

Neutral Citation Number: [2021] EWHC 2291 (Ch)

Case No: BL-2020-LDS-000025

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN LEEDS**  
**BUSINESS LIST (ChD)**

Date: 13<sup>th</sup> August 2021

**Before:**

**MR NICHOLAS THOMPSELL**  
**sitting as a Deputy Judge of the High Court**

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**Between :**

**PARWAIZ NAZIR**

**Claimant**

**- and -**

**(1) MRS SEEMA JAGOTA**  
**(2) MR JAVAID AKHTAR NAZEER**  
**(3) TANIYA PROPERTIES LIMITED**  
**(4) JASPIA LIMITED**

**Defendants**

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**Ms Cristin Toman** (instructed by Schofield Sweeney LLP) for the **Claimant**  
**Mr Simon Goldberg** (instructed by Sintons LLP)  
for the **Defendants**

Hearing dates: 21 June - 2 July 2021

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**JUDGMENT**

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**MR NICHOLAS THOMPSELL:**

**1. INTRODUCTION**

1. It is always sad when an argument about money has the effect of creating bitterness and discord within a family. This is one of those cases.
2. The Claimant in this case is Mr Parwaiz Nazir ("**Parwaiz**") - I will refer to the family members by their first names, as many have same surname. He is suing his brother Mr Javaid Nazir ("**Javaid**") and Javaid's wife, Ms Seema Jagota ("**Seema**") and two companies owned or majority-owned by them, Taniya Properties Ltd ("**TPL**") and Jaspia Limited ("**Jaspia**").
3. Seema and Javaid are the owners (directly or indirectly via companies which they control) of what has become a substantial property-based business, comprising rental properties and student accommodation.
4. Through this case, Parwaiz is seeking to establish that he has an interest in a good part of that property business. He bases his claim primarily on the proposition that Seema and Javaid entered into partnership with him. In the alternative, if the court does not find that partnership exists, he makes a claim based on the doctrine of proprietary estoppel.
5. The court has heard this claim over the course of the 10 day trial at which both parties were ably represented. Parwaiz was represented by Ms Cristin Toman. The Defendants were represented by Mr Simon Goldberg. The court is

indebted to both counsel, both for their helpful and learned submissions and for the sensitive manner in which they dealt with the conduct of the trial, given that this was case in which emotions could easily have got out of control.

## **2. BACKGROUND**

6. It is useful first to introduce the main parties to this action and to say something about their relationship to one another.

### **(A) The family background**

7. The family background is important in this case as it casts light on the relationship between the parties and their possible motivations in relation to the issues that are in dispute.
8. Parwaiz and Javaid are members of the Nazir family. Parwaiz is the elder brother and they have three sisters, Parween, Zahida and Sadie.
9. Their father, Mohammed Nazir, emigrated from Pakistan in 1958 and worked for British Steel. Javaid reports having a difficult relationship with their father.
10. Whilst the family were all brought up as Muslims, Javaid had a relationship and a child, with a non-Muslim woman, and later, after this relationship had broken down, married Seema who also was outside the Muslim faith. This had been a source of tension between him and the remainder of the family. In particular, the rest of the family found it difficult to accept Javaid's marriage to Seema,

who had been raised as a Hindu, and her refusal to convert to Islam to allow the wedding to take place according to the Muslim tradition. When they married by means of a Registry Office wedding followed by a celebration following the Hindu tradition, the Nazir family generally boycotted the wedding, although Parwaiz did attend the civil ceremony.

11. Seema generally characterised her and her husband's relationship with the remainder of the Nazir family as being civil rather than close.
12. How close the two brothers were is a matter of dispute. Parwaiz has been anxious to emphasise their family ties and closeness. In his witness statement he outlines various ways in which he has assisted his younger brother over the years. He claims to have acted as his brother's best man at his wedding to Seema.
13. Javaid does not agree with this characterisation of their relationship. He and Seema each deny that Parwaiz was his best man, explaining that such a role does not a feature in a Hindu wedding.
14. From what the court has seen, the relationship has had its ups and downs and the brothers have been closer at some times than others. The fact that the brothers went on holiday with one another suggests that at one point at least there was a degree of closeness beyond that to which Javaid was admitting. It is more questionable, however, that they were particularly close at the point that Parwaiz alleges a partnership was formed.

15. It does, however, seem that there was a degree of closeness between the brothers, and between Parwaiz and Seema, during the period when they were working together in relation to the first two phases of the property development undertaken at Drinkwater House, as related further below. There are no complaints about Parwaiz' work during this period and there were many instances of Seema and Javaid doing things of benefit for Parwaiz. These included assisting him with an Individual Voluntary Arrangement ("IVA") (including paying amounts towards his creditors). After the first two phases of Drinkwater House were complete, they also assisted him by agreeing to arrange for two of their companies to employ him to undertake maintenance at Drinkwater House so that he could demonstrate a regular wage to help with a visa application that his fiancée (and later his wife) was making.
  
16. It was only later that more of an estrangement developed. This was when there was less demand for Parwaiz' skills to assist with the building work, and Javaid and Seema had complaints that he was not attending to the maintenance work that he had agreed to do, and was displaying a poor attitude at work.
  
17. The rift became complete at the end of January 2019 when Seema and Javaid decided to dismiss Parwaiz from this employment, bringing to an end his involvement with their affairs. It was following this event that Parwaiz began to press his claim to be properly treated as a partner.

**(B) Parwaiz**

18. At the time at which Parwaiz alleges that the partnership was created, October or November 2011, Parwaiz was unemployed. He had worked for some years for a charity dealing with offenders or ex-offenders but had been made redundant earlier in the year. Before that he had worked for the Inland Revenue and for a Job Centre. He had never been employed (or had any self-employed business) in building or construction. In his own witness statement he says that, nevertheless, he had experience in renovating properties, having done this for properties owned by his father and also having assisted Javaid and Seema in past. Javaid denies at least some of this account, but on this point I am more prone to believe that Parwaiz did have experience relevant to renovating properties, albeit that he had not mastered any particular trade or worked professionally as a builder. I do not think that there is any evidence that he had experience in project management as such.
19. There has been a certain lack of consistency in Parwaiz' various accounts as to which the month it was in 2011 in which he lost his job and as to the point at which he had moved back to his father's and sister's home in Middlesbrough from Sheffield (where he had been based for that job). However it seems that by October/November 2011, the time at which he says that a partnership was formed, he was no longer employed and had moved or was about to move back to Middlesbrough.
20. It seems that at that time he was at something of a low ebb. He was without a job and living again with his father and his sister.



**D. Seema and Javaid**

21. By the time in question, Seema, with assistance from her husband Javaid, had already built up from the ground something of a portfolio of rental properties as well as a clothing business and a make-up business. By all accounts Seema is a formidable businesswoman. She acquired the habit of working hard from an early age assisting her parents with a shop which they ran. She obtained both a BTEC diploma and degree in business studies and was given various management-level career opportunities within major corporations including a graduate job with Proctor and Gamble, before ceasing employment to concentrate on her own businesses.

22. It was acknowledged throughout the family that Seema was the driving force behind these businesses, but it appears that she valued the support and counsel that she received from her husband Javaid.

**4. THE ALLEGED FORMATION OF THE PARTNERSHIP**

23. The facts concerning the alleged formation of the partnership are hotly disputed.

24. The circumstances concern events around October or November 2011. Seema had identified a business opportunity in the form of the property called Drinkwater House at 210-212 Marton Road, Middlesborough ("**Drinkwater House 1**") that was coming to auction. This much is agreed between parties. However the parties' respective accounts are at odds with one another as to what

happened next.

**(A) Parwaiz' account**

25. Parwaiz' account, as set out in his witness statement and as supplemented by his oral testimony, is as follows.
  
26. Before the question of purchasing Drinkwater House 1 arose, he had already had discussions with Seema and Javaid about taking on a commercial property venture together and they had considered some properties. When Drinkwater House 1 came up for auction, Javaid and Seema called him to tell him about this. He returned to Middlesbrough and met them at the property.
  
27. Seema and Javaid were interested in purchasing the property but were concerned at the size of the development which (according to Parwaiz) was larger than any other development that they had previously undertaken. They also had not yet decided what to do with the property if it was purchased.
  
28. They went to view the property together. In the car outside the property they discussed the opportunity. Seema and Javaid explained their concern that they did not have the expertise or the time to manage such a substantial renovation project and they asked him to join them as an equal partner to take the venture forward. They asked him whether he would go into partnership with them.
  
29. Seema and Javaid were considering developing the property as bedsits. It was Parwaiz who made the suggestion that it would be suitable for development as

student accommodation and, according to his own evidence, put his foot down that he would not participate unless this was the plan for the development.

30. Seema and Javaid accepted his advice on this and they all agreed to go ahead on this basis.

31. Crucially, Parwaiz says that during this conversation Seema and Javaid agreed with him, immediately to form a partnership.

32. The terms agreed for this partnership were as follows. The three of them would be equal partners with an equal share in the property and the income generated by it. Parwaiz would be responsible on a full-time basis for project managing the build and would take on some of the physical work himself. Seema and Javaid would take on responsibility for arranging the financing and would source and order materials for the development. Parwaiz would not be asked to contribute anything financially – his contribution would be his project management and oversight of the renovation work.

33. Parwaiz does not say that there were any more detailed terms agreed for this partnership at this stage. The terms that were not discussed (even on Parwaiz' account) included some fairly fundamental terms, as I discuss further below.

34. At the time of his witness statement Parwaiz appears to have been hazy about the details for the acquisition of the property. He says that

*"Javaid and Seema purchased Drinkwater House on 9 December 2011,*

*for the sum of £165,000. They rang me immediately after the auction to tell me that they had bought it. We agreed that the property would be held in Javaid and Seema's name, but this was not a lengthy discussion as I trusted in Javaid completely".*

35. This account appears to elide two events, the auction which was on 25 October 2011, and the completion of the contract formed at auction which was on 9 December 2011. Despite the alleged agreement that the property would be held in Javaid and Seema's name, only Seema's name was put forward as the buyer at the auction and in fact the property was transferred at completion to TPL.
36. Over subsequent years further properties and interests in property have been acquired by Seema and Javaid or by TPL or their wholly owned company Jaspia which Parwaiz says should be considered partnership property. An adjacent property at 214-216 Marton Road (which the parties have referred to as "**Drinkwater House 2**") was acquired and was refurbished to add to the student lettings. Later the land behind both properties was redeveloped with a further newly built student accommodation block ("**Drinkwater House 3**"). Some further interests in land have been acquired at the adjacent site; other land has been acquired in Newcastle (two houses, in Darras Road, Newcastle, one of which Seema and Javaid use as their home); and a former department store (Joplings) has been acquired in Sunderland.
37. Parwaiz' case is that he has a one third interest in all of these properties (except for Drinkwater House 1 where he accepts he has only a one quarter interest) as

they should all be regarded as assets of the partnership.

**(B) The account of Seema and Javaid**

38. Seema and Javaid both deny that there was ever any conversation in which Parwaiz was offered a partnership. They say that they agreed to take Parwaiz on as a self-employed contractor and to pay him on a per job basis to undertake labouring and some basic semi-skilled building and decorating work. This, they say, occurred in January 2012, after work had begun to clear out the property ahead of renovation. Parwaiz had, without being asked, volunteered to take part in that work, without asking for any pay, and they, and their business associate, Aminur Choudhury ("**Aminur**") agreed to this, partly because they wanted to help Javaid's brother and partly because they need to pay someone to do this work anyway.

39. They deny that there was any conversation at or outside Drinkwater House 1 prior to its purchase at auction, or that the property was purchased for the benefit of a partnership. They deny that it was Parwaiz' idea that the property should be used for student accommodation.

40. They say that, in fact, it had always been their intent that the property would be purchased in the name of TPL. TPL was an existing company which had already acquired a number of properties for rent. It had been formed by Seema and Javaid alongside Aminur and his wife, Taniya Choudhury (after whom the company had been named). Originally it was owned 50-50 between the two families but this was later amended so that Seema and Javaid held 75% shares

between them and Aminur and Taniya and the other 25%.

41. Because it had always been agreed that TPL would be the purchaser, when the deposit was paid at auction 50% of the deposit was paid by Aminur. They say that prior to the auction funding for the property had been sought in the name of TPL from Lloyds Bank. As explained in more detail below, this did not arrive in time for completion and other arrangements had to be made.

**(C) How should the court choose between the accounts?**

42. The account given by Parwaiz is contradicted by the account given by Seema and Javaid and the court has to choose between these accounts.

43. Of course each of these accounts now relate to events that are almost 10 years earlier. Mr Goldberg has referred me to the very cogent warnings made by Leggatt J (as he then was) in *Guestmin SGPS SA v. Credit Suisse (UK) Ltd* [2013] EWHC 3650 (Comm) regarding the malleability of memory particularly in the context of litigation. Both the matters at stake, and the litigation process itself can have a tendency, even in the most conscientious witness, of colouring and even remoulding the witness's recall of events. The litigation process involves the rereading of old documents and the taking of witness statements in the context of what now are understood to be matters of importance to the litigation but which may not have been regarded as important at the time of the events.

44. In the light of the fallibility of memory, the court needs to be cautious when

approaching witness evidence and should look at this in the broad context of what other evidence is available as regards the existence of the partnership.

#### **4. THE EVIDENCE THAT THERE WAS A PARTNERSHIP**

45. In support of his case that there was an agreement for a partnership, Parwaiz has, in addition to his own testimony, adduced evidence from a number of witnesses, and two audio recordings which he invites the Court to conclude include admissions by Seema and/or Javaid relating to the existence of a partnership.

##### **(A) Parwaiz' witness evidence**

46. Parwaiz himself was the first witness that the court heard. He was not precise as an oral witness and would change position on details of his evidence, although he did stick unshakeably to the main points of his allegations.

47. He admitted that in some ways his memory was not sharp on the events in question, and the court was taken to various points where his story changed between his letter before action, his Particulars of Claim, his Reply to Defence and his witness statement. For the most part these were points of detail or omissions to state matters on which he later relied, but this did include a lack of consistency on some major points including the amounts of money he had been paid and the date on which he says an agreement for partnership had been concluded. When caught out on some matters he explained that he was "*confused, angry and humiliated*" when drafting his Reply to Defence, even

though this was nine months after he was sacked.

48. He, clearly, is not a businessman and he displayed little understanding of the nuances of business, for instance the differences between a partnership, a shareholding or a directorship in a company, a share of gross revenue or a share of profits.

49. It also casts a great deal of doubt on his credibility that by his own admission he had either treated other important documents casually - not reading before signing tax returns that he submitted or allowed to be submitted to HMRC and, according to his own, clearly stated, evidence, lying when making formal declarations to obtain an IVA and in signing to witness a document where he said that he had not witnessed the document being signed.

50. However, I do consider that he was sincere in his belief that he was claiming something that he had been promised and that his sense of grievance and betrayal is genuine and unfeigned.

51. Two of the witnesses whom Parwaiz called were his sisters, Zahida and Parween.

**(B) Parween's witness evidence**

52. Parween gave evidence in her witness statement that included the following:

*"I was aware of Javaid, Parwaiz and Seema's plan to go into business together shortly before they purchased Drinkwater House in 2011. Javaid told me that if he,*



*Seema and Parwaiz went into business together, that would avoid Parwaiz leaving Middlesbrough to get a job elsewhere."*

53. She went on later in the witness statement to say:

*"One day around October 2011, Parwaiz, Javaid and Seema came to my house and told me that they had been looking at properties together to buy. I knew they went to see quite a few together before they eventually decided to buy Drinkwater House. I remember when Parwaiz, Javaid and Seema told me that they had bought Drinkwater House. This was around October or November 2011. They mentioned there was a financial problem that they were dealing with and it would be sorted in the next few days. Seema and Javaid also said to me that the three of them have an equal share in Drinkwater House.*

*Seema, Javaid and Parwaiz said that Parwaiz did not have any money to put in for a share in the business. So his contribution to the business and the development was the physical work. They would all however have an equal share in it. Javaid and Seema had control of the money and Seema would do the paperwork."*

54. This account does not actually include any mention of a partnership, as opposed to a more nebulous concept of going into business together and having "*an equal share*".

55. Parween claimed not to be taking sides, and that she considered herself an honest broker between her two brothers. That claim is open to doubt. She had generally through her life been closer to Parwaiz than to Javaid. She had refused to attend Javaid's wedding and she and Javaid had been estranged for a number of years (although the precise number of years was disputed) over a family matter relating to her conduct around the death of Seema's father. It seemed to me that she now clearly was taking Parwaiz' side and was acting from the belief that he had been hard done by. This would explain her general

demeanour, which came across as slightly nervous and defensive, and her role in making one of the secret recordings that are discussed further below.

56. During cross-examination, it became clear that Parween's memory of the events in question, and in particular of the conversations in October or in October/November 2011 related above, was not as clear as the impression given in her witness statement and that her understanding of the partnership arrangements did not, as was suggested in the witness statement, all derive from those conversations.

57. One point in her witness statement was clearly wrong. She claimed that before the events leading to this dispute "*Javaid, Parwaiz and I had always been close*" but omitted to mention that there had been a long period commencing on Boxing Day 2007 and by her own admission lasting until 2010 (and in the account of Javaid and Seema lasting until May 2012) during which she had been estranged from Javaid, who had found unacceptable her conduct towards Seema around the time of the death of Seema's father.

**(C) Zahida's witness evidence**

58. Zahida gave evidence in her witness statement pertinent to the question of the formation of a partnership as follows:

*“Around November 2011 Javaid, Seema and Parwaiz came to the house together and said they had some good news. They were all really excited. They explained that they had bought a property (now called Drinkwater House) and were going into a partnership together to develop it. They said that they would be working together on it and they would all be equal partners”.*

59. Seema and Javaid deny that any such meeting happened at this time and that they said any such thing at any time.

60. Although Zahida claimed not to be taking sides, again, my impression was that, in fact, she had sided with Parwaiz. In giving her oral evidence, her general demeanour could be described as combative. She agreed that she had been "*upset and angry*" when she heard that he had been sacked. She said at one stage "*I would do anything to help my brother*".

61. When taken through her witness statement in cross examination she remained unclear about the date of the meeting in question and generally, I find it difficult to accept that her evidence was based on a clear unprompted recollection of events in question. I consider that it is more likely that it was coloured by her belief that her brother had been treated unfairly, and her acceptance of his side of the story.

62. In addition to calling two of his sisters, Parwaiz called as witnesses three of the contractors with whom he had worked at various stages.

**(D) The evidence of Neil Worton**

63. The first was Mr Neil Worton, who had been a site manager involved in the development of Drinkwater House 3.

64. In his witness statement he referred to one of his first meetings with Parwaiz

(whom he referred to by his familiar name "Naz") and Javaid (whom he referred to by his familiar name "Jav") as follows:

*"Naz brought Seema and Jav to the site where I was working at Aislaby, to look at the build and to check out our quality of workmanship and how we went about things. This visit was towards the end of 2015. At this meeting Naz introduced Javaid and Seema to me as his business partners."*

65. Other statements he made that are pertinent to the evidence of the existence of the partnership include the following:

- (a) Noting that Parwaiz was sometimes at the building site on Saturdays, he said that *"I got the impression that Naz could come and go as he pleased. This reinforced my understanding that he was a partner and equal to Jav and Seema."*
- (b) *"Seema, Naz and Jav always came across as being together. They were like the "Three Musketeers". I got the impression that this was Naz, Seema and Jav's project and while Seema was the brains behind it, Naz helped bring things together and made sure everything was getting done."*
- (c) *"Naz always talked to me as if Drinkwater House was his, Jav and Seema's project."*
- (d) Describing a car journey he took with Parwaiz in December 2017 he said *"I had a chat with Naz in the car going up to Joplings and he told me a bit about his background. He said that he had worked in the prison service and had a pretty good job there, but then he had been*

*approached by Seema and Jav about becoming a partner and they had talked to him about what they were doing with the developments. He said he decided to leave his job at the prison service and go for it with Jav and Seema when they approached him."*

- (e) He mentions a conversation with Javaid where Javaid said "*how happy he was that Naz had met a new girl, picked his life up, and was doing the Drinkwater development with them.*"

66. During cross-examination, Mr Worton answered questions straightforwardly and appeared relaxed. Whilst, no doubt, he has some goodwill towards Parwaiz, there is no reason to think why he would be a biased witness.

67. When challenged on his ability to recall the precise words used in conversations, which at the time would have had little import to him, he was honest in admitting that he would not necessarily have remembered which words were being used.

68. From his role on the jobs, Neil Worton would have had more interaction with Parwaiz than with Seema or Javaid, and I think it is clear from his evidence that whatever understanding he picked up regarding Parwaiz' status within the project derived principally, if not exclusively, from what Parwaiz had told him. He appeared to agree that had he known various facts in 2015 which Mr Goldberg explained to him (such as the fact that the properties were owned by TPL, and that Parwaiz was subject to an IVA) he might not have formed the same impression.

69. In my view, whilst Mr Worton's evidence may provide some support for the proposition that Parwaiz thought, or at least was telling people, that he was a partner or had had some kind of ownership interest in the project in 2015/2016, it does not help establish whether this belief was correct or well-founded.

**(E) The evidence of Danny Sykes**

70. The second witness that the court heard was Mr Danny Sykes who was a plumber who worked alongside Parwaiz during the refurbishment of at Drinkwater House 1, commencing in January 2012. He says that:

*"Parwaiz worked alongside us as an equal member of the team. He was easy to get along with and did everything we asked him to. He worked very hard. He was the first point of call for us and we went to him if there was anything we needed, like materials."*

71. Pertinent to the partnership issue, he said the following in his witness statement:

- (a) *"At one point whilst I was working at Drinkwater House, Parwaiz mentioned that he, Javaid and Seema were partners (although I do not recall specifically when he said that). Seema said to me as well on numerous occasions that she, Parwaiz and Javaid were partners (although again, I do not remember specific dates). One time, she said it whilst we were sitting in the car park at Drinkwater House having a sandwich. Someone also mentioned another person who was involved in the project at some point. I do not remember the fourth person's name, but I think he worked for British Telecom before investing in Drinkwater*

*House. I did not understand the legalities of how the partnership worked or where the money came from – had I thought about it, I think I would have assumed the development was funded by bank”;*

- (b) Recalling a conversation towards the end of the project where he had commended Parwaiz' work he says that "*Seema replied "yes well we're partners" and said something along the lines of "hard work never killed anyone"*".

72. In cross-examination it became apparent that Mr Sykes' recollection of these various conversations was not as clear as one might assume from his witness statement and that he could not promise that he was accurate in the terminology used, for example whether a reference was to "partner" or to "business partner".

**(F) The evidence of Danny Oliver**

73. The next witness heard was Mr Daniel Oliver, a builder who had worked on the Joplings project.

74. Daniel Oliver went to Drinkwater House in around 2012 to price some work (although he did not get the contract for the work on Drinkwater House 1). On that occasion he explains how he met Seema, Javaid and Parwaiz who introduced themselves together and referred to themselves as "we". He says that he "*understood they were all partners*" and that he "*got the impression that Parwaiz was the one who co-ordinated staff as the workmen on the site were approaching him with their questions. He appeared to manage the site and knew about the technical side of the development*" and he confirms that "*I spoke*

*with all three of them at the meeting and discussed the job”.*

75. His next interaction was about five years later in 2017 when he was asked to quote to provide services in relation to the development of the Joplings building in Sunderland. In relation to this project, his dealings were with Seema and Javaid. During the course of this project, he recalls having a couple of conversations with Seema and Jav about Parwaiz which he summarised as follows:

*“Jav [i.e. Javaid] and Seema said that they had set up the business with the three of them working together but now Parwaiz was not really doing much. Jav complained that Parwaiz was no longer chipping in”.*

76. He says that he became aware that, as a result of their dissatisfaction with Parwaiz work as the person undertaking maintenance at Drinkwater House they were proposing to dismiss Parwaiz as an employee. He advised them (based on his own experience of having been in business with his brother and the termination of that business relationship) to try to make sure that they parted amicably. Seema and Javaid said that there was no need for them to give Parwaiz anything. He clarified in his oral testimony that he asked whether Parwaiz was just an employee and they said yes.

77. In 2019 Seema and Javaid sought some assistance from Mr Oliver's wife, who had expertise in human resources, in relation to the drafting of the letter terminating Parwaiz' employment and Mr Oliver was present when the letter was being discussed. He tried on that occasion to dissuade them from falling



out with Parwaiz, although interestingly, if at that time he thought they were in partnership, he did not raise this as a matter to be taken into account.

78. He related how he had been told that, after that letter had been sent, Seema and Javaid had told him that Javaid's and Parwaiz' sisters had insisted on meeting to try and sort things out and that a sister had in insisted that Parwaiz had been an equal partner and "*owned one third of everything*" and says:

*"I asked Jav and Seema why Parwaiz and their sisters would think Parwaiz owned a third of the business. Seema said her and Jav had told Parwaiz he was a partner. She also said that Jav and Parwaiz's sisters had been there when this her and Jav had referred to Parwaiz as an equal partner..."*

79. The reference in this account to "one-third" is a strong indication that Mr Oliver was not quoting Seema on this occasion, since if she had been relaying what was claimed at the meeting, she would have said that the sisters were claiming 25% of the business, as appears from the transcript of both meetings. The figure of "one-third" is more likely to have come directly from Parwaiz and may provide an example of how memories of different accounts by different people may become mixed up within a person's recollection.

80. Seema and Javaid deny ever having had such a discussion about Parwaiz with Danny Oliver.

**(G) The evidence from the first recording**

81. Two recordings are relied upon by Parwaiz. Both were made secretly at informal meetings between one of Parwaiz' sisters and Seema and Javaid.

82. The first recording was made on 12 February 2019, shortly after Parwaiz had been dismissed as an employee. The circumstances were that Parween, having agreed to this course of action with Parwaiz, dropped in on Seema and Javaid at the office at Drinkwater House. Whilst this was not a formal meeting, the conversation quickly turned to Parwaiz' dismissal. Parween explained that Parwaiz had showed her the letter dismissing him as an employee.

83. Much of the discussion was taken up with Javaid and Seema justifying Parwaiz' dismissal on the grounds that he was not performing his role adequately. At that time his role was to be in charge of maintenance at Drinkwater House. Javaid in particular wanted to counter any suggestion that they had treated Parwaiz unfairly and was keen that Parween should understand what monies had been paid to Parwaiz, or on his behalf.

84. Parween, for her part, appeared keen to bring up the question of what she referred to as Parwaiz' "25% share", raising this on several occasions. She first brought this up as follows:

*"But Jav all I can say right from the beginning you have gone into it together, you know all three of you, four of you, from the beginning when you started up you said you would make a go of it, this was quite a few years ago, but I can clearly remember that you said that you, Parwaiz,*

*and you Seema and I don't know if there was somebody else but the four of you 25% share each".*

85. Seema, immediately denied saying that. Javaid also questioned the statement saying, "*The 25% share?*"

86. Parween elaborated:

*"That happened in our house, you said that there was four of you and it was 25% share, a share is a share, on top of that like whatever wages he was getting he was getting, like I don't know how much he was getting or not getting, Jav. many times in our house in front of you Seema and Mazhar has been there as well you said whatever money he will get you will get it for the rest of his life he can work that he doesn't have to work he was going to get that payment".*

87. Javaid again questions "*This 25% share?*"

88. Parween went on "*You stopped him Seema, you said, "aw he can't say forever he can't say always". I clearly remember that was Seema's words and you turned around and said no he will always get that and I will be honest with you even, that was in fact was probably the time when that Carrie thing happened, Jav, that's when that happened and you said that Seema in our house and Mazhar was there and before that like as if you were supposed to be equal when you started, like I know you put your money in Jav."*

89. The reference in this paragraph to "*that Carrie thing*" places the conversation referred to there in 2016 or 2017 and is at odds with Parween's introduction of the subject (which I have set out at [84]) where she says she is talking about a conversation "*at the beginning*".
90. The recorded conversation went on for much longer than this and Parween made various further attempts to introduce the notion that it had been agreed that Parwaiz would be given a 25% share.
91. It is difficult to read anything said at this meeting as being an admission by Seema or Javaid that there had been a partnership. The word partnership was not used at any time, only a reference to a "share". Seema at no point acknowledged any agreement to provide such a share. Javaid denied that being any sort of a share at various points saying "*There is no 25%*" and at one point even more emphatically "*he has got no fucking shares he never had a share that was a gesture of goodwill but what goodwill has he got? He has been against me from day one*".

**(H) The evidence from the second recording**

92. The second recording was made on 25 February 2019, a couple of weeks after the first recording. The circumstances were that Parwaiz requested this meeting to be held at Drinkwater House, it seems in order to press his claim for his "share". Those present included Parwaiz, Sadie, Parween (whom Sadie had asked not to come) Seema and Javaid. The meeting was recorded secretly by Parwaiz.

93. During the meeting Parwaiz made various demands to receive his 25% share.

Again, Seema and Javaid denied there being any 25% share although at one point Seema said:

*"we were still paying you whatever we could because we knew you didn't have nothing and we made sure that you had gone sort of self employed and got all your papers sorted because of the debt and I actually said to you, I said, you know that while you are working with us we will look after you we will pay you your debt and give you 25% of whatever we take, we didn't say ownership of all the assets. He would have had a share of profits as long as he worked with us".*

94. It is unclear what point of time Seema was talking about here. Whilst the context in which Seema says this appears to refer to the very early stage, when Parwaiz had been made redundant, it cannot have been before Drinkwater House 1 had been acquired since Seema refers to this happening after she had discussed with Javaid the fact that Parwaiz was "*working really hard*", by implication on the Drinkwater House development and that they were not taking any money out of business and were already paying him whatever they could.

95. Later in the conversation Javaid again denied any share in the business but said, "*He [Parwaiz] would have had a share of the profits as long as he worked with us.*" When Sadie asked what was meant by "the profits" Parwaiz explained this as "*The money that was coming in*".

96. A little further on in conversation, Seema said that she had said to Parwaiz:

*we will give him 25% of whatever we were taking but we were not taking any wages out of here".*

97. It may be noted that none of these formulations referred to a partnership share and that a "*share of the profits*" (which normally would be understood as income less expenditure), a share of "*of what was coming in*" (which would normally be understood as gross revenue) and "*25% of whatever we were taking*", which suggests rather an approach of equal distributions would all give rise to very different results.

98. Each of these recorded conversations can be characterised as a heated family argument rather than any sort of a forensic exposition of the business arrangements, and I find it difficult to draw anything from them in relation to the partnership issue other than an understanding of the passion which both sides were bringing to the issue and the possibility that Seema and Javaid acknowledged that they may have said something to Parwaiz at some point about giving him some income whilst he worked for them, out of the profits or turnover. This point is considered further below in relation to the proprietary estoppel claim.

**(I) Other evidence indicating a partnership**

99. Other than the witness evidence mentioned above, and whatever admissions can be gleaned from the conversations recorded on tape, the only other evidence for the existence of partnership that has been brought to the court's attention related

to the fact that Hillman and Co, the accountancy firm engaged by Seema, Javaid and TPL, made various references to their responsibilities as "partners" when writing to the directors of TPL to set out the terms of its engagement.

100.I discount this as evidence for an intention to create a partnership. It is clear on the face of the engagement letter, and the letter enclosing it that the persons it was addressed to work being addressed as directors of TPL, not as partners. The references referred to were all in the standard form of engagement letter, rather than personalised to the parties, and I accept the evidence of Ian Wardman that he asked his secretary to prepare a standard form of engagement letter, she used the wrong standard form and he did not notice this when he signed it and sent it out.

101.In any case, it is difficult to see how this letter helps Parwaiz' case since the letter is not addressed to him and he is not mentioned as a possible partner.

## **6. THE EVIDENCE AGAINST THE CREATION OF A PARTNERSHIP**

102.The evidence directly contradicting the proposition that there was a partnership includes the witness testimony of Seema and Javaid, who deny the account that Parwaiz gave of the formation of the partnership and some other witness evidence that they adduced.

### **(A) Seema's witness evidence**

103.Seema gave a very detailed witness statement and was cross examined on this at

length.

104. Overall she came across as a very credible witness. She remained calm throughout and answered questions carefully and clearly. She was clear and consistent in her evidence and exhibited both a strong grasp of the facts and of the court process. She was wary of leading questions and perhaps sometimes a little prone to deny everything but overall her account was both internally consistent and was consistent with what documentary evidence was available.

105. Seema denies that there was any meeting with Parwaiz ahead of the auction when Drinkwater House 1 was purchased and explained in some detail her discussions with Aminur in relation to their agreement that TPL should acquire the building and her attempts to arrange finance with Lloyds, and backup finance with her brother Anil.

106. The details that she gives are consistent with what documentation survive from that period. These include:

- (a) an email from her to Aminur drawing Aminur's attention to the opportunity to purchase Drinkwater House ahead of the auction;
- (b) evidence that Aminur did indeed pay one half of the deposit at auction;
- (c) a valuer's report addressed to Lloyds Bank and headed "Miss S Jagota – Jagota/Tanita properties Ltd Drinkwater House, 210-212 Martin Rd, TS42T" showing that a valuer inspected the property on behalf of Lloyds Bank on Tuesday, 1 November 2011;
- (d) the Land Registry documentation showing that the purchase went ahead



- in the name of TPL, and bankruptcy search is made against the directors and shareholders of TPL (and not against Parwaiz); and
- (e) a copy of an email sent to her brother Anil thanking him for his assistance in the financing which was completed that day.

107. In her witness statement she describes the origins of Parwaiz' involvement in the project as follows:

*"In late 2011 and shortly after Taniya Properties Ltd had purchased Drinkwater House, I was telephoned by Parwaiz in the small hours of one morning. Parwaiz Nazir was not someone I really knew or was close to but when he telephoned me in the small hours of one morning and at a time when I understood he was still working in Sheffield, he told me that he was apparently standing in the cemetery, was deeply depressed, and told me he was in a great deal of debt."*

108. She says later:

*"Following the completion of TPL's purchase of Drinkwater House in December 2011 and very shortly after Parwaiz had telephoned me very early one morning, we visited Jav's father at his home in 121 Southfield Road.*

*When we visited Parwaiz was present and, as I understood matters at the time, he was still working and living in Sheffield and was visiting his father every weekend. We told members of the family present that we have bought Drinkwater House which was very near to Southfield Road.*

*At the time of this visit Parwaiz mentioned that Zida [Zahida] had plenty of money if we needed it and Zida was also put on the spot and reluctantly said yes .....” However, we did not ask Zida for the money, as we had already arranged our funds and did not discuss the ins and outs of our business with them....”*

109.*Parwaiz did not tell us that he wanted any involvement in our business, nor did he tell us that he was back home and out of work. Parwaiz and other family members did not know how and when we purchased the Drinkwater House until after the event has occurred but from the beginning of 2012, Parwaiz began visiting the site.*

110.Seema's account (which Javaid confirms in his own witness statement) contradicts the accounts of Parwaiz and Zahida, not only in its description of what was said at the meeting about the three of them going into partnership, but also in relation to the account of the timing. Seema puts this conversation after the completion of the purchase on 9 December 2011. Parwaiz and Zahida put the conversation in a period after the auction date of 25 October 2011 but before the completion date of 9 December, during which there was concern that Lloyds Bank had not come through with its informal promise of funding and the deposit was paid might be lost. Whilst I find Parwaiz and Zahida's explanation more likely as regards this point regarding timing, I do not think that this necessarily means that their account of the rest of what transpired at that meeting is to be preferred.

111.Later in her witness statement she says: "*Parwaiz began to visit site and like my cousin's husband and Jav's best friend, Paul Coates, whilst on site he would begin doing some clearing and waste removal work*"....

112.She goes on to explain that she came to realise that Parwaiz was no longer working in Sheffield but in fact had been made redundant and was now living in Middlesbrough again. Knowing that he was "*down on his luck*" and recognising that he was working very hard on the site, she discussed with Jav and with Aminur the proposal that they should start paying Parwaiz for his work on the basis that he would work as a self-employed contractor. As a result "*I told Parwaiz that whilst he was working with us in the way he was we wanted to pay him for his work until he found alternative employment*". She says that Parwaiz was initially reluctant saying that he was "*just passing the time*" but Seema said that he was doing work she insisted on paying him, pointing out that if they were not paying him they would have to pay someone else to do the work he was doing. She says that "*Parwaiz agreed to be paid and in fact had tears in his eyes*". She dates this conversation to 12 January 2012, which is the date of the first cheque that was paid to Parwaiz and which she says was paid in course of this conversation.

113.She went on to explain in her oral evidence how this would be on a per job basis rather than on the basis of any set rate per hour.

114.Seema flatly denies any meeting with Parween in October, November or December 2011 and indeed says that she did not meet Parween until some

months later when she went into hospital for an antenatal scan and Parween was there.

**(B) Javaid's witness evidence**

115. Javaid, in his witness statement and his oral evidence, supported Seema's account that there had been no conversations with Parwaiz before the property had been purchased and that there was never a partnership. He also denied the conversations reported by the other contractors who had acted as witnesses where Parwaiz was described as a partner.

116. He was not as impressive as Seema as a witness. He did not have her grasp of detail and he came over as defensive and did not always understand the subtleties of the questions. Some of his denials, seemed overstated. These included his denial that he had ever been on more than civil terms with Parwaiz (whilst in fact he had gone on holidays with him and they had gone to social events together) and his denial that he had discussed Parwaiz with Danny Oliver at all (even at the point when Danny Oliver's wife was being consulted on the dismissal letter drafted for Parwaiz).

117. I am also mindful that, as one of the defendants, he had remained in court whilst the other witnesses I have mentioned above, including Seema had given their evidence and it is difficult to tell how far what he recounted was his own recollection or was based on what he had heard Seema and others tell the court.

118. In addition to their own testimony, Seema and Javaid called further witnesses.

**(C) Aminur's witness evidence**

119.Their first witness was Mr Aminur Choudhury.

120.He confirmed the account given by Seema and Javaid regarding the establishment of TPL and the fact that this was an established business with property investments before the Drinkwater House opportunity began. He confirmed that he had been involved in considering the Drinkwater House opportunity ahead of the auction and had agreed that if they were successful at auction this would become an investment of TPL. He confirmed that he attended the auction with Seema and Javaid and had paid half of the deposit. He explained his own participation in the business after that.

121.As regards the involvement of Parwaiz, he confirmed that he had never been made aware of any interest or involvement that Parwaiz had in the venture and that Parwaiz was never present at their meetings or at any of the auctions they had attended to buy properties, including the auction at which Drinkwater House 1 was purchased. He says that he first became aware of Parwaiz in early 2012 when Seema and Javaid explained that Parwaiz was in financial difficulty having lost his job and he was asked whether it would be all right if Parwaiz worked on site as a labourer and if he was paid for the work that he did. He readily agreed to this proposal. He says that it was agreed (presumably between him and Seema and Javaid) that Parwaiz would be a self-employed contractor because at that stage the business was spending rather than making money and they did not want to take on the responsibilities of employer.

122.Later in his evidence he gave an account of his relationship with Parwaiz once he began to work at Drinkwater House (around 2018, when he agreed to work full-time in the accommodation business as a manager. He says that:

*"it became clear that Parwaiz did not like or get on with me and I knew from Jav that his relationship with his brother and family was a difficult one.*

*Parwaiz seem to resent that I was in a position of authority over him even though I explained to him that I was one of the owners of the business, how Seema, Jav and I had agreed to create Taniya Properties Ltd, and to buy Drinkwater House, and how my wife and I had financially contributed to the purchase".*

123.It is notable that there has been no suggestion that Parwaiz ever sought to counter such a statement by himself asserting his partnership interest. Aminur says:

*"At no stage did Parwaiz either before or following my beginning to work with him daily ever suggest that he was involved in or was an owner of the business at Drinkwater House or that he ever had any involvement in the business beyond the semi-skilled labouring work he had carried out from early 2012 and as part of his subsequent employment as a maintenance man."*

124.Aminur also confirms that Seema and Javaid never suggested to him that

Parwaiz had had any such involvement and that he knows of no such involvement in the ownership of the business or its property from his own involvement in TPL and Drinkwater House.

125.Of course, in considering Aminur's evidence, I should give due weight to the fact that, as an owner of TPL and being employed in the Drinkwater House business, Aminur has an interest in the outcome of this litigation. He was not overly impressive as a witness – he did not always understand the subtleties of questions put to him. Nevertheless, I find the overall content of his evidence credible, and certainly I find it difficult to believe that he would give evidence in the way that he did if in fact he knew (or even suspected) that Seema and Javaid had accepted Parwaiz as a partner, cutting across the relationship that he had with them as co-shareholders in TPL.

**(D) Ian Wardman's witness evidence**

126.Ian Wardman is an accountant (although he does not have a formal accountancy qualification) and a trusted adviser to Seema Javaid. Mr Wardman worked both in his own practice (branded NE Consultants) within which he provided tax and accountancy advice generally and within a larger firm called Hillman & Co. which was used in relation to the preparation of accounts.

127.He had been consulted about, and had detailed knowledge of, the financial affairs of Seema, Javaid TPL, and Jaspia and describes himself as acting effectively as their finance director.

128.He was able to confirm the arrangements relating to the establishment of TPL, having advised on this when Seema was first considering going into business with Aminur. He was not, directly, consulted however in relation to the acquisition of Drinkwater House, being involved in another client's business at that time.

129.However, he did travel to Drinkwater House in early 2012. He recalls that on his first visit he was introduced to Parwaiz and was told that he was helping Seema and Javaid to clear the property out. When asked how he would have reacted if he had heard Parwaiz described as a partner he says that he would have "*had a heart attack*" such would have been his degree of surprise. He was quite sure that he would have been consulted if Seema and Javaid were considering bringing him into the ownership structure, in the same way that they consulted him when deciding how to bring Aminur and his wife into the ownership structure.

130.If he had been consulted, he says that he would not have advised a partnership (even one holding shares in a company) because of the tax treatment. If he had been asked how to involve Parwaiz in an ownership role within the business he would instead have suggested a shareholding interest in TPL. This in his view was better from the viewpoint of tax and also would have the flexibility that if there are any special terms (such as that Parwaiz was to participate in income but not in any capital asset) these could be written into the terms of the shares.

131.He was also asked whether it was correct that he would have advised that



because Parwaiz was deeply in debt in 2011, could not be a director or shareholder (as far as a potential lender's involvement was concerned) as this would render it unlikely that the bank would lend to him. He said that he did not think that this was the case – the bank would base their lending decision on the prospects of the development and on the security and personal guarantees offered. If these requirements were met the bank's lending criteria, they would not be particularly troubled if there was another shareholder involved who was not able to offer any useful additional security.

132. He was clear that, throughout the time he had known Seema and Javaid, at no stage had they ever told him that Parwaiz was in any way involved in or part of their business or an owner of any properties.

133. Mr Wardman, appeared to me to be truthful and careful in his answers and to have a good grasp of the facts at hand. He was willing to say when he could not recall particular matters. He appeared before the court through a remote link, as he was self-isolating ahead of an imminent operation, but this did not affect his ability to give his evidence or Ms Toman's ability to cross-examine him thoroughly. He remained generally unflustered but occasionally ran out of patience when he felt the same question was being asked in different ways too many times.

134. As well as confirming the corporate arrangements that were used by Seema and Javaid, he was able to give evidence about two other matters which became important during the trial: the circumstances surrounding Parwaiz' IVA and the

arrangements for the submission of Parwaiz' tax returns. He also provided the explanation I have already mentioned concerning the production of an engagement letter by Hillman & Co which, although addressed to the directors of TPL included references to their responsibilities as "partners".

**(E) Neil Thompson's witness evidence**

135.Neil Thompson was a solicitor who had assisted Seema and Javaid and the limited companies that they had been involved in for seven or eight years. This included representations in relation to the acquisition of various properties and the financing of those acquisitions.

136.He had been involved in particular in relation to the preparation of the shareholders agreement relating to TPL involving its four shareholders, Seema, Javaid, Aminur and his wife Taniya.

137.He gave evidence that he never received verbal or written instructions from anyone other than the directors of TPL or Jaspia. He had never personally dealt with or met Parwaiz.

138.He pointed out that, had it ever been suggested that any other person or company had enjoyed an interest in the properties he was assisting TPL and Jaspia to purchase on mortgage, he would have been required to report this to the lenders involved (or their representatives where the lenders were separately represented).

**(F) Mark Taylor's Witness Evidence**

139. Mark Taylor worked alongside Parwaiz at Drinkwater House commencing after the Drinkwater House 1 redevelopment had been completed. He originally worked as a self-employed contractor.

140. In 2013 he was introduced to Aminur as being one of the four people who owned Drinkwater House and on various occasions he worked alongside Aminur and alongside Parwaiz, with whom he got on well. His work varied from labouring works to more office-based work.

141. His evidence was that at no time did Parwaiz or anyone else ever suggest to him that Parwaiz was an owner of the building or up business. Apart from the fact that he knew that Parwaiz was Javaid's brother he considered that Parwaiz was treated in the same way as he was in being given instructions on carrying on what they were asked to do.

142. Mark Taylor seemed a little nervous when giving his evidence but seemed to be anxious to report accurately rather than to get a particular point across. Of course I must bear in mind that he was employed by Seema and Javaid (and it seems was living in accommodation that they have provided) but he did not agree that he was dependant on them.

**6. SUMMARY OF THE EVIDENCE ON THE PARTNERSHIP QUESTION**

143. In summary, the evidence in favour of Parwaiz' contention that there was a

partnership comprises:

- (a) his own witness evidence;
- (b) a statement by Parween that Seema and Javaid had said to her that the three of them have an equal share in Drinkwater House;
- (c) a statement by Zahida that Javaid, Seema and Parwaiz said around the time of acquisition of Drinkwater House that *that they would be working together on it and they would all be equal partners*”;
- (d) Neil Worton's impressions of the relationship, which appear to have been principally or exclusively derived from what he heard from Parwaiz;
- (e) Danny Sykes' evidence that Parwaiz had told him that he and Javaid and Seema were partners and that Seema had told him on numerous occasions that she Parwaiz and Javaid were partners.
- (f) Danny Oliver's evidence impression that they were partners, but he had been told by Javaid and Seema that *"they had set up business with the three of them working together"* and his recounting of an explanation that he received from Seema's that she had Javaid had told Parwaiz that he was a partner and had described him as an equal partner in front of his sisters.

144.The witness evidence in favour of Seema's and Javaid's contention that there was no partnership comprises:

- (a) their own witness evidence;
- (b) statements by Aminur and Mark Taylor, each of whom worked with

Parwaiz who claim at no time did Parwaiz, Seema or Javaid make any claim that they were partners. This was the case in relation to Parwaiz even in circumstances when he was claiming that he was being badly treated and one might have expected him to state that this was no way to treat a partner;

- (c) the statements by Ian Wardman, who had intimate knowledge of the corporate arrangements, and by Neil Thompson, the solicitor handling matters for the last seven or eight years each of which have given evidence that they were unaware of Parwaiz as having any interest in the business or in any of the property.

145.The evidence that may be derived from the recorded conversations does not assist Parwaiz much in establishing a partnership. At most, it is evidence of an admission by Seema and Javaid that they had represented to Parwaiz that he would get 25% of "profits" measured on some unspecified basis.

146.If we turn to what documentary evidence is available, then there is not a shred of evidence that goes towards establishing the existence of a partnership. There are no partnership accounts. There are no minutes of partnership meetings. There are no letters written in the name of the partnership. No one had a business card printed describing them as partner. No bank account was opened in the name of partnership. There is no suggestion that any notice was affixed at any partnership premises setting out the names of the partners.

147.What documentary evidence there is points firmly away from the existence of a

partnership.

148.First, the court has seen various of the tax returns submitted by Seema and Javaid for a number of the years in which a partnership is alleged to have existed. None of these tax returns include any return in relation to partnership income or expenditure.

149.Secondly, the court has seen tax returns submitted on behalf of Parwaiz which do not include any return in relation to partnership income or expenditure. Parwaiz seeks to explain these on the basis that they were prepared by Seema and the accountant instructed by Seema and that he signed them without reading them. This does not seem a very credible explanation, particularly if he says that Seema (and in Parwaiz' contention Ian Wardman) knew of the partnership and were deliberately hiding it from HMRC. For the record, the court rejects this explanation and any suggestion by Parwaiz that Seema and Mr Wardman were colluding to mislead HMRC.

150.Thirdly, the court has seen the documentation signed by Parwaiz when he applied for an IVA in 2015. This does not disclose any interest in a partnership. Parwaiz explains this by saying that he was deliberately lying, and furthermore was doing so on the explicit instructions of Seema and of Ian Wardman. This is a very serious accusation and it is strenuously denied by Seema and by Ian Wardman. It is difficult to see what either of them would gain this by advising Parwaiz in this way and I find the accusation completely unbelievable.

151. I am not disposed, however, to believe that Parwaiz has made these accusations out of malice or is deliberately telling an untruth. I think it is more likely that he has confused things that Seema may have said to him to explain why she and Javaid would not make him a partner (or give him any equivalent co-ownership standing) and taken these as statements why he should hide the fact that he was in fact a partner.

152. Fourthly, the documentation relating to the ownership of the properties, and what documentation the court is seen in relation to the various borrowing facilities entered into, is all entirely consistent with Seema and Javaid's contention that the properties were owned within Jaspia and TPL and that Parwaiz was not a shareholder in those companies.

153. Whilst there are some difficulties of detail in some of the accounts on both sides, overall I consider the witness evidence produced on behalf of the defendants to be more reliable and more cogent than that produced on behalf of Parwaiz. Certainly when the documentary evidence is taken into account as well, I can see no way in which the court could conclude that Parwaiz had discharged his burden of proof to establish the existence of an oral partnership.

154. In addition when I consider the inherent probability of the accounts on either side being true my conclusions point in only one direction.

155. First, I find it difficult to accept that in October 2011 Seema and Javaid would find attractive the proposition that Parwaiz describes. Under this proposition

they would bring to the project their considerable experience of managing all aspects of property redevelopments and they would be expected to provide the equity funding personally and to accept personal liability by means of a personal guarantee in relation to the bank funding whilst Parwaiz would bring only his lower-level experience in relation to basic building skills – skills that could easily be purchased at a much lower cost. Whilst Parwaiz describes his contribution as "project management" it was clear that what project management he was to provide was limited to a certain degree of dealing with practical matters on site such as telling Seema when a new delivery of materials should be ordered. Most of the important elements commonly understood as project management, such as arranging and monitoring budgets, producing specifications and plans, selecting contractors and specifying the work for them to do, paying contractors and scheduling the works programme were undertaken by Seema with assistance from Javaid.

156. Secondly, if Seema and Javaid had intended to provide Parwaiz with an equal interest it is difficult to understand why they would have chosen to acquire the property via TPL, which already held property assets which Parwaiz would not have contributed to and in which another family held a 50% interest. If there were reasons why it needed to be done through TPL, it is difficult to understand why they did not take professional advice on structuring the arrangements to involve him as a shareholder. Indeed it seems inherently improbable that they would have entered into any partnership arrangements without taking tax advice from Ian Wardman, which they would normally do. Neither is it likely that they would enter into a partnership without any attempt to codify and to document



the partnership arrangement, as evidenced by the care they took to ensure that there was a proper shareholders agreement when they were dealing with Seema's close friend Aminur.

157.Thirdly, it seems inherently improbable that, despite the care that it is understood that Seema taken in her business dealings, her degree-level knowledge about business administration and her existing experience as having been in a partnership and in a company, on this occasion she had been content not to clarify all the normal matters that would be clarified in a proper partnership arrangement. The terms that were not discussed (even on Parwaiz' account) included some fairly fundamental terms, as well as more minor things such as choice of bankers or names on bank mandates. To take a few important examples, Parwaiz does not say that anything was specifically agreed about:

- (a) the scope of the partnership – was it just to develop this building, or all buildings that may take place on adjacent sites, or to encompass all future investments that any of the partners might make, or any involving student accommodation?
- (b) the basis for decision-making – would this be on a majority or a unanimous basis?
- (c) what would be the time commitment of the partners and would they be excluded from pursuing other opportunities?
- (d) any limits on the ability of any of the partners to commit the partnership to any financial obligations?
- (e) the term of the partnership?

- (f) how the partnership would hold its property – would this be in the name of all partners, in the name of a nominee for the partnership or through a company in which they would all own legally or beneficially shares? Parwaiz says that because he had debts he could not "*have properties in his name*" but does not go any further than this;
- (g) the extent that the partners could be obliged to advance capital or loans to the partnership or to guarantee its liabilities (except that Parwaiz says that he was agreed that he would not be asked to contribute anything financially);
- (h) whether any financial contribution that the partners did make would be represented as repayable loans (with or without interest) or advanced as non-withdrawable partnership capital; and
- (i) how distributions of profit would be made.

158. Whilst it is perhaps credible that Parwaiz would not have thought of the need to discuss such matters, it is not credible that Seema if she had intended a partnership would not have ensured these matters were considered.

159. As well as casting further doubt on the existence of any partnership, the absence of any detailed terms substantially weakens Parwaiz' case that he has rights as a result of the alleged termination of the partnership. The only basis on which Parwaiz has corroborated in any way his own account that there was a partnership and the terms of that partnership, has been by reference to the evidence of his sisters and the admissions made by Seema and Javaid in the

recorded conversations. At most these corroborate a possible agreement to provide him with a 25% interest in profits, on some unspecified basis, whilst he remained a partner. Even if a partnership had been intended and understood on this basis, it is likely that the terms that would have been applicable to this might have included an ability to expel him as a partner if he was ceasing to contribute as expected, and that on termination of his partnership his rights would be limited to any capital that he had contributed. If those were the terms of the partnership, he might find it very difficult to establish that he has suffered from any breach of those terms.

160. Fourthly, in order to accept Parwaiz' account, the court would need to be persuaded that, at the same time as agreeing to a legally binding relationship as partners, Seema and Javaid were discussing with Aminur and with Lloyds Bank an entirely different ownership proposal involving the acquisition of the property via TPL in which, at the time Aminur and his wife had a 50% share and that they were hiding the partnership arrangements from their co-shareholders.

161. Parwaiz' account of how Aminur and his wife related to this partnership which he originally said was a partnership entitling him Seema and Javaid to one third each, but which he later conceded might allow for a one quarter share for Aminur is ill-defined and incoherent. He is not clear on whether he alleges that the shares held by Seema and Javaid in TPL were held on trust for the alleged partnership as a partnership asset or whether he says that TPL was holding properties on trust for the partnership (or on trust for the partnership and

Aminur). However, if any such proposition were true and this position were not disclosed to Aminur and his wife and to Lloyds Bank (and indeed to HMRC), Seema and Javaid must be regarded as having deliberately misrepresented the position to these parties. To accept Parwaiz' account, I must accept that they have been hiding Parwaiz' alleged partnership interest and misleading funders for years and have been lying on their tax forms and encouraging Parwaiz to lie on his IVA.

162.As well as considering the evidence that has been provided, the court should consider what evidence it would have expected to see if there had been a partnership. If there were a partnership being operated there are a number of things that one would expect to be able to find us evidence including:

- (a) partnership accounts;
- (b) a mention of partnership income or expenditure on the tax forms of the various parties;
- (c) a partnership bank account;
- (d) letters written in the name of partnership;
- (f) business cards that the partners used referring to them as partners;
- (g) a sign at the partnership premises with the name of the partnership and the list of its partners.

163.No such evidence was produced to the court, and indeed Parwaiz has not even made any suggestion that any such evidence exists.

164.It will be apparent from the analysis above that I do not accept that Parwaiz has

established his claim that an oral agreement was made to create a partnership.

165. Under section 1(1) of the Partnership Act 1990, Partnership is defined as "*the relation which subsists between persons carrying on a business in common with a view of profit.*" Theoretically it is possible, that even in the absence of an oral agreement a partnership could come into existence by means of the parties working together as partners. Ms Toman has not sought to put the case on behalf of Parwaiz that a partnership was created by conduct, and I think she was correct not to do this. However, for completeness anyway I will add that there is no evidence that partnership was created by conduct. Whilst in a loose sense, the parties may have been seen to have been working together, it is clear that Seema and Javaid, when working were doing so in their capacities as directors of TPL and Jaspia rather than in pursuance of any partnership with Parwaiz. Parwaiz must be regarded as having worked as an independent contractor at the beginning and later as an employee.

166. As I have found that there was no partnership, Parwaiz' claim based on an interest in a partnership must fail.

## **7. THE CLAIM BASED ON PROPRIETARY ESTOPPEL**

167. Next, I need to consider Parwaiz' alternative cause of action: that he has a claim under the doctrine of proprietary estoppel.

### **(A) The nature of proprietary estoppel claims**

168. The word "estoppel" is based on the old French word "estoupail" meaning a

cork or "stopper" and this gives a clue to how the notion of estoppel has developed into English law. Equity has long recognised that there are circumstances in which someone should be prevented (or to use the legal term, "estopped") from making a claim or denying a claim. Generally estoppel is said to operate as "*a shield and not a sword*". It operates as a possible defence to a claim rather than forming the basis of the claim itself. However, as applied to property (and the earliest cases were all to do with land), it has developed into a basis of claim in its own right.

169. In the earliest cases this operated by the simple expedient that the person with the best claim to own the land was prevented from asserting his claim. This had the result that the other party claiming the estoppel (who generally was in possession of the land) was then left holding the title. However as applied by the courts, particularly over the last half-century, the doctrine of proprietary estoppel has been applied more widely and more flexibly. Nevertheless, it still remains the case that the word "proprietary" within the phrase "proprietary estoppel" is an important one – for an estoppel to operate as a proprietary estoppel (and therefore to be useable as a sword rather than merely as a shield) it needs to operate as a claim over identified property belonging to the defendant. This point was emphasised in the decision of the House of Lords in *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752.

170. In *Thorner v Major* [2009] WLR 776 Lord Walker described proprietary estoppel as being based on three main elements:

*"a representation or assurance made to the claimant; reliance on it by*

*the claimant; and detriment to the claimant and consequence of his (reasonable) reliance".*

171. For a claimant to be given a remedy, it may be added that there is another necessary element— that the court would regard it as "unconscionable" for the claimant to be denied relief. As Lord Walker explained in *Cobbe* (at paragraph 92), unconscionability:

*"does in my opinion play a very important part in the doctrine of equitable estoppel, in unifying and confirming, as it were, the other elements. If the other elements appear to be present but the result does not shock the conscience of the court, the analysis needs to be looked at again."*

172. *Snell's Equity*, the leading textbook on this topic, suggests that a distinction should be made between three different strands of proprietary estoppel according to whether the estoppel is based on:

- (a) ***acquiescence***: that is the defendant's acquiescence in allowing a claimant to act to his detriment (for example by building on the defendant's land) on the basis of a mistaken belief (for example that the land is his) without disabusing the claimant of his mistake and asserting his own rights to land. This type of proprietary estoppel will apply only where the defendant is aware of both the claimant's mistaken belief and of the true state of affairs.
- (b) ***representation***: that is the defendant's false representation (for example as to the whereabouts of the boundary in relation to land) causes the

claimant to act to his detriment (for example by building on the defendant's land). In these cases there is a need to show that there was a false representation and that there was a reasonable reliance, but it may not be necessary to show that the defendant was aware of the true state of affairs (although this may have a bearing on the question of unconscionability).

- (c) ***promise***: that is the defendant makes a promise that the claimant will acquire a right in relation to the defendant's property and the claimant, reasonably believing that this promise was seriously intended as something which he or she could rely, adopts a particular course of conduct and would suffer detriment if the defendant were to be wholly free to renege on that promise.

173. Whilst estoppel based on acquiescence or representation, may be seen as providing remedies that are truly based on a concept of pure "estoppel" (as I have explained this above), estoppel based on promise may be considered to have gone further than that basic concept. Nevertheless, for this to form a cause of action there still needs to be a connection with identified property owned by the promisor. This point was again emphasised by Lord Walker in *Thorner* when he said (at [61]):

*"In my opinion it is a necessary element of proprietary estoppel that the assurances given to the claimant (expressly or impliedly, or, in standing-by cases, tacitly) should relate to identified property owned (or, perhaps, about to be owned) by the defendant." ..... "It is the relation to identified land of the defendant that has enabled proprietary estoppel to*



*develop as a sword, and not merely a shield: see Lord Denning MR in Crabb v Arun DC [1976] Ch 179, 187.*

**(B) Parwaiz' claim for proprietary estoppel**

174. Parwaiz' claim based on proprietary estoppel appears to have been something of an afterthought. It was added into his Particulars of Claim through an amendment ordered on 28 May 2021, relatively late in the course of these proceedings.

175. In paragraph 38A of the amended Particulars of Claim Parwaiz sets out his claim that:

*"... by reason of the matters set out at paragraphs 2, 11-16, and 19 of these Particulars of Claim; the First and Second Defendant in November 2011 represented to the Claimant and/or led him to believe and/or knowingly acquiesced in his belief that he was and/or in the future would be entitled to:*

- (a) a quarter share in 210/212 Marton Road [i.e. Drinkwater House 1] and any rents/profits generated from 210/212 Marton Road;*
- (b) a one third share in the Assets other than 210/212 Marton Road.*

176. The term the "Assets" used here is defined for the purposes of the amended Particulars of Claim to include the properties I have referred to at [36] above.

177. The amended Particulars of Claim allege that, in reliance on the representations

and/or the beliefs referred to in paragraph 38A, Parwaiz undertook the work which he undertook at Drinkwater House (all three phases) and subsequent work in refurbishing 68 Darras Road (the property in Newcastle where Seema and Javaid now live and which is currently in the legal ownership of TPL).

178.Parwaiz claims that, by reason of these matters, the Defendants are estopped from denying that he is entitled to a one quarter share in Drinkwater House 1 and a one-third share in the other properties mentioned and or any rent and/or profits derived from those properties. In the alternative he claims that he is entitled to one third of Seema's and Javaid's shares in TPL and Jaspia. He claims relief on the basis that the court should declare that he has these entitlements.

179.I think it is clear that Parwaiz has based his proprietary estoppel claim both on acquiescence and on representation. There is something of a question as to whether Parwaiz also has sought to plead claim for proprietary estoppel based on a promise.

180.Certainly this was not his primary argument – that argument was not raised in Ms Toman's skeleton argument. Nevertheless, some discussion of this did arise during closing speeches.

181.Mr Goldberg drew my attention to the Court of Appeal decision in *UK Learning Academy v Secretary of State for Education* [2020] EWCA Civ 370 which provides a reminder that one should not stray too far outside the matters

pleaded. Whilst I accept the force of that argument in general, I was willing to accept arguments based on promise-based proprietary estoppel since I consider that the phrase within paragraph 38A of the amended Particulars of Claim concerning Parwaiz' alleged "*belief that he was and/or in the future would be entitled to*" at the very least muddied the distinction between representation and a promise.

182. However, whether or not proprietary estoppel by promise can be regarded as having been pleaded, any case based on this faces the difficulty that when giving his own oral evidence Parwaiz was very clear that he considered that he had not been promised some interest in the business in the future, but that he believed (and I think he would say had been led to believe) that he had a current interest as a partner. Given the ambiguity of the pleadings in this regard and Parwaiz' own clear statement that he was not relying on a promise about the future, I will treat his claim as being based on representation and/or acquiescence but not as one based on a promise.

**(C) What must Parwaiz show to establish a proprietary estoppel?**

183. To establish his proprietary estoppel claim Parwaiz needs to persuade the court of the following matters:

- (a) either (i) that he received a representation in relation to the property or shareholding interests that he is claiming, or (ii) the Defendants knew that he believed that he had an interest in these properties or shares and allowed him to continue in that belief;
- (b) that he reasonably relied on that representation or belief, to his detriment

and (at least in the case of estoppel by acquiescence that the Defendants knew that he was doing so); and

(c) that it would be unconscionable not to afford him relief.

**(D) Was there a relevant representation?**

184.I have already outlined at length my analysis of the evidence that Parwaiz has adduced in favour of the contention that there was a partnership. According to his pleaded case, Parwaiz relies on the same facts as establishing that representations were made to him that, or that it was represented to him, or that there was a knowing acquiescence in his belief that he had been granted a partnership interest.

185.This evidence comprises principally Parwaiz' own witness evidence, with some backing from statements made by Parween and from Zahida's evidence that Seema and Javaid had said to her that the three of them would have an equal share in Drinkwater House and that they would be working together at Drinkwater House and that they would all be equal partners. There is some further support from Danny Sykes' evidence that Seema had told him on numerous occasions that she Parwaiz and Javaid were partners, but as I have explained above I do not find his account to be particularly reliable or useful. Danny Oliver's evidence also provides little further support.

186.This witness evidence is contradicted by Seema's and Javaid's own witness evidence. They both specifically deny any meeting in November and deny promising a partnership interest or any other type of interest in the property or

in the project.

187. The other witnesses called by Seema and Javaid, were not in a position to give any evidence about what representations Seema or Javaid may have made to Parwaiz (although their evidence may be relevant to the question whether Parwaiz was acting on the basis that he thought he was a partner).

188. The documentary evidence is useful in relation to the question of whether there was a partnership but cannot help on the question of what other representations or promises Seema and Javaid may have made Parwaiz.

189. The other matter to take into consideration, is the evidence provided by the two recorded conversations referred to at [80] to [97] above. Whilst there was nothing in those conversations that I think reasonably could be seen as an admission that there was an agreement for a partnership interest, Seema and Javaid did appear to confirm that they may have said something to Parwaiz at some point about giving him some income whilst he worked for them, variously described variously as "*a share of the profits*" or "*of what was coming in*" or "*25% of whatever we were taking*".

190. These formulations are, of course, very different things and none of them is particularly clear. No one has ventured an explanation of what was meant by "profits" and in this term creates more questions than it answers. Does it refer to the profits of TPL, the profits of Drinkwater House 1, the profits of all future ventures? Are capital gains included? Does this mean operating profit or profit

after all costs and amortisation? Would expenditure on refurbishment to be expensed or capitalised and then amortised (and if so over what period?) Should profit be assessed after deducting interest on amounts put into the venture by Seema and Javaid (or by Aminur and his wife), or interest paid by them to borrow those amounts)? Should amounts earned by way of salary or management fee be regarded as a deduction against profits or as a distribution of profits? Is this looked at before or after tax? If there are years of losses followed by years of profit, do the losses need to be made up before a profit can be shared?

191. Whilst this will depend on what basis of measurement is used, it seems very likely that there were no "profits" arising from the Drinkwater House project for many years. The abbreviated accounts for TPL filed at Companies House that were included in the court bundle show a deficit on profit and loss account that increased in every year between 2012 - 2016.

192. Equally the term "*25% of whatever we were taking*" is unclear. Does this mean turnover or does it mean amounts taken out of the business as personal income? If the latter, does it include dividends from TPL (which may have come from the other properties TPL acquired before Parwaiz' involvement)? Is it net of advances? Does it include loan repayments made to them? How are management fees routed via a separate company to be dealt with?

193. In relation to this point Seema and Javaid at trial sought to explain the 25% mentioned in the recorded conversations as referring to a much later offer, after

the refurbishment of Drinkwater House 1 and 2 had been completed, for Javaid to take a role as managing agent for their properties, responsible for lettings, rent collection and maintain the properties in return for a percentage of the rent, originally offered at a lower percentage but when finally offered at the percentage rate of 25%. They say that Parwaiz turned this offer down.

194. Mark Taylor corroborates Seema and Javaid's evidence that there was an occasion where he heard them offer Parwaiz the opportunity to manage their properties in return for a percentage of the rents.

195. In many ways, I find this explanation more credible than the explanation that Parwaiz had been offered up-front a 25% interest for life on the basis of what it was expected that he would contribute to Drinkwater House 1. The offer made according to Seema's explanation, is more readily described as a "gesture of goodwill" (as Javaid referred to it at various points in the first recorded conversation) than would be the offer of a full partnership that included handing over an interest in properties that were to be purchased using Seema's and Javaid's money and credit. There is also the matter of the intrinsic likelihood behind the story on each side.

196. I have already explained that I find it difficult to believe that Seema would offer a partnership to Parwaiz based on the contribution that she would have thought, in November 2011, he might be able to make to the project. It seems even more difficult to believe that she and Javaid would have represented to Parwaiz that he had been, or would be, given a partnership or a share in the properties or in

TPL, with no intention of following through on this representation or promise. They had very little to gain from making such a representation and had much to lose in how they must have understood this could have soured the relationship with the rest of Javaid's family. I am satisfied that Javaid and Seema, when they involved Parwaiz in their business, did so with the intention of helping Parwaiz, not of exploiting him.

197. For all of these reasons, I find it difficult to credit that Seema and Javaid would have made the representations that Parwaiz says that he understood them to have made.

198. However, neither can I credit Seema's account about the offer of the lettings agent role as explaining the statements made by her and Javaid during the recorded conversations. If Seema and Javaid had been referring to an offer which Parwaiz had turned down, surely they would have referred to the fact that the offer had been made and declined.

199. Furthermore, there are points in the transcript where Javaid and Seema from the context appear to be agreeing that a 25% offer of some sort had been made at the commencement or in the very early stages of the Drinkwater House 1 project. Mr Goldberg has invited me to note that, the conversation was wide-ranging, and confused different points in time and also that the conversation was emotionally charged – a point that comes over within the transcript but even more powerfully when one listens to the recording. I accept this and I note that Javaid and Seema were, I think, primarily concerned to refute allegations



that they had not been acting fairly towards Javaid's brother than anything else. However even taking all of this into account the lettings agent explanation does not quite ring true.

200. I believe that Parwaiz has been sincere in believing that he thought that he was getting some kind of interest in the business, and the support that he has had from his sisters suggests that they believe his account. However I think this is more likely to be explained by Parwaiz having misunderstood or over-interpreted statements that perhaps were made to him by Javaid and Seema. It is clear from their own accounts that they were concerned at this point to help Parwaiz, and to help cheer him up and it seems more than likely that they said things to encourage him along the lines of "*come and work with us*", "*we can work together on this*" or "*if we make a success of this there will be plenty of upside for everyone*". It seems entirely possible that there would have been statements along these lines which Seema and Javaid would never have understood as offering partnership or co-ownership arrangement but which Parwaiz might have built up in his own mind, either at the time, or much later after he had been sacked from his employment, as saying meaning much more.

201. The evidence from the recorded conversations suggests that such statements might have included some kind of reference to providing Parwaiz with some sort of a share of income whilst he worked with them in the project. However, given the rest of the evidence and circumstances that I have mentioned I cannot see this statement as amounting to an offer of a partnership interest. Neither do I think any statement made that if he worked with them, he would receive a

distribution of income on some nebulous basis that was related to the success of what they were doing together business would have been clear enough to amount to any representation or promise to create an equity in any specific property.

**(E) Was there a representation or acquiescence relating to property?**

202. As noted above, for there to be a proprietary estoppel the representation, promise or acquiescence in a false belief needs to relate to specific property. The basis of the doctrine is that the claimant has acquired "an equity" in specific property which the court will require the defendant to honour. Generally, this property will belong to (or be property to be acquired by) the defendant making the representation or promise or acquiescing in the false belief, although I will discuss below the extent that this requirement can be departed from.

203. Even if I accept that something that Seema and/or Javaid said about a share in income amounted to a clear enough representation to form part of a claim for a proprietary estoppel, Parwaiz has not established any clear case that relates any property of Seema or Javaid to that representation (or to any belief that he had to which they might have acquiesced).

204. The matters which Parwaiz relies upon as establishing a representation or acquiescence are those referred to in paragraphs 2, 11-16, and 19 of his amended Particulars of Claim. In essence, they depend on his contention that he was told that he was to be made a partner in a partnership. These paragraphs refer to:

- (a) his allegations made in those paragraphs about an oral agreement to form a partnership;
- (b) his description of the circumstances giving rise to that alleged agreement and of its allegedly agreed terms;
- (c) his description of how further properties were bought into the business of the alleged partnership and the claim that these properties were purchased under the framework of the original partnership agreement;
- (d) his averral that he later became aware of Aminur's financial contribution to Drinkwater House phase 1 and that the parties' agreement was varied with Parwaiz agreeing to Aminur receiving quarter share of Drinkwater House 1 and any rental income generated from it.

205. There is a difficulty in the pleaded case in that it does not identify what is the property that is the subject of such representations or the subject of any acquiescence in allowing him to harbour a false belief.

206. There are three possibilities as to what property might be relevant in this case:

- (i) an interest in the partnership; (ii) the various property assets he lists; and (iii) the shares in TPL and Jaspia. There are difficulties with each of these possibilities.

*(i) Partnership interest as property*

207. The case that Parwaiz has argued throughout was that he was told that he had been given from the outset a share in a partnership.

208. Whilst it is established that the doctrine of proprietary estoppel does not apply only to land, but also can apply to other types of asset including choses in action, neither counsel were able to refer me to any case where the court considered whether the doctrine can apply to a partnership interest. I think it is open to doubt whether a partnership interest is a suitable asset to be the subject of a proprietary estoppel claim, given that partnership involves much more than just property rights - it gives rise to a plethora of mutual rights and duties and involves a personal relationship between the parties, not just rights in property. Perhaps there may be cases where applying proprietary estoppel to a partnership share is unproblematic (for example if one was looking at an interest as a limited partner in a limited partnership which had been established for investment purposes, where the limited partner had substantial property rights but very few obligations as a partner). However, in the case of a general trading or professional partnership, it seems to me that imposing a proprietary estoppel would create difficulties in the form of an imbalance in mutual rights and duties. The estoppel would prevent the partners against whom the estoppel is asserted from denying a claimant's right, but would not avail them of their own rights as partners against that claimant as a partner.

209. However, this is not a matter which I need to determine in this case, because I have found that no partnership exists in which Parwaiz could be given a share. Ms Toman suggests that I should apply proprietary estoppel on the basis that Seema and Javaid are estopped from denying the existence of the partnership, but such an estoppel does not create out of nothing a partnership interest as an independent form of property if no partnership exists. I cannot, therefore, in

this case regard a partnership interest as the subject of a representation, promise or acquiescence in the belief to which doctrine of proprietary estoppel can attach.

*(ii) The properties themselves*

210.Parwaiz' primary claim, as pleaded under paragraph 38C(a) and (b) of his amended Particulars of Claim, is to one quarter or one third interest in the various properties referred to.

211.There is an obvious objection that applies to all the properties (except possibly the properties at Darras Road Newcastle, which are held in the legal ownership of TPL but where it was not clear to the court whether TPL is holding them on trust for Seema and Javaid). These properties are not owned by Seema and Javaid. They belong to TPL or Jaspia. Logically, an estoppel against Seema or Javaid therefore will not operate to give an equity in these properties to Parwaiz.

212.This is not one of those rare occasions on which the corporate veil can be ignored under the "concealment" or "evasion" principles outlined by Lord Sumption in *Prest v Petrodel Resources Ltd* [2013] UKSC 34. Both companies have a real existence. TPL has shareholders other than Seema and Javaid, and has or has had employees. Both companies have creditors (including secured creditors) who rely on these companies owning their properties. I do not think there is any suggestion or evidence that these companies were interposed in order to defeat Parwaiz' claim.

213.I said at [202] that, for proprietary estoppel to apply, generally the property in question will belong to (or be property to be acquired by) the defendant making the representation or promise or acquiescing in the false belief. However, this general rule, can be departed from. This was shown by the Court of Appeal's decision in *Lloyd and MGL (Rugby) Limited v Sutcliffe* [2007] EWCA Civ 153. I was referred to this case during closing submissions on the last day of the trial, although unfortunately there was not time for either counsel to address me on the implications of that case.

214.That case concerned an appeal against findings by the judge at first instance, H.H. Judge Norris QC (as he then was) sitting as a judge of the High Court, Chancery Division. The dispute arose out of a property development joint venture. Originally, the venture was to proceed through the claimant and the first defendant having equal ownership of a company owning an option over the property ("**Nimega**"), but later the arrangements were modified so that when the option was exercised the property was put into a company (the second defendant) controlled by the first defendant (but in which another party had an interest). This was accepted on the understanding that the claimant was to obtain his interest by means of a building contract or other contract by which he was to secure a share in the profit from the development. The claimant advanced money towards the project and invested substantial time and effort in the project and was regarded as having provided a key to the success of the development. However, for his part, the first defendant in the case failed to make good on his promise to provide the promised profit share, despite having

accepted the claimant's interest during discussions about sale of the property to another developer. The judge at first instance found it unconscionable for the first defendant and the second defendant to take advantage of the fact that the detail of the contract for sharing of profits had not been agreed. The judge ordered that an equity had arisen in favour of the claimant which needed to be satisfied by the second defendant and may upon enquiry need to be satisfied by the first defendant and he gave directions for further evidence to be assembled to determine the nature and extent of the equity.

215. One of the grounds considered on appeal was that it was not open to the judge to hold that the equity might need to be satisfied by the first defendant personally because the claimant's equity had been held to attach to part of the proceeds of the property venture which were by then vested in the second defendant company and thus were not the first defendant's property. This argument was dismissed by the Court of Appeal.

216. The court accepted that:

*"It goes without saying that the court cannot flit whimsically between seeking to enforce an equity against the property, when owned by a company, which it holds it to be attached and seeking to enforce it against the personal property of the company's sole director and spokesperson."*,

and noted that the court in *Cobbe* in very similar circumstances had set aside a lien placed on a director's personal property in order to secure satisfaction of an equity attaching to the company's property. However, it distinguished

*Cobbe* on the basis that no case had been pleaded for proprietary estoppel against the director and on the basis that in *Cobbe*, the property had always been within the ownership of the company, whereas in the case before it, the first defendant and the claimant had originally (indirectly through his 50% share in Nimega) jointly owned the option.

217. In these circumstances the Court of Appeal considered that the judge at first instance was entitled to hold that the first defendant was in principle liable to satisfy the equity to the extent that the second defendant was unable to satisfy it. The court dismissed a submission that no promise can set an estoppel in train unless, at the time when he makes it, the promisor owns the property which is the subject of it. It considered that:

*"An arbitrary limitation of that sort is antithetical to the malleable character of the doctrine."*

218. In many ways, the facts in *Lloyd and MGL (Rugby) Limited* are similar to those in the present case and this gives me pause in relying on the logical conclusion described at [211] that an estoppel against Seema or Javaid therefore will not operate to give an equity in these properties to Parwaiz allowing enforcement of that equity against Seema and Javaid.

219. However, I think that the circumstances in the present case need to be distinguished from those in *Lloyd and MGL (Rugby) Limited* for three reasons.

220. The first is that an important element of the reasoning in that case was that both



the first defendant and the claimant in that case had originally itself had an interest in the property in which an equity was said to arise before the property was transferred to the second defendant, and this (alongside the content of the pleadings) allowed the Court to distinguish that case from the similar circumstances that the House of Lord' had dealt with in *Cobbe*. This in my view was the chief consideration in linking the promise made by the first defendant to create an equity in property that by then was being held by the second defendant and to require the first defendant to satisfy that equity. The circumstances of our current case are more like those in *Cobbe*. The relevant properties have from the beginning been held within the companies. (Whilst it is true that only Seema's name was on the auction slip at the time that Drinkwater House 1 was purchased, I accept her evidence that this was just a convenience as she was registered for the auction and that in bidding she was doing so on behalf of TPL - as evidenced by the fact that Aminur paid one half of the deposit put down at the auction.)

221.The second reason is that the relevant company in *Lloyd and MGL (Rugby) Limited* was a new company specially formed in order to take over the relevant property interests and which held only the relevant property interests. The Court of Appeal accepted that this was regarded as the first defendant's company. In these circumstances, it is understandable why the Court of Appeal might have considered it "*arbitrary*" to pay any attention to the fact that the first defendant had changed the way the property was held when forming a judgement why he should not be required to satisfy an equity which had already accrued in the relevant property to the claimant in that case. In our case, TPL

was an existing trading company with other property interests.

222.The third reason is that the proprietary estoppel found in *Lloyd and MGL (Rugby) Limited* was one based on a promise rather than a representation or acquiescence and the courts have generally been more flexible in applying the doctrine in such cases. As I have explained above, I am treating Parwaiz' case as one based on representation or acquiescence and not one based on promise.

223.Having regard to these points, I do not think that I should ignore the difficulty in Parwaiz' case arising from the logical conclusion described at [211] that an estoppel against Seema or Javaid therefore will not operate to give an equity in these properties to Parwaiz.

224.A separate argument might be made that Parwaiz could establish a proprietary estoppel against TPL and Jaspia relating to the properties. However, although Parwaiz has joined in TPL and Jaspia as Defendants, he has not pleaded that these Defendants made any representations to him and there has been no such suggestion in any of the evidence before the court that TPL or Jaspia ever made representations or promises to Parwaiz upon which he relied. At the key time that Parwaiz says that the representations were given to him that he relied upon (October or November 2011) Parwaiz (according to his own evidence) was unaware of the existence of TPL and Jaspia did not exist.

225.Neither do I think there is any reason why Parwaiz should be entitled to regard regarded any representation made by Seema or Javaid as speaking on behalf of

these companies. However, there are again parallels here with one of the matters argued in *Lloyd and MGL (Rugby) Limited* and I have considered whether anything in that case should cause me to change my view on this point.

226.A further ground considered on appeal in that case was that neither the claimant's pleaded case, nor his evidence, justified an attribution to the second defendant of any such understanding as there may have been with the first defendant so as to form the necessary initial constituent of the estoppel. This was rejected by the Court of Appeal. The Court rejected it based on an analysis of the wording of the pleadings and on the basis that it was natural that, once the second defendant had acquired the option over property and then property itself, that any statement made by the first defendant relating to what would happen in relation to the property would naturally be understood as having been made by him in his capacity as the sole director of the second defendant, unless he made it clear that he was speaking otherwise.

227.Whilst the circumstances are similar here, I do not think that they are sufficiently alike that I should follow the same analysis. There is a crucial difference. In that case the claimant was aware of the existence of the companies and that the first defendant was director and spokesperson for the company. In our current case, Parwaiz claims no such awareness at the time of the representations upon which that he bases his case.

228.TPL and Jaspia must be regarded as sharing the knowledge that Seema and Javaid possessed and if Seema and Javaid could be said to have acquiesced in

Parwaiz' belief, these companies also could perhaps be regarded as acquiescing in this. However, as I will explain below, I have not found any conduct on the part of any of the Defendants here that amounts to acquiescence. In any case this is not any part of the pleaded case (and neither was this raised as an argument at trial). The proprietary estoppel case pleaded is based on the representations and/or acquiescence of Seema and Javaid and not that of the companies, and I will not consider that aspect any further.

229. There is a further objection that applies in respect of all of the properties other than perhaps Drinkwater House 1. Parwaiz does not point to any specific representation or promise being made that he would be given a share in those specific properties, and certainly not at the time that he pleads as being the time at which he was led to believe that he would have entitlements in property (November 2011). Instead he says that they had been, or should have been, brought into account as partnership assets.

230. Clearly, as there was no partnership, they cannot actually have been brought into any partnership as partnership assets.

231. Ms Toman has outlined arguments based on sections 29 and 30 of the Partnership Act 1890 as to why these assets should be brought into account. Mr Goldberg objected to these arguments being made at trial, as they were not properly pleaded – in his amended Particulars of Claim Parwaiz argued that these properties had been brought into the alleged partnership, not that they should have been. I think Mr Goldberg was right to object, and as a result I do

not think that this is an argument that the court should consider. However, I will note that in my view it is taking the doctrine of proprietary estoppel too far to suggest that it would allow the court (having found that there is no partnership in place) to deem one into existence so as to provide remedies for breach of partner duties.

232. In summary on this point, even to the extent that Parwaiz makes out the case that he has pleaded that there were representations made by Seema and Javaid about how he would benefit from their venturing together, it is difficult to see how representations, or any acquiescence on the part of Seema and Javaid could operate to give Parwaiz an equity in property owned by TPL or Jaspia. Furthermore, any representations that he said were made to him in November 2011 were not capable of referring to any of the properties other than Drinkwater 1 with a sufficient specificity to allow these properties to be identified as the proper subject of a proprietary estoppel claim.

*(iii) Shareholding interests as property*

233. In the alternative, Parwaiz claims a third of Seema's and Javaid's shares in TPL and Jaspia.

234. As noted above, at the key time that Parwaiz says that the representations were given to him upon which he bases his claim Parwaiz was unaware of the existence of TPL and Jaspia did not exist. He cannot, therefore, say that he was relying on representations or promises that he would be given shares in these specific companies.

235.Parwaiz' justification as to why he should be regarded as having an ownership interest in these shareholdings is based on something like the following analysis. Seema and Javaid represented to him or allowed him to believe that he had been given or would be given a share in the original Drinkwater House 1 project by means of a partnership interest or an ownership interest in whatever form that ownership took, and also to be given a one third ownership share in any future projects. Accordingly, when Seema and Javaid failed to ensure that Drinkwater 1 became an asset of such a partnership, and instead placed the Drinkwater House project and property into TPL, TPL (or at least the shares held by Seema and Javaid in TPL) should be regarded as the vehicle for co-ownership for Drinkwater House 1 and for the other property ventures undertaken within TPL, and they are estopped from denying him that share. They are similarly estopped from denying when future projects came along that were undertaken within Jaspia that Parwaiz did not have an interest in Jaspia.

236.There are at least two objections to this analysis.

237.The first is that it is difficult to square with Parwaiz' own pleaded case. His case is very firmly rooted in the contention that he believed, and had been led to believe, that there was a partnership – not that he accepted and was relying on looser arrangements for co-ownership, and certainly not that he was relying on an interest in shares in TPL or in Jaspia specifically.

238.The second is that this contention is difficult to bring into the accepted bounds

of proprietary estoppel which, as I have explained, require the matter relied upon to relate to specific property. Whilst there is no doubt that the principles of proprietary estoppel can be applied to choses in action such as shares, there is still a need for that form of property to be identified.

239. By the time we get to the formation of Jaspia and the projects and investments that Jaspia came to undertake, the contention that that company and those activities were identifiable as being property which Parwaiz had been led to believe he would share in becomes very difficult to accept.

240. In view of the warning in *Lloyd and MGL (Rugby) Limited* about recognising an "arbitrary limitation" so as to operate in a way that is "antithetical to the malleable character of the doctrine." I have entertained the possibility that this objection might be overcome in relation to the shares held by Seema and Javaid in TPL. That company became the conduit for the business and assets that Parwaiz was involved in at the point that he says that his expectations were formed, and this might (but I do not find that it definitely would) be sufficient to allow the shares in TPL to be identified with the proprietary interest he claims.

241. However, even in relation to the shares in TPL, and even if I allow that Parwaiz may have received representations that he would receive a share in income, I am not convinced that, such representations would be sufficient to give rise to an equity in the shares in TPL. TPL contains (or certainly during the time in question contained) more than just the Drinkwater House properties and it is difficult to see any basis on which Parwaiz can claim any entitlement to those

other properties. Also again I note that that *Lloyd and MGL (Rugby) Limited* was based on a promise rather than a representation or acquiescence, where the courts have generally been more flexible in applying the doctrine whereas I am treating Parwaiz case as being one based on representation or acquiescence and not one based on promise.

242. In view of my findings on other matters I do not need to determine this point finally, and I will content myself with the observation that I am satisfied that that even if Parwaiz were successful in relation to establishing the other requirements for a proprietary estoppel (which in my view he is not) he definitely has not have done enough to link any representation or acquiescence to the shares in Jaspia and I remain to be convinced that I should accept the argument that this would give him an equity in the shares of TPL.

**(F) Was there conduct amounting to acquiescence?**

243. Even if there was no sufficiently clear representation in relation to a partnership or ownership in property, Seema and Javaid might have realised that Parwaiz did believe that he did have partnership or ownership rights and if they acquiesced in that belief that these circumstances might form the basis for a proprietary estoppel claim based on acquiescence.

244. The classic form of "acquiescence" giving rise to a proprietary estoppel claim, was described by Lord Neuberger in *Fisher v Booker* [2009] UKHL 1764 at [62] as follows:

*"The classic example of proprietary estoppel, standing by whilst one's*



*neighbour builds on one's land believing it to be his property, can be characterised as acquiescence".*

245."Standing by" in this context generally means failing to assert one's superior right's to property. Thus *Snell's Equity* (at paragraph 12-034) describes proprietary estoppel based on acquiescence as applying "*where B adopts a particular course of conduct in reliance on a mistaken belief as to B's current rights and A, knowing both of B's belief and of the existence of A's own, inconsistent right, fails to assert that right against B*".

246.Over the period during which Parwaiz says that he understood that he had an ownership right in the relevant properties or shares, there is no evidence that there was any failure on behalf of Seema or Javaid in asserting their rights over the shares or the properties. By all accounts they continued throughout to deal with these assets in a way that was entirely consistent with their direct and indirect ownership rights being unfettered by any partnership or co-ownership considerations relating to Parwaiz. For example, they arranged for the mortgaging of the properties and paying off indebtedness - including allowing the companies to repay amounts they had lent to them - and they made decisions on behalf of the companies to undertake new investments. The court has seen no evidence to suggest that at any time they deferred to Parwaiz to seek his consent for any decision (although it has heard that they did consult Aminur when they were making decisions on behalf of TPL), or that they accounted to him for any of the profits of the business, or indeed that they did anything that was consistent with treating him as a partner, a co-owner of the

properties or as beneficially entitled to a proportion of the shares in companies. Indeed, in the case of one of the assets in which Parwaiz claims an ownership interest, 68 Darras Road, they have gone so far as to establish this as their home. It is, therefore, very difficult to see in what sense they were failing to assert their rights or why Parwaiz would not, if he considered those rights to be inconsistent with his own rights as partner or co-owner, did not challenge this.

**(G) Did Parwaiz have a reasonable belief about his rights?**

247.If anyone has failed to assert their rights, it is Parwaiz. Despite, he says, understanding between 2011 and 2019 that he had ownership rights, he did nothing to assert those rights when he knew, or should have realised, that the way businesses were being run by Seema and Javaid without any meaningful consultation with him was in a manner that was contrary to the rights that an equal partner or co-owner would have.

248.Neither did he at any point act in any meaningful way as if he was a partner or co-owner. In particular, at the point of his IVA, Parwaiz did not make any claim to have any ownership interest in any of the business assets or for a moment consider making use of those assets to repay his creditors. Neither did he, at the time that he came to understand the fact that Drinkwater House 1 had been placed within TPL, do anything that suggests he attempted to think through what might be the relationship between whatever rights he had in the project and those of the shareholders of TPL or that he did anything to assert or preserve those rights.

249.Parwaiz has sought to explain his failure to claim his interests earlier than 2019 on the basis that he was taking a long-term view of his interest and separately that he thought (even after he had received a notice discharging him from his IVA) that he had to hide his interest from his creditors. I find these explanations less likely than the explanation that Parwaiz had not before 2019 thought about having any legal or beneficial claim, but only had an expectation that he would be treated fairly by his brother and sister-in-law.

250.I do consider it likely that Parwaiz did from an early stage have an unformulated expectation that his brother and sister-in-law would continue to involve him in their projects and to provide him an income based on profits or turnover arising from Drinkwater House. I expect also that he thought that they were morally obligated to do this, given what he considered he had put into the Drinkwater House project. However, I do not think that he necessarily had concluded any belief that he had a proper, legally binding, status as a partner or equivalent beneficial interests in shares or property until he sought legal advice following his dismissal in 2019.

251.Although in *Lloyd and MGL (Rugby) Limited* Wilson LJ found that it was not necessary to the creation of a proprietary estoppel that the promisor should have made clear that his promise was irrevocable or enforceable, this point refers only to a proprietary estoppel based on a promise rather than a representation or acquiescence, and it is not Parwaiz case that he was relying on promise. His case is that was relying on his belief, acquiesced in by Seema and Javaid, that he had a partnership interest giving him enforceable rights.

252. Even if I am wrong about the extent of Parwaiz' belief at the relevant time of his reliance, there is a further consideration that for proprietary estoppel to apply: the belief needs to be a reasonable belief.

253. The matters that I have outlined above concerning the inherent lack of probability that Seema and Javaid would have gone into partnership on the basis that Parwaiz describes are also reasons why it was not reasonable for Parwaiz to rely on any understanding that he might have had that this was the case, even if the rest of his case is accepted. Even though he was not an experienced businessman, he should have realised that a short conversation in a motorcar does not form a reliable basis for assuming a partnership or ownership interest in property - even where the other parties involved were family. It was not reasonable for him to assume that that conversation could be relied upon without any further confirmation or explanation, or filling in of the gaps, even when he could see that he was not being deferred to in the way that any partner or co-owner might expect to be. The fact that he did not raise this again until 2019 both places doubt on the credibility that he had formed this belief, and goes to the reasonableness of his maintaining any such belief.

**(H) Did Seema and Javaid know about Parwaiz' false belief?**

254. Proprietary estoppel by means of acquiescence will not apply unless the person to be stopped knows of the existence of the false belief. Even if it is accepted that Parwaiz did believe that he was a partner and/or had co-ownership rights, the evidence that Seema and Javaid were aware that Parwaiz considered himself

a partner in the full legal sense of that word, or as a co-owner is extremely weak.

255. At best, Parwaiz can point to some conversations where he might have held himself out as being a partner (or business partner) to third parties and Seema and Javaid did not correct the impression he was giving. Parwaiz was (in a loose sense) working alongside them in the business and was Javaid's brother and it may not have surprised them that he might have aggrandised his role when talking to others. I do not think it is fair to conclude that by hearing Parwaiz describe himself in a particular way, they had understood the extent of the proprietary claims that he is now making and which he says he believed he had at the time. Neither do I think that this provides cogent evidence that they were deliberately allowing Parwaiz to continue to believe that he had such claims. It seems more likely that they would not wish to correct him or embarrass him in front of others.

256. There is evidence that Seema and Javaid did not understand that Parwaiz thought that he had ownership rights to the extent that he now claims when we consider the reaction that Javaid and Seema had during the two recorded meetings when they learned that Parwaiz considered himself entitled to a share in business. Their reaction, in my view, was one of unfeigned surprise.

257. Again it is necessary to consider what explanation seems the most likely. For the same reasons that I have considered it unlikely that they intended to offer him a partnership share, it seems to me equally unlikely that they could have

imagined that he would have thought himself a partner or co-owner. It is also unlikely that they would have intended to encourage or allow a belief in a partnership share if they did not intend to give him one - there was no obvious advantage to them in doing so and an obvious disadvantage that this would end badly once Parwaiz finally realised that there was no partnership.

**(I) Did Parwaiz rely on the false belief to his detriment?**

258.Parwaiz pleads that he did rely on his belief that he was a partner or co-owner in the business to his detriment in that he worked long hours, particularly in relation to Drinkwater 1, but also in relation to some of the further property developments without being adequately paid for his services and lost the opportunity between 2011 and 2019 to find establish himself in more lucrative work.

259.Both the amount he worked, and the amount that he paid are the subject of dispute.

260.Parwaiz makes extravagant claims as to the hours that he worked, particularly in relation to the refurbishment of Drinkwater House 1, where he says that he worked around a hundred hours per week for 18 months, working seven days a week. He claims a somewhat lesser commitment to the Drinkwater House 2 refurbishment, saying that he worked there for between 60 to 70 hours per week from April 2014 until early 2015 except for a period of six weeks when he was recuperating from an accident. He claims he spent a further six weeks in the summer of 2016 refurbishing 68 Darras Road and that, at the time when

Drinkwater House 3 was being developed, he had some oversight of the project and "*spent a large amount of time at the Drinkwater House properties*" and was there seven days a week. From February 2017 he continued working at Drinkwater House on snagging repairs and maintenance.

261.Parwaiz' account of his hard work during the refurbishment of Drinkwater House 1 is corroborated by his sister Zahida (with whom he was living at the time) and, to a lesser extent by Parween. It also receives some corroboration by the contractors who worked alongside Parwaiz, Neil Worton and Danny Sykes, although neither of them was on site sufficiently to corroborate the account fully.

262.Whilst agreeing that at times Parwaiz did work hard, Seema and Javaid do not agree with this assessment of his hours and consider them grossly overstated. They describe a more casual approach in his work, so that, for example whilst he might come in early (although they deny that he was the one always opening the site up) he would go back home later in the morning for breakfast. They also describe his role as being that of a labourer or semiskilled worker rather than as that of a project manager. Their account of shorter hours at the time of the development of Drinkwater House 2 has some support from the witness evidence of Mark Taylor. They also point out that at the time that he was claiming to be working a hundred hours a week he was also claiming a carer's allowance on the basis that he was said to be working 35 hours a week in looking after his elderly father.

263. In the absence of time records it is difficult to know which report to believe.

However, Parwaiz' account of his early enthusiasm for work at Drinkwater House 1 rings true and I can believe that he might have worked long hours there, perhaps to the extent of 100 hours a week some weeks, although I strongly doubt that he worked consistently for those hours over an 18 month period.

264. As regards the later phases, I am more prone to believe that he worked a more

normal working week. From the time that Drinkwater House 2 was complete his duties became much lighter. Once he met his girlfriend and later his wife, Carrie, it seems that his commitment to work became much less, not working a full working week, taking off several weeks to spend time refurbishing his own home and, it is complained of him, once a system of clocking in had been established at Drinkwater House, cheating that system by arriving by the front door and signing in and then very soon afterwards leaving by a side door without signing out.

265. The amounts that were paid to him are also a matter of dispute. Over the course

of the litigation Parwaiz revised upwards his estimate of what money he received a number of times. In his letter before action he said that he had received nothing. In his Particulars of Claim, he admitted to receiving £6,000 from Seema during the refurbishment of Drinkwater House 1 and says nothing about payments made in the later stages. As part of his disclosure he produced bank statements which he redacted in various different ways, eventually conceding receipt of some £46,000 over the period 2011 to 2019.



266. Seema and Javaid say that this is a gross underestimate of the amounts and benefits that he received over this period. On the basis of bank statements, cheque stubs and a notebook in which Seema kept notes of payments made, they have assembled a spreadsheet showing payments which they say have been made to Parwaiz or for his benefit (including payment of his mobile phone bills, car insurance, road tax, medical insurance, clothing, holidays, and payments towards his IVA. The amounts claimed to have been given to him or for his benefit on the spreadsheet total to over £101,500.

267. Seema claims that in addition some payments were made to Parwaiz as cash in hand at the time of up the development of Drinkwater House 1 for which she has no documentation and that Parwaiz also benefited from mobile phone charges between 2012 and 2019 up and card payments made for fuel for Parwaiz, for which Seema has no records and from free accommodation being given to his then girlfriend and subsequently wife, Carrie for a year and for her parents for a month.

268. Ms Toman has criticised the documentation of these payments and I accept that the provenance for some of the amounts claimed in the spreadsheet may be open to challenge. However, this spreadsheet does at least have some grounding in contemporary documentation and I accept this as producing a more accurate overall picture than any evidence that Parwaiz puts forward of the amounts and benefits that he received over this period. The total may have been more if Seema is to be believed that there were also cash payments not

recorded, and if one takes into account the other matters mentioned in the previous paragraph. They may have been less than this, to the extent that some of the individual entries are open to challenge. In the absence of any more credible figures, and having regard to the fact that it is for Parwaiz to establish his case that he was underpaid, rather than for Seema and Javaid to disprove it, I am inclined to take £101,500 as the best estimate that the court has of the amounts and benefits that Parwaiz received.

269.If the spreadsheet figures are taken as representing something close to the amounts paid to Parwaiz or for his benefit, then I think it is likely that Parwaiz, during period of the development of Drinkwater House 1 may well have been inadequately paid by reference to the hours that he was putting in. However, his detriment needs to be looked at across the whole period from January 2011 to January 2019 during which he says he was working in the belief that he was a partner and/or co-owner. If one takes into account the later periods when the hours he worked and his overall contribution was much less, the overall amounts he received or benefitted from, do not look to be significantly out of kilter with what someone performing the work that he did might have expected to be paid.

270.As an illustration, Mr Goldberg points out that a contractor charging £7.50 per hour (above minimum wage at the time) working for 6 hours a day for five days per week and 48 weeks per year over seven years would charge £75,600. Even if one accepts that on average over the period Parwaiz worked more than this, and assumes on average he worked 8 hours a day 5 days a week, this would

come to only £100,800 - less than the amount that I am taking as the amount that he was paid.

271.If one looks at this differently and assumes that if he had not worked with Seema and Javaid on this project, he would have he would have found full-time employment, it would only be to the extent that he could find work paying over £14,500 per annum over the period that he would have lost out. Parwaiz did not produce any evidence as to what other job he would have done had he not worked with Seema and Javaid. It is credible that he might have been able to find a job that paid more than £14,500 a year, but it is by no means guaranteed that he would have done, or that if he did that this job would have suited him with the same flexibility as to hours and ability to be close to his family that he enjoyed when working with Seema and Javaid.

272.Another way of looking at this would be to consider what would be Parwaiz' minimum rights if he had been given a partnership interest. As I have noted at [159] above, the only basis on which Parwaiz has corroborated in any way his own account that there was a partnership, suggests that the terms of that partnership would have been to provide him with a 25% interest in profits, on some unspecified basis, whilst he remained a partner. The terms which might have applied to a partnership on that basis would be likely to have included an ability to expel him as a partner if he was ceasing to contribute as expected, and that on his expulsion as a partner his rights would be limited to any capital that he had contributed. If there had been a partnership on those terms, given the apparent lack of profitability of TPL over the period it seems unlikely that

Parwaiz has over the period received less than he would have been entitled to under such arrangements.

273. It follows from my analysis above that I do not accept that Parwaiz has established any substantial degree of detriment if one compares the work that he performed over the whole period in question with the amounts that he received or benefited from or even if he had established an entitlement to 25% of the profits attributable to the Drinkwater House project.

**(J) Would it be unconscionable not to afford Parwaiz relief?**

274. The question of unconscionability is closely related to the question of detriment.

The greater the detriment that the claimant can show, the more likely it is that the court would regard it as unconscionable for the claimant not to be given relief.

275. Whilst I have concluded that there may have been some detriment to Parwaiz arising from his working with Seema and Javaid, I do not consider that Parwaiz has made out a case that establishes significant detriment. To the extent that he was underpaid, (and, contrary to my findings above, can establish the other elements of proprietary estoppel), I do not think that any element of underpayment was of an amount such that it would "*shock the conscience of the court*", in Lord Walker's phrase for the court not to grant relief by means of proprietary estoppel. Certainly the relief that he has claimed - a one third or one quarter interest in a substantial portfolio of properties is entirely out of kilter with any detriment he has established.

276. Another issue which may have a bearing on the question of unconscionability is the conduct of the parties. If Parwaiz thought that he was a partner in the enterprise, it seems that from some time in 2017 he was not pulling his weight by even performing satisfactorily in the role as caretaker/maintenance person that he had accepted. Furthermore, he could be criticised for not having raised his claim to a full partnership earlier, when he saw that Seema and Javaid were making investments in further properties and taking out financial commitments in order to do so.

## **9. CONCLUSION**

277. Parwaiz' principal contention throughout this litigation was that he had become a partner to Seema and Javaid by means of an oral contract. The evidence that he has provided to support that contention is extremely thin, and is entirely contradicted by the way that the businesses were conducted. I have no doubt that this claim must be rejected.

278. Parwaiz' secondary contention was based on proprietary estoppel. Recognising what appear to be genuine strength of feeling on the part of Parwaiz that he had been badly done by, I have been keen to examine his arguments in relation to proprietary estoppel in some detail. However, I find that they fail to establish any of the essential elements of a proprietary estoppel claim.

279. The first essential element of a proprietary estoppel claim is the requirement

that there must be, in the words of Lord Walker in *Thorner*, a "*representation or assurance*" or, in the taxonomy suggested by *Snell's Equity*, a representation, a promise or acquiescence in the claimant's false belief. To establish proprietary estoppel, and therefore the basis of the claim, the representation or assurance must relate to identified property - and generally will be property in the ownership of the person against whom the claim is being made, although there may be exceptions to this last point.

280. It is not Parwaiz' case that any promise was made to him and in my view Parwaiz has failed on the evidence to establish that Seema and Javaid made any such representation of sufficient clarity, to be regarded as a representation on which it was reasonable for him to rely. There may have been a representation that whilst he worked with Seema and Javaid he would be provided with an income by reference to some notion of profits or receipts from the business at Drinkwater House but, any such representation was not, in my view, sufficiently clear or clearly related to any property to create an equity in any property.

281. Neither has Parwaiz shown that Seema or Javaid acquiesced in any false belief that he might have had relating to his ownership of any identified property.

282. The second essential element of a proprietary estoppel claim is the requirement that there must be reasonable reliance on the representation or assurance. In my view Parwaiz has failed on the evidence to establish that at any time prior to 2019 he had considered himself as being partner in a properly constituted

partnership or having an ownership interest in the properties. What evidence there is of his conduct, such as through his completion of a form to obtain an IVA, his signature of tax forms and his acceptance of an employment contract when he was trying to fortify his fiancée's visa application rather indicated the opposite. From his later reaction, and the sincerity with which he has put forwards this claim, I am persuaded that he believes that he is morally entitled to be better treated than he has been, but there is little, beyond his own word, to suggest that he genuinely believed he had the type of legal or beneficial entitlement that he now claims. Certainly, he waited until his employment contract was terminated to press that claim and did not press it earlier despite there being occasions when it would be natural for him to do so. His failure to assert any right as a partner or co-owner at any time before 2019 places doubt on the credibility of his claim that he believed he had these rights.

283. Even if I am wrong, and Parwaiz had concluded that he did have rights as a partner and/or co-owner, I do not think it was reasonable for him to have reached that conclusion having regard to the evidence of what had been said to him, and the inherent improbability that he would be granted the sort of interest in property that he claims on the basis of what he was bringing to the business.

284. The third essential element of a proprietary estoppel claim is that of detriment. Parwaiz sought to demonstrate detriment in that he worked long hours for inadequate pay. Whilst this may have been the case during the refurbishment of Drinkwater House 1, I do not think that Parwaiz has established that looking at the whole period between 2011 and 2019 that he has been underpaid overall to

any major extent, and certainly not to the extent so as to satisfy the fourth element of a proprietary estoppel claim, that it would be unconscionable for the court not to grant relief.

285.It will be clear from my analysis above that I find against Parwaiz in relation to his claim based on proprietary estoppel.

286.As I have found from the Defendants in relation to both claims made by Parwaiz, the court should make an order of costs in their favour.

287.As I said at the beginning of this judgment, it is always sad when an argument about money has the effect of creating bitterness and discord within a family. In this case, the falling out has resulted in a lengthy and expensive trial which can have served only to exacerbate what, I am sure, must be deeply held feelings of resentment and betrayal on both sides. I can only hope that by providing a clear outcome in this trial a line can be put under this dispute, and that in time the family divisions may be healed.