Neutral Citation Number: [2022] EWHC 2160 (Ch)

Case No: BL-2020-MAN-000109

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

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 26 August 2022

Before:

HHJ CAWSON QC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

STEWART MAURICE DIXON

Claimant

- and -
(1) JOHN EDWARD WILLAN
(2) WILLAN TRADING LIMITED
(3) JW HOUSES LIMITED

Defendants

- -
- -

Glenn Willetts (instructed by **Marshall Hatchick LLP)** for the Claimant
Hashim Reza (instructed by **SAS Daniels LLP**) for the Defendants

Hearing dates: 4-8, and 11-13 July 2022

Approved Judgment

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

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HHJ CAWSON QC:

CONTENTS	PARAGRAPH
	1
	3 3 18
	32
	39
	53
	159 159 161 177
	187

Introduction

1. The Claimant, Stewart Maurice Dixon ("**Mr Dixon**"), and the First Defendant, John Edward Willan ("**Mr Willan**") are both property developers. The Second and Third Defendants, Willan Trading Ltd ("**WTL**") and JW Houses Ltd ("**JWH**"), are both companies controlled by Mr Willan or members of his family. Mr Dixon alleges that he reached agreement with Mr Willan regarding a joint venture involving the purchase and/or development of a number of pieces of land in Cumbria acquired in the name of WTL and JWH. Mr Dixon alleges that he is entitled to share in the profits made in respect of the purchase and/or development thereof, and/or to a beneficial interest in the land in question. The Defendants deny that Mr Dixon has any such entitlement, maintaining, amongst other things, that any entitlement on the part of Mr Dixon to share in the profits, or to an interest in the land in question, was subject to him making a financial contribution to the joint venture and/or arranging finance,

and/or to the terms of the joint venture being formalised and the joint venture being conducted through a limited company established for the purpose thereof.

2. Mr Glenn Willetts appeared for Mr Dixon, and Mr Hashim Reza appeared for the Defendants. I am grateful to them for their helpful written and oral submissions.

Overview of the Claim

The basis of Mr Dixon's claim

3. It will be necessary to review the background to the claim in more detail in due course. However, by way of overview, Mr Dixon alleges that, beginning with an agreement concluded in February 2015 by a shake of hands when viewing a plot of land at Ladybeck, Cumbria ("**Ladybeck**"), he and Mr Willan were subject to the terms of a joint venture agreement, binding also on WTL and JWH when land was acquired by the latter.

4. It is Mr Dixon's case that there was either one umbrella joint venture agreement, or alternatively that there were a series of separate joint venture agreements relating to individual sites pursuant to which two sites were pursued, but ultimately not proceeded with, namely Ladybeck (because planning permission could not be obtained) and land at Hackthorpe, Cumbria ("**Hackthorpe**"), and five other sites that were ultimately acquired by either WTL or JWH, namely:

    i) A site at Culgaith, Cumbria ("**the Culgaith Site**"), acquired for residential development by WTL on 19 January 2018;

    ii) A site at Lazonby, Cumbria ("**the Lazonby Site**"), acquired by JWH for residential development on 21 December 2018;

    iii) A site at Langwathby, Cumbria ("**the Langwathby Site**"), acquired by JWH for residential development on 25 March 2020;

    iv) Land and premises at Myers Lane, Penrith, Cumbria ("**Myers Lane**"), being commercial premises acquired by WTL on 12 June 2019; and

    v) A site at Redhills, Penrith, Cumbria ("**the Redhills Site**"), being land acquired by WTL for commercial development on 26 November 2019.

5. It is Mr Dixon's case that his and Mr Willan's respective contributions to the joint venture agreement or agreements were, and were agreed to be, as follows:

    i) Mr Dixon:

        a) Sourcing, or negotiating prices for properties that the Defendants would not have been able to purchase, or would have had to pay a higher price to purchase, either by contributing the benefit of favourable agreements (including options) negotiated with sellers of land, or by utilising his contacts, knowledge, experience and negotiating skills in order to obtain a number of the above sites at below market value; and

b) Carrying out work in respect of the development of the above sites, both before and after purchase, including sourcing loan finance, and assisting with the obtaining of planning permission.

ii) Mr Willan, through either WTL or JWH, providing the *"delivery vehicle"* for the purchase and/or development of the relevant site, including the purchase of the relevant site (funding the cost of purchase using their own monies and loan finance), carrying out the relevant work if acquired for development (again funding the cost using their own monies and loan finance).

6. As pleaded, it is Mr Dixon's case that it was agreed that profits from the respective acquisitions and/or developments would be shared equally between Mr Dixon and Mr Willan (and/or the other Defendants), and that Mr Dixon would have an equal share and interest (to Mr Willan or the other Defendants) in the properties acquired.

7. So far as the respective sites are concerned, Mr Dixon's case is as follow:

i) The Culgaith Site – Having been purchased by WTL on 19 January 2018, the site has been fully developed with the construction of a number of houses, which have been sold off. Mr Dixon claims 50% of the profit made. It is his case that in early 2019, the Defendants reported that the profit was £180,000, of which Mr Dixon was said to be entitled to £90,000, although the profit made is now said by the Defendants to be closer to £165,000.

ii) The Lazonby Site – Having been purchased by JWH on 21 December 2018, this site has also now been fully developed with the construction of a number of houses which have been sold off. Mr Dixon claims 50% of the profit made by the Defendants, there being an issue as to the quantum thereof.

iii) The Langwathby Site – Having been purchased by JWH on 25 March 2020, this site has also now been fully developed with the construction of a number of houses which have been sold off. Mr Dixon claims 50% of the profit made, there being an issue as to the quantum thereof;

iv) Myers Lane – Having been purchased by WTL on 12 June 2019, this land was subsequently transferred on 15 December 2020 to Willan & Lund Holdings Ltd ("**W&LHL**"), a joint venture between Mr Willan and/or other members of his family and the other Defendants, and Thomas James Lund ("**Mr Lund**"), after which such transfer it has been improved and extended. It is Mr Dixon's case that Myers Lane was acquired by WTL at significantly below its market value as at 12 June 2019 in consequence of Mr Dixon having introduced a favourable purchase on terms negotiated by Mr Dixon with the seller, John Barry Lloyd ("**Mr Lloyd**"), or more precisely Mr Lloyd's company, Lloyd Ltd, in December 2015. As confirmed in closing submissions, Mr Dixon seeks to recover 50% of the profit made by WTL on its dealings with Myers Lane based upon the value thereof as at the date of its transfer to W&LHL.

v) The Redhills Site – Having been purchased by WTL on 26 November 2019, this land was also subsequently transferred to W&LHL on 15 December 2020. Again, Mr Dixon seeks to recover 50% of the profit made by WTL on its

dealings with the Redhills Site based upon the value thereof as at the date of its transfer to W&LHL.

8. So far as the legal analysis of Mr Dixon's case is concerned, it is primarily his case that a binding agreement was concluded between himself and Mr Willan, with Mr Willan, acting so far as necessary as agent for and on behalf of WTL and JWH, or at least with their ostensible authority, such agreement extending to each of the respective sites, alternatively that binding agreements were so concluded individually in relation to the respective sites, to the effect that profits made from the development or other exploitation thereof would be shared equally, and the relevant properties acquired in equal shares as between Mr Dixon and the Defendants. It is Mr Dixon's case that he is now entitled to enforce the relevant agreement or agreements by the present proceedings seeking an order for specific performance.

9. So far as the absence of any signed, or indeed any other writing, and the effect of ss. 52 and 53 of the Law of Property Act 1925, and s. 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989, is concerned, Mr Dixon alleges that the true nature of the agreement between the parties was one of partnership, i.e. the carrying on of business together in common with a view to profit (see s. 1 of the Partnership Act 1890), and that any property acquired in the name of WTL or JWH pursuant to the alleged agreement or agreements is properly to be regarded as partnership property of the relevant partnership or partnerships pursuant to s. 20 of the Partnership Act 1890.

10. The existence of a partnership or partnerships has further significance on Mr Dixon's case in the light of the Defendants' case that any agreement or agreements as alleged by Mr Dixon that might be established were determined as a result of the Defendants' acceptance of Mr Dixon's repudiatory breach thereof. Mr Dixon relies upon *Hurst v. Bryk* [2002] AC 185, HL, and *Mullins v. Laughton* [2002] EWHC 2761(Ch), [2003] Ch 250, as authority for the proposition that a partnership cannot be brought to an end by acceptance of a repudiatory breach of the terms thereof, a partnership, by its nature, requiring dissolution and winding up.

11. An alternative way that Mr Dixon's case is put is that the present circumstances gave rise to a so-called *Pallant v Morgan* equity (after *Pallant v Morgan* [1953] Ch 43), whereby WTL and JWH are to be treated as having acquired the sites that they did subject to an equity in favour of Mr Dixon that recognises and gives effect to the interest therein that it had been agreed between Mr Willan and Mr Dixon that Mr Dixon should have, whether that is, on proper analysis, a one half beneficial interest, or such other interest as is necessary to give effect to the bargain which was, on Mr Dixon's case, that the profits of the venture or ventures should be shared equally between them out of the proceeds of sale of the relevant properties.

12. Mr Willetts submits that the following principles can be stated as to the requirements of a *Pallant v Morgan* equity. I did not understand Mr Reza challenge this formulation of the relevant principles which I consider to be entirely accurate:

    i) The equity must relate to specific property that is not at first owned by either of the parties – see *Cobbe v. Yeoman's Row Management Limited* [2008] UKHL 55, [2008] 1 WLR 1752, per Lord Scott at [37].

ii) The acquiring party and the non-acquiring party must form a common intention that the acquiring party will take steps to acquire the property and if they do so that the non-acquiring party will obtain *"some interest in it"*, which does not have to be a specific proprietary interest (whether legal or equitable) in the land itself. It *"just requires that specific property be acquired for the joint benefit of A and B"* - see *Kilcarne Holdings v. Targetfollow (Birmingham) Limited* [2005] EWCA Civ 1355, and *Kearns Brothers v. Hova Developments Limited* [2012] EWHC 2968, per Edward Bartley Jones QC (sitting as a Deputy Judge of the High Court) at [114] to [119].

iii) The common intention need not be in writing. Nor does the common intention require that there be an arrangement that amounts to a contract capable of specific performance (i.e. because its terms are insufficiently certain or because the arrangement was not intended to be an enforceable contract). However, there is a requirement that the main terms of the arrangement have been agreed between the parties. Further the *Pallant v. Morgan* equity cannot arise where the agreement is made in arms-length commercial negotiations where the agreement is expressed to be *"subject to contract"* or where both parties mutually agree or each realise that the arrangement is not legally enforceable since they both plan and intend to enter into a binding agreement in the future - see *Banner Homes Group PLC v. Luff Developments Limited* [2000] Ch 372, 397-399, *Cobbe v. Yeoman's Row Management Limited* (supra) at [37], and *Generator Developments v. LIDL UK GMBH* [2018] EWCA Civ 396, [2018] 2 P& CR 7, per Lewison LJ at [56] to [70].

iv) *"In order to be able to invoke the Pallant v Morgan equity it must in my judgment be possible to say that the agreement or understanding in question is one which has been assented to by a person capable of binding the party in question; or who at least has ostensible authority to do so"* – see *Generator Developments v. LIDL* (supra), per Lewison LJ at [82], and *Pallant v. Morgan* (supra), per Harman J at 47.

v) The *Pallant v. Morgan* equity will arise if the non-acquiring party can show that in reliance on the acquiring party's assurance or the non-acquiring party's expectation that they would acquire an interest in the land, the non-acquiring party then does something which confers an advantage on the acquiring party in acquiring the property or which is detrimental to the non-acquiring party's ability to acquire it on equal terms - see *Banners Homes v. Luff* (supra).

vi) The *Pallant v. Morgan* equity will arise where it would be unconscionable for the acquiring party to keep the property for itself. As it was put in *Banners Homes v. Luff* (supra) at 398-399, per Chadwick LJ: *"It is the existence of the advantage to the one, or detriment to the other, gained or suffered as a consequence of the arrangement or understanding, which leads to the conclusion that it would be inequitable or unconscionable to allow the acquiring party to retain the property for himself, in a manner inconsistent with the arrangement or understanding which enabled him to acquire it ... What is essential is that the circumstances make it inequitable for the acquiring party to retain the property for himself in a manner inconsistent with the arrangement or understanding on which the non-acquiring party has*

acted. Those circumstances may arise where the non-acquiring party was never "in the market" for the whole of the property to be acquired; but (on the faith of an arrangement or understanding that he shall have a part of that property) provides support in relation to the acquisition of the whole which is of advantage to the acquiring party. They may arise where the assistance provided to the acquiring party (in pursuance of the arrangement or understanding) involves no detriment to the non-acquiring party; or where the non-acquiring party acts to his detriment (in pursuance of the arrangement or understanding) without the acquiring party obtaining any advantage therefrom."

vii) The effect of the *Pallant v. Morgan* equity is that the acquiring party becomes bound by a constructive trust to prevent them from benefitting from their unconscionable breach of the agreement.

viii) Since it is an equitable jurisdiction, the court has a wide discretion as to what remedy it orders, which could include the court declaring that the acquired property is held on trust for the acquiring party and the non-acquiring party jointly, that the property be re-sold and that after the deduction of the expenses of purchase and development that the net proceeds of sale be divided between the parties in equal shares or that the acquiring party holds the property on a constructive trust for both parties to give effect to their informal common intention and/or that the court orders accounts and enquiries and/or that the court makes an award of equitable compensation to one of the parties – see *Cobbe v. Yeoman's Row Management* (supra) at [30] and *Kearns Brothers v. Hova Developments Limited* (supra) at [123] to [130]).

13. It is submitted on behalf of Mr Dixon that the requirements for finding a *Pallant v Morgan* equity are satisfied on the present facts.

14. A further alternative way that Mr Dixon's case is put is that, on proper analysis, the various sites were purchased by WTL and JWH as agents for Mr Dixon and the relevant one of them as principals, and that WTL and JWH are to be regarded as having been subject to fiduciary duties such that they are liable to account to him for damages or equitable compensation for breach of those fiduciary duties in failing to recognise his interest. In *Generator Developments v. LIDL* (supra) at [70] to [71], Lewison LJ referred to the fact that Etherton LJ in *Crossco No. 4 Unlimited v Jolan Ltd* [2011] EWCA Civ 1619, [2012] 1 P. & C.R. 16, had identified agency as being the true basis upon which *Pallant v Morgan* had itself been decided, but that the majority of the Court of Appeal in *Crossco No. 4 Unlimited v Johan Ltd* had felt bound to treat *Banner Homes* as having no other ratio other than the imposition of a constructive trust.

15. A yet further alternative basis upon which Mr Dixon's case is put is on the basis of a proprietary estoppel, particular reliance being placed upon the decision of the House of Lords in *Thorner v. Major* [2009] UKHL 18, [2009] 1 WLR 776, for the proposition that a proprietary estoppel will arise:

i) Where A makes a promise or assurance that B has or will acquire a right in or in relation to property.

ii) Where B, reasonably believing that A's promise or assurance was seriously intended as a promise or assurance on which B could rely, adopts a particular course of conduct in reasonable reliance on A's promise or assurance; and

iii) If, as a result as a result of that course of conduct, B would then suffer a detriment were A to be wholly free to renege on that promise, A comes under a liability to ensure that B suffers no detriment.

16. These criteria are alleged to be satisfied in the circumstances of the present case, the point being made on behalf of Mr Dixon, placing reliance upon *Thorner v Mayer* (supra) at [27], per Lord Walker, that there is no separate strand of unconscionability, and that the question of unconscionability is to be assessed objectively, it being unnecessary to show that A has acted with unconscionable state of mind.

17. Should Mr Dixon fail with the above lines of argument, then it is his case that he is entitled to pursue a claim in unjust enrichment on the basis that if no contract, trust, fiduciary duties or estoppel is or are binding on the Defendants, then by reason of his mistaken belief as to the binding nature of the Defendants' obligations to him the Defendants have been unjustly enriched at his expense by the development opportunities that he presented them with, as well as the time and effort that he expended working on the purchase, funding and development of the sites, and certain costs and expenses that Mr Dixon incurred. It is submitted by Mr Willetts that there has been a total failure of consideration in respect of the latter, and that Mr Dixon is entitled to restitution from the Defendants to reverse this unjust enrichment - see paragraph 59 of the Particulars of Claim, and *Cobbe v. Yeoman's Row Management Limited* (above), per Lord Scott at [3], [4] and [42] to [45].

The basis of the Defendants' defence and counterclaim

18. The Defendants deny that any binding agreement was ever concluded with Mr Dixon, whether giving rise to a partnership (or partnerships) or otherwise. Whilst there were discussions between Mr Dixon and Mr Willan between 2015 and July 2017 with regard to a joint venture involving the purchase and/or development of property, and agreement in principle was reached that they would look to purchase and develop properties together, no binding agreement, they say, had been concluded ahead of the purchase of any property.

19. So far as the existence of any partnership is concerned, objection is taken by the Defendants to Mr Dixon's reliance upon there having been a partnership, or a series of partnerships given that Mr Dixon's case is not expressly pleaded on the basis of partnership, and given that in response to the Defendants' pleaded case that any agreement had been terminated on the grounds of repudiated breach, it was not alleged that the relevant contractual arrangements give rise to a partnership or partnerships that could not be terminated in this way, rather Mr Dixon maintained that the facts did not support a case that he had acted in repudiatory breach. However, Mr Dixon's pre-action correspondence certainly alleged partnership, and I note that, in a number of instances, Mr Reza's Skeleton Argument for trial presupposes that one of the bases upon which Mr Dixon was putting forward his case was in terms of partnership – see e.g. paragraph 18 of Mr Reza's Skeleton Argument referring to Mr Dixon's *"primary relief"* as being for *"specific performance of the alleged, oral, joint venture, partnership(s), agreement(s) supposedly made in February 2015 …"*

etc.. In the circumstances, and given that the case as to partnership is based solely upon facts already pleaded, I am not persuaded that it is not open to Mr Dixon to maintain a case based upon there being a partnership or partnerships.

20. However, apart from their case that no binding agreement (of partnership or otherwise) was ever concluded, it is the Defendants' case that by July 2017, the parties had decided to, and in fact did incorporate a limited company, Wren Place Homes Ltd ("**WPH**"), as the vehicle for their joint venture.

21. It is not in dispute that at a meeting on 12 July 2017, it was agreed that WPH be incorporated, that Mr Willan would hold all the issued shares in WPH, at least for the time being, and that he would hold these shares as to 50% for WPH, and as to 50% for a trust to be established for Mr Dixon's benefit, or in which Mr Dixon had an interest as a beneficiary under a discretionary trust as Mr Dixon did not want to be seen to be involved in another business given ongoing matrimonial ancillary relief proceedings.

22. On the Defendants' case it was thus agreed that any properties acquired through any joint venture involving Mr Dixon and Mr Willan would be acquired by, and funded through WPH, and developed by WPH, albeit using the services of WTL, an established builder and developer, for that purpose.

23. The Defendants accept that, as between Mr Dixon on the one hand, and the Defendants on the other hand, Mr Dixon would use his experience and knowledge of the market to source properties for the joint venture, and to procure development finance, albeit for WPH rather than for WTL or JWH. Mr Willan would then apply his expertise, through WTL, to carrying out the development work, with any profit being shared through WPH.

24. So far as the funding of WPH is concerned, it is the Defendants' case that it was always the expectation (and agreement) that Mr Dixon would provide 50% of any funding requirement, with the Defendants providing the other 50% of any funding, although at trial the Defendants placed greater emphasis in their oral evidence on an alleged expectation (and understanding) that Mr Dixon would procure 100% funding for the proposed developments to be carried out through WPH.

25. It is thus the Defendants' case that it was agreed, or at least well understood, that there would be no binding agreement with Mr Dixon, and that he would have no interest in any joint venture, unless and until it was conducted on a formal basis through WPH, which was, in itself, dependant upon Mr Dixon contributing to funding, or raising funds through WPH.

26. In the event, WPH was never used as the vehicle for the purchase of any of the sites, nor was it used as the vehicle for subsequently developing the same. Mr Dixon's explanation for this is that Mr Willan informed him that he did not want to close WTL down, and so wanted the developments to be run through WTL, so that it would become WTL through which the joint venture would operate. It is Mr Dixon's evidence that he was assured by Mr Willan that this *"changed nothing"* on the basis that *"we would still share in the profits as to 50% to Willan Trading and 50% to me"* - see paragraph 24 of Mr Dixon's witness statement. This is Mr Dixon's explanation as to why WPH did not subsequently purchase the relevant sites, but rather that WTL and JWH did. In paragraph 25 of his witness statement, Mr Dixon further explains

that as a result of WPH not being used, he: … *"could not jointly fund the purchase of the sites because they were to be in the name of Willan's companies with shares owned by various members of the Willan family."*

27. Mr Willan, and his son Jonathan Duncan Willan ("**Jonathan**") emphatically deny that Mr Willan informed Mr Dixon that he did not want to close down WTL, or that Mr Willan gave any assurances that if WTL was to purchase the relevant sites, then it would do so on the same basis as if WPH had done so. They maintain that there was simply no common-sense reason for Mr Willan to have said that he did not want to close down WTL, not least because the agreement concluded in July 2017 for the use of WPH as the corporate vehicle for the joint venture specifically envisaged the use of WTL to carry out the development work for WPH.

28. Rather, it is the Defendants' case that the point was reached later in 2017 when it became clear that Mr Dixon could not, at least at that stage, come up with 50% of the funding, or procure 100% funding for WPH, and that WTL would have to fund the purchase and development, and borrow monies in its own name. In those circumstances, it is the Defendants' case that Mr Willan was insistent that the acquisition of the sites should be in the name of WTL, with WTL taking ownership thereof, in order to protect its position. This was on the basis that it was agreed or at least understood that Mr Dixon would have no interest in any joint venture or joint ventures until he provided or procured funding, when WPH could then be used as the vehicle for the joint venture, with the relevant sites thereafter being acquired by, or transferred to that company.

29. As funds or other assets were not forthcoming by way of contribution to the joint venture, in particular notwithstanding what the Defendants claim was an agreement on Mr Dixon's part to transfer certain land owned by him into the joint venture and his failure to obtain finance to fund the purchase of Myers Lane, it is the Defendants' case that they ultimately lost patience with Mr Dixon in July 2019 and that matters were then brought to a head. Although there was, at that point, some form of discussion between Mr Dixon and Mr Willan to the effect that the Defendants would retain the residential development sites and the benefit thereof, and that Mr Dixon would buy the commercial sites, Myers Lane and the Redhill Site, by paying out the Defendants in respect of the monies outlaid by them in respect of those properties, this was never seen through, and the Defendants have denied, as they say that they are entitled to do, that Mr Dixon is entitled to any share of any profits made, or any interest in any of the relevant properties.

30. On this basis, it is the Defendants' case that not only was there no binding agreement, as alleged by Mr Dixon, to carry on business in partnership or otherwise with regard to the pursuit of a joint venture, the circumstances simply did not arise in which there was any common intention behind the purchase of the relevant properties sufficient to support a *Pallant v Morgan* equity, a proprietary estoppel or any form of constructive trust. Further, as there was no mistake on Mr Dixon's part, the circumstances do not exist to support Mr Dixon's alternative claim in unjust enrichment.

31. Consequently, by their counterclaim, the Defendants counterclaim for declaratory and for other relief consistent with the above.

Witnesses and other key individuals and entities

32. I heard from the following witnesses called on the half of Mr Dixon, namely:

    i) Mr Dixon himself;

    ii) Richard Norton ("**Mr Norton**"), the founder of R&E Finance, a brokerage providing financial support for businesses, who was introduced by Mr Dixon to Mr Willan, and who introduced funding provided by United Trust Bank ("**UTB**") to assist with WTL's purchase of the Lazonby Site;

    iii) George Bowman ("**Mr Bowman**"), the former owner of the Redhills Site, who had known Mr Dixon for many years and who, having obtained planning permission for the development of the Redhills Site, on 25 October 2018 entered into *"subject to contract"* heads of terms with Mr Dixon providing for Mr Dixon, upon payment of an option fee of £100,000, to be granted an option to purchase the Redhills Site upon the payment of a further sum of £150,000 on the exercise of the option or completion thereof, and who subsequently transferred the Redhills Site to WTL.

    iv) Nick Bailey ("**Mr Bailey**"), a Designer and Technical Director with the Manning-Elliott Practice, a firm of architects responsible for the design of the 24 residential properties constructed on the Langwathby Site by WTL and/or JWH.

    v) Mr Lloyd, who for many years operated an agricultural and construction equipment business from Myers Lane through Lloyd Ltd. In 2015, Mr Lloyd decided to move the business and sell Myers Lane. Having received a valuation of £380,000-£400,000 in respect of Myers Lane, and having passed on details of the site to a number of friends and acquaintances, Mr Lloyd agreed, on behalf of Lloyd Ltd, to sell Myers Lane to Mr Dixon at a price of £395,000, subject to contract, as recorded in a signed memorandum dated 9 December 2015. On 12 June 2019, Lloyd Ltd subsequently transferred Myers Lane to WTL at a price of £395,000.

    vi) John Andrew Sanderson ("**Mr Sanderson**"), a retired architect and former managing director of Abacus Building Design, who provided professional services in respect of a number of sites, but in particular the Culgaith Site.

    vii) Christopher Ian Lamont ("**Mr Lamont**"), a Chartered Accountant, and director of Lamont Pridmore Ltd, Chartered Accountants, who has provided professional accountancy services to Mr Dixon since 2013, and who was present at the important meeting on 12 July 2017 when it was agreed to incorporate WPH.

33. I heard from the following witnesses called on behalf of the Defendants, namely:

    i) Mr Willan;

    ii) Jonathan [Willan], Mr Willan's son;

    iii) Huw David Jenkins ("**Mr Jenkins**"), a Senior Director - Property Development, employed by UTB, who was introduced to Mr Dixon and Mr

Willan by Mr Norton with a view to UTB funding the purchase and/or development of the Culgaith Site and the Lazonby Site;

iv) Mr Lund, who, together with his wife, loaned monies to WTL to fund its purchase of Myers Lane in June 2019, and who subsequently entered into a joint venture with Mr Willan conducted through W&LHL to which Myers Lane and the Redhills Site have subsequently been transferred as referred to above.

34. WTL was incorporated on 27 January 2010, with its principal object being stated to be the construction of domestic buildings. At all relevant times, the directors of WTL have been Mr Willan, Jonathan, Mr Willan's brother, Stephen Willan ("**Stephen**"), Fiona Willan and Jamie Willan. As understood, Mr Willan has always been the majority shareholder therein, with the remaining shares being held by other members of Mr Willan's family. Jonathan became Managing Director of WTL in 2017, after Mr Willan, who had suffered a number of heart attacks, decided to play less of a role in the business. Prior to the events in question, WTL successfully carried out a number of development projects involving the construction of residential properties in the Penrith and surrounding Eden Valley area.

35. WPH was incorporated on 24 July 2017, with its principal object being stated to be the construction of domestic buildings. Its directors from incorporation to 23 July 2017, when Mr Willan resigned as a director, were Mr Willan and Mr Dixon. Following its incorporation, the share capital of WPH was held entirely by Mr Willan as had been agreed on 12 July 2017, although following Mr Willan's resignation as a director, and the transfer of his shares to Mr Dixon in July 2019, Mr Dixon is now the sole shareholder therein.

36. JWH was incorporated on 3 October 2018, with its principal object being stated to be the construction of domestic buildings. It was incorporated as the corporate vehicle through which to develop the Lazonby Site, and was subsequently used as the vehicle through which the Langwathby Site was developed. At all relevant times, its directors have been Mr Willan, Jonathan and Stephen, and its issued share capital of three ordinary shares has been held as to one share each by Mr Willan, Jonathan and Stephen.

37. W&LHL was incorporated on 13 September 2019, with its principal object being stated to be the letting and operating of owned or leased real estate. Mr Lund and Jonathan were appointed as directors of W&LHL on incorporation, and the share capital thereof has, at all relevant times, been held as to 100 shares by Mr Lund, 60 shares by Mr Willan, 30 shares by Stephen, and 10 shares by Jonathan.

38. In addition to the witnesses of fact called to give evidence at trial, Mr Willan and the Defendants respectively called expert valuation evidence, Mr Dixon calling Richard Percival MRICS ("**Mr Percival**") and the Defendants calling Mr Bruce Allan MRICS ("**Mr Allan**") . This evidence, so far as relevant, went to the value of Myers Lane as at June 2019, November/December 2020 and April 2022, and as to the value of the Redhills Site as at November 2019, November 2020 and April 2022. In addition, Mr Percival's report, but not that of Mr Allan, dealt with the Lazonby Site and the Langwathby Site, providing evidence as to the value thereof on certain dates, and as to the profitability of the development thereof. So far as the November/December

valuations are concerned, Mr Percival was working to the date in December 2020 when Myers Lane and the Redhills Site were transferred by WTL to W&LH, whereas Mr Allan was working to the date in November 2020 on which the proceedings were commenced. However, I understand it to be accepted that there is no significant difference between the two dates from a valuation perspective.

Assessment of the reliability credibility of the witnesses

39. In assessing the reliability of the oral evidence in this case, it is necessary to bear firmly in mind the much-repeated observations of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15]-[22] with regard to the unreliability of memory, and his caution to place limited weight on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or provable facts. These observations have a resonance in the present case where we are concerned with events that took place up to seven years ago, and with the key events taking place some five years ago, and much of the respective parties' cases being based upon matters alleged to have been discussed and orally agreed between them without being documented. In these circumstances, there is particular scope for witnesses to have subconsciously recalled events, and their understanding as to the nature of the transactions in which they were involved, in a self-serving way. Nevertheless, I recognise that any findings that I make must be made by reference to all the evidence, that is both documentary evidence and witness evidence, placing such weight as the circumstances require on each.

40. I did not find Mr Dixon to be a satisfactory or reliable witness. I will return to aspects of his evidence when considering the background to the case in more detail, but would highlight the following points:

    i) It is a feature of the Claimant's case that he is, as pleaded in paragraph 2 of the Particulars of Claim, a well-known and highly regarded property developer in and around the Northern Lake District/Penrith area. This was the basis upon which Mr Willan agreed, at least in principle, to pursue a joint venture with Mr Dixon involving the purchase and development of land. I recognise that the evidence does show that Mr Dixon had an ability to source land at competitive prices, and the evidence of Mr Norton supported the proposition that Mr Dixon had some not inconsiderable expertise in the property market with his reference to having an amicable relationship with Mr Dixon and to the two of them running business opportunities past the other. However, I am satisfied that Mr Dixon exaggerated his success as a property developer to Mr Willan, and in his case as presented to the Court. In particular:

        a) Although Mr Dixon does refer in paragraph 15 of his witness statement to future plans, there was no real evidence of Mr Dixon having been involved in property development activity of any significant kind after 2009, his business interests in more recent years having been focused upon his ownership, together with his ex-wife, of units on the Gilwilly Industrial Estate, Penrith ("**the Gilwilly Units**") which generated a

rental income, and the adjoining Eden Business Park, an undeveloped site of some 2.5 acres ("**Eden Business Park**").

b) A company of which Mr Dixon had been a shareholder and director, Hawksdale Ltd ("**Hawksdale**") had become balance sheet insolvent with a net deficiency of £411,952 by 30 June 2011, and has subsequently been dormant. In paragraph 8 of the Reply and Defence to Counterclaim it was alleged by Mr Dixon that Hawksdale was incorporated as a single purpose vehicle for a single project. However, under cross examination Mr Dixon was constrained to accept that this was not the case, and that whilst the sole purpose of Hawksdale might have been development, it was concerned with a number of projects.

c) It was only through the Defendants' persistence in pursuing disclosure applications that Mr Dixon disclosed documentation that showed that he and his wife had defaulted in respect of their obligations to RBS, that the relevant lending secured upon the Gilwilly Units and Eden Business Park had been referred to RBS's Global Restructuring Group ("**GRG**"), and that in 2016, RBS had appointed LPA Receivers over the Gilwilly Units and Eden Business Park. Further, accounts relating to the relevant business, and Mr Dixon's tax returns, show that the income received by Mr Dixon was not, at least at first blush, consistent with that of a particularly successful property developer. It is fair to say that the circumstances in which a number of businesses, such as Mr Dixon's partnership with his ex-wife, fell under the auspices of RBS's GRG have been a matter of some controversy as highlighted by the well-publicised Tomlinson Report in relation thereto. Further, Mr Lamont gave evidence as to his dealings with RBS in the circumstances leading up to Mr Dixon and his wife refinancing with Cumberland Building Society in 2017, and as to the fact that RBS may have routinely appointed LPA Receivers in closing down its GRG. Nevertheless, Mr Dixon's success as a property developer is necessarily qualified by the difficulties that he and his wife clearly encountered with their borrowings secured upon the Gilwilly Units and Eden Business Park.

d) Overall, I was left with the impression that Mr Dixon is an individual who is able to talk a good game, without necessarily having the ability always to produce that which he might have promised such as, in the present case, funding to have enabled WPH to have acquired sites and developed the same itself.

ii) I am concerned that Mr Dixon did have a tendency, at times, to say what he then considered might help his case, even though he must have known that this did not reflect the reality of the position or the true factual position. Examples are provided by the following:

a) What was pleaded by Mr Dixon in paragraph 8 of the Reply and Defence to Counterclaim in respect of Hawksdale, as referred to above.

b) In paragraph 13 of his witness statement, Mr Dixon specifically said, in the context of the RBS lending, that: *"We were not in receivership …"*. I find it difficult to see how Mr Dixon could truthfully have said this, and I found his explanation given under cross examination in this respect to be unconvincing.

c) In paragraph 55 of his witness statement, Mr Dixon referred to having been able to negotiate down the number of affordable properties required for planning purposes in respect of the proposed development at Hackthorpe that never progressed. However, it was plain from correspondence put to Mr Dixon under cross examination that it was Savills, rather than him, who had in fact negotiated down the number of affordable properties, with Mr Dixon only having a peripheral involvement.

d) At one point in his evidence Mr Dixon referred to Hackthorpe as a *"super site"*, but he was taken in cross examination to a contemporaneous email dated 11 July 2018 in which he described it in very much less flattering terms.

iii) The case as now advanced by Mr Dixon, as I have identified above, is to the effect that he had shaken hands in respect of the development of a number of sites with Mr Willan, so as to give rise to a partnership, or a series of partnerships, commencing as from 2015. However, in Mr Dixon's first letter before action, sent on his behalf by his then Solicitors, Cartmell Shepherd, on 2 October 2019, the case was expressed very differently, with reference being made to discussions progressing until the summer of 2017, when agreement was reached to incorporate WPH. For reasons that I will expand upon in due course, I consider that the version of events set out in the letter before action dated 2 October 2019 represents the true position.

iv) There is an issue between the parties as to whether there was discussion in early 2019 between Mr Dixon and Mr Willan with regard to Mr Dixon introducing Eden Business Park, or some part thereof, into the venture as his contribution. Mr Dixon is adamant that there was never any question of him doing so, but the Defendants' case is that this was discussed as a condition of Mr Dixon benefiting from the joint venture. For reasons that I will expand upon in due course, I consider that the documentary evidence overwhelmingly supports the Defendants' case that there was discussion at least with regard to Mr Dixon introducing this land or some part thereof into the joint venture, and I consider that Mr Dixon was untruthful in his evidence on this issue.

41. In short, in the light of these and a number of other considerations, I consider that I should treat Mr Dixon's evidence with some caution, at least unless supported by contemporaneous documentation or the common sense of the situation.

42. So far as Mr Dixon's other witnesses are concerned, I am broadly satisfied that they were doing their best, to assist the Court. However, I do have to take into account that they were giving evidence some considerable time after the events in question, and thus that their recollections are liable to be affected by the passage of time.

43. So far as Mr Norton is concerned, it was clear that he has a relatively close relationship with Mr Dixon, and I do have a concern that his evidence, and that of other witnesses called by Dixon, including Mr Bailey who has known Mr Dixon as a client of his for many years, may, potentially at least, have been influenced in what they said in their evidence by what they had been told by Mr Dixon after the event. Nevertheless, I do accept the evidence of Mr Norton that he was told, in the presence, at least, of Mr Willan, that Mr Willan and Mr Dixon were involved in a joint venture, and that he regarded them as partners hence him referring to Mr Dixon and Mr Willan in such terms in an email dated 24 October 2018 to Michael Heal. Further, I note Mr Bailey's evidence that he regarded Mr Willan/WTL as the delivery partner in a joint venture with Dixon, and I note Mr Sanderson's evidence that he assumed that he was dealing with equal partners. Whilst these impressions are a factor that I must take into account, they are not determinative of the true nature of the relationship between the parties.

44. So far as Mr Willan is concerned, I regret that I did not find him to be a satisfactory witness, but for rather different reasons than Mr Dixon. His evidence under cross-examination was often somewhat confused, and he gave a number of answers that did not make a great deal of sense, for example in relation to what he said with regard to the rationale for Mr Dixon's agreement to introduce land at Eden Business Park into the venture. Further, whilst with the passage of time recollections will necessarily have faded, Mr Willan's ability to recall certain events that he might have been expected to remember was particularly poor. This contrasted with the detailed description of conversations and events contained in his witness statement made earlier this year.

45. During the course of his cross-examination, it was put to Mr Willan that a number of paragraphs in his witness statement matched, almost precisely, what had been said by Jonathan in his witness statement. Mr Willan sought to play this down, but the point was well made by Mr Willetts in cross examination. As I shall go on to say, I did find Jonathan to be a good witness, and given Mr Willan's poor recollection, I am led to conclude that Mr Willan's witness statement was probably prepared as much by reference to what Jonathan was able to recall based upon his own recollection, and on what Mr Willan might have said to him contemporaneously, as on what Mr Willan himself can now actually recall. This is not a satisfactory situation, and I must therefore treat what Mr Willan says in his witness statement with considerable care, certainly if not corroborated by other, preferably documentary evidence or the common sense of the situation.

46. However, it is fair to say that I did not find Mr Willan to be a witness who was seeking to mislead the Court, or who was consciously not telling the truth. Further, despite the limitations upon his evidence, there were aspects of it in respect of controversial areas of dispute with Mr Dixon which turn upon matters of general principle rather than detail that did have a ring of truth about them. Although criticised by Mr Willetts as something of a mantra, Mr Willan was consistent throughout his oral evidence that there had been an understanding that Mr Dixon would procure 100% funding for the acquisition and development of the sites acquired for residential development, or at least make a 50% contribution to funding, rather than funding being purely the responsibility of the Defendants as *"delivery partner"* as maintained by Mr Dixon. At one stage in his evidence, Mr Willan was

particularly impassioned as to the difficulties and concerns that he and his family had been put to as a result of the Defendants being let down by Mr Dixon, and having been left by Mr Dixon to fund the various projects, and this did have a real ring of truth about it.

47. As I have said, in light of the difficulties with Mr Willan's evidence that I have identified, I must treat Mr Willan's evidence with some considerable care. However, I do not consider that it is to be dismissed out of hand, and that there are important aspects of it that I am entitled to accept and have regard to, where corroborated by Jonathan's evidence, contemporaneous documents, or the common sense of the situation.

48. As I have said, I found Jonathan to be a good and reliable witness who did his best to assist the Court by telling the truth.. He was clear and concise in the answers that he gave, and made concessions where necessary. I do, however, have to take into account that he was giving evidence some years after the event, in circumstances in which there is a danger at least in which he might have quite generally recalled matters to his advantage, but inaccurately. Further, as Jonathan accepted, although he became Managing Director of WTL in 2017, he left it to his father to do the talking with Mr Dixon, and so is unable to give direct evidence concerning many of the important conversations that will have taken place between Mr Dixon and Mr Willan. However, Jonathan did plainly discuss matters contemporaneously with his father on an ongoing basis, and would therefore have a broad contemporaneous understanding as to the basis upon which WLT and JWH came to acquire the relevant land, and what had been agreed between Mr Dixon and his father.

49. There is one aspect of Mr Willan's and Jonathan's evidence that does require specific comment. In paragraph 17 of his witness statement, Jonathan had said to the effect that at the meeting on 12 July 2017 with Mr Lamont that I shall return to in more detail, they, i.e., those present including Mr Lamont, had all understood that Mr Dixon was to pay 50% of the funding or capital required for WPH. However, in his evidence, Mr Lamont did not accept that, at the meeting on 12 July 2017, there had been any discussion with regard to funding. Indeed Mr Lamont's evidence was that there had been no such discussion. In giving evidence, and confirming his witness statement, Jonathan corrected paragraph 17 of his statement to say, in effect, that the understanding was one that existed prior to the meeting, accepting that Mr Lamont had not therefore been a party to it. In cross examination, it was put to Jonathan that he had only made the correction in the light of Mr Lamont's evidence, and that the evidence in his witness statement had been untruthful. Jonathan responded to the effect that he had made a genuine error in recalling when these matters were discussed, and I accept his evidence on this point.

50. In paragraph 20 of his witness statement, Mr Willan had said that because Mr Dixon had not supplied any assets, funds, or working capital towards the development sites, and was not able to supply any working capital to WPH, it was agreed at the meeting on 12 July 2017 that the shares in WPH would be acquired in Mr Willan's name, and that Mr Dixon would not be entitled to have 50% of the shares registered in his name until he was able to do so. Mr Willan said in his witness statement that Mr Dixon understood and accepted in July 2017 that he would not be entitled to any profits from the development sites, unless and until any agreement or partnership was made and

completed and he had paid his 50% share by procuring funds or assets for the intended developments and/or providing working capital for WPH.

51. So far as the reasons for the shares being put into Mr Willan's name are concerned, Mr Lamont's evidence was that this was done for convenience, rather than having anything to do with funding, funding of WPH not having been something that was discussed on 12 July 2017. I accept Mr Lamont's evidence that funding of WPH was not discussed at the meeting on 12 July 2017, and that the reason for all the shares initially being put into Mr Willan's name was for convenience pending the carrying out of money laundering checks in relation to WTL as proposed shareholder, and the establishment of the trust for the benefit of Mr Dixon. However, I am satisfied that both Mr Willan and Jonathan, in their witness statements and in giving evidence, sought to give an honest explanation of events, and I consider it likely that Mr Willan has confused what was discussed on 12 July 2017, with subsequent conversations with Mr Dixon concerning WPH, and the basis upon which the relevant units were to be acquired, when it became clear that 100% funding for WPH was not available as Mr Dixon had led Mr Willan to believe that it would be.

52. So far as the other witnesses called by the Defendants are concerned, namely Mr Jenkins and Mr Lund, I consider that they were honest witnesses doing their best to assist the Court.

Background and findings of fact

53. In dealing with the background to the case, I have been greatly assisted by a chronology of key events agreed between Mr Willetts and Mr Reza.

54. I have already referred to Mr Dixon's background in property development. It is not in dispute that he has an ability to source land in the Penrith and wider Eden Valley area for development, and some ability at least to introduce sources of funding through his connections with Mr Norton. Further, it is not in dispute that Mr Dixon's experience goes back some years, although, as I have found, he has somewhat exaggerated his reputation and degree of success, at least so far as more recent years are concerned.

55. On the other hand, I consider that the Defendants have, in turn, in the way that they have presented their case, overstated any lack of success on the part of Mr Dixon and any financial difficulties that Mr Dixon might have. Whilst it is true that RBS did appoint LPA receivers over the Gilwilly Units, this was, as I have explained, in the context of a banking relationship that involved the somewhat controversial GRG within RBS, and one does have Mr Lamont's evidence that RBS appointed LPA receivers as a matter of routine when it's GRG was closed down. Further, Mr Dixon and his ex-wife were able to enter into new lending arrangements with Cumberland Building Society, secured upon the Gilwilly Units and Eden Business Park, relatively quickly after the appointment of LPA receivers. In addition, whilst the Defendants have relied upon accounts of the partnership as between Mr Dixon and his ex-wife as showing an insolvent position, once the value of the Gilwilly Units and Eden Business Park as set out in a valuation report prepared by Bilfinger GVA dated 18 June 2016 is taken into account, the relevant partnership business is clearly solvent, albeit that the accounts thereof do not show the partnership making particularly large profits. Having said this, the evidence does suggest that Mr Dixon's financial position was such that

he was never in a position to raise significant sums of money in his own name for the purposes of any joint venture involving the Defendants.

56. So far as the Defendants are concerned, Mr Willan lived in Canada prior to 2008, carrying on a number of business activities in that country. He returned to Penrith in 2008, and WTL was incorporated in 2010 to carry on the business of the development and construction of residential homes, mainly in Cumbria, with the family involvement that I have referred to above. At the time that Mr Willan made his witness statement, WTL had constructed some 178 houses.

57. It is not in dispute that Mr Dixon and Mr Willan first met at Anchor Farm, Penrith in 2013. It is further not in dispute that between 2013 and 2015 Mr Dixon and Mr Willan met on several occasions, and discussed the possibility of a 50:50 joint venture involving the purchase and development of property. It was Mr Dixon's evidence that Mr Willan was attracted by the ability of Mr Dixon to introduce Mr Willan/WHL to larger sites for residential development, that would allow for larger and more profitable developments than had theretofore been carried out by WTL.

58. In February 2015, Mr Dixon and Mr Willan viewed Ladybeck. It is Mr Dixon's case that he and Mr Willan shook hands, and agreed to develop this site pursuant to a joint venture, sharing the profits between them. Mr Willan denies that hands were shaken on a deal, it merely being agreed in principle that they would look into the development of this site together without any binding or other commitment being intended at that stage. In view of the matters referred to in paragraph 40(iii) above, I consider it unlikely that Mr Dixon and Mr Willan did shake hands this stage, and likely that Mr Willan's version of events is the more accurate.

59. In paragraph 13 of his witness statement, Mr Willan refers to meeting Mr Dixon in *"about"* 2015 at Cranston's café, Penrith, and to Mr Dixon having asked him if he wanted to go in with him in respect of a site that he said that he had bought on Myers Lane, Penrith, i.e. Myers Lane, on a 50:50 basis. Mr Willan says that Mr Dixon informed him that he was going through a divorce, and needed an experienced property developer with history, as he was unable to borrow any money to complete the development. Mr Willan says that he asked Mr Dixon what was in it for him, and was told that he would receive one half of the profits from the development and would not need to put in any capital for the development. Mr Willan further says that he did not pursue any involvement with Myers Lane at that stage.

60. In or about December 2015, Mr Dixon signed a *"subject to contract"* Memorandum of Agreement with Mr Lloyd's company, Lloyd Ltd, recording an agreement for the purchase by Mr Dixon of Myers Lane at a price of £375,000. It is clear that this was negotiated as a result of Mr Dixon's personal connection with Mr Lloyd.

61. Mr Dixon subsequently introduced Mr Willan to the Lazonby Site, and they met on site in June 2016. Again, it is Mr Dixon's evidence that they shook hands and agreed to proceed through a joint venture, and share profits. It is Mr Willan's evidence that nothing more formal was agreed or concluded than had been agreed or concluded in respect of Ladybeck. Again, in view of the considerations referred to in paragraph 40(iii) above, I consider Mr Willan's explanation to be more likely to provide an accurate version of events.

62. On 18 August 2016, Bilfinger GVA produced their valuation report in respect of the Gilwilly Units and Eden Business Park, valuing the totality thereof at £2,475,000, with Eden Business Park being valued at £375,000. The report referred to the market rent of the Gilwilly Units as being £182,400 per annum.

63. On 7 September 2016, RBS appointed LPA receivers over the Gilwilly Units and Eden Business Park, which it held as security for the liabilities of the partnership between Mr Dixon and his ex-wife.

64. It is common ground that, in February 2017, Mr Dixon and Mr Willan gave consideration to Hackthorpe as a potential joint venture acquisition.

65. In April 2017, Mr Dixon and his ex-wife refinanced with the Cumberland Building Society, with the result that the LPA receivership over the Gilwilly Land and Eden Business Park was discharged, and Mr Dixon and his ex-wife regained control thereover.

66. In the spring/summer of 2017, Mr Dixon and Mr Willan decided to proceed with the development of Ladybeck, and work was subsequently put by Mr Dixon into seeking to obtain planning permission for the development thereof. It is not in dispute that Mr Dixon spent not inconsiderable time and effort in doing so.

67. In June 2017, Mr Willan introduced the Culgaith Site to Mr Dixon. It is Mr Dixon's case and evidence that, shortly after this introduction by Mr Willan, he and Mr Willan shook hands and agreed that, subject to obtaining planning permission, the Culgaith site would be purchased and developed on a 50:50 joint venture basis. Again, whilst accepting that a potential joint venture in respect of the Culgaith Site was discussed, Mr Willan denies shaking hands, or committing himself or WTL in respect thereof.

68. On 19 June 2017, and in response to an email from Savills that identified that WTL and one other party had been selected as preferred bidders, and inviting a final offer, WTL (by Jonathan) emailed a best and final (subject to contract) bid of £310,000 for the Culgaith Site.

69. There is evidence that by early July 2017 the parties had begun to discuss names for a company through which their joint venture might be conducted.

70. The important meeting at Mr Lamont's offices then took place on 12 July 2017. Mr Dixon, Mr Willan and Mr Lamont was certainly present at this meeting, although there is an issue as to whether Jonathan was also present. Mr Dixon cannot recall that Jonathan was present, but I accept Jonathan's evidence that he was present.

71. It is important what Mr Dixon says about this meeting in paragraph 21 of his witness statement, namely:

> *"In or around June 2017 it was agreed that myself and John Willan would set up a company, which we did, Wren Place Homes Limited, to purchase the sites we would develop. It would be the vehicle through which we could borrow funds and easily share the profits. The agreement with John Willan was that Ladybeck and all future sites we developed together would be purchased in the name of Wren Place Homes Limited, with myself and John Willan splitting the shares, and the*

profits, 50/50. We had a meeting with Chris Lamont of Lamont Pridmore Accountants (who are my accountants) on 12th July 2017 to discuss the formation of the company and take advice. At the time I was in the process of divorce and financial settlement proceedings."

72. Mr Lamont prepared an attendance note of the meeting on 12 July 2017 that recorded that Mr Dixon and Mr Willan had agreed that a joint venture company called Wren Place Homes Ltd would be incorporated, that the share capital would be held 50:50, that all the shares would be allotted to Mr Willan, but that they would subsequently be transferred so that WTL held 50 of the shares, and the remaining 50 shares would be settled into a trust for Mr Dixon. In evidence, Mr Lamont explained that the shares were initially transferred to Mr Willan as a matter of convenience in order to avoid delay whilst money-laundering checks were carried out in respect of WTL. Further, time would have been required to prepare the trust documentation required in respect of the trust to be established for the benefit of Mr Dixon.

73. As I have already found, there was no discussion at this meeting with regard to the funding of WPH. However, in paragraphs 9 and 10 of his witness statement, Mr Lamont gave a helpful, and I consider substantially accurate, account of what transpired at the meeting:

> *"9. I was approached by Stewart Dixon about the joint venture with John Willan in July 2017, I met with them on 12th July 2017, I was instructed that Stewart Dixon and John Willan were starting a new business together.* [He then refers to an exhibited copy of his attendance note]. *My recollection of the meeting is that Stewart Dixon and John Willan wanted to undertake various development projects together whereby Stewart Dixon would introduce development opportunities and work to prepare the sites and obtain planning permission and John Willan, through his company, would build the opportunities out. At the time I met with both of them Stewart Dixon was in the process of the divorce and financial settlement. It was considered prudent not to confuse the divorce and financial settlement proceedings with potential future trade opportunities that may or may not come to fruition.*
>
> *10. It was therefore decided that a company would be established and my notes reflect I was instructed that the name of the company was to be Wren Place Homes Limited ("the Company'). It was discussed and agreed that the Company would be set up with 100 shares to be held as A and B shares in the name of John Willan, who would hold the A shares (50 shares) on trust for Willan Trading Ltd and the B shares (50 Shares) on trust for Stewart Dixon to start with so that there would not be a need to explain in the financial settlement proceedings a new shareholding that had no current value and of which the future value was uncertain. Mr Dixon also confirmed that he and his wife were seeking a clean break and therefore that future earnings would be irrelevant to a settlement. To date, no trust has been set up."*

74. An email written the same day by Mr Lamont internally within his firm instructing that WPH be set up explained that Mr Willan was initially going to hold 50 A and 50 B shares, but on the basis that 50 of the shares would be transferred to WTL, and the

other 50 to *"... a discretionary trust on* [Mr Dixon's] *behalf."* WPH was subsequently incorporated on 24 July 2017 but, as Mr Lamont said in his witness statement, the discretionary trust was never set up.

75. As set out above, in paragraph 21 of his witness statement, Mr Dixon referred to the fact that it was intended that WPH would be used as the vehicle through which funds would be borrowed in order to purchase the relevant land and carry out the relevant developments. In their witness statements, Mr Willan and Jonathan referred to an agreement that WPH would be funded 50:50 by Mr Dixon and the Defendants, but in their oral evidence, as I have said, they placed greater stress on Mr Dixon having assured them that funding by the parties themselves would not be required on the basis that Mr Dixon would be able to procure *"100% finance"*, i.e. loan funding that would cover the whole acquisition and development cost.

76. Given Mr Dixon's connection with Mr Norton, and his acceptance in paragraph 21 of his witness statement that funds would be borrowed through WPH and his further observation in paragraph 25 of his witness statement that *"the plan had always been to borrow the full cost through Wren Place"*, I consider it likely that Mr Dixon did give some form of assurance to Mr Willan that he would be in a position to procure 100% funding, and that that was the basis upon which it was agreed to incorporate WPH. When questioned under cross examination as to who was to put money into WPH, it was Mr Dixon's response that there was no discussion regarding that, and he went on to say: *"that is why it fell apart."* If that is right, and there was no discussion as to who was to put money into WPH, then that does, as I see it, make it even more likely that Mr Dixon did give some form of assurance regarding 100% funding as Mr Willan and Jonathan contended that he did.

77. Matters were, following the meeting on 12 July 2017, left that the joint venture as between Mr Dixon and Mr Willan would involve also WTL (as shareholder in WPH and Mr Willan's company that would carry out the building works), and that Mr Dixon's interest in the chosen joint venture vehicle, WPH, would be enjoyed through a discretionary trust because it was considered unhelpful for the purposes of Mr Dixon's divorce for him to take a stake in the joint venture in his own name.

78. I return now to Mr Dixon's case that notwithstanding the incorporation of WPH, the correct analysis of the position is that an umbrella partnership, or a series of separate partnerships relating to individual sites, came into existence as from 2015 so as to define the true nature of the relationship between Mr Dixon and Mr Willan and/or the other Defendants. As I have really identified, this is inconsistent with the position as advanced in Mr Dixon's first letter before action dated 2 October 2019 which refers to Mr Dixon first being introduced to Mr Willan in 2013/2014, and to Mr Dixon being aware that Mr Willan was looking at developing his business as home builders, and to them both exploring the options of developing sites of five or more homes on each site, being an increase on the number of houses usually and currently built on each site by Mr Willan/WTL. The letter dated 2 October 2019 went on to say: *"These discussions progressed significantly in the summer of 2017. Jonathan Willan explained to our client that the sites you owned in a secondary location were not making sufficient profit, and our client's contacts were pivotal in allowing you to develop on better located sites. As such, <u>it was agreed during the summer of 2017</u> that you would go into business jointly with our client to progress such developments, with a view to sharing profits derived from such development sites ... <u>To this end</u>, on*

12 July 2017 our client and John Willan met with Mr Christopher Lamont of Lamont Pridmore Accountants. It was agreed to incorporate a new limited company, and Wren Place was so incorporated on 24 July 2017 with John Willan and our client as joint directors" [Emphasis added].

79. The letter went on to explain, somewhat oddly, that Mr Willan would hold 50% of the share capital of WPH *"to* [Mr Dixon's] *benefit on a contingency basis."* The letter then explained this *"contingency basis"* as being *"agreed ultimately to be based on the work carried out to each site, which was on a case-by-case basis."* Further, the letter later went on to allege that, given the timing of the formation of WPH, *"... it is clear that all of the seven developments referred to above were intended to be carried out by [WPH]"*, and it was essentially alleged that Mr Willan had acted in breach of his fiduciary duties as a director of WPH, and was liable to account accordingly given that this had not occurred, and the various sites had been acquired, and the development works carried out by WTL and JWH. In the alternative, but only in the alternative, it was alleged that if the developments were found not to have been part of the intended work of WPH, then it was still the intention that Mr Dixon Mr Willan should work together with a view to sharing profits, and therefore that each development site represented a separate partnership between them

80. In view of the way that matters were explained in this first letter before action, written on 2 October 2019 and very much closer to the events in question than now, and in particular given the specific reference therein to it being in Summer 2017 that matters moved from discussion to agreement to carry on a joint venture through WPH, I am driven to conclude that the true explanation of events is that the discussions between the parties prior to July 2017, and any steps taken towards the furtherance of a joint venture prior thereto, were in mere anticipation a binding agreement concerning a joint venture between Mr Dixon and Mr Willan, and it was only in July 2017 that they actually agreed that they would participate in a joint venture, but not by way of a partnership between them, but rather through WPH, a company incorporated as a special purpose vehicle to that end.

81. On this basis, I find that it was not until July 2017 that it was agreed between Mr Dixon and Mr Willan that what had prior thereto been a contemplated joint venture, should be carried out through the vehicle of a limited company established for that purpose, and that there was no prior binding agreement, whether of partnership or otherwise. It was this limited company, in fact WPH, that would acquire and develop the relevant sites, and obtain its own funding for that purpose, with Mr Dixon's primary role being to source sites and funding, and to involve himself in obtaining planning, with Mr Willan, through WTL, being responsible for building out the sites when acquired.

82. It was in these circumstances that matters were left following the meeting on 12 July 2017 that WPH would be incorporated as the vehicle through which the joint venture would be conducted, and that whilst initially Mr Willan would hold the entire share capital of WPH, 50 shares would subsequently be transferred to WTL, and the other 50 shares would be transferred in such a way that Mr Dixon's interest in the joint venture could be enjoyed through a discretionary trust because it was considered unhelpful for the purposes of Mr Dixon's divorce for him to take a stake in the joint venture in his own name. It is reasonably clear, not least from what Mr Lamont says at the beginning of paragraph 10 of his witness statement, that it was Mr Dixon's

desire to protect his interest in the joint venture from the consequences of his divorce proceedings that provided the main motivation and rationale for the parties deciding to carry on the joint venture through WPH. Their intentions must therefore have been informed thereby.

83. On 21 August 2017, Jonathan, having been provided with documentation in relation to the planning application concerning the Lazonby Site by Graham Norman, the architect, then forwarded the same on immediately to Mr Dixon. This provides some indication of the ongoing support being provided by Mr Dixon at the time in respect of the preparation of the relevant sites for development. There can be no real dispute that this support was significant support.

84. On 7 September 2017, WPH entered into an option agreement with Mr Kenneth Tuer that granted WPH the option to purchase Ladybeck. This enabled planning permission to be sought before WPH committed itself, by exercising the option, to purchase Ladybeck. The bill in respect of the legal fees of Burnetts, the Solicitors acting for WPH in relation to this transaction, was addressed to Mr Dixon.

85. In September 2017, Mr Dixon sought funding for the Culgaith Site, the Lazonby Site and Ladybeck through Mr Norton, and his brokerage RE Finance. By an email dated 31 October 2017, Mr Norton identified:

    i) In respect of the Lazonby and Culgaith Sites: *"A mezzanine lender who, with the main lender, could provide 90% of project costs up to 75% of the end project value at an all round interest rate of circa 8%";*

    ii) 100% funding through several wealthy individuals able to contribute up to £500,000 each, but in return for a 50% share of the profits; and

    iii) A facility providing for 80% debt finance at a cost of 8% per annum and 18% mezzanine finance at a cost of 30% per annum, leaving *"the client"* to provide 2%, but keeping all the profits.

86. On 1 November 2017, Mr Dixon responded to Mr Norton informing him that the finance option for Lazonby and Culgaith was *"fine"* but also saying that it needed to be put forward *"as Willan Trading* [i.e. WTL] *as the applicant."*

87. Thereafter, in November 2017, it was agreed that Mr Dixon would relinquish such rights as he had under the memorandum of agreement entered into with Lloyd Ltd in respect of Myers Lane in favour of WTL, subject to an agreement being entered into between Lloyd Ltd and WTL for the purchase of Myers Lane at the price that had been agreed between Mr Dixon and Mr Lloyd in December 2015, namely £395,000.

88. WPH was not involved in this letter transaction, and it was WTL and JWH that acquired the relevant sites subsequently acquired for residential development, namely the Culgaith Site, the Lazonby Site and the Langwathby Site, and also Myers Lane and the Redhills Site for commercial use, having themselves borrowed the funds required to purchase and, in the case of the residential sites, develop the same. Bearing in mind that WPH had been established as the corporate vehicle through which it had been agreed that the joint venture would be pursued, this does beg the question as to why matters did not proceed utilising WPH to acquire and develop the

relevant sites in accordance with this agreement. As to this, there is a significant conflict of evidence.

89. In paragraph 18 of the Particulars of Claim, Mr Dixon pleads that the use of WPH was *"ultimately" … "abandoned"* in favour of an agreement to use WTL and JWH *"as the vehicle for the joint venture"*, the basis of this agreement being that whilst the sites would be registered in the name of WTL or JWH, *"they would be beneficially owned by* [Mr Willan] *(or at his election of the company of his choice) and* [Mr Dixon] *in equal 50/50 shares."* I note that this case as to the abandonment of the use of WPH as the joint venture vehicle is inconsistent with the primary stand taken on behalf of Mr Dixon in the letter before action dated 2 October 2019, in which it was was asserted that it was *"clear"* that all of the seven developments were intended to be carried out by WPH.

90. Mr Dixon dealt with his case as to abandonment of WPH as the joint venture vehicle in paragraphs 24 and 25 of his witness statement. He there says that at some point whilst he was trying to make progress with Ladybeck, and before a deed of trust had been prepared in relation to the shares in WPH, Mr Willan said to him that, having set up WPH, he did not want to: *"close Willan Trading down so he wanted the developments to be run through* [WTL]*."* Mr Dixon goes on in paragraph 24 to say: *"he assured me that it would not change our agreement. At the time I had no objection as to which company the joint venture operated through because John was keen to assure me that it changed nothing, we would still share in the profits as to 50% to Willan Trading and 50% to me. I had no reason not to trust him and if it meant we could proceed without difficulties I was happy to do so, based on his reassurances. John Willan reassured me that "We are holding hands together and nothing will change." I trusted his word. He had agreed to a joint venture 50:50 and to the structure of the company and the Trust Deed so I took him at his word if we operated through Willan Trading."*

91. At paragraph 25, Mr Dixon then went on to say: *"By not using [WPH], I could not jointly fund the purchase of the sites because they were to be in the name of Willan's companies with shares owned by various members of the Willan family. The plan had always been to borrow the full cost through [WPH] but if purchased through Willan Trading I was not a director or shareholder and did not legally own the land."*

92. Under cross-examination, Mr Dixon was taken to paragraph 93 of his witness statement where he had referred to an email to Robbie Mather of Burnetts dated 22 January 2018: *"informing him that Myers Lane would probably be purchased by* [WPH] *but that I would want to run that by my accountant, Chris Lamont, first"*. It was put to Mr Dixon that this was inconsistent with an earlier abandonment of the use of WPH. In response, Mr Dixon suggested that *"abandonment"* was perhaps too strong a word to use, and that *"drift"* might be more accurate. However, such a *"drift"* does not really tie in with the discussion and agreement referred to in paragraph 24 of Mr Dixon's witness statement, which, on his case, had been acted upon by 22 January 2018, by, amongst other things, the agreement on the part of Mr Dixon in November 2017 to relinquish the option agreement regarding Myers Lane and the fact that the Culgaith Site was transferred to WTL on 19 January 2018.

93. As referred to above, in paragraph 21 of his witness statement, Mr Dixon referred, amongst other things, to WPH as being the vehicle through which funds could be

borrowed for development. In paragraph 25 of his witness statement he accepts that, at least until the subsequent alleged agreement with Mr Willan referred to in paragraph 24 off his witness statement, the plan had *"always"* been to borrow the full cost through WPH.

94. Mr Willan did not deal in his witness statement with the specifics of the conversation and agreement alleged in paragraph 24 of Mr Dixon's witness. This is not surprising given that the suggestion that there was some subsequent agreement not to use WPH had only been pleaded in the most general of terms in paragraph 18 of the Particulars of Claim. However, when put to him under cross examination, he strongly denied any suggestion that he had said that he did not want to close down WTL, and that he therefore wanted WTL to become the vehicle for the joint venture, or that he gave assurances to Mr Dixon that if WTL was so used, nothing would change.

95. Mr Willan's position is set out in paragraph 26 et seq of his witness statement. In essence he says that Mr Dixon had given confident assurances that the full cost of the purchase and development of the sites through WPH could be borrowed, which is of course consistent with what Mr Dixon says the plan had always been, but that after Mr Dixon had introduced Mr Norton, and Mr Norton had become involved, it became clear that some 10% to the 30% of the cost would have to be found by Mr Dixon and/or the Defendants. As the Defendants were able to provide this 10% to 30%, but Mr Dixon was not, in order to protect the Defendants' position, Mr Willan insisted that the purchase of sites proceeded in the name of WTL and JWH, until such time as Mr Dixon did make the contribution that he promised he would make. This was on the basis that when Mr Dixon was able to contribute, then WPH would be utilised. As Mr Willan put it when questioned in relation to this under cross examination, if Mr Dixon came up with the money, then there would have been a joint venture, but WPH could not be used until 100% funding was available, or Mr Dixon came up with the cash. It is the Defendants' case that it was in this context that there was discussion with regard to Mr Dixon making his contribution by introducing Eden Business Park, or part thereof, which I will return to.

96. Jonathan's evidence was to the same effect, namely that the joint venture through WPH could not go ahead because of the funding issue, so matters proceeded in WTL's name until Mr Dixon was in a position to provide his contribution to the funding, and on the basis that when that happened WPH would be used as the vehicle for the joint venture.

97. I reject Mr Dixon's evidence that he was informed by Mr Willan that Mr Willan did not want to close down WTL, and that agreement was reached that the joint venture would be carried out through WTL instead, with WPH being abandoned and Mr Willan assuring Mr Dixon that nothing would change, with profits to be shared 50:50 as between WTL and Mr Dixon. I do so for the following principal reasons:

    i) Firstly, as I have already touched upon, I can see no good reason why Mr Willan would have said that he did not want to close WTL down. There is nothing inconsistent between a joint venture as conducted through WPH, and WTL, as one of the shareholders in WPH, continuing to trade and carrying out construction work for WPH. As Mr Lamont said in paragraph 9 of his witness statement, the understanding behind the incorporation of WPH included that WTL would build the opportunities out.

ii) Secondly, it is difficult to see how it could ever have been envisaged that WTL could have stepped into WPH's shoes without changing the agreement rather more fundamentally than Mr Dixon suggests, particularly bearing in mind that it had been envisaged, as Mr Dixon accepts, that the acquisition and development of the sites to be acquired was, pursuant to what had been agreed in July 2017, to be wholly funded through WPH.

iii) An agreement to abandon WPH is inconsistent with the way that Mr Dixon's case was primarily put in the letter before action dated 2 October 2019, and inconsistent with Mr Dixon suggesting that Myers Lane might be acquired by WHL in his email dated 22 January 2018 referred to in paragraph 23 of his witness statement.

iv) The conversation alleged in paragraph 24 of Mr Dixon's witness statement is, on his case, clearly a very important conversation that defined the relationship going forward. Whilst not inconsistent with what is alleged in paragraph 18 of the Particulars of Claim, it is surprising at least that the conversation and the assurances alleged in paragraph 24 were not mentioned until Mr Dixon made his witness statement for trial, and had not been further and more precisely foreshadowed in the pre-action correspondence or the statements of case.

v) As already identified, I found Mr Willan's and Jonathan's evidence that Mr Dixon had consistently promised to contribute or to procure 100% funding, but ultimately failed to do so, to be broadly accurate.

98. I consider that the more likely explanation is broadly as contended by the Defendants, namely that discussions with Mr Norton identified that 100% funding could not be obtained for the benefit of WPH so as to enable it to be used as the joint venture vehicle in the way envisaged when it was agreed to incorporate WPH, or at least that 100% funding could not be obtained on suitable commercial terms given the indication in Mr Norton's email dated 31 October 2017 that, in order to obtain 100% funding, 50% of the profits would require to be shared with the funders. This was, of course, different from what, so I have found, Mr Dixon assured Mr Willan could be done, and what had been planned. Thus, so I find, it was identified that funds would require to be introduced in order for the proposed purchase and development of sites to proceed at an acceptable cost so far as outside funding was concerned, but that Mr Dixon was not in a position, at least at that stage, to contribute. In order to protect what he considered to be the Defendants' position, Mr Willan required that matters proceeded in the name of WTL until such time as Mr Willan was in a position to contribute, or 100% funding on satisfactory terms for WPH could be obtained, in which event WPH could then be used as the joint venture vehicle and Mr Dixon would then be entitled to share in the profits through his interest in WPH (subject, of course, to the terms of the proposed discretionary trust). I consider that the above explains why Mr Dixon, on 22 January 2018, still contemplated the purchase of Myers Lane by WPH.

99. In reaching this conclusion, I have taken into account that Mr Norton did not accept under cross examination that he had said that 100% finance was not available, or that he had said to the parties that it would be necessary for them to put in some 10 to 30% of the development cost as suggested by the Defendants. I accept that Mr Norton may not have expressed matters in quite such terms as suggested by the Defendants, but it

is apparent from his email dated 31 October 2017 that, in order to borrow at reasonable commercial rates of interest, and without having to share profits with a funder, a not insignificant financial contribution would have been required to have been made by Mr Dixon and/or the Defendants in order to fund WPH if used as a joint venture vehicle.

100. On 17 November 2017, planning approval on reserved matters for the Culgaith Site was obtained, and Mr Sanderson forwarded the relevant decision notice to Jonathan and Mr Dixon, marking his email for the attention of Jonathan and Mr Dixon.

101. On 5 December 2017, Mr Jenkins viewed the Lazonby Site and the Culgaith Site on behalf of UTB, with a view to UTB financing the purchase and development thereof. A meeting on sites was attended by Mr Dixon and Jonathan. Later that day, Mr Jenkins emailed Mr Dixon proposing to provide 83% of the funding cost for the Culgaith Site, but indicating that UTB was not in a position to fund the Lazonby Site.

102. On 19 December 2017, WTL submitted a Development Loan Application to UTB in respect of funding for the Lazonby Site, but not the Culgaith Site. So far as funding for the Culgaith Site is concerned, WTL decided to stick with the lender that it had used to fund earlier developments that it had carried out.

103. In respect of Mr Dixon's ongoing divorce proceedings, on 18 January 2018 Mr Dixon signed his Form E, Financial Statement, setting out details of his assets and means. Mention is made therein of his interest in the partnership with his ex-wife relating to the Gilwilly Units and Eden Business Park, and being a shareholder in Hawksdale. Further, at section 4.1.2 of this Form E, it is stated that:

> *" I am involved in two projects, both projects involve obtaining planning permission to develop properties. There is an option on a residential site at Tirril, Penrith. The aim is to try to obtain planning permission to build bungalows. In addition, there are negotiations to purchase a building from the Lloyd Tractor Group in Penrith with a view to developing it. I have no funds to invest in either of these projects at the moment but depending upon the outcome of these proceedings and a settlement being reached with the Applicant, I will have funds to invest. If planning permission is not granted, the projects will not proceed."*

104. The reference to the residential site at Tirril is, as I understand it, a reference to Ladybeck, and the option in respect thereof referred to above. The reference to the Lloyd Tractor Group building is, as I understand it, a reference to Myers Lane. Apart from these references to Ladybeck and Myers Lane, and consistent with what had been discussed on 12 July 2017, there is no reference in the Form E to any involvement by Mr Dixon in any partnership or other joint venture with the Defendants, or to any interest of Mr Dixon in WPH. Section 2.14 of the Form E reminded Mr Dixon of his obligation to disclose *"all your financial assets and interests of ANY nature."*

105. On 19 January 2018 the Church Commissioners of England transferred the Culgaith Site to WTL for a consideration of £310,000. The purchase and subsequent development of the Culgaith Site was funded by WTL without any contribution from Mr Dixon, WTL doing so with the assistance of monies that WTL had borrowed from

the lender that had financed earlier developments that it had carried out, and not a lender introduced through Mr Dixon or Mr Norton.

106. In early 2018, an offer was made in respect of Hackthorpe. Site investigations and negotiations as to terms for the purchase of this site continued until July 2019, but the proposed purchase did not .proceed. I do not understand it to be in dispute that Mr Dixon was involved in this process.

107. In addition to writing to Burnetts as referred to in paragraph 93 of his witness statement, on 22 January 2018, Mr Dixon also requested that Robbie Mather of Burnetts approach Lloyd Ltd's Solicitors with a view to securing Myers Lane. On 6 March 2018, Mr Mather emailed Jonathan stating that he needed: *"to know what the legal entity which the site* [Myers Lane] *is going to be bought in to get a file opened. Have they decided yet?"* Jonathan responded the same day to say that it was going into the name of WTL.

108. Further, on the same day, 6 March 2018, WTL (presumably by Jonathan) forwarded to Mr Dixon *"WeTransfer"* files that had been received from PFK in respect of Hackthorpe and the Langwathby Site for Mr Dixon's input.

109. On 17 March 2018, Burnetts confirmed in an email sent to both Mr Dixon and WTL and addressed to *"Stuart/John"* that a file had been opened for the proposed purchase of Myers Lane, and that the *"purchase will be in the name of"* WTL. I pause to note that it was Mr Willan's evidence, which I accept, that he did not write or otherwise deal with emails, and that all such emails would have been dealt with by Jonathan.

110. In an email dated 27 March 2018, Mr Dixon informed Robbie Mather that: *"We are going to use the Lloyds site for a commercial storage venture. Not a residential site."*

111. On 24 May 2018, Mr Sanderson informed Mr Dixon and Jonathan that there had been success in removing planning conditions in respect of the Culgaith Site. However, on 6 July 2018, planning permission was refused in respect of Ladybeck, and nothing further proceeded in respect thereof.

112. By letter dated 7 August 2018, Burnetts wrote to Mr Dixon and Mr Willan noting that Myers Lane was to be purchased by WTL, of which Mr Willan was a director. This letter went on to say as follows:

> *"Given that the purchase is to be a joint venture between Willan Trading and Stuart* (sic) *Dixon, how will Stuart's interest in the property to be registered? Is he to be appointed a director of the company or will he be joined to the contract in his individual name? Alternatively, is Stuart's interest to be protected by a legal charge in his favour which will be secured against the property? Obviously this option will be of limited benefit if bank financing is required to facilitate the purchase as any legal charge registered in Stuart's favour will rank behind a first legal charge secured by a lender. Please confirm how the property is to be financed and provide further instructions on the ownership point."*

113. There is no evidence that there was any response to this letter from any party setting out the basis on which Mr Dixon was to be involved in the joint venture that Burnetts referred to.

114. In email correspondence between 22 and 25 August 2018, Mr Dixon put forward an offer of £650,000 to the sellers, ESH, for the purchase of the Langwathby Site. It is Mr Dixon's case that the offer was made on behalf of himself and the Defendants as joint venture partners, and with the authority of the Defendants. The offer was accepted by ESH on 31 August 2018, subject to proof of funding. Mr Dixon forwarded the relevant email from ESH accepting the offer to WTL (in practice Jonathan). In response, WTL provided proof of funding by reference to funds in its bank account. This was forwarded to ESH, and was found to be acceptable.

115. JWH was incorporated on 3 October 2018. By this stage, UTB had offered to fund the purchase of the Lazonby Site. However, because WTL had already granted security in relation to other projects, in particular Culgaith, UTB required the relevant lending to be through a new company incorporated for the specific purpose of the purchase and development of the Lazonby Site so that the appropriate security could be granted by that new company, i.e., in the event, JWH.

116. On or about 25 October 2018, agreement was reached between Mr Dixon and Mr Bowman with regard to the purchase of the Redhills Site. Mr Bowman was a friend of Mr Dixon's family, and it is reasonably clear on the evidence that it was through this connection that Mr Dixon was able to engage with Mr Bowman regarding the Redhills Site. Draft *"subject to contract"* heads of terms were produced providing for payment of £100,000 on the day that an option agreement was entered into, and a further sum of £150,000 on completion if the option was exercised. The recitals thereto stated that: *"George Bowman intends to sell Stuart (sic) Dixon land at Redhills, Penrith on the following heads of terms."* It is Mr Dixon's case that, the following day, he met with Mr Willan on the Redhills Site, and they agreed and shook hands on Mr Dixon introducing this site into the joint venture on a 50:50 basis.

117. I note that, on 9 October 2018, Mr Norton responded to Mr Dixon in respect of a new enquiry in respect of funding. Mr Norton identified that he had a cash rich high net worth individual looking to invest as a joint venture partner on the basis of receiving a 50% share of profits, but that he also had an institution that would lend 100% of all costs and take no profit share, but would load the interest rate up to about 1.3%, presumably per month. It is not entirely clear what development site this related to, although I understand that it may have been the Langwathby Site.

118. By email dated 11 October 2018, Mr Bailey emailed Jonathan in order to inform him that his practice had worked up some initial house types for the Langwathby Site *"along the lines of Stewart's instruction"*. This email is relied upon by Mr Dixon in support of his case that he had a continuing involvement in the working up of the developments.

119. Following on, as I understand it, from Mr Norton's email dated 9 October 2018, a draft joint venture agreement was prepared in respect of a potential joint venture with Pummit Capital Ltd relating to the Langwathby Site. This identified *"Willan Holmes and Developments"* and *"Stewart Dixon legal entity"* as *"JV Partners"*, and Pummit Capital Limited as *"Investor"*. It is not in dispute but that the terms of this draft were unattractive, and a joint venture with Pummit Capital Ltd limited was not taken further.

120. On 28 November 2018, Lowther Estates proposed draft heads of terms to Mr Dixon in respect of their proposed sale of Hackthorpe.

121. On 21 December 2018, the Lazonby Site was purchased in the name of JWH with the benefit of funding provided by UTB to JWH.

122. On 11 January 2019, WTL entered into an option agreement with Mr Bowman in respect of the Redhills Site. This provided for the payment of a non-refundable £100,000 option fee, and for the further sum of £150,000 to be paid on completion, with the relevant option being exercisable up until 31 December 2019. This non-refundable fee was paid by WTL. In a letter dated 10 January 2018 addressed to WTL, but sent by email to WTL and Mr Dixon, Burnetts set out and explained the terms of this option agreement, providing advice in respect thereof.

123. By January 2019, the development of the Culgaith Site had been completed. It is Mr Dixon's case that, at about this time, he was informed by Mr Willan that the profit made in respect of the development of the Culgaith Site was not as great as had been expected, and that in a subsequent conversation with Jonathan he was told that the profit would be about £180,000. He says that he was told that he would therefore be entitled to 50% thereof, namely £90,000, but that he agreed that this £90,000 should be left in the joint venture to be used in connection with the development of future sites, or to fund the cost of the purchase of the Redhills Site and Myers Lane.

124. Some reliance has been placed by Mr Dixon upon a supposed diary entry recording: *"15:30 JW Culgaith 180K profit 90K each."*. I do have concerns as to the reliability of this document as a contemporaneous record, not least given that the relevant page appears to be headed *"19/2/18"* rather than a date in 2019. I do not consider that I can place a great deal of weight upon it.

125. The Defendants' case in response to Mr Dixon's case in respect of these conversations in January 2019 is that whilst it is accepted that Mr Willan informed Mr Dixon that the Culgaith Site had not made as much profit as anticipated, and had made a profit of about £180,000, it was made clear that Mr Dixon was only ever going to be entitled to half of the profit if he transferred to WTL half of Eden Business Park land, i.e. approximately 1½ acres as a contribution to the cost thereof.

126. It is fair to say that when cross-examined about this conversation, and the suggestion that Mr Dixon was to transfer land, Mr Willan became very confused, and indeed somewhat incoherent, as to what had been agreed and the basis thereof. Further, Mr Dixon flatly denies that there was any question of any transfer of land, whether at Eden Business Park or otherwise, to WTL or otherwise into the joint venture.

127. However, in the context of it being put to Mr Dixon that he had said that he would put up half of the land at Eden Business Park as a contribution, Mr Dixon was questioned about a WhatsApp message dated 21 January 2019 sent by Mr Willan to Mr Dixon in which Mr Willan said: *"If you meet James show him the land at Eden Business Park 2.5 acres."* At this time, Mr Willan had approached Mr Lund with regard to possible funding for the purchase of Myers Lane. The reference to James in the WhatsApp message is a reference to Mr Lund, and it was put to Mr Dixon that the only reason for showing the land at Eden Business Park to Mr Lund could have been in the context of the relevant land being provided as a contribution to the joint venture. I did

not consider that Mr Dixon was able to give any satisfactory answer in respect thereof.

128. Further, reliance is placed by the Defendants on a letter dated 1 February 2019 from Joe Ellis of Edwin Thompson, Chartered Surveyors, to Mr Dixon and Mr Willan stating that Edwin Thompson would be pleased to act: *"on your behalf in respect of the ongoing sale and letting opportunities in relation to your property holdings."* This letter followed on from an earlier letter from Joe Ellis to Mr Dixon and Mr Willan dated 24 January 2019 that itself followed on from a meeting between Joe Ellis and Mr Dixon and Mr Willan. The letter identified that the *"property holdings"* to be the subject matter of instructions to Edwin Thompson were not only to be Myers Lane, and the letting of units thereat, but also: *"the design and build land parcels on Gilwilly Industrial Estate"*, i.e. Eden Business Park.

129. During the course of Mr Dixon's cross examination, sales particulars were put to him relating to Eden Business Park, and it was his evidence that these particulars were created much more recently than 2019. However, the Defendants were subsequently able to locate sales/letting particulars relating to Eden Business Park that clearly did date back to 2019, and which described the Eden Business Park Land being available for sale/let *"on a design and build basis."* This wording ties in with the wording used in Joe Ellis's letter dated 24 January 2019 referred to in paragraph 128 above, thus linking the particulars to the instructions to Edwin Thompson. When questioned about this under cross-examination, Mr Dixon sought to suggest that he had decided to sell the Eden Business Park land in order to raise funds to purchase a greenfield site. I found this to be an unconvincing answer.

130. It was put to Mr Dixon that the fact that Mr Dixon and Mr Willan had jointly instructed Edwin Thompson in respect of not only Myers Lane, but also Eden Business Park was consistent only with that land, or part thereof, being brought within the compass of the joint venture as Mr Dixon's contribution, or else why were there joint instructions, and was inconsistent with Mr Dixon's denials that Eden Business Park had ever been discussed in the context of Mr Dixon making a contribution. I have to say that I again found Mr Dixon's answers to this line of enquiry to be entirely unconvincing, and I am led to conclude that Eden Business Park was included within the instructions to Edwin Thomson because there had been discussion between Mr Willan and Mr Dixon with regard to Mr Dixon making a contribution to the joint venture through the introduction of Eden Business Park, or some part thereof, or the proceeds of sale thereof.

131. Further, given the timing of the instructions to Edwin Thompson in January 2019, at about the time that there was discussion with regard to the profits of the Culgaith Development, and given that Mr Dixon was unable to provide any other cogent explanation as to why he was combining with Mr Willan in giving instructions to Edwin Thompson with regard to both Myers Lane and Eden Business Park, I am also led to conclude that the Defendants' version of events is to be preferred, and that Mr Dixon's entitlement to profits from the development of the Culgaith Site was tied by Mr Willan or Jonathan to an obligation to make a contribution, something that Mr Dixon had indicated that he would do going back to the discussions in or about September/October 2017 when difficulties had arisen regarding WPH raising funds to cover the entire purchase and development cost of the relevant sites.

132. Reliance is placed by Mr Dixon on the fact that the acceptance by Mr Dixon and Mr Willan of Edwin Thomson's terms and conditions, under their respective signatures, describes the capacity in which they were signing as, in each case, *"Owner"*. It is said that this demonstrates that Mr Willan recognised that Mr Dixon was to be a co-owner of Myers Lane when it was acquired. I am not persuaded that such significance can necessarily be attached to this document. *"Owner"* appears to be written in both cases in the same hand, and it is not clear that it was there when Mr Willan signed the document.

133. Exchange of contracts in respect of the Langwathby Site took place on 14 March 2019, the contract being entered into by JWH.

134. Exchange of contracts in relation to Myers Lane took place in April 2019, the contract being entered into by WTL. In early May 2019, an attempt was made to begin marketing units at Myers Lane to prospective tenants, Myers Lane at that time being vacant and unoccupied.

135. An email dated 9 April 2019 produced by Mr Norton at the trial suggests that attempts were being made by Mr Dixon, through Mr Norton, to raise funds for the purchase of Myers Lane. On 8 May 2019, Edwin Thompson produced a valuation report in respect of Myers Lane valuing the same at £750,000, but identifying a current market rental value of £60,000 per annum albeit that the relevant premises were vacant. It was the Defendants' case that this report was relied upon to support the attempts to raise monies to fund the purchase of Myers Lane, but that such attempts on the part of Mr Dixon were unsuccessful. This valuation of £750,000 is to be contrasted with the price of £395,000 negotiated with Mr Lloyd. The valuation experts are not agreed as to the value of Myers Lane as at May/June 2019. Mr Percival for Mr Dixon values it as that date at £750,000, whereas Mr Allan for the Defendants gives evidence as to a lower value of £485,000, but still significantly more than the negotiated £395,000.

136. In the event, WTL funded the purchase of Myers Lane by borrowing from Mr Lund and his wife, with the relevant advance being secured by way of charge over Myers Lane. In the course of his evidence, in answer to a question that I posed, Mr Lund said that he was, at the time, informed by Mr Willan that he had been let down by *"another party"*. I accept that Mr Willan probably did inform Mr Lund that he had been let down by another party, because he had been so let down. Although Mr Lund did not identify that other party, there can be little doubt but that it was Mr Dixon.

137. WTL completed the purchase of Myers Lane from Lloyds Ltd for £395,000 on 12 June 2019, with the benefit of funds advanced by Mr Lund and his wife.

138. On 5 July 2019, Mr Dixon signed a lease or draft lease purporting to grant a lease of one of the units at Myers Lane to EK Motor Factors Ltd for a term of 5 years, the document also being signed on behalf of EK Motor Factors Ltd. This document describes the tenant as *"Willan Trading Ltd - S.M.Dixon"*. Mr Willan refused, himself, to sign the document. Apart from any question of Mr Dixon's authority to grant such a lease, particular objection is taken by the Defendants to the fact that Mr Dixon had received three months rent in advance into his own bank account in respect thereof.

139. It is clear that matters came to a head as between Mr Dixon and Mr Willan at this point. On or about 10 July 2019, the telephone conversation took place between Mr Dixon and Mr Willan that I have already mentioned in which there was discussion with regard to them going their separate ways, it being agreed that Defendants would take the residential properties, and Mr Dixon would take the commercial properties, i.e. Myers Lane and the Redhills Site, subject to Mr Dixon buying out the Defendants, in the sense of reimbursing them in respect of their expenditure in relation to the commercial properties.

140. This discussion, and the agreement reached, is referred to in an email from Mr Dixon to Jonathan dated 10 July 2019 in which Mr Dixon said:

> *"One major point I have just spoken with your dad on the phone, on the way forward, and he sees it now, as per the original agreement that the commercial properties are my responsibilities, and as I have always agreed the, housing sites are yours. This enables a line to be drawn under it all.*
>
> *I am very pleased at a sensible outcome, and wish you all the best."*

141. By an email sent by Jonathan prior to this email from Mr Dixon, Jonathan had provided details in respect of WTL's expenditure in respect of the respective sites. The expenditure incurred in respect of Myers Lane totalled £113,500, of which £103,500 related to the purchase cost (excluding, as I understand it, the funds borrowed from Mr Lund and his wife secured on Myers Lane).

142. On 25 July 2019, Mr Norton, who was seeking to raise monies for Mr Dixon, received an in principle loan offer from Aldermore offering to advance £456,780 to Mr Dixon. This process involved Mr Dixon raising sufficient to cover WTL's expenditure and borrowings secured upon the relevant properties so that WTL could be bought out as discussed above. However, ultimately, Mr Dixon was unable to raise the monies, notwithstanding that Mr Norton had sought to line up bridging finance to cover the position until Myers Lane was fully let, and therefore provided better security for a lender.

143. It is Mr Dixon's case that, during July 2019, Mr Willan confirmed that Mr Dixon would be entitled to 50% of the profit from the Lazonby Site, but also said that Mr Dixon would have to wait for his money. Mr Willan denies that any such confirmation was provided, and the Defendants say that the contention that Mr Willan said this is inconsistent with any agreement or understanding between the parties as reflected in Mr Dixon's email dated 10 July 2019. I find it difficult to accept that Mr Willan said what it is alleged that he did say, particularly in the context of the agreement recorded in Mr Dixon's email dated 10 July 2019, and Mr Dixon's apparent acceptance in that email that he had *"always agreed the housing sites are yours"*.

144. On 23 July 2019, Mr Willan resigned as a director of WPH and arranged for the transfer of his shares therein to Mr Dixon.

145. On the same day, Arnison Heelis, Solicitors acting for Mr Lund and his wife, wrote to Burnetts complaining that the lease purportedly granted by Mr Dixon on 5 July 2019 had been granted in breach of the terms of the lending to WTL, and the terms of the

security granted by WTL to Mr Lund and his wife. It was Mr Lund's evidence that his real concern at the time was not so much the lease itself, but having discovered about Mr Dixon's involvement in respect of Myers Lane.

146. So far as the lease purportedly granted by Mr Dixon on 5 July 2019 is concerned, nothing ultimately really turns upon it, because in the face of the objections thereto, Mr Dixon granted a lease or tenancy of a unit at the Gilwilly Units instead, utilising the rent received in respect of the unit at Myers Lane as rent received in respect of this alternative lease or tenancy.

147. On 2 August 2019, Mr Dixon emailed Jonathan and Steven Willan, copying in Ian Sharman of Cartmell Shepherd, saying: *"Please can you send me the £90,000, this is owed to me by [WTL]. The money has been owed to me since February, therefore would appreciate payment. I will give you until, close of business, Tuesday 6th August."*

148. Again, this is somewhat difficult to reconcile with the approach taken by Mr Dixon in his email to Jonathan dated 10 July 2019, and I consider is likely to have been written after Mr Dixon had run into difficulty in raising funds to buy out WTL in respect of the *"commercial properties"* as referred to above, or alternatively because, by this time, it had become clear that WTL had no interest in disposing of its interest in Myers Lane on the basis that might previously have been discussed.

149. On 5 August 2019, Jonathan emailed Nigel Read of SAS Daniels, the Defendants' Solicitors, explaining the position with Mr Dixon. No claim to legal professional privilege has been made in respect of this email, which was included in the trial bundle. This requires to be referred to in full as Mr Willetts, on behalf of Mr Dixon, has sought to place particular reliance upon it:

> *"Hi Nigel,*
>
> *As per phone conversation here is points for goings on with Stewart Dixon.*
>
> *Stewart has no money and was putting development and commercial sites our way.*
>
> *Culgaith residential development:*
>
> *Willan trading owned, built and sold. Stewart potentially owed £90,000.00 for his share but has been snagging done so this number will be reduced when final costs come in. Nothing in contract between Dixon and Willan,but following this site Willan Trading put further investment into more sites.*
>
> *Lazonby residential development: Willan Trading bought and are currently building. All paid for by Willan Trading. No sales able to complete until late this year, early next year.*
>
> *Myers lane (Lloyds site) Commercial site with buildings on:*
>
> *Stewart Dixon did a heads of terms with owner approx. 5 years ago. Stewart not in a position to buy site so bought in Willan Trading name as we*

wouldn't put any one else's name in the contract if not contributing money. This was one of reason we took Stewart along with us as this site was not a potential profit site it already had equity upon purchase so Willan Trading could use this as it is investing in other developments also with £0 from Dixon. When setting up legal contract for purchase of Lloyds site Dixon did put £2500 in for a undertaking and so did Willan Trading. Nothing further invested from Dixon and purchase was completed in the name of Willan Trading.

Mile Lane (brown field site) Currently have outline planning application running for 7 Acres of commercial units:

Purchase contract between Willan Trading and George Bowman. Agreed contract we pay £100,000 for land (paid) and £150,000 1 year later to give us time to secure a planning permission. £150,000 not owing until December 2019. All paid for by Willan Trading

Hackthorpe residential development site:

Currently in planning. Contract between Willan Trading and Lowther estate trust. All cost up to date paid for by Willan. Still trying to get Reserved matters planning application approved

Langwathby residential development:

Currently in planning. Contract between Willan Trading and Esh homes. All cost up to date paid by Willan

Tirril site residential development:

Contract between Willan and Lowther. ready to submit planning application for reserved matters. All costs up to date paid for by Willan

Dixon said he wants his £90,000 from Culgaith, and to purchase Myers lane and Mile lane. We have said Myers lane is not for sale so Dixon is threatening litigation. He has said he doesn't want anything to do with residential developments, but that is where bulk of the cost is and we are going to keep Myers lane as it is the only investment with a cash flow and uplift in value now. There is no return going to be coming from residential sites with the exception of Lazonby until mid 2020.

We will sell Mile lane but don't want it dragged out as we know Dixon has no money but says he does and drags things out.

Regards,

Jonathan Willan"

150. W&LHL was incorporated on 13 September 2019. Jonathan and Mr Lund have, at all relevant times, been the directors of W&LHL, and the shareholders therein have been Mr Willan, Jonathan, Stephen Willan and Mr Lund, with Mr Lund holding 50% of

the share capital, and the other 50% of the share capital being held by the members of the Willan family.

151. Mr Dixon's first letter before action referred to above was sent by his then Solicitors, Cartmell Shepherd on 2 October 2019. This was responded to by the Defendants' Solicitors, SAS Daniels, by letter dated 5 November 2019.

152. On 26 November 2019, WTL, having exercised the relevant option, proceeded with its purchase of the Redhills Site from Mr Bowman , paying the sum due on completion, namely £150,000, meaning that WTL paid, in total, £250,000 for the Redhills Site. It is to be noted that whilst Mr Allan, on behalf of the Defendants, has valued the Redhills Site as of November 2019 at £250,000, Mr Percival, on behalf of Mr Dixon, has valued it at £425,000 as at that date.

153. On 28 February 2020, a further letter before action was sent by Mr Dixon's then Solicitors, SDM Legal.

154. On 25 March 2020, JWH completed its purchase of the Langwathby Site.

155. The present proceedings were commenced on 12 November 2020.

156. On 15 December 2020, WTL transferred Myers Lane and the Redhills Site to W&LHL. Mr Allan has placed a value of £875,000 on Myers Lane as at that date, and a value of £300,000 on the Redhills Site as at 12 November 2020. Mr Percival has placed a values of £940,000 and £500,000 respectively on these properties as of 15 December 2020. As already referred to, it is not suggested that there is any difference in value between these dates.

157. Between 2020 and 2021, WTL has completed the building works at, and sold off the residential properties constructed on the Lazonby Site and the Langwathby Site.

158. So far as valuations of Myers Lane and the RedHills Site as of April 2022 are concerned, Mr Allan has placed a value thereon of £1,290,000 and £370,000 respectively, and Mr Percival's equivalent valuations are £1,360,000 and £650,000. However, it must be pointed out that development works have been carried out to Myers Lane since the transfer to W&LHL.

Determination of the claim and counterclaim

Introduction

159. I consider that, in determining the merits of Mr Dixon's claim, and the Defendants' counterclaim, it is necessary to distinguish between the residential sites developed by WTL on the one hand, and the commercial sites, Myers Lane and the Redhills Site, on the other hand, as I consider that different considerations apply to each..

160. In respect of each of the relevant sites, it is necessary to consider whether Mr Dixon has made out his case that he is entitled to share in the profits made, or to some other interest, on the basis of contract (whether of partnership or otherwise), the imposition of a *Pallant v Morgan* equity, or the existence of a proprietary estoppel, or whether Mr Dixon is entitled to a remedy based upon the Defendants' unjust enrichment if his other claims fail.

Residential Sites

161. We are here concerned with the Culgaith Site, the Lazonby Site and the Langwathby Site, but not the other sites (Ladybeck and Hackthorpe) that ultimately came to nothing.

Contract/Partnership

162. I have already found, for the reasons set out in paragraphs 78 to 81 above, that, although there was activity prior to July 2017 in respect of Ladybeck, Hackthorpe and the Culgaith Site, so far as seeking to acquire the sites and preparing the same for development is concerned, and discussion between Mr Dixon and Mr Willan with regard to a potential joint venture agreement, it was not until July 2017 that discussion with regard to a possible joint venture agreement involving the sites crystallised into a decision between Mr Dixon and Mr Willan to pursue a joint venture, using WPH as the corporate vehicle for doing so.

163. Section 1(1) of the Partnership Act 1890 provides that partnership is the relation: *"which subsists between persons carrying on business in common with a view to profit."* It is not necessary, for a partnership to exist, that some actual trading activity must have taken place. Steps taken to establish a business may be sufficient – see Lindley and Banks on Partnership, 20th Ed. at 20-03. However, given my finding above that Mr Dixon and Mr Willan were yet to decide as to how their joint venture was to be pursued, I do not consider that any partnership or partnerships can have come into existence prior to July 2017.

164. In July 2017, the agreement reached was not to carry on business in partnership, but rather, and inconsistent with a relationship of partnership, to use WPH as a corporate vehicle for the joint venture, under which WPH, itself, would acquire the relevant sites for development and obtain its own (full) funding in order to do so. Thus, I do not consider that any partnership can have come into existence at this point, or at any later stage unless the agreement reached in July 2017 was subsequently varied or superseded, either expressly or by conduct, so as to provide for a relationship of partnership going forward. Likewise, to establish any other binding agreement for the sharing of profits, it would be incumbent upon Mr Dixon to prove that, after July 2017, a sufficiently certain binding agreement was reached with regard to the sharing of profits and/or Mr Dixon acquiring an interest in the properties acquired, otherwise than through a joint venture utilising WPH.

165. Whilst there is evidence from witnesses such as Mr Norton, Mr Bailey and Mr Sanderson that it was their understanding that Mr Willan and Mr Dixon were in business together, and indeed partners, this evidence is of limited value as against a consideration of what was actually discussed and agreed between Mr Willan and Mr Dixon, and an understanding that in July 2017 they had agreed to use WPH as the vehicle for their joint venture.

166. Thus I consider it necessary to consider whether there was, after July 2017, some sufficiently certain binding agreement concluded between Mr Dixon and Mr Willan, expressly or by implication, for the sharing of the anticipated profits from the development of the sites that it was anticipated would be acquired and/or as to Mr Dixon acquiring an interest in those sites, either as partners or otherwise, and

otherwise than through WPH as the corporate vehicle established for their joint venture.

167. I consider Mr Dixon's case that such an agreement was concluded to be subject to a number of difficulties, including the following:

i) The joint venture actually agreed upon in July 2017 was one in which Mr Dixon did not intend to have a personal interest otherwise than through a discretionary trust that it was anticipated would be established in order to avoid complications with his then ongoing divorce proceedings, and in particular having to disclose that he had an interest in a new business that was yet to make a profit. There is no reason to suppose that Mr Dixon's intentions were any different when the decision was taken that, for whatever reason, the sites would be acquired by WTL rather than by WPH. This, as I see it, explains why, in January 2019, in completing his Form E for the purposes of his divorce proceedings, Mr Dixon, whilst making reference to Myers Lane and Ladybeck, made no reference to any interest in any other developments or proposed developments notwithstanding what was ongoing in respect thereof at the time.

ii) The Culgaith Site, the Lazonby Site and the Langwathby Site were all acquired in WTL's name, or that of JWH, and the acquisition and development costs were borne by these companies, by the use of their own funds and by borrowing in their own name for the purpose, albeit that Dixon may have contributed to a limited extent to some expenditure and assisted in respect of planning, design and other issues such as the obtaining of funding through the introduction made to Mr Norton.

iii) For the reasons set out in paragraph 94 above, I have rejected Mr Dixon's evidence that it was agreed to abandon WPH as the vehicle for the joint venture in favour of using WTL for that purpose, and I have rejected Mr Dixon's evidence that he was assured by Mr Willan that things would not change if WTL was so used. Further, I have found that is likely that it was agreed or at least understood, that once the decision was taken that the relevant sites would be acquired in the name of WTL and that WTL would fund the acquisition and development costs, that Mr Dixon's future participation in the joint venture was dependent upon him making some financial contribution, e.g. by contributing land at Eden Business Park Land, which never in fact happened. Further, I consider it likely that the agreement or understanding was, as Jonathan said in evidence, that when Mr Dixon was able to contribute, then WPH would have been used for the purposes of the joint venture, with any necessary transfer to WPH, in much the same way as Myers Lane and the Redhills Site were subsequently transferred to W&LHL for the purposes of the joint venture between WTL/the Willan family and Mr Lund.

iv) I regard it as significant that in his email dated 10 July 2019, Mr Dixon went so far as to say: *"... as per the original agreement ... I have always agreed that housing sites are yours."* Under cross examination, Mr Dixon was unable to provide any cogent explanation as to why he had said this if it had not reflected his understanding of the position in the events that had happened. He

suggested that he was *"just being decent"*, but this was unconvincing and makes little sense.

168. In these circumstances, I am unable to conclude that, in the events as they actually unfolded after July 2017, there was any understanding, let alone any binding agreement, that the agreement to use WPH as the corporate vehicle for a joint venture should be superseded by a partnership or partnership, or other arrangement providing for the sharing of profits and/or Mr Dixon acquiring an interest in the properties acquired for residential development. Rather the understanding was that only when Mr Dixon was able to make an appropriate contribution, which he said he would do, or procure appropriate 100% funding on commercial terms, that the envisaged joint venture be pursued – through WPH.

169. I should add that I have taken into account what was said by Jonathan in his email dated 5 August 2019, and in particular his reference therein to Mr Dixon being: *"potentially owed £90,000 for his share but has been snagging done so this number will be reduced when final costs come in."* Jonathan was cross- examined on this and highlighted that he had said *"potentially"* owed in respect of the £90,000, saying that this is on the basis of a transfer of the land at Eden Business Park. Earlier, under cross examination, he had said that any obligation to account for £90,000 of the profits from the Culgaith Site was on the basis of transfer of land at Eden Business Park, adding that this was the only reason that his father and Mr Dixon had signed Edwin Thompson's terms and conditions (on 4 February 2019, and relating to instructions in respect of both Myers Lane and Eden Business Park). I accept Jonathan's evidence in respect of this, by way of explanation as to how he came to say what he did in his email dated 5 August 2019.

Pallant v Morgan equity

170. I do not consider that Mr Dixon has established a *Pallant v Morgan* equity in respect of the Culgaith Site, the Lazonby Site, or the Langwathby Site.

171. As identified in paragraph 12(ii) above, the key requirement of the equity is that the acquiring party and the non-acquiring party had formed a common intention that the acquiring party would take steps to acquire the property and that if they did so, then the non-acquiring party would obtain some interest in it. However, as I have found, the understanding between the parties in the present case, at least so far as the residential development sites are concerned, was that Mr Dixon would only be entitled to share in the profits of any joint venture and/or to some interest in the properties acquired if he made some appropriate financial contribution or was able to procure appropriate 100% funding, so that WTL and JWH were not left bearing the full cost of the acquisition and development of the sites. In this event, consistent with the agreement reached in July 2017, WPH would be used as the vehicle for the joint venture and Mr Dixon's entitlement would be recognised in that way. There was not, therefore, a common intention that that Mr Dixon should obtain some interest in the relevant sites.

172. Further, and in any event, the further necessary ingredient of the equity is that it should be unconscionable for WTL or JWH to have kept the relevant sites for themselves. Considering the matter objectively, I find it difficult to see that it would be unconscionable for WTL or JWH to retain the benefit of the profits made from the

development of the relevant sites in circumstances in which the understanding was, as I found, the Mr Dixon would only be entitled to participate therein if he financially contributed, or was able to procure 100% funding, which he did not.

173. The position is, as I see it, no more beneficial for Mr Dixon if *Pallant v Morgan* equity is analysed in terms of agency in accordance with the principles considered in paragraph 14 above. Given the circumstances in which the relevant sites came to be acquired in the name of WTL and JWH, I find it difficult to see how they can sensibly be said to have done so as agents for Mr Dixon and the relevant one of them. WTL and JHW were acquiring the relevant properties on their own account, with any entitlement of Mr Dixon to participate being conditional upon him making a financial contribution, and even then the chosen vehicle for his participation was through WPH.

Proprietary estoppel

174. The difficulty with Mr Dixon's case as to proprietary estoppel is, again, that Mr Dixon's participation was conditional upon him making a financial contribution to the venture concerning the acquisition and development of the residential sites or procuring appropriate 100% funding, and even then was to be enjoyed through WPH. Thus, given my rejection of Mr Dixon's evidence as to the abandonment of WPH and assurances alleged to have been given so far as the use of WTL was concerned, I consider it impossible to identify a promise or assurance sufficient to support a proprietary estoppel, or the adoption of a course of conduct in reliance thereupon. Mr Dixon is therefore unable to establish a proprietary estoppel that assists him.

Unjust enrichment

175. Despite my findings in relation to the reliability of Mr Dixon's evidence, I do have some sympathy with him for the fact that he clearly expended not inconsiderable time and effort in respect of the relevant sites so as to benefit the Defendants without, given my findings above, reward. However, his case in unjust enrichment is founded upon the premise that if no contract, trust, fiduciary duties or estoppel is or are found to be binding on the Defendants, then by reason of a mistaken belief as the binding nature of the Defendants' obligations to him, they have been unjustly enriched at his expense. The difficulty with this is that on the basis of my factual findings, Mr Dixon did not have a mistaken belief as to the binding nature of the Defendants' obligations to him and was aware that any entitlement to participate was conditional upon him making a financial contribution or obtaining appropriate 100% funding, which he never did.

176. In the circumstances, I do not consider Mr Dixon's case as to unjust enrichment to be made out.

Commercial Premises

177. There are, as I see it, a number of important distinctions between Mr Dixon's case in respect of the residential development sites, and the commercial properties, Myers Lane and the Redhills Site. In particular:

    i) In respect of Myers Lane, Mr Dixon not merely introduced the same to Mr Willan for potential acquisition, but had negotiated terms for the acquisition of

the same with Mr Lloyd as long ago as December 2015, then entering into the, albeit subject to contract, memorandum of agreement with Lloyd Ltd for the purchase of Myers Lane at a price of £395,000. It was on this basis the Myers Lane was introduced to Mr Willan, and specific agreement was reached in November 2017 for the relinquishment of Mr Dixon's interest in Myers Lane in favour of WTL on an understanding that any profit gained from the acquisition thereof would be shared. Although, as I found, the understanding was that any joint venture in relation to the development of the residential units would be conducted through WPH, the position is less clear in respect of Myers Lane, and although Mr Dixon's email to Burnetts dated 22 January 2018 contemplated the acquisition of Myers Lane through WPH, it is not, I consider, without significance that Mr Dixon specifically identified Myers Lane, and his interest in respect of this property, in his Form E.

ii) Further, Burnett's letter dated 7 August 2018 clearly recorded that the purchase of Myers Lane was to be a joint venture between WTL and Mr Dixon. There is no evidence of this being challenged by the Defendants at the time.

iii) So far as the Redhills Site is concerned, Mr Dixon's interest therein came after he had completed his Form E, and so it is unsurprising that it is not referred to therein. Again, Mr Dixon did not simply introduce this property as an acquisition target, but had agreed draft heads of terms with his personal contact, Mr Bowman, on 25 October 2018. These recorded that Mr Bowman intended to sell to Mr Dixon on the terms set out therein, which provided for an option fee of £100,000, and the payment on the exercise of the option of a further £150,000. Although these heads of terms were expressed to be subject to contract, when Mr Dixon met on site and discussed this property with Mr Willan the following day, it was on the basis that Mr Dixon had negotiated a particular deal. It was in these circumstances, that it was agreed that WTL would acquire the Redhills Site, and in the circumstances, I consider that this must have been on the basis that the profits from doing so would be shared 50:50. Further, it is, as I see it, again less obvious that the understanding was that any joint venture in relation thereto would necessarily be conducted through WPH as with the residential development sites.

iv) Myers Lane was acquired with a view to being let out so is to produce a rental income. Whilst some refurbishment works may been required before it could be let out, it did not require the same sort of outlay for the cost of development as was the case in respect of the residential sites. Although, of course, there was the requirement to fund the acquisition of Myers Lane, the necessity for Mr Dixon to make a financial contribution would have been much less of an imperative than it was in the case of the residential sites, which required specific development funding. The Redhills Site was acquired as a development site, but it did not have the benefit of outline, let alone full planning permission, when introduced to WTL in October 2018 (albeit that outline planning permission was subsequently acquired), and so there was no immediate requirement to fund the cost of development necessitating a contribution from Mr Dixon.

v) In light of the considerations referred to in sub-paragraphs (I) to (iv) above, I consider it unlikely, on balance, that the condition that Mr Dixon should financially contribute or procure funding before being entitled to share in the profits from the residential development sites, or to otherwise participate in a joint venture together with the Defendants, extended to the agreement or understanding between the parties in respect of Myers Lane and the Redhills Site. I take into account that in paragraph 47 of his witness statement, Mr Willan does say that he made it clear to Mr Dixon that he was not entitled to any profits from Myers Lane until an agreement or partnership was made and completed, and until Mr Dixon paid a 50% share. However, whilst I consider that such conversation may well have taken place in the context of the acquisition and development of the residential sites, I am not persuaded that any such conversation did take place in the context of Myers Lane, or the Redhills Site given the circumstances in which they were introduced by Mr Dixon to Mr Willan and WTL.

vi) I regard what Jonathan said in his email dated 5 August 2019 in respect of Myers Lane to be of significance. It is certainly right that Jonathan does say that the Defendants would not put Myers Lane in anyone else's name, i.e., anybody apart from WTL, if Mr Dixon was not contributing money, which is consistent with the understanding that I have held existed in respect of the residential sites. However, the relevant paragraph of the email dated 5 August 2018 goes on to talk in terms of taking *"Stewart along with us as this site was not a potential profit site it already had equity upon purchase"*, and to putting Myers Lane in the name of WTL as being one of the reasons for doing so.

vii) So far as the *"equity"* identified by Jonathan in his email dated 5 August 2019 is concerned, what Jonathan was plainly referring to was a difference between the price paid for Myers Lane and its value as at the date of purchase. If there was a significant difference, as Jonathan was suggesting that there was, then this represented a profit that Mr Dixon had brought to the table through his advantageous deal with Mr Lloyd/Lloyd Ltd that he had negotiated in 2015 for a purchase at a price of £395,000. In the circumstances, I consider it unlikely that the parties would have understood or intended that WTL was to reap the whole benefit thereof in the event that Mr Dixon was not in a position to procure funding for the purchase of Myers Lane, or to make a contribution to the acquisition cost.

viii) So far as the value of the *"equity"* on purchase is concerned, as I have identified there is a difference between the experts as to the value of Myers Lane as at the date of its purchase in June 2019. Mr Allan places a value of £485,000 thereupon, whilst Mr Percival's figure is £750,000. It is not strictly necessary for me to determine the value of Myers Lane as of June 2019, particularly bearing in mind that even Mr Allan's valuation discloses an increase in value of some £90,000. However, having considered the two valuation reports, the experts' joint report, and their oral evidence at trial, I am satisfied that the market value of Myers Lane as of June 2019 was not insignificantly more than £485,000, meaning that the profit on purchase was in all probability significantly more than £90,000. Mr Percival essentially agreed with Edwin Thomson's valuation dated 8 May 2019. However, I consider that

this was significantly on the high side as a valuation in that it appeared to assume that Myers Lane was fully let, or could be fully let shortly after purchase, which was not the case. Further, I agree with Mr Allan's evidence that the yields relied upon by Mr Percival were on the high side, or *"keen"* as Mr Allan put it. On the other hand, I consider that the yields relied upon by Mr Allan were on the low side and that it is relevant in respect of this property that Mr Percival, unlike Mr Allan, is not simply a valuer, but practices as a chartered surveyor in the area with knowledge and experience of the local market and local transactions. For what it is worth, and taking into account the considerations identified by the respective experts, I consider that the open market value of Myers Lane at the relevant time is likely to have been somewhere between £600,000 and £650,000.

ix) So far as the question of *"equity"* is concerned, I consider that similar considerations are likely to have arisen in respect of the Redhills Site, albeit that the difference between the price paid and the open market value thereof was less significant given that only £250,000 was paid, in total, for the Redhills Site in November 2019. As referred to above, it was Mr Allan's expert evidence that the open market value reflected the price paid, namely £250,000. On the other hand, Mr Percival's evidence was that the open market value as at the date of purchase was £425,000. As Mr Percival put it at paragraph 7.13 of his report, the Redhills Site was: *"introduced as an off market opportunity at a figure substantially below market value for a site of this nature in this location."* Mr Allan's valuation is based upon a residual appraisal, whereas Mr Percival, initially at least, adopted a price per acre approach before, as I understand it, subsequently testing that as against a residual appraisal. Again, I consider that this is a site in respect of which Mr Percival's local knowledge is of some advantage. I am satisfied therefore that there was some equity in this purchase, and that similar considerations apply as in the case of Myers Lane so far as the parties' intentions were concerned.

x) I consider that Mr Dixon's email dated 10 July 2019 provides further insight in respect of the position. This email, written after a discussion with Mr Willan with regard to the *"way forward"* records Mr Willan and Mr Dixon, at that point, both considering that *"as per the original agreement"*, the commercial properties should be Mr Dixon's responsibility, and the *"housing site"* those of Mr Willan. Further, if there was then discussion with regard to Mr Dixon buying out the Defendants' interest in the commercial properties by raising funds to reimburse the Defendants in respect of the expenditure incurred by them, then this, to my mind, further serves to demonstrate that each party viewed the commercial properties and the residential units on a rather different footing, recognising that Mr Dixon had some interest in the commercial properties given, in particular, the equity that he brought to the table though the deals that he had done. At that stage, only Myers Lane had been purchased, but WTL had entered into the option agreement in respect of the Redhills Site.

178. In short, therefore, whilst I consider that Mr Dixon's participation in any joint venture concerning the residential development sites was, after it was decided that those sites would be acquired and developed at WTL's cost, understood and agreed to be conditional upon him financially contributing thereto or raising appropriate 100%

finance, in which case WPH would be used as the joint venture vehicle, I am satisfied that different considerations apply in the case of Myers Lane and the Redhills Site, and that there was an agreement and understanding between Mr Dixon and Mr Willan that if those properties were acquired, then Mr Dixon would share equally in any profit made thereby without the necessity for Mr Dixon to provide any contribution or procure any funding, or for WPH to be used as a corporate vehicle.

179. So far as the authority of Mr Willan to bind the other Defendants to any agreement or understanding is concerned, I am satisfied that he had ostensible, if not actual authority, and it is not insignificant that Jonathan was kept fully up to speed as to what was going on, and involved in the process as managing director of WTL.

180. In light of the above, whilst I am not satisfied that what was agreed or understood between the parties was sufficiently clear or certain to give rise to a binding contract (of partnership or otherwise), or was intended to create a binding contract, I am satisfied that a *Pallant v Morgan* equity arose in respect of Myers Lane and the Redhills Site.

181. As to a *Pallant v Morgan* equity, and having regard to the various requirements set out in paragraph 12 above:

i) The equity does relate to specific properties that were not first owned by either of the parties. Whilst Mr Dixon may have negotiated terms for the purchase of each of the properties, he did not own them at the time that they were introduced to Mr Willan and WTL, and he had not entered into a binding contract to purchase the same having merely negotiated *"subject to contract"* terms for their purchase.

ii) Mr Dixon and Mr Willan (on behalf of WTL) did, I find, form a common intention that WTL would take steps to acquire Myers Lane and the Redhills Site and that if WTL did so, then Mr Dixon would acquire some interest therein. As the authorities referred to in paragraph 12(ii) recognise, the intention does not require to be related to some specific proprietary interest, simply that the property is acquired for the joint benefit of the acquiring party and the non-acquiring party – see in particular *Kearns Brothers v Hova Developments Ltd* (supra) at [114] –[115]. In the present case, I consider that the overriding consideration is that the relevant properties were to be acquired by WTL on behalf of itself and Mr Dixon so that they could share 50:50 any profit to be made from the acquisition thereof. That is, as I see it, the equity that would require to be satisfied,

iii) I consider that the main terms had been agreed between the parties, namely that the relevant properties would be acquired so that the profit to be made from the exploitation thereof could be shared between WTL and Mr Dixon. Further, in contrast to the position in respect of the residential units, giving effect thereto was not, on the basis of my findings, conditional upon Mr Dixon providing a financial contribution or procuring funding, or upon some formal agreement being concluded.

iv) As I have found, Mr Willan had at least ostensible authority to act on behalf of WTL so far as relevant.

v) This is, as I see it, a case where the non-acquiring party (Mr Dixon) can show that in reliance upon the acquiring party's (WTL's) assurance or the non-acquiring party's (Mr Dixon's) expectation that they would acquire an interest in the land, the non-acquiring party (Mr Dixon) then did something which conferred an advantage on the acquiring party (WTL) in acquiring the property, or which was detrimental to the non-acquiring party's (Mr Dixon's) ability to acquire it on equal terms. In short, in reliance upon Mr Willan's/WTL's agreement that the properties would belong 50:50 to WTL and Mr Dixon, or at least that the profits therefrom would be shared 50:50, Mr Dixon conferred an advantage on WTL in passing on, or at least introducing to WTL, the benefit of the subject to contract agreements that he had negotiated and agreed with Lloyd Ltd and Mr Bowman respectively in respect of Myers Lane and the Redhills Site, thereby allowing WTL to take advantage thereof, which it did. It is clear from the authorities, that it is is not necessary for Mr Dixon to show that he would have been in a position to purchase himself, and did not do so in reliance upon the agreement or understanding with WTL. Consequently, to this extent, Mr Dixon's own financial position, and ability to purchase the properties himself is irrelevant. That WTL advantaged itself by purchasing in these circumstances is sufficient.

vi) It is necessary for Mr Dixon to show that it would be unconscionable for WTL, as acquiring party, to keep the benefit of its acquisition for itself. I can see an argument for the proposition that in circumstances where, as I have found, Mr Dixon was seeking to procure funding for the purchase of Myers Lane, but let Mr Willan/WTL down by failing to do so, thus requiring them to borrow from Mr Lund and his wife, he ought not properly to be able to say that WTL had acted unconscionably in purchasing and denying that Mr Dixon was entitled to benefit. However, the question is to be considered objectively, and it is not necessary to demonstrate a subjective unconscionable mind. Having regard to all the circumstances, and in particular the circumstances in which Mr Dixon came to introduce these properties to Mr Willan and WTL, and given the recognition expressed in Jonathan's email dated 5 August 2019 that the Defendants had taken Mr Dixon along with them in circumstances in which there was an equity to be exploited, I am satisfied that it would be unconscionable to permit WTL to retain any net profit that might have been made from the acquisition of these properties, without accounting to Mr Dixon for 50% of that profit.

vii) The authorities referred to in paragraphs 12(vii) and (viii) and 14 above demonstrate that the equity is to be given effect to by the imposition of a constructive trust, or by holding WTL liable to account as fiduciary (if analysed in terms of agency). Further, the authorities demonstrate that the Court has a wide discretion as to how the equity ought to be satisfied or given effect to in the particular circumstances – see sub-paragraph 12(viii) above.

182. So far as to how the equity ought now to be satisfied, from the way that he dealt with a question that I posed during the course of submissions, and given that Myers Lane and the Redhills Site have now been transferred on to W&LHL, I understand Mr Willetts' position on behalf of Mr Dixon to be that WTL ought to be required to account to Mr Dixon for 50% of the net profit (if any) that it made in consequence of

its acquisition of the two properties, based upon the price paid for the same and the value thereof as at the date of their transfer to W&LHL in December 2020, and taking into account all legitimate expenditure incurred in acquiring these properties, and improving or maintaining them up to December 2020 and their transfer to W&LHL.

183. Unfortunately, there are simply not the materials presently before the Court to determine the sums (if any) to be paid, and the Court will have to direct an account or enquiry in respect thereof unless agreement can be reached between the parties.

184. However, given that I heard evidence from the valuation experts as to the value of Myers Lane and the Redhills Site as of December 2020, in order to narrow the issues for the account or enquiry, it is appropriate for me to set out my findings in respect thereof.

185. So far as Myers Lane is concerned, the difference is between £895,000 (Mr Allan on behalf of the Defendants) and £940,000 (Mr Percival on behalf of Mr Dixon), Mr Percival having provided a revised figure for the purposes of the joint report once he had information regarding the passing rents. The difference is only £45,000, within what I would have thought was a reasonable margin of appreciation. Of course it is not permissible for a judge to simply spit the difference between the valuers for each side – see *Stanley J Holmes & Sons v Davenham Trust Plc* [2006] EWCA Civ 1568, [2007] BCC 485. However, here the two experts have adopted essentially the same investment method of valuation by reference to the passing rents so as to produce between them what is in reality a range of values based upon the rents and yields that they have used. In these circumstances, and given that they have adopted essentially the sane approach, I consider that it is open to me to find that the market value is somewhere within that range. I consider £915,000 to be the appropriate figure.

186. So far as the value of the Redhills Site as of November/December 2020 is concerned, the difference is between £300,000 (Mr Allan) and £500,000 (Mr Percival). The difference of approach between the experts is, primarily, that Mr Percival began with a valuation based upon a price per acre rather than a residual appraisal, before he prepared an appraisal, whereas Mr Allan began and ended with a residual appraisal. A further difference between the experts centred upon whether the land can accommodate a single unit which would enhance the value. Mr Allan says not for what appear to be fairly convincing reasons. On the other hand, as referred to in sub-paragraph 177(ix) above, Mr Percival had the advantage of having been involved in transactions in the relevant Penrith area, and knowledge of the local market. Further, beginning with a price per acre and then testing the same against a residual appraisal provided a useful cross-check which might properly be said to add further weight to Mr Percival's evidence. These differences, I believe, entitle me to find for a valuation somewhere between the two experts' figures as a matter of evidence and logic, as opposed to speculation or just splitting the difference. Seeking logically to placed proper weight upon and to apply the evidence, I arrive at a valuation figure of £375,000 for the Redhills Site as at November/December 2020.

Overall conclusion

187. I consider that Mr Dixon's claim should be dismissed so far as it concerns the Culgaith Site, the Lazonby Site and the Langwathby Site.

188. However, consider that Mr Dixon's claim succeeds so far as concerns Myers Lane and the Redhills Site, at least to the extent that I consider that a *Pallant v Morgan* equity arose that ought to be satisfied by requiring WTL to account for 50% of the net profit (if any) that it has made in consequence of its ownership of these properties up to, and thus crystalised as at the date of their transfer to Willan and Lund Holdings Ltd in December 2020.

189. I will therefore direct an account or enquiry as to the net profit (if any) so made. I have set out above the basis upon which such account ought to be taken, or enquiry made above. It will be necessary for Court to give directions for the taking or making thereof, which it will do either on handing down judgment or at any required consequentials hearing.