegen or used for its benefit, then Mr Collins committed a breach of fiduciary duty and a breach of his duty under section 172 of the Companies Act 2006. I accept that in those circumstances, the Court should discount those loans on the valuation of Ms Oberman's shares in the same way as it has discounted the Blue Letts loan and whether or not the creditor is able to enforce the debt against Bluegen.

iv) In any event, Mr Deacon and Ms Wookey accepted in their written closing submissions that if the identified loans were not genuine or not in the interests of Bluegen, the Court could order them to be discounted in the valuation for the buyout (although they submitted that all of the loans were genuine).

202. None of the six identified loans were recorded in Bluegen's "Creditors Lead Schedule" used for preparing the accounts for the year ended 31 March 2016. The loans alleged to have been made by Ms Ryder, Mr Sans and Mr Harber appeared in the corresponding schedule for the years ended 31 March 2017 and 31 March 2018. The loans alleged to have been made by Mr Walker and Mr Clark appeared only in the schedule for the year ended 31 March 2018 (although the loan alleged to have been made by Ms Barton was not recorded in either the 2017 or the 2018 schedule). Mr Collins' explanation for the absence of any of these loans from Bluegen's accounts until 2017 was that they had been allocated to him in 2016:

> "Andrew Wilson, the original one, that he allocated all those loans just under my name first of all, just to keep it simplistic, then decided that afterwards - - I think purely because of the nature of the case was then going to highlight them individually so they individually stood out. So it's the same figure just under individual names."

203. This explanation was false. The figure of £240,596.81 shown on the Creditors Lead Schedule for the year ended 31 March 2016 as owing by Bluegen to Mr Collins included the sum of £151,624.56 which had been credited to his account on the sale of 58 Nicholas Road: see [181] iv) (above). I was not prepared to accept that the loans were never made or to discount them entirely just because Mr Collins gave a false explanation and could not explain why they did not appear in Bluegen's accounts. But equally I was not prepared to accept that they were genuine or that the funds had been paid to Bluegen or applied for its benefit without clear evidence to establish those facts.

204. *Ms Barton (£35,000)*: On 4 April 2017 Ms Barton paid the sum of £10,000 into Mr Collins' First Direct account. On 15 December 2017 she also paid the sum of £5,000 into his account. In her witness statement Ms Barton explained these two payments and a third payment of £20,000 in cash as follows:

> "3. On 4th April 2017, I agreed to loan Mr Shaun Collins the sum of £10,000 This was paid into Shaun's personal First Direct Account and then to be distributed accordingly. It was agreed that this was to be repaid within two weeks. 4. On 15th April 2017, I agreed to loan Mr Shaun Collins the sum of £5,000, also into the First Direct Account. Again, this was also to be repaid

> within two weeks. 5. On 20th December 2017, I agreed to loan Mr Shaun Collins the sum of £20,000 in cash……I attach a copy of the loan agreement entered into between me and Bluegen."

205. In her oral evidence Ms Barton accepted that paragraph 4 was inaccurate and that she had made the second payment on 15 December 2017. She also gave evidence that when she made the loan in December 2017 she was told that it would be repaid on the sale of a Property in January 2018. When she was asked to identify the borrower she gave the following evidence:

> "Q. Are you speculating there as to what happened, or are you saying that it did happen that you were told it was to be used by Blue Letts Limited? A. I would have been told, but as I say, whether it is Bluegen or Blue Letts Limited, you know, I will get confused with it all and I think I can be forgiven for doing so, there's so much going on. But as to the exact date of that, what you are asking me, I don't know. Q. Really you have no idea which company this money was going to go to? A. No, I just trust Shaun that you gave him some monies to where it needs to go. It wasn't his personal account it was staying in for his use, I know that."

206. Ms Barton was then taken to the loan agreement dated 1 April 2017. She was unfamiliar with its terms and, in particular, that she was entitled to receive an additional £10,000 upon repayment of the loan. When it was put to her that the agreement could not have been signed before 20 December 2017 she became confused and could not recall. When Mr Collins was asked about the loan agreement, he had to accept that it had been prepared after the payments had been made. He also suggested that it was probably executed in January 2018. He gave the following evidence about the preparation of the loan agreement:

> "Q. Tab 4, this is a loan agreement between you and Ms Barton. A. That's correct. Q. And it's dated 1 April 2017. A. Yes. Q. It wasn't created on 1 April 2017, was it? A. No, no, no. The loan agreement was started on the 18th, so the three payments would come. There was no more request for monies, I wasn't going to borrow any more money after the £20,000, so we arranged for the agreement dated before the first one so that it accounted for three payments. Q. Why did you do that? A. Why not? Because that's quite straightforward, isn't it. We weren't going to do it before the £20,000 payment because the £20,000 payment is the last one, so there's not going to be any further payments, so we went back down to the date of the first payment and added the

> three payments on the dates they were paid. Q. Ordinarily, Mr Collins, if you sign a document, you put the date that you sign the document, not -- A. We didn't, so -- but there's nothing, there's nothing contentious about that. It's straightforward. She bailed out the company, yes, again. Q. I suggest this was designed to mislead and give the impression it was created on 1 April 2017. A. Absolutely not. I'm not hiding it. I know what date it was created. But I couldn't create it before the payment of £20,000, but because the £20,000 was the last payment I went back to that date as the date of the arrangement."

207. I accept Ms Barton's evidence that she had no idea who the borrower was. I also accept Mr Collins' evidence that the loan agreement was signed and back-dated after each of the three payments was made. But I do not accept that it was intended to record loans which Ms Barton had made to Bluegen and in my judgment it was intended to mislead Ms Oberman and her advisers and ultimately the Court into accepting that a formal loan agreement had been made between Bluegen and Ms Barton before she made any of the payments.

208. It is unnecessary for me to determine whether the loan was made to Blue Letts or Mr Collins personally. But I am satisfied that the loans were not made to Bluegen for the following reasons:

i) Each of the first two payments was made into Mr Collins' personal bank account and not to Bluegen.

ii) Ms Barton was recorded as a creditor in the accounts of Blue Letts and not in the accounts of Bluegen.

iii) Although it is fair to say that on 4 April 2017 Mr Collins paid £5,000 of the first £10,000 to Bluegen, he used the balance to pay off his overdraft and Visa cards. He used the second £5,000 to fund the purchase of 26 Beaconsfield Road.

iv) Mr Collins made no attempt to explain how he used the remaining £20,000 in cash. Indeed, he did not mention the loan at all in his witness statement.

209. *Ms Ryder (£40,000)*: On 30 April 2013 Ms Ryder, who is Mr Collins' mother, paid £40,000 into Mr Collins' First Direct Account. She gave evidence that she

intended to lend the money to Bluegen and entered into a loan agreement dated 30 April 2013 on or about that date. Mr Collins did not, however, transfer into Bluegen's bank account any of the money which she had advanced. He lent £20,000 to Blue Letts and used the balance to pay his personal expenses. He defended this on the basis that Bluegen owed substantial sums to Blue Letts:

> "Q. So it doesn't look like any of this money was given to Bluegen, does it, Mr Collins? A. The money is allocated to Bluegen. I made that decision, that the money came in, it's a loan to Bluegen, the same as Nikki Barton's is, on the basis that Bluegen isn't paying for anything at all, it's been -- it's taken money from other companies, and so when everything comes back, all these payments can be settled and everybody can be paid off. Q. Mr Collins, if this money was being used for Bluegen's interest and was being paid to Blue Letts, wouldn't it be being used to pay down the debts that Bluegen owes to Blue Letts rather than being treated as a loan by you? A. No, and that's -- that's why I dealt with it. Q. I suggest again this is not in the interest of Bluegen. A. Nor is the debt that is outstanding to Blue Letts for it. But as I said, Bluegen has had many, many benefits from having Blue Letts working for it and not paying any of the bills. Q. And if you go back to bundle D, if you go to tab 5, page 62, you have the creditor's schedule. Now, Ms Ryder is there in 2017 but she's not there in 2018. A. I've no idea why. I don't know why. Q. So you've no idea why she's been removed as a creditor of Bluegen? A. No, I'd only be guessing. Q. These would be your decisions? You would be the one who told the accountant who the creditors are? A. Yes the information would have been supplied through me or through Alison, and Andrew would have made some decisions internally, yes. Q. The reason is, isn't it, that you hadn't used any of this money for Bluegen so you didn't consider her a true creditor? A. No, she is a true creditor."

210. Mr Watson raised a number of concerns about the loan and whether it was genuine but I accept Ms Ryder's evidence and find that she intended to lend Bluegen £40,000 and advanced that sum to Mr Collins for that purpose. However, I also find that in breach of his duty under section 172 of the Companies Act 2006 Mr Collins did not pay that sum to Bluegen or apply it for Bluegen's benefit or to promote its interests. He paid £20,000 to Blue Letts but instead of treating this as a repayment of any sums which Bluegen may have owed to Blue Letts he treated it as a loan by himself. He misappropriated the balance of £20,000 for his personal benefit.

211. *Mr Sans (£98,000)*: In his witness statement Mr Collins stated that in or about 2010 Mr Sans paid £50,000 towards the purchase price of 17A Redbourne Drive. He also referred to an investment of £50,000 by a third party investor in 43 Whernside Close although he did not identify the investor by name. In cross-examination he confirmed that it was Mr Sans. However, Mr Collins did not call Mr Sans to give evidence and he did not produce any documentary evidence of the loan or receipt of payment.

212. In the absence of any documentary support or corroboration by Mr Sans himself, I am not prepared to accept Mr Collins' evidence that such a loan was made. If the loan had been genuine, Mr Grimes would have recorded it in Bluegen's accounts from 2010 onwards and if it had remained outstanding, Mr Wilson would have recorded it in Bluegen's accounts for the years ended 31 March 2016. However, it was not recorded in Bluegen's accounts until the year ended 31 March 2017 (and after this dispute had begun). Furthermore, Mr Collins did not refer to Mr Sans in either of his emails dated 18 September 2017 and 27 November 2017 to Ms Starling. If the loan had been genuine or was still outstanding, I have little doubt that he would have done so.

213. *Mr Harber* (*£115,855.72):* Mr Harber gave evidence that on 1 March 2014 he entered into a loan agreement with Bluegen which stated that an invested sum was to be paid to Bluegen on the sale of two properties owned by Mr Harber and that he would be repaid £130,000 plus a return of 10% for each year which it remained outstanding. He also confirmed that approximately £115,000 was realised on the sale of the two properties and that it remained unpaid.

214. Although there were some unusual features about the source of funds and the loan agreement and Mr Harber accepted that he thought that Mr Collins and Bluegen were one and the same, I accept Mr Harber's evidence that he lent approximately £115,000 to Bluegen and that it has yet to be paid back. There was no evidence to suggest that Mr Harber's evidence was fabrication or that the agreement itself was a sham (and Mr Watson did not submit that it was).

215. Mr Collins gave no evidence, however, in his witness statement about the proceeds of sale of the two properties and produced no bank statements to show

where the money was paid. Moreover, in his email dated 27 November 2017 he informed Ms Starling that Mr Harber had invested £60,000 in Bluegen in 2013. Mr Collins could not explain the discrepancy or why he had not produced a reconciliation. In the absence of any evidence that the entire sum was paid to Bluegen or used for its benefit, I am not prepared to accept that any more than £60,000 was used for the benefit of Bluegen.

216. *Mr Walker (£20,000)*: Mr Collins did not address this loan in his witness statement and he did not call Mr Walker to give evidence (despite BCH stating that he intended to do so in an email dated 4 September 2020). Nor did he produce any documentary evidence of the loan or receipt of payment by Bluegen. In the absence of any proper explanation from Mr Collins and any documentary support or corroboration provided by Mr Walker himself, I am not prepared to accept that this loan was made either.

217. I add that I have taken into account the fact that in his emails to Ms Starling Mr Collins stated that Mr Walker had invested £100,000. However, in their letter dated 31 July 2020 BCH stated that Mr Walker provided £100,000 towards the purchase price of 10 Brasted Close (Property No. 41). If Mr Collins is able to establish this fact on the taking of the account, then I direct that he should be given credit for this sum.

218. *Mr Clark (£6,000)*: Mr Collins did not recognise this loan when it was put to him in cross-examination and said: "I can't tell you what J Clark loan of £6,000 is". In the light of this evidence, I need not consider this point any further.

219. In the light of these individual conclusions I will direct that the valuation of Ms Oberman's shares in Bluegen shall be carried out after discounting all six loans apart from £60,000 of the loan made by Mr Harber and on the assumption that Bluegen owed this sum to the six creditors identified in issue (18) but no more.

VII. The Third Party Properties

220. My findings in relation to the Collins Properties means that I must deal with the Third Party Properties. As Mr Watson contended, I will not make a declaration in relation to the ownership of those Properties. I am prepared to give the parties

a three month period to attempt to resolve the ownership of those Properties or to agree directions for the resolution of the issues between them. If they are unable to do so, I will permit them to restore the Part 7 Claim for further argument.

221. Although I will not prejudge any conclusions which the Court may make at any restored hearing, it seems to me unlikely that the Court will be able to fashion a resolution of the ownership of the Third Party Properties in these proceedings without an element of co-operation. I am unlikely to require third parties to make a claim or issue the equivalent of interpleader proceedings (even if I have jurisdiction to do so). I am also unlikely to make declarations in relation to the Third Party Properties without the issue of their ownership being properly determined. If Ms Oberman wishes to pursue her claim to 50% of the Third Party Properties, she may have to join the third parties as defendants to these proceedings or to commence fresh proceedings.

VIII. Disposal

The Part 7 Claim

222. I will declare that Ms Oberman has a 50% interest in the Oberman Property, the Joint Properties and the Collins Properties (apart from the Third Party Properties). By reference to the Appendix they are Properties No. 1 to No. 8 (inclusive), Properties No. 30, No. 33, No. 34 and No. 37 to No. 40 (inclusive). If necessary, I will also declare that Mr Collins holds the Bluegen (SC) Properties, i.e. Properties No. 19 to 29 on trust for Bluegen.

223. I will not make any declaration in relation to the Third Party Properties, i.e. 6 Barn End Drive (Property No. 31), 2 Chestnut House (Property No. 32) and 17 Hill View Drive (Property No. 36). But I will give Ms Oberman permission to restore the Part 7 Claim after a period of three months from the date of my final Order for further directions in relation to the determination of the ownership of those Properties.

224. I will also order Mr Collins to provide an account of the following: (a) sums acquired by way of mortgage on the Portfolio; (b) rental payments made on the

Portfolio; and (c) the proceeds of sale from the Portfolio. For the purposes of taking the account:

i) I will declare that Ms Oberman had a 50% share in 11 Shepherd's Lane, 17 Voyager's Close and 70 Princess Alice Way and that she was (and is) entitled to a 50% share in their proceeds of sale.

ii) I will order Mr Collins to account for the application of the proceeds of sale of those three Properties and to account for the source of the funds used to purchase 26 Beaconsfield Road (Property No. 40) and 10 Brasted Close (Property No. 41).

225. I will also order Mr Collins to provide an account for the payments made to Blue Letts shown on his director's loan account and, in particular, to identify (a) the bank account out of which each payment was made, (b) the source of the funds and (c) if the source of funds was the rents and profits any of the Oberman Property, the Joint Properties or the Collins Properties whether those funds were then re-invested in the Portfolio.

226. I will make an order requiring Mr Collins to pay all sums due to Ms Oberman. In broad terms this will be 50% of the rent and profits or the proceeds of sale of the Portfolio which Mr Collins did not re-invest in the Portfolio but paid to Blue Letts or used to purchase 26 Beaconsfield Road and 10 Brasted Close.

227. I will not make an order for the sale of any of the Properties until after hearing further submissions from the parties and will give the parties permission to apply for further directions in relation to the taking of the accounts and any other ancillary or consequential matters.

The Unfair Prejudice Petition

228. I will order Mr Collins to purchase Ms Oberman's 49 £1 shares in Bluegen at a fair value to be fixed by the Court but without any discount for the fact that Ms Oberman is a minority shareholder. The fair value of those shares will also be struck on the following assumptions:

i) Bluegen is the legal and beneficial owner of the long leases of Flats 1 to 3, 49 Elmdene Road (Property No. 19 to Property No. 21);

ii) No discount should be made for the debt owed by Bluegen to Blue Letts as shown in the creditors' loan schedule for Bluegen for the year ended 30 September 2018 as £1,518.241.73 (or any increase since that date); and

iii) No discount should be made for the following loans: (a) Ms Nikki Barton: £35,000; (b) Mrs Carol Ryder: £40,000; (c) Mr Danny Sans: £98,000; (d) Mr S Walker: £20,000; and (e) Mr J Clark: £6,000.

iv) The sum of £60,000 is due and owing to Mr Ashley Harber.

229. As a final postscript, I add that the agreed table of Properties suggested that a third party claimed an interest in 62 Well Hall Road (Property No. 13) and that it had been sold. Again, this was not pursued by either party in evidence. Because it is (or was) a Bluegen Property, it seems to me that the value of Ms Oberman's shares ought to take into account the sale and the amount (if any) which Bluegen paid to redeem the third party's interest. But I will give the parties permission to raise this issue too at any resumed hearing.

APPENDIX

NO: Ms Oberman

SC: Mr Collins

Bluegen (SC): Mr Collins but held on behalf of Bluegen

No.	Address	Registered owner	3P interest asserted?
	The Oberman Property		
1.	207 Greenhaven Drive	NO	No
	The Joint Properties		
2.	1 Clarenden Place	SC and NO	No
3.	182 Congleton Grove	SC and NO	No
4.	5A Redbourne Drive	SC and NO	No
5.	9A Redbourne Drive	SC and NO	No
6.	11A Redbourne Drive	SC and NO	No
7.	13A Redbourne Drive	SC and NO	No
8.	19A Redbourne Drive	SC and NO	No
	Bluegen Properties		
9.	1A Northumberland Close	Bluegen	No
10.	Redbourne Drive Communal	Bluegen	No
11.	17A Redbourne Drive	Bluegen	No
12.	59 Sweyn Road	Bluegen	No
13.	62 Well Hall Road	Bluegen	Yes
14.	Land adjoining 136 Woodhill	Bluegen	No
15.	Land on the north west side of 142 Woodhill	Bluegen	No
16.	58 St Nicholas Road	Bluegen	No
17.	251 Eltham High St (freehold)	Bluegen	No
18.	49 Elmdene Road (freehold)	Bluegen	No

	Bluegen (SC) Properties		
19.	Flat 1, 49 Elmdene Road	Bluegen (SC)	No
20.	Flat 2, 49 Elmdene Road	Bluegen (SC)	No
21.	Flat 3, 49 Elmdene Road	Bluegen (SC)	No
22.	177B Herbert Road	Bluegen (SC)	No
23.	75 Miles Drive	Bluegen (SC)	No
24.	111 Whitebeam Avenue	Bluegen (SC)	No
25.	98 Woolwich Road	Bluegen (SC)	No
26.	251A Eltham High Street	Bluegen (SC)	No
27.	251B Eltham High Street	Bluegen (SC)	No
28.	251C Eltham High Street	Bluegen (SC)	No
29.	Shop on ground and lower ground floor 251 Eltham High Street	Bluegen (SC)	No
	The Collins Properties		
30.	15A Redbourne Drive	SC	No
31.	6 Barn End Drvie	SC	Yes
32.	2 Chestnut House	SC	Yes
33.	116 Greenhaven Drive	SC	No
34.	152 Greenhaven Drive	SC	No
35.	272 Greenhaven Drive	SC	No
36.	17 Hill View Drive	SC	Yes
37.	1A Redbourne Drive	SC	No
38.	21A Redbourne Drive	SC	No
39.	11 Wedgewood Court	SC	No
40.	26 Beaconsfield Road	SC	Yes
41.	10 Brasted Close	SC	Yes