

**Neutral Citation Number: [2012] EWHC 917(Ch)**  
**In the High Court of Justice**  
**Chancery Division**  
**Companies Court**

**In the matter of Home & Office Fire Extinguishers Limited**  
**And in the matter of the Companies Act 2006**

**Before:**  
**Mr N Strauss QC**  
**Between :**  
**Guy Jonathan Rodliffe**

**Petitioner**

**and**  
**(1) Simon Ross Rodliffe**  
**(2) Home & Office Fire Extinguishers Limited**

**Respondents**

**-and-**

**In the High Court of Justice**  
**Chancery Division**

**Between:**

**Simon Rodliffe**

**Claimant and Part 20 Defendant**

**and**  
**(1) Guy Rodliffe**

**First Defendant**

**(2) Home & Office Fire Extinguishers Limited**

**Second Defendant and Part 20 Claimant**

Date of judgment 4<sup>th</sup> April 2012

Hearing dates 13<sup>th</sup> – 17<sup>th</sup> February 2012

*Mr. James Stuart, instructed by Messrs. Edwards Duthie, appeared for the petitioner/† defendant. Mr. Graham Sinclair, instructed by Messrs. Adams Harrison, appeared for the respondent/claimant.*

**(Transcript of the Handed Down Judgment of**  
**WordWave International Limited**  
**A Merrill Communications Company**  
**165 Fleet Street, London EC4A 2DY**  
**Tel No: 020 7404 1400, Fax No: 020 7831 8838**  
**Official Shorthand Writers to the Court)**  
**Judgment**

**As Approved by the Court**

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**Introduction**

1. This is a petition under section 994 of the Companies Act 2006, in which each of the two 50% shareholders in Home and Office Fire Extinguishers Limited (“the Company”) seeks an order for the compulsory purchase of the other’s shares. The case is unusual, in that the main issue is which of the shareholders attacked the other with a hammer shortly before 8 a.m. on 17<sup>th</sup> June 2008, at the Company’s premises at Saffron Business Centre, Elizabeth Close, Saffron Waldon. The shareholders, Guy and Simon Rodliffe (“Guy” and “Simon”) are brothers.

2. There is also a separate action in which there are claims for arrears of salary, alternatively wrongful dismissal, by Simon, and a counterclaim by the Company for damages for breach of Simon’s contract of employment. The main issue is, again, who attacked whom. The counterclaim is limited to damages for Simon’s failure to do any work for the Company, in the event that his claim for arrears of salary succeeds. Claims for failure to perform duties before June 2008, misuse of petty cash and interfering with the Company’s contractual relations with members of its staff have not been pursued.

3. Simon was tried in August and September 2009 at Chelmsford Crown Court for malicious wounding. He was acquitted on 8<sup>th</sup> September 2009.

4. The Company was incorporated on 24<sup>th</sup> August 1979. Its business is the sale and servicing of fire extinguishers and alarms. Until 2001, its shareholders and directors were John and Yvonne Rodliffe. Their older son, Simon, joined the company in 1980, and their younger son Guy followed him in 1983. By August 2008 they were respectively 46 and 43 years old.

5. By July 2001, Mr. and Mrs. Rodliffe were no longer active and they agreed to transfer their shares to Simon and Guy, receiving in return "salaries" or pensions. Up to this time, the brothers were on good terms with each other and with their parents.

### **Detailed facts**

6. Both Simon and Guy refer to disputes between them which arose after 2001 to explain the supposed reason of the other for the attack on 17<sup>th</sup> June 2008. They have succeeded in demonstrating that there was mutual resentment which provides a possible explanation for violence by either of them. Beyond that, little turns on the details, or on who is right about these issues, and I will deal with them shortly.

7. I should however first refer briefly to Simon's personal circumstances. At some time in the early part of the decade, he became involved in an online interactive game called EverQuest. This involved role-playing and his role as "Paazz" was that of a warrior. It is clear that he spent a great deal of time on this game. Over a 6 year period, the time logged was some 518 days, which is the equivalent of about 8 hours a day, every day. Even taking into account time when Simon was logged on, but not actually playing, this demonstrates considerable devotion to the game. At some time (the date is unclear) Simon attended a weekend abroad at which he met other participants in the game, including an Italian lady called Laura with whom he fell in love and started an affair. He began to spend long weekends in Turin, and he left his wife, Christine, in October 2005. Divorce proceedings ensued which, by June 2008, were still ongoing.

8. It is common ground that Guy was supposed to look after the financial side of the business, whereas Simon was concerned with its operations, dealing with the engineers and customers. It is also common ground that, on any given day, only one of them was supposed to be at the Company's premises. So each of them was there for 2 days one week, 3 days the other.

9. What is in dispute is what Simon's duties were on the days when they were not in the office. Guy's case is that he worked full-time at home, doing the books by hand in what he now recognises as an unnecessarily cumbersome way, involving handwritten entries for large numbers of invoices for relatively small amounts for servicing. He expected Simon to work on his days out of the office as well, but this did not happen from 2005 onwards, when Simon spent much of his time in Turin with his mobile phone off. He had remonstrated with Simon, but to no avail. Simon's case was that it had been agreed between them that each would work part-time and that he

was therefore entitled to be away. I find that the arrangement was not clear-cut. Guy did not explain in his evidence what full-time tasks Simon would have when not at the office, but it is difficult to see how he could have looked after his side of the business without at least being available on the telephone. Eventually, in about January 2007, one of the engineers, Gareth Weekly, was promoted to the position of manager which, as Simon put it in an email to Laura, “made it easier for me to spend more time with you”.

10. The cost to the business of employing Gareth Weekly as a manager was originally relied on to support a claim by the Company against Simon for damages for breach of his contract of employment, and as prejudicial conduct in the petition, but in the course of the hearing Mr. Stuart accepted that Guy had, albeit reluctantly, tolerated the situation and could not now base any claim on it.

11. Guy, supported by Mr. Weekly, also claimed that Simon did increasingly less work, and ultimately virtually none, even when he was there. In their witness statements, they claim that he spent much of the time playing EverQuest. In their oral evidence they accepted that he did not actually play it in the office, but said that he talked about it a lot and did preparatory work for it, for example, by printing out maps. On the other hand, Guy’s partner, Karen Holdgate, on the basis of what she had been told at the time, accepted that Simon did fulfil a substantial role when there. I find that Guy’s evidence on this, and Gareth Weekly’s, were exaggerated; indeed Gareth Weekly described Simon as coming into work on the days in his statement to the police, without saying that he did not actually do any work. But I find that Simon did not fully pull his weight, and caused a degree of customer dissatisfaction by failing to follow up on their requirements, especially when in Italy. Guy resented this, and the need to employ Gareth Weekly as a manager, at considerable expense to the company and therefore to his own financial detriment.

12. Simon gave evidence about an incident which occurred in August 2005, when he called a meeting with his parents and the Company’s accountant, Mr. Warin, and confronted Guy with instances of illegitimate expenditure of company money for personal items. He said that Guy had no answer to his accusations, and that he had only been dissuaded from going to the police by his mother. She supported his evidence. Guy’s evidence was that they had both been involved in questionable expenditure and were given a warning by Mr. Warin of possible tax consequences. Mr. Warin’s evidence, and the letter he wrote at the time, were consistent with this. It is unnecessary for me to resolve this issue. Simon relies on it as the reason why Guy, from then on, was out for revenge, eventually exacted 3 years later. I do not accept this, and the incident has no other relevance.

13. There was tension between Simon and Guy in the autumn of 2007. This arose from two causes. First, there was a cash crisis in the Company, which caused Guy to decide to reduce both their salaries from about £5,000 to about £3,500 per month. Then Simon was concerned about some cheques which Guy had written, and asked the bank for information. This led to the bank sending copies of the cheques to Guy, which caused offence. Simon accepted that his concerns were unfounded, but he was not happy with the cut in salary and proposed to reduce it by half. This fell on deaf ears.

14. During March and April 2008, Mr. Weekly used Simon’s absence from the office to print out from his

computer private correspondence with Laura and correspondence with his solicitors about the divorce. Mr. Weekly offered no excuse for doing this, and accepted that he had acted wrongly.

15. On 13<sup>th</sup> May 2008, Simon wrote to Guy, apologising for taking too much salary, and asking him to deduct the overpayment from that month's salary. On the same day, he wrote to ask Guy to tell him the bank balance at the end of each week, and to complain about Mr. Weekly's work.

16. By this stage, Simon was under considerable pressure. The divorce proceedings were continuing, and he had to pay his solicitors. He had to pay the mortgage on the family home and he had rented a 4 bedroom house in Saffron Walden, partly (as he said) in order not to have any surplus income which could be claimed by his wife and partly (as I find) to entertain Laura and her family on visits to England. He had to finance weekly trips to Italy, which must have been expensive, even though the air fare was usually very cheap. There was also tension with his parents because they always invited Christine, not Laura, for meals. In June 2008, he asked them for a loan to pay his solicitors £3000, but they were only prepared to pay the solicitors directly. However, no bill was produced, and the evidence suggests that he owed his solicitors much less than this.

17. Guy was quite annoyed with his brother, not only about his absences. He thought that Simon was making too free use of the petty cash and started to take it home with him. The pleadings in the High Court action include a claim by the Company for petty cash drawn by Simon, but it became clear during the hearing that Simon had left vouchers for all petty cash taken, and the claim was dropped. Mr. and Mrs. Rodliffe say that Guy had started a "campaign of hate" against Simon but, from their description of what he had said, it did not sound like hate, but more like frequent snide remarks about how much Simon was spending on visiting and entertaining Laura, and on treatment for his teeth. I find that, mixed with resentment and annoyance, Guy was genuinely concerned that Simon's personality had changed for the worse, through excessive interest in EverQuest, resulting in his leaving his wife and not treating her well over property, and not doing his fair share of the work in the Company.

18. On Thursday, 12<sup>th</sup> June 2008 Simon flew to Turin as usual, returning with Laura, her mother and her daughter, who were to spend a few days with him in the house he rented in Saffron Walden. A few days earlier, on 6<sup>th</sup> June 2008, Simon wrote to Guy:-

"Dear Guy,

Please keep the contents of this letter strictly confidential, I ask you not to discuss it with anyone.

I really am in a very bad situation right now financially. Just getting the £2000 last pay cheque doesn't even cover my mortgage & rent - let alone any other expenses.

As from the 1<sup>st</sup> July 2008 I am moving out of the house at Greenways and moving into a shared house. This will cut my housing expenses from £1500 per month to £200. I had to keep the house while my divorce was still dragging on with Christine, as I needed to show I had expenses if we ended up going to the judge. Now it seems we can bring an end to our marriage I can actually start getting my life together again at long last.

Things for me were ok until we had to take the pay cut in September 2007 - then I started to struggle and things have been very hard for me since.

I know you disapprove of my relationship with Laura but it is my personal choice, and I know you understand this. My flights are just £25-£30 return from Stansted to Turin, so, considering I don't drink, go to the pub or eat out in restaurants a lot, I don't think it is such an extravagance in my life. I love Laura, she is the woman I want to be with for the rest of my life.

As from 1<sup>st</sup> July 2008 things will be a lot easier for me, but right now things are financially very hard.

What I would like is for the company to give me a salary advance of £5,000. I would then like this deducted from my wages by £500 each month, as from July 2008. From July I will be £1,300 per month better off, so it will not be a problem for me to have this deducted from my wages each month. I just need to get my accounts in order now and to get the agreement set up for Christine's house. Then I can move on with my life.

I know this is a lot to ask, but I am in a horrible position right now, with a lot of credit card bills to pay, and to have this money now will really help me a lot in these final difficult days until the divorce is settled.

I do not ask this lightly. You know what it is like to not be able to pay your bills. I know this is brought on by myself and my divorce from Christine, but it is almost at an end now, and I want to move on with my life without so many worries.

I ask this as a big, big favour and I hope you will agree.

Regards,

Simon”

19. Guy replied on the same day having, notwithstanding Simon's request for his letter to be kept confidential, discussed it with Mr. Weekly and with one of the secretaries, Bernie Kelly:-

“Dear Simon

Further to your letter, I feel really sorry for you if you have got yourself in a really bad situation. You know we are in a bad financial situation at the moment at work and I do not know how you can expect the company to lend you £5,000 out of our overdraft. We are not even in credit at the bank and the accountant made it very clear we are in last chance saloon and the bank also. Already we have not got the money for salaries PAYE and Vat due at the end of the month of over 20,000 despite borrowing an extra 30,000 just 2 months ago.

We WILL need all the money in the company in the next few months and as I pointed out this morning will not be surprised if we have to take another pay cut in August just to keep the company going. I have not been able to show the bank our last set of accounts and do not know how long I can hold them off for. I am not happy about salary cuts and no dividends either and Karen and myself have had to take out loans just to keep the family afloat which we will be paying back for years to come.

This is mainly due to you lifestyle and the fact you wanted to keep going to Italy and were therefore unable to do all the work which you had previously been doing up to that point. If it was not for that you and me would be doing the work and not having to pay Gareth. £36000/year I am not happy I have had to take a pay cut and sacrifice dividends just because you wanted to live this extravagant lifestyle.

As I have said me and Karen have had to cut back a lot and get deeper into debt in the hope we will be able to turn it round.

Just 2 months ago when you first said you had overspent I offered you £1,750 instead of the Amerex trip but you said it was okay and did not want the money. It has now been paid to Amerex.

If the company was in credit and we had money of our own, of course I would lend you whatever you needed but in the circumstance I feel it is totally unfair when we do not know if we can even pay our VAT liability at the end of the month.

Regards.

Guy”

20. Because Simon went to Italy on or about 6<sup>th</sup> June 2008, he may not have received this letter until his return on 10<sup>th</sup> June 2008, although Bernie Kelly says in her witness statement given to the police that he saw it on the same day and was very distressed.

21. On that day, 10<sup>th</sup> June 2008, Simon bought the hammer which was used, by himself or by Guy, on the morning of 17<sup>th</sup> June 2008. Either at the time or later, he left a copy of the bill in the petty cash box.

22. On 11<sup>th</sup> June 2008, Guy and his partner, Karen noticed Simon driving near his house, at about 8.50 a.m., when Simon ought to have been at the Company's premises. Guy telephoned Mr. Weekly, who said that Simon had said that he was going to the bottle bank, which is not near Guy's house. In a statement made to the police on 1<sup>st</sup> July 2008, Guy described the incident in this way:-

“On this particular day 11<sup>th</sup> June we were walking back down Anso Road towards our house when I noticed the top of a silver Mitsubishi Shogun over the hedges bordering the lane, travelling towards us. I mentioned it to Karen whether

it was Simon. As it came into view I knew it was as I could see him driving, there wasn't anyone else in the vehicle. I put my hand up to waive at him and he slowed down and stopped near to us. This was right next to a small house called Shepherds Cottage. He wound down the passenger window. I immediately thought how strange he was behaving, he seemed very on edge and uncomfortable.

I said to him, "What you doing here?"

Simon replied, "Really busy got to go. Bye" and then drove off up the road away from the house.

There was no reason for Simon to be there at all. It isn't anywhere he normally travels only to visit our house. Even Karen remarked when he had gone how strange he looked and behaved. ...

The next day Thursday 12<sup>th</sup> June 2008, I received a text on my mobile phone, this is a Nokia Lunar black mobile number 07825150070. This text was sent at 0704 hours and it came up on my phone as 'Simon's mobile'. The text is still on my phone which I can produce if necessary as my exhibit GJR/3. PC WRIGLEY has viewed this text, it reads as follows:-

'The 2 cash machines were out of order this morning so I borrowed £100 from petty cash I have put a note in box I have got some money from cash machine at airport so will return borrowed next week I was late today so I didn't have time to go into town Adrian Brooks is bringing log book for my car into office.

Please put it in an envelope in my desk. Thanks.'

I thought this text was a bit odd but didn't think anything of it.

The next time Karen and I were walking the dogs and passing the garage, which is in the same road we live in, Anso Road. This is Brooks Motor Services, we use this garage to service all our vehicles, the man who owns it is called Adrian BROOKS. We walked past and thought we would ask him if he had seen Simon recently. When we asked him he told us Simon had come in on the same Wednesday 11<sup>th</sup> June we had seen him. The first thing Adrian said to us what that Simon had behaved very strangely."

23. Mr. Brooks' evidence is that Simon had indeed behaved strangely. He had come to his garage on the morning of 10<sup>th</sup> June, and had asked him to stamp the service book on his company vehicle. When asked for the book, however, he said that he thought it "may be in my car" before finding it.

24. On 15<sup>th</sup> June 2008, there was a Father's Day lunch at Mr. and Mrs. Rodliffe's house, attended by Guy and Karen, and by Christine and Luke. According to Christine, whose evidence I accept, Guy said bad things about Simon, and then said that he would not be surprised if Simon committed suicide and advised Christine not to let Simon see his son any more. Christine, who gives the impression of remaining very loyal to Simon, was visibly upset when giving evidence about this, to the effect that she had resented it. She made it clear that Simon had always looked after Luke very well, including on holidays and had never behaved violently. At this lunch, Christine gave Guy some correspondence to pass to Simon, and Luke asked him to give Simon his Father's Day present.

25. Evidence obtained by the police from Gareth Weekly establishes that the security alarm at the Company's office was activated at 17.10h on 16<sup>th</sup> June 2008, then deactivated 45 seconds later and reactivated at 17.51h. During this 40 minute period, Simon's credit card statements were accessed on his computer, and at 17.33h there was a 4 minutes 12 seconds telephone call to Barclaycard on his telephone line, in which his Barclaycard account was accessed via the automated telephone voice recognition system.

26. Simon's credit card statements show that he was up to his limit except on his MBNA card, on which some £2,800 was available as at 8<sup>th</sup> June 2008. Although he has obtained the statements up to the end of June 2008, he has not disclosed the following week's statement despite requests to do so.

27. The incident which has given rise to these proceedings took place at about 7.45 or 7.50 a.m. on 18<sup>th</sup> June 2008. The engineers were all out on distant jobs on that morning, noted in the office diary, but Gareth Weekly was due at work at 8 a.m.. He was quite often late, but this could not have been relied on by either brother, if planning an attack on the other. Simon was booked out for the day.

28. According to Guy, when he arrived he saw Simon standing outside the main office door at the top of the stairs. He had not expected him. There was a brief exchange, and Simon said "I understand that you have a present for me" and he replied that he had a card and a present from Luke, and that they and some bills and correspondence were in a bag on his desk. He knew that Simon had been in the office since the previous night, as his chair had been moved, and wondered why he had not taken the present.

29. Simon then asked Guy to get the items for him, and he said "Okay, they're on your desk", although he thought it strange. When he went into Simon's office, Simon attacked him from behind with a hammer, screaming "you bastard" as he hit him several times. He escaped and ran to Homebase, which was nearby, and they called the police and the ambulance.

30. Simon's evidence is that he went to the office because he wanted to see if a big accumulation of work had built up since the previous Wednesday night, and to get his son's present and telephone to thank him. He intended to return home at midday. His account is very detailed, and continues as follows:-

"The office door was unlocked, as my brother was already there, and I went up the stairs and into the main office. My brother was just coming out of Gareth's office, apparently as he had been turning on Gareth's computer. When he saw me his face expression turned to thunder, it was obvious he was not happy to see me or was in a very bad mood. His first words to me were 'what are you doing here?' - a strange question as I am a director of the company and had every right to be in my own business. I replied that I understood that there was a present from my son for me. He walked past me, out of Gareth's office and into the main office and told me 'it's on your desk', gesturing with his arm towards my desk. He then started to turn on the other computers in the main office and I took off my jacket and hung it up - on the only coat hooks we have in the office, which is in Gareth's office. AS I did this my gloves, which were in the pocket, fell out onto the floor, so I picked them up, roughly stuffed them back into a pocket, and hung up my jacket. I then walked out of Gareth's office and into my own. As usual, there were a pile of papers for my attention on my desk, so I started to sort through them. I became aware that Guy was leaning against my door, looking at me, in an aggressive stance, with his arms folded across his chest. As I told the police, he started to ask me, in an abrupt, rude way, if I had thought 'any more about what we talking about'. I seriously didn't know what he was talking about, and really wasn't in the mood for this sort of bad behaviour from him. I asked him what he meant and he answered that he was asking about whether I wanted to sell the business to him. I had already made it clear that I had absolutely no interest in this subject and just laughed at him and told him to stop being asshole. I was in a good mood, because I was about to have some nice days with my girlfriend, and then we were going to the sea in Italy for some holiday - so I had no wish to have to deal with my brother in this mood. When I told him to 'stop being an asshole' he spun around and out of my office to, I presume, his office. I then saw the present from my son and decided to open it, to take my mind of the behaviour of my brother. As I started to unwrap the present I noticed from the corner of my eye, a sudden movement, as I reacted and turned towards the movement I realised it was my brother, and he was shouting, something like, 'I'll show YOU who is an ASSHOLE'. I saw my office plant, which is quite large, start to fall as he entered my office - I believe he caught it with his hand, in which he was holding the hammer, as he raised it to swing at me. My first reaction was to put distance between him and me, so I pushed back my chair, which has wheels, against the wall. I saw his arm moving towards me and thought he was going to hit me with the hammer. He was off balance because of the wild lunge, because my desk was between him and me, and also because he got his feet tangled in the plant. I believe his foot or feet slipped on the spilled earth or large leaves and as he tried to get his balance I grabbed at the hammer he was holding. We struggled for a few seconds and I got the hammer from his hand. I did not know it at the time but he was holding the hammer handle with still the plastic bag wrapped around it. I believe this is why he could not grip it properly and I managed to get it off him. As he got his balance he lunged at me, to try and keep him away I swung the hammer in front of myself. As I swung he ducked his head and turned his shoulders towards me, and I caught him with the hammer either at the top of the shoulders or neck or head. It was a concentrated, aimed swing - I was just trying to keep him at a distance to me. The momentum of his lunge forced him into me, and he pushed us both back against the wall in my office. I was trying to push him off, while trying to edge myself along the wall towards the only door in my office. He was trying to get my hand which held the hammer and using his bodyweight to push me. As I got out of the door, with him still pushing me, the wall was no longer there to take our weight, and we staggered, still sort of wrestling, into Gareth's office. I fell back and my legs caught on the desk, causing me to fall backwards, losing my balance. I had Guy still half holding me and pushing me, but my right arm, which held the hammer, was down by my side as I was trying to regain my balance. All the time he was making a sort of 'growling' noise and I was very afraid and shocked at what was happening. As I regained my balance I knew I had to get him off me. He looked up at me and his face was red with rage, and his

veins were bulging at his neck. He started to move towards me again so I swung the hammer again. He saw the hammer and turned his head again - which I struck. Both blows with the hammer were just trying to make him stop. I was NEVER trying to deliberately seriously injure him. As I have told the police, I estimate that the force I used in the swing was perhaps 6/10 or 7/10. Absolutely never 10/10 with intention to seriously harm him.

This second blow seemed to bring him to his senses. He pulled back off me and put his hands to the back of his head - it was obvious that this second hit had hurt and stopped him in his tracks. When he brought his hands back, I saw, for the first time by this stage, that they were covered in blood. He stared at his hands, as if without comprehension, and looked at me. I shouted something like 'what are you doing? What are you doing?' and he staggered backwards and turned to run away. In his confusion he turned to his left, and ran straight into the wall - where my jacket was hanging up. I should point out that below the coat hooks there are always boxes stacked, and I believe that he lost his balance as his feet came across the boxes and this caused him to lose his balance and topple forward. This is my only explanation why my jacket had his blood on it. (During my trial, in August 2009, it was revealed that the forensic detective who was the first at the scene to gather evidence, immediately after the attack, did not even notice a Jacket hanging in the office, and certainly did not notice that it was blood stained, even though his sole purpose of being there was to search and photograph evidence. The Jacket was only discovered more than 24 hours later when Guy met a police officer at the office and directed him to it - more 'evidence' discovered by Guy! Also the Jacket was hanging up against a white wall, yet there was no evidence of blood on this white wall.) Where I was half lying across the desk I could not see what he did, but his head was down, as he was off balance due to his feet being restricted by the boxes. He then staggered back and ran out of the office and down the stairs. I was in a state of shock. I could not believe what had happened. Although my brother has a vicious temper he has only ever attacked me once, and that was when we were in our 20s and he was drunk.

At first I did not move, I was concerned if he had gone into the main warehouse to perhaps find another weapon. I went into my office and looked out of the window, but I couldn't hear or see anything. I ventured slowly down the stairs - trying to listen for him. As I got to the bottom of the stairs I saw blood on the floor, which was still open, so I closed it. I then went into the main warehouse, but he was obviously not there. As I came back I felt the shock and ran into the toilet to vomit and use the toilet.

There was still no one else at the office so I decided I had to telephone my girlfriend to tell her what had happened. I had left my mobile in my car so I went out, still afraid that Guy was maybe hiding somewhere. I got my phone and returned to the office. As I got into my office I realised I still had the hammer, and dropped it on the carpet.

I was about to telephone my girlfriend but then realised that my hand, arm and leg, were injured. So I dialled 999 for the police and an ambulance.

I stayed in my office in a state of shock until the police arrived."

31. There is a witness statement from Mr. Gentles, a team leader at Homebase, which he gave to the police on the day. He says that a man (in fact Guy) ran into the store at 7.50 a.m., saying that he had been attacked by his brother, who had hit him several times with a hammer which he had pulled out of his bag. He seemed very distressed and was breathing rapidly. There was "lots of blood" on the back of his head and shoulders and back and a raised lump on the front of his head. The assistant manager, Mr. Ramsbottom, called for an ambulance which arrived very quickly and, while he was being treated by paramedics the man was telling someone on his phone that he had been attacked and to grab the kids and just drive, drive anywhere. Karen Holdgate's recollection is that Guy rang her and told her that he had been attacked, and to stay indoors with the children and lock the doors, which she did until telephoned later by the police to say that they had Simon.

32. The police telephone log records Simon making a call at 7.59 a.m.:

"Inf (i.e. Simon) and brother Guy have just argued over money at the business. The argument became physical - (Simon) hit Guy with a heavy hammer. Unknown injuries as Guy ran off in direction unknown but he will be on foot - he's left his vehicle outside - ... Guy Rodliffe ... black polo shirt, blue jeans, short brown hair, likely to be bleeding heavily from head ... (Simon) has locked himself in office - no injuries."

So Simon is not recorded as saying in this call that Guy had attacked him.

33. P.C. Hodgetts and P.C. Eccleston were on the scene at about 7.50 a.m.. They saw Guy with blood on the right side of his head and face, and in his hair. They heard him say to someone on the telephone "Simon has just attacked me with a hammer. He has gone mad. Just get the kids and go, leave." He then repeated to the officers that Simon had attacked him and said "it was all over money. Lately he has been suicidal, but I never thought he would do something like this."

34. The officers then went to the Company's premises. They saw Simon's car, a silver Mitsubishi Shogun which Guy had identified, parked outside. Simon opened the door and seemed extremely agitated. They all went upstairs, and the officers noticed a hammer with a blood-stained handle on the floor of Simon's office, and blood in various places in Simon's and the adjacent office and on the door leading to the stairs and on the stairs. They arrested Simon on suspicion of causing GBH to his brother. Simon said "He attacked me. He was just sitting there. He came at me with a hammer. He just caught me." Simon's left hand had blood on it, and was bruised and swollen, and there was a red mark between his forehead and his temple on the right side. He complained of pain, also on his shin, and he was distressed and hyperventilating. The officers called an ambulance and at 8.40 hours he was taken to hospital in Harlow, where he was given tetanus and painkillers. He was then taken on to Braintree police station, arriving at 12.55 hours.

35. Meanwhile, Guy had been taken to Addenbrooke's Hospital in Cambridge, where he was found to have a 2cm laceration on the back of his head and a bruise on his forehead, and a swollen hand. PC Ford, who was there, said that he also complained of pain in his neck and back. The account he gave was substantially the same as the account given later that day in his witness statement.

36. He also told P.C. Ford that Simon had been wearing a three-quarters length black quilted coat, which was done up. The main attack had taken place in Simon's office, and the hammer was a light-handled one with a silver metal head. The carrier bag was green, yellow and white. Another officer, P.C. Humberstone, took possession of Guy's bloodstained clothing and watch. Guy's mother was there.

37. Guy made a witness statement on the same day.

"Up until the past three years my relationship with Simon was excellent. Unfortunately over the past three years our relationship has deteriorated. The reasons for this being that he met a girl via the internet, he left his wife and visited the girl who lives in Italy each week for between three to five nights. Simon was not working but was still withdrawing his wages. Simon was living beyond his means to keep up this relationship. He is in a financial mess. As a result we have had to employ an additional staff member at the company.

As a result of Simon's financial difficulties on approximately the 6<sup>th</sup> of June 2008 I received a letter from Simon was left on my chair in my office. This letter was a request for cash from Simon. ...

...

On Monday the 16<sup>th</sup> of June 2006 at approximately 1710 hours I left Home and Office Fire Extinguishers Ltd. On doing so I took the whole of Home and Office Fire Extinguishers books including cheque book and petty cash as Simon had taken money from petty cash the previous week. I knew he was in the UK as Gareth had spoken to him on Monday when he was driving back from the airport. Gareth and myself thought it would be safer for the company to take these items home. We are aware of his financial problems as we receive many calls for him each day with callers refusing to give their names. I returned home and left all the items in the boot of the car.

On Tuesday the 17<sup>th</sup> of June 2008 at 0750 hours I arrived back at the office. I entered the building and switched off the burglar alarm and went upstairs to reception. I switched on my accounts computer in reception as I walked past to my office. I put my car key and wallet on my desk. I went back down to my car and retrieved the company's book, petty cash and cheque book from the boot. I then went into Gareth's office and switched on his computer. As I came out of Gareth's office after about five seconds, the reception door opened inwards. I couldn't see who was there, only that the door had opened. As I walked around the door back to my office, Simon was standing there in along three quarter length black quilted coat which was done right up. I was surprised to see him as he was not due at work until the 18<sup>th</sup> of June. As I got to my office door I half turned round, just over my shoulder and said something like "Hello" as I wasn't expecting to see him.

He replied, "Oh hi". Simon then said, "I understand you have a present for me."

I replied, "Yes a father's day present from Luke and a card which he has asked me to give to you. They are in a bag on your desk."

The bag also contained credit card bills that his wife had given me to pass to him. The bag also contained a wrapped up box of chocolates that my mother had wrapped up for him and a father's day card.

Simon said, "Could you just get them for me."

I said, "Sure, they are just in a bag on your desk."

I walked past him, he was stood at the reception entrance and I took two to three steps into his office. The reception office entrance is three to four steps from Simon's office door. I felt a heavy blow to the back right hand side of my head, I dropped to my knees with the force of the blow, it was so unexpected, I thought the ceiling had caved in. Whilst on my knees I felt a second blow to the top of my head. By this point I had still not seen where the blows were coming from or what they were caused by. I felt really dizzy and I felt like I was going to pass out. I knew I was badly hurt.

Whilst on my knees I looked over my right shoulder, Simon was stood inches behind me, towering over me and screamed "You bastard."

I turned and quickly grabbed his arms so he could not hit me again. I thought he was going to kill me.

As I grabbed his arms I said, "Stop it you're going to kill me you nutter."

Just prior to him saying "You bastard" I thought for a second he was coming to help me, but I saw a white plastic bag with green and yellow in it. When he called me "You bastard" I realised it was him that had hit me. I didn't know what was in the bag. The bag was in his right hand. I managed to shake his right hand hard and saw a hammer fall onto the floor. I don't know where the hammer fell as I was fighting for my life. The hammer had a light coloured wooden handle and looked quite old and had an old silver metal head on it.

At this point the fight seemed to stop for a split second. I released myself and he tried to bend down to retrieve the hammer. I turned and took a couple of steps to the reception door in order to try and escape. Simon grabbed my shirt and as the door only opens inwards I couldn't get round the door to escape. I turned and just grabbed him as hard as I could and forced him backwards into Gareth's office pushing with all my strength. He crashed into Gareth's office chair and up; the desk behind him and his feet came off at the floor. As I was pushing him I threw one right hand punch towards the direction of Simon as he was falling backwards and pushed my hands downwards on top of his hands, to make him release me.

As he let go I turned and ran around the half opened door and ran down the stairs. The catch on the door was locked. I had left it open. It was obvious that Simon had locked the door to slow down my escape or to stop any other engineers entering the building. I managed to unlock the door, I had trouble doing this because I could see out of my right eye. My eye had gone dark. I felt dizzy and disorientated, I didn't have my car key so ran past my car, I was losing blood and it was covering my shirt. I realised that Homebase must be open and ran in through the front door. I feared that Simon was still chasing me with the hammer. I asked a young man on the checkout to lock the doors, call the police and get me an ambulance. I told him I'd been the victim of a hammer attack. I collapsed in a pool of blood in-between the aisles, I was conscious but my legs wouldn't work anymore. ..."

38. Mr. Weekly also made a statement on 17<sup>th</sup> June 2008. He had been aware that Simon had money problems, and felt that he had been looking particularly unhappy since Guy had refused the loan. Apart from that, he had no direct knowledge. By the time he had come on the scene, at 8.15-8.20 a.m., the police were already there. He was asked whether hammers were kept on the premises and he said categorically not; he had a claw hammer in his toolbox, but it had been in his van since the previous Thursday.

39. Mr. Rodliffe senior also made a statement on the same day in which he said:-

"I have ... been told that Simon became obsessed with the computer always playing war games staying up all night. I have witnessed this when going round to visit. He was sat on the computer and didn't even acknowledge us being there. I believe Simon has a mental health problem as a result of this obsession but a lot of the information that I have is from other people telling me what has gone on."

40. Simon was interviewed at length on the following day, 18<sup>th</sup> June 2008, and told substantially the same story as is set out above. He described his movements on 16<sup>th</sup> June 2008 after landing at Stansted; he and his girlfriend had been shopping for food at Tesco between 5.30 and 6 p.m., and had not gone out after returning from it. He said nothing about going to the office that evening. At this stage, the police had not found Simon's bloodstained coat, so he was not asked about that. In describing his actions on entering the office on 17<sup>th</sup> June 2008, he said, three times, that he went into Gareth's office, where the coat hanger was, and hung up his coat. He said that he was not in financial difficulties. His financial position was "manageable". His divorce was nearly settled and he would be able to give up the rented house, which he had only taken on to reduce his free income and stop the court from taking more

money. This was to happen soon (but in fact did not for another 4 months). He denied that he was in any way depressed.

41. He was asked about the hammer. He said at first that hammers were part of the engineers' tool kits, and were around in the office all the time. He then said that tool kits were kept in the engineers' vans, but that they sometimes brought them in to the office when they were emptying them. Hammers would not generally be lying around, but they would sometimes be on the engineers' desk. He had not seen a hammer lying around but, if he had, he would not have thought it "totally unusual". While being questioned about this, he made no mention of the hammer which he had bought at Homebase 8 days earlier, for which he had left the petty cash receipt.

42. I have not seen the bail conditions to which Simon was subject after his release on 18<sup>th</sup> June 2008, but he wrote to the police 5 days later to complain that they prevented him seeing his parents. They were released so as to permit him to see his mother, but not his father, who was a witness. The bail conditions prevented Simon from going to the Company's office; he wrote to the police at least twice to protest about this.

43. Two further pieces of evidence were found on 18<sup>th</sup> June 2008. The police found Simon's coat, heavily bloodstained, hanging on the peg in Gareth Weekly's office, and Gareth Weekly notified the police of the facts relating to the burglar alarm and the contact with Simon's credit card accounts on 16<sup>th</sup> June 2008 (see paragraph 25 above). Some time later, they obtained a CCTV recording, showing Simon's purchase of the hammer.

44. On 26<sup>th</sup> June 2008, Mr. Rodliffe senior wrote to the police as follows, relying in part on what Simon had by then told his mother:

"With regard to the fight between my two sons, Simon and Guy Rodliffe at their company premises in Saffron Walden on the morning of Tuesday 17<sup>th</sup> June 2008, I have listened to my son Guy's version of events, saying that his brother Simon attacked him, and I do not think this is the truth.

Simon has never attacked anyone, nor shown any signs of being violent.

While my wife was in the hospital when Guy was being questioned by a policewoman, she was alarmed as he appeared to have planned what he was going to say, in fact the police officer only managed to ask him a couple of questions before Guy started rattling off his version of what had happened and the officer had to ask him to slow down several times as she could not write it down quickly enough, so from that moment my wife started to have her suspicions about what Guy was saying about his brother.

On Wednesday 18<sup>th</sup> June, I took Guy and his partner, Karen Holdgate, to Chelmsford Police Station so that he could have his head wounds photographed. I was very surprised to find that the photographer had difficulty finding the wounds – they were definitely not in keeping with Guy's Statement of events.

On Thursday 18<sup>th</sup> June, my wife and I went to the company's office to help the Office Manager, Gareth Weekly to clear up the mess. We were very surprised to find how little blood there was.

We both noticed, on entering Simon's office, that his Father's Day present and card, from his son, were on his desk, and the present had been PARTLY opened. It appears to both of us that Simon had been sitting at his desk, opening his son's gift, when he was attacked.

We are convinced that Simon did not start the fight, nor did he attack Guy.

On looking back over the past few years, we now realize Guy has been consistently telling lies about Simon, running him down to us and anyone in the company who would listen to him..."

45. Simon was interviewed again on 14<sup>th</sup> October 2008. He was asked first about the hammer which he had bought on 10<sup>th</sup> June. He said that Gareth Weekly had asked him to get it, because one of the engineers had lost a hammer and needed a replacement. It was a small hammer, which the engineers needed to put rawl plugs into the customers' walls when fitting fire extinguishers. Buying it was a normal thing for him to do. He had put the hammer in his car, taking it into the office on the following day and put it on Gareth Weekly's desk, telling them that he had done

so. He then took the money out of the petty cash and left a receipt. There was nothing unusual about this; it could be a screwdriver, or some pens. He said that Gareth Weekly's statement, that they always used rubber handled hammers, was nonsense.

46. Next, Simon was asked about the deactivation of the security alarm between 17.11h and 17.51h. on 16<sup>th</sup> June, and the computer and telephone activity in that period. He flatly denied that he had gone to the office at that time. He said that his brother or Gareth Weekly was trying to set him up, to get him out of the business and increase their salaries. He said that he was in Tesco at 5.30 with Laura, her mother and her daughter, and could not have been in the office.

47. He was then asked about his coat. He confirmed what he had said at the previous interview, namely that he had hung his coat up in Gareth Weekly's office before Guy's attack on him. He said that the blood must have got on the coat when he hit Guy for the second time and Guy spun into the other office, hitting the coat on his way out. He gave no substantial explanation for the fact that there was blood all over his gloves, which were in the coat pocket.

48. Two days later, Simon sent a long email containing "a few comments" to P.C. Wrigley. This included the following passage:-

"6.The Hammer. Leading up to this incident I was being asked, almost every day, to buy things for the office that were needed. This happens on a fairly regular basis. As I explained either myself or my brother were in the office each day, so if anything was needed then we used to be the ones to buy it. Occasionally we would give Gareth the money to buy whatever was needed but, usually, it was myself or my brother who bought the items, just to keep some control on costs. I am now realising that every day for the 2 or 3 weeks leading up to this incident I was being asked to buy items for the office or for the engineers. This was consisting of the usual items we needed, so I really didn't suspect anything odd at the time. There seemed to be something every day that was needed, which I suppose, looking back at it, was strange. I just presumed that my brother couldn't be bothered to buy these things, so he was asking me to get them on the days I was in the office. I now believe that he was deliberately doing this, so I would not be necessarily concentrating on each item I bought. As I explained, to do this was nothing but an inconvenience which had to be done, then it was instantly forgotten. You must remember that we have a very busy office with a lot of things going on each day, and being asked to buy some paper, or printer cartridges, or permanent market pens, or tools, or stamps, or envelopes, or more toilet paper, isn't something that you remember doing after completing the task. I was being asked to buy these items in several ways. Either Guy was ringing me up saying we needed something and would I buy it. Or he would leave me a note/letter on my desk listing what was needed. Or Gareth would pass on a message, saying that Guy had asked him to tell me to buy something. With the hammer I really couldn't remember the events leading up that time. As you saw from the cctv footage I was in the store, after leaving work, bought the hammer and out again -in about 30 seconds. I now remember that I was asked to buy this by Guy! He telephoned me at the office to discuss a lot of different things and to generally chat. He was complaining a lot about the engineers and their work output etc and the conversation was very long and varied. He told me that Gareth had said that we needed another hammer - as one of the engineers had lost theirs and would I buy it. It was not an unusual request, which I did as I left the office. As you can see, I just chose one on cost - not as an effective weapon! This statement that you have, that we never have wooden handle hammers is complete rubbish. We usually chose tools on price. There is no point to buy expensive, high quality tools as they are usually lost before they are worn out. As I said on Tuesday, I really couldn't remember well what I did after I made the purchase. I said that I thought I gave it to Gareth the next day, when he was on the phone. I now realise that this was incorrect. The incident when Gareth was on the phone was actually on 6.6.2008 when I was asked to buy some stationery from Millways in Stansted. I remember this because it was my son's birthday and I was taking him for a pizza after school. My brother telephoned me and asked me to go into Millways for some stationery items we needed for the office. I bought these and after taking my son home, went back to the office that afternoon with the items. Gareth was busy on the phone and as I didn't want to particularly get involved with any problems which may have occurred (a regular hazard) I just waved the bag in front of Gareth and put it on the desk, Millways is in Stansted, not in Saffron Walden, and as I was going to collect my son it is in the same direction, I now remember the evening I purchased the hammer I was going home after work and put the hammer, in its bag, on the floor of my car. I did not take it into my house as I was going to take it into the office the next day. The next day, 11.6.2008 I forgot about the hammer, as I said, these things are not at the forefront of your mind. I discovered it that evening, that it was still on the floor of my car, as I was packing my bag in

the car, as I was going to Italy early morning on the Thursday 12.06.2008. I knew I had to go to the cash machine the next day, so decided to take it then to the office on my way to the airport early in the morning. The cash machines were both out of order at Tesco's the next morning so this is when I went up to the office. As I have already said, I went to the office and put the hammer, in the bag, on Gareth's chair in his office."

49. The police report to the C.P.S. records that Laura had been spoken to on the telephone on "the day we dealt with Simon", which must mean 17<sup>th</sup> or 18<sup>th</sup> June, and confirmed in broken English that he had gone out for a few minutes during the afternoon of 16<sup>th</sup> June.

50. Simon was charged with wounding with intent to do grievous bodily harm on 18<sup>th</sup> November 2008, and his bail conditions prevented him from contacting Guy or any member of his direct family, or Gareth Weekly and required him to live and sleep at his parents' house.

51. On the following day, Simon sent an email to P.C. Wrigley, asking for the conditions to be varied by requiring Guy to let him have a key to the new lock to the office, and the passcode for the burglar alarm, and to be permitted to visit his office once a month in normal office hours to examine the books and accounts and other business documentation. Nothing came of this.

52. On 27<sup>th</sup> November 2008, Guy's solicitors wrote to Simon, stating that they had been instructed by the Company and referring to the fact that Simon had now been charged. They continued:-

"Your bail conditions have effectively prevented you from working for the Company from the time of your arrest and will continue to do so until the conclusion of your trial. Now that you have been charged with a very serious criminal offence, the Company has determined to suspend your employment and in the particular circumstances such suspension will be without payment. The Company will reconsider its position at the conclusion of your trial."

53. This was followed up on 12<sup>th</sup> January 2009 by a letter on the Company's notepaper, signed by Guy, referring to the "vicious assault with a hammer" on Guy, and terminating or purporting to terminate his employment with immediate effect.

54. Both letters were answered by Simon's solicitors, who contested the Company's entitlement to act on the instructions of Guy alone, and on 12<sup>th</sup> May 2009 they wrote asserting that Guy had breached his duties as a director.

55. On 17<sup>th</sup> June 2009, Gareth Weekly made a further statement, in which he said that the Company used rubber handled hammers, not wooden handled hammers, and he corrected the statement he had made as to the whereabouts of his own toolbox, with the hammer in it. He had used it to help Christine Rodliffe to put up a TV on a shelf. He said that the normal procedure if engineers required a tool was for them to buy it themselves and claim the money back through petty cash. Simon did not regularly buy items for the engineers. He had once asked him to buy pliers for all the engineers' toolboxes, but he had failed to do it. This was on 5<sup>th</sup> November 2006, and he never asked him again.

56. There is also a statement from Bernie Kelly, in which she confirms that she, Guy and Gareth Weekly had all driven off together from the office at 17.10h on 16<sup>th</sup> June 2008.

### **Who attacked whom?**

57. Both Guy and Simon gave oral evidence, and each was thoroughly cross-examined. Not surprisingly, each of them told the same story that they had previously given, and each made a reasonable impression as a witness. The same is true of their parents, and of the other witnesses. The solution to this case does not lie in deficiencies in the oral evidence of the witnesses.

58. There is one fact which supports Simon's account. That is the fact that Gareth Weekly was due in the office at 8, a.m. A pre-meditated attack a quarter of an hour earlier, such as is alleged by Guy, therefore seems unlikely. By contrast, what Simon alleges happened was the result of a sudden unpremeditated burst of anger, which seems more likely. However, the point is far from conclusive. Simon's behaviour, as alleged by Guy, could be the result of his being in an unstable condition, due to the matters recounted earlier. Almost all the other evidence supports the opposite conclusion, that it was Simon who attacked Guy.

59. The most important evidence is the forensic evidence of Joanne Caveille (now Mrs. Coogan), which is set out in a very detailed and careful report, supported by her oral evidence and unshaken by cross-examination. The quantity and distribution of blood on Simon's jacket is consistent with Guy's account of the attack and inconsistent with Simon's evidence that the jacket was hanging on the peg in Gareth Weekly's office before any violence occurred, and that the blood on the jacket was the result of Guy running into his coat on his way out of the office. Her opinion is that what she found provided "extremely strong support" for Guy's account of what happened. It is unnecessary to rehearse the whole of this evidence but, for example, the blood stains on the inside of the jacket in the collar region correspond with the blood stains on Simon's pullover.

60. I accept her evidence, from which it follows that Simon's evidence that he took off his coat before anything happened is wrong, and that he deliberately took it off afterwards, before the police arrived, and hung it up in Gareth Weekly's office and lied to the police about it.

61. Another aspect of the evidence which strongly favours Guy's account is the evidence relating to the hammer, which Simon bought on 10<sup>th</sup> June. In the first place, Simon cannot have forgotten that he had bought it when the police asked him on 18<sup>th</sup> June about the hammer used in the attack, and his failure to mention it is telling. Secondly, while his explanation in the October interview, that he was casually asked by Gareth Weekly to buy it, is not implausible, the lengthy elaboration in his e-mail, claiming that such requests were made almost daily or regularly, is not credible. I accept the evidence of Guy and Gareth Weekly that neither had asked him to buy this hammer. Simon argues that, if he had bought the hammer to attack his brother, he would hardly have put the bill in the petty cash box; that might well have been done to make the purchase look less suspicious.

62. Another part of the evidence which strongly supports Guy's case is the evidence relating to the accessing of Simon's credit card accounts on his computer, and the telephone call to Barclaycard, on the evening of 16<sup>th</sup> June. Simon prays in aid the fact that Gareth Weekly had snooped into his affairs earlier in the year, but it is highly unlikely that he or Guy would have left the office at the usual time and then immediately re-entered it for this purpose. Either could have accessed this information at any time in the previous 4 days, while Simon was away. Gareth Weekly actually sat at the computer during the day. On the other hand, it is readily understandable, given his financial

situation, that Simon would have done this. Also, Laura told the police that he had gone out for a short time. Simon argues that he would not have needed to go to the office for these enquiries; he could have done exactly the same at home. It is however understandable that he might not have wanted to make these enquiries at home, when Laura and her family were there.

63. I therefore find that Simon waited in the alley beside the office until Guy and the others had left, and then immediately entered the office and checked out his position on his credit card. He lied to the police on 18<sup>th</sup> June, when he said that he had not gone out apart from the shopping at Tesco, and he lied again at the October interview. The reason he lied is that he wished to cover up the motive for the attack, which was anger at Guy for refusing him the means of escaping from his increasingly difficult financial situation.

64. This is also probably the answer to the point raised by Mrs. Yvonne Rodliffe. Her evidence, which I accept, is that she saw Luke's present half opened in the office on 18<sup>th</sup> June 2008. She therefore concluded that Guy's attack had, as Simon said, interrupted him in the act of opening the present. It was hardly likely that he would have started to open it in the time between his own attack and the arrival of the police. Therefore, this detail was in her view consistent with Simon's account of the matter. I agree with Mrs. Rodliffe that Simon would not have opened the present while waiting for the police. But I think that the likelihood is that he started to open the present on the evening of the 16<sup>th</sup> June, but did not finish doing so because he did not want to be gone for long, with Laura and her family in the house as his guests.

65. Apart from these three main matters, the forensic evidence, the purchase of the hammer and the activity on the evening before the attack, there are a number of other features of the case which support Guy's account, even if no one of them is conclusive in itself:-

(a) The relative severity of Guy's injuries.

(b) The fact that Guy's main injury was on the back of the head.

(c) The fact that Simon did not say, in his call to the police, that he had been attacked.

(d) Guy's urgent concern for his partner and the children.

(e) Simon's failure to disclose his MBNA statement for the relevant week, from which it is legitimate to draw the adverse inference that his financial position had worsened.

66. I therefore conclude that it was Simon who instigated an attack on Guy. I think it probable that, whether as a result of EverQuest or financial pressures, or both, he was not in a normal state of mind at the time.

### **Simon's claim against Guy and the Company**

67. The only part of this action remaining to be decided is Simon's contention that he is entitled to his salary from January 2009, when the Company stopped paying it. There are two issues namely (a) whether Simon is entitled to his salary despite the fact that he did no work for the Company in that period and (b) whether Guy had authority to terminate his contract of employment by the letter dated 12<sup>th</sup> January 2009.

68. The answer to the first question is clearly no. It is well established that an employee cannot recover his salary if he has failed to do the work for which he is employed. The authorities are fully reviewed by Stadlen J. in Giedo van der Garde BV v. Force India Formula One Team Ltd [2010] EWHC 2373 (QB) between paragraphs 420 and 424. For example, in Miles v. Wakefield MDC [1987] A.C. 539, a registrar of marriages had refused to officiate at weddings on Saturday mornings, which represented 3 of the 37 hours which he had contracted to work. It was held that the Council could withhold a proportionate amount of his salary, on the simple basis that it had lost the value of his services, quantifying the loss by taking that proportion of his salary.

69. In the present case, Simon disabled himself by his actions from doing any work for the Company on or after 17<sup>th</sup> June 2008. Up to the end of his trial in September 2009, his bail conditions prevented him from going to the Company's premises. After that date, there was no legal impediment to his going to the Company's premises, but what he had done made it impossible to work with his brother, and therefore impossible for him to carry out his duties to the Company. Therefore Simon, having disabled himself from carrying out his contractual duties, is not entitled to his salary.

70. That makes it unnecessary to decide the second question. There is in my view no doubt that Simon's actions constituted a repudiatory breach of his contractual duty to act faithfully in the interests of the Company. This was an attack carried out on the Company's premises on a fellow director and employee, with whom he had to work closely if he was to carry out his duties, and it was motivated by anger at the victim's decision on a Company matter. What is less clear is whether Guy had authority, on behalf of the Company, to accept the repudiation and terminate Simon's employment. I am inclined to the view that he did have authority, because, in Simon's absence, he was left as the sole director who was able to run the affairs of the Company. However, whether or not that is right, Simon is not entitled to recover any arrears of salary.

### **The section 994 petition**

71. In order to succeed in a petition under section 994, the petitioner must establish that the respondent has conducted the company's affairs in an unfairly prejudicial manner. The words "affairs of the company" are to be construed liberally: see Re Neath Rugby Ltd (No.2) [2009] B.C.L.C. 427. The prejudicial conduct is usually a breach of the terms on which the shareholders agreed that the company's affairs should be conducted, but may be on a single event which puts an end to the basis upon which the parties entered into association with each other, so as to make it unfair that one should insist on the continuation of the association: see per Lord Hoffmann in O'Neill v. Phillips [1999] 2 B.C.L.C. 1 at 7-11.

72. So far as I am aware, there is no authority on facts which are similar to the present case, but I have no doubt

that Simon's conduct related to the affairs of the Company, and Mr. Sinclair has not argued the contrary, if I found against Simon on the facts. Simon's conduct was a breach of the implied understanding that he and Guy, would act properly and in good faith towards each other, and it was also a single event which made it impossible for them to continue their association as directors of, and shareholders in, the Company. The position was aggravated by the fact that Simon, far from apologising for his conduct, asserted that Guy's account of it was untrue. Simon's conduct was also related to the Company's affairs, in that it was essentially a reaction to a decision taken by Guy concerning the Company's finances, which was his sphere of responsibility. While Guy has not established that the Company suffered financial loss as a result of Simon's conduct, there can be no doubt that it caused prejudice, in that Guy was left to carry on the Company's affairs as its sole director, with a cloud hanging over the Company until the litigation was resolved. Also, of course, the Company was deprived of Simon's services, which I have found were real, even if not all they should have been, and in any case it would be impossible for the Company to continue with both as shareholders.

73. As to the remedy, it is obvious that one of the brothers must sell his shares to the other and, in my view, equally obvious that it should be Simon who sells to Guy. This is mainly because Simon is the guilty party, but also because Guy has been running the Company on his own for nearly 4 years, whereas Simon's performance before June 2008 was below standard.

74. As to the value, the parties jointly instructed Mr. Paul Short of Lambert Chapman, who has provided valuations on different bases, covering the various possible outcomes of the action, taking into account claims which in the event have not been pursued. Since both claim and counterclaim in the separate action will be dismissed, the only relevant valuation is what he terms the theoretical market value, which was £389,379 on 13<sup>th</sup> July 2011, but was reduced to £226,642 on 29<sup>th</sup> September 2011. The reduction took into account the settlement of a claim by Mr. and Mrs. Rodliffe senior arising from their pensions having been stopped by Guy, and the Company's profitability as shown by the accounts of the Company for the year ended 31<sup>st</sup> August 2010 and the management accounts for the following 10 months.

75. The question then arises whether Guy should pay Simon 50% of the market value i.e. £113,321, or whether this should be discounted to reflect the value of a 50% shareholding. Mr. Short's view is that the market value of a 50% shareholding would be at a discount of 40% i.e. 30% of the theoretical market value of the Company as a whole.

76. In general, it is not appropriate to discount the value of a minority (or 50%) shareholding in a quasi-partnership company, but the court certainly has a discretion to do so where there are special circumstances, for example where the prejudicial conduct has caused loss to the Company: see Re Bird Precision Bellows Ltd [1984] Ch. 419; [1986] Ch. 658; O'Neill v. Phillips at 16h-i per Lord Hoffmann.

77. However, the basic principle is that the valuation must be fair: see Re Bird Precision Bellows [1984] Ch. at 429f. In the present case, it is not fair to apply either 40% or any discount, for the following reasons:

(a) In general, it seems to me wrong to apply a discount because of the selling shareholder's misconduct alone without more. To do so, when no loss has been proved, would be in effect to impose a penalty on the selling shareholder, and to give a windfall to the buying shareholder.

(b) In the present case, Guy has not proved that Simon's conduct caused financial loss.

(c) While it is true that Simon's shareholding is only worth 30% of the Company's market value, the same is true of Guy's shareholding; therefore to apply the discount would indeed give Guy an unjustifiable windfall. Once there is a sole owner, both shareholdings will increase in value; the market value will equal the theoretical market value.

(d) Guy has done quite well out of the Company since January 2009, as the following table shows:

	Y/e 31/8/08	Y/e 31/8/09	Y/e 31/8/10	Y/e 31/8/11
Sales	814,075	646,085	527,528	497,814
Directors' salaries	91,823	93,212	83,722	88,384
Net profit	80,352	32,535	98	(2419)

(e) There was no clear evidence as to the reasons for the decline in the Company's turnover, but it seems to have been wholly or partly attributable to there having been a particularly profitable product sold in the period up to August 2008, to the departure of 2 engineers in 2010 and to the recession. Nevertheless, Guy's salary in the last 2 years has been almost equal to his and Simon's combined salaries before Guy's departure. It is true that Guy has probably had to work even harder, especially after the departure of the engineers, doing a lot of servicing work himself, but on the other hand finding a more sensible way of doing the books and accounts. However, even taking this into account, he appears to have benefited financially from Simon's departure. Sensibly, it has not been submitted on Simon's behalf that the price should be increased to take account of this, but I certainly do not think that there is any valid case for a discount.

## **Conclusion**

78. For the reasons set out above, I will order that Simon sells his shares to Guy for £113,321, plus interest at 2% over the banks' base rate from 22<sup>nd</sup> November 2010, the date on which the petition was issued. This is subject to possible adjustment to take account of a point still to be argued identified by the parties as "the parental loan issue", of which as yet I know nothing. The claim and counterclaim in the other action will be dismissed. I will hear the parties on the form of the order and on costs. If the parties are able to agree an order by 6 p.m. on the day before the judgment is handed down, there will be no need for anyone to attend.