



Neutral Citation Number: [2019] EWHC 2097 (QB)

Case No: HQ16X02378

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2019

Before:

MATHEW GULLICK
(sitting as a Deputy High Court Judge)

Between:

(1) PEPE'S PIRI PIRI LIMITED **Claimants**
(2) PEPE'S FRANCHISING LIMITED

- and -

(1) MUHAMMAD ALI JUNAID **Defendants**
(2) FOOD TRENDS LIMITED (now dissolved)
(3) OPTIMUM SERVICES INTELLIGENCE LIMITED
(4) SYED ADIB AHMAD
(5) SYED HASIB AHMAD
(6) RAZI SIDDIQUI
(7) INFINITI FOODS LIMITED
(8) KHUDEJA RAZI
(9) OPTIFOODS GSN LIMITED

Nigel Jones QC and Paul Strelitz (instructed by **Boddy Matthews**) for the **Claimants**
Barry Coulter (instructed directly) for the **First Defendant**
Tim Welch (instructed directly) for the **Third to Ninth Defendants**
The Second Defendant did not appear and was not represented

Hearing dates: 12, 13, 14, 15, 18, 19, 20 & 21 March 2019

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Deputy Judge Mathew Gullick:**A: Introduction**

1. Pepe's Piri Piri ("Pepe's") and Rio's Piri Piri ("Rio's") are competing fast food franchise businesses. The Claimants are the companies which control the Pepe's franchise business and its branding. Their franchisees sell grilled chicken products to members of the public. The "Piri Piri" style of cooking used by both Pepe's and Rio's involves particular types of spicy marinade.
2. On the evening of 9 April 2016, during normal trading hours, the Pepe's Piri Piri chicken shop at 23A Gold Street in Northampton ("the Premises") was closed. It never re-opened. On or about 12 June 2016, a Rio's Piri Piri chicken shop opened at the Premises.
3. By this Claim, issued on 6 July 2016, the Claimants allege that the nine Defendants, all of whom were involved to varying degrees with the Pepe's chicken shop at the Premises, with the nearby Rio's chicken shop at 206 Wellingborough Road in Northampton, or with both shops, committed various torts against the Claimants for which it is said that they are liable in damages. The total amount claimed has varied over time, however by the conclusion of the trial the Claimants' claim for damages was put at just over £500,000.
4. It is alleged that the Defendants conspired together to injure the Claimants' business by unlawful means and that they unlawfully interfered with the Claimants' business. It is further alleged that the First and the Third to Ninth Defendants committed the tort of procuring a breach of contract, i.e. the franchise agreement between the Claimants and the Second Defendant ("Food Trends") under which the Premises was run by Food Trends as a Pepe's chicken shop.
5. Although this claim is brought in the name of both Claimants, Mr Jones QC conceded that any judgment ought only to be entered in favour of the Second Claimant, to which the franchise agreement relied on has been assigned by the First Claimant. Mr Jones QC explained that the claim had been brought in the name of both the assignor and the assignee of that agreement in case any point was taken about the validity of

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the assignment. For the purposes of this judgment, nothing turns on that issue and I will refer throughout to “the Claimants”. It was also accepted by Mr Welch, on behalf of the three limited companies named as Defendants, that insofar as those in control of the companies were liable in tort to the Claimants, then the companies were liable also. I shall therefore focus, in this judgment, on the actions of those individuals.

6. Unless the contrary appears, references below in this judgment to the terms set out in this paragraph should be understood as follows:
 - i) “the parties” refers to the Claimants and the Defendants together, but excluding Food Trends;
 - ii) “the Defendants” refers to the First Defendant and the Third to Ninth Defendants;
 - iii) “the Individual Defendants” refers to the First, Fourth, Fifth, Sixth and Eighth Defendants;
 - iv) “the Investors” refers to the Fourth, Fifth and Sixth Defendants.
7. A default judgment was entered against Food Trends on 19 August 2016, for damages to be assessed. Food Trends was dissolved on 1 August 2017 and took no part in the proceedings before me. I have not been asked to determine what sums might be due to the Claimants from Food Trends under that judgment. The remaining Defendants deny all the allegations made against them.
8. During the course of the trial, I delivered two *ex tempore* judgments on applications made by the Claimants. The first, on the morning of the second day of the trial, was on an application for permission to call further expert and factual witness evidence in response to the content of the Defendants’ expert’s report. I allowed that application and also permitted the Defendants to rely on a supplemental report from their expert replying to the Claimants’ further evidence. I shall address that evidence later in this judgment. The second ruling, on the morning of the last day of the trial, was on an application to amend the Claimants’ costs budget. In the event, that application was largely disposed of by agreement although I did determine a handful of disputed items. That costs budgeting decision is not material to this judgment.
9. The first and last days of the trial were occupied by the applications to which I have already referred and by the opening and closing submissions of counsel. Each of Mr Jones QC, Mr Coulter and Mr Welch made both an opening and a closing speech. I heard evidence from the witnesses of fact and from the experts over the intervening period of six days.
10. At the outset, I express my gratitude to all counsel who appeared in this case for the considerable assistance provided to me. I also thank all the parties and legal representatives for their co-operation during the hearing, which ensured that it was completed within its revised time estimate of eight days.

B: Factual Background

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11. In this section, I will set out the material factual background as it appears from the uncontroversial parts of the witness and documentary evidence.

[a] The establishment of Pepe's Piri Piri

12. From 1995, Mr Munir Hussain ("Mr Hussain") had been operating a video rental business in Watford. In 2003, he was approached by one of his customers, Mr Muhammad Naeem ("Mr Naeem") who was interested in setting up a fast food shop. In 2004, Mr Hussain funded the purchase of a fast food chicken shop in Luton. This shop was managed by Mr Naeem and had the name "Roosters Chicken". Mr Hussain continued to run his video rental business.
13. In 2006, Mr Hussain developed a new fast food chicken concept called "Pepe's Piri Piri". He converted his video rental store in Watford into the first Pepe's chicken shop, which he operated as a sole trader. Mr Naeem managed both the Roosters' shop in Luton and the Pepe's shop in Watford. In 2007, the Luton shop became a second Pepe's. In 2009, a third Pepe's shop was opened in Harrow. These stores were all owned by Mr Hussain and managed by Mr Naeem.
14. Between 2007 and 2009, Mr Hussain received requests from third parties to establish new Pepe's shops on a franchise basis. Mr Hussain did not have the ability to run a network of franchisees, but in 2009 he decided to develop that ability. He therefore incorporated the First and Second Claimants, established a Head Office and recruited several new members of staff. Mr Hussain became, and remains, the Chief Executive Officer of Pepe's. Mr Naeem was promoted to Head of Operations. Mr Hussain also contracted Business Options, a specialist franchise consultancy run by Mr Clive Sawyer ("Mr Sawyer"). Mr Sawyer was subsequently referred to as Pepe's Head of Franchising, although he was, and remains, a part-time consultant to Pepe's rather than being an employee.
15. The first four Pepe's franchises, all located in Greater London, were established in late 2010 and early 2011. Since then, the business has expanded and there are now more than 75 franchised Pepe's shops in operation in the United Kingdom, as well as further franchises in several other countries.
16. In March 2013, Mr Naeem resigned from his employment with Pepe's. In due course he set up his own franchise business, named "Rio's Piri Piri". As its name suggests, Rio's is a direct competitor to Pepe's. It too is involved in the retailing of Piri Piri chicken and it operates using a similar franchise business model.

[b] The Northampton Pepe's Franchise

17. In the latter part of 2009, Mr Masroor Qureshi ("Mr Qureshi") approached Mr Hussain about the possibility of establishing a Pepe's franchise. Mr Qureshi had moved to the United Kingdom from Pakistan earlier in 2009. Mr Hussain told Mr Qureshi that he was not at the point ready to begin establishing franchises but that they could discuss the possibility further in the future.
18. At about the same time as he met with Mr Hussain, Mr Qureshi also came into contact with the First Defendant, Mr Muhammad Junaid ("Mr Junaid"). Mr Qureshi and Mr Junaid lived near to each other and their children attended the same school. Mr

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Junaid was also looking for potential business opportunities and was considering the food industry. Mr Qureshi and Mr Junaid decided that they would like to establish a Pepe's franchise together.

19. In early October 2010, Mr Hussain decided to grant a Pepe's franchise to Mr Qureshi and Mr Junaid, who had already been searching for a suitable location. In September 2010 they had alighted upon the Premises at Gold Street in Northampton with the assistance of Mr Krishan Patel, a surveyor who worked for Pepe's property agents. The Premises was approved by Pepe's Head Office as an appropriate location for a franchise to be established. Mr Junaid and Mr Qureshi produced a business plan, with the assistance of Pepe's Head Office, which anticipated set-up costs of £160,000 and in due course monthly sales of just under £52,000, with the objective of a 40 per cent net profit margin within the first year of business.
20. Mr Qureshi and Mr Junaid incorporated Food Trends to operate the proposed Pepe's franchise at the Premises. On incorporation, Mr Qureshi and Mr Junaid each held 50 per cent of the shares in Food Trends. They were both directors of Food Trends. In their respective capacities as directors of Food Trends, they signed a franchise agreement ("the Franchise Agreement") between Food Trends and Pepe's on or around 29 April 2011. The Franchise Agreement was for a period of 10 years and provided, amongst other things, for Food Trends to pay Pepe's a monthly management fee of £1,000 plus VAT escalating at 5 per cent per annum for the duration of the agreement.
21. Also acting as directors of Food Trends, Mr Junaid and Mr Qureshi signed a lease for the Premises on 13 July 2011, for a term of 15 years. The initial rent was £11,500 per annum, rising to £23,000 per annum in the second year of the lease and further increasing in subsequent years. The landlord had an option to determine the lease early, exercisable on 13 July 2020 with one year's prior notice. Both Mr Qureshi and Mr Junaid personally guaranteed Food Trends' obligations under that lease.
22. The Premises had to be refurbished and fitted out as a Pepe's shop. Mr Qureshi and Mr Junaid each borrowed substantial sums of money, which they in turn loaned to Food Trends, to enable this to be done. Mr Qureshi borrowed £40,000 from a friend. Mr Junaid borrowed £40,000 from his brother-in-law, the Sixth Defendant, Mr Razi Siddiqui ("Mr Razi"). Their family relationship arises because Mr Junaid's wife, Dr Asma Ali ("Dr Ali") and Mr Razi's wife, Mrs Khudeja Razi ("Mrs Razi") are sisters. Mrs Razi is the Eighth Defendant in this Claim.
23. The Pepe's franchise thus established commenced trading at the Premises on 11 September 2011. Thereafter, the Pepe's chicken shop at the Premises continued trading until 9 April 2016, a period of just over four and a half years. In 2012, a home delivery service was established. At the outset, Food Trends incurred a substantial debt to Pepe's in respect of services provided to it by Pepe's. By April 2012, this debt had reached £19,940.00. It had still not been cleared by April 2015, when it stood at £11,735.50.

[c] The involvement of the Investors

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24. In 2014, Mr Razi requested the repayment of the balance of the loan that he had made to Mr Junaid in 2011. Mr Junaid was not however in a position to repay that money. Mr Qureshi was also in debt to family and friends.
25. Mr Razi introduced Mr Qureshi and Mr Junaid to two of his friends, Mr Adib Ahmad ("Mr Adib") and Mr Hasib Ahmad ("Mr Hasib"). Mr Adib and Mr Hasib are brothers. They are the Fourth and Fifth Defendants in this Claim. Mr Razi, Mr Adib and Mr Hasib all worked in the field of information technology. None of them had experience of the food industry.
26. Mr Razi, Mr Adib and Mr Hasib together proposed to invest £100,000 into Food Trends. They incorporated the Third Defendant, Optimum Services Intelligence Limited ("OSI"). OSI was to be the vehicle for the proposed investment into Food Trends. Each of them owned one third of the shares in OSI.
27. During March and April 2014, Food Trends was valued by an accountant, Mr Musa Patel. The valuation was done on the basis of projected profits rather than past performance; the third and final version of the valuation put the value of Food Trends at £292,000. Based on that figure, it was agreed that 34 per cent of the shares in Food Trends would be exchanged for the proposed £100,000 investment. A contract ("the Purchase and Sale Agreement") providing to this effect was signed between OSI and Food Trends on 28 May 2014. The agreement was drafted by Mr Adib. Each of the Investors signed in his capacity as a director of OSI and Mr Qureshi and Mr Junaid signed as directors of Food Trends. This agreement stated that Food Trends was running a franchise business and that the Franchise Agreement and the lease of the Premises were attached to the Purchase and Sale Agreement as appendices. It provided for Food Trends' profits to be distributed by way of dividend. It further provided in Clause 12.2 for a possible buy back of the shares in Food Trends from OSI "after a minimum of 24 to 30 months".
28. Consequent upon this agreement, 34 per cent of the shares in Food Trends were transferred to OSI. Mr Qureshi and Mr Junaid then held 33 per cent each. The £100,000 invested into Food Trends by OSI was divided into three parts. Both Mr Qureshi and Mr Junaid received £40,000 to repay the loans that they had made to Food Trends in 2011. Mr Junaid, in turn, used his £40,000 to repay the loan made to him by Mr Razi, which had been called in. The balance of £20,000 was left in Food Trends. Pepe's Head Office was not at this point informed about the investment into Food Trends by OSI or about the transfer of 34 per cent of the shares in Food Trends.
29. In June 2014, agents acting for the landlord of the Premises requested payment of outstanding rent from Food Trends, in the sum of £71,400. The arrears of rent had arisen because the landlord had never demanded payment of the rent from Food Trends and the rent had simply not been paid. Both Mr Qureshi and Mr Junaid received notices informing them of their personal liabilities as guarantors under the lease.
30. On 22 July 2014, Mr Junaid emailed Pepe's Head Office, copying in Mr Qureshi, stating that he and Mr Qureshi had "struggled for almost three years" and that they wished to sell the Northampton Pepe's franchise. Pepe's gave permission for a sale to take place. However, the business was not sold. A reduced sum in respect of the outstanding rent was negotiated with the landlords' agents. However, this could not

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be paid immediately; neither Mr Qureshi nor Mr Junaid was in a position to put further funds into Food Trends. They therefore approached the Investors. It was agreed that OSI would invest a further £44,000 into Food Trends, in exchange for a further 16 per cent of the shares. OSI's shareholding in Food Trends was thereby increased to 50 per cent by the transfer of shares from both Mr Qureshi and Mr Junaid. They then held 25 per cent of the shares each.

31. Again, Pepe's Head Office was not informed about the further investment by OSI or about the transfer of further shares in Food Trends to OSI. At this point, Pepe's Head Office was entirely unaware of the involvement of OSI and the individuals who stood behind it.

[d] The Wellingborough Road Rio's shop

32. During the summer of 2014, Mr Qureshi and Mr Junaid together paid a visit to Mr Naeem, who had by this point established Rio's, at his office in Croydon. At or about the same time, Mr Junaid searched for premises in Northampton at which to open a second business. He was shown premises at 206 Wellingborough Road in July 2014.
33. During the period when plans were being made for the opening of what became the Rio's chicken shop at 206 Wellingborough Road, Mr Junaid continued as a director of Food Trends. He continued to work in the Pepe's shop at the Premises.
34. In January 2015, the Seventh Defendant, Infiniti Foods Limited ("Infiniti") was incorporated. Mrs Razi was at that point the sole shareholder and director of Infiniti. Mrs Razi, like her husband, had no experience of the fast food business. A planning application for 206 Wellingborough Road was submitted to Northampton Borough Council on 21 April 2015. The applicant was Mrs Razi. Mr Junaid acted as planning agent. It was intended that 206 Wellingborough Road would be operated as a Rio's franchise.

[e] Mr Junaid's resignation as a Director of Food Trends

35. During the latter part of 2014 and in early 2015, Mr Junaid sought advice from several firms of solicitors regarding the ability of a director of Food Trends to remain as a director of that company whilst operating a competing franchise business. In particular, Mr Junaid was concerned that this might breach the Franchise Agreement between Pepe's and Food Trends. On 20 April 2015, a document was filed at Companies House recording Mr Junaid's resignation as a director of Food Trends, effective from 6 October 2014.

[f] Setting up Rio's at Wellingborough Road

36. On 12 May 2015, Infiniti and Mr Junaid signed a contract, the "Setup and Management Agreement". Mrs Razi signed the agreement on behalf of Infiniti, of which she was still the sole director. This agreement provided that Mr Junaid would receive a fixed fee of £12,000 for setting up the Rio's franchise in Wellingborough Road, and that he would be responsible for the day-to-day running and general management of the business, in return for 30 per cent of the monthly profits. Mrs Razi was at this point, and remained, the sole director of Infiniti. On 27 July 2015, the Rio's franchise fee of £5,000 was paid by electronic transfer to Rio's, from Mrs

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Razi's bank account. In August 2015, Infiniti entered into the lease for 206 Wellingborough Road. Again, Mrs Razi signed the lease on behalf of Infiniti.

37. The Rio's chicken shop at 206 Wellingborough Road opened for business at the beginning of February 2016. At this point, Mrs Razi resigned as director of Infiniti. However, she remained the sole shareholder of Infiniti. Mr Asad Tasleem ("Mr Tasleem") then became the sole director of Infiniti.

[g] The October 2015 letter from Pepe's

38. On 9 October 2015, Mr Sawyer, acting as Pepe's Head of Franchising, wrote letters to Mr Qureshi and Mr Junaid. Those letters were in materially identical terms and set out various alleged breaches of the Franchise Agreement between Pepe's and Food Trends. The basis of the alleged breaches was that it had come to Pepe's attention that Mr Junaid was no longer a director of Food Trends and that Pepe's had been led to believe that Mr Junaid was in the process of setting up a competing business. Pepe's was concerned that there might have been a change in the ownership or control of Food Trends, the business that operated its franchise, which was prohibited by the terms of the Franchise Agreement. Pepe's was further concerned that Mr Junaid might have breached the terms of the Franchise Agreement that prohibited him from involvement in a similar business without the written consent of Pepe's. The letter indicated that the Franchise Agreement might, if the allegations were correct, be terminated.
39. Mr Qureshi responded to Mr Sawyer by email on 12 October 2015 stating that Mr Junaid was no longer a director of Food Trends and that he had been working as "floor staff" at the Premises "as and when required by management". Mr Qureshi informed Mr Sawyer that Mr Junaid had no access to any confidential information about the running of the Pepe's franchise and that he was not in a position to access any such information. He stated that he had no knowledge of Mr Junaid being involved in a competing business. On 15 October 2015, Mr Junaid responded to Mr Sawyer, again by email, in similar terms although he did not positively state that he was not involved in a competing business. He stated that he had not been a director of Food Trends "for more than a year now" and concluded the email by stating that he was "only working as staff on [an] as and when required basis".
40. Mr Sawyer was not satisfied with the response from Mr Junaid, who had not said whether or not he was involved in a competing business. He therefore instructed Mr Qureshi to prevent Mr Junaid from working at the Premises and informed Mr Junaid that he had done so.

[h] The shareholdings in Food Trends & Food Trends' accounts

41. Foods Trends' Annual Return at Companies House filed on 27 October 2014 reflected the position in relation to shareholdings to which I have referred at paragraph 30 above. When the next Annual Return was filed on 26 October 2015, this recorded that Mr Junaid had transferred his shares in Foods Trends to Mr Qureshi on 17 November 2014 and that OSI had transferred its shares in Food Trends to Mr Qureshi on 12 January 2015. Mr Qureshi was thereby recorded as being, as at 26 October 2015, the holder of 100 per cent of the shares in Food Trends, as well as the sole director of Food Trends. On 10 March 2016, a further Annual Return was filed

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recording that as at that date, OSI held 75 per cent of the shares in Food Trends, with Mr Qureshi holding 25 per cent. The date of the transfer to OSI was stated to be 10 March 2016, i.e. the date of filing of the return.

42. At this point I should refer to what is stated in the accounts filed by Food Trends at Companies House for its accounting years ending on 30 September 2013 and 30 September 2014. These were abbreviated accounts and so did not disclose Food Trends' turnover or what profit, if any, it made. They record however that Food Trends' net liabilities had grown from £152,846 at 30 September 2012 to £293,525 at 30 September 2014, this latter figure being given in the final set of accounts that were filed on 30 June 2015. These accounts were prepared by a firm of chartered certified accountants, ASK Accountants UK Ltd, and were stated to be approved by Mr Junaid in the capacity of director, on behalf of the board of Food Trends.

[i] The events of March and early April 2016

43. On 6 March 2016, Mr Qureshi, Mr Junaid, Mr Razi, Mr Adib, Mr Hasib all attended a meeting at Mr Razi's house to discuss their business arrangements. The meeting was not minuted, but Mr Razi prepared an agenda in an email which referred amongst other things to a potential meeting with Mr Hussain regarding the contract for the Pepe's franchise, and the sharing of staff and resources between both the Pepe's and Rio's franchises in order to reduce costs.
44. On 15 March 2016, the Ninth Defendant ("Optifoods") was incorporated, with OSI as its sole shareholder and each of the Investors as a director.
45. On 21 March 2016, Mr Razi circulated an email to Mr Qureshi, Mr Junaid, Mr Adib and Mr Hasib in which he referred to having "several individual meetings with all the stakeholders" following the meeting on 6 March and setting out what he described as "steps to resolve [the] current situation". These steps included the dissolution of Food Trends, the surrender of the lease of the Premises and the transfer of Food Trends' assets to a new company, which would also take over the lease of the Premises. Mr Razi stated that it was the accountant's advice that Food Trends was in "negative equity" and that the company should be dissolved immediately "to reduce liabilities and cost savings". Mr Razi recorded that Mr Qureshi had told him that he was only willing to work as a staff member, rather than take responsibility for the business, unless "all the shareholders agree to his model, which he presented in shareholders meeting".
46. On 25 March 2016, Food Trends and OSI entered into an "Asset Purchase Agreement" whereby OSI purchased all the assets of Food Trends, save the lease of the Premises, for the nominal sum of £1. The agreement was signed by Mr Adib on behalf of OSI and by Mr Qureshi on behalf of Food Trends, their signatures being witnessed by Mr Junaid and Mr Razi.
47. On 6 April 2016, Northampton Borough Council's Food Safety Officer wrote to Food Trends with a report of a visit to the Premises that had been undertaken on 9 March 2016. This visit resulted in a rating of one on the National Food Hygiene Rating System (the maximum score being five), and a corresponding requirement for significant improvements in the hygiene standards at the Premises. A formal schedule of works required by the Council was enclosed, including several repairs, the cleaning

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of the extraction unit and a general deep clean of the rear area of the Premises. Several incidents of very poor food hygiene practices were recorded by the inspection team and instructions were given to improve the practices employed at the Premises and the training of staff, with a review of progress to follow after eight weeks.

48. On 6 April 2016, Food Trends' new accountants, QP Accountants, sent a draft VAT return by email to Mr Qureshi. This was for the quarter ending on 29 February 2016. It recorded Food Trends' sales for that quarter as being £71,744.42, exclusive of VAT, and the cost of sales as being £70,216.92, exclusive of VAT. These figures were similar to the figures that had been declared for the preceding quarter, in a return filed on 7 January 2016. That return recorded quarterly sales of £71,453.00, exclusive of VAT, with the cost of sales being £64,150.00 exclusive of VAT.
49. On 8 April 2016, Mr Qureshi as director of Food Trends signed a deed of surrender in respect of Food Trends' lease of the Premises which released Food Trends, Mr Junaid and Mr Qureshi from their obligations under that lease. On the same day the Investors, as directors of Optifoods, signed a new lease of the Premises for a term of 25 years, commencing immediately. Each of the Investors personally guaranteed Optifoods' obligations under that lease.
50. On 9 April 2016, Mr Qureshi signed an application to strike off Food Trends from the Register of Companies. He had sent an email to Food Trends' accountant on 8 April 2016 stating that he planned to send this form to all vendors and creditors, asking the accountant to let him know if there was anything to be added.
51. At 2:50 pm on the afternoon of 9 April 2016, Mr Qureshi sent Mr Hussain an email in which he thanked him for "taking out time to discuss the current situation of Pepe's Piri Piri Northampton". In the email, Mr Qureshi blamed Mr Junaid for what he described as Food Trends' "negative balance sheet" and stated that the accountant had strongly recommended dissolving Food Trends. Mr Qureshi said that he had decided "not to take his [i.e. Mr Junaid's] liability on my shoulders and [to] dissolve Food Trends Ltd." He proposed a meeting to "discuss the credibility and ability of new franchisee" and stated that he had "informed them to fill [in] the application form and email back to Pepe's before meeting."
52. On the evening of 9 April 2016, Mr Junaid, Mr Razi, Mr Adib and Mr Hasib went to the Premises during normal trading hours. They closed the shop. Mr Qureshi sent Mr Hussain a text message at 11:16 pm in which he stated: "... I was informed by staff that they have closed the shop. I am not sure what their intensions [sic] are, I am quite concern [sic] about their motives and would like to discuss it with you on an emergency basis..."

[j] Events following the closure of the Pepe's franchise at the Premises

53. On 11 April 2016, Mr Qureshi went to Pepe's Head Office where he met with Mr Hussain, Mr Sawyer and Mr Khan. They discussed the circumstances surrounding the closure of the Premises on 9 April. Following the meeting, Mr Sawyer contacted Pepe's solicitors, Boddy Matthews.
54. On 12 April 2016, Boddy Matthews, sent a "Notice of Breach and Rectification" addressed to the directors [sic] of Food Trends Ltd and also addressed, separately, to

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Mr Qureshi. This stated that Foods Trends was in breach of its obligations under the Franchise Agreement, amongst other things because it had surrendered the lease of the Premises. Boddy Matthews stated that Pepe's view was that this was a deliberate attempt to seek to introduce a competing business. They stated that, "... Mr Qureshi intimated that its [i.e. Food Trends'] majority shareholder OSI was seeking to take or had taken an interest in the Premises itself for the purpose of either preventing the Franchise Business to operate or for its own purposes of operating in breach such Business or operating a competing business in which it seems interested parties are involved."

55. Boddy Matthews' letter also referred to Mr Junaid having continued his connection with Food Trends despite being involved with a competing business. The letter stated that Food Trends had no right to assign, delegate or transfer performance of the Franchise Agreement to OSI. It further stated that "all goods and services" provided to Food Trends under the Franchise Agreement were suspended with immediate effect until rectification of the alleged breaches. The required eight steps by way of rectification included "a legally binding agreement to ensure that the Franchise Business can continue to operate under the terms of the Franchise Agreement for its duration at the Premises...", written undertakings from Mr Qureshi and others regarding the operation of the business and further personal guarantees from Mr Qureshi and from each shareholder. The letter stated that the suspension would last until 7 June 2016 or the date of rectification in accordance with Pepe's requirements, whichever was the earlier. Boddy Matthews stated: "**During this period you will not be entitled to trade. We therefore recommend you take this action urgently.**" (emphasis in the original). Mr Sawyer and Mr Qureshi arranged by email for the latter to be present at the Premises during the afternoon of 12 April 2016 so that he could take delivery of the letter.
56. Mr Qureshi forwarded a copy of Boddy Matthews' letter by email to Mr Razi at 7:43 pm that evening, stating: "When I was leaving store got this notice from Pepe's. It looks like I am in deep trouble, please advise how to proceed further." At midnight, Mr Razi responded, copying in Mr Adib and Mr Hasib, stating that on a number of occasions Mr Qureshi had been asked to inform Pepe's of OSI's involvement and to arrange a meeting with Pepe's to discuss the future. He noted that this had not been arranged, that OSI had no contract with Pepe's and that OSI could not now trade as Pepe's Piri Piri. He asked Mr Qureshi to arrange for all Pepe's branding and signage to be collected from the Premises and requested that he refrain from entering the Premises and return his keys. Mr Qureshi forwarded that email to Mr Sawyer, who advised him on the terms of a response. At 10:22 am on 13 April 2016, Mr Qureshi responded to Mr Razi stating that he had arranged a meeting between the Investors and Mr Hussain for 2 pm on 11 April 2016, but that Mr Razi had told him that they were busy and would arrange the meeting themselves. He noted that the Franchise Agreement had not been terminated and asked Mr Razi whether he wished to rectify the breaches of the Franchise Agreement and continue to trade as Pepe's, "or you wish to discontinue with the Pepe's". On 15 April 2016, Mr Qureshi sent Mr Sawyer a text message in which he told Mr Sawyer that "without any hesitation they want to continue with Pepe's", that "they" wanted to meet with him directly and that he had given "them" Mr Sawyer's mobile phone number.

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57. On 19 April 2016, Pepe's Area Manager, Mr Muzammal Hussain, visited the Premises. There were builders present who did not allow him to go inside. He sent Mr Sawyer a photograph of the exterior of the Premises showing that the Pepe's signage had been covered up.
58. On instructions from Mr Sawyer, Boddy Matthews contacted OSI's solicitors on 26 April 2016 to arrange a meeting between Pepe's and the Investors. That meeting took place on the following day, 27 April 2016. Mr Razi, Mr Adib and Mr Hasib went to Pepe's Head Office. They met with Mr Hussain and Mr Sawyer. Although the meeting was expressed to be on a "without prejudice" basis, something reflected in the note of the meeting prepared by Pepe's, all those present gave evidence about what had happened during the meeting and the note of the meeting was included in the trial bundle. I proceed on the basis that, insofar as any part of the meeting may have been privileged, such privilege has been waived; no party made any claim to privilege before me. At the meeting, Mr Razi, Mr Adib and Mr Hasib proposed that Pepe's should take over the running of the franchise at the Premises, stating they were not experienced in the food business and had no intention of running the store themselves. This was not, however, acceptable to Pepe's. The meeting therefore ended without agreement.
59. During May 2016, several visits to the Premises were made by Pepe's staff. These showed that the Premises remained closed for business, with the Pepe's signage covered up and the windows whitened out with paint. On 12 May 2016, a supplier attended the Premises to remove a leased vending machine. The supplier sent several photographs of the Premises to Mr Sawyer including a photograph of the interior which showed a distinctive design of red peppers on a dark background which appeared on the interior wall near to the front window.
60. On 27 May 2016, Pepe's wrote to Food Trends to terminate the Franchise Agreement due to an alleged material breach, i.e. the surrender of the lease of the Premises. It was said that this was a breach of Clause 16.3.2 of the Franchise Agreement, that Food Trends was thereby in repudiatory breach of contract and that Foods Trends should take the required steps consequent upon termination that were set out in the Franchise Agreement.
61. In early June 2016, the Premises re-opened as a Rio's franchised chicken shop. The exact date on which the Premises re-opened as a Rio's is not clear from the evidence, but it had certainly been fitted out as a Rio's store by 8 June 2016 when Mr Khan was sent a picture of the Premises prominently displaying Rio's signage, although it was not yet open for business at that point. It had however opened for business by 12 June 2016.
62. In June 2016, Mr Qureshi met with Mr Sawyer at the latter's request. What he told Mr Sawyer formed much of the factual basis for the Claim now brought against the Defendants, which was issued on 6 July 2016. In August 2016, Mr Qureshi forwarded Mr Sawyer a number of emails from Mr Junaid dating back to 2014 regarding the operation of the Pepe's franchise at the Premises and the Rio's franchise at Wellingborough Road.

C: The Claims Made Against the Defendants

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63. On 6 July 2016, the Claimants issued this Claim. The Particulars of Claim were filed with the Claim Form. They were signed with a statement of truth by Mr Hussain, acting on behalf of both Claimants. They allege, in broad terms, that the Defendants were all part of a conspiracy to injure the Claimants' business and that the Claimants' business has suffered significant losses as a result. Specifically, they allege the following against each of the Defendants:
- i) That they procured breaches of the Franchise Agreement by Food Trends;
 - ii) That they unlawfully interfered with the Claimants' interests by causing, encouraging, permitting or facilitating:
 - a) Food Trends' breaches of the Franchise Agreement; and/or
 - b) The Rio's shop at 206 Wellingborough Road; and/or
 - c) The termination of the Franchise Agreement.
 - iii) That they conspired with each other to cause, encourage, permit or facilitate Food Trends' breaches of the Franchise Agreement and/or the Rio's shop at 206 Wellingborough Road.

In relation to the third of these allegations, I note that the conspiracy alleged by the Claimants is one between the Defendants alone; it is not alleged that any other person was a party to the alleged conspiracy.

64. Although paragraph 40 of the Particulars of Claim refers to the likelihood of the allegations against the Defendants being amended following disclosure or following cross-examination at trial, no application was in fact made. Nor did the Claimants file any Replies to the Defences filed by the Defendants.
65. The Defendants deny the allegations against them and deny that they committed any torts against the Claimants. They further deny that, even if the torts are established, they are liable to pay damages.

[b] The acts complained of

66. For the purposes of each of the three pleaded causes of action, the Claimants allege that the Franchise Agreement was breached and that as a consequence of such breaches the Defendants are liable to the Claimants in tort. In respect of each of the Defendants, and each of the three causes of action, the same clauses of the Franchise Agreement are relied on in the Particulars of Claim as having been breached:
- i) Clause 6.1.3, which provides that the Franchisee (i.e. Food Trends) shall "*observe and perform the agreements, obligations, covenants and stipulations contained or referred to in any lease of the premises.*"
 - ii) Clause 6.1.5, which provides that the Franchisee shall "*not assign or otherwise dispose of the lease of the Premises to any person other than a buyer of the*

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Business pursuant to and in accordance with the provisions of this agreement.”

- iii) Clause 6.1.8, which provides that the Franchisee shall “*display such Signage at the Premises as required by the Franchisor. Where the Franchisor has provided the Signage as part of the Initial Package then the Franchisee acknowledges that the signage is provided on loan by the Franchisor for a one off cost and the Franchisee will strictly comply with the terms set out in Schedule 4.*”
 - iv) Clause 6.1.10, which provides that the Franchisee shall “*ensure that the Premises meet the Franchisor’s specifications of a typical Pepe’s Piri Piri branded restaurant at all times and not carry out any alterations whether external or internal to the structure or layout of the Premises without the Franchisor’s prior written consent.*”
 - v) Clause 6.3.6, which provides that the Franchisee shall “*ensure that the Premises are open for trading between the hours specified in the Operations Manual or by the Franchisor subject to any restrictions contained in the lease of the Premises.*”
 - vi) Clause 6.3.16, which provides that the Franchisee shall “*ensure that it is creditworthy at all times and that adequate finance is available to it to enable it to perform its obligation under this agreement and by way of working capital.*”
 - vii) Clause 6.3.22 which provides that the Franchisee shall “*not do or permit to be done anything which may bring the Intellectual Property into disrepute or which may damage the interests of the Franchisor or any member of the Pepe’s Piri Piri Network.*”
 - viii) Clause 8.1.3 which requires the Franchisee to pay to the Franchisor, “*without any deduction or set-off... the Management Fee on the fifth working day of the Month following the month to which the fee relates. The Management Fee shall be increased by 5% in each year of the Term such increase to take effect on 1st January.*”
 - ix) Clause 14.3, which provides, “*The Franchisee and the Guarantor shall during the Term and thereafter keep this agreement confidential and not disclose or permit the disclosure of any of its contents to anyone other than its [sic] professional advisors and then only if such disclosure is made to them in confidence.*”
67. Further, in respect of each of the Defendants it is alleged that the Defendant caused, encouraged, permitted or facilitated Food Trends to commit a material breach of the Franchise Agreement. The provision relied by the Claimants is Clause 16.3.14, which provides:
- “16.3 *The Franchisor may, without prejudice to any other rights or remedies available to it, terminate this agreement by written notice to the Franchisee, upon a material breach of this agreement and the following shall be deemed*

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to be a material breach but the list shall not be deemed to be exhaustive, and upon such termination all rights of the Franchisee under this agreement shall cease:

...

16.3.14 if the Franchisee or the Guarantor behaves in an immoral manner or in any other way which brings the Franchisor or the Franchisee into disrepute..."

I note that it is not alleged in the Particulars of Claim that any of the Defendants themselves behaved in an “*immoral manner*” or indeed in any other way that might amount to a material breach as defined by Clause 16.3.14 of the Franchise Agreement. Rather, the sole allegation is that Food Trends behaved in an “*immoral manner*” and that the Defendants’ liability flows from that. Particulars of the alleged immorality on the part of Food Trends were not, however, pleaded.

68. It is also alleged against each of the Defendants in respect of all three pleaded causes of action that they caused, encouraged, permitted or facilitated the opening of the Premises as a Rio’s Piri Piri franchise, defined in paragraph 37 of the Particulars of Claim as “*the Competing Operation*”. It is therefore alleged that the opening of “*the Competing Operation*” was:
- i) a breach of the Franchise Agreement by Food Trends, procured by each of the Defendants, although no particulars are given of which parts of the Franchise Agreement were thereby breached;
 - ii) an unlawful interference with the Claimants’ interests by the Defendants;
 - iii) an actionable conspiracy by the Defendants.

Finally, it is alleged that each of the Defendants caused, encouraged, permitted or facilitated the termination of the Franchise Agreement, which it is alleged was an unlawful interference with the Claimants’ interests.

D: The Law**[a] Conspiracy to injure by unlawful means**

69. The tort of conspiracy has two branches: conspiracy to injure by lawful means and conspiracy to injure by unlawful means. This judgment is not concerned with the former branch of the tort, which requires that the predominant purpose of the defendant is to injure the claimant; that is not alleged in this Claim.
70. The basic ingredients of the tort of conspiracy where the allegation is of conspiracy to injure by unlawful means were summarised by Morgan J in *Digicel (St Lucia) Ltd v Cable & Wireless plc* (“*Digicel*”) [2010] EWHC 774 (Ch) in Annex I to his judgment, at [2]:

“... The necessary ingredients of the conspiracy alleged are: (1) there must be a combination; (2) the combination must be to use unlawful means; (3) there must be an intention to injure a claimant by the use of those unlawful means; and (4)

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the use of the unlawful means must cause a claimant to suffer loss or damage as a result.”

71. A combination between two or more persons for the purpose of this tort need not be express: “it is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end”. See *Kuwait Oil Tanker Co SAK v Al-Bader (No.3)* [2000] 2 All ER (Comm) 271, CA, (“*Kuwait Oil*”) at [111]. It is, however, “not necessary for the conspirators all to join the conspiracy at the same time, but ... the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of...”: see *Kuwait Oil* at [111]. It is a rare case where there is evidence of an agreement and, in most cases, “...it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination”: see *Kuwait Oil* at [112]. It is sufficient if those involved combine, albeit tacitly, to achieve a common end. As noted by the Court of Appeal in *Kuwait Oil* at [120], it will often be necessary to infer intent from the primary facts. However, the claimant must properly prove their case, i.e. the nature of the agreement, the unlawful means alleged, each unlawful act relied on as causing loss and the fact that each act was carried out pursuant to the conspiracy: see *Kuwait Oil* at [132].
72. There was a dispute between the parties about whether the unlawful means necessary to establish this branch of the tort of conspiracy could include breaches of contract, which are the only type of unlawful means pleaded by the Claimants in the Particulars of Claim. This dispute also arose in *Digicel* (see Annex I at [4]). As long ago as 1964, Lord Devlin considered that whether a breach of contract could amount to unlawful means in this context remained to be decided (see *Rookes v Barnard* [1964] AC 1129 at 1209-1210). After an extensive analysis of the authorities – ranging far wider than those cited to me – Morgan J declined to decide the point in *Digicel* (see Annex I at [65]) because it did not arise on the facts of that case. I shall return to that issue later in this judgment.
73. There was no disagreement between the parties as to the content of the requirement, for the commission of this tort to be established, that the defendant should have intended to injure the claimant. Nor, as I understood them, did the parties disagree that the test for intention in this branch of the tort of conspiracy was the same as that for the tort of unlawful interference (see below). In any event, I respectfully agree with and gratefully adopt the reasoning and conclusion of Morgan J on this question in *Digicel* at [79-85] of Annex I to his judgment, i.e. that the test for intention is the same in both torts.
74. For the tort of conspiracy to injure by unlawful means – and also for the tort of unlawful interference – to be established, there must be an intention on the part of a defendant, although not necessarily a predominant intention, to injure the claimant. The intention to injure may be a specific one, e.g. because the defendant has a grudge against the claimant. Even without there being a specific intent to injure the claimant, the requirement of intent may be satisfied where the injury to the claimant is the necessary corollary of benefit to the defendant. A defendant's foresight that his conduct may or probably will damage the claimant is not, however, sufficient: see *OBG Ltd & Others v Allan & Others* [2007] UKHL 21, [2008] 1 AC 1 (“*OBG v*

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Allan”), *per* Lord Nicholls at [166]. Where, however, “loss to the claimant is the obverse side of the coin from gain to the defendant”, such that “the defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked” and “the defendant cannot obtain the one without bringing about the other”, then the requisite intention may be found: *OBG v Allan* at [167], *per* Lord Nicholls citing the following passage from the speech of Lord Sumner in *Sorrel v Smith* [1925] AC 700, 742:

“When the whole object of the defendants’ action is to capture the plaintiff's business, their gain must be his loss. How stands the matter then? The divergence disappears. The defendants’ success is the plaintiff's extinction, and they cannot seek the one without ensueing the other.”

This passage was further explained by the Court of Appeal in *WH Newsom Holdings Ltd v IMI Inc* [2013] EWCA Civ 1377, [2014] 1 All ER 1132, *per* Arden LJ at [40]:

"Lord Sumner is taking the situation where loss to plaintiff must follow from the object of the conspiracy. He was taking the case where the proved facts exclude every other inference. As Lord Nicholls put it, the gain and the loss are inseparably linked."

75. In *OBG v Allan* at [166], Lord Nicholls cited with approval the formulation adopted by Cooke J, giving the judgment of the Court of Appeal of New Zealand, in *Van Camp Chocolates Ltd v Aulsebrooks Ltd* [1984] 1 NZLR 354, 360:

“... If the reasons which actuate the defendant to use unlawful means are wholly independent of a wish to interfere with the plaintiff's business, such interference being no more than an incidental consequence foreseen by and gratifying to the defendant, we think that to impose liability would be to stretch the tort too far.”

76. Finally, in relation to intent in the context, both Arden and Toulson LJ held in their respective judgments in *Meretz Investments NV & Another v ACP Ltd & Others* [2007] EWCA Civ 1303, [2008] Ch 244 (“*Meretz*”), that liability will not be established where the defendant believed that he had a lawful right to act as he did: see at [122-127] *per* Arden LJ and at [171-174] *per* Toulson LJ. In particular, Toulson LJ concluded at [174]:

“... I would support Arden LJ’s view at [127] that it is a defence to an action for conspiracy to injure by unlawful means if the defendant not only acted to protect his own interests, but did so in the belief that he had a lawful right to act as he did. Just as the tort of conspiracy to induce a breach of contract is not committed if the defendant believes that the outcome sought by him will not involve a breach of contract, ... so a defendant should not be liable for conspiracy to injure if he believes that he has a lawful right to do what he is doing...”

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Whilst those observations were strictly *obiter*, in my judgment they accurately state the law and I will apply them in deciding this Claim.

77. It was not suggested on behalf of the Defendants that the Claimants' pleading was inadequate to support the allegation of conspiracy to injure by unlawful means that was pursued at trial. However, it is right to point out that at paragraph 40 of the Particulars of Claim it is averred that each Defendant conspired with one or more of the other Defendants but without any particulars being given of the alleged combination between one or more of the Defendants (including, for example, when such combination is alleged to have first come into being) and nor do the Claimants make in the Particulars of Claim, expressly, any allegation that there was an intention on the part of any of the Defendants to injure the Claimants. Whilst, given the way in which the case was argued before me, I do not consider that the Claimants are disabled from pursuing their allegation that there was such an intent, I bear in mind that the Claimants have not, at the very least, pleaded that any of the Defendants had any particular motive to injure the Claimants. Nor was any particular motive to injure the Claimants suggested to any of the Defendants when they were cross-examined.

[b] Unlawful interference with the Claimants' business

78. A separate tort alleged to have been committed by the Defendants is that they unlawfully interfered with the Claimants' interests; or, more to more fully describe the tort, that they interfered with the Claimants' trade or business by unlawful means. The elements of this tort were set out by Lord Hoffmann in *OBG v Allan* at [45-64]; Lady Hale (at [302]) and Lord Brown (at [320]) agreed with Lord Hoffmann's speech on this issue and it therefore represents the view of the majority of the Appellate Committee. There must be a wrongful interference with the action of a third party in which the claimant has an economic interest. As with the tort of conspiracy, an intention to cause loss to the claimant is an essential ingredient. I have set out the law on intention at paragraphs 74 to 76 above. The unlawful means employed for the purpose of this tort must be actionable by the third party; there is no dispute, in relation to this tort, that the unlawful means can include breaches of contract. Lord Hoffmann considered at [51] that the unlawful means used by the defendant must consist of:

“... acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant.”

Lord Brown summarised the position of the majority at [320]:

“As Lord Hoffmann explains, any liability for this tort is primary (unlike the accessory liability which arises under the principle in *Lumley v Gye* (1853) 2 E & B 216 where the defendant induces a contracting party to commit an actionable wrong against the claimant) and it arises where the defendant, generally to advance his own purposes, intentionally injures the claimant's economic interests by unlawfully interfering with a

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third party's freedom to deal with him. In this tort there is no question of the third party's conduct (which ex hypothesi will have been inhibited or obstructed by the defendant's actions) being unlawful vis-à-vis the claimant; if it were, the case would be one of *Lumley v Gye* secondary liability. Rather the unlawfulness is that of the defendant towards the third party and the defendant's conduct must be such as would be actionable at the suit of the third party had he suffered loss. To define and circumscribe the tort in this way seems to be not only faithful to its origins as described by Lord Lindley in *Quinn v Leatham* [1901] AC 495, 535, and consistent with the great bulk of authority which has considered the tort over the ensuing century, but also to confine it to manageable and readily comprehensible limits...”

79. For this tort to be committed, the alleged tortfeasor (in this case, the Defendants) must commit an unlawful act against a third party (in this case, Food Trends) which is independently actionable by the third party. Those unlawful acts must interfere with the actions of the third party, in which the claimant has an economic interest. There must be an intention to cause loss to the claimant, based on the definition of intent to which I have already made reference.

[c] Procuring a breach of contract

80. The third tort alleged to have been committed by each of the Defendants is that they procured breaches of the Franchise Agreement by Food Trends. Procuring a breach of contract is a tort. The elements were restated in *OBG v Allan* by Lord Hoffmann at [8] and [39-44] and by Lord Nicholls at [168-193].
81. Importantly, unlike both the tort of conspiracy and the tort of unlawful interference, the tort of procuring a breach of contract does not require an intention to injure the claimant. What is however necessary is knowledge both of the act complained of by the claimant and knowledge that it constitutes a breach of contract.
82. For the tort to be established, there must be a breach of contract by the contracting party (see *OBG v Allan* at [5] and [8], *per* Lord Hoffmann); in the present case, that means there must have been a breach of contract by Food Trends. The tort is a form of accessory liability. There can be no accessory liability without primary liability, which is of the essence – i.e. in this case, a breach of contract by Food Trends. The defendant must have procured that breach of contract by (for instance) active persuasion or enticement of the contracting party himself; a direct communication from one person to another such as by way of an ultimatum or instructions will suffice.
83. There must be both knowledge of the contract on the part of the procurer and an intention to interfere with its performance. In *OBG v Allan* at [40-41], Lord Hoffmann said in relation to knowledge:
- “40. The question of what counts as knowledge for the purposes of liability for inducing a breach of contract has also been the subject of a consistent line of decisions. In *Emerald*

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Construction Co Ltd v Lowthian [1966] 1 WLR 691, union officials threatened a building contractor with a strike unless he terminated a sub-contract for the supply of labour. The defendants obviously knew that there was a contract - they wanted it terminated - but the court found that they did not know its terms and, in particular, how soon it could be terminated. Lord Denning MR said (at pp. 700-701)

“Even if they did not know the actual terms of the contract, but had the means of knowledge - which they deliberately disregarded - that would be enough. Like the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated, heedless of its terms, regardless whether it was terminated by breach or not, they would do wrong. For it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, indifferent whether it is a breach or not.”

41. This statement of the law has since been followed in many cases and, so far as I am aware, has not given rise to any difficulty. It is in accordance with the general principle of law that a conscious decision not to inquire into the existence of a fact is in many cases treated as equivalent to knowledge of that fact (see *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469). It is not the same as negligence or even gross negligence: in *British Industrial Plastics Ltd v Ferguson* [1940] 1 All ER 479, for example, Mr Ferguson did not deliberately abstain from inquiry into whether disclosure of the secret process would be a breach of contract. He negligently made the wrong inquiry, but that is an altogether different state of mind.”

Lord Nicholls’ speech was to the same effect, at [191-192]:

“191. I turn next to the mental ingredient of the *Lumley v Gye* tort. The mental ingredient is an intention by the defendant to procure or persuade ('induce') the third party to break his contract with the claimant. The defendant is made responsible for the third party's breach because of his intentional causative participation in that breach. Causative participation is not enough. A stranger to a contract may know nothing of the contract. Quite unknowingly and unintentionally he may procure a breach of the contract by offering an inconsistent deal to a contracting party which persuades the latter to default on his contractual obligations. The stranger is not liable in such a case. Nor is he liable if he acts carelessly. He owes no duty of care to the victim of the breach of contract. Negligent interference is not actionable.

192. The additional, necessary factor is the defendant's intent. He is liable if he intended to persuade the contracting party to

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breach the contract. Intentional interference presupposes knowledge of the contract. With that knowledge the defendant proceeded to induce the other contracting party to act in a way the defendant knew was a breach of that party's obligations under the contract. If the defendant deliberately turned a blind-eye and proceeded regardless he may be treated as having intended the consequence he brought about. A desire to injure the claimant is not an essential ingredient of this tort.”

84. As regards intention for the purpose of this tort, the claimant must show that the breach of contract was an end in itself or the means to an end. The fact that the breach is the foreseeable consequence of the defendant's conduct is not sufficient.

E: The Evidence**[a] Witness Evidence**

85. I heard oral evidence from 11 witnesses of fact, in the following order:
- i) Mr Hussain, the founder and Chief Executive Officer of Pepe's;
 - ii) Mr Sawyer, Pepe's Head of Franchising;
 - iii) Mr Qureshi, who formerly managed the Pepe's franchise at the Premises and now runs the Pepe's franchise in Milton Keynes;
 - iv) Mr Khan, Pepe's Franchise Operations Director;
 - v) Mr Krishan Patel, a surveyor employed by Pepe's property agents;
 - vi) Mr Sam Gyesi ("Mr Gyesi"), a system support analyst and trainer employed by 3S POS;
 - vii) Mr Junaid, the First Defendant;
 - viii) Mr Razi, the Sixth Defendant;
 - ix) Mr Hasib, the Fifth Defendant;
 - x) Mr Adib, the Fourth Defendant;
 - xi) Mrs Razi, the Eighth Defendant.
86. The statements of a further three witnesses called by the Claimants and two called by the Defendants were admitted by agreement between the parties, there being no dispute about those witnesses' evidence. Those witnesses were:
- i) Mr Michael Gosschalk, director of Hadley EHS Ltd, a food hygiene consultancy, who carried out training for Infiniti;
 - ii) Mr Ian Wilson, who is employed as an accounts assistant at Pepe's Head Office;

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- iii) Mr Lee Hussain, a prospective Pepe's franchisee who explored the possibility of opening a Pepe's franchise in Northampton after the events with which this Claim is concerned;
- iv) Mr Shahid Sarfraz, a witness to the Franchise Agreement;
- v) Mr Muhammad Maliq, the director of Infiniti since 5 September 2017.

Although a witness statement made by Mr Naeem had been served, and indeed he had been the subject of a witness summons, in the event the Defendants elected not to call him to give evidence. Mr Tasleem, who took over from Mrs Razi as the director of Infiniti in 2016 until Mr Maliq's appointment in September 2017, was also not called to give evidence by the Defendants despite a witness statement having been served.

87. The most significant events with which this Claim is concerned occurred over a period of approximately two years, i.e. from the summer of 2014 to June 2016, although some of the material events took place considerably before that period. The trial took place in March 2019. The witnesses were, therefore, giving evidence some three to five years after the main events had taken place. There were significant challenges made to the credibility of certain witnesses on both sides of the dispute. In *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), at [16-20], Leggatt J observed that human memory is unreliable, especially so when it comes to recalling past beliefs. At [22], he concluded:

“In the light of these considerations [about the unreliability of memory], the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

88. The parties were in agreement that I ought to apply Leggatt J's approach in the context of this Claim. I agree that that this is the appropriate and, indeed, the conventional course.

[b] Expert Evidence

89. I also had the benefit of written and oral expert evidence from two chartered accountants, Mr Simon Blake of Price Bailey (for the Claimants) and Mr Vivian Cohen of Frenkels Forensics (for the Defendants).

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90. During his cross-examination of Mr Cohen and in his closing submissions, Mr Jones QC criticised Mr Cohen's approach, contending that it was more akin to that of an advocate for the Defendants rather than that of an expert appointed under Part 35 of the Civil Procedure Rules (CPR). Mr Jones QC pointed to a number of what he said were unsatisfactory features in Mr Cohen's written and oral evidence. These included that Mr Cohen's report introduced matters outside his expertise, including general criticisms of the Claimants such as whether the Claimants ought to have issued proceedings against the guarantor of the Franchise Agreement or against Mr Qureshi. Mr Cohen opined at paragraph 3.5 of his report that the failure to issue such proceedings was "very strange". I agree with Mr Jones QC that Mr Cohen's report was, in significant part, more of a critical commentary on the Claimants' conduct of the litigation than an assessment of their claimed losses.
91. In his oral evidence, Mr Cohen said in response to Mr Jones QC that although his ultimate duty was to the court, where he was instructed by a particular party then he would do the best that he could to present that party's case in the most favourable light. I do not regard Mr Cohen's approach, thus explained, as being consistent with the duties of an expert under CPR Part 35. It is not part of the duty of an expert to advance the case of the party instructing them, whether by advancing arguments of fact or law which are outside their expertise or by seeking to present that party's case in a favourable light. An expert witness should present evidence which is uninfluenced by the pressures of litigation and contains independent assistance by way of objective opinion. Mr Cohen's understanding of his role as being to present the case of the party instructing him in the most favourable light was, in my judgment, not consistent with the well-established position which is now set out in paragraph 2 of the practice direction to CPR Part 35. I accept Mr Jones QC's submission that Mr Cohen, insofar as he was critical of the Claimants' case and of the evidence of Mr Blake, approached the exercise more as an advocate than as an expert complying with the requirements of CPR Part 35. That is not to say, of course, that the Claimants' case and the evidence of Mr Blake must necessarily be accepted or indeed that the criticisms made by Mr Cohen were necessarily incorrect – indeed, Mr Cohen identified a flaw in Mr Blake's assessment of the Claimants' losses which Mr Blake accepted. But, insofar as there is conflict between Mr Cohen and Mr Blake, I am constrained for these reasons to place little weight on the views of Mr Cohen.
92. Mr Blake, on the other hand, was a witness whose evidence did not suffer from the flaw to which I have just referred in relation to that of Mr Cohen. However, I did consider some of his evidence on the quantification of the Claimants' claimed losses to involve a considerable degree of speculation. Mr Blake himself recognised in his report that it was not possible on the available evidence to quantify with precision certain aspects of the Claimants' claimed losses. Moreover, he accepted after his discussion with Mr Cohen that he had overvalued the Claimants' losses in some respects. He therefore produced a supplementary report which revised downwards his quantification of those claimed losses. Whilst I am able to place greater weight on his evidence than that of Mr Cohen, I do remind myself that ultimately the decision as to the extent of any losses is a matter for me and not one on which the expert evidence adduced by either side, although of assistance, is determinative.

[c] Documentary evidence

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93. The trial bundle in this case ran to 13 lever arch files, including over 1,700 pages of documentary evidence. In addition, the Defendants filed a supplemental bundle of documents containing just under 400 pages of evidence. Despite the volume of documentation submitted for consideration by the court, there were aspects of the documentary evidence – or lack thereof – that were unsatisfactory.

[1] The competing versions of the Franchise Agreement

94. The first issue which causes me concern is that of the Franchise Agreement itself. The Particulars of Claim aver that there was a Franchise Agreement. Certain terms of the agreement are pleaded and relied on as having been breached. It is also expressly averred that a true copy of the Franchise Agreement has been annexed to the statement of case and that Ms Saima Masroor, Mr Qureshi's wife, was the guarantor of the Franchise Agreement. As I have already noted, the Particulars of Claim were signed with a statement of truth by Mr Hussain.
95. Mr Junaid however contended that the version of the Franchise Agreement put forward by the Claimants and annexed to the Particulars of Claim had been materially altered from that which he and Mr Qureshi had signed in 2011. Mr Junaid disclosed a different version of the Franchise Agreement. The material differences are:
- i) It is clear from the signature pages disclosed by both the Claimants and Mr Junaid (which are, save in respect of pagination, identical) that the Franchise Agreement was in fact signed by Dr Ali as guarantor, with Ms Masroor's details being given only as witness to her signature. The evidence of both Mr Junaid and Mr Qureshi was that Dr Ali had in fact signed the agreement as guarantor and that Ms Masroor had signed only to witness Dr Ali's signature. However, in the version of the Franchise Agreement relied on by the Claimants, the name of Ms Masroor has been entered in typescript on the cover page and in the definition of "Guarantor" on page 1, although her name is given there as "Ms. Saima Masroo [sic]". In the version of the Franchise Agreement disclosed by Mr Junaid, both these parts were left blank.
 - ii) The definition of the "Franchise Transfer Fee", i.e. the sum payable to Pepe's if the franchise is sold, is different as between the two versions, so that the minimum payable in the version of the Franchise Agreement relied on by the Claimants is £10,000 whereas that in the version disclosed by Mr Junaid is only £5,000.
 - iii) Schedule 3 to the Franchise Agreement, which contains representations made by the franchisee and the guarantor to Pepe's, and which has been disclosed by Mr Junaid in a form signed by him and Mr Qureshi (though not by Dr Ali or anyone else purporting to be the guarantor) has been omitted from the version annexed to the Particulars of Claim, which contains only Schedules 1, 2 and 4, although the pagination skips from page 42 (for Schedule 2) to page 44 (for Schedule 4).
 - iv) The pagination of the two versions of the Franchise Agreement is different. That relied on by the Claimants and annexed to the Particulars of Claim has 46 numbered pages, with the 46th page being the signature page on which Mr Hussain, Mr Junaid, Mr Qureshi, Dr Ali and the various witnesses to their

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signatures all signed. That disclosed by Mr Junaid has only 44 pages. It appears that the signature page disclosed by both sides, which in both cases is the final page, is identical, but that the version disclosed by the Claimants has had the printed pagination "44", which appears in the centre at the bottom of the page, amended in manuscript to "46".

- v) The heading "Franchise Agreement Corporate (fixed fee)" which appears in the top right-hand corner of each page of the Franchise Agreement disclosed by Mr Junaid, including the signature page, only appears on the signature page of the version relied on by the Claimants.
96. Despite the identification of this issue at paragraphs 17-18 of the Defence filed by Mr Junaid on 3 August 2016, which alleged that the Franchise Agreement relied on by the Claimants had been "tampered [with] or changed", the Claimants chose not to engage with it whether by way of pleading (no Replies to the Defences were filed), explanation for the differences in their evidence or in argument. In the Claimants' skeleton argument and in Mr Jones QC's opening submissions, the issue raised by Mr Junaid regarding whether the copy of the Franchise Agreement relied on by the Claimants had been altered was described as a "side-show". I do not agree with that description.
97. In his evidence, Mr Hussain, who had signed the Franchise Agreement on behalf of Pepe's, said only that he had been made aware in early 2016 that there were different versions of the Franchise Agreement in existence but that he had no recollection of why this might be the case. Mr Sawyer said that he had obtained the version of the Franchise Agreement that is annexed to the Particulars of Claim from Pepe's Head Office files in 2016. He stated that he had reviewed the hard copy and electronic files once the issue had been raised by Mr Junaid. Mr Sawyer hinted at the possibility that the version of the agreement relied on by Pepe's might have been altered by a former employee of Pepe's Head Office, who had left the business in 2012. However, the Claimants did not call that former employee to give evidence or any other witness capable of explaining the reason for the differences; and so no explanation was given in the Claimants' evidence or submissions for it. Mr Sawyer proffered in evidence his view that there was no material difference between the competing versions of the Franchise Agreement; however, as I have endeavoured to explain at paragraph 95 above, there were a number of important differences between the two versions of the agreement, not least the naming as guarantor, in the version relied on the Claimants, of the person who had on any view signed only as the witness to the guarantor's signature, and the increase in the level of the transfer fee.
98. Mr Qureshi was, however, able to say what version of the agreement he had signed. When he was cross-examined by Mr Coulter on this issue, Mr Qureshi readily agreed that the document which he had signed in 2011 was not that annexed to the Particulars of Claim, that Dr Ali had signed as guarantor and that Ms Masroor had signed to witness Dr Ali's signature. In my judgment, the evidence is compelling that the agreement actually entered into is not that annexed to the Particulars of Claim and relied on by the Claimants. Quite why that is the case has, as I have said, not been explained by the Claimants. This is all the more surprising as Mr Sawyer's note of the meeting with Mr Qureshi at Pepe's Head Office on 11 April 2016 records that Mr Qureshi had told Pepe's even at that stage that it was Dr Ali, and not Ms Masroor, who had signed the Franchise Agreement as guarantor.

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99. Mr Coulter submitted that in these circumstances I should dismiss the Claimants' claim in its entirety because it is clear that the Franchise Agreement relied on by the Claimants and annexed to the Particulars of Claim is – for whatever reason – not that which was actually signed. I do not, however, accept that submission. It is clear from the material parts of the pleadings and evidence that the Franchise Agreement was entered into and that it contained the particular terms relied on by the Claimants in these proceedings. It is not in dispute – at least as between Mr Junaid, Mr Qureshi and Mr Hussain, all of whom were signatories to the Franchise Agreement – that an agreement was entered into. Nor is it in dispute that the clauses of the Franchise Agreement relied on in the Particulars of Claim appear in the version of the Franchise Agreement produced by Mr Junaid. It is not suggested that this Claim is vitiated by fraud or any other reprehensible conduct on the part of the Claimants or anyone for whom they are responsible. I consider that the task of the Court in these circumstances is to ascertain and then apply the terms of the agreement actually entered into. An agreement was, in my judgment, entered into containing terms identical to those relied on by the Claimants as giving rise to their cause of action in this Claim.
100. I do not consider, however, that this issue is a mere “side-show” of no relevance at all, as Mr Jones QC submitted. It is clear from the evidence of both Mr Junaid and Mr Qureshi that the version of the Franchise Agreement relied on by the Claimants has indeed been materially altered from that which was signed. There are important differences which might, had claims ever been advanced in this or another context based on the disputed terms, or relying on the erroneous identification of Ms Masroor as the guarantor, have been material to the outcome of legal proceedings. Indeed, the discrepancies were the foundation for the perfectly legitimate submission made by Mr Coulter – albeit one that I have not accepted – that the Claim ought to be dismissed. It is of course important that all businesses keep true and accurate records. Whatever the reason for these differences, the fact that the Claimants have at all stages of these proceedings relied on what, in my judgment, is a materially altered version of the Franchise Agreement, without being able to explain how or why the alterations came about, raises a significant doubt about the robustness and efficacy of the Claimants' record-keeping. I find it surprising, to say the least, that a document as significant as the Franchise Agreement can survive in the Claimants' records only in a significantly amended form and without, apparently, any record being made of the alterations, the reasons for them, or whether they had been the subject of any agreement between the parties to the Franchise Agreement.
101. I consider that the weight that I can place on documents produced by the Claimants from their records – at least where they relate to matters in dispute – is, as a result of this issue, significantly lower than it might otherwise be. The Claimants cannot, in my judgment, simply ignore the issue very properly raised from the outset by Mr Junaid by not calling any witness who can deal with the matter, failing to proffer an explanation and seeking to dismiss it as a mere “side-show”. For the reasons that I have endeavoured to set out, it is not.

[2] The lack of evidence about Food Trends' finances

102. The Claimants contend, relying in particular on the evidence of Mr Qureshi, that Food Trends was a viable and indeed a profitable business in the run-up to the events of early April 2016. They contend that the Defendants' allegation that Food Trends was

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a failing business is no more than a pretext to disguise the true nature of their actions pursuant to the alleged conspiracy to injure the Claimants. On the other hand, the Defendants allege that Food Trends was by this point an insolvent business, doomed to imminent failure. These starkly different characterisations of the financial position of Food Trends shortly before its collapse were of such a high degree that Mr Jones QC put to Mr Junaid in cross-examination that Food Trends had, to Mr Junaid's knowledge, submitted false VAT returns. Mr Junaid denied that allegation.

103. What is striking, however, is the complete lack, in terms of the material adduced in evidence before me, of many of the sorts of documentary evidence that would have shed light on Food Trends' finances. For example, neither side sought to adduce any of Food Trends' bank records, sales records, invoices showing the cost of sales and other expenditure or the source material provided to Food Trends' accountants for the purpose of preparing the accounts or the VAT returns. This is all the more significant because Mr Sawyer gave evidence, when cross-examined, that the Claimants' electronic sales system retains the sales data from the tills at the Premises for the entire period of the operation of the Pepe's franchise there. Such data, which would at least have shown the minimum level of sales being made (as it would exclude online sales made via third parties, for example) was not, however, disclosed by the Claimants or provided to the Court. No satisfactory explanation was given for this by any of the Claimants' witnesses.
104. Further, on 9 August 2018 Mr Junaid wrote to Mr Qureshi noting that the latter had provided certain material to the Claimants which had been disclosed in these proceedings. Mr Junaid requested specific disclosure from Mr Qureshi of material that he said had not been disclosed to him by the Claimants, i.e. *inter alia* all the emails contained in Food Trends' two email accounts, as well as Food Trends' sales records, annual returns and VAT returns and all communications between Mr Qureshi and Mr Sawyer and between Mr Qureshi and Food Trends' accountants. Mr Junaid stated that he believed that Mr Qureshi had provided selected materials to the Claimants in order to suit his own position. Although I understood it to be accepted by the Defendants that Mr Qureshi had responded to that letter, the response was not in the trial bundle. The effect of the response was however summarised to me by Mr Coulter: Mr Qureshi stated that he was not in possession of any further relevant material.
105. I am not in a position to adjudicate on the competing claims as to who might be in control of the Food Trends email accounts or who might be in possession of any of Food Trends' records. What is clear however is that neither side has, so far as I am aware, made any formal application either for specific disclosure from the other side or for a non-party disclosure order against Mr Qureshi or indeed anyone else. Both sides were content to proceed to trial on the basis of the available evidence, as disclosed. Whilst I do not speculate on what any of the material requested from Mr Qureshi by Mr Junaid in his letter of 9 August 2018 might show, assuming it still exists, both sides' inability to refer to the content of that material, insofar as they contend that it would have assisted them, necessarily prejudices their ability to establish their respective cases.

F: Findings of Fact**[a] Introduction**

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106. The general rule in English law is that the party asserting something has to prove it, i.e. that party bears the burden of proof. The Claimants bear the burden of proving the matters that they assert which are necessary to establish their Claim. The civil standard of proof is the balance of probabilities – i.e. whether it is more likely than not that the fact in issue occurred. Whilst I have taken into account all the evidence presented to me and all the arguments made by the parties, I will not in this judgment deal expressly with every single point that has been argued or every single piece of evidence. Furthermore, my assessment of the facts, applying the civil burden and the civil standard of proof, is necessarily based on the material that the parties have chosen to place before the court. In this regard, the court is not engaged on a quest to determine what the lay observer might describe as “the truth”. Rather, to adopt the words of Andrew Baker J in *Auliffe & Others v Ellis* [2019] EWHC 1427 (QB) at [26], the task of the court is:

“... to identify what needs to be proved, by whom, upon the basis of a correct identification and analysis of the legal rules governing the case; and then to form a judgment (doing so rationally, reasonably and impartially), for each such proposition of fact, as to whether the evidence presented at trial made what the party bearing the burden of proof says occurred appear – more probably than not – to be what occurred.”

[b] Assessment of the key witnesses

107. All the parties made allegations that certain witnesses had lied under oath both in their witness statements and in their evidence given under cross-examination. Although I adopt the approach set out by Leggatt J in *Gestmin*, the oral evidence of the parties' witnesses remains evidence of value. I will now set out in short form my assessment of the credibility of the evidence given by each of the key witnesses.
108. Mr Hussain impressed me with his evident passion for the Pepe's business and, in particular, its branding and advertising. He was not, however, someone whose evidence demonstrated that he was on top of matters of detail or that he was someone who kept detailed records. Furthermore, the omission from his witness statement of any reference to his discussions with Mr Qureshi in early 2016 about the latter's plans to open a new Pepe's franchise in Milton Keynes was a matter of some concern. He accepted that his handwritten notes of these meetings had been disclosed only shortly before the trial and that he had not looked at them before making his witness statement. Whilst I do not consider that his credibility is significantly undermined, I do bear in mind when assessing the overall reliability of his evidence that he does not appear to have approached the preparation of his witness statement with a high degree of care.
109. Mr Sawyer was a witness whose evidence and contemporaneous record-keeping demonstrated, unlike in the case of Mr Hussain, a close attention to detail. I did not have any reason to doubt the credibility of his evidence or, insofar as it was based on the contemporaneous records made by him, its reliability.
110. I found the evidence of Mr Qureshi unsatisfactory in general and, in places, entirely lacking credibility. In particular, the contemporaneous documentary evidence completely contradicts the impression given by Mr Qureshi at some length, in a

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witness statement running to no fewer than 227 paragraphs, that, firstly, he was not involved in any significant way in the Wellingborough Road Rio's project and, secondly, that during March and April 2016 he was simply following the instructions of Mr Razi and Mr Junaid. I found Mr Qureshi's evidence when challenged about his involvement in the project to establish a Rio's at Wellingborough Road particularly unsatisfactory. In his witness statement, he denied being involved in any of the dealings with this new venture. Yet he was constrained to accept, when cross-examined by Mr Welch, that he and Mr Junaid had gone together to visit Mr Naeem at the latter's offices in Croydon in 2014. When it was put to him that he and Mr Junaid had gone to see Mr Naeem in order to discuss the possibility of opening a Rio's franchise, Mr Qureshi flatly denied it. He speculated that the trip – of some two hours each way, from Milton Keynes to Croydon – might simply have been a “courtesy call” on Mr Naeem or that perhaps he and Mr Junaid had gone simply to view Mr Naeem's “new setup” in Croydon. I regard that explanation as simply incredible in the circumstances, for reasons that I will explain in more detail below. Moreover, it is of some concern that he omitted from his extensive witness statement any reference at all to his discussions with Mr Hussain in early 2016 about setting up a new Pepe's franchise in Milton Keynes or that he had also at this point expressed an interest to Mr Hussain in setting up a Pepe's franchise in Pakistan. In my judgment, Mr Qureshi sought to conceal this aspect of his conduct, which was only revealed by the late disclosure, after Mr Qureshi had made his witness statement, of Mr Hussain's handwritten notes of those meetings.

111. Mr Junaid's evidence was also unsatisfactory in significant respects, and his credibility was also significantly undermined. Mr Junaid's attempts to explain his continued involvement in running the Pepe's franchise after his resignation as a director of Food Trends were also unsatisfactory. Mr Junaid is recorded as having approved the accounts of Food Trends that were filed at Companies House in June 2015, after he had resigned as a director. His explanation for this, which I refer to in more detail below, was entirely unconvincing. It is clear from the contemporaneous documents and the unchallenged evidence of Mr Gyesi and Mr Gosschalk regarding the training they undertook for Food Trends and Infiniti that Mr Junaid continued to be involved in the management of the Pepe's franchise at the Premises well after his resignation as a director, and that during the establishment of the Rio's franchise in Wellingborough Road his business partnership with Mr Qureshi continued as before but with Mr Qureshi taking the lead in relation to the Pepe's franchise and Mr Junaid in relation to the Rio's franchise. I reject Mr Junaid's evidence that he had nothing to do with the running of Food Trends after October 2014, other than as an employee. Indeed, if Mr Junaid had been a mere employee of Food Trends by this point then it is odd that Mr Qureshi did not comply with Mr Sawyer's instruction, resulting from the correspondence in October 2015, to exclude Mr Junaid from the Premises.
112. The evidence of Mr Razi, Mr Hasib and Mr Adib also lacked credibility on an issue of major significance. They each gave evidence that they had never even received, still less read, the Franchise Agreement. For the reasons that I give at paragraphs 124 to 126 below, in my judgment that evidence is simply not credible. Similarly, in my judgment it does undermine their credibility that they were prepared to mislead Mr Hussain and Mr Sawyer at the meeting on 27 April 2016, when seeking to get Pepe's to take over the Premises. Mr Sawyer's notes record that early on in the meeting, Mr Razi stated that the Investors “were not aware that Food Trends Ltd was operating as

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a franchise when they invested and became shareholders”. Whilst it became apparent during the trial that in fact it was Mr Hasib who had said this, not Mr Razi, there is no dispute that this statement was made and was one which neither Mr Hasib nor Mr Razi nor Mr Adib sought to correct. It was blatantly untrue. Mr Hasib frankly admitted in his oral evidence that he believed that he could make such a misstatement without any consequences because the meeting was, he believed, being held on a “without prejudice” basis. I therefore consider that they, too, were prepared to mislead where it suited their purposes to do so.

113. It will therefore be apparent that I am not willing to accept the evidence of Mr Qureshi, Mr Junaid, Mr Razi, Mr Hasib or Mr Adib on important issues unless corroborated by contemporary documents or other evidence or unless consistent with the inherent probabilities. It does not of course follow that everything these witnesses said must be rejected; as with the other witnesses, their evidence may be consistent with the documents or the inherent probabilities on a particular issue.
114. Mrs Razi was, in my judgment, a considerably more credible witness than any of the other Defendants; her credibility was not significantly undermined in cross-examination, during which she gave clear answers and maintained the evidence given in her witness statement that she had invested her own money into the Wellingborough Road project, albeit that she was not a businesswoman and was being guided by Mr Junaid.
115. I accept however that the Individual Defendants were people who, prior to the events with which this Claim is concerned, lacked business experience. By contrast, Mr Qureshi did have some business experience, having completed a Master's degree in Business Administration (MBA) and having previously run a franchised business in Australia. Before he established the Pepe's franchise at the Premises with Mr Qureshi, Mr Junaid was working part-time for the NHS. Mr Razi, Mr Adib and Mr Hasib had each spent many years in full-time employment as IT professionals. Mrs Razi was a charity volunteer and a primary school governor, caring for three children; as she herself put it, her involvement in the events that resulted in this Claim was because she was “a mum who wanted to earn money without having to leave home”. The arrangements that they made between themselves were not sophisticated, in commercial terms. Much was done ‘on trust’ as a result of family relationships and friendships. I also accept that the Individual Defendants as a group did not fully understand the concept of corporate vehicles and ownership.
116. I also take into account, when evaluating the witness evidence, that I was taken to many contemporaneous private email and text message communications, in particular between Mr Junaid, Mr Qureshi and Mr Razi. In my judgment, it is to be expected that when expressing themselves to each other, the participants in those exchanges, which were private communications between individuals who were closely involved in business together – and which were created well before this litigation was commenced – were expressing themselves frankly and representing their beliefs and intentions accurately. I do however very much bear in mind the possibility that some or all of them were, despite this, seeking at the time to mislead the recipient(s) of such communications, or to disguise their motives, and there are some instances in which I am satisfied that this was indeed the case.

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117. I accept the Defendants' submission that the Pepe's franchise in Gold Street was, from the outset, not a financial success. The actual setup costs were £292,000 – significantly higher than the £160,000 that had been anticipated in the business plan – and sales were lower than had been projected. Mr Khan accepted when cross-examined that the initial setup costs incurred in establishing the Pepe's franchise at the Premises were high, compared to other stores of similar size and location. In my judgment, the projections of future profits, in reliance upon which the Investors put £144,000 into Food Trends, were highly optimistic; those projections appear to have beguiled the Investors into parting with significant sums of money to invest in a business that was not doing well. The anticipated turnaround in the fortunes of the business never arrived. By the end of its accounting year on 30 September 2014, three years after it had started trading, Food Trends had net liabilities of nearly £300,000, according to its last set of accounts filed at Companies House. Food Trends had also failed to pay rent for some three years after taking possession of the Premises, resulting in the demand for £71,400 from the landlords in June 2014. In my judgment, Mr Welch's submission that the Investors made an investment that was "bungled... from start to finish in an entirely disorganised and amateur way" is well-founded and is apt to describe not only the investment itself but the way in which the business of Food Trends was run.
118. I reject the Claimants' submission, based largely on the evidence of Mr Qureshi, that the Gold Street Pepe's franchise was profitable, and the suggestion put to Mr Junaid that he had caused it to file false VAT returns. Mr Qureshi gave evidence when cross-examined that Food Trends' quarterly sales were in the region of £150,000, which was in accordance with the original business plan. This was more than twice the amount declared in the quarterly VAT return filed on 7 January 2016 (the only filed VAT return which I was shown) and in the draft return sent for Mr Qureshi's approval by Food Trends' new accountants in April 2016. Whilst I was referred to various spreadsheets, prepared by Mr Qureshi, which indicated a much greater level of sales than that declared on the VAT returns, the information to support the calculations set out in those documents – for example, by way of bank statements, supplier invoices or till records – was absent. Mr Junaid gave evidence that his involvement in the preparation of the VAT returns was to provide the relevant invoices and bank statements to Food Trends' accountants. These documents were not, however, produced in evidence by either side. Further, as I have already noted, it was within the Claimants' own power to demonstrate, by providing the historic till sales figures held in their own Head Office system, the minimum level of sales made by Food Trends, to support their argument that the VAT returns were false. In any event, quite apart from the evidence of Food Trends' various liabilities, to which I have already made reference, the contemporaneous discussions about Food Trends' financial position, to which Mr Qureshi was himself a party, paint a picture of a struggling business:
- i) Mr Qureshi sent a text message to another Pepe's franchisee on 25 April 2012 in which he stated, "... Due to drastic downfall in our daily sales, we are finding it very difficult to meet our expenses..."
 - ii) Mr Qureshi was copied into Mr Junaid's email of 22 July 2014 to Pepe's Head Office in which Mr Junaid referred to their wish to sell the Pepe's franchise, having "struggled for almost three years". When he was asked in cross-

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examination by Mr Coulter why, if the business was in fact doing well, he had not responded to that email to contradict what Mr Junaid had said, Mr Qureshi said only that he had not felt like sending such a response. I regard Mr Qureshi's failure to correct the position set out by Mr Junaid in his email of 22 July 2014, and his unconvincing explanation for that failure, as undermining his evidence about Food Trends' profitability.

- iii) Mr Qureshi was also copied into a further email from Mr Junaid to Pepe's about the proposed sale of the business on 24 July 2014 in which Mr Junaid stated: "We don't want to over advertise to avoid potential buyers think [sic] we are desperate but at the same time we have made up our mind and would like to exit ASAP to avoid further loses. [sic]"
 - iv) On 5 August 2014, Mr Sawyer sent to Mr Khan a note of a meeting that had taken place at Pepe's Head Office on the preceding day, in the form of a proposed email to Mr Junaid and Mr Qureshi. Under the heading "Store Profit & Loss", Mr Sawyer wrote: "You [i.e. Mr Junaid and Mr Qureshi] explained that you were not achieving the franchise projections originally provided to you."
 - v) Mr Qureshi also sent an email to Pepe's Head Office on 29 April 2015 with a proposal to pay off the then outstanding debt owed by Food Trends to Pepe's of £11,735.50 over a period of 18 months. In that email, he stated: "You know that it has been an uphill task to run the store and dispose off [sic] our liabilities given the unforeseen / unplanned setup cost especially when all efforts to sell the business failed as well." That is also not consistent with his evidence that Food Trends was a profitable business by this point in time.
 - vi) Finally, Mr Qureshi sent an email to Mr Hussain on 9 April 2016 in which he stated that he had decided to dissolve Food Trends because he did not want to "take... on my shoulders" Food Trends' liabilities, which he claimed had been run up by Mr Junaid.
119. Mr Jones QC relied heavily, in support of his argument that Food Trends' true financial position had been disguised from the outside world, on a reference to "cooked" accounts, appearing in an email sent on 19 March 2014 by Mr Razi to Mr Junaid. The email appears to pass on a request from the accountant preparing the valuation of Food Trends for the Investors, Mr Musa Patel, for a range of company documents. One of the items on the list of documents requested reads: "2013 accounts submitted to companies house (cooked)". Mr Jones QC submitted that the use of the word "cooked" was of some significance, because it indicated that the accountant had either been told, or had deduced, that the accounts submitted by Food Trends to Companies House did not disclose its true financial position. I agree with Mr Jones QC that the use of the word "cooked", in this context, on its face connotes belief on the part of the person using it that the filed accounts contain a significant degree of falsity.
120. However, I do not accept Mr Jones QC's submission that the reference to "cooked" accounts in the 19 March 2014 email supports the proposition that Food Trends' financial position in early 2016 was not a poor one:

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- i) The email is dated 19 March 2014 and the reference to “cooked” accounts is specifically in relation to the accounts that had been submitted to Companies House in 2013. The two sets of accounts of Food Trends that were adduced in evidence before me were, however, those submitted in June 2014 and in June 2015. Both those sets of accounts therefore post-date the reference made in March 2014 to “cooked” accounts, and indeed the accounts filed in 2013 would only have related to the position as at 30 September 2012.
- ii) Both the sets of accounts adduced in evidence, which were for the two subsequent accounting years, were prepared by a firm of chartered certified accountants. I do not know what Food Trends’ accounts filed at Companies House in 2013 contain, or by whom they were prepared.
- iii) If the accounts filed in 2013 were “cooked” (i.e. falsified), I have no idea on what basis that might have been done or indeed for what purpose, particularly given that the accounts filed at Companies House in 2014 and 2015 were, as one might expect for a small business, abbreviated accounts comprising a balance sheet only rather than a full profit and loss account. The filed accounts that I was shown do not set out Food Trends’ turnover or its gross profit; although they do indicate a worsening position in terms of Food Trends’ net liabilities. Even if the set of accounts filed at Companies House in 2013 was “cooked”, it does not follow that Food Trends’ profitability would necessarily have been misstated.

I do not therefore consider that the reference in the email of 19 March 2014 to “cooked” accounts having been submitted by Food Trends to Companies House in 2013 leads to the conclusion urged on me by the Claimants, namely that Food Trends was at all material times – and in particular during the first quarter of 2016 – a viable and indeed a profitable business.

121. The Claimants also placed considerable reliance on an undated document exhibited by, and created by, Mr Qureshi. This apparently records, in tabular form, that the Investors received payments from Food Trends averaging just under £3,250 per month between November 2014 and January 2016. Mr Qureshi also exhibited a single bank receipt demonstrating a cash payment into a NatWest bank account on 15 December 2014 corresponding to the figure given in the table for payment to the Investors for the month of November 2014.
122. The difficulty however is, again, that the information underlying the calculations set out in this document is absent. It is not clear, for example, whether if payments were made to the Investors at the levels set out in this document they actually represented profits, properly so described, or whether they were, in effect, payments on account or indeed payments from Food Trends’ gross takings rather than its from its net profits. I note in this regard that Mr Sawyer recorded in his note of the meeting that he had with Mr Qureshi on 11 April 2016 that Mr Qureshi had said to him that OSI “took 50% of profit / takings (?)” and that in his evidence, at paragraph 129 of his witness statement, Mr Qureshi referred to the Investors receiving “monthly cash payments from the takings of the store.” Moreover, the table does not extend beyond January 2016, which is two months before the decision was taken to surrender the lease and dissolve Food Trends.

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123. I also take into account the assessment of Mr Blake, the Claimants' own expert, which was that Food Trends was in 2016 a failing business which would have required either further investment or the forbearance of its creditors if it was to survive.

[d] The Individual Defendants' knowledge of the Franchise Agreement

124. It is clear that Mr Junaid knew of the Franchise Agreement and of the terms relied on by the Claimants, because he signed the agreement. I agree with Mr Jones QC that it is impossible to approach the case on the basis that Mr Junaid did not have knowledge of the Franchise Agreement. The issue in relation to knowledge of the Franchise Agreement really arises in the cases of the Investors and of Mrs Razi.
125. I accept Mr Jones QC's submission that the Investors each knew both of the existence of the Franchise Agreement and of its terms, not least because, in my judgment, the evidence demonstrates that they had each been provided with a copy of the Franchise Agreement:
- i) On 18 April 2014, Mr Junaid forwarded a copy of the franchise agreement to Mr Razi by email, as an attachment in a compressed format (a '.zip' file). Mr Razi did not respond stating that he was unable to read the agreement. Shortly afterwards, also on 18 April 2014, an email was sent from Mrs Razi's email address to Mr Qureshi requesting permission to view the copy of the franchise agreement that had been stored by Mr Qureshi on his Google Drive. Again, there was no further email indicating any difficulty had then been encountered in viewing the agreement.
 - ii) Clause 2 of the Purchase and Sale Agreement, which was signed on 28 May 2014 by each of the Investors acting as directors of OSI, stated: "Food Trends Ltd has acquired Pepe's Piri Piri franchise for Northampton and currently running this business for nearly three years. Franchise agreement and property lease agreement copies have been attached and can be referred to in Appendix A and B." In their evidence to me, each of the Investors stated that the franchise agreement had not in fact been annexed to the Purchase and Sale Agreement. I reject that evidence. The Investors were each investing substantial sums of money into Food Trends. I regard it as simply incredible that they would not have sought to establish the basis upon which Food Trends was trading as a Pepe's franchise. Nor do I regard it as remotely likely that the Investors would have drafted and signed the Purchase and Sale Agreement without the Franchise Agreement having been annexed to it or at the very least having had a copy of the Franchise Agreement in their possession.
 - iii) On 14 August 2014, Mr Razi was copied into an email from Mr Junaid to Zakk Solicitors in which Mr Junaid stated *inter alia*: "... attached please find the franchise agreement for your review... The franchise agreement is in two parts, trailing email to have the second part."
 - iv) On 16 February 2015, Mr Razi was copied into an email from Mr Junaid to Zakk Solicitors in which Mr Junaid sent a Google Drive link to access an online copy of the Franchise Agreement. The same Google Drive link was sent to Mr Razi by Mr Qureshi in a separate email also on 16 February 2015. There are no responses suggesting that the link was inoperable.

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- v) On 16 October 2015, Mr Razi was copied into a blank email sent by Mr Junaid to himself, to which was attached a copy of the Franchise Agreement in .pdf format.
126. In my judgment, the evidence from these contemporaneous communications is not only that the Investors were aware that they were investing in a business running a franchise and that there was a Franchise Agreement but also that they were aware of its terms. They were all concerned to ensure that their investment was a sound and commercial investment; they were not men with money to throw around. I reject Mr Razi's evidence that it was not possible for him to view the Franchise Agreement via any of the various attachments or links that he was sent. In my judgment it is simply not credible, and certainly not the likely state of affairs, applying the civil standard of proof, that any of the Investors would have signed the Purchase and Sale Agreement on 28 May 2014 without having read the Franchise Agreement, or that the Purchase and Sale Agreement did not, as it stated on its face, have annexed to it a copy of the Franchise Agreement.
127. If I had not found that the Investors had actual knowledge of the Franchise Agreement, and its terms, then I would nonetheless have found that they had constructive knowledge of the Franchise Agreement, and of its terms, by reason of all the references to the Franchise Agreement in the contemporaneous correspondence and documents, in particular the Purchase and Sale Agreement.
128. I do not, however, consider that Mrs Razi had the requisite knowledge of the Franchise Agreement, whether actual or constructive. There is no evidence that it was ever brought to her attention and her involvement with the other Individual Defendants was in relation to the establishment of the Rio's franchise in Wellingborough Road, not in relation to the Pepe's franchise at the Premises. She was not a recipient of the emails to which I have referred at paragraph 124 above, and nor was she a signatory to the Purchase and Sale Agreement. Although the request to view the Franchise Agreement sent on the morning of 18 April 2014 came from her email address, Mr Razi's evidence was that the request had in fact been sent by him, using Mrs Razi's email address. This is consistent with the other evidence that Mr Razi was at this point in the process of obtaining the Franchise Agreement for the purpose of the proposed investment by the Investors into Food Trends. Mrs Razi was not taken to this email in cross-examination. Save for this, there no other indication that Mrs Razi ever read the Franchise Agreement. I find that she did not have knowledge of the Franchise Agreement, whether actual or constructive.

[e] The Establishment of the Rio's at 206 Wellingborough Road

129. I accept Mr Jones QC's submission that from the beginning it was the intention of Mr Junaid and of Mr Qureshi that their business partnership would involve opening multiple fast food outlets. In the business plan submitted by Mr Junaid and Mr Qureshi to Pepe's in 2010, it was stated:

“Both partners will not withdraw any monies from the business in year 1 as it is their strategic goal to open the next store in Milton Keynes by the end of 2011.”

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On 30 April 2014, Mr Qureshi sent Mr Junaid an email containing what appears to be the draft text of an offer to potential investors, in which it was claimed that they would be able to achieve significant costs savings if they were to open further stores, resulting in an annual return on investment of 15% to 17%. The draft text in the email stated:

“With our experience we want to team up with the Potential Investors for different food outlets.”

Reference was made to a potential “venture in Milton Keynes”, something which had been mentioned in their initial business plan in 2010 and which was clearly still in their minds. Despite the reference in this email to the possibility of opening a new store in Milton Keynes, however, by the summer of 2014 Mr Junaid and Mr Qureshi were actively exploring opening a second outlet in Northampton, this time under the Rio’s brand.

130. In his evidence, Mr Qureshi sought to portray his role in the establishment of the Rio’s in Wellingborough Road as no more than that of a bystander who was copied into emails sent by Mr Junaid. I accept the submission made by Mr Coulter that the reality of Mr Qureshi’s involvement in the formation and development of the Rio’s at 206 Wellingborough Road was similar to his role in the development of the Pepe’s shop at the Premises. The contemporaneous documents and communications indicate, and I accept, that contrary to the impression conveyed by his evidence, Mr Qureshi was closely involved in the process of setting up the Rio’s franchise at 206 Wellingborough Road:

- i) On 22 June 2014, Mr Junaid and Mr Qureshi had a text message exchange in which they discussed meeting Mr Naeem at his shop in Croydon. Mr Junaid stated that the train journey to Croydon would take 1 hour 48 minutes, involving two changes of train. He asked Mr Qureshi when they should go. Mr Qureshi responded: “... Any time after Tuesday.” Mr Junaid suggested that he should ask Mr Naeem if he would be available; Mr Qureshi agreed. The exchange concluded with Mr Junaid stating: “... Meeting with Naeem set for 5:45 on Wednesday 25 June. He will confirm if anything changes...” Mr Qureshi replied: “Great”.

Mr Qureshi did not mention meeting with Mr Naeem in his witness statement. When it was put to him in cross-examination that he and Mr Junaid had met with Mr Naeem to discuss opening a Rio’s franchise, Mr Qureshi accepted that he had gone to Croydon with Mr Junaid in order to meet Mr Naeem. Mr Qureshi said initially that he was not sure what the purpose of their visit had been but that it might have been to discuss a Rio’s franchise. He said that going to Croydon to meet Mr Naeem did not mean that he had been actively involved in the plan to open a Rio’s franchise. Later still, Mr Qureshi denied that the purpose of this visit had been to discuss opening a Rio’s franchise in Northampton. He suggested that he and Mr Junaid might have made what he described as a “courtesy call” on Mr Naeem in order to see his new venture. I reject that explanation. In my judgment, the purpose of the meeting with Mr Naeem was to discuss the establishment by Mr Qureshi and Mr Junaid of a Rio’s franchise, a project in which both Mr Qureshi and Mr Junaid were actively involved.

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- ii) On 17 July 2014 at 3:56 pm, Mr Junaid wrote in an email to the estate agents handling 206 Wellingborough Road, which was copied to Mr Qureshi: "Can we view the property tomorrow at 4:30 for our builder & franchiser to do their working?" Later that day, 17 July 2014, between 8:00 pm and 9:00pm, Mr Junaid and Mr Qureshi had a brief text message exchange. Mr Junaid said the estate agents had said that 4:30 pm was too late and that he would let Mr Qureshi know promptly about the latest time the estate agents could do so that Mr Qureshi could "relay to Naeem". Mr Qureshi replied: "Ok". Mr Junaid then wrote that the viewing was "set for between 12:00 to 12:30. I have told Naeem as well." Mr Qureshi responded: "Great". When the text message exchange was put to him in cross-examination by Mr Coulter, Mr Qureshi accepted that he and Mr Junaid had met with Mr Naeem at 206 Wellingborough Road.

The text messages are not consistent with Mr Qureshi's evidence at paragraph 55 of his witness statement, which was that when he was copied into the email sent by Mr Junaid to the estate agents a few hours beforehand, he did not understand why Mr Junaid was looking for other property to rent. I reject that evidence. It is clear that Mr Qureshi knew perfectly well on 17 July 2014 why Mr Junaid was looking for other property to rent and that Mr Qureshi knew that it was for a Rio's franchise – hence the reference to "our... franchiser" in Mr Junaid's email to the estate agents and the references to Mr Naeem attending the meeting to view the property in the later text message exchange between Mr Junaid and Mr Qureshi. Indeed, matters were so advanced that on the next day, 18 July 2014, Mr Junaid wrote to the agents with an offer to take a 15-year lease on 206 Wellingborough Road at £9,000 per annum, to commence on the grant of A5 (i.e. hot food takeaway) planning permission.

- iii) On 26 July 2014, Mr Junaid and Mr Qureshi had a text message exchange about investment in the new venture at 206 Wellingborough Road. Mr Junaid stated, "... We are going to meet a couple of people to see if we can raise about 70-80k. I am more inclined on giving from [sic] Pepes shares, what do you think?" Mr Qureshi responded: "... I also think giving Pepes shares are more feasible. Mr Adeeb [sic] is not interested in investing?" Mr Junaid replied: "No he can't but other people if we can convince them can invest through their company so nothing changes for us...". Early the following morning, Mr Junaid wrote: "I have pitched to one party yesterday who wants to invest 50k. We will meet another one today who wants to do 20-30k. I think this should be enough rest we can get credit from the builders." Later on, Mr Junaid stated that he was trying to convince the investors that they could get a return if they took shares in the Pepe's business and that the start date and sales figures for the Rio's business were all "here say" [sic]. Mr Qureshi responded: "I agree offering Pepes [sic] shares is best option. INSHAHALLAH Rio's outlet will be a great contributor in paying their monthly share as well as buying back shares from them."

It is clear from this exchange that Mr Junaid and Mr Qureshi required outside funding for the Rio's franchise at 206 Wellingborough Road and that Mr Qureshi was actively involved in discussing the funding arrangements for the Rio's franchise.

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- iv) On or about 29 July 2014, Mr Junaid filled in a pro forma contact request on the website of a firm of solicitors, stating: "Myself and my business partner have been running a Piri Piri chicken franchise in Northampton for about 3 years. Now another opportunity has come along with more independent and cost-effective structure and we or one of us would like to know if we can indulge into that business without violating the current franchise agreement. Time is of essence as we have to make a decision one way or the other..."

Mr Junaid's reference to his "business partner" and his use of "we" can only sensibly be read as referring to Mr Qureshi.

- v) On 27 August 2014, Mr Junaid and Mr Qureshi had a text message conversation about the planning application for 206 Wellingborough Road. The conversation started with Mr Junaid stating: "...I have forwarded the final plans for 206, can you please give your feedback so that Rauf can submit the application..." Mr Qureshi replied: "... Final plans are OK..." Later in the conversation, Mr Junaid wrote to Mr Qureshi: "... I called Rio Croydon... Nae [sic] bhai I think is in Dubai and is due back tonight. I have told Rauf to air today for his input..." Mr Qureshi responded: "... I think even we submit application by Friday its fine..." Mr Junaid replied: "... That should be fine but since I had told Gordon yesterday upon his asking that we will submit today..." Mr Qureshi replied: "... My suggestion is to submit plans tomorrow. Naeem has seen the initial plans, changes can be made before start of work..."

Again, these text messages are not consistent with Mr Qureshi's evidence that he had no involvement in the dealings with what he described as Mr Junaid's new venture. It is clear that Mr Qureshi was closely involved with the submission of the planning application for 206 Wellingborough Road to such an extent that his feedback on the draft plans was necessary before they could be submitted. He was also very clearly aware of the involvement of Mr Naeem (and, therefore, Rio's) in the proposed venture.

131. In my judgment, the evidence demonstrates clearly that Mr Junaid and Mr Qureshi were, at this point, i.e. in July and August 2014, intending to set up a Rio's Piri Piri franchise at 206 Wellingborough Road. This was a venture in which both men were interested because they were, as Mr Junaid described them in his message to the solicitors on 29 July 2014, "business partners". Whilst it is right to say that Mr Junaid was undertaking most of the preparatory work, in my judgment Mr Qureshi was playing a full part in the establishment of the Rio's franchise. I reject his assertions in evidence that he was not involved "in any of the dealings with his [i.e. Mr Junaid's] new venture," and that he "did not want to get involved with Mr Junaid's other plans".
132. It is however right to point out that Mr Junaid and Mr Qureshi were concerned at this point not to do anything that might result in a breach of the Franchise Agreement with Pepe's. I agree with the submission made by Mr Jones QC that Mr Junaid and Mr Razi – and, for that matter, Mr Qureshi too – were aware from the early stages of the process which resulted in the opening of the Rio's franchise at Wellingborough Road that there was an obvious problem created by seeking to operate both a Pepe's franchise and a Rio's franchise. On 13 August 2014, Mr Junaid sent an email to Mr Zakir of Zakk Solicitors, copied to both Mr Razi and Mr Qureshi, in which he asked

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for advice on whether one of the directors of Food Trends could resign to become an employee of a competing business without breaching the Franchise Agreement.

133. That Mr Qureshi and Mr Junaid sought specific advice about this issue from solicitors indicates that their intention was, insofar as possible, to run the Rio's at Wellingborough Road and the Pepe's franchise at the Premises in tandem. That much is also apparent from their text message exchange on 27 May 2014 in which Mr Qureshi suggested that the Rio's franchise would contribute towards buying back the shares in Food Trends from the Investors. Insofar as the Claimants allege that the Defendants had an intention to injure the Claimants' business, it is not apparent that Mr Junaid, at least, had any such intention during the summer of 2014. Rather, the intention was to seek to operate the two different franchise businesses in a way which would, if possible, avoid breaches of the Franchise Agreement with the Claimants.
134. Mr Jones QC submitted that the Rio's franchise was in due course set up with a corporate structure that disguised its true ownership, and that Mrs Razi's involvement was a sham. I do not accept that. Nor do I accept Mr Jones QC's description of the Defendants' evidence as being to the effect that the Rio's franchise was an entirely different venture brought about entirely by Mrs Razi's desire to create her own business. Mr Junaid's evidence was that during 2014 he and Mr Qureshi decided that they needed to explore other business opportunities in order to repay the Investors. Indeed, his evidence was that the suggestion to open a Rio's franchise was made, during the summer of 2014, by Mr Qureshi.
135. It is, in my judgment, clear that during the summer of 2014 Mr Junaid and Mr Qureshi wanted to open a Rio's franchise and were undertaking preparatory work. Equally clear however is their need for external investment in order to take forward any such project. Mrs Razi's evidence was that she had some savings available which she wished to invest into a business, as her husband had previously done, and that in the latter part of 2014 she discussed this with Mr Junaid. In August 2014, Mr Junaid instructed agents to prepare a planning application with Mrs Razi named as the applicant, although it seems that the application was not in fact submitted at this time. He explained that at this point Mrs Razi was the only potential investor in the Rio's franchise. Then, in January 2015, Mr Junaid proposed to her an investment in a Rio's Piri Piri franchise. Mrs Razi wished to take this forward and Infiniti was incorporated by Mr Junaid on Mrs Razi's behalf; I note that this was one of the potential company names for the Rio's franchise that had been discussed via email by Mr Junaid and Mr Qureshi in July 2014.
136. Whilst I do accept that Mr Junaid – and, for that matter, Mr Qureshi – was 'behind' the establishment of the Rio's franchise at Wellingborough Road, I do not accept Mr Jones QC's submission that Mrs Razi's involvement in the Wellingborough Road project, as the sole shareholder and director of Infiniti, was a sham in the sense that it was designed to conceal the true nature of the business arrangement. Mrs Razi had no business experience, lived in London and was responsible for the care of three children. It is unsurprising that, in these circumstances, Mr Junaid would undertake the work to establish the new Rio's franchise in Northampton. It was, after all, his project in the sense that it had been conceived by him and Mr Qureshi and it was intended that it would be set up and managed by them.

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137. It is also clear from the text messages that passed between Mr Junaid and Mr Qureshi in July 2014, to which I have already referred, that they required external funding in order to proceed with the establishment of the Rio's franchise. The involvement of a third party – despite the project being conceived by Mr Qureshi and Mr Junaid – was inevitable in these circumstances and does not of itself indicate any sort of sham arrangement. I accept Mrs Razi's evidence that she herself paid significant sums of money in order to set up the Rio's franchise. On 5 May 2015, a Barclays Bank payment receipt shows £1,620 was sent from Mrs Razi's personal account to the account of Zakk Solicitors, this sum having been requested to pay the landlord's solicitors' fees in relation to the lease on 206 Wellingborough Road. On 27 July 2015, a similar receipt shows that £5,000 was transferred from her personal account to the account of Rio's Piri Piri. Both payments were made under the reference "Infiniti Foods Ltd". I accept Mrs Razi's evidence that, to the extent that these payments are discussed in emails sent by Mr Razi, he was at all times acting on her behalf. Furthermore, there is no evidence demonstrating that Mrs Razi's personal bank account, from which these payments are recorded as having been made, was being used as a conduit for funds which were in fact supplied by others. Indeed, if Mrs Razi was being used as a 'front' for the Investors, it is odd that they later put significant funding into Infiniti directly.
138. It is, in my judgment, unsurprising that the person who provided the initial funding for the Rio's project – Mrs Razi – and not Mr Junaid or Mr Qureshi should own the company which in due course became the Rio's franchisee, i.e. Infiniti. The position of Mr Junaid, who was to run the Rio's shop (and by extension, that of Mr Qureshi, his business partner) was protected because Infiniti and Mr Junaid entered into the management agreement to which I have referred at paragraph 36 above, providing for Mr Junaid to receive a fixed fee for setting up the Rio's franchise and thereafter 30 per cent of the monthly profits.
139. In due course, Mrs Razi's savings alone were not sufficient to fund the new business; Mr Razi gave evidence that during 2015, OSI put money into Infiniti, over time amounting to something close to £70,000, which was half the estimated set-up cost. A formal agreement providing for OSI to provide 50 per cent of the funding and Infiniti the other 50 per cent was drafted but was never executed. It is also apparent that during the latter stages of the Wellingborough Road project Mr Junaid supported it with significant sums of money, much of it borrowed. Mr Junaid explained that by October 2015, the costs of the Wellingborough Road project, which he was managing, were higher than anticipated. There were no external funds available by that point and rather than abandon the project, Mr Junaid and his wife, Dr Ali – Mrs Razi's sister – took out a personal loan and used their credit cards to pay for its completion. In November 2015, Dr Ali's credit card statement shows that she paid for more than £8,500.00 of work on the Wellingborough Road store. In a text message conversation with Mr Qureshi on 31 December 2015, Mr Junaid wrote:

“... I am under immense pressure as I have leveraged myself completely and to the last penny, as you know we are struggling with opening the new store the re-payments have already started. I am even putting my weekly money, Asma's [i.e. Dr Ali's] salary towards the system but am finding it very difficult to keep things going. I have been using my credit

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cards for day to day to save cash but that too is fast accumulating...”

If, as Mr Jones QC put to Mr Junaid in cross-examination, Mrs Razi's involvement in the Wellingborough Road project was a device to conceal the involvement of the Investors, then it is odd that it was Mr Junaid and Dr Ali, rather than the Investors, who were paying for the completion of the Wellingborough Road Rio's in this way.

140. Even if I had accepted the submission made by Mr Jones QC that Mrs Razi's involvement of the Wellingborough Road Rio's was a sham to disguise the true nature of the arrangement entered into between the Defendants, it does not by any means follow that the ultimate purpose of any such arrangement was to injure the Claimants, and in particular to engineer the closure of the Pepe's franchise at the Premises and/or its replacement by a Rio's franchise. Not only does the allegation of such a conspiracy that is made by the Claimants credit the Individual Defendants with a degree of sophistication that, in my judgment, they did not possess, but it is also contradicted by the contemporaneous documents and in particular the internal discussions between Mr Junaid and Mr Qureshi. Those discussions proceeded on the basis that the Rio's franchise at Wellingborough Road and the Pepe's franchise at the Premises would be run together, and Mr Junaid went to some lengths to seek legal advice on how to ensure that this could be achieved without breaching the Franchise Agreement with Pepe's. The far more likely explanation, in my judgment, having regard in particular to the contemporaneous communications to which I have already referred, is that if Mrs Razi's involvement was a sham then it was no more than a device designed to conceal from Pepe's the fact that Mr Junaid (and, for that matter, Mr Qureshi) had become actively involved with the establishment of a Rio's franchise in the same town as their existing Pepe's franchise. There is, in my judgment, nowhere near sufficient evidence to support the conclusion that, even if Mrs Razi's involvement in the Rio's at Wellingborough Road was a sham, the Individual Defendants' intention in setting up the Rio's at Wellingborough Road was to effect the transformation of the Pepe's franchise at the Premises into a Rio's.
141. Even if I had accepted the Claimants' contention that Mrs Razi's involvement in the establishment of the Rio's in Wellingborough Road was a sham, therefore, I would not in all the circumstances have gone on to infer any intention on the part of any of the Individual Defendants thereby to injure the Claimants. In my judgment, the Claimants' case on this issue seeks to stretch the evidence too far.

[f] Mr Qureshi and the Milton Keynes Pepe's franchise

142. The Defendants' contention is that by the beginning of 2016, Mr Qureshi had decided that he was not going to continue his involvement in the Pepe's franchise in Northampton and that he wanted to pursue new business opportunities on his own elsewhere – in particular by opening a Pepe's franchise in Milton Keynes. Mr Qureshi's evidence was that he had approached Mr Hussain in January 2016 to discuss the possibility of opening a Milton Keynes franchise, but that he was only in a position to finance the project in 2018. He maintained that the discussions in early 2016 about the Milton Keynes franchise were of no import in relation to the issues arising in this Claim.

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143. I reject Mr Qureshi's evidence on this issue. In my judgment, the Defendants' submissions are well-founded. At their meeting on 11 February 2016, Mr Hussain and Mr Qureshi agreed that the latter would pay the £10,000 franchise fee for the Pepe's Milton Keynes franchise in March or April 2016. Mr Qureshi confirmed in his oral evidence that he had paid the franchise fee in 2016, although he could not remember precisely when. Mr Hussain said in evidence that Mr Qureshi had told him at this point that he had funding in place for the Milton Keynes store, or that he could access such funding, and that he had said that he was due to receive money from his family in Pakistan and from other sources.
144. Indeed, contrary to Mr Qureshi's evidence that the Milton Keynes project had only "matured" in 2018, it is clear that significant work on the establishment of the Milton Keynes franchise was undertaken well before then. An announcement was made on 19 June 2017 on the website of MBI Property, the Claimants' property consultants, regarding the completion of the acquisition of the premises for the Milton Keynes store. The announcement stated that, "... works for fit out will commence over the coming weeks with the opening to take place later in the year". Whilst the store may not actually have opened until 2018, it is clear from that announcement that planning was at a very advanced stage as early as June 2017 and that it was envisaged at that point that the Pepe's in Milton Keynes would open in 2017.
145. The Defendants contend that Mr Qureshi's involvement, from early 2016 onwards, in the establishment of the Pepe's Milton Keynes franchise is significant as it provides a motive for Mr Qureshi to have acted duplicitously in his dealings with Mr Junaid and the Investors during the early part of 2016, because he had – without telling them – decided to turn his attention to a new venture and to abandon the project in Northampton. Indeed, as well as not informing Mr Junaid or the Investors of his plans at the time, Mr Qureshi failed to refer at all in his witness statement to his discussions with Mr Hussain in early 2016 about the Milton Keynes franchise and, save as describing himself at paragraph 1 of his witness statement, made in August 2018, as being "in the process of opening another Pepe's Piri Piri store in Milton Keynes" made no reference whatsoever in his evidence, until cross-examined, to the Milton Keynes project. At paragraph 130 of his witness statement, he referred to his meeting with Mr Hussain on 19 January 2016 but omitted any reference to the discussion about Milton Keynes that appears in Mr Hussain's handwritten note of the meeting. At paragraph 131 of his witness statement, he said that he had met Mr Hussain on 11 February 2016 but omitted any reference to the discussion, recorded in Mr Hussain's handwritten note, about payment of the franchise fee for Milton Keynes, stating only that at the meeting he had "said I had investors in Food Trends who would be silent partners." At paragraph 165 of his witness statement, he said that prior to resigning as a Director of Food Trends in April 2016, he had "only ever wanted to continue to run the Pepe's franchise [in Northampton] as I enjoyed doing this and it provided me with a decent income..."
146. In my judgment, the evidence demonstrates that, far from Mr Qureshi's only desire at all times prior to his resignation from Food Trends being to continue to operate the Northampton Pepe's franchise, during the early months of 2016 Mr Qureshi had decided to focus instead on opening a new Pepe's franchise in Milton Keynes; his desire to pursue this project was such that he was prepared in February 2016 to agree to pay Pepe's an up-front fee of £10,000. This supports the Defendants' contention,

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which I accept, that at this point the Northampton franchise, far from being the focus of Mr Qureshi's efforts, was a business that he had decided to abandon.

147. Whilst Mr Qureshi protested that Food Trends was his only source of income at this point, and so he had every incentive to continue running the Pepe's franchise in Northampton, he had told Mr Hussain in February 2016 that he had access to funding for the Pepe's in Milton Keynes. He also told Mr Razi on 21 March 2016 that if his new business plan for the Pepe's franchise in Northampton was not accepted then he would only work there as a member of staff. I should add that Mr Qureshi also owned a consultancy business, Safem Ltd, from which he had previously derived a substantial income (£28,000 in 2014), although his evidence was that this business had become dormant during 2015.
148. At this point (i.e. in early 2016), Mr Qureshi was also in contact with Mr Naeem of Rio's, although it is not clear what the purpose of such contact was. In a text message to Mr Naeem on 14 January 2016, apparently obtained from Mr Naeem by the Defendants, Mr Qureshi wrote: "Naeem Bhai, tried to call you. Zulfi will be free at 5pm. He was asking what's the plan. His phone battery is very low." When this message was put to him in cross-examination, Mr Qureshi accepted sending it but denied knowing what "the plan" was, although he accepted that he had introduced "Zulfi" to Mr Naeem.

[g] Mr Junaid's continued involvement in Food Trends

149. At paragraph 35 above, I noted that the record of Mr Junaid's resignation as a director of Food Trends was filed with Companies House on 20 April 2015, as having been effective from 6 October 2014.
150. When he was cross-examined about Food Trends' filed accounts, Mr Junaid initially said that he had approved two sets of accounts, the first set being those for the accounting year ending 30 September 2013, approved and filed in June 2014. When he was taken to the second set of accounts on which his name appears as the director who approved them, those for the subsequent accounting year filed in June 2015, he then said that he had not approved those accounts, despite what is stated on the face of the document, because he had already resigned as a director and went on to say that he had made a mistake in saying that he had approved two sets. I accept Mr Jones QC's submission that Mr Junaid's evidence that he had not, contrary to what is stated on the face of the document and his earlier evidence, approved that second set of accounts was an attempt to avoid the consequences of accepting that his involvement in Food Trends continued after the date on which his resignation as a director had been filed at Companies House, which was some time before the accounts were prepared.
151. Mr Gyesi gave evidence that in November 2015, he had attended the Premises to install new tills. He was met by Mr Junaid, and trained both Mr Junaid and Mr Qureshi on the new tills when they had been installed. Mr Junaid was present throughout the installation and training, and Mr Gyesi was asked to create a manager's user account for both Mr Junaid and Mr Qureshi. Mr Gyesi subsequently visited the Premises to reinstall the till software; Mr Junaid was again present and oversaw the reinstallation of the software. Mr Junaid was clearly far more than a mere employee of the Pepe's franchise at this point and indeed was content to approve

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the accounts of Food Trends in June 2015 at a point when, on his own evidence, he had not been a director of Food Trends for nine months. Thus it is unsurprising that in a text message on 31 December 2015, Mr Qureshi assured Mr Junaid of his “full support and effort to run both ventures successfully”.

152. I agree with Mr Jones QC that the responses given by Mr Junaid and Mr Qureshi to Mr Sawyer's correspondence in October 2015 regarding Mr Junaid's involvement in Food Trends were misleading. Indeed, Mr Qureshi's response of 12 October 2015 was more misleading than that of Mr Junaid because he actively represented that he had no knowledge of Mr Junaid's involvement in a competing business. This was untrue, as Mr Qureshi well knew that Mr Junaid was involved in setting up the Rio's in Wellingborough Road. Mr Qureshi did not refer to this email at all in his witness statement. When he was taken to it in cross-examination, he said that the email had in fact been written for him by Mr Junaid and that he had lied to Pepe's in it because he had been told to. I reject Mr Qureshi's explanation. Indeed, if he had been forced, as he claimed, to send an email in such misleading terms then it is surprising that he made no reference at all to it in his witness statement. Mr Qureshi was, in my judgment, well capable of taking such decisions for himself and was not a person who succumbed to pressure from others. I also agree with Mr Jones QC that the Investors were aware at this point of Pepe's concern about Mr Junaid's involvement in a competing business, not least because Mr Razi was copied into several emails in which Mr Junaid set out his proposed responses to Mr Sawyer's correspondence.
153. Although Mr Razi was copied into much of the correspondence, I do not accept that the Investors had a particularly high degree of involvement in the business of Food Trends. All three of them lived a significant distance away from Northampton and had other jobs. The involvement of Mr Adib and Mr Hasib in Food Trends appears to have been almost non-existent. Whilst Mr Razi was more involved than the other Investors – which was not surprising given that he was the nominated point of contact for OSI under the Purchase and Sale Agreement – I do not accept Mr Qureshi's characterisation of Mr Razi, as someone who was giving Mr Qureshi instructions which he was following.

[h] The transfers of shares in Food Trends

154. In his closing submissions, Mr Jones QC placed some emphasis on the transfer of 50 per cent of the shares in Food Trends from OSI to Mr Qureshi, recorded in Foods Trends' Annual Return as having occurred in January 2015. I accept that this transaction did not represent the reality of the situation, in that it was never intended by anyone that Mr Qureshi would be the sole owner of Food Trends. In his evidence, Mr Hasib described the transfer as “a paper transaction”. In my judgment, that was an accurate description and I accept Mr Jones QC's submission that the probable explanation is that the ownership of the company was in practical terms intended to remain as before, whilst ownership of the shares was transferred to Mr Qureshi, who was, in effect, a nominee for OSI.
155. Insofar as the Claimants rely on this transfer to support the inference that there was a sinister motive in the minds of some or all of the Defendants, I decline to draw any such inference. Mr Razi's evidence was that in January 2015, Mr Qureshi had told the Investors that Food Trends was in breach of the Franchise Agreement which stipulated that at least 75 per cent of the shares in Food Trends had to be held by a

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director. Mr Razi said in evidence that Mr Qureshi told him that this was a very serious matter and there was a possibility that their entire investment could be lost. He said that Mr Qureshi had asked for OSI's shares in Food Trends to be transferred back to him to avoid this happening. Mr Hasib and Mr Adib gave evidence to the same effect. Mr Qureshi's evidence however was that the share transfer had taken place later in 2015 and that it had been at the instigation of the Investors. However, his evidence was that the Investors had told him that the reason for the transfer was to ensure compliance with the same requirement of the Pepe's Franchise Agreement to which I have just referred.

156. I reject Mr Qureshi's evidence that in acquiescing in the transfer of the other shareholdings in Food Trends to him, he was merely carrying out the instructions of Mr Razi. Whilst there is no contemporaneous documentary evidence setting out either the reasons for the transfers or when they took place, the witnesses are in a substantial measure of agreement as to the reason behind the transfer of the shares. This was to avoid breaching the Pepe's Franchise Agreement. I regard it as far more probable that the Investors were asked to transfer their shares by Mr Qureshi, rather than the other way around, for the reasons given by Mr Razi, Mr Adib, and Mr Hasib. If the initiative to transfer the shares had come from Investors, I would have expected, based on the way in which they dealt with matters generally, some form of written request or record. The lack of a written record in my judgment supports the Investors' evidence that the share transfer from OSI was an emergency measure requested by Mr Qureshi in order to seek to escape the situation in which Food Trends found itself, namely that it was in breach of the Franchise Agreement because of the way in which its shares were held following the involvement of the Investors. That Mr Qureshi would have been concerned about a breach of the Franchise Agreement which might result in the termination of the franchise is unsurprising given he was a director of Food Trends, the person responsible for running the Pepe's franchise, and a guarantor of Food Trends' obligations under its lease of the Premises.
157. I agree with Mr Jones QC that the probable intention of all concerned, and here I include Mr Qureshi notwithstanding my rejection of his evidence about how this came about, was to preserve, as between themselves, their existing interests in Food Trends whilst making it look to the outside world as if Mr Qureshi was the sole owner. However, as I have already set out, it was a requirement of the Franchise Agreement that the shares in Food Trends should be held in a particular way. The transfer of the shares to Mr Qureshi, therefore, is explicable on the basis advanced by both the Investors and Mr Qureshi in evidence, namely a wish to avoid a breach of the Franchise Agreement. I do not regard the transfer of the shareholding to Mr Qureshi as supporting an inference that the Defendants intended to injure the Claimants' business. Rather, in my judgement, the approach of the Defendants at this time, consistent with the way in which Mr Junaid had sought legal advice about his role in establishing the Rio's franchise in Wellingborough Road, was to seek to ensure that there was no basis upon which the Claimants could seek to take action against Food Trends for breach of the Franchise Agreement which might result in the loss of the Pepe's franchise. In other words, the Defendants – and, for that matter, Mr Qureshi – were, in my judgment, at this point concerned to preserve the Pepe's franchise.
158. On 10 March 2016, 75 per cent of the shares in Food Trends were transferred back from Mr Qureshi to OSI. Mr Qureshi's evidence was that he had signed a blank share

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transfer form at the time that OSI's shares were transferred to him, in order to enable the Investors to secure OSI's shares, and that this form was used to effect the transfer back to OSI. The Investors' evidence was, however, that Mr Qureshi had unilaterally transferred 75 per cent of the shares in Food Trends back to OSI. Quite how OSI's shareholding in Food Trends was returned to the level it had been prior to the transfer of its shares to Mr Qureshi is not clear from the Annual Return – for example, it is not clear who authorised the filing of the Annual Return – but I am satisfied that the transfer back to OSI reflected the intention of all concerned at the time of the transfer of shares to Mr Qureshi, namely that his becoming the sole shareholder of Food Trends was, as Mr Hasib termed it, merely a “paper transaction” which did not reflect the reality of the ownership of Food Trends.

[i] The events of March and early April 2016

159. As I have already set out, Mr Qureshi had discussions with Mr Hussain in January and February 2016 about establishing a Pepe's franchise in Milton Keynes and had agreed to pay a £10,000 franchise fee. Like Mr Junaid, however, he had personally guaranteed Food Trends' obligations under its lease of the Premises. Food Trends was, in my judgment, in significant financial difficulty at this point. Mr Qureshi therefore had an incentive to suggest, or at least to follow, a course of action which would, in due course, both relieve him of his obligations under the lease of the Premises and permit him to devote his energies to the establishment of the new Pepe's franchise in Milton Keynes. It is not only significant that Mr Qureshi failed to refer in his witness statement to his discussions with Mr Hussain about the Milton Keynes franchise but also that he did not make either Mr Junaid or the Investors aware of such discussions at the time. Mr Junaid and the Investors were therefore acting in ignorance, during March and April 2016, of Mr Qureshi's plan to open the new Pepe's franchise in Milton Keynes, something which he had agreed on with Mr Hussain shortly beforehand.
160. It is clear that there was a meeting on 6 March 2016 at which Mr Junaid, Mr Qureshi and the Investors discussed the future conduct of their business relationship, and in particular the difficulties being experienced by Food Trends. Mr Jones QC submitted in opening the Claimants' case that the conspiracy to replace the Pepe's franchise at the Premises with a Rio's had been decided upon at the latest at the meeting on 6 March 2016. However, if that were the case then it is odd that Mr Razi – on the Claimants' case, a central figure in the conspiracy – was apparently rather concerned in an email sent on 6 March 2016, albeit before the meeting, that the Investors had not had any contact with Mr Hussain. Mr Razi compiled an agenda for the meeting on 6 March 2016, which he circulated by email or text message. This read as follows:

“What's the update with the Franchisor contract and when are we going to meet with Munir.

This was discussed last month and please provide us with some updates as this is an urgent priority.

1 – we have an agreement to run the management together for both premises.

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2 – How will they run the Rios [sic], they said they will utilise the existing senior staff across both stores [sic] to save cost

3 – both stores can share the resources to minimise the cost and help out each other

4 – Cost efficiency and cost of sales can be brought down by working together and buying power is increased bringing costs down

5 – last year you said you were going to buy 10% back in November what are the plans for this.”

161. Mr Jones QC placed some emphasis on what he submitted was the practical impossibility of achieving several of the objectives set out in the agenda for the meeting of 6 March 2016 sent by Mr Razi, in particular that of having the two stores under common management. The relevant part of Mr Razi's agenda states: “we have an agreement to run the management together for both premises”. Mr Jones QC submitted that it was obvious that this could not be achieved if the two stores remained as competing franchises and that the only logical inference to draw from this aspiration was that the Defendants had indeed decided to “swap sides” and to run both shops as Rio's franchises.
162. I decline to draw the inference proposed by Mr Jones QC, not least because this item appears directly below Mr Razi's request for an update about the proposed meeting with Mr Hussain about the “Franchisor contract”, which he described as an “urgent priority”. If there had been a decision to “swap sides” by this point, with both stores proceeding under the Rio's brand, then this reference to a meeting with Mr Hussain regarding the contract would not have been needed at all, still less the description of it as being an “urgent priority”, and its inclusion would represent an attempt by Mr Razi to mislead some or all of the recipients of this email into thinking otherwise. I do not consider that the email, read as a whole, sustains the conclusion urged on me by Mr Jones QC that the reference to running the management of the two stores together means that there was an intention to proceed with only one franchisor. The agenda, running to five numbered items, is focused on the general issue of saving costs across the two stores through e.g. sharing resources and buying in bulk, rather than the question of whether it would be preferable to proceed with only one franchisor. Moreover, the item says that, “we have an agreement to run the management together for both premises” and it is clear that Mr Qureshi and Mr Junaid were already sharing between them the management of the two stores despite them being different franchises. Mr Qureshi had on 31 December 2015 assured Mr Junaid in a text message of his “full support and effort to run both ventures successfully”. This was, at least so far as Mr Razi and the other Investors were concerned, what was already being done; and Mr Razi, who drafted the email upon which Mr Jones QC placed such emphasis, said when cross-examined that he had been told by Mr Junaid and Mr Qureshi that they could manage both businesses. Whilst that might well have been contrary to the provisions of the agreements with either or both of the two franchisors, I do not consider that the reference in Mr Razi's agenda for the meeting of 6 March 2016 to managing both stores together leads to the conclusion that the intention at this point was to proceed with only one franchisor.

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163. On 21 March 2016, Mr Razi sent an email to Mr Qureshi, Mr Junaid, Mr Hasib and Mr Adib, which began as follows:

“Following our meeting on 06th of March 2016 I had several individual meetings with all the stakeholders, and I can confirm that we are now in a position to move towards resolution. From today we will take following steps accordingly to resolve current situation.

Lease renewal for premises – Current lease holder Food Trends Ltd is in negative equity and cannot sustain itself, all shareholders agreed to dissolve the company and new company will take over the premises and business, all the current shareholders will remain grantors [sic] in the lease. All of you are aware only four years left in the current lease for the break clause and also rent review is due in July 2016 hence all the shareholders are in agreement to renew the lease. I have informed the landlord and he has agreed for the renewal, he has already instructed his solicitors...”

164. The issue of the lease of the Premises had not been referred to in Mr Razi’s agenda for the meeting on 6 March 2016. Mr Razi, Mr Adib and Mr Hasib all gave evidence that at the meeting on 6 March, Mr Qureshi had told them that the landlord planned to operate the break clause in the lease in order to redevelop the Premises, and that this could be avoided by negotiating a new lease for a longer term. Mr Qureshi’s evidence was that the surrender of the lease had first been suggested by Mr Razi, albeit for a similar reason (to prevent the landlord from selling the Premises) and had come as a complete surprise to him. There was clearly an agreement to surrender the lease and negotiate a re-grant. I prefer the evidence of the Investors as to how this issue arose. Mr Qureshi was actively exploring alternative business opportunities at this point, albeit he had not disclosed that to those present at the meeting on 6 March, however he was a guarantor of Foods Trends’ obligations under its lease. He therefore had an incentive to propose this course of action, which would remove that potential liability.
165. I regard Mr Razi’s statement in his email of 21 March 2016 that the agreement was to dissolve Food Trends and to incorporate a new company to “take over the premises and business” as significant. There is no indication that the “business” that was being referred to was anything other than the existing Pepe’s franchise. Indeed, Mr Qureshi’s evidence was that at the meeting on 6 March 2016, Mr Razi had stated expressly that the new company would continue to run the Pepe’s franchise. Certainly, there is no suggestion in writing that there was any plan or intention at this point to open any other sort of business at the Premises, and in particular to open a Rio’s franchise. Later in the email, under the heading “Accounts”, having recorded an agreement that QP Accountants would now manage the company accounts, Mr Razi stated:

“Due to negative equity in Food Trends going forward it is very difficult to maintain and balance the accounts, accountant’s advice is to dissolve the company immediately to reduce liabilities and cost savings. New company has been created and share holdings will be allocated accordingly...”

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Under the heading "Interim Daily Management", Mr Razi stated:

"Today Mr. Masroor [i.e. Mr Qureshi] has called me today [sic] and agreed to do the daily cash for a few days and will provide me with the details regularly. According to him Mr Adnan will do the other operations including staff rota and ordering etc. Masroor is willing to train nominated manager for one month only, after one month he will not provide any training or take responsibility but is willing to work as staff. Meanwhile if all the shareholders agree to his model, which he presented in the shareholders meeting, he will take full responsibility of the business."

The email concluded: "Meanwhile if anyone has concerns or suggestions please respond in writing." Mr Qureshi accepted when cross-examined that he did not raise any concerns about the process set out in Mr Razi's email. On 23 March 2016, Mr Razi sent a further email to Mr Junaid, Mr Qureshi and the other Investors. This recorded that, "no concerns have been raised so far". It noted that a draft deed of surrender for the lease of the Premises would be received on the following day, and also that new accountants had been appointed.

166. Nor was Mr Qureshi excluded from the project. Although on its incorporation all the shares in Optifoods were held by OSI, Mr Razi emailed the accountant on 18 March 2016 asking what was required to transfer 25 per cent of the shares in Optifoods to Mr Qureshi's company, Safem Ltd. Later that day, he emailed Mr Qureshi, copying in the accountants, stating: "Please send me full name of your company so I can submit 25% shares transfer form". Mr Qureshi did not, however, respond. That failure to respond is consistent with Mr Qureshi having decided to abandon the Northampton Pepe's franchise.
167. A handwritten note made by Mr Hussain discloses that he met or spoke to Mr Qureshi on 22 March 2016. The note records that Mr Qureshi expressed at this point an interest in opening a Pepe's franchise in Pakistan, although Mr Hussain said in his oral evidence that he told Mr Qureshi that he would need to speak to Pepe's master franchisee in Pakistan about that. It also records that Mr Qureshi told him that there were investors in the Northampton franchise who wanted to "come on the books". Mr Hussain's note refers to a "new agreement" and a "new company", 25 per cent owned by Mr Qureshi and 75 per cent owned by the "others" – which reflects the position arrived at on 10 March 2016 with regard to the shareholdings in Food Trends, to which I have already referred at paragraph 158 above, although not Mr Qureshi's failure to respond to Mr Razi's invitation to tell him how his 25 per cent shareholding in Optifoods should be allocated. Mr Hussain said in his oral evidence that he had informed Mr Qureshi that the investors – whose names Mr Hussain did not know at this point – would need to be approved by Pepe's and that he had explained to Mr Qureshi that they would need to complete Pepe's franchise application forms. He said that following that meeting, he was expecting completed applications forms to be submitted.
168. Mr Qureshi accepted that he had not told Mr Hussain on 22 March about the plan to surrender Food Trends' lease of the Premises, of which he was aware. He said when cross-examined that he did not tell Mr Hussain about what had been agreed between

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himself, Mr Junaid and the Investors because his own understanding, at that point, was that the Premises would continue to operate as a Pepe's store, but with a new company operating the store and under a new lease. He therefore did not see any prejudice to Pepe's in the proposed surrender of the lease. He said that he did not suspect that there was any possibility of the store not continuing as a Pepe's until the events of the evening of 9 April 2016.

169. I reject Mr Qureshi's evidence that during this period he was simply following instructions given to him by Mr Razi. Whilst Mr Razi may have taken the lead in organising the surrender of the lease and the establishment of Optifoods, there is nothing to indicate that Mr Qureshi was an unwilling participant in what occurred. At no stage, even on his own account in evidence, did he protest. In my judgment, it actively suited his own purposes at this point to ensure that he was removed from his position as a guarantor of Food Trends' obligations under its lease of the Premises. Indeed, if Mr Qureshi was merely following Mr Razi's instructions then it is odd that he did not respond to Mr Razi's email inviting him to set out how his proposed 25 per cent shareholding in Optifoods was to be allocated. In my judgment, the likely explanation for that is that Mr Qureshi had by this point decided that he wanted to pursue opportunities elsewhere, in particular the Milton Keynes franchise, rather than continue to operate the Pepe's franchise at the Premises.
170. That Mr Qureshi was far from a puppet in the hands of Mr Junaid and Mr Razi is also shown by Mr Hussain's note of their meeting on 11 February 2016. Mr Hussain recorded that Mr Qureshi had told him that he had "direct control of the business" (i.e. the Northampton franchise). When he was cross-examined about the content of the note, Mr Qureshi denied that this was the case, stating that it was in fact Mr Junaid and Mr Razi who had direct control of Food Trends. But, if that were right, it is odd that in a private meeting with Mr Hussain, Mr Qureshi asserted that it was he who had direct control of the Northampton franchise. For completeness, I should record that Mr Welch submitted the exact reverse was the case, i.e. that the Investors, certainly by March 2016, were following instructions given to them by Mr Qureshi; I do not consider that the evidence bears this out, either. In my judgment, Mr Qureshi, Mr Junaid and the Investors were people in business together who discussed matters between themselves and then arrived at an agreed course of action.

[j] The closure of the Premises on 9 April 2016 and the immediate aftermath

171. On 9 April 2016 at 2:50 pm, Mr Qureshi sent an email to Mr Hussain in which he thanked Mr Hussain for "taking out time to discuss the current situation of Pepes [sic] Piri Piri Northampton". Mr Qureshi went on to state that due to the "negative balance sheet" of Food Trends, which he blamed on Mr Junaid, the accountant had "strongly recommended to dissolve Food Trends Ltd" and that Mr Qureshi had decided "not to take his [i.e. Mr Junaid's] liability on my shoulders and dissolve Food Trends." Mr Qureshi proposed a meeting "to discuss the ability and credibility of new franchisee", a new management structure and a new franchise agreement. He concluded the email by stating, "As discussed I informed them to fill [in] the application form and email back to Pepes [sic] before meeting."
172. Although Mr Qureshi did not refer either to this email or to the discussion with Mr Hussain that apparently preceded it in his witness statement, he was taken to the email in cross-examination. He maintained that the actions referred to in the email were

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taken at the direction of the major shareholders in Food Trends. He conceded that although he had referred to Food Trends' financial position in the email, he had not mentioned to Mr Hussain any concerns about the content of its VAT returns, or the draft return that he had recently been sent. When questioned about the reference in the email to telling "them" to complete the application form for the new franchise, Mr Qureshi said that he had given the Pepe's franchise application forms in hard copy to one of Mr Razi, Mr Junaid, Mr Adib or Mr Hasib but that he could not recall to whom.

173. Mr Hussain, who had received the email, also did not refer either to the email or to the apparent prior discussion with Mr Qureshi in his witness statement. He agreed when cross-examined that the implication of the last sentence was that Mr Qureshi had given "them" the Pepe's application forms. Mr Hussain could not recall what he and Mr Qureshi had discussed prior to the email being sent. He said that at this point, his expectation was that a completed franchise application form would be sent to Pepe's. He did not know the identities of the Investors and had no contact with them, so was unable to communicate with them directly.
174. I reject Mr Qureshi's evidence that he gave the Investors, or Mr Junaid, the Pepe's application forms to complete. Not only was he unable to say to whom he had given the forms, but if he had done so then I would have expected either Mr Razi or Mr Qureshi to have referred to that fact in their subsequent email exchange on the morning of 13 April 2016, to which I refer below. I also reject Mr Qureshi's evidence that he arranged a meeting between Mr Hussain and the Investors, to take place on 11 April 2016 at 2 pm, which the Investors declined to attend. It is clear from the email that he sent at 2:50 pm on 9 April 2016, to which I have referred at paragraph 171 above, that no such meeting had been arranged at that point. There is nothing to indicate that such a meeting was either arranged, or arranged and then cancelled by the Investors, after that time until Mr Qureshi's email in response to Mr Razi's email of 13 April 2016 in which the latter stated that he had promised to arrange such a meeting, but had not done so. The supposedly arranged but then cancelled meeting with the Investors is not referred to in either Pepe's agenda for the meeting with Mr Qureshi on 11 April 2016 or in Mr Sawyer's note of that meeting. I consider that Mr Qureshi's response to Mr Razi that such a meeting had indeed been arranged for 11 April 2016 – notwithstanding the absence of any prior written communication about such a meeting, and the lack of evidence about it from Mr Hussain or Mr Sawyer that such a meeting had in fact been arranged – was an attempt to cover up the fact that he was, at this point, dealing with the Claimants on one basis and with the Investors on another – or, as Mr Welch put it in his closing submissions, "riding two horses".
175. At 11:16 pm on 9 April 2016, Mr Qureshi sent Mr Hussain a text message in which he stated: "... Sorry to disturb you at this time, I was informed by staff that they have closed the shop. I am not sure what there [sic] intensions [sic] are, I am quite concern [sic] about their motives and would like to discuss it with you on emergency basis..." Mr Hussain said that after receiving this message he had telephoned Mr Qureshi who had told him who "they" were, i.e. the Investors and Mr Junaid. Mr Qureshi said in his oral evidence that he could not remember when he had told Mr Hussain the names of the Investors.
176. Mr Jones QC submitted that this text message was precisely what would have been written by a man who had just realised that he had been "had over" and that this was

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indeed what had happened. It was not, said Mr Jones QC, the response of a man whose business associates were executing a pre-conceived plan. I have some difficulty with this argument, however. Firstly, even on Mr Qureshi's own evidence, the message is by no means as frank as it might have been. Mr Qureshi's evidence was that at 7:00 pm on the evening of 9 April, he had made a routine telephone call to the store manager, who had told him that Mr Junaid, Mr Razi, Mr Adib and Mr Hasib were all in the store and were closing it. His evidence was that he had then gone to the store where he was told by Mr Razi that the closure was for maintenance and repair. The text message that Mr Qureshi later sent to Mr Hussain makes no mention of Mr Qureshi having gone to the store or of the explanation given to him by Mr Razi. Mr Qureshi and Mr Razi also had a brief text message exchange just over an hour after Mr Qureshi had sent his text message to Mr Hussain. At 12:28 am on the morning of 10 April, Mr Razi wrote to Mr Qureshi: "Closed for refurbishment. InshaAllah try to finish work within week. Hopefully sort out all details tomorrow." Mr Qureshi's response was simply, "Inshah Allah", i.e. "God willing". He did not respond in terms that suggested that he was at all concerned about the closure of the store or that he was surprised about the reason given by Mr Razi, i.e. closure for a short period for refurbishment. Indeed, Mr Sawyer's note of Pepe's meeting with Mr Qureshi on 11 April 2016 records that he told Pepe's that the store was "closed for some build [sic] work... and will open on Friday."

177. This need for a short closure to undertake the works is also explicable in the context of the failure of the extractor fan at the premises. Mr Junaid gave evidence that the extractor fan had failed on 3 April 2016, that this had not been dealt with by Mr Qureshi and that Mr Junaid was asked by the Investors to address the issue. An invoice from an extractor fan company dated 12 April 2016, to which Mr Junaid made reference in his evidence, records that some £630 of works were completed. When he was cross-examined, Mr Hasib explained that the works completed at the Premises immediately after the closure were not limited to those recommended by the Council as a result of its inspection and that there was work required on the flooring and the extractor fan canopy that could not be completed whilst the store was trading, because equipment needed to be moved around. Further, it cannot be said that the closure of the Premises must have been a contrivance designed to disguise an intention of the part of the Defendants to oust Pepe's, given both the failure of the extractor fan and the receipt only three days earlier of the Council report, which made strong criticisms of the food hygiene standards at the Premises. Whilst it was not necessary to close the Premises to effect the repair works required by the Council, a short period of closure in these circumstances for these and other works to be performed is understandable.
178. In my judgment, the evidence demonstrates on the balance of probabilities that the Premises was closed on the evening of 9 April 2016 in order to effect refurbishment, to address the issue with the extractor fan about which Mr Junaid gave evidence and to ensure that the works required by the Council were carried out. The closure was intended to be short term and coincided with the surrender of Food Trends' lease and the grant of a new lease to Optifoods. That those controlling Optifoods would choose to undertake a brief refurbishment of the Premises after the grant of the new lease is not, in my judgment, at all surprising. Whilst Mr Jones QC invited me to find that the presence of Mr Junaid and the Investors at the Premises on the evening of 9 April 2016 was in some way sinister because it was unnecessary for them all to visit the

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Premises, I do not consider that the evidence points towards such a conclusion. It is not, in my judgment, sinister that the Investors would have wished to visit the Premises in these circumstances.

179. On 11 April 2016, Mr Qureshi went to a meeting at Pepe's Head Office. Mr Sawyer emailed a note of the meeting to Mr Hussain at 12:32 pm. In it, Mr Qureshi is recorded as having told Pepe's that Mr Junaid had "got involved with Rio's" and that, "Optimum Services Intelligence intention is to have Junaid running both Rio's and Pepe's for them. They don't want Masroor [i.e. Mr Qureshi] involved any more."
180. That Mr Qureshi was content to portray himself to the Claimants at this point as someone who had been "had over", to use Mr Jones QC's description, is unsurprising – but his actions and communications with the Defendants throughout March and early April 2016, including on the night of 9-10 April 2016, paint what is, in my judgment, a very different picture. In my judgment, it is the latter that is far more likely to represent the reality. Mr Qureshi was, as I have said, planning at this point to open a new Pepe's franchise on his own, in Milton Keynes, and had expressed to Mr Hussain an interest in opening a Pepe's franchise in Pakistan. It was therefore in his interests to distance himself in the eyes of the Claimants, so far as possible, from any involvement in the process which had led – entirely without the knowledge of the Claimants and despite Mr Qureshi having met with Mr Hussain on 22 March 2016, after the course of action had been agreed on – to the dissolution of Food Trends, Pepe's franchisee, the transfer of its assets and the surrender of its lease at the Premises.
181. In my judgment, the explanation for the events of March and early April 2016 is, on the evidence adduced, broadly that advanced by the Defendants. The evidence demonstrates that Food Trends was in a poor financial position. Mr Qureshi himself told Mr Hussain on 9 April 2016 that the accountant had recommended that Food Trends be dissolved. During March 2016, Mr Junaid, Mr Qureshi and the Investors agreed on a plan of action which had as its object not any injury to the business of the Claimants, but the continuation of the Pepe's franchise at the Premises by means of the transfer of Food Trends' assets to a new company and the replacement by that company of Food Trends as tenant of the Premises. In my judgment, the intention of Mr Junaid and the Investors at all times prior to receipt of the Claimants' solicitors' letter of 12 April 2016 was that the Pepe's franchise at the Premises should continue, but that it should be operated by Optifoods,

[k] Events in April, May and June 2016 following the closure of the Premises

182. At 9:25 am on 12 April 2016, Mr Razi sent an email to Mr Qureshi, which was copied to the other Investors and to Mr Junaid. In it, he stated that Mr Qureshi had during a meeting in the previous week "agreed to provide the final figures and summary for March 16 and until 10 April, also give us some update regarding the way forward". Mr Razi requested that the update be provided by midday, "so we can make some plans as well, cannot leave things pending for long". It does not appear that Mr Qureshi replied to that email.
183. Later on 12 April 2016, the Claimants' solicitors, Boddy Matthews, wrote a letter addressed jointly to the Directors [sic] of Food Trends and to Mr Qureshi.

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“A. Breaches

...

5. Our client has as recently as yesterday, 11 April received a copy of a draft deed of surrender of the Lease of the Premises... Mr Qureshi has stated to Mr Sawyer of our client that he signed this document on 8 April 2016 in his capacity as Director of the Franchisee at the direction of the majority shareholder of the Franchisee, Optimum Services Intelligence Limited (OSI)...

...

7. This apparent voluntary surrender of its interest in the Premises is a breach of Clauses 6.1.4 and 6.1.5. Mr Qureshi was unable to confirm if the Franchisee is left with any interest in the Premises from which to operate the Pepe's Piri Piri Franchise Business. In fact Mr Qureshi intimated that its majority shareholder OSI was seeking to take or had taken an interest in the Premises itself for the purposes of either preventing the Franchise Business to operate or for its own purposes of operating in breach such Business or operating a competing business...

...

9. The Franchisee has no right to assign or delegate or transfer performance of the Franchise Agreement and any such attempts to allow OSI to do so is in breach of Clause 13.1.

...

C. Notice of Immediate Suspension

Notice of immediate suspension of all goods and services until rectification is given under Clause 8.4.”

The letter then set out, at paragraphs 3(a) to 3(h) of the section headed “D. Rectification”, eight required remedial actions. The Claimants were prepared to allow a period of eight weeks, until 7 June 2016, for all these actions to be taken. They included entering into a “legally binding agreement to ensure that the Franchise Business can continue to operate under the terms of the Franchise Agreement for its duration at the Premises,” and “a written undertaking from Mr Qureshi and other senior figures in the Franchise Business regarding the ongoing operation of the Business as required,” as well as additional personal guarantees being given by the Investors. This section of the letter concluded as follows:

“We confirm that you should carry out actions listed at 3(a) to (h) as soon as possible. The goods and services under Clause

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8.4 will be suspended until rectification or 7 June 2016 whichever is the earlier to our client's satisfaction. This should be more than ample time for the breaches to be rectified. **During this period you will not be entitled to trade. We therefore recommend that you take this action urgently.**" [emphasis in original]

184. Although he had arranged in advance with Mr Sawyer to be present at the Premises in order to receive the solicitors' letter, when Mr Qureshi forwarded the letter to Mr Razi at 7:43 pm on 12 April 2016 he wrongly gave the impression that his receipt of the letter had been a coincidence, writing, "When I was leaving store got this notice from Pepes [sic]. It looks like I am in deep trouble, please advise how to proceed further." At midnight, so just over four hours after Mr Qureshi had forwarded the solicitors' letter, Mr Razi sent an email to Mr Qureshi, copied to Mr Hasib and Mr Adib. In the email, Mr Razi stated:

"This is to remind you that on a number of previous meetings [sic] we have advised you to inform the Pepes [sic] franchise of OSI's involvement in Food Trends Ltd... as an investor, OSI have asked you [a] number of times for the past few months to arrange a meeting with Pepes [sic] Management to discuss our ownership and management model and future management involvement. To date this has not been arranged, so that we can continue to trade after the refurbishment and lease transfer has taken place. As we are now in this situation we do not have any contract with Pepes [sic] Piri Piri franchise so therefore OSI cannot trade as Pepes [sic] Piri Piri..."

Mr Razi's email to Mr Qureshi concluded with a request to collect all the Pepe's branding and signage from the Premises and a request to Mr Qureshi to refrain from entering the Premises and to return any keys held by him. Mr Razi said that he would take legal advice. I note that the inability of OSI to trade as Pepe's Piri Piri was something that the Claimants' solicitors had pointed out in the clearest of terms in their letter of 12 April.

185. Mr Razi's evidence was that the Claimants' solicitors' letter of 12 April had come as a surprise because he had been expecting that Mr Qureshi would negotiate an agreement with the Claimants to enable the Pepe's franchise at the Premises to be operated by Optifoods. The impression which he and the Investors had from the solicitors' letter was that the Claimants had decided not to seek to resolve the issues that had arisen by negotiation but had instead made a series of demands. Further, the references in the letter to the content of Mr Qureshi's conversations with Mr Sawyer drove them the conclusion that, as Mr Razi put it, Mr Qureshi was working with the Claimants and against the Defendants. As Mr Razi stated in evidence, it was now apparent to the Investors that there was no basis for the continued operation of the Pepe's franchise at the Premises.
186. Insofar as the Pepe's shop at the Premises did not re-open shortly after the closure on 9 April 2016, then in my judgment the content of the Claimants' solicitors' letter of 12 April 2016, and the reaction of the Investors to it, provides the explanation. The Claimants, having been given certain information by Mr Qureshi, had expressly

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forbidden the continued operation of the Pepe's franchise at the Premises until their requirements, set out in the list at paragraphs D3(a) to D3(h) of their solicitors' letter, were met. The Investors in these circumstances decided that they had no basis to continue operating the Pepe's franchise from the Premises and concluded that they had been let down by Mr Qureshi. That, in my judgment, provides the explanation for the action taken by Mr Razi in his email of midnight on the night of 12-13 April. I reject the Claimants' contention that Mr Razi's email was the culmination of a plan on the part of some or all of the Defendants to get the Pepe's franchise out of the Premises. That the Investors still harboured some hope of rescuing the situation with Pepe's is borne out by Mr Qureshi's subsequent message to Mr Hussain stating that after a short meeting, "without any hesitation they want to continue with Pepes" and the Investors' attendance at the meeting at Pepe's Head Office on 27 April 2016.

[h] The Meeting of 27 April 2016

187. As I have already noted, although this meeting was expressed to have been held on a "without prejudice" basis, none of the parties asserted that any part of it was in fact privileged. I heard evidence about what occurred from all the participants and had the benefit of Mr Sawyer's note of the meeting.
188. I accept the Claimants' submission that the Investors sought to mislead the Claimants from the outset of this meeting by one of their number stating that they had not been aware, when they initially invested in Food Trends, that it was operating as a franchise. Although Mr Sawyer attributed the comment to Mr Razi, it was in fact Mr Hasib who stated that the Investors were not aware. As Mr Hasib frankly admitted when he was cross-examined, this was a lie. The impression given – in my judgment, deliberately – by this lie was not corrected by any of the Investors during the course of the meeting.
189. When he was cross-examined, Mr Hussain accepted that the meeting had resulted in an impasse. The Investors, who had by this point fallen out with Mr Qureshi, were not interested in running the Northampton Pepe's franchise themselves, but had the potential liability associated with the new 25-year lease of the Premises, of which they were personal guarantors. However, the Claimants were not willing to take over the store because, Mr Hussain explained, they were only interested in franchising and not in running their stores directly from Head Office. This was something which, according to Mr Hussain, would have diverted resources and would not have fitted in with the Claimants' business model.

[h] The establishment of the Rio's franchise at the Premises

190. The Premises re-opened as a Rio's franchise on 12 June 2016, i.e. some six and a half weeks after the meeting of 27 April. Mr Jones QC submitted that it was nonsensical to suppose that nothing had passed between the Defendants and Mr Naeem regarding the operation of a Rio's Piri Piri at the Premises prior to the meeting on 27 April 2016. I do not accept that. There are no communications of any sort disclosed between either Mr Junaid or the Investors and Rio's or Mr Naeem. Nor are there any emails or text messages disclosed between Mr Junaid and the Investors, or between the Investors themselves, which deal with the issue. The efforts made by the Investors at the meeting of 27 April 2016 to get the Claimants to take on the Premises would have been unnecessary had there already been an agreement for it to re-open as

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a Rio's. When he was cross-examined, Mr Razi explained that following the meeting of 27 April, the Investors had explored other options which included speaking to Mr Naeem of Rio's. Mr Razi said that they found someone interested in taking over the Premises in the first week of May 2016. Mr Razi said that the Investors gave Mr Naeem and his potential franchisee access to the Premises in the early part of May, when they commenced work. The Investors obtained permission from the landlord of the Premises to sub-let, although a sub-lease was not actually signed until March 2017.

191. The first indication that the Premises was being fitted out as a Rio's store comes from the photograph taken by one of Food Trends' suppliers on 12 May 2016. In that photograph, a distinctive pattern of red peppers is visible on one of the interior walls of the Premises, near to the glass shop front. In his evidence, Mr Sawyer identified this pattern as being a part of Rio's branding. That there was some Rio's branding at the Premises on 12 May 2016 is not, however, indicative of there being any agreement to re-open the Premises as a Rio's prior to 27 April 2016. Mr Sawyer was not able to say how far advanced the fitting-out of the Premises as a Rio's was at this point. The email from the supplier recorded that, "all the Pepe's signage has been removed from the walls and the furniture is being replaced for a newer style bench and table seating. The equipment (cooking) has all been disconnected and moved to the centre..." This does not indicate that the fitting-out of the Premises as a Rio's was at an advanced stage on 12 May 2016 and indeed it was another month before the Premises re-opened as a Rio's. That there was some Rio's branding at the Premises on 12 May 2016 is not inconsistent with Mr Razi's evidence that, following the failure of the meeting with Pepe's on 27 April 2016, in early May the Investors agreed to let Mr Naeem and his potential franchisee operate a Rio's at the Premises and gave them access to undertake works.
192. The evidence is that the Rio's Piri Piri franchise that began operating at the Premises is run by a company called KQ Foods Limited ("KQ Foods"). No evidence was provided to me to demonstrate any connection between any of the Defendants and KQ Foods, beyond the sub-lease of the Premises which was granted by Optifoods to KQ Foods for a term of three years commencing on 17 March 2017. I reject the submission made on behalf of the Claimants that the delay of some nine months in executing the sub-lease undermines the Defendants' case. Email correspondence from early June 2016 shows that prior to the opening of the Rio's store at the Premises, there was contact with the landlord's solicitor about sub-letting the Premises and Mr Razi requested that Optifoods' solicitor should obtain permission for the Premises to be used by the proposed sub-lessee prior to the execution of the sub-lease. So, on 3 June 2016, the landlord's solicitors replied to Optifoods' solicitors, stating: "... draft licence to sub-let will be e-mailed to yourselves next week... we require a bank reference to confirm the under-tenant can meet the yearly rent..." On 7 June 2016, Mr Razi wrote to Optifoods' solicitors stating: "New proposed tenants wanted [sic] to start the business while we are in process of sublease. Can you please check whether it is permissible or we need some sort of approval verbal / written from landlord. If needed can you please arrange it for us." This is consistent with Mr Razi's evidence that such permission was both sought and obtained.

G: Application of the Law to the Facts**[a] Conspiracy to injure by unlawful means**

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193. Considering all the evidence in the round, I do not consider that it supports the Claimants' case about the Defendants' intention either on the wider basis that the intention from the start of the Wellingborough Road project was to replace the Pepe's at Gold Street with a Rio's, or on the narrower basis that the Defendants had such an intention in the run-up to the closure of the Premises on 9 April 2016. I decline to draw the inferences that are urged on me the Claimants and I find that the Defendants had no such intention.
194. I do not accept that the evidence supports the Claimants' contention that the Individual Defendants intended from 2014 onwards to force the closure of the Pepe's franchise at the Premises and/or its replacement by a Rio's franchise.
195. The Claimants' case is that Mrs Razi was involved in the alleged conspiracy to injure the Claimants. Her involvement was, however, only in relation to the establishment of the Rio's franchise in Wellingborough Road. She did not have any involvement in the decisions taken during March and April 2016 in relation to the Pepe's in Gold Street. Indeed, Mrs Razi appears to have played no part whatsoever in any decisions concerning the Pepe's franchise at the Premises, whether in March and April 2016, or beforehand.
196. Mr Welch submitted that the necessary implication of the Claimants' case that Mrs Razi was a part of the alleged conspiracy to injure the Claimants was that the Individual Defendants' plan from an early stage (i.e. from at least a point in 2015, if not even earlier) was to 'bump out' Pepe's from the Premises, and that the Defendants had conspired together over a significant period of time to manufacture a false picture for this purpose. I agree with Mr Welch that this is the necessary implication of the Claimants' case as pleaded and as advanced at trial – as it was put at paragraph 40.1 of the Claimants' skeleton argument, that the Defendants were each involved in a plan create two Rio's outlets in Northampton under their control and in doing so to lock the Claimants out of the Northampton market. I do not, however, accept the Claimants' case on this issue. Even if, as Mr Jones QC submitted, Mrs Razi's involvement in the Wellingborough Road Rio's project was a sham in order to disguise the true nature of the project from the outside world, it does not necessarily follow that she was part of a conspiracy to injure the Claimants on the basis advanced by them. For that to be the case, it would in my judgment be necessary to accept that the establishment of the Rio's shop in 206 Wellingborough Road was part of the sort of wider conspiracy to injure the Claimants which I have just described. I do not consider that the evidence, which I have considered at paragraphs 129 to 141 above, supports that inference and I decline to draw it.
197. Indeed, as I have set out at paragraphs 140-141 above, the evidence suggests that even if, which I do not accept, Mrs Razi was being used simply as a 'front' for the Rio's at 206 Wellingborough Road, this was in order to ensure that the Rio's shop could operate in tandem with the Pepe's shop at the Premises, rather than as the first stage of a conspiracy to oust Pepe's from Northampton entirely and thereby injure the Claimants.
198. It is, however, clear that during March and early April 2016, Mr Junaid, Mr Razi, Mr Hasib and Mr Adib were all acting in combination to achieve a common end. Their objective, as I have already stated, was to dissolve Food Trends and to establish a new company which would take over the Premises, under a new lease, and the business of

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Food Trends, i.e. the Pepe's franchise at the Premises. I do not accept that injury to the Claimants was either their intention or a necessary corollary of what they were planning. They intended to dissolve Food Trends, transfer the Premises and the assets of Food Trends to a new company, operating under a new lease, and to continue Food Trends' business. Their intention was, in my judgment, at the very least until they received the Claimants' solicitors' letter of 12 April 2016, to negotiate a new franchise agreement with the Claimants and to continue as a Pepe's franchise.

199. I do not accept the submission made by the Claimants that the Defendants' intention, even at this point (i.e. March and early April 2016), was to replace the Pepe's franchise at the Premises with a Rio's franchise. Insofar as the Claimants' case is put on the alternative and narrower basis that the Defendants' intention, if not present throughout, was present in the period immediately prior to the closure of the Premises then I reject that basis also. In reaching that conclusion, the following pieces of evidence are, in my view, of particular importance:
- i) Mr Razi's message of 6 March 2016 in which he stated: "What's the update with the Franchisor contract and when are we going to meet up with Munir. This was discussed last month and please provide us with some updates as this is an urgent priority".
 - ii) Mr Razi's email of 21 March 2016 in which he stated that the new company "will take over the premises and business" of Food Trends, without any reference to the company operating from the Premises under a different franchisor (still less, as a Rio's Piri Piri);
 - iii) Mr Qureshi's email to Mr Hussain of 9 April 2016 in which he proposed a meeting "to discuss the ability and credibility of new franchisee" and referred to a "New Franchise Agreement, which will include 25% shares of my new company".
 - iv) Mr Sawyer's note of his meeting with Mr Qureshi on 11 April 2016 in which the latter is recorded as stating that the Investors' intention was to have Mr Junaid "running both Rio's and Pepe's for them".
 - v) Mr Razi's email to Mr Qureshi of 13 April 2016 in which he stated: "... OSI have asked you number of times [sic] for the past few months to arrange a meeting with Pepes [sic] Management to discuss our ownership and management model and future management involvement..."
 - vi) Mr Qureshi's message to Mr Hussain on 15 April 2016 where he stated that having met with Mr Razi, Mr Hasib and Mr Adib: "... without any hesitation they want to continue with Pepes [sic]..."
 - vii) Mr Razi's statement in the meeting of 27 April 2016, as recorded by Mr Sawyer, that it was "always their intention to meet Pepe's to discuss running it under new management".
 - viii) The absence of any reference in any of the contemporaneous communications passing between the alleged conspirators, whether emails or electronic

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messages, to any intention to operate the Premises as a Rio's Piri Piri, or indeed as anything other than a Pepe's Piri Piri.

All these contemporaneous pieces of evidence point towards the plan of Mr Junaid and the Investors being to continue the Pepe's franchise at the Premises. In my judgment, it is the most likely explanation for what occurred. I decline to infer any intent on the part of any of the Defendants either to cease the operation of the Pepe's franchise at the Premises or to injure the business of the Claimants.

200. I therefore reject the Claimants' case based on the tort of conspiracy. There was no conspiracy to injure the Claimants; the intention of the Defendants was, in my judgment, to ensure the continued operation of the Pepe's franchise at the Premises, something which would have been in the Claimants' interests. As the tort of conspiracy requires an intention to injure the claimant, whether directly or as a necessary consequence of the Defendants' actions, the Claimants' case on this issue must fail.
201. It is therefore unnecessary, on the facts of this case, for me to determine the issue of law to which I referred at paragraph 72 above, i.e. whether a breach of contract can constitute the unlawful means sufficient to establish the tort of conspiracy to injure by unlawful means. I prefer to express no view on that issue, particularly given that I was not taken to many of the authorities that were considered by Morgan J in the *Digicel* case.

[b] Using unlawful means to injure the Claimants' business

202. This claim fails for two reasons. The first reason is the absence of an intention to injure the Claimants' business, the requisite intention being the same as for the tort of conspiracy to injure by unlawful means. The second reason is that none of the Defendants' actions that are complained about in these proceedings was unlawful as against, and therefore actionable by, Food Trends. The pleaded actions of the Defendants about which complaint is made are the causing, encouraging, permitting or facilitating of breaches of the Franchise Agreement by Food Trends, the establishment of the Rio's store at the Premises and the termination of the Franchise Agreement. But none of these matters could have been the subject of an action against the Defendants by Food Trends – they were not unlawful conduct by the Defendants as against Food Trends. As the House of Lords said in *OBG v Allan*, the unlawful means employed by the alleged tortfeasor for the purpose of this tort must be unlawful as against the third party (in this case, Food Trends).
203. Mr Jones QC submitted that inducing a breach of contract by a third party could amount to the tort of causing loss by unlawful means. He relied for this proposition on the speech of Lord Diplock in *Hadamor Productions Ltd v Hamilton* [1983] 1 AC 191, HL, at 228-229. In that case, the plaintiff was a television production company. It had made a series of films for sale to broadcasting companies. Five of the films were transmitted by a broadcaster, Thames Television. The transmission of a further films was stopped by industrial action by Thames' employees (a process known as 'blacking'), which had been approved by a resolution in a meeting of members of the Association of Cinematograph Television and Allied Technicians (ACTT), a trade union. The members feared that there might be redundancies if films which could be made in the broadcaster's own studios were made by external production companies.

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The plaintiff sought an injunction against the defendants, Mr Hamilton and Mr Bould, who were officials of the trade union, restraining them from instructing their members to act in accordance with the resolution. Dillon J refused to grant the injunction; the Court of Appeal allowed the plaintiffs' appeal. The defendants appealed to the House of Lords, which allowed their appeal on the ground that although the plaintiffs might establish that the defendants had committed the tort of intimidation, it was overwhelmingly likely that the defendants would be able to establish at trial that their actions were immune from liability in tort pursuant to s.13 of the Trade Union and Labour Relations Act 1974.

204. Lord Diplock gave the leading speech, with which the other members of the Appellate Committee agreed. At page 228 of the report, he addressed the third issue in the appeal, which was whether the defendants were entitled to immunity under the terms of the 1974 Act, stating:

“My Lords, one can leave aside the tort of conspiracy to injure a man in his trade or business. Hadmor does not rely on that for reasons that are obvious in view of the recent decision of this House in *Lonrho Ltd v. Shell Petroleum Co. Ltd. (No. 2)* [1983] 3 W.L.R. 33; however misguided the purpose of A.C.T.T. in threatening the blacking may have been, that purpose was not to injure Hadmor however inevitably injury to Hadmor might be one result of the blacking. As already mentioned in connection with issue (i), the tort upon which Hadmor relies is interference with its trade or business by unlawful means; and the unlawful means relied upon consisted in the acts of Hamilton and Bould in threatening that they would induce other persons, viz. A.C.T.T. members employed by Thames, to break their contracts of employment with Thames. Such an act is capable of constituting unlawful means, and if its effect is to cause damage to someone, even though he is not a party to the contract threatened to be broken, by interfering with that third party's trade or business, it is actionable as a tort to which the name “intimidation” was attached by this House in *Rookes v Barnard* [1964] A.C. 1129...”

205. I do not consider that this passage is authority for the proposition advanced by Mr Jones QC. The unlawful means relied on in that case was the threat by the defendants to cause the employees of Thames Television to break their contracts with that company. That threat would have been actionable at the suit of the third party, Thames Television. This was not a case, like the present case, in which it was alleged that the defendants had induced a breach of contract by the third party. Rather, they had threatened to cause the third party's employees to breach their contracts with the third party. It is on that basis that their actions constituted ‘unlawful means’ for the purpose of this tort, because the threats were unlawful acts against Thames Television.
206. Indeed if this passage in Lord Diplock's speech were authority for the proposition advanced by Mr Jones QC then it is surprising that the case was not even cited to the House of Lords in *OBG v Allan*. I consider that the law in relation to what constitutes

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unlawful means for this purpose is set out in the speech of Lord Hoffmann in that case at [51]:

“Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant.”

As Lord Brown went on to explain at [320]:

“... In this tort there is no question of the third party's conduct (which ex hypothesi will have been inhibited or obstructed by the defendant's actions) being unlawful vis-à-vis the claimant; if it were, the case would be one of *Lumley v Gye* secondary liability. Rather the unlawfulness is that of the defendant towards the third party and the defendant's conduct must be such as would be actionable at the suit of the third party had he suffered loss...”

207. Inducing a breach of contract by Food Trends was not an unlawful act as against Food Trends. It might be unlawful as against the Claimants but, as the majority held in *OBG v Allan*, that does not amount to the tort of using unlawful means to injure the Claimants' business. It gives rise to a different tort. It is to that third cause of action that I now turn.

[c] Procuring a breach of contract

208. The tort of procuring a breach of contract, unlike the other torts relied on by the Claimants, does not require the establishment of an intent to injure the claimant. I do not accept Mr Welch's submission that the Claimants' case is entirely dependent on what he termed their “conspiracy theory”. What this tort requires is knowledge on the part of the defendant of the action complained of and knowledge that it constitutes a breach of contract.
209. In my judgment, each of Mr Junaid, Mr Razi, Mr Hasib and Mr Adib are fixed with actual, or if not that then constructive (i.e. ‘blind eye’), knowledge of the Franchise Agreement and of its terms. In the case of Mr Junaid, it is clear that he knew about the Franchise Agreement, and its terms, because he signed it; indeed, during 2014 and 2015 he was at pains to obtain legal advice on the precise effect of its terms.
210. I have rejected the evidence of Mr Razi, Mr Hasib and Mr Adib that they never read the Franchise Agreement. Each of them was the recipient of an email containing what purported to be a copy of the agreement and they drafted (in the case of Mr Adib) and signed (in each case) a contract which referred to and purported to annex the Franchise Agreement. If I am wrong about that, then each of them is fixed with knowledge of the terms of the Franchise Agreement. Even if they did not in fact read the Franchise Agreement at any point, then the evidence clearly demonstrates that they turned a blind eye to its provisions.

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211. The next question is whether Food Trends breached any of the terms of the Franchise Agreement that are relied on by the Claimants in relation to this tort. I have set those terms out at paragraphs 66 to 68 above. I shall deal with them in turn:
- i) I do not consider that Food Trends was in breach of Clause 6.1.3. Food Trends had not breached the terms of the Lease of the Premises.
 - ii) I do consider that Food Trends breached Clause 6.1.5 of the Franchise Agreement. In my judgment, the surrender of the lease by Mr Qureshi, acting as a director of Food Trends, on 8 April 2016 was a breach of this Clause because it was a disposition of the lease of the Premises to a person who was not a buyer of the Pepe's franchise business. In my judgment, the meaning of the contractual term 'disposition' in this context includes the surrender of the lease; otherwise, Clause 6.1.5 would be rendered nugatory.
 - iii) I do not consider that Food Trends was in breach of Clause 6.1.8. The Pepe's signage was on display at the Premises during the entirety of Food Trends' occupation of the Premises. I do not consider that this Clause of the Franchise Agreement can be construed as requiring Food Trends to display signage at the Premises when it was no longer in occupation and had no longer got any interest in the Premises.
 - iv) Again, I do not consider that Clause 6.1.10 was breached by Food Trends. Whilst Food Trends was in occupation of the Premises, they met the required specifications. Further, insofar as alterations to the exterior and interior of the premises were carried out following the surrender of Food Trends' lease, they were not carried out by Food Trends.
 - v) Similarly, I do not consider that the obligation in the Franchise Agreement to keep the Premises open during specified trading hours, in Clause 6.3.6, can be construed as surviving a surrender of the franchisee's interest in the Premises.
 - vi) Insofar as Clause 6.3.16 provides that the Franchisee shall "*ensure that it is creditworthy at all times and that adequate finance is available to it to enable it to perform its obligation under this agreement and by way of working capital*" then Food Trends was in breach of this provision well before the events of March and April 2016. To the extent that Food Trends was in breach of this provision, then this was not a result procured by the actions of the Defendants – indeed Mr Junaid and the Investors provided substantial financial assistance to Food Trends.
 - vii) I do consider that Food Trends was in breach of Clause 6.3.22, but on a limited basis which is no more than a corollary of the breach of Clause 6.1.5. In my judgment, Food Trends' surrender of the Lease was an act which damaged the interests of the Claimants because it brought about a situation whereby the Pepe's franchise at the Premises could no longer be operated, with the consequence that the Claimants' management fees were not paid.
 - viii) Clause 8.1.3 which requires the Franchisee to pay to the Franchisor, "*without any deduction or set-off... the Management Fee on the fifth working day of the Month following the month to which the fee relates. The Management Fee*

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shall be increased by 5% in each year of the Term such increase to take effect on 1st January.” Food Trends was in breach of this provision, but, again, this is the corollary of the surrender of its lease of the Premises.

- ix) I do not consider that Food Trends breached Clause 14.3. The agreement was not disclosed by Food Trends to anyone other than those involved with Food Trends as directors and shareholders, or professional advisers.
- x) I do not consider that Food Trends breached Clause 16.3.14. I am unable to discern from the evidence anything to indicate that Food Trends behaved in an immoral manner.
- xi) I do not consider that the establishment of the Rio's franchise at the Premises amounted to a breach of contract by Food Trends. Nor was the termination of the Franchise Agreement itself a breach of contract by Food Trends – rather, it was the action of the Claimants in response to what they considered to be breaches of contract by Food Trends.

The breaches of contract, i.e. of the Franchise Agreement, by Food Trends that I have found established were, therefore, consequent upon the surrender of its lease of the Premises on 8 April 2016. The next issue is whether any of the Defendants is liable for inducing those breaches.

- 212. I consider that Mr Junaid, Mr Razi, Mr Hasib and Mr Adib are liable to the Claimants on the basis that it was their joint intention and plan, together with Mr Qureshi, for Food Trends to surrender its lease of the Premises. All of these Defendants participated in that plan. The surrender of the lease was the means to an end because it was the method by which these Defendants and Mr Qureshi planned to secure the grant of a new lease of the Premises to Optifoods. There was an intention on the part of these Defendants to interfere in the operation of the contract between the Claimants and Food Trends, because they all intended that Food Trends should cease to operate the Pepe's franchise at the Premises. I do not consider that the surrender of the lease on 8 April 2016, albeit done by Mr Qureshi on behalf of Food Trends, was an independent act on the part of Mr Qureshi for which none of the Defendants should bear responsibility. They each intended that to occur and indeed shortly thereafter the Investors themselves signed a new lease for the Premises in their capacity as directors of Optifoods.
- 213. Further, in my judgment these Defendants, i.e. Mr Junaid and the Investors, are fixed with the necessary knowledge that this was a breach of contract on the part of Food Trends. I accept that they did not positively believe that the surrender of the lease of the Premises would result in a breach the Franchise Agreement. Indeed, Mr Qureshi's evidence was to the same effect. I do not consider that, as Mr Welch argued, this defeats the Claimants' case entirely. I should add that I do not accept that this is a case of the mere prevention of performance of a contract, or a case in which these Defendants were doing that which they were entitled to do (see *Meretz* at [131]).
- 214. I accept Mr Jones QC's submission to the extent that it is, in my judgment, inherently improbable that Mr Junaid and the Investors did not consider that the surrender of Food Trends' lease would not be a matter with which the Franchise Agreement was concerned, both because they knew about the Franchise Agreement and also because

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they would have known that there was a contractual relationship between Food Trends and the Claimants which the surrender of Food Trends' right to occupy the Premises would inevitably affect. I agree with Mr Jones QC that they cannot have been so naïve as to have thought that the course of action upon which they agreed would have no impact whatsoever on the position of Food Trends under the Franchise Agreement.

215. In my judgment, Mr Junaid and the Investors were content for Food Trends to surrender the lease of the Premises, notwithstanding that it might amount to a breach of the contract between Food Trends and the Claimants, in the expectation that matters would in due course be resolved to the mutual satisfaction of everyone (including the Claimants) and the Pepe's franchise at the Premises would continue. That was not, however, what transpired. I consider that Mr Junaid and the Investors are liable to the Claimants for the tort of procuring a breach of contract on the basis that they all knew of the Franchise Agreement but were, recklessly, indifferent as to whether the surrender of the lease by Food Trends would amount to a breach of it. Mr Junaid and the Investors – together with Mr Qureshi – proceeded with their plan to surrender the lease without any consideration of whether Food Trends would thereby be breaching the Franchise Agreement. This is not the sort of case where a defendant negligently made the wrong inquiry, or reached a positive but mistaken conclusion that their act would not result in a breach of contract by the third party, or believed that they had a contractual entitlement to act as they did (see *Meretz* at [124-127]). In my judgment, the evidence demonstrates that Mr Junaid and the Investors simply abstained from consideration of the impact of their agreed course of action, in terms of any breach of the Franchise Agreement by Food Trends, because they were indifferent as to the effect of any potential breach of the Franchise Agreement which might result from their actions. They considered that a new agreement with Pepe's to permit them to continue the operation of the franchise would be forthcoming and were prepared for that reason to pre-emptively surrender the lease of the Premises. These Defendants were prepared to put Food Trends in breach of its obligations under the Franchise Agreement in the expectation that they would in due course be able to negotiate a new franchise with Pepe's. The actions of Mr Junaid and the Investors were clearly sufficiently connected with the breach of contract by Food Trends to attract accessory liability in these circumstances.
216. In my judgment, both Mr Junaid and the Investors (and, therefore, OSI and Optifoods, the companies which they controlled) must therefore bear the consequences of the breaches of contract which they, together with Mr Qureshi, caused Food Trends to commit. Had those breaches not occurred, then Food Trends would not have surrendered its lease on 8 April 2016 and would have continued trading as a Pepe's franchise at the Premises, at least in the short term.
217. In my judgment, the Claimants' case on liability is therefore made out to the extent that Mr Junaid and the Investors committed the tort of procuring a breach of contract on the part of Food Trends by their plan, in which they (and, for that matter, Mr Qureshi) were concerned, that Food Trends should surrender the lease of the Premises and thereby cease to operate the franchise business.
218. I reject the submission that the Defendants are able to rely on the defence of justification to avoid liability under this head of the Claim. That they may have been acting in what they perceived to be their own best interests does not amount to

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justification, for these purposes, of what would otherwise be tortious conduct – see *Edwin Hill & Partners v First National Finance Corporation Plc* [1989] 1 WLR 225 at 230, CA, cited by Lord Nicholls in *OBG v Allan* at [193].

H: Damages

219. I have found that Mr Junaid, Mr Razi, Mr Hasib, Mr Adib, OSI and Optifoods are liable to the Claimants in tort for procuring breaches of contract on the part of Food Trends arising from the surrender of its lease of the Premises on 8 April 2016. That breach resulted in Food Trends no longer being in a position to trade from the Premises. I approach the award of damages for the tort of procuring a breach of contract on that basis. As with liability, it is for the Claimants to prove, to the civil standard of proof, the nature and extent of the losses caused by the tortious conduct of which they complain.

[a] Management fees

220. The Claimants claim the sum of £2,523.07 in respect of management fees due until the termination of the Franchise Agreement on 27 May 2016. Thereafter, they claim as damages the sum of £88,905.45 in respect of future management fees until the conclusion of the period of 10 years provided for in the Franchise Agreement, i.e. until 29 April 2021.

221. At paragraph 5.10 of his report, Mr Blake, the Claimants' expert, stated:

“[Food Trends] had consistently shown an insolvent balance sheet position since inception which worsened as time progressed. In the abbreviated accounts filed for [Food Trends] for the period ended 30 September 2011, the company had cash of £3,296 and a net liabilities position of £85,693. In the last set of abbreviated accounts filed for [Food Trends] for the year ended 30 September 2014, the company had cash of £648, and a net liabilities position of £293,525.”

222. Mr Blake went on to state at paragraph 5.11 that Food Trends “had struggled since the business commenced”. He accepted when he was cross-examined that Food Trends could have been an insolvent business. He further accepted that Food Trends was failing and required investment if it was to survive. If Food Trends had failed then it would have gone into liquidation and there would not have been a Pepe's franchise operating in Northampton. Mr Blake's assessment chimes with the contemporaneous advice of the accountant in March or April 2016, reported by Mr Qureshi in his email to Mr Hussain on 9 April 2016, that Food Trends ought to be dissolved as a result of its financial difficulties.

223. In my judgment, the evidence clearly demonstrates that Food Trends was in such a poor financial state that it would have failed in any event very shortly after the events of early April 2016 about which the Claimants complain, and at the latest by the date on which the Franchise Agreement was actually terminated by the Claimants, i.e. 27 May 2016. If Food Trends had continued to trade from the Premises then it would have had to undertake the remedial work required by the Council and also make substantial improvements in its hygiene practices and undertake food hygiene training of its staff. All this would have required further investment. It is unlikely, in my judgment that Food Trends could have survived beyond the eight-week period that it

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was given by the Council for the required remedial works to be undertaken. It would, in my judgment, have failed at some point in May 2016.

224. To the extent that the Claimants assert that Food Trends was a viable business in early April 2016 and that it could and would have continued to operate as a Pepe's franchise in the medium and long term, I reject their assertion, which in my judgment is not supported by the available evidence. In large part it depends on their contention, which I have already addressed in some detail at paragraphs 117 to 123 above, that Food Trends submitted false VAT returns and filed false accounts, neither of which reflected its true financial position. But, as I have already concluded, the evidence to support that contention is largely absent – and, in the case of the sales data from the Claimants' own system, entirely absent.
225. I therefore award damages of £2,523.07 in respect of the management fee due to the Claimants for the period up to the termination of the Franchise Agreement. I reject the Defendants' argument that nothing at all should be awarded in respect of management fees because of Food Trends' poor financial position; Food Trends had continued to pay management fees to the Claimants, the last payment being in respect of the March 2016 monthly fee. Had it continued to trade then it would, in my judgment, have continued to pay the monthly fees. I do not however award any further damages in respect of future management fees beyond the end of May 2016 because they would not, in my judgment, have been paid by Food Trends because it would have failed anyway by that point, and ceased to trade, had the events now complained about by the Claimants not taken place. Had Food Trends failed at that point, then the evidence indicates that it would have been hopelessly insolvent and the Claimants would not have recovered anything in the insolvency, as indeed it appears they did not when it was in fact dissolved, a year or so after this Claim was issued.
226. I reject the Defendants' submission that the Claimants ought not to recover any damages under this head of loss because of Mr Qureshi's action, after the surrender of the lease, in applying to dissolve Food Trends. Firstly, the dissolution of Food Trends was itself part of the course of action that had been agreed upon by Mr Qureshi, Mr Junaid and the Investors in March 2016. Secondly, Food Trends was not in fact dissolved until 1 August 2017. It could therefore, had it not surrendered the lease, have continued to trade as a Pepe's franchise had it re-opened after the closure of 9 April 2016, albeit in my judgment the period of any such resumed trading would have been short.

[b] Loss of the ability to open a second store in Northampton

227. This claim is made in the sum of £170,759.26. It is put on the basis that the Claimants, if the events that are now complained of had not happened, would have opened a second Pepe's Piri Piri franchise elsewhere in Northampton but that they are now unable to do so because there are two Rio's shops in Northampton. Mr Blake, in his report, stated at paragraphs 6.17 to 6.19 that the damages should be assessed on the basis that a second 10-year franchise would have been entered into with effect from 12 May 2016, running in parallel with the continuing Pepe's franchise at the Premises. He calculates that the initial franchise fee and the monthly management fees due in respect of such a second Pepe's franchise would have been £170,759.26.

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228. I do not consider that this head of claim is supported by the Claimants' own evidence. There is nothing to indicate that Pepe's was considering opening a second franchise in Northampton at any point prior to the events complained of. Mr Hussain gave no evidence that this was ever even thought about, let alone of any intention to set up a second franchise in Northampton. Indeed, in early 2016 he was having active discussions with Mr Qureshi not about opening another store in Northampton but about the latter opening a new store in Milton Keynes. The furthest that Mr Sawyer went in his evidence was to note that there were several towns either similar to or smaller than Northampton with more than one Pepe's store operating, such as Watford, Leicester, Bournemouth and Bristol. He stated that this demonstrated that, prior to the matters complained of, Northampton had the potential for a second Pepe's store.
229. In my judgment, the bare suggestion that second Pepe's store might have opened in Northampton, or that Northampton had the potential to sustain a second Pepe's store, is not sufficient to sustain a claim for damages. Whilst Northampton might, as Mr Sawyer suggests, have been able to sustain a second Pepe's shop, that is nothing beyond speculation on his part and that of Mr Blake.
230. The Claimants have not addressed, sufficiently or at all, the question of whether the future opening of a second Pepe's franchise, in addition to that at the Premises, would have been viable. In any event, as I have already set out, there is simply no evidence to establish any prospect that such a second Pepe's franchise would ever have opened, and certainly none sufficient to found a claim in damages against the Defendants.
231. Furthermore, neither Mr Blake nor Mr Sawyer, when speculating about the possible opening of a second Pepe's franchise in this way, operating additionally to that at the Premises, took into account the established presence of the Rio's shop at 206 Wellingborough Road, a location in Northampton described by Mr Khan in his evidence as a "prime location". Whilst this might not have been something counting against the Claimants had I upheld their claim in conspiracy on the basis that the very opening of this store was part of a conspiracy to injure their business, that is not the basis upon which damages fall to be assessed. Even if I had upheld the Claim on that basis, I would not have awarded anything under this head for the other reasons given above.
232. I therefore award nothing for the claimed loss arising from alleged inability to open a second Pepe's shop in Northampton.

[c] Additional marketing spending

233. There was no specific claim made in the Particulars of Loss and Damage set out in the Particulars of Claim for the cost of additional marketing spending consequent upon the alleged torts, although there was a claim made for "loss of revenue by the Business generally" which was quantified as, "To be confirmed upon receipt of expert evidence..." which might be said, given the breadth of the language used, to encompass it. This aspect of the Claim as now advanced appears to have been first intimated in any detail in Mr Hussain's first witness statement, which was served in August 2018. Thereafter, it was quantified by Mr Blake in his reports and was then responded to by Mr Cohen. I did not understand Mr Coulter to take any "pleading point", as he described it, in respect of this head of loss when opposing the Claimants'

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application, which I allowed, to admit the further expert and witness evidence – although Mr Coulter did take such a point at that stage in relation to the issue of whether the Claimants had sufficiently pleaded the issue of the alleged loss in relation to a second premises in Northampton. Nor was any such issue raised by Mr Coulter in his skeleton argument or his opening oral submissions, both of which addressed the merits of the claim being advanced under this heading. The matter was then the subject during the trial of a good deal of evidence and of cross-examination. In his oral closing submissions, however, Mr Coulter submitted that this head of loss was not recoverable because it had not been sufficiently pleaded.

234. In all the circumstances, in my judgment it would have been unjust to debar the Claimants from pursuing this loss, which had been the subject of extensive evidence from both parties' witnesses and the experts. If any issue was to be taken regarding the adequacy of the Claimants' statement of case, including the particularisation of their alleged losses, then it should have been raised in the trial skeleton argument, in the oral opening submissions at the beginning of the trial and/or in response to the application to admit the further evidence which dealt with this issue.
235. In my judgment, insofar as there was any divergence from the pleaded case by the Claimants advancing this claimed loss then not only should the issue have been raised at an earlier stage but in the circumstances there was no disadvantage at all to the Defendants in permitting the Claimants to pursue it. At the conclusion of the parties' closing submissions I therefore permitted the Claimants to file a revised Schedule of Loss setting out this claim specifically and quantifying the amount pursued.
236. There was a good deal of argument on behalf of the Defendants regarding the sums claimed under this head, Mr Coulter and Mr Welch submitting that it was both unevicenced and exaggerated. I was not however addressed on the issue of whether damages for marketing spending were in principle recoverable, given that the main object of such damages was expressed by the Claimants' evidence as being to cure reputational damage said to arise from the commission of the torts alleged. I therefore proceed, without deciding the point, on the basis that such damages are recoverable in principle.
237. In his first witness statement, which was filed and served in August 2018, Mr Hussain stated that as a direct result of the closure of the Northampton store he had authorised a large-scale marketing campaign during 2016 and 2017, resulting in a massive marketing overspend. He did not however detail the precise amount being claimed from the Defendants. In his report dated 12 October 2018, the Claimants' expert, Mr Blake, quantified the additional marketing expenditure incurred by Pepe's as a result of the closure of the Northampton store as being in the range £140,813.98 to £322,209.25. His view was that the lower end of this range would be most appropriate. In his addendum report dated 9 January 2019, Mr Blake revised these figures substantially. The range given in his addendum report was £76,688.98 to £209,585.25. This represented a reduction of 43 per cent at the lowest end of the range. Again, Mr Blake was of the view that the lower end of the range given was the most appropriate.
238. The figure ultimately pursued by the Claimants in Mr Jones QC's closing submissions and in the revised Schedule of Loss in respect of this claimed head of loss is however substantially lower even than that given by Mr Blake in his addendum report. The

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final claim for this head of loss is in the range £18,212.98 to £151,109.25. This represents a reduction in the sum claimed at the lowest end of the range of 87 per cent from the figure given in Mr Blake's first report and 76 per cent from that given in his addendum report.

239. In his first report, Mr Blake calculated the Claimants' losses by considering the amount spent by the Claimants on advertising and marketing. After stripping out spending on advertising outside the UK, he arrived at a figure for £265,569.25 in respect of advertising. It was not possible to determine how much of the £56,540 for marketing related to non-UK expenditure. Therefore, Mr Blake took the view that the maximum extent of the Claimants' losses was the total of those two figures, i.e. £322,209.25. This was the higher end of the range given in his first report.
240. Mr Blake calculated the losses using an alternative method, based on advertising expenditure on television, cinema and radio advertising only. He calculated that the total expenditure on these methods of advertising was £148,225.24. As Mr Sawyer had referred to a "significant" increase in advertising spending, Mr Blake applied what he described as "the statistical meaning" of the term "significant", which he considered to be 95 per cent. Accordingly, he put the Claimants' losses on this basis at £140,813.98 (i.e. 95 per cent of £138,225.24). This was the lower end of the range given in his first report.
241. In his addendum report, Mr Blake made adjustments to these figures, as follows:
- i) By reallocating three transactions as 'foreign' expenditure, reducing the amount of advertising spending by £21,100.00.
 - ii) By making an allowance under the first method for the advertising and marketing spending that had already been budgeted in 2017. The relevant budgeted figures totalled £91,524.00.
 - iii) By making an allowance under the second method for the budgeted advertising spending on television, cinema and radio advertising for 2017. The relevant budgeted expenditure was £67,500.00.

Accordingly, the figure arrived at under the first method of calculation was reduced by a total of £112,624, becoming £209,585.25. That arrived at by the second method was reduced by £64,125 (i.e. to 95 per cent of the revised advertising expenditure figure of £80,725.24), becoming £76,688.98.

242. In his closing submissions and in the amended Schedule filed after the hearing, Mr Jones QC reduced each of these figures by a further sum of £58,476. This was to reflect the fact that the 2017 advertising budget (at £91,524), which Mr Blake had used to calculate the amount of the overspend, was substantially lower than that for 2016 (at £145,000) due to a factor entirely external to the matters with which this Claim is concerned. When the advertising budget for 2017 was set, it had been the Claimants' intention to activate a clause in the agreements with their franchisees requiring the franchisees to contribute a percentage of their income to a national marketing fund. The central marketing budget for 2017 was deliberately reduced to take account of this expected development. However, as it turned out the Claimants did not activate the national marketing fund during 2017. The budgeted figure was

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not, however, then adjusted back upwards to take account of the lack of the expected new fund. These matters only became apparent during Mr Coulter's cross-examination of Mr Sawyer; it appears that Mr Blake was not made aware of them. The Claimants accepted that it would not be appropriate in these circumstances to base any claim for overspending on the 2017 budgeted figure and therefore applied a revised notional budget of £145,000 for 2017 – the same figure that had been budgeted for 2016 – resulting in the downward adjustment to which I have referred.

243. That, then, is the way in which this aspect of the claim evolved. The question remains, however, whether any part of the revised sums claimed should be awarded as damages.
244. In my judgment, the difficulty with this aspect of the claim was well put by Mr Blake at paragraph 6.31 of his first report, where he stated: "... it is not clear which marketing expenditure was additional, beyond Mr Sawyer's reference to television, cinema and radio spending increasing significantly..." This problem becomes all the more acute when the issue to which I have referred at paragraph 242 above is taken into account – how is it possible to determine what expenditure above the budgeted figure during 2017 was due to the lack of a national marketing fund and how much due to the closure of the Northampton store?
245. Mr Hussain's evidence when cross-examined was that decisions on advertising and marketing spending were ultimately his. He said that he was passionate about this aspect of his business and that he had wanted to show that his brand was strong following the closure of the Northampton store. He accepted that Pepe's was already marketing nationally. In terms of the increased spending, Mr Hussain said that he himself decided on what he felt was the right thing to do, and instructed agencies to carry out the campaigns. His evidence was that he was particularly concerned about the risk to his brand of what he described as a "breakaway" store.
246. Notwithstanding what amounted to a warning in paragraph 6.31 of Mr Blake's first report about the lack of clarity in this aspect of the claim, both Mr Hussain and Mr Sawyer were however unable to identify when cross-examined which spending had been undertaken as a result of the closure of the Northampton store. It appears that no records were kept by the Claimants of what additional advertising or marketing was undertaken as a result of the closure of the Northampton store – another instance of the sort of poor record-keeping on the part of the Claimants to which I have referred at paragraphs 94 to 101 above. Mr Hussain said that the increased spending had not been focused on Northampton – in which there was no longer a Pepe's store – but on various towns across the country. He was, however, unable to name those towns when asked to do so.
247. When Mr Sawyer was cross-examined on this issue, he said that there was no formality about the additional spending, it was simply that Mr Hussain would have said to him that Pepe's needed to spend more money on particular things. Mr Sawyer could not say what the additional expenditure was, when it took place or why it occurred. He accepted that the total expenditure could have been broken down to show what was additional, but that it had not been. He accepted that it was not possible to ascertain from his evidence what would have been spent anyway.

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248. The Claimants have not disclosed any records, minutes of meetings or details of their advertising and marketing campaigns that would enable an assessment of the true extent of any additional advertising spending consequent upon the closure of the Northampton store. Insofar as Mr Hussain made the decisions about what marketing to undertake, he appears to have made no effort to record or itemise what parts of the expenditure he was authorising were attributable to the closure of the Northampton store. That is all the more surprising in light of the fact that the Claimants had already issued this Claim against the Defendants on 6 July 2016 and so Mr Hussain was well aware during the latter part of 2016 and during 2017 that the Claimants would be seeking damages from the Defendants as a consequence of the closure of the Northampton store. It is even more surprising given the very detailed schedules of the management time spent dealing with the issues arising from the closure of the Northampton store which have been prepared by the Claimants in support of their claim for damages for lost management time, an issue to which I will return.
249. In my judgment, the Claimants have not proved that they suffered any identifiable loss under this head of claim. The figures given by Mr Blake – as revised substantially downwards, for the reasons given above – represent no more than possible representations of the true amount of any losses that might be attributable. To adapt Mr Blake's own words at paragraph 6.31 of his report, it is simply not clear what expenditure was and what was not additional, in the sense of having been undertaken as a result of the closure of the Northampton store.
250. Whilst I consider that this aspect of the Claim fails because the Claimants have not proved what, if any, additional spending on advertising and marketing was undertaken because of the closure of the Northampton store, it suffers from other significant difficulties. The first is that insofar as there was any such additional expenditure, the Claimants adduced no evidence to demonstrate that Mr Hussain's apparent fears about the impact on the Pepe's brand of the closure of the Northampton store were justified. There was, in my judgment, no adequate evidence of the supposed reputational damage to the Pepe's brand said to have given rise to the need for the additional spending on advertising.
251. Mr Sawyer's evidence, when cross-examined, was that no franchisee had raised this issue with him directly, although he believed that they had done so with Mr Hussain and with Mr Khan. Mr Khan's evidence was that since April 2016, many potential and current franchisees had asked him questions about what had happened to the store in Northampton and that they were worried that something had happened which might impact the Pepe's brand. He said that he would tell them only that the store had stopped trading without the approval of Pepe's Head Office and that there were ongoing court proceedings. Mr Khan did not however go on to say that this response was unsatisfactory to any of those who were given it or that they expressed any further concern about damage to the Pepe's brand.
252. Mr Hussain's evidence was that when the Northampton store closed, both he and Pepe's Head Office had calls from the general public and from existing franchisees asking why it had closed. Franchisees had asked whether there was something wrong with the Pepe's brand. Mr Hussain said that he was very concerned and as a result authorised a large-scale marketing campaign during 2016 and 2017 to demonstrate to existing and prospective franchisees and to the general public that the Pepe's brand was "still strong".

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253. The Claimants did not call any evidence from any existing franchisees to demonstrate any impact on either the Claimants' business or that of their franchisees as a result of the closure of the Northampton store and/or its re-opening as a Rio's Piri Piri. Mr Lee Hussain, a prospective franchisee whose witness statement was admitted in evidence by agreement between the parties, gave evidence that he approached Pepe's Head Office about becoming a Pepe's franchisee. A friend with whom he wanted to go into partnership had already opened two Pepe's franchises in Birmingham. Mr Lee Hussain did not give evidence that he or his friend had even heard about the closure of the Northampton store or that it had any impact on their decision to approach Pepe's about opening a new franchise.
254. Mr Lee Hussain attended a meeting at Pepe's Head Office in October 2016 at which it was suggested by Pepe's that he open a store in Northampton; he was sent details of a site at 219-225 Wellingborough Road. Mr Lee Hussain visited Northampton and spoke to local people and to staff at the Rio's shop that had opened at the Premises. His evidence was that he decided not to take up the offer of a franchise in Northampton because he was not satisfied that both brands (i.e. Rio's and Pepe's) could do well operating so close to each other. He did not suggest that the Pepe's brand had been damaged either in his own view or in that of anyone to whom he had spoken. Therefore, the only evidence called by the Claimants from an existing or prospective Pepe's franchisee was not to the effect that there had been any damage to the Pepe's brand as a result of the closure of the franchise at the Premises and its re-opening as a Rio's.
255. In my judgment, even if the Claimants had been able to prove what, if any, marketing spending was attributable to the closure of the Northampton store, their claim for damages would have failed anyway because the evidence simply does not establish that the wider – indeed, national – impact on the Pepe's brand that was perceived by Mr Hussain as resulting from the closure of the Northampton store had actually occurred. It was open to the Claimants to call witness evidence – for example, from the unnamed franchisees referred to by Mr Khan and Mr Hussain in their evidence as having asked what had happened in Northampton – to establish this, but they did not do so. Nor does it appear that any assessment was ever done by the Claimants – for example, by way of market research or polling either of franchisees or members of the public generally – to establish what, if any, level of impact on the Pepe's brand the events in Northampton which are the subject of this Claim had.
256. In these circumstances I do not regard Mr Hussain's assumption that there had been widespread – indeed, national – damage to the reputation of Pepe's and to its brand as a result of the closure of the Northampton store and/or its having reopened as a Rio's Piri Piri, such that a significant increase in advertising spending was necessary in order to protect Pepe's business, as having any objective basis. I would therefore not have awarded anything for this head of loss, even if the Claimants had been able to establish what sums had in fact been spent as a result of the closure of the Northampton store at the Premises.
257. I therefore award nothing for the claimed additional marketing spending.

[d] Mr Sawyer's additional consultancy fees

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258. The Claimants claim as damages the sum of £60,290.10 in respect of fees for Mr Sawyer's work from 16 August 2016 until service of their expert's report in October 2018 and continuing at the rate of £2,000 per month thereafter.
259. In 2012, Mr Sawyer's consultancy, Business Options, entered into a contract with Pepe's for Mr Sawyer to work for two days per week as Pepe's Head of Franchising. Business Options was paid £6,500 per month for this work. The Claimants do not make any claim in respect of this work.
260. Mr Sawyer's evidence, in his second witness statement, was that once what he described as the "Northampton case" arose, he spent additional time on "managing aspects of the Northampton case which was impacting on the contracted 2 days a week ad hoc support." This was initially invoiced on an hourly basis from 16 August 2016 until 27 April 2017 when a new contract was entered into for his work "relating to the Northampton case" at a fixed sum of £2,000 per month.
261. The first two Business Options invoices, covering the first period of Mr Sawyer's work up to 27 April 2017, describe the work done as "Exceptional Project Work Northampton RFI related work". They are in the total amount of £3,625.42. Thereafter, Business Options' monthly invoices for Mr Sawyer's work, in the sum of £2,000, state that they are for "legal support". Mr Sawyer explained in cross-examination that he was in effect managing the litigation process on behalf of the Claimants and that his work in respect of which the claim for damages is now made was related specifically to the litigation.
262. I pause here to note that the work done by Mr Sawyer which is now being claimed for was wholly additional to and separate from his existing duties. He was not diverted from his work as Head of Franchising, which he continued to perform, as before, on two days per week. The claim is not one for the diversion of management time, or staff costs. Rather, the Claimants saw fit to engage Mr Sawyer's services, through Business Options, on a further and entirely separate contract for the provision of litigation support.
263. As a general rule, expenses incurred by a party in connection with the conduct of litigation are recoverable, if at all, pursuant to an order for costs rather than as damages for the tort complained of in the litigation itself. There is a dividing line in this regard between "work referable to the claim and work referable to the attempted reconstitution of the claimants' business activity": see *Aerospace Publishing Ltd & Another v Thames Water Utilities Ltd* [2007] EWCA Civ 3, 110 Con LR 1 ("*Aerospace Publishing*") at [75] *per* Wilson LJ. In *Al-Rawas v Pegasus Energy Ltd & Others* [2008] EWHC 617 (QB), [2009] 1 All ER 346 ("*Al-Rawas*") at [24], Jack J stated:
- "... I accept that management time spent on preparing a claim for damages for breach of contract is not recoverable as damages. I also accept that it is not recoverable as costs, and so is irrecoverable. That is the law..."
264. In my judgment, the sums expended by the Claimants on these fees for Mr Sawyer's work in providing "legal support" to them are not recoverable as damages. This element of Mr Sawyer's work, valuable to the Claimants though it may have been,

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was undertaken solely in relation to this litigation. It was undertaken entirely after the issue of these proceedings and indeed almost all of it was undertaken under a specific contract for "legal support" and invoiced to the Claimants as such.

265. There is a clear distinction, in my judgment, between expenditure incurred by a claimant in consequence of the commission of the tort, and expenditure incurred by a claimant in connection with the conduct of litigation in respect of the tort. One type of expenditure is recoverable as damages for the tort, the other is not. In my judgment, this claimed loss falls into the latter category.
266. I therefore award nothing in respect of the claim for consultancy fees for litigation support undertaken by Mr Sawyer.
267. For the avoidance of doubt, I do not determine whether these fees would be recoverable under any order for costs, if one were to be made in the Claimants' favour. I did not hear argument on that issue which, if it arises, will be a matter for a Costs Judge to determine on assessment.

[e] Management time

268. The Claimants claim the sum of £29,600.10 in respect of lost management time from October 2015 to March 2019. I have been provided with three very detailed itemised schedules by the Claimants, setting out the time claimed. There are three tranches, each represented by a separate itemised schedule which is headed "Northampton Issue Time Analysis":
- i) From 2 October 2015 to 22 June 2016, claimed in the sum of £16,264.69;
 - ii) From 23 June 2016 to 2 January 2019, claimed in the sum of £10,427.08;
 - iii) From 1 January 2019 to 5 March 2019, claimed in the sum of £2,908.33.

I have examined each of these schedules. Most of the items on the schedules are for tasks that it is said took 5 or 10 minutes to undertake – it seems that units of 5 minutes have been used throughout, as they might be in a solicitor's timesheet.

269. I will deal first with the second and third schedules, covering the period from 23 June 2016 to 5 March 2019. All of the items on these schedules relate to time spent by the Claimants' staff – and almost entirely to time spent by Mr Hussain. A total of 132 hours and 15 minutes of Mr Hussain's time is claimed for on those two schedules, at a rate of £100 per hour. All the items relate to actions taken in relation to the conduct of this litigation. So, for example, on 31 January 2017 there is a claim for 120 minutes of Mr Hussain's time (i.e. for £200) in respect of a meeting with the Claimants' solicitors and counsel. There are many entries for 5 minutes or 10 minutes which are apparently claims for Mr Hussain's time in relation to reading emails from the Claimants' solicitors about matters such as costs budgeting, disclosure, instructions to the Claimants' expert, witness statements and other general case management issues.
270. In my judgment, all the sums claimed on the latter two schedules are not recoverable for the reasons given at paragraphs 263 to 265 above. They relate to time spent by the

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Claimants' staff on the day-to-day preparation for and conduct of this litigation. They are not recoverable as damages.

271. The first schedule includes claims for time spent by Mr Hussain, Mr Sawyer and Mr Khan. Given that I have rejected the claims in conspiracy and unlawful interference, then I do not consider that time spent prior to the commission of the breaches of contract is recoverable because I do not consider that it can be said to have been caused by the tort that I have found to be established, that of procuring a breach of contract. I therefore disallow the items claimed on the first Schedule up to and including 23 March 2016 on that basis. There is nothing claimed between 23 March 2016 and 9 April 2016, by which time the breaches of contract had occurred and, on my findings, the tort had been committed.
272. From 5 May 2016 onwards, almost all the entries in the schedule relate to communications with the Claimants' solicitors and counsel, or to prepare for and take steps relating to this litigation; insofar as there are any entries relating to any other matters after this time then their impact on the Claimants' business is in my judgment *de minimis*. Thus on 5 May 2016, both Mr Hussain and Mr Sawyer charged a total of 40 minutes for reviewing a claim form and seven letters. On 17 May 2016, Mr Sawyer spent 10 hours creating what is described in the schedule as a "case chronology and supporting documents for counsel" and then on 19 May 2016 both Mr Hussain and Mr Sawyer travelled to London for a four-hour conference with counsel. All this time is claimed as damages, at hourly rates of £100 for Mr Hussain and £81.25 for Mr Sawyer. I disallow these items as irrecoverable in principle for the reasons given at paragraphs 263 to 265 above.
273. That, then, leaves the period on the first schedule from 9 April 2016 to 4 May 2016. Over this period of 26 days, covering three-and-a-half working weeks, a claim is made for staff time totalling approximately 59 hours. Almost all the time claimed is in respect of work done by Mr Hussain and Mr Sawyer. The average time claimed by each of them over the period in question is therefore approximately one hour and 45 minutes each per working day. Although a significant amount of that time is claimed for communication with the Claimants' solicitors, I am prepared to assume, in the Claimants' favour, that it is not irrecoverable in principle.
274. In the *Aerospace Publishing* case at [79-85], Wilson LJ (giving the leading judgment on this issue, with which Pill and Longmore LJ agreed) reviewed the then existing case law on claims for diversion of staff time. At [86], he held that the authorities established three propositions, which I summarise as follows:
- i) the claimant must establish by evidence the fact and extent of the diversion of staff time;
 - ii) the claimant must establish that the diversion of staff time caused "significant disruption to its business";
 - iii) unless the defendant can establish the contrary, it is reasonable to infer from the disruption that the staff concerned would have applied their time to activities which would, directly or indirectly, have generated revenue for the claimant at least equal to the cost of employing those staff.

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275. In my judgment, this aspect of the Claimants' claim fails on the second of these propositions. Whilst I accept, based on the evidence of Mr Sawyer and the content of the third schedule, that staff time was diverted as a result of the commission of the tort that I have found to be established, the Claimants have not demonstrated that this diversion of time caused significant disruption to Pepe's business. Mr Hussain's evidence on this issue, given in his second witness statement, was very brief and in general terms, to the effect that the management time spent "in attending to the Northampton position" was time that had not been spent on expansion and strengthening of the brand. He did not further describe or explain the impact on the Claimants' business of the diversion of staff time, something which is my judgment is of particular significance given the evidence that Pepe's was undergoing a significant nationwide expansion during the period in respect of which the claim is made. Mr Sawyer's evidence on this issue, again in his second witness statement, was limited to setting out the amount of time spent "on the Northampton store matter"; he did not describe the impact on Pepe's business of this lost staff time.
276. In my judgment, the Claimants' evidence does not establish any significant disruption to Pepe's business resulting from the diversion of staff time, whether for the period from 9 April 2016 to 4 May 2016 (i.e. the period in which I have held that the claimed damages for diversion of staff time are not irrecoverable) or otherwise. Indeed, as the Defendants point out, Pepe's underwent a significant national expansion during the period for which the claim for damages for the diversion of staff time is made. In June 2017, the announcement by MBI Surveyors to which I referred at paragraph 144 above stated that they had completed four acquisitions of sites for Pepe's stores over the previous two months and that Pepe's was "now approaching 60 units as the national brand continues to grow from strength to strength". A subsequent announcement on the Pepe's website heralded the opening of Pepe's 75th store in the UK.
277. I therefore award nothing in respect of the claim for damages in respect of staff time.

[f] Mitigation

278. It is not necessary for me to deal in any detail with the points raised by the Defendants regarding the Claimants' efforts to mitigate their losses, because in large part I have held that the claimed losses are either irrecoverable in principle or have not been established on the evidence. To the limited extent that I have allowed the Claimants' claim for damages in respect of further management fees due under the Franchise Agreement, I do not consider that there is any failure to mitigate such losses on the part of the Claimants in the immediate aftermath of the collapse of Food Trends.

I: Conclusion

279. For the reasons given above, I allow the Claim in respect of the tort of procuring a breach of contract as against Mr Junaid, Mr Razi, Mr Hasib, Mr Adib, OSI and Optifoods. I award the Claimants damages in the sum of £2,523.07. The Claim as against Mrs Razi and Infiniti is dismissed.