Neutral Citation Number: [2018] EWHC 1931 (Ch)

Case No: HC-2015-005146

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

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Date: 25 July 2018

Before :

MR. GEORGE BOMPAS QC (sitting as a Deputy Judge of the Chancery Division)

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Between :

(1) SIMONE DOMINIQUE BENNETT **(2) BEN BENNETT**	**Claimants**
- and -	
WAYNE ANDREW BENNETT	**Defendant**
- and -	
TREVOR FORD	**Third Party**
SIMON RENOLDI	**Fourth Party**

- -

Mr Marc Glover & Ms Chloe Sheridan (instructed by **Gordon Dadds LLP**) for the **Claimants**
Mr Richard Clegg (instructed by **SA LAW LLP**) for the **Defendant**
Mr Stuart Hornett (instructed by **LSGA Solicitors**) for the **Third & Fourth Parties**

Hearing dates : 12 to 16, 19 to 23, 27 & 28 March 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.

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George Bompas QC

Mr George Bompas QC :

Introduction

1. This action concerns the ownership of a football ground ("the Ground") at Corringham, in Essex. The Ground, a freehold parcel of land registered with title number EX177025, has been used by East Thurrock United Football Club as its home since about 1982. Much of the action centres on events which are now almost ancient history, in particular events dating from 2002.

2. The parties are, with one exception, members of a family all living in Essex in the neighbourhood of the Ground. Mr Ben Bennett, the Second Claimant, may be described as the senior member of the family. He is the father of the First Claimant, Ms Dominique Bennett. On the other side of the dispute is the Defendant, Mr Wayne Bennett; he is Mr Ben Bennett's son. Allied with Mr Wayne Bennett is Mr Trevor Ford, the Third Party. He is Mr Ben Bennett's nephew. Also allied with Mr Wayne Bennett is the only non-family member, Mr Simon Renoldi, the Fourth Party. Mr Renoldi, however, had connections with Mr Ben Bennett and the Bennett family: he had at one time been in a relationship with Ms Dominque Bennett; he was keen on football, and went with Ben to matches, including travelling abroad on holiday; and in about 2000, as I describe later, Ben assisted Mr Renoldi in the career he was starting on after serving a lengthy prison sentence.

3. In this judgment I shall refer, for convenience and not intending any disrespect, to Mrs Gro Bennett (Mr Ben Bennett's wife who, although not a party or witness in the present action, features prominently in the material events), Ms Dominique Bennett, Mr Ben Bennett and Mr Wayne Bennett as, respectively, Gro, Dominique, Ben and Wayne. I shall also refer to Mr Ford and Mr Renoldi together as "the Additional Parties"; and when it is relevant to do so I shall refer to them together with Wayne as, simply, "the Defendants".

4. The genesis of the present action is a restriction which on 5 December 2014 Wayne applied to the Land Registry to have placed on the register for the Ground. The foundation for this restriction was that, at the time contracts for the purchase of the Ground were concluded, there was in place an agreement with Ben that Wayne would have a 20% share in the Ground, or alternatively that he was entitled to a beneficial interest in the funds applied in redemption of a legal charge over the Ground, the redemption having been the price for the Ground.

5. The Claimants started this action by applying for a declaration as to their ownership of the Ground. The Additional Parties were then joined into the proceedings, their claim (and Wayne's) being that the agreement Wayne claimed to have had with Ben also included each of the Additional Parties with, respectively, a 20% share for Mr Ford and a 10% share for Mr Renoldi.

6. The present action is, unfortunately, only a campaign in what seems to be a war being waged among the Bennett family members.

    i) There have been proceedings in the Property Chamber of the First Tier Tribunal, now concluded with a judgment given on 1 July 2015 by HH

Judge Owen Rhys. These proceedings ("the FTT Proceedings") were between Gro and Dominique on the one side, and Wayne on the other. As started the FTT Proceedings concerned the ownership of numerous properties in Essex; later the focus narrowed to a single property, Cobblers Mead Lake, which had originally been registered in Wayne's name and the name of a Mr Robert Stonebrook. Wayne's case, a case accepted by the FTT, was that this property, when acquired in about 2004, had been held for Ben, Wayne and Mr Stonebrook in equal shares, and that in about 2009 Wayne had acquired Mr Stonebrook's share. But at the outset of the FTT Proceedings Wayne's statement of case, served on 27 January 2014, also contained an assertion that, at any rate in 2006, the beneficial interests in "*East Thurrock United Football Club*" were "*split between Ben (50%), [Wayne] (20%), Trevor Ford (20%) and Simon Renoldi (10%)*". (It is not altogether clear whether the beneficial interests then described by Wayne were interests in a business, which at any rate until after 2006 was apparently owned by East Thurrock United Football Club Ltd, or in that company itself, a company referred to elsewhere in Wayne's statement of case.)

ii) There is an ongoing action in the High Court between Dominque, Gro and Ben as claimants on one side and Wayne and Mr Trevor Ford as defendants on the other. Mr Stonebrook is also a defendant. That ongoing action concerns past dealings between the parties, including in relation to properties which have come to feature in the evidence in the present case, and involves in particular a dispute about the ownership of a parcel of land in Essex known as "the Chadwell Land".

iii) Just before the start of the trial of this present action, a judgment was given by HH Judge Middleton-Roy in proceedings in Basildon County Court between Mr Ford and his wife concerning the ownership of the former matrimonial home, of which Mr Ford's wife is the registered proprietor. Evidence and issues which featured in the Basildon County Court proceedings were referred to at the trial of the present action, not least of all because those proceedings involved events going back to 2003 with which a company called "Pageway Ltd" was said to be concerned, that company having also played a part in the events relevant to the present action.

7. The witnesses who gave oral evidence have been numerous.

i) On the Claimants' side they were: Ben, Dominique, Mr Brian Grover (once a trustee for the Club), Mr Terence Keating (another trustee, and author of a history of the Club and its team), Mr Brian Mansbridge (present Chairman and long-standing supporter of East Thurrock United Football Club), Mr Neil Speight (present Secretary of East Thurrock United Football Club and, from January 2004, editor of a local newspaper), Mr Philip Hibbert (for many years a supporter and, through his businesses, sponsor of the team), Ms Paula Young (for many years a member of the Bennett family's office staff working as a bookkeeper at their offices), Ms Susan McBride (an office administrator and long-standing member the office staff), Mr John

Coventry (present team manger, previously a coach and then assistant team manager), Mr Mick Stephens (volunteer helper), and Mr Aarron Whittaker (present Football Club bar manager, who had started part-time in working in the bar, in about 2005, when he was 15).

ii) Wayne gave evidence; and other witnesses called by him who gave oral evidence were his wife, Hayley, and his daughter, Yasmin, Mr Robert Stonebrook (a conveyancer), Mr Paul Reader (until 2008 a Licensed Conveyancer) and Mr Paul Baker (a chartered accountant carrying on an accountancy practice under the name PBA Group).

iii) The Additional Parties both gave evidence; and their witnesses called to give evidence were Mr Wayne Tomkins (an accountant who worked for Mr Renoldi), Mr Peter Fusedale (bar manager at the Ground for six months in 2005), Mr Edward Carter (an electrician), Mr Gino Renoldi (Mr Renold's father and the bar manager at the Ground in 2003 and 2004), Mr Mark Webb (who worked for Mr Renoldi from 2001), and Mr Lee Patterson (team manager).

8. As I have said, most of the events with which this action is concerned took place many years ago. The documentary record is frequently incomplete, obscure and (for reasons which will become apparent) unreliable. The testimony of the witnesses is difficult to test; and their evidence can be directly at odds with that of others of the witnesses and difficult to reconcile with the documents.

9. Another notable feature of the present action is that, although each of the Defendants had ceased many years ago to have any active involvement with the East Thurrock United Football Club business and activities (2004 in the case of Mr Renoldi, 2006 in Wayne's case, and 2006 or 2007 in the case of Mr Ford), and although each explains that this cessation was because each was excluded by Ben, until about January 2014 none took any step to assert any claim to any proprietary or other interest in the Ground or the football club business or entities carrying that business.

10. In the course of describing the relevant events I shall refer, as appropriate, to the various witnesses and their evidence, and explain my assessment of their evidence.

The Club and the Ground

11. Until 2002 East Thurrock United Football Club had been a members' club, with a committee managing its business. This members' club I shall call "the Club". At the material time it was a member of the Isthmian League and was within the football league structure of the Football Association. It had trustees who were registered as the owners of the Ground, having been appointed by what had been known as the "East Thurrock United Development Association". By 2002 these trustees (whom together I shall refer to as "the Trustees") were Mr Brian Grover, Mr Terence Keating and Mr Trevor Firman.

12. In about 1990 the Club borrowed some £310,000 from Greene King, the brewers, to develop facilities for the Club at the Ground. This borrowing was secured on the Ground, the Trustees having given a charge to Greene King.

The relationship with Greene King was part of an arrangement under which the Club would take its supplies of beer from Greene King, with the quantities of beer taken impacting on the amount of the debt. The debt to Greene King continued to hang over the Club. There had been a refinancing of the debt in 2000, but by early 2002 the Club was in a precarious position financially. This was plainly a matter of concern to the Club's committee and to the Trustees. In his evidence, which I accept, Mr Grover explained how in his belief he had had his own house on the line.

13. In evidence are minutes of the Club's emergency general meeting held on 11 March 2002 when there was a discussion of the Club's future: by this time the Club determined matters could not continue as they were.

14. Following this meeting the Club sought a way out of the financial difficulties. Ben, who had at one time played football for the Club, came forward with a proposal to the Club's Committee to take over the Club's football club operations and to assume responsibility for the Club's debts, including the debt to Greene King. This proposal also involved his acquisition of the Club's assets, the Ground included. I shall refer to the football club business carried on from the Ground as "the Football Club", including within this expression the changing assets and liabilities from time to time comprised in the business.

15. In evidence are minutes of a general meeting of the Club held on 14 April 2002 at which Ben made a presentation of his proposals for the Club. According to the minutes Ben offered to "*take over the entire debts of the club*", while preserving "*the running of the club in a similar way as at present*", but changing the staffing of the bars and cleaning activities using existing and additional employees, and also refurbishing the club and expanding "*the team's financial position through sponsorship and fund raising activities*". He also said, according to the minutes, that arrangements could be started immediately "*as the money from the sale of his restaurant business was earmarked for the purpose should he be successful*". Later I shall say a little more about this sale.

16. On 15 May 2002 Ben sent a letter to the Club, addressed to the Chairman (who was Mr Gary Snell) setting out "*my offer to purchase East Thurrock United Football Club*". The offered price was £370,000 "*which is the total amount required to clear all declared indebtedness to Greene King*". The letter continued that Ben "*would adhere to the following conditions*". These included a minimum ten-year promise to see to the continuation of East Thurrock United Football Club, and further for Ben to take financial control on 1 July 2002. Also there was a promise that Ben would "*consider all offers of financial participation from members*".

17. A reply to Ben's letter was sent by Mr Snell, as Chairman of the Club. He explained that Ben's letter had been placed before a members' meeting on 27 May 2002 and that Ben's offer "*was successful, subject to an Internal clarification and contracts with Solicitors*".

18. By 25 July 2002 solicitors had been retained to act for the Trustees in relation to the disposal of the Ground. These solicitors were Graham Harvey; and the individual who was responsible within that firm was Mr Robert Stonebrook, a licensed conveyancer. As I have mentioned, he has given written and oral

evidence in these proceedings. In a letter dated 25 July 2002 to Mr G Snell, Mr Stonebrook first thanked Mr Snell for his "*enquiry in relation to this firm acting on behalf of the Trustees for the sale of the above [namely East Thurrock United Football Club] to Mr B Bennett*"; and he continued later in the letter "*I understand that the sale price is £370,000 which is to include redemption of two Legal Charges over the Title of the ground*".

19. On 30 July 2002 Mr Stonebrook wrote to Mr Reader at Anderson Hunt. This letter described Mr Stonebrook's instructions concerning the sale of "East Thurrock United Football Club"; it explained that Mr Stonebrook understood "Mr Bennett" (who must be Ben, the purchaser referred to in the letter of 25 July 2002 and also named in the second draft contract described later) to be Mr Reader's client as purchaser; referred to Greene King's charge over the Ground securing a debt of £370,000 (that being the agreed sale price); referred to a proposed deposit of £5,000, to exchange of contracts "this week" being moved towards; and enclosed a draft contract (which, however, is not in evidence).

20. A little later, on 11 September 2002, the Club's Secretary, Mr John George, wrote to Mr Stonebrook saying that the Trustees had asked him to act for them as Secretary in the matter of "*the change of ownership and of the land lease holder of the Club. (Title No Ex 177025)*", and that "*The Trustees would be grateful if you would draw up a lease document changing the lease holder from East Thurrock United Football Club to Mr Benjamin Bennett*". The letter added *"... at present East Thurrock United Football Club own the buildings on the site, it is these buildings that the Club is selling to Benjamin Bennett and he is taking over the lease on the land which has approximately 84 years to run*".

21. It will be noticed that this letter describes what is obviously the Trustees' title to the Ground as being a long leasehold, rather than freehold. This letter is not the only document which was confused as to the nature of the title. What may have given rise to the confusion is obscure.

22. The following day Ben sent to Mr Stonebrook a letter, headed "*Re: Sale of ETUFC*", saying "*Please take this letter as confirmation that I agree to the following condition that ETUFC are requesting with regard to the sale*", and setting out this condition as being that "*In the event that I should sell the land/property at ETUFC, then I would agree to relocate the club to a suitable alternative football stadium within the local area*."

<u>The claims made in this action - summary</u>

23. The case put forward by Ben and Dominque is simple.

    i) The Trustees (that is Mr Keating, Mr Grover and Mr Trevor Firman) executed in favour of Dominique a TR1 transfer form of the Ground, this being dated 5 February 2010; and the transfer was registered on 16 March 2010. The TR1 showed a purchase price of £250,000. The TR1 was, unsurprisingly, executed also by Dominque. It contained a covenant on her part restricting any further transfer without provision having first been made for a replacement football ground for the Club.

ii) Before this transfer Dominque had, in May 2007, received a bank loan which was used (in part) to discharge what Greene King was by then willing to accept in satisfaction of its debt (that is, some £241,023), and Greene King's charge over the Ground had been released.

iii) Thus, the Ground was purchased by Ben and Dominique, and she holds the Ground as his nominee.

24. The complication with the Claimants' case arises from the events of 2002 and the unusual way the Bennett family's affairs were organised (as I describe later).

25. As to the events of 2002, it is unclear how Ben's 2002 proposal, which was accepted by the Club, was in fact intended to have worked as a matter of legal form, or how far it was carried out as intended. I shall describe in more detail the later and protracted steps by which the Ground came eventually to be transferred by the Trustees. But in the evidence before me there is no concluded written agreement (the TR1 transfer form excepted) dealing with any disposition of the Football Club, or containing any binding promise made to the Committee, the Trustees or anyone else to pay, or to give an indemnity in respect of, the Club's debts in return for the Club's property.

26. What does seem to have happened, so far as concerns the acquisition of the Football Club from the Club, is that from about the end of June 2002 the Club's Committee and membership regarded Ben as having taken over responsibility for the Football Club and the paying of its debts; and in time these were all paid. The inference is that, insofar as traders dealing with the Football Club concerned themselves with the identity of their debtor, it will have been Ben. At all events, not very long afterwards a company (namely East Thurrock United Football Club Ltd, which I shall call "the First Company") was introduced into the picture as the owner and operator of the Football Club in the place of either the Club or Ben.

27. The First Company was incorporated in September 2002, according the statement in its first accounts (to 31 October 2003). At first Wayne was sole director and shareholder. Then Dominque is recorded in the records at Companies House as having been appointed a director of the First Company in November 2004, when she was given a shareholding of just less than half of the total; the remainder continued to be held by Wayne, who is recorded as having resigned as a director on 24 January 2005. The return reporting his resignation is dated 24 January 2006, the date when it was received at Companies House.

28. There is considerable uncertainty about the precise time when Wayne and Mr Ford ceased to be involved with the Football Club. This time was, it is likely, after Dominique had returned to settle in England, having for many years, from well before 2002, been living and travelling on the Continent. Her evidence on this return was confused. In her written evidence she dated her return to about January 2006. In cross-examination she suggested it may have been a year later; but when she was giving her oral evidence she was, I think, more or less incapable of giving any evidence with precision, and it is more likely that her written evidence was correct on this particular point. As to this, Wayne certainly did not cease to be involved later than the end of 2006 (and

before the FTT he had himself referred to 2005 as the date of Dominique's return), and therefore Dominique's return cannot have been at the end of 2006.

29. Meanwhile, although Ben had sporadic discussions with Greene King (which I shall describe later) about the discharge or refinancing of the Greene King debt, several years passed until the debt was discharged; and it was three more years before, in 2010, the Ground was transferred by the Trustees.

30. The precise sequence in relation to the discharge of the Greene King debt is as follows:

    i) On 10 May 2007 a loan agreement was made between Dominique and National Westminster Bank for Dominque to borrow £366,000. Dominque said, and I accept, that she signed this because she had been asked to by her father, and she signed for him anything he asked her to.

    ii) The £366,000 was drawn down and, on 11 May 2007, credited to a current account with National Westminster Bank. This account was known as "the Bennett Partnership Account", and immediately before the credit of the £366,000 was marginally overdrawn.

    iii) The redemption price of £241,023 was paid out of that same account, the Bennett Partnership Account, to Greene King by a bank transfer on 15 May, there having been no further amounts credited to the account before the payment out.

31. One of the issues I have to consider is whether, and if so when and with whom, any previous contract of sale of the Ground was made by the Trustees: as with the Greene King debt, the exchanges concerning the transfer of the Ground from the Trustees had continued (so far as the documents show) in a sporadic and inconclusive manner for several years after the exchange I have already described. What is clear is that, if any contract of sale was made, there cannot have been any notice or restriction made in the register for the Ground at the Land Registry to protect the contract: had there been, it would surely have been referred to in the trial.

32. The Defendants' contentions add another layer of complication. Their position is that in about the middle of 2002, when Ben was negotiating the acquisition of the Football Club, he enlisted their help; and he and they agreed that they would enter into a partnership to own and carry on the Football Club, that is to say a business until then carried on by the Club along with its associated assets and liabilities, the partnership shares having been agreed to be 50% for Ben, 20% each for Wayne and Mr Ford, and 10% for Mr Renoldi. And they say that this partnership did acquire and, at any rate for a period, did carry on the Football Club.

33. On the basis of the 2002 agreement contended for by the Defendants, together with subsequent acts of the Defendants in reliance on the agreement, it is said that they have specific interests in the Football Club, and in the Ground, in each case as being a partnership asset.

34. It is a precondition of a partnership that there is a binding contractual relationship between the parties. The agreement may be created expressly, or

inferred from conduct; but in the present case the Defendants do not argue for a partnership on the basis of an implied contract. If there is a binding contractual relationship, the question is whether the agreement is for partnership. Thus, section 2 of the Partnership Act 1890 identifies features which may be present and which indicate or negate the existence of partnership.

35. In Memec plc v IRC [1998] STC 754 Peter Gibson LJ gave the following explanation of partnership in English law:

> *"The relevant characteristics of an ordinary English partnership are these:*
> *(1) the partnership is not a legal entity;*
> *(2) the partners carry on the business of the partnership in common with a view to profit (s.1(1) Partnership Act 1890);*
> *(3) each does so both as principal and (s.5 ibid.) as agent for each other, binding the firm and his partners in all matters within his authority;*
> *(4) every partner is liable jointly with the other partners for all debts and obligations of the firm (s.9 ibid.); and*
> *(5) the partners own the business, having a beneficial interest, in the form of an undivided share, in the partnership assets ..., including any profits of the business."*

36. As an alternative to their partnership claims the Defendants argue for those interests by way of constructive or resulting trust, or by way of proprietary estoppel or some other form of estoppel. I shall refer to the agreement contended for by the Defendants as "the 2002 Agreement", recognising that on the Claimants' case there was no such agreement.

37. One of ways in which the Defendants have developed their alternative claims is for a joint venture giving rise to a Pallant v Morgan [1953] Ch 43 constructive trust. This formulation of the claim features in the opening Skeleton of Mr Richard Clegg, Wayne's Counsel. His submission in that Skeleton is that there was a relationship of joint venturers constituted by the 2002 Agreement, and there is in the result a constructive trust in relation to the Ground which entitles the Defendants to the specific agreed shares. The ingredients for such a claim were explained by Kitchen LJ in Farrar v Miller [2018] EWCA Civ 172 at [22] to [27].

38. Wayne puts forward an alternative claim, in the event that the partnership claims fail. On his behalf Mr Clegg has submitted that his beneficial interest arises in various ways. What is contended is as follows:

    i) Wayne was the contracting purchaser of the Ground, the contract having been made in late 2002; and the purchase contract with Wayne gave rise to a trust for him. The transfer to Dominique did not achieve priority under the Land Registration Act 2002 because it was not itself for valuable consideration.

    ii) The Greene King debt (being the consideration for the acquisition) was serviced and paid down during the period 2002 to 2007, eventually being satisfied in 2007 with a final £241,000 payment, the monies paid

to Greene King having belonged in part to Wayne (in excess of 20%) giving rise to a resulting trust in his favour.

iii) In 2010, following a protracted investigation by the Inland Revenue into Wayne's tax returns and the Callahans business, which he been reporting as his (as sole trader), there were discussions involving Mr Baker, Wayne and Ben which led to a document being submitted to the Inland Revenue showing, among other things, Wayne to have a 25% interest in the Ground. The submission of this document led, in turn, to a settlement with the Revenue pursuant to which the Revenue were paid £90,000 plus a sum for interest. The upshot, so it is submitted, is that Wayne obtained "*the represented beneficial interest on the part of Wayne by constructive trust or proprietary estoppel*".

39. The Claimants' response to the claims made by the Defendants is that, even if the claims can be made out (which the Claimants deny on the facts), they are precluded by laches: the Defendants have stood by for many years without putting forward their claims, and have allowed the Claimants to proceed as though the Ground were theirs. Further, the Claimants rely on a defence based on the Limitation Act 1980.

Callahans, and related businesses

40. It is convenient to say a little more about Wayne's case based on his claim to have contributed to the purchase price paid for the Ground and to have been himself the contracting purchaser. This is because an assessment of his claim, as well indeed as the partnership claims of the Defendants, requires an appreciation of the way in which Ben and the Bennett family members organised their affairs in the period before and after 2002.

41. Many years before 2002, in the early 1980s, Ben started into a property business. Typically he would arrange the purchase of a residential property in the name of a nominee, the purchase price being arranged by Ben with the nominee having a mortgage. Rental income from the property would be used to service the mortgage. This business was conducted under the name "Callahans", and by 2002 the administration of the business was carried on at offices at 60 Orsett Road. At some time in the 1990s Ben brought Wayne into the business, wanting to have Wayne involved in the management of the business. It is common ground that at this time Ben was contemplating a four-way split of the business, between himself, Gro, Wayne and Dominique, that Wayne was dissatisfied with this, and that Ben then agreed to an equal three-way split of the business between Gro, Wayne and Dominque. The explanation for this given by Ben is that he, Ben, would benefit indirectly through Gro's share. Also, it was contemplated that Ben would continue to assist in the management and development of the business.

42. In the FTT Proceedings it was claimed by Gro and Dominique that the arrangement made in the 1990s brought into being a partnership between them and Wayne. Wayne denied this. He claimed that the properties were agreed to be held in equal shares for himself, Gro and Dominique, and (it follows) that the net income was theirs in those shares. On this point Wayne was successful: it was held by the First Tier Tribunal that there had not been any partnership brought into being, merely a sharing of ownership of properties. It

has not been argued before me that I can or should reach any different view of the arrangement, which after all may be the subject of an issue estoppel as between the Claimants and Wayne.

43. One of the findings made by the First Tier Tribunal was that Ben has always been the prime mover in the property business, the Callahans business. So far as concerns the operation of the Callahans account (discussed below), and the making of arrangements concerning the Football Club and the First Company, I find that the same to be true: Ben has always been the prime mover. Further in the FTT Proceedings it was held that there had been a "*surprising lack of documentation relating to beneficial ownership*" of properties, and that this "*appears to be a deliberate policy, since it allows Ben to create and deal with these interests … according to his wishes and requirements from time to time*". The evidence before me leads me to conclude that there was just such a policy applied by Ben in relation to the First Company, and then later in 2010 in relation to the Ground.

44. It is convenient here for me to explain that in my judgment Ben's testimony is not reliable, and only to be accepted with caution. He is plainly astute; but where facts were inconvenient he would present himself as naïve. One example concerns the evidence he gave when he was asked about a standing order from the First Company, and he professed not to see any difference between payments by him and payments by his company. Another was his insistence that a tax investigation into his affairs had resulted in his being vindicated, when the document he had received was a letter apologising for the fact that the investigation had not been progressed for many years and explaining that as a result of the delay the investigation was no longer to be pursued.

45. At the least his evidence was inaccurate. For example, he gave inconsistent evidence concerning the operation of the original property business and the position of the nominee purchasers/mortgagees. Again, he accepted that all of his assets were held in the names of others and that he had never been registered as a director of one of his companies; yet he denied having exercised control through others, when transparently his daughter, Dominique, and his employee, Ms McBride, served as officers of such companies to carry out his directions. Both said as much in their cross-examination. In Mrs McBride's case, her oral evidence was that it was not unusual for her to be made secretary of companies without her even knowing, and to sign documents without checking what they were simply because she was asked. Further, Ben's purpose in arranging his affairs as he did, so that he was invisible as the owner of property or as a company officer, was obviously to allow him to conceal the true picture as to his involvement where he could.

46. One issue on which Ben was cross-examined by Mr Stuart Hornett for the Additional Parties concerned the First Company and Ben's position in relation to that. The inconsistencies in his evidence on this may be noted. There was a distinct tension between Ben's willingness to acknowledge involvement and control on the one hand, and on the other a wish to appear remote from the First Company. Ben's written evidence was that by mid-2002 he was in charge of running the Football Club and treated as such, and also that it was he

who took the decision to form the First Company. But the tension became acute under cross-examination.

i) As to the start of the First Company, he explained he "*encouraged*" Wayne to "*be involved in the limited company*", and that "*at my suggestion Wayne agreed to work with Paul Baker (the accountant) to incorporate the company and deal with the necessary paperwork. Mr Baker's job was to prepare annual accounts, deal with the VAT returns and deal with related matters such as dealing with FA requests for information*".

ii) In contrast he stated also that Dominque was his nominee: "*Dominique was not personally involved in any of the commercial discussions, or in the running of the Football Club. Her involvement was limited to acting as my nominee*".

iii) But then also in his oral evidence he gave answers which contradicted the above. He was positive that the club was 100% his and that he was in control. But then he said that Dominique was not his nominee "*on the original company*", that the limited company was being run by "*Paul Baker, Wayne and various people at the club*", that he was "*the owner*" of the club, his venture, that he was in control, and that he *"had whatever control I felt was necessary*" and "*would have had control over any decisions if there was a need to*".

iv) Finally, to explain why he appeared to be distancing himself from the First Company, he said "*I was not really bothered about the limited company. The limited company was limited, so it did not have a lot of control over the land or assets*".

47. This last answer given by Ben was, it seems to me, telling. If the Football Club's debts came to overwhelm it, there would be no liability for Ben if the Football Club was being conducted through the First Company. This would be in contrast with the position if he had himself been conducting the Football Club as his own unincorporated business.

48. So far as concerns Wayne and Mr Ford and their position in business dealings with Ben and other Bennett family members, I have no doubt that Ben (assisted by Gro) was preponderant: he called the shots.

i) Mrs McBride would, it appears, think nothing of signing cheques on the Callahans account using what purported to be Wayne's signature, and it may be on other documents besides. Shown a cheque for £500 signed by her in 2011 using Wayne's signature, she said "*I was a signatory on the bank account, but for ease of reference when I was signing things, because I used to get confused if I had rung up Wayne and asked him something, he would say 'Just sign it for me', I always used his signature because there was other paperwork other than cheques and everything that I signed on his behalf. I believe, since Wayne has been at that company, that has been the same policy, and he trusted me to do that ...*". And she explained that she had gone on doing this into 2011 from "*force of habit*".

ii) When, in 2006, Wayne parted company from Ben and his family in the Callahans business, it was because Ben had decided that Wayne had been drawing too much and that for the time being there should be no further payments out. This decision about drawings was not a mutually agreed decision, but one imposed on Wayne. In this falling out Ben required Wayne to give up his keys for the Ground, bringing to an end Wayne's involvement in the Football Club.

iii) Mr Ford's businesses, through Pageway Ltd ("Pageway") and Fleetplant Ltd ("Fleetplant"), were administered for him from the Orsett Road offices by Gro and by Mrs McBride. As I explain below, the administration of the businesses enabled funds from those businesses to be managed and applied in a pool with funds from other Bennett family businesses, often without Mr Ford knowing what was being done.

49. Mr Ford is said to be severely dyslexic and incapable of reading to any material extent. My impression was that there was an element of exaggeration in the limitations for the reading disability claimed for him; but I accept that his reading ability is very poor. This evidence was supported by a comment made by Mrs McBride, that when working from the Orsett Road offices and Mr Ford had been working there (as he did quite a lot), she would read documents with Mr Ford; that Gro helped Mr Ford with paperwork and accounts; and that he could not have done this himself so that someone had to help him. It was Mr Ford's evidence that in relation to his tax and financial affairs, and in particular in relation to the operation of the finances of companies of which he was or ostensibly was owner, he was "*babysat*" with "*It … all being done in the office … by Ben Bennett, Sue McBride and Gro Bennett*".

50. In these proceedings it is the Additional Parties' submission that there were payments made from Pageway and Fleetplant towards the Football Club, and that by reference to these payments it can be shown that Mr Ford contributed to the acquisition of the Football Club or the Ground. But they do not suggest that Mr Ford even knew at the time that the payments were being made, much less that he authorised them; and the material payments (if in fact made) were mostly from Pageway and for the most part only after about 2006, after Mr Ford had ceased to be involved with the Football Club.

51. One topic which was much canvassed at the trial concerned the ownership of a property from which a restaurant business was conducted in the 1990's. This business was known as "Benny Wongs". The property from which the restaurant was operated was at King Street, Stanford-Le-Hope. The freehold of the property, which included flats over a shop premises, was registered in Wayne's name but, like many other properties, held by him (according to his evidence) as nominee for family members, including Ben, without this fact being shown on the title for the relevant property. In this case Wayne says that the beneficial owners were Ben, Gro and Wayne in equal shares. This Ben denies, claiming that he was the sole beneficial owner. The relevance of this issue is that when, in 2002, Ben made his offer to the Club to acquire the assets and business and pay off the debts, he is said to have explained that he was in a position to do this "*as the money from the sale of his restaurant*

business was earmarked for this purpose should he be successful". Wayne says that before making this offer Ben had discussed with him, Wayne, the proposed use of the proceeds of sale of the restaurant.

52. The beneficial ownership of the King Street property is not a matter which I need to resolve. Even if Wayne is correct as to ownership, the simple point is that the sale proceeds (which in the event were £200,000) were not applied in paying off the debts of the Club, including the Greene King debt. Further, it does not necessarily follow that Ben would have discussed with Wayne the use of the proceeds of sale of the King Street property before telling a meeting of the Club that he had the proceeds available: it would have been in character for Ben to describe himself, without first asking Wayne, as able to deploy the whole proceeds.

53. In the 1990s, and before the events of 2002, the Callahans bank account had been opened; that is, the account designated as "Wayne Bennett T/A Callahans". This account, the Callahans account, became a clearing account through which money generated from and payable in respect of various different businesses was passed.

54. At the trial there was extensive examination made of old accounting books and records in relation to the Callahans account. In summary, the offices from which the Callahans business was run were the 60 Orsett Road offices (offices held in Wayne's name but in equal shares for himself, Ben and Dominque). In those offices there were two staff who kept the books of the properties and businesses in which Ben and family members were involved. These two staff were Mrs Susan McBride and Ms Paula Young. Mrs McBride's tasks were administrative, managing the routine not only of the Callahans business but also of related businesses conducted through the 60 Orsett Road offices. As she explained it, her role was "*overseeing the whole running of the office*". Ms Young was principally responsible for bookkeeping and accounting, including making and receiving, and recording, payments.

55. At 60 Orsett Road Ms Young operated a computerised "Quicken" accounting system. In evidence are numerous pages of hard copy entries from the system. These "Quickzoom" pages contain, for example, cash-flow reports. The cash-flow reports in the trial bundles frequently list out in a blended fashion income and expenditure from and in respect of quite different businesses, and suggest that this might reflect cash moving through the Callahans account.

56. Wayne in his oral evidence confirmed that the Callahans account was used in this way, essentially as a clearing account. Wayne's evidence to me was also that Mrs McBride and Miss Young would need to know who was involved with what "*to get an idea of how to produce and allocate payments in on the back of the paying-in book and record their Quicken details from different payments, et cetera*".

57. A contention made on behalf of Wayne is that from the Quicken reports it can be seen that income passing into the Callahans account included income in respect of which Wayne had a direct or indirect interest, and that from the Callahans account there was expenditure in respect of the Football Club, including on one or two occasions payments in respect of the Greene King debt.

58. Also in evidence were two notebooks, referred to as the blue and red notebooks, in which there had been numerous entries made concerning financial transactions connected with the Football Club. These included entries made by Ben and Miss Young. The entries showed income and expenditure, as well, seemingly, as loans and repayments.

59. Despite the time spent at the trial exploring the significance of the various entries in these notebooks, I was unable to draw much from them of any real significance. It seems probable that the books were supposed to record transactions, in many cases in cash, outside any record which might feature in more formal accounts or be reported to the Revenue. But I do not believe that they can be relied upon as showing the Defendants to have made net financial contributions to the Football Club.

60. Against this, the evidence of Ms Young was that the Quicken accounting system as operated live could show much more information than is in the present printed pages, and also that now, in 2018, it is not readily possible to interrogate the computerised data preserved from 2002 to 2005 as the necessary software and hardware is not available any longer. But she also said that back in those years the accounting system generated balances which allowed for reconciliation of income and expenditure among the particular businesses and among the persons interested in the businesses. Further, Wayne's own oral evidence was that "*our bank accounts were reconciled by two office staff daily*". And while Miss Young explained that she herself did not do more than reconcile information to bank statements, there was an accountant (that is, Mr Baker) who "*would go from there*" and determine profit and loss and the capital position. This was, indeed, much the same as the case pleaded by Wayne in his statement of case before the FTT.

61. There is considerable force, in my judgment, in the evidence concerning the limitation of the information given in the printed "Quickzoom" pages before the Court. As it seems to me, it is completely impossible to reach any conclusion as to whether, and if so to what extent, financial contributions were made via the Callahans account, out of money belonging to Wayne (or, for that matter, the Additional Parties or their companies), to the Football Club or for the acquisition of the Ground. The onus is on Wayne to show what money he contributed, and he has not satisfied me that he had made any such contribution.

62. In addition to the First Company, three other companies connected with the Bennett family or the Defendants are relevant to the issues in this action. Two, Fleetplant and Pageway, I have already referred to. The third is Halemere Construction Co Ltd ("Halemere")**.**

63. Fleetplant was formed in August 2001 in the Irish Republic. In December 2001 Mr Ford was appointed a director, at a time when Mrs McBride was a director. They both remained directors until the winding up of the company in 2005.

64. Pageway was incorporated on 12 October 2000. Mr Ford was a director, and his then partner Deborah Conn was secretary. Its filed accounts for the year ended 31 October 2003 (seemingly its first year of trading) showed Mr Ford to own beneficially one of the two issued shares, and its business to be that of

cleaning services and labour supply, when its operating profit was £6,847 on turnover of £117,571 and director's emoluments were £13,200 with a dividend of £7,000. At all events, these accounts give little support for an idea that Pageway was placed financially to offer any significant financial assistance to the Football Club.

65. Mr Ford's evidence was that in the late 1990's he had a substantial business supplying cleaning services and labour, and that he turned to Ben for advice. He said that the setting up of Pageway and Fleetplant was done by Ben and Mrs McBride, and that "*That was why she became director. Ben gave me advice about the VAT and accounts but it was his wife, Gro …, who helped on a day to day basis. She did all the accounts and invoicing*". Similarly, when asked about his income tax returns for 2003 and 2004, submitted for him by Mr Baker and discussed elsewhere, he attributed to Gro the provision of all information to Mr Baker.

66. Mr Ford does not suggest that Ben had any ownership interest in Fleetplant or Pageway: his contention is that they were his own companies. However, it is said by Mr Ford that each of Ben and Wayne had a £300 per week "draw" from the business because of the help that they had given. Ben's evidence is that so far as he was concerned the £300 was for Gro's services.

67. Mr Ford relies on the way in which he was, as he says, dependent on Gro, Ben and Ben's staff, as explaining why the 2002 Agreement should have been undocumented, as were the activities he said he had carried out pursuant to and in reliance on it. He says quite simply he trusted Ben.

68. Further, Mr Ford relies on what was done with a plot of land at Chadwell St Mary, a plot backing onto his son's house, as evidencing the relationship he had with Ben and Wayne. In 2002/2003, he says, he brought to them an opportunity to purchase the plot, which had development potential, and lay to the rear of Chadwell St Mary Working Men's Club. That land, the Chadwell Land, was when purchased registered in Wayne's name; but at the time of purchase there was an informal agreement between Ben, Wayne and Mr Ford to be as between themselves equal owners.

69. Halemere was incorporated on 18 April 2000. According to its filed accounts for the period ended 30 April 2003 (apparently signed by Mr Renoldi as "Chairman" on 30 March 2005 and received at Companies House on 4 April 2005) it traded under the name "Callahans Labour Hire", with Mr Renoldi as its director owning half of its issued share capital and with Wayne as company secretary. Oddly, its annual return filed on 22 April 2004 showed its director then to be Wayne, with Wayne holding 74 shares, Mrs McBride holding 25 and Mr Renoldi holding one share: this document was seemingly signed by Wayne as director. Also, on 24 April 2002 a form of special resolution, seemingly signed by Wayne as director was received at Companies House; and Wayne agreed that this signature was his.

70. Halemere's activity was providing labour and subcontractors. Mr Renoldi explained that it was set up for him with Ben's help in about 2000, when it came to conduct business from offices at 62 Orsett Road. These offices were next door to, and part of the same office building as, 60 Orsett Road from which the Callahans business was conducted and where Miss Young and Mrs

McBride worked. Mr Renoldi had been sent to prison, as I have mentioned, on a lengthy sentence in the early 1990's, when he a still a young man. In the late 1990's when he was trying his hand at recruitment consultlancy, Ben and Wayne encouraged him to set up his own business; and this led to the formation of Halemere. It is also relevant that Mr Renoldi was and is an enthusiastic follower of football, and a supporter of Liverpool FC.

71. So, while Mr Renoldi came, without question, to assist in the promotion of the Football Club in the period from mid-2002 to during 2004, the Claimants say that this was because he was indebted to Ben for his position with Halemere and the leg up which Ben had given him, as well as other financial help; and they say it was also because of Mr Renoldi's passion for football which he shared with Ben. It was, so that Claimants' say, enough that Mr Renoldi would be helping Ben and at the same time having a direct involvement with a football team that he enlisted to help, and not through the promise of any financial return. As to this, they rely on the statement which Mr Renoldi made during a televised interview in 2003, that "… *my dream is, I would like to do something which I could do with football*".

72. Over the period from before 2002 until about the middle of 2004 Halemere was managed by Mr Renoldi; but Mr Renoldi's oral evidence (in contrast with his written evidence) was that both Ben and Wayne were "silent partners" in Halemere and from time to time received drawings from it.

73. At some time, in about 2004, when Ben and Mr Renoldi parted company, Mr Renoldi gave up Halemere and moved out of 62 Orsett Road, allowing Ben and Wayne to keep the name *"*Callahans Labour Hire*"* while he took the staff to set up his own recruitment business. This he started up and ran through a company called "Thameside Labour Hire (London) Limited". Then, in September 2005 an application was made to have Halemere struck off as dormant, the application form for the striking off seemingly having been signed by Wayne.

74. Meanwhile, in about the middle of 2004 a company named "Callahans Labour Hire Limited" was formed, while a company with that name which had been incorporated in July 2003 changed its name to "Callahans Labour Hire (2004) Limited". Beyond the fact that these entities appear to have been associated with the Bennett family in a loose sense, I cannot say what lay behind these arrangements.

75. However, one issue canvassed at the trial concerns two series of invoices, both addressed to "East Thurrock United FC", one from Pageway dating from 2003 to 2004, and the other from Callahans Labour Hire Ltd dating from 2005 to 2006. The Claimants rely on these as showing that Mr Ford or his companies were paid for work done at the Ground. Mr Ford challenges these invoices, suggesting that they may not be genuine, were not paid and, in the case of the Callahans invoices, were not from a company with which he was concerned.

76. At this distance in time it is impossible to reach any firm conclusion on this issue. However, the invoices do not give the impression of being rendered for the services described, and I am not persuaded that they establish that Mr Ford was paid for any and all his work at the Ground. On this issue I consider that

the burden lies on the Claimants, and on the balance of probabilities they have not satisfied me.

77. It was common ground that in about 2002 or 2003 Ben made an undocumented loan of £140,000 involving Mr Renoldi. Ben contended that the loan was a personal one to Mr Renoldi, while the latter claimed that the loan was for Halemere. This is another issue I need not resolve; but it gives an indication of what in my judgment is typical informality surrounding arrangements entered into by Ben.

78. What is striking about this loan is that Mr Renoldi's oral evidence was clear, that Ben had an interest in Halemere, and that, he said, was the reason for Ben's loan. This was, as I have said, a change from Mr Renoldi's written evidence. The change appeared to me to have intended to deflect the argument that Mr Renoldi would have been pleased to involve himself in the Football Club without any promise of a share or a financial reward, simply because he was grateful to Ben and would wish to help him if he could, and also because he was excited about being able to participate as an insider in promoting an active semi-professional football club.

The operation of the Football Club after mid-2002

79. In practice it seems that from about the middle of 2002 income from activities at the Ground, football and social, was used to pay current outgoings and to service the Greene King debt, this income being topped up as occasion required by the Bennett family or their associated businesses, the Club having surrendered possession and control of the Club's property to Ben. Some of the income from the activities at the Ground went through the Callahans account, notwithstanding that after the acquisition of the Football Club there had been the bank accounts referred to in the next paragraph and that later, when the First Company was started, it had its own bank account. It would seem also that some of the income, from gate receipts, from fruit machines, the bar and the like, and from portacabins installed on the Ground and rented out as temporary sleeping accommodation, was received and paid out in cash.

80. On 16 September 2002 a bank account was opened for Wayne trading as East Thurrock United Football Club; and by about the middle of 2003 there was also a bank account with the name "Wayne Bennett T/A East Thurrock United Football Club No2 A/C". These accounts were used at the time for the Football Club's purposes.

81. The First Company had been incorporated in September 2002. In about April 2003 an application was made by Mr Baker to have this company registered for VAT; and on 20 June 2003 HM Customs and Excise wrote to say that by then it was understood that the First Company had taken over all the Club's trading activities.

82. The precise date when the First Company took over the Football Club is not clear. It may not have been before 2003. In cross-examination of Mrs McBride Wayne's Counsel put it that "*The club was run via a company called East Thurrock United Football Club Limited, from 2002, was it not?*", a proposition with which Mrs McBride agreed.

83. At all events, whether the First Company came into the picture shortly after its incorporation in September 2002, or only in 2003, by about the middle of 2003 at the very latest it was used as the vehicle for holding what had been the Club's property and running the Football Club.

84. In evidence is a faxed document dated 9 February 2005 containing two sheets of bank statements for a current account for the company from October and November 2004, covering the company's 31 October 2004 financial year end. I comment that the 9 February 2005 date shown on the fax is notable, as it is the day before the First Company's 2004 accounts were signed off, suggesting that the fax was sent as part of the process of finalising those accounts.

85. The arrangement involving the First Company continued for several years until, in about 2009, there was a further change, with the first company dropping out of the picture and another coming onto the scene.

86. Meanwhile minutes of an annual general meeting of the Club held on 8 June 2003 record that the meeting was held to "*officially dissolve the club committee that stood down 01.09.02 Club now run on a management basis from that date*" and that a "*Football Management Committee*" was appointed. Mr Renoldi, I should add, is recorded as having been appointed to this committee as "*Commercial Co-ordinator*".

87. To complete the narrative as regards the cessation of the Club, the 2004 Report to which I refer later explains that, by the time of that report, it was assumed that the Club had ceased to exist.

88. According to the First Company's first annual accounts, those for the period from 16 October 2002 to 31 October 2003, the Football Club started trading on 1 September 2003, and had a single director and shareholder, Wayne. His shareholding was said to be owned beneficially by him. These accounts, which were signed by each of Wayne as a director and Mrs Susan McBride as Secretary on 8 February 2005 (according to the date on the accounts), also showed the First Company to have tangible assets of £340,531which included "*freehold property*" at £217,114, along with plant and machinery at £90,000 and fixtures and fittings at £38,000; and the accounts reported the First Company as having an outstanding loan of £322,702 payable in 2 to 5 years. The activity of the First Company was described as that of a Semi-Professional Footballers Club.

89. The freehold property referred to in these first annual accounts for the First Company is the Ground; and the loan is the Greene King debt.

90. These annual accounts were prepared for the First Company by P. Baker & Associates, the accountancy practice of Mr Baker. They have on them a "received" date stamp of 9 February 2005, suggesting that that was when the signed copy of the annual accounts was received back by the practice; and this indication that the trial bundle copy of these accounts is from the records of Mr Baker is supported by the manuscript legend "E43" on the copy, this seemingly being the accountants file number. According to Mr Baker it was not him, but a Mr Hawkins of his practice, who assisted the First Company with the preparation of these annual accounts. If Mr Baker is correct about this, then the typed parts of the original of the Notes and Queries document,

discussed below, must have been generated by Mr Hawkins setting out queries in order that crucial information for inclusion in the First Company's accounts could be checked; and Mr Baker or someone else in his office will have followed up the queries with Ben or (on Mr Baker's evidence) Ben and Wayne together.

91. In particular, so far as concerns the treatment of the Ground in the annual accounts, Mr Baker's oral evidence was that "*everything to do with the football club and all the meetings that were held were always held with Wayne and [Ben] present. And I think initially when we started to act for the club, Ben and Wayne implied that the property was owned by the company …*".

92. Mr Baker acted for a long period, for most of the period relevant for the issues in this action, for each of Ben, Wayne, Mr Ford, and Mr Renoldi, as well for the First Company and other companies administered from the Orsett Road offices such as Pageway. Documents with his writing on or from his practice featured much in the evidence at the trial.

93. In late 2003 and early 2004 the Isthmian League carried out a review of the Club. This led to a Report ("the 2004 Report") dated on each page 19 April 2004. According to the 2004 Report, which was prepared for the Isthmian League by the Football Association Financial Advisory Unit with a Mr Lee Champion as "reporting accountant", the production of the 2004 Report had included "*discussions with the commercial manager, Mr S Renoldi*"; and in his oral evidence Mr Renoldi agreed that he had indeed had such discussions.

94. The 2004 Report contains, in various places, italicised responses in answer to recommendations. It appears that there had been a draft document prepared and sent out in December 2003, following field work in late November and early December 2003; and the responses on behalf of the First Company must have been sent back before the issue of the final report.

95. Various passages in the 2004 Report need to be mentioned. Nevertheless, a measure of caution is required when reading the 2004 Report, as the 2004 Report seems to offer confusing descriptions of the interest in the Ground which was immediately involved: there are references both to a freehold and to a leasehold, when it must be one and the same interest in the Ground, a freehold interest, which the 2004 Report is intending to refer to.

96. The 2004 Report contained no indication that either of the Additional Parties or Wayne had any beneficial interest in the First Company, the Business or the Ground. The only indication that an individual (as opposed to the First Company and, thus, Wayne indirectly as owner of the Company) might have an interest in the Ground, or in the purchase of the Ground, was a reference to Ben's intention to purchase the Ground; but even that reference is then confused with an understanding that it is to be the First Company which is to take a transfer of the Ground.

97. Relevantly, the 2004 Report contained reference to the formation of the First Company and stated that Wayne was the sole owner, and also that "*all football related income is now passing*" via the First Company. It referred to there having been a brewery loan owed by the Club of £366,490 "*secured by a mortgage over the freehold land and club premises*"; and it referred to the

Club having in April 2002 resolved upon a rescue package put forward by Ben, whose intention was understood to be "*to purchase the 99-year lease to the ground from the members club and removed (sic) the threat of the brewery calling in the loan*".

98. On behalf of the Defendants it was submitted that income from certain activities at the Ground, for example rental income from portacabins installed in the car park at the Ground, did not qualify as "football related" and was therefore dealt with outside the First Company. If so, the most likely explanation seems to me to be simply that where income was received in cash it was either applied for Football Club purposes but not accounted for, or taken into and dealt with through the Callahans Account. But in any case it is impossible at this distance in time to divine what income was football related and what was not, and what the amount of the income was. Further, I cannot see how it would assist the Defendants if their submission were correct. Their case is that they were to be partners in the Football Club, not in a business carrying on non-football related activities at the Ground.

99. Three other passages in the 2004 Report should be mentioned.

i) First, the 2004 Report explained that "*We have insisted that [the First Company] agrees in writing to honour any debts that remain outstanding from the former members club*". It recorded as a recommendation that the First Company should state that it agreed to undertake any debts that remain outstanding from the Club, and that the statement should be forwarded immediately to the Isthmian League and the Essex FA. The Report recorded the "*Club response as at 16 April 2004*" as being that "*the Club officials are currently finalising matters regarding the transition from Members Club to Limited Company and on conclusion thereof, such undertakings as required … will no doubt be given*".

ii) Second, the 2004 Report requested "*a copy of the written confirmation from the Trustees … that the freehold was to be sold to*" the First Company. The 2004 Report recorded the "*responses as at 16 April 2004*" as being to refer to the response just quoted, adding *"… It is included in the minutes of April 2002 that [the First Company] will be given such an undertaking*". In this connection the 2004 Report also contained a summarised balance sheet for the Club at 30 June 2002. This showed the Club to have at "*NBV*" assets, including "*Clubhouse, stand and floodlighting*" at £300,854, "*Improvements to pitch*" at £61,059, and "*Furniture, fixtures and fittings*" at £5,457, giving a total for fixed assets of £397,370. The principal liability for the Greene King loan was shown at £366,490. In principle this balance sheet, if accurate, was depicting assets which Ben was to have acquired from the Club in return for the assumption and discharge of the Club's liabilities, including the Greene King debt.

iii) Third, the Report records that the reviewer was given to understand that "*the brewery loan was transferred from the members club at the time of incorporation to [the First Company]*", and then makes a request for "*a copy of the latest loan statement that confirms where*

legal ownership of this loan now sits". The 2004 Report recorded the response as being the same as quoted in sub-para (i) above.

100. Mr Renoldi relies on a BBC television broadcast from early during the 2003-04 season, when East Thurrock United had had a successful run qualifying rounds for the FA Cup competition. The broadcast focussed on the team and its support. During the broadcast Mr Renoldi was interviewed; and for a few seconds a caption was displayed labelling him "*Simon Ronaldi Co-Owner East Thurrock United*". It is submitted for Mr Renoldi that this broadcast demonstrates that he had an ownership interest in the Football Club.

101. When, however, Mr Renoldi was asked how it happened that the 2004 Report did not mention his having any such ownership interest, his explanation was that "*On this report, I was forced to do with the FA, I did not know what I was supposed to tell the FA. The affairs at the club, as you have seen in the trial, was not 100% squeaky clean, was they?*".

102. In early 2005 the First Company was being pursued by the Revenue for late submission of its tax return; and on about 17 January 2005 the Company's accountants, P Baker & Associates (to whom I shall make reference later in this judgment), submitted a corporation tax computation showing the acquisition of a stand and pitch at £90,000 and fixtures and fittings at £38,000.

103. I have referred to the date on which the 2002/03 accounts of the First Company were signed, namely 8 February 2005. Also in evidence is a photocopy document, a copy of a printed form document partially completed in type but with the date 8 February 2005, and various other entries, added in manuscript. Mr Renoldi gave evidence about how he had found this photocopy document (which I shall call "the N&Q Document"), after the start of these proceedings, when looking through some boxes of documents, in Wayne's possession. These boxes had been provided by Mr Baker and were said to contain papers relating to the Callahans business. The N&Q Document is only a photocopy, as I have said. The original document showing the original ink or pencil manuscript has not been produced.

104. The document of which the N&Q Document is a copy is headed "*Notes and Queries*", and appears to have been made on a type of form which an auditor or accountant might use in dealing with a draft set of accounts. The client is described, in type, as "*East Thurrock United Football Club*", and the form has the typed legend "*Y/E: 31/10/2003*". There is also the typed legend "*REF: M097*". On the left of the document is a column headed "Queries", beneath which are two typed entries: "*Details of Greene king loan required to agree Barrelage and balance by year end*", and "*Freehold premises £217,114 confirm ownership*". There is also, lower down, the manuscript text "*A/c's urgent*". In manuscript, under the heading "*Answers*", are set out the following entries: first is, "*Loan statements faxed per client call to brewery*"; and second is:

"*Premises owned by*

WAB 20% TF 20% BB 50%

10% S. Renoldi

Introduced with loan

above".

105. In my transcription of the manuscript I have used the word "introduced". To my eye that is what is clearly written. However, the Additional Parties' pleading uses the word "contributed" in the place of the word "introduced". Oddly that was what Mr Baker said at first, in his oral evidence, had been the word appearing in manuscript in the document. I have great difficulty with this. The middle of the written word plainly contains no letters "i", "b", or "t". And later, in the course of his oral evidence when asked in re-examination to read out the manuscript text, Mr Baker himself read out the relevant word as "introduced" not "contributed".

106. There is an issue about the N&Q document, and the original of which ultimately the N&Q Document is a photocopy, and in particular as to when the N&Q Document was made and by whom, and how it came to light. The Claimants characterise this as "suspicious", and do not accept that the manuscript text was added to the original document on or about 8 February 2005. It was put to Mr Renoldi in his cross-examination that the document was a fabrication by him or Mr Ford.

107. If, the original from which the N&Q Document was made as a copy was a genuine and contemporaneous document in the same terms as appearing on the N&Q Document, when set against the content of the 2002/03 accounts and the next year's accounts (which I am about to describe), the force of the manuscript text is, in my judgment, that the writer (that is, someone within P Baker & Associates – and as mentioned above, Mr Baker says it looks like his writing) was recording the writer's understanding that the Ground had been introduced to the company by the owners as an asset in consideration for the assumption of the debt owed to Greene King.

108. As to this, the writer, if involved in the production of the 2002/03 accounts, or the provision of information to the Football Association, cannot have believed that the Ground, was after the financial year end still beneficially owned by anyone other than the First Company, because otherwise the 2002/03 accounts and the information provided to the Football Association would have been altogether untrue. In his re-examination Mr Baker explained that the text, "*introduced with loan above*", showed the consideration for the First Company's acquisition of the freehold, in other words the Ground, to have been the taking over of the loan: as he explained "*the loan must represent an asset … if you take over the loan, if you are taking over the loan, then you must be introducing some consideration for it*". This makes perfectly good sense, and is consistent with the presentation in the First Company's accounts and statements in the 2004 Report.

109. The Additional Parties rely on the statement in the N&Q Document concerning the identity of the owners and the ownership shares as corroborating their case that Ben and the Defendants had agreed on the acquisition of the Football Club's business and assets by them in the relevant proportions shown on the document. It is also relied upon by Wayne, by whom Mr Baker was called: Mr Baker referred to the document in the following terms in his written evidence: "*On 8 April 2003, Wayne came to see*

me at my offices and instructed me to deal with the incorporation of [East Thurrock United Football Club Limited]. It was incorporated primarily to facilitate the activities of East Thurrock United Football Club ("the Football Club) … I was instructed by Wayne and Ben to incorporate ETUFCL, register it for VAT and set up its payroll schemed. I was also instructed to prepare VAT returns, annual accounts and to deal with any enquiries from The Football Association … I had various meetings with Wayne and Ben during which I took instructions. At one such meeting in 2005 at which Wayne and Ben were present we discussed ownership of the Football Club and I was told that Wayne had a 20% share, which is reflected in my file note". The file note referred to by Mr Baker is the N&Q Document.

110. The difficulty with Mr Baker's suggestion in his written evidence, that the document recorded Wayne as having a 20% share of the Football Club, is not so much that the document records other names in addition to Wayne's which are not mentioned in Mr Baker's statement, but that what the document purports to record is past ownership of the Ground now acquired by the First Company. It says nothing about past or current ownership of the Football Club (as opposed to the Ground); and, consistently with Mr Baker's oral evidence, set out above, that Ben and Wayne had told him that the Ground was owned by the First Company, the document records an understanding about the acquisition of the Ground and its ownership by the First Company.

111. I do not consider Mr Baker to be a reliable witness. He made a witness statement in the FTT Proceedings in which he described an important document, a schedule of properties (which I shall call "the 2009 Properties List") submitted to the Revenue, as having been "*agreed by all the parties as accurate*". The 2009 Properties List was a schedule of properties at 5 April 2009 sent to the Revenue by Mr Baker in 2010, at the conclusion of an investigation into Wayne's tax affairs and the Callahans business started in 2005. Mr Baker's written evidence for this trial refined this story, saying that the 2009 Properties List was "*not entirely agreed*", a couple entries remaining contentious, but that "*both parties*", that is Wayne and Ben, "*gave approval to send the schedule"*. The second version was the version which was in line with the evidence Wayne was giving in the present trial; and Mr Baker confirmed the truth of his witness statement in this trial without correction. Yet he agreed in his oral evidence that his second description was wrong. As I explain, the changes made by Mr Baker in his evidence did not end there.

112. In relation to the 2009 Properties List, both Wayne and Mr Baker tried to explain the absence of any reference to Ben or Mr Ford as having an ownership interest in the Ground on the basis that the Revenue were concerned only with Wayne's interest in the Ground, and perhaps several other properties, so that no information needed to be given about those interests. This makes no sense, as the 2009 Properties List was being presented to the Revenue without any differentiation between the properties where complete information was required and those where it was not and was therefore not being given: Mr Baker's letter to the Revenue of 12 October 2010, making the settlement offer and sending the 2009 Properties List explained it "*is a true reflection of the actual ownership of each asset at 5th April 2009*".

113. Further, it is relevant to this that in another respect Mr Baker's evidence to the FTT differed from what it was, as given orally, at the trial before me. Before me Mr Baker relied upon the fact that he had, as he said, been told in a telephone conversation by the Tax Inspector that the Inspector did not want to know about all the various interests in certain properties, including the Ground; in his evidence to the FTT Mr Baker made no such claim, but instead said quite simply that the Inspector had asked him to produce a statement detailing Wayne's interests in the listed assets as well as "*details of any other person with an interest*". There was no reference to any telephone conversation with the Inspector in which this request had been changed. Further, Mr Baker's written evidence for the trial made no reference to any such telephone conversation, but instead, describing the meeting with the Inspector, explained that all that was requested was "*a statement detailing Wayne's assets and his interest in those assets*".

114. Ultimately, Mr Baker said that his statement to the FTT was wrong when he had claimed that the 2009 Properties List was accurate, as the list was only accurate so far as it went as it was incomplete, omitting information which the Inspector said he did not want about several of the listed properties. When asked why his evidence before the FTT had omitted much of what he had told me, Mr Baker was driven to conclude "*To be honest with you, it's confusing. This whole case and the family issue is really confusing*".

115. I accept that, if the N&Q Document is an accurate copy of an original, then 8 February 2005, the date written on the document, would be consistent with the dates on which the First Company's accounts for the years to 31 October 2003 and 2004 were signed. A decision about the items and costs to be shown for the First Company's fixed assets, and also the liability for the Greene King debt, was at the time highly material for the presentation in the accounts; and the 8 February 2005 date would suggest that the original was made in connection with the obtaining of confirmation of those items.

116. The real question is whether the N&Q Document, a photocopy document, can be relied upon as establishing that on about 8 February 2005 there was an original, of which the photocopy is an accurate copy, made by someone within Mr Baker's practice, most likely Mr Baker, in connection with the preparation of the First Company's accounts.

117. After careful reflection, I am not satisfied that the photocopy document produced at the trial is a true copy of a document produced on 8 February 2005. The Claimants have, fairly and squarely, put the Additional Parties to proof; and it is for the Additional Parties to prove what was set out in the original working paper of 2005. What has been produced by the Additional Parties is only a photocopy, made when, by whom and in what circumstances is unknown. It would have been possible, for example, for the two lines of manuscript text identifying Ben and the Defendants as the owners of the Ground, as those lines appear on the photocopy, to be different from what was originally written out in manuscript: manipulation of photocopies is not difficult or unknown.

118. Indeed, given that the author of the manuscript was seemingly describing the introduction of the Ground to the First Company as being "*with loan above*",

and as the loan was the Greene King loan secured on the Ground, which was held by the Trustees for the Club, and was owed to Greene King by the Club, it is more likely that the owners from whom the Ground was introduced to the First Company were Greene King's debtors than that they were collectively Ben and the Defendants.

119. In this regard I explain later in this judgment my reasons for my conclusion that in fact no written sale contract for the Ground was entered into by the Trustees before the Greene King debt had been discharged. Conversely, the Trustees had not been given any binding undertaking as part of such a contract that the Greene King debt would be novated or discharged. In these circumstances it is not obvious what interest the First Company might in fact have had in the Ground, or what liability it might have had in relation to the Greene King debt. Whether, therefore, the First Company was correct to include those items in its accounts is an interesting question which was not explored at the trial. But on no basis could the First Company have acquired or become liable for those items from any dealing with Ben and the Defendants collectively as owners or purchasers of the Ground and persons liable for the Greene King debt.

120. Therefore I am not satisfied that the photocopy document establishes that in 2005 the maker of the original document had in fact understood, or understood correctly, the ownership of the Ground to have been as set out in the photocopy.

121. There is a further consideration. It was Mr Baker's evidence that within his practice he had available a very extensive, if not comprehensive, electronic database containing information dating back to 2003. The detailed information stored on this database was evidenced by the following. In 2017 a colleague of Mr Baker's, having interrogated the database, was able to write for Mr Ford the following letter, dated 8 August 2017, to be deployed by Mr Ford in his proceedings against Mrs Conn: "*I recall a meeting I had with Mr Ford in early 2003 regarding the level of dividends he was able to withdraw from his company at the time Pageway Limited due to him having an extension built at his personal residence."*. The colleague was also able to write on 14 August 2017, saying for Mr Baker: "*I remember that in November 2003, [Mr Ford] contacted me on holiday regarding how to take a dividend of £18,000 from his company Pageway Limited*". As it seems to me, it would have been open to the Additional Parties, once the N&Q Document had been put in issue by the Claimants, to have sought secondary evidence about the original of the document by asking Mr Baker for a copy from his database. Mr Baker told me that he had not been asked for any copy.

122. Mr Baker, I should say, as became clear in the course of his oral evidence, had no memory either of writing on the original document which came to be reproduced in the photocopy, or indeed of the original document itself.

123. There are three further comments I would make concerning Mr Baker's evidence. First, in the course of his oral evidence Mr Baker struggled to reconcile the fact that his practice had assisted the First Company with the preparation and filing of three years of annual accounts which had reflected the Ground as an asset belonging to the Company, with his evidence that he

must have prepared a note in February 2005 showing the Ground to be owned by four individuals. His explanation was that the preparation of the accounts was by a member of his staff, not him. However, he had himself done work of a practical and detailed nature in relation to, at the least, the preparation of the accounts to 31 October 2003, this work involving the making of final adjustments reflecting (among other things) the Ground as part of the First Company's assets. In my judgment he must have known, at the latest from February 2005, the way in which the First Company was accounting for the Ground.

124. Second, I reject his evidence that he had a meeting in 2005 in which Ben and Wayne told him that Wayne had a 20% share in the Football Club. I do not believe that he has any memory of any such meeting. When challenged on the part of his written evidence where he had claimed to have had such a meeting, his answer was: "*You have to understand that nobody would agree. To try and get an agreement from this family to get these accounts signed … If I am honest with you, you were provided with the answer from the clients which Ben would advise you whatever answer suited, whether I was responding to a question to the FA but the whole thing was just totally confusing, and no one would provide you with a straight answer*". While this answer has a ring of truth about it, that the Bennett family stated positions would be led by Ben and would be whatever Ben thought at the time to be convenient, it does not support the proposition that Mr Baker could remember being told in 2005 that Wayne had a 20% share of the Football Club. When pressed further on the point, Mr Baker relied upon the meetings of 2010 surrounding the settlement of the Revenue investigation, meetings which had involved Ben, Wayne and Mr Stonebrook.

125. Also in his written evidence Mr Baker, when describing those meetings, said "*These meetings were tense and there was arguing during them but I understood from meetings (generally in my capacity as an accountant for the parties) that the Football Club was acquired by Trevor Ford, Simon Renoldi, Wayne and Ben using personal and company income and their own assets. Simon, Wayne and Ben had an interest in a labour hire company that put money in …*" And in his oral evidence he explained that he first had his understanding about the acquisition of the Football Club from about 2005, that being a time when first "*there was some contention*", this being "*mainly between Wayne and Benjamin*" as to exact percentage shares in the land (not just the Ground but "*ownership of all the properties*") and was, so far as the Ground was concerned, whether Wayne had 20% or 25%. He further elaborated on this explanation to say that the dispute about percentage shares had developed in 2005, but after February 2005, and was whether the information that had then been given to Mr Baker was accurate and was as to "*who owned the football club*".

126. In my judgment Mr Baker's evidence was simply made up. There are two reasons. If Mr Baker had in 2005 had any such understanding as recorded in his written evidence, his practice would have been involved with the preparation and finalisation of accounts, a process which continued until early 2007, which gave an altogether false picture of the First Company. Second, no witness has spoken of any dispute concerning ownership of the First Company, the Football Club, or the Ground, at any time before, at the earliest,

the making of the 2009 Properties List. Indeed, it was Wayne' positive case that, so far as he himself was concerned, there was no dispute with his father about the Ground until modern times.

127. The third point concerns Mr Ford's tax returns for the years ended 5 April 2003 and 2004, both of which were submitted by Mr Baker's practice. The second of these appears to have been produced in early 2005. In both cases the return indicated that Mr Ford was not in partnership. Had Mr Baker at the time believed Mr Ford to be part owner of the Football Club along with Ben and Wayne, one would have expected the returns to have reported Mr Ford to have been in partnership with them in the Football Club (that is an unincorporated business being carried on together by its owners in common with a view of profit).

128. The annual accounts of the First Company for the following year, to 31 October 2004, were signed in the same way as the previous annual accounts, but with the date of 10 February 2005, and showed much the same as the previous accounts. As before, these annual accounts showed tangible fixed assets which must have included the Ground.

129. On 18 February 2005 (and therefore just after the signing of the 2002/03 and 2003/04 accounts and the manuscript date in the N&Q Document), the Football Association (by Mr Lee Champion) wrote to Mr Baker at P Baker Associates concerning East Thurrock United Football Club. The letter stated, among other things, "*We note that the accounts for the year ended 31 October 2004 (albeit unaudited) include Freehold Property. One assumes that this is the football ground and as a result we require a copy of the title absolute to ensure that the club has adequate security of tenure to comply with Southern League rules.*"

130. On 3 March 2005 Mr Baker wrote to Ben enclosing a copy of the 18 February 2005 letter and saying that he had been asked to provide the information I have just quoted. The fact that it was Ben, and not Wayne, to whom Mr Baker wrote is notable, as it is consistent with Wayne having been a nominee, or "*front runner*" as Wayne put it, for Ben in the First Company.

131. On 14 April 2005 Mr Baker replied to Mr Champion saying, as to this particular request, "*I have written to Green King (sic) to ascertain who holds the Deeds as they are held against the Green King loans*". Mr Baker did not say that the relevant freehold land was not the Ground, or that the Ground belonged to anyone other than the First Company, as depicted in both the 2002/03 and 2003/04 accounts.

132. In evidence are a couple of pages of working papers of Mr Baker's firm produced in about September 2006 by Mr Tony Hawkins in connection with the preparation of the First Company's accounts for the year ended 31 October 2005. The papers include a note reading "*discuss loan and issue of freehold property*". There is no entry recording the result of any discussion. The accounts themselves, signed seemingly by Dominque (as sole director) and Mrs McBride on 2 January 2007, follow the previous years' accounts in including freehold property at £217,114, and a 2-5 year loan (which must be the Greene King debt) at £324,137.

133. Before the Court is a series of print-outs, dated 13 December 2006, of computerised accounting ledgers for the First Company for the year ended 31 October 2006. These still record the First Company as having freehold property at £217,114, along with plant and machinery, and as having a debt payable after 2 years of more than £300,000.

134. The First Company was struck off in early 2011, notice having been given by the Registrar of Companies on 2 November 2010.

135. However, on 7 January 2010 and before the First Company's dissolution a series of annual accounts and restated annual accounts for the First Company was filed at Companies House covering years down to 31 October 2008. These, which appear for the most part to have been signed in mid-2009 by Dominique and Mrs McBride, showed the company to have had no assets other than stocks and cash in the year ended 31 October 2003; and there was no indication that the First Company owned any real property. Equally, there was no debt due in more than one year shown as owed by the First Company: creditors were all due within a year.

136. As it was explained by Mr Baker in his oral evidence, "*the property was later extracted from the accounts*". But there is no evidence before the Court to explain what went on within the First Company, or within Mr Baker' practice so far as his practice was involved with the extraction of the Ground and restatement of accounts. And what led to the extraction of the Ground is unexplained.

137. At the time of the extraction the Greene King debt had been paid off with the proceeds of a loan taken in Dominique's name; but as yet the title to the Ground remained with the Trustees. Ordinarily one might have expected the accounting for the extraction to have reflected a sale of the Ground by the First Company to Dominique in consideration of her discharging the Greene King debt. Instead the accounting treatment for the extraction involved concluding that for many years the First Company had wrongly been including in its assets and liabilities both a material property and a material debt.

138. One possible explanation is that the extraction of the Ground was considered sensible by Ben, who must have been the prime mover in the extraction, in order to remove the risk of a failure of the First Company leading to the Ground being realised for the benefit of the First Company's creditors; another is that the extraction was considered sensible for reasons connected with the Revenue's then continuing investigation into Bennett family affairs, including in relation to the First Company. Either way, it is likely that the decision to extract the Ground was connected with the decision to form the Second Company, referred to below. Whatever the explanation, it is remarkable that the episode has simply been glossed over.

139. There is a feature of the First Company which needs to be mentioned. In the course of the Revenue investigation which I already mentioned a letter dated 10 December 2007 was sent on behalf of Wayne to the Tax Inspector: in evidence is a copy of the letter, a letter prepared by Mr Fleetwood who, at the time, was assisting with the investigation. This letter stated that, as regards the First Company, Wayne had no shares and no profit drawn. The letter was in response to a letter dated 22 November 2007 from the Revenue to Wayne at

his home address asking, among other things, "*Are you, or have you been in the last 6 years, a director or shareholder of any UK companies*", with a request for details.

140. My conclusion is that what was said to the Revenue was in substance true, and that Wayne was in fact a nominee for his father. This was what Dominique agreed in her oral evidence so far as concerned her own position as director and shareholder in the First Company. It was Ben's style of operation never to hold property in his own name, and to have nominees front for him in his business activities. As I explain, this was, indeed, the way in which he and his family operated, and had operated for many years before.

141. Thus, it was Ben who caused the First Company to be formed, and had Wayne made director and shareholder. He had Dominque appointed to be a director and given shares. She explained in her oral evidence that she "*never dealt with anything*" for any of the companies, and had nothing to do with paperwork except that "*as I have said before, if I am asked to sign something by my father, I do*". In cross-examination Ben said that the club was 100% his and he was in control of it, having whatever control he felt necessary. He also said that he regarded himself as being the owner of a football club and the land. In my judgment it was Ben who made any important decision concerning the financial affairs of the Football Club after the formation of the First Company, his children being fronts for him.

142. The point can be looked at in another light. If the First Company was in fact wholly owned by Wayne until after October 2004, with him being the sole director, it is difficult to see why he should have been willing to have half the First Company made over to Dominique in late 2004: seemingly he, and he alone, was indirectly through his company, the First Company, the owner of the Football Club and thus the Ground (insofar, that is, as a sole shareholder is appropriately to be treated as owner of assets owned by the shareholder's company).

143. In July 2009 a new company was formed, with the name (originally slightly misspelt) of East Thurrock United Football Club (2009) Ltd. This company I shall refer to as "the Second Company". Dominque was the sole director. Information provided to Companies House conveyed that she held 499 of the 1000 issued shares in the Second Company, with Wayne holding the remaining 501 shares. Dominique, in giving her evidence at the trial, was asked about this company. Plainly she knew practically nothing about it and had had no involvement with it. It was Ben's company, and Ben was the controller of it and of its affairs.

144. According to documents provided to Companies House, the Second Company was dormant up to July 2010, a little before the notice had been given by the Registrar of Companies concerning the striking off of the First Company. By one means or another it has come to own and run the Football Club in the place of the First Company, but not to own the Ground. The only evidence as to this was from Mr Speight, one of the witnesses called by Ben to give evidence concerning the Football Club. He explained that he was very much involved with the incorporation of the Second Company, and worked with the

FA and the Isthmian League to ensure that "*all the Club's business was conducted properly*".

145. Ben, I note, has made in his written evidence the statement that he gave instructions to Mr Baker to incorporate the Second Company because he discovered that the First Company had been dissolved for its failure to file accounts. I have no doubt that it was Ben who instructed Mr Baker to form the Second Company. But Ben must be wrong in saying that the instruction followed, and was because of, the striking off of the First Company, when the Second Company was incorporated at about the same as the "extraction" of the Ground from the First Company and long before the First Company was struck off.

146. One complaint in these proceedings made by Wayne is that an annual return for the Second Company, made in 2014, has shown him to have made a transfer of 501 shares to Dominque on 31 August 2013. However, it seems to be common ground between the parties that Wayne has never a made a transfer of any shares in the Second Company.

147. The Claimants' attempted justification for the depiction of there having been a transfer of the 501 shares is that there was a mistake in showing them as having been issued to Wayne in the first place. But that cannot be a possible reason for showing a transfer of the shares, rather than seeking to have the register of members rectified. And that would raise the question whether Wayne was ever in truth properly a member of the Second Company and whether he had ever agreed to take any shares. Possibly he had not, as almost everything done in relation to the Second Company appears to have taken place without him knowing, much less agreeing, anything at all. But this is not an issue before me, as no party is claiming to have the Second Company's register of members rectified and there has been no evidence on the particular point.

148. The relief claimed by Wayne is "*a declaration that there has been no transfer, or no valid transfer, to the First Claimant of the Defendant's 501 shares in the Second Company*". While I think Wayne is entitled to a declaration that he has not made any transfer of any shares in the Second Company to the First Claimant, I am not in a position to give a declaration that he is in fact a member of the Second Company with a holding of 501 shares. Unless the parties can resolve their differences on this question, it would be a matter for yet further proceedings, this time proceedings joining the Second Company as a party.

<u>The Greene King debt and the purchase of the Ground</u>

149. It is convenient at this stage to return to 2002, and to consider what other documents suggest as regards the discussions surrounding the Greene King debt and its ultimate repayment, and also as regards the movement of the legal title of the Ground from the Trustees.

150. On 13 December 2002 Greene King wrote to Ben giving an explanation of the Greene King debt and the arrangements in place in relation to the debt. This letter followed a meeting which Ben had had shortly before with Greene King. In the letter there was an offer to discuss repayment of "*the Club's principal*

debts (excluding early redemption figures) ... together with a trading relationship going forward." This letter was followed by one in March 2003 from Greene King to Ben setting out offers for dealing with the debt. In about the middle of 2003 there had been further discussions, with Greene King writing to Ben on 2 September 2003 to acknowledge having received "the Letter of Intent", and promising to send "a Formal Offer Letter".

151. What transpired with Greene King between September 2003 and November 2004 does not appear from the documents before the Court. But it is clear that in October 2004 Ben had a meeting with Greene King; and on 5 November 2004 Greene King wrote to Ben to arrange a follow up. On 9 November 2004, Greene King sent Ben an offer to restructure the debt with payment over a long term and there being volume commitments for sales of beer, wines and spirits.

152. The next letter in evidence is one from the following year. This, dated 8 April 2005 from Ben, on behalf of the First Company, was to Greene King commenting on proposals and figures from Greene King. It described, on the second page, the letter of 9 November 2004 as Greene King's last contact: this must have been intended by the words acutally used in the letter, "*your last contract*". One notable point about this letter is that it included the statement that "*I am paying a monthly payment on standing order of £1680.40 which would be servicing the £319,000 loan*".

153. There was at the time such a standing order payable from the First Company's own bank account. Ben was cross-examined about the statement. It was put to him that "*The company was paying the debt, and we have seen from your pleading that the club was paying its income into the company, and for these purposes they are one and the same.*" Ben agreed with this. He also agreed that he probably did not "*really understand the distinction between ... a company and himself in these sort of circumstances*".

154. More importantly, accepting that money being used to service and reduce the Greene King debt was coming from the Football Club, this being at the time the First Company's business, it has not been explained to me on behalf of the Defendants how their efforts to promote and assist the Football Club, that is efforts by them for the First Company, give them any claim on or interest in the Ground in the hands of the Claimants. Their claims would lie against the First Company, at least in the first instance.

155. The following year, on 4 May 2005, Greene King wrote again to Ben, this time at the First Company, setting out the position as regards beer sales and the debt since November 2002. According to this letter some £30,000 had been sent to Greene King "*as capital sums*". On 13 July 2005 Greene King sent to Ben at the First Company an offer letter for £249,500 "*in order to complete this matter at the beginning of August*", but in a covering letter also made reference to "*commercial rate discounts*" to be detailed in a separate letter. The indication, in other words, was that what was under negotiation was a continuation of a long-term debt with Greene King and some kind of sales-related repayment terms.

156. A year later, on 27 March 2006, Mr Stonebrook wrote to Ben to say that he had requested from Greene King a full redemption statement. This statement,

dated 31 March 2006, was sent to Ben by Mr Stonebrook on 31 March 2006. This correspondence continued into the summer of 2006.

157. On 25 August 2006 solicitors for Greene King wrote direct to Ben. This explained "*I have spoken to Mr Robert Stonebrook and with his agreement I am writing direct to you with the enclosed Legal Charge in favour of Greene King relating to the Football Club premises. I understand that legal ownership is being transferred from the present trustees to you. I understand that the property is then being mortgaged by you to Greene King in respect of monies owing to Greene King by East Thurrock United Football Club Limited. The enclosed Charge needs signature by you*".

158. For reasons which will appear, it is significant that the author of this letter, if reporting correctly, had had it from Mr Stonebrook that the transfer of the Ground was to be to Ben (and therefore not to Wayne).

159. Also on 25 August 2006 Greene King sent to Ben a letter in which it was said that £170,026.18 was needed "*to complete this week*", with a new loan and trade relationship being made direct with Ben.

160. In late August 2006 some £60,000 was paid via the Callahans account to Greene King; but a letter of 6 October 2006 from Greene King conveys that, apart from this payment, what was to happen to the balance of the Greene King debt and how if at all it was to be restructured or discharged then remained open. (This £60,000 is said by Ben to have been his own money; and although Ben was challenged on this in his cross-examination, there has been no evidence offered to contradict Ben's evidence on the point. I therefore say no more about it.)

161. Greene King's debt had not been repaid by February 2007, and no arrangement satisfactory to Greene King had been reached. This appears from a letter dated 9 February 2007 sent by Greene King's solicitors, Stanley Tee, to Mr Keating. The letter pointed out that Mr Keating was one of the registered owners of the Ground, that Greene King had a charge on the Ground to secure their outstanding accounts, and that Greene King "*are currently confused by the continuing situation regarding Mr Ben Bennett. They have been led to believe that Mr Bennett would be purchasing the land ... to include a simultaneous restructuring of the monies owed to Greene King and the security arrangements*". The letter pointed out that "*The lack of developments on this front is of great concern to them as mortgagee*", and threatened proceedings to enforce Greene King's security.

162. Mr Keating's evidence about this letter is that, while he recalls having received it, he understood that Ben was dealing with it. At all events the letter must have prompted from Mr Keating a reaction of some sort, as the markings on the letter in the trial bundles suggest that someone, whether Mr Keating or someone else, spoke to the solicitors on 12 February 2007. Then in March 2007 Greene King sent Ben a letter stating that the redemption total for the debt was £288,414.97; and on 12 April 2007 Greene King offered to accept "*the negotiated compromise settlement figure*" of £241,000. This was subject either to payment in full or acceptance of a new loan. In the event, as I have already explained, the debt was fully repaid in May 2007.

163. Wayne's contention before me, in written and oral evidence, is that he was beneficially interested to the extent of at least 34% in the sum paid to Greene King in May 2007 in repayment of its debt.

164. In the FTT Proceedings it had been Ben's contention that Wayne had no interest in the Bennett Partnership Account or the monies in it. Ben had contended that using the Bennett Partnership Account for receipt of the £366,000 (proceeds of a loan negotiated by Ben without reference to Wayne) was a convenient way of keeping the monies separate from those passing through the Callahans account. Ben had also contended, and it was found in the FTT Proceedings, in a judgment from which Wayne has not appealed, that the loan had been negotiated by Ben without reference to Wayne. On this basis, Mr Marc Glover on behalf of the Claimants submitted before me that the receipt of the loan and the subsequent payment of Greene King did not show that Wayne had made any contribution to the payment of the Greene King debt.

165. I accept this submission on behalf of the Claimants. The obvious point is that, on any view of the evidence, by 2007 Wayne and Ben had fallen out: I can see no plausible basis on which Wayne can claim to have had any interest in any part of the £241,023 paid to Greene King through the Bennett Partnership Account.

166. This point deserves further explanation. In about 2006 there had been a proposal for a reorganisation of borrowings made for the Callahans business and secured over numerous properties. In this context Wayne, Gro and Dominique had represented to National Westminster Bank that there was a partnership in the business of residential lettings and estate agents between those individuals in the shares 34%, 33% and 33% respectively, and in due course a loan agreement for over £1 million had been made between the Bank and those three individuals as the partners in "the Bennett Partnership", with the Bennett Partnership Account being opened for the purpose. In the event the loan had not been drawn, and later in 2006 the loan agreement had been replaced with one in Wayne's sole name. In his written evidence in these proceedings Wayne explained that the Bennett Partnership Account "*was the account … that was set up for the aborted partnership between Dominique, Gro and myself that never came into existence*".

167. As the aborted partnership never came into existence, it is in my judgment entirely irrelevant what was told to the Bank in 2006 about the Bennett Partnership when, in 2007, the Bennett Partnership Account was used to pass through money borrowed by Dominque and paid immediately to Greene King.

168. In passing I note that, in Wayne's statement of case in the FTT proceedings he alleged that interests in "*East Thurrock United Football Club*" were intended to have been part of the consolidation of various business interests planned as part of the opening of the Bennett Partnership Account. In the evidence before me there has been (subject to the point mentioned in the next paragraph) no suggestion, by Wayne or anyone else, of there ever having been such an intention. Indeed Wayne's oral evidence to me was clear, that it would not have made sense to muddle up the football club interests (which supposedly included the Additional Parties) with another Bennett family loan, and that for

that reason the football club was not put forward as security. He had no real explanation for what was alleged in his statement of case in the FTT proceedings (a statement of case signed by him with a truth statement).

169. In reaching my conclusion as to the relevance or otherwise of the £366,000 loan to Wayne's case, I have not overlooked the fact that on 3 June 2010 a letter was written to the Global Restructuring Group of Royal Bank of Scotland, the copy of this letter suggesting that it had been sent by Ben on behalf of "*Bennett Partnership*". The letter, which set out to "*clarify our banking history and agreements with Natwest*", was plainly trying to deflect calls for repayment. In the process the letter described how the amount of the borrowing from the bank had become effectively capped by the fact that NatWest lending to enable, among other matters, the payment of the Greene King debt, had been taken into account. But this letter does not demonstrate, in my judgment, that the £366,000 loan taken by Dominque was part of the Callahans business, or that Wayne made any contribution to it.

170. However, Wayne suggests a further argument in his written evidence. He states that "*we wanted to pay off the [Greene King] debt in full so that we need not be tied to the brewery and could operate as a freehouse. Therefore we obtained a loan to pay off the outstanding amount of the debt. ... Following a discussion in 2007 between my father and I, it was agreed that a loan would be obtained to pay off the debt and that the loan should be obtained in Dominique's name as I had reached my lending limit*".

171. This evidence I reject. As I have mentioned, it is Wayne's own case that before 2007 he had been excluded from the Football Club and had fallen out with his father. His written evidence is that even in 2005 "*my father started trying to exclude me and Trevor [Ford] from any dealings at the Club".* Ben agrees that by 2007 Wayne had ceased to have anything to do with the Club. In these circumstances I cannot believe that in 2007 Ben consulted with Wayne about the payment of the Greene King debt and the borrowing of money for that purpose. As I have already said, I reject Wayne's argument that in some manner Wayne had a beneficial interest in or claim on the money borrowed by Dominique and paid on to Greene King.

<u>The purchase and transfer of the Ground</u>

172. I have referred to Ben's letter of 12 September 2002 to Mr Stonebrook. On 24 October 2002 Mr Stonebrook wrote to Mr George following, what he described as his "*discussions with you and Brian Grover with regards to the above transaction*", that being "*Sale of East Thurrock United Football Club*". The letter enclosed what he said was a revised draft contract for the sale of the Ground by the Trustees to Ben for a price consisting of the "*the debt in favour of Greene King ... limited to a maximum sum of £400,000*". Nothing was shown as being payable as a deposit. Mr Stonebrook explained in his covering letter that there was a stamp duty advantage in confining the consideration to the discharge of the Greene King debt. Also, he was contemplating that the sale and completion would be dependent on the Greene King charges on the Ground being discharged, and that it would be for Mr Stonebrook to give 28 days' notice to complete when he had in his hands the documents required for having the charges discharged; and he was also contemplating two alternative

possibilities for the Greene King debt, one being that it would be paid off direct by Ben to Greene King, and the other being that the necessary funds would be provided by Ben to the Trustees. The special conditions included, at special condition 2.3, a stipulation that the Trustees would not be obliged to transfer the land to anyone other than Ben or a company controlled by him.

173. The inclusion of special condition 2.3 is of some relevance, as there is in evidence a letter signed by Ben and dated 31 July 2002 in which Ben requested that the completion date should be left open and also that special condition 2.3 should be "*erased but exchange in my name*". It is not clear whether, when Ben wrote his letter, special condition 2.3 was in the form it took in the document of 24 October 2002, or was narrower.

174. Finally, in relation to Mr Stonebrook's letter, he drew attention to the question of a deposit for the purchase. As I have pointed out, the draft contract contained no provision for any deposit. The letter to Mr George explained "*With regard to a deposit that again is slightly complicated in that no funds are actually being paid to the trustees for the Transfer it is simply the assignment of the debt. Consequently if I can have your thoughts on any minimal contract (sic) that I shall ask Mr Bennett to hand over to bind him into this agreement*".

175. Also on 24 October 2002 Mr Stonebrook sent a fax to Mr P Reader at Anderson Hunt, solicitors. Mr Reader is also a witness in these proceedings. The fax described Ben as being Mr Reader's client. It referred to previous correspondence between Mr Stonebrook and Mr Reader. Enclosed with the fax was a copy of the revised draft contract described above. Mr Stonebrook added "*We are today forwarding the contract to our clients for signature and hope to be in a position to exchange contracts with you shortly*".

176. It may be noted that had any contract in the form of the draft been entered into with the Trustees for the sale of the Ground, the Trustees would have had the benefit of an enforceable promise on the part of the purchaser to see to the payment of the Greene King debt (albeit limited to a maximum of £400,000).

177. A cheque stub entry in a cheque book for the Callahans Account records that on 31 October 2002 a cheque was drawn for £5,000 for "*E Thurrock FC Purchase Deposit*". There is evidence that this cheque was cashed shortly afterwards. While the payment would be consistent with the indication in Mr Stonebrook's letter of 24 October 2002 that some sort of minimal deposit might be appropriate, there is nevertheless no documentary evidence to show what had in fact happened in the days immediately after 24 October 2002, or to show how in fact the £5,000 was applied or for what. Wayne stated that the money was paid at Ben's instruction, and that he believes it was intended as a cash injection to "*keep the club going in the short-term*", evidence which he repeated in cross-examination. Most importantly, no copy of a signed contract for the sale of the Ground by the Trustees has been put before the Court; and there is a question as to whether any such contract was made and who the parties were.

178. As regards the making of any contract of sale of the Ground by the Trustees before the execution of the TR1 transfer form, the paper trail has a gap from 24 October 2002 and 24 September 2003, after which it comes to an end.

179. Wayne's contention, and his written and oral evidence, was that in late 2002 a contract for the sale of the Ground was entered into between the Trustees and him; and he argues that, when eventually the Ground was transferred by the Trustees, the transfer was pursuant to this contract. In his written evidence he said that in late 2002 he collected the contract from Mr Stonebrook's office, went with it to see Mr George at his place of work "*for signing by the Trustees*", and then "*attended Paul Reader's office to sign the contract, as it was in my sole name*". He said he understands that contracts were exchanged subsequently between Mr Stonebrook and Mr Reader, but that he has never seen the contract. And, in his oral evidence, he observed that "*I think when they come to give evidence, they will explain their tale of events ... and why it is done in this nature*". He denied having rehearsed with them the account which he was giving concerning the exchange of contracts with him as purchaser.

180. In support of this contention Wayne relies on the evidence of Mr Stonebrook. Mr Stonebrook gave written and oral evidence that, when contracts were ready to be exchanged, in late 2002, the purchaser's part was in the name of and signed by Wayne; and Mr Stonebrook also stated that to get the Trustees' part signed Wayne collected the contract from Mr Stonebrook's office and, as Mr Stonebrook said he understands, took the contract to Mr George in order for him to arrange for signing by the Trustees. Mr Stonebrook added that the Trustees' part of the signed contract came back to him from Mr George, and that was exchanged by him with Mr Reader for the part signed by Wayne.

181. Mr Stonebrook's written evidence contains no reference to the draft contract which was in fact in the name of Ben as purchaser, and gives no indication as to when or how Wayne might have been substituted, or why Mr Stonebrook had written as he did on 24 September 2003.

182. When giving his oral evidence it was clear that Mr Stonebrook did not remember what special conditions might have been applicable to the sale of the Ground, when clearly an essential term on which the Ground was to be sold was that the purchaser would have obligations as regards the continuation of the Football Club.

183. Wayne also relies on the evidence of Mr Reader. Mr Reader made a statutory declaration in March 2016 in which he explained that, having been instructed by Ben in the matter of the purchase of the Club in early 2004, the purchase (as he was eventually instructed by Ben) was to proceed in the name of Wayne and the consideration would be the taking on of the Club's debt with Greene King. Mr Reader referred to having had contact with Greene King, but not with the Trustees or their solicitor in relation to the purchase; and he too made no reference to the draft contract in Ben's name as purchaser.

184. In this action Mr Reader made a witness statement on 10 November 2017. This does refer to Mr Stonebrook as being the Trustees' solicitor. But Mr Reader describes the Trustees as the "*Trustees of ETUFCL*", and says that the consideration for the purchase would be "*the taking on of ETUFCL's debt to Greene King*". The expression "ETUFCL" Mr Reader defined as referring to the First Company. Again Mr Reader dated his instructions to early 2004, which would fit with his reference to the First Company, and said that his

instructions came from Ben and Wayne (not just Wayne, as in the statutory declaration); but in his oral evidence he corrected this date as having been a typing error which should have read 2002, notwithstanding that in fact the first instructions to solicitors in the purchase of the Club are unlikely to have been much before the middle of 2002. Again he made no reference to the draft contract in Ben's name. What he said, as to this, was "*I was eventually instructed by Ben that the purchase would proceed in Wayne's name and from then on I received instructions predominantly from Wayne. I preferred working with Wayne in any event as I always found him to be more rational*".

185. I do not accept Wayne's evidence, or the evidence of Mr Stonebrook or Mr Reader, concerning the making of a purchase contract for the Ground in the name of Wayne. I do not regard either of Mr Stonebrook or Mr Reader as a reliable witness, and I do not believe that they have any genuine memory of the detail of one conveyancing transaction, even an unusal one, from many years ago among the hundreds they will have dealt with over the years.

186. There are several reasons why the evidence of Wayne, Mr Stonebrook and Mr Reader is implausible, insofar as it concerns the putative purchase contract in Wayne's name.

i) First, and most striking, there is no trace of any contract being made or contemplated in Wayne's name, while there is a draft in Ben's name, and no explanation for any change from Ben to Wayne.

ii) Second, as appears from what follows below, Ben – not Wayne - was the person who dealt with Greene King concerning its debt. From the letter of 9 February 2007 Greene King then still believed that it was Ben who would be purchasing the Ground from the Trustees.

iii) Third, with the exception of the indication of £5,000 having been paid as a deposit at about the end of October 2002, it is improbable that the purchase of the Ground was progressed further after about the end of October 2002 until very much later, when the Greene King debt was finally dealt with. And, bearing in mind the importance to the Trustees of having the Greene King debt discharged, I cannot see why they would have been willing to substitute Wayne for Ben as their purchaser before the discharge of the Geene King debt. I describe elsewhere the evidence given on the point by Mr Keating and Mr Grover, evidence which I accept.

187. Further, the making of a concluded written sale agreement for the Ground in 2002 is, in my judgment, something which did not happen. It is inconsistent with the minutes of a meeting of the Club held on 6 April 2003. These convey that at the time there was still no signed contract for the sale of the Ground. They also convey that Ben was still the intending purchaser of the Ground. My conclusion is that <u>if</u> there was ever a signed contract (and I consider on that on the balance of probabilities there was never one), it was made after April 2003 and with Ben as the purchaser.

188. My reasons for doubting whether there was ever a signed contract is because it would be consistent with Ben's style for him to prevaricate and put off, if he could, making a positive and enforceable commitment to pay the Greene King

debt; and his paying or taking on (by novation or indemnity) the Greene King debt was what the Trustees were expecting as the price for the Ground. The absence of any document evidencing any assumption by Ben of any definite liability for the Greene King debt is consistent with there never having been a signed contract by which Ben bound himself to take responsibility for the debt in return for having the Ground sold to him.

189. On 24 September 2003 Mr Stonebrook wrote to Ben (there being no indication of the letter being copied to either Wayne or Mr Reader) saying that he enclosed a transfer form to transfer the Ground "*from the current trustee (sic) to Dominique as requested. I have today sent this transfer to John George so that he can arrange with all the trustees to sign the transfer and then return it to me*". The letter asked Ben to get Dominique to sign the transfer, once Mr Stonebrook had the transfer back from the Trustees. Finally, Mr Stonebrook explained that he had written to Mr George (and enclosed a copy of the letter) covering the execution of the transfer.

190. Mr Stonebrook's letter to Mr George added as follows: "*I am pleased to report that the situation with Greene King has now been resolved and they shall continue to supply the 'beverages' to the football club… Accordingly we are now in a position to execute the transfer transferring the land from the trustees to Mr Bennett however he has asked that it be completed in the name of his daughter*". This letter, it is to be noted, made no reference whatsoever to Wayne as a person who had contracted with the Trustees; and if there had been such a contact, it is difficult to understand how Mr Stonebrook could have thought it appropriate to accept an instruction from Ben to have the Ground transferred to Dominique. His oral evidence was that, before sending the letter, he spoke to Wayne and was given by him the instruction which, in his letter, he attributes to Ben; but that makes no sense because, if Wayne were the contracting purchaser, his letter should have referred to Wayne as the person directing the transfer to be made to Dominique.

191. In 2006 the correspondence referred to in paragraphs 156 to 159 above was sent to Ben, this correspondence plainly treating Ben as the purchaser of the Ground.

192. For Wayne's case the importance of his being the intending purchaser of the Ground pursuant to a contract made with him as purchaser was to explain how it was that he had waited until years before putting forward any claim to have a beneficial interest in the Ground, when (as is common ground) he had fallen out with his father in 2006 and had since then had nothing more to do with the Football Club. On his case he believed for many years that he was registered as the holder of the Ground, this having come about pursuant to the contract of purchase made with him.

193. Mr Grover explained in his oral evidence that he had no memory of signing even the TR1 form for the Ground in 2010, let alone any earlier contract. He did say, however, that he believed that the purchaser was to be Ben, and it would have concerned him had it been proposed that someone else should replace Ben as intending purchaser.

194. Mr Keating had no memory of signing any contract; and his memory of signing the TR1 was only vague. However, he was clear that had he been

asked to sign any document naming Wayne as purchaser of the Ground, he would have questioned the document. Also, he received the letter of 9 February 2007 from Greene King's solicitors. That letter referred to Ben as the intending purchaser, not Wayne. That was consistent with Mr Keating's evidence that he understood that Ben would be dealing with the repayment of the loan.

195. I consider Mr Grover and Mr Keating to be correct, and that had there been a switch in their intending purchaser it would have been something noteworthy which they would have remembered.

196. I should now explain a little more about my conclusions concerning the reliability of the evidence of Mr Stonebrook and Mr Reader.

197. For the Claimants it has been submitted that Mr Stonebrook's antecedents are relevant when assessing his evidence. He has been barred by the Solicitors Regulatory Authority from ever acting for a firm of solicitors. This followed an investigation into numerous of the conveyancing transactions conducted by Mr Stonebrook, the major failure being the misreporting or non-reporting of transaction details to mortgagees. He accepted that he is and was a friend of Wayne's. He had also done property deals with Ben and Wayne as business partners: he would introduce to Ben and Wayne property opportunities on which Graham Harvey had been retained by vendors, the properties being sold into the name of Wayne but with Ben, Wayne and (without the clients knowing of Mr Stonebrook's interest in the purchase) Mr Stonebrook being purchasers sharing in due course the proceeds of sale. While there may be a proper explanation for such transactions, it is not obvious what this might be and anyway it does appear that the transactions involved a conflict of interest which Mr Stonebrook could not see. In line with this, in his oral evidence at the trial Mr Stonebrook appeared to have had no conception that, in relation to the sale of the Ground, he owed his duties to the Trustees, the vendors, and not to the purchaser.

198. As it seems to me, Mr Stonebrook is not to be relied on as a witness of truth. I do not base this conclusion on the order made by the SRA, but rather on what I saw and heard when Mr Stonebrook gave his evidence at the trial. In my judgment he came to Court to advance Wayne's case as best he could. I cannot accept that he had any memory of a sale contract having been made in the name of Wayne as purchaser. I have referred already to his inability to remember an important special condition of the proposed sale. Further, he could not recall who it was who had told him that the transfer of the Ground was to be into Dominque's name and therefore not to Wayne. Yet further, his assertion in his oral evidence that "*We exchanged contracts in 2002*" is, as I have pointed out, belied by the minutes of the Club's meeting of 6 April 2003, at which time there had not been any contract for the sale of the Ground. Finally, he asserted, at the conclusion of his cross-examination, that in conversations with Wayne he had told Wayne that his consent would be required for a transfer of the Ground to go into Dominque's name, and that Wayne had never consented to that transfer. This evidence is contradicted by his letter of 24 September 2003, when he was arranging for the transfer to be into Dominique's name, and when earlier his oral evidence had been that

before sending the letters he would have spoken with Wayne about what was proposed.

199. Mr Reader was, at the time of the events in question a partner in Anderson Hunt, Licensed Conveyancers. He later served a prison sentence: he was convicted in 2012 of money laundering and conspiracy to defraud. He was also subject to SRA disciplinary proceedings for falsifying the amount on a transfer deed. As with Mr Stonebrook, it is submitted for the Claimants that Mr Reader's antecedents are relevant when assessing the reliability of his evidence. I see the force of the Claimants' submission, especially given Mr Reader's criminal record, nevertheless again I base my conclusions as to the value of his evidence from what I saw and heard when Mr Reader was in the witness box.

200. As I have pointed out, Mr Reader made no claim in his written evidence to have remembered the signing of a sale contract by the Trustees in favour of Wayne as purchaser. His evidence in his witness statement, which as to this was to much the same effect as his statutory declaration, was simply that initially he was instructed to act in "*in the connection with the purchase of [East Thurrock United Football Club Limited] by Ben and Wayne*", when he was to act "*on behalf of the then-unnamed buyer*", but that he was "*eventually instructed by Ben that the purchase would proceed in Wayne's name…*".

201. I do not believe that Mr Reader has any genuine memory of what his instructions actually were, and in particular of any instruction that Wayne was to be the purchaser, when on his evidence he was engaged to act in connection with a purchase of assets of the Club; and I therefore place no weight on his evidence. But, even if (contrary to my view) his evidence could be accepted, it would not establish Wayne's claim to have contracted with the Trustees as purchaser of the Ground.

    i) There is no document indicating that Wayne had any involvement in the organisation of the sale of the Ground by the Trustees or the discharge of the Greene King debt.

    ii) I have drawn attention to Mr Reader's confusion with dates in his statutory declaration and witness statement, and to the fact that in his witness statement he described the purchase of the Club as being by the First Company, which had not come into existence in early 2002.

    iii) When asked about his confusion with dates, he explained: "*I understand that [the 2004 date] does not fit in..",* and that as to this understanding "*I probably would have had the conversation with Wayne*".

    iv) Having been shown his letter of 4 March 2004 and asked whether his first instructions in the sale of the Ground might have been early 2004, he explained that that was not right "*because Wayne ... and Trevor Ford came over to my office to sign it and it would not fit in with March 2004*". He did not explain what document it was that they came over to sign, how he remembered their coming over, or how that could "*not fit in*" with March 2004.

202. My reasons for rejecting Wayne's own testimony, that he had collected a contract for the sale of the Ground to be made with him as purchaser, that he had signed a contract for the purchase of the Ground, and that until about 2013 he believed that he had become the registered owner of the Ground, are shortly stated. The documentary record is in my judgment inconsistent with there having ever been a contract proposed or made with Wayne as purchaser.

    i) Wayne's repeated suggestions in cross-examination that letters written by Mr Stonebrook to Mr Reader referring to "Mr Bennett" as the client could have been referring to him, Wayne, were indicative of the desperation of his case. In the context in which Mr Stonebrook was writing, it is obvious (as I have pointed out) that the client being referred to was Ben.

    ii) Further, in the absence of any contract signed by him, Wayne could have had no possible reason for thinking that the transfer of the Ground had been made to him. Indeed, he does not suggest that he ever signed a TR1 transfer for the Ground, although his signature would have been required, not least of all because of the covenant required from the transferee concerning the provision of a pitch for the Football Club in the event of disposal of the Ground.

203. As a final observation in relation to the evidence of Mr Stonebrook and Mr Reader concerning any sale contract with the Trustees, there is no suggestion by either of these two conveyancers in their written evidence that they had, in 2002 or at any time thereafter, any knowledge that the intending purchaser was to be either a partnership or an individual, whether Ben or Wayne, in the capacity of partner with someone else (for instance Mr Renoldi or Mr Ford). Given that Mr Stonebrook was a close friend of Ben and Wayne, as he stressed when giving his oral evidence, he might have been expected to have been told by them and therefore to know if there was a partnership involved in the purchase. The same applies to Mr Reader, as the solicitor acting for the purchaser and, again, a friend of Ben and Wayne.

<u>The Revenue investigation, the 2009 Properties List and the Settlement Agreement</u>

204. In 2005 the Revenue started an investigation into the tax returns made for Wayne for tax years 2001-02 to 2003-04, and later extended to the following year. The relevance of this investigation is that it culminated in the sending of the 2009 Properties List to the Revenue and then the making of a settlement agreement ("the Settlement Agreement") between Ben, Wayne and Mr Stonebrook.

205. The investigation concerned among other matters the Callahans business, as this had been reported to the Revenue as being simply Wayne's own business; but the investigation also extended to properties owned by Wayne and companies in which he had been involved. At a meeting with the Tax Inspector then carrying on the investigation, a Mrs Musson, on 26 September 2006 Wayne, accompanied by tax advisers (Mr Bernard Fleetwood and a Mr Jim Reed of Chase Bureau), promised to send a statement of assets by 30 September 2006. In early 2007, it is clear from letters dated 18 January and 27 April 2007, sent by Mrs Musson to Wayne at his home, a schedule had been provided on Wayne's behalf to the Revenue, this schedule purporting to

list properties owned by Wayne at 5 April 2006, together with limited details of loans secured.

206. In evidence is a document, which (according to Mr Baker and as I find) was generated by the Revenue in the course of the investigation, sometime in about 2010. This document, which I shall refer to as "the 2006 Properties List", includes a section captioned "*Let properties owned at 05/04/2006 as supplied by agent*". The section sets out numerous properties of which Wayne was the registered owner, but does not include the Ground. Instead the Ground is listed in a later section of the document under the heading "*Other known properties: Apparently owned at 5/4/06, but not on list*". The clear inference is that the schedule of properties at 5 April 2006 supplied to the Revenue in early 2007 had not included the Ground.

207. The letter of 10 December 2007 from Mr Fleetwood to the Revenue which I have referred to much earlier in this judgment is relevant as regards the position with the Ground. In answer to a question requesting details of properties owned, other than those on the schedule listing properties owned at 5 April 2006, the response was a simple "*No*"; and "*Not applicable*" was the answer to the question "*Have you been registered with the Land Registry as the proprietor of any other properties during the last 6 years*". In other words, the response was unequivocal. It was a denial of Wayne's having owned or been registered as proprietor of the Ground. Further, while Wayne's tax returns had dealt with the Callahans business as his, in answer to the question whether Wayne had in the last 6 years had any other busines interests (as sole trader or in partnership), he had referred only, so far as relevant, to the First Company while denying having any shares or profit drawn; and he had not mentioned any partnership business in relation to the Football Club.

208. Wayne's explanation of the response given in the 10 December 2007 letter to the Revenue's questions was not impressive. Essentially his explanation was that, despite his having fallen out with his father by December 2007 and having parted ways, nonetheless his father could still influence what he Wayne reported to Mr Fleetwood and thus the Revenue, his father having an overriding direction. But this does not explain why Wayne was willing to allow the Revenue to be given information which, on his case before me, was false to the best of his knowledge and belief in that he was at that time denying both being the registered owner of the Ground and having a beneficial interest in it.

209. This was also, in essence, his answer during his cross-examination in relation to the tax return signed by him for the tax years ended 5 April 2007 and 2008, both of these prepared for Wayne by Mr Baker, but signed by Wayne. Each contained an indication that during the year Wayne had not been in partnership, while of course this is quite inconsistent with his case that he was and still is in partnership in relation to the Football Club.

210. In considering what conclusions to draw from Wayne's dealings in connection with the Revenue investigation and his various tax returns, I have had regard to the fact that throughout he was presented as being sole owner of the Callahans business ("*front runner*" as Wayne described it), when on no view was that correct, and that his presentation was in all likelihood with the

agreement of Ben. Giving false information, where there might be a financial advantage, appears to have been acceptable to members of the Bennett family. But the feature that is surprising in relation to what was being said to the Revenue about the Football Club and the Football Ground is that, to his knowledge, Wayne was not being offered up to the Revenue as being the owner. On Wayne's case he was supposed to have been the registered owner of the Football Club, as well as the Ground, and that would have been in order that he could be the family's front runner for the business.

211. For reasons which appear later, it is also to be noted that the Chadwell Land features in the same part of the 2006 Properties List as the Ground, the description given being "*land west of Thames Drive CSM*".

212. In early 2010 Mr Baker was asked to take over from Mr Fleetwood in dealing with the Revenue investigation. Over the period of about 8 months there were exchanges by Mr Baker with the Revenue, and in turn Mr Baker had discussions with Wayne, Ben and (as I accept) Mr Stonebrook. On 6 July 2010 the Tax Inspector conducting the investigation was a Mr Warren, who wrote to Mr Baker inviting an offer to settle "*all duties under review*". An initial offer of £40,000 was made to the Revenue. This was rejected in a letter dated 24 August 2010 which indicated that there was to be a meeting with Mr Warren on 14 September 2010 at Mr Baker's offices. On 12 October 2010 Mr Baker sent the letter of offer I have already referred to, together with the 2009 Properties List: this, he told the Revenue, "*is a true reflection of the actual ownership of each asset at 5th April 2009*". This offer the Revenue accepted.

213. On 15 October 2009 Ben, Wayne and Mr Stonebrook signed the Settlement Agreement by which they agreed as between themselves to contribute to the £90,000 settlement figure, as well as Mr Baker's costs. In principle Ben was to bear half the cost, Wayne a third and Mr Stonebrook the remainder.

214. The 2009 Properties List features prominently in the case, as Wayne relies on the indication in the document that he had a 25% share in the Ground as evidencing the fact that he had an interest in the Ground from the time Ben had agreed on the acquisition of the Football Club, or alternatively as giving him a free-standing claim arising from the representation to the Revenue (made, says Wayne, with Ben's agreement) and the making of the Settlement Agreeent.

215. It is Ben's case that the 2009 Properties List does not assist Wayne in either of the ways he claims. Two obvious points are made on Ben's behalf. First, it is no part of Wayne's case that he was to have a 25% share in the Ground. Second, the 2009 Properties List is inaccurate, even on Wayne's case as to the 2002 Agreement, in failing to show Ben or Mr Ford as having any interest in the Ground; and he points out that the 2009 Properties List did show the Chadwell Land as being held in equal thirds between himself, Wayne and Mr Ford.

216. Further, Ben sought in his evidence to suggest that the content of the 2009 Properties List was not agreed with him, at any rate so far as concerns the Ground, in that while he accepts that he took part in meetings with Mr Baker at which the ownership of various properties was discussed, he denies having stated or agreed that Wayne had any interest in the Ground, much less that he

agreed that Wayne had a 25% share in the Ground. His explanation for the 25% figure put forward to the Revenue is that this proportion was claimed by Wayne in line with a four-way split of the Ground between himself, Ben, Gro and Dominique. Wayne's evidence is that it was Ben who, in the meetings with Mr Baker, told Mr Baker to put forward Wayne's share in the Ground as being 25%, and that when Wayne asked why Ben had just shrugged. Further, Wayne said he had told Mr Baker that the interests were split 20% to him, 50% to Ben, 20% to Mr Ford and 10% to Mr Renoldi. In other words, both Ben and Wayne convey that the 2009 Properties List was inaccurate in what was depicted as regards the interests in the Ground.

217. Relevant to this is a letter dated 5 September 2011 sent to Mr Baker. The letter has a typed signature, "*Ben Bennett*". The letter refers to the Settlement Agreement, and also refers to a meeting at Mr Baker's office "*attended by Wayne, Rob [Stonebrook] and myself*" and which "*I logged all the partnership assets and put forward a fair proposal to make each person proportionately responsible for their liabilities*".

218. I accept the evidence of Wayne and Mr Baker that the 2009 Properties List was put to the Revenue with Ben's agreement, as well as with the agreement of Mr Stonebrook, and it was as being what they thought it fitting that the Revenue should be told.

219. On the other hand it is impossible, in my judgment, to extract from the 2009 Properties List, or from the discussions which led to its submission to the Revenue, or from the Settlement Agreement, any conclusion that Wayne had already, or was thereby given, a beneficial interest in the Ground. It is common ground that the 2009 Properties List was inaccurate as regards the Ground. While it will have reflected what both Wayne and Ben were happy for the Revenue to be told, neither can have believed that it was accurate as a reflection of the actual position with the Ground. I do not accept that Wayne thought that he was being given a 25% share in the Ground, whether or not in the place of a previous 20% share, or that he believed that the agreement to make the submission to the Revenue was a confirmation that he had already held a 20% share. In my judgment the 2009 Properites List was simply what Wayne and Ben, along with Mr Stonebrook and Mr Baker, decided would appear plausible to the Revenue.

<u>Partnership?</u>

220. I have indicated earlier the foundation of the Defendants' case that at a meeting in mid-2002 a partnership was agreed upon and brought into being between Ben and the Defendants when they reached an oral agreement (which I shall refer to as "the 2002 Agreement") for the formation of the partnership, the purpose of the partnership being the acquisition of the Football Club and its property, and the operation of the Football Club, and that this partnership was then carried on.

221. The Defendants' case rests on the testimony of the Defendants concerning the making of the 2002 Agreement, and on evidence put forward both as showing that the 2002 Agreement must have been made as claimed while at the same time establishing the existence of the partnership so agreed upon. This other evidence is directed towards:

i) statements made by the Defendants and others, and beliefs held by others, as to the ownership of the Football Club after mid-2002;

ii) contributions made by each of the Defendants to the progress of the Football Club;

iii) the N&Q document; and

iv) the 2009 Properties List, together with the Settlement Agreement made between Ben, Wayne and Mr Stonebrook.

222. I have already dealt extensively with the N&Q Document, as well as the 2009 Properties List and Settlement Agreement. Suffice it to say, I do not find these materials to be helpful in reaching a conclusion concerning the making or otherwise of the 2002 Agreement.

223. In the next section of this judgment I consider the evidence of the four individuals, Ben and the Defendants, who were present for the making of the 2002 Agreement and parties to it. In the section after that I consider what I would describe loosely as the "reputational evidence" concerning the Defendants' interests in the Football Club, and also the evidence as to financial and practical contributions made by them towards the Football Club. In summary, however, I consider the reputational evidence and evidence of contributions inconclusive.

224. In particular, I am not persuaded that in the years following Ben's offer to the Club to take over the Football Club anything was said by any of the parties which showed anyone other than Ben or the First Company to be the purchaser and proprietor of the Football Club. Insofar as anyone may have thought that the Defendants had any beneficial interest, that involved the making of an unfounded assumption based, at the most, on loose descriptions given by the protagonists as to their roles in the Football Club. On the other hand, the involvement of the First Company, and the presentation of the Ground as part of its assets, seems to me wholly inconsistent with the existence of a partnership to own and run the Football Club.

225. Further, I do not believe it to be possible to identify any definite and material financial contributions made by any of the Defendants to the purchase of the Football Club. While I accept that each of the Defendants worked with a view to improving the fortunes of the Football Club, I do not consider that the work was exceptional and referable to, or explicable only on the basis of, a promise made by Ben of some proprietary interest in the Football Club (and hence in the Ground).

<u>The 2002 Agreement</u>

226. Ben and each of the Defendants gave written and oral evidence concerning the events of mid-2002, in particular concerning the making of the 2002 Agreement contended for by the Defendants. I shall deal in detail with this evidence, which is starkly conflicting. But, as a preliminary, I observe that for reasons discussed elsewhere none of the three individuals who give evidence about the supposed meeting at which the 2002 Agreement was made can be relied upon as a truthful and accurate witness. Those individuals were giving

evidence about events which were said to have happened almost 16 years before the trial, without even the possibility of the witness' memory being refreshed by some contemporaneous record, and described as fact details they could not possibly have remembered.

227. Wayne's pleaded Defence, signed by him with a statement of truth, was that in 2002 Mr Renoldi, Ben, Wayne, and Mr Ford agreed "*that they would together acquire and own beneficially the Club and [the Ground] in the proportions 10%, 50%, 20% and 20% respectively*". Thus far the Defence follows the witness statement Wayne had made in 2014, when he applied to enter a restriction on the title to the Ground. The Defence alleges that there were further express or alternatively implied terms concerning the acquisition, for example that the parties would contribute to costs "*from their existing businesses or businesses in which they had an interest*", and would "*share in the profits but would first use those to pay the Greene King debt*".

228. Wayne's witness statement in this action speaks of the pleaded agreement as being for a "venture". The statement does not mention any reference having been made to the words "partners" or "partnership". His statement also explains how, at the meeting at which the agreement was made, roles were assigned to each of the parties: Mr Ford was "*to manage the upgrading of the facilities*", Mr Renoldi was to promote the Club and arrange sponsorship to help finance the footballers' wages, and Wayne and Ben "*would run the Club on a day-to-day basis*". Further, it was agreed that the "*Club [(that is, East Thurrock United Football Club and its grounds)] was to be registered in [Wayne's] name*".

229. The Additional Parties' pleaded case (signed by both with a statement of truth) contains in substance, but set out with much greater detail, much the same as Wayne's Defence. Like Wayne's Defence, it does not allege that the parties used the words "partners" or "partnership". But in contrast with Wayne's witness statement, it states that "*There was no express discussion … about in whose name the Club and the Property would be purchased, but the natural inference to be drawn … and the understanding of Mr Ford and Mr Renoldi was that the legal title … would be acquired by Ben Bennett and/or Wayne Bennett for the benefit of the parties …*".

230. The witness statements made by the Additional Parties follows their pleaded case. Mr Renoldi says at one place that he assumed the Club (which he says was what they were talking about, drawing no distinction between the Football Club and the Ground) would be put in Ben's name, and at another that he assumed it would be purchased in Ben's name "*or maybe Wayne*". Mr Ford says he assumed it would be in Ben's or Wayne's name. Mr Ford also states that "*Basically, we were supposed to be partners*", without however saying that that was the term used when the agreement was made.

231. There is scant evidence of any of Ben or the Defendants ever having used the words "*partner*" or "*partnership*" to describe their relationship. The Defendants do not say that the words were used when they were discussing and concluding the 2002 Agreement; and I doubt whether they did in fact use the words at all in relation to the Football Club, and certainly not in any technical sense. Such evidence as there is I mention later, this being evidence

given by two witnesses called by the Additional Parties. Of course, the fact that the parties to the 2002 Agreement did not, when making their agreement, use those words does not mean that their agreement did not in law amount to a a partnership agreement; but the absence of the words militates against their having had in mind any partnership between them.

232. Mr Ford's explanation for his invitation from Ben and Wayne to join them in their plan to acquire and run the Football Club was that Ben told him they did not "*want the entire risk themselves*", and that he, Mr Ford, had a lot of cash and also that he would be expected to work at the Ground, helping out with the grounds, carrying out refurbishment work and putting in money if that were needed. He also said he didn't expect the Football Club to make much profit, but the deal was a good one as he was "*getting a stake in the land*".

233. Mr Renoldi's explanation for his invitation was that he could help with promotion of the Football Club and raising sponsorship.

234. Ben's case was that he had, in mid 2002, when deciding upon the acquisition of the Football Club, invited each of the Defendants to help him with the Football Club; but he said that his invitation was not coupled with any offer that they should have any ownership share in, or become partners with him in, the Club's business or property. It was an exciting new adventure he was embarking on, and one they could be pleased to be involved with.

235. While, for reasons I have already explained, I treat Ben's evidence with caution, I can understand that it would be in keeping with Ben's approach to business, even with his family, for him to make no definite promise.

236. It is, in my judgment, for the Defendants to make good the partnership claim; and this they have failed to do. But in any event, on the balance of probabilities I believe it more likely than not that the 2002 Agreement was not made and that nothing was said to the Defendants to lead them to the conclusion that they were to be partners with Ben and each other, or that Ben was proposing to give them any beneficial interest in the Football Club and its property. Four matters lead me to this view.

    i) This seems to me the more likely position, having regard to what was said and done publicly in 2002; and the Defendants' testimony as to the private meetings concluding with the making of the 2002 Agreement I did not find convincing.

    ii) The existence, operation and presentation of the First Company is inconsistent with the Football Club having been a partnership business from at the latest the middle of 2003: it was the business of the First Company. This must have been obvious to the Defendants; yet there was no protest. I should add that there is no suggestion that the putative partnership was concerned with the shareholding in the First Company.

    iii) There is ample evidence that in 2002 and 2003 Ben was perceived to be the purchaser of the Club and the person who was to pay its bills. This is obvious from the minutes of the Club meetings. There is no suggestion that, immediately after Ben's offer in principle was

accepted, Wayne or the Additional Parties stepped up to become the face of the business of the Football Club in the place of the Club's Committee and alongside Ben; and this is what should have happened if there was the putative partnership contended for by the Defendants, as they all in partnership would have been the persons together carrying on the Football Club and, therefore, liable to traders and suppliers for the Football Club's debts.

iv) The Defendants never asked for the production of partnership accounts, or for a report as to the progress and profits or losses of their putative partnership; and on exclusion from involvement with the Football Club each of the Defendants went quietly and did not seek to have a winding up of and accounting for their putative partnership.

237. I feel unable to place weight on Wayne's evidence concerning the discussions leading to a partnership agreement being made in mid-2002. I have already made findings concerning his case as to the contract for the purchase of the Ground supposedly made with him named and signing as purchaser: as I have explained, I do not accept that he has any memory of the events which he described. This evidence of Wayne's was, in my judgment, contrived. It is a matter of real concern that, in support of his case on the point, Wayne appears to have relied on the evidence of Messrs Stonebrook and Reader, evidence which appears to me to have had no genuine foundation. Also, for reasons I have given, I do not accept that he ever believed that the Ground had been registered as held by him as legal owner.

238. But there is a further finding I would make. This concerns Wayne's written evidence to which I have just referred, namely his evidence that at the meeting in mid-2002 at which the 2002 Agreement was made it was agreed that the Club was to be registered in his name. In his oral evidence Wayne explained the agreement was "*because all assets were registered in my name*". This may be so, when matters were private between himself and Ben and perhaps Gro and Dominque; but in relation to the Football Club acquisition, on Wayne's case, both the Additional Parties were involved, and it is not suggested that all their assets were ordinarily registered in Wayne's name. There is therefore no obvious reason why they should both have agreed to Wayne becoming the apparent owner of the Football Club assets.

239. Further, the testimony of the Defendants is that at the meeting what was under discussion was the acquisition of the Football Club and all that went with it, there being no discussion about the Ground as distinct from the Football Club. Bearing in mind that the Club's committee and membership were, as they thought, selling to Ben and depending on Ben to discharge all their debts, it would have been remarkable if there was discussion at the meeting leading to an agreement that what was to be acquired, whether the Football Club or, separately, the Ground as one of the assets, was to be registered in Wayne's name.

240. As a general comment, throughout his evidence Wayne explained what "*would have*" happened. My clear impression was that he was substituting in his mind what he reconstructed as having happened in the place of what he could remember as having happened. Much of what he was putting forward as

his testimony concerning events of many years ago was therefore unreliable, when at best what he could now remember was only impression.

241. Mr Ford was not a satisfactory witness. At the outset of his oral evidence he avoided answering a simple question put to him three times. He was shown a tax return for him, for the tax year ended 5 April 2003. He stated that the signature on the document wasn't his, probably having been put on the document by Gro (a view he had formed a number of years ago); and Gro it was who would have provided the information in the return. Later in his evidence he became very uncertain as to when first he had seen the tax return. He then said that the signature on the following year's return looked like his; but he could not say whether the signature on a client engagement letter of January 2005 was his. He then said that he could not be sure of any of the signatures being his. Whether he had seen any of the documents before going into the witness box, and if so whether he had formed any view about his signature being forged, was completely obscure. The problem for Mr Ford's case is that the tax returns, as completed, conveyed that Mr Ford was not in partnership during the relevant periods.

242. Essentially Mr Ford's evidence was that he had nothing to do with money dealings or accounting; and this appeared to cover his personal finances, the Football Club, Pageway and Fleetplant. Yet he said in his written evidence that when he ceased to be involved with the Football Club it "*was not making a profit and so I knew I was not entitled to take anything out by way of income*". In cross-examination it was clear that during the period he was involved with the Football Club he had had no idea whether it was profitable or loss-making. This, indeed, was in contradiction of his written evidence that he had had a memory of being told by Ben that "*the Club was making a profit and doing well and that the Greene King debt was being paid off and the debt was going down*".

243. I have explained that Mr Ford is said to have been invited to join in the proposed partnership with Ben in relation to the Football Club to assist with the risk. His written evidence is that that was told to him by Ben. Yet in his cross-examination he gave a different version. He said he was going along having a good life at the time the partnership was proposed and did not think about risk; and he explained his invitation was because they needed his help because Ben was not hands on.

244. To my mind the most accurate evidence Mr Ford gave was when, in cross-examination he said "*I would not know about time and dates and things like that.*" This he said when he was being asked about the way in which the 2002 Agreement had come to be made.

245. Mr Renoldi's written and oral evidence differed in a couple of material respects as to which accuracy should have been expected. This makes it difficult to accept that in fact he was remembering what happend years before rather than constructing what could advance his case.

    i) His written evidence was that it was while travelling with Ben in Japan in 2002 for the Football World Cup Ben had said that he, Wayne and Mr Ford were to buy the Club together, and that Ben had asked if Mr Renoldi would like to be involved. Mr Renoldi's oral evidence was

that during the trip to Japan Ben had not mentioned Wayne or Mr Ford as having any connection with the proposed purchase.

ii) His written evidence was, as to Halemere, that it was "*in reality my company*"; and he explained the fact that Wayne and Ben had from time to time had drawings from Halemere as being simply "*because of the close nature of our relationship*". Yet, as I have mentioned, his oral evidence was that in fact Wayne and Ben were silent partners; and he said that his written evidence was mistaken. While the Additional Parties' pleaded case had been that he regarded Ben and Wayne as "*sleeping partners*", this was only as an explanation of the fact that Ben and Wayne had given Mr Renoldi assistance and had a close relationship with him, and not by way of a statement that Ben and Wayne had any ownership interest in Halemere.

iii) His written evidence was that "*We didn't discuss in whose name the Club would be purchased*" and he explained that he assumed it would be Ben (or Ben or Wayne). His oral evidence was different, being that he could not recall the question being discussed.

246. Another consideration causes me considerable pause for thought concerning Mr Renoldi's evidence. He stated, in his oral evidence, that he "*definitely knew from day one that they had set up*" the First Company, but said that he did not really get involved in that side and "*left it to them*".

247. The difficulty I have with this is that Mr Renoldi's case is that he believed he was part-owner of the Football Club. Yet the involvement of the First Company in the Football Club, together with statements in the 2004 Report concerning the First Company and the Ground, and the absence of any reference to Mr Renoldi as owner of anything, are hard to reconcile with any such belief. As I have mentioned, however, he was involved in the discussions with Mr Champion which led to the production of the 2004 Report; and in evidence Mr Renoldi stressed that the 2004 Report described him as "Commercial Manager", thereby demonstrating his significant position in relation to the Football Club.

248. In my judgment, if Mr Renoldi believed there to have been a partnership formed in 2002 of which he was a partner and which was to own and operate the Football Club, it is implausible that he had no interest into the way in which the Football Club was actually owned and accounted for. It is also difficult to understand what possible assistance he could have given to Mr Champion in the production of the 2004 Report that would have led Mr Champion to describe him as "Commercial Manager": that label is apt to describe someone managing the business administration of the Football Club as distinct from the team's playing and performance on the pitch. And he said in cross-examination that "*I was left to deal with [the FA] with the finances and stuff. They was obviously concerned probably with issues of limited companies and members clubs and stuff like that*"; but nevertheless, as I have explained, he stated that he did not mention to the Football Association that he was a co-owner because (on his evidence) he did not know what he was supposed to tell the Football Association. If he really believed he was a co-owner, his explanation for dissembling is not impressive as it means he was

willing to have the Football Association form a mistaken view concerning the Football Club which it was reviewing.

249. In conclusion, I am not satisfied that there was a meeting in mid-2002 when Ben and the Defendants agreed to be partners in the business of acquiring and running the Football Club.

250. Further, I am not satisfied that Ben ever promised the Defendants that they would be part owners of the Football Club, as some kind of entity, in specific shares in return for their becoming involved and assisting, while not themselves becoming answerable for the debts of the Football Club. The point here is that in mid-2002 the Football Club was simply the business of the Club along with associated assets and liabilities. Had there been an agreement for the Defendants to take responsibility, along with Ben, for the Football Club debts, there would have been every reason for Ben to present, both to the Club's Committee, to the Trustees and to Greene King, his proposed purchase as being by a partnership or consortium along with other family members and associates. But this never happened, as none those parties saw anyone other than Ben as the proposed purchaser. And much the same considerations as have led me to reject the partnership claim apply in relation to the joint venture claim.

251. The further alternative legal foundations contended for by the Defendants for their claims to the specified shares in the Football Club or the Ground, namely common intention constructive trust and proprietary estoppel, founder for the same reason. In his closing address Mr Hornett summarised the Additional Parties' position as being that "*there was an oral agreement, there was detrimental reliance and/or consideration given for it and there was exclusion*", adding that "*That case ... stands or falls on its own evidence*". In my judgment these claims fail because the Defendants have failed to establish the 2002 Agreement.

Reputational evidence and evidence of contributions to the Football Club

252. I have already summarised the evidence relied upon by the Defendants to support their testimony concerning the 2002 Agreement. In greater detail:

i) They say that each worked hard in relation to the Football Club following the agreement, promoting the Football Club in various ways and assisting it to prosper. As to this, the Claimants' pleaded Defence to the claim by the Additional Parties is that "*it is admitted that following Ben's acquisition of the Club he sought the help of Wayne, Mr Ford and Mr Renoldi in running it, that they agreed to do so and averred that, like many others, they did so on a voluntary basis*".

ii) They say that their respective families were enlisted to work in the Football Club.

iii) They claim that Football Club debts were paid by them either directly or indirectly from the Callahans account or business, Pageway or Halemere (this last having been involved in the payment of footballers' wages).

iv) They rely on the BBC broadcast to which I have made reference. They rely also on the undoubted fact that by about 26 September 2002 Mr Renoldi had been given the position of "commercial co-ordinator" or "commercial manager" in the Football Club and that Wayne became the Chairman for two years.

253. There has been extensive evidence concerning the activities of the Defendants and their families in relation to the Football Club, and concerning the value of their respective contributions. On the one side witnesses called by Ben have conveyed that the activities were modest and their effect on the Football Club of limited value; on the other side the witnesses called by the Defendants have stressed the Defendants' commitment to the Football Club and the impact of their contributions.

254. Before describing further the evidence of the numerous witnesses, I summarise my conclusion as to the Defendants' efforts for the Football Club. In short, I accept that the Defendants all worked to promote the Football Club. Precisely how hard and with what result it is impossible to measure at this distance in time. This said, I do not accept that the only reasonable explanation for their work, and for that of their families, was that they had or believed they had shares in a partnership which was running the Football Club. That is a possible explanation. However, a possible and in my judgment more likely, explanation is that the Defendants were (as the Claimants contend) willing to pitch in to what looked like a new and relatively high-profile adventure associated with their family or (in the case of Mr Renoldi) with Ben as friend, supporter and fellow football enthusiast.

255. The Defendants put forward their contributions to the Football Club as follows.

256. Wayne's contribution is said to be:

i) being responsible for the day to day running of the Football Club and attending most days, including working behind the Bar, dealing with tills and each Friday together with his father, his wife and Mr Ford emptying and counting cash from the fruit machines;

ii) taking on the position of club chairman for a couple of seasons, from about 2003;

iii) having his wife and daughter work at the Ground, his wife working behind the bar, and also making rolls to sell, and his daughters working on the gate and selling programmes on home match days; and

iv) making financial contributions in that payments for the benefit of the Football Club were made from the Callahans account.

257. Mr Ford's contribution is said to be:

i) attending and looking after the fabric of the Club, including tending to the grounds and pitch many days of the week and locking up;

ii) arranging and paying for refurbishment works, including:

a) stripping out, painting and refurbishing the toilets (including the supply of paint and materials);

b) laying of new paths and carrying out works to the football pitch;

c) repairing the roofs to all the Club buildings or overseeing contractors;

d) laying new concrete throughout the Club premises;

e) installing concrete terraces and contributing towards the costs of a new spectator stand;

iii) supplying labour from Pageway;

iv) sourcing and installing portacabins for labourers from the local BP refinery;

v) subsidising the Club and making *ad-hoc* cash payments, including a payment of £5,500 to Paul Carter for installing an electricity sub-station;

vi) running and paying for the tea/burger bar; and

vii) Contributing, or by Pageway contributing, a new team kit for the reserve team for about £2,500.

258. The "portacabin" contribution featured prominently in the Additional Parties' submissions and evidence. It needs further explanation.

259. There are in the car park at the Ground a collection of portacabins and caravans. At least some of the portacabins were brought on the Ground in about 2004 and were used to provide rented sleeping accommodation for workers working at the near-by BP refinery. Mr Ford's pleaded case is that installing these portacabins was his idea, as through Pageway he was supplying labour to the refinery, and there was a need for temporary accommodation of the workers. He alleges in his pleaded case that he personally purchased 6 or 8 of the portacabins at a cost of £500 or £600 each, while in his written evidence the cost is said to have been met by Pageway. And he says that he arranged at his cost to have the portacabins made fit for habitation, Ben however organising showers which (Mr Ford says) were paid for by the Football Club. And Mr Ford said in his evidence that there were other people who did work on the portacabins. Mr Ford alleges that the income generated from letting the portacabins was (or should have been) used to repay the Greene King debt; but I construe the reference to repaying the Greene King debt as intended as a reference to payment for the purposes of the Football Club.

260. The case advanced by the Claimants is that indeed Mr Ford was able to acquire some portacabins because BP needed to dispose of them, and that they have no knowledge of the particular portacabins having cost Mr Ford anything to acquire. In his oral evidence Ben said that when these ones were brought on site they were not fit for habitation, having been used for builders'

changing rooms and the like, and had had to be fitted out, not simply by Mr Ford, but at a cost which the Football Club had paid. He also says that the income generated by the portacabins was applied for football club purposes.

261. As I have pointed out much earlier in this judgment, the blue and red notebooks recording certain income and expenditure in relation to the Football Club, show portacabin income and expenditure. Thus an entry from 28 June 2004 shows "*Portacabin income £200.00*"; other entries for same date show expenditure of "*repay Portacabin Howdens (400.00)"* and "*Dobo. Portacabin furniture (230)*". Elsewhere in the notebooks is a page headed "Portacabin rents", this covering a period starting in late June 2004; while there is a page headed "*Portacabin Refurb Russell*" covering a period starting in early May but with "*Balance carried fwd*" of £2,500.60, and another with similar entries dated to April 2004.

262. Mr Renoldi's contribution is said to have been:

i) arranging sponsorship for the team;

ii) promoting events in the bar and increasing bar takings, including putting on special events and themed nights;

iii) promoting and encouraging attendance at matches and increasing membership;

iv) promoting club and marketing the club;

v) setting up a web site;

vi) appointing a new manager (Lee Patterson) and working with the team;

vii) arranging payment (and paying) team wages from Halemere, and Supplying the team kit; and

viii) getting his family involved with working at the Bar, including his Father.

263. Ben's witnesses on the question of the Defendants' reputation and activities were Mr Keating, Mr Grover, Mr Brian Mainsbridge, Mr Neil Speight, Mr Philip Hibbert, Mr John Coventry, Mr Mick Stephens, Mr Arron Whittaker, Miss Young and Mrs McBride. The evidence of Miss Young and Mrs McBride I comment on separately later. As to the others of these witnesses, each was, I believe, doing his best to help and to give accurate evidence; but as the events about which they were being asked happened 10 years ago, and were not of particular moment as they happened, their evidence is of limited value on the question of the Defendants' reputation and contributions in relation to the Football Club.

i) Mr Keating knew that after Ben had agreed to take over the Club Mr Renoldi's father, Mr Gino Renoldi, came to work behind the bar. Beyond that he was aware of Mr Renoldi having made active contributions to raising sponsorship and seeking to expand the membership. In cross-examination he acknowledged that Mr Renoldi

was known to have been involved "behind the scenes" at the Football Club, including raising sponsorship, and that he had worked hard to promote the club; but he commented that "*what Mr Renoldi has done is no different to what people have done before him and after him*". He did not know Mr Ford.

ii) Mr Grover explained that from 2002 he attended at the Ground on match days, but rarely during the week, and he would go on Friday nights and at weekends. His evidence was to the effect that he did not know of, and could not recall, work done by the Defendants or their families, although he could recall having seen Wayne, Mr Ford and Mr Renoldi at the Ground. He had not known of Wayne being Chairman, and could not recall having seen Wayne working behind the bar.

iii) Mr Mainsbridge, who is at present the Chairman of East Thurrock United, first became involved with the Club in 1999 and by 2001 was actively assisting with the playing side of the Club. He remembered Wayne having been Chairman for a time, but commented that "*he wasn't really that interested in football*" and "*didn't really do a huge amount*". He was aware of Mr Renoldi's involvement for a couple of years as someone working on promotion; and he also was aware of Mr Ford having been around in the early days of Ben taking over, and of his wife assisting with teas.

iv) Mr Speight only became involved with the Football Club in about 2004; and his evidence was that he knew only Mr Ford, and not Wayne or Mr Renoldi, and had seen him a number of times at the club.

v) Mr Hibbert was a supporter who had for many years provided sponsorship, sponsorship which he continued after mid-2002. He knew Wayne, and had occasionally seen him at the Ground "*normally in the Club's bar*", but not at matches. He had also met the Additional Parties. He said that Mr Renoldi had never been in touch with him about sponsorship. He also said that the team had only started to make any significant progress from around the 2005/06 season.

vi) Mr Coventry was a coach, and had been involved with the East Thurrock United team since the 2002-03 season. He could recall Wayne having been chairman for a season or a season and a half; and while he knew that the Additional Parties had come and gone, he had no impression of their being significantly involved beyond that of a lot of other people.

vii) Mr Stephens had worked at the Ground since 2000 or thereabouts. He described many people he knew who had worked for the Club as volunteers, and he also knew that Wayne had been Chairman for a time. He also knew of Mr Renoldi acting as fundraising and promotions officer for a time, and of his father working behind the bar. He also knew of Mr Ford having helped at the Ground and had seen him in the bar at odd games.

viii) Mr Whittaker started working at the Ground on weekends in 2005, and in 2007 he came to hold an alcohol licence and be licensee for the bar.

He had not seen Wayne at the Ground. While he knew Mr Ford, he had had no dealings with him beyond serving him at the bar.

264. Mrs McBride has worked for Ben and Gro for 35 years, and they pay her salary and are good friends. I have no doubt that she is intensely loyal to them. I consider that this loyalty has coloured her evidence so that, for example, she refused to acknowledge that she could have been asked by Ben or Gro either to become a director of Fleetplant or to sign a form appointing Mr Ford to be a director of that company, when in all likelihood the request must have come from them; and this is despite the fact that Ben's defence admits that he and Gro assisted Mr Ford with the formation of Fleetplant. So far as relevant to the question of practical contributions made by the Defendants to the Football Club's running and to the identity of the reputed owners:

i) She said, and I accept, that she had a memory of making up players' wage packets at the Orsett Road offices on Friday evenings with Mr Patterson and Miss Young; but she denied that Mr Renoldi had ever assisted with the wage packets. On this last point I think that Mr Patterson is more likely to be correct: he remembers Mr Renoldi as having been present.

ii) She offered the view that Wayne's involvement in attending at the Ground to deal with tills and, each Friday, empty the fruit machines, could only have been for a short period following the acquisition of the Football Club, this period lasting until a bar manager was engaged. She explained that thereafter she or Ms Young would get the moneys needed into the office to pay for bills.

iii) She was clear that only Ben was owner of the Football Club, having taken on a "*completely separate entity ... as a business venture*". However, it was not obvious from her evidence how she come to know this at the time, or even what facts might have led her to have this belief.

265. Miss Young had worked in the Callahans business since 1999. Like Mrs McBride, it was her evidence that she had believed Ben to be sole owner of the Football Club. This she explained in her written evidence, saying that her "*ongoing belief [is] that the Club has always been a private business solely owned by Ben*". But she did not explain how she had come by this belief, so her evidence as to her belief is of limited help.

266. The relevant witnesses called by Wayne were his wife, Hayley and his daughter, Yasmin.

i) Mrs Hayley Bennett explained how, when she came to know of the acquisition of the Club in 2002, her two eldest daughters were excited. She said that Wayne had spoken to her at the time of him and Ben purchasing the Football Club; and she also said that Wayne told her that the share would be 50% to Ben, 20% to Wayne, 20% to Mr Ford and 10% to Mr Renoldi, and that "*Wayne also had the Club in his name as his name was always used for purchasing business assets*". At that time Yasmin was 12. As Yasmin got older, said Mrs Bennett, her

father allowed her to work on the gate during home games. Hollie, a younger daughter, was allowed to sell programmes, so she would not feel left out. She herself, after a time, would help every Friday to count money from the fruit machines, and would do other occasional jobs including helping Mr Ford's wife and daughter with a burger van near the pitch.

ii) Yasmin Bennett, explained how she started working at the Ground in 2003, her job being to work on the gate on Saturdays when there was a match, and then to work behind the bar. She said also that she would watch some part of the game with Ben, her grandfather. Occasionally she would help Mr Ford and his daughter, Danica, run a burger van when it was understaffed, and also she would work behind the bar when there were functions in the hall. She was paid £15 per hour for working on the gate, and £5 per hour for working behind the bar. She said she used to love working at the Club. Her contribution to cash counting was on Saturdays, not Fridays, when she would "*count the takings from the night before and prepare the floats for the tills with my father and grandfather*". She said also that once Dominique returned from Amsterdam she along with her mother, father and sisters were all excluded and not welcome to visit any more.

267. Mrs Bennett in giving her evidence was, it seemed to me, anxious to assist her husband. Her witness statement recorded as fact events which were said to have taken place when she was not there and about which she had no first-hand knowledge. When asked about this, she explained that she could remember being told these things by her husband. Her evidence about "the Club" being in Wayne's name might have been correct if, contrary to what she accepted in cross-examination, she was not speaking of 2002 but of 2003 or later: the First Company was of course "*in Wayne's name*". But the Football Club never was, and as I have explained the Ground never was either. A telling passage in her written evidence was that Mr Renoldi had "*been pushed out of offices in Orsett Road and the Club*" in about 2006, at about the time when she said that Wayne told her he had been pushed out. She corrected this at the outset of her oral evidence to say that it was in 2004 that Mr Renoldi had been pushed out. In cross-examination she again dated the pushing out of Mr Renoldi to 2006, and could not explain why she had chosen 2004 at the outset of her oral evidence. But she did acknowledge "*It is quite a long while ago*". At this distance in time I cannot accept that her evidence as to what she was told by her husband can be taken as giving support to the Defendants' contentions.

268. Ms Yasmin Bennett's evidence I largely accept, but with the comment that it seems to me that her time spent at the Ground probably is remembered by her as more extensive than actually it was. Nevertheless, there certainly was a period when she was actively involved.

269. The relevant witnesses called by the Additional parties were Mr Wayne Tomkins, Mr Peter Fusedale, Mr Edward Carter, Mr Gino Renoldi, Mr Mark Webb, Ms Danica Ford and Mr Lee Patterson.

i) Mr Tomkins played for the Club from about the middle of 2002. At about the time he was looking for a job and was directed to what he understood to be a recruitment agency run by Ben and Mr Renoldi under the name Callahans Labour Hire. He was then hired as an accounts assistant following an interview by Mr Renoldi. He explains how Mr Renoldi was responsible for paying the players' wages, collecting money from a bank and then making up wage packets. He also explained how Mr Renoldi was heavily involved in the commercial side of the Club, and devoted much of his time to raising sponsorship and organising fund raising events. He also said that Mr Ford was heavily involved with the running of the Club, and he would see him "*at the Club undertaking various different works for the Club including rebuilding the football stands and assisting the grounds man*". He said further that at Mr Renoldi's offices there was a back room for senior staff where Ben and the Defendants would meet every few weeks "*to discuss the management of the Club*". (None of the Defendants, I should add, mentioned these regular management meetings.)

ii) Mr Fusedale worked in the bar at the Ground from January 2005 to June 2005, having been asked by Mr Ford in late 2004 to take over the running of the bar as its new manager. He said he was interviewed for the position by Ben, Mr Ford and Wayne when they referred to themselves as "*equal partners in the Club*". For good measure, he said that while he was working for them these three would "*refer to each other as equal partners in the Club*". And he said that during the time he worked at the Club Mr Ford (who was "*more or less at the Club every day carrying out work … and would often bring men along to assist him with the maintenance work which he was carrying out.*") had told him he had put money into the Club.

iii) Mr Carter was an electrician who from time to time carried out work for Callahans. His evidence was that he would be asked on occasion by Mr Ford to work at the Ground, and his work would be supervised by Mr Ford. Payment for the work Mr Carter would arrange with Mr Ford or Wayne. Mr Carter says that on one occasion he was paid £5,000 by Mr Ford for work fitting out temporary accommodation at the Ground. He also said that Mr Ford told him that Ben, Wayne and Mr Ford had bought the Club, at a time when the Club was in serious disrepair. And he said that "*I always got the firm impression that [Mr Ford], Ben and Wayne were the owners of the Club*", and "*saw all three as equals*"; and also that "*It was common knowledge that [Mr Ford], Ben, Wayne and Simon were the owners of the club*". He did not explain in his written evidence why his impression as to the owners was different from what he said was common knowledge.

iv) Mr Gino Renoldi is Mr Simon Renoldi's father. He says that he was asked by Ben and Mr Simon Renoldi to come and work as bar manager at the Club, and after discussion with them he agreed to do so. He says that he only agreed because he believed Mr Simon Renoldi was one of the owners, having been told that by Mr Simon Renoldi. He also says that he had believed Ben, Wayne, Mr Ford and Mr Simon Renoldi to

be the owners, with Ben "*having a majority of the shares*". But he nowhere explained how he had formed this belief, as he says very little about the involvement of Wayne beyond having "*got the impression that others also thought that Simon [Renoldi], [Mr Ford], Ben and Wayne were the owners of the Club*". So far as concerns Mr Ford, his evidence is of his having seen Mr Ford at the Club, and that he "*would make sure that everything at the Club worked well*" and "*would also help the Bar staff with deliveries*".

v) In 2001 Mr Mark Webb came to work for Halemere, at the time (as he describes it) a recruitment agency run by Mr Simon Renoldi at 62 Orsett Road. His job title, he says, was "commercial manager". He explains that from 2002 to 2004 he was working three to four hours each day, alongside Mr Renoldi, to obtain sponsorship for the Football Club, and also that he assisted Mr Renoldi with writing match reports to be put on the Football Club's website. He says that Mr Renoldi was regarded as "the boss" by "all the staff", and from what he could tell "one of the owners", that he organised wage payments, did promotional interviews, and was the spokesperson and "face" of the Club, referring in this connection to the 2003 BBC broadcast and the filmed interview of Mr Renoldi. He says that he "*always understood that Simon was one of the owners of the Club along with Ben Bennett, Trevor Ford and Wayne Bennett*"; and he states that "*there were frequent meetings to discuss the Club and this took place at the offices of the Company between Simon, Trevor, Ben Bennett and on occasions Wayne Bennett*".

vi) Ms Danica Ford's witness statement records that in 2002 her father, Mr Ford, had told her that along with Ben and the other Defendants he had bought the Football Club, and that each of her father, Ben, Wayne and Mr Renoldi referred to the others as partners. She also says that her father become heavily involved with the Football Club, and helped with its running, and that she herself used to "*spend a lot of time at the Club with*" her father "*particularly at weekends and after School*", and helped him when there were home games by being in charge of the burger bar (for which she was not paid anything) and sometimes helping at the Club's bar.

vii) Mr Lee Patterson had declined to make a witness statement, and all his evidence was given orally at the trial. He had been manager of the team in the late 1990's, but had left when Mr Snell became chairman of the Club and, as he saw it, the Club went into decline and was in financial difficulty. He returned for the 2002/03 season and remained the manager until about 2007. As manager he did more than simply manage the team: he was Football Club manager, and explained that assisted by Mr Coventry, Mr Stephens and "*anybody that really expressed an interest to volunteer to really help out on the football side*" he would be responsible for dealing with gate receipts, sponsorship and any work that needed to be done round the ground. It was Mr Renoldi who had approached him to invite him to return to be manager. Also, while Mr Renoldi was involved, Mr Patterson's payment to players for their expenses would involve him collecting

> money from Callahans or from a branch of Halifax where sponsorship money was received and held, then sitting on a Thursday or Friday evening at the Callahans offices with Mr Renoldi, Miss Young and Mrs McBride to make up the expenses into envelopes to have handed over to players on the Saturday. He believed that he had known of Ben as owner, "*from the previous sort of board*" really saying that Ben had taken over the debt of the football club and was now the new owner. He had little knowledge of Wayne or Mr Ford working at the Ground, having only seen them occasionally so far as he could recall. Mr Patterson said that he used to speak to Mr Renoldi regularly about the progress of the team. He remembered Mr Renoldi using the word "owners" in conversations when Mr Renoldi would threaten Mr Patterson, if the team had not been playing well, with the owners contemplating making "*a changer managerial wise*".

270. Mr Tomkins' evidence was, in my judgment, exaggerated. He has, as he admitted in cross-examination, reasons to be grateful to Mr Renoldi, for whom he has done work for many years (as he described it, sitting "*next to each other in the accounts room, in an office all day, every day, for the last 16 years*"); and, I formed the view that he is keen to support Mr Renoldi's claim. For example, in cross-examination on the passage in his written evidence which I have quoted concerning Mr Ford's rebuilding the football stand, he said that his evidence was because on one occasion he had seen Mr Ford actually carrying out rebuilding work; but, when it was pointed out that Mr Ford himself made no claim to have himself worked on rebuilding the stand, Mr Tomkins then said he had in fact seen Mr Ford "*overseeing the works maybe*". As to the periodic management meetings, Mr Tomkins agreed in cross-examination that he had not himself been present during the meetings, and that he was repeating what he had been told after the meetings concerning their subject. He could not explain why he remembered meetings which none of the Defendants remembered, and which would plainly have been of central importance to their case of partnership with Ben. Finally, although Mr Tomkins in his written evidence claimed to have been told by Mr Renoldi both that the latter "*had a share of the Club*", and that it was a 10% share with Mr Ford having a 20% share, in his oral evidence he agreed nothing specific was told to him by Mr Renoldi before 2004, and he could not remember what Mr Renoldi had said when telling him of the size of the shares.

271. While it is possible that Mr Ford might have used to Mr Fusedale the word "*partners*" when explaining that the latter's proposed engagement to work at the Club would be subject to interview by Ben and Wayne, I do not accept that the word "*equal*" was used by Mr Ford; and I think it improbable that in an interview or at any other time any of the three referred to any of the others of the three as their equal partner. Indeed in his oral evidence Mr Fusedale acknowledged that "*they had not told me they were equal partners*". Further, Mr Fusedale explained in his oral evidence that he is and has been for a very long time a friend of Mr Ford's; and he added that "*We used to speak to each other all the time … he would come to my pub and we would chat. We would chat for hours. It is what you do is it not*". The likelihood, in my judgment, is that these frequent and lengthy chats have resulted in Mr Fusedale's memory of what actually happened becoming confused, and that he was willing to embellish such memory as he had. I had the clear impression that this

happened when he described, at the conclusion of his oral examination, what was said when he was interviewed for a job by Mr Ford, Ben and Wayne.

272. Mr Carter's connection with the Football Club during the material time must have been quite limited, as he did not know of individuals who would undoubtedly have been prominent in the years from 2002 to 2006. In my judgment he was exaggerating what he could actually remember, and putting forward evidence without any firm foundation. When asked about his memory of what was common knowledge, namely the ownership of the Football Club, his response was that "*Trevor Ford would turn up and meet me there and go through work that him and Wayne had discussed previously, I expect – I do not know for sure – that they wanted done …*". He went on in his oral evidence to try to explain the difference between his impression as to ownership of the Football Club and what he said was common knowledge, this difference being the involvement of Mr Renoldi. This explanation (that he only ever dealt with Mr Ford, Ben and Wayne, and not Mr Renoldi) was an unconvincing effort to explain a reconstruction of events.

273. Mr Gino Renoldi obviously enjoyed giving his oral evidence, trying to score points off Counsel cross-examining him. But I was not satisfied that he had any real memory of Mr Simon Renoldi telling him, in Ben's presence, that he (Mr Simon Renoldi) had a small share in the Club. I accept that Mr Gino Renoldi knew that his son was heavily involved with the running of the Football Club, and that Mr Ford had from time to time done work at the Ground. But beyond that any beliefs he may have had as to ownership of the Football Club would have been his own assumptions.

274. Ms Danica Ford, in her cross-examination, acknowledged that her witness statement contained two errors of detail. More importantly, it was accepted by her that, with the exception of what her father would have said of the others, she had not heard any of the Defendants or Ben referring to any of the others as "*partners*". And, judging from her evidence in her cross-examination, I do not think she could in fact remember her father having spoken of the others as his partners. Further, while she may have a memory of her father having become involved with the Football Club, and of telling her that he was to be involved, I do not accept that she can recall the detail of what he said to her concerning ownership of the Football Club.

275. Mr Patterson's evidence was measured and, in my judgment, given carefully: he was doing his best to say only what he could recall. For example, his explanation concerning his belief as to the ownership of the Club is well understandable, if the minutes of the meeting of the Club on 6 April 2003 are correct: he is shown as having been present at that meeting, when there was reference to the hand over of the Club to Ben. He fairly pointed out that he did not know about the involvement of the Defendants in the ownership of the Club, not having been party to any conversations or agreements about that.

276. In discussing the evidence surrounding the question of reputed ownership of the Football Club I have not described the extensive exploration at the trial of the BBC broadcast of the interview with Mr Renoldi to which I have referred. Much time was given over during the trial to considering how the relevant caption came to have been arrived at by the BBC, where Ben was when the

broadcast took place, what the reactions were of those who saw it, and so forth. It is unnecessary to spend time on what ultimately seems to me to be altogether inconclusive. The caption was not particularly noticeable. Further, the interest to anyone watching who had any connection with the Football Club would have been in what Mr Renoldi was saying and how he appeared, rather than the description of him placed underneath his name and displayed only for a few seconds. I cannot see that the caption was significant or demonstrates that Mr Renoldi was, or passed himself off to the BBC (or was passed off by anyone else who might have known the facts) as, co-owner of the First Company or the Football Club.

277. In paragraph 256 above I summarised the way in which Wayne describes his contribution to the Football Club. As I have already indicated, I accept that Wayne and his family did the work which they say they did, although I also conclude that they are likely to be overstating the level of commitment in time and effort. Further, Mrs McBride is likely to be correct when she says that Wayne's role in collecting, counting and physically handling and managing cash diminished as the changed arrangements after mid-2002 took hold.

278. I have already made findings about Wayne's financial contributions to the Football Club from the Callahans account.

279. I summarised in paragraph 257 above the way in which Mr Ford's contributions to the Club are described. Mr Ford's written evidence followed these headings. However, having listened carefully to his oral evidence, and having considered the evidence of the other witnesses, I am sure that Mr Ford exaggerated his contributions to the Football Club; but I accept that he gave worthwhile assistance. Specific comments I would make are:

i) Mr Ford's work at the Ground was not every day; rather he would visit the Ground regularly. His work at the ground was chiefly contributing and directing his workers, when they did work on structures at the Ground. The sandwich making and tea/burger bar running does not appear to me to have been particularly burdensome or unrewarding.

ii) Mr Ford had no idea about the income or expenditure of Pageway or Fleetplant, as this was administered by the staff at the Callahans offices. Whether those companies were net contributors to the Football Club is not something he would have known or decided upon. But, if they were, that would not necessarily have been his decision. Thus, I cannot accept the argument made on his behalf, that because VAT reports from the Quicken system suggest that between 2006 and 2009 Pageway might have contributed some £106,000 towards the Football Club (or the company running it), it can be shown that Mr Ford himself made or caused over that period any such financial support for the Football Club. Again, while it is possible that from time to time in the period after mid-2002 Mr Ford had made cash payments for work or materials at the Football Club, I am not satisfied that Mr Ford was left out of pocket to any material extent.

iii) Whoever had the idea of putting portacabins into the car park (and Wayne's written evidence is that it was Ben's idea, while Ben seemed willing to acknowledge that Mr Ford had at the least played a part), the

only real issue is whether there was a material cost to Mr Ford in time, trouble and personal outlay. As to this I accept that Mr Ford was involved in the sourcing and fitting out of portacabins; but this work was not particularly remarkable. I am not persuaded that Mr Ford personally made any financial contribution to the costs involved, or that he procured the fitting out to be done at no cost to the Football Club. It is possible that money towards the costs was taken from Pageway by Gro or someone else in the Orsett Road offices; but that would not have been something handled by Mr Ford. I think it more probable, though, that any costs were paid in cash and accounted for, if at all, as part of income received in cash and accounted for only informally through the notebooks.

280. Mr Renoldi's contributions to the Club, as his case was presented, are summarised in paragraph 258 above. These, I consider, were not so extensive as presented, while nevertheless significant.

i) Mr Renoldi was active, for a couple of seasons, in seeking sponsorship income for the Football Club, and for generating publicity and enthusiasm (and hence support) for the team and hence the football club. Also he did start and maintain a website, with Halemere staff assisting. This activity on the part of Mr Renoldi will have helped to get the Football Club out of the doldrums in which it had found itself at the end of the 2001/02 season. But this activity was, it seems to me, nothing like a full time job: it had the character of work which could be done in leisure time.

ii) If Mr Renoldi or Halemere made any financial contribution towards the Football Club, this was extremely modest. In particular, as to the arranging and paying of team wages from Halemere, Mr Renoldi's evidence on the point was more measured than the impression given in the presentation in argument on his behalf. His own role was confined to making up wage packets, a task others were involved in as well. The Halemere payments towards wages were only occasional, when there was for whatever reason a cash shortfall, there being no indication that the Halemere payments were bounty and were not repaid.

281. A submission strongly pressed on me on behalf of the Defendants is that the activities of the Defendants and their connections in supporting and promoting the Football Club could not be explained except on the basis that each had to have been promised, and believed himself entitled to, a share in the Football Club. In this regard the blue and red notebooks convey that at times there were loans made and repaid among the Football Club, the Defendants (and related companies) and Ben. It is then pointed out that none of the supporters or volunteers appear to have been involved in such loans, suggesting that the relationship between those protagonists was one of business, among business associates with a common ownership interest in the Football Club.

282. I do not accept this submission. As I have already indicated, my assessment of the evidence is that the activities of the Defendants and their supporters, including the loan transactions, are explicable on the basis that Ben, the senior

member of the Bennett family, had taken on a new and exciting venture which his family and associates were pleased to help him with: at the end of the day Ben was the main figure in the businesses carried on from Orsett Road and could decide on the application of the income and property of the businesses.

The Defendants' ceasing to be involved with the Football Club

283. From about 2007 none of the Defendants had any continuing active involvement with the Football Club.

i) Mr Renoldi's involvement stopped in mid 2004 following a serious disagreement between Ben and him. This had concerned a fracas which had happened at the Ground at a time when the two of them were together travelling abroad in Portugal for the 2004 European Cup Finals: they had different views as to who was to blame for the fracas. Mr Renoldi claims that this disagreement was simply a pretext for Ben to exclude him. I think the more likely reason for their different views was that they had different loyalties to the individuals involved in the fracas and a different understanding of events. At all events Mr Renoldi moved out of the 62 Orsett Road offices, and he and Ben severed their business interests in Halemere, having agreed they could no longer work together. According to the written Opening submitted by Mr Hornett on behalf of Mr Renoldi, at the time "*nothing was said or agreed about [his] 10% interest in the Club*".

ii) Wayne admits that he ceased to be involved in about 2006; and his wife says she remembers how at that time Wayne told her he had been asked to return his keys. Wayne says that he was excluded by Ben, at a time when Ben refused to allow him to continue taking drawings from the Callahans business, Ben's case as to this being that Wayne was taking excessive drawings when the Callahans business was financially stretched and could not afford the drawings, and that Wayne's refusal to accept this led to a falling out between them. Wayne made no claim to any interest in the Football Club or the Ground when he was excluded, and for a number of years thereafter.

iii) Mr Ford ceased to be involved in about 2006 or 2007, when (according to his evidence) he was alienated and side-lined by Ben, Ben's attitude towards him having changed when he complained to Ben about Dominique's operation of the Football Club's bar. As a result, says Mr Ford, he felt ostracised and no longer welcome and so ceased to be involved. From about 2006 or 2007 he joined Wayne in a pub business at the Corringham Bull. It is said by the Claimants that this pub was in competition with the Football Club's bar. Mr Ford's pleaded case is that "*At no point was there any discussion had about Mr Ford's 20% interest in the Club*".

284. Ben admits in his pleaded case that he excluded Mr Renoldi following their disagreement. Ben denies that he excluded Wayne. Mr Ford's own pleaded case does not allege in terms an exclusion by Ben, but rather that Mr Ford felt that he was ostracised by Ben; nevertheless the case has been presented on the basis that Mr Ford's position was made intolerable by Ben, and therefore he ceased to be involved.

285. It is difficult to be confident about the truth of the Defendants' claims to have been driven away by Ben from involvement with the Football Club; but my conclusion is that on this issue their contention is to be accepted. The likelihood, in my judgment, is that it was Ben who brought about the departure of the Defendants, leaving them no real choice.

286. A common position taken by the Additional Parties is that when ceasing to be involved with the Football Club each had thought there to be no great value in the Football Club. Mr Renoldi's written evidence was that he "*didn't think there would be any income from the Club for years (if ever)*". In his oral evidence he supplemented this, saying "*At the time when we had a falling out, it had a big debt on it. It was worth nothing. Why would I want to take my 10% of the club then?*". Mr Ford's written evidence was that he "*knew the Club was not making a profit and so … knew [he] was not entitled to take anything out by way of income*", that he "*didn't really expect it to make any serious money*", and that he "*never thought the Club was worth very much if anything*".

287. Wayne's evidence is that he made no claim because, as he explained it, "*I was aware that the Club was held in my name and I had a 20% beneficial interest*", so that "*I always thought that my father and I would have to resolve our issues at some point as he would need my involvement if he ever wanted to sell the Club*". To be clear, in this explanation "*the Club*" means "*East Thurrock United Football Club and its grounds*".

288. A feature of the Defendants' evidence is, of course, that as and when each of the Defendants ceased to be involved with the Football Club, it remained still the business of the First Company; but the First Company appears to have been completely ignored by them at the time when they ceased to be involved. This follows from what they say was in their thinking at the time. They all proceeded as if the First Company's existence and operation was a simple fiction. They all knew, however, that the Greene King debt remained outstanding. They all knew that it had been Ben, and Ben alone, who had had any dealings with Greene King and the Trustees concerning the debt. None apparently gave any thought to the obvious point that if the Football Club failed to prosper and ran into financial difficulties, it would be Ben and not them who might be pursued for any of the Football Club's debts, in particular by Greene King or the Trustees as regards the Greene King debt.

289. A submission made by the Claimants is that when eventually the Greene King debt was paid off, and then again when the Trustees transferred the Ground to Dominique, there was no surviving partnership involving the Defendants and Ben, and therefore the Defendants cannot say that the Ground is still a partnership asset. As to this, had there been any partnership formed in 2002, it could not have continued after 2003 when the Football Club was acquired and run by the First Company, so that no longer was the partnership doing or able to do the business it had been formed to do. But, further, the Claimants submit that at the latest any partnership formed in 2002 would have been dissolved as regards each of the Defendants as each in turn ceased to be involved so that by 2007 only Ben remained.

290. I consider that this argument is unanswerable. What each Defendant would have been entitled to as an outgoing partner was an account of what was due in respect of his proportionate share of the partnership's net assets. The Ground had not yet become an asset of the partnership, as not only had there been no transfer of the Ground, but further there had not even been a written contract for its purchase.

291. For a corresponding reason the Defendants' claims based on joint venture must fail. Their respective causes of action, which would have arisen before the acquisition of the Ground from the Trustees, would be for breach of the joint venture, when each was excluded, and damages or an account of what was due to them at the time.

The Defendants' claims in relation to the Football Club and the Ground – conclusion

292. I have already explained my reasons for rejecting the Defendants' primary claim, their claim to have been partners with Ben in relation to the Football Club, and need say no more about that claim.

293. The Defendants' constructive trust claim based on a joint venture arrangement or understanding, explained in paragraph 37 above, also is to be rejected. My reasons are at paragraph 250 above.

294. The Claimants deployed, as an answer to the Defendants' claims to have beneficial interests in the Ground based on their partnership contentions, an argument that section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 prevents the Defendants from asserting that the 2002 Agreement gave them any beneficial interest in the Ground. That section requires, in its essentials, that subject to irrelevant provisions a contract for the sale or other disposition of an interest in land is only to be made in writing and then only by incorporating all the expressly agreed terms in one written signed contract. It is said that therefore, by operation of section 2 of the 1989 Act, there was no contract at all for the partnership contended for by the Defendants, and therefore they can have no interests in the Ground when acquired by Dominique as nominee, ostensibly for Ben.

295. The logic of the Claimants' argument based on section 2 of the 1989 Act is that a partnership agreement may not be made orally where, as in the present case, the partnership is formed for the purpose of buying and conducting business on land owned by a stranger to the partnership. In the present case when the putative partnership was agreed upon, there was no contract yet made by the Trustees for the sale of the Ground, to Ben or anyone else.

296. In my judgment this argument is to be rejected. The formation of a partnership does not, in the example I have just given, involve any sale or disposition of any interest in land, so that a contract of partnership for such a partnership is not required to be in writing. Writing becomes relevant, by operation of the section, when one or more of the partners seeks to purchase land or interests in the land from the third party owner: the contract for that purchase needs to be in writing. But if, say, one of the partners, in the capacity of partner, is the contracting purchaser, the purchase by the partner will be by him as agent for the partnership, and the land or interest in the land when conveyed to him pursuant to the contract will be held by the partner as

an asset of the partnership. The partner's purchase of the land from the third party will not involve any sale by the partner to the partnership (and hence to the other partners).

297. Wayne has his own claim based on the 2009 Properties List taken with the Settlement Agreement. The argument put forward on Wayne's behalf by Mr Clegg is that in 2010 Ben agreed with Wayne that the latter had a 20% share in the Ground, and further added to this an additional 5%, thereby agreeing and representing that Wayne had a share in the Ground of 25%, and causing Wayne to submit the 2009 Properties List to the Revenue and to accept responsibility for a proportion of the sum which was paid to put an end to the Revenue's investigation. On this basis it is submitted that Ben is estopped from denying that Wayne has a 25%, or alternatively 20%, share in the Ground, or alternatively that Wayne has such a share arising by way of constructive trust. No doubt having regard to section 53 of the Law of Property Act 1925, and the requirement for signed writing for the creation or disposal of an interest in land, Wayne does not rely simply on the making of the 2009 Properties List as causing him to become entitled to 25% of the beneficial interest in the Ground.

298. In my judgment the facts do not support Wayne's argument described in the previous paragraph. While the parties (by which I mean Ben, Wayne, Mr Baker and in all likelihood Mr Stonebrook), as I have found, agreed to the 2009 Properties List being put to the Revenue with a view to having the Revenue investigation bought off by paying a settlement sum, it is indeed Wayne's case that the description of interests in the listed properties was not agreed between the parties as "finalised". What was in the 2009 Properties List as submitted to the Revenue was simply what the parties expected the Revenue to accept without further question. And the division of the burden of the settlement sum was not part of a bargain under which one of the parties traded with another interests in properties. It was a way of sharing responsibility for the settlement sum, a sum which would satisfy the Revenue and put an end to the investigation: it has not been shown that the sum was calculated with any precision and by reference to particular properties and values or prices to justify an inference that Wayne was paying (or believed he was paying) Ben for an interest, or an interest of a particular extent, in the Ground or, for that matter, any other properties, or was otherwise making his contribution provided for in the Settlement Agreement on the basis that the 2009 Properties List defined what he owned beneficially.

299. Wayne also claimed to have interests in the Ground arising by way of resulting trust or presumption of advancement. I need only note that I reject these claims. Resulting trust would require Wayne to show that he had made a transfer of some property to Ben without clarity as to Wayne's intention, in making the transfer, as to his disposition of the beneficial interest in the property; and there is no evidence of any relevant transfer of property to Ben. What is relied upon by Wayne is payments made to service or in reduction of the Greene King debt and coming from the Football Club or from the Callahans Account. The payments from the Football Club would have been, at any rate after mid-2003, payments of money belonging to the First Company; but, even before that, I have rejected Wayne's claim that he had a beneficial interest in the Football Club so that sums paid in the operation of

the business might be treated as his property. And I am not satisfied that payments from the Callahans Account towards the Greene King debt or the Football Club were payments of Wayne's money.

300. Conversely a trust in favour of Wayne arising as a result of a presumption of advancement would require Ben to have made a transfer in favour of Wayne; and I cannot identify any such transfer. The transfer principally relied upon by Wayne is said to be the payment of money to Greene King via the Bennett Partnership Account, the argument being that this payment involved a disposition in favour of Wayne. I have already described how this Partnership Account came into existence. I do not accept that in 2007 a payment into this account gave rise to a chose in action owed to Wayne as his own property.

301. In the result my conclusion is that the Defendants have no beneficial interest in the Ground, or in the Football Club, and no claim against Ben or Dominique for an account either in respect of the putative partnership or in respect of amounts received from or spent on the Ground. Their claims against the Claimants fail, subject only to the claim referred to in paragraph 148 above.

Laches and Limitation

302. Given this conclusion, it is not strictly necessary for me to consider the Claimants' case that the Defendants' claims (that is, those claims other than Wayne's which are said to arise from the 2010 settlement of the Revenue's long-running investigation) are no longer open to them, assuming that they once might have been. I shall nevertheless explain briefly my reasons for finding in favour of the Claimants on this issue.

303. The behaviour of each of the Defendants, in ceasing for many years to be involved in the Football Club without making any claim to a share and without any protest that he was being excluded from a business in which he was a partner and part-owner, has the flavour of abandoning the Football Club and any partnership there might have been. But the case made by the Claimants is that in any event it is no longer just for the Defendants to be given the claimed relief.

304. The principle on which the Claimants rely, that is the doctrine of laches where equitable relief is claimed, is conveniently explained in the speech of Lord Blackburn in *Erlanger v New Sombrero Phosphate Co* (1877-78) LR 3 App Cas 1218 at page 1279:

> *"In Lindsay Petroleum C v Hurd (1874) L.R. 5 P.C. 221 , 239, it is said:*
>
> > *'The doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where, by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material. But in*

> *every case if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.'*
>
> *I have looked in vain for any authority which gives a more distinct and definite rule than this; and I think, from the nature of the inquiry, it must always be a question of more or less, depending on the degree of diligence which might reasonably be required, and the degree of change which has occurred, whether the balance of justice or injustice is in favour of granting the remedy or withholding it. The determination of such a question must largely depend on the turn of mind of those who have to decide, and must therefore be subject to uncertainty; but that, I think, is inherent in the nature of the inquiry."*

305. In the present case the simple period of delay is several years at the least. In that time the Defendants stood by without making any claim, knowing that Ben was dealing with the Football Club as though it were his. For example, it was after the Defendants had ceased to be involved that the Greene King debt was paid off. The only possible point which might be made on the Defendants' side of the balance is that, on their case, they were each excluded by Ben without good reason, so that it would not be unjust to grant them the claimed relief against him and Dominique. But the exclusion is, after all, the circumstance which might naturally be expected to call for at least <u>some</u> diligence on the part of the Defendants in asserting their claims. Instead they each positively chose to say and do nothing.

306. On the other side of the balance is the fact that for many years Ben has carried on in relation to the Football Club without having any of the input from the Defendants that was supposed to be the return for their respective interests in the Football Club. In my judgment it is not just for an excluded party to say that that party is excused from providing their promised input, without the party also pointing out that the party is reserving the right to make a claim, at a future time of the party's choosing, to recover the promised interest despite not having given the promised input. Quite simply, Ben was left, as time went by without any claim having been made, to think that there would be no claim in respect of the Football Club and to deal with the Football Club, the First Company, the Second Company and a further related entity (called East Thurrock United Football Club Social Club Ltd) as he thought best.

307. The passage of time is of considerable importance when, as in the present case, the foundation for the claim being asserted is an oral agreement. As time passes, memories fade and evidence is lost. In the present case this is certainly true. The Additional Parties acknowledged this in their written Opening, when it was said "*Given the practical difficulties of taking accounts from*

2002, the Additional Parties are prepared to take a practical and realistic approach to their accounting claims". How this practical and realistic approach might operate in practice is difficult to see. It will have been apparent from much of this judgment that the remoteness of the material events, and the resulting deficiencies in the documentary record, has resulted in real difficulties in divining the truth of the various versions of events offered to the Court: the difficulties go far beyond trying to manage an accounting from the disorganised and incomplete accounting materials before the Court.

308. In the result I have no doubt that the balance of justice or injustice is in favour of withholding the remedies claimed by Wayne and the Additional Parties.

309. So far I have considered the defence of laches. It is unnecessary, and perhaps not open, to the Claimants to rely on this defence if and to the extent that the Defendants' claims are time-barred under the Limitation Act 1980.

310. It is accepted by the Additional Parties that their claims all arose many years ago, at the latest when they ceased to be involved with the Football Club, and that it was much more than 6 years before they brought any proceedings to vindicate their claims. The Claimants' argument is that the Defendants' claims (other than Wayne's claim based on the events of 2010) are all for an account, and are all barred by section 23 of the Limitation Act 1980, that section providing for actions for an account the same limit under the Act which is applicable to the claim which is the basis for the duty to account.

311. If the Defendants were correct that a partnership had been constituted in 2002, the claims which they might each be making could be for an account of what was due to them for their share in the partnership at the time of their respective departures from the partnership business, on the basis that at that time the partnership dissolved so far as they were concerned and they were then entitled to be paid their proportionate share of the partnership's net assets. Their claims would then be subject to six-year limitation period by the combined operation of section 43 of the Partnership Act 1890 and either section 5 or section 9 of the Limitation Act 1980. This would be an application of the principle stated by Lord Lindley in "Lindley on Partnership", 4th Ed, p.966 as cited with approval by Malins V.-C. in Noyes v Crawley (1878) 10 Ch.D. 31 at 39: "*So long ... as a partnership is subsisting, and each partner is exercising his rights and enjoying his property, the statute of limitations has, it is conceived, no application at all; but as soon as a partnership is dissolved or there is any exclusion of one partner by the others, the case is very different, and that statute begins to run*".

312. But the Defendants also make claims to be entitled to shares in the Ground on other bases than partnership. In particular they say that they can rely on section 21(1)(b) of the Limitation Act 1980 as preventing the running of time under the statute where the relevant claim is to recover property held by Ben or Dominique as constructive trustee, and where the taking of any account would be incidental to that claim For this they rely on Burnden Holdings (UK) Ltd v Fielding [2018] UKSC 14.

313. While I see the force of the argument in the previous paragraph, I do not comment on it further. If the argument is correct, it does not assist the

Defendants given their admitted delay in bringing forward their claims and my conclusion that it would be unjust for these claims now to be pursued further.

Disposition

314. The Claimants will be entitled to the claimed declaration that Wayne has no right or interest in the Ground and to have an order for the cancellation of Wayne's application for the entry of a restriction against the title to the Ground. On the other hand the Defendants' claims will be dismissed, with the exception of Wayne's claim to a declaration concerning the transfer of shares in the Second Company. As to this claim, the declaration ought to be simply that there has been no transfer made by Wayne of any shares in the Second Company.

315. When this judgment is handed down I will make an order in the terms indicated in the previous paragraph. But as this judgment is to be handed down shortly before the Long Vacation and the parties may not be in a position to deal with the costs and other consequential orders following this judgment, I propose to direct pursuant to CPR 52.12(1)(a) that the Defendants' time for filing an appellants' notice at the Court of Appeal should be 8 weeks, to 19 September 2018. In making this direction I am not at this time giving the Defendants permission to appeal: that will be a matter to be considered if an application for permission is made. Rather I fintend that the Defendants should have ample time if they need to prepare any application, and that the time for seeking to appeal should not have expired before any further hearing to deal with the consequential orders.