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Case No: PT-2020-000979

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12/06/2023

Before :

The Honourable Mr Justice Rajah

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Between :

FARIS AL-RAWI	**Claimant**
- and -	
1) SAMI WADI SIDAWI	**Defendants**
2) WAEL HOURANI	
3) AMAL HOURANI	

- -

Max Mallin KC and **Simon Atkinson** (instructed by **Teacher Stern LLP**) for the claimant
Peter Knox KC and **Stephen Ryan** (instructed by **Taylor Wessing**) for the defendants

Hearing dates: 24th April 2023 to 5th May 2023

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Approved Judgment

This judgment was handed down remotely at 14.30am on 12 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Rajah:

1. The Claimant ("**Faris**") is a 51-year-old Londoner who has worked in real estate and property for around 25 years. In the relevant period (2009 to 2015) Faris operated his property business through Waterbridge Estates Limited and Waterbridge Designs Limited (together "**the Waterbridge companies**"). Those companies were owned by him and another.

2. The First Defendant ("**Sami**") is a businessman who splits his time between Abu Dhabi, where his construction company is based, and London, where his family is based. The Third Defendant ("**Amal**") and the Second Defendant ("**Wael**") are father and son (together "**the Houranis**"). They are close friends of Sami. Wael is a businessman based in Dubai while Amal is an engineer living in Beirut.

3. By these proceedings Faris claims he is contractually entitled to a share of the profits arising from the acquisition, redevelopment, and subsequent disposal of four prime real estate properties in central London. Faris introduced Sami to each of these investment opportunities. In relation to one of these projects, Sami involved Wael and Amal Hourani. If Faris has no contractual entitlement to a share of profits he brings in the alternative a claim for a quantum meruit.

4. The hearing was the trial of issues of liability pursuant to the order made by Master Pester on 25 March 2022.

5. At the end of the trial, I reserved judgment. I have reflected on the evidence and submissions I heard and revisited most of the documents referred to during the trial or in written skeletons and submissions. I have concluded that Faris' claims fail. This judgment sets out why I have reached that conclusion.

6. I use first names in this judgment for brevity and convenience. I mean no disrespect to the parties or witnesses in so doing.

7. This judgment will be structured as follows:
    a. Summary of issues
    b. Approach to the evidence
    c. Witnesses
    d. The Facts and factual findings
    e. Conclusion on the profit share agreements
    f. Quantum meruit
    g. Conclusion

Summary of issues

Key issues

8. The four projects in question are:
    a. **Draycott** - 2 adjoining residential properties in Chelsea purchased by Sami in 2010 and redeveloped, some flats have been sold, some retained;
    b. **Thurloe** – a house in South Kensington purchased by Sami in January 2011 and sold in August 2016, after redevelopment;

c. **KHN** – a car park in Kensington purchased by Sami and the Houranis (there is an issue as to which of the Houranis is a principal) in March 2011 and sold in January 2017 after redevelopment;
d. **Cromwell** – a house in South Kensington purchased by Sami in March 2014 and sold by him, without redevelopment, in December 2014.

9. In each case the property was purchased by an entity controlled by Sami (or in the case of KHN, by Sami and the Houranis). Sami generally relied upon his friend and advisor Radwan Al-Rawi ("**Radwan**") to advise him on the appropriate structures to use. Radwan is Faris' father (together "**the Al-Rawis**"). Radwan is a chartered accountant and the principal at Rawi & Co, which is based in Mayfair.

10. Faris says that he and Sami reached binding oral contracts that he would be paid a share of the profits of 15% from Draycott, 15% from Thurloe, and 50% from Cromwell. A key issue to be determined by the trial was whether there were such binding oral contracts. It is common ground that the identification and exploitation of opportunities by Faris and Sami proceeded on an ad hoc basis, differing from project to project. It is common ground that Faris or Radwan could acquire an equity share by making a monetary contribution. It is common ground that the Waterbridge companies could charge for any services they provided. Where the parties differ is that Faris says that in respect of each property a binding agreement was reached for him to be paid a profit share with no deduction for cost of capital, whereas Sami says that in relation to each project (except KHN) it was a matter for his discretion to pay what was effectively a bonus for a good job, in the shape of a profit share, and in each case after a deduction of 5% interest by way of cost of capital.
11. In relation to KHN there is no dispute that it was agreed that Faris should have a profit share of 12.5%. The primary issue is whether Sami and the Houranis are entitled to deduct interest of 5% on the capital they introduced in the calculation of the profit. If they are, then there is no profit. There is a secondary issue as to whether Wael Hourani is a party to the profit-sharing agreement.

12. If Faris has no contractual entitlement to a share of profits then there is an issue to be determined as to whether he is in principle entitled to a quantum meruit and if so, whether his claim is barred by the Limitation Act 1980.

Other issues

13. There are many other collateral or subsidiary issues. I determine them to the extent that I consider it necessary to do so to reach a conclusion on the key issues which I have set out above.

14. So, there is a dispute as to whether or not in 2009 Faris and Sami reached an "in principle" agreement to pursue larger projects with Faris to be rewarded by way of a profit share in an amount to be agreed on a case-by-case basis.

15. There is a dispute as to whether handwritten notes of each agreement were made and kept by Sami, and subsequently destroyed by Sami's wife. There is also a dispute as to whether in 2013 Faris and Sami made a manuscript record of the key

terms they had agreed in respect of each of the four projects ("**the Composite Record**") which Sami kept and has not disclosed.

16. There is a dispute as to whether the Waterbridge companies provided their services "at cost".

17. There is also a significant dispute as to the identity of Sami's partner in the Draycott project. Sami says Draycott was an equal partnership between him and the Al-Rawis. The Al-Rawis say that his partner was the Hope Trust – a trust settled by Radwan's brother and who at the time had as its sole beneficiary a named charity. I make findings in relation to this issue below.

18. A related issue is the ownership of funds which were injected into Draycott in 2013 for redevelopment. £1 million was transferred from the proceeds of sale arising from another project called the Courtfield project ("**Courtfield**"), which Sami believed he held on trust for Faris. A further £887,000 was transferred from Park Gardens Limited, the shares in which company Sami believed he held on trust for Faris. Faris says those assets were owned by Radwan, not Faris. This was the subject of High Court proceedings by Radwan and Faris against Sami in 2019 in which both Faris and Radwan sought an order for the transfer of the remaining assets held by Sami to Radwan. This was eventually resolved by an agreed order, but only after a ruling by Mrs Justice Bacon on the first day of an 8-day trial that she did not need to decide whether it was Faris or Radwan who had been the original beneficial owner. Some, but not all the documents from that trial have made their way into the trial bundles for this trial. Some, but not all the witnesses in that action have been called in this trial. The witness statements filed in those proceedings were not introduced as evidence in chief at this trial. In such circumstances it would be undesirable for me to make findings on the issue of beneficial ownership unless it is necessary for me to do so. I am satisfied that it is not necessary to do so.

Approach to the evidence

19. A number of witnesses were called to give evidence of their recollection of events, conversations and beliefs in the past. The approach I take to the assessment of that oral evidence is to weigh it in the context of the reliably established facts, including those to be distilled from contemporaneous documentation, the motives of the protagonists, the possible weakness of human memory and ultimately, the inherent probabilities.

20. In *Bancoult, R (on the application of) (no3) v Secretary of State for Foreign and Commonwealth Affairs* [2018] UKSC 3, Lord Kerr at paragraphs 100-101 said:

> *"Case law emphasises the importance of documentary evidence in assessing the credibility of oral witnesses. In Onassis v Vergottis [1968] 2 Lloyd's Rep 403 Lord Pearce, having reviewed the various reasons that a witness's oral testimony might not be credible, stated, "all these problems compendiously are entailed when a judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and*

probabilities must play their proper part." In Armagas Ltd v Mundogas SA (The Ocean Frost) [1985] 1 Lloyd's Rep 1, 57 Robert Goff LJ made this observation:

"It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence ... reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."

21. When it comes to the possible fallibility of human memory both sides urged me to have regard to the observations of Mr Justice Leggatt in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), at paras 15-20 in the context of commercial cases.

"15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or

suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

19.The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been 'refreshed' by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

22. These observations in *Gestmin* are a reminder from an experienced judge of the risks of the fallibility of human memory, but they do not displace the need in each case for a proper assessment of the oral evidence and the weight to be placed on evidence of recollection. *Gestmin* lays down no general principle that no reliance is to be placed on the recollection of witnesses as the Court of Appeal made clear in *Martin v Kogan* [2019] EWCA Civ 1645 at paragraph 88.

Witnesses

23. The principal witnesses were Faris and Radwan for the Claimant, and Sami and Samer Sidawi ("**Samer**") for the Defendants. Samer is Sami's son. My general observation of all four men was that they were well prepared. They were familiar with the documents and knew what their position was in respect of documents which were adverse to their side. I also formed the view that they had all become entrenched in their positions and in the dispute between them which has been litigated in one form or another since 2019. I felt that the truth was a victim of these battles. My assessment of each of them was that each was willing to say whatever he believed advanced his side's interests whether it was true or not. I accordingly treat all their evidence with caution. That said, I found Sami to be most credible of these four witnesses, although I do not accept all of his evidence.

24. I also heard evidence from Ramez Sarkis and Charles Gomez for the Claimants. Mr Sarkis' was cross examined in relation to two witness statements with diametrically opposed contentions in connection with the previous proceedings. As I have said above, I have concluded that I do not need to make findings on the issues which were the subject of the previous proceedings. I did not find the rest of his evidence of much assistance. Mr Gomez was an honest witness who I felt was trying to assist the court. Nothing significant turns on his evidence.

25. I heard evidence from Amal and Wael which I regarded as essentially truthful. Wael in particular could remember very little.

Facts

26. I set out below the facts as I find them. I deal in broadly chronological order with events leading up to Draycott, the first of the four projects, and then I deal with each of the four projects in turn. There is a considerable overlap in the issues and the evidence and it is necessary to deal with some things out of chronological order.

Relationship between the Sidawis and the Al Rawis

27. Sami Sidawi and Radwan Al-Rawi and their families were close friends for about 30 years prior to this dispute. Sami described Radwan as his "Number 1 friend" in London. Samer referred to Faris as his brother. Their families holidayed together, and they socialised together. It is common ground that by 2009 Sami, Samer, Radwan and Faris trusted each other implicitly and treated each other as family.

Sami's relationship with Faris

28. Faris and his father have had a difficult relationship. There were glimpses of this in the evidence, which included some very critical, angry and emotional messages from Faris to his father. Both Faris and Sami alluded to the fact that Faris confided in Sami as to the difficulties in his relationship with his father and that Sami was compassionate and caring. It is common ground that Faris and Sami became very close. In their dealings Faris referred to Sami as "Amu"– a term for an uncle.

29. Sami says that he treated Faris like a son – and there are statements by him to like effect in the contemporaneous documents. It is also borne out by the apparently complete trust he had in Faris in giving him a free hand in developing and refurbishing properties, charging commissions and fees for his Waterbridge companies in doing so, all to be paid for by Sami. This was not a business-like arrangement. Sami knew that Faris had no competition. As far as Sami was concerned Faris could choose what work his companies did and charged for, and what work was outsourced. Waterbridge Estates Limited acted as the primary estate agent, receiving commission on acquisition and on sale even when other agents were involved. Faris did not produce detailed budgets or calculations in respect of a proposed investment opportunity, and he did not produce detailed accounts of what he was spending money on. Sami says he did not query Faris' rates or commissions or indeed what he spent on refurbishment and redevelopment

(as long, I assume, as it was in line with the initial estimate of projected cost). Sami's evidence is that he was happy for Faris to make money on the projects (assuming, I expect, Sami also made money from the projects). I accept that evidence.

30. Faris says that he in fact provided his services at cost – I deal with that in the context of Faris' quantum meruit claim below - but this does not detract from the point that Sami left it completely to Faris what to charge for his companies' services. On any view, the commissions paid to Waterbridge Estates by way of finder's fee and on sale cannot be described as services provided "at cost" and even if some services were provided at cost, Sami would not have known. He believed Faris was making money from the projects from the payments being made to Faris' companies.

31. I therefore have kept in mind in assessing the inherent probabilities that this is not an arm's length commercial transaction.

32. These were two men of Middle Eastern origin in a quasi uncle and nephew relationship. That is also an important part of the relationship between them. Mr Sarkis made a point about this in cross examination:

"You see, you have to look at this thing not from your Anglo-Saxon glasses, [but] from our Middle Eastern background. In the Middle East we do favours [for] each other. We trust each other. We don't put everything in writing. We have this relationship where we are ashamed of each other, you see what I am saying, Mr Knox, so therefore many transactions will happen without documentation…we are ashamed to say to a friend, no. It is a different type of thinking than the Anglo Saxon."

33. Mr Sarkis' meaning may be open to interpretation, but it is a reminder that the business relationship between Faris and Sami was firmly founded in the trust arising from their relationship, their families' relationship, and their cultural heritage. I am sure that Faris trusted Sami, the benevolent uncle figure to do right by Faris, and that Sami saw himself in the role of a benevolent uncle and wanted to do right by Faris, and indeed be generous and supportive of him. I got the impression at times that the Sidawis and the Al-Rawis would have considered it rude and demeaning to have asked for a written contract in light of their relationship.

34. I have concluded that it is likely that much of Faris and Sami's dealings with each other were not intended to be contractual at all, but simply left as matters of honourable and fair dealing between Sami and Faris. It is clear that the absence of a written contract between them is a deliberate decision of Faris and Sami. It suggests a deliberate decision to rely on the trust they had that each would behave honourably and fairly and indicates that they did not intend to create a legal relationship. At some points their dealings undoubtedly gave rise to rights under English law. For example, when Faris invested money in Stanhope with Sami's agreement, he had rights in trust law in respect of that investment in a property in the name of Sami. It does not mean that their every dealing gives rise to rights

under English law. It follows that a failure to act honourably and fairly does not necessarily give rise to rights to relief under English law.

Pre 2009

35. In the early 2000s Radwan began advising Sami and acting as his accountant and advisor. It is also common ground that Sami invested in a number of small real estate investment projects in the early 2000s with the Al-Rawis. Radwan handled the structuring of the acquisition and its financing and Faris dealt with the development and sale. I accept Sami's evidence that he was a sleeping partner and he dealt mainly with Radwan in these early years. The primary relationship between the two families was between Radwan and Sami, and if Radwan was involved in a project, it would have been natural for Sami to deal with him. Faris' evidence was that he received a profit share as remuneration for his work while Sami had no recollection of it, saying he was a "very passive investor" and "not involved at all". There was no documentation disclosed about these dealings and I am not willing to make findings that Faris was remunerated on the basis of the oral evidence of Faris alone. As Sami left it to Radwan to manage the investment it seems to me to be likely that any decision as to how to remunerate Faris was made by Radwan, and so carries little weight as to what Sami and Faris agreed in subsequent years.

The alleged 2009 Agreement

36. By 2009 Sami believed, in the aftermath of the worldwide financial crisis, and the residential property crash, that London prime property was undervalued. He therefore wanted to invest much larger amounts of money in much larger projects.

37. Radwan did not want to be involved however, and so Sami decided to deal with just Faris.

38. Faris' pleaded case is that he and Sami reached an agreement in principle in a coffee shop in Hyde Park, that he would (a) identify properties, (b) develop plans and budgets, (c) manage personally or through corporate vehicles the development, and (d) help sell them, in return for a percentage share on each project. The amount of the percentage share was not fixed, but he says the principle was agreed. Sami denies a meeting in a coffee shop in Hyde Park, or any in principle agreement with Faris.

39. I find that there must have been some discussions about the fact that Sami would now be dealing with Faris rather than Radwan, and that Sami wanted to get involved in much bigger projects. This is borne out by an angry and heartfelt email sent by Faris to Sami on 21 January 2016 when he learnt that Sami did not intend to pay him a profit share on certain projects:

"Your son also then went on to say that you have done so much for me in my life. If he is referring to business, you approached me for deals and asked me to make you millions, I never asked you for your money. I remember this discussion too (sic) place in Hyde Park with my mother and father as witnesses, I never asked

you, you asked me and now that I have performed you are short changing me big time."

40. However, I am satisfied that there was no binding 2009 agreement as pleaded by Faris. It is more likely that there were simply discussions, whether in Hyde Park or elsewhere, in which Sami made clear that he wished to invest in bigger projects and asked Faris to find some for them to work on together. There was simply no need to enter into a binding agreement of any kind at that stage when there was not even a specific project in mind. My view is reinforced by the fact that whatever was discussed was not reduced to writing – there is no dispute that no informal note or record was made of this meeting. Further, the meeting in Hyde Park which Faris describes was not a business meeting but a social chat with other family members in attendance, and so not a natural forum for a binding contractual agreement to be reached. No contemporaneous reference was made to any agreement even informally in emails or Whatsapp messages that have been disclosed. The first reference to it was the email in January 2016, and even then it does not refer to an "in principle" agreement that Faris would have a profit share.

Stanhope

41. The first project between Sami and Faris without Radwan involved was Stanhope. The property was acquired in July 2009 and sold in December 2012.

42. Faris relies upon Stanhope as an example of earlier dealings between Faris and Sami in which:
    a. he made a minor capital contribution giving him a small equity share in the property of 8 or 9%;
    b. he also received a 15% share of the profits made on that project;
    c. those profits were calculated after an allowance of interest on the capital introduced by both Faris and Sami, but at a rate equivalent to available UK lending rates of just under 2%.

43. This is borne out by a series of emails between Faris and Sami on 5 and 6 December 2012. A pdf copy of a spreadsheet was disclosed just days before trial. The spreadsheet appears to show an account of the profits made on Stanhope and how they should be divided between Faris and Sami. I ruled that it could be admitted and used at the trial. Faris gave evidence that it is a copy of the electronic document which was attached to the email of 5 December. The figures in the spreadsheet correlate to the figures being discussed in the email and while Sami did not accept the authenticity of the document no cogent alternative was advanced as to what else this spreadsheet might be other than a version of the document which was attached. I accept that the spreadsheet is a copy of the electronic document that was attached to the email of 5 December or a version of that document. I think it unlikely that any difference detracts from the points above for which Faris relies upon it.

44. However, on the question of whether there was, as Faris says, a binding agreement for a profit share at the outset of the Stanhope project, these emails and spreadsheet shed little light. Clearly by the end of the project Sami had agreed that

Faris should have a 15% share of the profits less the costs of capital at UK lending rates. Sami says that was a matter in his discretion.

45. In addition, Faris relies on manuscript notes Sami made on a Waterbridge Estates client account statement and kept as part of his electronic records. The statement date and the metadata as to when the statement with manuscript notes was scanned and uploaded to Sami's electronic records indicates that the notes were made at some point between March and June 2011. The notes appear to relate to three projects – Stanhope, Thurloe and Courtfield. Each contains a note in Sami's handwriting of Faris' contribution to the capital (if any) and a reference to a profit share. In relation to Stanhope the note says, *"Faris contributed £250,000 - to the capital (8.3%) and 15% of profit after expenses*". In relation to Thurloe it says, "*Faris gets 15% of profit after expenses. When Stanhope is sold, his share will be in the equity of Thurloe*". The notes in relation to Courtfield, need not be set out here – they are relevant to the issues in the previous proceedings, and on which I am satisfied I do not need to make findings.

46. There is a dispute about what these manuscript notes represent. Sami says these are notes to himself of discussions he has had with Faris, but they do not represent an agreement. It was, he says, always a matter for his discretion whether Faris got any profit share at all. Faris says that the notes were notes of the binding agreement reached between him and Sami.

47. I am not satisfied that these notes reflect the existence of a binding agreement between Faris and Sami that he should be entitled to a profit share in respect of Stanhope or Thurloe. These notes show that there were fairly detailed discussions between Sami and Faris as to their intentions in 2011 (roughly midway through the Stanhope project), at least in relation to these projects, but they were clearly not fixed. For example, there is no dispute that Faris' share in Stanhope was never translated into a share of Thurloe. The notes are unsigned by either Faris or Sami, and Faris accepted in evidence that he did not at the time ask for or take a copy or make any written record of an agreement himself. In other words neither Sami nor Faris acted as if they were recording a binding agreement. There is no other contemporaneous document reflecting a binding oral agreement – whether in the shape of an email or even a WhatsApp message.

48. All of the points made above support the conclusion that Faris and Sami's dealings with each other in relation to a profit share were an example of the dealings referred to above (paragraph 33) as dealings which were not contractual but simply left as matters of honourable and fair dealing between Sami and Faris. That is consistent with Sami's evidence, which I accept, that whether and what profit share was paid to Faris was a matter in his discretion. There clearly has been a specific discussion in which they have discussed a 15% figure as an appropriate figure – but that does not give rise to an entitlement on Faris' part to that figure. An expectation of a bonus and how much that bonus might be is not the same as an entitlement to the bonus.

49. Faris also says that there were notes similar to this made in relation to each of Draycott, Cromwell and KHN. He says they have been deliberately destroyed by Sami's wife. Sami denies that there have ever been any such notes which have not

been disclosed and denies that any notes were destroyed. Faris' pleaded case on this has changed, apparently to reflect the disclosure of the manuscript notes in relation to Courtfield, Stanhope and Thurloe. In the original particulars of claim, Faris alleged that there was in respect of each property a handwritten note evidencing the agreement which was signed by him and Sami. The pleading has since been amended to delete the reference to the notes being signed by both parties and his case is that the manuscript notes in relation to Stanhope and Thurloe are the informal agreements he was referring to in relation to those properties. No such notes in relation to Draycott, KHN and Cromwell have been disclosed although copies of the notes in relation to Courtfield, Thurloe and Stanhope have been. That suggests that there are no other notes. If it had been intended to destroy the notes, one would expect all the notes to have been destroyed including those which have instead been disclosed. Sami was not cross examined at any length as to his system for record keeping, why there are electronic notes of these three projects and not the others, or the circumstances in which Sami's wife might have had access to the notes or why she might destroy them. There is very little to displace the starting point that no notes were disclosed because no notes ever existed. I conclude that there were no such notes which have not been disclosed.

50. This is a convenient point at which to also deal with the contention that there was a Composite Record. On 7 March 2023, less than 2 months before the trial, Faris circulated an amendment to his Particulars of Claim alleging that in mid 2013, he and Sami had one or more meetings at which Sami instigated the preparation of a proper record of the agreements reached in respect of the four projects using the informal manuscript notes for each property which Faris says existed (see the previous paragraph). The Composite Record contained specific terms relating to Thurloe and KHN which support Faris' case on those properties. This Composite Record of the four agreements was then signed by both Sami and Faris and kept by Sami until it too was destroyed by Sami's wife. There had been no prior mention of a Composite Record in the angry emails which were exchanged in 2015 and 2016 when Sami denied Faris any entitlement to a profit share. There had been no prior mention of a Composite Record in the pleadings or witness statements in these proceedings which commenced in 2020, or in the previous proceedings which had commenced in 2018. The most striking thing about this allegation is Faris' contention that it had somehow slipped his mind until 6 March 2023, and he only remembered it when reviewing the documents to consider whether any amendments needed to be made to the Particulars of Claim. On Faris' case the Composite Record represented the most recent and most formal written record of the disputed agreement and was the only record signed by both Faris and Sami. Its intended purpose was to be a formal record of their agreements. It would have vindicated Faris' entitlement to a profit share on Draycott, Thurloe and Cromwell and his case on the cost of capital in relation to KHN. It is simply not credible that if such a document had come into existence in the way he describes he could have forgotten of its existence by the time he came to formulate his claim in these proceedings or make his first witness statement for trial and moreover, that he should suddenly remember its making and contents clearly in a vivid flash shortly before trial. I conclude that there was no Composite Record.

Draycott

Outline facts

51. In or around April or May 2009 Faris identified 2 properties at 10 Draycott Avenue, Chelsea, London SW3 3M and 50 Draycott Place, Chelsea, London SW3 2SA. They were acquired by Courtfield Assets Limited, a BVI company, on 21 January 2010 for approximately £10,542,812 (including Stamp Duty Land Tax and other acquisition costs). Approximately £6,249,570 was spent in redeveloping the properties. As indicated by the cost, this was a significant project involving the demolition of the original buildings and the construction of a new building with larger internal space. It involved architects, engineers, builders, and other consultants and contractors.

52. Courtfield Assets Limited was wholly owned by Sami and he provided half the purchase price. The other half of the purchase price he thought had been provided by the Al Rawis but on 14 December 2010 half of the shares were transferred to the Hope Trust. In March or April 2017 Sami bought back the Hope Trust's shares for £13.9 million which appears from a contemporaneous offer to have been their then full market value. The connection between the Hope Trust and the Al-Rawi's is considered further below.

53. Sami and Courtfield Assets thereafter continued the development of Draycott on its own without the involvement of the Al-Rawis.

54. Before the exit of the Al-Rawis, Waterbridge Estates Limited received £117,500 by way of a finder's fee commission on purchase and Waterbridge Design Limited received £167,400 by way of design fees.

The Hope Trust

55. During the course of this trial, it has become apparent that Faris and Radwan use nominees and take other steps which have the consequence of obscuring their involvement and their ownership of assets. Here are three examples.
    a. The previous proceedings concerned shares in Park Garden Limited and 50% of the shares in a company called Quay One Limited. The shares were in the name of Sami but he did not claim to be the beneficial owner. He maintained that he held them on trust for Faris, while Faris and Radwan maintained that he held them on trust for Radwan.
    b. The shares in Handle Limited are in the name of Mr Sarkis but Handle held its 12.5% interest as a member of the KHN LLP as nominee for Faris.
    c. The shares in Field Property Limited are in the name of Mr Sidawi, but he does not claim to be the beneficial owner, at least as to half of them. Again, there is a dispute as to whether he held half the shares in this company for Faris (as Sami says) or Radwan (as Faris and Radwan assert).

    In addition, in emails and spreadsheets produced by Faris he refers to Sami's "partner" or "Investor 2" instead of referring to himself by name – my strong suspicion is that this was intended to avoid there being a written record of his involvement.

56. The Hope Trust is another example. The Hope Trust is an important part of the factual matrix to the Draycott project because on the pleaded cases, Sami says his equal partner on Draycott was the Al-Rawis whereas Faris says Sami's partner was the Hope Trust. In pleadings, witness statements, and skeleton arguments, Faris and Radwan have tried to put distance between themselves and the Hope Trust.

57. In September 2010 Radwan gave instructions to SG Hambros for the creation of two new trusts which came to be known as the Guardian Trust and the Hope Trust, both established under the laws of Gibraltar. At the outset the drafts of both trusts had Radwan's wife and children (including Faris) as the named beneficiaries and that continued to be reflected in various draft documents for some time until shortly before final documents were prepared.

58. When eventually executed in November 2010, the Guardian Trust was a trust where the named beneficiaries were, and are, Radwan's wife and children. The Hope Trust, however, had as its named beneficiary the Great Ormond Street Hospital, but with a power to appoint new beneficiaries. It used to be a well-known practice in the offshore trust world to create a trust with a charitable beneficiary and to confer on the trustee a power to appoint new beneficiaries, there being no intention that the charity should be the primary beneficiary and the intention being to add the beneficiaries really intended to benefit from the trust at a later date. In the interim, as here, the identity of the intended beneficiaries is obscured.

59. On the face of the trust deeds, the settlor of the trusts, at least as to the initial £100 to constitute each trust, is Sinan Al-Rawi, Radwan's brother. Apart from being named as settlor and signing a letter of wishes, he did not otherwise appear in the contemporaneous documents referred to at trial. The fact that he has created the settlements with an initial seed fund of £100 says nothing about who has transferred further assets into the trusts. Both trusts expressly envisage that further assets may be transferred in by someone other than Sinan Al-Rawi – see recital 2. In fact, it seems that over £40 million was added by somebody to the Guardian Trust which was then loaned to the Hope Trust.

60. When the final documents were provided to Radwan on 15 October 2010, there were two Letters of Wishes for the Hope Trust: one referring to the charity as the beneficiary, and (curiously) a supplemental letter to be read in conjunction with the first with detailed wishes for benefitting Radwan's immediate family, including Faris. No explanation was offered as to why it was thought appropriate to have two letters of wishes rather than one. After the documents were signed, Mr Gomez pointed out to Radwan that only the first Letter of Wishes had been signed and asked Radwan to obtain the settlor's signature for the second. In fact, the second letter of wishes was never signed.

61. There are nevertheless a number of indications that the Hope Trust was intended to be for the benefit of Radwan's immediate family. It is funded by an unsecured and interest free loan of approximately £40 million from the Guardian Trust. The Guardian Trust is on its face intended to be for the benefit of Radwan's immediate family. That £40 million represents almost the entirety of the additional capital

introduced after the Guardian trust was set up. The Hope Trust had been specifically amended during its drafting to include a power to allow a beneficiary to occupy trust real estate, and it has come to hold a series of companies holding assets connected with Radwan's family, including the offices of Rawi & Co in Mayfair. The structure chart being used by the trustee in 2016 (see its 6 October 2016 email) identified the intended beneficiaries of the Hope Trust as Radwan's wife and children, including Faris.

62. Paragraph 17(b) of the original Particulars of Claim admitted that the Hope Trust was set up for the benefit of the Al-Rawi family, but that admission was deleted in the amended pleading. In cross examination about the intended beneficiaries Radwan was evasive but was eventually driven to accept that the intention was that the people who should benefit from the money in the Hope Trust were his family (he used the word "maybe" but in the context of the questioning it was clear that he was grudgingly accepting the point being put to him by Mr Knox).

63. Radwan is the first Protector of each trust. One matter on which the Letters of Wishes for both the Hope Trust and the Guardian Trust are identical is the desire that Radwan have a very significant role in relation to the operation of the trust.

"Subject to the terms of the Trust Deed the First Protector should not be removed and should have the power to recommend changes to the trust, change the trustees, add new beneficiaries and remove any of the existing beneficiaries.

Subject to the terms of the Trust Deed, I would also like the Trustees to consider consulting with the Protector prior to taking any investment decisions."

In cross examination Radwan agreed that he "was the person giving direction to the trustees, all the time".

Hope Trust involvement in Draycott

64. As far as Sami was concerned, Faris and Radwan contributed £500,000 to the £1 million deposit; and then, on 21 January 2010 they contributed half the purchase price, in return for half the shares in Courtfield Assets Ltd. The monies for completion were received from an account or accounts held with Lloyds Bank by Uville Limited, and Coutville Limited. There was no suggestion at the time that these payments were from anyone other than Faris and Radwan. Uville Limited is now owned by the Hope Trust, but since the Hope Trust did not exist until November 2010, these contributions could not have been made by the Hope Trust.

65. Further sums were introduced by the Al-Rawis in 2013 towards their share of redevelopment costs. £1 million was transferred from the proceeds of sale of the Courtfield project which Sami believed he held on trust for Faris. A further £887,000 was transferred from Park Gardens Limited, the shares in which company Sami believed he held on trust for Faris.

66. On Sami's reacquisition of what he thought was the Al-Rawis' 50% interest in Draycott in February 2017 for £13.9 million, Radwan told him that in fact half of the shares in Courtfield Assets were held in the name of the Hope Trust.

67. Although Sami's signature is on the share certificate, he is adamant, and I accept, that he had not heard of the Hope Trust until it was revealed by Radwan in February 2017. The most likely explanation is that the share certificate was signed in blank by Sami leaving it to Radwan to fill in as required the entity which would hold the Al-Rawi interest in Draycott.

68. It seems that until it became necessary to reveal it in February 2017, Radwan intended to conceal the involvement of the Hope Trust in the Draycott project. In November 2015, Radwan was contacted by Nicholas Van Patrick in connection with a proposed offer by a third party in relation to Draycott. The estate agent needed to establish the "beneficial owner" of Courtfield Assets Limited for money laundering purposes. By that stage Sami owned 50% of the shares in Courtfield Assets Ltd and the Hope Trust was the owner of 50% of the shares in Courtfield Assets Ltd. Radwan had sent a copy of the Hope Trust's share certificate to the trustee on 21 December 2010. Yet he told Nicholas van Patrick that the sole director and shareholder of the company was Sami and he sent them copies of the old register of members which showed just Sami as a member. When asked to explain in cross examination why he had lied he said it was because money laundering requirements were "a nuisance". I am satisfied that Radwan was at the time trying to conceal the involvement of the Hope Trust in the Draycott project.

69. Although a share certificate in favour of the Hope Trust had been issued on 14 December 2010, it appears that Radwan did not update the Register of Members for Courtfield Assets until October 2016 when prompted by a complaint from the trustee of the Hope Trust that the trust records only showed Sami as a shareholder.

70. Faris in his evidence said that he thought that Radwan was Sami's partner and that he had not known about the Hope Trust at the time. Radwan also accepted in cross examination that Sami thought he was dealing with Radwan. In relation to the £1.887 million transferred towards redevelopment costs where Sami maintains he held those sums on trust for Faris, and Faris and Radwan maintain he held it for Radwan – Faris' evidence was that in practice, as far as Sami was concerned it was coming from "the Rawis" or from "[Faris'] side" and without a distinction being made between Faris and his father. Faris' Response to a Request for Further Information suggested that this further injection from Faris/Radwan was to discharge a debt owed to Sinan Al-Rawi which is why it was being expended on a project in which the Hope Trust was invested, but in the end no attempt was made to adduce evidence on that issue.

71. I am satisfied that in relation to Draycott, Sami, Faris and Radwan acted throughout until February 2017 as if this was a joint venture between Sami on the one hand and both Faris and Radwan on the other as equal partners. I find that the original contribution to the purchase of Draycott was made on behalf of Faris and Radwan, and not by Sinan al-Rawi on behalf of the (at the time) non-existent Hope Trust. I find that the contribution of £1.887 million was made by the Al Rawis (I do not need to resolve who as between Faris and Radwan) and not by the Hope Trust. The Hope Trust was a vehicle which was subsequently used to hold Faris and Radwan's interest in Draycott. Faris may well have left it to his father to deal with issues of structure, but I have no doubt that Radwan has deliberately

structured his and Faris' interest in Draycott in this way. I also find that at the time the persons ultimately intended to benefit from the Hope Trust were Radwan's immediate family, including Faris.

The alleged Draycott profit share agreement

72. Faris' pleaded case is that he orally agreed with Sami at around the time of exchange of contracts in July 2009 that he would be entitled to 15% of the profits arising from the disposal of Draycott.

73. I am not satisfied that there was any binding contractual agreement entitling Faris to 15% of the profits of Draycott. I do not accept that Faris believed there was such an agreement. My reasons are as follows:

    a. At the time of exchange of contracts, Faris had invested £250,000 (2.5% of the purchase price of Draycott) and it is likely that there were consequently discussions about that investment. It is possible that there were discussions about an additional bonus by way of a profit share if things went well, but it is inherently improbable that Sami would have committed to a fixed percentage of profit at that nascent stage of the project when it was not clear what redevelopment would be done and at what cost, and what role Faris would have. It is more likely that at this nascent stage whatever discussions were had, Faris simply trusted Sami to act honourably and to treat him fairly when the project was over.
    b. In any event, any such discussions were superseded before completion of the purchase when it was agreed that the Al-Rawis would become equal partners. Profits were to be divided equally between the equal partners. As Faris' 28 December 2015 email explained "I have either taken historically 20 per cent of the profit on the project with a cost of capital charged based on UK rates. Or I have personally invested and been your partner." Here Faris and Radwan had become Sami's partners and as Faris' email indicated such a partnership was an alternative to a reward by way of profit share. There is no dispute that Faris and Radwan could also bill for the services they provided themselves or through their companies and those formed part of the expenses of the project before the calculation of the profits.
    c. When the Al-Rawis became equal partners Radwan took on the responsibility for the development, including obtaining an important planning permission. This is another reason why any understanding about a profit share for Faris would have fallen away – it was no longer envisaged, if it ever had been, that he would be doing the development. I do not accept Faris' or his father's evidence that Faris or his companies in fact carried out a lot of unremunerated work on Draycott. That is simply not borne out by the documents such as the minutes of the project meetings between July 2012 and April 2014 where Faris was present at just two meetings to report on design issues and was otherwise not even included in the circulation list. Waterbridge Designs provided design services for which they invoiced regularly. Faris may have provided some minor assistance to his father, but it was Radwan who was overseeing the development.
    d. Faris' case seemed to be partly premised on the footing that he had nothing to do with the Hope Trust and therefore a profit share was the only

incentivisation and remuneration he would have from the project. In fact, as I have found, at the stage of completion of the purchase of Draycott the partnership was between Sami on the one hand and Faris and Radwan on the other, and the Al-Rawi interest was transferred to the Hope Trust to hold for the benefit of Radwan's immediate family. When pressed in cross examination whether his case was that he was entitled to 15% before the profits were divided between Sami and the Hope Trust, he volunteered for the first time that he was entitled to 15% from Sami's share only. Yet that is not pleaded. On the contrary what is pleaded, even after amendment, is a claim to a 15% share of the profits from the whole project. There was no evidence that this change to the alleged profit share agreement was even discussed with Sami. It is inherently unlikely that Sami would have agreed to a 15% profit share from his share but not from what he understood was Faris and Radwan's half share. Faris' evidence appeared to me to be shifting to meet developments. I did not believe him, and I reject his evidence in relation to the alleged agreement in relation to Draycott.

e. There is nothing in the contemporaneous documents between 2009 and 2015 referring to a profit share for Faris in relation to Draycott. It was first mentioned in a letter of 27 December 2015 to Sami after a dispute had arisen, but even then, the letter does not actually set out a claim to be entitled to a profit share when Draycott was sold.
f. When the Hope Trust exited in 2017 it was paid what was calculated to be its full value without any discussion or deduction or reserve for a profit share for Faris. That makes clear that both Radwan and Sami who were dealing with the Hope Trust's exit did not understand Faris to be entitled to a 15% profit share in addition to the 50% profit being made by the Hope Trust.
g. Sami and Samer were cross examined about a Whatsapp exchange on 21 January 2016 where Samer appears to suggest that Sami should 'pay 15% on Draycott'. It was suggested that this was an admission of an agreement to pay a profit share, but I accept Samer's evidence that this was an error of a typographical kind. It is inconsistent with the proposal Samer had just made the previous day to Faris that Faris seek any "performance fee" in respect of Draycott from the Hope Trust's share. Faris had appeared to be willing to accept that, saying in his first email of 20 January 2017 that he would deal with his father on Draycott.

Thurloe

Outline facts

74. On 14 September 2010 the Claimant emailed Sami to say he had identified 32 Thurloe Square, London SW7 2SD as a potential investment opportunity.

75. The property was purchased by Dagan Property Limited, a special purpose vehicle incorporated in the British Virgin Islands, of which Sami was the ultimate beneficial owner. It was purchased for just over £6 million (including acquisition costs) on 5 January 2011.

76. Following the completion of the transaction, a significant sum was spent on redevelopment and refurbishment works which were overseen by Faris using Waterbridge Designs Limited. The redevelopment of Thurloe involved converting

the three individual flats comprising the property into a single luxury house. Faris says this cost £1,750,000.00, Sami says the payments made to Faris and Waterbridge Designs Limited for these works was over £2.5 million.

77. During the course of the redevelopment, it was decided between Faris and Samer that Samer and his wife should make it their London home. Sami disapproved, but he reluctantly agreed. The refurbishment thereafter took into account Samer and his wife's wishes for the finishes to the property. In March 2013 Dagan Property Ltd transferred the property to SWSinvest (PTC) Ltd as a vehicle to hold it for Samer and his family.

78. Thurloe was sold by SWSinvest (PTC) Ltd for £10.2million.

79. Waterbridge Estates Limited received £69,216 as a finder's fee commission on purchase. Waterbridge Designs Limited received a considerable amount for disbursements and a further £918,528 directly although it is not clear how much of this was also used for disbursements.

The alleged Thurloe profit share agreement

80. Faris' original pleaded case was that during September 2010 he met with SWS and a binding agreement was reached that he would be entitled to 15% of the profit from Thurloe. That is the agreement he sued on when he issued his Claim Form.

81. Between March and June 2011, Sami made the manuscript note referred to at paragraph 44 above that, "*Faris gets 15% of profit after expenses. When Stanhope is sold, his share will be in the equity of Thurloe*". Both Faris and Sami agree that at this stage it was contemplated that Faris would make a contribution to the cost of the Thurloe project.

82. Faris did not in fact contribute any capital from Stanhope. The property ceased to be an investment project because Samer had decided to make it his London home. Faris gave up any claim he had to invest in it and to a profit share – he referred to having done so in an email dated 28 May 2013. Although he initially denied in his Reply that he had given up any claim he had just because Samer had decided to move in (saying this was "commercially nonsensical"), there is now no dispute that he did.

83. In his Amended Particulars of Claim he says Sami reassured him that he would be compensated in a fair and reasonable manner after Samer decided to move in. Then, after Samer, who had moved into Thurloe, moved out again, Sami and he orally agreed in August or early September 2013 that Faris would receive 15% as originally envisaged. This is the agreement he now sues on.

84. I am satisfied there was no binding agreement for Faris to receive a 15% profit share from Thurloe. I do not accept that Faris believed that there was such an agreement. My reasons are as follows.
    a. I do not accept that there was a binding agreement at the outset for Faris to have a profit share. I do not accept that the manuscript notes evidence such a binding agreement for the reasons set out in paragraphs 47 and 48.

b. I did not find Faris' evidence on this issue credible.
   i. There was no good explanation for the evolution of his case in the way described above. Again, it seemed to me that Faris was simply shifting his position and his evidence to meet the problems to his original position thrown up by the documents, and in particular his email of 28 May 2013.
   ii. There is no contemporaneous evidence to support Faris' new case.
   iii. On the contrary, his 28 May 2013 email was sent when he was desperate for money and "*almost begging*" Sami for more money to meet outgoings on the development. In it he reminded Sami that he had "*foregone any profit share and sales commissions on that deal and hope you recognise that*" [emphasis added]. He did not mention the alleged assurance that Sami would compensate him in a fair and reasonable manner. It would have been natural to do so because his case is that Sami gave him that assurance precisely because Sami had recognised that Faris had given up such claims.
   iv. It is also inherently unlikely that Sami would have reached an agreement to pay Faris a share of the profits from Thurloe in August or September 2013 when Sami had divested himself of Thurloe and gifted it to Samer by transferring it to SWSinvest (PTC) Ltd. This is particularly so in circumstances where Sami's evidence is that he had not been happy with Faris and Samer having agreed to make Thurloe Samer's London home.
   v. When the dispute erupted on 23 December 2015, and in the subsequent exchanges, Faris did not allege an entitlement to a profit share. This cannot have been an oversight because in the same exchanges Sami was requesting information to complete his accounts for each project. Faris responded that "Thurloe was closed and I will send you the final account that we agreed and settled". That is no doubt a reference to the cost of the redevelopment which Faris had overseen, and Thurloe was at this point unsold. However, it would have been natural for Faris to have responded, at the same time as he was expressing shock at Sami's failure to remember their agreements, with a reminder that he was owed 15% of the profits of Thurloe if he thought there had been an agreement to that effect. He did not do so.
   vi. On 19 June 2016 when Faris emailed Sami again after a hiatus of some months he was clear that the dispute between them related to three properties - Cromwell, KHN and Draycott. He did not mention Thurloe.
   vii. Nor did he mention a profit share when Thurloe was sold in August 2016. The Thurloe claim was raised for the first time in the letter before action dated 5 November 2019.

KHN

Outline facts

85. In early 2011 Faris identified Kingston House North Car Park, Kingston House, North Kensington Road, London ("KHN") as another possible investment opportunity.

86. By a Member's Loan Instrument ("the MLI") dated 1 April 2011, Sami made available a loan facility of £12 million to Kensington House North LLP (" the LLP"). Interest was payable on the loan at 5% per annum.

87. On 24 May 2011 the LLP used that loan facility to purchase KHN for £10.7 million.

88. After completion the members of the LLP were Kensington House North Limited ("KHN Limited") and Handle Limited ("Handle") which held 87.50% and 12.50% interests in the LLP respectively. Sami and Wael Hourani each held 50% of the shares in KHN Limited respectively. Handle Limited was owned by Mr Sarkis but held its interest in the LLP as nominee for Faris. In 2015 Handle ceased to be a member of the LLP and it was replaced by Bisque Holdings Ltd, a company beneficially owned by Sami and Amer Hourani.

89. KHN was sold on 23 January 2017 for £17.5 million.

90. Waterbridge Estates Ltd received £64,200 finder's fee commission on purchase and £735,000 commission on sale. Further fees of about £78,000 were received by Waterbridge Estates for management and other services.

The issue

91. This is the only one of the four disputed projects where there is no dispute that Faris was entitled to have a profit share – the agreed profit share was 12.5%.

92. A dispute arose in 2015 as to whether Faris' agreed 12.5% profit share was correctly reflected by Handle having a 12.5% interest in the LLP. As a consequence, Handle ceased to be a member of the LLP and it was replaced by Bisque Holdings Ltd, a company beneficially owned by Mr Sami Sidawi and Mr Amer Hourani.

93. KHN was sold on 23 January 2017 for £17.5 million. If interest of 5% per annum on the amounts advanced by Sami is to be taken into account in calculating the Faris' profit share, then I understood the position of both parties to be that there was no profit, but see now paragraph 150 below.

94. The issue is whether the profits to which that profit share applies are to be calculated after the deduction of interest at 5% on the capital loaned by Sami under the MLI.

The relevant agreement

95. There is no dispute that there were discussions in March 2011 between Sami and Faris and Sami and the Houranis in which it was agreed that Faris would have a 12.5% profit share. Sami explains, and I accept, that he wanted there to be a binding agreement for a profit share for Faris because of the involvement of the Houranis. Sami did not want to be embarrassed by being caught in the middle of a dispute as to whether Faris should have a bonus. Faris says there was a meeting

between them all in his father's offices at which what had been agreed was explained to Radwan.

96. It is Faris' evidence that it was expressly agreed in these oral discussions that Faris' profit share would be calculated without deduction of the cost of capital. It is improbable that Sami would have agreed expressly to not charging for the cost of capital if the issue had been raised – it is clear from the Stanhope email exchange that Sami thought that the principle that a sleeping partner's capital should carry notional interest as a cost of capital was important. Sami's evidence, which I accept, on this issue was that Faris was very excited by this project and was postulating eye watering figures for an exit such that he was not unhappy with 12.5% and did not care about the cost of capital. It is unlikely that there was an express agreement that the interest rate should be 5% as Sami alleges. Sami could point to no precedent in his dealings with Faris and Radwan where the cost of capital was as high as 5%, and in Stanhope the interest rate had been a much lower UK lending rate. I consider it more likely that the issue of cost of capital was simply not discussed. This would explain why after the dispute arose, Sami produced at least three schedules (and in particular the schedule in February 2016) postulating different interest rate scenarios and the effect that would have on Faris' profit share. I did not accept Sami and Samer's evidence that these were merely internal documents for modelling the opportunity cost of the investment, or "curiosity". The February 2016 schedule and May 2017 schedules appear to have been prepared for the purposes of negotiation. However, had there been a clear agreement on the cost of capital it is improbable that Sami would at this early stage have chosen this method of seeking to reduce Faris' profit share – he would have known that it would have enraged Faris that Sami was reneging on an agreement and it would have made a compromise more difficult. At the point at which the February 2016 schedule was prepared Sami was not aware of the MLI and its terms.

97. The acquisition moved quickly. On 21 March 2011 Dentons emailed Freemans (who were acting for Sami and the Houranis) with a due diligence pack and a step plan, involving the newly formed LLP. The transaction was structured in this way at the request of the vendor and Sami and the Houranis were willing to accept it. By the end of March Sami's lawyers Freemans were liaising with Radwan and Faris over the documentation for the transfer. On 30 March 2011 Sami executed a power of attorney in favour of Faris, but it seems that Radwan gave the instructions to Freemans on the structure.

98. On 1 April 2011 a suite of documents were signed and exchanged. These included the MLI by which Sami made available a loan facility of £12 million to the LLP at a rate of interest of 5%. On 30 March 2011 Freemans had sought instructions from Radwan and Faris as to the rate of interest to insert into the MLI. Radwan's evidence was that he told the solicitors to insert as high a rate of interest as possible. Faris attended at Freemans and had a brief explanation of the document by which stage the figure of 5% interest had been inserted into the document. Faris signed the MLI as Sami's attorney and he accepted that he knew or would have known that the MLI provided for an interest rate of 5%.

99. After completion, the structure was that KHN Ltd held an 87.50% interest for Sami and the Houranis. Handle Ltd held a 12.5% interest for Faris. This was intended by Radwan and Faris to represent Faris' 12.5% interest in the profits of the KHN project.

100. Under these arrangements it is clear that Handle's 12.5% interest was in *the profits of the LLP*, and the profits of the LLP were to be calculated after repayment of the loan facility and 5% interest under the MLI.

101. Pausing there, I observe that whatever oral agreements and discussions there had been previously, these documents were intended to formalise and encapsulate the agreement between Faris and Sami and the Houranis. If the documents fail to reflect the agreement reached between the parties, then they need to be rectified or set aside, but there is no claim for any relief for any error or mistake in the documentation.

102. Sami left the details of the arrangements to Radwan, and it seems was not aware of the involvement of Handle or the terms of the MLI. When in July 2015 he discovered that Faris had through Handle a 12.5% interest in the LLP he was unhappy as he felt that gave Faris 12.5% of the equity in KHN and not just a profit share. Faris sought to reassure him in WhatsApp and email messages that there was a loan registered in the accounts which was payable "before the profit share" and "there is no profit until the loan is repaid".

103. To assuage Sami, Faris agreed to Handle being replaced by Bisque Ltd, but Faris' pleaded case, which is not disputed, is that this change in membership did not affect Faris' entitlement to the 12.5% profit share that had been agreed. In other words, Faris' entitlement remained in the profits of the LLP, and therefore to be calculated after repayment of the loan facility and 5% interest under the MLI. When Faris demanded the 12.5% profit share on 29 June 2016 he claimed it as due to Handle Ltd.

104. Mr Mallin sought to take a number of routes to circumvent this problem for his client.
    a. He sought to rely on the original oral agreements where it is Faris' case that it was expressly agreed that Faris' profit share would be calculated without deduction of the cost of capital. I have already said that I reject Faris' evidence on that issue. In any event, as I observed above at paragraph [101], no relief is sought for any error or mistake in the documentation giving effect to the agreement.
    b. It was said that the MLI was irrelevant because Sami had not even known about it until shortly before completion of the sale of KHN on 23 January 2017. However, the MLI was signed on Sami's behalf by Faris pursuant to a power of attorney, it binds the LLP, and it confers rights on Sami. That is unaffected by Sami's lack of knowledge of the MLI.
    c. Radwan's evidence was that interest was never going to be paid under the MLI and the accounts his firm prepared did not show interest as due. Under the terms of the MLI, Sami was entitled to interest, and it is not alleged (except by the alleged Composite Record which I have rejected) that those rights were expressly or impliedly waived or that some sort of estoppel arose.

It is difficult to see how that could have happened in circumstances where Sami did not know about the MLI and its terms, and he was not asked about his knowledge of the accounts.

d. It was also submitted that the relevant profits for calculation of the 12.5% profit share are the profits made by Sami and the Houranis personally from their interest in KHN Ltd, including the profits made from charging interest under the MLI on the sums they injected. As I have already made clear, under the structure set up and the formal documentation executed, Handle Limited's, and therefore Faris' share, was in the profits of the LLP.

105. I conclude therefore that Faris' 12.5% profit share is calculated by reference to the profits of the LLP, with the loan facility and interest under it properly deductible as an expense.

106. There was an issue as to whether Wael Hourani was party to the profit share agreement. It is academic in light of my findings but I set out my conclusion for completeness. The pleaded case is that Wael holds the share in KHN Limited for Amal. Amal was much less clear in his evidence, referring to having given his share to Wael apparently as part of passing part of his fortune to his son but only "for the time being" . There was no satisfactory explanation of what that meant. I observe that there is no doubt that the share in KHN Limited was vested in Wael and even now the basis on which is said his involvement should be ignored is not clear. Faris says both Wael and Amal were parties to the profit share agreement. Neither Amal nor Wael had a clear recollection of who was present at the meetings where a profit share agreement was discussed although the Defence admitted that Wael had been present at at least one. I find that Wael was present at the meetings when the 12.5% profit share was discussed and agreed and it was not made clear to Faris that he was merely acting as an agent for his father. I would have found that viewed objectively Wael was a party to the agreement. In any event, an agent is personally liable on a contract made where he has an undisclosed principal; see Bowstead & Reynolds on Agency 22nd ed, paragraph 9-012. Wael is therefore as liable to Faris as his father in respect of the profit share agreement, although there is in fact no liability.

Cromwell

Outline facts

107. In early 2013, Faris identified 7 Cromwell Place, Kensington, London SW7 2JN ("the Cromwell Property") as a potential investment opportunity for the First Defendant. Ignoring the corporate vehicles which were used, on 7 June 2013 Sami gave the vendor a loan facility of £5.2 million to repay its borrowings and completed the purchase of the property for £6 million in March 2014.

108. During the course of 2014 an opportunity arose to "flip" the property by onward sale to an interested purchaser. Agreements were exchanged on 11 November 2014 and the sale was completed on 4 December 2014 for £7,600,000 plus £60,000 for late completion (at £10,000 for every day that completion was delayed).

109. Waterbridge Estates Limited received £226,400 on sale, and as I conclude below, a further £25,000 as a finder's fee.

The alleged Cromwell profit share agreement

110. Faris' case is that in January or February 2013 he and Sami orally agreed that they would share equally the profits arising upon the disposal of Cromwell.

111. There is no dispute that there were discussions at about this time between Faris and Sami about becoming equal investors and equal partners in the Cromwell venture. There was no firm decision as to what to do with the property. Faris was keen to develop it and keep it for rental income. Sami's evidence is that he was not keen on redevelopment but was happy to buy the property and then decide what to do with it. He was also happy for Faris to become an equal partner if he invested half of the purchase price and other costs.

112. Faris' evidence is that the idea was that £4 million would be borrowed in Sami's name from SG Hambros, who were Sami's bankers and had provided financing for previous investments. Faris would be informally responsible for half of that loan and he and Sami would contribute equally the remaining cash for the purchase. On 18 February 2013, SG Hambros approved in principle a loan. No attempt was made to progress any further with the loan. It is common ground that Faris did not contribute any monies to the purchase of Cromwell which was funded entirely by Sami.

113. Faris' evidence in both his witness statement and in cross examination was, at the same time as it was discussed that he should become an equal investor and partner in Cromwell, it was also discussed and agreed that if the property was "flipped", meaning it was sold on immediately, then Faris would receive 50% of any profits made by Sami without becoming an investor.

114. I am satisfied that there was no binding agreement to that effect. I do not accept that Faris believed there was such an agreement.
    a. It is inherently implausible, at the same time as discussing becoming equal co-investors in a £6 million acquisition, that Faris and Sami also agreed that if Sami bought the property alone without contribution from Faris and then sold it, that Faris should receive 50% of the profit made by Sami. Such an agreement makes no commercial sense. Faris' explanation in cross examination was that he had caught Sami in a good mood on the day it was agreed. My assessment of Sami is that while he considers himself a reasonable and fair man who was generous to Faris, he was a shrewd businessman. It is highly unlikely that he would have reached any kind of binding agreement to give Faris a 50% share of the profits he made on selling Cromwell if Faris did not invest.
    b. It was not until 17 November 2015, almost a year after Cromwell was sold, that Faris hinted at a possible claim to a profit share. In the covering email enclosing a short statement showing a calculation of the profit made on Cromwell he said:

> *"You will see there is a significant profit in a very short time. We were supposed to be partners and I even remember us discussing using security of Courtfield flat for the loan".*
>
> Two points arise from this email. The first is that the lengthy delay since the sale is not consistent with Faris having an entitlement to a profit share which arose on sale. Faris says he wanted to "*wait for a good time*" to ask Sami for the money, but that too is not consistent with there being any binding obligation on Sami to pay a fixed profit share. It is consistent with their dealings being based on honourable and fair treatment of each other. The second point is that in this email, and in subsequent emails in December 2015, Faris repeatedly relies on the fact that a loan had been agreed in principle for which he was going to be equally responsible, and he refers to his willingness to use the Al-Rawi interest in Courtfield as security. But it is common ground that he did not invest, and he never became an equal partner. What these emails do not ever do is say what he now says; namely that it had been expressly agreed that if the property was not retained and was sold, he would receive 50% of the profits without needing to invest.

Breakdown in relations

115. On 23 December 2015 Faris and Sami had a conversation in relation to Cromwell. Faris raised the issue of payment of a share of the profits from Cromwell to him. Sami made clear his view that Faris had no entitlement to a share of the profits from Cromwell. Emotional and angry correspondence then ensued, which quickly become increasingly self-serving. Both sides have relied on aspects of this correspondence and I have referred to some of those aspects above.

116. Attempts were made to broker a compromise through Radwan and then through Mr Sarkis, but they were unsuccessful. In the end, the relationship between Radwan and Sami also became acrimonious.

117. In 2018 the previous proceedings concerning the shares in Park Garden Limited, and Quay One Limited were commenced by Radwan against Sami to which Faris was later joined. These proceedings followed in December 2020.

Conclusion on profit share agreements

118. I conclude that there was no binding agreement for Faris to have a profit share from the Draycott, Thurloe or Cromwell projects. I conclude that there is no profit share due to Faris in respect of the KHN project.

Quantum meruit

119. Faris has an alternative claim for a quantum meruit. He has taken an assignment from Waterbridge Designs Limited of any claim for quantum meruit which that company has against Sami. No assignment has been made of any claim by Waterbridge Estates Limited and no claim is advanced on its behalf. The validity of the assignment to Waterbridge Designs Limited was one of the issues for

determination at this trial pursuant to the Master's order but in the end was not challenged.

Law

120. A claim for a quantum meruit is a claim for unjust enrichment. It is a claim which arises where there is no contractual entitlement to payment. It is a claim that services have been provided by the claimant which if not paid for will mean that the defendant has been unjustly enriched at the expense of the claimant.

121. There are four factors that a court needs to consider in a claim for unjust enrichment: (1) has the defendant been enriched (2) was the enrichment at the claimant's expense? (3) was the enrichment unjust? ("the unjust factor") (4) are there any defences available to the defendant?; see *Barton v Morris* [2023] UKSC 3 at paragraph 77.

122. In relation to (3) above, Faris relies on the principle of free acceptance as the unjust factor.

123. The principle of free acceptance has been articulated in Goff & Jones, The Law of Unjust Enrichment since its 7th edition (now in its 10th ed) as follows:

"[A defendant] will be held to have benefited from the services rendered if he, as a reasonable man, should have known that the claimant who rendered the services expected to be paid for them, and yet did not take a reasonable opportunity open to him to reject the proffered services. Moreover, in such a case, he cannot deny that he has been unjustly enriched."

124. Faris says these requirements are satisfied because he or Waterbridge Designs provided services which Sami chose to accept in circumstances where Sami knew or should have known that Faris expected to be paid.

125. Faris also relies on the principle of mistake as an alternative unjust factor.

126. Goff & Jones, The Law of Unjust Enrichment (10th ed.) summarises the elements of a claim for unjust enrichment on the basis of mistake as follows:

"First, the concept of a "mistake" requires, as a threshold matter, that a claimant believed that it was more likely than not that the true facts or true state of the law were otherwise than they actually were. Secondly, this belief must cause the claimant to confer the benefit on the defendant, in the required sense. Thirdly, even if a causative mistake can be shown, a claimant may sometimes be denied relief on the basis that he responded unreasonably to his doubts, and so unreasonably ran the risk of error. Fourthly, beyond this, a claimant who had doubts may be denied relief on the distinct grounds that he has compromised or settled with the defendant, or on the basis that he is estopped from pleading his mistake."

127. Faris says that he and Waterbridge Designs provided services to Sami in the mistaken belief that he had a profit share agreement with Sami.

Is the Claimant is precluded from recovering a reasonable sum in respect of services provided by him and/or Waterbridge Designs Limited on the basis of any fees or commissions previously paid to the Claimant, Waterbridge Designs Limited and/or Waterbridge Estates Limited?

128. This is one of the specific questions I am asked to determine in relation to this alternative claim by the Master's order.

129. At the risk of stating the obvious, there can be no claim for a quantum meruit in respect of services which have been paid for. There is then no enrichment at the Claimant's expense because he has been remunerated, and there is no enrichment of the Defendant which is unjust.

130. Faris' Waterbridge companies charged significant fees and commissions in respect of each project as summarised in paragraphs 53, 78, 90 and 109 above. It is Faris' case that there was effectively another stream of work carried out by him and his companies that was not remunerated. There are difficulties with that submission - (a) he has not particularised, either in his pleadings or in his evidence, precisely what the specific work is for which he claims remuneration (b) he has not particularised who did that work (no claim being made for any work done by Waterbridge Estates Limited) and (c) he has not attempted, either in his pleadings or in his evidence, to differentiate the work done by his Waterbridge companies for which payments were made.

131. Faris relies simply on the very general plea of the terms of the "in principle" 2009 agreement (which I have found was not a binding agreement) in paragraph 10 of his Amended Particulars of Claim:

> *"At the said meeting the Claimant and the First defendant entered into an oral agreement ("the 2009 Agreement"). It was expressly agreed that the Claimant would (A) identify potential properties for acquisition by [Sami] (or by corporate entities in which [Sami] was ultimately beneficially interested), (B) develop plans and budgets for the development of the said properties for approval by [Sami], (C) manage, whether personally or through corporate vehicles, the development of the said properties and (D) help facilitate the sale of them."*

132. He does not plead what further work was actually done pursuant to this alleged in principle agreement which was not remunerated by the fees and commissions earnt by his companies.

133. Moreover, it is clear that Waterbridge Estates Limited charged finders' fees and a further commission on sale. Both companies appear to have charged management, handling and other fees as well. It is simply impossible to discern from the pleadings, or indeed from the evidence what, if anything, was done which was not covered by these charges.

134. It is submitted by Mr Mallin that in broad terms Faris was providing a service by introducing an opportunity to Mr Sami, but that is usually why a finder's fee is paid, as seems to have happened on all four properties. The only doubt was

Cromwell, but Faris accepted in cross examination that it looked from the documents like a £25,000 finder's fee was recovered from Sami, albeit on sale. Mr Mallin says that Faris had a role of oversight in seeing the project through from acquisition to exit – but nowhere is it particularised what it is he did which was not compensated by the payments and the commission which were paid to the Waterbridge companies.

135. In relation to Thurloe, Faris gave evidence that he did not make a profit on its redevelopment. In Thurloe there was an agreed budget for the works to be done by a third party builder which must have included a profit element. Faris agreed to take over from the builder and honour that budget notwithstanding problems which had arisen – that is not the same as agreeing at the outset to do work at cost. In any event, no attempt has been made by Faris to provide documentation to show that the large sums paid to the Waterbridge companies only covered their costs of providing the services they provided.

136. I conclude that Faris has not proved on the balance of probabilities that there are any services provided by him which were not remunerated by the payments made to the Waterbridge companies.

137. It is not necessary to dwell on the other difficulties this claim faces. Very briefly:
    a. In relation to Thurloe there is no dispute that Faris relinquished any claim he had for the work he had done. He thereby relinquished any claim he had for a quantum meruit. I have found that there was no subsequent agreement to reinstate a claim.
    b. In relation to KHN there <u>was</u> a contractual agreement whereby Faris was to receive an agreed profit share in addition to any fees and commission charged by the Waterbridge companies– the only issue was whether there was a profit at the end of the project. In such circumstances there cannot be a further claim for a quantum meruit on the basis of free acceptance or mistake.
    c. In relation to Draycott, I have found that Faris' expectation was to benefit from the Hope Trust's half share as equal partners in the project in addition to charging fees and commissions for the work done by his companies – there was no expectation or belief that he would separately receive a further payment. Again, there cannot be a further claim for a quantum meruit on the basis of free acceptance or mistake.

Limitation

138. Another issue I am asked to determine by the Master's order in relation to this alternative claim is:

    c. whether the quantum meruit claim is time-barred in respect of services provided before 10 December 2014 (such issue to include determining when payment was to be due for any services provided and also whether the Claimant is entitled to rely on s. 32(1)(c) of the Limitation Act 1980).

139. It is common ground that section 5 of the Limitation Act 1980 applies to the quantum meruit claim. Section 5 provides that "*An action founded on simple contract shall not be brought after the expiration of six years from the date on*

which the cause of action accrued". It does not mention quantum meruit or unjust enrichment, but there is a growing body of caselaw acknowledging that it does apply to claims which might be regarded as quasi-contractual; see *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1994] 4 All ER 890, 942-943, *Aspect Contracts (Asbestos) Ltd v Higgins Construction plc* [2015] UKSC 38; [2015] 1 WLR 2961*, Sixteenth Ocean GmbH & Co. KG v Société Générale.*

140. This claim was issued on 9 December 2020. It follows that any cause of action for unjust enrichment which accrued before 9 December 2014 is barred by section 5. The general rule, where the unjust factor is not a failure of basis, is that a cause of action in unjust enrichment accrues at the moment when the defendant is enriched; Goff & Jones at paragraph 33.16. In this case this is when the relevant services were provided. It is not clear from the pleadings or the evidence that there were any significant services which were provided after 9 December 2014.

141. Mr Atkinson sought to argue that as Faris' claim was for a profit share it did not arise until the properties were sold and a profit realised. But that is not right. The cause of action is complete when the benefit is conferred and not when the Claimant expected or hoped to be paid.

142. Faris also relies on s.32(1)(c) of the Limitation Act 1980 the relevant parts of which are:

"…where in the case of any action for which a period of limitation is prescribed by the Act, either-…
(c) the action is for relief from the consequences of a mistake;
The period of limitation shall not begin to run until the plaintiff has discovered the… mistake… or could with reasonable diligence have discovered it."

143. Faris says he provided services in the expectation and belief that he was contractually entitled to a profit share. If, as I have found, he was not contractually entitled to a profit share then, his argument goes, he was operating under a mistaken belief. He says that he could not with reasonable diligence have discovered that mistake until December 2015 when Sami denied his entitlement to a profit share in the Cromwell project.

144. Section 32 (1)(c) requires that the mistake which has led to the claim being made is an essential ingredient in the claimant's cause of action: see *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs (formerly Inland Revenue Comrs*) [2012] 2 AC 337. In relation to all four properties, I have found that there was no profit share agreement and I do not accept that Faris believed he was contractually entitled to a profit share. There is therefore no unjust factor based on mistake and no cause of action to which s.32(1)(c) could apply.

Set off for negligence

145. In relation to Thurloe and KHN, Sami seeks to set off losses caused by alleged mismanagement by Faris. In light of the findings that have been made, this set off does not arise. There is no Counterclaim.

146. If it had arisen, I would not have allowed a set off. The claimed set off is a series of vague and unparticularised complaints on which barely any evidence was adduced. The claim is said to arise out of the engagement of Faris and/or the Waterbridge companies to provide services. No attempt is made to identify who the contracting party is or who is liable for the loss to be set off - only Faris is a party to these proceedings, and only Waterbridge Design has assigned its quantum meruit claim to him. No details have been pleaded as to the scope of the duties and no particularisation of how it is said the relevant contracting party breached them. In Thurloe, the complaint seems to be as to the quality of the work carried out by contractors and Faris is entitled to know precisely how it is said that he is liable for any defects in their work. In KHN the mismanagement is said to relate to the appointment of a bad contractor who became insolvent, the appointment of a bad manager and the bad marketing of parking spaces. But there are no particulars of what duties Faris owed in respect of these appointments or marketing or in what way he breached those duties. He was not asked about his marketing of the parking spaces in cross examination. There are also no particulars of loss.

147. I would not have found that Sami had proved any entitlement to a set off against sums due to either Faris or Waterbridge Designs.

Conclusion

148. Faris' claims in relation to Draycott, Thurloe and Cromwell are dismissed.

149. There will be a further hearing ("the consequentials hearing") listed in due course to deal with costs, applications for permission to appeal and any other matters consequential upon this judgment.

150. In relation to KHN I had understood the position of both parties to be that if interest of 5% was chargeable on the capital injected pursuant to the MLI, then there was no profit, and no profit share due to Faris. However since the circulation of this judgment in draft pursuant to CPR Practice Direction 40E it has become clear that Mr Mallin contends that this was not, or at least now is not, common ground. I will therefore hear from counsel on this issue and the appropriate form of the Order at the consequentials hearing.