Case No: QB-2022-000833

Neutral Citation Number: [2024] EWHC 964 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 April 2024

Before:

ROBERT PALMER KC
(Sitting as a Deputy Judge of the High Court)

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Between:

AYOUB ROFAIL	**Claimant**
- and –	
MOHAMMED HASSANIN	**Defendant**

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- -

Edward Rowntree (instructed by **Baron Grey Solicitors**) for the **Claimant**
Jerome Wilcox (acting directly) for the **Defendant**

Hearing dates: 21-24 November 2023

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Approved Judgment

This judgment was handed down remotely at 10:30am on 25 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

ROBERT PALMER KC (sitting as a Deputy Judge of the High Court):

Introduction

1. The Claimant, Mr Ayoub Rofail, had the good fortune to win £6.75m on the National Lottery in 2006. Until that point, he had been working as a private chauffeur. With his new wealth, he decided to pursue his longstanding interest in cars by purchasing a garage business. To that end, Performance Autocars Limited (**"PAL"**) was incorporated on 7 September 2007. Mr Rofail was the sole shareholder and director of PAL. The business was run from premises within a multi-storey car park on Belsize Road in London NW6, which were leased from the London Borough of Camden ("LB Camden"). He describes PAL as having been run for "recreational" purposes, as a means of fostering his interest in cars. From 2009 onwards, Mr Rofail also entered into the property development business. His aim was to purchase residential properties in London, to refurbish them, and then either to sell them or to let them out.

2. Mr Rofail employed the Defendant, Mr Mohammed Hassanin, at his garage from around 2007. On 1 May 2008, he appointed Mr Hassanin as company secretary. So far as Mr Hassanin's activities are concerned, that much is common ground. Little else is: the nature and extent of the work carried out by Mr Hassanin for Mr Rofail is almost wholly a matter of dispute between them.

3. At the centre of the dispute lies a transfer of £390,000 that Mr Rofail made to Mr Hassanin on 8 April 2014. Both agree that such a transfer was made, but each gives an entirely different account as to the circumstances surrounding it. In short summary, Mr Rofail says that it was a loan to Mr Hassanin, to assist him in buying a house. Mr Hassanin says that it was not a loan, but that it was a payment due to him under a profit share agreement, pursuant to which Mr Hassanin was entitled to 25% of the net profits from various property development projects upon which he had worked for Mr Rofail as a project manager.

4. Mr Rofail now brings this claim to recover the alleged loan. Mr Hassanin denies that there was any such loan, and counterclaims for further sums which he says remain due to him under the alleged profit share agreement. Mr Rofail in turn denies that there was any such profit share agreement.

5. Mr Edward Rowntree appeared for the Claimant, and Mr Jerome Wilcox appeared for the Defendant. I am grateful to both counsel for their assistance.

The parties' cases in broad outline

(i) The Claimant's case

6. Mr Rofail says that he had employed Mr Hassanin shortly after the incorporation of PAL on 7 September 2007 to manage the garage.

7. In or about March 2014, Mr Hassanin approached Mr Rofail and requested a personal loan to enable him to purchase the property at 91 Mackenzie Road, London N7 which he was then renting from the local authority, the London Borough of Islington ("LB Islington"). Mr Hassanin requested a loan in the sum of £390,000. Mr Hassanin had explained that because this was a council property, he could buy it at a very good

discount. Mr Hassanin explained that the terms of his purchase from the council would prevent him from selling the property for the first five years after purchase, but that at the end of five years he proposed to sell the property at a good profit. When he did, he would repay the money loaned to him by Mr Rofail.

8. Mr Rofail says that he agreed to loan the sum. The terms of the loan were that the funds would be used for the purchase of 91 Mackenzie Road, and that the loan would become immediately repayable in full on its sale. The agreement was a verbal one: given his trust in Mr Hassanin, he did not need the agreement to be written down. Mr Hassanin was working for him, they were friends, and Mr Rofail trusted him. Nor did Mr Rofail seek to charge any interest on the loan: he did not need any interest as he was a wealthy man. He said they both knew exactly what the agreement was.

9. Mr Rofail said that it was in accordance with this agreement that he transferred the sum of £390,000 from his bank account at Barclays Bank to the account of Mr Hassanin on 8 April 2014. He says that the fact that the payment was a loan was acknowledged a couple of weeks later by Mr Hassanin's wife, Balgis Mohamed, when they met at a Starbucks café in Queensway.

10. On 27 October 2014, Mr Hassanin and his wife purchased the property for £377,300 as joint tenants.

11. In January 2015, LB Camden took possession of the car park and demolished it in order to build residential accommodation. Mr Rofail decided not to find new premises for the garage business but to close it down, as PAL was only a recreational interest for him, and finding new premises and moving everything would be a lot of hard work. He therefore decided to close PAL down and have the cars put into storage. PAL was duly dissolved on 6 October 2015.

12. Mr Rofail said that it was at this point that his friendship with Mr Hassanin had broken down. It appeared to him that Mr Hassanin was angry with him for closing the business. Mr Hassanin made clear that he thought that Mr Rofail should be looking after him and was upset that he wasn't making as much money as he had when the garage was in operation. Mr Rofail had no further work for him, but Mr Hassanin continued to complain. Despite these complaints, they had kept in touch. They exchanged greetings cards at the times of their respective religious festivals, and from time to time they had gone for coffee together. On one such occasion in 2019, they had met in the Camden branch of Costa Coffee; Mr Hassanin had said to him that he was waiting for his daughter to do her GCSEs and then he would sell the house and repay the loan.

13. After a while they lost touch, and they were no longer in regular contact. Eventually, after Covid lockdown restrictions had eased, he had gone to 91 Mackenzie Road on three occasions in late summer and early autumn 2021 to find Mr Hassanin, but on each occasion had found there was nobody there. Research at HM Land Registry had revealed that on 20 February 2021, Mr Hassanin had sold the property for the sum of £745,000. Mr Hassanin had not told Mr Rofail about the sale of the property. Mr Rofail says that he realised that rather than simply having lost touch, Mr Hassanin had deliberately avoided him: he knew that he would have to repay the loan on the sale of the property. In December 2021, Mr Rofail's solicitors engaged a firm of private investigators, who discovered that Mr Hassanin and his wife had jointly purchased a

house in Hythe on 21 May 2021 for the sum of £655,000 without the assistance of mortgage funding.

14. In January 2022 he travelled to Hythe with his friend, Moris Mankaruis, to confront him and to demand repayment of the debt. When they met him outside his house in Hythe, Mr Hassanin did not deny the debt. Shortly after that conversation, Mr Hassanin blocked his telephone number. Realising that Mr Hassanin did not intend to contact him further, but would continue to avoid him and to refuse to pay the debt, Mr Rofail instructed lawyers to bring the claim.

15. Since the property had been sold on 26 February 2021 (although without Mr Rofail's knowledge at the time), Mr Rofail's case is that the loan is now due. He brings this claim to recover the sum of £390,000. He claims no interest under the loan (but does claim interest pursuant to section 35A of the Senior Courts Act 1981). The claim was issued on 14 March 2022.

(ii) The Defendant's case

16. Mr Hassanin denies that there was any such loan agreement. He had not asked for such a loan nor accepted any offer of one. Instead, he says that the transfer of £390,000 was made by way of payment to him, pursuant to the terms of a profit share agreement. In his initial role at the garage, he had been paid only £400 per month, increasing to £700 per month by 2014 (plus a cash bonus of £1000-£2000 per annum). However, in addition to those very modest sums, Mr Rofail had offered him a 25% net profit share of his property development business in lieu of salary in return for him taking on a managerial or project manager role of that business. This was an oral agreement. The agreed terms were said to be broadly as follows:

    i) Mr Rofail would use his lottery winnings to purchase suitable properties in or around the London area with a view to their refurbishment and resale at profit.

    ii) Mr Hassanin would act in a managerial or project manager role throughout the duration of the refurbishment and without any fixed income stream over the duration of the refurbishment.

    iii) Upon conclusion of the refurbishment work, Mr Rofail would immediately market the refurbished property at the best possible market price.

    iv) Upon conclusion of the sale of the refurbished property and in consideration of the time and energy spent by Mr Hassanin undertaking the agreed role, Mr Rofail would pay Mr Hassanin a 25% share of the net profit as determined either by agreement or by reference to an accountant's agreed figure-work.

17. The £390,000 payment represented part of his share of the profits which had been accrued by Mr Rofail's property development business. Mr Hassanin's counterclaim is for a further sum to be paid to him representing his outstanding share of the net profit made by Mr Rofail in respect of properties whose refurbishment Mr Hassanin had overseen. Mr Hassanin relied upon the work he had undertaken in respect of eight individual properties. They were as follows:

    i) 61 Victoria Road, London NW6;

ii) The Blarney Stone pub, Blackbird Hill, Kingsbury, London NW9;

iii) A property in Donnington Road, London NW10;

iv) 145 Harvist Road, London NW6;

v) Flat 4 Hillside Court, 409 Finchley Road, London NW3;

vi) Flat 19 Hillside Court, 409 Finchley Road, London NW3;

vii) 52 Rothschild Road, London W4; and

viii) The Tavern, 75 Cricklewood Lane, London NW2.

18. Further, Mr Hassanin says that when the car park premises on Belsize Lane were the subject of possession proceedings brought by LB Camden in 2015, he made a further oral agreement with Mr Rofail, whereby Mr Hassanin would negotiate the level of compensation to be paid by the local authority to Mr Rofail in exchange for 50% of the compensation sum received. He says that it was eventually agreed that he would be paid £40,000 by Mr Rofail, £35,000 of which represented half of the £70,000 compensation ultimately awarded, with the remaining £5,000 being a bonus payment that Mr Rofail had promised him.

(iii) The Claimant's response to the counterclaim

19. Mr Rofail denies that there was any such profit share agreement with Mr Hassanin. He further denies that he agreed to share any part of the compensation in respect of the termination of his tenancy with Mr Hassanin. He further denies that Mr Hassanin had done any work at all in relation to the property development business, save for the odd errand that he might have run or some basic administrative tasks, which he would have done in the course of his employment at the garage.

20. To the contrary, Mr Rofail said that he had instead entered into a profit share agreement with Mr Billal Javed, who handled all matters from identifying properties for development, consulting surveyors and architects, obtaining planning permissions, and matters relating to the sale and management of the properties. It was Mr Javed and not Mr Hassanin who had performed the project manager role.

The issues for trial

21. By order dated 22 November 2022, Master Eastman directed that the claim be conducted by way of a split trial on the question of liability and quantum. The liability trial should decide the following issues:

i) Was the payment of £390,000 made by Mr Rofail to Mr Hassanin on 8 April 2014 a loan and, if so, what were the agreed terms on which such loan was made?

ii) Has the loan fallen due?

iii) If the said payment was not a loan, what was the basis on which the payment was made?

iv) Was there an agreement about profit sharing between Mr Rofail and Mr Hassanin in relation to Mr Rofail's property development business?

v) If question (iv) is answered in the affirmative, what were the terms agreed?

vi) Is Mr Rofail liable to pay Mr Hassanin any money?

The witnesses

22. The evidence of the two principal witnesses in this case – namely, Mr Rofail and Mr Hassanin – was directly opposed to each other's. They cannot both have been telling the truth. Much of the witness evidence that each called in their support was similarly polarised. I have therefore had to take particular care to assess the credibility of each witness's evidence, in particular by reference to such contemporaneous documentary evidence as there is. In so doing, I have borne mind the familiar guidance of Leggatt J (as he then was) in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Com) at [16]-[22], in particular having regard to the length of time which has passed since many of the key events which formed the background to the disputed payment. This is a classic case where it is appropriate to assess the evidence by reference to such documentary evidence as is available, as well as inferences from known or probable facts. Witness evidence is to be assessed having regard to the personality, motivations and (where applicable) the working practices of the witness. As to the importance of contemporaneous written evidence, I have also had in mind what was said by Arden LJ (as she then was) in *Re Mumtaz Properties* [2011] EWCA Civ 610 at [14], and by Robert Goff LJ (as he then was) in *The Ocean Frost* [1985] 1 Lloyds Rep 1 at 57. I need not set out those well known passages here.

23. I assess the evidence below with those principles well in mind. However, it is also possible in this case to draw some general conclusions as to the reliability of the witnesses' evidence, which will in turn inform the assessment of the particular factual issues that arise. I set out those conclusions next, before setting out the competing evidence on the main factual issues and my conclusions upon them.

The Claimant's witnesses

24. Mr Rofail made three witness statements, each of which he adopted in his evidence in chief. The first was a comparatively short witness statement dated 8 March 2022: it was filed when the claim was first issued, in support of an application to freeze Mr Hassanin's assets up to the value of £390,000 up to the trial of this action. The second was a fuller witness statement dated 28 April 2023, which was prepared for trial. The third was dated 22 September 2023, and was filed in response to Mr Hassanin's second witness statement. I granted permission for it to be relied upon at the outset of the trial: it was wholly responsive in nature, and it was necessary for it to be admitted to ensure that the parties divergent cases were properly aired. There was no prejudice caused to Mr Hassanin in so admitting it, given that it had been served two months before trial.

25. It was therefore somewhat surprising that, when cross-examined on this evidence, Mr Rofail insisted that he had never read or seen Mr Hassanin's second witness statement before; nor had it been translated for him. Given that he had provided his third witness statement specifically to respond to it, this cannot have been right. Nonetheless, when this was pointed out to him, he again said that he hadn't read it before. When taken to

his third witness statement, and reminded that he had signed it, he said that he did not remember when he had first seen this witness statement, and could not remember what it was about. Only upon then being taken back to Mr Hassanin's statement did he agree that he had seen it before.

26. This was just one aspect of his evidence that left me with the clear impression that Mr Rofail was – as Mr Hassanin had described him in his second witness statement – a "*denial person*": Mr Hassanin had said in his second witness statement that "*My experience of him is that he always denies any allegations made against him in business and in his personal life."* The observation proved to be apposite throughout Mr Rofail's evidence from the witness box. His first instinct was often to deny even the most basic of matters, including where (as here) his denials could not possibly be true, or positively contradicted his own evidence. Thus, to give three further examples from his oral evidence:

    i) Mr Rofail denied that he had initially employed Mr Hassanin at the garage because he had been impressed by him. That contradicted his evidence in his first witness statement that when Mr Hassanin had done some repairs at the garage, "*I was impressed and when he asked me for a job, I was happy to employ him to manage the garage."* He had changed his evidence because, in light of the counterclaim, he now sought to denigrate Mr Hassanin's contribution to his business in any aspect.

    ii) He denied that he had known that Mr Hassanin had been appointed Company Secretary to PAL on 1 May 2008, but claimed he had only found out "*just now*"; he said that Mr Hassanin had "*appointed himself*". Neither of those statements was true: Mr Rofail had said in his second witness statement: "*Because the Defendant handled all the garage's paperwork, I appointed him Company Secretary on 1 May 2008.*"

    iii) He denied having previously seen a note signed by a Mr Nagdi acknowledging a debt to him, despite the fact that he had exhibited it to his own witness statement and had provided an explanation of the circumstances in which he had obtained it. Even when this was put to him, he maintained that he had not seen the note before. That was clearly untrue.

27. I take full account of the fact that Mr Rofail gave evidence through an interpreter. English is not his first language: he was born in Egypt on 13 July 1953, and moved to the UK in 1977. Although it was clear that he usually understood questions put to him in English, it was equally clear that his ability to express himself in English was limited. On his own evidence, he does not write easily in English, and as I observed during the course of his evidence he is slow to read English as well. He said in his second witness statement that his emails are always typed out for him by an assistant or an acquaintance, but as I shall go on to explain, this was an over-generalisation: he is as capable of writing a short and simple email in English as he is of providing a short and simple oral answer to a question in English.

28. With all due allowance made, his evidence remained unreliable and inconsistent. I discuss the most important aspects of it in my review of the evidence below. Overall, it appeared to me that he was more concerned not to make any admission in response to Mr Wilcox's questioning than he was to assist the court with his best recollection of

events. The result is that I cannot readily accept Mr Rofail's evidence save where it is supported by contemporaneous evidence or by other reliable evidence (including witness evidence).

29. Mr Rofail called Mr Javed to give evidence. Mr Javed's witness statement was dated 22 September 2023, having been served only in response to Mr Hassanin's evidence. I granted permission for it to be relied upon at the outset of the trial. I considered that its admission would not cause real prejudice to the Defendant, and that its admission would enable me to deal with the case more justly in accordance with the overriding objective. Mr Javed sought to assist the court to the best of his recollection. During cross-examination, he realistically accepted the limits of his knowledge as to the nature of Mr Hassanin's activities on behalf of Mr Rofail, and made clear where matters were outside his personal knowledge. The result was, as will appear below, that his evidence was rather less far-reaching than it first appeared. So far as it went, however, I was satisfied that Mr Javed had sought to give a truthful account.

30. Lastly for the Claimant, Mr Mankaruis was called to give evidence. Mr Mankaruis had provided a witness statement dated 28 April 2023. Mr Mankaruis gave evidence which was limited in compass to events which took place some time after the payment in dispute in the present case. His recollection of the timing of the events has to be treated with caution: he appeared to me to express a higher degree of confidence in some aspects of his recollection than could be justified having regard to known events. His motivation in giving evidence to be to support his longstanding friend Mr Rofail.

The Defendant's witnesses

31. Mr Hassanin made two witness statements. The first was dated 6 April 2022, having been prepared in response to Mr Rofail's freezing application. The second was dated 9 May 2023, having been prepared for the trial.

32. In giving oral evidence, Mr Hassanin was passionate in defence of his own position, displaying impressive command of the facts: he was able to provide considerable supporting detail of his account when challenged. However, at times his desire to argue his case meant that his account became prone to exaggeration as to his own role in events, and as to the clarity with which key events could be recalled. Caution is therefore required in assessing some of the detail of his evidence. I make clear in my findings below where I have rejected aspects of his evidence.

33. Mr Hassanin called his wife Balgis Mohamned, his daughter Ayat Mohamed, and his son Saif El Dein Mohamed Saad. Each of them had provided a witness statement dated 9 May 2023. Each was called to give evidence before me and was cross-examined on behalf of Mr Rofail. Each gave evidence in a straightforward manner, and I was satisfied that each was seeking to give evidence to the court to the best of their ability.

The evidence and my findings of fact

34. I set out below the relevant evidence and my findings of fact upon it, under the following sub-headings.

    i) The establishment of Mr Rofail's garage business and Mr Hassanin's role within it (2006-2009);

ii) Mr Rofail's property development business and Mr Hassanin's role within it (2009-2015);

iii) The transfer of £390,000 and the alleged meeting in Queensway, Bayswater (April 2014);

iv) Mr Hassanin's purchase of 91 Mackenzie Road, including the correspondence with Mr Rofail's bank manager (October 2014);

v) The closure of the garage and the compensation claim (2014-2015);

vi) The email correspondence between Mr Rofail and Mr Hassanin (July 2015);

vii) A side-issue: the loan to Mr Nagdy (2010-2011);

viii) The meeting in Costa Coffee (2019);

ix) Mr Rofail's attendance at Mr Hassanin's home in Hythe (January 2022);

x) Mr Hassanin's response to service of the claim form and to Mr Rofail's application for a freezing order (March 2022).

35. I then set out my conclusions on the central issue in the case, namely whether the transfer of £390,000 to Mr Hassanin was made because it was loaned to him, or whether it was paid to him pursuant to a profit share agreement, and in either case on what terms.

(i) The establishment of Mr Rofail's garage business and Mr Hassanin's role within it (2006-2009)

36. In his witness statement, Mr Rofail explained that he had come from Egypt to the UK in 1977, working first in a hotel and then as a chauffeur. After winning the lottery in 2006, he established PAL in 2007 and started operating his garage business. He describes it as having been run "*for recreational purposes*". Mr Rofail said that he had been impressed by Mr Hassanin when he had come to the garage to do some repairs. When Mr Hassanin had asked him for a job, he had been happy to employ him as the garage manager. He said he wanted someone to run the business as he didn't want to have to deal with all the paperwork and similar matters: he was just interested in the cars themselves. As Mr Hassanin handled all the garage's paperwork, he had appointed him company secretary on 1 May 2008.

37. Mr Hassanin's account of the circumstances in which they had met was broadly consonant with that described by Mr Rofail in his witness statement. He said that having been born in Egypt, he moved to the UK in 1995 when aged 27 years old. He had met Mr Rofail in 2000, on the Edgware Road. They had occasionally met in bars, and had got to know each other. He said he had taken his car into the PAL garage in 2005. (I interpose that this date cannot be correct: PAL was not incorporated until September 2007, which is consistent with Mr Rofail's evidence that he acquired the business only after his 2006 lottery win. Even if the acquisition of the garage business pre-dated the incorporation of the company, it is difficult to see how Mr Rofail could have acquired such a business before receipt of the lottery funds in 2006.) Coincidentally, an old acquaintance Ahmed Moussa had been the manager, and Mr Hassanin had discovered that Mr Rofail was the owner, with the result that they had renewed their relationship.

At around the same time, he had begun working for a chauffeuring service opposite PAL, and had started buying cars from auction sites to make extra money. Mr Hassanin said he would do whatever mechanical or body work was needed on the cars and had sometimes taken the cars into PAL and paid them to do the work for him. He would then resell the cars at a profit. He began to build up a really good relationship with Mr Rofail, who would tell him how impressed he was with his approach to work. At some point in 2007 Mr Rofail had asked Mr Hassanin to manage PAL for him, having parted company with Mr Moussa. Mr Hassanin said that it had been clear to him that Mr Rofail was not really interested in working day to day: he preferred to spend money and enjoy his winnings. He had really wanted someone else to do the day to day work for him. On 1 May 2008, Mr Rofail had appointed him company secretary of PAL. By this time, Mr Hassanin said they had become extremely close and trusted each other.

38. When this account was put to Mr Rofail in cross-examination, however, he denied any such close friendship or relationship of trust. He agreed that Mr Hassanin had started working for him in 2007, but denied that he worked very well. When it was put to him that he had been so impressed he had appointed him company secretary on 1 May 2008, he claimed that Mr Hassanin had appointed himself to the role, and that he (Mr Rofail) had not known he was company secretary: he had only found out "*just now*". He said that Mr Hassanin had spent all his time at the garage working on the laptop. He said that he used to visit the garage and would always find Mr Hassanin and the two other employees playing on their phones. He had only employed him because he needed someone after Mr Moussa had left, and not because he had been impressed with him.

39. Mr Hassanin's evidence was that he was paid only £400 per month for his work at the garage, rising to £700 per month by the time he finished there in 2015. This pay may have been low, but he said that from the outset, Mr Rofail indicated to him that he could "*set him up with big money*" if he worked with him not only in PAL but also potentially in the property refurbishment business he had planned for the future.

40. Although the payroll recorded that Mr Hassanin was paid only £400 per month, Mr Rofail said that he in fact paid him £400 in cash every week; he said that Mr Hassanin had under-recorded the sums paid to him on the payroll to avoid taxes, as he was being paid cash. He also said he would give Mr Hassanin gifts of £2,000 in £50 notes, on special occasions such as Eid (totalling some £24,000 over the length of their relationship). He would routinely carry large sums of cash on his person, and would frequently treat his family and friends.

Conclusions on the establishment of Mr Rofail's garage business

41. Mr Rofail's oral evidence in cross-examination directly contradicted that in his witness statement, and I reject it. He had explained from the time of his first witness statement in March 2022 that he had employed Mr Hassanin because he had been impressed with him, and further that he had appointed him company secretary in 2008 because he was already doing all the paperwork. I find that by 2008, Mr Rofail and Mr Hassanin were in a trusting relationship, and in particular that he trusted Mr Hassanin with the management of his garage business on a day to day basis (allowing Mr Rofail himself to treat the business as simply a "*recreational*" interest, notwithstanding that it had at least three employees).

42. This conclusion is unaffected by the fact that PAL proved to be a loss-making business over time. According to the abbreviated accounts produced by Mr Rofail with his third witness statement, PAL made losses each year, to a fairly modest extent until 2010 but with the losses more steeply rising thereafter. I do not consider this to have been shown to reflect any lack of application on Mr Hassanin's part to the business; nor is there any contemporaneous evidence of Mr Rofail having blamed Mr Hassanin for his company's deteriorating fortunes. Rather, it reflects the fact that Mr Rofail's primary business focus from 2009 onwards was on his investments in property development. As I explain below, it is likely that Mr Rofail required Mr Hassanin to focus his efforts on that business also, rather than on the garage business of PAL.

43. Mr Rofail paid Mr Hassanin for his work at the garage on an informal cash basis. I cannot accept that Mr Hassanin was paid only £400 per month at the outset rising to £700 per month by 2015, as I was told the payroll recorded: it would have been impossible for Mr Hassanin to live on such low sums (which would have been substantially below the minimum wage in any event, given the hours Mr Hassanin worked). It is likely that Mr Rofail paid cash to Mr Hassanin in excess of the recorded sums. This is likely to have reflected both the informal "recreational" nature of the business that he viewed himself as maintaining; however, it also reflected Mr Rofail's own desire to be seen to act generously to others and with a degree of largesse. Mr Rofail used such acts of generosity not to reward but also to incentivise: he knew that those who were close to him were well aware of his wealth, and consciously used the prospect of being the beneficiary of his largesse as a means to invite loyalty and hard work. That was precisely the basis upon which Mr Hassanin agreed to work for him in the first place.

44. I do not find it necessary to resolve a side-issue that arose as to whether Mr Rofail's trust in Mr Hassanin at this time extended to asking him to witness his personal will. Mr Rofail denied this, producing copies of his wills of 2007 and 2015, neither of which were witnessed by Mr Hassanin. This did not exclude the possibility that there was another will made in the interim; however, nothing turns on this issue. For the reasons I have already given, I accept that by 2008 Mr Hassanin was a trusted manager and employee at PAL.

45. Mr Hassanin also gave further evidence as to various matters relating to Mr Rofail's personal life and conduct after his lottery win, which Mr Rofail in turn denied. I do not find it necessary to resolve those matters: it suffices to say that the matters raised do not bear upon the conduct of Mr Rofail's businesses, and that I did not find these matters of any assistance in resolving any wider issue of the credibility or reliability of either witness's evidence.

(ii) Mr Rofail's property development business and Mr Hassanin's role within it (2009-2015)

46. Mr Rofail's evidence, as set out in his second witness statement, was that he began to work with Mr Billal Javid on property development in 2009. The arrangement was that Mr Javed was to handle all matters related to identifying properties for development, consulting surveyors and architects, obtaining planning permissions, and matters related to the sale and management of the properties. Mr Rofail's own role was to provide funding for these ventures. In cross-examination, Mr Rofail's position was bluntly stated: he had had no profit share agreement with Mr Hassanin of any kind, and

Mr Hassanin was not involved in any way with the property development business. All Mr Hassanin had done, he said, was to sit behind the laptop at the garage playing games, while Mr Rofail was looking after the business.

47. Mr Hassanin's evidence was that in 2009, Mr Rofail had offered him a profit share of 25% in his property business on top of his garage wages if he would take over a managerial or project manager role. He said he had agreed to this. In his first witness statement dated 6 April 2022, he said that by 2009 he was managing three of Mr Rofail's properties in London, that this had expanded to 12 properties by 2011, and that he was running the various refurbishment contracts, including with overseas suppliers from China and Egypt. He had also travelled to the USA as part of his work. The work had been very time consuming and hard, and involved him spending a large amount of his time away from his family.

48. Mr Hassanin gave further details in his second witness statement dated 9 May 2023, both as to his role in general and as to the work he had done in relation to specific properties. He said that on or around 9 January 2009, Mr Rofail had told him that he was so impressed as to how he had been working with him at PAL that he wanted him to work with him side by side on his property development business. He said Mr Rofail offered him a net 25% profit share after all financial expenses, either as agreed between them or by reference to an accountant's breakdown, in his property development business. Mr Rofail explained that he wanted to be the face of the business, but did not want to get his hands dirty. Initially, he had expected Mr Hassanin to source suitable properties for purchase and refurbishment, but subsequently this was in fact done by "Mr Bilal" (i.e. Billal Javid). He envisaged (as at January 2009) that he would fund the purchase of the properties and that Mr Hassanin would project manage their refurbishment to get the properties ready for sale, and deal with their maintenance. Mr Hassanin said he agreed without hesitation.

49. Mr Hassanin stated that they further agreed that they might simply sell the certain properties on for a quick profit in an appropriate case, but in general all the properties would be refurbished first and then sold, and they would then take their respective profit shares as agreed, namely a net 75% for Mr Rofail and a net 25% for Mr Hassanin (after all expenses and costs). This was a long-term project, and Mr Hassanin would not be paid a salary for his work: he would have to live off his PAL salary.

50. In his new role, Mr Hassanin said, his days combined both jobs. His day from Monday to Saturday would start at 8am and ended after 10pm, sometimes not until 2am. Sometimes he worked seven days a week. His job involved managing the garage, as well as working in the property development business. In the latter regard, he was investigating and preparing reports on potential properties for purchase. Mr Javed sourced these properties from the owners before they came to market, and Mr Hassanin would research them by for example establishing their market value (by reference to comparables), identifying any future rental or sales market when it came to selling the property, identifying the social class of existing residents, the rate of price change in the area, crime rates, quality of schools, and transportation to and from the area. In particular, it was important to establish the best rental value of any potential property given sale timing could be a long and delicate process if market conditions changed. Mr Hassanin said he would visit the chosen areas, view similar properties and meet and discuss the local potential properties with local estate agents who might sell and rent similar properties they were in the market for in that area. All these efforts would take

days and weeks of hard work along with the daily work in PAL. He and Mr Rofail agreed that if the property was not sold quickly after it was refurbished and there was likely to be any extended delay in selling, they would need to establish a source of income from any particular property until it was sold. As set out below, he gave a detailed account of his involvement with each of seven significant projects.

51. Mr Hassanin was supported in his evidence by that of his wife, Balgis Mohamed. She gave evidence that she was aware of his work on the properties: she said that he was going out in the middle of the night and answering calls, as well as spending time away from home. She had once got angry with Mr Rofail because Mr Hassanin had been too tired from work to spend Eid with the family. Even though he did not tell her how much he was to be paid for this work until after he had received the payment in April 2014, she was aware of his work not only at the garage but also at the properties. When he told her of the payment on 8 April 2014, he explained it was part of a percentage-based payment of what he was owed from the property business and what he had worked for.

52. In his third witness statement, Mr Rofail said that he was astonished by these suggestions. He said that Mr Hassanin had not had any role in the property development business beyond running minor errands, let alone the frankly fictional role that he had told the Court that he had undertaken. He said that Mr Hassanin had no qualifications or experience in property development, and that he had not offered him a partnership, or a 25% profit share in his property business. Nor had he asked him to source properties for purchase, and had the possibility have been raised, he would not have trusted him to do so. He denied that Mr Hassanin had worked the hours claimed, or that it was even possible for him to have done so. He said that he did not trust him to have any part in his property investment activities at all.

53. In cross-examination, Mr Rofail insisted that he Mr Hassanin had done precisely nothing in support of the property development business. He only had knowledge of the business because he used to sit in in the garage, and would see all the documents on the table and read them (and commit their contents to memory). Mr Hassanin in turn denied this, pointing to the detail of the properties' development that he could provide.

54. The contrasting accounts on this point are best assessed by reference to the evidence that is available in respect of each of the properties, as now follows.

(a) 61 Victoria Road, London NW6

55. Mr Rofail said that he purchased his first investment property on 25 June 2009. This was 61 Victoria Road, London NW6. It was purchased for £830,000. The property had already been converted into flats, but with the assistance of Mr Javed, he had decided to develop the flats further and had sought planning permission for improvements to them. Mr Rofail pointed to the fact that on 3 January 2011, Mr Javed had emailed him attaching the planning permission that had been granted in respect of the property. Planning permission had been granted on 22 December 2010 in respect of a retrospective application made on 11 August 2010 for "*part-single, part three storey rear extension to lower ground, ground and first floor self contained flats*" at 61A, 61B and 61C Victoria Road.

56. Mr Hassanin agreed that it was Mr Javed who had sourced the house. However, Mr Hassanin said that it was he who had dealt with all the negotiations and had agreed a

price of £830,000. He said he had done a lot of work to ensure that this first property was going to be a good deal, researching everything to the greatest detail both online and via physical attendances at various addresses. He was spending a lot of time on investigating the potential division of the property into separate flats to achieve a greater rate of sales profit rather than being a refurbishment of a single dwelling to be sold on as one unit. Having spent some months investigating the position, Mr Rofail had purchased the property. The property was converted into four flats and Mr Hasanin had negotiated a good quality contractor to do the work for about £180,000, including some extension work to the rear. He said he had attended the site for all deliveries of building materials, and had noted what was delivered, making sure all materials were accounted for. During the reconstruction, he recalled flying to Egypt on 4 December 2009 to buy porcelain tiles in bulk from the factory directly for future use in the purchased properties, to save money. When the tiles arrived in London, they had used over 200 square metres of them in refurbishing the four flats. After the flats had been completed in around 2010, he took his camera to photograph the apartments; these pictures were to be used in the advertisements marketing the flats. He had organised three estate agents in the same area where the property was located to provide a valuation for each of the four flats, totalling £1,640,000. Instead of selling, Mr Rofail and he had agreed that given the strength of the market, a higher price could be achieved if they waited, and let the apartments out for a period. As a result, Mr Hassanin had arranged for the flats to be let and managed any rental issues as needed (such as plumbing and electrical problems, as well as administrative issues and the chasing of outstanding rental payments with the agents/tenants concerned). About £6,000 rental per calendar month had been achieved, and by 2014 the valuation of the four flats had increased to a total of £2,100,000.

57. Mr Rofail responded to this evidence in his third witness statement, saying that it was demonstrably untrue that a single house had been converted into four flats: the property was already in flats in advance of his purchase of the property on 25 June 2009. In particular:

    i) A planning permission dated 4 February 2008 referred to 61A-D Victoria Road as the address, and granted permission for a loft conversion "to second-floor flat", and for the installation of an access door to the rear garden of the "lower-ground-floor flats".

    ii) The retrospective planning permission dated 22 December 2010 was for an extension to flats which were already in existence by then.

    iii) An email from a financial consultant to Mr Rofail's solicitor dated 12 May 2016 in connection with a mortgage application had confirmed: "*It does transpire that the flats were purpose built not converted. Brent Council was aware that the property is 4 flats and confirm that there is no record (paper or otherwise) for planning a house to flats. … Ayoub and his builder confirm that what he did was improve the 4 flats."*

58. He also stated that it was untrue for Mr Hassanin to have claimed to have negotiated a good quality contractor to do the work on 61 Victoria Road: only Mr Rofail and Mr Javed had conducted any such negotiations. Further, Mr Hassanin had flown to Egypt to buy tiles at his own express request, to help his brother. If Mr Hassanin had taken his camera to the property to take photos and/or obtained valuations, he had done so

without Mr Rofail's knowledge or consent: he had always intended to let the flats out and not to sell them. A property agent, Merlin Cooper Ltd, had been used to manage the letting ever since they had first been offered for lease. It was untrue that Mr Hassanin had maintained or managed the properties when they were let out: that had all been done by Merlin Cooper.

59. Cross-examined, Mr Hassanin confirmed that this was the first property that Mr Rofail had bought for the purposes of his property development business. He had researched other properties in the same road and surrounding area to establish the correct price. He had only visited it from the outside, but felt able to value it because number 59 was on the market at the same time, and the interior would be stripped "*and made into flats*". It was put to him that the flats were already in existence, as evidenced by the planning permissions referred to above, and a Building Regulations Completion Certificate showing a completion investigation had been carried out on 27 May 2010 in respect of works notified on 16 July 2009 for the "*refurbishment of existing flats and loft conversion*". Mr Hassanin responded that when he had entered 61 Victoris Road [after it had been purchased on 25 June 2009] there were no flats: the conversion to flats took place "*after we took over*". He said that the contractor had charged £180,000 for this work, and an additional £25,000 for some subsequent alterations. He said that the reference in the 2008 planning permission to existing flats was incorrect, and that the email of 12 May 2016 referring to 61 Victoria Road having been purpose built as flats was also wrong. He said: "*We entered the property as one house and we did all the conversion. I am the one that did that job"*; he said that the physical work "*and getting hands dirty*" was done by him. He had then rented out the properties through an estate agent in Queen's Park. Merlin Cooper had not been established until 2013.

(b) The Blarney Stone pub, Kingsbury

60. Mr Rofail said that around a similar time in 2009, Mr Javed had approached him with a proposal for a project to purchase a pub called the Blarney Stone in Kingsbury, northwest London. He proposed that they would obtain planning permission to demolish the pub and build housing on the site. They agreed that Mr Rofail would provide funding for the project, and that Mr Javed would take the lead in arranging the necessary planning consents, coordinate design and building work, arrange insurance, and liaise with all necessary surveyors, engineers, construction workers and other contractors. In exchange for this work, it was agreed that Mr Javed would receive a profit share in the proceeds of the development. Mr Rofail said that on 7 May 2010, he completed the purchase of this property for £1,500,00 plus £236,250 VAT. Mr Javed and Mr Rofail's accountant, Mr Ajit Shah, had subsequently applied on his behalf to recover the VAT. On 20 May 2010, Mr Javed emailed Mr Rofail to report that the pre-application for planning permission had been submitted to Brent Council that day. The pre-application was a 43 page document setting out the nature of the proposal, including its essential design elements. The proposal was for 39 flats with 40 parking spaces and 4500 square feet of retail space. Mr Rofail said that on 27 March 2013, the sale of the Blarney Stone pub was completed for £2,750,000 plus VAT. On 19 August 2013, Mr Javed submitted an invoice to Mr Rofail in the sum of £168,000 for his profit share in relation to the purchase and sale of the pub, marked "*Already received*".

61. Mr Hassanin agreed that it was Mr Javed who had brought this proposal to Mr Rofail, and that he had suggested it would be possible to get planning permission for a large number of apartments in this pub. He said that Mr Rofail asked him to investigate and

report back as usual. Mr Hassanin said that he had been able to establish that new build residential flats were selling for between £400,000 to £600,000 depending on the number of bedrooms. The property had been purchased for £1.5 million in May 2010. It was in quite a derelict state due to squatters constantly returning to the property and vandalising it. Mr Rofail arranged for a wooden protective fence to be installed around the property by a contractor and for the property to be cleared of the damage. Abandoned and parked cars also had to be removed from the site, which Mr Hassanin arranged. Damage to the fence was an ongoing problem, and both he and mechanics from PAL had to help with fixing it back into place. In order for the development to begin, the pub had to be demolished. A contractor was hired. Mr Hassanin arranged for the utility lines to be cut off and managed this process successfully at a fraction of the price being quoted by private companies. He had negotiated a saving of around £40,000 from the quotes for demolition which had been in the region of £80-90,000. After the completion of the demolition process, he supervised the clearance process and contacted a number of private companies to remove the waste building materials before choosing a suitable company at the lowest price to complete the removal. He said he had been on site for three weeks from 7:00 AM until 6:00 PM because he had to supervise the loading process to make sure that the heavy transport vehicles were fully filled: the cost of each transfer was about £300. The completion of the removal was shared by two heavy-load demolition removal trucks. Even after the land was cleared, there was a major problem with fly tippers. He had to arrange for security. Quotes were provided for about £4000 per month, but he found an individual who was prepared to live on the site in his caravan in exchange for acting as site security. This ended up being a considerable monthly saving given the delay between clearance and planning permission being granted.

62. During the application for planning permission, Mr Hassanin said that he and Mr Rofail had attended the architects two or three times to discuss how they could deal with the section 106 agreement and the possibility of paying a sum of money to compensate the council to waive the affordable housing requirement or alternatively buy a plot of land in the same borough. They decided to buy a plot on the border of the borough as part of the section 106 agreement. This would enable all the flats to be sold to private owners and maintain the highest possible value. Planning permission was granted for 34 flats, two detached houses and a commercial unit. The development also included eight residential units allocated to council tenants.

63. After obtaining planning permission, a decision needed to be made whether to develop the site themselves from scratch or to sell it on with the benefit of planning permission. Mr Hassanin said that he was able to persuade Mr Rofail that it would be more sensible to sell rather than to take on the high cost of building a development of this scale. The land was sold in March 2013 to Catalyst Housing Limited for £2,750,000. The sale contract was drawn up by Baron Grey solicitors. A few months later, Mr Rofail had provided him with a printed copy of a final account calculation for the Blarney Stone pub. He told him he had received this from his accountant. He said that on the face of the document, there had been a net gain of £573,824.03, and that Mr Rofail had confirmed his entitlement was to 25% of this sum.

64. In his response to this evidence set out in his third witness statement, Mr Rofail made four points. First, he denied that he had given Mr Hassanin any instructions in respect of the Blarney Stone pub or that he had offered him any share in the profits. He said

that all the development work had been done by Mr Javed, with whom he did agree a profit-sharing arrangement. He disputed that the cost of demolition had been £40-50,000, pointing to the accountant's final account calculation which he said indicated that the cost had been £15,000.01. In his oral evidence, Mr Hassanin pointed to additional costs of clearing the site, including £12,000 which appears to have related to land restoration consequent upon the demolition and over £15,000 that was paid in respect of a damaged Caterpillar excavator. All of those sums exclude VAT.

65. Secondly, Mr Rofail disputed Mr Hassanin's account that he had obtained quotes for the clearance of the site and supervised the loading process. It was said that Momi Deco had been used to clear the site, as they had been for the demolition, as evidenced by the fact that a further £8,000 had been paid to them for the "removal of rubbish" and repair of fencing. Mr Rofail pointed to an invoice dated 22 March 2013. Mr Hassanin explained that this was likely to have related to clearance of rubbish from the the fly-tipping that he had described by Mr Hassanin rather than removal of the demolition waste. (I interpose that this evidence was supported by the fact that the date of this invoice was some 18 months after the demolition works. By contrast, the invoices from "Land Restoration Countries" a year earlier appear more likely to have related to the removal of the demolition waste.)

66. Thirdly, Mr Rofail disputed that Mr Hassanin's claim to have arranged security for the site to protect against fly-tipping after the demolition had been completed. He pointed to entries in the final account for "security hire" from Safe Estates Limited, and noted that they were for sums considerably lower than £4,000 per month. However, Mr Hassanin noted in cross-examination that these entries related only to the period from May to July 2010, and not to the period after demolition which he was describing, where he had arranged for a person to remain on the site for free, in exchange for permission to stay there with his caravan. (I also note that there was no evidence as to the whether the earlier security from Safe Estates related to 24 hour security, or at a level equivalent to that which Mr Hassanin says was quoted for at a later stage, such as to put into doubt the sums that Mr Hassanin had said had been saved in this way.)

67. Fourthly, Mr Rofail denied that Mr Hassanin had been involved in negotiating the section 106 agreement with the Council, noting that he had engaged solicitors who subsequently invoiced for work *"in connection with the preparation, negotiation, and settlement of s.106 agreement".* In response, Mr Hassanin unsurprisingly readily accepted that solicitors had been involved in the preparation of that legal document, but stated that this simply reflected the outcome of the negotiations that had already happened, which had been mainly led by Mr Javed. However, he said that he had combined with Mr Rofail on 2-3 occasions at the architects' offices to talk about what could be offered by way of a s.106 agreement (whether cash in lieu or a separate site for council-owned housing).

68. Mr Hassanin further denied the evidence of Mr Javed that he had had no real involvement in the development beyond "*running errands*" for Mr Rofail. He said that was untrue, and that Mr Javed had never been there to manage the site to deal with practical problems when they arose.

(c) The Donnington Road property

69. Mr Rofail said that Mr Javed had assisted him in purchasing this property, but that this was his home and had never been part of his investment portfolio.

70. Mr Hassanin said that Mr Rofail had bought this property in July 2009 for about £720,000. His own role had been precisely the same as it had been for 61 Victoria Road. The property had at the time four bedrooms and two reception rooms. It was in a very poor condition as the house had not been renovated for more than 25 years. He negotiated a very good price to buy the house as the property had not yet been put onto the market. Work began on the property a few weeks after purchase, and he arranged for a rear extension to be built to increase the number of bedrooms, as well as to enlarge the ground floor level. Planning permission was obtained to convert the garage into ground floor accommodation as well, and this enabled the first floor to be enlarged with further accommodation. The second floor was converted into two bedrooms with the addition of a loft conversion. As for the ground floor, it was enlarged to three reception rooms, a gym, an office room with a dining room, a large kitchen and two bathrooms. Once planning permission had been obtained from the local authority, he supervised the work and delivery of the building materials without direct interference from the contractor. Again, sometimes Mr Rofail would deal with the contractor directly. He project managed the Donnington Road property from beginning to end. He could recall Mr Rofail accompanying him at one point in time to a large warehouse to buy all the wooden doors and flooring for the property, and that he also joined him to buy the kitchen and kitchen appliances as well as all the bathroom accessories. At times he had been inspired to be involved, but all decisions were generally taken by Mr Hassanin and approved by Mr Rofail when he was around.

71. Other work which Mr Hassanin recalled carrying out included the purchase and fitting of the ground floor bathroom with an integrated cabin, the supply of some rare marble for the master suite, arranging for the gym to be fitted out and for gym equipment to be installed, as well as the furnishing of the house. He arranged for all the iron work (including the gates) around the house to be supplied and fitted, and he also sourced the electric gate motors and arranged for an engineer to install them. He arranged for the CCTV monitoring systems and shutters to be supplied and fitted. Each and every part of the project had to be timed and scheduled to coincide with the building work, and generally involved obtaining at least three tenders from suitable professionals, meeting them on site and assessing their quotes. In fact, the only aspect of the work he was not involved in with this property, he said, was the installation and selection of the carpet on the first and second floors, as Mr Rofail had hired his son-in-law to do this work.

72. Mr Hassanin continued by stating that the renovation work on this property had been completed in late 2010, taking just under a year in all. Even after the builders had left the site, there was a major water leak from the top floor roof. He recalled arranging for the contractor to return to site to remove some of the exterior tiles of the roof, to remove the ceiling of the two bedrooms, and to reinstall the insulating materials, which all took his further involvement.

73. Two estate agents valued the house, arriving at evaluation of around £2.5 million. However, once again, Mr Rofail took the view that the house was undervalued and could be sold at a much greater profit later. He valued the house at £3,000,000. So once again, instead of selling, they had decided to let the house out to gain a cash income. Mr Rofail had told him he would let the property out "*on short term lets to wealthy*

Arabs over the summer". However, he had never sold the property nor had let this property out on any extended basis. He still owned it, and says that he now lives there.

74. In response to this evidence, Mr Rofail denied that Mr Hassanin had negotiated the price for the house. He said that he had discovered that this property was for sale when Mr Javed had brought it to his attention. They had driven past the property, and he had told him he was interested in purchasing it as a home. Mr Javed had then negotiated a quick sale with the state agent, and Mr Rofail had purchased it. The Donnington Road property had been refurbished, but Mr Hassanin had had no involvement in that process at all. All the building work was carried out by Momi Deco Limited, who had already been engaged to work on 61 Victoria Road. The project was supervised by himself with the assistance of Mr Javed. The applications for planning permission had been made by his usual architect, Lewis Walshe. E-mail correspondence between himself, Mr Javed and Mr Walshe in respect of plans for the proposed refurbishment showed that Mr Hassanin had had no involvement in the matter: he had not been copied into the correspondence at all. Mr Rofail said he had never obtained valuations for the Donnington Road property, as he had purchased it as a home and it had never been his intention to sell it. He denied planning to let it out or telling Mr Hassanin that he would let the property out "*on short term lets to wealthy Arabs over the summer*". Nor had there been any major water leak after the contractor had left.

75. Cross-examined, Mr Hassanin accepted that he had not personally negotiated the price for this property with the seller, but said that he had carried out his normal valuation exercise, based on comparable properties, and had provided Mr Rofail with those valuations. When it was pointed out to him that in his witness statement he had claimed to have negotiated a very good price for the house, he said that he had negotiated it with Mr Javed, as Mr Javed had been the only direct contact with the seller. As to the work of the contractor, he said that the contractor had been responsible for the building only 9including tiling, electrics and plumbing), not the fittings. He had been sourcing materials, checking that no material was wasted, coordinating the different contractors for example, arranging for them to come at the right time), and identifying contractors such as for the CCTV and shutters. He denied the suggestion that this account had all been made up.

(d) 145 Harvist Road, London NW6

76. Mr Rofail said that on 1 October 2009, Mr Javed contacted him to suggest purchasing 145 Harvist Road, which he said could be developed by obtaining planning permission to build four residential units on the site. His email suggested the premises could be purchased for £800,000, construction costs would be £300,000, and the four units could be sold for a total of around £1.6m. In the event, he completed the purchase on 20 March 2010 for £880,000.

77. Mr Hassanin's account was very different from this initial account from Mr Rofail: he said that the property had been offered to them in November 2009 for £800,000. When Mr Rofail had given him the address, he had started to make all the usual enquiries in terms of the market and refurbishment/conversion costs. After discussion, Mr Rofail had agreed with his assessments and he had bought 145 Harvist Road. It was agreed that planning permission would be sought to convert the property into flats. Within a short period of time, Mr Javed had called Mr Rofail and told him that he had a buyer

for £880,000, and the property was sold on 29 January 2010. This was an £80,000 gross profit.

78. In response to this account, Mr Rofail said that he had not given Mr Hassanin any instructions in relation to this property, nor had discussed it with him: on the contrary, his decision to purchase and sell the property had been entirely based on his conversations with Mr Javed, and his view that it could be developed into four flats. However, he said that he had taken the view within a couple of months that it would make more sense to sell the property on quickly. Mr Javed had agreed at the time, even if he now considered this to be an error, and that more money could have been made if the property had been retained. Implicitly, therefore, Mr Rofail recognised that his original evidence that he had completed the purchase of this property in March 2010 for £880,000 – rather than having sold it for that sum within a couple of months of its acquisition – was incorrect. However, save for "*the usual errands*", Mr Rofail continued to deny that Mr Hassanin had had any involvement in this property.

79. Mr Hassanin responded in his oral evidence that he had researched the appropriate price, noting that at this stage they had still only known Mr Javed for five months.

(e) Flats 4 and 19, Hillside Court, 409 Finchley Road, London NW3

80. Mr Rofail said that on 2 December 2009, he purchased Flat 4 for £110,000 and Flat 19 for £240,000. He referred to the fact that in September 2010, Mr Rofail's architect, Lewis Walshe, had emailed Mr Javed and Mr Rofail to report that they had filed a Building Notice and Commencement Notice with LB Camden Building Control in respect of the development of Flat 19.

81. Mr Hassanin said in his second witness statement that Mr Rofail had been offered these flats in December 2009 through Mr Javed. In the course of his enquiries, Mr Hassanin had discovered that the two flats were being let out to long-term secure tenants: Flat 19 was occupied by a lady in her 80s, and Flat 4 by a gentleman in his 90s. This was why the asking price for them was relatively low. Mr Hassanin considered them to be a long-term investment. Mr Rofail had again agreed with his assessment, and had purchased the two flats for £350,000 for the pair. No changes or repairs were made to the flats, given the presence of the sitting tenants, but he liaised with the management company and caretaker to ensure that the quarterly service charges were paid and to deal with any issues relating to the flats. Between December 2009 and Mr Hassanin's parting company with Mr Rofail in 2015, the management company had changed about three times. He was in constant contact with each company to pay the quarterly service bills, to deal with repairs and any late payment fees (where correspondence had been sent directly to Mr Rofail but he had failed to respond), for example when the central heating and boiler room were upgraded for the whole building. In 2012, the management company had decided to conduct an external repair of the whole building, resulting in a large bill that had to be split and paid for by the flat owners. It had come to £8,000 for the two flats in total; Mr Hassanin said he took on the additional responsibility of challenging the bill, given the amount involved.

82. When the tenant of No 19 died, Mr Hassanin said that he had overseen the complete refurbishment of the flat, including lowering the ceiling and fitting of new spot lighting, replacing the original floor for a wood floor, fitting a new kitchen and branded appliances, fitting a new bathroom, and general electrical work and decoration. He then

furnished the flat, which was let out for a good rent to three individuals for about £1800 pcm. Mr Rofail decided that the market would get stronger and so not to sell. Mr Hassanin's role was again to deal with all aspects of the rental including dealing with viewings, completion of paperwork and the handing over of the keys. The tenant of No 4 died in around 2014/15, but Mr Hassanin said he had no involvement with that flat afterwards as he had already left the business.

83. Mr Hassanin stressed that his responsibilities were not confined to project management, but that he was expected to deal with all issues, whether they be blocked sinks, leaks or on one occasion a fire alarm issue in the middle of the night, after a contractor had failed to disconnect an old alarm located in the old ceiling above the new (lowered) ceiling. He was prepared to do all these tasks because of his profit share agreement with Mr Rofail, he said.

84. Mr Rofail, in response, denied that Mr Hassanin had had any role at all in the refurbishment of No 19. The project management was in fact the responsibility of himself, the architect and Mr Javed. He pointed to email correspondence between them in which Mr Hassanin had played no part: it showed the architect liaising directly with Mr Javed to agree e.g. structural engineers fees, with Mr Rofail in copy, and Mr Rofail and Mr Javed engaging with the management company at one point in 2014 over confirmation of the service charges for the purposes of providing information to the Valuation Office Agency. He also pointed to a Building Regulations Notice of Commencement in respect of works at No 19 starting on 16 September 2010, and the fact that it did not refer to the lowering of ceilings.

85. Challenged in cross-examination, Mr Hassanin maintained his account. He denied that the work had instead been done by Merlin Cooper.

(f) 52 Rothschild Road, London W4

86. Mr Rofail said that on 10 March 2010 he purchased this property for £440,000.

87. Mr Hassanin said the same, but added that it had then been sold in August 2010 for £558,000. He said that when Mr Rofail was offered the property, Mr Rofail had given him the details and asked him to make all the usual investigations and enquiries needed to ensure that it was purchased at a good price, and that after factoring in refurbishment costs, it would sell at an even better price. He established that this was a good investment, noting that it probably had not been touched for 20 years and had great potential to be extended and refurbished. Mr Rofail had agreed with him and had bought it. However, before any work was done, someone offered to purchase it for £558,000. The immediate gross profit of £118,000 was too good to turn down, and so they had agreed to sell.

(g) The Tavern, 75 Cricklewood Lane

88. Mr Rofail said that on 9 October 2013, he completed the purchase of The Tavern. Mr Javed had identified the property. On 21 November 2013, ROH Architects emailed Mr Rofail with plans for eight flats over three floors and one retail shop at ground floor level.

89. Mr Hassanin said that the property had been bought for £1,265,000 plus VAT in October 2013. He had made his usual enquiries about the area, including visiting the local amenities. The proposal was to seek planning permission for as many residential units as possible as well as a commercial complex on the ground and basement floor levels. In his absence, Mr Rofail decided to demolish the bar, bathrooms and worktops. He also removed the carpets, cut connections from the basement to the beverage pipes and threw out most of the furniture. He thought that this would enable demolition and building permits to be obtained more easily, and in a shorter time frame. At Mr Hudson's suggestion, it was agreed to divide the upper floors into small flats and to let them out until planning permission was granted for the larger scale project. They also agreed to create an Egyptian style shisha bar and coffee shop on the ground floor. The building contractor then built 5 flats. After completion, Mr Hassanin said, he dealt with the furnishings and bought furniture. He also bought refrigerators, electric cooking rings, microwaves, double beds and new flooring and decoration for each of the flats. The flats were then offered to an estate agency to market. His management role continued with the new tenants, as these "quick build" flats were not without problems and all had to comply with the relevant regulations. The bar and coffee shop on the ground floor had to be fitted out. A tight budget was required. Mr Hassanin said he started to look for businesses of this type that were closing down, to try to obtain deals on their appliances. He would source goods on the internet and on one occasion travelled to Birmingham to buy a coffee machine, bargaining the seller down from £2000 to £600. He also travelled to Manchester to buy a cooker with six rings for about £800 when its real retail price was over £3000. He also went to buy a freezer, a microwave and other products he had found on the internet at very low prices. He travelled to Egypt to buy the equipment, shisha pipes, some handmade carpets for the wall and floor decoration as well as two oversized copper torches, chandeliers, antique wall lights, antique copper tables and all the tools used to make high quality Egyptian coffee. He had them all shipped to London. After he returned, he supervised a change of contractor whom he had identified and who he supported over the project by buying all the materials he needed. His final role in this project was to arrange for the construction of a shisha lounge made out of wood in the back garden of the bar, which he arranged to be done for £18,000, in preference to other quotes in excess of £30,000. Ultimately, planning permission for the original residential plan was not granted until 2021.

90. In response, Mr Rofail denied that Mr Hassanin had undertaken any such work in respect of the Tavern. Instead, planning for this project had been overseen by Mr Javed, and Mr Rofail's usual contractors had been used to carry out the required work. He exhibited emails dated November 2013 to January 2014 to him from ROH Architects, attaching plans and proposals in respect of the proposed development, and from Mr Javed. Nor, he said, was Mr Hassanin involved in the fitting out of the bar and coffee shop: Mr Rofail had instead taken all his advice on this matter from Moris Mankaruis, who at that time had 15 years' experience of work in the restaurant trade. He had continued to take professional advice from his architect to design the residential project and advise on planning permission.

91. Mr Hassanin agreed in cross-examination that the property had been identified by Mr Javed. He denied the suggestion, however, that Mr Rofail had been the one who had sourced the contractors and overseen the building work.

Mr Billal Javed's evidence

92. Mr Billal Javed also gave evidence in response to Mr Hassanin's account. In his witness statement, he explained that he was a property developer who had been working in that field for around 20 years. His work involved buying and selling residential and commercial properties in and around London, helping to add value through obtaining planning permission and developing flats and houses for sale or as investment properties. He had first met the claimant in 2004, he said, when he went to PAL on Belsize Road to have his car repaired. (Again that date cannot be correct; it must have been 2006 or 2007 at the earliest.) He said that at some point around 2007 or 2008, Mr Rofail had expressed an interest in property development and had told him he had cash funds to do business. Initially, Mr Javed had not taken him seriously but once he realised he had the funds available from his lottery winnings, they agreed to develop properties together. In particular, it was agreed between them that Mr Javed's role would be to bring good deals to the table for Mr Rofail to buy, after which either he would develop the property himself or they would develop it on a joint venture basis. Because of his expertise in the field, it was agreed that Mr Javed would run the trading deals from start to finish. They agreed profit sharing terms which would be determined on a deal by deal basis, depending on various factors including the cost of purchase, the cost and complexity of the development proposal, and the expected return on the initial investment.

93. Mr Javed said that at a similar time, he also met Mr Hassanin, who worked for Mr Rofail at PAL. He confirmed that Mr Rofail and Mr Hassanin had become friends. He said that his understanding was that Mr Hassanin worked on a full time basis at the garage and Mr Rofail would ask him to run errands and take on various administrative tasks. He said that he was not aware of any profit share arrangements between Mr Rofail and Mr Hassanin. The refurbishments were run by contractors who Mr Rofail had selected and would oversee to make sure the developments were done in his way. He was not aware either of any reports prepared by Mr Hassanin into any of the properties. In relation to each of the eight properties referred to by Mr Hassanin, he said that he was not aware than Mr Hassanin had had any involvement, beyond running errands for Mr Rofail.

94. However, when cross-examined, Mr Javed clarified the nature and extent of his own role. He explained how he would call Mr Rofail if he had identified an opportunity, run it past him and ask him if he wanted to view the property. If he was interested, Mr Javed would deal with the legalities; Mr Rofail would transfer funds to a solicitor's account. Mr Javed would work on adding value through the grant of planning permission or refurbishment – or sometimes would do nothing beyond the fact that he had been able to purchase the property at good value. The most complicated transactions would be dealing with planning permission issues, where a number of consultants would need to be engaged. He dealt with that personally. As to the construction or building work, his role was more limited: he would introduce the builder. For the first couple of projects (61 Victoria Road and Donnington Road), a Mr Bilal Arshad was part of the property development project, assisting Mr Rofail and the contractor with Mr Rofail's requirements. After that, Mr Rofail had dealt with Momi Deco, a company. He oversaw their progress, but was not there on a daily basis.

95. Mr Javed explained that his own profit share agreement with Mr Rofail was undocumented, but that the share was one third in his favour and two thirds in Mr

Rofail's favour, although this would change to between 25%-35% in his own favour and hence 75%-65% in Mr Rofail's favour, depending on the deal. He could not explain why only a single invoice (relating to the Blarney Stone pub) had been produced.

96. As to the individual properties:

i) In relation to 61 Victoria Road, Mr Javed said that the entire project had been handled by a contractor, and that Mr Hassanin had had no significant involvement. He may have attended the property to run errands for the Claimant, as he often did as part of his role at the garage, but he had had no dealing with him on this project. Cross-examined, he acknowledged that Mr Hassanin may have been involved in liaising with the contractors: he said that if Mr Rofail was not around, Mr Hassanin would assist with any problem or issues that arose. He was aware that he had attended the properties with and without Mr Rofail. He was aware of him being present on a couple of occasions, but had only been there himself once a week once the project was running.

ii) As to the Blarney Stone pub, Mr Javed said that this had been a highly complex development, entailing a great deal of negotiation with the local authority, as well as various contractors and experts. He said that he had dealt with everything from start to finish, and that Mr Hassanin had had no involvement in the development, beyond running errands for Mr Rofail. When cross-examined, he acknowledged that Mr Hassanin would be tasked with, for example, ensuring that a contractor was provided with access to the site. He also made clear that he (Mr Javed) had not himself been on site more than once a week, and so could not speak to what had happened in his absence.

iii) In relation to Donnington Road, Mr Javed said that Mr Hassanin had had no involvement in the purchase of the property, and that the same builder had carried out the refurbishment work as had worked at 61 Victoria Road. Although he had said in his witness statement that Mr Hassanin had had no involvement beyond running errands for Mr Rofail as and when required, he explained when cross-examined that he could not say what the actual arrangements with Mr Hassanin were beyond the fact that he knew he was employed at the garage, and would assist Mr Rofail as required.

iv) In relation to Harvist Road, Mr Javed said that to his knowledge, Mr Hassanin had had no involvement with the purchase and sale of this property. There had just been a purchase and sale, with no development carried out.

v) As to Flats 4 and 19 Hillside Court, Mr Javed said that he was not aware that Mr Hassanin had had any involvement with this project. He clarified in cross-examination that his belief that Mr Rofail alone dealt with the contractor was based on the updates that Mr Rofail had provided him, rather than his own direct observation.

vi) In the case of 52 Rothschild Road, Mr Javed said that the property had been bought with the intention of a quick sale rather than redevelopment, and that Mr Hassanin had had no involvement in this property.

vii) As to the Tavern, Mr Javed stated that he had assisted with the planning application, but was not further involved in this project as Mr Rofail wanted to handle it by himself. In cross-examination, he acknowledged that he was not aware of whether Mr Hassanin was or was not involved in this project: he did not know. He observed that his name had not been mentioned by Mr Rofail or the contractor, but did not go further.

97. Overall, Mr Javed described his relationship with the contractors as being "at arm's length": he would arrange for contractor, and make sure that everything was "ticking along", but again emphasised that this was at arm's length. In terms of the actual works, he was not involved.

98. It was put to Mr Hassanin in cross-examination that it had been Mr Javed who had sourced the properties. Mr Hassanin agreed. However, he explained that his own role in relation to the properties was to research the properties that Mr Rofail was offered. He said that he and Mr Rofail were new in this market, that all the property they were offered was off-market, and that they had had no clue if the price they were being offered was the right price. That is why he started to do his research and check whether the property was worth the money at which it was being offered or not. He explained that at the outset, they had not known Mr Javed. It would have made no sense simply to take his word for fact that the property would be a good investment and had been properly valued. That is why Mr Rofail had asked him to undertake this research. He maintained that he had worked on day to day issues concerning the management of the properties during the works.

Conclusions on Mr Rofail's property development business and Mr Hassanin's role within it

99. I reject Mr Rofail's account that Mr Hassanin had had no role in his property development business. I do not find it credible that Mr Hassanin's sole role had been at the garage, beyond the running of the occasional "errand". Mr Hassanin's impressive familiarity with the detail of the properties which were developed is inconsistent with this suggestion. Nor is it credible that he could have picked up such details by having read documents lying around on a desk at the garage, as Mr Rofail contended.

100. In some important respects, Mr Hassanin exaggerated the degree of his involvement:

i) I do not accept that Mr Hassanin negotiated the purchase price of any of the properties. That was Mr Javed's role. In respect of the Donnington Road property, I reject Mr Hassanin's suggestion that this involve him negotiating with Mr Javed: it is difficult to see how that evidence could make any sense, given that Mr Javed alone was negotiating with the vendor.

ii) Nor do I accept that Mr Hassanin engaged the principal building contractors to work in those projects requiring building work. I accept Mr Javed's evidence that he was responsible for doing finding and engaging such contractors.

iii) I do not accept Mr Hassanin's evidence that he supervised the conversion of 61 Victoria Road into flats. The building had likely been purpose built as flats. Prior to Mr Rofail's acquisition of the property, planning permission had been granted in February 2008 for a loft conversion to the second floor flat, and the installation of an access door to the rear garden of the lower ground floor flats.

It is plain that the property was already in flats by that date. Furthermore, the work which was undertaken immediately after Mr Rofail acquired the property (and completed by May 2010), subsequently regularised by the grant of retrospective planning permission on 22 December 2010, was for an extension to the existing flats, not the creation of new flats.

101. However, notwithstanding that exaggeration, I find on the balance of probabilities that Mr Rofail did task Mr Hassanin with substantial work in support of his property development business. As I have found above at paragraph 41, by the time that Mr Rofail had decided to enter into the property development business, he and Mr Hassanin were in a trusting relationship. Mr Rofail trusted Mr Hassanin with the management of his garage business on a day to day basis, and had been impressed with his work. He was the natural person for Mr Rofail to turn to for support in his new venture, in which Mr Rofail had no previous relevant experience. Mr Rofail was understandably reliant on the expertise of Mr Javed in sourcing the properties and in consulting surveyors and architects, and where appropriate obtaining planning permission, as he acknowledged. However, in terms of the practical day to day operations relating to the refurbishment and fitting out of the properties, Mr Javed's involvement did not extend beyond the appointment of the contractor and subsequent supervision at arm's length: he was not present at site on a day to day basis. Mr Rofail had neither the experience nor the inclination to engage with all of the detail of their development or subsequent management. Although professionals' emails were understandably directed to him as the ultimate client (as well as to Mr Javed who had engaged them on Mr Rofail's behalf), there is little evidence of any detailed interaction with them from Mr Rofail. There was a substantial amount of work which remained to be done in order to develop and manage the properties. Mr Hassanin's close familiarity with the detail of the properties' development and management is the result of the fact that he was the one whom Mr Rofail made responsible for much of their day to day management. I further broadly accept Mr Hassanin's evidence as to the hours he worked on behalf of Mr Rofail, both at the garage and in respect of the property management, although I am conscious that the extent of those hours may also have been exaggerated in some respects.

102. I find that Mr Hassanin was tasked with four key roles by Mr Rofail.

i) First, Mr Hassanin was tasked with seeking to verify the valuation of the properties that Mr Javed had identified: as he explained, at the outset at least, Mr Rofail would not have assumed that Mr Javed's valuations could be relied upon as accurate. It made obvious good sense to seek to compare the prices being asked for the properties with those at which other comparable properties had been offered to the market. Mr Rofail delegated that task to Mr Hassanin. Mr Hassanin conducted substantial research in this role: notwithstanding that he had no prior experience of such work (any more than did Mr Rofail), he had the initiative and the work ethic to conduct a thorough job of conducting online research and physical attendance at site addresses to assess their position in the neighbourhood. In particular at the outset, this gave Mr Rofail confidence in the investment decisions that he was being invited to make. Mr Hassanin's involvement in this exercise also equipped him to take part in discussions in the case of the Blarney Stone pub over what (from a commercial point of view) could be offered by way of an affordable housing contribution, to support the

application for planning permission. Mr Rofail found it valuable to have Mr Hassanin present at and contributing to such discussions. Notably, Mr Hassanin had a better command of the details of the various transactions than did Mr Rofail (including for example in relation to 145 Harvist Road).

ii) Secondly, following the successful acquisition of the various properties which were subsequently developed and/or refurbished, I accept that Mr Hassanin was tasked by Mr Rofail with acting as a point of liaison with contractors. This role was substantially more than simply running errands. It involved obtaining competing quotes for materials and services, the sourcing of materials (including such matters as tiles, iron work and electric gate motors), regular attendance at site to take deliveries, liaison with suppliers of all kinds including identifying smaller contractors (for example for the supply of CCTV and security fencing), and acting as a form of ad hoc trouble shooter (such as the supervision of the removal of materials from the Blarney Stone pub, and the subsequent protection of the site from fly tipping – as to which I accept the evidence of Mr Hassanin). I do not accept that this amounted to a full "project management" role, as that would be to ignore the important work done by Mr Javed. However, it remained a significant role. That is well illustrated by his role at The Tavern, which involved amongst other things equipping the flats with all that would be required to be let out on a furnished basis, and for the bar to be furnished as an Egyptian style shisha bar (including a trip to Egypt to source items from there). I reject Mr Rofail's evidence that Mr Hassanin was not involved in this work at all, and that had had only taken advice from Mr Mankaruis (who gave no evidence in support of that claim).

iii) Thirdly, following the completion of those works, Mr Hassanin liaised closely with Mr Rofail over the decision as to whether to sell or let the flats (including by seeking valuations from estate agents beyond those ultimately engaged by Mr Rofail). Where the decision was made to let them, he assisted with their marketing (including by taking photographs, as at 61 Victoria Road).

iv) Fourthly, following the letting of individual flats to tenants, Mr Hassanin was tasked with responding to issues requiring action by Mr Rofail landlord as they arose. This included responding to calls out at night of which Balgis Mohamed also gave evidence; her evidence was unshaken in cross-examination. In relation to the flats at 409 Finchley Road, Mr Hassanin gave impressively detailed evidence as to the need for him to go out at night to deal with the fire alarm going off, having been overlooked by the contractor when the ceiling had been lowered to accommodate spot lighting. I do not accept the suggestion on behalf of Mr Rofail that omission of reference to the installation of a (false) ceiling from the Building Regulations notice is dispositive of this account.

103. It is clear that Mr Hassanin performed these roles because he expected to be remunerated in respect of them. That raises the central issue between the parties as to whether the £390,000 transfer in April 2014 was a loan or a payment pursuant to a profit share agreement. The findings I have made above do not in themselves answer that question: rather, that issue must be addressed in light of all of the evidence that bears upon it taken together. I shall return to it in due course.

(iii) The transfer of £390,000 and the alleged meeting in Queensway, Bayswater (April 2014)

104. Mr Rofail said in his first witness statement that in or about March 2014, Mr Hassanin had approached him and requested a personal loan to enable him to purchase a property at 91 Mackenzie Road, London N7 from the London Borough of Islington. He requested that the loan be in the sum of £390,000. He said that this was a council property which he could buy at a very good discount. They did not discuss interest on the loan; by way of explanation for that, Mr Rofail said that Mr Hassanin was working for him, they were friends, and he didn't need any interest. He was a wealthy man, and he trusted Mr Hassanin. They made a verbal agreement that Mr Rofail would make the requested loan on terms that it would be repaid in full immediately on the sale by Mr Hassanin of the property. He said he knew that this would not be for five years as Mr Hassanin told him that the sale by the council would contain a term which required him to keep the property for that minimum period. He said that given his trust in Mr Hassanin, he did not need the agreement written down: they both knew exactly what the agreement was. On 8 April 2014, in accordance with that agreement, he had transferred the sum of £390,000 from his bank account at Barclays Bank to Mr Hassanin's account (as evidenced by his bank statement). Mr Rofail said that about a fortnight later, he had met with Mr Hassanin and his family. At that meeting, Mr Balgis Mohamed acknowledged the debt owed by Mr Hassanin in the course of conversation, and said they would repay it as quickly as possible.

105. In his second witness statement, Mr Rofail repeated this account, with the added detail (previously given in a Response to a Request for Further Information dated 15 June 2022) that in discussing the terms of the requested loan, Mr Hassanin had said that he proposed to sell the property at the end of five years. He said the meeting a fortnight later was at Starbucks on Queensway, Bayswater, to catch up socially. (This evidence had also been provided in the Response to the RFI; Mr Rofail had also said that Mr Hassanin's two children had also been present at this meeting.)

106. In response, Mr Hassanin denied that there was any such loan agreement. He agreed he had been paid £390,000 on 8 April 2014, but said in his first witness statement that that was as a result of the profit share agreement relating to his participation in the property development business. In his second witness statement, Mr Hassanin described the suggestion that there had been a loan agreement as being "*totally untrue*". He said he would not have agreed to sell his family home after five years and pay the loan back at that point, and they did not in fact sell the house five years after purchase (but only on 20 February 2021, over six years after its purchase in October 2014); there had been no suggestion by Mr Rofail as at October 2019 that they were obliged to sell the house and/or repay the alleged loan at that point.

107. Mr Hassanin did not comment on the alleged meeting at Starbucks when his wife is said to have acknowledged the debt. However, Ms Mohamed gave evidence that the meeting had never happened. She had never been to a Starbucks on Queensway in her life, or indeed any Starbucks. She gave reasons why she would never go to a Starbucks: she believes that its profits support the Arab/Israeli war in Palestine, with the result that neither she nor her children go there as a matter of principle. Nor did she have any social reason to spend time with Mr Rofail, and had never done so save on one occasion when he had attended her husband's 40th birthday party in 2009, when he had been

invited to join them at a restaurant near Tower Bridge. Nor was there any reason for their children to have gone to such a meeting.

108. Similarly, Ayah Mohamed (Mr Hassanin's daughter) gave evidence. She would have been aged just under 15 in April 2014. She confirmed that she had never been to any Starbucks. She had no memory of meeting Mr Rofail in her teenage years, and could not think of any occasion when she had been present with her parents for any kind of financial discussion with another person.

109. Saif El Dein Mohamed Saad (Mr Hassanin's son) also gave evidence. He would have been 13 years old in April 2014. While he could remember meeting Mr Rofail at his father's birthday in 2009 (when he would have been aged 8), and when he was at his father's workplace between the ages of 10 and 13 (when he remembered Mr Rofail giving him a £20 note to buy food and drink locally), he confirmed that he had never been to Starbucks on Queensway or any Starbucks, and had never had any social reason to spend time with Mr Rofail.

110. In cross examination:

i) Mr Rofail said that the meeting was not in Starbucks, but it was in a different coffee shop in Queensway. He then said it might have been Starbucks, but he could not remember. He said that they did not talk about the loan agreement, but were just meeting to have a coffee together: he had talked with Mr Hassanin about the agreement earlier but not with his family. However, Balgis Mohamed volunteered that she would find a way to pay back the money.

ii) Mr Hassanin denied meeting Mr Rofail in Queensway a fortnight after the money had been transferred to him in April 2014.

iii) Balgis Mohamed maintained her denial that there had been any such meeting, and denied acknowledging any such loan. She said she would not take her children all the way from their home in Caledonian Road to Queensway to meet a person "who I was not associated with".

iv) Ayah Mohamed said that it was completely untrue that there had been a meeting in Queensway;

v) Saif El Dein Mohamed Saad also said that there had been no meeting in Queensway.

Conclusion on the transfer of £390,000 and the alleged meeting in Queensway

111. There is no dispute that £390,000 was transferred by Mr Rofail to Mr Hassanin on 8 April 2014. I will return to my conclusions as to the reason for that transfer at the end of my review of the evidence.

112. I cannot be satisfied that the alleged meeting happened in Queensway. Each of Mr Hassanin and his family members was clear that it could not possibly have happened as Mr Rofail initially recounted it, as none of them ever visit Starbucks. I accept that evidence. I also accept Balgis Mohamed's evidence that she never acknowledged such a loan. Presented with that evidence, Mr Rofail suggested that it could have been at a

different coffee shop. He was notably hesitant about this evidence, pausing for a long time and declining at first to confirm that it was his signature that appeared on the Statement of Truth at the end of the Response to the RFI in which the location of the meeting had first been identified. It was apparent that he had no clear recollection of the occasion. I am unable to place any reliance upon his evidence that it took place at all.

(iv) Mr Hassanin's purchase of 91 Mackenzie Road, including the correspondence with Mr Rofail's bank manager (October 2014)

113. Mr Hassanin and Ms Mohamed purchased 91 Mackenzie Road as joint tenants on 27 October 2014. There was no requirement that it not be sold for five years. Rather, consistent with the "Right to Buy" provisions of the Housing Act 1985, there was a covenant to the effect that if within the discount period of five years there was a disposal of the property, the Mr Hassanin and Ms Mohamed as transferees would have to pay all or some of the discount percentage of 4.92% (the precise proportion diminishing each year after the transfer) which they had received on the purchase of the property.

114. Mr Rofail said in his second witness statement that prior to the completion of that sale, on 7 October 2014, he had written at Mr Hassanin's request to Mr Nicholas Morris, who was Mr Rofail's bank manager at Barclays, to ask him to contact Mr Hassanin's representatives to verify that the transfer of £390,000 into his bank account had been legitimately made by Mr Rofail in order to enable him to purchase the property.

115. The email to which Mr Rofail referred was one sent at 19:59 on 7 October 2014 to Mr Morris. It read as follows:

> "*Dear Nicholas,*
>
> *How are you? I hope you well.*
>
> *could you please send a letter with Barclays letter head to Mr Chris via his email* [an email address for "Chris" at a law firm was then given], *verifying that the money transferred to Mr Mohamed Hassanin 0n 08/04/2014 from my account it is clear and clean fund to allow him buying his property. I guess there is a formal letter for this purpose to comply with the low and regulation of laundry money.*
>
> *Kind regards*
>
> *Ayoub*"

116. Mr Morris replied on 8 October 2014 that he had called Chris and left him a message. There was not a standard letter that they could use, but he would be happy to say to him that Barclays were very comfortable with Mr Rofail's source of wealth being legitimate. "*Beyond that I obviously don't have any details of your arrangement with Mohamed Hassanin, so I would not be able to make any comments on that*". On 9 October 2014, Mr Morris replied again to say that a letter had been sent on the previous evening, and that Chris had said it was fine.

117. Amongst the Claimant's disclosure was an earlier email from Mr Rofail directly to Chris, sent on 6 October 2014. It had then been forwarded as a sent message from Mr Rofail's account to Mr Hassanin. The message read:

> "*Dear Chris, To whom it may concern*
>
> *On the 8th April 2014 I Ayoub Rofail deposited to my family friend Mohamed Hassanin the amount of £390,000 from my personal bank account.*
>
> *This amount was a gesture of goodwill for helping my friend to buy his current home.*
>
> *I have given Mohamed an original bank statement for this transaction if you need further information please contact Mr James Taylor* [contact details followed]"

118. Mr Rofail was asked about the email of 6 October 2014. He said that he did not remember this email, and that someone had hacked his email account. He said he had never seen this email before, nor discussed it with his solicitors. He had not given permission for it to be written. He had never written an email in his life before, and did not know how to draft one.

119. He was then asked about the email of 7 October 2014 which he had exhibited to his witness statement, which he said he had written at Mr Hassanin's request. He denied writing it. He said that he didn't write any emails: he never writes emails. He said that Moris Mankaruis wrote emails for him, and sometimes Mr Hassanin. He said he did not remember if he had authorised this email, and that he did not know who this Nicholas Morris was.

120. Mr Hassanin acknowledged in his second witness statement that the email of 6 October had stated that the payment had been made as a "*gesture of goodwill*" – i.e. neither as a loan or as a payment under a profit share agreement. He recalled that Mr Rofail had told him that he had been advised that if the £390,000 was described as a gift that it was not taxable, and that if he survived 7 years then Mr Hassanin would not have to pay tax on the money. He said that he had not thought about what "*gesture of goodwill*" meant at the time. He said he had no reason to disbelieve what he had been advised, but that they were both clear that the payment had in fact been in respect of the profit share agreement. He confirmed that he had not in fact paid any tax on the payment he had received. Mr Rofail denied that he had communicated any such advice to Mr Hassanin.

Conclusion on Mr Hassanin's purchase of 91 Mackenzie Road, including the correspondence with Mr Rofail's bank manager

121. It is common ground that Mr Hassanin and his wife bought the property on 27 October 2014. Notably, this was over 6 months after the payment had been made to him.

122. It is likely that Mr Hassanin discussed the purchase with Mr Rofail. Mr Rofail was plainly aware that it was being bought with the benefit of a discount, even if he and/or Mr Hassanin had misunderstood the effect of the covenant requiring repayment of all or some of the benefit of the discount for up to five years after the purchase.

123. Shortly before completion of the sale, Mr Hassanin's lawyer Chris was clearly concerned to establish the provenance of the funds which were being used for the purchase. It is unsurprising that in that context, Mr Hassanin should have wished to ask first Mr Rofail and then his bank for a letter confirming the legitimacy of the source. I reject Mr Rofail's suggestion that either email was sent as a result of his account being "*hacked*" or without his authorisation. Certainly no suggestion was made to Mr Hassanin that he had sent such an email himself without the authorisation of Mr Rofail. It is difficult to see why anyone else would have done either.

124. More surprising is the fact that the initial email to Chris from Mr Rofail should have described the payment as a "*gesture of goodwill*", and not as a loan (as on Mr Rofail's case, it was). It is equally surprising that if it was understood by both parties to be a payment pursuant to a profit share agreement (as on Mr Hassanin's case, it was), it was not described as such.

125. If the transfer had been a loan, there could not have any conceivable reason to describe the payment as a gesture of goodwill in order to avoid tax: no tax would have been payable on a loan. By contrast, Mr Hassanin's evidence that it had been thought advisable to describe the transfer as a gesture of goodwill – meaning a gift – makes more sense, if the aim was (dishonestly) to avoid income tax. The claim that no tax would be payable by him if Mr Rofail survived for seven years is clearly a reference to a (mistaken) view of the effect of relevant provisions relating to inheritance tax: the view appears to have been taken that if the payment was treated as a gift, the sum would not have been deemed to form part of Mr Rofail's estate for the purposes of inheritance tax if he survived for that period, and would not attract income tax. I do not accept Mr Hassanin's evidence that he did not really think about the meaning of "*gesture of goodwill*" at the time. It was clearly intended to explain that the source of funds was legitimate, and that there was good reason why not a penny of it had been paid in tax by Mr Hassanin. It is notable that despite his evidence that it was understood to be a payment for his work for Mr Rofail's property development business, he was equally clear that no tax had been paid upon it. I do not accept Mr Hassanin's evidence that he did not understand how such a payment should be treated from a tax perspective or that it was not obvious to him that it was income.

126. Notwithstanding that, this email nonetheless casts considerable doubt upon Mr Rofail's evidence that the payment was a loan. Again, I shall return to that issue after considering all of the evidence.

(v) The closure of the garage and the compensation claim (2014-2015)

127. Mr Rofail explained in his witness statements that on 13 March 2014 (shortly before the transfer to Mr Hassanin), the London Borough of Camden gave notice to PAL under section 25 of the Landlord and Tenant Act 1954 of its intention to determine the lease in respect of the garage premises, which it wished to demolish in order to build new residential accommodation. Proceedings were issued on 12 June 2014. On 27 November 2014, a settlement was reached with the Council by which PAL agreed to give full vacant possession of the premises on or before 15 January 2015. As PAL was only a recreational interest for him, and finding new premises and moving everything there would be an awful lot of hard work, he decided not to find new premises for the garage business but rather to close it down and to have his cars put into storage. PAL was duly dissolved on 6 October 2015. Mr Rofail further said that at the point that the

garage business closed down that his friendship with Mr Hassanin broke down. It appeared to him that Mr Hassanin was angry with him for closing the business down; that he thought Mr Rofail should be looking after him; and that he was plainly upset that he wasn't making as much money as he had previously. He had no further work for him, but Mr Hassanin continued to complain.

128. Mr Hassanin's evidence was that when notice was initially received in around March 2014, the Council was offering compensation to PAL of only £5,000. Mr Rofail had been advised that there was no basis for challenging the decision and should vacate the premises. Mr Hassanin said he looked into the matter separately with a customer who was a lawyer, and believed that there was a strong case for arguing for greater compensation. He offered to fight the case for Mr Rofail on the basis that Mr Rofail would be guaranteed £5,000 compensation, and Mr Hassanin would keep any additional compensation awarded. Mr Rofail did not agree to this, but offered Mr Hassanin 50% of any compensation obtained from Camden after expenses. Mr Hassanin said he agreed to that. He said Mr Rofail agreed to him "*acting for PAL on its behalf in trying to secure compensation*" after a solicitor (initially from Davenport Lyons, and then from Gordon Dadds LLP) had made contact to represent the occupiers of the Abbey Road Motor Centre, where PAL was based. He said he then took over the responsibility for arguing the case with Camden, collecting all relevant documents and obtaining relevant documentation from other businesses from the Centre. He said he represented PAL against Camden Council and correspondence between them ensued. He recalled dealing with a senior development manager, Petra Clarke, when it came to discussing compensation. After many telephone calls and negotiations he agreed a settlement sum of £70,000 with Camden, who paid that money to Mr Rofail. Mr Hassanin said that Baron Grey Solicitors (who were acting for PAL then) were sent this agreement by the Council in order for them to explain it to him (and to Mr Rofail), and what they were signing for and what accepting. He said that this settlement was the second highest of all the Centre's occupant companies; all but P&O Motors (who had occupied their premises for 35 years only) only received between £5,000 and £10,000. He said that Mr Rofail was so pleased with this result that he offered to pay Mr Hassanin a £5,000 bonus on top of the agreed 50% share of £35,000, to reflect his time and effort and the clearance work of the garage following the agreement, totalling £40,000. However, he said he never received any such compensation. He said that he lost his garage job through no fault of his own.

129. In response, Mr Rofail denied having accepted that there was no basis to challenge the decision and that PAL should vacate the premises. He accepted that Mr Hassanin had taken a great interest in the prospective closure of PAL. He also accepted that Mr Hassanin had made some representations to Camden Council on the company's behalf in this respect. However, he said that this was on an *ad hoc* basis, and he had not taken over responsibility for arguing the case with Camden. Gordon Dadds LLP had been instructed at the beginning of March 2014 (as Mr Hassanin had rightly said), who initially began negotiations with the Council. However, no settlement had resulted from their negotiations, and on 12 June 2014, Camden Council had issued proceedings against PAL for possession of the garage. Mr Rofail had then instructed Baron Grey to defend the claim. After service of a Defence and Counterclaim, a settlement was achieved following negotiations between Baron Grey and Camden. Mr Hassanin had not agreed the settlement of £70,000; Baron Grey had done so. It was a nonsense to

suggest that Baron Grey had been sent the settlement only so that they could advise on its terms.

130. In cross-examination, Mr Hassanin denied the suggestion that his account of his involvement had been a fiction. He said that he had got all the emails, and that most of the negotiation was on the phone between himself and Ms Clarke. They had reached agreement of £70,000 over the telephone, following which she said a consent order would be provided to the solicitor.

131. There are a number of contemporaneous documents which cast some further light on this aspect of the dispute.

i) First, an email from the partner at Davenport Lyons dated 28 February 2014 was sent to representatives of thirteen tenants of the premises. Of the fifteen recipients, Mr Hassanin's email address appeared as the representative of PAL. The email followed a meeting which had been held the previous week. It recorded an agreement reached at that meeting that they would each provide Davenport Lyons with their communication details, that two of them (neither of whom were from PAL) would be appointed as the tenants' representatives, and that they would appoint Davenport Lyons to legally represent the tenants and to take such steps as may maximise the amount of time the tenants could remain in the building.

ii) Second, on 5 June 2014, the same partner (but now at Gordon Dadds) sent a detailed ten page letter to LB Camden. The letter made clear that Gordon Dadds were acting for twelve of the tenants (all who had attended the meeting but P&O Motors), including PAL. The letter was in response to an offer made by the Council by letter of 9 May 2014. It contained detailed legal submissions as to why each of the tenants held a lease which was protected by the provisions of the Landlord and Tenant Act 1954 (and were not simply contractual licensees or tenants at will, as the Council had apparently maintained), notwithstanding that nine of them (including PAL) had no written tenancy agreement. The letter noted that contested proceedings might delay the Council's intentions by around a year, but then made an offer as to an acceptable level of compensation, based on a level of 2x the rateable value of each tenant's premises, as assessed by a surveyor and valuer at Montague Evans. The proposed compensation for PAL was £54,500. The proposed compensation for other tenant varied from much lower sums (such as c.£3,000 in one case, and between £10,000 and £16,000 in four other cases) to higher sums, including three higher than PAL's (those offers being (£88,000, £72,000 and £56,250). Gordon Dadds made clear that they were aware of the compensation paid to P&O, and considered that it should be paid to other tenants on the same basis.

iii) Third, on 12 June 2014, LB Camden issued a claim form against PAL. That is consistent with the offer to accept £54,500 having been rejected by the Council. On 14 July 2014, Baron Grey acknowledged service on behalf of PAL, and served a Defence and Counterclaim. It maintained that PAL was a protected tenant under the 1954 Act, and disputed that the Council required vacant possession of the premises to enable the intended works to be done. The counterclaim was for a declaration that PAL occupied the premises as protected tenant under the 1954 Act, for the grant of a new tenancy, and for compensation

of a total of £18,500 in respect of damage done by the Council's agent destroying an advertisement placard and disconnecting its electricity supply, including loss of business over a period of five weeks of £12,500, and damages of £6,000.

iv) Fourth, on 24 October 2014, Baron Grey wrote to LB Camden confirming in principle that PAL accepted a settlement figure of £70,000, subject to an agreement being reached on costs. A consent order signed on the same day, however, made no mention of costs but simply provided for the Council to pay PAL the sum of £70,000 in full and final settlement of both the claim and the counterclaim. The agreement recognised that the tenancy had been a protected one, but provided for PAL to give vacant possession on or before 15 January 2015. The agreement was expressed to be in full and final settlement of all claims either party had against one another arising from the circumstances surrounding the premises. The parties further agreed that the terms of the settlement would remain confidential and would not be disclosed to any third party.

132. Mr Rofail agreed that the garage had duly closed down on or before 15 January 2015, and that at that point Mr Hassanin's contract had come to an end, and he and Mr Rofail had parted company. Mr Hassanin clarified that they had not gone their separate ways simply because the garage had closed (as that would not have affected the property development business), but simply because their relationship was getting cool at that time. After that, they spoke only occasionally by telephone, although they continued to meet occasionally (as to which see below from paragraph 170).

Conclusion on the closure of the garage and the compensation claim

133. Mr Hassanin's evidence exaggerated the significance and effect of his involvement in the negotiations. It is clear that from February 2014, PAL was professionally represented in the dispute with the Council. The dispute did not just turn on an appropriate figure for compensation, but on whether this was a protected tenancy at all. It is credible that an initial offer of compensation of £5,000 had been made, given that at that stage the Council's position was that there was no protected tenancy at all, but only a contractual licence. The negotiating strategy adopted to raise that sum turned on the lawyers' establishing that the tenants enjoyed protected tenancies under the 1954 Act, with which argument Mr Hassanin is unlikely to have been involved. Furthermore, the final sum of £70,000 achieved represented a settlement not just in respect of the termination and non-renewal of the tenancy, but also the counterclaim in respect of the damage caused by the Council's agent (which must have been done at a stage when the Council had not yet recognised that PAL had any statutory protection as a tenant at all). Given that it appears that the sum was also inclusive of costs (notwithstanding Baron Grey's attempt to negotiate costs on top), the resulting figure does not appear to have been an advance on the £54,500 compensation which had been put forward by Gordon Dadds on 5 June 2014 (but which at that stage had been rejected by the Council), which had been based on 2x rateable value as estimated by Montague Evans, and which had not included any mention of a counterclaim for damages and loss of business (presumably because no such claim had yet arisen).

134. I do not accept Mr Hassanin's evidence that the compensation awarded far outpaced that of other tenants (save P&O): on the face of the Montague Evans valuations it

appears that there were three other tenants with similarly strong or stronger claims to compensation; it is unlikely that they were only granted £5,000 to £10,000, as Mr Hassanin suggested. Further, it is likely that settlements with other tenants was also subject to confidentiality in any event, casting doubt on the extent to which Mr Hassanin could have known the true position.

135. It is possible that it was Mr Hassanin who at the outset of the engagement of Davenport Lyons jointly by the tenants had attended the meeting and provided his contact address on behalf of PAL, and that Mr Hassanin played some form of role in encouraging at least some of the tenants to band together and produce documentation to Davenport Lyons/Gordon Dadds to get matters off the ground. However, there is no evidence beyond Mr Hassanin's word that he undertook any work in respect of the negotiation of compensation for the termination of the tenancy; I cannot accept that evidence given the exaggerated basis upon which it has been offered. It is true that Mr Rofail acknowledged that Mr Hassanin had taken an active role, including by making representations to the Council. This is unlikely to have involved discussion as to the legal status of the tenancy or the rateable value of the premises, given that an estimate had already been provided. It is more likely to have related to the provision of details as to the loss of business and damage caused by the Council's agent, which cannot have been the subject of any profit share agreement between Mr Rofail and Mr Hassanin at the outset of the process.

136. I return below (at paragraphs 217-219) to the question of whether Mr Hassanin was offered a financial incentive to undertake this work in the form of a share of any compensation awarded.

(vi) The email correspondence between Mr Rofail and Mr Hassanin (July 2015)

137. In his first witness statement, Mr Hassanin had explained that after the closure of the garage the relationship between him and Mr Rofail was not working well, and that in July 2015 he asked him to calculate his 25% share of the profit for the property work since 2009 and also the 50% share of the compensation figure and to settle the debts due to him. He said he wanted to move on to other things. He recalled that at the time Mr Rofail denied the agreement was for 25% and claimed it as for 20%, and said that he would get his accountant to sort out the money owed to him. Mr Hassanin said that this had been a lie as they had agreed 25%; he chased for a reply but heard nothing. He recalled that Mr Rofail then told him that he did not have any money at the time, which he did not believe either, but he still hoped Mr Rofail would keep to their agreement and pay him later on.

138. In support of his case as to existence and terms of the alleged profit share agreement for the property development business, as well as the alleged compensation share in respect of the termination of the tenancy for the garage business, Mr Hassanin produced a series of emails dating from July 2015. I set out below:

i) The emails relied upon by Mr Hassanin;

ii) The expert evidence as to the provenance of the emails;

iii) Mr Rofail's response to the emails; and

iv) My conclusions on the emails.

- *The emails relied upon by Mr Hassanin*

139. **Email 1** was sent on 2 July 2015 at 00:52. It was sent by Mr Hassanin to Mr Rofail. The subject was "*Calculate my Share*". It read:

> "*Dear Ayoub,*
>
> *would you please calculate my share and money for all properties business we have done together since 2009 based on our agreement of 25%.*
>
> *and if you please include the 50% of the compensation I managed to have from Camden council regards Performance Auto Cars Ltd as we agreed earlier.*
>
> *Looking forward to hear from you soon.*
>
> *Kind regards*
>
> *M Hassanin*"

140. **Email 2** was sent on 2 July 2015 at 17:27. It was Mr Rofail's response to Mr Hassanin. The subject was therefore "*Re: Calculate my Share*". It read:

> "*OK I will call my accountant. But I said 20% not 25%*
>
> *Ayoub*"

141. **Email 3** was sent on 9 July 2015 at 21:06. It was sent by Mr Hassanin to Mr Rofail. The subject was "*My Outstanding Money*". It read:

> "*Hello Ayoub,*
>
> *I'm wondering if you heard anything from your accountant. I'm still waiting as I need to finish all related business commission these include; Blarney Stone Pub, 61 Victoria Road, flats 4&19 Hillside Court, [the] Donnington Road [property], 145 Harvist Road, 52 Rothschild Road and the Tavern 75 Cricklewood lane.*
>
> *Looking forward to hearing from you soon.*
>
> *Kind regards*
>
> *Mo*"

142. **Email 4** was sent on 11 July 2015 at 23:22. Mr Rofail sent a blank email to Mr Hassanin, presumably unintentionally, in response to the earlier email chain with the subject "*Re: Calculate my Share*".

143. **Email 5** was sent on 13 July 2015 at 12:53. Mr Hassanin responded to Mr Rofail's blank email, still under the subject "*Re: Calculate my Share*". It read:

> "*Hello Ayoub,*

> *I didn't hear anything from you, what's going on? Please I want to finish everything to do with the property business ASAP and everybody get his share profit.*
>
> *Also please don't forget my compensation money from Performance Auto Cars, its been more than 6 months and you didn't give me my % 50.*
>
> *I need to move on Ayoub.*
>
> *Regards*
>
> *Mo*"

144. **Email 6** was sent on 13 July 2015 at 13:20 (i.e. within half an hour of Email 5). Mr Rofail responded to Mr Hassanin, still under the subject "*Re: Calculate my Share*". The email read:

> "*don't you have any patience. you getting greedy now. what's wrong with you I paid you £390000 last year and I'm in short of money now. Ayoub*"

145. **Email 7** was sent on 13 July 2015 at 13:51 (i.e. around half an hour after Email 6). It was sent by Mr Hassanin to Mr Rofail. The subject was now "*Property Business*". It read:

> "*Hello Ayoub,*
>
> *I'm Patient with you for all these years we worked together. I'm also appreciated the last year payment which is as you know very well part of my shares, but I need to finish all related property business, these include; Blarney Stone Pub, 61 Victoria Road, flats 4 & 19 Hillside Court, [the] Donnington Road [property], 145 Harvist Road, 52 Rothschild Road and the Tavern 75 Cricklewood lane.*
>
> *Thanks*
>
> *Mo*"

146. **Email 8** was sent on 13 July 2015 at 13:55 (just minutes later). It was Mr Rofail's response to Mr Hassanin, with the subject: "*Re: Property Business*". It read:

> "*ok*"

- *The expert evidence as to the provenance of the emails*

147. As will be readily apparent, on the face of it, the terms of those emails lend strong support to Mr Hassanin's case on the existence of the claimed agreements, and undermine Mr Rofail's case that the £390,000 payment was a loan. Although their content had been alluded to in Mr Hassanin's first witness statement dated 6 April 2022, that witness statement was produced at a very early stage of proceedings, in response to Mr Rofail's application for a freezing order. The emails themselves were first produced with the Amended Defence and Counterclaim dated 27 October 2022, to which they were attached.

148. It quickly became evident after their production that there was an issue as to the provenance of those emails. On 21 November 2022, Master Eastman acceded to a joint proposal at a Costs and Case Management Hearing that both parties should have permission to rely on the expert evidence of a computer expert in relation to the emails appended to the Amended Defence and Counterclaim and any other emails provided by the parties.

149. Each party appointed an expert witness, who were able to access and download forensic details of both Mr Rofail's and Mr Hassanin's email accounts. On 26 May 2023 a memorandum of understanding as how the extraction of the relevant data was to take place was agreed. However, Mr Rofail did not then serve a report from his expert. On 28 September 2023, Mr Wilcox enquired of Baron Grey when the Claimant's expert would be ready to exchange reports, noting that the Defendant's expert had not heard anything further from him for a number of weeks. Baron Grey responded on 29 September 2023: "*We do not intend to file expert evidence in this claim.*"

150. On 4 October 2023, the Defendant duly served an expert report dated 28 September 2023 by David Martin-Woodgate for Forint Digital Investigations. He was not required by the Claimant to attend for cross-examination. His conclusions are therefore uncontested. So far as material, those conclusions were that:

    i) None of the eight emails set out above had been identified within the file downloaded from Mr Rofail's email account, but each was identified as an original or as an email within a trail of emails contained with Mr Hassanin's account.

    ii) The only reasons Mr Martin-Woodgate could conclude why those emails were not presented within Mr Rofail's email account is that they were either deleted by the user of the account, or that the emails had been purposely archived (a manual intervention) within an offline folder i.e. kept locally upon another computer or a removal storage device.

    iii) All the emails appeared to be genuine. Each of the emails appeared to have been sent by the user of Mr Hassanin's email account upon the dates and times contained within each of the email files. In other words, all these emails were sent and received at the times and on the dates they indicate.

- *Mr Rofail's response to the emails*

151. In his Amended Reply dated 13 January 2023, Mr Rofail denied that he had written Email 2, Email 6 or Email 8. He said that at all material times, Mr Hassanin had had access to his email account and regularly used the same. The Court would be invited to conclude that Mr Hassanin had used Mr Rofail's email account to send the email. He said that the contents of Email 6 and Email 8 were further contradicted by the terms of the email dated 6 October 2014 from Mr Rofail to Mr Hassanin's conveyancing solicitor Chris, in which Mr Rofail had referred to the payment as a "*gesture of goodwill*". (Mr Rofail did not dispute that he had sent that email.)

152. This led to a Request for Further Information being made of Mr Rofail, seeking to understand whether receipt of the emails from Mr Hassanin was admitted, and clarification as whether it was alleged that the emails said to be from Mr Rofail were

said to have been fraudulently produced, and particulars as to the circumstances in which that could have been done. In a Response signed with a Statement of Truth by Mr Rofail and dated 7 February 2023, it was said that he continued to take expert advice on the content of the emails and would make his position clear in due course when both witness statements and expert reports were exchanged. In the meantime, as to the emails of July 2015 alleged to have been sent by Mr Hassanin (Emails 1, 3, 5 and 7), it was said that they had not been found in Mr Rofail's disclosure searches, and no admissions were made as to whether or not Mr Rofail had received the emails. As to the emails alleged to have been sent by Mr Rofail (Emails 2, 6 and 8), no allegation of fraud was "*currently*" made.

153. Mr Rofail further provided some examples of emails sent from Mr Rofail's email address but bearing Mr Hassanin's signature were referred to as evidence that he had had access to Mr Rofail's email account at least when they were sent. These each dated from the time that Mr Hassanin was working for Mr Rofail at the garage and in support of the property development business (unlike the position as at July 2015). They included:

i) two emails dated December 2010, in which Mr Hassanin had continued an email chain initiated by Mr Rofail, making enquiries of an individual named Ramy as to the supply of electronic toilets and granite worktop pieces;

ii) an email dated 31 October 2014 to a garage customer's insurer relating to an authorisation for repairs to be undertaken. It was sent from Mr Rofail's personal account and signed by Mr Hassanin for PAL.

154. The only reference in Mr Rofail's witness statements to the emails is in his second witness statement at paragraph 42, where he said: "*In October 2022, the Defendant submitted additional evidence as part of his amended defence. This included [several] emails supposedly from me to him. I have no memory of any such correspondence between us and searching my email account, I could find no record of the supposed emails between myself and the Defendant. I reiterate that I did not offer the Defendant a share in the profits of my property development business and I have never made a profit-sharing agreement of any kind with the Defendant.*" Nothing was added to that in Mr Rofail's third (responsive) witness statement dated 22 September 2023.

155. Moris Mankaruis was also called to give evidence on behalf of Mr Rofail. He had been a close friend of Mr Rofail since 1995. He said in his witness statement that after the closure of PAL in 2015, Mr Rofail had asked him to help with his emails and text messages as he did not write well in English, and Mr Hassanin who had previously been assisting him was no longer working for him. He expanded on this evidence in cross-examination by explaining that he would write emails for Mr Rofail and then Mr Rofail would check them and press Send himself, whether on his phone or on his laptop.

156. Mr Rofail was asked about the emails in cross-examination by Mr Wilcox. He denied sending Email 2, saying that he had never written an email in his life, and did not know how to do so. By contrast, Mr Hassanin knew his email, name, date of birth and everything about him. He denied that he had either deleted the emails or archived them, saying that he did not know how to do these things. He said it had been done from outside by some hackers. He said the emails were a lie. He denied having read any of the emails before – but then accepted that he might have done when he reviewed the

expert report. It was suggested to him that he knew very well what was in these emails; he responded "*I have got a lot of things to see.*" When it was put to him that he had not disclosed them to his solicitors, he said "*Might be yes might be no*".

157. When asked in re-examination whether Mr Hassanin had also known his password, however, he said that "*There was no password at all – it was open every time.*" I understand this to mean that it was not necessary for a person with access to one of his devices to use a password to make use of his email. There plainly would have needed to be a password to access his email from a different device, however. In any event, Mr Hassanin's evidence was that he had had no direct access to Mr Rofail's passwords or email accounts, and certainly no access to his emails when he was not present.

158. It might have been thought that Mr Rofail's original case that he had not written or read any of these emails, and that Mr Hassanin had had access to his email account was still being maintained. Mr Martin-Woodgate's report may have been uncontested, but it still left open the possibility, at least in theory, that the "user" of Mr Rofail's account could have been Mr Hassanin if he had previously acquired and retained knowledge of Mr Rofail's password to that account. Any such case would have had to have posited the suggestion that Mr Hassanin had taken the opportunity in July 2015 to have laid a trail of false evidence to support a future claim that the £390,000 had been a payment of money owed to him rather than a loan, and that he considered further sums were still owed to him – to which end he had sent a number of emails from each account before deleting them from Mr Rofail's account before he could see them.

159. Such a course of action would have required remarkable foresight and cunning. However, in the event, Mr Rowntree confirmed to me that no such positive case was advanced. To the contrary:

    i) It remained the position that the Claimant declined to plead any case of fraud against Mr Hassanin, as was the stated position at the time of the RFI;

    ii) No suggestion was put to Mr Hassanin in cross-examination either that he retained access to Mr Rofail's email account after he left his employment or that he had used any such access to fabricate these emails before deleting them from Mr Rofail's account (while retaining them on his own);

    iii) In closing submissions, Mr Rowntree noted that Mr Rofail had formally denied that he wrote emails 2, 6 and 8 in his Response to the RFI dated 7 February 2023, and that he had also pointed out that Mr Hassanin had had access to Mr Rofail's email account. When I pointed out that no case had been put to Mr Hassanin in cross-examination that he had written them himself by misusing his previously permitted access to Mr Rofail's email account, Mr Rowntree confirmed that this was because he could take the matter no further than the position as set out at paragraph 42 of Mr Rofail's second witness statement, namely that he had no memory of any such correspondence, and could find no record of the emails in his email account.

160. Mr Rowntree further accepted that Mr Rofail's evidence that he had never written an email was incorrect, accepting in particular that he had written those that went to Barclays Bank and Mr Hassanin's conveyancing solicitor. He also accepted that Mr Rofail's evidence that he did not know how to delete emails cannot have been right, as

he had later said in the witness box that he routinely deleted unimportant emails (from his inbox) that he had received.

- *My conclusions on the emails*

161. I find that Mr Rofail received emails 1, 3, 5 and 7, and sent emails 2, 4, 6 and 8. There is no room for any conclusion other than that the emails were sent and received as claimed by Mr Hassanin, at the times which are shown on the email records. Further, they must be taken to have been sent and received by Mr Rofail, in the absence of any suggestion to Mr Hassanin that he was responsible for accessing Mr Rofail's email account and doing so himself before then deleting them. It would make no difference if the means of sending one or more of the emails was to ask Mr Mankaruis to type it before he checked and sent it. However, I think that unlikely with respect to Emails 2, 6 and 8 in any event.

162. Contrary to Mr Rofail's case, he was capable of writing an email, and had previously done so, as Mr Rowntree accepted. He was also capable of deleting one. Even though he only admitted to routinely deleting emails from his Inbox, I do not accept that it was beyond him to delete his emails from his Sent emails folder, nor to empty the Deleted emails folder from time to time.

163. I find it is more likely than not that he deleted the emails, which is why they could not be found in his account by the time of the disclosure exercise, and could not be found either by Mr Martin-Woodgate; I do not think it likely that they were archived on an external device. I make no finding that they were deleted in order to avoid their disclosure: that could never have been effective, given that they were sent to and received from Mr Hassanin's account. Rather, Mr Rofail deleted them because he chose to ignore the issue of Mr Hassanin's claim that he was still owed money – either regarding it as unimportant to him, or because he preferred to wish the matter away.

(vii) A side issue: the loan to Mr Moustafa Nagdy (2010-2011)

164. This issue was first raised by Mr Hassanin. It concerns evidence of a loan that Mr Rofail had previously made to a Mr Moustafa Nagdy in 2010. The reason Mr Hassanin raised this matter was simply to show that Mr Rofail had been fully aware of the need to evidence any loan agreement in writing.

165. The background to the matter was that in October 2010, Mr Rofail had agreed to make a personal loan of £42,000 to Mr Nagdy, an acquaintance whom he had met first some four or five years previously at an Arabic nightclub where he had worked as a bouncer. He agreed to assist him with a short-term loan when Mr Nagdy had approached him saying he was in trouble over repayment of personal debts. No contemporaneous record of the loan had been kept. Subsequently, Mr Nagdy did not make the repayments that had been agreed. On 25 June 2011, Mr Rofail confronted him about this in the presence of Mr Hassanin. He said that Mr Nagdy was still unable to pay him, but signed a brief note documenting the loan, which was witnessed by Mr Hassanin (and post-dated to 25 October 2010). That note subsequently formed an important part of the evidence served in support of a county court claim that Mr Rofail brought against Mr Nagdy to recover the loan, plus interest. So too did a witness statement from Mr Hassanin dated 29 January 2015, attesting to Mr Nagdy's earlier acknowledgement of the existence of the loan, which Mr Nagdy denied having entered into. The claim had subsequently been

settled for a total of £30,000 plus £9,000 costs, pursuant to a consent order dated 23 March 2015.

166. Mr Hassanin argued that against this background, the absence of a loan agreement in his case was striking: Mr Rofail would not have made the same mistake twice. The reason there was no loan agreement in his case was that there had been no loan.

167. In cross-examination, Mr Rofail denied that he had seen the post-dated note signed by Mr Nagdy before, despite the fact that it had been exhibited to his Reply, as well as to being expressly referred to in and exhibited to both the Claimant's Response to the RFI dated 7 February 2023 as well as Mr Rofail's own witness statement. He also said he was not sure whether he had seen the consent order settling the claim before. This was a document which had also been attached to the Claimant's Response to the RFI dated 7 February 2023.

Conclusion on the loan to Mr Nagdy

168. I find that Mr Rofail was well aware that he and Mr Hassanin had confronted Mr Nagdy and required him to sign the note evidencing the alleged loan. He was also aware of the consent order.

169. The episode is of limited relevance, but provides some support for the suggestion that Mr Rofail would have been likely to have been more cautious before entering into another undocumented loan, in particular one of almost ten times the size of the one which had been offered to Mr Nagdy.

(viii) The meeting in Costa Coffee (2019)

170. Even after Mr Rofail and Mr Hassanin had gone their separate ways in 2015, they kept in touch, Mr Rofail said. They exchanged cards and messages at Christmas and Easter, and he would send him cards at Ramadan and Eid. From time to time, they met for coffee. At some point in 2019, they met at the Camden branch of Costa Coffee. Mr Rofail claimed that on that occasion, Mr Hassanin had told him that he was waiting for his daughter to finish her GCSEs, at which point he would sell the house and repay the loan.

171. Mr Hassanin agreed that they had met for a coffee in Camden Costa in 2019, but denied that at any stage he had claimed he owed him money. Instead, he said he had raised the profit share agreement and the 25% profit share payment. He said that Mr Rofail had not tried to claim that the agreement had been for 20% but had agreed it was 25%, and had apologised for the situation he had left him in. Mr Hassanin said that Mr Rofail had accepted that he owed Mr Hassanin several hundreds of thousands of pounds but had claimed that he had lost a lot of money through bad investments over the previous years. He had claimed he would repay the money in the future. Mr Hassanin said he had moved on with his life, and had no financial means of pursuing Mr Rofail through the courts. Mr Rofail said Mr Hassanin's account of this meeting was a lie.

Conclusion on the meeting in Costa Coffee

172. Mr Rofail's evidence that Mr Hassanin had said in 2019 that he was waiting for his daughter to finish her GCSEs cannot be correct: having been born in May 1999, she

had sat her GCSEs in the summer of 2015, and had finished school altogether in 2017. This casts doubt upon his memory of this meeting. (It also casts doubt on Mr Mankaruis's separate recollection that in 2017 Mr Rofail had told him about the loan agreement and had said that Mr Hassanin needed to wait until 2019 before he could sell the house, as he could not sell it for five years, and that he also needed to wait until his daughter had finished school.) However, neither party's evidence affords much assistance in resolving the central issue either way: their accounts of the meeting some five years after the payment was made are equally self-serving. I attach little weight to either party's evidence in respect of this meeting.

(ix) Mr Rofail's attendance at Mr Hassanin's home in Hythe (January 2022)

173. On 26 February 2021, Mr Hassanin and Ms Mohamed sold their house on Mackenzie Road for £745,000. On Mr Rofail's case, this event would have triggered the repayment of the loan. On 21 May 2021, they moved to a new house in Hythe, which they purchased as joint tenants for £655,000, without any need for a mortgage. (They had lived in rental accommodation in the interim.) Upon discovering the move, Mr Rofail decided to travel to Hythe to see Mr Hassanin in January 2022. His account of that event (and that of Mr Makaruis who accompanied him) differs from that of Mr Hassanin (and that of his wife and daughter, who were present at the house with Mr Hassanin).

- *The Claimant's evidence*

174. Mr Rofail's evidence was that he at all times acted on the basis that the money he had paid Mr Hassanin had been a loan, repayable upon sale of the house, and that the house would be sold after five years. By late summer of 2021, it had been over seven years since the loan had been made. Mr Rofail said that by this time he was wondering what had become of Mr Hassanin, and had visited his Mackenzie Road house three times between late Summer and early Autumn 2021, each time finding it empty. On searching the internet, he discovered the sale of the property. He contacted his solicitors who hired a firm of investigators, SIP International, to trace Mr Hassanin, who in December 2021 reported that he had purchased the house in Hythe.

175. Mr Mankaruis gave evidence that in late 2021, Mr Rofail had come into his restaurant as he did most evenings, but he was not in a good mood. He asked him what was wrong. Mr Rofail told him that Mr Hassanin had stopped answering his calls, and that he had been to his house on Mackenzie Road, but it seemed to be empty. He told Mr Rofail that he had long been concerned that Mr Hassanin night not pay him back, and that when he had said so before Mr Rofail had always told him not to worry and that Mr Hassanin would pay him back. Having discussed it, they decided to instruct solicitors, who they then asked to trace Mr Hassanin using a firm of investigators. He said that once they realised that Mr Hassanin had sold the Mackenzie Road property and bought a new one, it was obvious that he was running away and had no intention of repaying the loan.

176. Mr Rofail said that in January 2022, he travelled to Hythe with Mr Mankaruis to find Mr Hassanin at his new house. He said in his witness statement that his purpose in going there was to try to reach a resolution with Mr Hassanin. Cross-examined, Mr Makaruis first said that he did not know the purpose of the trip, but then said that Mr Rofail wanted to go and ask him about getting his money back.

177. When they got there, Mr Rofail said that Mr Hassanin seemed very surprised to see them. Mr Rofail asked him to repay the debt. Mr Hassanin did not deny receiving the money, but complained that Mr Rofail had never helped him. Mr Rofail said that he found this extraordinary given their history, and told Mr Hassanin that he (Mr Hassanin) had his telephone number if he wanted to talk. Soon after, he found that Mr Hassanin had blocked his telephone number, and he realised that Mr Hassanin had no intention of contacting him. He therefore instructed solicitors to bring the present legal proceedings.

178. Mr Mankaruis said that Mr Hassanin had seemed shocked to see them and had not asked them inside the house. He asked how they had discovered his new address. Mr Rofail asked Mr Hassanin why he had left without providing contact details, given that the large loan was to be repaid when the Mackenzie Road property was sold. He said that Mr Hassanin said that he was not going to repay the loan and that there was nothing Mr Rofail could do to make him. Mr Mankaruis told Mr Hassanin that this was unfair, as Mr Rofail had helped him, he had taken his money and run away. Mr Hassanin told him to not to get involved, after which he stayed quiet. Mr Hassanin then became aggressive, so he took Mr Rofail away and they went back to the car to return to London. Cross-examined, Mr Mankaruis denied that it was he and Mr Rofail who had been aggressive themselves.

179. In his witness statement, Mr Rofail denied making any threats or being aggressive, and said he did not see Mr Hassanin's wife or daughter. When cross-examined, he said that both of them were there, but behind the window 20 metres away.

- *The Defendant's evidence*

180. Mr Hassanin said that on 11 January 2022, Mr Rofail had appeared at his house with Mr Marakuis and had started asking for money. The conversation was in Arabic. Both his wife, Balgis Mohamed, and his daughter, Ayat Mohamed, had been present. Mr Rofail had been incredibly aggressive and intimidating, shouting loudly at times. Mr Hassanin and his family had felt under threat. Mr Rofail had demanded that Ms Mohamed come out of the house, which she refused to do. Mr Rofail tried to insist that Mr Hassanin get into their vehicle which was parked nearby. He said it was a terrifying experience for him and his family, especially his daughter. The idea that there had been any sensible discussion about the events relating to this claim was ridiculous.

181. Asked in cross-examination why Mr Rofail would attend his house in Hythe if he owed Mr Hassanin money, rather than the other way around, Mr Hassanin responded that what he didn't understand about Mr Rofail was that "*he can sleep, he dreams and then acts on his dreams as if they were true*". He said he did not know how Mr Rofail's brain worked.

182. Balgis Mohamed recalled that she had been at home with Mr Hassanin and their daughter when Mr Rofail and Mr Mankaruis arrived. She said Mr Hassanin went outside. Both Mr Rofail and Mr Mankaruis were very aggressive and started shouting at him in Arabic demanding money. They also demanded that Ms Mohamed come out of the house, which she refused to do. She recalled that Mr Hassanin replied asking "*What money?*", and that he had confirmed that he did not owe Mr Rofail any money, and that any money he had received he had worked for. She then got worried for his safety as Mr Rofail was trying to get Mr Hassanin into his car. A moment later, Mr

Hassanin returned to the house, but was clearly shaken. She watched all this from an open window in the house with Ayat.

183. Ayat Mohammed said she was at home with her parents at the time. She was aged 22 at the time. She said when Mr Rofail and Mr Mankaruis arrived, her father went outside and did not let them into the house. She gave the same account as her mother had done as to what then transpired.

184. In cross-examination, each of Balgis and Ayat Mohamed rejected the suggestion that there had been no shouting. They each commented that their dog had started barking in response to the shouting. They were not further cross-examined on this episode.

Conclusions on Mr Rofail's attendance at Mr Hassanin's home in Hythe

185. I prefer the evidence of Mr Hassanin, Balgis Mohamed and Ayat Mohamed to that of Mr Rofail and Mr Mankaruis as to what occurred.

186. First, I do not accept the circumstances in which Mr Rofail said he had initially tried without success to find Mr Hassanin, before he discovered that he had moved to Hythe. I note that when cross-examined about his evidence as to his initial searches for Mr Hassanin at his former home in Mackenzie Street, Mr Rofail could not explain why he had not simply telephoned or emailed Mr Hassanin if he wished to ascertain his whereabouts. He claimed that he did not send emails (which I have already found to be untrue); he further claimed that he did not wish to ask Mr Mankaruis to draft an email for him (which is implausible given that his evidence was that Mr Mankaruis regularly drafted emails for him, and that he had discussed the alleged loan to Mr Hassanin with him in any event). He said that he could not phone Mr Hassanin as he had blocked him, which is inconsistent with his evidence that he only blocked him after the meeting in January 2022, but there is no evidence that he even tried to phone him at this stage.

187. I find that Mr Rofail did not take any of those steps because he did not want to give Mr Hassanin prior warning of his visit. Once he had realised that Mr Hassanin had moved away from Mackenzie Road, he engaged his solicitors (and through them, private investigators) to find out where he had moved to. This revealed the new address in Hythe.

188. I do not doubt that he told Mr Mankaruis that the purpose of the visit was to seek to persuade Mr Hassanin to acknowledge that the payment had been a loan. Mr Mankaruis's evidence as to the purpose of the visit is consistent with him having been so told. That does not in itself take the matter much further, however, as Mr Mankaruis was not privy to any of the actual arrangements which gave rise to the payment. I reject Mr Mankaruis's evidence that he had been told about the existence of such a loan as early as 2017.

189. Had Mr Rofail been primarily concerned to enforce the alleged loan agreement, the logical next step would have been to instruct his solicitors to write to him. He did not do so. Instead, he went to visit Mr Hassanin, taking Mr Mankaruis with him. The purpose of taking him with him was to seek to intimidate Mr Hassanin. I accept the evidence of the Hassanin family that Mr Rofail and Mr Mankaruis were aggressive and threatening, and sought to persuade Mr Hassanin to get into their car. I also accept the evidence that Mr Hassanin responded to the demands for money by asking "*What*

money?" and stating that any money he had been paid had been money he had worked for. I accept that Mr Hassanin was visibly upset and shaken by the incident. I reject the evidence of Mr Rofail and Mr Mankarius that they remained calm and were simply there to have a talk as a friend; further that Mr Mankarius stayed quiet after being told not to interfere, and that it was Mr Hassanin alone who became aggressive: that evidence is inconsistent with that of Mr Hassanin's family, who were clear in their evidence as to what had happened.

190. This does not yet explain why Mr Rofail embarked on this course, if there was no loan agreement at all – or indeed why he subsequently brought this claim. I will return to that question below at paragraphs 207-208.

(x) Mr Hassanin's response to service of the claim form and to Mr Rofail's application for a freezing order

191. Mr Rofail proceeded to issue these proceedings on 14 March 2022. (There was no pre-action letter.) At the same time, he made an application for injunctive relief freezing the Mr Hassanin's assets to the value of £390,000: it was said that Mr Rofail was concerned that he might sell or transfer the Hythe property and become uncontactable again.

192. On 15 March 2022, Mr Rofail's solicitors, Baron Grey, sought to serve the claim form, Particulars of Claim and the application on Mr Hassanin. They were sent by first class post. Mr Hassanin's evidence was that they arrived on 22 March 2022.

193. Meanwhile, on 21 March 2022, Baron Grey also arranged for personal service, apparently concerned that Mr Hassanin was difficult to make contact with. The process server sought to effect personal service on 23 March 2022, but Mr Hassanin was not at home at the time. His son provided the agent with a telephone number for Mr Hassanin, saying that he had moved away, but it was reported that this number was not accepting incoming calls. The process server therefore sent a letter of appointment nominating a time for service. On 24 March 2022, Baron Grey sent the claim form and application for the freezing order to Mr Hassanin's email address by e-mail. On 25 March 2022, Baron Grey advised Mr Hassanin by email that a hearing of the application for the freezing order was to take place on 7 April 2022, forwarding confirmation from the QB Listing Office to that effect.

194. On 28 March 2022, the process server wrote to Mr Hassanin at his Hythe address to inform him that they would attend that address to serve him personally with the documents at 6pm on 4 April 2022. On 5 April 2022, Baron Grey wrote and emailed again: they said that although an appointment had been made for the evening of 4 April 2022 to effect personal service, his wife had telephoned the agent from a withheld number to state that he would not be at the address at the appointed time, but that he would accept service at 6pm on 7 April 2022.

195. It appeared to Baron Grey that this date and time had been deliberately calculated so that Mr Hassanin would only accept service after the scheduled hearing had taken place. For that reason, the process servers were instructed to serve the enclosed papers through the letterbox at Mr Hassanin's address that day, 5 April 2022, which they duly did. (There is a dispute about whether the process servers were abusive towards Mr Hassanin's wife on that occasion, which I do not need to resolve.)

196. On 6 April 2022, Mr Rofail's solicitors received an automatic alert from HM Land Registry indicating that a search had been conducted on the Hythe address at 10:30 AM that morning, in relation to a pending purchase in favour of Balgis Mohamed. This led to Mr Rofail applying without notice that day for an interim freezing order, which was granted by Clare Padley (sitting as a Deputy Judge of the High Court) with a return date the following day.

197. On 7 April 2022, Mr Wilcox placed himself on the record as Mr Hassanin's legal representative, acting as direct access counsel. At the hearing on the same date, Mr Hassanin offered an undertaking to the Court that until trial or further order of the court, he would not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of his assets which are in England and Wales up to the value of £420,000. As a result, Clare Padley discharged the interim freezing injunction made the previous day. Costs were reserved to the trial judge.

198. In oral evidence, it was suggested to Mr Hassanin that he had been deliberately seeking to evade service, and had attempted to dissipate his assets in the meantime. He denied this. He accepted that he felt panicked by the service of legal documents, and so did not respond to the emails. He said he was trying to get legal advice to be able to respond, and did not get legal advice until 5 or 6 April 2022. He considered the freezing order to be baseless, because it concerned a claim for money for which he had worked hard for. He did not consider there was any ground to take him to court.

199. Mr Rowntree submitted that the above matters went to Mr Hassanin's credit: he suggested that he had sought to evade service, as well as the ultimate enforcement of any judgment against him by seeking to transfer the ownership of his jointly owned property into the sole ownership of his wife in advance of a freezing order being made. This was a form of dishonesty, and showed a tendency to deny reality and then to lie.

Conclusion on Mr Hassanin's response to service of the claim form and to Mr Rofail's application for a freezing order

200. I have gained little help from the evidence of these events. Service of the claim form and application for a freezing order by first class post to Mr Hassanin's address was enough, in accordance with CPR 6.3(1)(b) and 6.20(1)(b). Although Mr Hassanin said it did not arrive until 22 March 2022, Baron Grey would have known that they would be deemed to have been served on 17 March 2022, being the second business day after they were posted, in accordance with CPR 6.26(1). Nothing further was required. Duplicative attempts at service by email were not in accordance with CPR PD6A in any event. The elaborate attempt at personal service was unnecessary, and achieved little save to alarm Mr Hassanin's family (who, it is to be remembered, had only recently experienced an alarming and intimidating visit from Mr Rofail; his son's reaction must be viewed in that light). The whole episode will have been experienced as oppressive by Mr Hassanin. True it is that any attempt to move his assets into his wife's name when faced with an application for a freezing order were misguided at best, but this does not indicate that Mr Hassanin was thereby acknowledging the payment to have been a loan which he knew was due to be repaid. It is equally consistent with a panicked reaction to the threat of legal proceedings which Mr Hassanin understood to be an unjustified attempt to deprive him of his principal asset and family home. Mr Hassanin explained in evidence that he had simply panicked, and only then was able to gain legal advice (following which he offered suitable undertakings to the court).

Overall conclusions on the central issue: loan or profit share agreement?

201. It is now possible to draw the threads together, and to return to the main issue in the case whose resolution I have deferred until now, taking into account all of the evidence in the case. I conclude as follows.

202. When Mr Rofail won the national lottery in 2006, the prize understandably transformed his financial position. He no longer needed to work as a private chauffeur, and instead could start his own garage business in the form of PAL. That business was never profitable, but Mr Rofail maintained it because it allowed him to indulge his own enthusiasm for cars. It was in that context that he employed Mr Hassanin at the garage. Mr Rofail had been impressed by his abilities. His willingness to make him manager of the garage business reflected the trust he was prepared to place in him; but it also reflected the reality that Mr Rofail was not interested in personally running the business. He did not want to deal with the paperwork or the day to day business of running a garage: his interest was only in the cars themselves, and his main role was to provide the funding to establish the business. Mr Hassanin was trusted with managing day to day operations and administration: see paragraph 41 above.

203. The true basis upon which Mr Hassanin was remunerated for his work was not formally recorded in writing. In the case of his employment at the garage, he was paid in cash at a rate which exceeded that recorded in PAL's payroll. It is likely that both Mr Rofail and Mr Hassanin preferred for him to be paid on that informal basis. Mr Rofail also emphasised his wealth by making gifts to Mr Hassanin from time to time: see paragraph 43 above.

204. When Mr Rofail entered the property development business in 2009, he was dependent on others to help him make a success of it. He had no relevant experience in property development. He identified Mr Javed as a professional who could identify properties for purchase, liaise with surveyors and architects, apply for planning permission and building consents, and appoint a building contractor. There remained much else to do: there needed to be some form of assessment as to whether the proposals made by Mr Javed did represent realistic investment opportunities. Mr Hassanin performed that role, researching the property market in each area where a property was proposed, to check both that the price the property was being offered at was fair, and to assess what price the property might be able to command after refurbishment or redevelopment. Thereafter, the task for Mr Hassanin was to assist in the progress of each project, with a focus on day to day operations, sourcing of materials, coordination with contractors and other service providers, and managing problems as they arose, both before and after the properties were let: see paragraphs 101-102 above.

205. While Mr Hassanin was willing to take on the additional work in relation to the property development work, he agreed to do so on the basis that he would be paid on a profit share basis. In reaching that conclusion, I place substantial weight on the terms of the July 2015 emails. In circumstances where it has been established on the basis of unchallenged expert evidence that the emails were genuinely sent between the two email accounts at the time recorded on their face, and where there has been no suggestion put to Mr Hassanin that he was himself responsible for authoring those purported to have been sent by Mr Rofail, I am driven to accept that Mr Rofail was in those emails acknowledging that they had agreed at least in principle that Mr Hassanin

would be paid a share of the net profit on certain development projects. Having done so, he then chose to ignore the issue, deleting the emails: see paragraphs 161-163 above.

206. Equally importantly, I reject the account given by Mr Rofail that he had entered into a loan agreement with Mr Hassanin. That is because:

i) Contrary to Mr Rofail's account, Mr Hassanin was actively engaged in working for the property development business, having been financially incentivised to do so: see paragraphs 99-103 above.

ii) The claim that the £390,000 payment was a loan is inconsistent with the July 2015 emails, and in particular Email 6: see paragraph 144 above.

iii) It is also inconsistent with the explanation given to Mr Hassanin's solicitor (Chris) on 6 October 2014 that the payment was a "*gesture of goodwill*". There would have been no good reason to describe the payment as such if in fact it was a loan. The reason it was so described when in fact it was a payment pursuant to a profit share agreement was to seek (dishonestly) to avoid liability for income tax: see paragraphs 123-126 above.

iv) I have rejected Mr Rofail's claim that the existence of a loan was acknowledged by Balgis Mohamed at a meeting at a Starbucks in Queensway in April 2014: see paragraph 112 above.

v) Mr Rofail's experience of seeking to recover the loan he made to Mr Nagdy would have made it less likely that he would then enter into an undocumented loan of almost ten times the size of the one which had been offered to Mr Nagdy: see paragraph 169 above. The point is of limited weight, but provides some further support for the conclusion that the £390,000 payment was not a loan.

vi) Little weight can be attached to Mr Rofail's account of his meeting with Mr Hassanin in Costa Coffee in Camden in 2019, which in any event is not reliable: see paragraph 172 above.

207. It is true that by January 2022, Mr Rofail appears to have convinced himself that the payment had been a loan: that is why he visited Mr Hassanin in Hythe, and sought to put pressure on him retrospectively to acknowledge that the payment had been a loan and needed to be repaid. It is also why he initiated the present proceedings. However, taking all of the evidence together, I have concluded that this amounts to a substantial rewriting of history. Faced with apparent financial difficulties, Mr Rofail appears now to be regretting some of the largesse with which he formerly conducted himself. It appears likely that he drew inspiration from the occasion on which he was able to put pressure on Mr Nagdy to acknowledge retrospectively that a payment to him was in fact a loan (although in Mr Nagdy's case, there is no evidence that it wasn't), and visited Mr Hassanin in the company of Mr Mankaruis with a similar end in mind. There is little other explanation for the aggression with which they conducted themselves, or for Mr Hassanin's response ("*What money?*"): see paragraphs 185-189 above.

208. It remain possible that Mr Rofail has persuaded himself that this rewriting of history is true. However, that is simply symptomatic of his own unreliability as a witness: he consistently denied the undeniable in his evidence, and sought to deny past events even

in the face of direct documentary evidence. Having deleted the emails in which he had acknowledged the payment – and claiming now not to have any memory of them – he has chosen to write Mr Hassanin's work on the property development business out of the story. He now contends wholly implausibly that Mr Hassanin had only ever sat in the garage playing games on his phone, and that he had never been impressed with any element of his work. I have no hesitation in rejecting those claims. Mr Hassanin clearly worked hard on Mr Rofail's behalf, even if he has now exaggerated the significance and extent of some of that work.

209. For those reasons I accept that the money that Mr Rofail paid to Mr Hassanin in April 2014 represented a share of actual or anticipated profits in respect of the property development business. To that extent, I accept that the payment was as a result of an understanding between the two men that there should be a sharing of the profits.

210. Nonetheless, I do not accept that there was a contract on the terms contended for by Mr Hassanin. The difficulty with the claimed profit share agreement goes beyond the evidential one that they were never reduced to writing: they lacked the necessary completeness to give rise to an enforceable contract.

211. I do accept that, as the emails of July 2015 reflect, Mr Rofail and Mr Hassanin had agreed "in principle" at the outset (i.e. in or around January 2009) that Mr Hassanin would work on an unsalaried basis in support of the then contemplated property development business, in return for a share of 25% of the net profits following sale of any refurbished property. However, the agreement was made at a time when neither Mr Rofail nor Mr Hassanin had had any experience of developing property. The headline profit share taken alone was reached on a somewhat naïve basis, without thought in any detail as to how this might work in practice. In particular, there were critical details missing from the agreement:

    i) It was not expressly discussed or agreed how Mr Hassanin would be remunerated in the event that any individual property was let rather than sold, or (as in the case of the Donnington Road property) retained as Mr Rofail's own house. There was at most an implied term that in such an event the basis upon which Mr Hassanin was to be remunerated would have to be the subject of further discussion, so as to reflect the spirit of the "in principle" agreement that they had reached.

    ii) Subsequently, when Mr Javed was engaged, the terms of his remuneration were also to be calculated on the basis of a share in the net profit (although the precise share varied from project to project). There was no agreement between Mr Rofail and Mr Hassanin as to how that would affect the net profit share they had agreed between themselves. Would any remuneration due to Mr Javed then have had to be treated as a cost reducing the net profit as calculated for the purposes of the prior agreement between Mr Rofail and Mr Hassanin? That may seem likely to be commercially sensible, as any other result would not be consistent with Mr Hassanin's evidence that Mr Rofail would take a "*net 75%"* and Mr Hassanin would receive a "*net 25%*", the net figure being "*net of all expenses and costs".* Instead, he would be left with 45% of the overall net profit, with the cost of the decision to involve Mr Javed and his expertise being born entirely by Mr Rofail, to the benefit of Mr Hassanin. But there was no evidence before me that this was even discussed, let alone agreed upon.

iii) I cannot accept the pleaded case set out in the Amended Defence and Counterclaim that there were terms agreed that upon the conclusion of the refurbishment work in relation to each property, Mr Rofail would immediately market it at the best possible market price. In fact, as Mr Hassanin explained in his evidence, it was part of his role to discuss whether any particular property should be sold or let out, the ultimate decision in each case being for Mr Rofail, and a further part of his role to deal with problems or issues as they arose while a property was in fact let to tenants. The attempt to argue that this was an express term of the contract appears to me to be a retrospective attempt to make up for what were in fact significant omissions in the completeness of the agreement between them.

iv) Nor can I accept that it was agreed that Mr Hassanin would take a 25% share of the profit in relation to a property which was not in fact refurbished or redevelopment, but which was simply sold for a quick profit without any work being undertaken at all. Mr Hassanin's pleaded case was that the profit share payment for each property would be paid in consideration of "*the time and energy spent by him*" in undertaking "*a managerial or project manager role throughout the duration of the refurbishment*" of each property. It is unlikely that it was contemplated that the same share of the profit on any sale would be paid to him even where no such work was undertaken, and I do not accept that there was agreement to that effect. However what (if any) reward was to be paid in such circumstances (recognising that some work would have been done at the market research stage) was not worked out by the parties to any degree at all.

212. Given the absence of agreement on these essential matters, the "profit share agreement" claimed to have existed by Mr Hassanin was in my judgment no more than an agreement in principle that was incomplete. These were important points that were left unsettled. Instead, the parties proceeded on the basis of trust. As at 8 April 2014, that trust was maintained, as Mr Rofail paid Mr Hassanin for his work.

i) At that stage, only the Blarney Stone pub had been the subject of development works and then sale. The Blarney Stone pub had achieved a net profit of £573,824.03, but that was before deduction of Mr Javed's share of £168,000 (around 30%). If that was agreed to be taken into account, it would have left £405,824.03. Mr Hassanin's 25% share from that project would then be £101,456. If he was entitled to 25% of the larger sum (leaving Mr Rofail with just 45% of the profit on his investment), it would have been no more than £143,456. On either basis, Mr Hassanin was being paid a far higher sum, reflecting the fact that he had performed substantial work on other properties too.

ii) 145 Harvist Road and 52 Rothschild Road had also been sold – but without refurbishment or development work of any kind having been undertaken. If it had been agreed that Mr Hassanin was to be entitled to the full amount of 25% of the profit on those properties, his share could not have exceeded £50,000 in total, bringing his rolling total (including te Blarney Stone pub) to £193,456 at most. (For the reasons I have given, however, I do not accept that there was an agreement that 25% of the profit on properties such as these should be paid to Mr Hassanin.) Even on this basis, he was still being made substantially more –

nearly £200,000 more. The payment must have reflected his work on further properties.

iii) 61 Victoria Road, Flat 19 Hillside Court and the Tavern had all been refurbished, but not sold: they had been let out. In cross-examination, Mr Hassanin suggested that account needed to be taken of the rental income which had been achieved from those properties, but there was no such claim in the pleadings, and no evidence of any agreement on that basis. Faced with that point, he stated that the problem was that Mr Rofail had broken his side of the agreement by failing to sell these properties, and was still enjoying a rental income from them. However, I have rejected the suggestion that Mr Rofail was under any kind of obligation to sell at any given time: there is no credible evidence that that was a matter which had been discussed and agreed upon by the parties when the profit share was agreed upon. Nonetheless, considerable work had been done on those properties, leading to an increase in their valuation. It is likely that that was reflected in the payment made in April 2014, even if Mr Rofail had chosen not to liquidate those assets by that time. Again, however, the oral "in principle" agreement they had reached was silent as to these matters.

iv) Work had also been done on the Donnington Road property, but with a view to it becoming Mr Rofail's home rather than an investment property. There was no agreement as to how Mr Hassanin should be compensated for the work he did, where there was never any proposal to sell the property; nor was it let out to tenants.

v) There was no agreement as to the timing of any payment.

213. In my judgment, it is likely that the sum of £390,000 was paid to reflect the in principle agreement which the parties had reached. It was represented a fair assessment of the appropriate reward for Mr Hassanin's work since the property business began in June 2009 up to that date.

214. It is equally clear from the July 2015 emails that Mr Hassanin considered that it had not been a final payment, and that further payments were due. Mr Rofail made no such concession in those emails, however, first agreeing to contact his accountant to calculate Mr Hassanin's share (see Email 2), and then expressing his anger at the suggestion that more could be due (see Email 6). His final email (Email 8) can be taken as being no more than assent to the proposition that he should follow up with his accountant for a proper calculation of what (if anything) was due.

215. Mr Hassanin's expectation is unsurprising: he had, after all, continued to work after 8 April 2014 until the closure of the garage by January 2015. He had then ceased to work for Mr Rofail, and he wished to collect whatever else was due to him, on the basis of his understanding as to what remained due to him.

216. However, in my judgment, nothing further can in fact be said to be have been due to him as a matter of law: the terms of the profit share agreement were not sufficiently certain (and there had been no further completed sales in any event). It is trite law that agreements in principle only are not binding where important points are left unsettled so that the agreement is incomplete: see *Chitty on Contracts* (35th Edition) at paragraph 4-146; see also *Western Broadcasting Services v Seaga* [2007] UKPC 19; [2007]

E.M.L.R. 18 at [19]. One of the examples cited by Chitty of such a case is *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55, [2008] 1 W.L.R. 1752. In that case, an agreement in principle for the redevelopment and disposal of residential property, which specified core terms but left important matters, such as the timing for the project, for future discussion was an "incomplete agreement" and so did not amount to a binding contract. The fact that one or both parties may have expected that all outstanding points would be resolved did not mean that the outcome was certain or near-certain: see *Cobbe* at [7] and [88]. So too here: for the reasons I have given above at paragraph 212, there was nothing like agreement as to important terms of this agreement. Instead, Mr Hassanin was left to wait for many years after the completion of the Blarney Stone pub, and it was unclear when if at all he would receive payment in respect of his work on other developments which had not culminated in a sale. Realistically, he did not seek to pursue the outstanding sums which he considered were due to him after he had sent the emails of July 2015, and has only done so now in response to the claim against him. In reality, there was no certainty as to the terms of the alleged agreement; there is no basis upon which I could now conclude what sums would be due to him under the "in principle" agreement which he reached.

217. There remains Mr Hassanin's claim in respect of the share of the compensation from LB Camden relating to the termination of the lease.

218. I accept that in principle, Mr Rofail had offered Mr Hassanin a 50% share of the compensation awarded in respect of the determination of the lease on the garage premises, if he was able to negotiate a higher level of compensation. Mr Rofail had initially been offered only a small sum by the Council of £5,000, reflective of its position that the tenants of the premises did not enjoy protection under the Landlord and Tenant Act 1954. Mr Rofail did not anticipate compensation being awarded in anything like the sum ultimately awarded, and saw little downside in offering half of the compensation to Mr Hassanin if his work resulted in an increase in compensation. However:

    i) The agreement can only have related to compensation for the termination of the tenancy, not damages for action by the Council's agents which only occurred subsequently, or any contribution to costs. The £70,000 ultimately accepted included both an element in respect of Mr Rofail's counterclaim for loss of business at the garage and damage to an advertising placard (which Mr Hassanin is more likely to have been involved in negotiating through his role as the garage manager) and costs.

    ii) So far as compensation for the termination of the lease is concerned, this was not in fact negotiated by Mr Hassanin: the figure arrived at is likely to have been a lesser sum than that which had been advanced by Gordon Dadds on the basis of Montague Evans's valuation. I do not accept that the increase in compensation was attributable to Mr Hassanin's work. Even if he provided the initiative to engage a lawyer on behalf of the tenants' group, and attended the opening meeting on Mr Rofail's behalf, I cannot accept that he had a meaningful role in connection with the compensation for the termination of the lease: see paragraphs 133-135 above.

219. The initial offer must have been made on the basis that a share of the compensation would be offered to Mr Hassanin if he was responsible for negotiating higher

compensation – not simply if higher compensation resulted following the engagement of lawyers (and a valuer) funded in whole or part by Mr Rofail, or if compensation also became due because of some fresh cause of damage. Although Mr Hassanin referred to his request for "*50% of the compensation I managed to have from Camden Council regards Performance Auto Cars Ltd as we agreed earlier*" in Email 1 and Email 5 of the July 2015 emails, there was no direct acknowledgement of such an agreement or of such a debt in Mr Rofail's responses, and the matter was not mentioned again in Email 7. In my judgment, this is not enough for Mr Hassanin to establish on the balance of probabilities that he was owed £35,000 (being half of the £70,000 total), still less that an additional £5,000 bonus had been promised (which is notably not mentioned in any of the emails). I therefore reject Mr Hassanin's counterclaim in respect of the share of the compensation for the termination of the lease.

Conclusion

220. On my findings above, it is possible to provide answers to each of the six issues identified by Master Eastman in the Order of 4 July 2022, as set out at paragraph 21 above.

i) The payment of £390,000 made by Mr Rofail to Mr Hassanin on 8 April 2014 was not a loan.

ii) The second issue does not arise: since there was no loan, it has not fallen due.

iii) The payment was made to remunerate Mr Hassanin in respect of his work in support of Mr Rofail's property development business, and was based upon a rough and ready calculation reflecting the fact that (a) they had agreed in principle of a 25% share of net profit being paid to Mr Hassanin at the outset of the property development venture, but (b) they had not reached any agreement as to how Mr Hassanin should be remunerated in the event that a property was not sold but let out, or else retained by Mr Rofail for his own purposes.

iv) There was therefore an "in principle" agreement about profit sharing between Mr Rofail and Mr Hassanin in relation to Mr Rofail's property development business, but it did not give rise to an enforceable contract.

v) No sufficiently certain terms were agreed, beyond the "in principle" agreement to which I have referred.

vi) Mr Rofail is not liable to pay Mr Hassanin any further sums, whether pursuant to the alleged profit share agreement, or pursuant to the alleged agreement in relation to the compensation payment.

221. In the result, both Mr Rofail's claim and Mr Hassanin's counterclaim are dismissed.