Neutral Citation Number: [2025] EWHC 1083 (Ch)

Case No: BL-2023-000426

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

Rolls Building
Fetter Lane
London, EC4A 1NL

15 May 2025

Before :

NICOLA RUSHTON KC

(Sitting as a Deputy Judge of the High Court)

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Between :

12345 RETAIL GROUP LTD

Claimant

- and -

(1) BUBBLE CITY LTD
(2) MR QINGHENG MENG
(3) MR SUNEET SINGH SACHDEVA
(4) MR YIJIAN GAO
(5) BUBBLE CITEA LTD
(6) CITEA OUTLETS LTD

Defendants

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Mr Edward Bennion-Pedley (instructed by **Broadfield Law UK LLP**) for the **Claimant**
Mr Ben Shaw KC (instructed by **Richard Slade & Partners LLP**) for the **First to Sixth Defendants**

Hearing dates: 10-14 and 17 February 2025

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Approved Judgment

This judgment was handed down remotely at 10 a.m. on 15 May 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

NICOLA RUSHTON KC:

Introduction

1. This claim is part two of a dispute over the control of a chain of bubble tea outlets which since 2019 have been operated to a substantial extent through the Fifth Defendant, Bubble Citea Ltd ("**OpCo**"), and under the brand name "Bubble Citea" ("**the Brand**"). This judgment follows a fully contested trial of liability and quantum over 6 days from 10 to 17 February 2025. Except where otherwise stated, the facts in this Introduction are agreed.

2. The Bubble Citea business operates through kiosks and small shops, generally located within shopping malls, all over Britain although with a greater presence in the south of England. There are 28 outlets currently operated through OpCo and about a further 25 operated through the Sixth Defendant, Citea Outlets Ltd ("**Outlets**"). All 53 outlets use the same Bubble Citea branding and all are presently under the control of the Defendants. During the trial it was confirmed on behalf of the Claimant that its claim is now limited to OpCo and the 28 outlets which it operates, although its claim has previously been wider.

3. Part one of the dispute was an unfair prejudice petition under s.994 of the Companies Act 2006 ("**CA 2006**") between many but not all of the same parties. The trial of that petition was heard by ICC Judge Prentis in June 2022. He handed down judgment on 20 July 2022 in *Re Enno Capital Ltd (CN 11887468),* [2022] EWHC 1819 (Ch). He made a number of significant findings, some of which are relevant to the case before me. There is an issue, albeit now quite limited, as to whether certain of the Defendants are bound by certain specific findings of Judge Prentis.

4. The case before me arises from the transfer on 25 August 2020 of the sole share ("**the Subscriber Share**") in OpCo by its former owner Enno Capital Ltd ("**Enno**", now in liquidation) to the First Defendant ("**Bubble City**"), at the same time as Enno also transferred the sole share in Bubble City back to its original owner, the Third Defendant, Mr Suneet Singh Sachdeva ("**Mr Sachdeva**"). Those transfers were made pursuant to the terms of an alleged written Settlement Agreement dated 12 August 2020 ("**the Settlement Agreement**") made between Mr Sachdeva and Enno. The Claimant alleges the Settlement Agreement was void insofar as it purported to provide for Enno to sell and for Mr Sachdeva to procure that Bubble City should buy the entire share capital of OpCo. The Claimant claims as an assignee of Enno's claims against the Defendants.

5. The Brand was originally conceived and developed by Mr Sachdeva via his company, Bubble City, which he set up in August 2013, selling bubble tea from a store in Guildford. The business did not develop significantly between then and August 2019, except that in June 2018 Mr Sachdeva and a business associate, the Fourth Defendant, Mr Yijian Gao ("**Mr Gao**"), opened a second bubble tea shop in Portsmouth via a second company, known as Bubble Portsmouth.

6. However in early 2019 Mr Sachdeva and Mr Gao were introduced through a mutual acquaintance, the Second Defendant, Mr Qingheng Meng ("**Mr Meng**"), to a successful Chinese businessman, Mr Shichuang Xie ("**Mr Xie**"), who was interested in investing substantial funds into the Bubble Citea business. In April 2019 an agreement in principle was reached, whereby Bubble City and Bubble Portsmouth would be sold to a newly

created company, Enno, in which Mr Xie would invest and in which Mr Sachdeva, Mr Meng and Mr Gao would all have an interest and be employed.

7. Further to this plan, Enno was incorporated, and on 17 June 2019 Mr Xie and Mr Meng were appointed as Enno's two directors, with 95% of the shares initially issued to Mr Xie and 5% to Mr Meng. At the same time, two subsidiaries of Enno were incorporated: OpCo and Bubble Tea Supplier Ltd ("**SupplyCo**"). Mr Meng was the sole director of OpCo at all times up to 25 August 2020.

8. On 10 August 2019 Mr Sachdeva signed a business purchase agreement ("**the BPA**") under which he sold Bubble City to Enno. The BPA included a significant clause 22(d) which allowed Mr Sachdeva to "recall the deal" after one year, or else give that option up for a payment to him of £70,000.

9. On 12 August 2019 Mr Sachdeva duly transferred his one share in Bubble City to Enno for £1. Bubble Portsmouth had also been sold to Enno shortly before this. Also on 12 August 2019, Mr Xie's shareholding was reduced to 80% and the other 20% of the shares were transferred by him and Mr Meng to a company CT Management Holdings Ltd ("**CTMH**"), the shares in which were divided equally between Mr Sachdeva, Mr Meng and Mr Gao. Mr Meng became Enno's general manager, with Mr Sachdeva dealing with marketing and negotiating new stores and Mr Gao handling logistics including the practicalities of opening new stores. From this point OpCo operated the outlets and received revenue, and SupplyCo purchased bubble tea ingredients from Bubble City's Taiwanese supplier, Possmei, which it stored and supplied to OpCo at cost, i.e. without itself making a profit on the supplies. Bubble City became another subsidiary of Enno and held the Brand.

10. Over the following 10 months, Mr Xie loaned a total of about £1.2M to Enno, and by December 2019 six further Bubble Citea outlets had been opened, in Basingstoke, Plymouth, Brighton, Uxbridge, Bromley and Crawley. A second investor, Ms Kun Ding ("**Ms Ding**") also loaned £1.5M to Enno. However in March 2020 the Covid lockdown meant all the outlets were temporarily closed and further development of the business was effectively suspended.

11. From about early to mid-2020, relations between Mr Xie on the one hand and Mr Sachdeva, Mr Meng and Mr Gao on the other deteriorated very badly, as I will consider in some detail in this judgment. Mr Xie expressed a wish to replace Mr Meng with a new manager and Mr Sachdeva became disillusioned with remaining a part of Enno.

12. This deterioration in relations culminated on 15 June 2020 in Mr Meng purporting to remove Mr Xie as a director and dramatically to dilute Mr Xie's shareholding in Enno to less than 1%, by purporting to issue a large number of further shares in Enno. On 16 June 2020 Mr Xie was removed by Mr Meng and/or Mr Gao from management group chats and when Mr Xie travelled to OpCo's Portsmouth offices to confront Mr Meng, Mr Gao and Mr Sachdeva, he was refused entry. On 18 June 2020 Mr Meng purported to appoint Mr Gao as a director of Enno. From 22 June 2020 hostile correspondence was being sent by solicitors representing Mr Xie to Mr Meng, Mr Gao and Mr Sachdeva and from 25 June 2020, from solicitors for Mr Meng to Mr Xie.

13. On 1 July 2020 Mr Sachdeva gave notice to Mr Meng that he wished to "recall" the deal, i.e. to take back his shareholding in Bubble City, together with his original Guildford

outlet and the Brand, although he had already indicated by June that he intended to do this. Two new outlets were also opened around this time, in Croydon in July 2020 (I believe since closed) and Redditch on 22 August 2020.

14. Against this background two apparent compromise agreements were signed in August 2020, on which the trial before me centred. Both were signed, as deeds, by Mr Meng and Mr Sachdeva, and it is clear that both were signed without Mr Xie's knowledge.

15. The first was the Settlement Agreement, which was signed by Mr Meng on behalf of Enno and by Mr Sachdeva. By transferring the single Subscriber Share in OpCo from Enno to Bubble City, at the same time as transferring the single share in Bubble City back to Mr Sachdeva, the Settlement Agreement effectively transferred the whole of the Bubble Citea business (except for SupplyCo) away from Enno and into the ultimate ownership and control of Mr Sachdeva. By clause 3, the Settlement Agreement was said to be in settlement of any claims connected to the recall under the BPA or any other matters connected to the relationship between the parties. As Judge Prentis observed, it reads like a document prepared with professional legal help.

16. The second was a Memorandum of Understanding (the "**MOU**") dated 19 August 2020 and made between Mr Sachdeva and OpCo (again acting through Mr Meng). This referred to the Settlement Agreement, stated that OpCo had received significant benefit from Mr Sachdeva for the use of the Bubble Citea brand and set out what was said to be a fee structure by which OpCo agreed to pay Mr Sachdeva management fees for past services, plus brand fees for the existing stores, initially for 5 years, coming to a total of £524,000, repayable long-term over 3-5 years, without interest. The Defendants' case is that Mr Sachdeva was originally seeking £1M in settlement of claims he was making against Enno, but through negotiation a figure of £524,000 was eventually reached. Their case is that the Settlement Agreement was intended then to compromise the liabilities which OpCo would otherwise have had to Mr Sachdeva, as reflected in the MOU, by transferring OpCo itself to Bubble City, and Bubble City back to him, instead.

17. The two share transfers in the Settlement Agreement were effected on 25 August 2020. On the same day Mr Meng resigned as a director of OpCo and Mr Sachdeva and Mr Gao were appointed as OpCo's directors instead.

18. On 31 August 2020 Bubble City and OpCo each entered into a new exclusive Supply of Goods and Services Agreement with a new supply company, Jing Capital Ltd ("**Jing**"). Jing had been incorporated on 3 June 2020 with Mr Meng as the sole director and shareholder. The supplies were still from Possmei, but were no longer made to OpCo at cost. The agreements included fees for assistance with setting up new outlets and marketing, as well as supply of ingredients. There is a dispute between the parties as to the terms on which Jing has been selling bubble tea ingredients to OpCo, but Jing also offers online sales, under the trading name Boba Buzz, and it appears its sales to OpCo are essentially at the same prices. However the Defendants say that Jing has offered OpCo very generous payment terms, which OpCo needed, especially at the start.

19. On 27 August 2020 OpCo repaid £600,000 to Ms Ding in respect of her loans to Enno. This essentially represented OpCo's available cash at the time. It appears that around the same time Ms Ding lent around £1M to Jing to assist starting it up, although similarly to before Judge Prentis, Ms Ding has not given evidence before me.

20. There is a dispute as to whether Mr Gao's and Mr Meng's involvement with OpCo was seamless or whether there was a short hiatus, but certainly they were quickly involved with the Bubble Citea business under its new ownership. Mr Gao's role was the same as it had been under Enno. Mr Meng's role was on the supply side, through his control of Jing. OpCo grew rapidly over the next 2 years and by August 2022 it had 30 stores (although 2 have since closed).

21. On 14 December 2020, Mr Xie presented his unfair prejudice petition. The Respondents were Mr Meng, Mr Gao, Mr Sachdeva, Enno, and CTMH.

22. A year later, on 3 December 2021, OpCo issued 99 new shares, allotted to Bubble City by Mr Sachdeva as director, so it then held 100 shares including the Subscriber Share. Mr Sachdeva said in evidence that he did this on advice from his accountant, to facilitate potential investors taking shares in OpCo (although this never happened). By this stage Mr Sachdeva was the sole director of OpCo, Mr Gao having resigned on 15 June 2021.

23. On 20 July 2022, in his judgment following the trial of the petition, Judge Prentis made findings including that Mr Sachdeva had successfully exercised a right of recall in June-August 2020 (which Mr Xie had disputed), and had thereby regained control of Bubble City and the Brand. However his main conclusion was that Enno's affairs had indeed been conducted in a manner which was unfairly prejudicial to Mr Xie. By an order of 23 August 2022 Judge Prentis:

    i) Declared that Mr Meng had acted in breach of duty in purporting to remove Mr Xie as a director and appoint Mr Gao in his place, that these acts were of no effect, and that Mr Xie remained a director of Enno.

    ii) Declared that Mr Meng had acted in breach of duty in procuring Enno to allot the shares which had led to the purported dilution of Mr Xie's shareholding in Enno, and those purported allotments were of no legal effect.

    iii) Declared that the brand and trademark for Bubble Citea belonged to Bubble City.

    iv) Ordered Enno to repay Mr Xie his loans, totalling £1,246,647.12 plus interest.

24. During the course of the petition trial in June 2022, Enno was put into creditors voluntary liquidation by Mr Meng, although the parties' lawyers and the court were not told of this until the end of the trial. Enno was by then clearly insolvent, not least because of the loans repayable to Mr Xie, the balance repayable to Ms Ding and the transfer away of its share in OpCo.

25. In the months immediately after Judge Prentis handed down his judgment in July 2020, OpCo began diverting its revenues and its cash to an account held by Bubble City. After the judgment, all new Bubble Citea outlets were set up either through Bubble City or through Outlets, not OpCo. The Claimant's case is that this diversion of revenue and cash away from OpCo was part of a deliberate attempt by Mr Sachdeva to frustrate any claim to OpCo by Enno and/or Mr Xie.

26. The present claim was issued on 20 March 2023, a letter of claim having originally been sent on 27 September 2022. The Claimant is a special purpose vehicle owned and controlled by Mr Xie, which took an assignment from Enno's liquidators of Enno's

claims against the First to Fifth Defendants, by a deed of assignment of 17 March 2023, of which notice was given to the Defendants on the same date. Outlets was added by amendment to the claim on 18 December 2023, further notice of assignment being given on 11 March 2024. The validity of those assignments has been but is no longer disputed.

27. On 25 July 2023, on the Claimant's application, Deputy Judge Saira Salimi granted an interim injunction ("**the Salimi Order**") requiring the First to Fifth Defendants to restore the position as to payment of revenues to that which had existed on 27 July 2022, so that each outlet which had been paying revenues to OpCo at that date reverted to doing so, so far as future payments were concerned. This application was made after those Defendants had given undertakings through their solicitors in a letter of response dated 19 October 2022 not to diminish the assets of OpCo except in the ordinary course of business, despite which diversion of revenue and cash to Bubble City or Outlets had continued.

28. On 19 August 2023 the Defendants agreed a plan, with the assistance of their solicitors and accountants, for the reversion to OpCo of those stores which had been open as at 27 July 2022 ("**the Reversion Plan**"). Later stores have continued to be opened and owned by Outlets or Bubble City, including a small number where an outlet changed location. I believe the Reversion Plan was only disclosed to the Claimant relatively recently, when it was provided to the experts. The Reversion Plan creates a "spin-off" or franchise-type arrangement for the then 30 OpCo outlets, albeit it is said to involve a more hands-on approach to management. It includes a 5-year licence to operate under the Brand for a Royalty Fee of 5.25% of revenues, plus provision of back-office, marketing and management services for a Marketing and Management fee of 3% of revenues. It adopts the exclusive supply agreement which Bubble City has with Jing. This plan has since been implemented. I refer below in more detail to its contents.

Structure of this judgment

29. After that introduction, this judgment is structured as follows:

i) Summary of the 7 main live issues. These have changed and narrowed in the course of the trial. For clarity I have not included all the various sub-issues, or matters no longer in dispute.

ii) The witnesses.

iii) The key documents.

iv) My main findings of fact, including whether there is any relevant issue estoppel in respect of the Settlement Agreement arising from Judge Prentis's judgment.

v) Consideration of each of the 7 main issues, including the relevant law and any further factual findings and my conclusions applying the law to my factual findings.

vi) Final conclusions.

30. It was agreed by the parties at the Pre Trial Review ("**PTR**") before me in January 2025 that I should hear evidence on and determine both the liability and the quantum issues. Expert evidence on quantum was therefore presented on a number of alternative factual bases.

The main issues

31. The two sides have taken radically different stances as to which issues it is necessary for me to resolve. The list of issues filed with the court for the trial runs to 18 issues, not including sub-issues, but still did not ultimately include everything. However, in the course of the trial it became clear that the main live issues were as follows:

    i) Whether the Settlement Agreement and consequent transfer of the Subscriber Share to Bubble City is void as made without authority and/or in breach of fiduciary duty by Mr Meng and/or Mr Gao (as de jure director and de facto director respectively), with the knowledge of Mr Sachdeva, or if the Settlement Agreement was a genuine compromise of a real dispute.

    ii) Whether the Claimant has a proprietary claim to the Subscriber Share; in particular whether Mr Sachdeva assisted in any breach of duty by Mr Meng and/or Mr Gao and if so whether his knowledge was sufficient to constitute dishonest assistance and/or for Bubble City's receipt of that share to amount to knowing receipt.

    iii) Whether the Claimant has a proprietary claim to the other 99 shares issued and allotted on 3 December 2021 whether as traceable proceeds or via a remedial constructive trust or claim for breach of trust.

    iv) Alternatively, whether the issue of the 99 shares was undertaken for an improper purpose, and if so whether the Claimant has standing now to obtain an order to set aside that share issue or for rectification of OpCo's register of members.

    v) If the Claimant has a proprietary claim for the return of the 100 shares in OpCo, whether it also has a claim for substantial equitable compensation, the Claimant having elected for equitable compensation, not an account of profits.

    vi) If the Claimant has a claim for equitable compensation, how it should be calculated and what the quantum is, including consideration of the relative merits of the two sides' expert valuation evidence of OpCo and the correct date of valuation.

    vii) Whether the Claimant has a valid alternative claim for unlawful means conspiracy, and if so, against whom and for what measure of damages.

32. I must also express my appreciation for the constructive approach which counsel, Mr Edward Bennion-Pedley for the Claimant and Mr Ben Shaw KC for the Defendants, took to managing the trial and clarifying the issues, and the very helpful written and oral submissions provided by each of them, which have significantly aided my task.

The witnesses

33. The main four witnesses of fact before me were the same as before Judge Prentis: Mr Xie for the Claimant and the three individual Defendants, Mr Meng, Mr Sachdeva and Mr Gao. I have however formed my own individual view of those witnesses, based on their testimony before me and the trial more generally. I did have the benefit both of their witness statements from the petition (and the transcript of that trial) and also their witness statements for this trial. The only additional witness of fact was Mr Meng Xu, who gave evidence for the Claimant, and is Mr Xie's accountant. However he was a peripheral witness, having no direct knowledge of the key events in the summer of 2020, whose role

was mainly evidence gathering to support the Claimant's case. All five factual witnesses gave live evidence and were cross-examined.

34. I will also make some preliminary observations about language. Mr Xie, Mr Meng, Mr Gao and Mr Xu all speak Chinese as their native language. However their abilities to speak and understand English differed markedly, as was apparent in the course of the trial. Mr Xie plainly has limited, possibly very limited, knowledge of English, as all parties agreed. He gave evidence entirely through an interpreter. Mr Meng, Mr Gao and Mr Xu have all studied in the UK or the US on further degree or vocational courses which were conducted in English. Mr Meng and Mr Gao chose to give evidence with the assistance of an interpreter, as is entirely their right, and I comment further below on this in my assessment of each witness, but they were also competent English speakers. Mr Xu was a highly competent English speaker who did not use an interpreter. My impressions of the main witnesses in this respect accorded with that of Judge Prentis.

35. Mr Sachdeva is British and a native English speaker. Significantly for the purposes of this case, although he could speak and understand a little Chinese, his ability to do so was limited, certainly at the relevant time in 2020. This meant that, in the course of the events on which this trial focused, Mr Xie and Mr Sachdeva could not effectively communicate directly with each other, but were dependent on others for translation, usually Mr Meng or Mr Gao. In addition, group message chats were either in Chinese or in English (translations were provided of the Chinese ones in evidence); Mr Sachdeva could not participate effectively in the Chinese group chats and similarly Mr Xie could not participate in English ones.

36. As was the case before Judge Prentis, given the extremely contested nature of the factual evidence, it is notable that there are certain people whom one anticipates could have given valuable and more independent evidence on key issues, but who have not been called as witnesses by either party, in particular Mr Sachdeva's father and Ms Ding. I do not draw any inferences from their absence, but the oral evidence before me was less comprehensive and more partial (in both senses) as a result. In those circumstances I have placed particular weight on contemporaneous documents where available. However around the key events in July and August 2020 in particular, there is a surprising paucity of contemporaneous emails, text messages or other documents. In key respects I have therefore had to draw inferences from the evidence I do have and from the inherent probability of events.

37. In addition, each side relied on expert forensic accountancy evidence as to the value and profitability of OpCo on two dates (30 August 2022 and 30 September 2024, the latter treated as a proxy for the date of trial) and subject to various assumptions. This was for the purpose of any assessment of equitable compensation, although the Defendants' position was that this exercise was unnecessary. The Claimant relied on the evidence of Mr Andrew Donaldson BA (Hons) FCA FRSA MEWI, who produced a main report dated 29 November 2024 and a supplementary report dated 22 January 2025. The Defendants relied on the evidence of Ms Bee-Lean Chew MSc FCA MAE CFE, who produced a main report dated 2 December 2024 and a supplementary report dated 28 January 2025. I also had the benefit of a joint statement of areas of agreement and disagreement dated 11 December 2024 and a supplementary joint statement dated 5 February 2025. Both experts gave live evidence, back to back after the factual evidence, and were cross examined.

38. Mr Shaw submitted on behalf of the Defendants that it was unnecessary for me to assess the relative merits of the experts because there was no legal basis for any claim by the Claimant for equitable compensation. However, as will become apparent in the course of this judgment, I have found it necessary to compare and analyse that evidence to some degree, and I will set out my assessment of the expert evidence that I considered relevant when I come to consider equitable compensation. At this stage I wish to make two general points about the experts.

39. First, I consider that both experts were mindful of their duties to the court and approached their task with appropriate professionalism. In my view both were doing their best to assist the court as expert witnesses. In his closing submissions, Mr Bennion-Pedley criticised Ms Chew as having been there "almost as an advocate for her clients as opposed to an expert giving an independent opinion", saying that she "essentially talked around the point until she arrived at a conclusion that was favourable to her clients." I reject that submission, which I consider unjustified. While her approach to the task of valuing OpCo was conducted on a different basis to that of Mr Donaldson, there were aspects of both experts' evidence which I found of some assistance.

40. Second, the greatest difficulty for me as the judge in considering the expert evidence was that the two experts had been asked to approach their task on the basis of quite different assumptions, so that their evidence was of limited value where those assumptions were wrong. In my view this, rather than any lack of professionalism of the experts, was what led to a sense that each side's expert evidence was so orientated to their own side's case concept that they became difficult to compare and contrast.

41. With that introduction I will proceed to summarise my overall impressions of the factual witnesses.

Mr Xie

42. As already noted, Mr Xie gave evidence entirely through an interpreter and did not appear to understand or respond to the English questions. He was a confident witness, who spoke quite directly and forcefully, consistent with his description as a successful businessman. He clearly regarded himself as having been in charge of the Bubble Citea business as at the early summer of 2020 and entitled to make decisions and give instructions as to its management, as he chose. He had a tendency to grandstand and make statements rather than answering the questions put to him and gave the impression of having now formed a very fixed negative view of what had happened, which coloured his recollection, for example in saying he already suspected Mr Meng (in mid-June 2020). He was not inclined to make any concessions or admit of any doubt, and in my view underplayed some aspects, for example the extent to which in June 2020 he just wanted to sell the Bubble Citea business and get out of it. Overall I consider he was giving a reasonably honest account of the situation in 2020 as he perceived it, but strongly coloured by subsequent events.

43. Where Mr Xie says he was not aware of certain matters because they were kept from him by the Defendants, I accept that. In particular I accept that he was not aware of and did not approve the contents or overall intentions of the Settlement Agreement and was not aware of its existence until much later, in the course of the litigation on the petition. This is consistent with the correspondence sent by his solicitors to the Defendants in

September 2020, which makes no mention of the Settlement Agreement or of any negotiations with Mr Sachdeva.

Mr Xu

44. As already noted, Mr Xu is and was Mr Xie's accountant and he has been assisting Mr Xie with litigation against the Defendants since about November 2020. He has no direct knowledge of any of the events on which this case turns. His role has been to obtain factual evidence of matters such as pricing of ingredients by Jing and its competitors, and to assist Mr Xie in analysing the bank statements disclosed in the proceedings by the Defendants. His evidence in his witness statements often bordered on quasi-expert evidence and indeed significant parts were redacted either by agreement or following an order by me at the PTR. Insofar as he explains how material such as current price lists were obtained so they could be provided to the Claimant's expert, Mr Donaldson, his evidence was necessary background. Mr Shaw's cross examination of him was unsurprisingly limited. Overall it was not evidence which was able to assist me in resolving the real factual issues in this case.

Mr Sachdeva

45. Mr Sachdeva is in his 20's and is younger than the other parties. Bubble Citea is his first business venture and he is clearly passionate about it. In 2019 and 2020 he was relying significantly on his father for business advice, and it was on his father's advice that the recall option was included in the BPA. Mr Sachdeva was most fluent in evidence when explaining the success of the business, for example the choice to use high quality ingredients from Possmei in Taiwan, rather than what he said were poorer quality ingredients from Chinese grocery suppliers Longdan, saying "what we sell is experience". On issues concerning his knowledge of his business, including how to negotiate lease terms with shopping malls and launch new outlets, and the importance of good quality bubble tea supplies, his evidence was persuasive.

46. However on the key events in the summer of 2020, his evidence was unsatisfactory, frequently evasive and in some respects utterly unconvincing, for example in denying that he, Mr Meng and Mr Gao were intending in August 2020 to continue working together. On this he contradicted the evidence in his witness statement and floundered on whether there was any break in his relationship with them. On the key question of whether the 7 or 8 outlets then in existence had reopened by mid-August post-Covid and were receiving significant revenues, his answers were evasive, and he often retreated into denials and unconvincing statements that he could not remember, for example when faced with bank statements and payment records showing record-breaking revenues for the business in August 2020. I am unpersuaded that he could not remember the details of what was happening at that time, although he certainly gave the impression that it was a difficult time which he preferred not to think about. He agreed he had considered and did consider Mr Xie to be racist.

47. On the matter of the diversion of revenues and cash away from OpCo and into the accounts of Bubble City in the second half of 2022, which is plain and obvious from the bank statements, and took place at a time when he was OpCo's sole director, he kept saying he did not remember, did not get involved with the accounting and was not good with numbers. These were thoroughly unconvincing answers. His refusal to acknowledge what must have been his role at that time in switching business from OpCo and emptying

it of cash after the loss of the petition trial seriously undermines his credibility as a witness, even though I also accept Mr Shaw's submission that these matters are 2 years after the summer of 2020 and occurred at a time when hostilities between the parties were intense, so they cannot give direct insight into their thought processes or actions in June – August 2020. There is also other evidence suggestive of a lack of commercial probity by Mr Sachdeva, in particular his receipt of a Covid bounce back loan into Bubble City's account in July 2020 even though trading operations were by then through OpCo, and his use thereafter of that money very substantially for personal expenditure.

48. Mr Sachdeva became very uncomfortable during his cross-examination both on the events from June to September 2020 and from August 2022, becoming defensive, evasive and argumentative, but he did not try to put forward any other explanation for what was apparent from the bank statements from both periods. His evasions were transparent and unsophisticated.

49. My conclusion is that Mr Sachdeva's account of the key events leading to the signature of the Settlement Agreement is unreliable and incomplete, although I do accept that in June-July 2020 when he gave notice of recall, Mr Sachdeva's initial intention was simply to regain control of Bubble City and his original Guildford store, because he had become thoroughly disillusioned with Mr Xie and could not see a future within Enno.

Mr Meng

50. Mr Meng gave evidence with the assistance of an interpreter. He agreed in cross examination that he had studied at degree level in English in both the US and the UK, and he accepted that he could understand what Mr Bennion-Pedley was saying in English. Much of the time he answered the questions put to him in English, increasingly so as the cross examination progressed. I do not criticise him for preferring to consider and answer more complex questions in his native language, but I also formed the clear impression that he was using the interpreter to give himself more time to think about his answers and to slow the pace and challenge of cross-examination.

51. Mr Meng was the individual who in practice had the primary responsibility for running the Bubble Citea business in the summer of 2020. When he said in evidence that he was faced at that time with four issues: Covid; Mr Xie wanting to be repaid his loan and to sell the assets of the business; Mr Sachdeva wanting to recall Bubble City; and Ms Ding also then wanting to be repaid her loan, I accept that that was the truth as he saw it. My conclusion is that he took the steps which he believed would continue the overall Bubble Citea business, creating the documents which would support the steps he wanted to take, without regard to the legal niceties of whether what he was doing was right. I am quite convinced that he was the brains behind all the steps that were taken in the summer of 2020 which ultimately resulted in the value in the Bubble Citea business being transferred away from Enno and Mr Xie, to a different entity controlled by his preferred partners, Mr Sachdeva and Mr Gao, leaving behind the debt to Mr Xie in Enno, combined with the launch of a new, profit-making supply company in Jing under his own control, with the assistance of funding from Ms Ding. From his perspective, Mr Xie had become an unreliable and overbearing business partner whom he wished to escape from.

52. Unlike Mr Sachdeva, he did not become noticeably uncomfortable during cross-examination, but he gave a number of answers which were simply implausible, for example that the stock recorded in SupplyCo's accounts for the year ending August 2020

was thrown away because it was expired rather than being appropriated and used by Bubble City/OpCo; or that Jing was just his wife's consultancy company - even as at August 2020 and even though he was its sole director and shareholder; or that there was no link between the diversion of business away from OpCo after August 2022 and the Defendants' loss of the petition case.

53. My overall impression of his evidence about the key events in the summer of 2020 is that he mixed truth with fiction to give answers which fitted with his own overall concept of this case, helped by the slower pace and need for clarifications which came from giving evidence through an interpreter. This makes it very difficult for me to rely on his evidence in any respect except where it is consistent with other evidence or is inherently likely to be true.

Mr Gao

54. Mr Gao also gave evidence with the assistance of an interpreter, and made an interesting contrast to Mr Meng. His English was not quite as good as Mr Meng's, but he frequently tried to answer Mr Bennion-Pedley's questions in English even when it appeared he had not properly understood the question, and it might have been better to wait for the Chinese and then answer. Parts of his evidence were somewhat muddled as a result, but I think this was mainly over-eagerness on his part and not any attempt to create confusion.

55. Mr Gao's perception was that he became a director of Enno, at Mr Meng's request, in June 2020 because Mr Xie wanted to get out. He said that being in charge of operations, it was his intention to manage the business to make the shops run well and make sure the systems worked properly, and I accept that as far as it goes. He confirmed that he still worked for Enno in June and July 2020, albeit often from home, and he was involved in the installation of the new outlet in Redditch in August 2020. My conclusion is that he continued essentially in the same role throughout this period in 2020, albeit there were changes arising from the fact that stores were re-opening after the Covid lockdown.

56. Mr Gao answered most of the questions put to him straightforwardly, even if there were some confusions. He was not in my view evasive and did not appear to be trying to avoid answering difficult questions. He clearly considered Mr Meng to be entitled to make decisions on behalf of Enno, and also regarded Mr Meng as being in charge of matters such as company structures, accounts and banking. My overall assessment is that he was an honest witness who was doing his best the answer the questions put to him, but there were some significant limits to his understanding of what was happening at the time in the summer of 2020 because of what he saw as his role. He was aware in August 2020 of the transfer of OpCo to Bubble City through the Settlement Agreement, but I accept that he genuinely believed Mr Meng was entitled to do what he was doing.

The key documents

57. The BPA was considered in detail by Judge Prentis, who ruled that it did include a recall option which Mr Sachdeva had exercised effectively, and that Bubble City owned and owns the Brand. Both these matters had been disputed by Mr Xie in the petition. There are no issues arising from it which remain for me to resolve. I note simply that the recall provision was at s.22(d) and was in the following terms:

"(d) the purchaser [Enno] will offer the seller [Mr Sachdeva] to recall this deal after one year or when the seller give up the option of recall this deal will received £70,000 for the option value."

The Settlement Agreement

58. The Settlement Agreement, which is central to the dispute before me, is in the following terms so far as relevant. It was signed as a deed by Mr Sachdeva and Mr Meng, witnessed by a Fanzhi Yang, all signatories giving addresses in Portsmouth.

"**THIS SETTLEMENT AGREEMENT IS DATED 12 August 2020**

BETWEEN

(1) **SUNEET SINGH SACHDEVA** of 28 Hurstdene Avenue, Staines-Upon-Thames, England TW18 lJQ (SS);

(2) **ENNO CAPITAL LTD** (Company number 11887468) whose registered office is 4 Curzon Howe Road, Portsmouth, England, POl 382 (the ECL).

BACKGROUND

(A) SS and ECL entered into the purchase of business agreement dated 10 August 2019 whereby SS transferred the entire issued share capital of Bubble City Ltd to ECL (Agreement). Under this Agreement, ECL granted SS the right to recall the transaction (Recall).

(B) SS has exercised his right under clause 22(d) of the Agreement and the parties have agreed terms for the full and final settlement of the Recall and wish to record those terms of settlement, on a binding basis, in this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this agreement, unless the context otherwise requires, the following words and expressions have the following meanings:

BCity Shares 1 ordinary share of £1 being the entire issued share capital of Bubble City Ltd (CRN: 08655296).

BCitea Shares 1 ordinary share of £1 being the entire issued share capital of Bubble Citea Ltd (CRN: 12055095).

Connected has the meaning given in section 1122 of the Corporation Tax Act 2010.

CTM CT Management Holdings Ltd (Company number 12106760) whose registered office is 4 Curzon Howe Road, Portsmouth, England, POl 3BZ.

Related Parties in relation to a party a person Connected with such party and his assigns, transferees, representatives, principals, agents and in case of a corporation its officers or directors.

2 TRANSFER OF SHARES

In consideration of their respective obligations set out in this clause 2, on the date of this agreement:

2.1 ECL shall sell and SS shall buy the BCity Shares with full title guarantee and free from all encumbrances, together with all rights that attach (or may in the future attach) to the BCity Shares including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement;

2.2 ECL shall sell and SS shall procure that Bubble City Ltd (CRN: 08655296) shall buy the BCitea Shares with full title guarantee and free from all encumbrances, together with all rights that attach (or may in the future attach) to the BCitea Shares including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement;

2.3 SS shall sell and ECL shall procure that Qingheng Meng shall buy 5 ordinary shares of £1 each in the capital of CTM with full title guarantee and free from all encumbrances, together with all rights that attach (or may in the future attach) to such shares including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement;

2.4 SS shall procure that Yijian Gao [as] seller and ECL shall procure that Qingheng Meng shall buy 5 ordinary shares of £1 each in the capital of CTM with full title guarantee and free from all encumbrances, together with all rights that attach (or may in the future attach) to such shares including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement.

3 RELEASE AND AGREEMENT NOT TO SUE

3.1 This agreement is in full and final settlement of, and each party hereby releases and forever discharges, all and/or any actions, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the parties or to the law, and whether in law or equity, that it, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other party or any of its Related Parties arising out of or connected with:

3.1.1 the Recall;

3.1.2 the Agreement; and

3.1.3 any other matter arising out of or connected with the relationship between the parties including their Related Parties.

(Collectively the Released Claims)

3.2 Each party agrees, on behalf of itself and on behalf of its Related Parties not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other party or its Related Parties any action, suit or other proceeding concerning the Released Claims, in this jurisdiction or any other.

3.3 Clause 3 and clause 3.2 shall not apply to, and the Released Claims shall not include, any claims in respect of any breach of this agreement.

…

5 WARRANTIES AND INDEMNITIES

5.1 Each party warrants and represents to the other with respect to itself that it has the full right, power and authority to execute, deliver and perform this agreement.

5.2 Each party hereby indemnifies, and shall keep indemnified, the other party against all costs and damages (including the entire legal expenses of the parties) incurred in all future actions, claims and proceedings in respect of any of the Released Claims which it or its Related Parties or any of them may bring against the other party or its Related Parties or any of them.

6 SEVERABILITY

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

7 ENTIRE AGREEMENT

7.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

7.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

…

9 GOVERNING LAW AND JURISDICTION

9.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

10.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

…

12 VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

This agreement has been entered into as a deed on the date stated at the beginning of it."

The Memorandum of Understanding

59. The MOU was quite short and was in the following terms. It was signed by Mr Sachdeva and by Mr Meng acting as a director of OpCo, witnessed by a Chi Ho Mak:

"**MEMORANDUM OF UNDERSTANDING DATED 19th AUGUST 2020**.

BETWEEN

1. SUNEET SINGH SACHDEVA of 28 Hurstdene Avenue, Staines-Upon-Thames, England TW18 lJQ (SS);

2. BUBBLE CITEA LTD (Company number 12055095) whose registered office is 4 Curzon Howe Road, Portsmouth, England, POl 3BZ (BCT).

BACKGROUND

A. BCT is currently the retail arm of Enno Capital Ltd (ECL) (company number 11887468) and a member of the ECL group of companies.

B. SS and ECL entered into a Settlement Agreement dated 12 August 2020 ("Settlement Agreement") under which the parties confirmed the recall of certain rights and assets to SS.

C. Prior cooperation between SS and ECL was formed on the basis that ECL through BCT would increase the number of stores to 100; that the value

added through this expansion will confer benefit to SS. ECL and BCT did not achieve the said expansion hence the enactment of the Settlement Agreement.

D. BCT received significant benefit from SS in the use of the brand, the Guildford store and his experience. SS wishes to be compensated for the benefit gained at his expense.

E. SS and BCT have entered into a Memorandum of Understanding ("MOU") to arrive at a monetary settlement for both the rights allowed by and the services rendered by SS to BCT during a period when BCT had control over certain brands.

F. This MOU is to be considered a constituent part of the Settlement Agreement.

AGREED TERMS

1. **DEFINITIONS AND INTERPRETATION**

Brand fees a flat fee charged by SS to BCT of £40,000 per store for the right to use the brand, initially intended for 5 years. This fee was due at point of opening and is non-refundable.

Guildford store fee was a charge agreed to gain benefit for the Guildford store, the original flagship founded and wholly owned by SS that was operated by BCT, this fee being £120,000.

Management fees are charges for services rendered by SS which include the identification, opening, training and marketing lead services. £30,000 per store, time adjusted in the fee calculation.

2. SS and BCT have agreed to the following fee structure:

Management Fees	
Portsmouth	£24,000
Basingstoke	£22,000
Plymouth	£18,000
Brighton	£16,000
Crawley	£14,000
Bromley	£14,000
Store fee	
Guildford	£120,000

Brand fees	
Portsmouth	£40,000
Basingstoke	£40,000
Plymouth	£40,000
Brighton	£40,000
Uxbridge	£40,000
Crawley	£40,000
Bromley	£40,000
Total	**£524,000**

3. Payment terms are categorized as long term until BCT has sufficient cash flow to pay SS. The debt holds a zero-coupon rate and it is anticipated to be paid within 3-5 years.

4. All parties are to cover their own respective costs.

5. Other statutory terms are covered in the Settlement Agreement and to be upheld in this MOU.

This agreement has been entered into as a deed on the date stated at the beginning of it."

Agreements for the supply of goods and/or services by Jing

60. Another relevant document is the Supply of Goods and Services Agreement dated 31 August 2020 ("**SGSA 2020**") between Jing and OpCo, with an equivalent agreement in identical terms, of the same date, having been made between Jing and Bubble City. This was replaced for Bubble City by a Supply of Goods Agreement dated 31 March 2023 ("**SGA 2023**"), although this one does not extend to provision of services. I was told there was no similar new agreement with OpCo, but I note that by clause 2.10 of the SGA 2023, Bubble City grants Jing exclusive supplier status to all operators of its brand, on the same terms, which would include OpCo for as long as it uses the Brand.

61. There were the following material terms in the SGSA 2020, with equivalent terms in SGA 2023 unless otherwise stated:

    i) Clause 2.9: "The Customer shall grant the Supplier exclusive supplier status to the Customer, with the exception of where the Supplier is unable to supply Goods under the terms of this Agreement"

ii) Clause 8.1: "The sums due for the Goods shall be those as set out in the Supplier's current price list made available to the Customer either by writing or via the Purchase Order System." [Clause 6.1 under the SGSA 2023]

iii) Clause 8.4: "The sums due for the Services shall be those as set out in the Supplier's current price list from time to time, starting with the attached price list in Schedule 2." There is no provision for services in the SGA 2023, and no schedules of services or fees for such services.

iv) By clause 8.7, payment terms were 120 calendar days from the date of invoice.

v) By clause 13, the agreement was to continue for a period of 5 years, essentially with no early termination rights except for breach. There is an equivalent clause 11 in the SGSA 2023.

vi) Schedules 1 and 2 to the SGSA 2020, but not the SGA 2023, provide for Jing to provide services as follows, at the following prices (excluding VAT):

a) Store openings, at £30,000 per store;

b) Consultancy, for a monthly fee at £50 per hour;

c) Marketing, at 1% of customer revenue for each store, from the start of the second year of operation, charged on a quarterly basis;

d) Maintenance support, for a monthly fee of £25 per hour.

The Reversion Plan dated 19 August 2023

62. The Reversion Plan expressly states that it has been created for the purpose of complying with the Salimi Order. Among other things it provides:

i) By paragraph 1.3, the 30 Bubble Citea-branded stores listed at clause 2.1 are to be transferred to OpCo, with 4 stores as of 19 August 2023 remaining with Bubble City. I do note however that the list of 30 includes the Guildford store, which the Claimant has conceded should be returned to or retained by Bubble City, since on any view it was to return to Bubble City and Mr Sachdeva under the recall in the BPA. I am told another store has since closed, so the relevant number of stores held by OpCo is now 28.

ii) Paragraph 1.4.1 states that "Bubble City Ltd will grant OpCo a 5 year licence to operate under the Bubble Citea brand (see paragraph 3.1 and 3.2)".

iii) On revenues, paragraph 1.4.2 states "The revenues of the aforementioned stores are to be transferred to OpCo bank accounts (see paragraph 4)."

iv) Paragraph 1.5 provides: "The licencing arrangement mentioned herein will be applied to [Outlets] so as to ensure no differences in treatment from one licence holder to the other. However, cross charging and cost-centre operations will differ in so much as [Outlets] have staff and leases in its name. However, the aim is to provide parity of treatment of costs and revenues for both OpCo and Outlets (i.e., both will be responsible for leases, store level, employee costs – no matter whether directly under them or via Bubble City Ltd)".

v) Paragraph 1.6 states: "The licencing arrangement from Bubble City Ltd to OpCo [and Outlets] is somewhat different to many other 'franchisors' or 'licensors' in that Bubble City Ltd takes a greater hands-on approach to management matters in its licencing model so far. This is reflected in the Administrative and Management Fee outlined in paragraph 5)."

vi) Paragraph 1.9 provides: "The thirty plus two stores have built up a significant debt with Jing Capital Ltd (exclusive supplier), this is due to the 120 days credit granted by Jing Capital to the Bubble Citea brand. This debt amounts to £2 million, will be apportioned back to OpCo and will continue to be paid off by OpCo. To consider:

1.9.1 This debt was originally held by OpCo in 31st July, 2022 but transferred to Bubble City Ltd. It will now be reversed.

1.9.2 It will not include any debt owed from the operation of the four stores that remain in Bubble City Ltd.

1.9.3 The aforementioned debt in 31st July 2022 can be evidenced in historical accounts."

vii) Paragraph 3 set out the "Terms of Operation" including the following:

"3.1 OpCo will be operating the brand under licence and will be paying a 5.25% Royalty fee for this.

3.2 Bubble City Ltd will continue to provide a robust set of services to OpCo in addition to maintenance of the brand. This will include the provision of back-office services along with marketing and robust management services. To reflect this a number of additional fees are added to recoup Bubble City Ltd costs, notwithstanding a 3% Marketing and Management Fee.

3.3 The Royalty Fee and Marketing and Management Fee outlined in paragraphs 3.1 and 3.2 are referred to as the Licence Fee when combined.

3.4 All fees mentioned herein are defined further in the Costs section in paragraphs 5 and 6.

3.5 The summary basic terms of the Licence are that it expires after a period of 5 years, where the licensor has the option to terminate with 90 days' notice where underperformance, breach or licensor risk to the brand become apparent.

3.6 The particulars of the Licence will be outlined in a Licence Agreement between OpCo and Bubble City Ltd. This Licence Agreement will be similar (if not identical) to the Licence Agreement between Citea Outlets Ltd and Bubble City Ltd."

Sub-paragraph 3.7 then lists a large number of operations and services which Bubble City will provide to OpCo, including in relation to HR, training, maintenance, accounting, marketing and brand development. Sub-clause 3.7.17 provides that leases and business rates will remain with Bubble City.

Sub-paragraph 3.8 lists the operations which will be under the direct remit of OpCo. These are all store-specific functions.

viii) Paragraph 4.1 provides that the revenue generated through these 30 stores will be directed into OpCo's Metro bank account.

ix) Paragraph 5 provides more detail on the costs to be paid by OpCo to Bubble City. In particular, clause 5.1 provides: "OpCo will pay a Licence Fee to Bubble City Ltd representing 8.25% of total revenues paid on a monthly basis. The Licence Fee for the prior month is calculated and invoiced in the first week of the month to be paid on or before the 15th calendar day of the month. This fee is made up of:

5.1.1 Royalty Fee of 5.25% of total revenues for the right to use the brand;

5.1.2 Marketing and Management Fee of 3% of total revenues for the marketing and management support provided by Bubble City Ltd to OpCo."

x) Paragraph 5.3 provides that Bubble City will charge OpCo for all leases, licences, service charges and business rates relating to the 30 stores, plus an administration charge of 5%.

xi) Paragraph 5.4 provides that where Bubble City has paid a cost clearly attributable to OpCo, this will be invoiced to OpCo with a 4% administration charge.

xii) Paragraph 5.5 states: "It should be noted that additional costs and fees are common in a franchisor to franchisee relationship, that the Bubble City Ltd cost structure to OpCo can be considered favourable to OpCo by comparison."

xiii) Paragraph 7.4 states: "Jing Capital Ltd has an exclusive supply arrangement with Bubble City Ltd meaning the majority of purchases made by OpCo (and all licensees) are to be made with Jing Capital Ltd."

xiv) I also note that paragraph 7.5 states: "In the spirit of timely compliance with the court order, the management of Bubble City Ltd has been favourable to OpCo in the apportioning of costs and debts. For the avoidance of doubt, if Mr Xie were to evaluate OpCo for the sake of taking value from it, a broader assessment of costs and debts will need to be undertaken."

Contemporaneous solicitor correspondence

63. The trial bundle includes one email chain and two solicitors' letters from the period June to September 2020 when the relevant events were taking place, which shed some light on the parties' knowledge and the state of their relations at the time.

64. First is a letter from solicitors acting for Mr Meng to Mr Xie, dated 25 June 2020, which claims that Mr Xie's behaviour has caused Mr Meng and his family serious concern and that his unlawful actions have resulted in harassment, alarm and distress. It is alleged that Mr Xie has caused (unspecified) harassment on two occasions. It alleges blackmail, by making unlawful and "unwarranted demands with menaces" with a view to gain for himself or another, with intention to cause loss to Mr Meng. Again, what this is said to entail is not specified. Finally an allegation of malicious communication is made, by sending messages to Mr Meng and his family, which conveyed threats and information

known or believed to be false, with the intention of causing distress or anxiety to Mr Meng or his family. It is alleged these are serious criminal offences, one of which carries a maximum prison sentence of 14 years. The letter requires Mr Xie to cease and desist, and says that if he contacts Mr Meng or his family, or attends Enno's main place of business in Portsmouth, legal action will be commenced without further notice.

65. The next is an exchange of emails from late June 2020. The first is a short email from Mr Gao to Mr Xie dated 27 June 2020. Mr Gao thanks Mr Xie for acknowledging him as a director of Enno, and asks Mr Xie to ask his lawyers to write to Enno's Board stating that they are withdrawing all the allegations in their letter of 22 June 2020, and ask his lawyers to state Mr Xie's proposals to the Board in writing. Mr Gao said in evidence that he prepared this email with the help of translation software. I have not seen the original letter of 22 June 2020 from Mr Xie's solicitors referred to, though this might have been helpful.

66. The response to Mr Gao's email is dated 28 June 2020, is from Solicitor Advocate Raymond Xu on behalf of Mr Xie, and is sent to all three of Mr Meng, Mr Gao and Mr Sachdeva (among others). It says:

> "Dear Sirs,
>
> Re: Enno Capital Ltd ("Company")
>
> Our Client: Mr Shichuang Xie ("Client")
>
> We recommend you consult a lawyer as the matters in discussion are highly sensitive and could bear serious legal consequences to you personally.
>
> We write further to Mr Gao's email dated 27 June 2020 addressed to our Client in reply to our letter dated 22 June 2020 ("Letter", attached here again for your information). Given that our firm is now instructed on this matter, you should address all related communications to our firm and not to our client directly.
>
> Mr Gao has stated, somewhat bizarrely, in his email that our client has acknowledged Mr Gao as a legitimate director of the Company. This is not the case. For avoidance of doubt, our Client does not regard Mr Gao's appointment, including other actions purportedly taken on behalf of the Company (by Mr Meng), as described at paragraph 1.5 of our Letter, as valid for reasons explained in that Letter.
>
> In addition to matters detailed in our Letter, it has been drawn to our attention that our Client has lend [sic] some £1.2 million ("Loan") to the Company since its inception. Those funds were paid directly to Mr Meng (through his connected persons including his wife and friend) and Mr Gao (and his father in law) on the strict understanding that it will be used by the Company for its business. Our Client, in return, will play a key role in the Company's management and business affairs, as director and major shareholder.
>
> The highly prejudicial and harmful steps taken by the Company and Mr Meng since 15 June 2020, without our Client's prior knowledge or consent, is a direct and flagrant breach of the parties understanding. Additionally, our Client is concerned that, contrary to the assurances given to him by Mr Meng and Mr Gao at the

material time, not all of the Loan may have, in fact, been paid over to the Company, as originally intended but potentially misapplied by Mr Meng and Mr Gao.

Accordingly, in addition to the information requested at paragraph 5.2 of the Letter, our Client now requires a full explanation regarding the application and use of our Client's funds together with supporting bank statements from both the Company and the directors, to whom the Loan was paid, showing those monies were in fact paid over to the Company upon receipt by Mr Meng and Mr Gao (or their connected persons). For you reference, our Client paid some of the funds to:

- Ms Jing Zheng – wife of Mr Meng (ICBC account number ending…)
- Mr Qizheng Meng – friend of Mr Meng (ICBC account number ending…)
- Mr Laichang Cai – father in law of Mr Gao (ICBC account number ending…)
- Mr Yijian Gao (ICBC account number ending…)

Given the orchestrated and deliberate actions by Mr Meng to remove our Client as a director and improper dilution of his shareholding, our Client now demands the immediate repayment of the Loan.

We look forward to hearing from you by no later than 30 June 2020 confirming that:

1. The Company will fully carry out the steps (and comply with our Client's information request) as detailed in paragraph 5.2 of the Letter.

2. The Company will submit a written proposal to our Client in relation to the repayment of the Loan.

3. The Company will provide bank statements requested above together with a detailed explanation regarding the application of the Loan.

If you do not comply with our Client's request, our Client will have no option but to seek appropriate relief from the court given his concerns relating to possible misapplication of the Loan by Mr Meng and Mr Gao having regard to the Company's highly prejudicial conduct. In the event that Mr Gao and Mr Meng cannot prove that the above mentioned Loan was fully paid into the Company's account, our Chinese offices will commence relevant proceedings in China on the basis of potential commercial fraud.

It goes without saying that our Client reserves his position to the fullest extent of the law."

67. The third item is a letter dated 11 September 2020 from solicitors representing Mr Xie, Zhong Lun Law Firm, to Keystone Law, representing Mr Sachdeva. Again, it refers to a letter from Keystone Law dated 3 September 2020, replying to theirs of 27 August 2020, neither of which I have seen. Most of the letter aggressively refutes any suggestion that the BPA was a valid agreement or that Mr Sachdeva had any right of recall (issues which were subsequently decided in Mr Sachdeva's favour by Judge Prentis). Unquestionably there was therefore a live dispute with Mr Xie at that time on those matters.

68. Towards the end, the letter refers to the share transfers which took place on 25 August 2020, as follows:

> "In our letter dated 27 August 2020 your client [Mr Sachdeva] was asked to provide disclosure relating to the alleged share transfers, which your client has refused to provide. Your client was also invited to restore the Changes made to Companies House on 25 August 2020 concerning the share transfers of [OpCo] and Bubble City Ltd, which your client has refused.
>
> We do not agree with your legal analysis that our client has no basis for challenging the share transfers. This is ultimately a matter for the court.
>
> It is our client's case that the alleged share transfers by Mr Meng was done for an improper purpose and without proper authority, and not in the best interest of [Enno]. Your client knew that Mr Meng did not have the requisite authority to effect the share transfers, knew full well that our client had been unlawfully removed by Mr Meng, possibly in collusion of other parties, as a director of the Company. Your client is acutely aware that our client has engaged our firm to vindicate his rights against Mr Meng and other parties, including against your client concerning recovery of a personal loan of £10,000 payable to our client. We note with concern the share transfers were done in August 2020 immediately after both Mr Meng and the Company were notified about our client's potential legal redress."

69. In his judgment at [164], Judge Prentis refers to a further letter from Keystone Law, dated 17 September 2020, although again I have not seen this letter. Judge Prentis says: "… the explanation given by Keystone Law on behalf of the Third Respondent by near-contemporaneous letter of 17 September 2020 was that the transfer of Bubble Opco was, as the points of claim have it, 'payment of (unparticularised) services and licensing rights which the Third Respondent and Bubble City… had purportedly provided', which was taken to include use of the Brand even though the Company had the benefit of its registration until 6 October 2020."

Other documents

70. A number of text messages, individual and from group chats (both in English and Chinese) have also been disclosed. I will refer to these where material in the course of my consideration of the issues. However, as I have already noted, it is somewhat surprising how little contemporaneous material of this nature there is.

71. Bank statements have also been disclosed, along with accounting documents, for OpCo, Bubble City, SupplyCo and Enno. These are very enlightening as to the conduct of the business at various times, and I will refer to them also in the course of considering the issues. There are no bank statements or accounting documents disclosed for Jing.

My main findings of fact

Issue estoppel

72. The parties have all treated Judge Prentis's formal findings on the 8 issues before him as conclusive, even though not all were parties to the petition, and I also treat those matters as resolved. Where his conclusions in his judgment on matters prior to June 2020 have

some relevance to the matters before me, I have also had regard to them, given that he needed to consider these in detail in a way that I have not.

73. However, as regards the Settlement Agreement, it was only raised in the later stages of the petition trial, and he was not asked to consider its enforceability, only whether its creation was part of the unfair prejudice caused. Judge Prentis concluded on the Settlement Agreement and the MOU in the following terms:

> "[176] In the end what these documents further evidence, as Mr Mayes submitted, is the desire of the Respondents to empty the Company of any value, and to put that value away from the Petitioner. Although the Respondents did not appreciate the point at the time, strictly it is only the Settlement Agreement which does that because it is that which, without any commercial justification, passes to the Third Respondent not just Bubble City, to which he was entitled, but Bubble Opco, to which he was not. The Memorandum of Understanding is no more than a post-transfer agreement, of no direct interest to the Company. Whether the First and Third Respondents could validly rifle that company [i.e. OpCo] is a matter outside this trial's purlieus."

74. Neither OpCo nor Bubble City were parties to the petition proceedings. When Judge Prentis was invited by counsel for Mr Xie, when the final order was being drafted, to reach conclusions on the enforceability of the Settlement Agreement, he declined to do so. Mr Shaw took me to his conclusions on this question during the consequentials hearing, where the transcript records as follows:

> "ICC JUDGE PRENTIS: Let me say now, that the opening words of para.176 were intended to qualify the (inaudible). In other words, while we did address the issue of trial, we addressed it really as evidence of the intent of the respondents rather than making the sort of specific findings which one would have if this were a separate claim for such a transfer, and indeed if there were such a claim there would be different parties to it as well. So, it was not intended to be comprehensive in that way, it was a matter which we addressed, I had to address it, but I think it was on that more limited basis, and therefore I think, unless you want to persuade me otherwise, those declarations cannot be justified."

75. On the question of whether any issue estoppel is created vis-à-vis the three individual Defendants and Bubble City, Mr Bennion-Pedley's position in his final submissions was that Judge Prentis had to look behind their conduct at whether it was unfair and prejudicial, so an issue estoppel has arisen which is also binding on Bubble City because any knowledge which it had, had to be that of Mr Sachdeva. However, he also submitted that the evidence against the Defendants was so overwhelming that he was asking me to make the same findings of fact on the merits in any event.

76. On the question of whether issue estoppel applies, I would refer to the summary of the relevant principles by Dias J in *Fibula Air Travel Srl v Just-Us Air Srl* [2023] EWHC 1049 (Comm), where she said at [19]:

> "…(b) Even where the subsequent proceedings involve a different cause of action, a decision on a particular issue which formed a necessary ingredient of the earlier cause of action and is also relevant to the subsequent cause of action is binding on the parties and cannot be reopened: *Arnold (supra)* at 105E.

> (i) The relevant question in this respect is whether resolution of the issue was a "necessary step" to the decision or a "matter which it was necessary to decide and which was actually decided, as the groundwork of the decision": see *Seele Austria (supra)* at [18] quoting Lord Wilberforce in *Carl Zeiss Stiftung v Rayner and Keeler Ltd (No. 2)*, [1967] AC 853. A mere dispute about facts divorced from their legal consequences is not an "issue" for these purposes: *Fidelitas Shipping Co. Ltd v V/O Exportchleb*, [1966] 1 QB 630, 641. The test is whether the determination was so fundamental to the substantive decision that the latter cannot stand without the former: *P&O Nedlloyd (supra)* at [23]-[24] quoting with approval from Spencer Bower, Turner and Handley, the Doctrine of Res Judicata (3rd ed.);
>
> (ii) For this purpose, it is permissible to look not only at the judgment but also at the pleadings, evidence and, if necessary, other material in order to show what issue was actually decided: see *Seele Austria (supra)* at [18] quoting *Carl Zeiss*…"

77. Applying these principles, I have concluded that Judge Prentis's observations about the Settlement Agreement and MOU were not "necessary steps" in this sense. In my view the Settlement Agreement and MOU were peripheral to the petition claim, even though they were also evidence of further unfairly prejudicial behaviour by Mr Meng. Judge Prentis refused to make any order for the transfer of the shares in OpCo because he considered he had not made the findings of facts necessary to do so, and had considered them in a different way. In my view he carefully left open the critical question about the validity of the Settlement Agreement. In addition, neither Bubble City nor OpCo (the relevant counterparty to each agreement) was a party to the petition. In my view I should approach afresh the question of each the current parties' knowledge, for the purposes of the issues before me. I also note that, even though Judge Prentis referred to the Respondents as having maintained a joint defence, the actions listed in Judge Prentis's order of 23 August 2022 as having amounted to unfair prejudice are those of Mr Meng (and so far as he accepted a purported appointment as a director, Mr Gao), not Mr Sachdeva, who had no formal role in the management of Enno.

Findings of fact: June to September 2020

78. The period with which I am concerned was at the end of the first Covid lockdown in 2020, as a result of which all the outlets had been closed. However, Covid restrictions were gradually relaxed from 15 June 2020, when non-essential retail businesses were permitted to reopen, albeit with some continuing restrictions, and this will have been known and planned for by all the parties.

79. On 6 June 2020 there was a meeting at Enno's office in Portsmouth attended by Mr Xie, Mr Meng, Mr Gao and Mr Sachdeva and also by Mr Xinran Zhao (and possibly others). Mr Xie claimed he had secured funding of £100M from Stanford University. He also made it clear that he wanted to appoint Mr Zhao to take over Mr Meng's role as the manager of the Bubble Citea business, saying Mr Zhao had relevant importing/ warehousing experience which would help the business expand. He wanted Mr Meng to return to working for him in London on other projects, essentially as a personal assistant.

80. None of the Defendants was happy about this proposal, and all say they were shocked by it, which I accept, although I also accept that Mr Xie had mooted the possibility of bringing in Mr Zhao in February 2020. Mr Sachdeva said in evidence that he was shocked because he knew Mr Meng was a director of Enno, and that he was worried that such a

big change would impede the growth of the business. I also accept that the Defendants were very sceptical about Mr Xie's suggestion that he could obtain this level of investment, this not having happened to date.

81. Mr Meng says that a board meeting of CTMH was then held on 7 June 2020 at which it was agreed that Mr Gao would try to negotiate a shareholders' agreement with Mr Xie. The purpose of this was to try to limit the extent to which Mr Xie was involved with the management of the business, because they wanted Mr Xie to behave as an investor with no involvement in hands-on management.

82. On 8 June 2020 a long meeting took place at the warehouse in Portsmouth, attended by Mr Xie, Mr Meng, Mr Gao and Mr Sachdeva. Over the course of about 5 hours they debated these issues (probably mostly in Chinese), and the discussion became heated. Mr Xie refused to sign any shareholders' agreement, because he did not accept that his role should be limited to that of an investor or that he should not be involved in management decisions.

83. My conclusion is that during this meeting Mr Sachdeva also said that he wanted to recall his Bubble City deal under the BPA. Mr Xie then said that the Bubble Citea brand belonged to Enno, and had been registered by Enno, and that Mr Sachdeva would not get the Brand back anyway - this also being the position Mr Xie maintained on the petition. Mr Xie was evasive on this when cross-examined, but I consider it obvious that that was his view at that time, that he expressed this and that Mr Sachdeva will have become concerned that even if he exited Enno and got Bubble City back, it would be an empty shell without the Brand. I have also concluded that Mr Xie did say at some point during this meeting that he wanted out of the business, that he wanted to be repaid his money and that he wanted the business sold. This is one aspect where I consider Mr Xie has understated what he did and said at that time. The meeting broke up at an impasse.

84. After the meeting Mr Xie texted Mr Meng, saying:

> Jun 8, 2020 5:56 PM
>
> - Come to my house tomorrow morning at 9 o'clock.
>
> - You must speed up and properly handle these assets and sell them as soon as possible.
>
> - I don't want to waste energy on this matter.
>
> - Starting now, do not communicate about anything.
>
> - Wait for me to handle it on Wednesday.
>
> And at 6:16PM
>
> - You've completely lost (my) face; I (don't) know how to start talking to the deputy general manager and others about it.
>
> - Tell me before you leave

85. This looks like an instruction to Mr Meng confirming that Mr Xie wanted him to take steps to sell Enno's Bubble Citea business as soon as possible. However I note that Judge Prentis had before him a longer sequence of messages, because in his judgment he says the messages continued on 8-9 June:

> "[132]… A little later was this: '…I said that I would support you to do business and I will definitely do it to the end. But I will never let go no matter who stands on the opposite side'. By the evening of 9 June it was 'Get everything sorted out. A real start, and a brand-new stage, I hope we can work together to be successful in this business'."

86. I also have the (translated) transcript of an audio call on 8 June 2020 between Mr Xie and Mr Meng, which must have been after this meeting, as follows:

> - (XIE) Firstly, Sunny's issue is a very serious one.
>
> - (MENG) Let me explain this.
>
> - (XIE) You said
>
> - (MENG) Firstly, in terms of structure, we now own Sunny's store, and upon owning Sunny's store, we registered the brand under Enno Capital, which is legal. Because we own this store at present, and at the time, our discussion was about doing these things together. Therefore, after one year, we are supposed to pay him £70k, which is to buy into the company. So, there's no issue with the legal structure I'm handling.
>
> - (XIE) Then, has this money been paid or not?
>
> - (MENG) It has not been paid.
>
> - (XIE) Why not?
>
> - (MENG) It hasn't come due yet.
>
> - (MENG) Currently, there's no issue at this stage, because his (Sunny's) company belongs to Enno Capital. We registered his company, and then our agreement with him was based on the entrepreneurial spirit of doing this together. That's why he would join. After he joined, it was on a trial basis for a year to see if it works. Initially, it was agreed that if the trial works, he joins and gets paid. If the trial does not work out, as you said, we simply return what belongs to them, and we cease operations. If we stop, there's no issue with the brand, because the store is still his, it's returned to him, and it remains his brand. However, if we continue doing this together, the brand belongs to the company (Enno Capital).

87. These records certainly confirm that Mr Sachdeva had said, either at the meeting on 8 June 2020 or before this, that he wanted to recall the deal under the BPA. It also indicates that Mr Meng regarded the Brand as liable to return to Mr Sachdeva if the recall was exercised, even if he was also trying to reassure Mr Xie.

88. Judge Prentis also records the following, at [134] – [135] of his judgment:

> "[134] Nevertheless, [Mr Xie] says that on 11 June he asked for the return of his loan from [Enno], and told [Mr Meng] he wanted no more to do with it, because of their "non-sensical" proposals. He says he made the demand to secure his fund, and with the intent then to discuss the position. At the least the demand shows a belief that he was entitled to this money. [Mr Meng] recalls that he also said he wanted no more to do with [Enno], and acknowledged there was no purpose in his continuing to hold shares or retain office. As just noted, that was not [Mr Xie's] position in the contemporaneous documents. It is a fillip for the Respondents' case.
>
> [135.] The next day, presumably after some digging, [Mr Meng] discovered that [Mr Xie] was subject to a RMB5m fraud claim in China. He says he confronted [Mr Xie] with this and the lack of progress in raising finance... There is no issue with the Chinese claim which, [Mr Xie] told him, was common enough for any successful businessman…"

89. On 12 June 2020 Mr Xie sent a text, apparently to Mr Zhao, which suggests he had a continuing intention to be involved in the business:

> 12 June 2020 12:54
>
> Xinran, the team must speed up to build the marketing strategy and realise the supply profit model. Regarding the station, apart from the design, the core is to have a clear positioning. 1. What are we selling? 2. How to sell? 3. What other ways are there to maximise the revenue?

90. The evidence around this issue is notably sparse, but the inference I draw is that Mr Xie had alienated Mr Meng by trying to push him out and replace him with Mr Zhao. Mr Meng had also, as Judge Prentis put it, "done some digging" and discovered the fraud claim against Mr Xie in China. I infer that Mr Meng concluded by this time, i.e. by between 9 and 15 June 2020, that Mr Xie was an unreliable and overbearing business partner, and that the Bubble Citea business would work better without him. Accordingly, rather than following Mr Xie's instructions either to take steps to sell the business or to hand over the management to Mr Zhao, Mr Meng began to take covert steps to exclude Mr Xie from Enno.

91. On 15 June 2020, without telling Mr Xie, Mr Meng purportedly removed Mr Xie as a director of Enno, and appointed Mr Abdul Khader Mohammed Ismail instead. Subsequently on 18 June 2020 Mr Ismail was removed and purportedly replaced with Mr Gao. Also on 15 June 2020 Mr Meng issued 10,000 ordinary £1 shares in Enno to CTMH. As Judge Prentis has held, those steps were improper and of no effect and were central to his finding of unfair prejudice in favour of Mr Xie.

92. Over the course of the same day, 15 June 2020, (which was also the day that all the outlets were reopening after lockdown), the following WeChat exchanges took place between Mr Xie and Mr Meng (Mr Xie's messages being the ones on the right; "Ekin" is Mr Gao; Fanzhi is the company secretary):

> **15th June 2020 09:07**
>
> Are we working as usual today?

I need to make work arrangements today.

> Did Ekin and Sunny stop working? What about Fanzhi?

They are working as usual. I am following up as necessary.

> Please pass all the articles of association of the several companies at present, the contract signed with Sunny earlier and the relevant contracts signed by Ekin to me.

15th June 2020 09:12

Okay, let me organise it and send them to you.

> Sunny's personal loan – Let him repay this week. Also how much did Ekin exchange in total? Can you calculate the cash profit amount?

15th June 2020 09:32

> Let me know before you depart.

Okay.

> 1bb afternoon.

15th June 2020 12:08

> Sunny's shop – there were previous accounts that haven't been settled. Okay. This week…
>
> The brand – How can this all be resolved regarding Sunny's dispute? The plan is what?
>
> Sort everything out and resolved them at once.

15th June 2020 12:51

["OK" symbol]

15th June 2020 16:52

> Are you coming or not? If not…

15 June 2020 17:31

[Voice message]

Bye, Mr Xie. Let me check my time. I visited each shop and checked the crowd. I was on the way back to Puma. Things weren't ready. I need to go back to prepare and check the time. If too late, then will be there tomorrow.

15th June 2020 22:43

> Sort things out tomorrow and send them over.
>
> Bring over all the documents, contracts and agreements relating to the company.
>
> How was the mall situation today?
>
> **16th June 2020 00:58**
>
> No time. I will arrange tomorrow.

93. The message on 15 June at 12.08 in this chain is relied upon by the Defendants as Mr Xie giving Mr Meng authority to negotiate a settlement with Mr Sachdeva in relation not only to his recall claim, but also a claim by him for substantial payment for services and Brand fees, said to have ultimately resulted in the Settlement Agreement.

94. On 16 June 2020 Mr Meng and Mr Gao blocked Mr Xie from their personal WeChats and one of them removed Mr Xie from Enno's WeChat group chats. When he discovered this, Mr Xie travelled to the Portsmouth head office to confront them all. Mr Meng, Mr Gao and Mr Sachdeva were all there when he arrived. They refused Mr Xie entry to the building, and, as Judge Prentis concluded at [138], they told him "Why are you coming to our company? This is our company. We only speak English here". Judge Prentis concluded that this exclusion was obvious and deliberate. This was not disputed by the Defendants, and I agree.

95. At this point in events, relations between Mr Xie on the one hand and Mr Meng, Mr Gao and Mr Sachdeva on the other completely disintegrated. On 22 June 2020, Raymond Xu's firm wrote to the three of them. Although I have not seen that letter, it is referred to in the email of 28 June 2020 from Raymond Xu quoted at paragraph 66 above, and it clearly challenged the validity of the removal of Mr Xie as a director, dilution of his shareholding and appointment of Mr Gao. On 25 June 2020 solicitors instructed by Mr Meng sent the "cease and desist" letter to which I have referred at paragraph 64 above, which accused Mr Xie among other things of harassment and blackmail. On 28 June 2020, Raymond Xu sent the said email to the three Defendants. In addition to challenging the removal of Mr Xie as a director and dilution of his shareholding, this demanded proposals for the repayment of Mr Xie's £1.2M loan, details of how the money had been spent, and threatened proceedings for commercial fraud.

96. In his final submissions, Mr Bennion-Pedley agreed that Mr Xie had wanted Enno sold to recoup his investment, saying Mr Xie had accepted this.

97. At [165] Judge Prentis records that on 1 July 2020, Mr Sachdeva gave notification of recall under the BPA. I have not seen separate confirmation of that date, but I accept that finding.

98. Against that background, I reject the Defendants' suggestion that the text message from Mr Xie to Mr Meng at 12.08 on 15 June 2020 constituted an authority from Mr Xie to Mr Meng to negotiate terms for the settlement of a dispute with Mr Sachdeva, whether limited to terms of a recall under the BPA or more wide than that. Further, I do not consider that that was how Mr Meng interpreted that message at the time. In my view this was one of a series of messages in which Mr Xie was asking Mr Meng to attend on

him with relevant contractual and company documents, so they could decide what to do about Mr Sachdeva recalling Bubble City and the possible effect on use of the Brand, including what other liabilities Mr Sachdeva might have. I further consider that on 15 June 2020, Mr Meng was deliberately avoiding replying substantively to those requests, let alone attending with the documents, because he had already started taking steps to exclude Mr Xie from the business instead.

99. At this point in the history I accept that Mr Sachdeva was planning to leave and recall Bubble City and the Guildford store under the BPA, but I conclude he had been panicked by Mr Xie's assertion that Enno would still own the Brand, as Enno had registered it. I also accept that, encouraged by his father, he told Mr Meng and Mr Gao that he wanted a payment of £1M to reflect his work over the past year and licences to use the Brand.

100. I also consider it likely that at the point Mr Meng made the company changes on 15 June 2020, he was probably envisaging simply that he would exclude Mr Xie and replace him in the Enno company structure with Mr Gao, and then deal separately with Mr Sachdeva. I am also convinced that once Mr Meng had "removed" Mr Xie, he persuaded himself, and persuaded Mr Gao, that he could make decisions on behalf of Enno without further reference to Mr Xie. However the solicitors' correspondence from 22 June 2020 onwards must have made it obvious to both of them that Mr Xie was not going to simply accept his removal.

101. More immediately, Mr Xie was now pressing for repayment of his £1.2M loans, which were owed by Enno. Mr Meng will also have anticipated that this would cause concern to Ms Ding, who was also likely to press for repayment (although, as already noted, there is no evidence nor even correspondence before me from Ms Ding, as there was not before Judge Prentis.) On 16 July 2020 Mr Meng and Ms Ding executed a facility agreement which purported to provide security for Ms Ding's loans, although it is now agreed that it was not effective to do so.

102. On 3 June 2020 Mr Meng had set up Jing, with himself as the sole director and shareholder. He said in evidence that Jing is his wife's name, and that the company was originally set up for her to provide consultancy or import services. I note that Enno's original name had been Jing Holdings Ltd, until it was changed on 4 September 2019 to Enno (which was Mr Xie's son's name).

103. Whatever may have been the initial intention when Jing was incorporated (which I do not find it necessary to resolve), it was always a company controlled by Mr Meng. By early July it must have been obvious to Mr Meng that Enno was at risk of insolvency due to Mr Xie, with whom he was now at loggerheads, calling in his loans, so there was little future in trying to continue any business through Enno. At the same time, even though Mr Sachdeva was seeking to withdraw Bubble City, there was value to keeping him on board, because Mr Meng appears to have accepted that Bubble City was entitled to the Brand (as well as value which Mr Sachdeva had as a member of the team).

104. I accept that there were negotiations during July between Mr Sachdeva on the one hand and Mr Meng and Mr Gao on the other, as to terms of payment to Mr Sachdeva for the right for OpCo to use the Brand after he exited, and to reflect what he had contributed to the business. I consider that the table in the MOU reflects terms which were being discussed, and a total of £524,000 which was provisionally negotiated.

105. However, given the pressure from Mr Xie's lawyers, I consider that at some point in July or early August Mr Meng concluded that the only way to "save" the Bubble Citea business would be to remove it from Enno, thus escaping Mr Xie's claims, both corporate and for repayment of his loans, and that the best way of implementing this would be simply to transfer OpCo out of Enno. Since he was already negotiating terms with Mr Sachdeva for an exit for Bubble City, I conclude that it was most probably Mr Meng who conceived the idea of transferring the Bubble City share back to Mr Sachdeva (to which he was entitled under the BPA) but at the same time simply transferring the OpCo Subscriber Share to Bubble City. The whole could then be conveniently packaged as a settlement of Mr Sachdeva's claims arising from the BPA and his right of recall, but the real purpose of it was to enable the Bubble Citea business to be exported and continued outside Enno. Another advantage of this solution was that Mr Meng had always been the sole director of OpCo (unlike Enno), so could readily control it without challenge. SupplyCo would also be left behind, but it had been supplying at cost, and I think Mr Meng saw an opportunity to set up a new, independent, profit-making bubble tea ingredient supply company. Jing was conveniently to hand, so he used that.

106. It must in my view be the case that he explained this plan in about July 2020 to Mr Sachdeva, whose agreement to structuring a settlement agreement in this way was needed. Mr Sachdeva must have understood that it was unlikely that either OpCo or Enno were going to be in a position to pay him £524,000 as they had been discussing, and that although this proposal would involve him running several stores with limited cash, it was the only alternative to him just taking back Bubble City and returning simply to running the Guildford Store. Mr Gao understood in general terms that Mr Meng was restructuring the business, now keeping Bubble City instead of Enno. In evidence Mr Gao said that he resigned from Enno, as an employee rather than as a director, in July 2020, and that he then stopped being paid by Enno. However he also said that he continued working from home, was involved in the store installations in Croydon in July and Redditch in August, and was also working for Jing. This supports the conclusion that a move away from Enno started in July 2020, but without there ever being an actual break in working for a Bubble Citea branded business by the three of them.

107. As Judge Prentis noted, the Settlement Agreement reads like a document prepared with legal assistance. In evidence Mr Meng said he could not remember the name of the solicitor used and had searched unsuccessfully for emails about it. He also said it was an online service for a nominal fee, less than £100. In any event, it would have been straightforward for Mr Meng to instruct someone to prepare a draft agreement to compromise all claims which Mr Sachdeva had under the BPA by conveying to him the single share in Bubble City and also conveying the Subscriber Share to Bubble City, without needing to explain anything else.

108. The Background section of the Settlement Agreement refers to the BPA and Mr Sachdeva having exercised his right of recall, and the agreement being to compromise those claims, but the reality is that this does not make commercial sense. As Judge Prentis noted at [172] in his judgment, insofar as the figures in the MOU (which was in any event dated later) were retrospective, they were not based on any prior contract and there was no obligation to pay them, and insofar as they consisted of payments for the Brand, there could be no charge for a period before at least 1 July 2020 as Enno had owned the Brand. I have quoted at paragraph 73 above Judge Prentis's conclusion that the Settlement Agreement and MOU were further evidence of the Defendants' desire to empty Enno of

any value and put it away from Mr Xie. However in my view this oversimplifies the intentions of Mr Meng and Mr Sachdeva, which I have concluded were to carry on the business in a way which would allow it seamlessly to continue to trade, while also insulating it from Mr Xie and from Enno's debts as far as possible.

109. My questioning of its commerciality is not about adequacy of consideration: as Mr Shaw pressed in submission, frequently people make dubious claims with little legal basis which are nevertheless validly compromised. Rather, it is about me making an assessment, on all the evidence, of what the Settlement Agreement truly was, and my conclusion is that was a device neatly to transfer the Bubble Citea business out of Enno, via Bubble City, which itself could properly be transferred out of Enno, rather than truly having the purpose of compromising any claims of Mr Sachdeva.

110. OpCo's bank statements show that it received record revenues during August 2020. After the lifting of lockdown, the business bounced back quickly. Mr Meng, Mr Sachdeva and Mr Gao will all have been aware that the outlets were busy. In his statement Mr Sachdeva said that at the time the Settlement Agreement was reached, the stores were closed due to lockdown. The bank statements show this was false. Mr Sachdeva was evasive when questioned on this statement by him, which in my view was intended to give a false impression that there was a hiatus in the business in August/September 2020 and in the involvement of Mr Meng and Mr Gao in it.

111. I have also concluded that Mr Meng and Mr Sachdeva must have been conscious that this arrangement was commercially dishonest, even if they also felt that it was the best thing to do for the Bubble Citea business. They must have been aware that they were taking steps which would inevitably result in Mr Xie losing his investment and all his interests in the business. It is in my view significant that no records whatever have been disclosed of any discussions (whether by text, email or otherwise) leading to the production of the Settlement Agreement or the MOU. I have no doubt that Mr Sachdeva justified it to himself because it kept alive both the Bubble Citea brand and the business to which he had devoted himself for years, but nevertheless I am quite sure Mr Sachdeva was aware that this was a dishonest sleight of hand. Mr Sachdeva was notably evasive during cross examination on questions around the creation of the Settlement Agreement and the MOU, repeatedly saying he could not remember things, and in my view this was discomfort because he was not telling the full story. Mr Meng's responses were different but equally troubling: he tended to avoid answering the questions on this topic and talk about something different. Overall it is remarkable how little Mr Meng and Mr Sachdeva actually said in evidence about changes to the business in the summer of 2020 that were critically important and must in fact have been memorable.

112. Since Mr Sachdeva has at all material times been the sole director of Bubble City, his knowledge, including any dishonesty, is also attributable to Bubble City.

113. In contrast, although the three individual Defendants have presented a united defence, I am not persuaded that Mr Gao was conscious of the commercial dishonesty of the Settlement Agreement in the same way. I think he probably just accepted that these were steps taken by Mr Meng to keep the business going. I accept that his focus at that time was on ensuring the systems and new installations ran to plan and that he did indeed leave questions of the business structure to Mr Meng. His answers about what he did in July and August 2020 were much more straightforward than the others' and he accepted that he had essentially continued to be involved in the business throughout, without

apparently being aware that part of the Defendants' defence was that there was a hiatus in his and Mr Meng's involvement which supposedly supported their claim that the Settlement Agreement was not part of a pre-conceived plan to move the business away from Mr Xie and Enno.

114. New Articles of Association were adopted by Jing on 20 August 2020, which included provision for preference shares (some of which were eventually allotted and issued in about June 2022 to Mr Sachdeva).

115. On 25 August 2020 Mr Meng resigned as a director of OpCo and Mr Sachdeva and Mr Gao were appointed. On the same day the share transfers from Enno of the Subscriber Share to Bubble City and of the Bubble City share to Mr Sachdeva were implemented. These steps were of course immediately apparent to Mr Xie. His solicitors wrote to Mr Sachdeva two days later, on 27 August 2020, challenging the transfers by Mr Meng as done for an improper purpose. On 3 September 2020, Keystone Law replied on behalf of Mr Sachdeva denying that they could be properly challenged. In Mr Xie's solicitors' reply of 11 September 2020 (from which I have quoted above at paragraph 68), while they challenged the validity of the share transfers, their focus was on the validity and rights under the BPA, since they were unaware of the Settlement Agreement.

116. On 27 August 2020 a payment of £600,000 was paid from OpCo's bank account to Ms Ding, which represented most of OpCo's available cash. In evidence Mr Sachdeva said that he and Mr Meng had already agreed that Ms Ding's loan should be repaid, so he followed through on that. My understanding is that it is not disputed that at about the same time, Ms Ding lent around £1M to Jing, which must have helped Mr Meng get that new business launched.

117. As mentioned above, on 31 August 2020, both OpCo and Bubble City entered into the 5-year SGSAs with Jing. This will have required some preparation: Mr Meng will have needed to negotiate supplies from Possmei for his new company before or at the same time. In his evidence Mr Sachdeva denied that the plan was always for OpCo to be supplied by Jing after the transfer, but the dates of the SGSAs are entirely inconsistent with the Defendants' case that Mr Meng and Mr Gao were not involved until October 2020. Mr Sachdeva accepted this in evidence, as he had to, but he still tried to deny that there had been a plan to do this. However, in my view this was clearly part of a plan which had already been conceived when the Settlement Agreement was signed, including the long payment terms which would allow OpCo to re-establish itself without further investment funds.

118. I am also satisfied, on the basis of the accounting records for SupplyCo, that bubble tea ingredients held in the warehouse and owned by SupplyCo were simply taken and used by OpCo without payment, and then written off in SupplyCo's accounts. SupplyCo's accounts for the period ending 31 August 2020 record stocks valued at £420,379 under current assets, which would have represented the lower of cost and net realisable value. By 31 August 2021, in the management accounts (Mr Meng having put SupplyCo into creditors' voluntary liquidation), no stock was recorded, but no sales either. As Ms Chew accepted in evidence, this indicates the stock was not sold to anyone, and there was no provision against stock, so the stock had probably been written off. Since it was still recorded as valuable stock as at 31 August 2020 (and so was not for example out of date) the likeliest inference is that it was used by OpCo without payment to SupplyCo, and I so find.

119. Between 25 August 2020 and about 1 August 2022, my view is that OpCo was effectively conducted as a standalone business (together with Bubble City, of which it was now a subsidiary), with supplies from Jing, which was a separate commercial entity. This is consistent with the fact that Bubble City was owned and controlled by Mr Sachdeva whereas Jing was owned and controlled by Mr Meng. Although Mr Sachdeva did in due course in June 2022 obtain preference shares in Jing, his stake was minor. I do not consider that in this period the two companies were effectively operated as a single group.

Findings of fact: December 2021

120. On 3 December 2021 Mr Sachdeva as director of OpCo allotted 99 new shares in OpCo to Bubble City, in addition to its single Subscriber Share, and OpCo issued those shares. All 100 shares in OpCo have since then been registered in Bubble City's name.

121. Potential defences based on the creation of these 99 shares, as being new property, were raised for the first time by the Defendants in correspondence on 14 January 2025, no doubt related to the Defendants instructing new leading counsel, Mr Shaw. On an application made at the start of the trial, I permitted the Defendant to run these arguments (which were primarily points of law, albeit some limited cross examination was required), and both parties to amend their statements of case to run and respond to these arguments. Re-amended Particulars of Claim ("**RAPOC**") and a Re-re-amended Defence, have been filed, in both cases pursuant to my order of 14 February 2025.

122. Mr Sachdeva accordingly gave evidence and was cross-examined as to the purpose and circumstances of the issue of these 99 shares. His evidence was that he did this at the suggestion of his accountant. He said that at the time he was looking to raise funds and needed to consider how he might share the business. His accountant recommended that the easiest way was to issue further shares, so he could divide them depending on what investment he got or how he wanted to grow in the future. He has not in fact transferred shares to anyone, saying "no one will come near us now because of this guy", i.e. Mr Xie and this litigation. Mr Bennion-Pedley said he had not seen anything in the accounts to show that the shares had been paid for, and asked Mr Sachdeva if they had been. Mr Sachdeva replied that he did not remember and did not know.

123. On this issue I accept Mr Sachdeva's explanation, which is also inherently the likeliest one. The timing of the issue, and the fact that Bubble City was the sole owner, so the issue and allotment did not have the effect of diluting anyone else's shareholding, makes it unlikely in my view that the share issue was done with the deliberate intent of obstructing a claim by Mr Xie or Enno. It is notable that the Defendants' arguments that the share issue prevents the Claimant from recovering more than 1% of OpCo are technical legal ones, which were not raised by the Defendants' previous representatives or before 14 January 2025, and I consider it unlikely that Mr Sachdeva had in mind the possibility of any such arguments when deciding to issue the shares.

124. As submitted by Mr Shaw, I do infer that the shares were issued at nominal value, there being no evidence of any premium being sought, and this being most likely given they were being issued on the advice of his accountant for a possible future investor. Mr Bennion-Pedley submitted that there was no evidence from the financial records (presumably for Bubble City) of any payment for those shares. I do note though that OpCo's accounts for the year ending 30 June 2022 recorded there as being 100 shares allotted, called up and fully paid, which would indicate that the shares were not unpaid.

Mr Shaw also relies on Model Article 21(1), which applied to OpCo, which provides that shares must be issued as fully paid. That is the extent of the evidence on this issue.

Findings of Fact: August to December 2022

125. Judge Prentis's judgment is dated 20 July 2022. Following a costs and consequentials hearing, his order recording among other things the finding of unfair prejudice was made on 23 August 2022. OpCo's bank statements record that between March and July 2022, OpCo was receiving around £1.1M - £1.4M in revenue through its bank accounts. From August 2022, the bank statements for OpCo and Bubble City show that revenue from the outlets (in particular card machines) was gradually switched over from OpCo to Bubble City, so that by November/December 2022, OpCo was receiving very little revenue at all. In addition cash (which came from various sources, including e.g. cash payments and VAT refunds) was also diverted from OpCo's to Bubble City's bank account. The Claimant claims, and I accept, that this cash totalled at least £842,633.72, following which OpCo closed its bank accounts, with a nil balance, in December 2022.

126. In addition, after August 2022, no new outlets were opened by OpCo. All of the outlets opened after that date (there are around 25) were opened in the name either of Bubble City, or the new company, Outlets.

127. Mr Sachdeva accepted, albeit with some unwillingness, that until July 2022, the revenue from the outlets (with the exception of the Guildford store, which seems to have paid its revenues to Bubble City) was paid to OpCo. He asserted that the change from that date was part of a rationalisation of OpCo and Bubble City advised by his accountants. He was cross examined about the switch of revenues and payment of cash away from OpCo between August and December 2022, including being taken to the relevant bank statements, and on this matter I found his answers extremely evasive. He kept saying he did not remember, that he did not get involved with the "accounting side" and did not have a numbers background, and he denied diverting revenues purposely. The statements show the revenues falling from £1.4M to zero, and repeated large cash transfers of £50,000 or so at a time. When asked who had authorisation to make payments from this account, he said "my accounts team", who he thought numbered 3 people. He asserted the change was made to put everything in the same place and makes things easier.

128. I entirely reject Mr Sachdeva's evidence on this issue. It is in my view obvious from the bank statements and timings that there was a deliberate decision to divert revenue and cash from OpCo to Bubble City which he, as the sole director at the time of both companies, was responsible for making. This was not an accounting matter. I consider it was done from fear that Mr Xie was going to make a claim to OpCo, as indeed he did by a Letter of Claim on 27 September 2022. While Mr Sachdeva may also have had advice about reorganising arrangements within the business, I do not accept that this was why these particular changes were made. It is also in my view apparent that this money was diverted without Mr Sachdeva taking advice on it from his solicitors, Richard Slade & Co, who on 19 October 2022 sent a Letter of Response which gave undertakings that neither OpCo nor Bubble City would dispose of, deal with or diminish their assets other than in the ordinary and proper course of business. I am quite sure his solicitors were unaware of this wholesale diversion of revenues and cash when they gave those undertakings (which actions continued until the accounts were closed in December 2022). The fact that Mr Sachdeva did not tell his solicitors about this and allowed them to give undertakings in these terms also indicates to me that he must have been aware

that this diversion was improper. It is notable that no explanation was given at that time that this was part of a business reorganisation.

129. This is in contrast to the Reversion Plan created in August 2023, after the Salimi Order required revenues to be reinstated to OpCo. The Reversion Plan does read to me as being a carefully considered document, intended to comply with the Order, but also enable a fair operation of the business as between OpCo, Bubble City and Outlets, which I accept was prepared with appropriate legal and accounting advice.

130. For completeness I should say that I do not consider that the opening of all new stores through Outlets or Bubble City after August 2022 was problematic in the same way as was the diversion of revenues and cash from August to December 2022. In my view this pattern of opening new stores was a reasonable business response, whether or not it was influenced in part by the loss of the petition, and I note the Claimant no longer pursues any claim to the outlets opened through Outlets or the value they represent.

Issue 1: is the Settlement Agreement void or is it a valid compromise of a dispute?

131. As Mr Shaw submitted, this is the primary issue in this case. If the Settlement Agreement is a *bona fide* compromise of a genuine dispute, then the transfer of the Subscriber Share to Bubble City was valid and effective and the rest of the claim falls away, save possibly for some remaining claim for breach of fiduciary duty against Mr Meng and Mr Gao.

132. Mr Shaw's position on this is simple. He says:

i) There was a real dispute between Enno and Mr Sachdeva about the terms of his recall of Bubble City and control of the Brand and whether he was entitled to any further payment for the Brand or for his efforts. There was a genuine dispute in part because Enno had registered the Brand and Mr Xie believed Enno owned it. This is further supported by the letter from Mr Xie's solicitors of 11 September 2020, which denies the enforceability of the recall provisions.

ii) Mr Xie authorised Mr Meng to negotiate a compromise to this dispute by his text message at 12.08 on 15 June 2020, which was before he knew he had been purportedly removed as a director, had had his shareholding diluted or been removed from any chat groups. This was a clear delegation of authority to Mr Meng to resolve the dispute.

iii) After consulting his father, Mr Sachdeva demanded £1M from Enno. Following negotiations with Mr Meng and Mr Gao, it was agreed Mr Sachdeva would be paid £524,000 comprising brand fees (for 5 years), £120,000 for the Guildford store and management fees.

iv) It is irrelevant whether these claims were justified. The Court should not consider adequacy of consideration for a compromise. In any event, Mr Sachdeva was right that the Brand did belong to Bubble City, which he was entitled to recall, as Judge Prentis found. He had a very strong bargaining position, because otherwise Enno would have had to stop using the Brand.

v) The Settlement Agreement, in providing for the transfers of shares, compromised Enno's liability to pay that £524,000 to Mr Sachdeva. The only evidence as to the value

of OpCo at that time is the joint expert Simon Blake's, within the petition proceedings, which was that OpCo was worth only £96,000 as at 11 June 2020.

133. Mr Bennion-Pedley contends that the Settlement Agreement is void and/or unenforceable essentially on two, alternative bases:

i) It is void because it was entered into by Mr Meng without the authority of Enno, as Mr Sachdeva was aware.

ii) It is void because Mr Meng entered into it in breach of his fiduciary duty to Enno, including at that point a creditor duty, of which Mr Sachdeva had knowledge.

134. As to the first point, he says that:

i) At that time, Enno had two lawful directors, Mr Meng and Mr Xie. This is because Mr Meng's purported removal of Mr Xie and appointment of Mr Gao was held by Judge Prentis to have been of no legal effect, so that Mr Xie remained a director (see paragraphs 1 and 2 of his order of 23 August 2023). This is clearly correct.

ii) Enno's Articles were the Model Articles (the bespoke ones purportedly created on 3 June 2019 also having been of no effect). Under those articles, decisions of the directors had to either be by majority decision at a properly called meeting, or unanimous. It is not suggested by anyone that any such meeting was held or any such authority given at a meeting.

iii) Mr Xie did not know about the Settlement Agreement, and cannot be said to have approved it.

iv) Mr Gao had not been lawfully appointed and so had no power to approve any decision. In any event, as Mr Bennion-Pedley noted in his written final submissions, it is clear that Mr Gao was not involved in the actual decision: as Mr Gao said repeatedly in evidence, it was Mr Meng who made this decision, and I accept Mr Gao's evidence that he found out about the transfer of OpCo to Mr Sachdeva (via Bubble City) after the Settlement Agreement had been signed.

v) The decision, the Settlement Agreement and the transfer of the Subscriber Share are therefore void.

135. As to the second point, he says that:

i) OpCo was trading successfully in August 2020; it was not in reality a liability. It was also in the process of opening two new stores, in Croydon and Redditch.

ii) The terms in the MOU provided for a long-term liability for £524,000, so there was no immediate need for payment. Terms had provisionally been agreed which would have allowed OpCo to continue to trade, without needing the Settlement Agreement.

iii) Equally, if there was cash to repay £600,000 to Ms Ding, there was also sufficient to pay this £524,000 in any event.

iv) If this had all been above board, there would have been no need to conceal it from Mr Xie.

v) No honest and reasonably intelligent director of Enno in Mr Meng's position could have considered the terms of the Settlement Agreement to be in Enno's best interests; rather Mr Meng and Mr Sachdeva acted together to extract the business from Enno, leaving Enno in an insolvent position, and Mr Gao went along with this,

136. On the question of whether these matters would render the agreement void or voidable, Mr Bennion-Pedley relies on a decision of Newey J (as he then was) in *GHLM Trading Ltd v. Maroo and others* [2012] EWHC 61 (Ch) at [168] – [172], where he said as follows, so far as material:

> "[168] … A director of a company has a duty to act 'in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole' (see section 172 of the Companies Act 2006). Where creditors' interests are relevant, it will similarly, in my view, be a director's duty to have regard to the interests of the creditors as a class. If a director acts to advance the interests of a particular creditor, without believing the action to be in the interests of creditors as a class, it seems to me that he will commit a breach of duty. Whether or not section 239 of the Insolvency Act 1986 (dealing with preferences) is in point cannot be determinative….
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> ...
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> [170] As for whether the transaction is binding, ordinary agency principles indicate that a company can disavow a contract which a director has caused it to enter into if (a) the director was acting in his own interests rather than those of the company, its members or (where appropriate) its creditors as a class and (b) the other party to the contract had notice of the director's breach of duty. Thus, 'Unless otherwise agreed, authority to act as agent includes only authority to act for the benefit of the principal' (Bowstead & Reynolds on Agency, 19th ed., at paragraph 3–007) and 'No act done by an agent in excess of his actual authority is binding on the principal with respect to persons having notice that in doing the act the agent is exceeding his authority' (Bowstead & Reynolds, at paragraph 8–049). The transaction may also be open to challenge on equitable principles: 'A contract made or act done by an agent which is, to the knowledge of the other party involved, in violation of the agent's equitable duties to his principal entitles the principal to equitable relief against the third party' (Bowstead & Reynolds, at paragraph 8–217).
>
> [171] The better view appears to be that, where a director has caused his company to enter into a contract in pursuit of his own interests, and not in the interests of the company, its members or (where appropriate) its creditors as a class, and the other contracting party had notice of that fact, the contract is void rather than voidable: see e.g. Bowstead & Reynolds, at paragraphs 8–067 and 8–220, Nolan [2009] CLJ 293, especially at 317-319, *Heinl v Jyske Bank (Gibraltar) Ltd* [1999] 1 Lloyd's Rep. Bank. 511 and *Hopkins v TL Dallas Group Ltd* [2005] 1 BCLC 543. On this basis, it is hard to see how it could matter whether the requirements of section 239 of the 1986 Act are satisfied.
>
> [172] Were the relevant contract not void but voidable, the applicability of section 239 would still be of no obvious significance. If *restitutio in integrum* were not possible, that could be an obstacle to rescission. However, the decision of the Court of Appeal in *O'Sullivan v Management Agency and Music Ltd* [1985] 1 QB 428

indicates that rescission may still be granted if practical justice can be achieved. In O'Sullivan, agreements obtained by undue influence were set aside even though the parties could not be restored to their original positions. Dunn LJ said (at 458):

> 'This analysis of the cases shows that the principles of *restitutio in integrum* is not applied with its full rigour in equity in relation to transactions entered into by persons in breach of a fiduciary relationship, and that such transactions may be set aside even though it is impossible to place the parties precisely in the position in which they were before, provided that the court can achieve practical justice between the parties by obliging the wrongdoer to give up his profits and advantages, while at the same time compensating him for any work that he has actually performed pursuant to the transaction'…"

137. Further, since the transfer of OpCo away from Enno would clearly render Enno insolvent (if only as a result of the loans due to Mr Xie and Ms Ding), the Claimant submits that this situation engaged the creditor duty, as analysed in *BTI 2014 LLV v Sequana SA* [2022] UKSC 25 [11, 14, 199-203 and 207-208]. It is submitted that Mr Meng (and Mr Gao) cannot have considered the interests of creditors before entering into the Settlement Agreement, so the question for the court must be just the objective one of whether an intelligent and honest person in the position of a director of Enno could have reasonably believed that the transaction was for the benefit of Enno, which it could not have been.

138. On these two points, Mr Shaw responds as follows:

i) As already outlined, he says Mr Meng was authorised by Mr Xie.

ii) In any event, he says Mr Meng had apparent authority to enter into the Settlement Agreement by reason of s.40 CA 2006, which provides that:

> "In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed free of any limitation under the company's constitution."

iii) Further, "limitations under the company's constitution" is to be interpreted widely – *Smith v. Henniker-Major & Co* [2002] EWCA Civ 762. He further submits that even a breach of directors' duties is capable of cure under s.40 (recognised but not resolved by the House of Lords in *Criterion Properties plc v. Stratford UK Properties LLC* [2004] UKHL 28 at [29]).

iv) As to the meaning of "good faith", this is not the same as notice: under s.40(2)(b)(ii), good faith is to be presumed unless the contrary is proved, and under s.40(2)(b)(iii), a person is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors.

v) Mr Sachdeva and Bubble City were acting in good faith because the Settlement Agreement was a *bona fide* compromise of a real dispute agreed following genuine negotiations. Even if the agreement was commercially disadvantageous to Enno, and even if Mr Sachdeva knew of breaches of duty by Mr Meng (or Mr Gao), it does not follow that they acted in bad faith. It is not bad faith to take advantage of a good bargain.

vi) By appointing Mr Meng as managing director and allowing him to run Enno, Mr Xie had impliedly represented that Mr Meng had authority to conclude the Settlement Agreement so Mr Sachdeva and Bubble City can rely on the principle of apparent authority. This principle depends on a representation made by a principal to a contractor that the agent has authority to enter into a contract on behalf of the principal *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480; Bowstead & Reynolds on Agency (23rd Ed.) at [8-009]-[8-020].

139. It is not suggested by the Claimant that the Settlement Agreement is a sham. (See the classic statement of the test for a "sham" in *Snook v West Riding Investments Ltd* [1967] 2 Q.B. 786: that the document appears to creates legal relations which are different from the ones which the parties intended to create.) On any view Mr Meng and Mr Sachdeva did intend the two share transfers under sub-clauses 2.1 and 2.2 to be effective.

140. I note that it is not now suggested by anyone that clause 2.1 of the Settlement Agreement, which provided for the share in Bubble City to be returned to Mr Sachdeva, was not effective. Judge Prentis stated at [165] of his judgment that the formal transfer was effected on 25 August 2020 through the Settlement Agreement and the MOU. At paragraph 8 of his order of 23 August 2023, he declared that the Brand belonged to Bubble City.

141. Insofar as the Settlement Agreement provided at clause 2.1 for the return of the share in Bubble City to Mr Sachdeva, I consider it was effective. To that extent Mr Meng had apparent authority to deal with Mr Sachdeva, given to him by Mr Xie in agreeing to his appointment as managing director, and insofar as there had been no properly called directors' meeting, and no unanimous decision of the directors, I consider Mr Sachdeva and Bubble City can rely on s.40(1) CA 2006. I do not therefore see this situation as one covered by Mr Bennion-Pedley's first point, which if it applied would cause the whole Settlement Agreement to stand or fall.

142. Rather, for the reasons I have outlined in the section setting out my main factual findings, my view is that in agreeing clause 2.2 of the Settlement Agreement, Mr Meng acted in clear and fundamental breach of his fiduciary duty to Enno, by essentially exporting the whole of the value of Enno's business out of Enno, knowing full well that this was not in Enno's interests. He did this instead to further the interests of himself, Mr Sachdeva and Mr Gao, by creating a situation in which the three of them could seamlessly continue the Bubble Citea business, but entirely outside Enno, leaving Enno saddled with debts among others to Mr Xie and Ms Ding. The latter debt was only partially met by him promising and causing Mr Sachdeva to cause OpCo to repay £600,000 to Ms Ding immediately after the transfer out of the Subscriber Share by Enno. Furthermore, given that the transfer out of that share rendered Enno insolvent, the creditor duty applied. Mr Meng acted in breach of this, in that no reasonable director in his position could have considered that this transfer of the Subscriber Share was in the interests of Enno's creditors.

143. For the reasons I have outlined, Mr Meng in my view acted in bad faith towards Enno in entering into and implementing clause 2.2. He was obviously preferring his own interests (and those of Mr Sachdeva) over those of Enno. This was not a genuine compromise agreement, at least so far as clause 2.2 is concerned, because it was not undertaken in good faith for the purposes of settling any dispute. Regardless of whether there was a

dispute with Mr Sachdeva, it was entered into for the purpose of extracting value from Enno, not for the purpose of compromising a dispute.

144. Furthermore, for the reasons I have already outlined, I am quite satisfied that Mr Sachdeva was fully aware that Mr Meng was acting in breach of his fiduciary duty to Enno in so acting, and that clause 2.2 was not really being included for the purpose of compromising a dispute, but rather that Mr Meng was acting in his own interests, which aligned with Mr Sachdeva's, so that Mr Sachdeva was equally not acting in good faith.

145. Accordingly, my view is that this is a situation which falls squarely within the principles articulated by Newey J in *Maroo.* Clause 2.2 of the Settlement Agreement is void, because it was a provision entered into by Mr Meng in breach of his fiduciary duty to Enno, preferring Mr Meng's own interests (and those of Mr Sachdeva) to those of Enno, of Enno's members as a class, and of Enno's creditors. Mr Sachdeva as the other contracting party had notice and knowledge of that fact, so this provision is void.

146. Clause 6 of the Settlement Agreement, concerned with severability, provides that if one part of the agreement is invalid, illegal or unenforceable, it shall be modified to the minimum extent necessary, or deleted as necessary. In my view clause 2.2 should accordingly be treated as deleted, this being the minimum revision necessary.

147. Finally I should record that while I find that Mr Meng has acted in breach of fiduciary duty for these reasons, I do not find that Mr Gao acted in breach of fiduciary duty in this matter, even though he was a de facto director of Enno at that time. It was Mr Meng in my view who conceived this device and it was he who signed the Settlement Agreement on behalf of Enno. However, I do not consider that this appeared to Mr Gao to be any more than Mr Meng restructuring the business, so it could continue to trade. Mr Gao's clear evidence, which the Claimant accepted, and so do I, is that he did not approve the terms of the Settlement Agreement and was not aware of them until after it was signed. He continued to work in the business throughout this period in 2020, undertaking the same role. I also note that Mr Xie's solicitors, despite being aware of both share transfers, do not seem to have been fully cognisant of the significance of what Mr Meng had done, continuing to focus on the exclusion of Mr Xie and the recall of Bubble City rather than the evisceration of Enno. Clause 2.2 was a clever but deceptively simple device.

148. On this issue therefore my conclusions are:

i) Mr Meng acted in breach of fiduciary duty in agreeing the transfer of the Subscriber Share under clause 2.2 of the Settlement Agreement.

ii) There was a genuine dispute with Mr Sachdeva over his recall of Bubble City and claim for additional compensation, but clause 2.2 was not a good faith compromise of that dispute by Mr Meng.

iii) Mr Sachdeva was aware that Mr Meng was acting in breach of duty to Enno, and that this was not a good faith compromise of any dispute that there may have been with him. He was aware that it was, rather, a transfer which preferred the interests of Mr Meng and himself against those of Enno, in a way which was not in good faith.

iv) Clause 2.2, providing for the transfer of the OpCo Subscriber Share to Bubble City, and the consequent transfer, are therefore void.

v) This clause can be excised from the rest of the Settlement Agreement and in particular clause 2.1, which provides for the transfer of the Bubble City share to Mr Sachdeva, for which Mr Meng did have actual or at least apparent authority, and which was not undertaken in bad faith.

vi) I do not find that Mr Gao acted in breach of fiduciary duty in relation to the Settlement Agreement or the transfer of the Subscriber Share to Bubble City or in any other relevant way.

Issue 2: Proprietary claim to the Subscriber Share, knowing receipt by Bubble City and dishonest assistance by Mr Sachdeva

149. It is well established that where a director of a company transfers property belonging to the company in breach of fiduciary duty, the control which directors as fiduciaries have over company property may be treated as analogous to the title that trustees have to trust property, so that a misapplication of the company's property by the director leaves the beneficial ownership with the company, for the purposes both of equitable proprietary claims and claims in knowing receipt.

150. The conceptual basis for this analogy was considered by Lord Briggs in the Supreme Court in *Byers and others v. Saudi National Bank* [2024] UKSC 51; [2024] AC 1191 especially at [31] and [56] – [62]. This a case on which the Defendants have relied in relation to Issue 3, but which is also relevant here. After considering the two leading cases in which this analogy was drawn, the first instance decision of Ungoed-Thomas J in *Selangor United Rubber Estates Ltd v. Cradock (No. 3)* [1968] 1 WLR 1555, and the Court of Appeal decision in *Belmont Finance Corpn v. Williams Furniture Ltd (No. 2)* [1980] 1 All ER 393, Lord Briggs noted that the dicta in those cases fell short of providing a completely neat and satisfying explanation of how the knowing receipt doctrine works in relation to the property of companies. He noted that it was common ground that there was no pre-existing trust or separation of legal title from beneficial interest for as long as legal title remained vested in the company. At [60] – [61], he set out the Respondent's submissions on the question, which he then accepted, in the following terms:

> "[60]… Mr Green submitted that equity applied the knowing receipt doctrine by treating corporate property as subject to a trust by analogy. Later he firmed up his analysis by submitting that a trust, with a concomitant splitting of legal title from the company's continuing beneficial interest in the misapplied property occurred at the moment of the transfer which constituted the misapplication. Legal title passed to the transferee, but the equitable beneficial interest remained with the company. Therefore the company retained the equitable interest sufficient to support a proprietary claim to the property or its traceable proceeds, and a knowing receipt personal claim against any recipient who had received the property with notice of the misapplication, subject to any overriding of its equitable interest in the meantime.
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> [61] I consider that Mr Green's final submission on this issue is correct. It best fits with all the dicta summarised above [from *Selangor* and *Belmont Finance*]. First, the analysis in *In re Lands Allotment* speaks of the trust arising when the misapplication of company property takes place. The same analysis is also supported by Millett J in *Agip (Africa) Ltd v Jackson* [1990] Ch 265, 290D—F. Secondly Ungoed-Thomas J is at pains to emphasise that this is a real trust and not

> just a breach of fiduciary duty treated like a breach of trust merely by analogy. Thirdly and decisively Buckley LJ implicitly recognises a continuing equitable interest remaining in the company after the transfer because of his acknowledgment that the company's knowing receipt claim may be defeated by a recipient with a better equity. That would of course include equity's darling…"

151. On the facts of the present case, therefore, when the Subscriber Share was transferred from Enno to Bubble City on 25 August 2020, in breach of fiduciary duty by Mr Meng, although the legal title was transferred to Bubble City, the equitable interest in it remained with Enno, subject only to the question of Bubble City's knowledge and whether it was equity's darling (i.e. a bona fide purchaser for value without notice).

152. Mr Sachdeva has been a director of Bubble City at all times from 16 February 2017 and continuing. Aside from Enno being its sole registered shareholder between 12 August 2019 and 12 August 2020, Mr Sachdeva was the sole registered shareholder immediately before 12 August 2019, and he has continued to be the sole shareholder since 12 August 2020. In reality he has always operated it as "his" company, including maintaining control of its bank account throughout 2020. It is unquestionably the case, in my view, that any knowledge of Mr Sachdeva is properly to be attributed to Bubble City for the purposes of the issues arising in these proceedings, as is implicitly if not explicitly accepted by the Defendants.

153. Bubble City has been registered since 25 August 2020 as the holder of the single Subscriber Share received from Enno. The issue is therefore whether it received that share with knowledge of Mr Meng's breach of fiduciary duty so as to make its receipt unconscionable. As Lord Briggs summarised in *Byers* at [42]:

> "[42] Knowing receipt is sometimes also called a form of ancillary liability, but it is not in my view ancillary to the liability of the trustee. Rather it is ancillary to the proprietary claim which will generally enable the continuing equitable beneficial owner to recover the trust property where it has passed into the hands of someone other than the trustee, without the equitable interest having been overreached or overridden. The personal remedy in knowing receipt comes to the rescue if the transferee then transfers, dissipates or destroys the property after learning of the breach of trust, so as to prevent the pursuit of a proprietary claim. In such a case the claimant's equitable interest still subsisted at the time when the transferee learned of the breach of trust, so that the later transfer, dissipation or destruction of the property was a breach of the restorative and custodial duty which then bound him."

154. For completeness, I note that whereas Lord Briggs analysed a claim in knowing receipt as being ancillary to a proprietary claim, Lord Burrows categorised it as an "equitable proprietary wrong". The majority considered it unnecessary to resolve this difference, but agreed with the reasons common to both of the longer judgments, which led to the same conclusions. It is not necessary for me to consider the possible differences in this judgment either.

155. So far as Mr Sachdeva is concerned, I have found that in entering into the Settlement Agreement with the inclusion of a provision for the transfer of the Subscriber Share to Bubble City (at the same time as the share in Bubble City was transferred to him), Mr Sachdeva was acting in conjunction with Mr Meng to implement a scheme which they

had mutually agreed to remove the Bubble Citea business from Enno and instead allow OpCo to be operated by him and Mr Gao, with supplies from Jing, the latter in turn controlled by Mr Meng. As such I consider that Mr Sachdeva provided assistance to Mr Meng in the latter's breach of his fiduciary duty to Enno.

156. It is apparent that the Supreme Court in *Byers* considered the test for the relevant knowledge to be different as between knowing receipt and dishonest assistance. However since in this case, any knowledge of Bubble City is simply that of Mr Sachdeva, it is simplest for me to consider first whether Mr Sachdeva was dishonest, sufficient to ground a claim in dishonest assistance, because if he was, this will also satisfy the test for knowing receipt on the part of Bubble City. I also note that the Defendants explicitly did not submit that there was any relevant differences in the tests of knowledge/dishonesty to be applied as between the different defendants.

157. The test for dishonesty has had a convoluted history, but the law in the context of dishonest assistance claims has now been comprehensively laid out by the Court of Appeal in *Group Seven Ltd v. Nasir* [2019] EWCA Civ 614; [2020] Ch 129. After reviewing the authorities on dishonesty in a civil context, and then the decision of the Supreme Court in *Ivey v. Genting Casinos (UK) Ltd* [2017] UKSC 67; [2018] AC 391, which had been delivered between the first instance and appeal decisions in *Group Seven*, the Court of Appeal said at [57] – [58], in a judgment of the whole court:

> "[57] After a full review of the criminal case law since *R v Ghosh*, Lord Hughes JSC [in *Ivey*] then stated his conclusions at paras 74—75. He said that the second leg of the *Ghosh* test does not correctly represent the law, and that the test of dishonesty is as set out by Lord Nicholls in *Tan* [1995] 2 AC 378 and by Lord Hoffmann in *Barlow Clowes* [2006] 1 WLR 1476, para 10. Lord Hughes JSC continued:
>
> > "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."
>
> Accordingly, as Lord Hughes JSC explained at para 75, if (contrary to his previous conclusion) the concept of cheating at gambling included an additional legal element of dishonesty, it would be satisfied by the application of the above test. It may be that Mr Ivey was truthful when he said that he did not regard his conduct as cheating, but that could not amount to a finding that his behaviour was honest. Whatever his own views on the question may have been, Mr Ivey's conduct constituted cheating, and it was also dishonest.
>
> [58] In the light of *Ivey* [2018] AC391, it must in our view now be treated as settled law that the touchstone of accessory liability for breach of trust or fiduciary duty is

> indeed dishonesty, as Lord Nicholls so clearly explained in *Tan*, and that there is no room in the application of that test for the now discredited subjective second limb of the *Ghosh* test. That is not to say, of course, that the subjective knowledge and state of mind of the defendant are unimportant. On the contrary, the defendant's actual state of knowledge and belief as to relevant facts forms a crucial part of the first stage of the test of dishonesty set out in Tan. But once the relevant facts have been ascertained, including the defendant's state of knowledge or belief as to the facts, the standard of appraisal which must then be applied to those facts is a purely objective one. The court has to ask itself what is essentially a jury question, namely whether the defendant's conduct was honest or dishonest according to the standards of ordinary decent people."

158. I note that the Court of Appeal in *Group Seven* also considered, at [51], that they were bound by an earlier decision of the Court of Appeal in *Starglade Properties Ltd v Nash* [2011] Lloyds Rep FC 102, which they also treated as correctly decided. *Starglade* is a decision about what might be termed commercial dishonesty, in particular by assisting with the removal of assets from an insolvent company for the purposes of defeating the just claims of a creditor. In disagreeing with the Deputy Judge at first instance on the question of whether the facts he had found amounted to dishonesty, the Chancellor, with whom the other members of the Court agreed, said:

> "[37] … It is unarguable that Mr Nash by his conduct assisted in the breach of the trust by Larkstore by paying away the money held by Larkstore on such trust. The question is whether that assistance was dishonest.
>
> [38] I accept that the deputy judge found Mr Nash to be an honest witness; but that has no bearing on the honesty or otherwise of his conduct under consideration. I also accept that this court should be very cautious indeed of substituting its own view of the honesty of Mr Nash's conduct for that of the judge. But, if this court concludes that the deputy judge asked the wrong question and approached it from the wrong perspective then it is its duty to say so.
>
> [39] That is my conclusion. As I have already said, the question was whether the relevant conduct of Mr Nash in seeking to frustrate Starglade [the creditor], given that he knew that Larkstore was insolvent but otherwise had sufficient assets to pay a dividend to its creditors, was dishonest. The deputy judge never looked at that issue. He concentrated on whether payments to or security given to Glancestyle might be set aside in due course by a liquidator of Larkstore. No advice was sought or given on what Mr Nash proposed to do or did or his reasons for doing so. The deliberate removal of the assets of an insolvent company so as entirely to defeat the just claim of a creditor is, in my view, not in accordance with the ordinary standards of honest commercial behaviour, however much it may occur. Nor could a person in the position of Mr Nash have thought otherwise notwithstanding a lack of understanding as to the legal position.
>
> [40] For all these reasons I would accept the first submission of counsel for Starglade and, notwithstanding those of counsel for Mr Nash, recognise the conduct of Mr Nash in assisting the undoubted breach of trust in favour of Starglade as dishonest by the ordinary standards of honest commercial behaviour…"

159. Applying the test in *Group Seven*, and also bearing in mind the observations in *Starglade*, my conclusions as to Mr Sachdeva's state of knowledge are as follows:

i) Mr Sachdeva, Mr Meng and Mr Gao were all opposed to Mr Xie's proposal to replace Mr Meng with Mr Zhao, and his wish for hands-on involvement with the business. This led to the unsuccessful attempt to persuade Mr Xie to agree to a shareholders' agreement, on 8 June 2020 and ultimately to the steps which Judge Prentis concluded amounted to unfair prejudice by exclusion of Mr Xie, especially his purported removal as a director and dilution of his shareholding on 15 June and his removal from the group chats and exclusion from the Portsmouth premises, at which Mr Sachdeva was present, on 16 June 2020. Mr Sachdeva was in my view unquestionably fully aware of and supported the events on 16 June 2020 which amounted to the exclusion of Mr Xie.

ii) On 22 and 28 June 2020 all three of them received formal correspondence from Mr Xie's solicitors demanding that those steps be reversed and Mr Xie's loan be repaid, and threatening litigation.

iii) Although Mr Sachdeva gave notification (presumably to Mr Meng) on 1 July 2020 of his wish to recall the deal with Enno and there were then negotiations as to the terms on which he might do this, I have concluded that at some point in July/early August, Mr Meng concluded that it would be preferable to transfer OpCo and so the business out of Enno altogether, and operate it instead through Bubble City as an independent company, leaving Enno insolvent and saddled with the debts to Mr Xie and Ms Ding. I have also concluded that Mr Sachdeva was fully aware that this was the true purpose of the transfer of the Subscriber Share, and was fully in agreement with this approach, so that that transfer was not in truth part of a *bona fide* settlement of a claim by Mr Sachdeva.

iv) In entering into the Settlement Agreement, I consider that Mr Sachdeva was also intending, at least in the sense of being aware that it was the inevitable result, that this would obstruct any attempt by Mr Xie to obtain repayment of his loan, as well as practically-speaking preventing Mr Xie from taking any further part in the business (even if his removal as a director and dilution of his shareholding were reversed). On the other hand Mr Sachdeva was complicit in, and implemented, the promise made by Mr Meng for OpCo to repay £600,000 to Ms Ding. These were clear decisions by Mr Sachdeva to assist in the obstruction of one creditor (Mr Xie) and the assistance of another (Ms Ding).

v) I consider that in so doing, Mr Sachdeva acted dishonestly, in the sense that this conduct was dishonest when judged by the standards of honest commercial behaviour of ordinary decent people. This is because it amounted to improperly benefitting himself, Mr Meng, Mr Gao and to some degree Ms Ding, by diverting all of the Bubble Citea business to themselves, at the expense of Mr Xie and Enno, who would be deprived of the business in which Mr Xie had an 80% share and in Mr Xie's case, prevented from recovering his loan.

160. Accordingly:

i) In agreeing, executing and implementing clause 2.2 of the Settlement Agreement, resulting in the transfer of the Subscriber Share from Enno to Bubble City, Mr Sachdeva dishonestly assisted in the breach of duty by Mr Meng which consisted of agreeing to transfer and transferring that share.

ii) The Claimant, as assignee of Enno, therefore has a valid claim in dishonest assistance against Mr Sachdeva.

iii) In receiving that share, Bubble City did so with knowledge of the breach of fiduciary duty by Mr Meng, so that it would be unconscionable for it to retain that share.

iv) The Claimant, as assignee, therefore has a claim in knowing receipt against Bubble City for the return of the Subscriber Share.

v) The Subscriber Share is still held by Bubble City. The Claimant as assignee has a proprietary claim for the return of that share to itself. Applying *Byers*, Enno retained the equitable interest in that share which was not overridden, because Bubble City was not a bona fide purchaser for value without notice of Enno's equitable interest.

vi) I will consider separately the claims for equitable compensation.

Issue 3: Does the Claimant have a valid proprietary claim to the other 99 shares in OpCo issued on 3 December 2021 and also held by Bubble City?

161. As Mr Shaw pointed out in his final submissions, the Claimant does not base its claim to the other 99 shares in OpCo issued on 3 December 2021 on any fresh, subsequent breach of duty by Mr Meng or Mr Gao (as directors of Enno). The claim to the 99 shares is not therefore a claim for knowing receipt or dishonest assistance against Bubble City.

162. Rather, the Claimant makes its proprietary claim to the 99 shares in two alternative ways:

i) On the basis that it can trace into the 99 shares;

ii) By a claim based on an allegation that Bubble City is a constructive trustee. Mr Bennion-Pedley submitted that the 99 shares could be considered trust property via one of three routes:

a) They were obtained by reason of an opportunity derived from the trust;

b) They became trust property because otherwise the effect of Bubble City's acquisition of the 99 shares would be to destroy or jeopardise the trust property;

c) They were trust property because equity would impose a constructive trust to prevent Bubble City setting up and asserting a beneficial interest in the 99 shares to dilute the Claimant's proprietary claims (as assignee of Enno).

163. In paragraphs 34A and 34B of the RAPOC (which were amended during the trial to respond to the Defendants' more concerted attack on any claim to the 99 shares), the Claimant states that its primary case is that the 99 shares were traceable proceeds, and alternatively that it makes a claim via constructive trusteeship. I will therefore consider first the traceable proceeds argument and second, the constructive trusteeship argument.

Tracing

164. In his oral closing, Mr Bennion-Pedley said he had skated over his traceable proceeds argument and it was not his best point, but I consider this rather understated its strength.

On the other hand, and no doubt reflecting its significance, in his written closing submissions Mr Shaw responded to the tracing point in detail. He submitted that there was no such tracing claim for the following reasons:

i) The Subscriber Share continues to exist and to be held by Bubble City. It has never been exchanged for anything.

ii) The 99 shares were created and taken by Bubble City pursuant to a new contract of allotment by Mr Sachdeva, the director of OpCo. There is nothing in OpCo's articles or the CA 2006 which prevented OpCo from issuing and allotting more shares.

iii) Neither should the 99 shares be treated as an accretion to the Subscriber Share. They are simply new shares.

iv) The Subscriber Share did not have attached to it any contingent right to acquire the 99 shares, rather they were created and allotted as a result of the exercise by Mr Sachdeva of his discretionary management power. They cannot therefore be described as the "fruits" of the existing trust property (i.e. the Subscriber Share).

v) The 99 shares are simply separate, new property, applying *Byers*.

165. Both sides referred me in their supplementary authorities' bundles to a number of extracts from *Lewin on Trusts* (20th edition, 2020), including Chapter 44, "Proprietary Remedy and Tracing against Trustees and Third Parties". At 44-098, the authors of *Lewin* say the following, under the heading "Transfer and issue of shares in companies":

> "Issues of tracing the inherent value of shares in companies can arise both where existing shares are transferred and new shares are issued:
>
> (1) [not relevant].
>
> (2) Since tracing is concerned with the identification of the value inherent in one asset in another asset, identification of that value in the other asset does not necessarily depend upon a transfer of the asset or an interest or share of the original asset. And so where a trustee in breach of trust procures that a company, with only one issued share which is owned by the trust, issues 99 new shares in the company to the trustee or a third party without any consideration being paid for the new shares, so that 99 per cent of the value of the original share is transferred into the new shares, the new shares are the traceable product of the original share owned by the trust. The position where some but inadequate consideration is paid for the new shares is less clear. Where the value of the share owned by the trust is substantially transferred into the new shares, perhaps the new shares should be treated as the traceable product of the share owned by the trust subject to a lien on the new shares of a sum equal to the amount of consideration paid for them. A proprietary claim against a third party to whom the new shares are issued will fail if the third party is a purchaser for value without notice…"

166. The authority cited in *Lewin* in support of the main propositions in this paragraph is the case in the Cayman Islands Court of Appeal of *Autumn Holdings Asset Inc v. Renova Resources Private Equity Ltd (as shareholder of Pallinghurst (Cayman) General Partner*

LP (GP) Ltd.) and others [2017] (2) CILR 136. As a decision in the Cayman Islands, this is not binding on me but is only of guidance, but I note that it is based on the same English authorities as are before me (insofar as they had then been decided), and that the only reasoned judgment was given by Chadwick J.A., the retired English Lord Justice of Appeal, and as such I give it weight.

167. *Autumn Holdings* concerned breach of fiduciary duty by the director of an investment master fund and of its wholly owned subsidiary, Project Egg Ltd or PEL, which had been incorporated to acquire certain Faberge brand and business rights. A sale and purchase agreement had been reached under which those rights would be granted to PEL. However the director secretly set up an alternative consortium of investors including himself. He then arranged for a loan to be made to PEL by those lenders and for 100 new shares in PEL to be issued at par value to the lenders, so that the master fund's interest in PEL was reduced to 1/101, thereby passing the economic benefit of the exploitation and development of those rights to the lenders. One of those lenders was Autumn Holdings, which received 25 shares, and which was also controlled by the director. Renova brought a derivative action on behalf of the master fund against the director for equitable compensation for breach of fiduciary duty and against Autumn for knowing receipt. The judge at first instance held that the director had indeed breached fiduciary duties to the master fund in so acting, that Renova had a valid claim against Autumn for knowing receipt and could trace through the single original share into the 25 new shares issued to Autumn, which it had received as a volunteer and for which it was therefore liable to account. He also dismissed Renova's claims for equitable compensation because, on the facts, the master fund was significantly better off financially than it would have been but for the breach of fiduciary duty. Both sides appealed to the Cayman Court of Appeal.

168. At [201] – [208] Chadwick LJ considered whether, consequent upon the issue of the new PEL shares, Autumn had been the recipient of the traceable proceeds of property of the master fund. At [201] – [202], he noted the difference between opportunities and assets (which I will consider in the context of the constructive trusteeship claim), which Renova said did not arise because the new shares were the traceable product of existing rights. He also recorded at [203] Autumn's argument that the master fund had no proprietary interest in the new shares because until they were issued, they did not exist, and the arguments, also made by Mr Shaw here, that:

> "[203]… before the issue of the new PEL shares to members of the consortium in January 2007, the master fund was the owner of one PEL share, and that, after the issue of the new PEL shares to members of the consortium, the master fund remained the owner of that PEL share. What changed was not the identity of the asset owned by the master fund, but the characteristic of that asset in relationship to the ownership of PEL. The effect of the issue of the new shares to members of the consortium was that the proportionate interest in PEL associated with ownership of that one share changed from 100% to less than 1%.... Those submissions are, if I may say so, self-evidently correct, and they are not, I think, in dispute. But they provide no answer to what (as Renova submits) is the relevant question for determination under this head: whether, consequent upon the issue of new PEL shares in January 2007, Autumn was the recipient of the traceable proceeds of property of the master fund."

169. At [206] – [207] Chadwick JA recorded Renova's arguments that "… 'tracing' in equity concerns value, not assets *in specie"* and that applying *Foskett v. McKeown* [2001] 1 AC

at 127-8, tracing is concerned not with locating the asset formerly owned by the plaintiff but with identifying whether there is an asset in the hands of the defendant in which the value of the original asset is now located. Renova argued that the effect of the share issue was that although the master fund still owned its single PEL share, the value of its holding was reduced by over 99% and the value lost to the master fund was transferred to the consortium as holders of the new shares. Accordingly, they said, the value of the 100% ownership of PEL (formerly represented by the single share) came to be represented by the 101 shares in PEL which existed post-dilution.

170. At [208], Chadwick JA accepted Renova's arguments, concluding as follows:

> "[208] I accept Renova' s submission that the judge was correct to conclude that the value of the master fund's holding (immediately prior to the issue of the new shares) of 100% of the issued share capital of PEL can be traced into the PEL shares issued to Autumn in January 2007. In the events which happened, the position immediately before the issue of the 100 new shares was that PEL was the owner of the Faberge rights, and as the holder of the single share then in issue, the master fund was the owner of 100% of the issued capital of PEL. The position immediately after the 100 additional shares were issued was that PEL remained the owner of the Faberge rights but that the issued capital of PEL was owned as to 100/ l01 by the members of the consortium and as to 1/101 by the master fund; or, to put the point another way, substantially the whole of the value of the master fund's interest in PEL and (indirectly, through PEL) in the Faberge rights had been transferred to the members of the consortium as owners of the new shares. In those circumstances, as it seems to me, the effect of the issue of the new PEL shares was that 100/ l01 parts of the master fund's ownership of the whole issued share capital of PEL was transferred to the members of the consortium and, in particular, 25/101 parts of the master fund's ownership of the whole issued share capital of PEL was transferred to Autumn. The value of what was transferred was represented by the new shares held by Autumn and the other members of the consortium, and can be traced accordingly. As Renova points out, to hold otherwise would be to allow corporate form to defeat commercial substance. It cannot be doubted that, had the transaction been carried out (as a matter of corporate form) in a slightly different way - by subdividing the existing single share in PEL into 101 new shares and then causing the master fund (as the owner of those 101 new shares) to transfer 100 of those shares to members of the consortium - the 100 shares so transferred could be followed into the hands of the transferees and could be the subject of a proprietary claim. To deny a proprietary claim in circumstances where what is, as a matter of commercial substance, the same transaction is carried out by the issue of new shares (rather than the creation of new shares by the subdivision of an existing share) would, indeed, be anomalous."

171. I note that *Autumn Holdings* was a case where the issue of the 100 shares was itself a breach of fiduciary duty by the director, and that Chadwick J.A. went on to hold that Autumn was also therefore liable in knowing receipt to a proprietary claim for the 25 shares it had received. On the facts before me, that is not the case, both because Mr Sachdeva was not a fiduciary vis-à-vis Enno (I will return to the constructive trustee argument) and because it is not said that the issue of the 99 shares amounted to a further breach. Nevertheless, on the tracing point I agree with the analysis of Chadwick J.A. and I consider that the same analysis applies here: 99% of the value in the single Subscriber

Share has been transferred to the new shares issued to Bubble City so that in my view the Claimant can in principle trace into the 99 shares.

172. This is subject only to the question of whether Bubble City was a bona fide purchaser for value of those shares without notice of the Claimant's beneficial interest. As outlined at paragraph 124 above, there is no record in Bubble City's accounts that is has paid for the shares. However, Mr Shaw submits that since Model Article 21(1) which applies to OpCo provides that shares must be issued as fully paid, I should proceed on the basis that this was complied with. It is also correct that OpCo's accounts for the year ending 30 June 2022 record there as being 100 shares allotted, called up and fully paid. I am prepared to accept that record as being correct, albeit there is no other evidence in support on Bubble City's side.

173. However, my view, for the reasons set out under Issue 2, is that Bubble City acquired the 99 shares with notice of Enno's (now the Claimant's) beneficial interest in them. Bubble City's knowledge is that of Mr Sachdeva and I consider that the natural consequence of my findings as to Mr Sachdeva's dishonesty in August 2020 is that he was aware that the Subscriber Share was properly the property of Enno. Therefore I consider that Bubble City was not equity's darling and it cannot now resist the tracing claim by asserting that it did not have notice of Enno's interest, even if the shares are treated as paid up.

174. Accordingly my conclusion is that the Claimant can trace its proprietary interest in the Subscriber Share into the 99 shares and so has a proprietary claim to the whole share capital in OpCo, which Bubble City still holds.

Constructive trusteeship

175. The Claimant makes an alternative proprietary claim to the 99 shares on the basis that Bubble City holds them as a constructive trustee. Although not strictly necessary given my findings as to tracing, I will also consider this alternative ground.

176. Mr Bennion-Pedley made this argument first on the basis that the opportunity to acquire the 99 shares was only open to Bubble City because it held the Subscriber Share as a constructive trustee, having acquired it by knowing receipt. He relied for support on passages in *Boardman v. Phipps* [1967] 1 AC 46 and *FHR European Ventures LLP v. Cedar Capital Partners LLP* [2015] AC 250. *Boardman* is of course the classic statement of authority that fiduciaries who have been appointed as such, who take advantage of an opportunity of which they have knowledge as a result of their fiduciary position, are liable to account to their beneficiaries for profits made, even if the beneficiaries could not themselves have taken advantage of that opportunity (see at 102-3).

177. *FHR* also concerned an appointed fiduciary: the central issue in the case was whether a principal has a proprietary claim to a bribe received by its agent, or only a personal claim, and it was held that the claim is a proprietary one. However Mr Bennion-Pedley relied on certain "Prefatory comments" at the start of the judgment, in which Lord Neuberger set out three general principles which he said were not in doubt, including in particular:

> "[7] The principal's right to seek an account undoubtedly gives him a right to equitable compensation in respect of the bribe or secret commission, which is the quantum of that bribe or commission (subject to any permissible deduction in favour of the agent - e g for expenses incurred). That is because where an agent

> acquires a benefit in breach of his fiduciary duty, the relief accorded by equity is, again to quote Millett LJ in the *Mothew* case, at p 18, "primarily restitutionary or restorative rather than compensatory". The agent's duty to account for the bribe or secret commission represents a personal remedy for the principal against the agent. However, the centrally relevant point for present purposes is that, at least in some cases where an agent acquires a benefit which came to his notice as a result of his fiduciary position, or pursuant to an opportunity which results from his fiduciary position, the equitable rule ("the rule") is that he is to be treated as having acquired the benefit on behalf of his principal, so that it is beneficially owned by the principal. In such cases, the principal has a proprietary remedy in addition to his personal remedy against the agent, and the principal can elect between the two remedies."

178. Mr Bennion-Pedley submitted that the phrase "pursuant to an opportunity which results from his fiduciary position" is not limited to appointed fiduciaries, that there is no blanket rule, and that it could in an appropriate case apply to a person on whom a remedial constructive trust has been imposed e.g. as a result of their prior knowing receipt.

179. Mr Shaw rejected this as being based on a misunderstanding of constructive trusteeship as an equitable remedy available against a knowing recipient or dishonest assister. He relied upon the distinction made by Millett LJ in *Paragon Finance plc v. BD Thackerar & Co* [1999] 1 All ER 400 at 408j-409g, between two categories of case in which the expression "constructive trustee" is used:

> "Regrettably, however, the expressions 'constructive trust' and 'constructive trustee' have been used by equity lawyers to describe two entirely different situations. The first covers those cases… where the defendant, though not expressly appointed as trustee, has assumed the duties of a trustee by a lawful transaction which was independent of and preceded the breach of trust and is not impeached by the plaintiff. The second covers those cases where the trust obligation arises as a direct consequence of the unlawful transaction which is impeached by the plaintiff.
>
> A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff….
>
> The second class of case is different. It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. He never assumes the position of a trustee, and if he receives the trust property at all it is adversely to the plaintiff by an unlawful transaction which is impugned by the plaintiff. In such a case the expressions 'constructive trust' and 'constructive trustee' are misleading, for there is no trust and usually no possibility of a

> proprietary remedy; they are 'nothing more than a formula for equitable relief ': *Selangor United Rubber Estates Ltd v Cradock (No 3)* [1968] 2 All ER 1073 at 1097, [1968] 1 WLR 1555 at 1582 per Ungoed-Thomas J."

180. Mr Shaw's submission was that in this second category of case, the constructive trustee does not owe fiduciary duties to the beneficial owner of the property. He relies on the decision of the Supreme Court in *Williams v. Central Bank of Nigeria* [2014] AC 1189 at [31] where it was said:

> "[31] The essence of a liability to account on the footing of knowing receipt is that the defendant has accepted trust assets knowing that they were transferred to him in breach of trust and that he had no right to receive them. His possession is therefore at all times wrongful and adverse to the rights of both the true trustees and the beneficiaries. No trust has been reposed in him. He does not have the powers or duties of a trustee, for example with regard to investment or management. His sole obligation of any practical significance is to restore the assets immediately. It is true that he may be accountable for any profit that would have been made or any loss that would have been avoided if the assets had remained in the hands of the true trustees and been dealt with according to the trust. There may also, in some circumstances, be a proprietary claim. But all this is simply the measure of the remedy. It does not make him a trustee or bring him within the provisions of the Limitation Act 1980 relating to trustees."

181. Mr Shaw submits that the Claimant's claims against Bubble City fall within the second category of constructive trusteeship: in claiming the Subscriber Share, Bubble City is using constructive trusteeship as a formula to obtain equitable relief for knowing receipt. However, he says, this does not mean that Bubble City took on fiduciary duties to Enno when it received the Subscriber Share, so that when it took advantage of the opportunity to acquire 99 further shares it became obliged to account for them to Enno as unauthorised profits.

182. He also relies upon the decision of the Court of Appeal in *Davies v Ford* at [86] where Sir Launcelot Henderson rejected an attempt which Mr Shaw himself had been making to rely upon [7] in *FHR* in support of an argument that a constructive trustee needed to account for a business opportunity of which it was only able to take advantage because of its own prior knowing receipt. At [95] the judge, said:

> "[95] For all these reasons, I remain wholly unconvinced that Mr Davies can in principle pursue a remedy in knowing receipt against GBRK which would extend beyond the well-established principles recently restated by this court in *Byers*. In particular, I can see no basis for concluding that such a remedy should extend beyond pre-existing trust property transferred in breach of Mr Monks' fiduciary duties, or that it could somehow embrace the entirety of GBRK's business as at the date of GBR's dissolution in October 2011..."

And at [108]:

> "… It is now clear that a receipt of pre-existing trust property is a necessary ingredient of a claim in knowing receipt, and it is not enough that a defendant has merely obtained a benefit from trust assets: see *Byers* at [22]…"

183. I accept the submissions of Mr Shaw on this point. In my view it is clear from *Davies v Ford* that a proprietary claim against Millett LJ's second type of constructive trustee cannot extend to business opportunities which have come the recipient's way as a result of its knowing receipt of trust property. Such opportunities are not themselves property which pre-existed and which was acquired through knowing receipt, so they do not become subject to a remedial constructive trust, even though the opportunity would not have come the recipient's way were it not for the property which it holds on constructive trust.

184. In my view therefore the Claimant cannot assert a constructive trust over the 99 shares by claiming that the opportunity to acquire them only came Bubble City's way as a result of its earlier knowing receipt of the Subscriber Share.

185. The second basis on which Mr Bennion-Pedley asserted that a constructive trust arose was because otherwise the effect of Bubble City's acquisition of the 99 shares would be to destroy or jeopardise the trust property. He relies on the case of *Griffith v. Owen* [1907] 1 Ch 195, which concerned the purchase by a will trustee of a house which was devised to beneficiaries, for the sum due on a mortgage secured on it. At 203-4 Parker J referred to the principle in *Keech v. Sandford* (1726) E.R. 223, that where trustees hold a lease which the lessor refuses to renew for the benefit of the beneficiary, but agrees to renew to the trustee, the trustee will still hold the lease on trust for the beneficiary. He said this depended on the fiduciary duty to the beneficiary. Applying the same principle to the case before him, Parker J said "… I think it clear, however, that when once the fiduciary relationship or duty is established on the part of the person obtaining the renewal the onus of proving that there is nothing inequitable in his claiming to retain the benefit for himself rests with him…"

186. Mr Bennion-Pedley submitted that otherwise the effect of the trustees' decision in *Griffith* would have been to destroy the subject matter of the settlement in favour of the beneficiaries. He said similarly here, if no constructive trust is treated as having arisen over the 99 shares, then the effect will be to destroy the trust property in the form of the Subscriber Share. He said that this conclusion did not depend on any bad faith by the trustee, it was imposed simply to avoid the prejudice which would otherwise be caused to the beneficiary. Further, once the fiduciary relationship is established, he said the onus of showing that there was nothing inequitable in the trustee claiming to retain the benefit of the acquisition was then on the trustee

187. Mr Shaw rejected this proposition, arguing that the Subscriber Share was still intact and had not been destroyed or even damaged, and that again these were principles taken from and applicable to appointed trustees, not type-2 constructive trustees.

188. My conclusion is that Mr Bennion-Pedley's second "route" does not work either, for similar reasons to his first. These are authorities relating to appointed fiduciaries and the principles applicable to them cannot be simply read across to type-2 constructive trustees. In any event, the allotment and issue of the 99 new shares did not involve any destruction of or damage to the original Subscriber Share, which still exists and is held by Bubble City. The complaint is that its value has been reduced, not that it has been damaged.

189. Similarly I do not consider that his third "route" works, that is that the Court has a general power to impose a constructive trust over the 99 shares to prevent them from being relied on effectively to destroy any proprietary claim. This was a catch-all assertion, based on

Carl Zeiss Siftung v. Herbert Smith [1969] 2 Ch 276 and Edmund Davids LJ's statement at 300F-G that:

> "English law provides no clear and all-embracing definition of a constructive trust. Its boundaries have been left perhaps deliberately vague, so as not to restrict the court by technicalities in deciding what the justice of a particular case may demand."

190. This statement of general principle is correct as far as it goes, but I do not consider that it can be relied upon by itself to create a constructive trust where a proprietary claim is being made (other than by tracing) to new property which did not previously exist, and when other more specific bases for asserting a remedial constructive trust do not apply.

191. In summary therefore, I do not consider that the Claimant can make a proprietary claim to the 99 shares by asserting that a constructive trust arose over them in December 2021.

Issue 4: Alternatively, was the issue of the 99 shares undertaken for an improper purpose and can the Claimant obtain an order to set the share issue aside?

192. This issue only arises if the Claimant does not have a valid proprietary claim to all 100 shares. Since I have held that it can trace into the 99 shares as well as having a proprietary claim to the Subscriber Share, this does not arise, but since it was fully argued I will deal with it.

193. This is a fallback by the Claimant: if there is no proprietary claim to the 99 shares, then its position is that those shares were issued for an improper purpose which renders the allotment and issuance void. If so, the Claimant says it is entitled now to an order for rectification of OpCo's members' register, without needing to wait to be registered as the holder of the Subscriber Share and so as a member itself.

194. The Defendants deny the substantive claim and also that the Claimant has any standing to apply for rectification of OpCo's register of members since it is not (yet) a member.

195. The provision under which an application can be made for rectification of the list of members of a company is s.125(1) CA 2006. In the form currently in force, it provides:

> "125 Power of court to rectify register
>
> (1) If a company's register of members—
>
> (a) does not include information that it is required to include, or
>
> (b) includes information that it is not required to include,
>
> the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register…"

196. This version has been in force since 4 March 2024. With effect from that date it was amended by the Economic Crime and Corporate Transparency Act 2023 ("**the 2023 Act**"). The previous version of this sub-section was in the following terms, which had applied since this provision of the CA 2006 originally came into force on 1 October 2009:

> "125 Power of court to rectify register
>
> (1) If–
>
> (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members, or
>
> (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,
>
> the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register."

197. On the question of standing to make an application for rectification of the register, the Claimant's position is that it falls within the category of "person aggrieved" and can apply within these proceedings for Bubble City to be removed as the holder of the 100 shares in OpCo and for itself to be registered instead, assuming it could prove that the issue of the 99 shares was void as having been done for an improper purpose.

198. The Defendants' position is that the Claimant would not have standing to make such an application unless and until it has been registered as the holder of the Subscriber Share (in the event it succeeded in its proprietary claim to that share), at which point it would fall into the category of "member", but that it does not currently fall within the category of "the person aggrieved". This argument was based on the history of this provision and the purpose of the amendments made by the 2023 Act.

199. Mr Shaw emphasised that if the Claimant's proprietary claim to the Subscriber Share was successful, that decision would be implemented by a court order requiring Bubble City to transfer it by executing a stock transfer form in respect of it. His submission was that it will only be upon receipt of that form that OpCo's directors will be obliged to enter the Claimant in OpCo's register of members, and that it is only at the point of entry in the register of members that the Claimant will become a member of OpCo within the s.112(2) CA 2006. I accept those submissions, which mean that even if the Claimant has a valid proprietary claim to the Subscriber Share, and I enforce that claim by order, it is still not presently a "member" of OpCo within the meaning of s.125(1).

200. The Claimant sought to make a broader argument, based on the meaning which the courts have given to the phrase "the person aggrieved" in other legislative contexts, arguing that in its current form the phrase is wide enough to include a person who is not yet a member but is claiming that they should be recognised as such.

201. This was one of the alternative responses raised by the Claimant to the Defendants' argument (itself first raised in correspondence on 14 January 2025), that the Claimant could not make a proprietary claim to the 99 new shares, even if it could establish such a claim to the Subscriber Share. As such it was among the proposed re-amendments which the Claimant applied at trial to make to the Amended Particulars of Claim, related to the re-re-amendments which the Defendants had applied to make to the Re-Amended Defence.

202. Most of those amendments were agreed, but Mr Shaw opposed the proposed amendments at new paragraph 34C, relating to this specific issue, because he said they were not

reasonably arguable. I heard argument on Days 3 and 4 of the trial and ruled on Day 4 that in view of the involved legislative history of s.125 and the different meanings which "the person aggrieved" had been given in different legislation, I considered that that proposed amendment did pass what I emphasised was the low bar of being reasonably arguable. I therefore allowed all of the proposed amendments to be made to both statements of case (no amendments to the Reply being considered necessary).

203. On standing, Mr Shaw's position was that considering the wording of s.125(1) which applied until 3 March 2024, the Claimant could not possibly then have had standing to apply for rectification of the register on the basis sought, because it was not within the original language of the section. Excluding extraneous words, the section had provided: "If (a) the name of any person is, without sufficient cause, entered in or omitted from a company's register of members… the person aggrieved… may apply to the court for rectification of the register". Accordingly, he argued, the phrase "the person aggrieved" clearly related to, and only to, the person whose name was wrongly entered in or omitted from the register. It had not applied to a person who would become entitled to be entered into the register once a stock transfer form had been executed; only to a person who was already entitled to be registered (or omitted).

204. He then submitted that the 2023 Act was not intended to change this limitation to the scope and meaning of the phrase "the person aggrieved". The clear purpose of those amendments was to broaden the information in the register which might be considered wrongly omitted or included, because one purpose of the 2023 Act was to require additional information about the member to be included in the register. But, he submitted, this did not, and was not intended to, affect the fact that "person aggrieved" was tied to and so limited to either a person who was a current member but had been wrongly excluded or described, or a person who was not a current member but had been wrongly included. All it did was allow rectification of the other information about a member which the 2023 Act had required to be included, to correct it if it was wrong.

205. Alternatively he relied on the meaning which the phrase a "person aggrieved" had been given in bankruptcy legislation, as in interpreted in *In re Sidebotham* (1880) 14 Ch.D. 458 at 465 where James LJ defined this as follows:

> "… It is said that any person aggrieved by any order of the Court is entitled to appeal. But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something…"

206. This was in the context of s.71 of the Bankruptcy Act 1869 which provided for appeals from the bankruptcy courts. Section 71 permitted "any person aggrieved" by an order of a local Bankruptcy Court to appeal to the Chief Judge in Bankruptcy. In that case the court had refused to act upon a report by the Comptroller in Bankruptcy that the trustee in bankruptcy had been guilty of misfeasance, causing loss to the estate. It was held that in that context, "person aggrieved" did not include the bankrupt or a creditor but only the Comptroller, because it was an appeal provision and it was the Comptroller, not any other person, who had made the report to the Court.

207. Mr Bennion-Pedley argued that in other contexts the phrase "person aggrieved" had been given a wider interpretation, and that s.125(1) was also a context in which a broader interpretation should be given. He relied by analogy on the interpretation of the phrase in the Patents, Designs, and Trade Marks Act 1883, as decided by the Court of Appeal in *In re Powell's Trade Mark* [1893] 2 Ch 388. The issue there was whether the Applicant, who was a business rival of the registrant, could challenge the registration of a trade mark for Yorkshire Relish, or whether the Applicant in effect had to breach the trade mark first and then challenge its validity in response. Lindley LJ held that the Applicant did fall within the definition of a "person aggrieved" for the following reasons (at 400):

> "… I think they are persons aggrieved in this sense—that they are entitled to ask the Court to hear the case on the merits. They have an interest in this matter: they are not common informers—they are not persons who have nothing to do with the sauce trade, and it may well be that if they can get rid of this mark they will sell Yorkshire Relish…"

208. Mr Bennion-Pedley argues that, similarly here, although the Claimant is not yet entitled to be registered as a member of OpCo, it obviously has an interest in the matter and so should be entitled to ask to court now to consider on the merits whether it or Bubble City should be registered as shareholder of OpCo. He submitted it should not be necessary to make a separate application to the Companies Court in the future.

209. My conclusion is that "person aggrieved" is a chameleon phrase which takes on different meanings which are heavily influenced by the particular legislative context. As such, I do not find the different interpretations which have been given to the phrase in other contexts (whether the old Bankruptcy Act or Trade Marks legislation) of much assistance, other than in illustrating the point that it can have a variety of meanings.

210. In the specific context which I have to consider, of s.125 CA 2006, the most salient point in my view is that in the version of the section which applied from 2009 until 2024, "person aggrieved" was clearly linked and limited to the person whose name had been either wrongly included in or omitted from the register. I do not consider that the amendments which were made by the 2023 Act were intended to modify that restriction for the purposes of the rectification provision in s.125, because their purpose was to provide for additional information about that person to be included, which also broadened the scope of information about the person which might be wrong. This does not suggest any wider legislative intention to change the meaning of the "person aggrieved".

211. Therefore I conclude that Mr Shaw is correct, and in this particular legislative context, "person aggrieved" is limited to a person who has been wrongly included or omitted, and/or where other information about that person included is wrong or has been wrongly omitted. I consider that it does not extend to a person who is not presently entitled to be registered as a member but is seeking an order requiring the directors of the company to transfer shares to them.

212. Accordingly I conclude that the Claimant cannot pursue this alternative claim before me. For completeness I should also say that:

    i) Mr Shaw also objected that any such application should be made to the Companies Court, by reason of paragraph 5 of Practice Direction 49A. However in my view, it was clearly more convenient and appropriate to resolve the question of whether the Claimant

had standing (and if it had, to consider the substantive application) as a part of the present claim, and this court does have jurisdiction to do so. Accordingly, I waive any breach of procedure involved in making the amendment at paragraph 34C of the RAPOC, and the consequent amendments to the Re-Amended Defence, applying CPR rule 3.10.

ii) In any event, on the basis of my findings of fact as to Mr Sachdeva's purpose in allotting and issuing the 99 shares, as set out at paragraphs 120 to 124 above, I find that the shares were not issued for an improper purpose. For the reasons I explained, I do not consider that they were allotted and issued for the purpose of diluting the existing Subscriber Share or of defeating a potential future claim by Enno. The timing does not support this and the defence now raised based on the issue of the 99 shares was a complex legal one which was unlikely to have been in the contemplation of Mr Sachdeva in December 2021. In my view he arranged for the 99 new shares to be issued, in line with his accountant's advice, because this might assist with future investment. That was not an improper purpose.

213. Of course, given the other findings I have made that the Claimant has a proprietary claim to all 100 shares in OpCo, I will order that Mr Sachdeva, as the director of Bubble City, is to transfer those 100 shares to the Claimant, by executing a stock transfer form in respect of them.

Issue 5: Does the Claimant have a valid claim for substantial equitable compensation, in addition to its proprietary claim for transfer of the 100 shares in OpCo?

214. It is on this issue that there is the most fundamental divergence of principle between Mr Bennion-Pedley for the Claimant and Mr Shaw for the Defendants. This is among other things apparent from the terms of the open offer made by the Defendants to the Claimant by a letter dated 14 January 2025, on which Mr Shaw placed significant emphasis in his submissions, in writing and orally. He went as far as to urge me to short-circuit the trial, and my judgment, by reference to the points of law which it raises. I declined to do so, preferring to hear all the evidence and legal arguments, and is so often the case, I consider the issue has become clearer having done so.

215. It is convenient to set out here the material terms of that open offer. First the letter summarised the Claimant's claim and allegations of a conspiracy, which it said were entirely denied. It addressed and denied the proprietary claims. It then continued:

> "Secondly, and even more fundamentally, equity in Bubble OpCo is worthless, as that company is heavily insolvent. In this regard, we refer you to management accounts for Bubble OpCo dated 30 June 2024, a copy of which is attached herewith. As at that date, Bubble OpCo had net current liabilities of £1,908,643 and an overall balance sheet deficiency of £817,711. Further, Bubble OpCo owed £2,147,426 to Jing Capital Ltd.
>
> Bubble OpCo is therefore only able to carry on trading as a result of the forbearance of Jing Capital Ltd: if Jing Capital Ltd demands repayment of its debt of over £2 million, Bubble OpCo will be unable to pay, with the result that Bubble OpCo will be liable to be wound up.
>
> The conclusion that equity in Bubble OpCo is worthless is in fact entirely consistent with the evidence of your client's own expert, Mr Donaldson, whose opinion at

paragraph 1.9 of his report dated 29 November 2024 is that, on the assumption that Bubble OpCo is required to pay a licence fee to use the brand name "Bubble CitTea" [sic], as at 30 September 2024, Bubble OpCo has no value [on the assumption of 53 stores].

The assumption that Bubble OpCo is required to pay a licence fee to use the brand name "Bubble CitTea" is plainly appropriate because, as found by ICCJ Prentis in the unfair prejudice proceedings and (correctly) acknowledged by your client in the current proceedings, the brand name "Bubble CiTea" is owned by Bubble City. Given that Bubble OpCo is currently a wholly-owned subsidiary of Bubble City, Bubble City allows Bubble OpCo to use that brand name under a licence.

Bubble City is under no obligation to provide that licence in the future. If (despite our clients' contentions, as set out above) the Court orders the transfer of Bubble OpCo's entire issued share capital to your client, Mr Sachdeva, through his control of Bubble City, will have the right to terminate that licence on reasonable notice. Reasonable notice in this context means, at most, a matter of a few months – your client's claim that reasonable notice would be as much as three years is untenable. Mr Sachdeva could therefore bring Bubble OpCo's trading to an end at any time by terminating its right to trade under the "Bubble CiTea" brand name. Mr Sachdeva would only be prepared to allow Bubble OpCo to continue using the "Bubble CiTea" brand name on payment of an appropriate licence fee.

We are confident that a court will accept these points. The suggestion that Bubble OpCo could carry on trading in the future under the control of the Claimant without paying an appropriate commercial rate for the use of a brand belonging to a third party (Bubble City) is both commercially and legally unrealistic.

To summarise, therefore, Bubble OpCo's current trading and financial position are extremely precarious. Bubble OpCo is heavily insolvent on a balance sheet basis, is only able to continue trading for so long as Jing Capital Ltd does not seek repayment of a debt of over £2 million. Moreover, Bubble City has the ability to terminate Bubble OpCo's trading by exercising its right to terminate Bubble OpCo's licence to use the "Bubble CiTea" brand name.

Our Clients' Offer

Against the background set out above, your client is seeking to litigate for no purpose at all. Your client claims worthless equity in a company which is heavily balance sheet insolvent. Further, your client's claims for equitable compensation and/or damages have nil value: given that equity in Bubble OpCo is worthless, your client lost nothing of value as a result of being deprived of that equity.

In an effort to avoid the costs of an entirely pointless trial, our clients make the following offer (subject to contract). They are willing to transfer the entire issued share capital of Bubble OpCo (i.e. all 100 Ordinary Shares) currently held by Bubble City to your client in full and final settlement of all claims against them. Further, they offer to settle on terms that our respective clients bear their own costs. This offer is made on an open basis and will remain available for acceptance unless it is expressly withdrawn.

> … [reference to releases from undertakings]
>
> **Conclusion**
>
> By way of final point, as set out in our Re-Amended Defence, your client's current case includes claims that Bubble OpCo is the victim of a conspiracy perpetrated by our clients. Needless to say, these claims are denied. If, however, Bubble OpCo is the victim of an unlawful means conspiracy, Bubble OpCo will need to bring claims for damages; your client, as assignee of Enno Capital has no right to bring such claims.
>
> Our clients recognise that, in offering to transfer the entire issued share capital of Bubble OpCo to your client, they will provide your client with the ability to cause Bubble OpCo to bring such claims. Again, however, we emphasise that Bubble OpCo is heavily balance sheet insolvent and is liable to be wound up on a petition presented by Jing Capital Ltd. If Bubble OpCo is wound up, it will be for the liquidator to pursue claims. Your client, as the sole shareholder in Bubble OpCo, will not receive any part of the proceeds of such claims until all creditors have been paid in full.
>
> We invite your client to consider our client's offer carefully. If your client rejects this offer and proceeds to trial, we intend to rely on this letter as part of our clients' submissions, both on the merits and issues of costs. Any High Court Judge will quickly conclude that your client's claims are pointless, given that the equity value of Bubble OpCo is nil."

216. Mr Shaw's position was in essence as follows:

i) The current value of OpCo is nil. A major reason is that it owes Jing over £2M for supplies, which have been provided on generous payment terms.

ii) The 100 shares are therefore worthless. A sign of the fact that the Defendants genuinely believe this is that they were willing to settle this claim on the basis of transferring them all to the Claimant. If the Claimant believed otherwise, it should have accepted that offer.

iii) In any event, any claim that OpCo has been devalued or damaged by the actions of the Defendants (including e.g. from August 2022 to August 2023), whether in breach of fiduciary duty to it or otherwise, is OpCo's claim, in respect of which the Claimant cannot claim or recover in the present claim, in which OpCo is a defendant.

iv) Furthermore, any claim by the Claimant that the value of the shares in OpCo which it recovers has been reduced by the Defendants' actions when they controlled OpCo would be reflective loss and so barred by the principles restated by the Supreme Court in *Marex Financial Ltd v Sevilleja* [2020] UKSC 31; [2021] AC 39 ("***Marex***").

v) Therefore the Claimant cannot, as a matter of law, have any claim for equitable compensation in respect of OpCo if it also recovers the 100 shares in OpCo. If it had been unable to recover the 99 shares, then it could at least in principle have had a claim for equitable compensation the loss of its equity interest in OpCo. However, that

compensation would have been nil because that is the value of OpCo. In any event though, it can have no claim if it recovers all 100 shares.

vi) In terms of the expert valuation evidence, the only potential issue is therefore as to the current value of OpCo, 30 September 2024 having been treated as a proxy for the trial date by the experts.

vii) Further, that "as is" valuation must be conducted on the basis that:

a) OpCo has a debt of about £2M to Jing, and is party to the 5-year exclusive SGA 2023 with Jing for as long as it uses the Brand;

b) OpCo must pay licence fees for use of the Brand, and is also obliged to pay other fees under the Reversion Plan, at least until it is terminated.

217. In contrast, Mr Bennion-Pedley's position was as follows:

i) The Claimant has elected equitable compensation rather than an account of profits, predominantly because the Defendants have structured things so that profits have been accounted for outside OpCo, by a third party, Jing.

ii) It is necessary therefore for the court to determine the appropriate counterfactual on which to base an assessment of equitable compensation.

iii) The approach to equitable compensation is that laid down in *Target Holdings Ltd v. Redferns* [1996] AC 421 as more recently affirmed in *AIB Group (UK) plc v. Mark Redler & Co Solicitors* [2014] UKSC 58; [2015] AC 1503. In *Target Holdings* Lord Browne-Wilkinson summarised the position at 438-439, approving the approach of McLachlin J. in the Canadian Supreme Court in *Canson Enterprises Ltd. v. Boughton & Co.* (1991) 85 D.L.R. (4th) 129, including the following:

"[from *Canson*] At p. 163:

> 'In summary, compensation is an equitable monetary remedy which is available when the equitable remedies of restitution and account are not appropriate. By analogy with restitution, it attempts to restore to the plaintiff what has been lost as a result of the breach, i.e., the plaintiffs loss of opportunity. The plaintiffs actual loss as a consequence of the breach is to be assessed with the full benefit of hindsight. Foreseeability is not a concern in assessing compensation, but it is essential that the losses made good are only those which, on a common sense view of causation, were caused by the breach.' (Emphasis added.)

In my view this is good law. Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach."

iv) Confirming this approach, in *AIB* Lord Reed JSC said at [134] – [135]:

"134 Following that approach [from *Canson* and *Target Holdings*]…, the model of equitable compensation, where trust property has been misapplied, is to require the

> trustee to restore the trust fund to the position it would have been in if the trustee had performed his obligation. If the trust has come to an end, the trustee can be ordered to compensate the beneficiary directly. In that situation the compensation is assessed on the same basis, since it is equivalent in substance to a distribution of the trust fund. If the trust fund has been diminished as a result of some other breach of trust, the same approach ordinarily applies, mutatis mutandis.
>
> 135 The measure of compensation should therefore normally be assessed at the date of trial, with the benefit of hindsight. The foreseeability of loss is generally irrelevant, but the loss must be caused by the breach of trust, in the sense that it must flow directly from it. Losses resulting from unreasonable behaviour on the part of the claimant will be adjudged to flow from that behaviour, and not from the breach. The requirement that the loss should flow directly from the breach is also the key to determining whether causation has been interrupted by the acts of third parties…"

v) There was a clear breach of fiduciary duty by Mr Meng by transferring away Enno's Subscriber Share to Bubble City, which Mr Sachdeva knew was a breach of duty when he and Bubble City accepted that transfer and then traded OpCo to the exclusion of Enno, including excluding SupplyCo and instead entering into the SGSA with Jing.

vi) This is not a claim for reflective loss because the Claimant is not claiming for the diminution in the value of its shareholding in OpCo, but for having been wrongfully deprived of its shareholding in OpCo (between 25 August 2020 and the date of any order of the court requiring Bubble City to transfer the OpCo shares to the Claimant.)

vii) As to the valuation evidence, an assessment simply of the current value of OpCo does nothing to identify or assist the court to assess the losses for which the Claimant is entitled to be compensated. Ms Chew's evidence simply evaluates the business as it is, essentially ignoring the very matters complained of. In contrast, Mr Donaldson has adopted a "but for" pro forma model which aims to identify OpCo's true profitability by calculating profit on a forensic basis by building up known costs over the relevant period against the gross profit margin ("**GPM**") prior to structural changes made by the Defendants which shifted value and profit out of OpCo, predominantly to Jing, to get a valuation "untainted" by those structural changes.

218. First of all, I accept that in principle even though I have concluded that the Claimant has a proprietary claim for the 100 shares, it may also have a claim for equitable compensation, subject to the issue of reflective loss. As quoted above, Lord Reed in *AIB* recognises that there may be a claim in respect of a diminishment of the trust fund. I accept that an equivalent claim for equitable compensation can be made where a proprietary claim has been made for the return of assets transferred away through a director acting in breach of fiduciary duty towards their company and where the value of those assets has also been diminished as a consequence of that breach of duty.

219. I bear in mind that this is a claim for equitable compensation, and not for an account of the profits made by Mr Meng, Mr Sachdeva and Bubble City. Following *Target Holdings* and *AIB*, such equitable compensation must be assessed on a "but for", causation basis, even if foreseeability is not an issue, applying a "common sense" approach. As Mr Bennion-Pedley anticipated, it is therefore necessary for me to consider what the counterfactual scenario would have been, i.e. what would have been Enno's position if

there had been no breach of duty by Mr Meng, and the OpCo Subscriber Share had remained owned by Enno.

220. In cases where directors have acted in breach of fiduciary duty towards their companies by diverting business or business opportunities to themselves or their proxies, it is frequently the case that the company itself would not in fact have been able to take advantage of those opportunities or develop the business in the same way itself. No doubt for that reason, the company more commonly seems to seek an account of profits, because the directors have done so much better than it could ever have done.

221. This can seem unfair from the directors' perspective, but that this is the correct principle where an account of profits is being sought has recently been confirmed by the Supreme Court in *Rukhadze v. Recovery Partners GP Ltd* [2025] UKSC 10 at [75]. "But for" causation and counterfactuals are irrelevant in a case where an account of profits is sought; the no-profit and no-conflict rules apply with their full vigour, subject only to a discretion to make an allowance for the application of the fiduciaries' work, skill and risk in undertaking the work. In passing, their Lordships contrasted at [59] – [60] the very different approach which is taken in cases where equitable compensation is sought:

> "59. It is undeniable that the twin cases of *Target Holdings Ltd v Redferns* (supra) and *AIB Group (UK) plc v Mark Redler & Co* [2014] UKSC 58; [2015] AC 1503 have transformed (or reformed) the law about equitable compensation by the erection of counterfactuals and the use of a but-for test…
>
> 60. .. Equitable compensation is, as its label implies, about compensation for loss."

222. I emphasise this difference between equitable compensation and account of profits because in my view there are some respects in which Mr Bennion-Pedley's wider submissions on behalf of the Claimant on quantum have blurred the lines between equitable compensation and an account of profits, seeking in effect to take some of the advantages of both. Mr Donaldson's original and supplementary expert reports put forward a number of alternative valuations, based on different assumptions. This was to assist me, depending on the factual conclusions I reached, and it has been of assistance. However, essentially these assume that the whole of the very successful business which has been developed by Mr Sachdeva, Mr Gao and, through the supply relationship with Jing, Mr Meng, could just as well have been built by Mr Xie, which is not a million miles from the account of profits approach. But on top of this, and because of the structural changes which the Claimant says the Defendants implemented which diverted value out of OpCo, Mr Donaldson, on instructions from the Claimant, has also provided valuations based on assumptions said to reflect the circumstances which it is said would have prevailed if OpCo had not been transferred to Bubble City, such as a continued supply of ingredients at cost by SupplyCo and no charges for licences to use the Brand.

223. Very little time or factual or expert evidence was given to proving the counterfactual, i.e. how and whether Mr Xie would have been able to run an equally successful business through Enno and OpCo, including how he would have developed it despite the split with Bubble City which would still have happened. I do note though that Mr Donaldson's valuations include allowances for the cost of managers to replace Mr Meng, Mr Gao and Mr Sachdeva in the business.

224. *Autumn Holdings* was one of the relatively rare cases where equitable compensation rather than an account of profits was claimed (see at [147]). It was also a case where the breach of fiduciary duty consisted of effectively transferring out a valuable subsidiary by issuing a further 100 shares, 25 to the director's proxy, and where the claimant succeeded in a proprietary claim for the transfer back of those 25 shares. Chadwick JA confirmed at [179] that the correct approach to assessing equitable compensation in those circumstances was to determine the current value of the subsidiary, the hypothetical value which it would have had without any breach of duty and so the difference between these figures, and also deduct the additional costs and expenses which would have been incurred by the claimant in the hypothetical. Since the value of the subsidiary would have been less, and more had been spent on it than was reflected in any difference in value, the amount of compensation was assessed as nil, confirmed on appeal.

225. In the present case, and subject to whether loss is barred as reflective loss, I have concluded that the best approach to assessing equitable compensation, consistent with the counterfactual approach mandated by *Target Holdings* and *AIB* is as follows:

i) I should first assess the current value of OpCo, in its actual state, since this is what the Claimant will be regaining when the 100 shares held by Bubble City are transferred back to it. The agreed date for that valuation is 30 September 2024. It is also now agreed that that valuation should be on the assumption that it owns 28 stores (for the avoidance of doubt, not including the Guildford store) and that the remaining 25 or so stores owned by Outlets are to be ignored.

ii) OpCo in its actual state has the following features:

a) It is party to a 5-year supply agreement with Jing, the SGA 2023, at Jing's ordinary retail prices, which it cannot simply terminate on notice. It also owes around £2M to Jing for previous supplies.

b) It has the benefit of a licence from Bubble City to use the Brand and other licensing arrangements typical of a franchising agreement, for which it pays a total of 8.25% of revenue under the Reversion Plan of 19 August 2023.

c) Insofar as the leases or licences for its outlets are held by Bubble City, they will be transferred to OpCo (which I understand to be agreed if a proprietary claim to 100% of the shares in OpCo succeeds).

iii) Equitable compensation should be assessed as the difference between that value and the value which OpCo would have had, also assessed as at 30 September 2024, in the factual circumstances which would have prevailed had there been no breach of fiduciary duty by Mr Meng in June-August 2020. I should also assume that Mr Xie was not purportedly removed as a director, nor excluded from the management of Enno, i.e. the steps which Judge Prentis concluded amounted to unfair prejudice had not been taken.

iv) Accordingly, it is then necessary for me to determine the most probable counterfactual, including the actions which the parties would probably have taken, but assuming they would not have acted in breach of their fiduciary or contractual duties.

v) In that scenario, Mr Sachdeva was still intending to exercise his right to recall Bubble City (and the Brand). I should assume therefore that the transfer back to him of

the share in Bubble City, under clause 2.1 of the Settlement Agreement, would still have taken place at that time, and also the transfer back of the Guildford store.

vi) Based on the evidence of the witnesses which I heard, and the contemporaneous documents seen by me, I consider that the most likely counterfactual outcome on the facts in July – August 2020 would have been:

a) Mr Xie would have removed Mr Meng as managing director of Enno and OpCo and replaced him with Mr Zhao. Mr Meng, Mr Gao and Mr Sachdeva would all have been very unhappy with this change.

b) In addition to obtaining a transfer back of the share in Bubble City, Mr Sachdeva would have made claims for financial compensation. He would have demanded a licence fee for the Brand to be paid by Enno if it was to continue to use the Brand in the 5 existing stores (as at June 2020) and any future stores.

c) Mr Meng and Mr Gao would probably also have left Enno. Mr Gao would have joined Bubble City with Mr Sachdeva, with the benefit of the Brand, and they would have set up a rival Bubble Citea business, starting with the Guildford store. Mr Meng would still have set up Jing as a supply business on the same basis on which he actually did, with supplies from Possmei.

d) Mr Xie would have disputed Mr Sachdeva's claims but ultimately he would have had to have reached some type of licensing and franchising arrangement with him if he wanted to continue to use the Brand (which the existing outlets were all using), including making licence and franchise payments.

e) Ms Ding would have demanded and received repayment of her £1.5M loan by Enno, and would then have given financial assistance to Jing. While she is technically a third party, her position has always been carefully protected by Mr Meng and she has acted in ways that strongly support the Defendants, and so I treat her as so close to the Defendants as to be identified with them. Further, unless Mr Xie had funded Enno sufficiently to repay her loans, she would have been in a position to threaten Enno with insolvency.

f) In the summer/autumn of 2020, Enno and Mr Xie would therefore have been facing significant competitive pressure from their former business associates, and very significant financial pressure from the recall of Ms Ding's loan, as well as the challenge of reopening after Covid without the detailed knowledge of the business of Mr Meng, Mr Gao and Mr Sachdeva. It seems to me that Enno and OpCo would have been in a much more fragile position than OpCo was in fact in after it was transferred to Bubble City.

g) I have seriously considered the question of whether the Claimant has proved that OpCo would have been able to continue to trade in this counterfactual scenario at all, or whether in fact it would probably have folded, leaving the field open to Bubble City. I note that Mr Xie's first attempt to start a bubble tea business (under the brand "One Bubble") did not succeed. I also note the aggression in the correspondence between his and Mr Sachdeva's solicitors in September 2020 around Mr Sachdeva's right to take back Bubble City,

which suggests he might have been unwilling to agree any franchising deal, albeit this is of course against the background of a more serious dispute.

h) On balance however I have concluded that probably Mr Xie would have been able to keep Enno and OpCo going, even if Mr Sachdeva, Mr Gao and Mr Meng had left and set up in competition using the same Brand. One reason is an observation made by Ms Chew in the joint statement, in the context of the need for marketing, that: "Due to the low barriers to entry, the bubble tea industry is peppered with competitors, both large and small, and constant new entrants, whether as franchisees or independent operators. The age group to which bubble tea appeals – Gen Z and Millennials - is also the age group that evidences little brand loyalty."

i) I do not consider therefore that this is a case where Mr Meng, Mr Gao and Mr Sachdeva had such significant individual skills and advantages that these could not have been replicated by Enno. On the other hand, I am quite convinced that the three of them would have been determined to continue a Bubble Citea business with the Brand, through Bubble City, even if they had Enno with their old outlets as a business rival. One thing which came across very clearly from their evidence is that they considered that they were very good at making this business work, and rather better than Mr Xie would be.

j) Finally I consider that Enno would have continued to operate with SupplyCo obtaining supplies from Possmei, without marking up the cost by any more than was necessary to keep SupplyCo solvent. The ingredients which were in my view probably diverted from SupplyCo to Bubble City and OpCo after August 2020 without payment, and were written off in SupplyCo's accounts, would have been used and would not have been so written off. I do not accept, as the Defendants contend, that SupplyCo would have become unsustainably insolvent and unable to continue to make supplies if OpCo had remained owned by Enno.

vii) On the evidence before me, it is not easy to determine the financial consequences of this counterfactual, especially as I suspect that there would have been legal disputes between these parties even if neither the unfair prejudice nor breach of fiduciary duty of Mr Meng had happened. However doing the best I can on the evidence available, and given my conclusion that there would probably have ended up being two businesses operating the Brand, one by Enno and one by Bubble City, I have concluded that the most appropriate counterfactual is to take the combined value of the current total Bubble Citea business of 53 stores, but say that that would have been split equally between Enno on the one hand and Bubble City on the other.

viii) Applying this approach, the counterfactual value of OpCo would be 50% of the combined value of OpCo and Outlets i.e. with 53 stores, with supplies from SupplyCo but with a liability to pay Brand licensing and franchising fees.

ix) From this should be deducted the current value of OpCo in its actual state, which the Claimant will be getting back.

x) I do not consider that the Claimant should also be entitled to any sums in respect of income or profits which it claims it would have earned from OpCo over the intervening

period as I consider that this would amount to double recovery. Among other things, profits were, and would anyway have been, retained in the business, contributing to its growth, and equally it would also probably have required further investment from Enno (as e.g. was taken into account in *Autumn Holdings*).

xi) I will consider the expert evidence on quantum in the next section of this judgment.

226. This is in my view the factual answer to the question of what loss has been sustained by the Claimant, but it does not answer the legal question of whether any such loss is barred as a matter of law as being reflective loss. I have considered the factual question first because it is easier to answer the reflective loss question when it is being applied to a specific head of loss, here the difference between what OpCo is actually now worth, and what it would have now been worth if it had remained owned by Enno.

227. The law on reflective loss was very significantly reconsidered and restated by the Supreme Court in *Marex*. In allowing the appeal, the majority affirmed the limited principle of company law that shareholders in a company could not bring an action to make good a diminution in the value of their shareholding, or the dividends they received, which flowed from loss suffered by the company for the recovery of which it had a cause of action, even if the company declined or failed to make good that loss. The rationale for the rule was that where it applied, the shareholder did not suffer a loss recognised in law as having an existence separate and distinct from the company's loss, given the long-established principle that the only person who could seek relief for an injury done to a company was the company itself. However, where a claim was brought in respect of a loss which did not fall within that description, whether by a shareholder or a creditor of the company, that claim fell to be adjudicated in the ordinary way, notwithstanding that the company had a right of action in respect of substantially the same loss. There was no justification for a reflective loss principle in the law of damages, and to the extent that previous cases had purported to lay down such a principle, they were overruled. The minority would have gone further and abolished the rule against reflective loss altogether.

228. Lord Reed, giving the majority judgment, set out in detail the history of how the reflective loss principle had developed. It was formally recognised in *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] Ch 204, as an application of the principle in *Foss v Harbottle* (1843) 2 Hare 461 that the only person who can seek relief for an injury done to a company, where the company has a cause of action, is the company itself (at [10] – [11] of *Marex*). However, after *Johnson v Gore Wood & Co* [2002] 2 AC 1, which purported to follow *Prudential*, but as a result of influential remarks in that case in particular of Lord Millett, the courts essentially took a wrong turn, broadening the principle and applying it much more widely, including to claims brought by a claimant in the capacity of a creditor, where the creditor had shares in the company and the company had a concurrent claim. Then in *Marex* in the Court of Appeal, the principle had been applied to a claim by an ordinary creditor who was not even a shareholder, where the company had a concurrent claim. There was also a line of cases considering whether a claimant might alternatively bring a non-pecuniary claim, e.g. for a declaration or an injunction so as to avoid the rule. In going through all these later lines of authority, Lord Reed analysed where matters had gone wrong, and why problems had arisen, which had essentially been as a result of applying a conceptual principle of company law as if it were a rule against double recovery of damages.

229. At [79] – [89] he summarised what should now be regarded as the correct position, as follows (as far as material):

> "79 Summarising the discussion to this point, it is necessary to distinguish between (1) cases where claims are brought by a shareholder in respect of loss which he has suffered in that capacity, in the form of a diminution in share value or in distributions, which is the consequence of loss sustained by the company, in respect of which the company has a cause of action against the same wrongdoer, and (2) cases where claims are brought, whether by a shareholder or by anyone else, in respect of loss which does not fall within that description, but where the company has a right of action in respect of substantially the same loss.
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> 80 In cases of the first kind, the shareholder cannot bring proceedings in respect of the company's loss, since he has no legal or equitable interest in the company's assets: *Macaura and Short v Treasury Comrs*. It is only the company which has a cause of action in respect of its loss: *Foss v Harbottle*. However, depending on the circumstances, it is possible that the company's loss may result (or, at least, may be claimed to result) in a fall in the value of its shares. Its shareholders may therefore claim to have suffered a loss as a consequence of the company's loss. Depending on the circumstances, the company's recovery of its loss may have the effect of restoring the value of the shares. In such circumstances, the only remedy which the law requires to provide, in order to achieve its remedial objectives of compensating both the company and its shareholders, is an award of damages to the company.
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> 81 There may, however, be circumstances where the company's right of action is not sufficient to ensure that the value of the shares is fully replenished. One example is where the market's valuation of the shares is not a simple reflection of the company's net assets, as discussed at para 32 above. Another is where the company fails to pursue a right of action which, in the opinion of a shareholder, ought to have been pursued, or compromises its claim for an amount which, in the opinion of a shareholder, is less than its full value. But the effect of the rule in *Foss v Harbottle* is that the shareholder has entrusted the management of the company's right of action to its decision-making organs, including, ultimately, the majority of members voting in general meeting. If such a decision is taken otherwise than in the proper exercise of the relevant powers, then the law provides the shareholder with a number of remedies, including a derivative action, and equitable relief from unfairly prejudicial conduct.
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> 82 As explained at paras 34—37 above, the company's control over its own cause of action would be compromised, and the rule in *Foss v Harbottle* could be circumvented, if the shareholder could bring a personal action for a fall in share value consequent on the company's loss, where the company had a concurrent right of action in respect of its loss. The same arguments apply to distributions which a shareholder might have received from the company if it had not sustained the loss (such as the pension contributions in *Johnson*).
>
> 83 The critical point is that the shareholder has not suffered a loss which is regarded by the law as being separate and distinct from the company's loss, and therefore has no claim to recover it. As a shareholder (and unlike a creditor or an employee), he does, however, have a variety of other rights which may be relevant in a context

of this kind, including the right to bring a derivative claim to enforce the company's rights if the relevant conditions are met, and the right to seek relief in respect of unfairly prejudicial conduct of the company's affairs.

84 The position is different in cases of the second kind. One can take as an example cases where claims are brought in respect of loss suffered in the capacity of a creditor of the company. The arguments which arise in the case of a shareholder have no application. There is no analogous relationship between a creditor and the company. There is no correlation between the value of the company's assets or profits and the "value" of the creditor's debt, analogous to the relationship on which a shareholder bases his claim for a fall in share value. The inverted commas around the word "value", when applied to a debt, reflect the fact that it is a different kind of entity from a share.

85 Where a company suffers a loss, it is possible that its shareholders may also suffer a consequential loss in respect of the value of their shares, but its creditors will not suffer any loss so long as the company remains solvent. Even where a loss causes the company to become insolvent, or occurs while it is insolvent, its shareholders and its creditors are not affected in the same way, either temporally or causally. In an insolvency, the shareholders will recover only a pro rata share of the company's surplus assets, if any. The value of their shares will reflect the value of that interest. The extent to which the company's loss may affect a creditor's recovery of his debt, on the other hand, will depend not only on the company's assets but also on the value of any security possessed by the creditor, on the rules governing the priority of debts, and on the manner in which the liquidation is conducted (for example, whether proceedings are brought by the liquidator against persons from whom funds might be ingathered, and whether such proceedings are successful). Most importantly, even where the company's loss results in the creditor also suffering a loss, he does not suffer the loss in the capacity of a shareholder, and his pursuit of a claim in respect of that loss cannot therefore give rise to any conflict with the rule in *Foss v Harbottle*.

86 The potential concern that arises in relation to claims brought by creditors is not, therefore, the rule in *Foss v Harbottle*. On the other hand, the principle that double recovery should be avoided may be relevant, although it is not necessarily engaged merely because the company and the creditor have concurrent claims against the same defendant. In *International Leisure Ltd v First National Trustee Co UK Ltd* [2013] Ch 346, for example, the principle was not engaged where the company and a secured creditor had concurrent claims against an administrative receiver whom the creditor had appointed, since the company could only claim in respect of any loss remaining after the secured creditor had been paid in full.

87 Where the risk of double recovery arises, how it should be avoided will depend on the circumstances. It should be borne in mind that the avoidance of double recovery does not entail that the company's claim must be given priority. Nor, contrary to the view expressed in a number of authorities, including the decision of the Court of Appeal in the present case, does the pari passu principle entail that the company's claim must be given priority. That principle requires that, in a winding up, a company's assets must be distributed rateably among its ordinary creditors. The proceeds of its recovery from a wrongdoer will form part of its assets available for distribution (subject to the claims of secured and preferred creditors). But the

> pari passu principle does not give the company, or its liquidator, a preferential claim on the assets of the wrongdoer, over the claim of any other person with rights against the wrongdoer, even if that claimant is also a creditor of the company. In other words, the pari passu principle may restrict a creditor of an insolvent company to the receipt of a dividend on the amount which the company owes him, but it does not prevent him from enforcing his own right to recover damages from a third party, or confer on the company's right against the third party an automatic priority. In the event that the third party cannot satisfy all the claims made against him, the position will be regulated by the law of (his) insolvency.
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> 88 It is also necessary to consider whether double recovery may properly be avoided by other means than the prioritising of one claim over the other, such as those mentioned in paras 5—7 above. The judgments of Gibbs CJ and Brennan J in *Gould v Vaggelas* 157 CLR 215, at pp 229 and 258—259 respectively, raise the possibility that subrogation, in particular, may provide a solution to issues of double recovery arising in connection with creditors' claims. That question has not, however, been discussed in the present proceedings, and I express no view upon it.
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> 89 I would therefore reaffirm the approach adopted in *Prudential* [1982] Ch 204 and by Lord Bingham in *Johnson* [2002] 2AC 1, and depart from the reasoning in the other speeches in that case, and in later authorities, so far as it is inconsistent with the foregoing. It follows that *Giles v Rhind* [2003] Ch 618, *Perry v Day* [2005] 2 BCLC 405 and *Gardner v Parker* [2004] 2BCLC 554 were wrongly decided. The rule in *Prudential* is limited to claims by shareholders that, as a result of actionable loss suffered by their company, the value of their shares, or of the distributions they receive as shareholders, has been diminished. Other claims, whether by shareholders or anyone else, should be dealt with in the ordinary way."

230. The consideration and rejection by Lord Reed of the reasoning in the decision in *Gardner v Parker* is notable. At [72] Lord Reed summarised the facts of that case as follows:

> "… The claim was brought by the assignee of rights of action held by a company ("the shareholder") which was both a shareholder and a creditor of a second company ("the company"), against a defendant who was a director of both the shareholder and the company. He was alleged to have sold the company's principal assets at an undervalue to another entity in which he had an interest, rendering the company insolvent, and preventing the shareholder from recovering the debt which the company owed it. In so acting, the defendant had acted in breach of fiduciary duties owed separately to the shareholder and to the company as a director of both of them. The shareholder then sought to recover in respect of the fall in the value of its shareholding, and also in respect of the loss arising from its inability to obtain repayment of the debt…"

231. Lord Reed then summarised the decision as follows (as far as material):

> "73 The Court of Appeal considered three questions. The first was whether the "reflective loss" principle applied where the wrongdoing took the form of a breach of fiduciary duty rather than the breach of a duty arising under the common law. The court held that it did, following its earlier decision in *Shaker v Al-Bedrawi* [2003] Ch 350. That aspect of the decision is not challenged in the present appeal.

> 74 [not relevant]
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> 75 The third question was whether the "reflective loss" principle applied to a claim arising from a creditor's inability to recover a debt owed to it by a company in which the creditor was a shareholder. The court held that it did, relying on the treatment of the claim for loss of pension in Johnson's case, and applying Lord Millett's dictum, cited at para 62 above. Neuberger LJ stated [2004] 2BCLC 554, para 70:
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> > "It is clear from those observations, and indeed from that aspect of the decision, in Johnson's case that the rule against reflective loss is not limited to claims brought by a shareholder in his capacity as such; it would also apply to him in his capacity as an employee of the company with a right (or even an expectation) of receiving contributions to his pension fund. On that basis, there is no logical reason why it should not apply to a shareholder in his capacity as a creditor of the company expecting repayment of his debt."
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> The claim brought as a creditor was therefore dismissed. Taking this reasoning to its logical conclusion, Neuberger LJ added (ibid) that the same reasoning should apply even where the employee or creditor was not also a shareholder.
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> 76 As was explained in paras 65—66 above, on the facts of Johnson the claim in respect of lost pension contributions was a claim for a loss of distributions, brought by Mr Johnson in the capacity of a shareholder. It therefore fell within the scope of the reasoning in *Prudential*, and Lord Bingham's proposition (1) [the core principle barring claims by a shareholder for diminution in the value of its shareholding where this merely reflects the company's loss]. The claim brought by the creditor-shareholder in *Gardner v Parker* did not fall within the scope of that reasoning, or Lord Bingham's proposition. It should not have been barred as reflective loss. The court might have had to consider the avoidance of double recovery, applying the general principles discussed in paras 2—7 above, if that issue had been raised; but it was not."

232. In the present case, the Claimant's claim against Mr Meng is for breach of fiduciary duty; its claim against Bubble City is for knowing receipt and its claim against Mr Sachdeva is for dishonest assistance. It is not currently a shareholder of OpCo (since it is seeking the transfer of the shares in OpCo). It is bringing those claims effectively as a creditor of those 3 parties; it is not in my view simply bringing a claim for diminution in the value of shares in OpCo which reflects OpCo's own losses qua company, since it has been excluded from its ownership of those shares by those breaches of duty. Rather it is claiming for a reduction in the value of OpCo and the shares which is *consequent upon their transfer away* from Enno, in breach of duty. I consider that the Claimant's proper claim for equitable compensation is for the difference between the value OpCo will have once the Claimant recovers the shares, as compared to the value OpCo would have had if it had never left Enno's ownership, and that this is not a reflective loss claim. OpCo may or may not have claims for breach of fiduciary duty against Mr Sachdeva for actions and decisions made while he has been its director (for example in August to December 2022), and which may also have led to a reduction in OpCo's share value, but that is a separate and unconnected question from whether the Claimant as assignee of Enno has a claim in respect of the reduced value of OpCo upon its return. As Lord Reed discusses

in *Marex*, such a claim by OpCo might be prevented as illegitimate double recovery, but that does not mean that the Claimant is to be prevented from making a recovery now.

233. Accordingly, while the Claimant's claim might at one time have been prevented by the broad principle barring claims even by creditors, as illustrated by *Gardner v Parker,* I do not consider that it is barred by the rule against reflective loss now that it has been confined to its proper scope by *Marex.*

Issue 6: assessment of the quantum of the claim for equitable compensation

234. Mr Donaldson was the only expert whose report addressed the question of what OpCo would have been worth if there had been no breach of duty, i.e. on the "but for" basis. Given the various structural changes to OpCo which have been made by the Defendants at different stages, he did this by "building up" that valuation based on revenue and expenses of a typical store, as well as general overheads. In principle I consider that this was a reasonable approach, as indeed Ms Chew accepted in cross examination.

235. While both experts addressed the question of the current value of OpCo in its present condition and as the owner of 28 stores, I also find Mr Donaldson's analysis of the question of its "as is" value more persuasive for three reasons:

i) One is the simple fact that I am then comparing like with like, when comparing actual value with hypothetical value, since he has approached both valuations on a comparable basis. I consider such consistency is important.

ii) Ms Chew ignored the figures for 2023 completely in her calculations (which were based on her creation of composite financial statements for OpCo with Bubble City and Outlets) because of the diversion of revenue and business from OpCo during that year. However this had the practical effect of skewing her figures towards earlier, less typical years when the business was nascent (even though she also applied weighting in favour of later years).

iii) Ms Chew made an assumption that the GPM of OpCo had decreased more recently because its management had considered they could not pass on all inflationary increases in costs, rather than e.g. because of any decisions to increase apparent costs or reduce income which were influenced by the litigation. However, as she confirmed in cross examination on Day 4, she had made that assumption as to passing on costs on instruction and not because she had checked whether it was appropriate. Mr Donaldson had demonstrated, albeit on a quite rough and ready basis, that the cost of a typical cup of bubble tea in the stores had in fact gone up in line with inflation over this period, which undermined any such assumption.

236. As to the valuation on the "as is" basis, I consider that the relevant valuation by Mr Donaldson is the one on the following assumptions:

i) As at 30 September 2024;

ii) On the assumption of 28 stores (i.e. only those held by OpCo);

iii) Subject to the liability to pay 8.25% of revenue as a licence fee, according to the terms of the Reversion Plan which it has agreed, and which will continue if it wishes to use the Brand;

iv) On the basis that ingredients are supplied by Jing, under the terms of SGA 2023.

237. Mr Donaldson's figure for the value of OpCo on this basis is **£1,500,000** (paragraphs 1.10 and section 9 of his Supplementary Report of 22 January 2025).

238. As to the value which I consider OpCo would have had, on the counterfactual basis outlined above, I consider that the relevant valuation by Mr Donaldson is the one based on the following assumptions, with 50% of the value to be attributed to a hypothetical OpCo and 50% to a hypothetical Bubble City:

i) As at 30 September 2024;

ii) On the basis of all 53 stores, across those now operated by OpCo and Outlets (it being more likely that the organic growth of both OpCo/Enno and Bubble City would have been simultaneous).

iii) Subject to a liability to pay a fee of 8.25% of revenue as a licensing and franchise fee. For the reasons explained above, I consider that if Mr Xie had wished to continue to operate OpCo using the Brand, it would have been necessary for Enno to reach a franchise type arrangement with Bubble City. The figures in the Reversion Plan were intended to reflect such an arrangement and would have been drawn up by the Defendants' solicitors and accountants in the knowledge that they were likely to be scrutinised by the court and by the experts in due course. Ms Chew also confirmed in cross examination on Day 4 that a marketing plus royalty cost at this level was reasonable based on her experience of franchise operations.

iv) On the basis of ingredients supplied by SupplyCo on the same basis as before August 2020. SupplyCo was already sourcing ingredients direct from Possmei at that time, so this would not have involved any change of supplier. For the reasons already explained I do not consider that the arrangement was unsustainable if SupplyCo and OpCo were both subsidiaries of Enno. The Enno/OpCo half at any rate would have had this arrangement, so this is the appropriate assumption.

239. Mr Donaldson's valuation of OpCo on this basis is £6,600,000 (paragraphs 1.7 and 10.2 of his original report dated 29 November 2024). 50% of this figure, for the half to be attributed to OpCo, is therefore **£3,300,000**.

240. Therefore the difference in the value of OpCo, between what it would have been worth as at the putative trial date and what it is in fact worth, now that the shares are being returned to the Claimant, is £3,300,000 less £1,500,000, or £1,800,000.

241. Accordingly I assess the amount of the equitable compensation for which Bubble City, Mr Meng and Mr Sachdeva are jointly and severally liable as **£1,800,000**.

Issue 7: unlawful means conspiracy

242. As an alternative to its other claims, the Claimant also brings a claim against the Defendants for unlawful means conspiracy, primarily in case its other claims against any of the Defendants failed. This is primarily of relevance therefore to its claim against Mr Gao, since I have held that the claim for breach of fiduciary duty against him has not succeeded, and there can be no proper claim against him for dishonest assistance.

243. There is no dispute that the component elements of a claim for unlawful means conspiracy are:

i) An understanding or agreement between the conspirators;

ii) An intention to injure the Claimant (which includes an intention to achieve a benefit for the Defendants in the knowledge that expense or injury to the Claimant is the inevitable consequence of that action);

iii) Unlawful acts carried out pursuant to that combination or agreement as a means of injuring the Claimant;

iv) Loss caused as a result, which can be assessed in a general, common sense way.

(See e.g. *Kuwait Oil Tanker v. Al Bader (No. 3)* [2000] 2 All ER (Comm) 271 at [108]).

244. On the basis of my factual findings as set out above, I conclude that:

i) There was an understanding or agreement between Mr Meng, Mr Sachdeva and (acting through Mr Sachdeva as director) Bubble City to undertake the plan which manifested as clause 2.2 of the Settlement Agreement and the transfer on 25 August 2020. However, for the reasons set out above, I do not consider that Mr Gao was part of that understanding or agreement, even if he was more generally supportive of a restructuring of the business which would involve Mr Xie no longer participating in it.

ii) Mr Meng and Mr Sachdeva intended to injure Enno, in the sense of intending to give themselves a benefit which carried with it inevitable damage to the interests of Enno. I do not consider that Mr Gao had sufficient knowledge to have had that intention.

iii) Unlawful acts took place in pursuance of that agreement, that is the transfer of the Subscriber Share in breach of Mr Meng's fiduciary duty to Enno, and the acts amounting to dishonest assistance by Mr Sachdeva and knowing receipt by Bubble City.

iv) Loss was caused as a result. I consider that the quantum of that loss is the same as the equitable compensation assessed under the previous heads and overlaps with it.

245. Accordingly, while I find that a claim for unlawful means conspiracy as between Mr Meng, Mr Sachdeva and Bubble City is established, I do not find such a claim established as against Mr Gao. Therefore this claim simply overlaps with the other heads of claim which I have already found established, and in the same quantum, here as damages.

Conclusions

246. In conclusion therefore, my findings are as follows:

i) Mr Meng acted in breach of fiduciary duty in agreeing and implementing the transfer of the Subscriber Share to Bubble City under clause 2.2 of the Settlement Agreement ("**clause 2.2**").

ii) There was a genuine dispute with Mr Sachdeva over his recall of Bubble City and claim for additional compensation, but clause 2.2 was not a good faith compromise of that dispute by Mr Meng or Mr Sachdeva.

iii) Mr Sachdeva was aware Mr Meng was acting in breach of duty to Enno in transferring the Subscriber Share to him, that this was not a good faith compromise of any dispute but rather a transfer intended to prefer the interests of Mr Meng and himself over those of Enno by exporting the whole business to Bubble City from where it could be developed by them and Mr Gao, with supplies arranged by Mr Meng through Jing.

iv) Clause 2.2, providing for the transfer of the Subscriber Share to Bubble City, and the consequent transfer, are therefore void.

v) Clause 2.2 can be excised from the rest of the Settlement Agreement, in particular from clause 2.1, which provided for the transfer of the Bubble City share to Mr Sachdeva, for which transfer Mr Meng had actual or apparent authority and which was not undertaken in bad faith.

vi) There was no breach of fiduciary duty by Mr Gao, in relation to the Settlement Agreement or the transfer of the Subscriber Share to Bubble City or otherwise.

vii) In agreeing, executing and implementing clause 2.2 and the resultant transfer of the Subscriber Share, Mr Sachdeva dishonestly assisted in Mr Meng's breach of fiduciary duty, so the Claimant has a valid claim for dishonest assistance against Mr Sachdeva.

viii) Bubble City received the Subscriber Share with Mr Sachdeva's dishonest knowledge and his knowledge of Mr Meng's breach of fiduciary duty, which are to be attributed to Bubble City, making it unconscionable for Bubble City to retain that share.

ix) The Claimant therefore has a claim in knowing receipt against Bubble City for the return of the Subscriber Share. Since that share is still held by Bubble City, the Claimant has a proprietary claim for the return of it. Enno retained the equitable interest in that share which was not overridden because Bubble City was not a bona fide purchaser for value without notice of Enno's equitable interest.

x) Furthermore, the Claimant can trace its proprietary interest in the value in the Subscriber Share into the 99 OpCo shares which were allotted to Bubble City by Mr Sachdeva and issued on 3 December 2021, and so it has a proprietary claim to the whole share capital in OpCo. Those shares must therefore be transferred to the Claimant by Bubble City.

xi) The Claimant does not have an alternative claim to those 99 shares based on constructive trusteeship, since a remedial constructive trust like the one over the Subscriber Share did not impose any relevant duties on Bubble City/Mr Sachdeva which were breached by the issue of the 99 shares.

xii) Nor would the Claimant have had a claim for rectification of the register of members of OpCo to substitute itself for Bubble City on grounds that the 99 shares were issued for an improper purpose. This is because they were not issued for an improper purpose and also the Claimant does not have standing to make such an application.

xiii) The Claimant also has a valid claim for equitable compensation against Bubble City, Mr Meng and Mr Sachdeva. That claim is not barred by the principle against reflective loss. This is because the Claimant's claim is not for a fall in the value of shares held by it which simply reflects losses suffered by OpCo; it is for the reduction in the

value of OpCo which is the consequence of Enno having been deprived of that shareholding through Mr Meng's breach of fiduciary duty in transferring it away.

xiv) That equitable compensation is to be assessed as the difference between the current value of OpCo at the trial date (since the Claimant is getting all the shares back) and the value which OpCo would have had at the trial date but for the breach of fiduciary duty by Mr Meng and the transfer of the Subscriber Share to Bubble City.

xv) Since Bubble City would have returned to Mr Sachdeva in any event and Mr Meng and Mr Gao would most probably have left Enno and assisted Mr Sachdeva in building a competing Bubble Citea business to Enno, and Enno would have had to reach a franchise-type licensing agreement with Bubble City in order to use to Brand, the relevant counterfactual for the purposes of assessing equitable compensation should be to assume that the business now located across OpCo and Outlets would have been split 50/50 between Enno/OpCo and Bubble City.

xvi) The value the combined business would have had, on the basis of supplies by SupplyCo (as the Enno/OpCo half at least would have had), a licensing agreement with Bubble City, and 53 stores would, on the basis of the relevant expert evidence have been £6,600,000, half of which or £3,300,000 would have been with OpCo. The current value of OpCo with 28 stores and its existing licensing and supply obligations, is £1,500,000.

xvii) The difference between these two figures, and so the amount of equitable compensation, is therefore £1,800,000, for which Mr Meng, Mr Sachdeva and Bubble City are jointly and severally liable.

xviii) The Claimant has a parallel claim against Mr Meng, Mr Sachdeva and Bubble City (but not Mr Gao) for damages for unlawful means conspiracy, also with a value of £1,800,000.

247. Accordingly, there will be an order on the following basis:

i) A declaration that Bubble City holds the 100 shares in OpCo as nominee for the Claimant.

ii) Mr Sachdeva, as the director of Bubble City, is to transfer those 100 shares to the Claimant, by executing a stock transfer form in respect of them.

iii) Mr Meng, Mr Sachdeva and Bubble City are jointly and severally liable to the Claimant for equitable compensation of £1,800,000 alternatively damages in that sum.

iv) No order is made against Bubble Citea Ltd but it is also bound by these findings and order as necessary.

v) The claims against Mr Gao and Citea Outlets Ltd are dismissed.

248. I invite counsel to prepare an agreed order that reflects these proposed orders and findings and any other consequential matters.

249. Unless all consequential matters are agreed, there will be a further hearing on a date to be fixed to deal with any such matters.