



Neutral Citation Number: [2020] EWHC 1842 (Ch)

Case No: C31BS166

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BRISTOL**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 13 July 2020

**Before :**

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

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**Between :**

**JOHN MICHAEL GEE**

**Claimant**

**- and -**

**(1) JOHN RICHARD GEE**

**Defendants**

**(2) ROBERT GEE**

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**Nicholas Pointon (instructed by Thrings LLP) for the Claimant/Applicant**  
**The Second Defendant/Respondent in person**  
**The First Defendant did not appear and was not represented**

Hearing dates: 8 July 2020  
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**Approved Judgment**

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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**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 10:30 am.**

**HHJ Paul Matthews :**

### **Introduction**

1. This is my judgment on an application made by notice by the claimant dated 2 June 2020, for various orders arising out of a judgment given on 11 June 2018 in his favour at a trial before Birss J which took place in April 2018 over 6 days. That judgment is to be found under neutral citation number [2018] EWHC 1393 (Ch). The claimant's application is supported by a witness statement dated 2 June 2020 of the claimant's solicitor Robert James, and a further witness statement of Mr James dated 6 July 2020. The second witness statement was made in response to two witness statements made in opposition to the application, that of the second defendant, and that of the second defendant's wife (Helen Gee), both dated 1 July 2020. All of these witness statements exhibit documents relied on in the course of the application.
2. On this application, the claimant was represented by counsel, Nicholas Pointon, instructed by Thrings LLP. Although the second defendant had been represented by counsel and solicitors at the trial and at subsequent hearings, in November 2019 the second defendant ceased to be represented, and took part in this application as a litigant in person. His wife, who is a qualified accountant, was with him in the room during the application and acted as a kind of "McKenzie Friend", quietly giving him advice and finding him documents. But, as is usual in such cases, the second defendant spoke on his own behalf. The application was conducted on the Microsoft Teams videoconferencing platform (which is now permitted on judicial laptop computers, and which has better functionality than Skype for Business). There were one or two minor technological glitches, but nothing substantive, and the hearing proceeded in much the same way as it would have done in a courtroom. I record here that there was no live evidence given, and that there was no application to cross-examine any witness on his or her witness statement.

### **The litigation and the order**

3. The litigation concerns a family farm, Denman's Farm, in Cumnor, Oxfordshire. The parties to the litigation and this application, and others involved in it, are all members of the same family. The first defendant is married to Pamela, and they have three surviving children, the claimant, the second defendant, and a daughter, Jeanne Pamela Humphrey, known as "Tussle". By his first wife, the claimant had three children, Charles, Jeffrey and Sasha. He is now however married to Sandra. The second defendant is married to Helen, who as I say is a chartered accountant, and they have two children, Jack and Ottilie. The first defendant's grandfather, John P Gee, bought the first land now part of Denman's Farm in 1924, and the farm has passed down the generations since then.
4. The claimant had sued the first defendant (his father) and the second defendant (his brother) in a proprietary estoppel claim relating to the family farm. The claim related to assurances made by the first defendant to the claimant over many years, in reliance upon which the claimant had worked on the farm at low wages, rather than striking off on his own. The farming business was carried on by a company, John P Gee and

Sons Ltd (“the company”), which had a tenancy of the farmland. In 2014 the first defendant owned all the shares in the company save one, which belonged to Pamela, his wife. At that time, the freehold reversion of the farmland belonged to the first claimant as to 7/18, to Pamela as to 7/18, and to the company as to 4/18. But in November 2014 the first defendant transferred all his shares in the company and his 7/18 share in the land to the second defendant. At the same time, Pamela transferred her one share in the company and her 7/18 share in the land to the claimant.

5. In his judgment, the judge held that the proprietary estoppel claim was made out. After considering the circumstances of the case, he held that the equity raised in favour of the claimant should be satisfied in such a way that the claimant ended up with 46% of the land but 52% of the company, and the second defendant and their sister Tussle each having 27% of the land but 24% of the company. There were further hearings on 22 October 2018 and 21 December 2018 about the steps that would be needed to reach that position. The final order was made on 14 February 2019. At the trial and at these further hearings both sides were represented by leading counsel. Although the judge himself refused permission to appeal, there was the possibility that either or both of the defendants would seek permission to appeal from the Court of Appeal.
6. So far as material, the order provided as follows:

“(1) in this order “the Effective Date” means:

- a. If the Defendants (or either of them) do not apply to the Court of Appeal for permission to appeal this order, 1 February 2019.
- b. If the Defendants (or either of them) apply to the Court of Appeal for permission to appeal this order and such permission is refused, the date of the order refusing permission.
- c. If the Defendants (or either of them) apply to the Court of Appeal for permission to appeal this order and such permission is granted, the date of the final determination of that appeal.

(2) For the purpose of giving effect to the Claimant’s accrued rights in relation to J P Gee and Sons Ltd (“the company”) and the freehold land registered under title number ON 270596 at HM Land Registry (“the Freehold Land”) the Claimant and Second Defendant shall make the transfers set out below.

(3) The Second Defendant do within two months of the Effective Date transfer 12,480 shares in the company to the Claimant to be held for the Claimant absolutely.

[ ... ]

(5) The Second Defendant do within two months of the Effective Date transfer to the Claimant a 32.985% beneficial undivided share in the Freehold Land such share to be held for the Claimant absolutely.

[ ... ]

(15) The parties shall make any necessary claims for holdover relief with the intent of minimising any tax liabilities that may arise in respect of the implementation of paragraphs (2) to (6) of this order.

(16) Any tax liabilities arising from the implementation of paragraphs (2) to (6) of this order shall (irrespective of the person or body primarily liable for the said tax) be paid by the Claimant and the Second Defendant in the same proportions as their shareholding of the company, being 52% and 48% respectively...

(17) There be liberty to each party to apply to the court for the purpose of varying this order should further or additional liability to tax arise in consequence of the terms of this order which were not within the contemplation of the parties at the date hereof.”

7. It will be noted that the order mis-names the company, as “J P Gee and Sons Ltd”, rather than “John P Gee and Sons Ltd”. This does not invalidate the order or make it unenforceable. If there were another company with that name, or no company with that name but another company with a similar name, in which the second defendant held shares, it would be necessary to resolve the ambiguity, perhaps by resort to the so-called slip rule, in CPR rule 40.12. But in the circumstances that there is only one company with a similar name to that in the order in which the second defendant has shares, there can be no confusion. It is perfectly clear which company the judge was referring to, and the order bites on that company. There is no need for any amendment to the order.

#### **Applications for permission to appeal**

8. The defendants did apply to the Court of Appeal for permission to appeal. Permission was refused by Rose LJ on 24 May 2019. The order was actually sealed and sent out on 28 May 2019. In accordance with CPR rule 40.7(1), the order took effect from the day when it was made by the judge, and not the day when it was sealed or sent out by the court staff. That means that “the Effective Date” for the purposes of the order was 24 July 2019 rather than 28 July 2019. As it happens, the second defendant made a further application to the Court of Appeal by application notice dated 10 October 2019 asking the Court of Appeal to reopen the appeal under CPR rule 52.30. On 14 January 2020 Rose LJ refused this further application. This did not, of course, affect the meaning of “the Effective Date”. It is obvious that I am not in a position to go behind the dismissal of these applications, and that the order of 14 February 2019 must be treated by me as definitive. My function on this application is simply to decide whether the second defendant has complied with his obligations under the order, and (if he has not) whether it should be enforced against him, and if so how.

#### **Subsequent events**

9. Following the order, there was correspondence between the parties about the implementation of the order. In June 2019 the second defendant recognised his obligation to transfer both shares and land to the claimant by the end of the following month. On 17 July 2019 the second defendant sent to the claimant a Form TR1 for him to sign in the presence of a witness in relation to the transfer of the land, and a draft stock transfer form (unsigned) for his information. However, points were taken on the form of the TR1 and the correspondence unfortunately became increasingly

acrimonious. The upshot was that, by the end of July 2019 no completed transfer of the second defendant's interest in the freehold land and no completed stock transfer of the second defendant's shares in the company had been delivered to the claimant.

10. As it happens, the parties subsequently managed to agree on the question of the transfer of the land. It was agreed between them that, instead of the second defendant making a direct transfer of his share of the land, effectively the same result would be achieved by way of a deed of declaration of trust, and such a declaration was prepared and has been signed by the second defendant and handed over to the claimant's solicitors, though not yet dated. The reason it has not been dated is that the parties agreed in correspondence in March and April this year that it would be more tax efficient for the transfer of the shares from the second defendant to the claimant to *predate* the deed of declaration of trust.
11. The result is that the claimant's solicitors hold the signed deed of declaration of trust with the intention of dating it the day after the stock transfer form transferring the shares from the second defendant to the claimant is dated. At all events, in this application the claimant makes no complaint in respect of the defendant's obligation under paragraph (5) of the order of 14 February 2019. The complaint that *is* made relates to the defendant's obligation under paragraph (3) of that order, that is, in respect of the transfer of his shares in the company. Although the second defendant has produced a draft stock transfer form, it has not yet been signed and handed over to the claimant or his solicitors.

### **Orders sought**

12. The claimant's application notice of 2 June 2020 seeks orders that:

- “(a) The Second Defendant execute a stock transfer form in respect of 12,480 shares in John P Gee and Sons Ltd (“the Company”) in favour of the Claimant;
- (b) Failing which, Pamela Humphrey be authorised to execute such a stock transfer form on his behalf, pursuant to section 39 of the Senior Courts Act 1981;
- (c) The Second Defendant deliver up the books of the Company in his possession;
- (d) Failing which, Pamela Humphrey be authorised to create a fresh register of the Company's members; and
- (e) The Second Defendant pay the claimant's costs of (a) this application; and (b) of and occasioned by the Second Defendant's failure to comply with paragraphs 3 and 5 of the order of Birss J dated 14 February 2019.”

### **The claim for holdover relief**

13. There can be no doubt that the date by which the second defendant was ordered to transfer his shares in the company to the claimant has long since passed, and that the second defendant has not yet done this. His justification for not doing so is that he was entitled under the terms of the order of Birss J to have the claimant sign a request for so-called “holdover relief” from capital gains tax either before or at the same time as the second defendant signed the stock transfer form, for his own protection, or, as

he put it, “for my peace of mind”. He ascribes this right to paragraph (15) of the order, set out above. Although he has sent filled in holdover relief forms to the claimant, the claimant has not yet signed and returned them to him.

14. It is clear from the joint statement of the parties’ tax experts dated 10 December 2018 that the implementation of transfers of shares and land from the second defendant to the claimant could result in a very significant capital gains tax bill, unless the transaction could be structured in such a way that holdover relief under section 165 of the Taxation of Chargeable Gains Act 1992 could be obtained. Where holdover relief is obtained, the acquirer of the asset is deemed to acquire it at the base cost of the transferor, thus in effect deferring the capital gain until the asset is later disposed of. In the present case the tax experts were agreed that it should be possible to obtain holdover relief in relation to the transfer of the company shares by the second defendant to the claimant, on the basis that the company was a trading company with business assets. They also agreed that, to the extent that the company had assets which were not business assets, holdover relief would be restricted. In substance, holdover relief would not be available in relation to the non-business assets.

*The second defendant’s submissions*

15. It is clear that the judge included paragraph (15) in order to ensure that holdover relief was obtained so far as available. The second defendant says that this paragraph is inextricably linked to his obligations in paragraphs (3) and (5) to transfer assets to the claimant. Further, he says that his obligations in paragraphs (3) and (5) are *conditional* on the claimant’s obligation under paragraph (15) to apply for holdover relief. Therefore, he says, he must have the holdover relief request form, duly completed and signed by the claimant, before he parts with the signed stock transfer form. Otherwise he is at risk of incurring a very significant capital gains tax bill, and not obtaining holdover relief.
16. Further, the second defendant says that, although up until now the regime for reporting capital gains and paying any tax on those gains has required them to be reported and paid in the January of the tax year following that in which the gains were made, new regulations applying from 6 April 2020 now require that gains are reported and taxes paid within 30 days of the transaction itself, so far as relating to residential property. This means that the risk for the second defendant of having to pay the tax is increased, because the window of opportunity for making a holdover relief claim has been significantly reduced. Although in the legislation there is a time limit of four years for making a claim to holdover relief, what matters is when the tax has to be paid, which is much sooner.

*The claimant’s submissions*

17. The claimant says that the second defendant’s obligations in paragraphs (3) and (5) are *not* conditional on the claimant’s obligation under paragraph (15) to apply for holdover relief. Firstly, the obligations are not expressed in the terms of the order to be conditional. Secondly, an application for holdover relief can only be made once the transaction has happened which would result in a tax liability. That means that, logically, there can be no obligation to apply for holdover relief before the share transfer has taken effect. Thirdly, it is not possible for the claimant to apply for holdover relief without a valuation first having been made of the non-business assets

(because holdover relief will be restricted to the *business* assets). But a valuation must be carried out as at the date of the transaction, and until the stock transfer form is executed, the date of the transfer cannot be known. The problem with the holdover relief forms that were completed and submitted to the claimant for signature was that they applied for the valuation to be deferred. Yet Inland Revenue Statement of Practice No 8 of 1992 (on which Mrs Helen Gee had relied in sending the forms to the claimant) made clear that it did not apply to cases where a valuation would be required, such as where non-business assets were included: see paragraph 13, referring to the Taxation of Chargeable Gains Act 1992, Schedule 7, paragraph 7.

18. So far as concerns the change in the reporting and paying regime, the claimant referred me to a letter from Mr Bagg, his tax expert, dated 6 July 2020, to the claimant's solicitor. This states in part as follows:

“I understand Robert and Helen's concerns; the capital gains tax rules change from 6 April 2020, so that the disposal of UK residential property must be returned in the capital gains tax paid to HMRC within 30 days of the completion of the disposal.”

19. It then goes on to say:

“In my original advice, I highlighted that residential property (whether held by a trading company or as a freehold reversion in personal name) will not qualify for Holdover Relief.

[ ... ]

I have previously stated that the company appears to be a trading company and, hence, the gain made on the transfer of the shares will qualify for Holdover Relief.

However, ... the proportional value of the residential property in the company shares will not qualify for Holdover Relief; Holdover Relief will only be proportionally available, based on the following fraction.

Chargeable Business Assets  
Chargeable Assets

The residential properties are not chargeable business assets but are chargeable assets.

As this disposal is a disposal of company shares, not residential property, the new capital gains tax reporting requirements (return and pay within 30 days) will not apply.

The capital gains tax payable on the disposal of the company shares will be reportable and payable by the 31<sup>st</sup> January following the end of the tax year of disposal.

[ ... ]

The gain made on the transfer of the reversionary interests in residential property held by Robert personally will be subject to the new 30 day reporting/payment deadline.

However, these gains do not qualify for Holdover Relief, ... and, therefore, it will not be possible to defer these capital gains using Holdover Relief in any case.”

20. As it happens, Mrs Helen Gee had made the same point, that a liability to capital gains tax would arise on any non-business assets, in a letter to her husband from her practice address on 16 April 2020.

## **Discussion**

21. In my judgment, the obligation of the second defendant under paragraph 3 of the judge’s order to transfer the shares in the company to the claimant is *not* conditional on the obligation of the claimant under paragraph 15 to make a claim for holdover relief. The language of the order is clear, and does not contain any conditional language. There is no need that I can see to imply such conditionality to make the order work. So far as concerns the claimant’s second point, I accept that logically the claim for holdover relief in respect of tax arising on a particular transaction cannot be made until the transaction itself has occurred, but that does not mean (for example) that there could not be an obligation to complete and sign a form and hand it over pending the completion of the transaction. On the other hand, there is no trace of such an obligation to be found in this order. Overall, I do not think the claimant’s second point adds anything to the first.
22. I turn to the third point. I accept that it is not possible to value the non-business assets without knowing the date as at which the valuation should be made. Accordingly, it is necessary to know when the transaction takes place. Ordinarily, one would expect to instruct a valuer that a transaction has taken place and that an asset must be valued as at the date of that transaction. But it may be possible to instruct a valuer to value an asset as at a date in the very near future, say in two or three days’ time. So I do not think this point is as conclusive as the claimant says. On the other hand, it still has some value, and seems to me to point in the direction of holding (as I have already done) that, in the absence of some wording imposing a condition, the obligation to transfer the shares was not to be conditional on the obligation to apply for holdover relief. To that extent, it supports the conclusion to which I have already come.
23. In addition, it is relevant to note that by paragraph (16) of the order the claimant himself must pay 52% of any tax liability that is incurred. Given the large potential tax bill, that is a very significant incentive for the claimant to make a claim to holdover relief before the date for reporting and payment arrives. I bear in mind also that the obligation of the claimant under paragraph (15) is to make an application for holdover relief so as to minimise the impact of tax. Although the claimant may have four years to make his application, he would not be minimising tax by leaving it until the last possible day. A tax charge would be incurred and a payment obligation would arise long before the four years were up. The claim for holdover relief would effectively be a claim for repayment of money that had already been paid. Minimising the impact of the tax to my mind means (if possible) preventing the tax liability from ever arising in the first place, which means making the application for holdover relief before the reporting and payment obligations bite. I did not hear any detailed



argument on this point during the hearing, but I did not understand Mr Pointon to disagree with this view.

## Decision

24. For all these reasons, therefore, I am satisfied that the second defendant has not been justified in withholding the completed stock transfer form from the claimant until the claimant produces a signed claim for holdover relief. That means that the second defendant has breached paragraph (3) of the order, and raises the question of the remedy for that breach. In my judgment the primary relief is to order the second defendant to deliver to the claimant within seven days a fully executed stock transfer form of 12,480 of his shares in the company. There is no difficulty about the form to be used, as the second defendant himself has already supplied copies of the draft. In my judgment he should have signed it by 24 July 2019, and should do so now without delay.

### *Senior Courts Act 1981, s 39*

25. The claimant asks for an additional order under section 39 of the Senior Courts Act 1981. As amended, this provides as follows:

“(1) Where the High Court [or family court] has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person—

- (a) neglects or refuses to comply with the judgment or order; or
- (b) cannot after reasonable inquiry be found,

[that court] may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for that purpose.

(2) A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.”

26. It was common ground at the hearing that the words “neglects or refuses to comply with the judgment or order” in subsection (1)(a) are jurisdictional, so that the court cannot make an order under this section unless it is first satisfied that the test represented by those words (or the alternative in paragraph (b)) is met. Allegations have been made by the claimant in this case that the second defendant has been deliberately difficult, and indeed has stated that he would not comply with the order of the court to transfer the shares. The second defendant denies these allegations. As I said at the hearing, without at least cross-examination of witnesses I am in no position to judge the truth or otherwise of these allegations, and in this judgment I make no finding that the second defendant has behaved in this way.

27. At the same time, it is clear to me, that, even if the second defendant has relied in good faith on a construction of the order which I have held to be incorrect (that is, that it made his obligation to transfer the shares conditional on the claimant providing a signed holdover relief claim form) nevertheless this amounts to the second defendant “neglecting” to comply with the order of 14 February 2019. Accordingly, in my judgment, the jurisdictional requirement for an order under section 39 is satisfied. But before me, and also in his evidence and in correspondence, the second defendant has been at pains to say that he would abide by the order of the court. The problem is that the relationship between the parties is at rock bottom, and the claimant fears that if an order is made that the second defendant deliver a completed stock transfer form, there will be further points taken as to why this obligation does not bite.
28. I am anxious that this expensive and time-consuming litigation is brought to an end as soon as possible. I do not wish on the one hand to doubt the word of the second defendant that he will do what the court orders him to do. I am however concerned not to take the risk that the second defendant interprets any order of the court in a way which it was not intended to be interpreted. Accordingly, what I propose to do, in addition to ordering the second defendant to transfer the shares within seven days, is to provide that if the second defendant has not delivered the completed signed stock transfer form to the claimant within that time, their sister Tussle (having by letter consented to be nominated) should be authorised under section 39 to do so on his behalf. That will at least mean that the transfer of shares does in fact take place without any further argument.

*The company’s books*

29. The next question is what to do about the books of the company, including the register of members. I was told at the hearing that the current directors of the company are the first and second defendants, Tussle, Pamela Gee and Helen Gee. The evidence is that both the claimant (who is not a director) and Tussle (who is) have asked for the books of the company to be handed over to them so that the share transfer to the claimant can be registered. The second defendant has refused, stating that, pursuant to the Companies Act 2006, the books of the company belong to the company and must remain at the registered office of the company (which is the second defendant’s home), and cannot be moved from there. He also points out that the company is not a party to these proceedings.
30. It is of course correct that the books belong to the company. It is not correct that they cannot be moved from the registered office. Section 114(1) of the 2006 Act provides that the register of members must be kept *either* at the registered office *or* at a place specified in regulations made under section 1136. Those regulations are the Companies (Company Records) Regulations 2008. They provide that the company may specify a place other than the registered office, provided it is in the part of the United Kingdom in which the company is registered (in the present case, England and Wales). In any event, as the second defendant accepted during the argument, the court could plainly order the company secretary or some other officer of the company to bring the records to court temporarily in order to help resolve a dispute, so the requirement to keep them at the registered office is certainly not absolute.
31. The fact that the company is not a party to these proceedings is not relevant, unless the company is being asked to do something, and is refusing. But the obligation to

register the transfer of shares is one which falls upon the directors, rather than upon the company. The second defendant is a director of the company. It will therefore fall to him (as well as the other directors) to register any transfer of shares to the claimant. The second defendant's evidence is that if the court orders him to execute a transfer of the shares to the claimant he will comply, and that he will see that the transfer is registered. The claimant expresses scepticism that this will take place.

32. I am prepared to take the second defendant at his word that, if the transfer is made to the claimant, he will facilitate the registration of that transfer. I will not therefore make any order today in relation to the books of the company at this stage. But I will give the claimant liberty to apply to the court without issuing a fresh application notice for an appropriate order in relation to the books. The second defendant should be in no doubt that, if there is any difficulty in registering the transfer, the court is likely to make an order to secure that registration, and if the difficulty has been caused by him he will almost certainly be ordered to pay the costs.
33. It might be that this would be an order for the delivery up of the books to the court or (as suggested by the claimant) an order for the reconstitution of the register of members under section 125 of the Companies Act 2006. In this latter respect, the claimant referred me to the decision of Vinelott J in *Re Data Express Ltd*, *The Times*, 27 April 1987. That was a case where the register of members had been accidentally thrown away and destroyed. The judge held both that there was jurisdiction under the statutory predecessor of section 125, and that it was appropriate in the circumstances to exercise it to order a new register to be made reconstituting the lost one. Whilst losing the register is not exactly the same as its being improperly withheld so that a transfer cannot be registered, there is a clear analogy. But for now I rely on the assurance of the second defendant that it will not come to that.

#### *Costs*

34. Lastly, there is the question of costs. Paragraph (e) of the relief sought on the application seeks not only an order for the costs of this application, but also an order for the costs "of and occasioned by second defendant's failure to comply with paragraph 3 and 5 of the order". So far as concerns the costs of this application, they will include both costs of *and incidental to* it: *Newall v Lewis* [2008] WTLR 1649, [16]. What order to make in relation to those costs will be dealt with after the handing down of this judgment, as part of the matters consequential upon it. I merely observe at this stage that it is clear that the costs of any proceeding *may* include costs incurred before the proceeding is formally instituted: see *eg Re Gibson's Settlement Trusts* [1981] Ch 179, 184-88; *ENE Kos v Petroleo Brasileiro SA* [2009] EWHC 1843 (Comm), [74]-[100].
35. So far as concerns the claim for costs which are *not* costs of this application, we are in different territory. First of all, I observe that no breach of paragraph (5) has actually been alleged or proved on this application. The application has been concerned only with paragraph (3). In relation to the latter paragraph, as a result of my decision that the second defendant had no justification for failing to transfer the shares, a breach of the order has been shown. However, no attempt has been made on this application to prove any loss, that is, to show that costs have been incurred (or some other loss suffered) in such and such an amount as a result. In my judgment, damages for breach of an order cannot be proved or quantified through the mechanism of assessment of

costs. The claim for damages is quite separate from a claim for costs. In other cases where a claim for loss suffered through breach of an order has been made, the court has ordered an inquiry as to damages. I have not heard any argument on this point, but I will consider it further when I come to deal with consequential matters, if the claimant wishes to pursue the point (bearing in mind what I said about the scope of the costs of the application itself above), and after giving the second defendant the opportunity to make submissions.

### **Conclusion**

36. In the result, I will make an order that the second defendant deliver to the claimant a signed stock transfer form for 12,480 of his shares in the company within seven days, failing which Pamela Humphrey is authorised to execute it on his behalf. I will give liberty to the claimant to apply for an order in respect of the books of the company if there is any difficulty about registering the transfer. I will consider costs and other consequential matters once this judgment is handed down. I will hand down this judgment remotely, in accordance with the Covid-19 Protocol. In the event that the parties cannot agree them, I will deal with consequential matters in the first instance on paper. I should be grateful to receive written submissions by 4 pm on 15 July 2020, with written submissions in reply by 4 pm on 17 July 2020.