



Neutral Citation Number: [2024] EWHC 919 (Ch)

Case No: PT-2020-000963

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY TRUSTS AND PROBATE LIST (ChD)**

Rolls Building, 7 Rolls Buildings  
Fetter Lane, London, WC4A 1NL

Date: 26/04/2024

**Before :**

**HH JUDGE DAVIS-WHITE KC**  
**(SITTING AS A JUDGE OF THE CHANCERY DIVISION)**

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**Between :**

<b>VANIDA WALKER</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>EKKACHAI SOMBOONSARN</b>	<b><u>Defendant</u></b>

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**Mr Timothy Cowen** (instructed by **WLS Solicitors Limited**) for the **Claimant**  
**Mr Robert Strang** (instructed by **Germain Kaile Law**) for the **Defendant**  
Hearing dates: 15-19; 22-24 May 2023

**Approved Judgment**

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to the National Archives. The date and time for hand down is deemed to be 10:30am on 26 April 2024

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HH JUDGE DAVIS-WHITE KC (SITTING AS A JUDGE OF THE HIGH COURT)

**Judge Davis-White KC :**

1. For ease of navigation, this judgment is structured as follows:

		Paragraph number
Introduction		2
The Parties		24
Legal Representation		32
The Main History		34
	(1) 1975 to 1997	35
	(2) 2000 to August 2001	66
	(3) August 2001	86
	(4) 2002	94
	(5) 2005	99
	(6) 2004	115
	(7) 2005	124
	(8) 2006	129
	(9) 2007	152
	(10) 2008	163
	(11) 2009	176
	(12) 2010	193
	(13) 2011	197
	(14) 2015	200
	(15) 2016	219
	(16) 2017	222
	(17) 2017-2020	222
The Proceedings		235
The witness evidence		243
	Vanida Walker (“Wanda”)	262
	Somphet Chanthangsy (“Pepsi”)	268
	Jiraporn Somboonsarn (“Jerry”)	282
	Nuanphan Cheesman	288
	Wattana Thamrongtanakit (“Mor”)	300
	Sirirat Hopper	307
	Suwannee Bovornsukul (“Bird”)	308
	Saovaros Chanpitak (“Et”)	312
	Ekkachai Somboonsarn (“Ekk”)	322
	Nicholas Robinson	326
	Naing Thien (“Nick”)	332
	David Harman	338
	Pawan Buranthi	347
	Phiravanh Chanthalangsy (“Phil”)	356
	George Poliakoff	385
	Halyna Dudar (“Helen”)	393

Hearsay Statements		
	Theptida Thornsri	404
	Wisit Pisankunakit (“Wisit”)	411
	Thaweekiat Preechappanitpattana	418
Shares in the Companies, forged documents, absence of share transfers, appointments and removals of directors		424
	Incorporation documents and reported share transfers thereafter	428
	Changes in directors	457
The shares in Anglo Thai Ltd and Finfish Ltd: legal title		465
Setting up of business, incorporation of EUBC and transfer of shares in EUBC to Wanda		475
Shares in Anglo Thai Ltd and Finfish Ltd		508
Ownership of TM Ltd		
	The Statements of Case	521
	The Evidence	529
	Findings	530
Flat 22 BM		
	The Statements of Case	536
	The Evidence	551
	Ownership on the acquisition of Flat 22 BM	585
	The 2009 Declaration of Trust	599
	The 2015 Legal Transfer	608
	Flat 22 BM: Conclusion	614
3, Chargrove Close		
	The statements of case	615
	The Evidence	619
	3 Chargrove Close: conclusion	631
78, Hermit Road		
	The statements of case	632
	The Evidence	639
	78. Hermit Road: conclusion	647
38, Charlotte Street		

	The statements of case	652
	The Evidence	657
	Findings	668
	38, Charlotte Street conclusion	681
Overall Conclusions		682

## **Introduction**

2. This is a dispute between mother (the Claimant) and son (the Defendant) as to the ownership of three companies (the “Companies”) (or the shares in those Companies) and the ownership of four properties (the “Properties”).
3. The Companies in question are as follows:

<b>Name</b>	<b>Date of incorporation</b>
Thai Metro Limited (“TM Ltd”)	29.08.01
Anglo Thai Limited (“Anglo Thai Ltd”)	29.01.03
Finfish Catering Limited (“Finfish Ltd”)	12.08.03

4. Of the Companies, TM Limited was, for many years after incorporation, dormant. However, it acquired a property, 133, The Grove, Ealing in January 2017 apparently at an overall cost of £2,027,197 (as shown by its accounts), the actual purchase price being £1,630,000. In large part, the monies for the purchase were funded from loans made to TM Ltd by Anglo Thai Ltd and Finfish Ltd (and Scoffle Ltd, a company owned by the Defendant). Its last filed accounts, for the year ended 31 August 2022, shows a net liability position on its balance sheet of £45,467.
5. Anglo Thai Ltd owns and runs a restaurant operating from 38, Charlotte Street, London W1 called Thai Metro. Its last filed abridged unaudited accounts for the year ended 31 March 2023 show a balance sheet with net assets of £891,299.
6. Finfish Ltd owns and runs a restaurant operating from 14, Charlotte Street, called Siam Central. Its filed abridged unaudited accounts for the year ended 31 August 2022 show a balance sheet with net assets of £583,088.
7. The Properties in question are:

<b>Address</b>	<b>Tenure</b>	<b>Acquired</b>	<b>Purchase Price</b>
Flat 22, Bloomsbury Mansions, London WC1B 5ER (“Flat 22 BM”)	Leasehold	23.04.04	£485,000
3, Chargrove Close, London SE16 6AP	Freehold	14.07.06	£320,000
78, Hermit Road. London E16 4LF	Freehold	28.03.08	£285,000
38 Charlotte Street, London W1P 1HP (“38 CS”)	Freehold	26.09.09	£145,000

8. As will be immediately clear from the dates given above, this case involves a consideration of what was (or was not) said and agreed and done over many years, the period stretches back over 25 years. This historical archaeology is made more complicated by the fact that it is said by both sides that the acquisition of each of the Companies and each of the Properties has to be considered against evidence of earlier acquisitions than the ones that I am asked to rule upon and as to the ownership and/or incidents and/or financial positions of businesses or family members. There is limited contemporaneous documentation. Documentation which would normally be dispositive (or at the least a strong indicator) of ownership cannot be relied upon given the cases put and evidence put forward.
9. For convenience, but meaning no disrespect, I refer to certain members of the family by their English first names or nicknames, as they were referred to before me at the trial. The same applies to a number of the witnesses as this is how they were referred to by themselves or by other witnesses. For present purposes it suffices to say that the Claimant was referred to before me as “Wanda” and the Defendant, most commonly, as “Ekk”. I use the same terminology. Wanda and Ekk are mother and son.
10. In summary, the position regarding the Companies is as follows. Two of them, Anglo Thai Ltd and Finfish Ltd, each started to trade as a restaurant business not long after their respective incorporations.
11. Anglo Thai Ltd took over a restaurant business called “Thai Metro” operating initially from 14, Charlotte Street, London W1. Anglo Thai Ltd took over this restaurant from another family company, Euro Union Based Company Limited (“EUBC”) . The business was apparently started in about 2000 by EUBC. The initial manager at Thai Metro became George Poliakoff.

12. There is a dispute about the ownership of EUBC. EUBC has since been dissolved. Both parties say that the ownership of EUBC is relevant to the issue of ownership of Anglo Thai Ltd because the latter simply took over what had been EUBC's business.
13. The restaurant "Thai Metro" was moved to 38, Charlotte Street, London W1 in about the Autumn of 2003. Although Mr Poliakoff occasionally helped out at 38, Charlotte Street, he remained as manager assisting Ekk with the new restaurant businesses operating at 14, Charlotte Street and owned by Finfish Ltd. "Juge", originally Mr Poliakoff's assistant, became the manager at 38 Charlotte Street.
14. Wanda apparently acquired the lease of 14, Charlotte Street in her own name. As I understand it, it is ultimately agreed that at all material times she has been legal and beneficial owner of the various leases of those premises, from which interest is derived any right or interest of Anglo Thai Ltd and Finfish Ltd to trade from that location.
15. As regards 38, Charlotte Street, the position regarding legal (and beneficial) ownership of the relevant lease is less clear. I address this issue later in this judgment.
16. After the move of the Thai Metro restaurant, a new restaurant was opened at 14, Charlotte Street by Finfish Ltd. Over time various different restaurants were established, owned by Finfish Ltd and operated at 14 Charlotte Street. The first restaurant was called "Fin", focusing mainly on fish dishes. This was not terribly successful, and it was rebranded as "Chu Chi", serving pan-Asian cuisine in 2005. This also had its problems and was re-opened in 2006 under the name "Siam Central". Although there was a concern that Siam Central and Thai Metro might be in competition with each other they served different markets; Siam Central was more expensive and "upmarket".
17. TM Ltd was, for many years, dormant. However, as I have already referred to, on 24 January 2017 it completed the purchase of a property at 133, the Grove, London W5 3SL for a purchase price of £1,630,000.
18. In the case of each of the three Companies, Wanda is, apparently, the sole subscriber to the memorandum of association who agreed to take 100 shares in the Company. I say "apparently" because certain of her apparent signatures on documents have been forged, which fact of forgery is now agreed. However, she says that the subscriptions in question were effected by or through her son as her agent and that it had been agreed that the companies were hers (and the restaurants were indirectly, though her share ownership, "hers"). She adopts the relevant forged signatures in question.
19. As regards each of the three Companies: no share register exists; no share certificates have been issued; no share transfers have been executed. There is therefore an issue as to whether shares have ever been issued. Further, certain returns made to Companies House show, in each case, Wanda to have transferred her shares. Wanda claims that the shares in the Companies remain legally owned by her (or that she is legally entitled to have the shares issued to her and in her name) and such shares are (or the right to subscribe for shares in the case of each company is) beneficially owned by her. Her son claims that they are beneficially owned by him. Both parties rely on the history of the development of the relevant businesses as supporting their respective positions as to beneficial ownership of the shares in the Companies as well as what is said to have been said by them at various times, as to which there is complete disagreement.

20. In summary, the Defendant's case is that the shares in EUBC, having been registered in his name, were originally transferred into Wanda's name to avoid his former wife making claims against or to the same in any divorce proceedings against him. For the same reason, on incorporation, shares in Anglo Thai Ltd and Finfish Ltd were shares in relation to which Wanda was or was to be the legal owner. However, she held the shares in EUBC (and the rights to subscribe for shares in Anglo Thai Ltd and Finfish Ltd) on trust for him as was agreed between Ekk and her. Wanda denies this and says that the agreement and understanding was that each of the three Companies that I have mentioned (EUBC, Anglo Thai Ltd and Finfish Ltd) always were "her" companies, and that she owned the shares (or the rights to subscribe for shares) beneficially and, following any share transfer regarding EUBC shares, legally as regards such shares and legally as regards the right to subscribe from the relevant date of incorporation.
21. As regards TM Ltd the parties' cases mirror those for Anglo Thai Ltd and Finfish Ltd but with the factual background difference that that company never ran a restaurant and was for many years dormant. However, as Ekk admits and asserts, TM Ltd was set up as a company in anticipation of being used in connection with the ownership and/or development of the restaurant business.
22. As regards the Properties, each of them was transferred into the name of Ekk by third party sellers, other than Flat 22 BM. With regard to the Properties other than Flat 22 BM, Wanda says that she was the beneficial purchaser of the same, that in layman's terms the monies to purchase them (or the bulk of such monies) came from her personally or through the restaurants that she owned (indirectly as owner of the relevant Company). Ekk says that both legal and beneficial ownership lies with him.
23. As regards Flat 22 BM, the long leasehold interest was transferred to Wanda directly by the third party sellers on 23 April 2004. In March 2009, Wanda then appears to have executed a deed of trust transferring her beneficial interest to Ekk (the "Declaration of Trust"). In December 2015, she then executed a transfer of the legal title to Ekk for no consideration and Ekk was registered as proprietor at the Land Registry. The matter is complicated by both Wanda and Ekk claiming that they were respectively the sole beneficial owner of Flat 22 BM since the date of purchase in April 2004. Again, Wanda says that she was the beneficial purchaser of the property. As regards the subsequent Declaration of Trust Declaration of Trust and transfer, she says that she did not agree to these documents, and they are not binding upon her and that she retains beneficial interest. Ekk says that he always retained beneficial interest but alternatively it was transferred by the Declaration of Trust Declaration of Trust and/or the transfer of legal title, which latter carried with it the transfer of beneficial title.

## **The Parties**

24. The Claimant, Mrs Vanida Walker, also known as "Wanda", was born in Thailand in April 1947. English is her second language. She has never been able to read or write English. I heard evidence from her through a translator. She is now 76 years old. Although accepting that his mother cannot read or write English, the Defendant says that, at the time of the events relevant to the Companies and the Properties, she understood oral English and could make herself understood in English. I deal with her proficiency in English when assessing her evidence.

25. Wanda had two children, Jiraporn Somboonsarn, (known as “Jerry”) and born in December 1969 and the Defendant, Ekkachai Somboonsarn (known as “Ekk” or “Eggy” and, in Thailand “P’Air”), and born in February 1973. I refer to Jiraporn as “Jerry” and Ekkachai Somboonsarn as “Ekk” Jiraporn is now 54 years old. Ekk is now aged 51. Wanda was, in the 1970s, married to Taem Somboonsarn. He died in 2002.
26. Ekk married Sansanee Kovadhana (also known as "Nok") in December 1998. By 2000 she was spending a lot of time in Thailand. In October 2000, Ekk started an affair with Halyna Dudar (“Helen”). Helen is Ukrainian but speaks English fluently. She gave evidence before me on behalf of Ekk.
27. In 1974, Wanda came to the United Kingdom, joining her sister, Sirirat Hopper (formerly Sirirat Prechapitak), who had come to the UK a few months previously. Wanda brought her daughter, Jerry, then aged about four, with her. Wanda started work as a cleaner and later developed her own substantial cleaning business. Later, she also engaged in an outdoor catering business.
28. It is also necessary to consider members of the family that live or lived in Thailand. This is because parts of the history of this matter concern family loans and inheritances about which there is considerable disagreement but which are said to be relevant to the questions of ownership that arise.
29. In Thailand, Wanda left a sister, Achara Pisankunakit (“Achara”) and her sister’s husband, Wisit Pasankunakit (“Wisit”). For present purposes, Wisit and Achara have two daughters, Noo Pasankunakit (“Noo”) and Wiragram Pasankunakit (“Ann”). Wisit is said by Wanda to have advanced a loan to enable her to purchase the freehold of 38, Charlotte Street, an opportunity that arose in about 2009, some years after that property (or part of it) had started to be used for the Thai Metro restaurant business.
30. Wanda’s father was Bucksir Se-Ng who died in 2003. He had five children, as well as Wanda and Achara, which included his first born son (stepbrother of Wanda) called Suchart Preechappanitpattana (“Suchart”). Suchart died in July 2019. Evidence for Wanda was given by witness statement made by his son, Thaweekiat Preechappanitpattana (“Thaweekiat”). Wanda relies on a loan made by Suchart, and its repayment, as part of the history of family loans. Ekk relies upon the loan as being one made to enable him to purchase 38 Charlotte Street. He also gave evidence as to a Thai inheritance that he had which he relies on as being used to repay certain family loans and/or as evidence as to why (at least in part) they would have been made,
31. Wanda’s mother, Buppa Prechachart, died in Thailand in about 2011.

### **Legal Representation**

32. Before me, Wanda was represented by Mr Timothy Cowen of counsel and Ekk was represented by Mr Robert Strang of counsel. I am grateful to both of them for their helpful oral and written submissions and to their respective solicitors for their control of the bundles.
33. I apologise to the parties for the length of time that it has taken to produce this judgment.

### **The Main History**



34. The following sets out matters which are either not challenged or are findings made by me based on the documents in the case or, where I make this clear, on the witness evidence. I also set out certain parts of the written witness evidence where immediately relevant. It was agreed that I could have regard to documents filed at Companies House in relation to the three companies as are available by searching the Companies House website even though those records had not all been inserted into the Trial Bundles.

**(1) 1975 to 1997**

35. In April 1975, 10, Harcourt Road was purchased for the sum of £6,950 and conveyed into the name of Sirirat Prechakitak. Prior to this it had been occupied by Wanda, Jerry and Sirirat under a tenancy in Sirirat's name.
36. Both Wanda and her sister (now Sirirat Hopper) say that the property was in fact paid for and beneficially owned by Wanda. Ekk originally denied this and said that the property was beneficially owned by Sirirat. However, Sirirat was not challenged in cross-examination at all and the evidence in her witness statement on this point (which matches that of Wanda) is established on the balance of probabilities. There was, says Sirirat, never any intention that the property would be treated as hers, although it was registered in her name. It was Wanda who wanted to buy it. The money to pay for the same was found from Wanda's hard work as an (employed) cleaner. Sirirat's name was used simply because she had been the person with whom the solicitors were used to dealing with and it was she who had engaged them. There was complete trust between the two sisters on the point. I accept this evidence and the legal conclusion which follows.
37. In about 1977 Wanda set up her own business, cleaning offices. For a time she ran this business in tandem with her job as an employed cleaner. She says that the business was run as a sole trader under the name S&V Cleaning Services. Ekk said that in fact the business was a partnership between Mrs Walker and her sister Sirirat, hence the name "S&V Cleaning Services" (emphasis supplied). However, Ekk also said that his mother and aunt fell out when he was about 12 or 13 (that is in about 1985-6). At that point, he says, Sirirat surrendered, which I interpret as "gave", her interest in the business to her sister. Sirirat's uncontested evidence was that she assisted Wanda in the cleaning business (e.g. by sending out invoices and sometimes looking at a contract on her behalf) but was only ever working for Wanda for which she received a sum of about £20-25 a week. She was not otherwise involved in the business and no part of it belonged to her. She was not a partner, simply a paid employee.
38. Sirirat was not challenged on her evidence. I accept Sirirat's evidence (and Wanda's evidence to like effect). In my judgment, it is less likely that Ekk age 12 or 13 (or under that age) would have understood or known precisely what the arrangements were between his mother and aunt with regard to the business.
39. I also note that in cross-examination, whilst accepting that Sirirat had not been challenged on her evidence, Ekk asserted that Sirirat had lied to the court on this issue. He said that there is a Thai culture of a younger person giving way to an older one and that this extended to lying to the court. Sirirat, he said, is younger than his mother and was lying to the court to back up her elder sister's evidence. Not only do I not accept this evidence, which is a point that could (and indeed, if relied upon, should) have been

put to Sirirat and to Wanda in cross examination, but was not, and which was not referred to in his written evidence. I consider that this is an example of Ekk reaching for (and making up) an explanation of evidence as it suits him.

40. A similar point arises as to the alleged “surrender” by Sirirat of her interest in the cleaning business. In cross-examination for the first time, Ekk asserted that he knew about this because at the time his mother expressed the position that she had to pay Sirirat. He expanded on this to say that his mother said she had to assist Sirirat with a deposit on something else as compensation for leaving the cleaning business. Again, I reject this evidence and regard it again as an example of Ekk reaching for (and making up) explanations as it suits him.
41. Wanda says that she built up her cleaning business so that at its height she employed over 50 part-time employees with 10 major cleaning contracts with International Mexican Bank, Ansbacher Bank, Arab Bank, Edward Erdman, Laker Airlines, 35-38 Portman Square, Lewis Silkin, Libra Bank, Swiss Volksbank (in Moorgate) and Mitsubishi Bank. I accept her evidence on these points.
42. In April 1977, Wanda married John Walker.
43. In 1978, Ekk arrived in the UK aged 5, with his maternal grandmother, Buppa Prechachart. She returned to Thailand after a few years.
44. According to Wanda’s affidavit filed in divorce proceedings against Mr Walker and made in June 1985, John Walker left Wanda in about 1979/80 saying that he was going to live in the United States.
45. In March 1982, Wanda purchased, in her own name, 110, Corporation Street London E15 for £25,000. A deposit of £10,000 was paid by her. The balance of the purchase price was borrowed against a mortgage on the property. The mortgage loan of just under £15,000 was provided by the Leeds Permanent Building Society. According to Sirirat’s unchallenged evidence, the purchase proceeded in Wanda’s name because there was no need for it to be in Sirirat’s name: it had not been rented by them before and she (Wanda) now better understood the process. Sirirat and Wanda both lived there. I accept Sirirat’s evidence regarding 110, Corporation Street (and Wanda’s evidence to like effect).
46. In April 1985, 10, Harcourt Road was sold for £31,000. The net proceeds of sale were just under £30,000. Sirirat confirmed that the sale proceeds went to Wanda and her evidence was not challenged. I accept it (and Wanda’s to like effect).
47. In 1985, Wanda sold 110, Corporation Road for £35,000. By this time Sirirat had already moved out. In the Summer of 1985 Wanda purchased 1, Dean Close, London SE16 jointly with a Mr Michael Hilton. Wanda and Mr Hilton were apparently then co-habitees and in a relationship together. There was later a dispute between Wanda and Mr Hilton as to their respective contributions and ownership position as regards this property.
48. In November 1985, a decree absolute of divorce was made ending the marriage between Wanda and Mr Walker.

49. A letter dated 2 February 1987 from Wanda's then solicitors (Bowling & Co) to Mr Hilton's then solicitors (Glover & Co), suggest that the purchase price of 1, Dean Close was £77,469 (the deposit being £7,770 of this sum). It goes on to assert the following facts. In addition to the purchase price, a sum of just over £1,552 was required to pay legal costs and Land Registry Fees. The total costs were therefore £79,021. According to the letter, some £50,000 was raised by way of mortgage loan. Of the balance of £29,021, the property deposit of £7,770 was paid as to £5,000 by Wanda and £2,770 by Mr Hilton. The balance to complete of just over £21,346 was paid by Wanda. The letter put forward an offer on behalf of Wanda to buy Mr Hilton out for £12,500.
50. In 1987, says Wanda, she bought out Mr Hilton's interest in 1, Dean Close for £12,500 in accordance with the offer in the letter dated 2 February 1987 from Bowling & Co that I have referred to.
51. Also in 1987, Costain, acting as a developer, paid compensation to owners in Dean Close development. Wanda received some £30,000.
52. According to Wanda, some £9,950 of the £30,000 compensation received from Costain was used by her to pay a deposit in respect of the purchase of 2, Chargrove Close. The property was conveyed to Jerry. Wanda's then partner, Mr Paul Cottrell, was a guarantor of the mortgage taken out by Jerry to provide the balance of the purchase monies. Wanda paid the regular payments under the mortgage loan.
53. According to Jerry, she was about 18 when 2, Chargrove Close was purchased by her mother for her. Although in part Jerry believed that this was a "thank you" for the cleaning work which she had assisted her mother with, she says that she regarded the property as her mother's, with it just being in her (Jerry's) name. Jerry says that her mother paid the deposit and thereafter the mortgage instalments. Despite Ekk's assertions to the contrary, I accept the evidence of Jerry and Wanda that 2, Chargrove Close was, when purchased, held by Jerry on trust for Wanda.
54. In 1989, Ekk started working, age 16, as a kitchen porter at a restaurant called Sri Siam.
55. In 1992, Ekk (aged about 19) started working at a restaurant called "Silks and Spice", helping his friend to open and develop this restaurant.
56. Also in 1992, Jerry graduated from King's College London with a degree in computer science and management. She initially went to the United States and then to Thailand, where she worked until 1994. She then returned to do an extension course in personal finance at the University of Southern California and in 1996 went to Malaysia where she stayed, save for occasional return trips to the United Kingdom, until 2009.
57. In 1993, Wanda started an outdoor catering business, selling food from a food van. She started the business working at comparatively small council-led festivals, such as the Lambeth Show, which required a small team of 4-6 staff and which each lasted 1 or 2 days but gradually built the business so that she was attending medium sized festivals (such as the Reading festival) lasting 3 or so days and requiring 6-10 staff and then the larger shows such as Glastonbury which lasted 5-7 days and required 12-15 staff. Over a summer and at the height, she says she would be doing about 10-15 shows and was away almost every weekend.

58. At some time between 1994 and 1996, a lease of a restaurant at 318, Lewisham High Street was purchased by Wanda and her then partner Mr Paul Cottrell. It is unclear (a) what the purchase price was (£20,000, £25,000 or £50,000) and (b) what the respective contributions of Wanda and Mr Cottrell were. (At various points Wanda has said that she paid £15,000 or £20,000.) The restaurant that then operated from the premises was called Siam House. The restaurant business was operated and owned by a company called Candlelight Catering Limited (“CCL”). It was incorporated in May 1996. It has since been dissolved and records from Companies House are not available or not readily available. I am told that CCL was jointly owned by Wanda and Mr Cottrell and each of them were directors. However, the records available to me suggest that Wanda was the sole director. I do not have any contemporaneous documents recording the identity of the shareholder(s) of what were apparently the two issued shares of £1 each.
59. The Lewisham restaurant business, ultimately, was not successful. Wanda puts this down to her being stretched too thinly, covering also her cleaning business and outdoor catering business and because Mr Cottrell went to work in Thailand for some years as a civil engineer.
60. In 1996, the cleaning business S&V Cleaning Services was sold. Wanda says that the overall sale proceeds were some £60,000 but that the sale proceeded by way of a sale of individual contracts at a time and with staged payments of the sale price for each contract. Ekk says that he was told by Mr Cottrell that the sale price was nominal. An email dated 6 March 2021 from Mr Cottrell in the trial bundle says that he (Mr Cottrell) was “informed” that her accountant organised a nominal purchase price. By whom, when and in what circumstances he was so informed is unclear and whether this is a reference to what the accountants arranged for tax purposes is unclear. I do not consider that this double hearsay statement carries any significant weight. I accept Wanda’s evidence that the sale proceeds were substantial and in the overall region of £60,000. After this, Wanda says, and I accept, that she had about £150,000 in hand because she also had £90,000 or so in savings at the time.
61. 1, Dean Close was sold in 1997. On 30 December 1997, the completion of the sale of 1 Dean Close took place at a price of £175,000. Wanda moved into 2, Chargoave Place and paid off the balance of the mortgage on that property. At this time, she says, she had some £250-300,000 in the bank and in cash. I accept her evidence that she used to deal extensively in cash (for example in selling her cleaning business). Although her tax returns do not show the sort of income that she has spoken to I consider that this is largely reflective of undeclared cash earnings.
62. In December 1998, Ekk (then aged 25) married his first wife, Nok. In his written evidence, he says that at his time he was looking to start his own restaurant business. His mother, he says, offered to give him money to do this. He says he then started to look around for suitable venues. Wanda denies offering to give him money to start his own business. She says that she did not consider him to be good with money.
63. At some time between 1997 and 1999, the business (and lease) at 318, Lewisham High Street was sold. The consideration for the assignment for the lease was £27,000. Candlelight Catering Limited was struck off the register and then dissolved in February 2000. Wanda said that ultimately no overall loss was sustained and I accept her evidence on this point.

64. By February 1999, Ekk and Nok were using 2 Chargrove Close, London SE16 as their address on legal documents. Wanda says that they lived there rent free.
65. In 1999, Jerry got married in Malaysia. Wanda, Ekk and Nok all attended. In that year Jerry and her husband set up a computer software company. It never really took off and ultimately failed. She accepts that she asked her mother for a loan, which her mother made, but this did not prevent the business failing. There is a dispute between her and Ekk as to the amount of the loan. She says £50,000, he says she asked for £100,000. She says that as she recalls the loan was paid to her in tranches and she believes that this was from a EUBC bank account.

**(2) 2000 to August 2001: Incorporation of Euro Union Based Company Limited (“EUBC”); Acquisition of 14 Charlotte Street; Establishment of Thai Metro restaurant**

66. A restaurant, called Thai Metro, was established at 14 Charlotte Street, London W1. A lease of those premises was acquired for that purpose. It is accepted that the lease was acquired beneficially by Wanda and in her name. The restaurant business was operated through and owned by a company called Euro Union Based Company Limited (“EUBC”).
67. At this stage, Wanda cut back on her festival work (though it may not have concluded until 2008 or so) and she continued with a market stall that she ran, although she stopped the market stall by some time in about 2001.
68. Wanda says, in effect that the business, lease and company were hers (directly or indirectly). Ekk, on the contrary, says that, other than the lease, the same were acquired in part from money gifted to him by his mother but that the assets were all his own and, he says, it was he who set up and ran the restaurant as owner. The remaining money to enable this to happen, says Ekk, came from him.
69. As regards EUBC, the documentation available at trial shows that this company was incorporated on 16 March 2000. Incorporation was effected by RMH Accountants of Aldershot (“RMH”). The subscriber to the memorandum was Ekk who agreed to take 100 Ordinary shares of £1 each. The initial directors were Ekk and a Ms Hirji of RMH. The company secretary was Ekk’s wife. Ms Hirji was probably made a director so she could make the appropriate declaration required for incorporation. She subsequently appears to have resigned as a director. In an annual return as a 28 February 2001, Ekk is shown as sole director.
70. Although, in light of the other evidence, I have doubts that shares were ever issued or indeed transferred in EUBC, it was not suggested by any party that shares in EUBC had not been issued and transferred. Accordingly, I assume regularity and that they were indeed issued and the subject of transfer as alleged by Ekk.
71. By letter dated 15 June 2000, Laurence Bird & Co, Chartered Surveyors and acting for the landlord of 14, Charlotte Street, sent to Ekk proposed Heads of Terms following a meeting the day before. The proposal was that 14, Charlotte Street (including basement) would be leased to a new company but that, pending its identification, negotiations would be conducted by Ekk on behalf of the proposed grantee. The lease would be a 10 year one, initially at a rent of £50,000 pa but eventually rising to £70,000

a year. There would be a premium of £50,00 for the grant of the lease and a rent deposit paid of £12,500.

72. Ekk accepts that the lease was taken by Wanda in her own name and that she was the beneficial owner of the same (that being agreed between them) and that she paid the bulk of the premium, rent deposit and one quarter's rent in advance, a total of £75,000. His evidence and pleaded case were that she paid the full £75,000. His more recent evidence was that she paid only £60,000 of this sum.
73. Ekk denies Wanda's case that she paid to renovate and fit out the restaurant or that such costs were anywhere near the region of £55,000 that she gives evidence to. He says costs were minimal (a few thousand pounds) and works were done on a shoestring, all paid for by him.
74. On 14 August 2000, Ekk's wife, Nok, is shown by filed returns (288a and 288b) as having been replaced as secretary of EUBC by Wanda. The returns however appear to have been lodged on 20 December 2000 and I find that the appointment/removal were backdated from this date. Wanda says that she knew nothing about this in August 2000 and I accept her evidence.
75. An extract from an accounting ledger also suggests that the first week of trading for the restaurant, in the sense of the restaurant being open to the public, was the week commencing 14 August 2000.
76. In her witness statement, Jerry says that she was not present in the UK at the time of the opening of Thai Metro at 14 Charlotte Street, and that at about that time there was not much communication between her on the one hand and Ekk and/or her mother on the other.
77. Wanda says that after the opening of the restaurant, her outdoor catering events work was cut back but still continued.
78. Ekk says that the restaurant was always operated through EUBC and his mother's suggestion in her early evidence that it was first operated by her as sole trader and then transferred to EUBC is clearly incorrect. As regards this, I accept Ekk's evidence on this point but do not consider that this point fundamentally undermines the overall credibility of Wanda's evidence. This is an example of a person (Wanda) trying to remember events of over 20 years before in circumstances where documents were not initially available to assist in memory recollection and where she was remembering what Ekk had told her and not directly concerned in the legal side of setting up the company. Further, it makes sense in the context of Wanda's evidence that she was told about a company and shares being in her name sometime after the business had been set up and was running (see further later in this judgment).
79. In about November 2000, (Helen says 17 November) Ekk started a relationship with Helen. He later married Helen. There was a later period when Ekk started a relationship with a woman called Tanya. His relationship with Helen was then on rather rocky ground, but it has since strengthened.

80. An annual return for EUBC showing corporate information as of 28 February 2001 (and signed on 9 March 2001) shows Ekk as sole director and as the holder of the 100 Ordinary Shares of £1 each in the capital of EUBC.
81. The accounts of EUBC for the period from incorporation of 17 March 2000 to 31 March 2001 show Ekk as sole director. They were signed off on 9 January 2002. The Director's Report is apparently signed by Wanda as secretary. The balance sheet is signed by Ekk as director, The balance sheet shows net liabilities of £755. The profit and loss account shows turnover of just over £210,000 and an operating loss of £855. The director's report contains the statement:
- “The director holding office at 31 March 2001 did not hold any beneficial interest in the issued share capital of the company at 17 March 2000 or 31 March 2001.”*
82. An Annual Return for EUBC showing corporate information as at 28 February 2002 (and signed on 8 May 2002) shows the 100 Ordinary Shares of £1 each having been transferred to Wanda on 1 March 2001.
83. According to Ekk the transfer by him of the 100 shares in EUBC to his mother on 1 March 2001 was effected on his accountant's advice to avoid claims being made to the same by Nok in any divorce. He said in his witness statement dated 24 February 2021 that that was all explained to his mother who knew that she was holding the shares for Ekk and that he remained the owner of them:
- “She was there when we signed the transfer forms” with his accountant “I remember the occasion. Ms Mawji [the accountant] asked me, in the presence of my mother, ‘do you trust your mother’ I said, “if I can't trust my mother, who can I trust”.*
84. In her witness statement, Wanda said that she had no recollection of this transfer at all and that she had only recently learned from these proceedings that Ekk had initially allocated the shares to himself and then, apparently, transferred them to her later on.
85. According to Wanda, Ekk had approached her in late 2000 and suggested that Thai Metro be run through a limited liability company of which she would own all the shares because she had put in all the money. She said that she would never have agreed to allow the business to be run by a company of which Ekk was sole shareholder and director. This is consistent with her original evidence that (she thought) the restaurant had started running first and only later been incorporated. I do not consider that the timing on this issue is relevant in determining ownership and, as I have said, I do not find that the issue assists on issues of credibility of witnesses.

### **(3) August 2001 Incorporation of Thai Metro Ltd**

86. TM Ltd was incorporated on 29 August 2001. The relevant documents leading to incorporation show incorporation again being handled by RHM (by that stage called RHM Mawji).
87. In these proceedings, there was a question about the apparent signatures of Wanda on a number of documents. These included the documentation submitted to achieve incorporation of TM Ltd. The position was considered by a report dated 21 June 2022

of a jointly appointed expert, Ms Ellen Radley, which report was in evidence before me (the “First Expert Report”). Ms Ellen Radley is a forensic document examiner at the Radley Forensic Document Laboratory Limited. She submitted two reports dated respectively 21 June 2022 and 22 September 2022. Ultimately these reports were not challenged by Ekk.

88. Certain signatures were accepted by Wanda as being hers, others were challenged. In relation to the challenged signatures the conclusions of Ms Radley that there is “very strong evidence” to support the proposition that certain signatures of Wanda were forgeries. The parties both accept that the relevant signatures identified as ones where Ms Radley considered there to be “very strong evidence” of forgery are indeed forgeries. Ekk now accepts that it is most likely that he is the person that made the forged signatures (at least other than the TM incorporation documents). When I speak of forgeries below, it is on the basis of the explanation that I have just given.
89. The relevant Form 10 in relation to TM Ltd showing first directors and secretary and location of registered office show the secretary as Wanda and the directors as Ekk and Ms Hirji. The signed consent of Wanda to be secretary is a true signature by her. Furthermore, her apparent signature on the form in her capacity as subscriber is also her true signature. Next to her signature as subscriber, the date has been amended and the amendment apparently signed by Wanda. However, that signature is a forgery.
90. The memorandum of association shows two apparent signatures of Wanda agreeing to take 100 Ordinary Shares of £1 each. One of those signatures bears a pictorial similarity to Wanda’s signature but the other bears no significant similarity to her signature and appears to be either a writing of her name or a representation of a signature in her name. Each of those signatures is a forgery. The articles of association also contain two apparent signatures of Wanda, each of which is a forgery. They have the same characteristics of the two signatures on the memorandum of association. As I understood it, having denied any forgery, once the First Expert Report was available, Ekk accepted that the relevant signatures were forgeries but in his written evidence he asserted that he was not responsible for these particular forgeries (though accepted personal responsibility for the others) and suggested that the individual from the accountants may have been responsible, in that it saved them time in going back to get extra signatures and/or signatures needed but not obtained. I reject this supposition. In my judgment it is more likely that the accountants acted properly and that any forgery was that of Ekk.
91. According to Ekk, the shares were shown as to be taken by Wanda for the same reason that shares in EUBC Limited were transferred to Wanda, namely to defeat any potential claim of Nok against the same on any divorce.
92. The necessary statutory declaration in support of the incorporation was made by Ms Hirji.
93. Mrs Hirji is shown as having ceased to be a director of TM Ltd on 31 August 2001.

**(4) 2002: Ekk purchases lease of 13, Royal Mint St, TM Ltd accounts contain note that Ekk has no beneficial interest in the shares in it**



94. The annual return for Euro Union Based Company Limited made up to 23 February 2002 (and signed by Ekk on 8 May 2002) shows the 100 issued shares of that company to have been transferred from Ekk to Wanda by transfer dated 1 March 2001.
95. On 24 April 2002, Ekk was registered as the proprietor of a long lease of the third floor of 13, Royal Mint Street, London, E1. The purchase price was £78,000.
96. The annual return for TM Ltd made up to 10 August 2002 shows (among other things) Wanda as the holder of the issued 100 shares of £1 each in the capital of the Company.
97. The accounts for TM Ltd for the period from incorporation (29 August 2001) to 31 August 2002 signed off on 6 October 2002 are dormant company accounts and show a balance sheet of £100 of assets (being a debt) and share capital of £100. The directors' report is signed by Wanda as secretary and the balance sheet by Ekk as director. The director's report contains the statement: "*The director holding office at 31 August 2002 did not hold any beneficial interest in the issued share capital of the company at 29 August 2001 or 31 August 2002*". The joint expert's opinion is that there is very strong evidence to support the proposition that Wanda did not write the signature which appears to be her signature at the foot of the director's report. In the circumstances previously explained, I take this to be a forgery by Ekk.
98. Subsequently, dormant company accounts for TM Ltd were filed for each of the relevant accounting years until that ending 31 August 2016, although they do not contain as much detail as the first set and do not refer to the beneficial ownership of the shares in TM Ltd.

**(5) 2003: incorporation of Anglo Thai Ltd and Finfish Ltd**

99. Anglo Thai Ltd was incorporated on 29 January 2003. According to Ekk's written evidence, the company was incorporated to take over the Thai Metro restaurant, EUBC Ltd having been struck off for failing to file accounts.
100. The documents submitted to achieve incorporation show Wanda as company secretary and Ekk and Mrs Hirji of RHM as directors. RHM at this time was called, or carried on this part of its business through, Auditax Company Ltd. Mrs Hirji signed the relevant statutory declaration. The Memorandum of Association of the company apparently shows Wanda as subscriber for 100 ordinary shares of £1 each. A similar box is set out at the end of the articles of association. The documents are dated (or re-dated) 20 January 2003.
101. According to Ekk he arranged for Wanda to be the subscriber for shares in Anglo Thai Limited for the same reason as he had transferred shares into her name in the case of EUBC: namely to avoid successful claims in relation to the same by his wife in any divorce proceedings. He "*did not want the business to be an asset in my divorce. My mother knew this.*"
102. According to Wanda, Anglo Thai Ltd was incorporated on her behalf as "her" company.
103. Mrs Hirji is shown at Companies House as having resigned as a director of Anglo Thai Ltd on 10 February 2003.

104. Finfish Ltd was incorporated on 12 August 2003. Ultimately, it ran replacement restaurants to Thai Metro at 14, Charlotte Street after Thai Metro restaurant moved to 38 Charlotte Street in the Autumn of 2003. The first restaurant was called “Fin restaurant” and opened in 2004.
105. The documents lodged to effect the incorporation of Finfish Ltd were dated 6 August 2003. Those documents showed that the initial directors were to be Ekk and Ms Hirji of RHM. The initial secretary was to be Wanda. Wanda’s apparent signature on the relevant Form 10 appears in two places. First, in the box signifying consent to act as secretary and secondly, in the box to be signed by the subscriber. Following receipt of the First Expert Report, it is common ground that these signatures were probably forged by Ekk. The memorandum of association and articles of association each contain an apparent signature of Wanda, agreeing to subscribe for 100 Ordinary Shares of £1 each. Again, following receipt of the First Expert Report, it is common ground that these signatures too are forged, probably by Ekk.
106. According to Ekk he arranged for Wanda to be the subscriber for shares in Finfish Ltd for the same reason as he had transferred shares into her name in the case of EUBC: namely to avoid successful claims in relation to the same by his wife in any divorce proceedings. Again, he “*did not want the business to be an asset in my divorce. My mother knew this*”.
107. According to Wanda, Finfish Ltd was incorporated on her behalf as “her” company.
108. Ms Hirji is recorded at Companies House as having resigned as a director of Finfish on 14 August 2003.
109. As I have said, in the Autumn of 2003, the Thai Metro restaurant business moved to 38, Charlotte Street. This involved the acquisition, by way of an assignment, of the lease of premises at 38, Charlotte Street. According to Ekk he paid the premium for the assignment. An unexecuted Rent Deposit Deed is in evidence to be entered into by the landlord and by Wanda and Ekk as tenants. It provides for a sum of £17,812 to be paid into a bank account and charged to secure payment of rents under the assigned lease of the basement and ground floor of 38, Charlotte Street. However, it seems fairly clear that legal title to the lease when acquired was vested in Wanda’s sole name. A letter dated 27 July 2005 from Leslie Aarons, Chartered Surveyor, on behalf of the landlord addressed to Mrs Vanida Walker refers to the lease dated 3 August 2001 of the premises at 38, Charlotte Street held by Wanda and proposing a new rent in the light of the rent review provisions in the lease.
110. In the latter quarter of 2003, starting in about October, steps were taken to transfer title to 2, Chargrove Close from Jerry to Wanda and then for Wanda to mortgage the same to raise over £200,000.
111. Ekk says that this was done to enable Jerry to repay him a debt that she owed to him. In particular he wanted this money to assist on a purchase by him of Flat 22 BM which he was then interested in buying. Wanda says that this was done in part to raise money for Anglo Thai Ltd because Ekk told her it was low on capital because of the purchase of the lease of 38 Charlotte Street, and the costs of the move. The other reason was to raise funds to acquire Flat 22 BM. Wanda says that, as far as she is aware, Ekk found

out that Flat 22 BM was for sale in early 2004 and approached her to buy it as an investment for herself and she agreed.

112. Ekk also says that he asked Wanda to buy Flat 22 BM in her own name but on his behalf because he did not want Nok to know about it or claim it in the divorce proceedings between them. He says that Wanda agreed to this.
113. On 19 December 2003, Wanda as tenant signed a 20 year lease of the ground floor and basement of 14, Charlotte Street and the basement of 14A Charlotte Street at an initial annual rent of £52,000 per annum.
114. On the same date Wanda signed a new 20-year lease of the ground floor shop premises at 14A Charlotte Street at an initial rent of £18,000 per annum. It is common ground that Wanda was the beneficial owner of this lease.

**(6) 2004: acquisition of Flat 22 BM, Ekk purchases Flat 6, Pembridge Gardens in his own name;**

115. Sometime in 2004, Finfish Ltd opened “Fin Restaurant” at 14, Charlotte Street.
116. The annual return for Anglo Thai Ltd showing information as at 29 January 2004 shows, among other things, Wanda as the holder of the issued 100 Shares in it of £1 each.
117. On 3 February 2004, Ekk purchased, in his own name, the residue of a 99 year lease (commencing 30 September 1981) of the first floor Flat 6, 25 Pembridge Gardens for £225,000 using a mortgage advance of £168,725 from the Abbey National plc and, he says, the proceeds of sale of his flat in Royal Mint Street. There is in evidence a draft uncompleted contract of purchase in relation to this purchase showing Wanda as the purchaser. She says she knew nothing about this at the time.
118. Abbreviated accounts for Anglo Thai Ltd for the period from incorporation, 29 January 2003 to 31 March 2004 were signed on 2 November 2005. They show net assets of £6,788 and a negative profit and loss account figure on the balance sheet of £6,888. 100 Ordinary Shares of £1 each are said to have been issued fully paid up at par in cash during the accounting period.
119. Meanwhile, the acquisition of Flat 22 BM was underway. By letter dated 9 March 2004, Mr Lamb of Dilworth Lamb & Co wrote to Wanda enclosing a completion statement for her (and Ekk) to peruse. The amount due on completion from Wanda personally was just over £132,000, subject to any variation to take account of apportioned rent and service charges. The purchase price was £485,000 and was to be met by sums due from Wanda personally and a mortgage of £363,680 from The Mortgage Business, the mortgage was a let to buy mortgage, as confirmed by a letter from The Mortgage Business to Wanda dated 6 April 2004. The leasehold purchased was a long lease with (at that stage) some 994 years or so to run. The mortgage was repayable over 14 years with an initial monthly mortgage payment of £3,252.87.
120. Wanda says that Ekk’s assertions that she agreed to purchase Flat 22 BM in her name and hold it on Ekk’s behalf (as part of a scheme to conceal assets from Nok) are completely untrue. She says there was never any such discussion and at no time did Mr

Lamb mention anything to her about her holding Flat 22 BM on Ekk's behalf or ask her to sign any document to that effect.

121. Completion of the purchase of Flat 22 BM apparently occurred on 23 April 2004 and Wanda was registered as proprietor on 13 May 1994. Wanda says that she believes that, as well as the mortgage advance on Flat 22 BM, some £133,270.86 was found by her from the sums raised by mortgage advance on 2 Chargrove Close, the balance of such mortgage monies being used, as she understood it, in connection with the move of Thai Metro restaurant to 28 Charlotte Street and the renovation of 14, Charlotte Street though she has no direct knowledge as to how the money was applied. Ekk, she says, managed the whole process and organised the mortgages and so forth.
122. Abbreviated accounts for Finfish Ltd for the period from incorporation (12 August 2003) to 31 August 2004, signed on 2 November 2005, show 100 issued shares with the company having fixed assets of £58,732 and net liabilities of £16,176.
123. A document dated 8 September 2004 and in the name of Wanda as borrower, is a mortgage deed in relation to Flat 22 BM in favour of Bristol and West plc. Wanda's signature is witnessed by Mr Lamb. Ekk signed a Deed of Consent, comprising part of the relevant form. His signature is witnessed by Mr Lamb. The consent is as a person who is or may go into actual occupation of the property. Wanda says that this was a remortgage of Flat 22 BM.

**(7) 2005: Finfish opens new restaurant at 14, Charlotte Street ("Chu Chi"); Annual returns for Anglo Thai and Finfish show share transfers of shares in each company by Wanda**

124. At some time in 2005, Finfish Ltd opened a new restaurant at 14, Charlotte Street, "Chu Chi". According to Ekk, the Fin restaurant essentially failed.
125. The annual return for Anglo Thai Ltd showing information as at 8 January 2005 (and lodged on 28 January 2005) shows, among other things, Wanda as the previous holder of 100 £1 shares with the annotation that she had "transferred" the same but the return does not show the identity of the person to whom the shares were purportedly transferred.
126. Abbreviated accounts for Anglo Thai Ltd for the year ended 31 March 2005 (signed off by Ekk as director on 18 January 2006) show net assets of £84,118.
127. The annual return for Finfish Ltd showing information as at 12 August 2005 (and lodged on 17 November 2005) shows Wanda as having transferred the 100 Ordinary Shares issued to her but the name of the transferee is not included in the return.
128. Abbreviated accounts for Finfish for the year ended 31 August 2005 (signed on 30 June 2006) show a balance sheet with net liabilities of £72,130. They do not give details of the shareholder.

**(8) 2006 Opening of Siam Central run by Finfish Ltd; apparent disposal of 60 shares in Finfish to Anglo Thai; Acquisition of 3, Chargrove Close; Ekk recorded as replaced as director of Finfish Ltd and Anglo Thai Ltd by Mr Wilford; Ekk opens takeaway fast food and Sushi business run through Scoffle Ltd in October**

129. At some time in 2006, Chu Chi closed, again having failed as a venture. Finfish Ltd opened a new restaurant, Siam Central, based on a concept of “Thai tapas”. Wanda says that she effectively was the moving force in the opening of the new business and that it was she who persuaded the chef, Kochakron Trachoo (“Nong”), to come and work for her there. They had met when Wanda was running the Siam House restaurant in Lewisham.
130. Also, in about 2006, Helen qualified with an accountancy qualification. She began to be involved in the financial side of the restaurant businesses, helping collect and count the takings and organise the distribution of tips, then doing VAT returns and then (in about April 2007) the payroll. She later assisted in preparing draft accounts to submit to the accountants.
131. The annual return for Anglo Thai Ltd for the period ending 29 January 2006, and filed on 10 March 2006, shows Wanda as holding the 100 Ordinary Shares in Anglo Thai Ltd.
132. Abbreviated accounts for Anglo Thai Ltd for the year ended 31 March 2006, signed off by Ekk as director on 30 January 2008, show balance sheet net assets of £113,103. Finfish Ltd is said to be its wholly owned subsidiary, having been acquired at a cost of £100 during the year.
133. According to Wanda, space for storage had become tight with the two successful businesses running at Charlotte Street. 3, Chargrove Close came on to the market in about April 2006 and she decided to purchase it to use it for storage. She says that she discussed it with Ekk who said that, at 59, she was too old to get a mortgage so the house would need to be purchased in his name as he would be able to get a mortgage. She said she was prepared to allow matters to proceed in this way but on the basis that she remained the true owner (as had been the case with 10 Harcourt Road). Ekk says that the purchase was always intended to be one by him and that he obtained both legal title and beneficial interest.
134. By letter dated 10 May 2006, Halifax plc made a mortgage offer of a loan of secured on Flat 6, 23 Pembridge Gardens to Ekk. The proposed loan was of £243,500 (plus fees) over a 23-year term on a repayment basis. A redemption statement from Abbey National as at 3 June 2006 in relation to its mortgage over Flat 6, Pembridge Gardens suggests that the sum required to redeem was £161,142.63 so that the remortgage would release funds of about £80,000.
135. By letter dated 20 June 2006, Mr Lamb wrote to Ekk about the latter’s divorce. He confirmed (previous) advice that the Court would need to be satisfied that Nok had received the relevant court papers or that it was appropriate to proceed without serving the papers and to that end to explain to the court the enquiries that had been made. The letter seems to have been prompted by Ekk having telephoned Mr Lamb with news that Nok’s mother had informed him, Ekk, that Nok had returned to Thailand with no intention of returning and that she had given birth there. According to Ekk, by the middle of 2006 he was no longer worried about Nok seeking his assets in their divorce.
136. By letter dated 4 July 2006, the Mortgage Trust Limited advised Ekk of its mortgage offer involving a mortgage loan secured over 3, Chargrove Close to enable the

acquisition of 3, Chargrove Close to proceed. The offer was for an interest only mortgage of £272,000, with a 25-year term.

137. According to an extract from the Land Registry, Ekk was registered as proprietor of 3 Charlgrove Close on 28 July 2006, following completion of the purchase for £320,000 on 14 July 2006. A charge dated 14 July 2006 in favour of Mortgage Trust Limited was also registered on 28 July 2006. The mortgage loan seems to have been an interest only product.
138. According to Wanda, she persuaded the owner to drop the £330,000 asking price by £10,000 on the basis that she (the owner) did not go through estate agents. The £10,000 was then split, £5,000 each as to purchaser/vendor. As regards this it seems from an earlier mortgage offer letter dated 2 June 2006 that at that point the purchase price was envisaged as being £330,000 so the price seems to have been negotiated down by £10,000 by someone.
139. In addition, Wanda says that she paid some £20,000-£30,000 of the deposit. At the time she thought that the balance of the purchase price had been met in full by the loan secured by mortgage over the property but now understands that the mortgage offer was £274,000, which suggests that Ekk may have found some personal money (which on the figures, and depending on the precise sum paid by Wanda, would be about £16,000 to £26,000) to make up the balance.
140. Wanda says that 3 Chargrove was rented out and the garage and outside area used for storage. The income from the tenants and the cash flow of the restaurants both assisted in paying the mortgage instalments.
141. From July 2006 to December/January 2007 a Mr Roy Wilford is shown at Companies House as being the sole director of each of Finfish Ltd and Anglo Thai Ltd, replacing Ekk in this position.
142. On 5 August 2006 Forms 288b recording the termination of the appointment of Ekk as a director of each of Anglo Thai Ltd and Finfish Ltd on 10 July 2006 were lodged at Companies House. Forms 288a recording the appointment of a Mr Roy Wilford on 10 July 2006 as a director of each of Anglo Thai Ltd and Finfish were also lodged at Companies House on 5 August 2006. The forms were apparently signed by Wanda.
143. There is a dispute as to whether Wanda lodged the relevant notices of her own volition and that Ekk did not know anything about it until he discovered the position later, as he says or whether, as is Wanda's case, she was acting at the behest of a third party: probably Ekk. Nothing much turns on this issue other than the credibility of the witnesses.
144. There is some mystery about these recorded changes in directors. In her Affidavit made on 13 November 2020, Wanda said that the Ekk resigned his directorships of the two companies and had nothing whatsoever to do with the restaurant businesses for a period thereafter. Ekk suggested that Wanda had "removed" him as director and appointed Mr Wilford. She, however, said that although the signatures on the relevant forms appeared to have been hers, she doesn't remember anything about them and would most probably have signed them if put in front of her by Ekk, which is what she thinks must have happened. I conclude on the balance of probabilities that Wanda's

evidence is to be preferred. Apart from anything else I do not consider that Wanda would have had sufficient knowledge and ability to obtain relevant companies act forms and to lodge them at Companies House unaided and/or at her own volition.

145. The annual return for Finfish Ltd for the period ended 12 August 2006, filed on 12 March 2007, shows 40 shares in Finfish Ltd as having been transferred to Anglo Thai Ltd in that period and Wanda as retaining 60 of the Ordinary Shares of £1 each.
146. According to Ekk's witness statement dated 24 February 2021, he effected this transfer on the advice of his accountants and it involved a decision of his to convert some inter-company loan into a shareholding. (In his fourth witness statement he changed this to advice that it would result in loans to Finfish being loans in a subsidiary. It is unclear why this would have been advised.) It also, he says, confirms that he was still acting as a director at this time and did not know he had been "removed" from that office. Given the general discrepancy in record keeping in relation to shares in the companies I do not consider that this evidence causes me to change my conclusion as to how the alleged change in directors came about. In the accounts of Anglo Thai Ltd the shares in Finfish are shown as having been acquired at par value, which casts doubt on Ekk's version of events that the shares involved conversion of inter-company debt into equity. There is also the discrepancy between accounts saying that Finfish was a wholly owned subsidiary of Anglo Thai Ltd and the returns as to transfers of shares in two tranches and over time.
147. Abbreviated accounts for Finfish Ltd for the year ended 31 August 2006, signed on 19 June 2007, show a balance sheet with net liabilities of £74,603 and, by note 4, that Finfish was a "wholly owned subsidiary Anglo Thai Ltd."
148. On 27 October 2006 Scoffle Limited, a company of which Ekk was sole director and a 98% shareholder, was incorporated. This company operated a business as a sushi café (see e.g. Annual Return for Scoffle Limited for 7 November 2007). Eventually it ran four takeaway sites under the brand name "Papaya". It also traded under the name "Roots & Leaves". Wanda accepts that this was entirely Ekk's business venture and that she had no part in it (financially or in managerial terms).
149. On 1 December 2006, according to returns at Companies House, Ekk is shown as having been reappointed a director of Anglo Thai Ltd and Mr Wilford as having resigned as director of that company.
150. The returns were made electronically (recorded as received at Companies House on 31 January 2007) and there is no contemporaneous evidence as to which individual made them.
151. According to returns at Companies House, Mr Wilford is also shown as having resigned as a director of Finfish Ltd on 31 December 2006.

**(9) 2007: Jerry purchases property in Malaysia; Ekk's divorce finalised**

152. From 1 January 2007, Ekk is shown at Companies House as having been reappointed director, and thereafter being the sole director, of Finfish Ltd. The relevant electronic return is recorded as having been received by Companies House on 12 March 2007.

153. It is common ground that Ekk was responsible for lodging the notices of (re) appointment of himself as director of Anglo Thai Ltd and of Finfish Ltd and the removal/retirement of Mr Wilford as director.
154. The annual return for Anglo Thai Ltd for the period ending 31 January 2007 shows Wanda as the holder of the 200 issued Ordinary Shares in Anglo Thai Limited.
155. Abbreviated accounts for Anglo Thai Ltd for the year ended 31 March 2007, lodged at Companies House, show balance sheet net assets of £166,210. They record their approval by the board on 30 January 2008 and are signed by Ekk. The fuller version of the financial statements was in evidence. They show at Note 13 under the heading “Controlling interest”:

“The Company is ultimately controlled by its shareholder, Ms V. Walker”.

156. Jerry is recorded at Companies House as having been appointed a director of each of Anglo Thai Ltd and Finfish Ltd on 22 May 2007. She is recorded as resigning from each such position on 31 December 2007. In her witness statement she says that she recalls being asked to become a director of Anglo Thai Ltd and Finfish Ltd on a visit to the UK in May 2007. She cannot now recall whether a reason for this was given to her but she remembers agreeing and that she signed some forms in this connection. Sometime after December 2007, she found she had been removed as a director but does not believe that she was told about this at the relevant time.
157. The annual return for Finfish Ltd for the period ending 12 August 2007, filed on 25 January 2008, shows all the shares in Finfish Ltd as then being held by Anglo Thai Ltd. On the face of things this means that the remaining 60% still treated as being held by Wanda had been “transferred” in this period.
158. In her affidavit, Wanda had said that she knew nothing about any such transfer had not authorised it and had executed no share transfers.
159. In his witness statement dated 24 February 2021, Ekk said that after his divorce was finalised, he took steps to transfer the ownership of the companies back to his name. This apparently is part of those steps. He went on to say that his mother knew about the steps to transfer the shares and she “*co-operated*” because it was always known between them that the companies “*were my businesses*”.
160. Abbreviated accounts for Finfish Ltd for the year ending 31 August 2007 (and signed on 29 June 2008) show Finfish Ltd to be the wholly owned subsidiary of Anglo Thai Ltd. The signature of Wanda as secretary to the director’s report is agreed to be forged.
161. In June 2007, Ekk says that he and Nok were finally divorced.
162. At some time, Ekk says 2006, Jerry 2007, Jerry needed money to buy a house in Malaysia. It is common ground that she required £60,000. Jerry says that the £60,000 was found (1) as to £30,432.75 from her surrendering and encashing her Standard Life endowment policy no. X21751703, payment being received on 8 October 2007 and (2) as to £28,854.50 from Wanda which represented the part proceeds of a surrender and encashment of a similar policy by Wanda (no. X18458814) which had a maturity value of £50,000 and which was received in early 2008



**(10) 2008: purported transfer of Anglo Thai shares to Ekk; acquisition of 78, Hermit Road.**

163. An annual return for Anglo Thai made up to 25 January 2008 and filed on that date shows the 100 Ordinary Shares of £1 in Anglo Thai Limited to be held by Ekk. The return suggests that they were “Disposed of in period on 21/01/08”.
164. In her affidavit, Wanda referred to the 2009 annual return (which also showed Ekk as the sole shareholder of Anglo Thai Ltd). She said that she knew nothing about this, did not authorise it and executed no share transfers.
165. In his witness statement dated 24 February 2021, Ekk appears to deal with this purported transfer as being effected after the divorce from Nok was finalised when he said he took steps to transfer the ownership of the companies back to his name:

*“My mother knew about them and cooperated because it was always known between us that the companies were my businesses.”*
166. By report dated 4 February 2008, Hockleys Surveyors provided a report and valuation to the Norwich and Peterborough Building Society with regard to an application by Ekk for a mortgage in relation to 78, Hermit Road, London E16. The property is described as being a mid-terrace retail/restaurant with first floor residential, being a flat. The ground floor was then fitted out as a takeaway.
167. By letter dated 13 February 2008, Ekk received a mortgage offer as regards a proposed purchase of 78, Hermit Road. The proposed loan was of £210,000 secured by mortgage over the property and a life assurance policy covering the life of Ekk, repayable over a 25 year term.
168. An extract from the Land Register shows Ekk to have been registered as proprietor of the freehold land being 78, Hermit Road on 22 April 2008. The purchase price paid on completion on 28 March 2008 is recorded as being £285,000 with a charge in favour of Yorkshire Building Society (trading as Norwich and Peterborough Building Society) also being registered at the same time. A later statement from the Norwich and Peterborough Building Society states that the loan amount was £210,000, the loan start date being 26 March 2008.
169. The solicitors dealing with the purchase for Ekk were Sandon Robinson. Their completion statement reveals the purchase price to be £285,000 with further fees and costs of £11,177.47, providing a total cost of £296,77.47 in relation to which there had been a payment on account of £800 so that after the mortgage advance a further sum of £87,707.47 was required. The contract appears to have been signed and exchanged on 27 March with completion being a day later.
170. According to Wanda, and as set out in her witness statement dated 8 November 2022, the circumstances of the purchase largely mirrored those of 3, Chargrove Close. Ekk told her that she was too old to get a mortgage on the property that it was proposed that she buy as an investment. Accordingly, he suggested that the property be put in his name and that he take out the mortgage. Wanda says that she paid £70,000 on 27 March 2008 and that most of the balance came from the mortgage loan in relation to the

property. She does not know where the balance of the purchase price came from. The Charlotte Street restaurants (or rather the companies owning those restaurants) paid the mortgage payments.

171. Wanda denied that the £70,000 that she paid was a repayment to Ekk of sums that Ekk had previously lent to her. As regards this, in his Defence, Ekk alleged that the £70,000 loan by him that he says she paid at this time (rather than it being a payment by her of part of the purchase price of a property she was buying) was the product of two loans: first, a sum of £13,000 that he had paid on Wanda's behalf for outside catering events in 2005 and £60,000 he had paid to Jerry at Wanda's request in 2006 when she was buying a property for herself in Malaysia. As regards the alleged £13,000 loan Wanda did not believe she had borrowed such sum or, if she had, that she would have left it outstanding for so long. As regards the sums needed by Jerry, the total was slightly less than £60,000 but was found by Jerry encashing an insurance policy and receiving just over £30,400 in October 2007 and by Wanda encashing an insurance policy on 21 February 2008 and receiving just over £28,800 which she then gave to Jerry. There is in evidence two letters from Standard Life confirming these two surrenders of policies and payment of the sums in question.
172. After the acquisition of 78, Hermit Road, Wanda says that everything to do with cooking and food preparation was moved from 2 and 3, Chargrove Close to 78, Hermit Road which was then used as a central kitchen to prepare food etc for the two restaurants in Charlotte Street and for Papaya and for storage purposes of Papaya. The first floor was rented out. The companies, she says, paid rent.
173. An annual return from Finfish for the period ending 12 August 2008 and lodged on 1 October 2008, shows Ekk as holding the entirety of the shares in Finfish, the note being that the 100 Ordinary Shares were held "as at 12 August 2008" and "disposed of" (presumably to Ekk by Anglo Thai Ltd) on 1 April 2008.
174. However, the accounts for Anglo Thai Ltd for the year ending 31 March 2009 still show Anglo Thai Ltd as holding 100% of the shares in Finfish Ltd as do the accounts for the years ending 31 March in each of 2010, 2011, 2012, 2013, 2014, 2015 and 2016. The entries in the accounts from 2017 are in a different form but still show balance sheet investments of £100 (the same amount as previously) in respect of group undertakings etc. This applies to the accounts for the years ending 31 March in 2017, 2018, 2019. In 2022 the £100 investment in Finfish is shown again in the notes to the accounts. The 2020 and 2021 accounts are insufficiently detailed to gain any assistance on the question.
175. Companies House records (in terms of confirmation statements) for Finfish Ltd show the shares in it all being transferred from Ekk to Anglo Thai Ltd on 1 September 2014 (see Confirmation Statement as at 12 August 2016, filed on 24 August 2016) (and thereafter there being no change in registered holder). However, this is inconsistent with an earlier annual return suggesting that up until 25 January 2016 the shares were registered in the name of Ekk (see annual return as at 12 August 2015, filed 17 September 2015)

**(11) 2009: Return of Jerry to UK; Wanda's will; Declaration of Trust Declaration of Trust of Flat 22 BM; purchase of 38 Charlotte Street funded in part by loan from Wisit**

176. In 2009, Jerry returned from Malaysia to live full time in the UK. She started working part time for Scoffle Ltd, helping out with the payroll for that company and also for Anglo Thai Ltd and Finfish Ltd. She also calculated the tips for the last two companies. She also handled the takings and deal with credit card issues in that connection. She says that she worked part-time from an office created in part of Flat 22 BM.
177. On 23 February 2009, Wanda made her (then) last will and testament. She left the leasehold property at 14 Charlotte Street and 38 Charlotte Street to Ekk and her freehold property at 2, Chargrove Close to Jerry. The remainder of her estate she left on trust for sale, the proceeds to be used to pay all relevant debts, testamentary expenses and inheritance tax and the residue for Ekk. The will is witnessed by a receptionist and conveyancing executive, both of Dilworth Lamb & Co., Orpington.
178. By deed dated 9 March 2009 and signed by Wanda and Ekk (the signatures being witnessed by Mr Lamb), the lease of Flat 22 BM was recited as having been owned legally and beneficially by Wanda since 2004 but that she wished to declare that she would thereafter hold the beneficial interest for Ekk. The Deed contains a declaration to that effect subject to a mortgage (said to be dated 8 September 2004 in favour of the Bank of Ireland, which was apparently registered as proprietor on 16 November 2007 as shown by an official copy of the register of title). Ekk also covenanted to pay outgoing and keep Wanda indemnified. A suitable restriction was then put in place on the Register by Dilworth Lamb & Co on behalf of Ekk. According to the evidence it was registered on 10 March 2009 and is to the following effect:

*“No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court”.*

179. According to a letter from Mr Lamb dated 12 March 2008 (which, as regards the year, appears to be a typo for 2009), the Declaration of Trust was executed by Wanda at Victoria Station. It appears to have been prepared by Dilworth Lamb & Co at the behest of Ekk and Dilworth Lamb & Co seem simply to have attended to its execution by Wanda rather than advising her in connection with the same (this analysis is suggested by their invoice to Ekk dated 9 March 2009 and sent under cover of the letter of 12 March).
180. Abbreviated accounts for Anglo Thai Ltd for the year ended 31 March 2009 as filed at Companies House, show the accounts to have been approved by the board on 27 January 2010 and signed by Ekk on 9 February 2010. The fuller version of the financial statements was in evidence. They show at Note 11 under the heading “Controlling interest”:

*“The Company is ultimately controlled by its shareholder, Mr Ekkachai Somboonsarn”.*

181. According to Wanda, as set out in her witness statement dated 8 November 2011, the opportunity to acquire the freehold of 38, Charlotte Street came up in 2009, the property being due to go to auction on 15 October 2019. She says that Ekk told her about the opportunity. She was keen to buy on the basis it would secure the future of the restaurants and provide income from the flats on the floors above the restaurant. She says that Ekk again told her that she was too old to get a mortgage and the purchase would have to go ahead in his name. At this time she had few savings left to supplement any mortgage. Ekk asked her to ask her sister, Achara and Acharas' husband Wisit for a loan of some 20 million baht (about £420,000).
182. Before approaching Achara and Wisit, Wanda says that she approached her step brother, Suchart, to see if he could help but he was not then in a position to repay her the loan of 6 million baht that she had earlier made to him after the death of her father in 2003.
183. She says she then went to see her sister in Thailand and they went to Macau on 22-23 September 2009. Whilst in Macau, she then raised the question of her borrowing some money from Wisit. Her sister suggested she speak to Wisit direct. Wanda says that she did this when she returned to Thailand on 23 September 2009. She says that Wisit agreed to lend money for the purchase of 38, Charlotte Street, they agreed interest at 10% per annum and Wanda explained that because Ekk was dealing with the purchase of 38 Charlotte Street the money would have to go to his bank account. The matter was then left to the children to organise the detailed arrangements, as she says is Thai custom once the elders have agreed something. Noo and Ann were to liaise with Ekk.
184. By email dated 7 October 2009, Ekk wrote to Ann thanking her for putting a proposal to her father whereby Ekk explained that the opportunity to buy the freehold at 38 Charlotte Street for £1.45 million had come up. Jerry had spoken before about the property being for sale at £2 million but after "careful consideration we thought this was too much for us". He said he would now like to buy the property and to that end to borrow the equivalent of £300,000 in Thai Baht. The proposal, as further detailed in an attachment, apparently involved some £145,00 deposit for No 38 Charlotte Street being paid from a Business Current Account and a further £300,000 from the family loan. The balance of the purchase price was to be found by way of mortgage loan of £1 million. The proposal was that repayment of the family loan would be over 4 years and that the loan would carry interest at 10%.
185. By email dated 9 October 2009, Ekk wrote to Ann thanking her again for helping him and setting out details of his bank account.
186. The freehold of 38, Charlotte Street was acquired by Ekk at the auction on 15 October 2009 for a sale price of £145,000 as shown by a sale memorandum. It appears that completion was some 6 weeks or so later.
187. By email dated 18 October 2009, sent to Ann, Ekk asked to borrow £300,000 by way of a family loan. He said that repayment would be in baht and that interest would be calculated at 10 per cent per annum of the outstanding balance. The email was copied to Jerry.
188. By email dated 29 October 2009, Noo sent Ekk a copy of the loan contract that she had drafted "according to Thai standard contract form". She went on to say that she had

“also translated each statement so that both you and your mom can understand”. The documentation, as signed, was transferred back to Thailand under cover of an email on 30 October 2009 (though there was then a request to re-sign a further document, which then happened). Noo indicated that Ann had said she would be able to send the money on the Monday (2 November 2009).

189. The final version of the agreement is in English in sections, with the Thai version under each section. It is dated 8 November 2009 and made between Ekk and Wanda as “the Borrowers” and Wisit as “the Lender”. The agreement contains terms (among others) whereby the Borrowers agreed to pay back to the lender 16,800,000 baht; interest at 10% per annum on any unpaid balance with the first payment on 8 November 2010; payments in instalments of 5,299,909 baht on 8 November each year so that the principal would be repaid in full within 4 years by 8 November 2013 and accelerated liability to pay the whole and provisions for default interest if payments were missed. The loan was received by Ekk in instalments in the early days of November 2009.
190. The mortgage loan offer of £840,000 secured on 38 Charlotte Street was made by Norwich and Peterborough Building Society by letter dated 11 November 2009.
191. A letter dated 20 November 2009 from Sandom Robinson (Ms Penny Nichols) to Ekk refers to a licence to assign and a Deed of Assignment for execution by Ekk and Wanda. The proposal seems to have been that Wanda would assign her interest in the lease of 38, Charlotte Street to Anglo Thai but remain guarantor of the tenant’s (or at least Anglo Thai’s) liabilities. The lease at this point had 20 years to run.
192. According to an extract from the Land Registry, Ekk was registered as the freehold proprietor of 38 Charlotte Street on 21 December 2009, completion of the sale to him having occurred on 26 November 2009 at a price of £1,450,000. A charge in favour of Yorkshire Building Society (trading as Norwich and Peterborough Building Society) is also registered. According to a mortgage statement, the mortgage was in the name of Ekk with a loan start date of 25 November 2009, a 25-year term and a loan amount of £840,000. The mortgage payments were, says, Wanda sourced from the profits and rental of the premises to the Thai Metro restaurant business as well as from the rental income from the commercial tenants on the upper floors of the building.

**(12) 2010 Repayment of Suchart loan and loan from Suchart to Wanda; Repayment by Wanda of Wisit Loan; repayment of Suchart loan.**

193. Abbreviated accounts of Anglo Thai Ltd Accounts for the year ended 31 March 2010, as lodged at Companies House, show the accounts as having been approved by the board on 8 December 2010. The fuller version in evidence shows under the heading “Controlling Interest” Note 11 in the following form:

“The Company is ultimately controlled by its shareholder, Mr Ekkachai Somboonsarn”.
194. In her witness statement dated 8 November 2022 Wanda explains how the loan from Wisit was repaid the year after it had been made. In line with the evidence of Thaweekiat, she says that Suchart became able to repay the loan by her to him and that he was so grateful for it that he repaid the 6 million baht plus an extra 4 million baht. She then asked him if she could borrow 10 million baht in addition and he agreed. The

repayment was, she says, arranged by Thaweekiat. There is evidence of receipt by Wanda of such sum.

195. Wanda explains in her witness statement that the loan from Wisit was repaid by her from various sources including the sums repaid/lent to her by Suchart.
196. Ekk's case is that the Thai family loans, so far as they arose in connection with the acquisition of the freehold of 38, Charlotte Street were paid from the proceeds of property that he had inherited from his father in Thailand and which Wanda managed and realised on his behalf.

**(13) 2011: Death of Wanda's and Sirirat's mother; repayment of Suchart loan; Anglo Thai accounts y/e 31 March 2011**

197. Mrs Buppa Prechachart died intestate in 2011. According to Sirirat's unchallenged evidence, this mean that her property was divided amongst her four children. It was agreed verbally by the family that the son (the brother of Wanda and Sirirat's) would take the property. The cash, which was about 6-7 million baht would go to Wanda. At an average exchange rate over 2011 of about 48.87 THB to the pound, this equated to about £122,775 to £143,237. The family were happy with this because Wanda had worked the hardest to help their parents as a child, and especially their mother. Contrary to Ekk's pleaded case, he did not receive any inheritance from his grandmother.
198. Wanda gives the same explanation in her 2<sup>nd</sup> witness statement of 8 November 2022. She says that 6 million baht received from her mother was used by her to discharge (in part) the 10 million baht loan made to her the year before by Suchart and that she handed over deeds to real property in Thailan worth about 4 million baht in discharge of the remaining 4 million baht of the loan from Suchart.
199. The abbreviated accounts for Anglo Thai Ltd for the year ended 31 March 2011, were approved by the board on 19 December 2011 and signed by Ekk. The fuller accounts in evidence contain note 12, under the heading "Controlling interest" in the following form:

*"12. The company is ultimately controlled by its shareholder, Ms V Walker".*

192. I accept Ekk's explanation in cross-examination that this was simply an error. As accounts for earlier years show, the equivalent note had been changed in those earlier accounts to reflect the apparent position, recorded at Companies House, that shares had been transferred from Wanda to Ekk.

**(14) 2015: new central kitchen at Canning Town; Wanda makes a new will; annual return for Thai Metro Ltd showing transfer of shares by Wanda; transfer of title of 22 BM from Wanda to Ekk:**

200. According to Wanda, by 2015 Hermit Road was no longer big enough to service the Papaya outlets and Ekk and Helen decided to move into a new central kitchen unit at Unit 4D Standard Industrial Eastate, Canning Town London E16. The lease of Unit 4D was taken by Scoffle Ltd but all the businesses (Anglo Thai Ltd and Finfish Ltd) contributed to the monthly rent. In the subsequent liquidation of Scoffle Ltd, the liquidators disclaimed this lease.

201. By email dated 9 February 2015, Ekk wrote to Mr Robinson, then of Sandom Robinson, confirming a meeting of the week before between Mr Robinson, Ekk and Wanda and asking for Wanda's estate to be divided as set out in the email. The instructions included that 22 BM was to be left to Sacha (Ekk's son) and 2 Chargrove Close equally to Abang Suhaili and Dayang Suhaili (Ekk's niece and nephew). In each case the properties were to be held on trust until the recipient's 25<sup>th</sup> birthday. The lease to 14/14A Charlotte Street was to be left to Ekk. It is clear from the email that the 7 year Inheritance tax rule was in mind. Indeed, the email asked for "immediate arrangements for all the above to be "gifted" to their beneficiary where the 7 year term will come into effect".
202. By email dated 13 February 2015 from Mr Robinson, reference is made to a will for Wanda having been completed (and executed by her) but only as a temporary measure to ensure that trusts were created for Ekk's son and his nephew and niece. As regards lifetime "transfers of equity" the taking of further advice (and especially expert tax advice) was recommended:
- "As we have discussed, you have been confused in the past about the different taxes and exemptions and particularly with regard to the 7 year rule which applies to Inheritance Tax.*
- You were under the impression that Dilworth Lamb solicitors had dealt with this previously but we were able to show that was not the case.*
- What we agreed was that the Dilworth Lamb Will was not what was required and we have therefore prepared a temporary Will to ensure that Trusts are create for your son and your niece and nephew".*
203. The email also suggests that Mr Robinson thought that 2, Chargrove Close was Wanda's home but he knew No 3 was in Ekk's name though Wanda had referred to "having the next door property" (to No 2). As regards transfers of the leases at Charlotte Street, Mr Robinson presciently raised the issue of "which business works from the premise and who owns that".
204. The will of Wanda is dated 13 February 2015 and leaves: 22 BM to Sacha on his attaining 25; 2, Chargrove Close to Abang and Dayang in equal shares on attaining 25 and the leases of 14/14A Charlotte Street to Ekk and the residue of her estate to Ekk. The will sets out the reason for not providing for Jerry under the will which is that "*she has benefitted from lifetime gifts I have made to her and I do not wish her to benefit further from my death*".
205. On 19 May 2015, Wanda's Platinum Banking Current account received a sum of £209,491.43 by way of transfer from a numbered account of "Vanida Somboonsa". This appears to be the source of funds later used to redeem mortgages on Flat 22 BM and 2, Chargrove Close (about £79,000 and £112,000 respectively).
206. The annual returns for Thai Metro Ltd up and including that made up to 29 August 2014 show the 100 issued shares as being held by Wanda. However, the annual return made up to 31 May 2015 shows the 100 shares in Thai Metro as held by Ekk. The return does not (as it should have) identify Wanda as the previous holder.

207. On 4 June 2015, Wanda received a mortgage redemption statement from Santander in respect of the mortgage over 2, Chargrove Close. The redemption amount as at 5 June 2015 was £112,377.67.
208. By letter dated 10 June 2015, Barclays Bank confirmed Wanda's instruction to pay just over £79,000 to Bank of Ireland from her "interest option account".
209. It is clear that Mr Robinson, then of Sandom Robinson, met with Wanda and Ekk on 10 June 2015. An email of 11 June 2015 from him to Ekk refers to a meeting of the day before at which Ekk advised him:
- "of the situation whereby your mother is going to gift you the flat at [22 BM]. You explained that this is really just putting things right because you put the property in your mother's name when you first bought it so that your partner at the time could not make any claim on it."*
- He made clear his firm was not advising Wanda "in any way" about the matter and certainly not with regard to the taxation consequences. He was expecting to hear from Wanda's own solicitor and assumed that a deed of gift was not required but would wait to hear from her solicitor on the point.
210. By letter dated 12 June 2015, Bank of Ireland confirmed to Wanda that redemption of the mortgage on 22 BM had been finalised that day with the last payment under the mortgage.
211. By email dated 16 June 2015, Mr Peter Tilly of Brown & Batts LLP wrote to Ekk under the heading "Gift of Property". He referred to a meeting the day before between himself, Ekk and Ekk's mother, Wanda. He referred to the likely fees for the "transfer of both properties" and proposed a heavy discount on the fee on the basis that Ekk was a client of "Peter's". An invoice dated 16 June 2015 was then sent by Mr Tilly in his personal name, as a notary public, to Wanda for £600 on account "*re: professional fees for the transfer of 2 properties to your son Ekkachai £600*".
212. On 1 July 2015 a Title document release authority form for Bank of Ireland was completed, authorising and requesting the title documents to Flat 22 BM to be sent to Wanda at that address. The document is apparently signed by Wanda but the expert considers that there is very strong evidence to support the proposition that Wanda did not sign the document and that the apparent signature is either a simulation of her general signature style or representations of signature/ writing in her name by another individual. Ekk now accepts that he forged this signature.
213. By about August 2015, a licence to assign Flat 22 BM was sought from the landlord. The landlord's agents wrote back saying that a licence to assign was not necessary in this case but that a deed of covenant and notice of transfer would be needed, plus payment of the landlord's fee of £60 for the receipted notice of transfer and £264 for the deed of covenant. Ekk was away until the end of August and so these matters could not be attended to until after then. Ekk appears to have paid the landlord's charges on about 7 September 2015.
214. By letter dated 28 October 2015, Mr Tilly wrote to Mr Nick Robinson informing him that they were instructed by Wanda and that she now wished to make a gift of Flat 22



BM to Ekk who would then live at the property. The deed of covenant had been executed by Ekk and the fee paid. However a notice of transfer and the £60 fee would also be required.

215. By email dated 4 November 2015, Mr Tilly sent Ekk by email a copy of the transfer documents that needed to be signed by Ekk and Wanda in front of a witness or separate witness and asking that when this was done the same be returned to him.
216. On Monday 21 December 2015, Peter Tilly wrote by email to Ekk asking for confirmation that Wanda was content to proceed on that date and Ekk said he would get her to get in touch and sent her contact phone number.
217. By TR1 dated 21 December 2015 title to Flat 22 BM was transferred from Wanda to Ekk. The consideration is stated as being nil. The signatures of each of Wanda and Ekk are witnessed by Ms Lucy Garrett of Magrath LLP. The date of the signatures and the witness's signature are not given.
218. At the end of the third day of the trial, I was told by Mr Cowen on behalf of the claimant that a witness statement made by Ms Garrett, a solicitor, in relation to this matter and on behalf of the Defendant was not disputed. That witness statement was dated 25 February 2021. In it Ms Garrett, a solicitor now in the firm of Magrath Sheldrick LLP (then Magrath LLP) confirms that the apparent signatures of her as witness on the December 2015 TR1 transferring title to Flat 22 BM from Wanda to Ekk are indeed her signatures and that although she does not specifically recollect witnessing the signatures on this occasion, her firm's standard practice has always been to obtain proof of identity before witnessing signature. She also "absolutely" confirmed that the document was not witnessed in a "small office in London Bridge". Her firm's offices were then at 66/67 Newman Street London W1T 3EQ which is situated in Fitzrovia about halfway between and parallel to Regent Street and Tottenham Court Road, being on the north side of Oxford Street. The inference is that it was witnessed at her firm's offices.

**(16) 2016: HMRC investigation touching upon 2 BM**

219. On 7 January 2016, Ekk signed a statutory declaration in relation to Flat 22 BM. It was sworn at Magrath & Co. The statutory declaration exhibits the Declaration of Trust/Declaration of Trust of 9 March 2009. It confirms that Ekk is the sole beneficial owner of Flat 22 BM, notwithstanding the restriction entered on the title. It seems to have been made in connection with an application to cancel the restriction pursuant to Form RX3 dated 21 December 2015 put forward by Sandom Robinson. The restriction has certainly since been removed. The original transfer to Ekk's name seems to have been permitted on the basis that no capital monies were involved and hence the restriction put in place in 2009 did not "bite" on the 2015 transfer transaction.
220. By letter dated 18 April 2016, HMRC wrote to Ekk asking about the connection between himself and the owner of Flat 22 BM since 2004 until December 2015 and the circumstances that led to the property being gifted to him.
221. An attendance note of a Ms Penny Nichols of Sandom Robinson shows that Ekk telephoned her on 19 May 2016 about a letter from HMRC (fairly clearly in context, that of 18 April 2016). In the attendance note he is recorded as explaining that the tax authorities were asking for details of what had happened since 2004. Ms Nichols

records that she said, “well in that case did he not have to disclose a Declaration of Trust” but he said that that was “really to do with wills”. She also recorded that she asked him “about who provided the money for the purchase” and he said that:

*“it was his mother. It was bought by her and it was hers she remortgaged one of her other properties but it was not finally given to him until December last year.”*

**(17) 2017-2020: Remortgage of Flat 22 BM by Ekk, Acquisition by TM Ltd of 133, The Grove, Ealing, Wanda’s solicitors’ letter re Flat 22 BM and 14/14A Charlotte Street**

222. On 3 January 2017, Ekk remortgaged Flat 22 BM to Clydesdale Bank to secure a loan of about £700,000.
223. On 20 January 2017, TM Ltd purchased 133 The Grove, Ealing W5 3SL for £1,630,000. No mortgage loan was taken in this connection. 133, The Grove was registered in the name of TM Ltd on 24.01.2017, under title number MX281617.
224. The purchase price was paid partly following the following transfers of funds to TM Ltd:
- (a) £682,500 from Anglo Thai Ltd
  - (b) £435,000 from Finfish Ltd
225. Wanda says that the purchase of 133 The Grove and the said transfers of funds were carried out without her knowledge or consent of the Claimant.
226. Accounts for TM Ltd for the year ended 31 August 2017 show acquisition of fixed assets at cost of £2.2m and loans from the following companies:
- |                |          |
|----------------|----------|
| Anglo Thai Ltd | £682,500 |
| Finfish Ltd    | £435,000 |
| Scoffle Ltd    | £ 40,205 |
- The accounts show net liabilities of £15,422.
227. Accounts of TM Ltd for the year ended 31 August 2018 show the tangible assets as being valued at £2,185,026, comprising the original cost of the property (as set out in the 2017 accounts) and additions of £157,829 during the year.
228. By letter dated 14 June 2019, Lawrence Hamblin solicitors wrote on behalf of Wanda to Ekk seeking a transfer of title to Flat 22 BM on the basis that title had been transferred to enable a charge to be raised and now that the charge had been repaid title should be transferred back. Beneficial ownership, it was said, remained with her after the transfer in 2015. Title to 22 Chargrove Close should be returned to Jerry and assistance was asked for in that respect.
229. A letter of response (also responding to a further letter not in evidence) from Peter Germain of EGD Strategic Services suggested that as regards the proposed transfer of

22 Chargrove Close, that was nothing to do with Ekk but that given Wanda's will specifically bequeathing the property neither legal nor beneficial title to the property was vested in Jerry. As regards Flat 22 BM that had been initially placed in Wanda's name on trust for Ekk "due to circumstances existing at that time". In 2015, legal title was transferred to Ekk. The property was mortgaged in 2017 and Wanda had no legal right to seek transfer of title into her name.

230. A letter from Peter Germain dated 24 February 2019, following a meeting and some emails which are not in evidence, to Lawrence Hamblin referred to a potential liability of Wanda for dilapidations when the leases of 14 and 14a Charlotte Street came to an end in 2023. It suggested that in light of this she might need to rely upon 2, Chargrove Close to meet the same and that this might prevent the property now (or by will) being gifted to Jerry.
231. Accounts of TM Ltd for the year ended 31 August 2019 show a balance sheet with net liabilities of £47, 088. The tangible assets are shown as being valued at £2,257,176, comprising the original cost of the property (as set out in the 2017 accounts), the additions in 2018 and further additions of £72,690 during the year. The loans to it from other connected companies are shown as follows:

Anglo Thai Ltd	£804,500
Finfish Ltd	£522,000
Scoffle Ltd	£ 40,205.

232. On 24 August 2021 Scoffle Ltd was placed into creditors' voluntary liquidation. The statement of affairs signed by Ekk shows an estimated deficiency of over £297,000.
233. The balance sheet of TM Ltd as at 31 August 2022 as shown by its filed accounts reveals net liabilities of £45,467 with fixed assets of £2,257,756.
234. On 19 December 2023, Scoffle limited was dissolved following completion of the liquidation process.

### **The Proceedings**

235. By application notice dated 3 December 2020 (issued on 4 December 2020), Wanda sought a freezing and/or proprietary injunction. On 4 December 2000 a claim form was issued seeking relief in relation to the Companies and the Properties.
236. The matter came on for hearing on 27 January 2021. On 27 January 2021, the Claimant was granted a proprietary and freezing order over the Companies and the Properties by Mr David Rees QC sitting as a deputy High Court Judge.
237. The injunction was continued by consent by order of Mr Justice Adam Johnson on 3 February 2021 and then by Mrs Justice Falk (as she then was) on 4 March 2021 over until trial or further order.
238. The original Particulars of Claim are dated 8 February 2021.

239. The original Defence has a statement of truth signed on 31 March 2021.
240. The amended Defence has a statement of truth signed on 17 August 2022.
241. The Re-Amended Defence and Counterclaim is dated 25 April 2023.
242. The Reply and Defence to Counterclaim is dated 27 April 2023.

### **The Witness Evidence**

243. As regards the general approach to witnesses I adopt what I have said in other cases, summarising the main elements of the authorities as I see them.
244. I heard oral evidence from Wanda and Ekk. The evidence of each of them is treated by me with great caution. They have been involved in this dispute or series of disputes for years. They have rehearsed the dispute and the evidence on a number of occasions in writing and no doubt orally and in their minds. Over time and with repetition, attitudes harden, memories become inaccurate and so on. Accordingly, I treat their oral evidence with great care and primarily test it against the contemporaneous documents, where available, as well as the inherent probabilities.
245. I also heard oral evidence from a number of witnesses for Wanda and Ekk. The same general considerations as regards effluxion of time and so forth apply also to them. In addition, in the case of witnesses for Wanda there are concerns about the manner in which witness statements were prepared flowing from the fact that certain witnesses did not speak English fluently and a Thai speaker had to be enlisted in the process of preparing that evidence. As will be seen, that person was primarily Jerry but, at least in some cases, Wanda was present when the evidence taking process was underway. That situation creates obvious concerns that I will enlarge upon below.
246. Finally, I had to rely upon hearsay evidence in the form of witness statements from witnesses living in Thailand. That evidence too suffered from the general problems of evidence being obtained such a long period after the events in question, with apparently few contemporaneous documents available, and the involvement of Jerry in the evidence gathering process but also from the fact that the evidence was hearsay evidence and the witnesses were not able to be cross-examined.
247. As regards the general problems of assessing witness evidence, I have well in mind the body of case law about the court's approach to evidence. As regards the difficulty of assessing the "demeanour" of a witness as a guide to truth and accuracy and the effect on memory of a continued re-consideration of a case and of documents over time, I would also refer briefly to the convenient summary set out in the judgment of Warby J (as he then was) in *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) at paragraphs 39 to 41 where he said (with emphasis removed, and inserting subparagraph numbers for bullets in the extracts from the judgment in the *Kimathi* case, referred to below):

*"[39] There is now a considerable body of authority setting out the lessons of experience and of science in relation to the judicial determination of facts. Recent first instance authorities include Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3650 (Comm) (Leggatt J, as he then was) and two*

decisions of Mostyn J: *Lachaux v Lachaux* [2017] EWHC 385 (Fam) [2017] 4 WLR 57 and *Carmarthenshire County Council v Y* [2017] EWFC 36 [2017] 4 WLR 136. Key aspects of this learning were distilled by Stewart J in *Kimathi v Foreign and Commonwealth Office* [2018] EWHC 2066 (QB) at [96]:

“i) *Gestmin*:

- (1) *We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.*
- (2) *Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of “flash bulb” memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.*
- (3) *Events can come to be recalled as memories which did not happen at all or which happened to somebody else.*
- (4) *The process of civil litigation itself subjects the memories of witnesses to powerful biases.*
- (5) *Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.*
- (6) *The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. “This does not mean that oral testimony serves no useful purpose... But its value lies largely... in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth”.*

*ii) Lachaux:*

- (7) *Mostyn J cited extensively from Gestmin and referred to two passages in earlier authorities.<sup>1</sup> I extract from those citations, and from Mostyn J's judgment, the following:-*
- (8) *“Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, contemporary documents are always of the utmost importance...”*
- (9) *“...I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities...”*
- (10) *Mostyn J said of the latter quotation, “these wise words are surely of general application and are not confined to fraud cases... it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that the demeanour of a witness is not a reliable pointer to his or her honesty.”*

*iii) Carmarthenshire County Council:*

- (11) *The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness. However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of Gestmin, Mostyn J said: “...this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context.*

[40] *This is not all new thinking, as the dates of the cases cited in the footnote make clear. Armagas v Mundogas, otherwise known as The Ocean Frost, has been routinely cited over the past 35 years. Lord Bingham's paper on “The*

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<sup>1</sup> *The dissenting speech of Lord Pearce in Onassis and Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, 431; Robert Goff LJ in Armagas Ltd v Mundogas SA [1985] 1 Lloyd's Rep 1, 57.*

*Judge as Juror” (Chapter 1 of The Business of Judging) is also familiar to many. Of the five methods of appraising a witness’s evidence, he identified the primary method as analysing the consistency of the evidence with what is agreed or clearly shown by other evidence to have occurred. The witness’s demeanour was listed last, and least of all.*

*[41] A recent illustration of these principles at work is the decision of the High Court of Australia in Pell v The Queen [2020] HCA 12. That was a criminal case in which, exceptionally, on appeal from a jury trial, the Supreme Court of Victoria viewed video recordings of the evidence given at trial, as well as reading transcripts and visiting the Cathedral where the offences were said to have been committed. Having done so, the Supreme Court assessed the complainant’s credibility. As the High Court put it at [47], “their Honours’ subjective assessment, that A was a compellingly truthful witness, drove their analysis of the consistency and cogency of his evidence ...” The Supreme Court was however divided on the point, and the High Court observed that this “may be thought to underscore the highly subjective nature of demeanour-based judgments”: [49]. The High Court allowed the appeal and quashed Cardinal Pell’s convictions, on the basis that, assuming the witness’s evidence to have been assessed by the jury as “thoroughly credible and reliable”, nonetheless the objective facts “required the jury, acting rationally, to have entertained a doubt as to the applicant’s guilt”: [119].”*

248. The question of the significance of the demeanour of a witness has also been addressed by Leggatt LJ (as he then was) in *R (on the application of SS (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 1391:-

*“[36] Generally speaking, it is no longer considered that inability to assess the demeanour of witnesses puts appellate judges “in a permanent position of disadvantage as against the trial judge”. That is because it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness’s demeanour as to the likelihood that the witness is telling the truth. The reasons for this were explained by MacKenna J in words which Lord Devlin later adopted in their entirety and Lord Bingham quoted with approval: “I question whether the respect given to our findings of fact based on the demeanour of the witnesses is always deserved. I doubt my own ability, and sometimes that of other judges, to discern from a witness’s demeanour, or the tone of his voice, whether he is telling the truth. He speaks hesitantly. Is that the mark of a cautious man, whose statements are for that reason to be respected, or is he taking time to fabricate? Is the emphatic witness putting on an act to deceive me, or is he speaking from the fullness of his heart, knowing that he is right? Is he likely to be more truthful if he looks me straight in the face than if he casts his eyes on the ground perhaps from shyness or a natural timidity? For my part I rely on these considerations as little as I can help.” “Discretion” (1973) 9 Irish Jurist (New Series) 1, 10, quoted in Devlin, *The Judge* (1979) p63 and Bingham, “*The Judge as Juror: The Judicial Determination of Factual Issues*” (1985) 38 *Current Legal Problems* 1 (reprinted in Bingham, *The Business of Judging* p9).*

.....

[39] *To the contrary, empirical studies confirm that the distinguished judges from whom I have quoted were right to distrust inferences based on demeanour. The consistent findings of psychological research have been summarised in an American law journal as follows: "Psychologists and other students of human communication have investigated many aspects of deceptive behavior and its detection. As part of this investigation, they have attempted to determine experimentally whether ordinary people can effectively use nonverbal indicia to determine whether another person is lying. In effect, social scientists have tested the legal premise concerning demeanor as a scientific hypothesis. With impressive consistency, the experimental results indicate that this legal premise is erroneous. According to the empirical evidence, ordinary people cannot make effective use of demeanor in deciding whether to believe a witness. On the contrary, there is some evidence that the observation of demeanor diminishes rather than enhances the accuracy of credibility judgments." OG Wellborn, "Demeanor" (1991) 76 Cornell LR 1075. See further Law Commission Report No 245 (1997) "Evidence in Criminal Proceedings", paras 3.9–3.12. While the studies mentioned involved ordinary people, there is no reason to suppose that judges have any extraordinary power of perception which other people lack in this respect.*

[40] *This is not to say that judges (or jurors) lack the ability to tell whether witnesses are lying. Still less does it follow that there is no value in oral evidence. But research confirms that people do not in fact generally rely on demeanour to detect deception but on the fact that liars are more likely to tell stories that are illogical, implausible, internally inconsistent and contain fewer details than persons telling the truth: see Minzner, "Detecting Lies Using Demeanor, Bias and Context" (2008) 29 Cardozo LR 2557. One of the main potential benefits of cross-examination is that skilful questioning can expose inconsistencies in false stories.*

[41] *No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts."*

249. These more recent iterations of judicial experience and scientific learning provide much of the rationale underlying the new regime governing witness statements,



and best practice in relation to their preparation, in the Business and Property Courts (as from 6 April 2021). As paragraph 1.3 of the Appendix to Practice Direction 57AC sets out:

*“1.3 Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:*

*(1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but*

*(2) is a fluid and malleable state of perception concerning an individual’s past experiences, and therefore*

*(3) is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration.”*

250. During the trial and in preparing this judgment I also had in mind the guidance given in Chapter 8 of the Equal Treatment Bench Book.

251. As a generality, I tended to find the evidence of Wanda to be more reliable than that of Ekk. Wanda’s evidence clearly suffered from the sort of general considerations that I have identified from the authorities about the evidence giving process and lapse of time. However, where she was, in my judgment, incorrect in her evidence that was often understandable and often on matters of detail that were not key. She was on the whole fairly accurate on the “big picture” issues. Ekk on the other hand, as I shall go on to consider, was much more adamant on matters that, in my judgment he was shown to be quite wrong on and which reflected on “big picture” matters rather than matters of detail. Further, these inaccuracies were not understandable as simply being matters of misrecollection and were matters which reflected on his credibility, not just in terms of reliability of recollection but also in terms of suggesting a willingness to say things that were not true as a way of furthering his case.

252. As regards the preparation of witness statements where the witness communicates and understands wholly or partly in a foreign language, the Court rules and guidance is by now well established.

253. I do not regard the witness statements of a number of witnesses for Wanda as having been prepared in accordance with the important provisions of CPR PD 57AC and the Appendix thereto.

254. In particular, paragraph 3.2 of the Appendix provides:

*“3.2 Any trial witness statement should be prepared in such a way as to avoid so far as possible any practice that might alter or influence the recollection of the witness other than by refreshment of memory as described in paragraph 2.6 above”.*

Paragraph 2.6 refers to refreshing memory by reference to a document that was created or seen by the witness while the facts evidenced by or referred to in the document were still fresh in their memory.

255. Here the practice followed in preparing a significant number of witness statements clearly ran the risk of evidence being given by leading questions from or reminders

from Wanda/Jerry in breach of the principle that a witness statement should only contain evidence that could be given in chief and following the principles in paragraph 2.5 (among others). Paragraph 2.5 repeats the well-known principle that, in general, evidence in chief should not be given in response to leading questions. Further, it ran the risk of being the product of pressure (direct or indirect), whether flowing from actual pressure or perceived pressure from the mere fact of the presence of Wanda and Jerry and they speaking to and being part of the evidence gathering process (see paragraph 2.4 of the Appendix). There are at the very least questions as to how the solicitor can properly have signed, as he did, the certificate required by paragraph 4.3 of the Practice Direction and it is unclear why at least some of the relevant witness statements did not explain the circumstances in which they came to be made in more detail than the economical statements originally made.

256. Rather as it is now commonplace for instructions for a will to be taken in the absence of other family members (unless perhaps a partner or spouse), I would expect evidence for witness statements to be taken in a similar manner.
257. Furthermore, the general rule is that where a witness is giving evidence in a their own language which is not English, then the witness statement should be given in the language that they are using and then that foreign language version be translated into English and the translation certified (see e.g. PD 32 paragraphs 18.1, 19.1(8) 23.2). The equivalent provisions for affidavits are paragraphs 4.1, 10.2 of PD 32. This practice does not seem to have been adopted in this case where many witnesses for Wanda (as well as all or most of the written evidence of Wanda) appears to have had their witness statement (or in Wanda's case affidavits as well) prepared in English and then translated and where it is unclear which document is being certified as being an accurate translation.
258. As required by the rules, a witness statement (and an affidavit) should be prepared in the maker's own words and in their own language (see CPR PD 32 paragraphs 18.1, 20.1 and 23.2; *Correia v Williams* [2022] EWHC 2824 (KB); [2023] 1 WLR 767). Their own language does not necessarily mean their main or first language but the language must be one that the maker is sufficiently fluent in to give oral evidence, including under cross-examinations if required (see *Afzal v UK Insurance Limited* [2023] EWHC 1730 (KB)). In my experience this requirement is observed more in the breach than otherwise, as in this case.
259. In many cases what I have identified to be concerns about the manner of preparation of witness statements of persons who were doing so not using the English language could well have been very significant. In many cases this was not the case because the content of their evidence, primarily about the respective roles of Wanda and Ekk in the restaurant businesses was, in my judgment and as I shall explain, not really key evidence in the case. Further, there was effective cross-examination of the witnesses which assisted in testing problems in their evidence that might have arisen from the manner in which the evidence was prepared in terms of language. In the circumstances and to the extent necessary I gave permission for the relevant evidence to be admitted.
260. I should also confirm that, given various findings that I have made about aspects of the evidence given by Ekk I have given myself what is often called the *Lucas* warning, being named after the case *Lucas* (1981) 73 Cr App R 457 and being a warning given

to juries in criminal trials in appropriate circumstances. The burden of proof is of course different in civil proceedings and I have adjusted the self-direction accordingly. The precise form of direction to a jury will vary, and be dependent on the facts, but the key points are summarised in the Crown Court Compendium, Part 1 (June 2023) as follows:

*“10. Before the jury may use an alleged or admitted lie against D, they must be sure of **all** of the following:*

- (1) that it is either admitted or shown, by other evidence in the case, to be a deliberate untruth: i.e. it did not arise from confusion or mistake;*
- (2) that it relates to a significant issue; and*
- (3) that it was not told for a reason advanced by or on behalf of D, or some other reason arising from the evidence, which does not point to D's guilt.”*

261. I deal with the witnesses in the order that they gave evidence (or their evidence was identified as not being contested and accordingly that they need not be called to be cross examined) because that order may be significant. I have not in this part of my judgment dealt with all the witnesses that were not called but whose evidence is dealt with elsewhere (for example, that of the expert and Ms Garrett).

### **Vanida Walker (“Wanda”)**

262. Wanda was the first to give oral evidence which extended over two days (with a gap on the afternoon of the second day, when Mr Somphet Chanthalangsy was cross examined) and concluded on the morning of the third day of the trial.

263. Her written evidence before the court comprised:

- (1) Affidavit made in 13 November 2020 in support of her application for injunctive relief. The witness statement is in English and then, after each paragraph or subparagraph, in Thai. The affidavit is said to have involved communication between the interpreter and Wanda in Thai with the Thai version of the statement prepared and translated into English and then, with adjustments, translated back into Thai. The translator, it was said, would certify “this version” against the original version in Thai. However, it seems unlikely that the translator acted as a prompt in preparing the witness statement (as a lawyer often would) and the process is somewhat opaque. The version signed is in English and as is clear from what I have said there appears (at the least) to be non-compliance with PD 32 paragraph 10.2 Indeed, there is no certification of the document before me nor a wholly Thai version sworn by Wanda.
- (2) A witness statement dated 1 March 2021 made in connection with the court's consideration of the extension of injunctive relief and following the hearing before Adam Johnson J. The witness statement is made in response to Ekk's second witness statement. There are both English and Thai versions. Wanda appears to have signed both. I cannot see any certification on the English translation although

the body of the witness statements says that it has been certified by an identified individual. The witness statement does not explain how it was prepared.

(3) A witness statement for trial dated 8 November 2022. There are English and Thai versions. The English version is certified as “Approved translation” but does not explain of what. As regards the manner of preparation of the document the same explanation is given as was given in relation to preparation of her affidavit.

264. Before me Wanda gave evidence partly in English and partly in Thai. I found her English at times difficult to follow. She tended to speak very quickly and to move from one point to another very quickly. The sort of difficulty encountered is perhaps best illustrated by a transcript of a conversation between herself and Ekk taken from a recording made by Ekk at a meeting on 21 September 2022 at Flat 22 BM.

265. Ekk relied upon this transcript as demonstrating admissions on her behalf. In fact, having heard her give evidence and having re-read this transcript a number of times I do not consider that, properly read, it shows anything of the sort. Rather it is entirely consistent with her evidence to the court. The point turns on what Wanda meant when she says to Ekk “you the one that set everything up not me” he suggests that she meant that he set up, ran, operated and owned (through the companies) the restaurants. I read it as meaning that he is responsible for setting up all the legal arrangements on a number of matters (and /or “set her up”). In any event it is clearly ambiguous. More to the point though the transcript helpfully gives a flavour of Wanda speaking as to events and responding to questions.

266. The transcript is in the following terms:

*“ES: just for reference I’m in the corridor of Bloomsbury Mansions, Afiz...it’s now Thursday, no it’s Wednesday 21<sup>st</sup> of September. Afiz is this Wednesday the 21<sup>st</sup>? I’m recording this because you’re going to say something and maybe I’m going to say something, so you should...it’s good for you because I know how you play now.  
VW: I know how you play that as well [laughs]. Anyway, I am coming to see this security, I want to know about you see me and I expected you to follow me and talk about it. But if you don’t talk it doesn’t matter.  
ES: oh, so you walk away, I said come on come here.  
VW: yes  
ES: oh, right ok. And you need me to chase you?  
VW: correct  
ES: ok  
VW: we didn’t see each other for 4 years  
ES: and why is that?  
VW: yeah, you know why, I know why, that’s it.  
ES: you have your version, I have mine.  
VW: yeah, but I want to tell you one thing, son, you can open this for Helen, you don’t know about Helen, I know really well now. I loved her dearly. When you have affair with Tanya, she the one tells me to keep away from you and tell me to keep you out. But end of the day you, my son.  
ES: what’s this got to do with what you’re doing now?  
VW: Yeah, because you remember when I said to you, I need number 3 Chargrove Close, and I want £50,000 Kwan borrowed from me but then returned back to you see you [INAUDIBLE] like this. Oh my, that’s it. Message to the fight. It’s ok Ekk now I make up my mind. You still young and I am old right and I work to death, but good thing we can*

*melt everything and then you can start, I'm going to die soon. I don't bother now because at the end of the day you the one set up everything not me.*

*ES: you're saying that, why are you saying that on the recording. Why would you say that because you told everyone that it was you.*

*VW: yeah*

*ES: why would you say that?*

*VW: See...*

*ES: I'm reminding you that this is being recorded*

*VW: Yeah, I know that*

*ES: And you don't have your lawyer with you*

*VW: No*

*ES: So, I'm reminding you*

*VW: I tell you the truth. I asked you for number 3 Chargrove Close, next door because I want to live there. But now no more, we have to fight because you still got income, you still got everything. You remember that letter you sent it to me for say "I'm old, I lost my memory". Now I keep fit, I go to the gym every day, right, because I want to prove to you to court say I remember everything, I do so many things for you. all the money, everything I never bother I thought you my son but you didn't think I your mother. Even though I asked like that - only get number 3.*

*ES: what did you say, can you repeat that?*

*VW: yeah*

*ES: to make it clear*

*VW: £50,000 you borrow from me, give it to Kwan, I still keep, I got cheque, I got copy*

*ES: No, no, no.*

*VW: you say all you*

*ES: No, that money was my money*

*VW: [laughs]*

*ES: That's why you gave it to Kwan, and that's why he returned it to me.*

*VW: Nah, how come? All from my account from my building society, I say to you...*

*ES: and where did that come from?*

*VW: Hang on, go to get Kwan, hold on, son, you know, you not working, you just come into be so proud. I tell you what*

*ES: You're the only one that works*

*VW: No, no I'm not saying that*

*ES: you're the only one that does things, yeah.*

*VW: good, you know that's good. If I don't put the money down or do everything. You got your cock to hit the window. You damage your cock for nothing. Kids never give you anything. I say that to you.*

*ES: If you look on your statement and my statement, I've never denied that, it's my company,*

*VW: yeah, yeah.*

*ES: You still have the lease*

*VW: Yeah, yeah, yeah, yeah ok.*

*ES: you still have the lease*

*VW: you try to [INAUDIBLE] out but the first day when you tell me go have a look at Charlotte Street, yeah, you say you just want to open. You don't need anything. No matter who is them. You do wonderful, that's why I sign the lease in my name because you say you don't need anything you just want to open, that's it, to prove how clever you are.*

*ES: I didn't say that, that's why I opened the business in my name.*

*VW: [laughs] you cheating me. Anyway...*

*ES: I think you're cheating yourself.*

*VW: I'm not cheat myself, why do I cheat myself? Ok darling, you...*

*ES: you're so great, you're so powerful, your Sacha is now working because I'm using the money to take him to college to go to court with you. I hope you're proud of yourself.*

*VW: Yeah, I am.*

*ES: and you should tell him*

*VW: yeah, why should I tell him? Leave your son still their mother still. But I'm telling you now, I hope you are living with Helen for another 20 / 30 year because she is the one give the knife to me, go stab him and give the knife to you to stab your own mother*

*ES: ok*

*VW: That's the way she is!*

*ES: what else do you want to say?*

*VW: that's all, just let you know.*

*ES: you know this will be admissible in court?*

*VW: yeah, that why you ask me to stay, you record everything*

*ES: I'm recording it because I have nothing to hide.*

*VW: yeah, I have nothing to hide as well, because I say to you because I hope in future you leave everything to your wife, the books the accounts, everything. You're stupid!*

*ES: say that again, say that again, just to make it clear?*

*VW: you not deaf.*

*ES: ok, I've got it on...I've...ok*

*VW: We go to the end!*

*ES: That's fine, come and see me any time.... You don't have to sneak off*

*VW: Why are you shit chucking it at to me? You think you are clever? I know your actual anyway. You try to make me struggle here to stab me; you try to tape record or something like that*

*ES: Hold on, you came here. I didn't ask you to come here. Afiz is my witness. I'm just here*

*Afiz talking to VW: I thought you guys said you just going to have a conversation. This is not a conversation*

*VW: You can see, you can see. Get him to switch off all everything.*

*ES: Why would I want to switch off, because you can say anything and then say you didn't say it*

*VW: That's what I want to say, you are cheating me*

*ES: Ahhhhhh, ok*

*VW: If 22 years ago you go to see, oh mum I want to open this. If you only get your cock, you get your cock to the window like that; you damage your cock. You never get anything like that.*

*Afiz: I thought you were going to have clear conversation with him*

*VW: No, I can't clear like that. He made a hook for me to come here. You don't know him. I know him. I know we can't settle. I tell you what, if he's being like this Hopefully you will look after your wife and your kids forever. That's why I say, you are still strong, you are young and clever, two of you, and you can build up something like me.*

*ES: What did you build?*

*[VW is Silent]*

*[VW leaves the building]".*

267. I accept that Wanda has only an extremely limited ability to read and write English. Her spoken English is more fluent. However, it is not always easy to follow as is demonstrated by the above transcript. Like most laypeople she does not have a sophisticated understanding of the law but I find that she did clearly understand the concept of property being in one person's name whilst being owned by another. As regards Thai, I consider that she could read and write the same but again to a limited extent (though more so than English).

### **Somphet Chanthalngsy (“Pepsi”)**

268. Mr Chanthalngsy (also known as “Pepsi”) made a witness statement for the Claimant dated 7 November 2022. He was cross-examined on it. His cross-examination took place part way through the cross-examination of Wanda and lasted about 15 minutes.
269. In his witness statement, his evidence was as follows. Pepsi started working at the Chu Chi restaurant at 14, Charlotte Street in 2005 and stayed until about 2018 when it had changed its name and, as he put it, “image”, to Siam Central. In 2012, he returned as manager of Thai Metro and he spoke to the period from then until he left in December 2019.
270. Pepsi explained in his witness statement that he had originally been approached by Ekk by a text message on 8 March 2021 when he had been asked to make a statement on his, Ekk’s, behalf. When they spoke, he said, Ekk told him that he had built the business on his own and that it was nothing to do with Wanda. Ekk said that he just gave her something to do and now she wanted to take everything away from him. He said that he wanted Pepsi to make a statement saying that she had nothing to do with the business. Pepsi said that he was unhappy about this and that he pointed out how hard Wanda had worked and that he wanted to talk to his brother, Phil.
271. Pepsi went on to say in his witness statement that he and his brother Phil had a word. They agreed they were not happy to make statements for Ekk which they knew to be untrue. He put Ekk off over a period of time but eventually told him that he was uncomfortable with what he was being asked to say and that he was not willing to have Ekk telling him what to say which was not true and was not willing to make a statement for him.
272. As regards his evidence about the respective involvements of Wanda and Ekk in the business, he said, of the period to 2008, that he saw Wanda virtually every day, that she was always running around doing the shopping, bringing in sauces for the kitchen, doing the cleaning and keeping an eye on things. The kitchen staff, he said, took their orders from her. Ekk (better known to him as “Eggy”), tended to come in to collect the takings and pay the wages and the tips.
273. In his assessment, the claim of Ekk that he only allowed Wanda to come and go at the restaurant because she was his mother, that her visits were intermittent and unplanned and that she was more of a hindrance than a help painted a picture that “could not be further from the truth”. He regarded Wanda as the backbone of the business and Ekk as the “face” of the business. This, he said, remained the position between 2005-8.
274. In 2012, when he returned as manager of Thai Metro, he said that Wanda remained, from his perspective, central to the business and, as before, was still running around but mainly working at the central kitchen and doing the cleaning. Ekk still came into to pick up the takings and to pay the wages and tips. This continued up until he left in December 2019.
275. In cross-examination, it was clear that his evidence overstated the position in several respects as I shall go on to explain. Of greater concern however was his confirmation of how his witness statement had been prepared. In the witness statement he referred to the statement having been made “at a face to face meeting with a representative of

the Claimant's solicitors". He confirmed in cross examination that this face to face meeting was in fact a meeting at which were present also his brother Phil, Wanda and Jerry and that at the time Thai was spoken and at times English. Both Wanda and Jerry, he confirmed, were talking whilst he was giving his evidence to the solicitor. He did not recall Wanda saying to Phil (at the meeting) that she would help Phil out if she won this case. He also denied that Wanda had offered to help him out.

276. Wanda was asked about the process of evidence being obtained from Pepsi and his brother Phil. The line of cross-examination focussed more on the obtaining of evidence from Phil but she did confirm that Pepsi's evidence was taken at a meeting at which she and Jerry were present.
277. According to Jerry, who was later asked about this by way of examination-in-chief, she, her mother and Phil were sat at a separate table with a table in between them and the one at which Pepsi and the solicitor were sat, the latter taking information for the witness statement. She said the location was quite noisy and the occupants of neither relevant table could really hear what was going on at the other table. She said that the only Thai spoken was with Phil. She also said that she and her mother (and Phil) were not able to participate in the conversation between Phil and the solicitor taking his statement.
278. I do not regard this witness statement as having been prepared in accordance with the important provisions of CPR PD 57AC and the Appendix thereto.
279. Here the practice followed in preparing the witness statement clearly ran the risk of evidence being given by leading questions from or reminders from Wanda/Jerry in breach of the principle that a witness statement should only contain evidence that could be given in chief and following the principles in paragraph 2.5 (among others). Paragraph 2.5 repeats the well-known principle that, in general, evidence in chief should not be given in response to leading questions. Further, it ran the risk of being the product of pressure (direct or indirect), whether flowing from actual pressure or perceived pressure from the mere fact of the presence of Wanda and Jerry and they speaking to and being part of the evidence gathering process (see paragraph 2.4 of the Appendix).
280. The concerns about Pepsi's witness statement evidence (whether from the method of its preparation or just as a matter of its inherent unreliability) are demonstrated by the following concessions readily made in cross examination:
- (1) He accepted that he left employment when Chiu Chi closed in about March 2006 when almost all staff were "let go". He had never worked at Siam Central and his evidence regarding his initial employment therefore could only have covered the period until about March 2006, not 2008. Although he said he had simply got the dates wrong, in fact he had also asserted he worked at a restaurant when in fact he had not. In my judgment this went beyond an understandable error as to precise dates.
  - (2) There were questions as to how often he was actually in the kitchen to see what he said he saw of Wanda's involvement, not least because he said he worked on the floor above the kitchen.



- (3) He accepted that the kitchen staff were managed by the head chef, but then he went on to say that this was how things were supposed to work but that he did see Wanda there and being involved.
- (4) He was unclear as to the period of time during which sauces were made at the central kitchen rather than being made or brought round by Wanda personally.
- (5) He “believed” that Wanda had done the shopping but did not seem very sure.
- (6) When it was put point blank to him that Ekk had not asked him nor told him what to say in any witness statement he prepared on behalf of Ekk, he said he could not recall the position. Given the importance of the point and what he had said in his signed witness statement, this was somewhat surprising.

281. In short, I consider that his evidence is unreliable and the most that I get out of it is that Wanda did have some (rather than no) involvement in the two restaurants properly identified, the involvement was more than minimal and it was more than simply officious interference outside any accepted management structure.

### **Jiraporn Somboonsarn (“Jerry”)**

282. Jerry made a witness statement dated 8 November 2022 and was cross-examined on it immediately after the conclusion of Wanda’s oral evidence. Her oral evidence took up most of the morning of the third day of the trial, after her mother completed her oral evidence, and started at about 10:55am. As I explain in relation to Mrs Cheesman, she (Jerry) was recalled to give evidence as a result of wishing to amplify what she had said in the witness box. She started off by being examined in chief regarding the circumstances in which various witnesses had made witness statements. I deal with that evidence in respect of each relevant witness.
283. In my assessment, Jerry’s evidence was honest and given with a view to assisting the court so far as possible. I also consider that it was reliable. Her concern to be accurate was confirmed by her coming back to the witness box (at her request) to correct a detail of her evidence which detail did not really matter (see further this judgment under the heading “Mrs Cheesman”).
284. In her witness statement Jerry said that she was not present at the time of the opening of Thai Metro at Charlotte Street, there was not much communication at that time with her brother/mother and that she was not kept fully informed about what was happening to her family in the UK. In cross-examination she explained that she understood at the time that her mother was opening a restaurant (that is, Anglo Thai) and that Ekk was helping her. She explained that this understanding came from what her mother had told her at the time and that her mother had also told her that she, Wanda, “put down money” regarding the new restaurant. In due course her mother also told her that Scoffle Limited was owned by her brother and was her brother’s venture and that the restaurants owned by Finfish were also her mother’s restaurants.
285. It was put to her that this was important evidence and she was asked why she had not included it in her witness statement. She could not explain why she had not put it in her witness statement but stressed that what she was saying was her evidence. She was

firm that she had not come to believe this more recently following Ekk and her mother falling out.

286. Having heard her give oral evidence, I am not persuaded that her evidence is weakened by only being given in cross-examination and not in her witness statement. The evidence is hearsay, in the sense that it is evaluation by her taken from information which she accepts was given to her by her mother at the time. Its significance lies more in the fact that it is some confirmation that Wanda was saying that the restaurants (and therefore the companies that owned them) belonged to her. Jerry's witness statement deals with a number of matters of which she had personal knowledge and in which she was involved. I am not wholly surprised that this evidence did not find its way into her witness statement which in any event, is likely to have come about by reason of questions from the solicitor compiling the same rather than being drafted by Jerry as an experienced lawyer knowing precisely what hearsay evidence was permitted, appropriate or important to be included.
287. I deal with the remainder of her relevant evidence in connection with the various topics that arise.

### **Nuanphan Cheesman**

288. Mrs Cheesman is a long standing friend of Wanda. They have known each other since about 1995. Mrs Cheesman made a witness statement dated 5 November 2022. It sets out each paragraph in English with a Thai translation underneath. The certificate of truth is signed both under the English version and under the following Thai version. The English document is certified as an "Approved translation" on the last page. She gave evidence on the third day of the trial for about 20 minutes immediately after Jerry's evidence was complete.
289. There are again serious concerns as to the manner in which this statement was prepared. It was clear to me that Mrs Cheesman's English is limited.
290. According to Jerry, she met the solicitor taking the statement at a station and then took him to the place of work (a bar) of one of the daughters of Mrs Cheesman, Ms Saovaras Chanpitak (also known as "Et"). Et also gave evidence before me.
291. Present at the bar were Wanda, Jerry, Mrs Cheesman, Mrs Cheesman's daughter Et and the solicitor. The creation of the statement (or at least the information which was then drafted as a statement) appears to have followed an iterative process whereby the solicitor would ask questions but these would be translated into or from Thai by Et and/or by Jerry. Further, Mrs Cheesman and her daughter would talk together in a mixture of Thai and English. The statement was later typed up in English but with a Thai translation so that Mrs Cheesman could understand it and ask for amendments (as in fact seems to have happened, part of a passage is deleted). This process apparently followed Et also having given evidence to the solicitor for the purposes of preparing a witness statement for her.
292. This process raises all the concerns that I have dealt with in relation to the witness statement of Pepsi. The concerns are greater because on the evidence of Jerry, Wanda and Jerry were both sitting there whilst the statement was prepared. Jerry was involved in translating for it. Et was involved in translating for it and Et herself had just given

her evidence to the solicitor for the purposes of preparing a witness statement. There is one respect in which the position is not so grave as that of Pepsi. This is that the iterative process I have described (so far as it concerned Jerry, but Et was not mentioned) was set out in the witness statement of Mrs Cheesman who said Jerry translated and no more. However, It is unclear to me how she (or the solicitor) would have been sure this was the case and the reality is that it is difficult even for a trained court translator simply to give a literal translation and resist the temptation to use their own understanding or knowledge to expand or explain what it is they are translating.

293. In later evidence, when recalled, Jerry explained that she had been mistaken in saying that the evidence was taken at a bar. In fact it was taken at her mother's house at Chargrove Close. She also suggested that her mother was not present when the process was carried out.
294. I do not consider that Mrs Cheesman's broken English was sufficiently competent for it to be said that English, although not her first language, was a language that she could sufficiently understand and converse in for the purposes of preparing and drafting a witness statement in English. That is in any event implicit in the process that was undertaken. The material should have been gathered from the witness in Thai, transcribed into Thai and then translated into English. Instead it was taken in English (partly from the witness directly reacting to an English question and partly by the witness reacting to an English question translated into Thai; and partly through a translation of what the witness had said as translated from Thai, The translators were two witnesses in the case, one of whom had just given her own evidence to the solicitor. The English product seems then to have been later translated officially into Thai by a professional Thai translator rather than the other way around.
295. As with other witnesses, and notwithstanding apparent non-compliance with the CPR, I was prepared to allow the witness statement into evidence. This on the basis that the statement is fairly short and the relevance rather limited. The non-compliance with the rules obviously weakens the strength of the same.
296. I consider that Mrs Chesman was an honest witness doing her best to assist the court.
297. In substance Mrs Cheesman gave evidence on two points. First, that she had been taken to see the premises at 14, Charlotte Street by Wanda before they were acquired and the business was started. She was firm in cross-examination that Wanda had told her that Ekk had found the restaurant for her (Wanda) to buy and open as a restaurant. She fairly accepted that she could not now be sure that the other statement in her witness statement, that she was told that Ekk would be working there front of house on a salary, was correct.
298. The second point was that she said she used to visit Fin (owned by Finfish as we now know) at 14 Charlotte Street when another of her daughters, Sonja, started working there as a waitress in 2004 and that she would visit her there 2 or 3 times a month between about 3pm to 5pm and would often stay until her daughter finished her shift and they would go home together. For what it is worth, I accept this evidence. The timing of the period when this happened and the timing of the end of shifts was not made clear. The relevance of the evidence was to say that she saw Ekk popping in and doing very little but that Wanda was always there rushing around and trying to get

things done. In cross-examination this appeared to have been an overstatement of Wanda's role. In any event, it does not assist me much as to what was going on, on a sufficiently consistent basis to be sufficiently sure, on the balance of probabilities, as to precisely what Wanda was doing. Nor does it assist me on the question of ownership of the business as the amount of hours a person is or is not working in a business and/or nature of the job they are carrying out (certainly as regards the evidence of Mrs Cheesman) does not really assist in assessing any issue as to ownership of the business. Mrs Cheesman herself did not draw any inference one way or the other about the ownership of Fin.

299. As regards the first point, it is some evidence to support the position that at the time Wanda was telling her that she, Wanda, owned (however indirectly as a matter of law) the premises and business of Thai Metro (as we now know, owned by Anglo Thai Limited). I accept her evidence (as clarified in cross-examination) on this point.

**Wattana Thamrongtanakit ("Mor")**

300. Mr Thamrongtanakit, also known as "Mor", was employed in the various businesses from time to time.
301. He worked as sous chef at Anglo Thai for about a year in 2002/3. He says that he was given this job by Wanda on the request (to Wanda) of his then girlfriend. He assisted in the move of that restaurant to 38, Charlotte Street and worked at the new location for about 3 months. He then left to continue with his studies though he also worked in some pubs nearer to his then home in St Albans.
302. In about 2008, having approached Wanda, he was taken on by her to work as sous-chef at Siam Central at 14, Charlotte Street.
303. In about 2010 he became the head chef at Siam Central and worked there until 2020. After lockdown due to the covid pandemic, when the restaurant re-opened, he decided that wanted to work nearer to home and handed in his notice in September. After that he worked at a Thia restaurant in St Albans.
304. His witness statement is dated 7 November 2022 and he gave oral evidence immediately after Mrs Cheesman. The giving of oral evidence took about 20 minutes.
305. I consider that he was an honest witness doing the best that he could to assist the court.
306. Again, the main drift of his witness statement was to suggest that Wanda was fully or greatly involved in the businesses and Ekk had little involvement. By the end of his cross-examination, in which I found him to be totally honest, it was clear that Ekk did or may have played a greater role on a day to day basis than the witness statement may have suggested and that, correspondingly, Wanda may have played a lesser role than suggested. What is clear is that on any view both were involved in the business but that the amount of work carried out by each and their respective roles are equally consistent with joint ownership or ownership by one or the other to the exclusion of the other. For the reasons that I have given in relation to Mrs Cheesman, I do not consider it necessary to decide precisely what matters as a matter of detail were covered by, respectively, Wanda or Ekk and at what period or periods. I have found Mr Thamrongtanakit's

evidence to be of very limited use in resolving the issues of ownership that I have to decide.

### **Sirirat Hopper**

307. Ms Sirirat Hopper, Wanda's younger sister, then gave oral evidence. Having affirmed the truth of her witness statement dated 30 October 2022, no questions were asked and she was not cross-examined further. Her evidence is therefore to be accepted and I have included it, where relevant, in the recital of facts already given under the heading "Main History".

### **Suwannee Bovornsukul ("Bird")**

308. The next to give evidence was Mrs Bovornsukul, also known as "Bird". Her witness statement was dated 7 November 2022. She and her husband had set up a partnership, trading as "Evergreen", in about 1993/4 and the business was later transferred to a company, in about 2003, called Evergreen Intertrade Limited. The business was the supply by way of wholesale of items needed by Thai restaurants. Supplies were imported from Thailand.

309. In her witness statement, she said that she became friends with Wanda before working together. A few years after they first met, Wanda told her that she was planning on opening a restaurant and asked if Evergreen could be a supplier. It was only after Thai Metro opened in 2000, that Evergreen started supplying Wanda. Mrs Bovornsukul only saw Wanda and as far as she was concerned Thai Metro was owned by Wanda. She also knew how hard Wanda was working to make the business a success.

310. In cross-examination, which lasted about 20 minutes, Mrs Bovornsukul accepted that when there had been bank payment issues she had been in contact by text with Helen about them, but said normally she would have contacted Wanda first if the initial contact came from the "Evergreen" side. She also accepted that a time came when she knew Ekk was involved in the business too and ended up by saying they all (that is Wanda, Ekk and Helen) seem to have been involved in the Thai Metro business.

311. Although I accept her evidence and that she was honest and doing her best to assist the court, it does not seem to me to take matters of ownership of the businesses much further forward. The involvement of Ekk, his wife and Wanda in the management of the businesses is, as I have said, consistent with the businesses having been owned by any one or more of them in combination but goes little further than that.

### **Saovaros Chanpitak ("Et").**

312. Saovaros Chanpitak (also known as "Et") was the next and final witness on the third day of the trial. Her witness statement was made on 5 November 2011. She is one of the daughters of Mrs Cheesman. Her oral evidence lasted about ten minutes.

313. In her witness statement she explained how she had come to the UK in 1993, aged 9. In 1998, at the age of 14, she had started working for Wanda in the latter's outdoor catering business working at festivals such as Glastonbury (which lasted 7 days), V, Reading, Bristol Balloon, Bath Park, Cambridge, The Isle of Wight, Portsmouth and Bournemouth. There were, she says, not many Thai stalls at that time and there were

plenty of new opportunities. Sometimes they would work two festivals in one day and may be about 20 over a six month period. In the summer months they would attend a festival virtually every weekend.

314. On many occasions Wanda would have to return to London to deal with Thai Metro in response to a call from Ekk or George Poliakov (the manager) and later the second manager (known as “Juggie” or “Juge”). It was clear to Et that the restaurant did not work without Wanda. Sometimes she would go back just to help with the cleaning or washing up.
315. In about 2002, when she was 18, she was asked by Wanda to work at Thai Metro which she did for about four months until she became pregnant. Ekk was not there much of the time but would come in twice a day and speak to the manager. After that she worked a bit helping out Wanda at the festivals.
316. Her daughter was born in June 2003, she then went back to work at Thai Metro first at 14 Charlotte Street and then, when it moved, at 38 Charlotte Street. She worked for about a year.
317. In about 2006, she came back to work at Siam Central at 14, Charlotte Street. Ekk did not do much work, instead he would come in for meetings to collect he takings and to pay the staff. He rarely attended staff meetings although Wanda would tend to sit in and listen.
318. At some point after Ekk left his wife, Helen, in 2004, she, Helen, would come into the restaurant and give out payslips or check details on payslips were correct. She would also sometimes come in and collect the takings which Wanda had by then taken over from Ekk as being her job.
319. Before the contract with Evergreen, the majority of the food and drink was sourced by Wanda who went out to buy it, often taking Et with her.
320. Et strongly disagreed with the statement in Ekk’s defence that he allowed Wanda to come and go at the restaurant as she pleased because she was his mother and that she made irregular and ad hoc efforts to contribute to the business but that her presence at and gratuitous involvement in the business was only ever intermittent. If anything, Et considered that this described Ekk’s involvement (though she could not of course comment as to the reason why Ekk was allowed to come into the restaurant).
321. As with the evidence of others, at the end of the day, this evidence did not great assist me on the key question of ownership that I had to decide.

### **Ekkachai Somboonsarn (“Ekk”)**

322. On the fourth day of the trial, Ekk started to give oral evidence. His evidence continued over until the end of the sixth day of the trial (that is oral evidence was given over three days) but with gaps as witnesses were interposed. The first witness to give oral evidence in this manner was Mr Robinson who gave evidence for about 15 minutes on the afternoon of the fourth day of the trial. At the start of the fifth day of the trial it was confirmed that the evidence of Nang Thien was not contested nor was that of David Harman. Pawan Buranthi gave oral evidence at the start of the afternoon of the fifth

day of the trial, followed by some further witnesses (Phiravanh Chanthalangsy and George Poliakoff). At this stage, Ekk had been giving oral evidence for about a day and a half. After the witnesses were interposed (starting with Pawan Buranthi), Ekk then gave evidence for about a further hour on the fifth day of the trial and most of the sixth day of the trial.

323. In terms of Ekk's written evidence, the following were before the court:
- (1) First witness statement dated 2 February 2021, seeking a variation to the injunctions made against him with regard to discharging debts in relation to the Properties.
  - (2) Affidavit made on 3 February 2021 confirming details given orally in relation to assets in connection with the freezing injunction as provided for by the order of Mr David Rees QC dated 27 January 2021;
  - (3) A second witness statement dated 24 February 2002 seeking discharge of the injunction against him and also explaining his defence;
  - (4) A third witness statement dated 2 March 2021 answering allegations that he had lied in his divorce proceedings about his assets.
  - (5) A fourth witness statement dated 27 April 2023, responding to Wanda's trial witness statement.
324. There were three particular matters which Mr Cowen relied upon as demonstrating the unreliability of Ekk as a witness. They were:
- (1) His evidence regarding Wanda's evidence that apparent signatures of hers were not in fact her signatures (i.e. that they were forgeries);
  - (2) His evidence regarding the initial ownership of Flat 22 BM;
  - (3) His evidence regarding him having an inheritance in Thailand which was used to discharge family debts in Thailand.
325. I deal with these matters later in this judgment but, as will become apparent, I largely agree with Mr Cowen's submissions in this respect.

### **Nicholas Robinson**

326. Mr Robinson gave evidence for about 15 minutes at the start of the afternoon of the fourth day of the trial. He was formerly a partner in the firm of Sandon Robinson. That firm has since amalgamated with other firms to become Dollman & Pritchard and he is now a consultant with that firm. He has been in poor health for some time having been diagnosed with cancer in December 2020 leading to extensive treatment and then having kidney issues in early 2023. He attained the age of 70 in September 2022.
327. Mr Robinson's evidence dealt with Flat 22, BM and Wanda's will. In the proceedings he made two statements on behalf of the Defendant. His first statement was made on 25 February 2021 in connection with the injunction application. His second, trial witness statement, was made on 27 April 2023.

328. In his first statement he dealt with the transfer of title of Flat 2, 22 BM. It is clear both from his witness statement and his oral evidence that he has no great recollection of the detail of events and was reconstructing it from the contemporaneous documents, specifically those on the files of his firm. I regard him as an honest witness but his evidence added little to the documents that he exhibited or referred to and spoke to.
329. In his first statement Mr Robinson said that there was nothing “untoward” with the transfer and he had no doubts that this was what Wanda wanted to do. However, this seems to be based on one meeting and a phone call confirming that the transfer was complete, she having signed it elsewhere. He refers to the claimant’s “illiteracy in English” but says that he has always found her to speak and understand spoken English. This was my experience too.
330. In oral evidence I understood him to accept that Wanda had difficulty in understanding legal terminology and legal words.
331. In his second witness statement, he referred to being instructed to make a temporary will for Wanda in February 2015. He clearly had little recollection of the actual events but said, which I accept happened in this case, that normally when relatives were in attendance during the signing off of a Will he would send out the room everyone other than the will maker and read the will over to the client. He said that he never had any need to question whether Wanda understood the consequences of what she was doing. He accepted in cross examination that there was a limit to what checks he could make in this respect: he would read the will and ask if the maker understood it and was prepared to sign it but he would usually have to take positive answers to these questions “at face value”.

**Naing Thien (Nick)**

332. In a witness statement dated 24 April 2023, Naing Thien (also known as “Nick”) gave evidence for the Defendant which, on the fifth day of the trial, Mr Cowen for the Claimant confirmed was not being challenged. Accordingly it was not necessary for Nick to give oral evidence.
333. His witness statement was originally dated 20 December 2012 but, due to defects, had to be and was remade on 24 April 2023.
334. In his witness statement Nick confirmed that Ekk trained him to work at Silk and Spice in Chiswick in about 1998. From 2003 to 2011 he was employed at Thai Metro at 38, Charlotte Street. He co-managed the site with Juge and after the latter left in 2005, he continued to manage it on his own until 2011.
335. During the time he worked at Thai Metro he reported directly to Ekk. He always understood him to be the owner (though the basis of that understanding is not explained) and he says that he did not take orders from anyone else.
336. He said he met Wanda on a few occasions. Sometimes she would drop off food supplies or left over food she had cooked which she gave the staff to eat. However, she did not hold a position in the Kitchen or on the floor and was not at Thai Metro on a rota basis and sometimes he would not see her for months at a time.



337. For reasons that will have become clear from what I have said earlier in this judgment, I do not find this evidence to be of much assistance in dealing with the questions that are before me.

### **David Harman**

338. Also on the fifth day of the trial, Mr Cowen confirmed that the witness statement of Mr David Harman was not contested. Mr Harman originally made a witness statement for the defendant dated 21 December 2022. It was remade on 27 April 2023 due to procedural defects in the first version.

339. In his witness statement Mr Harman explains that he is now retired but that his business background was the provision of sale, supply and repair services in relation to bar and restaurant equipment.

340. He had known Ekk since he started working for Silk & Spice (being a chain of restaurants which Mr Harman then supplied). He then supplied Thai Metro, set up by Ekk in 2000.

341. He remembered visiting 14, Charlotte Street in the lead up to the opening. There was some kitchen equipment already at the premises so there was no need to provide a complete set from scratch. Mr Harman provided a quote and Ekk purchased what was needed.

342. Mr Harman's business would then assist with repairs. Ekk, or one of his managers, would usually telephone to say, for example, a fridge was down or maybe a dishwasher. Mr Harman's business would then arrange a convenient time to attend on site to carry out the repair.

343. Mr Harman's business also supplied the other businesses Ekk ran, his Papaya restaurants, Siam Central, Thai Metro and the central kitchen.

344. He concludes by saying that he understands that there is dispute between Ekk and his mother as to who owns the restaurants. He says he regards this whole dispute as "absurd". He has never spoken to or seen Ekk's mother and does not understand how she can say the businesses are hers. In his entire business life, he says, he has never worked with a business and not known the owner.

345. In my judgment, the strictly factual matters that he speaks to regarding Ekk and his mother are ones that I should and do accept. However, his implicit assertions of opinion that (in effect) Ekk's mother cannot be, or has no grounds to assert that she is, the owner and that if she had been he would have known are not matters that carry any weight. They are unexplained or developed and it seems to me that they amount to little more than statements of opinion. How, for example can he say that he always knew the owner of any business that he entered into contractual relations with? Further, the matter is complicated here because the restaurants are actually owned by the relevant companies so he must be saying that he always has known the identity of the shareholders (or possibly the majority shareholder) and/or the beneficial owner of the shares in companies that he has dealt with. I agree with the submission made by Mr Cowen that whilst generally Mr Harman would know, in a family run business, one or more members of the family with the relevant executive role and responsibility of

dealing with Mr Harman and/or his companies, he would not necessarily know the precise family member who was the owner and the same must be true of shareholdings where the business was owned by a company.

346. As such, I do not consider his evidence takes matters any further forward. At the highest it is consistent with Ekk being the indirect owner (through a company/ies) of the businesses, but no more than that.

### **Pawan Buranthi**

347. Pawan Buranthi gave oral evidence on the afternoon of the fifth day of the trial for about 15 minutes. He had made a witness statement for the defendant dated 20 December 2022. It was re-made on 24 April 2023, due to procedural irregularities with the first one.

348. Mr Buranthi is a long standing friend of Ekk. He came from Thailand in about 1980 when he was eight and moved to Plaistow about two years later in about 1982 when he was ten. It was there he met and befriended Ekk as they both lived in Corporation Street. He is about half a year older than Ekk. He worked for Ekk at Papaya but joined Thai Metro in about late September 2022.

349. In my assessment he was an honest and reliable witness. With regard to the period when he and Ekk were in their teens he described a situation where, when he was about 15, Ekk was not always living at home with his mother but rather “sofa surfing” where he (and others of their friends) would stay a few nights at homes of friends but also go home to his mother every so often to stay there. There were however periods where Ekk was living with his mother.

350. I should deal with this point at this stage. There as a conflict of evidence between Ekk and Wanda as to precisely when he left and returned to her home to live with her in the period before the setting up of Thai Metro. What the evidence as a whole showed was that the relationship between the was quite fiery and they did not always get on. I did not find it helpful to seek to resolve and reach a decision on this issue. The issue itself was irrelevant to the issues other than as bearing on credibility and it did not seem to me that resolving the issue was going to be easy or that it would assist with credibility on the main issues before me.

351. As regards 14 Charlotte Street, Mr Buranthi said in his witness statement, and was not challenged on the point, that in 2000 he was working as a partner in a business in Portobello Road. Ekk mentioned that he was interested in a site at Charlotte Street. Because Ekk did not have the money to buy the lease Mr Buranthi asked Ekk how he would pay for it and he said his Mum would buy it for him. He understood from Ekk that this was or would be a gift to him by his mother as she had already bought Jerry a house. This evidence is consistent with the way in which Ekk put his case at one time but was of course inconsistent with the way in which the evidence eventually emerged and as accepted by Ekk that Wanda did not buy the lease of the restaurant businesses for him, Ekk, as a gift. Instead Ekk accepts that his mother bought the leases in her own name and owned them beneficially.

352. Mr Buranthi says that he introduced suppliers to Ekk but never heard of Wanda being involved in the business and did not see her there.

353. As a general matter, he says in his witness statement, and was not challenged on the point, he made various assertions that the businesses were Ekk's but did not explain on what this was based. The inference must be that it was derived from what he assumed (e.g. because he didn't see Wanda) and/or was told by Ekk.
354. Having returned to Thailand for about 6 months in 2013, he returned to the UK in about November 2013. He agreed to work for Ekk in Ekk's Papaya "group of eateries" as the General Manager based at the fourth branch, which opened in January 2024, based at Goodge Street (though he would often travel to other sites when they had any problems).
355. He instances a number of occasions when Wanda dropped off food at Papaya or turned up to check on things or, for example, to complain that lights had been left on or that staff were partying. At highest this shows that Wanda did get involved to some extent in a business that was not hers so that similar involvement in other businesses cannot necessarily be taken as a strong indicator of her ownership of the same.

### **Phiravanh Chanthalangsy ("Phil")**

356. Mr Chanthalangsy (also known as "Phil") gave evidence for about an hour on the fifth day of the trial immediately after Mr Buranthi. He was called by the Defendant and had made a witness statement for the Defendant dated 13 March 2023 (his "Second Statement"). However, prior to this he had also made an earlier statement for the Claimant, dated 7 November 2022 (his "First Statement").
357. The purpose of his Second Statement was for Phil to correct certain matters in his First and, as part of this, to explain the circumstances in which the First and Second Statements came to be made.
358. In his First Statement, Phil explained as follows. Whilst working as head chef at Silk and Spice in 1995, Ekk was the manager. They worked there for about four years.
359. Ekk left in about 1999/2000 to "go and work as manager" at Thai Metro. In his second statement Phil corrected this statement to say that Ekk left because he opened up his own restaurant, Thai Metro.
360. In 2003, Phil left Silks & Spice and went to work as head chef at Thai Metro at 14, Charlotte Street.
361. At that time, Wanda was doing "all the shopping" for the restaurant and was also involved in the central kitchen where she "prepared and provided almost all of the food". She supplied all the meat, the sauces and most of the starters. "All we needed to do was prepared the dim sum and the spring rolls".
362. Wanda cleaned the restaurant thoroughly on Sundays; did all the physical work and was always coming in and out. Ekk would come in just before closing to collect takings. The payment of staff wages and tips was carried out by Mr Poliakoff.
363. He denied any suggestion that Ekk only permitted Wanda to come and go because she was his mother, that she only made ad hoc efforts to contribute to the business and that

her presence was only ever intermittent and that she was more of a hindrance than a help.

364. There came a time when Ekk was having an affair with Tanya when he was married to Helen and at that time Wanda used to collect the takings, though Helen did on occasion too (but maybe only once a month).
365. In March 2021, he received a call from Ekk. Ekk told him that his mother was trying to take the business away from him and that he would be homeless and asked for him to go to his solicitor to make a statement for him saying that Wanda had nothing to do with the business and was not working there. Phil said he felt uncomfortable about this. Having discussed it with his brother he was not willing not to tell the truth. In the end he blocked Ekk's calls and as at November 2022 had not spoken to him further.
366. In his second statement, Phil said that:
- (1) He was contacted by Wanda to make a statement and wanted to help her because she said that Ekk was taking her to court, and she said that she would lose everything like her house.
  - (2) Wanda told him she would help him but she couldn't at the moment as she had no money. She would help him if she won in court.
  - (3) He now feels he got dragged along with his brother who decided himself to give a statement to help Wanda.
  - (4) He met with Wanda, Jerry and a solicitor at his workplace in Fleet. Wanda and Jerry were speaking in Thai and English.
  - (5) Wanda spoke with him in Thai about how much money he might need to instruct a solicitor for himself on his own affairs and he indicated £20,000. She again said that if she won this case she would (or possible could) help him.
  - (6) His English was not good. He was confused. Events he was asked to speak about were all a long time ago. The solicitor asked questions and he answered as best he could.
  - (7) He later signed the statement when Jerry and Wanda brought it to him and Jerry read it out to him by the was tired and did not focus on the wording enough before he signed the witness statement.
  - (8) He read his first witness statement through about two weeks before he made his second statement (on 13 March 2023) and realised he had to "make my statement right", He telephoned Ekk who arranged for his (Ekk's) solicitor to get in touch.
  - (9) The solicitor and he went through the first statement and identified corrections as set out in the second statement.
367. The main corrections were as follows:
368. Ekk did not leave Silks and Spice to "work as a manger" at Thai Metro but he "opened his own restaurant", Thai Metro.

369. It was not correct that Ekk ran the “upstairs” at Thai Metro. Rather, Nick was the floor manager and Ekk was the owner.
370. He had said that Wanda did all the shopping but he did not know it was all of the shopping because there was a delivery manager, Meng who came most of the time to deliver food to Thai Metro.
371. There was a central kitchen preparing food and delivering it frozen. He went there about 10 times and did see Wanda there but also saw other staff there.
372. Wanda did not clean the restaurant every Sunday. There was a different lady employed as a cleaner. He did not know how many times he saw Wanda cleaning.
373. When he had said that Wanda did “all the physical work” and was always coming in and out he had meant she did the shopping sometimes and brought the meat to Thai Metro. She did not work at Thai Metro and never worked in the kitchen. He was head chef.
374. Payment of wages was every Friday. He had said Ekk came in just before closing to collect the takings and that the payment of wages was left to the manager. He said in fact Ekk gave him an envelope for the wages for the 6 members of kitchen staff and one for Nick, the floor manager, for his staff. George Poliakoff was not manager at Thai Metro when he started (as he had said) but was at Siam House.
375. He had said that “I understand that Eggy has claimed that he only allowed Wanda to come and go at the restaurant because she was his mother, that she only made ad hoc efforts to contribute to the business, that her presence was only ever intermittently and that she was more of a hindrance than a help. That is not true at all”. However, he does not understand the first sentence and “cannot say some of these words from my mouth”. When he said Wanda was always around, he meant he might see her maybe 3 times a week if she dropped food off. She might have something to eat and stay for an hour or two.
376. He had said that Wanda used to come to collect the takings at a time when Ekk was having an affair with Tanya and that Helen did on occasion too. In his second statement he said he remembered Nick bringing the wages down. He didn’t know why he said Wanda (but in fact he had said Wanda collected the takings not delivered the wages).
377. When he had initially been approached by Ekk to make a statement Ekk had said to him not that Wanda had nothing to do with the business but that she had nothing to do with the running of the business. Wanda’s part, he now said, was only to do with the food supply.
378. He had not avoided making a statement for Ekk when originally asked on the basis he was not prepared to tell lies. He just didn’t want to get involved.
379. His first statement was a mistake (although he did not retract all of it).
380. Following his cross-examination, (as was clear from the wording of his statements) he admitted that his English was not that good. He also explained in re-examination for the first time that the other members of his family who he had referred to as being

unhappy with him making a second witness statement probably included his “ex” who was Et and that his mother in law had been Mrs Cheesman.

381. I came to the conclusion that his evidence, rather like that of others, and to the extent that I was able to accept it, showed an involvement of Wanda factually in the restaurant businesses which was equally consistent with her being the ultimate owner and her being a family member helping out.
382. However, it also seemed to me that, as shown by the differences between his first and second statements, he was not a careful witness and was able to be led into putting things into his witness statements and that this continued into his second witness statement. In particular there was evidence about another person called “Ekk” referred to as “Big Ekk” who seemed to have been influential in persuading him that he should not have made a statement for Wanda. That was explored in cross-examination and he seemed uncomfortable when giving this evidence. I regard him as an easily led witness whose evidence, if contentious, is not reliable. On the other hand, much of his evidence it seems to me is not contentious and confirms that Wanda had some factual involvement in the running of the restaurants but little more than that.
383. He was, not surprisingly, cross-examined on the basis of his assessment that Ekk was the owner of the restaurants. At one point he seemed to accept that his assessment of Ekk as owner was based on the fact that he thought he was working for Ekk and because he would go to Ekk if he needed a pay rise. When he worked there, he “assumed” Ekk was the owner. Then he later said more definitely that Ekk “was” the owner but this seemed based upon the fact that Ekk came to the restaurant with the wages.
384. At the end of the day I did not find his evidence very helpful and would in any event have given it minimal weight, unless substantiated by other evidence, had anything turned upon it.

### **George Poliakoff**

385. Mr Poliakoff was cross-examined for about five minutes immediately after Phil.
386. Mr Poliakoff made a witness statement on behalf of the Defendant dated 24 April 2023. This was the same as one made by him on 20 December 2022. The statement was re-made to cure certain procedural his defects. In his witness statement he explained how, having known Ekk when they were both managers at branches of Silk & Spice, Ekk had recruited him as manager of Thai Metro at 14 Charlotte Street in 2000. Ekk referred to the restaurant as one he was opening shortly. In the lead to the opening, Ekk and Mr Poliakoff did many things together to keep the cost down, such as painting. Things were done on a budget as Ekk “did not have much money”. After the restaurant opened, they continued to work hard, especially Ekk. Mr Poliakoff became the main liaison between Ekk and the other staff “when he eventually stepped back from service” but if there were specific issues, he would leave them to Ekk to sort out (e.g. as regards the equipment or staff).
387. As regards Wanda, in his witness statement, Mr Poliakoff said that he met her but she was introduced to him simply as “mum” and he never had any discussion with her about the business or decisions that were to be made by Ekk. He portrays her involvement at

Thai Metro and then at Fin and its successor restaurants at 14 Charlotte Street whilst he was there as very low level: mainly comprising dropping off the odd amount of food.

388. In 2009, Mr Poliakoff left, He returned at Ekk's invitation in 2016 but left again in 2017. In that period he said he rarely saw Wanda , maybe one or twice a year one such event being the staff Christmas party.
389. In conclusion he said that Ekk had always "lived and breathed the restaurants" since 2000 and that in his, Mr Poliakoff's mind, there is no doubt that the businesses were Ekk's.
390. In cross-examination, which was short and lasted about five minutes, his evidence was not substantially challenged. He denied that he had left in 2009 because Wanda had sacked him. In response to a question as to whether she had been at that time cross because, in her eyes, he was treating the restaurant as his own and giving free means and drinks to his friends, he did not deny that she was cross but turned the question by saying that it was often necessary to give compensation to people e.g. when they had been kept waiting. As I read it, Wanda had therefore had more dealings with him than he suggested and had asserted, or attempted to assert, control over him to some extent.
391. However, at the end of the day, I did not find his substantive evidence very helpful in resolving the issue of ownership of the restaurants (or rather of the companies which owned the restaurants). The evidence is consistent with Ekk being a manager or an owner and of Wanda being an owner or just a supportive mother. Mr Poliakoff's opinion barely stated that Ekk owned the restaurants is an opinion which I have to take as being based on no more than his substantive factual evidence and I have already explained the conclusion that I have drawn from that factual evidence.
392. After Mr Poliakoff had given evidence, Ekk continued to give evidence for the remainder of that afternoon (about an hour or so) and for about two and a half hours the following day (day six of the trial).

### **Halyna Dudar ("Helen")**

393. Helen gave evidence for about 40 minutes on the morning of the sixth day of the trial and about an hour and a half in the afternoon of that day. She was the last witness to give oral evidence.
394. Her trial witness statement was made on 27 April 2023 (replacing an earlier defective one).
395. In large part Helen's evidence repeated matters that were clearly derived from Ekk or given a spin in his favour. One example is the circumstances of the start of the restaurant business where she said that Vanida "told her" that she had given Ekk her last £50,000 which he used to start "his" business. Her then quoted recorded comments of Wanda are in fact entirely consistent with Wanda's version of events. Thus she suggests that Wanda "gave" Ekk £50,000 to start "his" business but then goes on to explain that what Wanda was saying was that without her (Wanda's) help, Ekk would never have been able to "obtain" the lease (of 14, Charlotte Street). It is however accepted that Ekk did not "obtain" the lease, at least in ownership terms; at all times Wanda had legal title and beneficial interest. Wanda did not "gift" the money; she used it to buy the lease,

even on Ekk's version of events. Repeatedly Helen refers to Wanda going on about "her gift" but that is simply inaccurate and I do not accept Helen's evidence on this point nor do I accept that she is in a position to say what the arrangements were before she came on the scene. Her attempt to rely on what Wanda said to her or which she overheard does not bear it out either.

396. In cross-examination, she suggested that the gift of £60,000 by Wanda (she agreed with the £60,000 that Ekk had ended up with but did not explain why she had said £50,000) was later repaid to Wanda. This was not part of Ekk's case. At this point in her cross-examination she fastened on some HMRC tax calculations for Wanda but which had been provided on a subject access request by Wanda under cover of a letter dated 27 April 2023. These showed dividends (plus tax credits) received as follows:

2005-06	£11,111
2006-07	£55,692
2007-08	£ 5,777

397. Helen relied on the last two and said that the dividends represented repayment of the "gift" of £60,000. When asked why she had not raised this before she said, in effect, that it was because she was not sure whether that might cause problems with the tax authorities. She did not give a convincing explanation as to why the "gift" should have been repaid (largely) in 2006-7 as opposed to any other time. She also denied that, having seen the documents, she had thought up a new version of events to explain away why Wanda should have received, and accounted to the tax authorities in respect of, dividends on shares which she held only as nominee. Finally, she did not refer to the 2005-06 year (although this may have been oversight).
398. I do not accept Helen's evidence on these points. I accept Mr Cowen's submission that this is an example of Helen's evidence deriving from a document coming to light and an explanation being fashioned to try and explain why the document is consistent with Ekk's case. The "gift back" made little sense, not least as there is no other suggested "undoing" of the status quo and it is common ground that the relevant lease was always owned by Wanda.
399. Furthermore, her written evidence in places identified occasions when she was personally present but in other places was unclear whether she was personally present or not. In cross-examination she sometimes identified more detail and said of some of the latter examples that she had obtained the information from being personally present at the time. I agree with Mr Cowen's submission that I should infer that information given in the witness statement was not from first-hand knowledge unless the witness statement says so.
400. Furthermore, and as a general matter, I also agree with Mr Cowen's submission that Helen's evidence should be treated with caution on the basis that in large part her evidence does not seem to be from genuine recollection but rather from a mixture of what she has pieced together looking at the documents and from discussions of the case with Ekk. This of course is not that surprising and reflects the problems witnesses face in situations such as this and that I have outlined when considering the court's approach to witness evidence.



390. At another place in her written evidence, Helen referred to Wanda telling her that when at a meeting dealing with the signing of transfers of shares in EUBC, the accountant asked Ekk if he trusted his Mum and Wanda was very proud of that and later told Helen about it. However, that tells one nothing about the context nor of what it was that Ekk was trusting his mother to do.
401. Similarly, as regards the loan from EUBC to Jerry, she repeats the “black hole in the accounts” (which could of course been treated as a loan by EUBC either to Jerry or to Ekk) but having accepted the monies were paid from EUBC and left a hole in its accounts she referred to it as a loan from Ekk (and EUBC treating its monies being loaned to Ekk) and some repayments being made, but without identifying how she knew these matters. She only became an accountant in 2006 and was not at the time in early 2000s then involved in EUBS’s financial side. The inference is that this is what she was told by Ekk.
402. As regards Flat 22 BM she asserted that there was an express oral agreement between Jerry, Ekk and Wanda that she observed and was present when made, that 2 Chargrove Close would be mortgaged to repay Ekk the debt arising from payments from EUBC to Jerry. Due to Ekk’s pending divorce, she says, Wanda was holding Ekk’s properties for him and it was agreed that when the mortgage proceeds from 2 Chargrove Close were used in purchasing Flat 22 BM it was bought in Wanda’s name for that reason. Jerry is also said to have known about this. As I shall explain when dealing with Flat 22 BM in more detail below, subsequent documents include ones from Ekk asserting that the property was bought with Wanda’s money and belonged to her on acquisition. I reject Ekk’s now evidence to the contrary and similarly reject Helen’s evidence. It seems to me that the detail that she goes into of matters said to be known to her in this connection also considerably weakens her credibility as a witness.

### **Hearsay statements**

403. There were a number of witness statements which were relied upon as hearsay statements. I must therefore treat them with care. These statements included the following.

### **Theptida Thornsri**

404. Ms Thornsri made a witness statement dated 7 November 2022 in favour of Wanda. This statement was relied upon by way of hearsay.
405. Ms Thornsri was the partner of Wanda’s former husband, Taem Somboonsarn. She met him in 1981 and they started living together in 1982/3 (each year is mentioned in a separate paragraph) which continued until his death in 2002.
406. The form of the witness statement is that paragraph by paragraph it sets out the evidence in English and then in Thai. The translation is said to have been approved by a translator who has also signed the statement. The statement of truth follows the same pattern that is being set out in English and then Thai though it is noticeable that both language versions appear to have been signed by Ms Thornsri.
407. Ms Thornsri says that the statement was prepared following a question and answer session by phone call between her and a representative of the claimant’s solicitors. She

has no understanding of spoken or written English. Jerry translated the English questions put to Ms Thornsri into Thai for her benefit and then translated her answers in Thai into English for the benefit of the English solicitor's representative. The statement was prepared from the question and answer session but Jerry was not involved in that process. The statement was then translated by a Thai interpreter.

408. In summary, she says that Taem arrived with a suitcase of possessions and that was all he had so far as she was concerned. Initially he was employed on the railways but retired in 1984 or so. He then paid his railway pension to her which was 8,000 baht a month (about £135 in 2000).
409. On Taem's death, the railway company made available to their family an amount of money equivalent to 30x monthly salary to be split equally between the widow and children. The sum was 240,000 baht (about £33,600 in 2002). As she had not been married to Taem she was not entitled to claim. Only Jerry claimed and Jerry received her 80,000 baht (about £225 in 2002), which she then gave to Ms Thornsri to pay the funeral expenses. Ms Thornsri had not been able to pay the same because Taem died owning nothing and had been unable to provide for her after his death.

#### **Wisit Pisankunakit ("Wisit")**

410. This statement was relied upon by way of hearsay.
411. Wisan made a statement dated 7 November 2022 in support of Wanda. To recap, he is Wanda's brother in law, being married to her sister, Achara.
412. The form of the witness statement is that paragraph by paragraph it sets out the evidence in English and then in Thai. The translation is said to have been approved by a translator who has also signed the statement. The statement of truth follows the same pattern that is being set out in English and then Thai though it is noticeable that both language versions appear to have been signed by Wisit.
413. Wisit says that the statement was prepared following a question and answer session by phone call between him and a representative of the claimant's solicitors. He has a limited understanding of spoken and written English. Jerry translated the English questions put to Wisit into Thai for his benefit and then translated his answers in Thai into English for the benefit of the English solicitor's representative. The statement was prepared from the question and answer session but Jerry was not involved in that process.
414. Wisit says that in September 2009, Wanda, having approached Achara and Achara having discussed it with him, approached him to lend her money 20 million baht (which was then about £362,000) in connection with the purchase of a building in London for a restaurant. He was happy to do this as Wanda had previously used her house to guarantee a small loan he had taken out for his business but given the size of the loan he discussed with Jerry, whom he trusted, and who confirmed to him that the restaurants were doing well and the new building would help provide greater security. He understood that Wanda had asked Ekk to deal with the paperwork on her side.
415. Although he had been told the loan was for the purchase of a building, he regarded the money as Wanda's to do as she wanted with it. To give him comfort in case anything

happened to Wanda he wanted Ekk to be part of the loan agreement and asked that Jerry witness the signatures of Wanda and Ekk.

416. He cannot be certain of the exact dates but the loan (and interest due) was repaid very quickly, probably within the year and in Thai Baht.
417. The paperwork he handed over to his daughters, Satinee (Noo) and Wiragran (Ann) to deal with. Noo drafted the agreement and Ann arranged for the remittance of the sum lent.

### **Thaweekiat Preechappanitpattana**

418. Mr Preechappanitpattana (“Thaweekiat” to distinguish him from his father, Suchart) made a witness statement dated 5 November 2022 which was relied upon as hearsay evidence. In fact it is double hearsay as it relates what Thaweekiat says that he was told by his father, who died on 20 July 2019.
419. The form of the witness statement is that paragraph by paragraph it sets out the evidence in English and then in Thai. The translation is said to have been approved by a translator who has also signed the statement. The statement of truth follows the same pattern that is being set out in English and then Thai though it is noticeable that both language versions appear to have been signed by Thaweekiat.
420. Thaweekiat says that the statement was prepared following a question and answer session by phone call between him and a representative of the claimant’s solicitors. He has no understanding of spoken or written English. Jerry translated the English questions put to Thaweekiat into Thai for his benefit and then translated his answers in Thai into English for the benefit of the English solicitor’s representative. The statement was prepared from the question and answer session but Jerry was not involved in that process.
421. The key evidence was as follows. When his grandfather died in 2003, he left 6 million baht (then about £93,000) to each of his five children. Wanda did not then need her share and lent it to her brother Suchart, to enable him to continue his farming business of agricultural merchants. The loan was an informal family one and no documentation to evidence or effect it was produced at the time.
422. In 2009 Wanda asked Suchart to repay the loan. At that stage he was unable to do so. However by 2010 the business had taken off and Suchart offered to repay the loan with interest of 4 million baht (about £83,000). At that stage Wanda had borrowed 20 million baht from Wisit, upon which she was paying interest. It was agreed between Wanda and Suchart that Suchart would lend Wanda another 10 million baht on top of the 10 million baht sum he was prepared to pay her in repayment of her original loan to him. Thaweekiat believes that his father paid 10 million baht to Wanda in repayment of her loan (with the interest). Suchart asked Thaweekiat to sort out the loan. Thaweekiat paid Wanda 10 million baht on 22 October 2010. Again, the loan was an informal family loan without any paperwork.
423. Following the death of Wanda’s mother (Suchart’s stepmother) in 2011, Wanda received about 6-7 million baht which she gave to Suchart in part repayment of the 10 million baht loan. In addition, she gave him the title deeds to some land she owned in

Uthai Thani province which was worth about 4 million baht. Those deeds were treated as extinguishing the balance of the loan.

**Shares in the Companies, forged incorporation and other documents, absence of share transfers, appointments and removal of directors**

424. The parties originally engaged on the basis that Ekk's case was that there had been share transfers of shares in each of Anglo-Thai Ltd, Finfish Ltd and TM Ltd to him as set out in the various returns to Companies House (though as I have pointed out there seems to have been a discrepancy between what annual returns/certificates of compliance showed compared with what some at least of the relevant company accounts showed). These share transfers were said to have been effected with the open acknowledgment and express agreement of Wanda that the shares were and always had been beneficially owned by him.
425. However, by the time of trial it was common ground that there had been no relevant transfers of shares nor indeed any initial issue of shares nor any share register ever made up.
426. In those circumstances it seems to me that the legal position is that Wanda is subscriber as regards each of TM Ltd, Anglo Thai Ltd and Finfish Ltd. On this point, she has signed documents at the time that the companies were incorporated indicating that she is the subscriber, even if her signature has been forged on the crucial agreement to subscribe and take shares. Further, she has adopted any signature made on her behalf in this respect. Accordingly, I consider that she is the person with the legal right to call for the issue of the shares to herself. The only question is whether she holds that right beneficially or whether she holds it on trust for Ekk and/or in circumstances in which she would hold any shares then issued to her on trust for Ekk.
427. Before I turn to that issue, I should identify evidence that Ekk has given both about (a) the forged signatures of Wanda that are now admitted; (b) share transfers which he formerly said were made in relation to the Companies and the circumstances in which, he said, share transfers were executed by her which included express discussion with and agreement by Wanda that she held such shares on trust for him and (c) the evidence regarding appointments/removal of certain directors. These matters are highly relevant to his credibility as a witness.

**Incorporation documents and reported share transfers thereafter**

428. In her affidavit made on 13 November 2011 in support of her application for freezing/proprietary injunctions, Wanda asserted near the start that as regards the restaurant businesses they were transferred to various companies of which she was sole shareholder and that in 2009, without her knowledge or authority, Ekk arranged for the shares to be registered in his name or that of companies that he owned. (In fact, this was a reference to transfers of shares in Anglo Thai Ltd only and she enlarged upon this general point to cover Finfish Ltd later in her affidavit).
429. She went on to refer to the transfer (recorded at Companies House) on 12 August 2006 of 40% of the issued shares in Finfish Ltd from Wanda to Anglo Thai and said that she knew nothing about it, never authorised it and executed no share transfers. She made

the same point regarding the apparent transfer on 12 August 2007 of the remaining 60% shareholding in Finfish Ltd from her to Anglo Thai Ltd.

430. As regards shares in Anglo Thai Ltd she referred to the apparent transfer of all the issued shares from her to Ekk on 25 January 2009. Again, she said that she knew nothing about this, never authorised it and executed no share transfers.
431. Clearly, further research was undertaken by or on Wanda's behalf, between the date of her affidavit and her Particulars of Claim dated 8 February 2021.
432. In response to his understanding of Wanda's then case, in his second witness statement dated 24 February 2021, Ekk said among other things:

*“ 48. My mother says that she does not recognise her signatures on some of the incorporation documents, and they are forged. That is not true. She signed the documents and she knew what they were for....*

*54. [As regards share transfers out of Wanda's name and the transfer of 40% of the Finfish Ltd shares from Wanda to Anglo Thai Ltd]: At the time this did not change the overall shareholding in the companies in my mother's name. But after my divorce from my first wife was finalised, I took steps to transfer the ownership of the companies back into my name. My mother knew about them and cooperated because it was always known between us that the companies were my businesses.”*

*82. As for the companies, my mother's case seems to be that she did not know I had taken over ownership of them until her lawyer's investigated. But on her own evidence, she has always known that I had effective control over their money and their company affairs, so I have always been able to do what I want with them.”*

433. In short, his evidence was that: Wanda had signed all the relevant incorporation documents and fully understood them; she transferred shares to Ekk and knew what she was doing in so doing and, in any event, he had control of the companies and could do what he wanted with them as she well knew. The latter point is not a good riposte in law to any complaint as regards measures to which she did not expressly agree (but needed to in order for them to be legally effective). However, in my judgment, this almost fallback justification throws a revealing light on Ekk's approach: which is that he felt he could do what he wanted and that because his mother had, in effect allowed him to take control of things, he was empowered to do what he in fact did and cannot be challenged in so doing.
434. In his original defence, Ekk asserted that where Wanda's signature was required (as it would have been for a share transfer) in relation to company transactions as thereafter referred to, he explained to her what she was required to do and she took the relevant step with knowledge and consent to the position and transfers of shares were effected on the basis that she had been Ekk's nominee as owners of the shares in the Companies.

435. As regards to the transfer of 40% of the shares in Finfish Ltd from Wanda to Anglo Thai Ltd in his original Defence, Ekk pleaded specifically that Wanda executed the necessary transfer.
436. As regards the transfer of the remaining 60% of the shares in Finfish Ltd to Anglo Thai Trading, Ekk's original defence pleaded, again, that Wanda executed the necessary share transfer.
437. Similarly, Ekk's original defence was that Wanda had executed the share transfers of shares in Anglo Thai Ltd into his name.
438. As regards the notification to Companies House of the registration of shares in Thai Metro Ltd into his name, again Ekk's original pleaded case was that Wanda executed the relevant share transfer form to bring this about.
439. In his fourth witness statement, dated 27 April 2023, Ekk's version of events totally changed.
440. The expert's report was by then available. In his fourth witness statement, Ekk now accepted forgeries of Wanda's signature as identified by the expert. As regards Anglo Thai Ltd incorporation documents he "could only think" that the accountant was responsible. As regards later documents upon which the expert opined, he now recalled forging Wanda's signature (because she was away) on the Bank of Ireland document release form. As regards other documents, lodged at Companies House with her forged signature (including accounts and Finfish Ltd incorporation documents) he accepted that the signature looked like the one that he had forged on the Bank of Ireland document and that:

*"realistically, the only person who would have signed in place of my mother on those corporate documents is me, as I controlled the companies and dealt with all of the company documents. So I accept that I probably did make those signatures".*

441. In my judgment, the same explanation applies also to the signatures on the Anglo Thai Ltd corporate documents. It also seems to me unlikely that an accountant would forge signatures on such important documents. Accordingly, I find that Ekk forged the relevant Wanda signatures on the Anglo Thai Ltd incorporation documents.
442. Finally, Ekk now accepted that no share transfers had been executed by Wanda in relation to shares in Finfish Ltd, Anglo Thai Ltd or Thai Metro Ltd. As regards the transfers notified to Companies House in 2007 regarding shares in Finfish Ltd he said:

*"86. My mother had no involvement in these decisions but she knew about them, because I told her. We were very close at the time. As far as I can remember, she did not sign any stock transfer form. I do not believe that we issued share certificates in Finfish or Anglo Thai, and I do not remember using stock transfer forms for any of the transfers of shares. I just notified Companies House online of the change in ownership. That was in the annual return that I filed on 12 March 2007. I did not know that anything else was required."*

443. As regards the share transfers in Finfish Ltd and Anglo Thai Ltd, he said that he started to transfer the shares back to himself (which was not an actual transfer but a notification to Companies House that shares had been transferred) after his divorce to Nok. He says that he told Wanda it was “time to transfer the companies to me” and she said, “That’s fine it’s all yours anyway”. He says that this involved the transfer of 60% of shares in Finfish Ltd to Anglo Thai Ltd and then transferring shares in Anglo Thai Ltd to himself.
444. However, he also said that the “transfer” of Finfish shares to Anglo Thai Ltd (in two tranches in the period prior to 12 August 2006 (40%) (as confirmed by Finfish Ltd annual return) and in the period 12 August 2006 to 31 August 2006 (60%) (as confirmed by combination of annual return of Finfish for 2007 and company accounts of Anglo Thai Ltd for year ending 31 August 2006)) did not change anything because Wanda was the registered owner of all the shares in Anglo Thai Ltd.
445. According to Companies House the shares in Anglo Thai Ltd were only transferred from Wanda to Ekk sometime between January 2007 and 21 January 2008, and most probably on the latter date (see annual return Anglo Thai made up to 25 January 2008). The shares in Finfish Ltd were only “transferred” to Ekk by Anglo Thai Ltd on 1 April 2008 (see annual return Finfish Ltd for period ending 12 August 2008).
446. I reject his evidence as to what was said at the time and how the purported transfers came to be reported to Companies House. The language attributed to Wanda does not ring true. Further, the “time” at which shares were first recorded as being held by Ekk extended over some years and does not suggest that once the divorce cloud had gone shares were then fairly promptly transferred back into his name. Indeed, it is far from clear that, assuming there to have been assumed to be share transfers, Anglo Thai was not the beneficial owner of shares in Finfish Ltd for a period. Furthermore, and as I have said, the accounts of the Companies suggest that shares were being treated as transferred back in 2005 when the divorce cloud was, according to Ekk, still hanging over him and being a reason why legal title (only) in such shares had been transferred to Wanda. Finally, the shares in TM Ltd were of course purportedly transferred years later. No explanation was given as to motivation or trigger for all these transfers (over time) save that the threat of divorce was removed so there was no need to leave the shares registered in Wanda’s name and steps were taken to reverse that position. “Each time” he said, he just informed Companies House of the changed ownership.
447. This prolonged period does not really fit with a decision that all shares could be transferred into his name once the divorce cloud had passed and Wanda being asked about it once and agreeing to it once and it then being given effect to.
448. In any event, this specific evidence does not appear in terms to relate to TM Ltd and the registration in 2015 of a change in ownership in that company is simply unexplained in Ekk’s fourth witness statement.
449. Ekk was, not surprisingly, cross examined about these changes in his case and evidence.
450. As regards his changed case from the very positive pleaded case that Wanda had executed the relevant documents to effect the shares transfers (which was retained in the Amended defence in 2022), he was simply unable to explain why he had originally positively said that there were share transfers signed by Wanda and that she had agreed to transfer her shares to him. Apparently searching for straws he suggested that he did

not understand the term “executed” in the defence. This made little sense (especially given he had had a second opportunity to make this point to his solicitors (or ask for clarification) when the amended defence was prepared) and sat ill with the pleading that where her signature was required he explained what he was doing and what she was required to do. He was also unable to explain how it came about that he realised that he was wrong in asserting that relevant share transfers had been executed by Wanda.

451. As regards the forgeries, in cross-examination he developed a new case. He continued to maintain that he had not forged the signature on the relevant Anglo Thai Ltd incorporation documents. He had said in his fourth witness statement that his mother had asked him to and agreed to him signing the Bank of Ireland document release authority form in 2015. However, as regards the company documentation, his position had been that he did not remember the relevant occasions when he had forged the signatures but, in effect, “I did not expect there to be any issue because it was my mum” and he controlled the companies and dealt with all matters. This latter explanation seems to me to ring true, that is that he did not care about the forgeries because he controlled the company and thought he could do whatever he wanted in relation to them. In cross-examination he suggested that in fact his mother had agreed to these forgeries being effected.
452. The false denial of any forgeries was explained by Ekk in cross-examination as being that panic had set in at the time and he accordingly wrote what he did instead of writing the truth, which was that he signed on his mother’s behalf and she knew about it.
453. I find that Ekk was not hit by panic but in fact thought that he would get away with having forged signatures. Indeed, his second witness statement did not simply deny forgery it went on to seek to explain why there were apparent discrepancies in the signatures:
- “But I will say that if you look through the documents signed by my mother which she does not say are forged, you will see variations in her signature. She knows how to write her name but her signature is not consistent. I have seen her have to pause and remind herself before signing whether she is signing as V Walker or V Somboonsarn”.
454. He only accepted the forgery when the handwriting expert reported and in very strong terms. Even then however, relying on the expert’s view that there were three different styles of forgeries and that what she called Style 2 signatures were “representations of signatures/writings I her name, by another individual or individuals”, he denied that he was responsible for forging the signatures on the Anglo Thai Ltd incorporation documents and suggested that the accountant must have done so. However, this was not consistent with the expert report which was that only some of the forged signatures on some of the Thai Metro incorporation documents were Style 2. In any event, it seems to me that the likelihood is that Ekk in fact forged or caused to be forged the signatures. It would be surprising for an accountant to do so and against the natural probabilities.
455. Furthermore. I reject his oral evidence that his mother specifically agreed or asked him to forge her signature on any documents or that she acquiesced in the same.
456. The inference that I draw from Ekk’s shifting evidence on these issues of forgeries and share transfer is that he is prepared to put forward a case that suits him even though he



knows it to be incorrect in fact, unless and until forced, by circumstances or other evidence, to retract.

### **Changes in directors**

457. As regards the removal of himself and appointment of Mr Wilford as director, as recorded at Companies House, Ekk's position consistently is that he only found out about this after the relevant event.

458. In her witness statement dated 1 March 2021, Wanda said of the incident of the appointment of Mr Wilford:

*“When I saw the Forms 288a last year appointing Roy Wilford as a director of Anglo Thai Limited and Finfish Catering Limited, this came as a complete surprise to me. Again, they are my signatures but I have no recollection that Roy was ever a director of these companies and, in any event, he never took any role in the businesses. I believe this was something which Eggy and Roy Wilford must have come up with themselves and another document Eggy asked me to sign for the business without me appreciating what it was. Sadly, Roy has passed away so he is not around to explain what was going on.”*

459. I do not accept Ekk's evidence on this point. It seems to me most unlikely that Wanda would have been able to obtain and complete the relevant Companies Act forms in each case unaided. I accept her evidence (though she cannot now recall what happened) that the likely facts are that the relevant forms were presented to her by Ekk (or Ekk and Mr Wilford) and that she acted at Ekk's behest. This follows from Ekk's position that he controlled the companies, that Wanda did not read or write English and my impression that she would not have had any idea how to get the relevant forms and lodge them.

460. As regards the subsequent removal of Mr Wilford as director and reappointment of himself, I accept Ekk's evidence that he “corrected the position”. I reject his evidence that he corrected the position “with the Claimant's knowledge”. The relevant filings at Companies House appears to have been made electronically and I consider it less than likely that Ekk involved Wanda in this process or even told her about it at the time. This fits in with his evidence about documents (other than company incorporation documents) being lodged by him with him having forged Wanda's signature and his evidence that he regarded the companies as his with the ability to do whatever he liked with them.

461. According to Ekk in his witness statement dated 24 February 2021, when he found out that he had been removed as a director he asked his mother who said she knew nothing about it. He then asked Mr Wilford, who he says was then in a relationship with his mother, and who told him “ask your mother”. He says that he did not stop acting as a director and so he “reversed” the resignation which his mother knew about. He says he did not know why she removed him as director but that their relationship has been turbulent from time to time. The inference being that a period of such turbulence may be the explanation.

462. According to Wanda's affidavit dated 13 November 2020, Ekk had himself recorded as being re-appointed a director even though there had been no directors or shareholders' meeting held to appoint him and she had not been consulted or informed.
463. I accept Wanda's explanation and reject Ekk's so far as it is inconsistent.
464. The appointments of Jerry as director and then removal were also filed at Companies House electronically. For the same reasons as apply as regards appointment of Mr Wilford, I again reject Ekk's evidence and stated case that he did not make the appointment (in the sense of filing a notice of appointment at Companies House) and accept Jerry's evidence regarding his telling her about, at the least, her appointment.

**The shares in Anglo Thai and Finfish Ltd: legal title**

465. As I have indicated, no shares have been issued in any of the Companies. Strictly the question is whether the rights of the subscriber, which include the rights to the issue of shares, are beneficially owned by Wanda or by Ekk. For convenience and by way of shorthand however I refer to rights to or ownership of the "shares".
466. As regards the legal position, I am satisfied that the legal rights of the subscriber to shares in both Anglo Thai Ltd and Finfish Ltd are vested in Wanda.
467. As regards Anglo Thai, there is no suggestion of forgery of Wanda's signatures on relevant incorporation documents.
468. As regards Finfish Ltd, Wanda's relevant signatures on incorporation documents are agreed to be forged and to have been forged by Ekk. However, Ekk agrees that he incorporated the company intending Wanda to be the subscriber and purportedly signing on her behalf. Further Wanda has adopted the signatures. In my judgment, legal title to take the shares rests with Wanda.
469. The question of beneficial title depends on considering the position in relation to EUBC and the circumstances in which Anglo Thai Ltd and Finfish Ltd came to be incorporated.
470. On this, there was, as I have explained, a great deal of witness evidence devoted to the issue of precisely how much work each of Ekk and Wanda carried out at the restaurants over time. As I have held, my view is that each were involved but that Wanda was less involved and Ekk more involved than she and her witnesses assert and similarly that Wanda was more involved and Ekk less involved than he and his witnesses assert.
471. Although it is possible that assessment of the degree of involvement of a person in the day to day running of a business, especially a small family business, can in particular circumstances be a helpful indicator of likelihood of ownership, this is not necessarily the case. Moreover the type of involvement is, it seems to me, much more relevant. Thus, whether or not Wanda cleaned the restaurant every Sunday or was on a regular employee rota to help out in the kitchen is, it seems to me, of marginal relevance. More significant is likely to be the extent to which they play a management role, for example in relation to staff and in relation to oversight of the books and records and the financial position of the business and therefore the company.

472. Even such involvement (or lack of it) is not however decisive. Wanda clearly interfered (or sought to do so) in a quasi-managerial/ownership type of role as regards the manager of Scoffle out of her concern as a mother but it is accepted that she did not have any ownership (or indeed managerial role) in relation to that business and the company that owned and ran it. Further, Wanda's lack of oversight of the books and records in this case is explainable by her lack of literacy in written matters and the close family relations between her and Ekk (for most of the time) and her factual contact with and involvement in the businesses which enabled her to keep a "finger on the pulse".
473. At the end of the day, I did not find the delving into the precise involvement of each of Wanda and Ekk in the businesses to assist me in determining the issue of ownership that I have to decide. I did not understand Counsel at the end of the day to seriously submit to the contrary.
474. Instead, in submissions, the approach that I was invited to apply was to consider what could be taken to have been agreed between Wanda and Ekk at relevant times. In the case of the shares of the Companies (or the right to subscribe for the same), the relevant time was the time when each company was incorporated. Neither side cited authority on this issue (for example) with regard to constructive trusts on the acquisition of (mainly real) property so that the issue was presented in the way that I have identified as being a question of what was agreed, explicitly or implicitly, at the relevant time but with a particularly relevant factor being the question of contributions to the purchase price.

#### **Setting up of business, incorporation of EUBC and transfer of shares in EUBC to Wanda**

475. The focus of the evidence was primarily on ownership of Thai Metro restaurant. As I have said, I accept that from inception this restaurant was owned by and run by EUBC. As I have said elsewhere, Wanda in her early evidence thought that the restaurant had run for a period and then that it was later transferred to EUBC. That recollection of events is wrong but understandable. I accept her evidence that she was illiterate in written English and relied upon Ekk when filling in relevant forms to do with the Companies and with EUBC. I also accept that she was seeking to rely on events that had taken place many years before.
476. As a general matter the written evidence (and therefore to large extent the cross-examination, at least of some witnesses) focussed on the extent to which as a matter of fact Wanda and Ekk were respectively carrying out management and other roles in the day to day business of the restaurants over time. As I have said, at the end of the day I did not find this evidence of much assistance on the questions of ownership that I had to resolve. As a matter of generality, and again as I have said, it seemed to me that Wanda's role was less than she asserted and more than Ekk asserted and the same is true, in reverse, as regards Ekk. However, the relevant evidence in this area was, it seemed to me, consistent on the one hand with Wanda not being the owner but a helping mother and Ekk being the owner and, on the other hand, equally with her being the owner giving Ekk an opportunity to carry out an important managing role in the restaurants and to develop them. I turn then to the evidence which I regard as more important.

477. As regards the setting up of EUBC and Thai Metro restaurant, Ekk's version of events has changed or at least developed over time.
478. In his second witness statement (February 2021) he did not mention any offer of a gift from Wanda in connection with the setting up of a restaurant. He simply said that by 2000 he was planning to set up his own restaurant (implicitly for the first time), he found the site at 14 Charlotte Street and asked Wanda to buy the lease which she agreed to.
479. In his defence (March 2021) he asserted that at his own wedding in December 1997 (a typo for 1998), Wanda offered him money towards starting his own business and he spent 1999 visiting potential sites. He found the 14 Charlotte Street site in 2000. He negotiated terms in May and June. He told Wanda about it and she agreed to buy the lease to enable him to start a business at the premises.
480. In his 4<sup>th</sup> witness statement (April 2023), Ekk said that (at about the time of his marriage when he got in touch with Wanda, at least on a meaningful basis, for the first time in some years), Wanda told him that she would back him in his venture and give him money and would prefer to give him money for a deposit on a house just as she had bought 2 Chargrove Close for Jerry. He spent 1999 and 2000 looking for premises. He incorporated EUBC in March 2000. He negotiated a lease of 14 Charlotte Street in May/June 2000 and asked Wanda for help by buying the lease, which she agreed to. In the end she paid about £60,000.
481. In cross-examination Ekk's evidence was confusing. He started by being fairly adamant that Wanda had offered to give him £60,000 at Jerry's wedding, not before. He was then shown his defence and said that his earlier evidence must have been mistaken. He then seemed unsure whether it was at or after his wedding or at Jerry's wedding that £60,000 had been offered. He then thought it was more likely that an offer of £60,000 was made by Wanda at or after Jerry's wedding and that it was only when he had this "budget" that he started looking for premises. He was however adamant that Wanda offered this money to him as a gift. However, he then accepted that Wanda had paid for the lease (including some rent in advance under the lease) of 14 Charlotte Street and purchased that lease in her own name as beneficial owner, so accordingly the monies spent by and in this respect were not a "gift".
482. In cross-examination he confirmed on a number of occasions that he did not look for a property until he had a budget and that therefore on this basis he could only have been looking for premises for about 6 months, from December 1999 rather than for 18 months from December 1998. His explanation for this discrepancy between his defence and his oral evidence was that he had been busy with his young children when preparing the defence and that between bath time and breakfast he was very busy and the subject of sleep deprivation. I do not accept this explanation.
483. Further, he was unable to explain why this offer of a specific sum, £60,000, which he said provided a budget so that he could look for premises, was not mentioned in his defence or in his 4<sup>th</sup> witness statement. I agree with the analysis of Mr Cowen that the details tended to be developed to try and strengthen Ekk's case and that they were not genuine recollections.

484. In cross examination, he also agreed that he had found 14, Charlotte Street in early June 2000 (not early 2000) and not long before the negotiations to acquire the same and after EUBC had been incorporated.
485. I have dealt already with Helen's evidence in this area. Helen was not of course around at the relevant time and so her evidence is of limited value on that ground alone.
486. I find that Wanda may have mentioned that she would like to assist Ekk so that he could set up a new restaurant but not that she offered to make a gift to him, whether of a specific sum or not, and certainly that she did not suggest that or agree, implicitly or otherwise, that Ekk would set up a new restaurant as his own business as opposed to him setting up and running a restaurant for her.
487. I find that Wanda did decide that she would assist Ekk so that he could manage a restaurant but that she did so on the basis that the restaurant would belong to her. Further, I find that Ekk confirmed to her and she agreed that EUBC would own and run the restaurant and that she would own the shares in EUBC. I do not consider that it matters precisely when this agreement and conversation took place that is before, shortly after or some months after the incorporation of EUBC effectively at that point a constructive trust came into being in relation to the shares in EUBC. In other words, it is not necessary to decide whether Wanda beneficially owned the shares in EUBC from incorporation (or more accurately issue) or from the date when legal title was later transferred to her. On any view, I consider that she beneficially owned the shares following the transfer of the shares in EUBC to her.
488. As well as preferring Wanda as a witness over Ekk, the following considerations support this view.
489. First, Wanda was at that time, as Mr Cowen put it, in a position where she would be "looking for a new business" given her running down/selling her main previous businesses.
490. Secondly, and very importantly, Wanda purchased in her own name the main asset that was crucial to the start and continuation of the business, namely the lease of 14 Charlotte Street. She later took further leases of those premises (and 14A).
491. It was suggested by Ekk that she had "benefitted" from such lease. It is agreed that she was the beneficial owner of the lease (and subsequent replacement leases e.g. in 2003 of 14 Charlotte Street) but in fact she never had in place a formal written sub-lease or licence to EUBC (or, in due course, Anglo Thai Ltd or Finfish Ltd). Further, those companies paid the rent for her under the leases but no more. There was no premium and ultimately she was left unprotected if the lease continued and the restaurant business failed or moved and left a void. Ekk suggested that she benefitted financially from the leases as regards the relevant companies but of course she did not in terms of any extra financial benefit over and above the rent being met. He then suggested that he had meant that she benefitted by way of a sums being paid to her from the relevant companies but there is no suggestion that this was any quid pro quo for allowing any of the companies into occupation and to use the premises. In my judgment, the circumstances in which Wanda purchased what one might think is the key asset to enable the restaurant to operate with no arrangements as between her and the restaurant business (through EUBC) to regulate the restaurant's use of the premises

and her liability under the lease or to reward her for the use of her asset by the restaurant are strong pointers to the restaurant being hers, as she says,

492. Thirdly, I reject Ekk's evidence in cross examination that the lease was put in Wanda's name to avoid problems if Nok sought to claim the claim the same in divorce proceedings and that the agreement was that Wanda would transfer it to him later. He seemed to raise this in cross-examination to deflect the general point being put to him that that I have just made, that is that she had bought the main key asset to enable the restaurant to operate in the circumstances I have described.
493. The reasons that I reject this evidence as to title to the lease and consider it to be another example of Ekk making evidence up as it suits him, are as follows. First, this explanation would suggest that the beneficial interest in the lease did not belong to Wanda, but that is not Ekk's case. Secondly, this was a suggestion that seems to have surfaced for the first time in cross-examination and is not mentioned in for example, his 4<sup>th</sup> witness statement or his Defence. Thirdly, the shares in EUBC were not transferred to Wanda until March 2001 following, he says in his defence, advice from his accountant. If the accountant had given such advice back in June or July 2000 (i.e. at the time Wanda took title to the lease) then the shares would presumably have been transferred then. If the replacement of Nok as a secretary is the sign of the start of any concerns as to their (Ekk's and Nok's) relationship, that did not happen until August 2000. If the shares were in his name until March 2021 then he cannot have been worried in June/July 2000 that the shares might be claimed by Nok and no reason to think that he would then have been worried about the lease of 14 Charlotte Street being subject to the same sort of claim. Fourthly, if the lease had been put into EUBC's name (and the heads of terms envisaged the possibility of the lease being put into a company's name) there was no reason for hiding this from Nok and no need to put the lease into Wanda's name. I now turn to the fourth reason why I have concluded that Wanda beneficially owned the shares in EUBC.
494. Fourthly, in his Defence (and 2<sup>nd</sup> witness statement) he accepted that Wanda paid £75,000 for or in respect of the lease, In his 4<sup>th</sup> witness statement (and without amending his defence) and in cross-examination he asserted that she paid only £60,000 and that the balance of £15,000 (as well as other sums in respect of fitting out) was found from his own funds. I accept his pleaded case and reject this attempt to change it, an attempt that did not include any explanation for the change.
495. I also accept Wanda's evidence that she paid further sums, other than directly in respect of the lease itself, as regards fixtures and fittings and the like. As regards this, Wanda says that costs of about £55,000-£80,000 were incurred by her in gutting the restaurant, renovating and fitting it out and getting it ready to open. She says she also bought chairs, tables crockery, glassware, food and drink and other items necessary to launch a new restaurant. She also says that she paid for works in excavating a basement area to be used for storage. Ekk's main case was that any other works effected or equipment purchased was of minimal cost and that he funded it himself, not Wanda.
496. As regards this, the first set of accounts for EUBC, for the period 17 March 2000 to 31 March 2001 and prepared by RMH Mawji ("RMH"), Chartered Accountants, show tangible fixed assets (at cost) of £68,794, broken down as to land and buildings (£26,000) and plant and machinery etc (£42,794). The plant and machinery show

application of a depreciation charge of £10,700 for the period of just over a year. Further the accounts that I have referred to show a “shareholders loan account” in credit of £71,692 (i.e. that sum being owed by the company). At the year end the shareholder was Wanda (the transfer being on 1 March 2001). Further those accounts have a note to the effect that Ekk at no point from incorporation had had any interest in the company’s shares, so the shareholder’s account clearly represented money owing to Wanda. It seems likely that the sum standing to the credit of her account represents in large part sums she had paid on the company’s behalf as she suggests. She also says that she incurred costs in carrying out excavations of basement works, which I also accept, to create storage and that may go some way to explaining the amount of the credit.

497. Further, I reject Ekk’s case that he had about £20,000 to invest in the restaurant. That would be inconsistent with his living with his wife at 2, Chargrove Close, rent free because he could not afford to buy anywhere. On his own version of events, Wanda was keen to provide him with a deposit for a house which suggests that he did not have much money. Ekk’s main evidence was that he did not have to pay anything substantial towards the setting up of the restaurant. I accept that evidence and that is a further matter to be weighed in the balance when considering the probabilities as to what the ownership position was and was agreed to be.
498. In the circumstances, Wanda paid substantial sums in getting the restaurant in a state where it could be opened. She owned the main key asset essential to the Company’s business, the premises, and contributed large sums (even if by way of loan) in addition. Ekk spent very little. The probabilities flowing from all of this are that the restaurant belonged to Wanda, even if indirectly through her shareholding in a company.
499. Fifthly, there is the statement in the accounts of TM Ltd (for the year ending 31 March 2001 and covering the period starting from incorporation until that date) by way of note: “*The director holding office at 31 March 2001 did not hold any beneficial interest in the issued share capital of the company at 17 March 2000 or 31 March 2001*”. The relevant companies’ accounts were prepared by accountants not by Ekk (or by anyone else). The note, if true, means that the shares in TM Ltd never belonged beneficially to Ekk, which is of course Wanda’s position. If it is true of TM Ltd that is some support or the view that the same was true in relation to EUBC given that TM Ltd was only incorporated in the context of being another vehicle that would be available in connection with the restaurant business.
500. Ekk says that the accountants advised him to put the shares in his mother’s name but that he took no legal advice. As regards this I take him to mean that accountants may have advised him to do it but he did not know what the legal consequence was.
501. If that is true, as regards the TM Ltd accounts, the accountants must have known the true position. I should assume that the accountants considered the accounts to be accurate in saying that Ekk had held no beneficial interest in the relevant shares.
502. I consider on the balance of probabilities that Ekk explained the true position, that his mother had paid in effect the capital sums required to get the company, and restaurant, up and running and that it was hers. The advice to transfer legal title to the shares may have been to make the position plainer and avoid Nok making a claim to what always

were understood to be his mother's shares. Thus, the position where the shares became registered in Wanda's name is rather similar to the circumstances where Flat 22 BM became registered in Wanda's name, albeit there is the difference that the shares were first registered in Ekk's name (I deal with Flat 22 BM later in this judgment). In both cases, if I am correct, Ekk has sought to go back on what he earlier accepted and/or agreed, namely that property belonged (beneficially) to his mother. Even if I am wrong about this, the inference I would still draw is that the shares, after their transfer, were in Wanda's name to avoid them being at risk in his divorce proceedings. To achieve this it was essential that the entire interest in the shares was transferred to Wanda. He would then have relied not on any legal obligation but on Wanda's good will and generosity to transfer them back to him when he requested her to do so. I do not consider that I should assume that the accountants would have been parties to a false note to the accounts, and this may therefore be an alternative basis on which they drafted, and were parties to, that relevant note to the accounts.

503. I should add that there is a question as to how far it is correct that Ekk received accounting advice as he says and that title to properties was changed because of concerns about Nok making claim to the same. He has not produced the accountant to give relevant evidence (or to say she cannot remember and has no records).
504. Further, there are two properties which were purchased by Ekk in his name, a property at Mint Street and a property at Pembridge Gardens. In those cases he says the properties were not put into Wanda's name because of the nature of the transaction. As regards Pembridge Gardens, he says that this was a purchase of an ex-council owned property under a shared ownership scheme and that he personally had to be the purchaser and Wanda could not stand as his nominee for title purposes. As regards Mint Street, he relied upon the purchase being a "first time buyer" purchase so that he could not put legal title through his mother. I have doubts about the veracity of this evidence about the two properties but there is insufficient evidence for me to be able to dismiss it on the balance of probabilities.
505. Finally, on this question of divorce concerns, there is the point that Ekk was aware by the summer of 2006 that any possible divorce concerns had gone away and yet, despite his evidence that he then took steps to transfer the shares back into his name, the steps he then took were over some years and not very speedy and there is no explanation for this nor as to what was the trigger for each of the various (delayed) "transfers".
506. However, at the end of the day, I do not feel able to conclude, on the balance of probabilities, that the whole divorce concerns point was made up after the event and that between 2001-6 he did not have concerns about divorce and about claims to property/other ancillary relief based on properties being owned by him. That concern was, however, in my view a limited factor in the facts that I have to consider.
507. For completeness, I should add that I reject Ekk's (implicit) evidence that as regards the EUBC shares his mother attended the accountants and had it explained to her that the shares were being transferred to her as, in effect trustee for Ekk. He says that his mother signed the forms there and that the accountant asked him if he trusted his mother and he said, "if I can't trust her who can I trust"? Even if this did occur it is quite consistent with the shares being beneficially transferred to his mother and him trusting her (in familial but not legal terms) to transfer them back again. I certainly do not accept



any suggestion that at that meeting (or any other) it was made clear to Wanda and she agreed that the shares were transferred to her but that Ekk retained the beneficial ownership in them. I have discussed this point with regard to Helen's evidence earlier in this judgment.

### **Shares in Anglo Thai Ltd and Finfish Ltd**

508. The circumstances in which Anglo Thai Ltd took over the Thai Metro restaurant business are also unclear. It took over the Thai Metro restaurant business from EUBC and its first set of accounts shows tangible assets at cost of £62,438, and then with a depreciation charge applied. It is unclear whether Anglo Thai paid anything to EUBC.
509. In his 4<sup>th</sup> witness statement Ekk says that he decided to move Thai Metro to new premises at 38, Charlotte Street. He says that the premium was paid out of the profits of the restaurant business, which must mean from EUBC. He said that Anglo Thai Ltd took over the operation of the Thai Metro restaurant not long after the move to 38, Charlotte Street. The reason for this was that EUBC was struck off and dissolved because the accountants delayed filing accounts. As such according to Ekk, Anglo Thai was simply a replacement holding company for the restaurant business and there was no change in ultimate ownership discussed or intended.
510. The reason for the delay in filing accounts was said by Ekk to flow from the fact that through EUBC he had lent Jerry about £75,000 for her business in Malaysia, Jerry could not repay. The accountants wanted to wait for repayment by Jerry and did not know how to categorise the loan. Accounts were not filed and EUBC was "wound up", by which I think he mean, struck off. In cross-examination he said that EUBC was not dissolved until 2005.
511. The explanation given by Ekk in cross-examination for the move of the restaurant business from EUBC to Anglo Thai Ltd also made little sense. He said that it was to have a healthy new company without showing a bad debt from Jerry. It was put to him that what he said was a bad debt, could have been written off so that it did not appear as an asset in the accounts of EUBC. It was put to him the accountants had not in fact written off the bad debt, Further, that on his account Jerry had repaid the money, which was then used by him to purchase Flat 22 BM, and that accordingly there was no bad debt as it turned out and the debt was repaid prior to dissolution of EUBC. He did not appear to me to have any convincing answer to these points. He also said that changing the company owning the restaurant business was an opportunity to have a company with a new name, but why a new name was necessary or helpful was not explained nor what it was not possible simply to change the name of EUBC. Although no substantive issue turns on this evidence it is again an example of unsatisfactory evidence from Ekk.
512. The move to 38, Charlotte Street involved a new lease being negotiated. Somewhat surprisingly none of the relevant legal documents have proved to be capable of being produced, even though more recently the lease was apparently assigned by Wanda to Anglo Thai.
513. There is some unclarity as to whether the lease was in Wanda's sole name or in Wanda and Ekk's joint names. This flows from the early documents regarding the lease negotiations. However, I am satisfied on the balance of probabilities that it was in Wanda's name and that she beneficially owned it. That is consistent with the later rent

review notice in evidence addressed solely to her. It is also consistent with the arrangements put in place after the freehold of 38 Charlotte Street had been acquired in Ekk's name and the lease was transferred from Wanda to Anglo Thai Ltd but on the basis that Wanda (but apparently not Ekk) entered into guarantee liabilities as regards the liabilities of Anglo Thai Ltd. Also of relevance is the context when it was later asserted against Wanda that she would be liable on such guarantee and exposed to dilapidations claims in the event that Anglo Thai Ltd gave up the premises and the absence of any suggestion that she was entitled to any indemnity/contribution (of any kind) from Ekk.

514. I am satisfied Anglo Thai Ltd was set up on the same agreement as EUBC, namely that the shares were both legally and beneficially to be owned by Wanda and the restaurant business was to be owned by her, indirectly, through ownership of such shares. Among the relevant considerations leading to this conclusion are: (a) the circumstances where Anglo Thai was in effect a "replacement" for EUBC and a continuation of a structure by which EUBC had owned and managed the same restaurant business and Wanda (as I have held) beneficially owned the shares in EUBC; (b) the fact that Wanda took a lease of 38, Charlotte Street which she owned beneficially and in circumstances where Anglo Thai Ltd paid the rent for her but did not pay her anything extra and there were no formal legal arrangements in place as regards Wanda and Anglo Thai Ltd with regard to the premises and she received no actual benefit from the lease in this respect (e.g. by way of a higher rent than she had to pay as tenant); (c) the dividends apparently paid by Anglo Thai Ltd to Wanda as beneficial owner of the same (and therefore the relevant shares) with regard to the tax years 2005-2008.
515. As regards Finfish Ltd, that started trading soon after Thai Metro restaurant moved to 38, Charlotte Street. Ekk accepts that Wanda continued to own the relevant lease and took (beneficially as well as legally) the lease of 14 and 14A Charlotte Street in 2003. Finfish Ltd was, he says, funded from EUBC.
516. I am satisfied that Finfish Ltd was set up on the same basis and agreement as underlay the setting up of EUBC, namely that the shares were both legally and beneficially to be owned by Wanda and the restaurant business was owned by her, indirectly, through ownership of such shares. Among the relevant considerations leading to this conclusion are: (a) the circumstances where Finfish was a continuation of the arrangements relating to EUBC, but representing an expansion of the existing family run business; (b) the new company was funded from EUBC, which I have held was owned by Wanda; (c) the fact that Wanda took a new lease of 14 and 14A Charlotte Street which she owned beneficially and in circumstances where Finfish Ltd paid the rent for her but did not pay her anything extra and there were no formal legal arrangements in place as regards Wanda and Finfish Ltd with regard to the premises and she received no actual benefit from the lease in this respect (e.g. by way of a higher rent than she had to pay as tenant).
517. Finally, I reject Ekk's evidence regarding his mother agreeing to the transfers of shares in Finfish Ltd. In any event, even if he thought he was transferring the shares to Anglo Thai Ltd that would of course still have been Wanda's company in her mind and I reject any evidence that at any relevant stage of the purported transfers from Wanda to Anglo Thai Ltd it was suggested that Anglo Thai Ltd was owned by Ekk.

518. Ekk's main case on this area regarding the shares in the two Companies is that, as was the case with the transfer of shares in EUBC to Wanda, shares were placed in her name as nominee because of his fears as to claims otherwise being made on the shares in any divorce proceedings with Nok. I have already dealt with this general claim in connection with EUBC and need not repeat it.
519. At the end of the day, this is a question as to whether Ekk is telling the truth or Wanda. I have found Wanda to be the more reliable witness and I also consider such little surrounding evidence as there is supports her account of what happened and what the legal position was rather than that of Ekk.

## **Ownership of TM Ltd**

### **Statement of case**

520. The pleaded cases regarding TM Limited are as follows.
521. The Particulars of Claim assert that TM Limited was incorporated by Ekk on behalf of Wanda but without her consent or knowledge. I have dealt with the documentary position in this respect earlier in this judgment. In summary, on a statement of first director and secretary Wanda signed the relevant form and in her capacity as subscriber. However, her apparent signatures as subscriber to the memorandum and articles of association were forged (though she has adopted such signatures).
522. The Particulars of Claim go on to assert that the 2015 annual return of TM Ltd shows Ekk as the sole shareholder of TM Limited. I have dealt with this return made up to 31 May 2015 showing the 100 issued shares as then held by Ekk. The Particulars of Claim assert that Ekk procured a transfer of the shares in question but it has since become clear that there was no relevant transfer of shares and no relevant issued shares. It is also asserted that Wanda did not execute any relevant share transfer nor did she agree to any transfer of shares or re-registration of the registered holder of the same at the time.
523. As a matter of law, Wanda remains the person who is the subscriber and entitled to the issue of shares in TM Ltd (leaving aside the issue of beneficial ownership of shares when issued or of the right to call for issue of the same).
524. Claims in the Particulars of Claim as regards any transfers of shares therefore fall away as there have been no such transfers of shares.
525. The purchase of 133, The Grove and the transfer of funds from Anglo Thai Ltd (£682,500) and Finfish Ltd (£435,000) to provide for part payment of the purchase price (of £1,630,000) are all said to have been effected without Wanda's knowledge or consent.
526. As regards this property it is simply asserted that 133 The Grove is owned by TM Ltd, a company wholly beneficially owned by the Claimant. Alternatively, that TM Ltd holds 133 The Grove on trust for Anglo Thai. As neither TM Ltd nor Anglo Thai are parties and as it is unclear whether other parties might have claims to the property, this is not an issue that, had it arisen, I consider that I should have resolved in these proceedings. As it happens Ekk admits that the property is wholly owned by TM Ltd. There is therefore no issue on the point as between Wanda and Ekk.

527. The defence is to the effect that:

- (1) Shares were put in Wanda's name to avoid a risk that Nok made a claim to the same as property of Ekk in any matrimonial proceedings. Wanda was aware of this reason and agreed that she would hold the shares as his nominee.
- (2) In this context Ekk made Wanda aware that he was incorporating a company with the shares in her name. He incorporated the company because he was considering franchising or rolling out further restaurants under the Thai Metro name but did not make Wanda aware of this reason or the relevant prospective possible plans. In fact these plans did not mature at the time.
- (3) As regards the 2015 annual return, Ekk originally pleaded in his Defence that Wanda had executed a share transfer and agreed to the transfer of shares to him. By way of re-amendment, the Defence was altered to plead that there had been no transfer but only a record by way of return to Companies House. The amendment included an allegation that in 2015 Ekk formed the intention to start using TM Ltd, which had hitherto been a dormant company, for business purposes, and to that end told Wanda. in a conversation in early 2015 that he intended to transfer the shares into his name. She, it is alleged, raised no objection. He offered no consideration for Wanda's agreement to the transfer of shares, nor did she seek any. This was because both parties understood that at all times he was the beneficial owner of the shares.
- (4) Ekk admits the transfers of sums from Anglo Thai Ltd and Finfish Ltd to assist in paying the purchase price. He also asserts that part of the funds transferred derived from the proceeds of Ekk's remortgage of Flat 22 BM. His witness statement of 24 February 2021 suggests that the relevant remortgage proceeds from Flat 22 BM were routed through Anglo Thai Ltd and Finfish Ltd, forming part of the source of the loans that those companies made to TM Ltd to pay the purchase price for 130, The Grove.
- (5) He accepts that 133, The Grove is owned by TM Ltd and that Wanda knew nothing about its acquisition by TM Ltd but did know that Ekk had caused its purchase. Her lack of knowledge about the involvement of TM Ltd in the acquisition, he says, is because his business affairs did not concern her and TM Ltd was owned by him.

528. The Reply largely denies the defence where it differs from the Particulars of Claim. Wanda's knowledge of the acquisition of 133, The Grove (but not that it was acquired by TM Ltd) is admitted.

### **The Evidence**

529. Somewhat surprisingly there are very few contemporaneous documents. Apart from the incorporation documents for TM Ltd, they amount to part of a copy of an extract of the register of title of 133, The Grove and the accounts of the three companies, TM Ltd, Anglo Thai Ltd and Finfish Ltd.

### **Findings**

530. As regards legal title, legal title to the right to shares under the right to subscribe is vested in Wanda. Her signatures so far as not forged acknowledge that she is the subscriber. Further, she has adopted the forged signatures. Ekk accepts that he set the company up with his mother as “shareholder”. The question is whether her relevant rights as subscriber are held on trust for Ekk. As with Anglo Thai Ltd and Finfish Ltd, in discussing ownership of TM Ltd, for convenience I talk in terms of the shares in that company as if they had been issued so that the concept covers also subscriber’s rights to shares.
531. I accept that TM Limited was set up as a company that would be available to be used in connection with the restaurant business. As I have held that the relevant restaurant business was owned (indirectly, through EUBC, later Anglo Thai Ltd) by Wanda, that also leads me to conclude that it likely that TM Ltd was held beneficially in the same way as the other two Companies. I prefer Wanda’s evidence to that of Ekk and consider it is more consistent with the other relevant evidence and natural probabilities.
532. I also reject Ekk’s evidence that he did not say anything to his mother at the time as to the reason for incorporating a new company of which his mother was to be sole shareholder. On the balance of probabilities. I find that he did at the least tell her that the company was to be incorporated so that it could be used in connection with the existing restaurant business or its expansion. If this is correct, it being implicit that the restaurant business was “hers”, there is no reason to think anything other than that the shares would also be beneficially hers.
533. I have dealt with Ekk’s claims as to property (including shares) being held in his mother’s name by reason of fears about Nok making claims against them in divorce proceedings between Ekk and her. I need not repeat that analysis.
534. Also of significance is the statement in the first set of accounts of TM Ltd that, from incorporation of TM Ltd, the director (Ekk) had held no beneficial interest in the shares.
535. I reject the evidence of Ekk that Wanda agreed that the shares would be transferred to him, whether or not that agreement is said to be an agreement that legal and beneficial title would be transferred or just legal title (on the basis that he was already the beneficial owner).

## **Flat 22 BM**

### **The statements of case**

536. The Claimant’s pleaded case is that the purchase of Flat 22 BM in 2004 for a purchase price of £485,000 was funded by her from (a) a cash deposit of £132,270.86 raised by way of loan secured on 2 Chargrove Close. Part of this loan was used in the restaurant business and the balance in the purchase of 22 BM and (b) a mortgage loan from GMAC in the sum of £363,680. Title to the long leasehold interest was registered in her name on 13 May 2004 under title no NGL767938. As a consequence, she was at that time the sole legal and beneficial owner of the property.
537. The pleaded defence to this claim is that whilst Flat 22 BM was purchased in the Claimant’s name she was not, and was not intended to be, the beneficial owner. It is said that in a conversation between Ekk and Wanda in about February 2004, they agreed

that the claimant would buy Flat 22 on the defendant's behalf, in her name, and that she would hold it for him because he feared a dispute with his first wife with regard to his assets. It was further agreed, it is averred, that he would raise the deposit from the remortgage of his sister's property, 2 Chargrove Close, and he would be responsible for collecting the rent from Flat 22 BM and ensuring all mortgage payments were met on Flat 22 BM and 2 Chargrove Close.

538. The Defence and Counterclaim accepts that the deposit was raised by loan secured on 2 Chargrove Close and that for this purpose that property was transferred to the Claimant. It is said that Ekk had previously lent Jerry approximately £100,000 through EUBC for a business venture in Malaya which failed and that in return she allowed him to raise money from 2 Chargrove Close to buy Flat 22 BM. Mortgage instalments regarding the loan on 2 Chargrove Close were, it is asserted, paid in the Claimant's name out of her account as Ekk was paying her rent collected from Flat 22 BM which was sufficient to pay the mortgage instalments both on 2 Chargrove Close and Flat 22 BM.
539. It is denied that Ekk told his mother that any part of the loan secured on 2 Chargrove Close was needed for the restaurant business.
540. The conclusion in the Defence and Counterclaim is that Flat 22 BM was held by Wanda on trust for Ekk at the time that it was acquired.
541. The Particulars of Claim do not refer to the Declaration of Trust in 2009.
542. The Defence and Counterclaim refers to the 2009 Declaration of Trust and says that at that time, the parties had considered transferring title from Wanda to Ekk but that at that time the outstanding mortgage liability prevented it. Instead, the Declaration of Trust was entered into which "was consistent with the parties' existing understanding and intentions" as to the true beneficial interest of Flat 22 BM. The parties were advised by Dilworth Lamb solicitors who "acting on the parties' behalf" caused the restriction to be entered on the register of title.
543. In the Reply it is averred that Wanda did not realise that she had executed a Declaration of Trust; the terms of the document are not consistent with the parties' intentions as Wanda never intended or understood that Ekk should receive any beneficial interest in Flat 22 BM and she never instructed Dilworth Lamb to act on her behalf or to enter any restriction and that firm did not explain the nature, force or effect of the Declaration of Trust.
544. I now turn to the 2015 transfer of Flat 22 BM.
545. The matter is picked up in the Particulars of Claim by reference to the 2015 Transfer of title to Flat 22 BM. It is said that Ekk told Wanda in about May 2015 of the need to raise money to pay for a kitchen to be used both by Ekk's company, Scoffle Limited and the restaurant businesses operating at Charlotte Street.
546. It is said that Ekk represented to Wanda that she was too old to obtain a mortgage loan and advised her to transfer Flat 22 BM into his name so that he could re-mortgage it to raise further funds. The claimant is said to have agreed to this. The transfer thereafter took place and it is said that Ekk arranged for the transfer of funds from a bank account

of Wanda in her maiden name into another bank account in her married name and then that that was used to pay off the Bank of Ireland loan and the mortgage lenders of 2 Chargrove Close without her knowledge or consent. Flat 22 BM was not then immediately re-mortgaged. It is said that the transfer was given to Wanda to sign but that she did not understand the content of the document and believed Ekk when he said they were necessary to complete the arrangement that she had agreed to. The witness to the transfer, Lucy Garrett was said not to have been present and not in fact to have witnessed the claimant's signature. The effect of the agreement is, it is said, that Flat 22 BM would belong beneficially to Wanda and that Ekk would hold the property as nominee on trust for her absolutely.

547. The claim is that the property is held by Ekk on trust for Wanda under a resulting or constructive trust, alternatively that the agreement between her and Ekk was void by reason of fraudulent misrepresentation and or voidable by reason of undue influence and that all sums paid to Ekk by Wanda in respect of Flat 22 BM was paid under a mistake of fact and/or law and/or by way of a total failure of consideration and should be returned with equitable interest and damages.
548. As regards the 2015 transfer of Flat 22 BM, the Defence and Counterclaim avers that the difficulty of transferring legal title by reason of the existence of the outstanding mortgage had now ceased to exist because Ekk was in a position to pay it off as he had received by way of inheritance from his father and grandmother in Thailand, the proceeds of sale of property (as originally pleaded it was the proceeds of sale of "a Thai business" but that was altered to "property" by amendment). Accordingly (it is said) Wanda agreed to transfer legal title to Flat 22 BM to Ekk. The Defence and Counterclaim denies the alleged agreement and representations referred to in the Particulars of Claim.
549. The transfer of £72,216,36 from Wanda's bank account to the Bank of Ireland so as to redeem the mortgage was effected, it was said, by Wanda when attending Barclays Bank with Helen. The previous transfer to that account was said to have been made from Wanda's account in her maiden name where the money had come in from Thailand.
550. In the Reply, and as regards the transfer in 2015, it is denied that Mr Tilly acted on Wanda's behalf. The reply does however accept that Wanda signed the transfer and that Ms Garrett was present and witnessed her signature. However, it is asserted that she did not realise that the document related to Flat 22 BM, she believing that all documents relating to Flat 22 BM had been signed at an earlier meeting.

### **The Evidence**

551. In her 1<sup>st</sup> witness statement, dated 13 November 2020, and made in support of her application for injunctive relief Wanda sets out the factual position much as set out in the Particulars of Claim.
552. In his witness statement setting out his factual case on the merits, being his 2<sup>nd</sup> witness statement dated 24 February 2021, Ekk set out his case much as in his Defence and Counterclaim but with the absence of any explanation as to the source of any sums used by him to redeem the Bank of Ireland mortgage. As regards his "inheritance" in Thailand he said that that was used (at least in part) to pay off a loan from Wanda's

sister in Thailand. The original loan from Ekk's aunt had, he said, been used to purchase 38 Charlotte Street. I deal with this aspect of the evidence when considering 38 Charlotte Street.

553. He also referred to the fact that he had been asked to transfer title to Flat 22 BM back to his mother in June 2019 and that he believes that this was as a result of them falling out in 2018 after she had visited a Papaya branch and had an argument with those present and Ekk had subsequently taken the side of his manager over that of his mother.
554. On 1 March 2021, Wanda made a further witness statement in relation to the injunction application. As regards Flat 22 BM she said:
- (1) Ekk did not ask Jerry to transfer 2 Chargrove Close to Wanda. He suggested that idea for the purposes of (Wanda) remortgaging it and Wanda then spoke to Jerry. Jerry agreed. It was nothing to do with money paid to Jerry by EUBC which, in any event, could not be characterised as a loan by Ekk to Jerry.
  - (2) Flat 22 BM was registered in Wanda's name because she was the person who bought it.
  - (3) She had no recollection of signing the Declaration of Trust. She remembers signing some documents at Victoria Station but, as usual, just signed what was put in front of her. She does not believe Mr Lamb explained the document. If he did she misunderstood and had she understood it she would not have signed it.
  - (4) There are various oddities of dates and the like about the Declaration of Trust and the oddity that it was not produced to her or referred to her in 2015.
  - (5) In 2015 she has no recollection that Peter Tilly acted for her. She signed the transfer at an office at London Bridge and Lucy Garrett was not present. She did not give the instructions to transfer money from her Barclays account to the mortgagee, Bank of Ireland.
555. On 9 November 2022, Wanda made her trial witness statement. As regards Flat 22 BM her evidence (in summary) was as follows.
556. First, as regards the position in 2004, she denied that there was any discussion about hiding assets from Nok or that there was any discussion about this in connection with Flat 22 BM. As regards the acquisition, this was funded by way of the loan secured by mortgage on 2 Chargrove Close and the loan secured by mortgage on Flat 22 BM. The balance of the loan in connection with 2 Chargrove Close was believed by her to have been used in connection with the move of Thai Metro from 14 to 38 Charlotte Street but she does not have direct knowledge of the how the money was applied. Ekk dealt with all relevant matters. Although Mr Lamb of Dilworth Lamb & Co acted in the matter, she received no advice of any nature and simply signed documents given to her to sign. There was no discussion with Mr Lamb about her holding the property on Ekk's behalf.
557. In September 2004, she remortgaged 22 BM with Bristol & West plc. Mr Lamb acted on her behalf and she signed documents presented to her.



558. As regards the Declaration of Trust, leaving aside forensic points (or argument about the documents and what is to be inferred from them and the overall history), her factual evidence about the contemporaneous events is that she first became aware of the Declaration of Trust in the course of the current proceedings, when exhibited by Ekk to his witness statement; she was unaware of signing the same; she did not ask for it to be prepared; she never received advice at the time and received no client care letter from Dilworth Lamb; she vaguely remembers meeting someone at Victoria Station and signing some documents but she does not know who it was and no advice about a Declaration of Trust was given; if she did sign it she was unaware of its force or effect or that it was a Declaration of Trust.
559. As regards 2015 and the redemption of the mortgage over Flat 22 BM, she says that she has not been able to find out where the monies came from which apparently came from an account in her former name. She did not knowingly make either the transfer from that account or the transfer to the Bank of Ireland and did not knowingly discharge the mortgages. Any money paid into her account was an inheritance from her mother and was not Ekk's inheritance (in the sense of it being his property).
560. She refers to the email of Mr Robinson referring to a meeting between him Ekk and Wanda on 10 June 2015 but does not say anything further as to whether the meeting took place or not. She denies instructing or receiving advice from Mr Tilly. She does not believe she met him on 15 June 2015. Mr Tilly had no authority to write the letter to Mr Robinson dated 28 October 2015 regarding his acting for her and that she wished to make a gift of Flat 22 BM to Ekk.
561. She remembers being taken to a small office near London Bridge to sign "the paperwork for the transfer of the flat" to Ekk. Ms Garrett was not there and did not witness the same.
562. She did not speak to Mr Tilly on or about 21 December regarding completion of the transfer and has indeed never spoken to him. She now accepts that she did sign the transfer form and that it was witnessed by Ms Garrett but she thought she had already signed the documents relating to the transfer. She thought she was transferring the property so that Ekk could raise money by way of mortgaging the same as she was too old to mortgage the property herself.
563. Having said earlier in her witness statement (paragraph 147) that her recollection is that she met Mr Tilly only once in premises in Berkely Square in connection with something entirely different, she then went on to say (paragraph 122) that the first time she heard of his existence was as a result of reading a letter dated 13 January 2020 sent to her by Mr Germain.
564. In cross-examination, Wanda maintained her position regarding Flat 22 BM. Among other things, she denied that the intention had been that Flat 22 BM would be purchased for Ekk but in her name so as to hide the investment from Nok. It was, she said, her investment in her name. She denied any agreement or plan to "hide" the investment from Nok: "[If] They have a problem, nothing to do with me".
565. As regards the transfer to her of 2 Chargrove Close and its mortgaging to raise funds to pay the deposit on Flat 22 BM (and she insisted, finance for the businesses as she understood it), she accepted that Jerry did this at her request because Jerry had, at

Wanda's insistence to Ekk, been lent money from the restaurant businesses, which were her businesses and not Ekk's. she did not know precisely from where the money had come or how she had told Ekk to arrange it and he had.

566. She denied that Flat 22 BM was rented out and that the rent was used to cover mortgage payments in respect of both Flat 22 BM and 2 Chargrove Close covered the mortgage. The mortgage loan repayments, she said, all came from the businesses.
567. As regards the Declaration of Trust, she described Mr Lamb being present when she signed it and explaining things but said she was too tired and did not understand so Ekk explained it to her in Thai. She could not explain why she had not said this in her earlier witness statements other than by saying that she might have forgotten and she did not know. She seemed to say that Ekk explained that she had to do it for a trust. Then she seemed to say that she thought she was signing a will.
568. The matter was returned to almost at the end of her cross-examination. She confirmed that she thought the will (and now the Declaration of Trust) had been signed at Victoria Station but at the time she thought she was executing a will. She said she only signed one document there and Ekk told her it was a will. In fact the will had been executed some weeks previously (on 23 February). She said she was very tired at Victoria station and it was very noisy, she had been exhausted. She did not remember signing the will on a different occasion or ever going to solicitors' offices in Orpington.
569. As regards the transfer in 2015, she insisted that this came about because Ekk had told her that the businesses needed money. She did not deny that at about that time Anglo Thai had about £600,000 the bank and that Finfish had about £400,000 in the bank, she said that she did not check and, implicitly, that she did not keep any eye on the companies' finances.
570. As regards redeeming the mortgages on Flat 22 BM and 2 Chargrove Close, she accepted that she had been in Thailand between 17 and 23 May 2015 and whilst in Thailand had withdrawn 1 million baht from her savings account with Kasikornbank (Rat Burana Main Branch) as confirmed by a relevant bank statement. (That would have been about the equivalent of just under £19,000). That account was in her maiden name. At this time she also had at least two other bank accounts in her name one of which apparently had to its credit some 10 million baht (equivalent to about £189,000) and another had some 1,552,771.30 baht (equivalent to about £29,000) to its credit in 2015. More to the point, there is a foreign exchange transaction application and receipt drawn on Kasikornbank for the transfer of £209,491.42 from Mrs V Samboonsarn's account to Wanda's Barclays account maintained with its Lewisham branch and apparently signed by the account holder. Wanda accepted that the form contained her signature and that she had transferred the relevant money but said that she did not remember doing so. Paragraph 57 of her witness statement dated 13 November 2020 was put to her in which she said she had not used the account "in her maiden name" for many years and did not make this transfer nor did she have the ability to make this transfer "Indeed I was unaware that the account in my maiden name was being used". She unconvincingly suggested that all of this passage was dealing with the subsequent transfer from her Barclays Bank account to the mortgagees. Ekk, she said in the following paragraph of her witness statement, had organised "all the funds" to pay off

the mortgages but quite clearly she had at the least arranged the transfer of sufficient funds from Thailand to the UK for that purpose.

571. In cross-examination she accepted that she had indeed transferred the funds to the UK. She said she remembered doing so but that she had not remembered going with Helen to the bank to arrange the transfer to the mortgagees.
572. In cross-examination at the start of the fifth day of the trial (18 May) she accepted that she had known about and arranged the remittance of sums from Thailand and the subsequent transfer of the same to the mortgagees in question and that had been her intention. Indeed, she remembered attending Barclays Bank and the assistant trying to help her. She denied that there had ever been any suggestion at the time that the money from Thailand was Ekk's or the remainder of his inheritance.
573. Her answers to cross-examination regarding the signing of the transfer form in relation to Flat 22 BM were also confused. She said she never spoke to Mr Tilly and she did not instruct him to complete. She did not remember going to sign the transfer at McGrath's offices but thought that she had signed it in December at London Bridge offices. She then expressly denied signing the transfer at McGrath's offices. On this line of cross-examination she ended by taking refuge in the complaint that Mr Strang was seeking to ask questions to confuse her. This was an unfair criticism and inaccurate. In my judgment, the questions were perfectly clear and perfectly fair.
574. I turn to the evidence of Ekk. I do not repeat all of that evidence (especially where it repeats his pleaded case or contains argument by reference to exhibited documents) but only some of the more salient parts.
575. In his witness statement dated 24 February 2021, he said that Jerry agreed to transfer 2 Chargrove Close to her mother so that Wanda could mortgage it and pay the deposit on Flat 22 BM which was to be a purchase by him (beneficially) was because he had previously lent her £100,000 out of EUBC which sum she had not repaid. However, the mortgage on 2 Chargrove Close was to be paid off from the rent on Flat 22 BM. As such therefore from Ekk's perspective the deposit for Flat 22 BM was only in effect a loan to him.
576. As regards the Declaration of Trust in 2009, Ekk says that there was a trust of the property and relies on this document.
577. As regards 2015, he relies on the reasoning set out in correspondence with lawyers as being the reason for the transfer (i.e. that Wanda was going to gift the property to him but that this was because the property had been put in Wanda's name on acquisition because of a fear that Nok would claim against it in matrimonial proceedings).
578. He also referred to the Bank's letter confirming Wanda's instructions to transfer sums to redeem the relevant mortgage.
579. In his (third) witness statement made on 2 March 2021, Ekk said that decision to transfer assets to his mother was made on his accountant's advice. He did not have to take advice about how to deal with this situation in the divorce because Nok in fact made no financial claims in the divorce.

580. In his fourth witness statement, Ekk referred to his inheritance in Thailand being a property worth approximately £300,000. He said that he left matters as they were at about that time, in 2002, feeling it would give him a connection to Thailand and that he might go and visit there sometime.
581. He also gave further detail about the signing of the Declaration of Trust in 2009 and the advice then given.
582. As regards the 2015 transfer of title, he gave further detail about what he said were the circumstances of the transfer being entered into which was that Wanda wanted to “put things in order”, triggered by the death of her former partner in 2014, Mr Wilford. He also referred to the 2015 will by which Wanda left the property to his son, Sacha, but that says a collective decision was then taken to transfer the property to him, Ekk, as Sacha was felt to be too young.
583. He then refers to a meeting with Peter Tilly but says that he, Ekk, had then forgotten about the Declaration of Trust and that he only remembered about it “when we found it during these proceedings”.
584. I deal with points made by him in his cross-examination below.

#### **Ownership on the acquisition of Flat 22 BM**

585. It is apparent that the convoluted history of this matter, with apparent inconsistencies even in the contemporaneous documentation, and little to go on save the contradictory evidence of Ekk (and Helen) on the one hand and Wanda (and Jerry) on the other hand means that there is lot of necessary inference and gap filling that has to be undertaken.
586. There are, it seems to me, two matters which point firmly to Flat 22 BM having been acquired by Wanda both legally and beneficially in 2004.
587. The first is the Declaration of Trust signed in 2009. That declaration must have been prepared on the basis of instruction primarily deriving from Ekk and which he knowingly executed. The Declaration of Trust makes clear in its opening recital that:
- “Whereas the Legal and Beneficial owner is the owner of the said Property referred to above and has been the owner of all the Beneficial Interest in the Property since 2004 and is desirous of declaring that she holds the Beneficial Interest in its entirety for the Beneficiary.”*
588. This deed must, in my judgment, have been drafted by Mr Lamb on the basis of instructions that Ekk was party to and agreed with. There is no evidence to suggest that the Declaration of Trust was subsequently agreed to be set aside or not implemented such that I should consider that the recital is of no or little evidential value.
589. The second matter is the attendance note of Ms Penny Nichols of Sandon Robinson of 19 May 2016 recording his statement to her that his mother not only provided the money for the purchase (which suggests not just the deposit but also the payments with respect to the secured mortgage loan on the property itself) but that it was “bought by her and it was hers”.

590. This is also consistent with the fact that Wanda's will made a few weeks earlier on 23 February 2009 did not deal with Flat 22 BM. To this extent, I can see that the Declaration of Trust was probably related to the will in the sense that the will taken together with the Declaration of Trust was an attempt to deal with certain of Wanda's properties and that they were dealt with at much the same time.
591. There is a tension between the background to the 2015 Transfer and the 2009 Declaration of Trust and I will revert to that point later.
592. I found the evidence from Helen and Ekk regarding the so-called funding of the deposit by Jerry/Wanda as really amounting to Jerry in some way repaying an earlier loan to her by EUBC/Ekk so that the funding/part payment of purchase price of Flat 22 BM was by Ekk to be confusing and unconvincing. As I have said this seemed to be put forward as a rationale to show that Flat 22 BM was indeed acquired by Ekk as his property, beneficially, although registered in the name of Wanda.
593. There was apparent disagreement between Ekk and Helen as to the amount of the outstanding "loan" to Jerry (£100,000 or £75,000) that had been made earlier as well as confusion as to who in law it was said lent the money to her, namely Ekk personally or EUBC. There was disagreement between the two of them as to whether some of that loan had later been repaid. Furthermore, an analysis of the arrangements was explained by Ekk, the legal position that he was contending for appeared to be one whereby money was in fact "lent" to him for the purchase price because (according to him) the deposit for Flat 22 BM, raised by mortgaging 2 Chargrove Close, was to be (and to some extent, was) "repaid" by the paying off of interest and capital on the relevant loan (until it was finally redeemed).
594. As regards the payment of mortgage payment instalments on 2 Chargrove Close and Flat 22 BM, Ekk says that the same were funded from rental out of Flat 22 BM. Wanda says that they were funded from the Companies. Somewhat surprisingly, I had no detailed contemporaneous financial records put before me or explored with witnesses as to the true position. However, payment out of rents from Flat 22 BM is neutral with regard to indicating ownership of Flat 22 BM. As regards payment from the Companies, if the companies were Wanda's that is consistent with her being the beneficial owner of Flat 22 BM. If not, it is consistent with Ekk being the beneficial owner but it goes no higher than that given he denies that the Companies spent any monies on the mortgages and does not advance any alternative case on that front.
595. Furthermore, the explanation put forward by Wanda was straightforward and credible: 2 Chargrove Close was always hers and legal title was transferred by Jerry to her to enable her, Wanda, to raise money (a) to invest in what she thought was her company and (b) to contribute to the purchase price on a property that she was buying.
596. On the other hand, Ekk's case as it finally emerged seems to depend upon (a) Jerry owning the property, 2 Chargrove Close, from inception though he was not party to that arrangement (b) him being owed a substantial sum of money by Jerry personally (though the money came from EUBC); (c) 2 Chargrove Close not being mortgaged to repay him that alleged debt but to allow him to borrow £200,000 on the security of the property (using Wanda as mortgagee) which he was responsible for and would then repay; (d) (according to Helen), Jerry repaying £30k of the £100k debt but not repaying

the remaining £75,000 (or indeed the claimed £100,000) from the proceeds of the mortgage; (e) Wanda repaying the balance of the mortgage on 2 Chargrove Close shortly before legal title to Flat 22 BM was transferred to him in 2015.

597. As regards (e) in the preceding paragraph, that payment is evidenced by payment from Wanda's own accounts but Ekk then had to explain that by suggesting that the monies were part of his property, received by way of inheritance from his Thai family. For reasons that I will explain in connection with a consideration of the acquisition of the freehold of 38, Charlotte Street, I do not accept that evidence.
598. It follows from my conclusion that beneficial ownership of Flat 22 BM as well as legal title was with Wanda from the time of acquisition that much of the evidence of Ekk and Helen as to underlying facts said to establish, as regards beneficial title, the converse are rejected and that this has a damaging effect on their credibility generally.

### **The 2009 Declaration of Trust**

599. On its face the Declaration of Trust is clear. Wanda in effect gifted her beneficial interest in Flat 22 BM to her son, Ekk. Two points arise: first, whether the Declaration of Trust has no effect as some form of "family arrangement" not intended to have legal binding effect or was later agreed not to be given effect to or to be rescinded and, secondly, whether the deed is of no effect by reason of the doctrine of *non est factum*.
600. Dealing with the first point, no evidence was put before me and no case was raised (or pleaded) that the Trust Deed was subsequently rescinded or in any way treated as being in escrow so that it was not effective. Similarly, the mere fact that there is a formal trust deed negatives any intention not to effect in law what the deed purports to do and there is no pleaded case to the contrary. Ekk says that he had forgotten about the Deed. It may be for tax or other reasons (for example, that it weakened his position that he had always beneficially owned Flat 22 BM) that that is how he wanted the position to remain. Be that as it may, subject to any claim of *non est factum* it seems to me that the Deed stands.
601. On the question of *non est factum*, which I do not consider was properly pleaded but I address the point anyway, Wanda's evidence was to the effect that she did not know what she was signing and never thought she was signing anything giving away her beneficial interest in Flat 22 BM.
602. In those circumstances undue influence and/or misrepresentation are difficult to pursue and Mr Cowen put his case fairly and squarely by reference to the principle of *non est factum*. In other words, as it is put in Chitty on Contracts (35<sup>th</sup> Edn) at paragraph 5-049:

*"If, however, a party has been misled into executing a deed or signing a document essentially different from that which he intended to execute or sign, he can plead non est factum in an action against him. The deed or writing is completely void in whosoever hands it may come. In most of the cases in which non est factum has been successfully pleaded, the mistake has been induced by fraud. But the presence of fraud is probably not a necessary factor.<sup>210</sup> As Byles J said in *Foster v Mackinnon*<sup>211</sup>:*

*“... it is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.”*

*However, a party is not permitted to escape the effect of a document that he has signed merely because he did not intend to sign a contract or a contract of the type he has in fact signed.”*

603. I was not addressed in any detail on the legal requirements to establish *non est factum*. They are summarised in paragraph 5-049 of Chitty on Contracts (supra) as follows, citing *Yedina v Yedin* [2017] EWHC 3319 (Ch) at [262] (Mann J):

*“The “key elements” for a successful plea of non est factum have been summarised thus:*

- (a) the belief of the signer that the person is signing a document of one character or effect whereas its character and effect were quite different;*
- (b) the need for some sort of disability which gives rise to that state of mind;*
- (c) the plea cannot be invoked by someone who does not take the trouble to find out at least the general effect of the document.”*

604. I find that Wanda had genuinely forgotten about the Declaration of Trust when she originally put evidence before the court, that is not surprising when the document only seemed to come to light later and be relied upon by Ekk. In this respect I reject Mr Cowen’s submission that Ekk does not rely upon the Declaration of Trust: at least in his pleadings and evidence. Mr Strang on his behalf said that he did not rely on the 2009 deed as an alternative case. However, it seems to me that given the evidence I cannot simply ignore the Declaration of Trust. I am neither persuaded by Wanda’s case that the deed is invalid on the grounds of *non est factum* nor by Ekk’s final case that the deed was an informal family arrangement which I can ignore. It having been adduced into evidence and there being no case that it was subsequently rescinded I have to act on the basis that it was signed and intended to have legal effect.
605. The fact that Wanda did not remember anything about the deed but then came up with confusing accounts of what happened reflects, to my mind, the fact that she did not really remember anything about the circumstances in which she had signed the same and that she was recreating in her mind what she felt must have happened (even though she genuinely believed that is what happened).
606. I find that the deed would not have been executed without at the least Mr Lamb making clear to Wanda what its general import was and that it related her giving up ownership of Flat 22 BM. Further, assuming that language can be a relevant disability for the purposes of *non est factum*, I consider that she would have been “negligent” within that doctrine by not asking the solicitor further, if she genuinely had a lack of understanding. In fact, I consider it more likely that she did understand what was being said and was prepared to transfer her beneficial interest to Ekk. I regard it as more unlikely that a solicitor would not have been satisfied that the person executing the document understood its effect and that effect is, after all, fairly simple and straightforward.

607. There is one slight oddity that I should record. The Declaration of Trust does not deal in terms with the mortgage on 2 Chargrove Close that had been entered into to raise funds for the purchase price and which Ekk was paying off nor to the mortgage on Flat 22 BM. However, before the 2015 legal transfer of title to Flat 22 BM, Wanda personally paid off both mortgages, though I understand the outstanding sums were not great. It is difficult to understand why this occurred and it is a factor suggesting that Wanda either was making a further gift to Ekk at this time or that there is some further explanation. Wanda's explanation is that Flat 22 BM was hers. That does not fit with the Declaration of Trust but may have been a mistake on her part or may reflect an agreement at the time of the 2015 legal transfer that she would transfer an unencumbered title. I recognise that the evidential position is unclear and unsatisfactory in this respect but this consideration does not cause me to change my conclusions with regard to both the Declaration of Trust and the 2015 legal transfer.

### **the 2015 Legal Transfer**

608. Of course, the legal transfer of 2015 simply transferred legal title if I am correct that the 2009 Declaration of Trust had already transferred beneficial ownership to Ekk. The oddity is the evidence about 2015 shows that, for whatever reason, the 2009 Declaration of Trust was not in anyone's mind and that the lawyers acting were then unaware of it or had forgotten about it.
609. While dealing with this point, I should also deal with another point which is that while Ekk may have forgotten the Declaration of Trust in 2009 (or, more likely, decided not to rely upon it) in 2015 the same cannot be said for forgetting about in the proceedings. Given the exchange with his solicitors arising from Inland Revenue interest and the statutory declaration made in respect of the removal of a restriction in 2016, my conclusion is that to have forgotten about it again is not credible.
610. I should add that when cross-examined about the 2009 Declaration of Trust, he said as regards his pleaded defence (and written evidence) on this issue that he was sleep deprived at much of this time and that this was the explanation for any failures in his defence/witness evidence. I am not persuaded by that evidence.
611. The contemporaneous documents show that the purpose of the 2015 transfer was to effect a transfer of legal and beneficial ownership. Again, I reject Wanda's evidence that she did not understand that at the time and that no-one explained that to her. In particular, a contrary conclusion would also involve a criticism that the professionals involved were either seriously negligent or (at the least hinted at by Wanda) themselves party to a fraud on her, which case I reject.
612. In short, Wanda's original evidence as to the location and circumstances of the signing of the 2015 transfer document has been shown to be wrong. I consider that her original evidence was genuinely believed but shows the imperfections of memory. I consider that the contemporaneous evidence and the likelihood show that she did meet the professionals involved (including Peter Tilly whom she denies meeting at the time) and that the purpose of the transaction would have been explained to her.



613. I also reject any suggestion that Wanda was tricked into transferring title on the basis that she needed to raise money for the restaurants and this needed a secured loan on her property Flat 22 BM which she could not mortgage without transferring title to Ekk.

### **Flat 22 BM: Conclusion**

614. In conclusion, beneficial ownership of Flat 22 BM was transferred to Ekk by the 2009 Declaration of Trust or the 2015 transfer of legal title.

### **3. Chargrove Close**

615. I turn to 3, Chargrove Close acquired in July 2006.

#### **The statements of case**

616. The pleaded case for Wanda regarding 3 Chargrove Close is that she desired to buy the property to provide extra accommodation for the restaurant businesses and partly as a rental investment. The purchase price of the property of £320,000 was paid for in part by payment(s) by Wanda (between £20,000 and £30,000) and in part by a mortgage which was discharged by payments from rents on the properties and/or one or more of the Companies running the restaurant businesses. The reason that title to the property was conveyed into her name is said to be a misrepresentation by Ekk that she would not (age 59) be able to obtain a mortgage and that accordingly the property should be conveyed to him (but she would retain the beneficial interest). It is also a key part of her case that Ekk paid nothing towards the property and that this was part of a plan devised in 2004 to ensure that future properties would be held in his name without having made any contribution to the purchase price thereof.
617. Alternative pleaded claims for fraudulent misrepresentation and/or money paid under a mistake of fact and/or law and/or undue influence were not pursued before me.
618. Ekk's case is simple: he bought the property in his name because he and Helen were going to live there. They were persuaded to do so by Wanda. The deposit of £40,000 was paid by Ekk from a remortgage of his flat in Pembridge Gardens. Although Wanda paid up to £30,000 to the previous owner of 3, Chargrove Close that had nothing to do with the purchase of that property. The alleged representations about obtaining a mortgage are denied. In the end Helen miscarried and they never moved into 3, Chargrove Close.

#### **The Evidence**

619. In her affidavit, Wanda made the allegation about the alleged misrepresentations made to her by Ekk about her ability to gain a mortgage as a generic complaint in relation to certain properties acquired "since 2006".
620. More specifically as regards 3 Chargrove Close she said that she paid the deposit and the balance of the purchase price was found by a loan secured on that property. Tenant income as well as the restaurants paid the mortgage payments.
621. In his second witness statement, Ekk did not deal substantively with 3 Chargrove Close on the basis that that was not a dispute to be resolved at that stage.

622. In her second witness statement, being her trial witness statement, Wanda explained that she had managed to negotiate a reduction in price of 3 Chargrove Close from £330,000 to £320,000 (which is agreed by Ekk, and contemporaneous documents confirm, was the purchase price). She said that she and the owner (Maria) then split the £10,000. This was agreed on the basis that the property would not have to go through estate agents and therefore commission/fees were saved.
623. She accepted that as the mortgage offer was only £272,000 and she had paid £20-£30,000 by way of deposit there was a shortfall in the purchase price (£18,000-£28,000) which was probably found by Ekk (although to be fair she doesn't suggest it was paid by him personally as opposed to from the Companies running the restaurants: she simply says she does not know where the money came from).
624. In her witness statement, Helen confirms Ekk's evidence that they did not move into the property because she miscarried and accordingly they stayed at Pembridge Gardens living there with their first son, Sacha.
625. In his 4<sup>th</sup> (trial) witness statement, Ekk confirms the reason for the purchase of 3 Chargrove Close (i.e. buying it as a residence for him, Helen and their family at the instigation of Wanda). As regards the purchase price he says that he had raised £80,000 by remortgaging Pembridge Gardens and that he paid the £40,000 difference between the purchase price and the mortgage loan raised on the property (£272,000). On the mathematics the figure would have been not £40,000 but £48,000. He denied that Wanda paid anything by way of deposit though he remembered her saying that if the purchase price was reduced from £320,000 to £300,000 the owner, Maria, could be paid £20,000.
626. In cross-examination, Wanda effectively maintained her version of events.
627. In cross-examination, Ekk maintained his position. As regards the alleged reduction in price by £10,000 he simply said that the £320,000 price was that which Wanda identified to him and he was happy to pay it. It does not seem to me that the evidence on this point takes matters much further. Any reduction in purchase price negotiated by Wanda is consistent with her being owner or negotiating for her son. Although it might be said to have gone beyond this, because according to Wanda the £10,000 reduction was arranged by her paying Maria £5,000 in cash, that is in the global scale of things no different in kind to her accepting that there was a shortfall of some £18,200 which Ekk found somewhere which she cannot deny he may have found from the mortgage loan obtained on the Pembridge Garden flat.
628. The contemporaneous documentation is extremely limited. Surprisingly there is no contemporaneous evidence showing the source of any of monies used for the purchase price (the best on the mortgage is an offer letter) nor the sources of sums used to pay the mortgage instalments.
629. I am also not satisfied on the balance of probabilities that 3 Chargrove Close was acquired solely with the purpose of providing extra storage for the restaurants (and also as an investment property). Although it was clearly later used for restaurant purposes, the suggestion of Wanda that Ekk would never move there because he already had the Pembridge Gardens flat does not deal with his and Helen's explanation that Pembridge Gardens was small and that they stayed there only because Helen miscarried what

would have been their second child. Any slight indication of ownership in favour of Wanda derived from her case as to intended use does not therefore apply.

630. Although on the whole my starting point is to prefer Wanda's evidence to that of Ekk where there is a conflict, I have explained why I still need to treat Wanda's evidence with caution and I cannot say that wherever there is a conflict Wanda's evidence is necessarily to be preferred and accepted. The evidence regarding Flat 22 BM confirms that approach to be appropriate.

### **3 Chargrove Close: conclusion**

631. On the balance of probabilities, the evidence is so lacking either way that I consider that Wanda has failed to make out her case and that beneficial title must be assumed to have been carried with legal title when the property was acquired in Ekk's name.

### **78, Hermit Road**

632. I turn to the acquisition of 78, Hermit Road in 2008.

#### **The statements of case**

633. The pleaded claim is that Wanda decided to purchase 78, Hermit Road in 2008, to act as a central kitchen, for storage purposes and as an investment property.
634. Wanda is said to have paid the deposit of £70,000 and the balance of the purchase price (the purchase price being £285,000) was raised by loan secured by mortgage over the premises.
635. The same representations about Wanda being too old to take out a mortgage loan as were said to apply to the acquisition of 3, Chargrove Close are repeated.
636. The mortgage instalments that fell due are said to have been paid from the restaurant businesses and rental income from the property.
637. As with 3 Chargrove Close the pleadings claim that it was agreed that 78, Hermit Road would belong beneficially to Wanda, that Ekk was a nominee holding legal title only on trust for Wanda and that Wanda would be responsible for mortgage payments.
638. The defence is to the following effect:
- (1) The decision to purchase was Ekk's, prompted by the need for a larger central kitchen because of the growing needs of Scoffle Ltd's business.
  - (2) The deposit of £70,000 was paid by Wanda but this was a repayment to Ekk of (a) loans made by him in 2005 in a total of £13,000 (being payments made on her behalf as regards her outdoor catering business); (b) a loan by Ekk to Wanda of £60,000 out of "his businesses". She had wanted to lend Jerry £60,000 to enable Jerry to buy property in Malaysia. The idea had been that Wanda would repay him out of an endowment policy that was close to maturity. When the deposit of £70,000 was needed, she paid part of the deposit on his behalf as discharge of the debt of £60,000 (in evidence said to be a repayment out of the endowment policy proceeds).

(3) Payments under the mortgage loan were made out of income from the property, being sums paid by the businesses, with Scoffle Ltd paying approximately 75% (in cross examination, Ekk said 80%) and a smaller proportion being paid by the Companies running the restaurant businesses.

(4) The representations and legal conclusions are all denied.

### **The Evidence**

639. The contemporaneous documentation shows the property being acquired for £285,000 with a mortgage loan of £210,000 and therefore a sum of £75,000 being needed to meet the balance. In fact from a completion statement we know there were further professional fees, disbursements and taxes such that after the mortgage advance and a deposit (the typing is unclear whether that was £800 or £600) some £87,707.47 was required to complete.
640. There is no contemporaneous documents as to payment of sums to enable mortgage payments to be made.
641. As regards the payment of £70,000 Ekk accepted that Wanda had made it but advanced the point set out in his defence that this represented repayment made to him of loans he had previously made to Wanda.
642. As regards the bulk of this, he said that £60,000 was repayment of a loan that he had made to Wanda so that she could lend money to Jerry. In cross examination he could not explain how much money Jerry needed and what the £60,000 would meet. He also said that the majority of the money came from Scoffle (but that he repaid it to Scoffle by setting off dividends from Scoffle) but some came from Anglo Thai Ltd and Finfish Ltd. As said, there was no contemporaneous evidence showing these matters as regards the companies involved. He also said that the loan by him was on no specific terms as regards repayment.
643. The payment of £70,000, he said, came from encashment of an endowment policy. However, in cross-examination he accepted that the documents showed that the money from the encashed endowment policy of Jerry (in October 2007 in the sum of just over £30,432) remained in a joint account of Wanda and Jerry throughout 2008 (completion on 78, Hermit Road had been 28 March 2008). The same account showed receipt of just over £28,854 from encashment of Wanda's endowment policy and again that sum remained in the account during 2008.
644. Accordingly, it followed that according to Ekk, Wanda and Jerry had encashed policies worth a total of about £60,000 but had not spent that money in 2008. Further the sums had been encashed before completion. According to Ekk's account therefore Wanda had a further £70,000 available to pay him. If that was the case he could not explain why she would have borrowed £60,000 from him in the first place as he said.
645. He then changed tack by saying that the fact of the endowment policies had reassured him that he would be repaid. He thought they had been used to repay him but if they had not been then he could not explain where the money to pay the balance of the purchase price, and on his account, repay him the loan had come from. More to the

point, he could not explain why Wanda would have borrowed £60,000 from him in the first place.

646. As regards the alleged loan of £13,000 arising from his having (on his account) paid certain bills of the outdoor catering business in 2005, having heard the cross-examination on the topic I am satisfied that any such payments would have been repaid by Wanda at or about the time that cheque payments were made by Ekk on her behalf to suppliers of good or services. I also agree with Mr Cowen's submission that this evidence is another example of Ekk picking upon isolated pieces of evidence (in this case evidence of cheques) and seeking to use them to make out his version of events when they in fact do not do so and the true and full explanation for which is not that which he gives.

### **78 Hermit Road: conclusion**

647. I am satisfied that the majority (at least £70,000) of the purchase price for 78, Hermit Road, to the extent that it did not come from the mortgage, came from Wanda as it were, as payment to acquire the property from her own monies and that the payment did not represent any repayment of sums to Ekk such that the purchase price of 78, Hermit Road cannot be said to have been paid by Ekk from his monies.
648. As regards the mortgage payments, they were met from the income from the property and that is therefore a neutral factor in attempting to assess beneficial ownership of the property. I appreciate that the legal liability was with Ekk but I do not consider of the facts in this case that that carries any great weight and if necessary would hold that there was an agreement that Wanda would ultimately be responsible for such payments.
649. In these circumstances the basis said to underlie the alleged oral agreement that Ekk would acquire (beneficially) and pay for the property entirely disappears. Accordingly, I am satisfied that 78, Hermit Road was purchased beneficially by Wanda, albeit that legal title was transferred to Ekk and that she remains the beneficial owner thereof.
650. I should add that I do not consider that I have to decide whether or not the misrepresentations that Wanda claims were made to her regarding her ability to obtain a mortgage are made out. My decision would not be dependent on such a finding being made.
651. I should also add that I have taken into account the fact that income by way of rents from 78 Hermit Road seems to have declared on Ekk's tax forms but I do not consider that this causes me to change my conclusion as to ownership of the property.

### **38, Charlotte Street**

652. I turn to the acquisition of the freehold of 38, Charlotte Street in September 2009.

#### **The statements of case**

653. The pleaded case of Wanda is that the purchase of the freehold of 38, Charlotte Street was funded by a loan to Wanda from a Thai relative (though the legal document also joins Ekk in as joint borrower it is neither party's case that the loan was other than to

one or the other of them and not to them jointly) and by a loan secured by mortgage over the property.

654. Mortgage payments, says Wanda, were paid from income from the Anglo Thai Ltd restaurant business (in fact, the lease of the restaurant premises was assigned from Wanda to Anglo Thai Ltd) and from other tenants.
655. The alternative pleaded case of false representations (acted upon by Wanda) that Wanda could not obtain the mortgage and that to do so she would have to transfer title to Ekk, undue influence and payment made under a mistake of fact/law were not pursued before me.
656. The pleaded defence is that the Thai family loan was a personal loan to Ekk for him to buy the property in his own name and that his mother was simply added to the legal loan document as borrower.

### **The Evidence**

657. I have indicated Wanda's evidence and case in the overview of the history in this case.
658. Initially, in her affidavit, she said that she thought that the family loan had not been repaid.
659. In his 2<sup>nd</sup> witness statement, Ekk denied this. He said that the loan had been repaid and that his mother had taken care of this and told him about it, He said that the repayment had been made in October 2010:

“when my sister and I inherited some property from my father in Thailand. I could not take legal ownership because I am not a Thai national and so my mother took it and from the proceed she paid her sister.”

660. In her 1<sup>st</sup> witness statement, Wanda said that the timing (that is regarding Ekk's father's death (which was in 2002) and the repayment of the family loan (in October 2010) was completely wrong. That is, that even if Ekk had inherited property that would have been back in 2002 and not in 2010 when he said he had inherited property. She went on to say that in any event there was no substantial inheritance as Ekk suggested. Ekk's father was comparatively poor.
661. She said that the documents that Ekk had exhibited had assisted her memory. At least part of the loan had been repaid although not by Ekk but by her.
662. In her trial (2<sup>nd</sup>) witness statement, Wanda set out how she repaid the loan from Wisit by a combination of sums from Suchart and a sum from Thaweekiat. She then explained how she repaid Thaweekiat the 10 million Thai Baht that she had borrowed by using money (6-7 million baht) which she inherited from her mother, after the latter's death in 2011, and by giving him land worth about 4 million Thai baht. That land, she said, had been bought by her cheaply some time before but it had subsequently greatly increased in value.
663. In his trial (4<sup>th</sup>) witness statement, Ekk asserted that the £145,000 deposit for the property was found from Anglo Thai Ltd.

664. He said that the inheritance from his father had not yet been sold but this gave the Thai family security that the sum would be repaid if they lent it to him. He said that he also wanted to:

*“reassure Wisit and make sure he understood that if I could not raise money from selling Thai property I would sell my flat in Pembridge Gardens, to give him every assurance that I was good for it.”*

In cross-examination he said that he did not know if the Thai family knew about his inheritance. This adjustment to his evidence no doubt followed from the fact that Wisit had given evidence that his loan was to Wanda, relying on what he had been told about the Charlotte Street restaurants as providing reassurance the loan could be repaid and that Ekk was joined to the loan simply because of Wanda’s age and in case anything happened to her. There was a risk throughout the trial that he might be called to give oral evidence if arrangements could be put in place.

665. He said that the loan was fixed at about £300,000 because that was what he believed his Thai property to be worth.
666. He also said that Wanda was offended that her name had been placed on the contract of loan and was uncomfortable with having her name on the loan and:

*“Before a year was out, she went to Thailand to pay back the loan as quickly as possible. She managed to sell some of my inheritance property to pay back part of it and she got a loan from her half brother to pay back the rest.”*

667. He went on to say that:

*“My mother said that not all of the property was sold at this time. Every time she came back from Thailand she would tell me what had been sold off and approximately how much money was in the bank”.*

## **Findings**

668. In his cross-examination in connection with his version of events regarding 38 Charlotte Street, Ekk’s version of events regarding his “inheritance” completely broke down. Among other things the following matters emerged.
669. First Pembroke Gardens had limited equity: he had re-mortgaged it in 2006. He did not answer the question whether Wisit (or other members of his family) asked him about this in any detail. As regards the alleged Thai property he said that he told Wisit or members of his family about this but again did not explain how much Wisit was told. Ultimately, he said, if he could not pay back the loan he would have had to sell the freehold of 38 Charlotte Street and pay Wisit back in that way.
670. As regards the Thai property, he said that he asked for a loan of £300,000 because he thought that was what the Thai property was worth. He said that his mother had told him in 2002 that it was worth £300,000 but he did not ask how much it was worth at or about the time of the family loan. Further, he did not ask how quickly it could be sold

or how difficult or easy it would be to sell it to realise money to repay Wisit. He said that he assumed it might take 6 weeks which he then amended to a year. Although the loan started to be repayable in instalments starting a year from inception. According to Ekk, he didn't say anything to Wisit (or members of his family) regarding his ability to pay back from the realisation of what he says was the Thai property he owned in terms of its value, how long it would take to sell or the like. He said that the three year repayment period was agreed to remove pressure from him but was unclear whether he had intended to pay it back earlier if he could and was hazy as to what went on with regard to his property after the loan or what instructions he gave his mother or what steps he took to monitor the position other than that she should start selling and at least make the first payment.

671. He said that things then changed because his mother was able to arrange that the loan to Wisit was repaid by a loan from her half-brother but he was hazy as to the detail or how and when he found this out. As regards payment of the first instalment due under the loan agreement with Wisit he said that this came from sale of his Thai property but then said that essentially he just left everything to his mother and did not ask or receive a report about how the sales of his property were proceeding.
672. His mother, he said, arranged everything and he trusted her. His understanding was that half of the Wisit loan was repaid from sales from his property and there was enough to repay the loan from her half-brother in full but he did not ask how much of his property remained after repayment of the loan to Wisit nor anything about its value or about the past or future sales and sale prices. He said in fact she did use the proceeds of sale from his property to repay her half-brother but he could not remember when he was told this, either in broad terms of whether he was told this at the time or some years later.
673. He had earlier on in his cross examination been asked about this alleged inheritance of Thai property which he said he owned and had inherited from his father. Again, the answers that he gave were unconvincing as to the existence of the same. He had also said that his Thai property had been used by Wanda to pay off the mortgages on Flat 22 BM and 2 Chargrove Close before title to the former was transferred to him in 2015.
674. Ekk's case and evidence had been that the money was found by Wanda from an account in Thailand and that the money in that account was Ekk's. He agreed in cross examination that the only evidence supporting this conclusion was that Wanda had told him that he had an inheritance in Thailand and she had asked him at some point to sign a document in Thai which he did not understand. He understood the property to be worth £300,000 and to comprise a number of properties and land but he did not know where these properties were situated, he said they were positioned nationally, that is as I understood it, all over Thailand. Despite his need for finance he did not ask for more detail about the land and property, did not visit Thailand until about 2008 and never took matters further. Essentially he left it all to Wanda to manage and deal with and had no real idea about the property beyond its existence and its value in 2002 of £300,000 or so. He also did not seem to know how and when Wanda was managing it and/or realising it.
675. After the transactions that he said involved repayment of the Wisit loan (and the loan from Wanda's stepbrother in about 2010) and the payments in 2015, he was unable to



identify what property was left of his Thai inheritance. He said he had been told by Wanda that something remained but agreed that he could not say whether that was worth £5,000 or £50,000. He then went on to say that he had been told by Wanda that half had gone. Later he said that in 2015 his mother had told him that pretty much everything had been disposed of. He believed her (though there were lots of things she had said that he now did not believe). He had made no enquiries of lawyers, his family or any other professionals or anyone else to find out more about his inheritance and whether anything was left. His answer was that he had not because he does not have Thai ID and it is very difficult to pursue enquiries in Thailand because he is not familiar with Thailand and he cannot speak the language.

676. As regards sales he assumed credits in a bank account of Wanda that he had on-line access to were credits from sales of his property but never asked her.
677. Having said in his witness statement that Wanda would tell him what had been sold, in cross examination he said in fact she only told him what was in the bank and gave him no details of what had been sold and what individual properties had realised. He then backtracked on this and suggested that Wanda did tell him what had been sold but the locations meant nothing to him. He relied on bank accounts being shown to him as regards which he then said Wanda showed him the credits and explained what land had been sold to give rise to the proceeds credited to the account. Those bank accounts had apparently been opened in 2009 and he was unable to say whether or not there had been any sales before 2009 and if so what sums they had realised or what had become of such proceeds.
678. He said that on his visits to Thailand (specifically in 2008 and 2011) he had been too busy to look further into the property that he said that he owned there.
679. He also said that he had no concept of and didn't ask anything about liabilities in connection with the properties, whether in terms of ongoing tax, whether properties were rented out and bringing in an income, tax on income or on capital on sales.
680. In short, I found Ekk's answers and the manner in which he gave them regarding the claimed Thai inheritance to be unconvincing. When taken with the other evidence, I am satisfied that at most Wanda may have spoken of his inheritance in Thailand meaning property that she owned in Thailand which he would inherit on her death but not property which he was the owner of whether in 2002, 2009 or 2015. I consider that Ekk has fastened onto this and used it as a basis for a version of events that is not true. Taking his evidence with the other evidence in the case I am satisfied that Ekk had no "inheritance" in Thailand being property that he owned and which was used to pay off the debts in Thailand incurred to acquire and pay part of the purchase price of 38, Charlotte Street. I am also satisfied that the various relevant Thai loans were loans arranged by Wanda and which were loans as to which she was primarily and personally responsible and that Ekk's name was added to the Wisit loan for the reason given by Wisit rather than Wanda simply being added as a nominal party as asserted by Ekk. As a general matter I consider that Wanda's evidence is supported both by the evidence of others, by its coherence and also by considerations of what is more likely. I should add that I do not feel that I have to be satisfied that the representations that she claims were made regarding her ability to obtain a mortgage were in fact made. I make no finding in that respect.

### **38, Charlotte Street: conclusion**

681. In circumstances where, apart from ongoing funding by way of income from the property used to meet payments under the mortgage loan, I am satisfied that the immediate monies to pay for 38 Charlotte Street represented sums belonging to and arranged by Wanda. I am also satisfied that the property was acquired by her as beneficial owner, that being the agreement between Ekk and Wanda.

### **Overall conclusions**

682. I am satisfied that Wanda is the beneficial owner of the rights of subscriber in relation to each of the three Companies and to have the relevant shares in question issued to her and that when issued to her she will be the beneficial and legal owner of the same. It may be that in the light of this judgment that Ekk will take steps to issue the shares. My preliminary view is that I do not consider at this stage that rectification of the relevant share registers (if necessary to create the same) is appropriate because I am not aware that, as regards the companies, Wanda has formally sought issue of the shares. I will hear further submissions on the precise form of relief in addition to declaratory relief but it maybe that the matter can be dealt with by giving liberty to apply to work out the order.
683. I am satisfied that Wanda is the beneficial owner of (a) 78, Hermit Road and (b) 38, Charlotte Street.
684. As regards Flat 22 BM, although this property was, on acquisition, legally and beneficially owned by Wanda, I am satisfied that she transferred beneficial title to Ekk either by Declaration of Trust in 2009 or as part of the transfer of legal title in 2015.
685. I am not satisfied that Wanda has made out her case to the civil standard of proof with regard to beneficial ownership of 3, Chargrove Close.
686. One of the Counsel in the case having been unavailable between the circulation in draft of this judgment and its formal handing down, I make the following order. The parties should seek to agree as much as they can of an order to give effect to this judgment and submit a draft identifying clearly what is agreed and what is not agreed and, in the latter case, which party proposes which wording. The draft should be submitted by 4pm on Friday 3 May 2024. It may be necessary to have a further hearing to determine parts of the appropriate order and, if so, the parties should seek to agree appropriate directions for such a hearing. I invite the parties to send a further draft order dealing with the process also by 4pm on Friday 3 May 2004. The directions should include a date before which the hearing should not take place, an estimated length of hearing, and a timetable for filing and serving a hearing bundle and skeleton arguments. In the meantime, I adjourn all matters consequential on this judgment to such hearing and extend the time for filing any notice of appeal until expiry of the period 21 days starting with the day of the making of any further order giving effect to this judgment or, if earlier, the date when both parties confirm they do not seek permission to appeal.