Neutral Citation Number: [2019] EWHC 2184 (TCC)

Case No: HT-2015-000181

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/08/2019

Before :

MRS JUSTICE JEFFORD DBE

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Between :

(1) NUA FACADES LIMITED	**Claimant**
(2) NUA INTERIORS LIMITED	
(3) SILK PROPERTY DEVELOPMENTS LIMITED	
- and -	
TERRY BRADY	**Defendant**
T/A TERRY BRADY DEVELOPMENTS LIMITED	

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James Bowling and Daniel Khoo (instructed by **Vyman Solicitors**) for the **Claimants**
Anthony Speaight QC (instructed by **Goodman Derrick LLP**) for the **Defendant**

Hearing dates: 14 to 15, 19 to 22, 26 to 29 November 2018; 13 December 2018

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Approved Judgment

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

.....

MRS JUSTICE JEFFORD

Insert Judge title and name here :

Introduction

1. This action concerns a development ("the project") at 166-198 Liverpool Road, Islington, London N1 undertaken by the Defendant, Terence Brady ("Mr Brady"). In short summary, the Claimant companies carried out works on the development and, in October and November 2012, the Nua companies, the First and Second Claimants, entered into a series of agreements with Mr Brady which settled any claims for payment they might have ("the Settlement Agreements"). Mr Brady argues, on various bases, that those agreements are not binding on him and that the Claimants are entitled only to the proper or reasonable value of the work done. On that basis, Mr Brady says that nothing is owing from him to the First and Second Claimants and that, on the true valuation of the works done, Mr Brady has, in fact, overpaid them. The Third Claimant, Silk Property Developments Ltd. ("Silk") also carried out works on the project and had claims for monies agreed to be paid in letters dated 29 November 2012 and 4 January 2013.

2. Mr Rishipal Singh is the leading light of all the claimant companies. Where it is relevant I shall refer to each of the Nua companies individually but otherwise I shall use Nua as the catch all for both the First and Second Claimants whichever of them may, in fact, have been the relevant contracting party. Similarly, and in particular, where this judgment is concerned with the general allegations of conspiracy, dishonest assistance, duress and undue influence, my references to Nua encompass as appropriate the Third Claimant, Silk.

Evidence at trial

3. There were before the court statements from, and I heard evidence from:
   (i) Mr Rishipal Singh.
   (ii) Mr Richard Pierce, formerly of Four Square Management Ltd. who acted as Mr Brady's project managers on the project.
   (iii) Mr Darren Elkin, who had been involved in the project as a quantity surveyor for Maybury Construction Ltd. ("Maybury"), one of the contractors on the project, and now a commercial manager for MadiganGill Construction Ltd. ("Madigan Gill"), the second main contractor on the project.
   (iv) Mr Terence Brady.
   (v) Mr Bruce Smith, of Westminster Consultants, quantity surveyors, who was the monitoring surveyor for Lloyds Bank ("the Bank"), the principal funder on the project.
   (vi) Mr Jack Barclay, Mr Brady's accountant.
   (vii) Mr Derek Poole, who was that the material time a construction and project management consultant working through his own company.

4. Expert evidence from:
   (i) For the Claimants, Mr Stephen Adkins, who practises as a construction consultant through his Adkins Associates.
   (ii) For the Defendant, Mr Brian Moran, who practises as a quantity surveyor and claims consultant through BfM Consulting Ltd.
   (iii) For the Claimants, Mr Anthony Stockton, a forensic scientist, specialising in the examination of disputed documents, handwriting and signatures.

5. There was also voluminous documentary evidence, although Nua continue to complain that Mr Brady has failed to give proper disclosure. There were certainly instances in

which Mr Brady claimed that he or his advisers could have produced documents to prove something but had not done so.

Outline facts

6. I will start with an outline summary of the facts and deal with them in greater detail as they relate to specific issues in due course.

7. Mr Brady is a highly a successful businessman. His primary business was a printing business, Alito Color Group Ltd., with a printworks on Liverpool Road. He gave an informative and engaging account of how he had established this business starting in the 1970s when he identified a gap in the market for merchandising and promotional material relating to pop music industry.

8. In about 2007, however, his intention was to close the printworks in Islington, moving to a new site and selling the Islington site for residential development. He had the benefit of planning permission to demolish the existing buildings and erect a mixture of private and affordable apartments and nine houses. In that context, Mr Brady came into contact with Rishi Singh. Mr Singh was himself a property developer or, at the least, seeking to establish himself as such, and he made some proposals to a business associate of Mr Brady's, firstly to buy and develop the site himself and later for involvement in a joint venture with Mr Brady for the development. In the event, Mr Brady was unable to sell the site and decided to develop it himself.

9. In the context of the discussions about a joint venture, Mr Singh introduced Mr Brady to Mr Pierce, a quantity surveyor, who had costed the project for Mr Singh. There was a prior relationship between Mr Singh and Mr Pierce to which I refer below. When Mr Brady decided to develop the site himself, he first used Mr Pierce as his project manager. In June 2009, Mr Pierce and Lee Sims incorporated a new company, Four Square Management Ltd. ("FSM"), to manage the development and FSM were subsequently engaged by Mr Brady to act as project managers.

10. In May 2010, Mr Brady engaged Maybury as main contractors, although Maybury had already been instructed to commence work in March 2010. As main contractors, Maybury also fulfilled the role of principal contractor for the purposes of the CDM Regulations. A number of sub-contract packages were to be let and the Nua companies tendered for those packages. They were the successful tenderers on the Windows, Dry Lining and Joinery packages but unsuccessful on other packages including mechanical works, kitchens, sanitaryware, underfloor heating, AGM (architectural glazing and metalwork), flooring and tiling. Sub-contracts for the packages on which Nua were successful were in due course entered in between Nua and Maybury.

11. Maybury left site on 16 December 2011 having stopped work on or about 5 December 2011. The development was at that stage nowhere near complete.

12. In the period between December 2011 and March 2012, Nua was appointed directly by Mr Brady on the following packages: Principal Contractor, AGM, Bi-Fold Windows, Windows, Flooring, Joinery, Tiling, Decoration and Drylining. The contracts were formed by letters confirming Nua's appointment to carry out the works on terms set out. The letters recorded an intention to formalise the appointments in JCT contracts but that

did not happen. Nothing turns on this. Nua carried out works under various of these contracts until June 2012 when, in circumstances I shall come to, they were barred from the site.

13. On 19 July 2012, a replacement main contractor, Madigan Gill, was engaged by Mr Brady. That engagement was made by FSM on Mr Brady's behalf acting under a letter of authority from Mr Brady of the same date. Madigan Gill's contract was terminated on 2 November 2012.

14. During the period from December 2011 to September 2012, the relationship between Mr Brady and FSM on the one hand and Nua on the other was marked by a number of events which are significant in this dispute.

15. Firstly, it is Nua's case that on or about 20 December 2011, after Maybury had left site, an agreement was reached with Mr Brady that Nua would continue with its works under the Windows and Drylining packages on the basis that amounts unpaid by Maybury would be paid directly by Mr Brady. Nua's terms were set out in an e-mail dated 20 December 2011, which was agreed with FSM and, following which, Mr Singh said that Nua would proceed "full steam" with the drylining on the basis that £45,000 owed in the drylining package would be paid over the next few valuations.

16. Mr Brady then, on Nua's case, went back on that agreement and, in early 2012 FSM informed Mr Singh that Mr Brady would not pay the monies due from Maybury. Mr Brady offered to pay £20,000 only towards the cost of the windows and made that a condition of payment of the sums due from Maybury. In February, when Mr Singh chased payments of £200,000 on Nua's December valuation, Mr Brady said that he would only pay £85,000. Mr Singh recorded this conversation in an e-mail dated 2 February 2012 in which he described Mr Brady's conduct as "blackmail". On 29 February 2012, Mr Brady signed a letter addressed to Nua and confirming FSM's authority to enter into contracts on his behalf.

17. In March 2012, there was also a dispute between FSM and Mr Singh as to whether deposits for flooring and tiling works were to be paid by Mr Brady. On 1 May 2012, Nua gave notice suspending works for non-payment. Mr Singh subsequently proposed that there would be a written agreement about monthly valuations but that was not agreed and the disputes about payment continued. It is not necessary for me to make findings of facts on these disputes. They are relevant to the present dispute because, on Nua's case, they are part of the background to serious allegations of improper collusion between Nua and FSM which Mr Brady now makes and they explain the concerns which Mr Singh says he had about Mr Brady being as good as his word.

18. Secondly, these disputes culminated in Mr Singh taking direct action and removing the windows and doors from site on 24 June 2012. That was something both Mr Brady and FSM took extremely seriously. Mr Pierce reported Nua to the police for theft and, on 26 June 2012, Nua were barred from site.

19. Following these events, Mr Singh, through his solicitors and in correspondence with FSM sought to settle all of Nua's accounts with Mr Brady but FSM would only discuss the windows that had been removed. On 25 July 2012 Nua gave notice of intention to adjudicate against Mr Brady although the adjudication was not, in the event, pursued.

The following day, 26 July 2012, Mr Singh sent an e-mail to Mr Pierce which played a crucial role in these proceedings and became known as the "no angels" e-mail. I will come to this in due course.

20. On 31 July 2012, Mr Singh sent final account claims (on the basis that Nua were barred from site) to FSM. There were subsequently discussions between Mr Singh and Mr Sims of FSM about these claims in which Mr Singh offered to withdraw the claims for loss of profit (following termination) and Mr Sims threatened to seek an injunction for the return of the windows. If these events were a low point, relations then seem to have improved and on 30 August 2012 a meeting was held between Mr Singh, FSM and Mr Brady at which Mr Singh agreed to return a number of doors and FSM requested that Nua should return to undertake the AGM package. Mr Singh's position was that he wanted the final accounts agreed first. On 1 September 2012, Mr Singh then e-mailed FSM (copied to Mr Brady) confirming that he and Mr Brady had agreed terms for the return of the windows and doors and that the agreed aim was to "conclude our outstanding issues".

21. In the context of these discussions, Mr Singh made two proposals. One was that an agreement should be signed by Mr Brady confirming that FSM had authority to agree the final accounts following termination. The other was that the so-called FSM Instruction Letter should be signed by FSM confirming Nua's various entitlements to payment. FSM gave clear advice to Mr Brady against signing the Instruction Letter and required a waiver from Mr Brady if he nonetheless did so. The terms of these letters are set out below.

22. On 11 September 2012, a meeting was held on site attended by Mr Singh, Mr Brady and FSM:

    (i) Nua and Mr Brady agreed terms relating to the windows (the Windows Settlement Agreement).
    (ii) An authority letter, as Mr Singh had proposed, was signed.
    (iii) The Instruction Letter was signed, despite the advice that FSM had given.

23. However, Mr Brady and Mr Pierce also had in mind avoiding the agreement with Nua. Mr Pierce's notes dated 3 October 2012 recorded:
"Nua are pressing for settlement of the accounts detailed in the letter of 11 September which FSM signed under duress. Nua had advised this matter would not be actioned until the development reached completion. It was proposed by Terry Brady and FSM to fight the Nua letter at the appropriate time. "

24. There was also discussion at this meeting about Nua undertaking what was referred to as the AGM2 package and on 18 September 2012 a contract for those works was entered into.

25. Between 22 October 2012, when Mr Singh sent final accounts to FSM, and 8 November 2012, all of Nua's accounts were settled by FSM on behalf of Mr Brady. I deal with the events around this time further below but there is no dispute that the following agreements were concluded:

    (i) On 31 October 2012:
        (a) The Principal Contractor Contract in the sum of £219,126,72
        (b) The Flooring Contract in the sum of £53,125.00

(c) The Joinery Contract in the sum of £127,590.41
(d) The Tiling Contract in the sum of £54,910.16

(ii) On 6 November 2012:
(a) The Decoration Contract in the sum of £7,003.07
(b) The Drylining Contract in the sum of £377,108.25

(iii) On 8 November 2012:
(a) The AGM Contract in the sum of £90,959.43
(b) The Bi-fold Windows Contract in the sum of £38,349.35
(c) The Windows Contract in the sum of £18,500

26. Also during this period and for a short time another Singh company, the Third Claimant, took on the role of Principal Contractor, that is from 5 November 2012 after Madigan Gill had left site.

27. Despite the comfort of the authority letter, and, on Mr Singh's case, against the background of non-payment, Mr Singh also wanted Mr Brady to ratify the Settlement Agreements. A ratification letter was provided by Mr Singh. It was apparently signed by Mr Brady and witnessed by Mr Pierce. Mr Singh was not, however, satisfied that the signature was genuine and required the ratification letter to be signed again in his presence on 22 November 2012. The end result on any view was that Mr Brady had ratified the Settlement Agreements made on his behalf by FSM. The terms of the ratification letter are set out below.

28. Madigan Gill having left site and Silk having taken on the role of principal contractor, Mr Singh saw an opportunity to expand his involvement in the project and made various proposals, which may or may not have been realistic for funding the project. On 25 November he offered to have 25-30 men on site the following day if Mr Brady signed a letter relating to Silk's costs.

29. On 26 November 2012, Mr Brady signed such a letter and also signed an authority letter giving FSM authority to deal with Silk on his behalf. On 27 November 2012, FSM provided a briefing note to Mr Brady about Silk which included the following:

*"**Silk Proposals to complete the work at the above site***
10. Consideration of the above.
10.1 In the short time frame to completion it is essential to keep Silk and the labour force on site
10.2 If Silk are removed from the site the dates for completion will be missed as it is unlikely any other contractor will be able to step in. Madigan Gill were a consideration but their record on the project demonstrated they are not reliable.
10.3 How to satisfy the requirements of Silk without committing to their terms?? Silk are seeking financial assurance by arrangements to exchange on three houses.
10.4 Silk have demonstrated they have the labour force and resources to complete the works.
10.5 If Silk leave site then the Bank/Bruce [Smith] are more than likely to take action and bring in Business Support. This would probably result in the site being closed for a period of time with the possibility that sales would be lost. It is anticipated the Bank would incur considerable costs in this exercise."

This note, therefore, reflected real concern to keep Silk on site and concern as to the impact on the Bank if that did not happen.

30. Mr Singh was also dissatisfied with the amount agreed to be paid and wanted that amount increased to £140,000. On 29 November 2012, Mr Brady signed a second version of the Silk letter ("the First Silk Letter") at an increased price. His signature was witnessed by his accountant.

31. As part of the chronology, and another incident which took on some significance, I note that on 30 November 2012, the Bank's monitoring surveyor, Mr Smith, visited the site. He was shown materials on site which were presented to him as architectural glass – they were wrapped so that he could not see what, in fact, the materials were and it is common ground that, whoever the idea came from, this was a deception and that this was not in fact architectural glass. I accept that the idea was unlikely to have come from Mr Brady who subsequently told Mr Smith what had happened.

32. On 5 December 2012, Nua issued statutory demands against Mr Brady. I deal with these below. At the same time, in the course of December 2012, Mr Singh continued to try to seek agreement on a formal contract for Silk but he was also aware that Mr Poole had appeared on site. Mr Brady dispensed with Silk's services and Silk's final account was agreed with Mr Sims of FSM and a letter dated 4 January 2013 from FSM to Silk agreed to pay a further sum of £337,800 ("the Second Silk Letter").

33. FSM terminated its engagement on 12 February 2013. The development was ultimately completed by a number of contractors engaged directly by Mr Brady and managed by Mr Poole.

The "no angels" e-mail

34. It is convenient at this point to return to the "no angels" e-mail which came to light as a result of the proceedings relating to statutory demands which I address below.

35. The e-mail was sent on 26 July 2012 by Mr Singh to Mr Pierce timed at 13.42. It was sent about a month after the removal of the windows and immediately after the commencement of the adjudication. It was slightly inappropriately marked Without Prejudice, it would appear because Mr Singh saw that as making the e-mail "closed" and providing some form of confidentiality. Despite its length, I set it out almost in its entirety:

"I'm very disheartened and saddened that our long working relationship had seemed to deteriorate by what seems to me to be a common denominator (a client who refuses to pay either of us, along with so many others as well)!! I accept that the actions we have taken are certainly considered unprofessional by your good self and please believe me, these were the absolute last resort that we intended to take. I do need you to understand why we acted this way, because the events leading up to our actions on removing good from sire can be easily forgotten and all of a sudden, it can look I'm the bad guy, when I was only reacting …!

Despite these recent circumstances, I've thoroughly enjoyed working with you in the past many years and have been grateful for the experience I've shared as an outcome. I've learnt so much and being the 25 year old gullible, naïve inexperienced child you met in

2005, I fell I've grown to be a confident and certainly far more experienced young man. I cannot deny, that part of that transition is something that I'm grateful to you for. I once again seem to be a victim here and as you know I was previously damaged by the likes of our common friend. ….

Again, when it came to LR, as much as I feel that you were obliged to give me the opportunity, I now understand your reluctancy to do so and completely endorse your sentiments. I understand that you had to keep a professional integrity …. However, the internal packages that we have been awarded, I fell we have worked extremely hard for, out team do not procrastinate and it has been a fun, learning experience. I must express that we have been so relaxed on contractual terms, simply and only because of our working relationship. So much so that, on December 16, we commenced works without even a Letter of Intent, let alone Contracts. Surely, this must not be forgotten and just proves how accommodating we have been? Not to mention the significant amounts of money we lost with Maybury, surely it is unfair for us to take such a beating on a new business, it was enough to drown us!

I'm listing out issue below where I think that I've been helpful to you and you will see I've gained nothing from it whatsoever, not have I ever raid this before and in fact it has put me out of pocket, but once again, I have never asked anything from you in return.

1. I kept you on for longer than I required to do on Pinner Road, simply as I knew you lacked work at that time and you also had your unfair split with your previous partners at PierceHill (PH). This was simply so that you would be earning some monies (albeit not much) to keep you surviving until you landed on your feet again.

2. Same as above, but for Redington Road with Rizz.

Rizz did not want to use any of my existing team, but I made it a pre-requisite which he ended up agreeing to. This happened around early 2009 when you was in dispute with PH, so I knew how tough times were for you then. Albeit, you never really earned much from this, I did everything I could to have helped you on the matter of cashflow and income.

3. Providing yourself and your son kitchen units. I had nothing to gain here, but just another helping hand I was extending.

4. Loaning £10,000 to Charles on your request only. Its been almost 3 years now since you asked me to help out on this matter and I gladly did for you. I did not even know Charles then (although I bumped into him in the road once whilst I was with Indi).

You told me that you was under pressure from Charles to keep him afloat whilst he tied up Jamaica and only on that basis I assisted. So far I've lent him £10,000 which in the past 3 years had cost me and additional £9,000 in credit card interest that I could have redeemed instead (I can provide you with my statements since the loan). What I have gained from that event? A debt of almost £20,000 only to assist you once again. I've not even had a courtesy call to be told when I will be getting repaid.

5. There are many others, some small minor things and some more so, but there is no need for me to continue to express this, I'm hopeful you understand that, in many ways, I've only been helpful.

Please do not think I'm trying to gain brownie points by mentioning the things above, but I'm just expressing how helpful I've been as I've respected you and we're now suffering for it. Payments have never been made on time to us, nor in full.

Surely, you can appreciate that possesses a problem for us. I get chased and hounded by staff, suppliers, creditors, for works that I've completed. Its all very frustrating! The events of us removing material from site were for three reasons.

1. Terry Brady (TB) was not releasing our £38,000 on the previously valuation, despite all works were completed and complied too.

2. We were not paid the 90% on the doors that were contractually owed to use going back to 30th April. And then, TB started to hang doors that he did not own. Obviously, if I did not remove them then, we would have not been able to once they were all hung, making any more negotiations difficult with TB.
3. After begging and pleading for our £38,000, he told me to "fuck off, I'm not paying you anything". It was loud and clear, just simple bad intentions all over from him! This happened on the day before (Friday) when we went on site to take our goods.
I humbly request that you acknowledge what why we have done what we have done, it was not fun us, I can assure you.
Until last Friday, I was under the impression with Lee that we were all working to resolve matters amicably. We were to return doors, tiles, bifolds, etc. But that seems to have moved once again, to the point that only the SbD doors are required for a lousy sum of £8,000! Therefore, given the time that has lapsed, I've had to commence adjudication proceedings as I'm being chased for my monies from everyone and everywhere. The issue here is, there is so much that you as contract administrators should have done, but did not do so. I can show you the complete file, it really is black and white. I'm not saying this with an attitude, but rather so it can be realised and hopefully prevented. I know we (Nua) have been no angels here and I'm not stating that we are, but if this goes to adjudication, we still have to disclose everything, and I'm sure you will too. I really do not want to get in a mud swinging situation, because it will only expose things that do not have to be revealed.
Not all the time things that are written come across in a pleasant way, but I'm saying everything I have in this email in the most respectful way possible and mean no attitude (if any comes across).
Maybe if you have sometime free, we can pop out for a coffee or even a private chat? I would be most grateful if you can let me know either way please?
PS: I have sent this letter as closed and would request that it is strictly between us."

36. Mr Pierce responded at 9.34am the following day, 27 July 2012. Again I set out his e-mail almost in full:
"Your general comments about our client are unfounded. Payments to us by the client are confidential and payments to the contractors on Liverpool Road are made in accordance with recommendations. We do not recommend payments are made by our client that we consider noncontractual and unsubstantiated.
Using your words, I am "very disheartened and saddened" about the actions you have taken on the Liverpool Road site in removing windows and doors, which was clearly unlawful. In my opinion, no amount of rhetoric can justify your recent actions on the site.
It is regrettable that our working relationship had deteriorated as a result of events on the Liverpool Road and I address the comments in your e mail as follows.
1. Pinner Road
This was simply a continuation of the service provided by PierceHill Limited. I was the obvious candidate to continue. Unfortunately, whilst you believe you were assisting me, the work actually did not cover costs because of the additional services provided to support you and the project.
2. Redington Road
A similar comment as Pinner Road. We offered comment and professional guidance on this project, attended numerous meetings as I thought it was assisting you and obviously the project. It became clear that Lint did not want our professional services and we

agreed a nominal hourly charge for the advice given. I do thank you if you consider you were assisting us in this matter.

3. Kitchen Units

You are correct this was for my son who need a few units for his kitchen. This was discussed with you as there were surplus units from Pinner Road and I offered to pay for them. If you now require payment please let me know and I will pay you a fair and reasonable cost.

4. Charles Broomfield

I cannot comment on matters between you and Charles Broomfield suffice to say he had known your business partner for several years and discussed a development in Jamaica with you. I would urge you to speak to Charles Broomfield.

5. Equally there are many issues where I have tried to help you move your career in construction forward.

I am not concerned about "brownie points" but am concerned about the motif behind your e mail. If it is a genuine expression of regret then I share that sentiment but if there is a deeper reason for your e mail then you will understand why I have to address the issue you raise.

Your reference to the non release of £38,000.00 glosses over the non performance of your company on the windows installation for Liverpool Road. This was having a serious affect on the programme of works and despite numerous offers of dates and level of commitment from you and your company not one was met. I am not endorsing the actions taken but you should understand that the £38,000.00 was the only leverage available to encourage you to honour your window contract.

Obviously I was not party to conversations between you and our client Terry Brady but I can imagine the frustration he was experiencing and perhaps the desperation for payment you were expressing.

I repeat my comments that in my opinion nothing can justify the actions you took at Liverpool Road which was literally taking the law into your own hands.

Lee Sims has been trying to reach a fair and reasonable conclusion to this matter with you but it seems that this had not been possible. I am not sure what you are hoping to achieve by your comments about a "complete file" but as you have decided to adjudicate Lee Sims has informed you it will be handled by the clients solicitors Laytons.

You end your e mail by saying "this letter is closed". If this is the case then this response is accordingly closed but placed on filed.

If you believe there is merit in meeting then I will make the time available."

37. Mr Singh responded to that e-mail. His e-mail is timed at 9.05am so the time on one device or another must have been incorrect. His response was as follows:

"Thank you for your comments below. There is no motif whatsoever in my email other than deep regret and apologies for our actions on site.

However, its disappointing to read that you see our respective client is at no fault whatsoever and we seem to be completely blamed for the matter.

I believe there is benefit for both of us to meet to see if we can reach a amicable conclusion on the matter before the whole issue escalates in the courts.

However, that will only be viable if we're both prepared to leave our emotions at the door and not bring them to the table. I would be grateful if we can do this privately at your convenience.

Once again, I do apologise for our actions, but we were forced in to this position."

The statutory demands

38. As I mentioned above, on 5 December 2012, Nua served statutory demands on Mr Brady. Nua Facades served a statutory demand for £149,908.78 and Nua Interiors served a statutory demand for £838,863.61.

39. At some time in December 2012, Mr Brady underwent cardiac surgery and he went abroad to recuperate. The response to the statutory demands was, therefore, in Mr Pierce's hands and he made a statement dated 21 December 2012 in defence in which he said that he was acting on Mr Brady's instructions. A number of points were taken but the most significant thrust of the statement was that the Settlement Agreements had been entered into under duress and that Mr Brady now elected to avoid the agreements. This was, I observe, the same tactic that had previously been discussed as a way of avoiding the agreement or agreements reached on 11 September 2012.

40. Mr Pierce described the final accounts submitted as "much greater than one would have anticipated" and the Settlement Agreements as "grotesquely one-sided in favour of the Nua companies". His statement contained the following description of the agreement of the settlements:

> *"Towards the end of October 2012 Mr Singh came to my office with the final account for flooring, joinery, principal contracting and tiling and walling. He also produced what were called settlement agreements for each of those classifications.*
> *I spent time with Mr Singh going through the final accounts so as to check for obviously erroneous items. Mr Singh then required me to sign the settlement agreements relating to those categories. He said words to the effect that the agreements had to be signed in order for him to continue the works, and (semi-facetiously, but as I understood him not without seriousness and in fact with an element of menace) he could always take the windows again. I asked if we had a choice. He repeated that I had to sign if we wanted him to continue the works. .....*
>
> *I need hardly spell out how the settlement agreements were to the disadvantage of Mr Brady. First, ... they required him to pay money due from Maybury Construction. Secondly, they purported to deprive him of the opportunity of valuing the amount properly due. Thirdly they purported to take away all accrued rights. Fourthly, and almost beyond belief, they would have snatched away any remedy for deficient workmanship.*
> *...*
> *Time has not yet allowed proper valuation of the works carried out by the Nua companies. On very much my preliminary assessment, the works for which Mr Brady would be liable (not including the works for Maybury Construction and not including the window installation) come to approximately £50,000."*

41. According to the statement that Mr Brady subsequently made in the statutory demand proceedings, at some point in January or February 2013, to assist Mr Brady, Mr Pierce provided documents to Mr Brady's advisers which included the "no angels" e-mail. There was at trial some dispute as to whether FSM/Mr Pierce had provided the entire contents of FSM's server on the project or more limited disclosure but the openness of this disclosure of documents is apparent from the fact that the e-mails provided also included those in which Mr Singh admittedly sought to bribe FSM to get the windows contract, an episode to which I refer further below. Mr Brady addressed this in a

statement made on 18 March 2013 in which he described the provision of the "no angels" e-mails as inexplicable. It would have been inexplicable if the e-mail was evidence of a sinister relationship between Mr Singh and Mr Pierce but rather less so if it were not. It would be even more curious if this documentation had been disclosed carelessly and without thought in the circumstances that, as the Defendant's case now is, Mr Pierce had only in recent months undergone a change of heart and started to behave improperly. It seems to me far more likely that the provision of documentation from FSM was consistent with FSM assisting Mr Brady in the statutory demand proceedings as Mr Pierce had done when he made his statement.

42. In any event, Mr Brady and/or his advisers clearly saw the "no angels" e-mail as sinister. In this statement, Mr Brady now said that he had not previously seen Mr Pierce's statement and had not been consulted about it until he returned to the country. He said that some parts were accurate but that Mr Pierce had put forward a version of events that seemed to "differ substantially from reality". Based on these e-mails he now contended that Mr Pierce, Mr Sims and Mr Singh had been engaged in "a dishonest cabal to cheat on the tender process" and that the windows contract had been obtained through corrupt and dishonest means.

43. Further in this statement, Mr Brady claimed only to have met Mr Singh twice and not to have known that he was behind Silk. He said that he did not know that Mr Singh was demanding outrageous amounts and did not know that Mr Pierce had signed the Settlement Agreements on his behalf. When he signed the ratification letters he did not know what he was signing and Mr Pierce led him to believe that he could still get the figures down. He claimed that neither the letters of authority (in February and September 2012) nor the ratification conferred actual authority on Mr Pierce to agree the settlements. He continued:

"I say that the settlement agreements were a dishonest attempt by Mr Singh and Mr Pierce to obtain much more than Mr Singh knew he was entitled to; and so as to give Mr Pierce a cut of the proceeds. I say that dishonesty disqualifies the Respondent from relying on any representation of authority."

44. Mr Brady adopted the case that the Settlement Agreements had been entered into under duress but continued:

"Mr Pierce knew very well that he was not allowed to take it on himself to pay out large sums like that. If there was no duress, the only and the obvious conclusion (adumbrated above) is that Mr Singh and he conspired together to do me harm, by procuring a breach of the contract between Four Square and me and/or a breach of the fiduciary duties owed by Four Square as my agent."

45. Nua withdrew the statutory demands because the debts were disputed.

46. On 24 January 2013, FSM also agreed Madigan Gill's final account still acting under a letter of authority from Mr Brady. The final account was agreed in the sum of £617,576.80, leaving an amount outstanding of £142,201.11. Madigan Gill also served a statutory demand on 10 April 2013 in the sum of £142,201.11. Numerous statements were served in these proceedings and numerous arguments advanced but, in short, Mr Brady also alleged that amounts agreed were excessive and denied that Mr Pierce had

had the requisite authority to settle the accounts. The matter eventually came before Registrar Derrett who, in a judgment dated 7 February 2014, refused to set aside the statutory demands. In a written judgment, the Registrar first addressed the scope of FSM's authority to settle the final account and noted that Mr Brady's position ignored the terms of the letter of authority. It also appears that some allegation of collusion were made which the Registrar dismissed. In this cross-examination in the present proceedings, Mr Brady said that he had suspected collusion but had no hard evidence until figures for the value of Madigan Gill's works were put before him by, it would seem, Mr Moran. Thus, as he has done in these proceedings, Mr Brady treated evidence of overvaluation as evidence of suspect conduct.

47. In the course of 2013 and 2014, Nua and Silk commenced a number of adjudications. They were successful in adjudications relating to the AGM2 contract and the First Silk Letter but did not succeed in a claim under the Second Silk Letter where the adjudicator found in favour of Mr Brady's defence that it had been procured through the dishonest assistance of Silk in the breach of FSM's fiduciary duties.

The defences and the re-amendment

48. These proceedings were then commenced on 13 April 2105. The Particulars of Claim set out, in respect of each of the packages, the relevant contract and Settlement Agreement and claimed the amount due under the relevant agreement. Express reference was made to the September letter of authority and the ratification letter (dated 21 November 2012). In the alternative, Nua claimed payment on the basis of a proper valuation of the works. Further claims were made for payment to Silk on the basis of the sums agreed in the letters of 29 November 2012 and 4 January 2013**.**

49. Before I deal further with the facts and the evidence in more detail, I turn to the nature of defences that have been raised by Defendant.

50. As I have already set out, the defence to the statutory demand was initially duress. That shifted in Mr Brady's statement to allegations of lack of authority and the allegation of a conspiracy between FSM and Mr Singh to procure a breach of contract and/or fiduciary duty, very much as a product of the interpretation put on the "no angels" e-mail by Mr Brady. Some of these defences continued to be relied upon in the Defence. However, the primary defence changed and continued to change throughout these proceedings.

51. In the Defence as originally served, Mr Brady made the following serious allegations:

    (i) Mr Brady averred that the Settlement Agreements were procured as a result of a fraudulent conspiracy between FSM and Nua and Silk. The fraud was said to have manifested itself and be evidenced by 3 main aspects: (a) Nua's obtaining the works contracts by obtaining inside information as a result of paying bribes to FSM; (b) Nua dishonestly submitting inflated accounts to FSM which were not reviewed at arms length; (c) FSM and Nua/Silk conspiring to have prepared and executed Settlement Agreements which constituted substantial overpayments to Nua/Silk and were markedly disadvantageous to Mr Brady.

    (ii) Maybury had bribed FSM in order to obtain the main contract. This was said to the "the starting point of the dishonesty". The bribe was alleged to have been made

by the payment to Mr Sims and Mr Pierce of FSM personally of the sum of £11,862.80 each in or about April 2011.

(iii) Nua had attempted to bribe FSM in order to obtain the windows contract. The defence set out a chain of e-mails in February and March 2011 (to which I refer below) which evidenced that attempt. Nua had also bribed FSM in order to obtain the dry-lining contract, Mr Singh promising to pay Mr Sims £5,000 in an e-mail dated 31 July 2011.

(iv) The allegation which followed was this (paragraph 44 of the Defence):

"Mr Brady avers that the fraud referred to above was replicated in respect of the other contracts let to Nua and/or Silk and the subsequent Settlement Agreement. Further, Mr Brady avers that such inference of fraud in respect of the other contracts and the Nua and Silk Settlement Agreements may properly be drawn having regard to the above emails alone, read in isolation, and/or such e-mails construed in the full context of the other fraudulent aspects of the conduct of the Claimant that are pleaded in this Defence."

(v) In other words, it could be inferred from these facts that Nua had bribed FSM in order to get each of the sub-contracts and similarly the settlement agreements. The fact that the settlement agreements were highly disadvantageous to Mr Brady was further evidence of those bribes and/or a fraudulent conspiracy, in particular the fact that they included claims for loss of profit which were excluded by the terms of the relevant contracts.

52. The "no angels" e-mail was expressly pleaded as showing a long and dubious trading history shared by Mr Pierce and Mr Singh.

53. It was, therefore, pleaded that the Settlement Agreements on which the Claimants' claims were based were the product of a "fraudulent conspiracy".

54. The trial was due to commence in October 2018 but was adjourned to a date in November. Shortly before trial, Mr Brady amended his Defence to plead a further set of bribes, this time from Nua to Mr Elkin of Maybury which were again said to have been made to obtain the sub-contracts. An application had been made (which had come before me during the vacation) for permission to make those amendments. I refused that application principally on the basis of the shortness of time to trial. When the trial was adjourned the application was renewed and allowed.

55. The consequences of the fraud were set out as follows:

(i) There was no justification for the sums claimed under the Settlement Agreements and neither FSM, Nua or Silk held an honest belief that they represented fair and reasonable settlements. In the premises, it was said, the Claimants and FSM fraudulently conspired to agree the settlements.

(ii) Further or alternatively, the Claimants dishonestly assisted in FSM's breach of fiduciary duty.

(iii) Further or alternatively, the Claimants dishonestly exerted or conspired to exert undue influence on Mr Brady to provide FSM with exceptionally wide authority to enter into the Settlement Agreements.

(iv) Yet further, Mr Brady entered into the agreements under duress or undue influence.

(v) The agreements were, therefore, unenforceable.

56. I note that there was no express plea that the agreements had been rescinded but I permitted that plea to be added by amendment at trial.

57. A striking feature of this case, as I have indicated, was that the evidence of the alleged bribes came from the voluntary provision of documents by one of the allegedly corrupt parties. In the case of the attempted bribe to obtain the windows package, it had emerged from the documents provided by FSM to Mr Brady in his fight against the statutory demands. Mr Singh had to admit that he had ill-advisedly attempted to bribe FSM but, he said, unsuccessfully. The "no angels" e-mail had similarly been disclosed in this process and well before any proceedings were commenced. Mr Brady continued to suggest that this disclosure had been inadvertent. For the reasons I have given, I do not accept it.

58. Unsurprisingly, apart from the attempted bribe in respect of the windows package, Nua otherwise denied having paid any bribes either to FSM or Maybury/Mr Elkin. In their opening submissions, the Claimants accepted that if any of the Settlement Agreements were the product of bribes they would be unenforceable. So far as the "fraudulent conspiracy" was concerned, Mr Bowling said that the Claimants understood that to be an allegation of an unlawful means conspiracy and he responded to the case on that basis.

59. Immediately before trial, Mr Brady applied to re-amend his Defence. I heard this application at the start of the trial but after the parties had opened their cases. In the course of the argument on the amendment, Mr Speaight QC (who had not drafted any of the previous pleadings) made it clear that he disavowed any allegation of impropriety against FSM and Mr Pierce during 2012 until some time in late October 2012. As it was put to Mr Pierce in due course in cross-examination, Mr Brady's case now was that at some time in late October 2012 there was an agreement or understanding between Mr Pierce and Mr Singh that he (or FSM) would benefit from the inflated Settlement Agreements. It necessarily followed from the way the case was now put that the allegation that any or all of the works packages had been obtained as a result of bribes from Nua to FSM was abandoned, although there was no application to amend the Defence consistently. Further, and despite the fact that it continued to play a prominent part in the trial, the "no angels" e-mail had at least to be seen in a different light and, since no impropriety on Mr Pierce's part was alleged before late October 2012, it must be Mr Brady's case that Mr Pierce had at some point and for some reason had a change of heart.

60. Mr Speaight QC characterised the proposed further amendments as putting the Defence in order. The proposed amendments left unamended the paragraphs of the Defence which I have summarised at paragraph 51 above. Over three pages of tightly spaced proposed re-amendments then followed. They pleaded as follows (with particulars of each allegation):

(i) Receipt of the payments due under the Settlements Agreements would be unconscionable because of the undue influence exerted on Mr Brady.
(ii) The Settlement Agreements were procured by duress.
(iii) The Settlement Agreements were procured by economic duress.
(iv) In so far as it might be necessary to establish the Claimants' actual or constructive knowledge or the acting in concert of the Claimants and FSM (which was relied on under sub-paragraphs (i) to (iii)), reliance would be placed on "the well established pattern of collaboration between the Claimants and FSM in fraudulent or unconscionable conduct". That brought back into play the allegations found elsewhere in the Defence but not the allegation that all the contracts were procured by bribes.
(v) FSM acted in breach of its fiduciary duties and the Claimants dishonestly assisted FSM in breaching its fiduciary duties.
(vi) If the agreements were enforceable, the Defendant was entitled to set-off equivalent sums as damages for the tort of unlawful means conspiracy.

61. In support of his application, Mr Speaight QC submitted that the particulars given of each of these defences simply drew together matters already pleaded elsewhere in the extant Defence. That was a submission I did not ultimately accept and, at this late stage of the proceedings, and for the reasons that I gave, I did not allow the re-amendments. The upshot was that the express pleading of the "unlawful means conspiracy" was not allowed. However, I made it clear at the time that the currently pleaded allegations were unaffected: that necessarily included the pleading of the fraudulent conspiracy which the Claimants had construed as an allegation of an unlawful means conspiracy. That was then the basis on which the Claimants' closing submissions were presented.

62. The Defendant's closing submissions made no reference to unlawful means conspiracy. In his oral submissions, Mr Speaight QC said that he did not regard the unlawful means conspiracy case as open to him given my refusal of the proposed re-amendments. That was wrong. What was refused was the plea of unlawful means conspiracy as particularised in the draft re-amendments but the pleaded case of "fraudulent conspiracy" patently remained open.

63. Instead, the case was primarily put on the basis of dishonest assistance, although that was also relegated to a position behind a case of surreptitious dealing. What I might call the "improper" conduct aspect of his case was now based on the contention that some form of surreptitious dealing rendered the settlement agreements unenforceable, Mr Speaight relying on *Panama and South Pacific Telegraph Company v India Rubber* [1875] Ch App 515, and the surreptitious dealing relied upon was the past favours from Nua to FSM or the expectation of future favours. As to the bribery allegations as such, the case was no longer that all the sub-contract packages had been obtained by bribery and, to the extent that the bribes were regarded as relevant, it seemed to be on the basis that they formed part of "a culture of corruption" which had existed in 2011, but not for the best part of 2012, and then re-emerged in connection with the Settlement Agreements. The Defendant's case in relation to the Settlement Agreements had shifted to the surreptitious dealing case.

64. It seems to me thoroughly unsatisfactory that such serious allegations should have been made in a manner that shifted so significantly both in their factual scope and legal

formulation before trial, at trial and right until the end of trial, and that the Claimants and the Court should have been left at the end of the trial still trying to understand exactly how the Defendant's case was put.

65. Having said that, I approach the case in this way:

(i) Were the Settlement Agreements reached as a result of the past payment of bribes or the promise of future bribes?
(ii) Were the Settlement Agreements the product of an unlawful means conspiracy?
(iii) Were the Settlement Agreements achieved by the Claimants' dishonest assistance of FSM's breach of fiduciary duty?
(iv) Were the Settlement Agreements entered into under duress?
(v) Were the Settlement Agreements entered unto under undue influence?

The approach of the courts to allegations of fraud

66. Although the case shifted in the way I have explained from one of "fraudulent conspiracy", the defence remained one that very much relied on allegations of improper conduct of a similar nature.

67. The need for clarity of pleading of such allegations of fraud and dishonesty has been repeatedly emphasised, not merely as a technical issue of pleading but because of the importance of the party knowing the case he had to meet including the primary facts that are relied on to allege fraud.

68. In my view, it is not only the primary facts that require clear pleading but the inferences that it is sought to draw from them. At the very least, where those inferences are unclear, it must cast doubt on whether they are proper inferences to draw.

69. In civil proceedings, the standard of proof for an allegation of fraud remains the civil standard of the balance of probabilities but I bear in mind that there is what is sometimes referred to as a higher standard of proof in respect of allegations of fraud. As Teare J succinctly put it in *JSC BTA Bank v Ablyazov* [2013] EWHC (Comm) 510 at [76], the court will require cogent evidence commensurate with the seriousness of the conduct alleged. Flaux J. summarised the principle in *Chantiers de L'Atlantique SA v Gaztransport & Technigaz SAS* [2011] EWHC 3383 (Comm) at [56] as follows:

"… fraud (that is dishonest, reprehensible or unconscionable conduct) must be distinctly pleaded and proved, to the heightened burden of proof as discussed in Hornal v Neuberger Products Ltd. [1954] 1 QB 247 and re H (minors) [1996] AC 563. This was emphasised by Rix LJ in The Kriti Palm [[2006] EWCA Civ 1601], at paragraphs 256-259, a case which provides a salutary reminder to any judge of the importance of being satisfied to the necessary heightened standard of proof that what is involved is dishonesty and of the fact that the explanation for something is much more likely to be human error than dishonesty."

70. In the present case, there may be some element of human error but it seems to me that the analogous position is that I should start from the position that the Settlement Agreements were properly entered into and that cogent evidence commensurate with the seriousness of the allegations is required to persuade me, on the balance of probabilities, that they were, in fact, the product of some kind of fraudulent conspiracy, even if that is not in law how the defence is now put.

General observations on witnesses

71. In relation to most of the witnesses, I include my observations about and impressions of them as witnesses at appropriate points in the course of this judgment. However, before I come to the events in more detail, I say something about Mr Singh and Mr Pierce as witnesses.

72. The view I formed of Mr Singh was that he was an ambitious man with big ideas about what he could achieve as a property developer. He had a tendency to exaggerate what he could offer but I regard that as the product of over enthusiasm and over-reaching rather than dishonesty. I have no doubt that he thought that he could use the Nua companies and a successful project at Liverpool Road as a step up to greater things and there was on occasion an air of frustration and even desperation both in his correspondence and in his evidence when things did not go according to plan. There were also a number of incidents including his unsuccessful attempt early on to bribe FSM that did not reflect well on him.

73. It is right that when he started to give his evidence, seated, he did not present well. He appeared nervous and his answers were rambling and capable of appearing evasive. However, when he returned to the witness box, he stood to give his evidence and his whole demeanour changed. He appeared far more comfortable giving his evidence when he was able to move as he expressed himself and his answers, although on occasion still lengthy, were given fluently and confidently. When he was addressing e-mails from FSM that contained complaints about Nua's performance or was dealing with difficulties he perceived he had had in respect of valuations and payments, he appeared to me genuinely agitated and his dissatisfaction with his treatment by FSM was wholly inconsistent with some existing or later conspiracy to inflate claims. Overall I found Mr Singh to be an open and credible witness.

74. Mr Pierce was also a credible witness. He was broadly speaking professional and careful in his responses. Some of this evidence was less than satisfactory and, as I say below, he allowed himself some wishful thinking, but this was insufficient to displace my overall impression of him.

The case on bribes in the Maybury period

The same offices

75. One notable fact relied on by the Defendant was that at the material times, the Nua companies, FSM and Maybury all had offices in the same building, indeed Maybury "sub-let" from FSM. Although this might have indicated some closeness between these parties, it certainly did not amount to evidence of a grand conspiracy and little reliance was ultimately placed on this fact. The way these three parties, in fact, dealt with each other was very much on an arms length basis.

Bribes from Maybury to FSM

76. The alleged bribe from Maybury to FSM was not directly relevant to the relationship between the Claimants and FSM but was relied on to paint a picture of Mr Pierce and Mr Sims as people who would take bribes.

77. The tender process had begun in January 2010 and was a two stage tender process. Mr Pierce's evidence was that Maybury's tender was the most favourable. It was the second lowest tender but the lowest tender, from Ellmer Construction, contained so many omissions and qualifications that it was disqualified. In other words, Mr Pierce's

evidence was that this was a perfectly normal tendering process in which the appropriate tenderer won.

78. There is no issue that the two payments of £11,862.80 to Mr Pierce and Mr Sims were made in April 2010. Mr Pierce's explanation was that during the summer of 2010, FSM took a lease of a new office at 61 Cheapside. The office was on the 5th floor and had a front and rear part. Maybury were based in Leatherhead in Surrey but had work in London, including this project, and wanted office space in London from which Darren Elkin (Maybury's quantity surveyor) and George Randell (contracts manager) then worked. The payments were payments for rent of the office space. Mr Pierce explained further in his oral evidence that the payments represented a deposit of £20,000 and a licence payment. He said that he and Mr Sims were advised by their tax adviser that the payments should be made to them personally.

79. This explanation was far from satisfactory in a number of respects. Firstly, there was no issue that the payments were made in April but FSM's lease of the premises was dated 8 June 2010. FSM could not, therefore, have granted a licence to occupy to Maybury until June and there is no obvious reason, and none was offered, why Maybury would make a payment in advance for office space. Secondly, the sums were similar to but not identical to the sum to be paid by way of deposit and rent under the licence from FSM to Maybury. Lastly, there was no satisfactory explanation for the payment of the monies to the individuals rather than to FSM. The only reason for the advice which Mr Pierce claimed to have received would be to keep the payments "off the books" of FSM so as not to decrease the company's apparent expenditure.

80. Although I am not satisfied with the explanation for these payments, it seems to me a step too far to then infer that they were bribes. They may have been advance payments for office space which FSM were trying to keep off the books. Discreditable thought that is, it is not evidence of a bribe. In reaching that view, I take into account both the view I formed of Mr Pierce as a witness and his reaction, which I shall come to, when Nua subsequently brazenly sought to bribe FSM. At the highest these payments cast doubt on the probity of the directors of FSM but had very little relevance to the defence to the Claimants' claims.

The offer from Singh to pay FSM for the windows sub-contract

81. The Defendant relied on the following chain of e-mails.
    (i) On 23 February 2011, Mr Sims asked Mr Singh to call when he had his priced for the windows because *"Richard (Pierce) has already advised on the target price but I want to ensure our allowance is included …."*
    (ii) On 25 February 2011, Mr Singh sent FSM his cost prices for the windows, requesting that they be treated as confidential.
    (iii) On 27 February 2011, Mr Sims replied *"I will run through this with Richard and get back to you where we need to pitch this for submission … As discussed we will manage Maybury."*
    (iv) On 28 February 2011, Mr Elkin sent details of what he expected to see in the tender. Mr Singh forwarded that e-mail to Mr Sims, copied to Mr Pierce, asking how he should respond. Mr Sims replied advising Mr Singh to price as asked but to send him and Mr Pierce his bottomline figure. Mr Singh responded *"I can price as he's asked, but I'm not sure what price to go in at. I only have our cost at the moment, how much margin do I stick on?"*. Mr Sims replied *"let me have your bottomline*

figure no profit margins but cover all costs …. We can then see where you sit and decide on the margin." Mr Singh replied with his cost.

(v) Later on 28 February 2011, Mr Sims e-mailed as follows: *"To come in under the others …. you need to be around £230K but this will obviously need to include our fee. Once you have secured the bid the omissions will need to be priced so you can lift this slightly …. Remember we still have joinery, finishes, kitchens and bathrooms to do."* Mr Singh replied *"I remember Richard showing me a breakdown of tenders and the next one up was £267K, if that's the case, can we pitch in say £255K. We'll be happy with £230K and you can have the £25K, it would be a great help for us and a bigger margin for you too!"*

82. This e-mail exchange gives some indication that FSM was assisting Mr Singh in knowing at what level to tender to get the packages from Maybury. That is suggestive of some relationship between FSM and Mr Singh. The suggestion of some "allowance" for FSM, on the basis of these e-mails, appears to have originated from Mr Sims (who did not give evidence), although the specific offer of £25,000 came from Mr Singh. Although it might be possible to draw the inference that Mr Pierce must have been aware of this, the e-mails that specifically referred to this allowance of margin for FSM were not copied to Mr Pierce.

83. Mr Pierce's evidence was that he was unaware of these e-mails at the time. In early March 2011, however, in a conversation with Mr Sims, Mr Sims had told him that Mr Singh had wanted to "incentivise" FSM to assist in securing the package from Maybury. Mr Pierce strongly rejected such an idea and was disappointed that it had ever been made.

84. Mr Singh, as I have said, accepted that he had made this offer and ought not to have done so. His explanation was that he was desperate to get the contract in part because the newly formed Nua company was acting as sole distributor for a Turkish manufacturer, Cuhadaroglu, and would lose their support if they did not get the contract. He also thought that Maybury was trying to secure the contracts for other Maybury companies. He made the offer to Mr Sims, but when Mr Sims informed Mr Pierce, Mr Pierce was totally against it and Mr Sims told Mr Singh simply to submit his cheapest price. As a matter of fact, and there was no evidence to the contrary, no payment was ever made to Mr Sims or Mr Pierce.

85. Having heard their evidence, I accept Mr Singh and Mr Pierce's version of events. Mr Singh's e-mail correspondence during this project, as well as his demeanour when giving evidence, demonstrated a tendency to become somewhat overwrought. His offer of a bribe was a foolish example of over-stretching but it came to nothing. The worst that can be said against FSM and, in particular, Mr Pierce is that he did not hold it against Mr Singh and continued to deal with Nua. As appears below, Nua did obtain some of the packages but was unsuccessful on others.

The dry-lining contract

86. The only evidence of a bribe in relation to this contract is a line in an e-mail from Mr Singh to Mr Sims on 31 July 2011. By this time, Maybury had issued a letter of intent to Nua for these works on 9 June 2011 and the contract had been concluded. In the e-mail Mr Singh said this:
"In response to your e-mail below, here are my comments:

We've received c£76,000 for windows on Friday. Thanks!
Maybury owe us c£72,000 for the drylining which they will send to use on Monday (as they've only received it on Friday). I will give you a cheque for £5,000 on Monday as promised.
….."

87. Mr Singh's explanation, supported by Mr Pierce, was that the payment of £5,000 referred to was to do with sums due to FSM from Nua on other projects. FSM was providing services to Nua in connection with pricing fit out contracts for Z Hotels and Sleeper Z Hotels. FSM had charged £15,000 but had to date only been paid £5,000. There was, in the form of e-mails between Mr Singh and FSM relating to Z Hotels and Sleeper Z, some documentary evidence that FSM was performing such services. There was further an invoice dated 1 April 2011 from FSM in this respect in the sum of £15,000 plus VAT. Mr Singh was cross-examined about including the full amount of VAT in his VAT return even though it had not been paid.

88. This documentation and the evidence given provided a less than full explanation for the reference to a payment of £5,000 but that did not mean that that reference was anything other than the flimsiest of evidence for a bribe. I bear in mind Mr Speaight QC's submission that the evidence should be looked as a whole rather than taking each instance of alleged bribery in isolation but at the same time there needs to be clear evidence of wrongdoing. The short point here is that that clear evidence does not exist even when the evidence is looked at as a whole. Part of that overall approach to the evidence involves consideration of the tendering process as a whole.

How packages were let

89. Although the allegation that all works packages were obtained by Nua as a result of bribes was not pursued, it is worth my describing how the packages (including windows and dry-lining) were let.

90. The general position was that the tenders were submitted to Maybury, Maybury made recommendations and the packages were let following instructions from FSM.

91. Some reliance was placed by the Defendant on the fact that there was evidence, for example in relation to the windows package, that Nua was permitted to see what others were tendering and to drive their price down accordingly, the suggestion being either that confidential information was being provided to Nua or that they were being given preferential treatment for no reason other than a suspect one. The Defendant's argument was that this cannot have been a case of trying to drive down Nua's price because, in that event, all tenderers would have been given access to the same information. There are, however, two matters that count against drawing the inference from that that there was something suspect in what was happening and that it is some evidence of collusion.

92. Firstly, so far as the windows package was concerned, the explanation proffered by Mr Pierce was that Mr Brady had particularly wanted Nua to have this package and had agreed that they should tender on what was in effect an open-book basis. The background was that, in 2006, Mr Pierce's former company, Pierce Hill had acted for Matrix, another Singh company, on four developments including one in Harrow in Pinner Road. They had acted as project managers and costs consultants and as monitoring surveyors for the

lending banks. On the Harrow development, many of the finishing materials had been supplied by a Turkish company, Prizma, for whom Mark Ellis was that UK contact. Mr Pierce contacted Mr Ellis about supplying finishes for the Liverpool Road project from the same company. That led to an approach to Mr Pierce from Mr Singh and Mr Ellis about engaging their new companies (the Nua companies) for internal works on the Liverpool Road project. A meeting was held at the Harrow site, at which Mr Pierce, Mr Brady and Mr Singh were present, for Mr Brady to see the quality of finishes. There was a minor dispute as to whether Mr Brady had visited Pinner Road to see the quality of the finishes or more generally the quality of work done but, whichever it was, he had not gone to the same effort with any other tenderer or sub-contractor. Mr Brady was satisfied with what he saw and I am satisfied that he was indeed keen to involve Nua. Both Mr Brady and Mr Pierce gave evidence that Mr Brady was interested not only in price but in quality. It makes a degree of sense that, having gone to the effort of viewing Nua's work and having formed a positive view, that Mr Brady would be happy for Nua to get preferential treatment in the tendering process. The view I formed of Mr Brady can be summarised as being that he was a businessman in a hurry. He was used to making quick decisions about what he wanted and getting his own way. Although Mr Brady denied it, I have no difficulty in believing that he made up his mind about what he wanted and said something that led to Nua being made aware of other tenderers' prices so that they could better those prices.

93. What actually happened was that Nua was told the other tenderers' prices and asked to better them. The same opportunity was not offered to other tenderers (including a Maybury company). That happened at least in respect of the windows and dry lining packages and all that took place with the knowledge of George Randell, Maybury's contracts manager, a man whom Mr Singh thought disliked him. Mr Elkin explained that Mr Randell's role was that of the man on site who dealt with sub-contractors, including health and safety matters. As such, he had an input into the choice of sub-contractors because he had to manage them. There is no suggestion from anyone that Mr Randell was in any way involved in any corrupt activity and yet he was not apparently in the least troubled by what was happening – even to the detriment of a Maybury company. He was copied into the e-mail in which the other tender prices for dry lining were sent to Nua and does not appear to have raised any concern about it. It was not put to Mr Pierce or Mr Elkin or Mr Singh that they had led Mr Randell to believe that this was sanctioned by Mr Brady when it was not. It seems to me far more likely that what was happening was what Mr Brady wanted or what would achieve what he wanted. This is the second matter, therefore, that counts against drawing the adverse inference which the Defendant now invites.

The payments to Darren Elkin

94. Between 13 May 2011 and 29 November 2011, a series of payments totalling £12,600 were made by Nua to Mr Elkin. All the payments were, in fact, made to Mrs Elkin not to Mr Elkin and he accepted that he had asked for monies to be paid to his wife to take advantage of her personal tax allowance. The invoices from Mrs Elkin for book-keeping services were, therefore, clearly fabrications. These payments were the subject matter of the amendments to the Defence in October 2018 and were alleged to be bribes paid by Nua to Mr Elkin for his influence with Maybury.

95. The explanation now given by Mr Elkin (and Mr Singh) was that Mr Elkin had been assisting Mr Singh on another project:

(i) This project was referred to as the Intermodal project and concerned modular housing units to be manufactured in Turkey and shipped to Iran.
(ii) There was not a single document to support the assertion that Mr Elkin had worked on this project.
(iii) Mr Elkin's description of the work he did was fatuous. He is, in practice, a quantity surveyor. He claimed that he had meetings with Mr Singh to discuss how the Intermodal units might be value engineered – it was unclear whether by re-design or manufacture – for which he charged and was paid a daily rate of £500. Mr Elkin claimed that he and Mr Singh had drawings and technical specifications before them when they had these meetings although not one was in evidence. It is, in any event, difficult to see how Mr Elkin's skill set could have extended to such advice on value engineering; the time spent (by reference to the daily rate) was inordinate; and there was no work product from it. The only explanation proffered was that it was too commercially sensitive.

96. The Claimants submit that there was, in any case, no correlation between the payments made and the contracts they were awarded :
(i) Nua tendered for the windows package between 2010 and February 2011 and awarded to Nua on 21 March 2011.
(ii) The mechanical package was tendered on 13 March 2011 and not awarded to Nua.
(iii) A payment of £1,000 was made to Mr Elkin on 13 May 2011.
(iv) Nua tendered for the drylining package on 6 June 2011 and it was awarded to Nua on 9 June 2011.
(v) Nua tendered for the joinery package on 9 June 2011 and it was awarded to Nua on 17 August 2011.
(vi) Payments were made to Mr Elkin on 9 June 2011 (£2,000), 12 June 2011 (£600), 17 June 2011 (£800) and 5 August 2011 (£5,000).
(vii) Nua tendered for the kitchen package on 15 July 2011 but it was not awarded the Nua.
(viii) In September 2011, Nua tendered for sanitaryware, underfloor heating, AGM works, flooring and tiling. None of these packages was awarded to Nua.
(ix) Three further payments were made to Mr Elkin on 10 October 2011 (£1,500), 24 November 2011 (£600) and 29 November 2011 (£1,000).

97. Mr Elkin presented as a confident and apparently credible witness but that was, in my view, because he had no conception of what he might have done wrong. When he was asked questions about the payment of monies through his wife's bank account to take advantage of her personal allowance, he did not see that as seeking to avoid tax, when that was objectively what it was. Mr Elkin's evidence about the Intermodal project was simply not credible for the reasons set out above. There is then, in my judgment, no credible explanation for the payments to Mrs Elkin other than that they were paid to Mr Elkin to keep him and thus, as far as possible, Maybury on Nua's side. The fact that they did not correlate with the packages awarded indicates that the relationship was not a linear one of payment for a particular package but does not indicate that they were legitimate payments. However, it is equally clear that they did not result in Nua being awarded by any means all the packages for which they tendered.

98. The payments to Mr Elkin do not reflect well on Mr Singh and, coupled with his offer of a bribe to Mr Sims, they show that Mr Singh had not learnt his lesson and remained

willing to act improperly to get the jobs he wanted. It is, however, a long leap from that conduct to the inference that the Settlement Agreements were entered into as a result of actual or promised bribes to FSM and to finding that the Defendant's defences in this case are made out. Indeed, the case that Mr Singh bribed Maybury is, as Mr Bowling submitted, inconsistent with the case that Mr Brady had advanced until the trial that FSM was already in Nua's pocket.

99. Further, on Mr Brady's case the conspiracy between Nua and FSM was highly elaborate – it involved, to put it colloquially, setting Mr Brady up to give FSM authority to settle Nua's claims and hoodwinking him into ratifying the settlements. At the same time, and rather oddly, it was well-documented. The "no angels" e-mail gave the game away about the relationship between Mr Pierce and Mr Singh and the inflated claims were evident on the face of the final accounts as was how Mr Pierce had dealt with them. But in the case of Mr Elkin there were no e-mails that referred to the payments and equally no elaborate scheme to cover them up, other than the fabricated invoices. If Mr Singh had been intent on disguising bribes to Mr Elkin, some paper trail relating to the Intermodal project could easily have been created. Thus on the one hand, the view I have formed is that these were small payments made in an unsophisticated way to keep Mr Elkin on side but not evidence of some wider conspiracy and, on the other hand, and in fact, they cast doubt on the allegation that Mr Singh and FSM were engaged in some sophisticated conspiracy.

100. In any case, there is a distinct feel of the pot and kettle in this allegation against Mr Singh. After Maybury had left site, Mr Brady apparently wanted information from Maybury as to what payments they had made to sub-contractors and Mr Brady was happily willing to loan Mr Elkin money in return for this information.

Nua's relationship with FSM/ events after Maybury left site and up until late October 2012

101. Maybury left site on 16 December 2011. As I noted above, the Defendant no longer pursues any allegation that, at this time or at any time until about late October 2012, FSM acted in any improper manner. Since no particular allegations are made, it is unnecessary for me to set out in any detail what passed between the Nua companies and FSM in this period but the correspondence (mostly by e-mail) was in nature and tone what one might expect to see between a sub-contractor and project manager. In particular, FSM complained about Nua's performance and Nua complained about payment. The correspondence also gives a flavour of the characters involved. Mr Pierce and Mr Sims' tone and mode of expression were generally professional and moderate. Mr Singh was free with his promises and flamboyant and emotive in his language, but a tone of begging and desperation started to infuse his e-mails.

102. There were, however, a number of specific events to which it is necessary to refer. Firstly, as I set out in the outline of the facts, in February 2012, Mr Brady signed a letter of authority giving FSM authority to enter into contracts on his behalf. The letter was addressed to Nua Facades Ltd. and Nua Interiors Ltd. and was in the following terms:

"Please treat this letter as confirmation that Four Square Management Limited (or any other project manager/ employer's agent that I may nominate in their place and inform you of in writing) have, and have had since [12 April 2010], full and unrestricted authority to act as my agent in relation to the Project.

The scope of this authority includes, without limitation, the right to award further contracts, letters of intent or enter into any other commitment as my agent in connection with the Project (each a "Related Contract") and to act as my agent in relation to the administration of a Related Contract including, without limitation, the issue of instructions, variations and all notices in respect of payment obligations I have under a Related Contract."

The letter then confirmed that letters to the Nua companies previously awarding them contract packages were deemed to be Related Contracts.

103. In the context of the direct contracts now being entered into with Nua, this letter seems to me to be no more than comfort for Nua, and indeed FSM, that FSM were acting with the requisite authority. Mr Brady's pleaded case remains that it was part of, as Mr Bowling put it, the ratcheting up of FSM's authority, apparently as part of the plan or conspiracy to defraud Mr Brady. It was, however, and contradictorily signed in a period where Mr Speaight QC now disavows any case that FSM acted improperly. It, therefore, supports Mr Singh's case that he was concerned about Mr Brady's readiness to seek to avoid his obligations and, at the same time, shows a willingness on Mr Brady's part to confirm FSM's authority.

104. Secondly, in the outline of the facts, I referred to the incident in which Mr Singh removed windows and doors from site. This was an incident which bulked large in the relationship between Nua and Mr Brady and was, to some extent, relied on as further evidence of Mr Singh's underhand behaviour. There was a degree of evidence about how this came about, how underhand Mr Singh had been and what damage he had caused in the process. He had gone on to site with 20 men and removed windows that had already been fitted.

105. It was not Mr Singh's finest moment – indeed it was one of a number of examples of ill-judged conduct - but it was clearly born of some sense of desperation and frustration with what he regarded as non-payment by Mr Brady. It was quite inconsistent with any suggestion that he had FSM in his pocket at the time. In fact, as I have said, FSM's reaction was to call the police. They made no attempt to explain or excuse Nua's actions and they were completely on Mr Brady's side: their loyalty was entirely to him. And this incident led to Nua's being banned from site which could not have been to FSM's advantage if the plan was to obtain money from Mr Brady.

The relationship between Mr Brady and Mr Singh

106. As this was a significant moment in the relationship between Mr Singh and Mr Brady, it is also a convenient point to say something about that relationship.

107. Mr Brady and Mr Singh had first met when Mr Singh was either trying to buy the site or trying to get involved in a joint venture. Mr Brady said in his statement in that Mr Singh had come to his house in 2007 or 2008 although he did not remember precisely what was discussed. It is difficult to judge what Mr Brady thought of Mr Singh at the time but, with hindsight, he obviously thought he was something of a big talker with no substance to his talk. The proposed joint venture did not get off the ground but it meant that Mr Singh was known to Mr Brady and Mr Brady, at the least, knew that there was some existing working relationship between Mr Singh and Mr Pierce. If that was unclear, it was made clearer by the visit to the Harrow development.

108. It is not the Claimants' case that there was some close business relationship or friendship between Mr Singh and Mr Brady but equally, until the windows incident, there was no reason to think that there was any animosity. However, in his evidence Mr Brady was at pains to downplay any contact with Mr Singh.

    (i) In his statement dated 18 March 2013, and thus much closer to the events, he had said that he only met Mr Singh twice, once when Mr Pierce brought him to Mr Brady's office for a meeting about payments to Nua and once on site in autumn 2012. They also spoke a number of times on the phone after the removal of the windows and doors.
    (ii) That was itself inconsistent with his evidence in his statement in these proceedings about Mr Singh coming to his house some years earlier.
    (iii) At the start of his evidence, he also made a correction to his statement. The statement said (at paragraph 45) that he was no aware that FSM, Nua and Maybury were in the same offices until the middle of 2012 when someone on site told him. He had said the same thing in the March 2013 statement. His correction was to say that in December 2011 he went to FSM's offices and was then taken to meet Maybury and then he saw Mr Singh. He added, wholly inconsistently with the case as now presented by Mr Speaight QC, that that was when he knew they were all in it together.
    (iv) He sought to create the impression in his oral evidence that he disliked Mr Singh and wanted nothing to do with him.

109. These parts of Mr Brady's evidence were imprecise at best, confusing at worst and plainly coloured by subsequent events. There were mistakes in his evidence but, it might be thought, only minor mistakes. However, what they illustrated was Mr Brady's willingness to let his current views influence his evidence of what had happened at the time. The windows incident was a low point but, as I will set out below, it seems to me that, even after that, when Mr Brady wanted something done and wanted Nua to do it, he showed little hesitation in just giving instructions for them to get on with it and his professed reluctance to deal with Mr Singh was not borne out in practice.

After the windows incident

110. In between the removal of the windows and the commencement of the adjudication, the "no angels" e-mail was sent. I have set out that e-mail, Mr Pierce's reply and Mr Singh's further response above.

111. Up until trial, Mr Singh's e-mail was a key factor in the Defendant's case as evidence of wholescale bribery and the fraudulent conspiracy. However, when the e-mail is read as a whole, its tone was very much one of begging and desperation rather than of a conspirator reminding his co-conspirator of what they owed each other or trying to persuade a potential co-conspirator to breach his obligations to his client. The favours that Mr Singh recites himself as having done for Mr Pierce cannot be seen as bribes and certainly do not relate to this project. The alleged bribes on this project are not referred to at all. Instead, as I read Mr Singh's e-mail, Mr Singh was appealing to Mr Pierce's memory of favours past to persuade him to forgive the removal of the windows and to help him by ensuring that he was paid rather than by some misconduct.

112. On the other side of the coin is the threat of things coming out in the adjudication. This was most heavily relied on by the Defendant as evidence of bribes (because it was inferred that it was a reference to past bribery) but that makes no sense. What Mr Singh was threatening was a washing of dirty linen in the adjudication. It is inconceivable that Mr Singh would be intending, or that Mr Pierce would think that he was intending, to support Nua's claims in adjudication by relying on the fact that Nua had bribed FSM to get some or all of the contracts. The far more likely meaning of this threat was that Mr Singh would, in the adjudication, criticise FSM's conduct as contract administrators, with the negative impact that might bring to their relationship with their client or to their reputation.

113. Mr Pierce's response to the "no angels" e-mail was an example of the professional and measured document that he produced on this project. In tone it was not defensive and it showed no fear of what Mr Singh might expose. Mr Pierce addressed each of the favours and, in so far as the e-mail had a darker tone, he dismissed it and appeared affronted by it. I have no doubt that these e-mails were a genuine exchange. If they were not, and if they were part of a fabricated paper trial, this was a most bizarre episode of one conspirator threatening the other in writing with disclosure of the conspiracy and the other carefully constructing a response which obliquely denied the conspiracy.

114. As I have said, this was how the case was put up until trial when Mr Speaight QC disavowed any criticism of Mr Pierce's conduct before later October 2012. It serves to demonstrate how the Defendant's case had been spun out of a knee jerk, but in my view, ill considered, reaction to the "no angels" e-mail. Necessarily, once it was accepted that there was nothing improper in FSM's conduct in this period, the e-mail took on a rather different role. Quite what that role was, to my mind, was unclear. The case about bribery had to a large extent fallen away and the allegation that all the Nua contracts had been procured as a result of bribery was not pursued. The remaining evidence of bribery came to be relied on either as evidence of a general tendency to dishonesty or as background in which there was a culture of corruption in 2011 which reasserted itself in 2012. That case was itself vague.

115. The main thrust of Mr Brady's case by the end of trial was that the Claimants had dishonestly assisted FSM to breach its fiduciary duties. The "no angels" e-mail was relied on as positively encouraging FSM to do so and threatening that discreditable material would come to light if FSM did not collaborate in procuring settlements at excessive valuations and with disadvantageous features. Neither of those ways of relying on the e-mail makes sense. It was sent well before the settlement negotiations commenced and in a different context. There was no case advanced or put that it was somehow held over Mr Pierce's head, even if there was anything that could have been held over him. Mr Pierce's response, which I do not doubt was genuine, made it clear that whilst he might have concerns about the tone of the e-mail, he was not troubled by any threat to unmask "discreditable conduct" or, as I read the e-mail, to criticise FSM's performance on the project. No reason has been suggested why his position might have changed so significantly by the time the Settlement Agreements came to be made.

116. The way this was put to Mr Pierce in cross-examination was that sometime between early and late October his conduct changed to being helpful to Mr Singh and ceasing to protect Mr Brady's interests; that that was because Mr Pierce was now responding positively to Mr Singh's earlier invitation to act favourably towards him; and that there was an

understanding between Mr Pierce and Mr Singh that in return for Mr Pierce's help there would be a benefit for him. In other words, Mr Brady's case was that sometime in October 2012 and for some unspecified reason, the e-mail became part of what influenced Mr Pierce to take an entirely different tack and to set out, in layman's terms, to defraud his client. That case makes no sense even if the "no angels" e-mail offered future benefits which could have influenced Mr Pierce to act against his client's interests and, in any case, it did not.

Events in August to October 2012

117. From August to October 2012, there were negotiations about the return of the windows and doors and other payments and a number of agreements were entered into.

118. On 31 August 2012, following a meeting the previous day between Mr Singh and Mr Brady an agreement was reached in respect of the return of doors and windows on receipt of payment of £20,000 and £85,000 and Mr Singh e-mailed Mr Pierce confirming that the agreed aim was to resolve all outstanding issues.

119. At a further meeting between Mr Singh and Mr Pierce on 4 September 2012, they broadly reached agreement on the delivery of the windows along the lines previously agreed and that was confirmed in an e-mail on 5 September 2012 from Mr Singh to Mr Pierce copied to Mr Brady.

120. On 10 or 11 September Mr Singh and Mr Pierce agreed the terms of a revised draft agreement for the return of the windows.

121. On 11 September 2012 Mr Brady signed both the Windows Settlement Agreement and the Authority Letter to which I referred briefly above.

122. The Windows Settlement Agreement dated 11 September 2012 provided that Nua should deliver to the project all the windows previously removed; that upon delivery Mr Brady would pay £40,000; that upon receipt of that amount, Nua would install the windows; and that upon certification by FSM that that work had been carried out, Mr Brady would pay a further £30,000. Payment of the £40,000 was to be in full and final settlement of any claims that Mr Brady might have under this contract.

123. The Authority Letter (dated 10 September 2012) provided:
"I refer to my letter to you of 29 February 2012 in which I notified you that Four Square Management Limited ("Four Square") have full and unrestricted authority to act as my agent in relation to the project.
As you know, on 20 July 2012 Four Square, on my behalf, sought to terminate the various contracts you have with me in relation to the Project, namely .....
Notwithstanding the termination of those contracts, my letter of 29 February 2012 remains effective. Further, and for the avoidance of doubt, the scope of Four Square's authority to act as my agent extends to settling any claims of whatever nature that may have arisen between us in relation to the Project (whether arising before or after the termination of the contracts) and settling all final account in relation to the contracts."

124. At the same time, Nua sought from FSM (on Mr Brady's behalf) signature of FSM Instruction Letter. That letter stated that FSM "irrevocably agree[d] the following instructions and well as monies that are due to your associated companies for the works.":
    (i) The letter included written confirmation that none of the contracts, except joinery, included any recovery of preliminaries and agreed to pay prelims at a rate of £1,950 per week from 16 December 2011 to the date of completion of the last package of works. It continued:
    "For the avoidance of doubt this prelims rate is fixed and no adjustment shall be made to the rate or your recovery under this instruction to reflect the duration of any particular package of works on site. For the further avoidance of doubt, we acknowledge that your role of principal contract is covered under the contract dated 12 January 2012 and any entitlement to sums in respect of that principal contractor role is separate to your entitlement to your prelims under this instruction."
    (ii) The letter confirmed costs due to Nua resulting from the lawful suspension of its obligations due to non-payment by Mr Brady and agreed sums included in earlier valuations.
    (iii) In respect of the tiling package, the letter confirmed a variation to omit the further supply of floor and wall tiles and pay a sum as loss of profit.
    (iv) In respect of the drylining, the letter confirmed that Mr Brady would pay all sums certified as due from Maybury but not paid by them but that the sum paid by Maybury was £265,874.21 for which credit would be given.
    (v) In respect of the joinery package, the letter confirmed the allocation of monies paid by Mr Brady and that a sum of £22,000 had been agreed in relation to prelims for the joinery package.

125. What the Instruction Letter purported to confirm or agree was patently generous to Nua and disadvantageous to Mr Brady and FSM firmly advised Mr Brady against signing it. That advice was confirmed in a letter dated 11 September in which FSM recorded, in effect, that Mr Brady had rejected that advice and asked them to sign the letter, but that they wanted Mr Brady to accept that he would in no way hold FSM responsible for its content. I quote from the letter:
    "we refer to the attached letter dated 10 September 2012 prepared by Nua …. for us to sign, as a pre requisite to them returning the windows they removed from site and then completing the installation.
    Nua are using this letter as a means to pressure the completion of an agreement between your company and theirs for completion of the window installation.
    As advised we would not usually countenance such a letter or sign it. The letter refers to preliminaries, non productive labour and loss of profit, which we have not agreed to for the following reasons:
        - *We have received no information, substantiation or evidence to support the financial claims*
        - *We are not currently satisfied that the claims are contractually due*
        - *We have not had the opportunity to fully assess and evaluate the claims made by Nua to advise you the client accordingly and prepare and issue the associated instructions*
        - *This is not the contractually correct process for agreeing such associated items.*

Recognising the above you have requested that we sign the letter agreeing to Nua's terms in order for you to reach agreement and settlement with them. It is understood that your instruction is borne of necessity and urgency to complete the agreement with Nua.
Respecting your request and instruction we have signed the letter but prior to issue to Nua ask you to countersign this letter confirming acceptance of the following:

- *FSM accept no responsibility for the terms and conditions detailed within the letter and the associated financial claims made by Nua which you may/will be subject to*
- *FSM have not accepted the terms of the letter and do not authorise the values of the claims stated within the letter*
- *FSM will not be held responsible nor accountable for any actions, disputes or other arising out of this letter between you and Nua*
- *You will not seek claims, damages etc. from FSM as a result of loss (financial or other) as a result of actions that may arise from the terms of the attached letter dated 10th September 2012.*

126. I have set out the terms of FSM's letter at some length because these events seem to me highly relevant. Firstly, this letter recorded exactly the same sorts of commercial pressures on Mr Brady as the Claimants say placed him in such a weak bargaining position later in the year. The letter expressly referred to the "necessity and urgency" of reaching an agreement with Nua. Secondly, it records very clearly FSM's advice and makes plain that they were seeking to protect Mr Brady's interests and not inflate the monies owed to Nua. Mr Brady appears to have had no concern about either of these aspects of the letter and signed the letter as requested. This letter was produced and signed in a period when the Defendant no longer contends that Mr Pierce was acting improperly. That must mean that it is accepted that the letter was a genuine attempt by FSM to protect Mr Brady's interests (and indeed ward off any future criticism he might have of them for not doing so) and that Mr Brady rejected that advice. It thus sets the scene in which Mr Brady was under commercial pressure (which he now denies); FSM were seeking to provide him with sound advice only a few weeks before, on the Defendant's case, Mr Pierce had a dramatic change of heart and approach; and Mr Brady was happy to ignore FSM's advice in order to get what he wanted in terms of moving the project forward.

127. I make this further observation about this letter. In his statement, Mr Brady now said of the letter from FSM that it had been brought to his attention that it had been prepared by Mr Singh and/or his then solicitors, Fenwick Elliott, which he described as incredible. The purpose of this statement would seem to have been to imply that it was all part of an elaborate scheme to make FSM appear to be acting independently and fulfilling their duties to Mr Brady when, in fact, that was not the case. I note again that that is inconsistent with the position now adopted that there was nothing wrongful in FSM/Mr Pierce's conduct before late October 2012. In any case, the Claimants provided a witness statement from Mr Bebb at Fenwick Elliott stating that Fenwick Elliott had not drafted the letter. Nonetheless, the Defendant then required Mr Bebb to be called to give evidence at trial. In the event, that course was not pursued. What this illustrates, however, is Mr Brady's willingness, once he had persuaded himself that he had been defrauded, to see everything in the worst light and to leap to adverse conclusions about innocent matters.

128. At the meeting on site on 11 September 2011, Mr Singh and Mr Brady also discussed the possibility of Nua carrying out architectural glazing and metalwork, referred to as the AGM2 works or contract and a contract was entered into on 18 September 2012.

129. The windows and doors had all been returned by 24 September 2012. Mr Singh then pressed for payment of the deposit on the AGM2 contract and, by e-mails sent on 2 October 2012, again asked Mr Pierce to agree final accounts and required final payment of £19,395 under the Windows Settlement Agreement to complete the installation. When Mr Pierce pointed out that that was not due, Mr Singh instead asked for payment of preliminaries under the Instruction Letter.

130. This appears to have been the background to a discussion between Mr Pierce and Mr Brady on 3 October 2012. Mr Pierce made notes of the discussion which I referred to above. As well as the proposal to "fight the Nua letter at the appropriate time", the notes stated that Nua's past record on site strongly suggested that they could not be trusted. It was agreed that Mr Brady would negotiate with Mr Singh including renegotiating the AGM2 contract and deferring action under the 11 September letter until completion. Mr Brady spoke to Mr Singh on 3 October 2012. He wanted Mr Singh to trim the price on the AGM2 contract and defer payment on other packages until completion. Mr Singh agreed to defer 75% until completion *"provided we agree final accounts on all packages by no later than next week"*:

    (i) The relevant exchange of e-mails started with one in which Mr Singh told Mr Pierce that he had spoken with Mr Brady and agreed a final payment of the windows of £19,550 to be sent that day along with payment of the deposit on the AGM2 contract.
    (ii) There then appears to have been a further conversation and Mr Singh e-mailed (addressed to Mr Pierce but copied to Mr Brady):
    "Further to our conversation just now, and provided we are in funds for the monies listed below, I further confirm the following:
        1. *We will endeavour to complete works to the elements below week commencing 12th.*
        2. *Provided we agree final accounts on all packages by no later than next week, we will agree that you can pay us up to 75% if the total outstanding monies when you Practically Complete both residential apartment blocks."*

    (iii) Mr Brady responded: *"That looks ok to me have you spoke to Richard ps I don't have the a/c number or the details for your arc/glazing co please send again."*

131. In one sense, the detail of what happened during this period is not relevant to the issues in this case. However, as Mr Bowling submitted on behalf of Nua, it showed that Mr Brady was willing to enter into agreements with the intention of challenging their validity later; it showed that he was acting with an independent mind; but this last exchange also showed him referring Mr Singh back to Mr Pierce.

132. Mr Speaight QC places emphasis on the fact that up until 3 October 2012, Mr Brady was actively involved in discussions about agreements and payments. He had direct contact with Mr Singh and was copied into other e-mails. In closing submissions Mr Speaight QC provided a table of references between 29 August and 3 October 2012 that make

good that submission. On 4 October 2012, Mr Brady went on holiday and was away for 8 or 9 days. By the time of Mr Brady's return, and as I discuss below, Mr Singh and Mr Pierce had embarked on the process of agreeing the final accounts. Mr Speaight provided a similar table of e-mails between 17 October 2012 and 8 November 2012 none of which was copied to Mr Brady. That he submitted marked a sea change and demonstrated that Mr Brady was deliberately cut out of the settlement of the final accounts. I address this point below together with the factual evidence leading up to the settlement agreements.

Settlement Agreements

133. On 17 October, so two weeks later, Mr Singh pressed Mr Pierce for a date to meet to discuss the final accounts. Meetings took place on 22 and 23 October 2012. On 22/23 October 2012, Mr Singh sent to Mr Pierce nine final accounts. Mr Singh appears to have wanted to meet again on 24 October 2012 but Mr Pierce did not have time and they met again on 25 October. There was a further meeting on 26 October at which a number of accounts were agreed. On 30 October 2012, Mr Pierce e-mailed to Mr Singh the final accounts for the Principal contractor, AGM, Bifold, Decoration, Drylining, Flooring, Joinery, Tiling and Windows final accounts with his manuscript annotations shown. At a meeting the same day, the figures for four Settlement Agreements (Principal Contractor, Flooring, Joinery and Tiling) were agreed. These agreements were subsequently signed by Mr Pierce on 31 October 2012.

134. On 31 October, Mr Singh e-mailed Mr Pierce pressing him to agree the Drylining final account.

135. On 1 and 2 November 2012, there was an exchange of e-mails between Mr Sims and Mr Brady about FSM's fees. No mention was made of the agreements being made by Mr Pierce.

136. At a meeting on 6 November 2012, Mr Pierce signed two further settlement agreements for Drylining and Decoration.

137. At a meeting on 8 November 2012, Mr Pierce signed three agreements for the AGM, Bi-fold and Windows packages.

138. On 8 November 2012, Mr Singh also e-mailed to Mr Pierce the ratification letter which he wanted Mr Brady to sign.

The Silk letters

139. Around the same time, and intertwined with the events leading to the agreement of the final accounts, Mr Singh was offering to become involved in funding the project, against the background, on the Claimants' case, of financial difficulties faced by Mr Brady (which I consider in more detail below).

140. On 24 October 2012, Mr Singh wrote by e-mail to FSM:
"Further to our discussions and that it has come to my knowledge that works on site are dragging on and on, can I suggest that you seriously consider us to return to site to finish what we started?
We never wanted to leave to start with, but our Contracts were Terminated … However, now we have almost resolved all our issues, we can drive this project forward rapidly …

… we can get 25 men on site and two fully packed lorry loads of material (right to the brim) all for Monday morning! By the end of next week you will see such a substantial change to the site (we know the site inside out) that it would improve everybody's view of progress on this development (including the Bank)."

141. The following day, Mr Singh met FSM and offered to fund the project. If the final accounts were agreed he would defer payment until the development was completed. In his e-mail on 26 October 2012 he also said: *"I have spoken to my investors and they will not allow me to even purchase a nail for this site until all our previous affair are agreed ….. otherwise we will have to politely refuse the offer of proceeding with completing the development."*

142. By the time the first set of Settlement Agreements was signed on 31 October 2012, Mr Singh was offering to fund the development and go proceed with the works from Monday 5 November. Madigan Gill left site on 2 November 2012 and Silk started work on site on 5 November 2012. Over the next few days, the number of men on site fluctuated. I set this out in more detail below as the Defendant's case is that this can be directly related to the pressure that Mr Singh was bringing to bear to have the final accounts agreed and the settlement agreements signed.

143. Silk was a recently incorporated company which did not, at the time, even have a bank account. Mr Singh was cross-examined in some detail about his case that he had associates and investors who could fund the project as follows:

"Q. Now, I wanted to ask you, who were the investors?

A. At that point I was in discussion with a few associates of mine in relation to this funding package.

Q. Because it's fair to say, isn't it, that up to this point in the story you've always been desperate for deposits and early payments because you've had funding difficulties?

A. No, this is – we have to start with the contractual position. If the contract is – and this is the method I've gone into contracts – is for deposits, then they have to be paid. If it was not that the deposits were available, then I would have put together a different package, which would have – mean I would have funded, for example, let's say. And that's completely different. So they're different circumstances all together.

Q. What are the names of the people you were talking to?

A. There was – one in particular was Mr Hussein.

Q. Mr Hussein?

A. Yes.

Q. What's his first name?

A. Abid. A-B-I-D.

Q. Mr Hussein. Anybody else that you recall?

A. Subsequent to this there were, yes. I think at this time I was speaking to Hussein.

Q. Had you spoken to Mr Hussein earlier in this saga when you were having such difficulties such as you couldn't pay your workforce?

A. Yes.

Q. And Mr Hussein, had he been willing to invest money?

A. Yes.

Q. --into Nua at that time?

A. Yes, multiple times.

Q. He did invest money multiple times?

A. Multiple times he gave me cash flow, yes.

Q. So didn't that resolve the problems that you had in cash flow?

A. No, it wasn't -- it was not – he didn't give me the full money of hundreds of thousands of pounds that was owed by Mr Brady.

Q. How much money did he invest?

A. Whatever I required for cash flow.

Q. Are we talking about £5,000?

144. I set out this passage in full because it demonstrates that the evidence of Mr Singh's investors was extremely vague. The loans made by Mr Hussein were not identified in any accounts. The documentary evidence showed that Mr Singh owed £40,000 to a Mr Abid Hussein at a rate of interest of 10% per month and owed £20,000 to his business partner, Mark Ellis, at an interest rate of 5% per month. In my judgment, Mr Speaight QC is right to describe Mr Singh's lofty claims as far-fetched. But that misses the point. The point was whether Mr Brady and FSM believed that Mr Singh could provide the financial support that he claimed he could and what he was offering was not a cash injection as such but the carrying out of works with payments deferred. At the time when the Settlement Agreements were being entered into and the First Silk Letter sent, Mr Singh was demonstrating that he could progress the project and however much Mr Brady now regards him as a fantasist, I am satisfied that at the time, Mr Brady believed that Mr Singh could deliver what he promised. I can see no other reason for Mr Brady to have ratified the settlement agreements, signed the authority letter that I address below or the First Silk Letter. The idea that he did so because of advice that he received from FSM or simply because he was told to do so by FSM without giving the matters any independent consideration is absurd, is not supported by the evidence and is inconsistent with how not only FSM but also Mr Brady had conducted themselves in relation to the Instruction Letter.

145. In late November, Mr Singh sent to FSM a proposed form of contract with Silk. It was highly advantageous to Silk and was rejected by FSM, although it might have provided, on Mr Brady's case, another opportunity to betray his trust.

146. As I have said, on 26 November, Mr Brady signed a further authority letter this time addressed to Silk Property Developments Ltd. Mr Brady's signature was witnessed by Jack Barclay, his accountant.

147. The letter confirmed FSM's authority to enter into and terminate building contracts in respect of the project; administer the terms of any building contract; vary or waive the terms of any building contract; settle any final accounts, disputes or claims; and vary the terms of the Nua Settlement Agreements. It contained the following:

"Please treat this letter as confirmation that Four Square Management Limited … ("Four Square") had full and unrestricted authority to act as my agent in respect of the Project.
The scope of this authority includes:
…..
4. To settle any final accounts, disputes and claims that may arise or have already arisen between us on terms to be agreed at the sole discretion of Four Square on my behalf and without the need for Four Square to seek my consent to the terms of any such settlement
…
and in each case regardless of whether Four Square's actions may ostensibly appear not to be in my interest but recognising that the Project is severely delayed (and the funders are aware of this) and that will be reflected in my bargaining position with contractors and that I may have to pay a considerable premium over the market rate for work to

complete the Project and enter into Building Contracts on terms that reflect my bargaining position.
In consideration of the work that you are to carry out at the Project I undertake to you that I will not revoke or vary the authority I have given to Four Square without first giving you no less than 5 days' notice of the same .....
My letter to Nua Interiors Limited and Nua Facades Limited of 29 February 2012 and 10 September 2012 are superseded by this letter
..."

148. Mr Brady further signed a letter dated 29 November 2012 confirming his agreement to pay Silk £140,000 (the "First Silk letter"). The first version of the First Silk Letter was signed by Mr Brady on 26 November 2012, the same day as the authority letter. It was in the same terms as the 29 November letter except for the amount which was £120,500. Mr Singh then e-mailed FSM saying that he felt extremely exposed and wanted to increase the amount. A second version of the letter was produced with the amount increased to £140,000.

149. That letter dated 29 November 2012 ("the First Silk Letter") addressed to Silk Property Developments Ltd. and signed by Mr Brady provides as follows:

"I refer to the work you have carried out at the Project since 5 November 2012.
I note that you have proceeded with this work without any formal contract in place between us in the interest of keeping the site secure and to avoid further delay to the Project.
This letter confirms my contractual agreement to pay you £140,000 (plus VAT) in respect of that work up to and including 29 November 2012 and to pay you in respect of any further work you carry out at the Project on Friday 30 November 2012. I agree the price for this further work is £10,000 (plus VAT).
I agree that the £140,000 is now due, that it constitutes a debt due, that the final date for payments of it is 31 January 2013 and that payment will be made on that date in full cleared funds and without any set off, deduction or abatement. The due date in respect of the further work carried out by you (being the work on 30 November 2012) is Monday 3 December 2012 an I shall make payment of sums properly due in respect of that further work by 31 January 2013 (that being the final date for payment).
I acknowledge that there is no obligation on you whatsoever to carry out any work in respect of the Project beyond 30 November 2012 and if we agree the basis upon which you do carry out any such works than it will be the subject of a separate contract between us."

150. Silk remained on site until 4 January 2013 but from about 4 December 2012, Mr Singh was aware that Mr Brady was considering other options and in particular had involved Mr Poole. By this time there was still no formal contract with Silk. On 4 December 2012, Mr Singh sent Mr Brady an illustration of the finance he would need to finish Phase 1 of the project no doubt in an attempt to persuade Mr Brady to continue with Silk as funder and contractor. But then on 5 December 2012, the Nua companies issued their statutory demands relating to the Settlement Agreements.

151. Despite this, it is evident that Mr Singh still had hopes for his involvement in the project. He sent an updated proposal on 11 December 2012 which was discussed with FSM during December 2012. That led, at least on the Claimants' case, to the agreement of a

further final account with Silk recorded in the Second Silk Letter dated 4 January 2013. That letter was sent by FSM ("on behalf of Terry Brady Developments") and signed by Mr Sims. It provides as follows:

"I refer to the letter dated 29 November 2012 from Mr Brady …. which confirmed detail of payment to be made to you in respect of work at the Project up to and including Friday 30 November 2012.
This letter confirms that on our verbal instruction, acting as agent for Mr Brady, you have proceeded with work at the Project since 1 December 2012.
This letter also confirms Mr Brady's contractual agreement to pay you £187,500 (plus VAT) in respect of the work at the Project from 1 December 2012 to 4 January 2013. This amount is undisputed, constitutes a debt due and Mr Brady will pay it in full cleared funds and without any set off, deduction or abatement by no later than 31 January 2012 (being the final date for payment).
This letter further confirms that the work carried out by you on Friday 30 November (and referred to in the 29 November letter) has been satisfactorily carried out by you. Similarly, this amount (being £10,000 (plus VAT)) is undisputed, constitutes a debt due an Mr Brady will pay it in full cleared funds and without any set off, deduction or abatement by no later than 31 January 2013 (being the final date for payment).
There is no obligation on you whatever to carry out any work in respect of the Project beyond 4 January 2013 and if we agree the basis upon which do (sic) carry out such work then it will be the subject of a separate contract between you and Mr Brady.
For the avoidance of doubt, this letter does not affect the contract that Mr Brady has with Nua Interiors Limited in respect of the architectural glazing and metalwork at the Project."

152. In the event, Silk left site on 4 January 2013 and had no further involvement.

The disadvantageous nature of the Settlement Agreements

153. I set out the Settlement Agreements and their amounts above. In support of any one of the ways of putting the Defendant's case, the main plank of the case is that the Settlement Agreements were so disadvantageous to Mr Brady that they call for an explanation. The point put simply is that the fact that Mr Pierce entered into these agreements on his client's behalf points to something suspicious having happened. In addition, Mr Speaight QC relies on the lack of inclusion of Mr Brady in the process and contends that the suggested explanation for the agreement of the inflated accounts is unsustainable. He invitesme to find that I am driven to the conclusion that the explanation is improper collusion between Mr Singh and FSM *"in the sense of an agreement or understanding that FSM would make the Settlement Agreements with inflated figures in return for past favours or future benefits."* Further he submits there was dishonesty in that there was no genuine belief that the Settlement Agreements and Silk agreements represented reasonable and fair agreements.

154. The Claimants accept that the agreements were to their advantage. They argue that they had the upper hand with Mr Brady. The project was delayed and running out of money: Mr Brady just wanted it finished and he was prepared to pay for that and the Claimants were prepared to take advantage of that (not least because of Mr Singh's unhappiness at the way he had been treated in the past). That, they say, is business not corruption. I address this case below but I first consider the valuation of the final accounts on the basis of the assumption that there was indeed time pressure to reach agreement.

FSM's approach to the final accounts

155. It is clear that the final accounts were agreed over a very short time period. Somewhat surprisingly, until his fourth witness statement very shortly before trial, Mr Pierce gave very little if any substantive evidence about the negotiations he had conducted with Mr Singh. His evidence was that Mr Singh was offering to return to site, and fund the development to completion, through the Silk vehicle but required agreement of Nua final accounts as a condition. That is consistent with the e-mails set out above. When Mr Singh submitted Nua's final accounts and draft settlement agreements, Mr Pierce said that he discussed these with Mr Brady and informed him that Nua were seeking around £1 million. Mr Pierce advised Mr Brady that in his opinion Nua were not due more than a few hundred thousand pounds. He said that this was discussed with Mr Brady who instructed him to agree the settlements.

156. That was the extent of Mr Pierce's evidence until his fourth statement in which he offered a little more detail about his efforts to negotiate figures down from a weak bargaining position. In that statement he said that he had made manuscript additions on the settlement agreements to show the challenges he made at the time. He had ultimately accepted the principle of paying loss of profit. He continued:

"None of Mr Singh's claims came as a particular surprise to me. They were the same items that he was applying for on his monthly valuations. I had previously resisted parts of those valuations and Mr Singh was making the same arguments in relation to payment I can see from the manuscript additions that I made that I carried out far more due diligence on the first four final accounts (which were each agreed on 31 October 2010), I raised a number of queries with Mr Singh in relation to those final accounts in my email to him on 30 October 2012. In relation to the works carried out as Principal Contractor, I considered that Mr Brady was underpaying and I did not draw this to Mr Singh's attention.
Mr Singh then produced a series of written instructions, invoices, explanations and argument for these first four settlement agreements which I then agreed on 31 October 2012."

157. Despite the absence of this further evidence until late in the day, it was apparent from the documents (the authenticity of which was not in issue), that Mr Pierce made efforts to go through each item and annotate them mostly with either a cross reference to an earlier valuation or a query or challenge. Where something was queried or challenged, very few reductions were, in fact, made. However, the point that Mr Pierce now made in his statement and what became clear in the course of the trial was that to a very large extent the sums claimed in the submitted final accounts, with the exception of the claims for loss of profit, had been the subject matter of previous applications for payment and valuations. At my request, the Claimants provided a table (which I will annex to this judgment) which set out this position. It can be seen that there were some claims included in the settlements that had not previously been advanced (including a claim for £12,500 for storage of bi-folds and a claim for legal costs under the Principal Contractor package); some relatively small sums that had been disallowed in previous valuations that were also, so to speak, reinstated; and an obviously controversial claim for costs associated with the removal of windows was included. These sums amounted to around £100,000.

158. There is, therefore, an inherent difficulty with the Defendant's case because, leaving aside the loss of profit claims, the final accounts as agreed reflect, to a very considerable extent, valuations of Nua's works made by FSM at a time when it is not alleged either that Nua's claims were inflated or that FSM was making inflated valuations or otherwise acting in breach of its fiduciary duties.

Loss of profit

159. The aspect of the final accounts that led to the amounts in the settlement agreements that made such a significant difference and must be relied on by the Defendant for the inference of collusion is the allowing of amounts for loss of profit. The claims totalled £328,705.97.

160. As pleaded (principally in the Reply), the basis of the Nua's case was as follows. In June 2012, the Nua companies were barred from site. That was accepted as a repudiatory breach of contract and Nua claimed loss of profit on all the contracts them in place.

161. It is, of course, Nua's primary case that the settlement agreements are binding on Mr Brady and that any issue as to whether Nua was, in fact, entitled to recover loss of profit and in what amounts is irrelevant. But Mr Brady's case is that Nua was so clearly not entitled to loss of profit (and/or in anything like the amounts claimed) that FSM could only have agreed to include these amounts in the Settlement Agreements in breach of their fiduciary duties, dishonestly assisted by Nua.

162. The principal basis for that argument is that in the contracts with Nua (except the Principal Contractor contract) there was a standard exclusion clause in the terms of paragraph [4] below (adding paragraph numbers as the Claimants' counsel did for ease of reference):

> *"[1] The Client may suspend or terminate the whole or any part of the Services at any time upon 5 working days notice. Subject to any rights and remedies which the Client might have, the Client will be liable to pay the Contractor such proportion of the Fee as is reasonable in all the circumstances in relation to the Services carried out prior to the suspension or termination.*
> *[2] The Contractor may terminate its appointment upon 10 working days written notice, in the event that the Client is in material breach of its obligations under this letter and has failed to remedy such breach within 10 working days of receipt of a written notice from the Contractor requiring it to do so.*
> *[3] Upon any suspension of termination of the Contractor's appointment, the contractor shall forthwith deliver to the Client all drawings or documents in its possession relation to the Property.*
> *[4] Upon any suspension or termination of the Contractor's appointment and whether or not such suspension or termination shall have arisen as a result of any fault, negligence or breach of contract by the Client, the Client shall not be liable to the Contractor for any loss of profit, loss of contracts or other losses and/or expense arising out of or in connection with such suspension or termination."*

163. Under the Principal Contractor contract, there was the following:
"If for any reason the contract is not entered into (and we may terminate this instruction at any time on written notice to you) we will reimburse you in accordance with the terms of the Contract for any expenditure properly incurred by you pursuant to this letter up to

the date of such notice, together with any demobilisation costs properly incurred by you after the date of such notice .... all as agreed with the Employer's Representative, provided that: ....
we will not be liable for any loss of profits, loss of contracts or other costs or losses suffered or incurred by you, except as expressly stated in this letter."

164. The Defendant argues that these provisions clearly mean that Nua could have no legitimate claim for loss of profit. Nua's case is that the standard exclusion clause was only concerned with the operation of the contractual mechanism for termination under paragraphs [1] and [2] and not with a repudiatory breach. Under the Principal Contractor contract, Nua contends that the exclusion was concerned only with the position where a further contract was not entered into. Mr Bowling rightly submitted that it was well-established that the same event could give rise to a contractual right to terminate and amount to a repudiation at common law (*Stocznia Gdynai SA v Gearbulk Holdings Ltd.* [2009] EWCA Civ 75) and that the consequences could be significantly different in the event of a contractual termination and the acceptance of a repudiatory breach (*Phones 4U Ltd. v EE Ltd.* [2018] EWHC 49 (Comm)). He submitted that in the present case a number of factors pointed to a narrow reading of the exclusions clauses including language indicative of a self-contained regime; the fact that the Contractor's right to terminate was limited to material breaches; and that the clause referred to suspension or termination of the appointment and not the contract.

165. In my view, it is in the first instance unnecessary for me to determine this matter of construction. It is sufficient for me to say that the point was at the very least arguable. The more important aspect of this evidence is whether Mr Singh was or was not advancing a dishonest claim. His evidence (which was not controverted) was that he knew that there was a legitimate debate about whether Nua was entitled to loss of profit and he was, in my judgment, right about that.

166. Mr Pierce's evidence in his fourth statement said that, having discussed it with Mr Brady, he took advice from solicitors, Laytons, on this issue. That statement was not supported by any documentary evidence and when Mr Pierce was cross-examined on this assertion the position was less categoric and he said that he thought he had had some contact with solicitors in which this might have been raised. Ultimately, it transpired that Mr Pierce was simply wrong about this. It seemed to me, however, that that was more a case of Mr Pierce misremembering something, with an element of wishful thinking thrown in, rather than a deliberate attempt to mislead the court as to the circumstances in which he agreed to include loss of profit.

167. The Defendant's case is that the inclusion of sums for loss of profit in the Settlement Agreements evidences the collusion between Nua and FSM. Mr Bowling submits, however, and in my view rightly, that it in fact suggests the opposite. If Mr Singh and Mr Pierce were, by this time, working together to inflate the agreed amounts, there were numerous approaches that they could have taken to disguise what they were doing. Instead, Mr Singh overtly advanced substantial claims for loss of profit, which he knew were disputed and which both Mr Pierce and Mr Brady knew were in issue in principle. It was a perverse step to take if the intention was to hoodwink Mr Brady. There is no satisfactory explanation for Pierce's acceptance of the loss of profit figures other than the pressure he may have felt himself under to reach an agreement which I turn to below. Before I do so, I will say something relatively briefly about the expert evidence.

168. The expert witnesses agreed that a percentage for overheads and profit of 15% was appropriate. On Mr Adkins' figures that would have produced a figure of £166,754 (not including the loss of profit on the AGM2 contract dealt with below). Mr Moran's figure was only £29,789 (not including AGM2) because despite the agreement he reduced the percentage to 5%. His reason for doing so was that it included overheads as well as profit and he considered that Nua could not have a claim for loss of overheads. I did not follow his argument on this point and, in my view, the 15% figure should be applied.

169. In either case, however, the amount included in the final accounts and settlement agreements for loss of profit was excessive. If one accepts, as I do, that Mr Pierce was under pressure, on Mr Brady's behalf, to agree the final accounts and had no bargaining position on the loss of profit claims, it does not seem to me of any relevance that the claims themselves were inflated. It is difficult to see how Mr Pierce could have negotiated them down and, in those circumstances, the agreed amounts are not evidence of breach of fiduciary duty.

The value of the work done: the expert evidence

170. The expert evidence of Mr Adkins and Mr Moran was adduced as to the true or reasonable value of the work done. This evidence was relevant for two reasons. Firstly, the disparity in the value of the work done and amounts of the settlement agreements is relied on by the Defendant as calling for an answer in the sense of providing the strongest evidence to support the case on dishonest assistance. By the same token the less the disparity, the weaker that case. Secondly, in the event that I found the Settlement Agreements not to be binding on Mr Brady, it would be necessary to value the work done.

171. At this point in my judgment it is necessary only to consider whether the level of the Settlement Agreements as compared with the value of the work done is such as to give support or make good the Defendant's case. However, before I address the evidence and at the risk of repetition, I should say that there is, in my view, a real difficulty with the Defendant's approach. Both parties engaged experts to carry out an ex post facto valuation many years after the event, although Mr Moran has been involved to some extent since about December 2012. The amounts in the Settlement Agreements were agreed by Mr Pierce who was, in marked contrast, involved in the project throughout. The agreements were, by his own admission, overall disadvantageous to Mr Brady. But in large part they reflected valuations that FSM had made during the course of the works at a time when no criticism is made of FSM's conduct. I, therefore, approach with some caution the case advanced by the Defendant's expert, Mr Moran, that the works were massively overvalued by FSM. Even if this were the case, when looked at objectively and after the event, it simply does not follow that it is evidence of wrongdoing on the part of FSM assisted by Nua.

172. As pleaded, Nua Facades' total claim was £147,808.78; Nua Interiors' claim was £975,466.01; and Silk's claim was £377,400. These are the sums derived from the Settlement Agreements and the Silk letters (plus the loss of profit claim on the AGM2 contract) and represent agreed final accounts less payments agreed to have been made. That gives a total claim of £1.5 million (including the AGM2 claim).

173. So far as the points of comparison are concerned:

    (i) A summary table was annexed to the Claimants' closing submissions in which the figures as figures are not in dispute. It shows that the total value assessed by Mr Adkins (including loss of profit) was £1,928,672 and the corresponding total value assessed by Mr Moran is £1,372,233.
    (ii) The total value of the works (not including loss of profit) as assessed by Mr Adkins is £1,240,149 and as assessed by Mr Moran £987,741.
    (iii) The Defendant's closing submissions appended a table which showed the value of the final accounts agreed by FSM, and again the figures are not, I think, in issue. That shows that the total of the final accounts claimed by Nua and Silk was £1,915,357.69 made up of £1,586,651.72 and loss of profit of £328,705.97.
    (iv) The Claimants' table also shows the total paid, adjusted to remove the amounts paid as a result of the adjudication because, as the claimants rightly say that payment had not been made at the time the Settlement Agreements were entered into. That results in a total due on Mr Adkins' valuation of £964,536 and on Mr Moran's of £323,187 which falls to be compared with the total of £1,326,272 agreed to be paid in the Settlement Agreements.

174. Therefore, the parties' positions are that FSM agreed on Mr Brady's behalf to pay between approximately £326,000 and £1,000,000 more than the value of the accounts (including loss of profit).

175. On Mr Brady's case and on the evidence of his expert, therefore, if this was a deliberate attempt, in breach of FSM's fiduciary duties, to bind Mr Brady to pay an inflated amount, it was the most extraordinary course to take. Rather than inflate the value of the final accounts by modest amounts which could be defended in the event that Mr Brady sought to challenge them, the supposed conspirators inflated the accounts by a sum which, as the Defendant puts it, called for an explanation. In doing so, they were assisted by the fact that the vast part of the valuations had already been assessed by Mr Pierce (when not acting in breach of fiduciary duty) and they chose to draw attention to the one element that was patently contentious, namely loss of profit. This makes no sense: it militates against drawing the adverse inferences which Mr Brady invites the court to draw and it casts considerable doubt on Mr Moran's valuation.

176. Further, as I have mentioned, Mr Moran had, in fact, had a role to play in Mr Brady's disputes since December 2012. It was not argued that that meant that he could not be an independent expert but it was submitted that it may have led him to be unwittingly partisan. That seems to me consistent with the extreme position that he adopted on valuation. I, therefore, approach Mr Moran's evidence with caution and where there is a dispute between him and Mr Adkins, I would generally prefer the evidence of Mr Adkins who had, in my view, carried out a reasoned and balanced assessment to the best of his ability in the circumstances of this case.

177. Further, the change of the Defendant's position at the start of the trial is, in my view, also material to the approach to valuation. The important concession made was that nothing in Mr Pierce's conduct before late October 2012 amounted to a breach of fiduciary duty and/or was in any way improper. Mr Bowling, therefore, put to Mr Moran, and he accepted, that that would affect his valuation in so far as any amounts agreed before that

time were included in the final accounts. It was apparent that that was not a matter Mr Moran had considered or been asked to consider before he came to give his evidence and he did not then produce an amended valuation.

178. Mr Adkins did produce such an amended valuation but he did so, not before or in the course of his evidence, but in a document provided to the court and the Defendant as part of the Claimants' closing submissions and objection was understandably taken to my having any regard to this document. I had at the start of the trial refused permission for the Claimants to rely on a belated supplemental report of Mr Adkins. In short, the amended valuation added a sum of £161,151 to Mr Adkins' valuation, representing a sum for instructions issued up to September 2012. He also identified a (greater) figure by which he said Mr Moran's valuation would increase. Given the objection taken, I said that I would consider the document *de bene esse*.

179. I have included that amount in Mr Adkins' valuation figure set out above. In seems to me fair to do so. I do not make any specific finding as to Nua's contractual entitlement to this amount but it would, in my judgment, be wrong to have no regard to the impact of the change of case in this context. Given my view of Mr Adkins' as a witness, I am prepared to accept that the figure is correct but, whether or not there may be issues about it, it serves to illustrate that the concession made at the start of trial would have had a not inconsiderable impact on the "proper" valuation. I do not place any reliance on the figure Mr Adkins attributed to Mr Moran – he had no notice of it and no opportunity to deal with it.

180. For completeness, I should add that the Defendant submitted that it would be wrong to regard the Instruction Letter as binding and that might appear to be what I have done in the paragraph above. That argument, however, in my view misses the point which is rather that Mr Pierce's valuations based on those "instructions" are not now impugned.

181. As I have said, even on Mr Adkins's figures, the Settlement Agreements represented a substantial overpayment to Nua and Silk as against the value of the work done. If I look simply at the totals, that overpayment is approximately £326,000 and a considerable part of that is accounted for by the amounts for loss of profit. If I accept, and I do, that there was nothing improper in Mr Pierce's agreement to include these amounts, then the difference in the amounts to paid under the Settlement Agreements diminishes still further and to a point where the case that the excessive amounts agreed under the Settlement Agreements evidence an improper understanding or agreement does not hold water.

182. The Defendant, however, submits that the matter should be approached rather differently. Referring to the figures for the value of the works alone, the Defendant submits that even on Mr Adkins' figures the work done (not including the loss of profit claims) was worth £332,056.90 less than the amount agreed by FSM. Further, it is submitted the total paid by Mr Brady both during the Maybury period and after together with the amounts paid by Maybury total £960,717. On Mr Adkins' figures, only a further sum of £258,609 was owing from Mr Brady in respect of work done and, on Mr Moran's figures, nothing.

183. What these various presentations of the figures serve to do is to show that, on this approach, and not including the loss of profit claims, the overvaluation agreed in the Settlement Agreements is, even on the Claimants' case, somewhere between £258,000

and £332,000. There is no doubt that these are substantial overvaluations but they reduce considerably if the figure that Mr Adkins attaches to the pre-September instructions is taken into account and, again, I cannot accept that in themselves and allowing for the difference in circumstances between those in which the final accounts were hurriedly agreed and those in which the experts have been able to consider the issues, they evidence any impropriety.

184. The Defendant does not, of course, accept Mr Adkins' figures and the approach that the parties took in their submissions was to focus on the matters which accounted for the difference between Mr Adkins' figures and those of Mr Moran. These were summarised in an annex to the Claimants' submissions which, for ease of reference, will form an annex to this judgment. What can be seem is that many of the constituent elements of the accounts are agreed and of those in dispute many are either of relatively small value or the scope of the dispute is limited. The most substantial areas of dispute are the Principal Contractor contract and the Silk works. I do not intend to address each item but I take a number of the larger items below.

185. On the windows package, the largest difference is one of £14,200 which arises from a difference in the value of the contract for supply from Cuhagaroglu. Mr Moran's lesser figure is taken from the minutes of a sub-contract meeting held on 18 March 2011 . The Claimants submit that that figure is wrong and appears to have been taken from another quotation. I agree. The greater figure relied on by Mr Adkins is taken from Maybury's tender comparison and, if I had to decide on one figure or another, I would prefer this figure.

186. There was a relatively small difference of £6,640 in relation to aluminium capping to window heads. Mr Moran had now accepted that this was an extra and the issue between the experts was one of measurement. What was put to Mr Adkins was that he had based his measurement on a schedule prepared by Mr Moran and had incorrectly interpreted "2 no." where it appeared on the schedule as meaning that there were two windows rather than two opening lights. I refer to this because when it was put to him Mr Adkins expressed obvious surprise at the suggestion and asked how this was known and whether there was a drawing to show this. Mr Adkins was told that this proposition was based on drawings and was asked if he could reach agreement with Mr Moran on this topic. So far as I am aware, that did not happen. But this dispute illustrates the level of detail into which the experts' exercises had gone, and the level of complexity, in order to reach their views on the proper valuation. There was another relatively small difference of £6,500 for an express shipping order. What was put to Mr Adkins was that that would not be recoverable without an instruction to accelerate. That is, of course, a legal argument. Mr Adkins' short answer was that this had happened in the Maybury period and had been certified by Maybury. I agree that it is then difficult to see why it should not have been included in the final account submitted to FSM or agreed by Mr Pierce.

187. On the joinery package, the experts had agreed in the joint statement that the starting point was the final account submitted to Mr Pierce in the sum of £374,911. However, Mr Moran thereafter used as his starting point an earlier version of the account totalling £332,102. There is no justification for doing so and it does not make sense in the context of the case as to the proper valuation of the works which it is contended Mr Pierce ought to have achieved.

188. There is difference shown of £13,000 for attendance of a foreman and labour for offloading. However, Mr Adkins was cross-examined on the basis that there were only two items still in dispute. One is a difference of £9,511 for materials left on site. The Defendant submits that it is inherently unlikely that any materials would have been left on site. That is pure supposition. Mr Adkins considered that there were probably materials left on site but accepted that the valuation was "a bit of a finger in the wind". That was fair concession. The best that can be said is that neither expert had available to them information on which they do more than make assumptions. There is a difference in the value of bath panels supplied under a project manager's instruction ("PMI"). Mr Adkins' value per panel is derived from the PMI issued during a period when no criticism is made of FSM and I can see no reason why it should not be accepted.

189. Under the Principal Contractor package, there are two large items of difference. The first is the inclusion of a sum of £62,400 for preliminaries. It will be remembered that the Instruction Letter made it clear that the agreement to pay preliminaries in respect of the other contract packages did not impact Nua's entitlement to be paid in respect of the Principal Contractor role. It seems to me that the implication of that distinction was that there was no entitlement to preliminaries on the Principal Contractor package and in this instance I prefer the approach of Mr Moran and the Defendant. However, I should add that I consider the claim arguable. Mr Moran accepted in cross-examination that many of the line items in the final account as submitted went beyond the health and safety type role of the Principal Contractor and the terms of appointment include items such as site set up and ordering of materials which went beyond that role. There was, therefore, an argument for the payment of prelims under the Instruction Letter or for their inclusion in a proper valuation of the work done and services provided.

190. The 4% fee for the Principal Contractor role was agreed to be reasonable and appropriate. The difference between Mr Adkins and Mr Moran arose from the value of the works to which it was applied. Mr Moran proceeded on the basis that the value of the works was that certified by the Bank against the loan facility, relying on the movement in the certified value between December 2011 and July 2012. The Claimants submitted that that ignored additional funds contributed by Mr Brady (which were not reflected in the monitoring surveyor's reports to the Bank). Again the evidence was unsatisfactory. The reports to the Bank appeared, on their face, to provide a valuation of the works but Mr Adkins' point, which seemed to me to be supported by the documents, was that the valuation was related to the related to the draw down on the facility and was, therefore, likely to be lower than the true value. The amounts paid by Mr Brady ought, therefore, to be included in the value to which the 4% is applied. In the normal course, one would expect the sums paid to reflect the value and it seems to me that the 4% should, therefore, be applied to the total.

191. On the Silk works, Mr Adkins' figure is £337,400 (the value of the two Silk Letters) whereas Mr Moran's is £863. This difference, therefore accounts itself for a very large part of the difference between the experts' respective valuations. The Claimants' position is that the progress monitoring reports suggest that the works carried out in the period that Silk were on site were of a value in excess of £80,000. They support that evidence by comparing the costs analysis of Mr Singh in early December 2012 which estimated further expenditure of £778,000 to complete the project and that of Mr Pierce in January 2013 which estimated the further expenditure required as only £208,581. Even allowing for an element of exaggeration in both directions, that is said to further

evidence a substantial scope of work done by Silk. Further, (i) the Claimants say that Silk must at the least have been carrying out the Principal Contractor role, otherwise there would have been none on site and (ii) they rely on Mr Adkins' valuation of preliminaries at £90,250.

192. Mr Moran had made no allowance for the Principal Contractor role but the Defendant accepted that the 4% figure ought to be allowed. Mr Moran, however, asserted that all work was carried out by other trades and not by Silk. The evidence to support this proposition is virtually non-existent. It is not the evidence of Mr Poole who was the Defendant's witness on site at the time and it is not supported by documentary evidence. The Defendant's case was that the maximum value of the work done is approximately £30,000 which is again derived from the movement in value in the monitoring surveyor's reports. As I have indicated, Mr Adkins explained why he thought that was likely to represent an undervalue but he had not evidence to support any greater value.

193. The evidence adduced by both parties as to the work done by Silk and the value of services supplied is thoroughly unsatisfactory. Both experts rely primarily on estimates that are unsubstantiated by any direct evidence. It is, in my view, unnecessary for me to decide a value of the works and enough for me to say that, on any view, the amounts agreed in the Silk letters were a substantial overvalue.

194. What can be seen from this exercise is that there are at the very least genuine disputes on the valuation of individual elements of the final account claims. That is, in my view, important whichever of the experts' views is, objectively, correct. That is because it serves to illustrate that the agreed final accounts did not include patently fictitious or unsustainable claims but rather ones on which views could differ. Firstly, that militates against any finding that the inflated claims were dishonest. Secondly, it supports the view that Mr Pierce, in a weak bargaining position, had every reason to agree the sums claimed. Looking at the matter overall, it is plain that the Settlement Agreements, and at the Silk Letters, represented a generous settlement of Mr Singh's claims but that is not in issue between the parties. What is in issue is whether they are so generous that they give rise to the suspicion of impropriety and provide evidence the improper understanding or agreement on which Mr Brady relies. In my judgment, as least so far as the Settlement Agreements and the First Silk Letter are concerned, they do not. If I am wrong about that, it would still be necessary to consider the surrounding evidence and the events that followed to see whether they supported or undermined that case and, as I address below, this further evidence goes to undermine Mr Brady's case. So far as the Second Silk Letter is concerned, the paucity of evidence as to what work was done in the course of December 2012 does cause me greater concern, particularly because this account was agreed as Silk left site. But, as I have already said, it is then necessary for me to consider the surrounding evidence as well and that I do below.

Overview of Mr Brady's position

195. It is obviously a key element of the Claimants' case that there is, as I have indicated, a persuasive explanation for why Mr Pierce was prepared to conclude, and Mr Brady was prepared to enter into, these disadvantageous settlement agreements, namely that the project was in trouble and Mr Brady was running out of funds. He denies that he was in such a position, although he adopts an alternative case on economic duress which is itself dependent on his having been in such difficulties. Having heard the evidence at trial and seen the witnesses give their evidence, the clear view I formed was that the Claimants

are right to say that by this time the project was in trouble. At the very least, it was badly delayed and the departure of the second main contractor and principal contractor, Madigan Gill, was on the horizon. Mr Brady wanted to and needed to get on with it.

196. I have described Mr Brady as a businessman in a hurry and that was his demeanour in the witness box and consistent with his evidence. I formed the view that Mr Brady was essentially an honest witness but that his evidence was often unreliable. On some issues he gave clearly unsatisfactory or confused evidence.

197. One particular example related to disclosure which had been an unending source of applications and complaints (by both parties) in this litigation. What became apparent from Mr Brady's evidence was that whatever he had been told by his solicitors and whatever advice he had been given about his disclosure obligations (and I do not doubt that they did anything other than comply with their obligations to him and to the court), he had paid no regard to what he had been told. His approach to disclosure appeared to be that he had given his solicitors everything relevant at the outset and that there was nothing more to give. His only further search had been a cursory look around his study in about February 2017. Despite having been involved in litigation of some description in relation to this project since 2013, he had done nothing to preserve hard copy or soft copy documents either before or when his printing company, Alito, whose servers he had used for documents and e-mails, had gone into liquidation. So far as electronic disclosure was concerned, it was limited to documents provided to him by FSM. When he was asked about this, he gave for the first time the frankly confusing explanation that he had been told by his PA that she had kept everything on a memory stick but that, in fact, appeared to be a reference to the FSM electronic documents. Further, Mr Brady did not appear to grasp the concept of something being in issue in or relevant to litigation such that documents relating to that issue might fall to be disclosed. For the reasons I have addressed briefly, his financial position in late 2012 was patently in issue, but, since Mr Brady's own professed view was that he was not under financial pressure, he did not consider that he needed to disclose relevant documentation. Further, his approach or understanding seemed to be not that he was under a duty to disclose documents but that the Claimants should have asked, and should have asked the right person, for documents. In particular, he said that his accountants had documents which could assist his case but they had not been asked for the documents.

198. I make these observations not as such because any issue turns on disclosure failures but because they illustrate Mr Brady's rather high level and perfunctory approach to matters. His view of the world holds sway and he believes what he says even if he is contradicting himself or what he says is demonstrably wrong.

199. In this case, it seems to me, by late October 2012, Mr Brady wanted results and wanted the bank to be kept on side. He was not overly concerned with how that was achieved and he did not pay too much attention to what was happening so long as things got done. He may have formed a dim view of Mr Singh by that time, not least because of the windows incident, or his view may have been coloured by future experience but, at the time, Nua/Silk were offering to keep the project going and that was what he wanted.

Mr Brady's financial position

200. Thus the Claimants' main response to the invitation to draw adverse inferences from the settlement agreements and their impact on Mr Brady was that they were the price he had to pay to get on with the job and to do so with contractor who would not require immediate payment.

201. Mr Brady's principal source of funding was a loan from Lloyds Bank. In his second statement, made in May 2018, Mr Brady responded to a suggestion by Mr Singh that he had behaved as if he, Mr Brady, could not walk away from Mr Singh's offers of funding. Mr Brady's response was that, apart from funding costs overruns from his own resources (which he said he did in excess of £1.2 million), if he had been short of money he would have been in a position to re-mortgage his home Owles Hall. In the event, that was unnecessary because the Bank extended the loan facility. Mr Brady offered no further evidence as to his finances.

202. The Bank loan had originally been in the amount of £6 million and was then increased to £6.8 million and further extended to £8 million in January 2012. At that time, the Bank's letter (from a Mr Cameron) gave no comfort that any further extension would be offered:

"You will no doubt have seen the e-mail correspondence on the Liverpool Road site between myself, Richard Pierce of [FSM] and Bruce Smith of Westminster Consultants over the last few weeks. It would not appear that the additional amount required from the Bank to complete the above development is £1.2m and I enclose an updated Term Sheet …
I have had an initial conversation with my colleagues in Credit on the request for increased facilities and we had a useful meeting with them on Friday, with Bruce Smith also in attendance. I do believe they will approve the request for a further £1.2 m increase in the Loan Facility, in line with the pricing detailed above, however, I suspect this is as far as they are prepared to go. Accordingly, it is essential that the development is completed within the revised budget, noting that Maybury have applied to enter into Liquidation, and there is clearly an onus on the sub-contractor taking on the role of the main contractor to complete the remainder of the works on time and on budget. It was made clear to me by Credit that any further overruns will need to be funded from other sources."

203. By mid-October 2012 the remaining "headroom" in the facility was only £150,000 and the facility was due to expire on 31 October 2012. Mr Smith, the bank's monitoring surveyor was asking for labour records with a sense of urgency about completion. In his statement in the statutory demand proceedings, Mr Brady had also said that the bank was applying a lot of pressure to achieve completion. That was also reflected in the later note dated 27 November 2012, to which I have referred, in which Mr Pierce noted that if Silk left site the Bank was likely to take action.

204. In fact, the facility was not increased until January 2013 when it was increased to £8.275 million, of which £150,000 was for interest. There was no further increase until March 2013 and then again in June 2013, when the facility was increased to £9.175m.

205. Mr Smith, the bank's monitoring surveyor, provided two witness statements. Neither statement addressed Mr Brady's finances. When he was cross-examined, it was clear (and he readily agreed) that he did not regard FSM as good project managers – in January 2012 he had been told the works would be complete by April and that was far from the

case. However, his dealings were still with Mr Pierce and very rarely with Mr Brady himself. He denied that he was applying any pressure in October 2012 or that the Bank was considering taking control of the project. He regarded himself as having a lot of weight with the Bank and he was at pains to emphasise that the Bank would always have increased Mr Brady's facility. I did not find Mr Smith to be a reliable witness. His answers to questions were unnecessarily combative and he seemed intent on fighting Mr Brady's case: his response that bank funding was a specialist subject and not like manufacturing tie pins gives a flavour of his tone. The detail is unimportant but he gave some incredible evidence that he simply deleted e-mails from Mr Singh without even reading them because it was his practice to do so with emails from contractors and sub-contractors. The assertion that the bank was happy to extend the facility is at odds with the documents and with what actually happened, but, in my view, Mr Smith was reluctant to admit that because it marginalised his role with the Bank.

206. The real issue in any case is whether Mr Brady thought the bank would simply extend the facility and the evidence suggests that he did not. Mr Brady had already said that he had had to put £1.2 million of his own resources into the project. It is not at all clear to me on the evidence whether that assertion was correct and when he asserted that that had happened but there is no reason he would have done so if the loan facility could simply be extended.

207. In cross-examination, Mr Brady suggested that at the material time he had his own funds he could have drawn down. The funds he referred to were personal funds and monies in the Alito company, a company that had gone into liquidation in April 2012. Neither of these sources had been mentioned in his witness statement and he said that he thought his accountant would have done so. There was no reason why his accountant should have done so unless the issue had been raised by Mr Brady before and it had not. In my view, Mr Brady was embellishing his story as he went along and it consequently lacked any credibility.

208. The story was further embellished in closing submissions. What Mr Brady had not said in his statement or his oral evidence was that he had, literally, money in the bank. It was not until closing submissions that Mr Speaight QC drew attention to some documents which appeared to have been prepared by Mr Brady's accountant for the purposes of VAT returns and which itemised debits and credits on two bank accounts. One of those was a corporate account and appears to have been the one from which most payments on the project were made. The other account was a personal account (in the name of Mr and Mrs Brady). Although at one point in submissions, Mr Speaight referred to it as the project account or the account from which payments on the project were made, that was wrong. It appears to have been used for small personal expenditure. However, there were latterly a number of payments made to Madigan Gill from this account. On Mr Speaight's figures, at the time the negotiations of the final accounts started there was about £555,000 in this account and, after payments to Madigan Gill, about £446,000.

209. Although, therefore, I accept that there was further evidence that Mr Brady had significant personal funds, he had said nothing about these funds in evidence and nor had his accountant, Mr Barclay. Mr Brady had made no reference to them in his exchanges with the Bank. It can be inferred that they were not in his mind as a source of finance to complete the project. He may have been prepared to make modest payments to Madigan Gill but I doubt whether he would have been prepared to commit them in whole to the

completion of the project. Indeed, he did not offer them the proof of funds set aside that they required (as set out below).

210. In any event, by the end of 2012, Mr Pierce's cost projection was that another £1.2 million was require to complete the project. Had Mr Brady committed the funds in his personal account and then been left with no other source of funding, he could, as he had said, have mortgaged Owles Hall. He accepted in evidence he would not actually have done so – it was the family home – but he would, he said, if he had had to, talked his wife into it. That in itself gives the flavour of the financial pressure Mr Brady was under.

211. In fact, in early 2013, what Mr Brady did was obtain a cash injection of £500,000 from his children's trust fund. He tried to downplay the significance of that contribution but suggesting that he had his own funds but that his children, nicely, said "Dad, here's some money to help you get through this if you need it." It seems to me highly unlikely that Mr Brady would have accepted that offer of help if he did not, in fact, need it. Indeed, because the monies were held in a trust fund, the consent of the trustees was required, and it can properly inferred that this was not as simple a matter as a gift or loan from his children as Mr Brady sought to suggest. Indeed, when that was put to him, he tried to say that the monies were not actually held on trust and that there was no trust in the legal sense. He eventually conceded that that was wrong but it was a simple example of Mr Brady's readiness to say whatever came into his head and suited his story.

212. In my judgment, taking this evidence as a whole, Mr Brady might not have been in completely dire financial straits but he was undoubtedly under considerable financial and commercial pressure. He would have been and was attracted by a proposal which deferred further payments and under which he could avoid seeking further financing. However, one looks at it, it put Mr Singh in a position of considerable strength in reaching a bargain that was advantageous to himself, particularly when, as I say below, it seems to me that Mr Brady took the view that he could get out of a bad bargain.

The impact of pressure in the settlement negotiations

213. I will at this point, and having set out my findings as to the pressure that Mr Brady was under, say a little more about the circumstances in which Settlement Agreements were reached.

214. The final account claims were submitted on 22 October 2012. The same day, Madigan Gill set out their terms for continuing. They required a payment of £70,900 by 30 October 2012 and confirmation that sufficient funds had been put aside to make three stage payments, totalling £250,000, by 7 December 2012. It was becoming clear that Madigan Gill was not going to continue with the Project. That gave Mr Singh a strong negotiating position. He was offering to continue with the project with Silk but on condition that the final accounts were agreed. The strength of that position was illustrated by his e-mail on 26 October 2012 in which he said that his investors would not allow him to purchase a nail for the project without agreement of the parties' "previous affairs". This e-mail was relied on by Mr Speaight QC as evidence of the illegitimate pressure brought to bear on Mr Brady. It is certainly questionable what investors Mr Singh had but that was not the concern at the time and the e-mail seems to me to show the strength of his position and not the exercise of illegitimate pressure.

215. On 31 October 2012, Mr Smith, the bank's monitoring surveyor, e-mailed Mr Pierce (copied to the bank and Mr Brady). By this time, as Mr Brady volunteered in cross-examination, Mr Smith wanted to know every day what was going on. This e-mail read:
"Dear Richard
I note the completion date had slipped back again by one week. Please keep the pressure on and make sure that no further delays occur. …."

216. At this point, Madigan Gill was on the verge of leaving site but Silk was lined up to take over. Had that not been the position, the pressure Mr Smith and the bank wanted kept on would have been impossible and Mr Brady conceded in cross-examination that it was a relief when Silk came on to site on 5 November 2012.

217. On Monday 5 November 2012, Silk had about 13 men on site but on 6 November when Mr Singh met Mr Pierce only 5.

218. That number was then increased to 9. But on 8 November, when the third tranche of agreements signed, the number had been reduced to 4 and Mr Singh threatened that work would not continue unless the remaining agreements were signed.

219. On 12 November 2012, Mr Singh said that he would have 50 men on site but the e-mail continued:

"We have till now expended substantial amounts and are not in Contract yet. Therefore, it is imperative that after our site meetings this morning, we do return to your office and spend the afternoon putting together our Contract, prices, Authority Letter/s for the Client to review and sign on Tuesday. We will not be in a position to spend any more money on this development after tomorrow, until such point we are in Contract."

220. Mr Speaight QC placed reliance on that e-mail in the context of (illegitimate) pressure to ratify the Settlement Agreements but that ignores the fact that "threat" not to continue was principally directed at getting agreement of Silk's contract. That never happened but Silk remained on site.

221. On 14 November 2012 there were, however, only 4 men on site.

222. This fluctuation in labour on site was characterised by Mr Speaight QC as the "on/off tap" by which Mr Singh exerted illegitimate pressure on Mr Brady (through Mr Pierce) to agree the final accounts and I refer to this further below.

Mr Brady's involvement in the settlement agreements

223. One of the matters now relied on by the Defendant is the absence of any advice from FSM not to sign the settlement agreements or as to how disadvantageous they were. That is contrasted with the advice given in respect of the Instruction Letter. But, in my judgment, the very fact that FSM gave the advice they did in respect of that letter militates against the finding that there was some "surreptitious dealing" in respect of the settlement agreements very shortly afterwards.

224. Further, in closing submissions and as referred to above, Mr Speaight relied heavily on the fact that Mr Brady was not kept informed about the Settlement Agreements.

225. Given the importance placed on this point in closing submissions, there was a dispute as to whether this point had been put to Mr Pierce to give him an opportunity to respond. The point was, in my view, adequately put to Mr Pierce but I bear in mind that the emphasis placed on this point was another significant shift in Mr Brady's case at trial. As I said above, Mr Pierce's evidence was that he spoke to Mr Brady regularly and told him what was going on.

226. Mr Brady accepted that he was a "word of mouth" man – he preferred to do things on the phone; he did not keep a diary or a notebook; and he only made occasional notes on bits of paper which he had not kept (although this was in contrast to the copious notes that he took during the hearing).

227. It is obviously right on the face of the documents that a distinction can be drawn between the two periods that Mr Speaight QC identified but there are other reasons for the distinction. In the period from late August to early October, it was not a case of agreeing final accounts but of agreeing terms for the return of the windows (an issue which Mr Brady was particularly exercised about and involved in) and for contracts to progress the works. Mr Brady was directly involved in these negotiations and had direct e-mail contact with Mr Singh. At the very point when it appeared to Mr Singh that he had agreement that the final accounts should be agreed quickly, Mr Brady went away. Final accounts were exactly the sort of matter that a contractor would expect to agree with the project manager or quantity surveyor on the job without necessarily involving the employer, and Mr Brady had already given FSM authority to settle accounts by the September Authority Letter.

228. When he was cross-examined, Mr Brady agreed that he knew, on 3 October 2012, that, as Mr Bowling put it, he had sent Mr Pierce off to agree the settlement agreements (on the final accounts); that he had given Mr Pierce authority to do so; and that he had already agreed to pay a very substantial amount of money under the Instruction Letter. He further agreed that Mr Pierce discussed the settlements with him by phone and that things were not dealt with by e-mail because he, Mr Brady, was a "word of mouth" man. Mr Brady agreed that Mr Pierce had explained to him that if the settlement agreements were not agreed, Silk would not be picking up the project from Madigan Gill, and that the price of Silk staying on site in November was the agreement and ratification of the settlements.

229. The e-mail exchanges into which Mr Brady was not copied are themselves what one might expect to see in normal, if hurried, final account negotiations. There is nothing that gives any indication that Mr Singh and Mr Pierce were colluding or planning to collude to obtain excessive sums from Mr Brady, and to do so with the intention that FSM/Mr Pierce could profit from it.

230. So, on the Defendant's case, the inference which I am invited to draw is that at some time in the first part of October 2012, Mr Singh and Mr Pierce came to some agreement or understanding that Mr Pierce would act against his client's interests (with the dishonest assistance of Mr Singh) in recognition of past favours or in the expectation of future favours; that they, therefore, agreed that Mr Brady would be kept out of it and e-mails no longer copied to him; but that they would conduct sham negotiations and fabricate a paper trial, to disguise what they were doing. That is not an inference that sits with Mr Brady's own evidence and it is not one I can sensibly draw. Further, as Mr Bowling submitted,

and I repeat, the Defendant's case had become one that disavowed any improper conduct on the part of Mr Pierce before late October 2012 and thus seemed to be one in which Mr Singh submitted his inflated final accounts and the collusion occurred afterwards. This internal confusion or contradiction in the Defendant's case further points to its weakness.

231. In any event, once the agreements had been reached, at the behest of Mr Singh, Mr Pierce obtained Mr Brady's ratification.

232. Each of the ratification letters was from Mr Brady to the Nua companies in the following terms:

> *"**Development at 166-198 Liverpool Road, Islington, London N1***
> ***Ratification of Settlement Agreements***
> *I understand that Four Square Management Limited ("Four Square") has, acting as my agent, recently entered into the following settlement agreements ("Settlement Agreements") on my behalf:*
> *1. Flooring Package dated 31 October 2012 with Nua Interiors Limited*
> *2. Joinery Package dated 31 October 2012 with Nua Interiors Limited*
> *3. Principal Contractor Package dated 31 October 2012 with Nua Interiors Limited*
> *4. Tiling Package (Floor and Wall) dated 31 October 2012 with Nua Interiors Limited*
> *5. Decoration Package dated 6 November 2012 with Nua Interiors Limited*
> *6. Drylining Package dated 6 November 2012 with Nua Interiors Limited*
> *7. Aluminium Windows and Doors Package dated 8 November 2012 with Nua Facades Limited*
> *8. Architectural Glazing & Metalwork Package dated 8 November 2012 with Nua Facades Limited*
> *9. Byfold Window Package dated 8 November 2012 with Nua Facades Limited.*
> *The purpose of this letter is to:*
> *(1) confirm to you that I have read and agree with the Settlement Agreements and understand, in particular, how each Settlement Sum (as defined in each Settlement Agreement) has been calculated (including the fact that each Settlement Sum contains an element of loss of profit in respect of uncompleted work) and agree with the same; and*
> *(2) ratify the Settlement Agreements in all respects should there have been any doubt as to whether Four Square had authority to enter into the Settlement Agreements."*

233. In his first statement, Mr Brady asserted that he did not know that Mr Pierce had signed the Settlement Agreements on his behalf. In the light of the terms of the ratification letters and the evidence he gave in cross-examination that was plainly wrong.

234. He then sought to explain away the ratification letters. His evidence was that on about 20 November 2012, Mr Pierce phoned him to tell him that Mr Singh was threatening to withdraw his work force from site and that Mr Pierce needed Mr Brady to sign some documents to keep Nua on site and "to keep the job going for the bank; Mr Pierce knew well that the bank was putting a lot of pressure on for completion." They met at Mr Brady's office. Mr Pierce did not explain what the document was other than that it was what Mr Singh wanted.

235. Whatever Mr Pierce may or may not have said, the terms of the letter are clear. Each of the Settlement Agreements is set out. There are no figures for each of them but the letter

expressly states that the Settlement Agreements include amounts for the contentious claims for loss of profit. If Mr Brady did not understand what he was being asked to sign and what the amounts of the Settlement Agreements were, he had only to ask. It seems to me far more likely that he knew. That is all consistent with his interest being in getting on with it and not with the detail and/or with Mr Pierce having kept him informed. It militates against any adverse inference from Mr Brady's not being copied in to e-mails.

236. Mr Brady's statement also included this curious passage about this meeting with Mr Pierce:

"I asked him whether Mr Singh's demands were within the scope of the costing that Mr Pierce had for the job. He said that the figures were there or thereabouts but as a trained quantity surveyor he would get them down."
The oddity of that statement is that it implied that Mr Pierce had told Mr Brady that he could get the agreed figures reduced which makes little sense.

237. Mr Brady was asked about this episode in cross-examination. Mr Brady agreed that he had read and understood the letter but then he had asked Richard Pierce *"What does this all mean", and he said to me, "Don't worry about this, I will get you good value and -- I need to finish this job, and I'll get you good value"*. Mr Brady was cross-examined at some length about this and it was put to him that he may have been recalling a conversation earlier in October before the deals were done. He continued to insist that Mr Pierce had still told him, after the settlements were agreed, that he would get him good value or a reduction in the amounts. The impression that I formed from his evidence was that, whatever he signed, Mr Brady did not truly believe that any agreement was binding on him and that, if he did not like what had been agreed, he would simply renegotiate.

238. The story of the ratification letter is itself material. It had been part of Mr Brady's case that the fact that Mr Singh wanted the agreements ratified indicated that he and Mr Pierce knew that there was something untoward about them. Mr Singh's evidence was that Mr Brady had reneged on agreements before and that he was concerned that it would happen again. In my view, Mr Singh's caution was entirely credible. Further, if there was some conspiracy, the way to alert Mr Brady might be thought to have been to get him to ratify the agreements, in a letter which, as I have noted, expressly referred to the contentious loss of profit claims, personally engaging his attention after, on his own case, cutting him out of the picture.

239. The state of the relationship between Mr Singh and Mr Brady by this time is evidenced by the fact that when Mr Singh first received a signed copy of the letter, he was suspicious of the authenticity of Mr Brady's signature. He thought it was or might be a forgery and that Mr Brady would later rely on this to unravel the agreements. So he asked for the letter to be signed again and witnessed. This led to the evidence at trial that the signature was a forgery.

240. I find that the signature was a genuine signature. The evidence of forgery is inadequate. It was Mr Pierce's evidence that when he met Mr Brady for him to sign the letter, Mr Brady left his office and returned with a signed copy. Mr Singh later asked Mr Pierce to witness that it had been signed in his presence. A rapid signature while Mr Brady was out of the room is hardly suspicious and, on the Claimants' case, Mr Brady had to find,

in short measure, someone who could do a sufficiently good forgery to fool Mr Singh but one that he could later establish was a forgery - and that despite the fact that Mr Pierce would be in a position to give evidence that Mr Brady had, at the very least, purported to sign the letter. Once the issue had arisen, Mr Brady's readiness, on 21 November 2012, to sign a further copy in Mr Singh's presence, is incompatible with his having been found out.

241. The Claimants called the evidence of Mr Stockton as a handwriting expert. In his report he said that there was strong evidence that the first signature was a forgery because of lack of fluency and the direction of the pen.

242. Mr Stockton's evidence was robustly challenged in part because it became apparent at trial that he had a conflict of interest. He had previously been asked to make a report for the Defendant and had done so in 2015 and in terms that were, it was submitted, significantly different. I accept, as Mr Bowling submits, that this was cross-examination by ambush. It is clear to me that the Defendant was aware of this issue and deliberately chose not to raise it before Mr Stockton came to give his evidence for maximum impact. It was plain that the conflict of interest exposed serious flaws in Mr Stockton's administrative procedures but it was otherwise innocent.

243. The 2015 report had, in fact, also observed a lack of fluency but had been more circumspect in its conclusions. Mr Stockton had said that he could not ascertain the direction of the pen and that it would be necessary to examine the original to provide an accurate assessment.

244. At the time of this report, Mr Stockton's observations were based on a copy of the letter and signature. When he made his report in 2018, his observations were based on a high resolution electronic "native" image. The Claimants submit, firstly, that this was created by their previous handwriting expert from the original document and was, therefore, sufficient and, secondly, that the original could only have assisted in limited respects, namely, whether the signature had been traced and whether the lack of fluidity resulted from writing on an uneven surface which (was not suggested by Mr Brady). In my view, however, it was not at all clear from Mr Stockton's evidence how the image he was working on had been made and how good its quality was. He accepted that it might have been copied a number of times before it reached him. Further, whilst he maintained that his opinions in the reports were consistent (because they were based on different images), his evidence was unconvincing and very much an attempt to explain away the inconsistency. Taken together with the factual scenario which I have referred to already, I do not find on the balance of probabilities that Mr Brady's signature was forged. It may have been badly executed when he was out of his office but no more.

245. It was also sought to make something of the fact that, by his own account, Mr Pierce had witnessed a signature that he had not, in fact, seen being made. It is not uncommon for someone to be asked to "witness" a signature by someone they are familiar with and to do so, even if the document has not been signed in their presence. The witness does so at his own risk – it is not the correct way of doing things but it is what happens in real life. I do not attach any significance to it.

The statutory demands revisited

246. Proving that Mr Singh's concerns were valid, Mr Brady did not pay the amounts agreed in the Settlement Agreements. That led, as set out above, to the issuing of the statutory demands. There were two aspects to what then happened that are of note.

247. Firstly, there was a suggestion that on 5 December 2012, Mr Brady was "lured" to site so that the statutory demands could be served on him personally. This suggestion came from the evidence of Mr Poole. In his statement made on 6 November 2018, very shortly before trial, he described his second day at work on the project. He said that he was outside in Mr Brady's car discussing the project with Mr Pierce and Mr Brady. Mr Pierce told Mr Brady that he needed to be on the site to sign some documents and was adamant about this even though Mr Poole advised Mr Brady to the contrary. No sooner had Mr Brady stepped on to the site than he was served with a statutory demand. This was portrayed as another example of disloyalty by Mr Pierce to Mr Brady and of collusion between Mr Pierce and Mr Singh. When Mr Poole came to give his evidence, he asserted that the statutory demand had to be served personally on an individual while on land or premises in which he had a proprietary interest. This assertion, which took most of the courtroom by surprise, was researched overnight and turned out to be completely misconceived. A statutory demand may be served in accordance with the ordinary rules on service and personal service may be effected anywhere. The significance of this assertion, however, seems to me to have been that it planted in Mr Poole's mind the idea that there was something suspicious about this visit to site and the allegation grew from there.

248. Similarly it was very clear that Mr Poole held Mr Pierce in very low regard, going so far in his evidence as to suggest that very little of what he, Mr Poole, was told when he started on the project was true. Although it was not explored in evidence, it is a reasonable inference that he alerted Mr Brady to the fact that he might have complaints against FSM and certainly that his attitude stoked the fire of the allegations that came to be made.

249. The second remarkable aspect of the story, however, is what happened after the statutory demands had been served. As I said, Mr Pierce came out fighting Mr Brady's corner and made a witness statement alleging that the sums agreed under the Settlement Agreements were grossly inflated. In doing so, he risked having his own performance criticised since he had agreed these amounts – even if he did not contemplate that this would lead to allegations of impropriety, it could certainly have led to allegations of negligence. He argued on Mr Brady's behalf that the agreements had been reached under duress or as a result of undue influence and were unenforceable.

250. If, on the one hand, Mr Pierce had entered into these agreements because he had had a sudden change of heart in relation to the matters referred to in the "no angels" email and felt that he owed Mr Singh, he had just undergone another sudden change of heart. If, on the other hand, he was anticipating his reward from the monies to be paid under the Settlement Agreements, he was now firmly arguing that they were unenforceable. Mr Speaight QC sought to explain this extraordinary behaviour as Mr Pierce trying to recover his position once he realised that Mr Brady would become aware of the inflated accounts. This motivation was not put to Mr Pierce and it is not persuasive.

Drawing the threads together

251. It is common ground that the Settlement Agreements were highly disadvantageous to Mr Brady. They do, I think, "call for an explanation" in the ordinary sense of those words that is, that the questions to be asked are (i) why would Mr Pierce negotiate and enter into such poor agreements and (ii) is the probable explanation some form of collusion with Mr Singh?

252. In considering the agreements, I bear in mind the following:

    (i) Firstly Mr Pierce, on any view, did not have the time to interrogate the accounts in the detail that the experts have done. I have illustrated above the level of detail into which the experts had been able to go and were still going by the time of trial. Mr Pierce had indicated what he challenged and where he had queries, creating a frankly bizarre paper trail if his intention was just to agree to what Mr Singh asked for.

    (ii) Secondly, as I have said above, it was the case that most of the amounts claimed accorded with previous instructions or valuations. The case that there had been a long running conspiracy was not pursued and no complaint was, therefore, made about many of the elements that went to make up the final account amounts, even if they are now challenged by the experts or do not form part of their valuations.

    (iii) One of the striking features of the accounts was the inclusion of the claim for loss of profit. The evidence about that does not persuade me that Mr Pierce was colluding with Mr Singh. He may now be embarrassed about having let these claims go and his evidence that there was or may have been some legal advice about this is wishful thinking or an ex post facto justification rather than evidence of collusion. In any case, as Mr Bowling submitted, if the intention was to defraud Mr Brady, there were cleverer ways of doing it and of hiding the inflated claims in the work done rather than isolating them as claims that appeared to conflict with the terms of the contracts and to which specific attention was drawn. On the Defendant's case, one has to accept that the conspirators, who had already fabricated clever paper trails to cover their tracks, nonetheless went about this aspect of the accounts in a manner that flagged up exactly what was suspect about them.

    (iv) The most striking aspect is that if the accounts had been paid, Mr Singh's companies would, on the Defendant's case, have been overpaid by nearly £1 million but it has taken numerous attempts and analyses to identify these figures.

253. The agreements were entered into against a background in which there was nothing that, on the balance of probabilities, would suggest any impropriety on FSM's part, other than Mr Sims' willingness to accept the bribe that was offered to him for the windows contract. On the contrary, FSM had, so to speak, taken Mr Brady's side on every issue-criticising Nua's performance; reporting Nua for theft of the windows; and advising against the signing of the Instruction Letter. There is no reason, and nothing from which it can be inferred, that Mr Pierce suddenly had a change of heart and that there was suddenly, and apparently at some stage in the negotiation of the agreements, the understanding or agreement that was put to him. Even more remarkably, on the Defendant's case, having deliberately acted against his client's interests in the expectation of some future benefit, Mr Pierce within weeks set about undoing what he

had done by arguing on oath in court proceedings that the Settlement Agreements were unenforceable.

The legal framework

Bribery

254. As I have said, the Claimants accept that, as a matter of law, if the Settlement Agreements and/or the Silk letters were procured by bribery (either the paying or the promise of bribes), they would be unenforceable. For the reasons I have given, I find that, as a matter of fact, the Settlement Agreements and the Silk Letters were not procured by bribery and are not vitiated by bribery.

Unlawful means conspiracy

255. The originally pleaded case was one of "fraudulent conspiracy" which was taken by the Claimants to be an allegation of unlawful means conspiracy. Again as I have explained above, that case remained open to the Defendant at trial. The difficulty with that case was, however, that it was a basis for a claim in damages (which was not pleaded) and not to rescind the agreements entered into. In any case, on the facts, there was no conspiracy. I have in the course of this judgment nonetheless made reference to the alleged conspiracy as a shorthand for the various ways in which the case is now put as to the understanding or agreement between Mr Singh and FSM/Mr Pierce, which I also find did not exist.

Dishonest assistance

256. The case that was primarily relied on by the defendant in closing submissions was that of dishonest assistance in a breach of fiduciary duty, although in his oral submissions Mr Speaight QC's emphasis shifted again to "surreptitious dealing".

257. The dishonest assistance relied upon was primarily the presentation of the inflated accounts. In my view, this itself posed an insuperable difficulty for the Defendant. The presentation of inflated accounts is commonplace – it is not dishonest but more usually the product of a contractor/sub-contractor claiming everything he might wish to claim or thinks he may be entitled to, even if it is not in accordance with the terms of the contract properly construed. A total costs claim is, in many instances, an obvious example. Similarly, a contractor may include in a final account claim speculative items as part of his negotiating position - to provide elements of the claim which can be conceded as part of a compromise. If the contractor has, for example, fabricated time sheets or invoices to support a claim, then it is dishonest but there is a vast spectrum of factual scenarios between that type of fraud and the simply overstated claim. The Nua accounts seem to me to have fallen towards the right end of the spectrum: even the claim for loss of profit was a claim for what Mr Singh thought he was or should be entitled to.

258. Mr Speaight QC cast his net wider in closing submissions and relied on the following matters as "in effect a joint venture" between the Claimants and FSM relating to the breach of FSM's duties. The presentation of final accounts and draft settlement agreements which were known to be inflated were one matter but this also brought back into the case the original bribery allegations and the "no angels" e-mail. I have dealt with these above and, in my view, the facts do not support any dishonest assistance. Similarly, Mr Speaight QC relied on threats not to resume or continue work and participating in settlements which were not the result of proper bargaining. These matters are part of the

bargaining position that the parties found themselves in and not evidence of any dishonest assistance or "joint venture".

259. If the Defendant could overcome the difficulties with the case on dishonest assistance, which in my judgment he cannot, the submission on his behalf would then be that, in this joint venture, Nua and Silk assisted Mr Pierce in the breach of his fiduciary duties.

260. The distinction between fiduciary duties and the duty to exercise reasonable care and skill was one which really only emerged when the case was put this way in opening submissions and it was only briefly explored. The distinction seems to me to be that when Mr Pierce was acting as project manager, in effect advising his client, he owed only a duty to exercise reasonable care and skill. When he was acting as his client's agent, his duty was a fiduciary one. When he entered into the agreements on Mr Brady's behalf, he did so as agent and in doing so he adopted what he had done to date in a non-fiduciary capacity.

261. It follows that, if Mr Pierce failed to exercise reasonable care and skill in reaching the agreements, when he entered into them, he was not acting in breach of his fiduciary duty but merely in a continuing breach of his duty of care. I am not asked to make any findings in respect of this aspect of Mr Pierce's performance – it would be wholly wrong for me to do so in the absence of any relevant expert evidence and Mr Pierce is entitled to have fully particularised allegations against him and the opportunity to defend himself. If Mr Pierce did anything wrong, it could amount, in my view, only to a failure to exercise reasonable care and skill. There was, I find, no breach of fiduciary duty.

262. The other way of putting the defendant's case explored at the end of the case was that there was "surreptitious dealing". In the case of *Panama v India Rubber* which was relied upon, James LJ made the following statement of principle (at page 526):

"…. I take it to be clear that any surreptitious dealing between one principal and the agent of the other principal is a fraud on such other principal, cognizable in this Court. That I take to be a clear proposition, and I take it, according to my view to be equally clear that the defrauded principal, if he comes in time, is entitled, at this option, to have the contract rescinded ….."

263. The factual context in which that statement of principle was made was a case in which an engineer with a certifying function under one contract had a clear conflict of interest because payments were to be made to him under another contract when the sums that he certified were paid. The analogy to the present case would be if FSM were to be paid (illegitimately) when the Settlement Agreements were paid. But that adds nothing to the other ways in which the case has been put. I leave open the question of whether this is a free-standing vitiating factor but, it will be apparent from what I have said above, that I do not find that there was any such surreptitious dealing.

Duress and undue influence

264. Mr Brady had two further pleaded cases which were said to lead to the conclusion that the Settlement Agreements were unenforceable. As I have explained, I refused permission to re-amend to further particularise these allegations. Although they are distinct as a matter of law, it is convenient to address them together and to start with the pleaded case in paragraphs 57 to 59 of the Amended Defence:

"57. Still further and/or alternatively, Nua Interiors and/or Nua Facades and/or Silk dishonestly exerted or conspire to exert undue influence on Mr Brady so as to provide FSM with the exceptionally wide authority they purported to enjoy and/or to agree the Settlement Agreements.

58. Yet further, Mr Brady entered into the Nua and Silk Settlement Agreements (or each of them under duress.

59. Further yet, where Mr Brady executed and/or ratified the Nua and/or Silk Settlement Agreements he did so by reason of Nua/Silk's undue influence and/or under duress and in the mistaken belief that they have been negotiated in good faith and were bona fides."

265. The first of these allegations is incoherent. It is that the Claimants exerted undue influence on Mr Brady to confer authority on FSM. There is no factual basis for that allegation and the authority letters were provided at a time when no criticism is made of FSM, so it is difficult to see how the allegation of exertion of undue influence could be made out or what the point of exerting any undue influence (whatever form that might be alleged to have taken) would have been. Further, and completely inconsistently with the Defendant's case, he signed a similar authority letter in respect of Madigan Gill (albeit one that he later sought to disavow in the statutory demand proceedings).

266. The second allegation that the Claimants exerted undue influence over Mr Brady to agree the Settlement Agreements. As the Claimants submit, to show undue influence the Defendant must show (i) that the Claimants had the capacity to influence the Defendant; (ii) that that influence was exercised; (iii) that the influence was undue; and (iv) that it brought about the transaction in question (*BCCI v Aboody* [1990] 1 QB 923). The Defendant accepts further that the influence must be exercised within a relationship of trust and confidence. It is impossible to see what influence, let alone undue influence, the Claimants through Mr Singh could have exerted over Mr Brady or how any relationship of trust and confidence could have been established. Mr Brady took his own decisions and acted on the advice of FSM. The Settlement Agreements were, I have found as a matter of fact, entered into in circumstances where Mr Brady was in a weak, and Mr Singh in a correspondingly strong, bargaining position. That does not amount to undue influence. The way in which the Defendant put his case in closing submissions was then that the relationship of trust and confidence was that with FSM. Once that is recognised, it can be seen that, in reality, this is simply another way of trying to express the "fraudulent conspiracy" case.

267. For the same reasons, the further case that the Settlement Agreements were ratified under undue influence must fail.

268. So far as the defence of duress is concerned, Mr Speaight QC's submission is that a contract is voidable if procured by wrongful or illegitimate pressure including economic pressure. The case that Mr Brady entered into the Settlement Agreements under duress is completely contrary to his case that he was not under any financial pressure because, if that were right, there would have been no pressure to be exerted on him and he would have had no reason to succumb to any pressure. It is, however, consistent with the position that Mr Pierce adopted at the outset when the statutory demands were served. But this defence is now very much an alternative.

269. Mr Speaight QC rightly submits that the relevant duress must be in some sense illegitimate and in support of the contention that illegitimate pressure was applied in the present case, he relied on the following:

    (i) Nua threatening not to complete the contract which was itself a breach of the Windows Settlement Agreement.
    (ii) Threatening to stop work as Principal Contractor. In this context, it is argued that once Silk had taken on this role from 5 November there existed an informal contract made by conduct under which Mr Brady was obliged to pay a fair and reasonable sum. I note that this case does not sit with the pleaded position that the First Silk Letter was not contractually binding because, if there was such an informal contract in place, the letter amounted to a binding agreement as to the amount due under that contract.
    (iii) Threatening to commit a tort by removing the windows again, relying on Mr Pierce's evidence in his statement in the statutory demand proceedings.
    (iv) Threatening to fold a company.

    There was a considerable element in these arguments of developing the case at trial and, in the light of the unsuccessful application to re-amend, I do not regard that as having been appropriate.

270. It was pleaded in the Defence that during October 2012, and in breach of the Windows Settlement Agreement, Nua Facades failed to complete the window installation and contrary to the agreement insisted that further sums were paid in advance of the works being completed. This threat was not relied on as a particular of duress. It featured obliquely in the re-amendments which I did not allow.

271. The reference to threatening to stop work as Principal Contractor appears to be a reference to what Mr Speaight QC characterised as the on/off tap during the negotiations. Again it is not pleaded. The difficulty with this argument, in any case, is the lack of formality in the contractual position with Silk. When the chronology is considered, it can be seen that what was happening, regardless of whether he could make good on his promises, was that Mr Singh was offering to get on with the project and provide the men to do so but his condition was the agreement of the Nua final accounts. In other words, this was part of the deal. It is not the case that there was an agreement between Mr Brady and Silk that they would provide any labour, let alone a certain level of labour, or carry out and complete the works by a particular date, such that the fluctuating levels of labour on site can be considered to be either a breach of contract or illegitimate.

272. The threat to remove the windows again was also not a pleaded particular of duress although mentioned in the amendments which I disallowed. In any case, Mr Pierce's statement put the "threat" in context and he regarded it as "semi facetious".

273. Mr Singh's threat to fold his companies was also not pleaded (although again it featured in the re-amendments I did not allow) and there was scant evidence to support it. The only evidence was the statement of Mr Pierce in the statutory demand proceedings. Mr Pierce said that, after the removal of the windows (and by definition before the Windows Settlement Agreement), when he saw Mr Singh over the next month or so, he, Mr Pierce, mentioned that there might be proceedings. Mr Singh said that if a claim was started he would fold his company. Even assuming that threat was made, it had nothing to do with the Settlement Agreements either directly or indirectly, no claim being made to rescind

the Windows Settlement Agreement. Further, it is difficult to see what impact it could have had on the Settlement Agreements which were concerned with payment to Nua and not with Nua carrying out further work.

274. I should add one last observation which relates to Mr Brady's health. I have mentioned that Mr Brady underwent heart surgery in or about December 2012 and went abroad to recuperate. It is submitted on his behalf that that strengthens his case at least on undue influence. Whilst Mr Brady's ill health is not in issue, there was no evidence to support a case that it contributed to any ability of Mr Singh and/or FSM to exert undue influence over him. The Settlement Agreements had been entered into and ratified and the First Silk Letter signed before his surgery. There was no evidence that his health in any way affected his business acumen or his ability to comprehend what was happening on the project. The First Silk Letter, which I address below, was witnessed by Jack Barclay, Mr Brady's accountant on 29 November 2012: Mr Barclay had known Mr Brady for 38 years and noticed nothing unusual about him. At the end of the trial, two doctors' letters were produced. They were not in evidence, as expert opinion, and they added nothing.

275. In short, I find that, as a matter of fact, no illegitimate pressure was exerted on Mr Brady by Mr Singh on behalf of the Claimants. In my view, the way in which the case on undue influence and duress was developed serves to illustrate how Mr Brady's case has fluctuated. That is wholly consistent with the view I formed of his evidence, namely, that he was ready to say whatever suited him at the time. Further, the matters that were relied upon as amounting to illegitimate pressure were all matters which had formed part of the re-amendments which I had not allowed and, in those circumstances, even if I had formed a different view of the facts, the defence of duress could not have succeeded.

The Silk Agreements

276. For ease, I address these agreements separately. I have set out above the letter of authority dated 26 November and the terms of the First and Second Silk Letters.

277. The passages in the letter of authority which expressly recognise that Mr Brady is in a weak bargaining position and that he may have to pay over market rate are striking. I infer that they were included because they reflected the true position and because Mr Brady had previously rejected FSM's advice not to sign the Instruction Letter. They did not cause Mr Brady to have any reservations about signing the letter.

278. Both versions of the First Silk Letter were similarly very clear in their terms and were signed by Mr Brady without any apparent concern. They were both witnessed by Mr Barclay and his signature on the 29 November version was accompanied by the stamp of his then firm, Everett & Son, Chartered Accountants with an address in London EC2. Mr Barclay, who had known Mr Brady for many years and had provided services, including audits, accountancy and tax services to Mr Brady and Alito over the years. His evidence was adduced by Mr Brady principally to address the Claimants' case that Mr Brady was in financial difficulties. His statement did not address his witnessing of this letter at all but he was asked about it in cross-examination. He described the first meeting at which he witnessed the letter as lasting about 15 seconds because Mr Brady was rushing as usual. When he visited Mr Barclay's office he usually parked on a double yellow line, wanted something done and then went off. On this occasion, he seemed the same as usual. Mr Barclay did not recall anything to suggest that Mr Brady was unwell

or agitated. Mr Barclay did not read the letter because Mr Brady knew his own mind and Mr Barclay only gave advice when it was sought. He simply witnessed the letter. The second meeting was just as short and much the same.

279. Mr Brady's pleaded case is that this letter does not evidence any concluded contract. That is unsustainable. The terms of the letter are absolutely clear and recognise a contractually binding obligation to pay a debt. Mr Brady's alternative position is that the agreement to pay in the letter is unenforceable for the same reasons as are relied upon in respect of the Nua Settlement Agreements and those defences fail for the same reasons.

280. The picture that Mr Barclay painted, however, was also informative. I have already mentioned his evidence in the context of the suggestion that Mr Brady was taken advantage of while he was unwell, but his evidence went further and to my mind was consistent with Mr Brady just wanting to get the job done, not being particularly concerned with how, and believing that he could get himself out of a bad bargain if he made one. This was the businessman in a hurry who wanted documents signed so that the project could progress. The suggestion that Mr Brady did not know what he was signing, that his trust was being abused, and that he would not simply have asked if he had any concern about what he was agreeing to pay, is not tenable.

281. The Second Silk Letter dated 4 January 2013 was sent by FSM ("on behalf of Terry Brady Developments") and signed by Mr Sims. It provides as follows:

"I refer to the letter dated 29 November 2012 from Mr Brady …. which confirmed detail of payment to be made to you in respect of work at the Project up to and including Friday 30 November 2012.
This letter confirms that on our verbal instruction, acting as agent for Mr Brady, you have proceeded with work at the Project since 1 December 2012.
This letter also confirms Mr Brady's contractual agreement to pay you £187,500 (plus VAT) in respect of the work at the Project from 1 December 2012 to 4 January 2013. This amount is undisputed, constitutes a debt due and Mr Brady will pay it in full cleared funds and without any set off, deduction or abatement by no later than 31 January 2012 (being the final date for payment).
This letter further confirms that the work carried out by you on Friday 30 November (and referred to in the 29 November letter) has been satisfactorily carried out by you. Similarly, this amount (being £10,000 (plus VAT)) is undisputed, constitutes a debt due an Mr Brady will pay it in full cleared funds and without any set off, deduction or abatement by no later than 31 January 2013 (being the final date for payment).
There is no obligation on you whatever to carry out any work in respect of the Project beyond 4 January 2013 and if we agree the basis upon which do (sic) carry out such work then it will be the subject of a separate contract between you and Mr Brady.
For the avoidance of doubt, this letter does not affect the contract that Mr Brady has with Nua Interiors Limited in respect of the architectural glazing and metalwork at the Project."

282. Mr Singh's evidence was that he negotiated on this occasion with Mr Sims because he was furious with Mr Pierce for the evidence he had given in relation to the statutory demands. FSM, nonetheless, tried to keep Silk "on side" and Mr Singh was persuaded to keep his offers of funding open. The agreement, it is submitted, is one reached by Mr Brady's agent with actual authority. Mr Brady relied on his dishonest assistance case

which fails for the reasons I have already given. In the case of the Second Silk Letter, the case advanced in the written closing submissions is that the agreement was made without any reference to Mr Brady at all and that the November authority letter cannot be relied upon because "the same undue influence factors set out above apply". That seems to be an unpleaded claim to rescind the authority given to FSM because it was obtained by undue influence in November 2012. Assuming that case is open to Mr Brady, for all the reasons I have already given, I do not find that there was any relevant undue influence exerted on him.

283. Accordingly, I find that the agreement within the Second Silk Letter was entered into by FSM on Mr Brady's behalf with his actual authority and is enforceable.

AGM2

284. Nua had one claim which is not the subject matter of an agreement and that is the claim for loss of profit on the AGM2 contract entered into on 18 September 2012. That contract did not contain the provisions relating to termination in the other contracts.

285. It is common ground that Mr Brady never paid the deposit of £43,251. That was accepted as a repudiatory breach by Nua on 24 January 2013 at latest and that gives rise to a discrete claim for damages.

286. That claim was assessed by Mr Adkins in the sum of £110,533.44. In summary, the works to be carried out under this contract were substantially the same as those under the original AGM contract. There were, however, significant increases in rates and some reduction in specification, giving an average increase of 45.6% which Mr Adkins regarded as evidence of Nua taking an opportunity to increase the profit margin. His calculation of loss of profit as damages for breach was then the aforesaid sum. Preferring his evidence generally, I would have accepted that figure as a proper assessment.

287. However, Mr Speaight QC submits that if Nua receives the sum under the relevant Settlement agreement, they will already have been paid loss of profit for the original AGM contract and that to recover the whole loss of profit on the AGM2 contract would be double-counting. Since the works are substantially the same, that argument is in my view well-founded and I give credit for the sum of £58,598.94 for loss of profit included in the AGM Settlement Agreement. The damages recoverable for breach of the AGM2 contract are, therefore, £51,598.94.

Conclusions

288. I find therefore that Nua is entitled to be paid the sums set out in the Settlement Agreements and the Silk Letters together with the loss of profit on the AGM2 contract as set out above.

Annex