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Case No: IL-2020-000117

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY CASES OF
ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 21/11/2022

Before :

HIS HONOUR JUDGE JARMAN KC

Sitting as a judge of the High Court

Between :

MOHAMMED MUNIM	<u>Claimant</u>
- and -	
HAZIFUR RAHMAN	<u>Defendant</u>
-and-	
RIFAT AHMED	<u>Third Party</u>
-and-	
LE CHEF PLC	<u>Fourth Party</u>
-and-	
ARTA AWARDS LTD	<u>Fifth Party</u>

Mr Matthew Winn-Smith and Dr Timothy Sampson (instructed by **Lexpert Solicitors LLP**)
for the **claimant** and **fourth** and **fifth parties**

Ms Nora Wannagat, Mr Michael Dickin and Mr Al Mustakim (instructed by **Capital Solicitors LLP**) for the **defendant** and **third party**

Hearing dates: 24 to 27 October 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on Monday 21 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives..

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The first three parties to these proceedings, Mr Munim, Mr Rahman and Mr Ahmed, held the 100 issued shares in the fourth party (Le Chef) upon its incorporation on 21 October 2014, in the proportions of 65, 25 and 10 respectively. It was intended that Le Chef would provide an online platform for Asian restaurant and takeaways for customers to order and pay for meals, and its trading name was Chefonline. Mr Munim says that shortly thereafter, Mr Rahman agreed to transfer 20 shares to him, and that Mr Ahmed agreed to transfer all of his 10 shares to him. He says that stock transfer forms dated 31 October 2014 were signed by or on behalf of Mr Rahman and Mr Ahmed.
2. Each of them deny such an agreement and deny signing or authorising the forms and say that they did not find out about this until 2017. They now petition under section 994(1) of the Companies Act 2006 (the 2006 Act) on the ground that the unauthorised transfer of their shares to Mr Munim amounted to conduct of Le Chef's affairs and that their interests as shareholders have been prejudiced unfairly.
3. Le Chef was the initial shareholder in the fifth party (ARTA) upon its incorporation on 9 October 2017. It was intended that ARTA (the initials standing for Asian Restaurant and Takeaway Awards) would promote Le Chef's business by holding regional and national Asian cooking competitions and award ceremonies. Mr Rahman, who is an accomplished graphic designer, was involved in the design of the ARTA logo (the ARTA logo) and the award trophy. He says that he is solely entitled to the intellectual property rights in these designs pursuant to the Copyright, Designs and Patents Act 1988 (the 1988 Act). He claims that after he and Mr Munim parted company in November 2017, Mr Munim and/or ARTA infringed those rights by using the logo to promote award ceremonies in 2018 onwards, at which copies of the trophy were presented. He further claims that a similar logo (the second logo) in respect of Chinese restaurant and takeaway awards is derived from the ARTA logo and also constitutes an infringement.
4. Mr Munim says that the creation of the ARTA logo was a collaborative project between himself and Mr Rahman and that at most Mr Rahman is a joint author with Le Chef and others. He states that the trophy is not simply a 3D representation of the ARTA logo, but the result of work by other designers, and that any work carried out by Mr Rahman in respect of the logos and the trophy was carried out in the course of his employment with Le Chef. Mr Rahman denies being so employed, and claims that he was self-employed.
5. As well as those main factual issues, there are several subsidiary factual issues which I must determine. I will set out the background to the claims, and in doing so determine such subsidiary issues where convenient to do so, before returning to the main issues to determine those. In doing so I do not deal with every inconsistency which was dealt with in evidence, but only those which assist in the determination of the issues. Most of these issues concern what was said and done up to eight years ago with scant relevant contemporaneous documentation.

Background to Le Chef

6. Mr Munim is a businessman with interests in Asian restaurants and takeaways as well as in other businesses such as property development. For several years prior to 2014, he used the services of Mr Rahman to develop various designs in these businesses. Upon finishing a master's degree in IT, Mr Ahmed with Mr Rahman, developed an online food ordering portal which traded under the name Smart Restaurant Solutions.
7. There is a dispute about how successful that business was. Mr Munim says that other automated ordering systems had already been piloted in the restaurant industry. It was a good idea and doable with the right expertise and the right people. Mr Rahman and Mr Ahmed say that their business was very successful with many restaurants paying to join the portal. However, the only list of such restaurants was compiled by Mr Ahmed and names 14 restaurants. It is accepted that some of these later became customers of Le Chef. Both admitted in cross-examination that by the beginning of 2014 their wages in this business were unpaid or part paid because of its financial situation. In my judgment it is likely that by then this business was not as successful as they had hoped and was struggling financially.
8. It was in that context that Mr Munim and Mr Rahman had discussions in early October 2014 about developing the online ordering system. By an email on the 10th of that month Mr Rahman sent to Mr Munim a breakdown of the discussion and "what's required." He said that the smart restaurant app is an online ordering system that allows restaurants to interact directly with the customer. He set out the benefits of the system, and the costs of what he called "the project." These included the wages or drawings of himself and Mr Ahmed and costs of outsourced development work. The total of these costs were set out as just over £21,000. He then set out future investment which included desktop software, a programmer, a sales person and an administrative person, legal costs and advertising. He required £10,000 for that and his target was to have 100 restaurants within six months. He offered Mr Munim 25% of the business for an investment of £25,000, half to be paid up front and the other half to be paid when the target of 100 was reached.
9. About a week later Mr Ahmed set out about 30 tasks to be completed and the time each task would take, including the transfer of the "smartapp to the new design" which would take 4-6 weeks depending on the front end designer. He also sent to Mr Munim and Mr Rahman an estimate to develop "all our website and applications" in three months. Mr Munim responded that he wanted market research carried out.
10. The email exchange at this time was limited to four or five emails. However, it is not in dispute that Mr Munim and Mr Rahman had further oral discussions, in which Mr Munim wanted 65% of the proposed business and wanted the necessary IT work to be carried out by Amber IT Limited (Amber) in Dhaka where he knew the owner, Showkath Aziz Russel. There are differences in recollection about further details.
11. Mr Munim says that it was a new business that was being discussed and that the shares in that new business were to be allocated according to the investment which each of the three men would make. It was then envisaged that the costs would be about £20,000, and so it was agreed that Mr Rahman would put in £5,000 for 25% and Mr Ahmed would put in £1,000 for 10%. He could not explain why for this amount Mr Ahmed would be entitled to more than 5% and thought that a mistake may have been made. He also says that he wanted Mr Ahmed to work at Amber in Dhaka to help develop the necessary IT.

12. Mr Rahman and Mr Ahmed say that Mr Munim agreed to invest “as much money as required to ensure the success of the company” in return for a 65% shareholding and that their shares were in return for the work that they had already done on developing it. Mr Munim says he would not have agreed to invest an unspecified amount into an existing business without seeing any business plans. In my judgement, it is inherently unlikely that he as an experienced businessman would agree to such an open ended investment on such limited information, and I prefer his recollection as to the initial discussions.
13. It is agreed that just after the incorporation of Le Chef, Mr Munim and Mr Rahman flew to Dhaka for six days in order to discuss the IT aspect with Mr Russel. Mr Ahmed was due to join them, but because he was planning on emigrating to the USA (where he is now based) there were visa complications and he decided not to go to Dhaka. Mr Munim says that in discussions with Mr Russel, it became clear that many aspects of the necessary IT had not been considered, such as security and data protection and that Mr Russel thought that more like £100,000 would be needed. These issues were particularly important for the electronic payment operating system which was intended to be developed whereby restaurant customers would be providing their debit and credit card details.
14. Mr Rahman does not agree that Mr Russel said their plan would not work and does not recall this figure being mentioned. He said in cross-examination that many discussions took place and that it was many years ago, but accepted that this figure could have been mentioned. Mr Ahmed did not meet Mr Russel, and does not recall it being said that a lot more money was needed, but when it was put to him in cross-examination that there was a view at this time that the system had to be built from scratch, he replied yes. This part of Mr Munim’s evidence, with some support from those concessions, rang true and I accept it.
15. Mr Munim says that Mr Rahman indicated that neither he nor Mr Ahmed could raise the amounts necessary for the original shareholding, and that this is the context in which the share transfer forms were signed. That is a main issue to which I shall return.
16. On 1 November 2014 three written resolutions were purportedly signed by Mr Munim and Mr Rahman. Each resolution on its face says that it was made without a meeting, but Mr Munim says that it is standard wording and that there was a meeting. He cannot recall who drafted them and said that he had a number of legal advisors any one of whom might have done so. One of them, Mr Miah was called to give evidence on his behalf, and said on this point that the resolutions were in the standard form that he or others in his firm, Citygate Solicitors, often drafted but he could not say whether these three had been so drafted.
17. The first resolution deals with directors loans from Mr Munim to be repaid interest free from Le Chef’s future profits. The second resolved that an offer by another of his companies MAM Estates Limited (MAM) of a tenancy at will of shared offices in Brick Lane, London should be accepted and that another of his companies, Salik & Co Limited (Salik), should be appointed to carry out administrative and other services for Le Chef. The third appointed Citygate Solicitors as Le Chef’s solicitors and Amber to carry out systems development management and maintenance of

Chefonline. The names of Mr Munim and Mr Rahman are then typed at the bottom of each and identified as a shareholder, “(95%)” and “(5%)” respectively.

18. On the same date, a tenancy at will deed was drawn up between MAM and Le Chef in respect of the Brick Lane premises. It was signed as a deed by a Miss Munim as a director of the former and Mr Munim as a director of the latter. Each signature was witnessed by Mr Miah and his personal stamp, as well as that of Citygate Solicitors, appears on the deed. On the same date a contract for services from Salik was signed by Mr Munim as a director of both companies. Also on the same date a contract for system development and maintenance of Le Chef by Amber was signed by Mr Munim for the former and a Mr Hakim for the latter.
19. Mr Rahman says that he did not have a meeting with Mr Munim about these matters and did not sign these resolutions. It was put to him in cross-examination that these were good resolutions for Le Chef, which he did not deny, but simply repeated that “it didn’t happen.”
20. A handwriting expert was jointly instructed by the parties to examine the purported signature of Mr Rahman on these resolutions as well as on other disputed documents. In respect of the resolutions, the expert concluded that limitations of the specimens meant that she could not express any strong conclusions but when the disputed signatures were taken together there was limited evidence that they were written by Mr Rahman. By this she meant that while she could not exclude the possibility that they are copies made by some other person, she considered this to be less likely. If any of these signatures were taken in isolation then her opinion may be weaker.
21. In my judgment, each of the resolutions were in the interests of Le Chef, and were put into effect at the same time. It is difficult to see why in principle Mr Rahman should not be asked to sign such resolutions, and why he should not do so. The addition of the description of the respective shareholdings might amount to such a reason, but only if he had not signed the share transfer forms or was denying having done so. In my judgment it is unlikely that if someone did copy his signature on the share transfer forms, and I shall return to this issue, they should go to the further trouble of doing so on each of the resolutions in order to obtain more documentary confirmation of the forms which they already had.
22. It may be that he has simply forgotten signing the resolutions, but his denial in cross-examination in respect of these resolutions was emphatic. His evidence about signing later resolutions, dated after a time when he says he signed some blank papers, was less emphatic, and I shall return to this issue. It is likely that his emphatic denial in respect of the 2014 resolutions was because he does not now want to acknowledge that he signed above the reference to a 5% shareholding lest it should be seen as weakening his case that he did not sign the forms. It is possible that he did not sign the forms, but did not take sufficient notice at the time of signing the resolutions of the reference to the 5% shareholding under his name.
23. On 2 November 2014 Mr Ahmed emailed Mr Munim about the cost of a trip to Bangladesh. He said that he had given personal details to Mr Rahman for the company registration, and asked to be informed when the registration, shares and other papers would be ready. Mr Munim accepts he did not respond to that email, as he said Mr Rahman had led him to believe that Mr Ahmed could not make any

investment, and as Mr Rahman was the main contact for him and he didn't want to contradict anything Mr Rahman might have said.

24. On 8 November Mr Ahmed emailed again, saying that he could not go to Bangladesh but he could work from the USA with Mr Rahman and other developers in Bangladesh. He said he could work for the project and asked for advice on timings. Mr Munim replied that they had been planning on setting up what he called the back office, a team of staff at Amber dedicated to Le Chef, based on Mr Ahmed taking charge of the full team that that was being put into place. He said they already had three people pencilled in, two senior people and four office and tele sales staff out for appointment. He said that he would discuss that with Mr Rahman and revise "our set up plan" accordingly. He says that he did so, and it was agreed that it was not viable for Mr Ahmed to work from the USA. He also says that Mr Rahman agreed to talk to Mr Ahmed about exiting the business, something which they deny. However, there were no further emails and in the event Mr Ahmed had no further engagement with Le Chef. In my judgment, it is likely that Mr Munim's recollection about these issues is the more accurate.
25. Mr Rahman was paid £1,500 per month by Le Chef for the work he did for them. He submitted monthly invoices for the sum setting out the work he had done, he says on a self-employed basis. He accepts that he made no self-employed tax returns or paid any tax on these sums. He says that he was earning this money for his brother who was running a business called iMedia as a sole trader, and left him to sort out these matters. When it was put to him in cross-examination that this was to avoid paying tax, he denied it but added that he was trying to make ends meet.
26. Mr Munim accepts that this is how Mr Rahman was paid, but maintains that from the outset he was employed by Le Chef and took instructions from him. He was referred in cross-examination to his pleadings where he says that Mr Rahman initially provided services as a consultant. He replied that the invoicing was done for Mr Rahman's convenience and he wanted financial help, and that despite frustration he, Mr Munim allowed that, something he now regrets.
27. Mr Munim and Mr Rahman visited Amber again in November 2014 to build up the dedicated team for Le Chef. He continued to send monthly invoices to Le Chef. Both men engaged with the system developers in Dhaka, and by mid-December Mr Munim seemed pleased with the progress, sending an email saying "all sounds good." However in January 2015, there were complaints from restaurateurs that the online system was still not fully operational. By an email to Mr Rahman dated 24 February 2015, Mr Munim complained that at the end of three months of development, nothing had been delivered, but that he had invested £80,000. He complained about the original budgets, development, and timescale being inaccurate. He said that the quality and reliability of the previous development was not as stated and had to be disregarded, and that the benefit from it to Le Chef was zero. He asked for Mr Rahman's comments on these concerns and for a structured plan going forward.
28. Mr Rahman replied that he would be replying with full details of where the project was, but does not appear to have done so in writing. When he was cross-examined about this, he said that he was a graphic designer not a programmer, and that he was instructing the designers but it was they who were not delivering.

29. The online system was not ready to go live until later that year. By this time Mr Munim had invested around £174,000 by way of director's loan, and had secured borrowing to do so on his personal assets. He accepts that he did not chase Mr Rahman for the £5,000 which he says was due for the revised 5% shareholding, because he says Mr Rahman made a contribution by signing up restaurants which formed part of his network of contacts.
30. Le Chef however needed to raise more funds. The way which Mr Munim chose to go about doing so was to restructure the company as a public limited company with 10 million penny shares to attract more investors. He says that he discussed with Mr Russel whether he would invest and received a positive response. Such investors would enable an application to be made for a grant from the Government Enterprise Investment Scheme. In October he instructed Mr Miah to draft the necessary shareholders agreement, which he did, showing the existing shareholding as 95 shares in Mr Munim's name and 5 in Mr Rahman's name. The proposed new shareholding was stated to be Salik as to 9,240,500, Mr Rahman as to 250,000, Mr Russel as to 500,000 and Mr Munim as to the remainder. He also instructed Mr Miah to draw up an employment contract for Mr Rahman.
31. By letter dated 28 October 2015, addressed to Mr Rahman at his home address in St John's Road, London, Mr Miah sent two copies of each of these documents, one clean and one signed on behalf of the other parties in escrow. The letter says that they have been prepared on the instructions of Le Chef and it was understood that he agreed to these terms. It was recommended that he should seek independent legal advice. He was requested to return the engrossed copies duly signed as soon as possible, and to keep the clean copies for his own reference.
32. In cross-examination, he said that Mr Rahman had come into his office to collect these documents. There was no one else there. He explained them briefly to Mr Rahman, who then took them away together with the letter. He did not sign these in the office, and when it was put to him that Mr Rahman signed some pages which were blank or just signature pages, he did not accept that. He was asked why the employment contract had the address of Norwich Road (the home address of Mr Rahman's father where he had previously lived) rather than St John's Road. He said that he had been given both address and that maybe this was an error. He said that the contractual documents were returned to him some time later bearing Mr Rahman's signature and dated 28 October 2015. The shareholders agreement was signed as a deed and the signatures of Mr Munim and Mr Rahman had been witnessed by Syed Umor Ali, who was Le Chef's financial controller at the time, and who passed away in the course of this litigation.
33. Mr Rahman's account is very different. He relies on the fact that he is dyslexic and has some difficulty dealing with documents, which I take into account. He says that he went to Mr Miah's office to sign documents to restructure Le Chef as a public limited company. Mr Munim, Mr Ali, and Mr Miah were there sitting around an L shaped table. He said he was told that the documents were simply to restructure Le Chef as a public company and this had to be done by 5pm that day to attract a grant of £2 million from the Government Enterprise Investment Scheme. In pre-action correspondence, his solicitors denied signing this version of the shareholders agreement, and, later, that such an agreement was provided or entered into. His case in these proceedings was that he signed several blank pages. He said that most of the

documents he signed were blank and others may have had typing on but he cannot recall. He then appeared to accept that he had signed the last page of the shareholders agreement and that Mr Ali witnessed something, but maintained that he did not see the content.

34. Some support for this was given by a witness statement from Mr Ali, which was admitted into evidence, but for obvious reasons this was not tested in cross-examination. There are emails from him some of which suggest that Mr Rahman was employed and others which suggest that he was self-employed. Moreover, Mr Munim in evidence said that he and Mr Ali had fallen out over financial irregularities which had been found about the latter in his role for Le Chef, something which was not challenged. In my judgment little weight can be attributed to Mr Ali's evidence in this regard.
35. There were several further resolutions of Le Chef signed by Mr Munim and purportedly by Mr Rahman on the following day, dealing with the share restructuring and the appointment of Mr Russel as a new director as well as other matters. When it was put to him in cross-examination that these could have been some of the documents he accepts he signed, he said that he could not comment. This was in contrast to his emphatic denials of signing resolutions in 2014. Registration of the allotment of the new shares took place on 16 November 2015, and Salik sold some of its shares to new investors.
36. Initially it was pleaded by Mr Munim that Mr Rahman provided support services to Le Chef as a consultant, and a contract was only mentioned by amendment. On Mr Rahman's behalf it was pointed out that this position changed when it was discovered that the issue of employment might amount to a defence to the intellectual property claims. There was no mention at this stage by Mr Munim's solicitors of an employment contract, and it was only when it was pointed out by their opponents that there was no evidence of employment, that one emerged. It was put to him that he had then fabricated the employment contract, by applying the same date which he knew Mr Rahman had signed papers, namely 28 October 2015. This he denied, and it is pointed out on his behalf that if the shareholders agreement had been signed by Mr Rahman in Mr Miah's office, then similar stamps would have appeared on it as appeared on the tenancy at will deed.
37. The purported signatures of Mr Rahman on the shareholders agreement, the employment contract, and the related resolutions were included in the disputed signatures examined by the expert, and so the same conclusions apply as to the 2014 resolutions dealt with above.
38. Another document dated 28 October 2015 was an agreement to opt out of the maximum weekly working hours under the Working Time Regulations 1998 signed by Mr Munim and purportedly by Mr Rahman. It does not appear that this was one of the signatures examined by the expert. Mr Rahman says he can't recall signing this document, again referring to signing blank pages. Mr Miah can't recall whether he drafted this, but says it is a standard document which members of his firm regularly draft. He does not know how this document was delivered to Mr Rahman.
39. The conclusions of the expert, taken together with the evidence of Mr Miah, in my judgment make it likely that Mr Rahman did sign these documents, and that Mr Miah

dealt with them as he recalls. If the employment contract was fabricated as put to Mr Munim, then it follows that Mr Miah's letter enclosing it must be questionable. Mr Miah gave his evidence in an entirely straightforward way, although unsurprisingly after this time he could not recall every detail or explain every discrepancy. It was put to him that he was a good friend of Mr Munim, to which he replied he was more of an acquaintance, but accepted that they had been on a business trip together. In cross-examination it was put to him that Mr Munim in his pleadings said that he signed these documents in his office, but he said that was wrong. That has support from the lack of stamps, either his or his firms, applied to these documents, in contrast to the tenancy at will deed which was signed in his office. Mr Miah's recollection is more consistent with contemporaneous documents than that of Mr Rahman. The fact that he said that Mr Munim's pleading was wrong shows a degree of independence. I accept Mr Miah's evidence.

40. Despite that finding, Mr Munim accepts that thereafter Mr Rahman continued to be paid on an invoice basis, and said he asked him to come on Le Chef's payroll, which prompted a request for more time to sort out finances. Mr Munim says he then left it to others to chase. In January 2016 Mr Ali sent to Mr Rahman an email asking him to complete a personnel form and to complete "P46 for your paye element." It was indicated that payment could only be made if the process was completed.
41. Attached to this email were three documents; one personnel form, one self-employed personnel form and a HMRC P46 for employee without a P45. When Mr Rahman was cross-examined about this, he said he did not reply as he was self-employed and retorted that if he was employed why was he being sent a personnel form for the self-employed. However, that answer ignores the other attachments and does not explain why he did not return the self-employed personnel form if that is what he was maintaining that he was.
42. On 22 January 2016 a special resolution of shareholders was signed by or on behalf of them all resolving that Le Chef should be a public limited company and adopting new articles accordingly. The expert comes to the same conclusion in relation to the signature of Mr Rahman on that document as with the above disputed signatures. On the date of the document, Mr Rahman was in Bangladesh. However, in my judgment, it is likely that he signed this document too at some point, as it gives effect to the intention that Le Chef would become a public limited company, something which Mr Rahman accepts was the intention for months beforehand. Following the listing of Le Chef, Mr Rahman held a 2.4% shareholding.
43. By early April 2017, Mr Munim again raised concerns with Mr Rahman about the number of restaurants, or sites as he called them, which Le Chef were dealing with, saying that only 90 sites had become live in the last three months and pointing to 300 potential sites. He asked for an urgent plan, to which Mr Rahman replied that he would start ringing restaurants directly. It was at this stage that there was discussion between the two of them about an Asian cooking award, which could promote Le Chef's business. They discussed various names for the award, including Britain's Asian Restaurant Award as suggested by Mr Rahman, to which Mr Munim responded "Asian Restaurant and Takeaway Awards." Mr Rahman thought that that sounded good.

44. It was later that month that Mr Rahman emailed Mr Munim and Mr Russel with concerns about his position in Le Chef. He said he was 100% loyal to them and to Chefonline, but he had serious concerns about his “standing within the company” including his position, shareholding, remuneration and ARTA. He referred to his original 25% shareholding and the new share structure “for which I should have taken advice.” He said he could not survive on £1,500 per month as he had a large family. He asked for a minimum gross of £3,000 per month with “company car and fuel.” He wanted a further 10% shareholding on top of “my existing 2.5% at par value” and a directorship. He said that all assets were to be owned by Le Chef including intellectual property “and not in personal name.” He also wanted equal shareholding with Mr Munim in ARTA and a directorship “as it will be purely based on the funds I bring in.”
45. That email was copied to the director of marketing at Le Chef, Mohammed Aktaruzzaman. The latter gave evidence on behalf of Mr Munim and the companies. He said that he had a discussion with Mr Rahman shortly after that email in which he indicated that a raise may be feasible in the future, and also emphasised, as instructed by Mr Munim, that Mr Rahman was fully aware of the share restructuring and that graphic design was part of his duty as an employee. He added that he would speak to Mr Munim about a salary increase.
46. A couple of days after the meeting, Mr Rahman emailed Mr Munim and Mr Russel, copying in Mr Aktaruzzaman and referring to his discussion with the latter. He said he needed the “salary increase” as he had no other means of income. He said he respected Mr Munim as a very experienced businessmen and never objected to anything he decided, but still believed that “we should not have expanded the budget” in such a short time. He then referred to the shares, saying that he had and continued to have faith in Mr Munim, and acknowledged that the latter expanded the business and put in funds from his own resources which loans would be repaid when there was sufficient cash flow. He continued as follows:
- “As he was spending money from his own resources & shareholders money which I also assisted in getting funds from my network I was not aware that my share of 25% will be diluted. I would request that instead of the 25%, I would accept a total shareholding of 12.50% of the plan share issue of 12m at par value.”
47. Although in that reply, he dealt with a number of matters set out in separate headings, he did not mention intellectual property issues. It was not responded to. A few days later he emailed Mr Ali, copying in Mr Munim, asking for one month holiday from mid-May for family reasons, which was granted. This evidence of Mr Aktaruzzaman on the points summarised above was not challenged and is broadly consistent with the contemporaneous emails. I accept that part of his evidence.
48. It was at this time that Mr Rahman and Mr Ahmed say they found out about the share transfer forms dated October 2014 and that they were shocked. In May 2017 Mr Munim and Mr Rahman attended a meeting with Abedur Rahman Shimu, one of their community leaders and a cousin of Mr Rahman. There were six people in all at the meeting, which was a long one. There was discussion of salary, a car, and shares. Mr Shimu said in cross-examination that Mr Munim agreed to pay Mr Rahman a salary of

£30,000 plus a company car. This was not in his witness statement, which in my judgment is surprising on such an important point, if it was said. Mr Shimu also said that Mr Munim confirmed that he would make Mr Rahman “happy with shares.”

49. Mr Munim says that he did not agree at that meeting that the shares had been taken away without knowledge or consent, that most of the discussion centred around salary and car, and indicated that if all went well then Mr Rahman would get a raise and a car. In my judgment it is likely that Mr Munim’s recollection on these points is the more accurate.

Background to ARTA

50. The focus of attention then turned to a design of a logo for ARTA and of a trophy for the award ceremonies. In May 2017, Mr Ali emailed Mr Munim and Mr Rahman setting out proposals for investing in shares and, amongst other things, asking Mr Rahman how many shares he wished to invest in. There is no email in reply, and Mr Rahman in his witness statements says that it was agreed that shares would be allocated to him in return for his design work. This is not consistent with his email the previous month saying that shares would be allotted purely on the funds that he brought in, nor is it consistent with an invoice which he later raised for design work, which I deal with in more detail below. In my judgment it is unlikely that his recollection as to shares for design work is accurate.
51. The final design for the logo are the letters ARTA in bronze colouring and in art deco style. In the middle of the letters is the depiction of a chef standing on a short plinth or base which also has those letters, with their arms aloft holding a bowl from which flames emerge. Underneath the letters the corresponding words are written.
52. The final design of the trophy for the regional awards, also comprised one chef standing on a short plinth or base holding their arms aloft holding a bowl from which a flame emerges, in similar design to that on the logo. The trophy for the national award was similar in design except there are three chefs forming a triangle holding the bowl. In each design, on front of the plinth the letters ARTA are written in a similar style to the logo with room for the winners names on the other sides of the plinth.
53. These designs went through several stages during the summer of 2017. In June Mr Munim engaged a business consultant, Mahbub Noor, trading as Interlink Business Consultancy based in Newport, Gwent, to carry out promotional work for Le Chef. He also asked Mr Noor for help in developing the branding concept of the ARTA awards. Mr Noor, who was called to give evidence on behalf of Mr Munim and the companies, was aware that there were many awards in the Asian restaurant business, which in the main were based on reviews. He says that he came up with the idea that the awards should be based on cooking competitions, and should include a prestigious trophy akin to a championship trophy in the sporting world, such as the World Cup. It was put to him in cross-examination that it was Mr Rahman who came up with the idea of a championship style trophy, which he denied.
54. In May 2017 Mr Noor instructed a designer who was known to him, trading as Brand NU Designs to develop the logo. They produced a simple flame design with the letters ARTA cut out. He then commissioned a fabrication company known as CCF Fabrication Limited to produce a prototype of the trophy. The result was three flames

in a triangle held at the base. The following month he sent this logo and the image of the prototype to a company known as Special EFX Ltd (EFX) to commission the trophy designs. He gave them dimensions of a single flame for the regional winners, larger dimensions for the triangle arrangement for the top three winners, and a large trophy (which he described to EFX as like the Premier League Cup) for the national award. In his witness statement he said the flame was important, because it represents the fiery heat of the curry industry.

55. EFX produced a 3D trophy design for Mr Noor on 28 June 2017, which he shared with Mr Munim. There were then discussions with EFX about the metal to be used for the trophy and some changes to the original design. He and Mr Noor visited the factory of EFX on 9 August 2017. There were further discussions about changes, one of which was that the flame or flames should rest on a base supported by three columns which sat on a small plinth which would have the winners name. Melanie Osbourne, the sales and marketing director of EFX who was called to give evidence for Mr Munim and the companies, says that EFX came up with idea of putting the flame on three pillars “to make it more impressive.”
56. On the 21 August Mr Noor visited Le Chef’s offices in Brick Lane, and met with Mr Munim and Mr Rahman. There were discussions regarding a chef depicted in the logo. Both Mr Munim and Mr Noor say that the first suggestion then made by Mr Rahman was of a chef holding a platter, with a cover, or cloche, over it. Mr Noor says that he pointed out that this resembled the British Curry Award trophy, and lacked the flame which he regarded as important for the reason given above. At the end of the working day Mr Rahman emailed Mr Munim enclosing an ARTA logo. This showed an image of a bronze coloured chef with arms aloft holding a flame. This was forwarded to Mr Noor. Mr Munim asked Mr Rahman for a list of all branding materials to be done including a logo and trophy.
57. On 24 August Mr Rahman replied saying “The concept of my idea for the new ARTA logo is to give it a prestige look and the concept of familiarity in uniqueness. To achieve this I have cut the typeface specifically for ARTA logo and kept the concept of the Oscars logo.” He enclosed two designs, each of which had the lettering which was finally adopted on a light coloured background. In one, the image of the chef came between the last two letters of ARTA, and on the other the image took the place of the T. Mr Munim replied that that looked good. Mr Noor recalls the similarity of this chef to the Oscar award statue of the Academy of Motion Picture Arts and Science, which he understood Mr Rahman had introduced.
58. By 29 August the image of the chef had moved to the middle of the letters, Mr Munim believes at his suggestion, and this was not challenged. On 4 September he sent this version of the logo to Mr Noor to forward to EFX, which he did on 7 September. The idea was that the award for the regional competitions should entail a single chef, and that for the national winner should entail three chefs. In respect of the latter, Mr Noor said in his email to EFX that the three chefs should have their arms “stressed over their shoulders backwards and holding the flames.” A few days later EFX responded with quotes for the 3D design and with manufacturing options.
59. Over the next few days Mr Noor and Mr Munim say they discussed the trophy with one another. The proposed manufacturer had said to EFX that there may be a problem with the production of a trophy with the chef holding the flame as it might be too

delicate a joint between the hands and the flame. They say that they discussed the idea of a base for the flame which would then connect with the chefs' hands. He says that he remembers clearly that Mr Munim asked Mr Rahman to incorporate a bowl in the design. It was put to him in cross-examination that he was out of the country at this time, which he accepted he may have been, but said that they were conversing by text message.

60. Mr Rahman accepts that there was a manufacturing issue with the flame connecting directly with the hands of the chefs, but says the bowl was his idea, which he took from the Olympic bowl. He also accepts that he was not able to produce a 3D design for the trophy and that EFX was engaged to do this. It was put to Ms Osbourne in cross-examination that this was simply a matter of making a 2D design into 3D. She replied that it was more elaborate than that, and it involved modelling, curves, shapes, and assembly. This took several hours, and she maintained that EFX developed the trophy "in its entirety."
61. On 15 September, Mr Rahman sent the final logo design to Mr Munim, who forwarded it to EFX. Two weeks later Mr Munim sent a text message, saying that he could not find the new logo and crest (he was referring to the single chef trophy) as he needed to send it "to trademark." Mr Rahman replied that he had sent it, and "its what you gave to that company to make the 3D." The logo and the trophy were later in 2018 registered as trademarks in the name of Mr Munim.
62. On 2 October, EFX sent the first of the 3D designs to Mr Noor, copying in Mr Munim. This was the single chef version, on which EFX attached the copyright mark. That was the end of Mr Noor's involvement. Mr Munim sent this to Mr Rahman for comments, which he provided. These involved suggestions such as the number of buttons on the chef's tunic, and the shape of the fingers and wrists. These were incorporated.
63. The same content was then used in the design of the three chef version. There were emails that month between EFX and Mr Munim about the final design of this version, such as the number of chefs and whether they should face inwards or outwards, to which Mr Munim replied, and his suggestions were adopted. The artwork for that was made by EFX. Later that month EFX invoiced Mr Munim for "3D Artwork production." Also in that month, iMedia in an invoice addressed to ARTA claimed £1,172 for "ARTA design and branding." Mr Rahman was mistakenly paid £11,772 for this, but returned only £10,000. Mr Munim says that he saw this as a bonus for Mr Rahman's hard work during this period and that the invoice was in response to a request from him.
64. On 9 October ARTA was incorporated and the sole shareholder was Le Chef. On 23 October those shares were transferred to Mr Munim. The final trophies were then manufactured by another company who was able to produce a silver finish.
65. In his witness statement, Mr Munim said that he was involved in every step of this and that Mr Rahman "developed each aspect on my instructions." In cross-examination this changed somewhat. He said he asked Mr Rahman in April 2017 to come up with a logo but he did not, and so this was begun in-house. Mr Rahman did not return until July 2017 and then the two spent many hours working together.

66. On these factual issues I prefer the recollection of Mr Noor and Ms Osbourne to that of Mr Rahman. Each gave their evidence in a straightforward way with the impression of professional independence, and in a way which was more consistent with the contemporaneous documentation than was the recollection of Mr Rahman. As their evidence is more consistent also with the recollection of Mr Munim on these issues, I accept also his evidence on them.
67. In November, there were further exchanges between Mr Rahman and Mr Munim, about various differences between them. It is common ground that Mr Rahman decided to leave the office of Le Chef, where he had been working full time, and did so on 24 November. Mr Munim says that before he left he transferred digital information on his computer relating to graphic design to its computers. He also said that Mr Rahman sent a message to colleagues saying that it had been a great privilege to work as part of the team and giving his best wishes to Chefonline. That evidence was not challenged and I accept it.
68. Mr Shimu arranged another meeting the following month to try and resolve outstanding differences between the two men. Neither of them attended, although Mr Aktaruzzaman attended on behalf of Mr Munim. Again it was a long meeting. It had been made clear that Mr Rahman was seeking £250,000 to settle their differences but Mr Shimu felt the meeting was going nowhere. Of his own initiative, he suggested to Mr Aktaruzzaman that Mr Munim should pay £50,000 to settle, saying that he would seek to persuade Mr Rahman to accept that sum. Mr Aktaruzzaman went away to make phone calls to Mr Munim but did not come back. Mr Shimu then spoke to Mr Munim by phone and suggested that he should offer this amount otherwise he would end up paying solicitors, but he refused.
69. In April and May 2018 the trademarks of the logo and the trophy were registered in Mr Munim's name. He posted on social media about the trophy. Mr Rahman later in May emailed EFX about the design authorship of the trophy and posted various messages on social media about Mr Munim's handling of matters. This led to a defamation claim by the latter against the former in July. In September 2018 the inaugural ARTA award event was held. On 8 November the Chinese Restaurant & Takeaway Awards Limited was incorporated. In January 2020, Mr Rahman issued the present copyright claim against Mr Munim and ARTA and in August 2020 he and Mr Ahmed issued the petition against Mr Munim and Le Chef. These claims have been consolidated, and the defamation claim stayed pending the resolution of the claims which are now before me for determination.

The share transfer forms

70. I turn to deal with the main issues and deal firstly with the signatures on the share transfer forms. It is not clear why there are two such forms, but it does not seem to me that that takes the issue of whether they were signed by or on behalf of Mr Rahman or Mr Ahmed very much further, one way or the other. The expert comes to the same conclusion as to that which purports to be Mr Rahman's as she does with his other disputed signatures.
71. However, in respect of that of Mr Ahmed, she concludes that there is no pictorial similarity between that and the specimen signatures. It is not possible to carry out a usual comparison because of the difference in styles. If he did write the disputed

signature, then either he must have an alternative style or wrote in such a way as to deny later that it was his. If he did not, then it was written by someone making no attempt to copy the signature shown in the specimens. It was not possible to determine which of these alternatives is the more likely and so the result is inconclusive.

72. That uncertainty does have some impact upon whether this signature of Mr Rahman is genuine. Moreover, on the face of it, it is surprising that these two men were prepared to give away shares to Mr Munim only days after being registered with them. It is also surprising that there is no written record of the agreement which Mr Munim says he had with Mr Rahman to bring about this change. It is also surprising that he made no mention of this in response to Mr Ahmed's emails in early November 2014. On the other hand, he says that the forms were only returned to him on 10 November.
73. A further indication that Mr Rahman had not agreed to this transfer was his assertion in 2017 that his 25% had been diluted on the restructuring. On the other hand, I have found that he signed resolutions in the intervening years in which his shareholding is referred to as 5%.
74. I have already found that the business which he had developed with Mr Ahmed had hardly taken off and was in financial difficulty. Moreover on the findings I have made, it is clear that the original budget for development of £20,000 was substantially inadequate and when consideration was given to such matters as security and data protection issues relating to the electronic payment operating system which was to be developed as an important part of Le Chef's business, the budget was more like £100,000. These events were fast moving during a few days in October 2014.
75. In my judgment it is likely that Mr Rahman did sign the share transfer forms in the circumstances set out above. He was reminded of his new share allocation whenever he signed one of the resolutions referred to above. By April 2017 he had clearly become dissatisfied generally with his position vis a vis Le Chef, and as he alludes to in his emails of that month, regretted the share allocation on which he says he should have taken advice. Whether his reference to 25% was part of the confusion displayed in those emails as to the true position which then obtained, or a more concerted attempt to achieve a better result, I am satisfied on the balance of probabilities that he signed the share transfer forms.
76. Mr Ahmed must be considered separately. In my judgment he gave his evidence in an entirely straightforward and impressive way. He appeared to be genuine in saying that he not signed the share transfer form or agreed to give away all of his shareholding. In my judgment it is unlikely that he signed the forms in a different style in order to deny it later. I accept to some extent that the reason he did nothing after his November 2014 emails to engage with Mr Munim or Le Chef, was that he thought Mr Rahman was dealing with matters on his behalf. On the other hand it is somewhat surprising that there is not one enquiry thereafter of them as to his shareholding, if that is what he believed he retained.
77. Whether he signed in a different style simply because he has an alternative, or Mr Rahman signed on his behalf and with his authority as he was then in the USA, I am satisfied in the circumstances set out above that the forms were signed by him or on his behalf. It is likely that over the years in which he had no further engagement with

Le Chef he has forgotten this, and that on seeing the signature on the forms and having liaised with Mr Rahman about the circumstances, he has convinced himself that he did not sign or agree to the transfer.

The employment contract

78. The next main factual issue is whether Mr Rahman was employed by Le Chef. In my judgment there was some confusion about this status. Zanna Begum was called as a witness on his behalf. She was employed by Le Chef Management Services Ltd as an administration officer and personal assistant to Mr Munim during the first nine months of 2016. She accepted that she had made a mistake in saying she was employed by Le Chef, but otherwise in my judgment gave her evidence in a very careful way. She said that as far as she was aware Mr Rahman was engaged as a self-employed consultant during her time, and she was not aware of the employment contract.
79. Neither of these points are surprising given that the employment contract was signed before her time, and that despite the request by Mr Ali in 2016 for Mr Rahman to sign the P46, he did not do so or return either personnel forms, but continued to submit invoices. It is likely that it was in his financial interest to do so. This is likely to have continued the confusion. Mr Aktaruzzaman accepted in cross-examination that Mr Ali regarded Mr Rahman as self-employed but said that it was not his role to deal with such matters.
80. I have already found that Mr Rahman signed the employment contract and opt out letter in 2015. Although he continued to invoice, I accept that he was requested to complete a P46. All the signs are that by 2017 at the latest he was regarded by Le Chef, and regarded himself, as one of its employees. His requests in that year for an increase in salary and a company car, the fact he was working full time in its offices with no or little other income, and requesting time off, all give some support to that conclusion. In my judgment the regular payment for the work he performed gave rise to a mutuality of obligation and control by Le Chef so as to show a contract of employment. Although the invoicing and lack of PAYE provision may be a counter indication, it is not sufficient to displace that conclusion (see *Ready Mixed Concrete (South East) Ltd v Minister for Pensions and National Insurance* [1968] 2 QB 497 at 515).

The logos and trophy

81. The development of the ARTA logo, on my findings above, was a collaborative effort between him and Mr Munim, with input from Mr Noor. Mr Rahman's contribution was made in the course of employment by Le Chef. It is telling that of all the grievances aired by Mr Rahman in 2017, he did not claim otherwise. Indeed, in his email of April 2017 he said that intellectual property should belong to the company and not in a personal name. He assisted Mr Munim to register trademarks without then raising his claim to intellectual property rights, and transferred digital information relating to the designs to Le Chef when he left employment. Even if he was providing this contribution on a self-employed basis, he did so at the request and for the benefit of Le Chef and was paid accordingly.

82. The main contribution to the development and production of the trophy was from EFX, with input from Mr Munim, Mr Rahman and Mr Noor. Each of these contributions was at the request and for the benefit of Le Chef and was paid for accordingly, if not, in Mr Rahman's case, as its employee.
83. Not a great deal of time was spent in evidence or submissions on the second logo. Mr Munim accepts that he gave instructions for this and that it was developed by the team in Dhaka. It is clear that it is taken from the ARTA logo, with the first letter A substituted by the letter C in the same style, and the word Chinese instead of Asian. Instead of the chef logo in the middle of the lettering, there is a dragon motif.

Principles of law in relation to the transfers of shares

84. The case for Mr Rahman and Mr Ahmed under the petition was presented by Ms Wannagat and for Mr Munim and the companies by Mr Winn-Smith. There was no difference between the parties as the law to be applied and it was accepted by all that the issues arising on the petition are heavily fact sensitive. Ms Wannagat properly and realistically accepts that if Mr Rahman and Mr Ahmed fail to establish that the transfers of their shares were registered without their consent, then their petition must fail. Le Chef's articles of association, at the time of the share transfer forms, were by virtue of article 1.6 of its memorandum of association the model articles set out in Schedule 1 to the Companies (Model Articles) Regulations 2008. Article 26(1) of those required that, if shares are to be transferred, the transferor must execute a share transfer form. In my judgment that is what Mr Rahman did.
85. Mr Ahmed's position is more complicated, in that he was not registered as a shareholder, and so relies on an application to be registered as such under section 125 of the 2006 Act as part of the petition. However to succeed in that application it must be the case that he has been wrongfully denied registration and on the facts which I have found he has not. It follows that in making the registration on the basis of the share transfer forms, Mr Munim was not in breach of his director's duty under section 172 of the 2006 Act to act in a way which he considers, in good faith, would most likely promote the success of Le Chef for the benefit of the members as a whole. For the reasons given, I am satisfied that in registering the transfers set out in the share transfer form, he was so acting.

Principles of law in relation to the logos and trophy

86. The case on intellectual property was presented on behalf of Mr Rahman by Mr Dickin and Mr Al Mustakim and on behalf of Mr Munim and the companies by Dr Sampson. Again there was general agreement that this case is also highly fact sensitive. On the facts which I have found there is little dispute as to the law. It is not in dispute that the logos and the trophy amount to artistic works within the meaning of sections 1 and 4 of the 1988 Act in respect of which the owner has under section 16 the exclusive right to copy and to communicate to the public. Section 17 deals with infringement by copying, which includes any material form of reproduction. Section 17(3) provides that in relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.
87. Section 10(1) of the 1988 Act provides:

“In this Part a “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.”

88. This concept was considered by the Court of Appeal in *Kogan v Martin* [2019] EWCA Civ 1645, which concerned a literary work. Floyd LJ, giving the judgment of the court, after an extensive and detailed review of the authorities, summarised the principles at paragraph 54, which, so far as material, are as follows:

“1. A work of joint authorship is a work produced by the collaboration of all the people who created it.

2. There will be a collaboration where those people undertake jointly to create the work with a common design as to its general outline, and where they share the labour of working it out. The first task for the court in such a case is to determine the nature of the co-operation between the putative joint authors which resulted in the creation of the work.

3. Derivative works do not qualify. Works where one of the putative authors only provides editorial corrections or critique, but where there is no wider collaboration, do not qualify. *Ad hoc* suggestions of phrases or ideas where there is no wider collaboration do not qualify.

....

5. Joint authors must be authors, in the sense that they must have contributed a significant amount of the skill which went into the creation of the work. Again, it is not correct to focus exclusively on who fixed the work in writing. The statutory concept of an author includes all those who created, selected or gathered together the detailed concepts or emotions which the words have fixed in writing.

6. Contributions which are not "authorial" in the above sense do not count. What counts as an authorial contribution is acutely sensitive to the nature of the copyright work in question.

7. The question of what is enough of a contribution is to be judged by the *Infopaq* test, i.e. whether the putative joint author has contributed elements which expressed that person's own intellectual creation. The essence of that term is that the person in question must have exercised free and expressive choices. The more restrictive the choices the less likely it will be that they satisfy the test.

8. The contribution of a putative joint author must not be distinct.

9. There is no further requirement that the authors must have subjectively intended to create a work of joint authorship.

10. The fact that one of the authors has the final say on what goes into the work may have some relevance to whether there is a collaboration, but is not conclusive. The author with the final say must be given credit in deciding on the relative proportions of ownership, for the extra work involved in making those choices.

11. It follows that the respective shares of joint authors are not required to be equal, but can reflect, *pro rata*, the relative amounts of their contributions.”

89. In *Infopaq International A/S v Danske Dagblades Forening* [2010] FSR 20 at paragraph 39, referred to by Floyd LJ in *Kogan* above, it was said that what copyright protects is “the expression of the intellectual creation of the author of the work.”

90. In my judgment, on the factual findings made above, the ARTA logo was the result of a collaborative effort of Mr Munim, Mr Noor and Mr Rahman. It was Mr Munim who contributed the name, and hence the letters, the idea of the chef in the middle of the letters, and the bowl. Mr Rahman contributed the artwork and the image of the chef. Mr Noor, through his designer, created important features of the logo. The meeting in August 2017 between the three of them produced the final design. The labour of working it out was thus shared, and each contributed a significant amount of skill in the elements which expressed the intellectual creation of each. The contributions were not distinct, and I am satisfied that the final say lay with Mr Munim, who must be given credit for making the choices.

91. I have found that Mr Rahman signed the contract of employment and opt out agreement. He is to be taken as bound by this, subject, on the facts of this case to his allegation of misrepresentation. This proposition was not in dispute before me (see *L’Estrange v Graucob* [1934] 2KB 394 and Chitty on Contracts paragraph 15.05). I am not satisfied he did so as a result of a misrepresentation, implied or otherwise. In my judgment he was aware of what he was signing. He was reluctant to complete the P46 as later requested because that would have involved PAYE deductions.

92. The 1988 Act refers to the making of artistic work in the course of employment in section 11, which provides:

“First ownership of copyright.

(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.”

93. A similar provision in respect of design rights is set out in section 215 of the 1988 Act. In *Ultraframe UK Limited v Fielding* [2003] RPC 435 Laddie J at paragraph 43

in considering that section said this:

“As a rough and ready rule of thumb, if designs are created and paid for by another, the statutory rights under the Act should belong to that other. I can see no reason when the other is a company, why there should be a different outcome simply because the designer is also the managing director of the company and majority or sole shareholder... The subsection is broad enough to cover cases in which the employee does the design work within the scope of his employment, in his employer's time and with his employer's equipment and facilities, even if he, the designer, wants to keep the product for himself.”

94. The extra monies which Mr Rahman received in October 2017 are, in my judgment, properly seen in context as a bonus for working extra hours. It is accepted that during his employment he designed websites for other Asian catering associations, but these included promotional material for Le Chef's business. He also designed a website for London Tigers but asked Le Chef's operations manager to look at the terms for doing so before he confirmed that he would do so.
95. In my judgment the ARTA logo and trophy were created for and paid for by Le Chef to be used by ARTA with the intention of promoting Le Chef's interests. Mr Rahman's contribution was made in the course of his employment with Le Chef, and the copyright vests in Le Chef. Le Chef by permitting ARTA to copy them, and creating the second logo, has not infringed any rights in relation to them so far as Mr Rahman is concerned.

Conclusions

96. It follows from the above that the petition by Mr Rahman and Mr Ahmed fails, as do the intellectual property claims by Mr Rahman.
97. I invite counsel to attempt to agree consequential matters and to submit a draft order within 14 days of handing down of this judgment. In so far as it is not possible to agree all such matters, then I shall determine these on the basis of written submissions which should be filed in the same time frame.
98. The parties asked me to deal in this judgment with one issue of costs which has been reserved. This relates to an application by Mr Munim and the companies to strike out Mr Ahmed's petition on the basis that he had no standing. It is not in dispute that the petition contained a number of factual errors, such as the allotments of shares and the chronology. Master Clark who heard the application expressed concern about these matters and directed that an amended petition should be filed and served.
99. A draft amendment was then served, which raised other difficulties, such as seeking to include Salik as a party. There was further correspondence between the parties' solicitors which eventually led to these difficulties being over-come and the application for strike out was not pursued. However, Mr Munim and Le Chef claim their costs of the application, as it was only the subsequent amendment (after further

correspondence to deal with further difficulties) which saved the petition from strike out.

100. On behalf of Mr Ahmed it is submitted that he should have the costs of this application. The point in relation to his standing was not raised in defence and was first raised in correspondence about a year after petition. The application was not served with three clear days' notice. The costs of Mr Munim/Le Chef consequential upon the amendment have been paid and so it is only the costs of the application which are in issue. The application for strike out was unlikely to succeed because the matters could be deal with by amendment, as in the event they were.
101. In my judgment there is some force in all of these arguments. I have come to the conclusion that the appropriate and just order in respect of these specific costs is that there should be no order.
102. I end by thanking counsel for their assistance in presenting their respective cases.