Neutral Citation Number: [2020] EWHC 687 (Ch)

Case No: BL-2019-MAN-000050

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INTELLECTUAL PROPERTY LIST

Date: 24th March 2020

Before :

His Honour Judge Halliwell sitting as a Judge of the High Court at Manchester

Between:

SHUA LIMITED **Claimant**

- and –

CAMP AND FURNACE LIMITED **Defendant**

Case No: CR-2019-MAN-000648

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)

In the Matter of the Companies Act 2006
AND in the Matter of Shua Limited (Company No. 09858266)

Between :

CAMP & FURNACE LIMITED **Petitioner**

- and –

(1) JOSHUA BURKE
(2) JONATHAN LACEY
(3) SHUA LIMITED **Respondents**

- -

Paul Chaisty QC and **Andrew Grantham QC** (instructed by **Napthens LLP**) for the **Claimant/Respondents**
Neil Berragan (instructed by **Brabners LLP**) for the **Defendant/Petitioner**

Hearing dates: 9th-13th September, 4th, 5th, 8th November 2019

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APPROVED JUDGMENT

I direct that, pursuant to CPR PD 39A Para 6.1, no official shorthand not shall be taken of this judgment and the copies of this version as handed down may be treated as authentic.

HHJ Halliwell:

(1) Introduction

1. These proceedings relate to the ownership of "Bongo's Bingo" ("BB"), an entertainment medium fusing bingo with rave and dance-offs.

2. There are four parties to the proceedings.

   2.1. Shua Limited ("Shua") is a private limited company which promotes BB events. The nominal share capital of Shua is £200 divided into 200 ordinary shares of £1 each.

   2.2. Joshua Burke ("Mr Burke") and Jonathan Lacey ('Mr Lacey") each hold 85 shares in Shua.

      2.2.1. Mr Burke is a promoter and events manager in the entertainments industry. He is also the sole director of Shua.

      2.2.2. Mr Lacey is a disc jockey and performer who operates under the stage name "Jonny Bongo".

   2.3. Camp & Furnace Limited ("C&F") is a private limited company. It is entitled to a tenancy of a property at 67 Greenland Street, Liverpool which it holds and operates as an entertainment venue ("the Venue"). C&F also holds 30 shares in Shua.

3. Before me, Mr Paul Chaisty QC and Mr Andrew Grantham have appeared on behalf of Shua, Mr Burke and Mr Lacey. Mr Neil Berragan has appeared on behalf of C&F.

4. There are two sets of proceedings.

   4.1. Firstly, there is an ordinary action ("the Action") in which Shua sues C&F for injunctive relief and an inquiry as to damages for passing off and copyright infringement on the footing that Shua owns BB and the copyright in two artistic works that it uses as its logo ("the Logos") in connection with the promotion of BB events. C&F defends the claim on the basis that it is itself owner of the BB goodwill in Liverpool and is entitled to an equitable licence to use the logo. It has joined Mr Burke and Mr Lacey to a counterclaim for declaratory and injunctive relief on the footing that they are not entitled to hold BB events in Liverpool otherwise than with C&F's licence.

4.2. Secondly, as a minor shareholder, C&F has presented a petition ("the Petition") in respect of Shua under the provisions of *Section 994* of the *Companies Act 2006* on the grounds that Shua has acted in a manner that is unfairly prejudicial to C&F's interests. Messrs Burke and Lacey have been joined as co-respondents. In Paragraph 28 of the Petition, it is pleaded that "the management of [Shua] by Mr Burke is subject to…legal and/or equitable constraints", including a duty to "account…for 15% of all gross profits…earned from all BB events", restrictions on remuneration and prohibitions precluding Shua from holding events without C&F's consent in Liverpool otherwise than at the Venue itself or at least at premises managed by C&F.

5. The proceedings are before me for the determination of preliminary issues although the scope of the preliminary issues has evolved. By an order dated 30th May 2019, HHJ Stephen Davies directed that the issues of liability and injunctive relief in the Action be tried as a preliminary issue. Following presentation of the Petition, Mr Lance Ashworth QC directed that "the issue of whether the conduct of the affairs of [Shua] is subject to the equitable constraints set out in Paragraph 28 of the Petition…be tried as a Preliminary Issue" so as to "take place at the same time as the trial of the Action".

6. Both cases came before HHJ Hodge QC on 22nd August 2019. In order to clarify and limit the range of the issues under consideration, HHJ Hodge QC directed that the issues for determination were (1) the ownership of the goodwill of the business and copyright in the Logos; (2) the issue identified by Mr Lance Ashworth QC including the existence and terms of an agreement on 15th July 2015; and (3) all claims for injunctive relief flowing from the determination of those issues. It is common ground that 15th June 2015 should be substituted for 15th July 2015 as the date of the putative agreement ("the 15th June 2015 Agreement"). However, I shall break down into two separate issues, the issue as to the existence and terms of the 15th June 2015 Agreement and the issue as to whether the management of Shua is subject to equitable constraints.

7. At the commencement of the trial, I was invited to add to the issues identified by HHJ Hodge QC by addressing whether (1) C&F is entitled to hold BB events in Liverpool and, if so, whether it is an exclusive right and (2) C&F is entitled to 15% commission in respect of events outside Liverpool. I took the view these additional issues would not significantly extend the time spent at trial-they overlap with the issue about the terms of the alleged

agreement of 15th June 2015-and it was in the interests of all parties for the additional issues to be resolved. I thus agreed to dispose of the additional issues together with the issues specifically identified by HHJ Hodge QC.

(2) Factual sequence

8. In 2010 or thereabouts, Mr Lacey started to work at a public house or bar known as "the Shipping Forecast". He began to provide entertainment in the name of "Jonny Bongo". In that name, he presented "Jonny Bongo's Pub Quiz…an offbeat version of the traditional pub quiz" with elements of "music, rave, mad prizes and dance offs". For this, he would be remunerated through the payment of professional fees and a share of the bar receipts. By 2012, this had become his main source of income and he was starting to obtain work at more than one place on "the pub and club scene".

9. During the same period, Mr Burke was working as a promoter or events manager. At one point, he was engaged by C&F. During this period, he became acquainted with Mr Lacey and they worked together on a number of occasions. On at least one occasion, Mr Burke arranged for Mr Lacey to host an event at the Venue. In August 2011, Mr Burke left C&F to set up a club called "Haus" with a business partner. When this came to an end, Mr Burke was contacted by Mr Miles Falkingham, a director of C&F, and invited to return. He did so in September 2014 although there is a dispute whether he was engaged as an employee or an independent contractor. His job was to promote and manage events at the Venue.

10. Early in 2015, Mr Burke arranged to meet Mr Lacey to explore his interest in hosting events at the Venue. When they met for a drink, it emerged that Mr Lacey himself had new ideas which involved incorporating a bingo theme in his offbeat version of the traditional pub quiz. Mr Burke was enthusiastic about the idea and he made arrangements with Mr Lacey to stage a new club themed bingo night at the Venue utilising the name "Bongo's Bingo". On 23rd March 2015, Mr Burke commissioned Mr Murphy to produce the artistic works for the event. The Logos were Mr Murphy's work.

11. Together, Mr Burke and Mr Lacey promoted and organised the first BB event. This was held at the Venue in early April 2015. Soon it was being held there on a weekly basis. It was a conspicuous success. C&F was entitled to the bar receipts although it paid Mr Burke

an amount equal to 15% of the net profits from the bar in addition to his monthly remuneration. The ticket receipts were collected on behalf of Mr Lacey so he could apply the proceeds in purchasing prizes and other items for the events. Initially, Mr Lacey was also paid £150 per show.

12. In view of the success of the venture, Mr Burke and Mr Lacey were soon keen to promote the event beyond Liverpool. At about the same time, Mr Burke decided to resign from his position with C&F. By an email dated 14th June 2015, he thus advised C&F that he was resigning from it "for formal purposes". However, he indicated, in the same email, that he wished to continue to work for C&F on a "commission only" basis and he plainly envisaged that Liverpool events would continue to be held at the Venue.

13. This led to a meeting, the following day, between Mr Burke and Mr Falkingham, a director of C&F, who then had a part time executive role in the company. At the meeting ("the 15th June 2015 Meeting"), there was a discussion about BB and, in that regard, the future arrangements between Mr Burke and C&F and they entered into the 15th June 2015 Agreement. The nature of the 15th June 2015 Agreement and the agreed terms are in dispute. It at least gave rise to an understanding that BB events would continue to be held at the Venue and, for so long as they were held, Mr Burke would remain entitled to 15% of the net profits from the Bar.

14. By an email message timed at 16:46 that day ("the 15th June 2015 Email"), Mr Falkingham stated as follows.

> "Hi Josh
>
> Thanks for meeting today-just for the avoidance of doubt. Commission will continue to be paid on Bongo's Bingo at 15% of contribution profit from bar. It was confirmed that C&F have exclusivity on Bongo's Bingo in Liverpool. Having covered retainers and start-up budgets for Bongo's Bingo C&F also has a 15% "stake" in Bongos Bingo on the road.
>
> We will meet on Monday now as Kath is away Friday.
>
> Thanks
>
> Miles".

15. In reply, Mr Burke emailed Mr Falkingham at 17:42 in the following terms.

> "Re: Notice of Resignation
>
> Yes all agreed.
>
> I will get the Bingo contracts written up with my solicitor friend if that's ok?
>
> Many thanks".

16. Although, at this stage, Mr Burke had intended to refer the matter to a solicitor, he omitted to do so. Shortly after the meeting, Mr Falkingham's part time executive role was scaled back and, by September 2015, he had ceased to have any such role in the company although he did not resign from the board until January 2017 when he sold his shareholding.

17. In the immediate aftermath of the 15th June 2015 Meeting and the exchange of emails between Mr Falkingham and Mr Burke, no arrangements were made for a formal written contract to be drawn up. However, Mr Lacey continued to present BB events at the Venue upon essentially the same basis as before.

18. On 5th November 2015, Shua was incorporated with a single subscriber share issued to Mr Burke.

19. On 15th December 2015, there was a meeting ("the 15th December 2015 Meeting") between Mr Burke, Mr Alexander Keeling ("Mr Keeling") and Mr Paul Speed ("Mr Speed") at the Venue. At the time, Mr Keeling was non-executive chairman of C&F and Mr Speed was a director and manager. In his minutes of the meeting, Mr Keeling recorded that C&F had "a 15% interest in the [BB] concept" and the parties explored the idea of franchising the BB concept. They also appear to have considered the formation of a new corporate vehicle in which C&F would be provided with "a 15% stake".

20. On 8th January 2016, there was a further meeting between Messrs Burke, Keeling and Speed to discuss the formation of a new company and, on 22nd January 2016, Mr Keeling emailed Messrs Burke and Speed seeking information to assist him in connection with the formalities for doing so on the basis that, together, they would be the initial directors and shareholders. On 15th March 2016, Mr Burke provided Mr Keeling with some of his personal details for this purpose. However, at about this time, Mr Keeling ceased to hold office as non-executive chairman of C&F.

21. No further steps were taken to incorporate the new company and, ultimately, the proposal to franchise "the concept" was not taken further. However, with effect from 1st April 2016, Mr Burke made arrangements for an additional 199 shares to be issued in respect of Shua. Of Shua's 200 shares, 85 shares were allotted to Messrs Burke and Lacey each and, in due course, 30 shares were allotted to Mr Speed. By August 2016, Mr Speed

was apparently aware that the shares were being allotted to him. However, it was not until 31st March 2017 that he emailed Mr Stuart McBain, C&F's accountant, requesting him to arrange for the shares to be allocated to Shua.

22. By this time, BB was an increasingly popular form of entertainment. I was advised by Mr Chaisty QC for Shua that, in the period leading up to its incorporation, some 41 Bongo's Bingo events were held, one in Manchester and the rest in Liverpool. He advised me that since then, Shua or Messrs Lacey and Burke have together held upwards of 1,500 events. Events have been held in the United Kingdom and abroad.

23. During 2018, Mr Burke sought to initiate negotiations with C&F for the acquisition of its shares in Shua. By an email dated 14th March 2018 to Mr Speed, he canvassed the possibility of C&F "relinquishing its shares in Shua…perhaps in exchange of a concrete deal with Bongo's Bingo for a minimum of 2 years, which I anticipate being around 240 shows and a bar spend of £4.2 million". Negotiations ensued but, after taking legal advice, there appears to have been a shift in C&F's stance. By an email dated 18th October 2018 to Mr Burke, Mr Speed stated that "following advice from our legal team there is no doubt in our minds that the BB brand is a C&F brand. It was first created by C&F and BB events had only ever been held at C&F before BB became successful enough to look at expanding the brand".

24. From that point, the parties have been in dispute about their respective rights to hold and present BB events. Mr Burke, Mr Lacey and Shua maintain that these rights are now exclusively vested in Shua itself and they maintain that Shua has carried on such events since it was incorporated. They also maintain that C&F has started to promote and advertise its own BB events and is thus liable for the tort of passing off.

25. Prior to the commencement of proceedings, Mr Burke, Mr Lacey and Shua entered into a series of agreements. By an un-dated deed of assignment, apparently made on 22nd May 2019, between Mr Murphy and Mr Burke, Mr Murphy assigned to Mr Burke his rights in the Logos. By two further deeds of assignment dated 22nd May 2019, it was recited that Messrs Lacey and Burke had "entered into partnership in or about April 2015" and Mr Lacey assigned to Mr Burke and himself "his entire goodwill and rights to sue for passing off attaching to the 'Bongo's Bingo' name" and "the name, business, event, performance

and/or show 'Bongo's Bingo'". All of these rights, together with their rights in the Logos, were then assigned to Shua.

26. On 23rd May 2019, Shua Limited commenced the Action and, on 12th July 2019, C&F presented the Petition.

(3) ***Witnesses***

27. C&F called as witnesses, Messrs Speed and Timothy Speed. They also called Messrs Alexander Keeling, Miles Falkingham and Andrew Donaldson, and Ms Hatty Buchanan.

27.1. Mr Speed has held office as a director of C&F since 2011 and took on a managerial role following the withdrawal of Mr Falkingham in August 2015 or thereabouts. He was not directly involved in the discussions that took place between Mr Burke and Mr Falkingham earlier in the year but confidently provided his own commentary about such discussions. He was an unimpressive witness who sought to make extravagant allegations about C&F's role in the creation of BB which he was wholly unable to substantiate in cross examination. In his witness statement, he alleged that BB was "conceived" and "created" by C&F who had "well grounded fears" that Shua wished to "craft a manufactured claim to the BB brand…" However, he was unable to sustain these propositions when giving evidence. He suggested BB had been "conceived" by Mr Burke at a time he was employed by C&F and it could thus be said to have been conceived by C&F; C&F had "created" the idea on the basis that Mr Speed had himself made suggestions about the use of a spot light, a flashing dance floor and, more generally, the lighting at the Venue. Having heard the evidence of Mr Burke and Mr Lacey, it is obvious that Mr Lacey - not Mr Burke - created and conceived BB and the lighting was entirely incidental to the BB concept. He was unable to substantiate or, indeed, suggest any credible basis for his allegation that Shua had somehow set out to "craft a manufactured claim". I have reached the conclusion that I must exercise considerable caution before accepting the evidence of Mr Speed in the absence of independent corroboration.

27.2. Mr Timothy Speed is a director and shareholder of C&F and has been since 2012. He confirmed that Mr Falkingham had made him aware of the June 2015 Agreement but had no direct knowledge of the discussions. His evidence was focussed on the

period after June 2015 and he sought to make some personal criticisms of Messrs Burke and Lacey. However, he provided me with very limited assistance in relation to the critical issues in the case.

27.3. Mr Keeling was the non-executive chairman of C&F for a period of some 2 ½ years until March 2016. He gave evidence that his first meeting with Mr Burke was in November 2015 or thereabouts and stated that, from the time of his first meeting, he had the clear impression that C&F's 15% interest "in the income 'on the road' had to be 15% of gross revenues." However, he was not directly involved in the negotiations leading up to the June 2015 Meeting and, if the views he expressed on this issue were honestly held, they can only have been based on what he was told.

27.4. It soon became apparent, when Mr Keeling was cross examined, that he had a propensity to make confident factual observations, without foundation, in relation to matters of which he had no personal knowledge. In his witness statement, he confidently asserted that "there was never any question of anything other than Camp being the owner of the event". When pressed in cross examination, he sought to support this assertion by suggesting that C&F had itself created and developed the BB concept stating that "ideas in a highly creative environment like Camp and Furnace are raised, they are workshopped, developed, worked on by a number of people and different people at different times". He suggested that Mr Speed himself and an employee called Ian Richards would have been involved in the creation or development of the BB concept. However, when probed further, he was unable to provide any grounds for these suggestions, stating that he did not know "what specific input Mr Richards would have had" and, whilst Mr Speed "may well have been instrumental in the production and delivery", he could not say what Mr Speed did because he (Mr Keeling) "was not involved in the day to day management". Mr Keeling was an unsatisfactory witness and, save where independently corroborated, his evidence must be treated with caution. This is particularly so where he sought to give evidence on issues of which he did not have personal knowledge, such as the creation of BB, the ownership of the business goodwill and the June 2015 Agreement itself.

27.5. Mr Miles Falkingham was a director of C&F between 18th August 2011 and 20th January 2017. He was only appointed to an executive role for a short period, February-August 2015, and his evidence was focused on this period. However, in the context of the present case, this was a highly important period. During it, he exchanged emails with Mr Burke at a formative time in the business and attended the meeting with Mr Burke on 15th June 2015. He was a careful witness. When taken to the contemporaneous documentation, his evidence was measured and, for the most part, internally consistent. Whilst he could not be expected to have a complete recollection of events that occurred upwards of four years earlier and, at times, he was defensive, I am satisfied I can generally rely on his evidence.

27.6. When cross examined on his email dated 15th June 2015 to Mr Burke, he confirmed that, in stating C&F were to have "a 15% 'stake' in Bongos Bingo on the road", he had deliberately omitted to indicate whether the 'stake' connoted a share of the business itself or the profits from the business. He stated that this was kept "vague" so that it could be defined more closely when the parties instructed their lawyers. This was consistent with their discussions at the meeting earlier that day. In the light of this, he confirmed, in answer to questions from me, that on 15th June 2015 he only reached agreement in principle with Mr Burke, the details of which still had to be ironed out.

27.7. Although not formally appointed as a director of C&F, Hatty Buchanan attended board meetings of C&F as the "nominated representative of…James Moore", who was a director. If, as she maintains, she participated in the decision-making at board meetings, she can be taken to have acted as a *de facto* director. She maintained that she first became involved in 2010 and her involvement continued at all times material to these proceedings. However, in cross examination, she stated that she had "very little" contact with Mr Burke personally. More generally, she was a defensive witness. C&F has disclosed no more than three minutes of board meetings. She maintained that the issues in relation to "Bongo's Bingo" had been discussed on other occasions but where this happened, the material parts of the discussions had not been minuted.

27.8. Mr Donaldson has been a director of January 2017. He did not have direct personal knowledge of the factual evidence pertaining to the preliminary issues. However, he was able to give explanatory evidence in relation to C&F's accounts.

28. Messrs Lacey and Burke were called to give evidence on behalf of themselves and Shua.

28.1. Mr Lacey gave evidence about his background as an entertainer and his pub quiz at the Shipping Forecast, which became known as "Jonny Bongo's Pub Quiz". He described this as "an offbeat version of the traditional pub quiz [to] which I introduced an element… of music, rave, mad prizes, comedy and dance offs". Early in 2015, he was approached by Mr Burke, with whom he was already acquainted. He advised Mr Burke that he was "planning to redesign my 'Jonny Bongo's Pub Quiz' [with] a core element to the show which was already a crazy, rave type pub quiz and….had been looking at building it around either speed dating or bingo". In his discussions with Mr Burke, he agreed to present "a rave bingo" event and suggested that it should be known as "Bongo's Bingo". He discussed with Mr Burke issues such as "…our target audience, how we would market it, where we would market it, where we could run it and so forth…" and Mr Burke said he would seek to put on the event at the Venue.

28.2. Mr Burke arranged for him to present the first BB event at the Venue early in April 2015 and from an early stage, it was a conspicuous success, drawing in some 400-500 customers, of whom perhaps 90% had followed him from previous events. In June 2015, Mr Burke advised Mr Lacey that he had resigned from C&F but he could continue to present events at the Venue. Mr Burke advised him that he would have the opportunity to present events elsewhere. He continued to present all the BB events until April 2017, when his son was born. Even at that stage, he presented almost all the Liverpool shows.

28.3. Mr Lacey was an engaging witness. Few, if any inroads were made on his evidence, in cross examination, and I am satisfied that he gave an honest and reliable account.

28.4. In May 2019 when he made his first witness statement, Mr Burke was 33 years of age. He has been engaged to work on behalf of C&F twice, leaving in August 2011, returning in September 2014 and leaving, again, in June 2015. He was thus 25 years

of age and 29 years of age or thereabouts on each of the occasions when he left. He gave evidence about his personal background and his relationship with C&F. He also gave evidence about his business relationship with Mr Lacey and his discussions with Mr Falkingham, on 15th June 2015, about the post-contractual arrangements with C&F.

28.5. Whilst Mr Burke had some business experience by the time of the 15th June 2015 Meeting, having carried out promotional work alongside his responsibilities to C&F, he did not have a clear understanding or command of the business issues at the time of the meeting, and he certainly did not have a proper understanding of the legal framework.

28.6. Mr Burke's evidence was of mixed quality.

28.6.1. When dealing, in broad terms, with issues which did not require a precise recollection of matters of detail (for example, in relation the creation of the concept of BB), I am satisfied his evidence was generally reliable. In cross examination, he accepted that he had "an idea to combine Bingo with a kind of club night" but emphasised that the concept of BB was created by Mr Lacey himself: "Jonny was like a force of nature and, you know, he had an incredible idea that, it was far, far better than anything I could have come up with in terms of the concept". This was consistent with the evidence as a whole. Whilst Messrs Speed and Keeling appeared at times to suggest otherwise, Mr Speed's evidence on this as on many other issues was wholly implausible and Mr Keeling's comments on the issue were made without the benefit of any personal knowledge.

28.6.2. However, on more specific issues, Mr Burke's evidence was less reliable. His evidence about his employment status and the basis on which he was engaged to work for C&F in September 2014 was unconvincing. His evidence about his discussions with Mr Falkingham in June 2015 was also unsatisfactory. In cross examination, he claimed to recall the use of the words "15% stake". Later, he said that he took "stake" to mean "shares" notwithstanding that there was no corporate vehicle in existence at the time and there is no independent evidence to suggest that such a company was in their contemplation. He also suggested that he thought a 15% stake meant "15% profit overall". However, it is likely that

Mr Burke's recollection of this has been transposed from subsequent conversations. On this aspect of the case, Mr Falkingham's evidence was more convincing than the evidence of Mr Burke. I accept that, if the word "stake" was mentioned, it wasn't discussed and certainly no agreement was reached on what it might mean.

(4) Mr Burke's relationship with C&F and Mr Lacey

29. I must determine two mixed issues of fact and law before addressing the matters identified for determination as preliminary issues.

30. Firstly, there is an issue as to whether Mr Burke provided services for C&F as an employee or independent contractor. This relates to the second period in which he was engaged to provide services, ie the period from September 2014 to June 2015. Unusually, Mr Burke maintains that he was engaged under a contract for services whilst C&F maintains that he was entitled to a contract of employment.

31. On this issue, I am satisfied that, during the material period, Mr Burke was an employee of C&F.

32. On behalf of C&F, Mr Berragan referred me to the classical guidance of MacKenna J in *Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance [1968] 2QB 497 at 515C* and the judgment of Sir John Mummery in *Troutbeck SA v White & Todd [2013] EWCA Civ 1171*. He submitted that the starting point is to identify the contractual documentation and, in the light of such documentation, it is then necessary to ask whether Mr Burke has agreed, expressly or impliedly, to be subject to C&F's control in the provision of such services.

33. On behalf of Shua, it was submitted that the issue of control is by no means determinative. I was referred, in particular, to the observations of Cooke J in *Market Investigations Ltd v Minister of Social Security [1969] 2 QB 173 at 184-5*, as authority for the proposition that I must ask whether Mr Burke was engaged to carry out the services on his own account and, in addressing that question, it is necessary to consider "…such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for

investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task."

34. In the present case, the contractual documentation included a letter dated 24th September 2014 from C&F to Mr Burke incorporating the "applicable terms of his employment", a document signed by him on 24th September 2014, headed "new starter/employee information form" and a notice signed by him on 1st October 2014 recording that his job title was "venue events and sales manager" and had read and understood the Employee Handbook. On 6th October 2014, he also signed a "Discretionary Bonus Agreement" providing that, in addition to his basic salary, he was eligible to receive a discretionary bonus payment calculated at "15% on the remaining amount after cost of sales, wages and overheads have been paid".

35. Although there was a space on C&F's letter dated 24th September 2014 for Mr Burke's signature, C&F has not produced a signed copy of the letter. It is alleged to have gone missing. In cross examination, Mr Burke stated that he could not recollect he had ever seen or signed the letter. When challenged, he stated that it was possible but unlikely that he had signed it. However, he did not deny that he had signed the other contractual documentation, including the acknowledgment that he had read and understood the Employee Handbook and understood that it formed "part of his terms and conditions of employment". It is not suggested that Mr Burke ever challenged C&F on the contractual documentation or asserted that he had not seen or received the relevant contract.

36. On the balance of probability, I am satisfied that, whilst a copy of the letter dated 24th September 2014 was posted and, in all likelihood, delivered to him, he did not read or sign it. On several issues, Mr Burke was an unconvincing witness and, on the employment issue, his case is generally inconsistent with the contemporaneous documentary evidence. However, he often took a casual approach to the legal documentation provided to him – indeed he read little if any of the relevant contractual documentation about his engagement in September 2014 before signing it - and it would not be in the least surprising if he did not read the letter dated 24th September 2014. For its part, although it appears C&F retained the relevant contractual documentation, including the letter dated 24th September 2014 and copies of the other contractual documents signed by Mr Burke at the time, C&F has not provided a convincing explanation why the signed version

of the letter dated 24th September 2014 might have gone missing. There is also no contemporaneous document to record that Mr Burke had signed it. At one point in his evidence, Mr Speed suggested he had recently seen a signed copy of the contract. However, as on many issues, his evidence on this point was unconvincing and un-corroborated.

37. The matter does not, of course, end there. From the outset, Mr Burke was aware of his responsibilities. As Venue Sales and Events Manager, he was expected to promote and arrange events on behalf of C&F and he was required to report to the Managing Director. In the performance of his duties, C&F retained a measure of control which was consistent with Mr Burke's status as an employee. Moreover, once Mr Burke was re-engaged he was remunerated as an employee with employer's pension contributions and PAYE deducted.

38. It is true that Mr Burke was engaged to work for C&F on the understanding that, in addition to promoting and arranging C&F events, Mr Burke would remain entitled to promote and organise his own events, including events personally organised by him using the name "Waxxx", for which he was entitled to be remunerated independently from C&F. Whilst engaged to work for C&F, Mr Burke thus promoted events held at the Venue and other places in Liverpool, such as The Grange, 24 Kitchen Street and 40 Seel Street, without any objection from C&F. He did so personally, not in his capacity as an employee, funding such events personally and undertaking full responsibility for promoting the events himself. C&F were content for him to do so. C&F's main concern was to ensure that, when working for C&F, Mr Burke did what was required of him and continued to generate an acceptable level of business.

39. Since C&F had engaged Mr Burke on this understanding, it did not amount to a breach of his duty of fidelity and good faith for him to promote events in his personal capacity provided that, in doing so, he did not otherwise commit a breach of his duties to C&F. No doubt this was an untidy arrangement and it potentially exposed Mr Burke to a conflict between his personal interests and his duties to C&F. However, I am satisfied that, in September 2014, Mr Burke was engaged as an employee and that he continued as an employee of C&F until his resignation, as such, was accepted on 15th June 2015.

40. The second question is whether Mr Burke and Mr Lacey formed a partnership for business purposes and, if so, when. A partnership is statutorily declared to comprehend a relationship between two or more persons carrying on business with a view of profit, P*artnership Act 1890 s1(1).* Where it is established that a person is in receipt of a share of such profit, this is *prima facie* evidence that he is a partner, *PA 1890 s2(3),* but such evidence is not conclusive and it is necessary to look at the terms of the parties' arrangements as a whole.

41. In Paragraph 11 of the Particulars of Claim, it is contended, on behalf of Shua, that "in the course of developing the show, Mr Burke and Mr Lacey had agreed that they would both work on the project and split any profits 50/50" and, on that basis, "a partnership at will arose between Mr Burke and Mr Lacey". Consistently with this proposition, Mr Burke confirmed, in his first witness statement, that by the time of the first BB event on 4th April 2015, Mr Lacey and himself had agreed "they would split Bongo's Bingo 50/50". However, when asked, in cross examination, to clarify what this might have meant, Mr Burke stated vaguely that "the 50/50 was getting the work done and 50/50 of whatever comes after that as well". Mr Lacey described it differently. In cross examination, he confirmed that it was their intention to be 50/50 partners but not, at that stage, in a financial sense. When characterised in this way, he was "not really one for thinking about money. I just kind of think '50/50, let's do it together'".

42. At the outset, Mr Burke and Mr Lacey did not share the proceeds of the events. The events were held at C&F's premises and C&F was thus entitled to the bar receipts. From the beginning, these were considerable. In return C&F paid Mr Lacey a fee, initially £150 for each event. Pursuant to an agreement which it reached separately with Mr Burke, C&F also paid 15% of the net bar receipts to Mr Burke. This did not form part of his remuneration as an employee. Together, Mr Burke and Mr Lacey arranged for proceeds of the entry tickets to be released to Mr Lacey so he could apply them towards the cost of the prizes. This arrangement continued following the resignation of Mr Burke as an employee of C&F. No doubt, their arrangements will have evolved once Mr Lacey started to perform at other venues but this wasn't examined in any detail before me.

43. Mr Burke and Mr Lacey believed that they "were in it together" and, in that sense, regarded themselves as equal partners. However, I am satisfied that, at least during the

period Mr Burke was an employee of C&F and, in all likelihood, at all material times afterwards, they were not partners in the legal sense of carrying on business in common with a view of profit. It is conceivable that that they entered into partnership at some stage between Mr Burke's resignation, on 14th June 2015, and the assignments dated 22nd May 2019. However, no conclusive evidence was adduced on this issue to demonstrate their change in status. If there was a change in their status, no evidence was adduced to show when that might have happened. There is thus no satisfactory evidence upon which I can reasonably infer that Messrs Lacey and Burke ever entered into partnership.

44. It was subsequently recited in the deeds of assignment dated 22nd May 2019 that Messrs Lacey and Burke "had entered into partnership in or about April 2015". It is thus conceivable Mr Lacey is estopped, by deed, from denying he was in partnership with Mr Burke for some limited purposes. No doubt, this would preclude him from challenging Shua's title and it may operate to restrict the rights and obligations of Messrs Burke and Lacey towards one another. However it would not be binding upon C&F save to the extent that it relates to the devolution of Mr Lacey's title to the BB goodwill.

45. In Paragraph 27 of the Particulars of Claim, it is alleged that the "Partnership" business was transferred to Shua on 5th November 2015, ie the date on which it was incorporated and, by implication, that Shua commenced business immediately at that time. I am not satisfied that this is correct.

    45.1. Firstly, there is no convincing evidence that Messrs Burke and Lacey were in partnership by 5th November 2015.

    45.2. Secondly, no evidence has been adduced to show that there were any legal formalities at that stage with a view to transferring business to Shua.

    45.3. Thirdly, on 31st December 2016, accounts were filed for Shua showing that it was a dormant company throughout its initial accounting period ending on 31st March 2016.

46. It appears Shua started to trade at some point during the following accounting year and it is at least implicit in Shua's case that Messrs Lacey and Burke became employees at that stage. It is also implicit that, once Shua commenced in business, each BB event was presented through Shua as a corporate vehicle. Whilst the supporting evidence on these

particular aspects of the case is limited, I am satisfied, on the balance of probability, that Shua did start to present BB events during this period and Messrs Lacey and Burke did indeed become employees. I am also satisfied that, once Mr Lacey was an employee of Shua, he can be taken to have presented events on behalf of Shua. However, until then, I am satisfied he acted as a self-employed entertainer, in business as a sole trader.

47. I shall now address the issues identified by HHJ Hodge QC at the hearing on 22nd August 2019 together with the two additional issues identified at the commencement of the trial.

(5) Ownership of the goodwill of the business

48. In *Reckitt & Colman Products Ltd v Borden Inc [1990] 1 WLR 491*, Lord Oliver re-stated the requirements to be established by the claimant in a successful passing off action.

> "First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff. Whether the public is aware of the plaintiff's identity as the manufacturer or supplier of the goods or services is immaterial, as long as they are identified with a particular source which is in fact the plaintiff. ... Thirdly, he must demonstrate that he suffers or ... that he is likely to suffer, damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

49. It is clear from the judgment of Lord Neuberger in *Starbucks v BskyB [2015] UKSC 31* that a claimant's reputation will not, in itself, suffice to found a claim. The claimant must be entitled to "goodwill, in the form of customers, in the jurisdiction…" of the court (Para 52).

50. In *Inland Revenue Commissioners v Muller & Co's Margarine [1901] AC 217* at *233*, Lord Macnaghten defined the goodwill of a business in the following way.

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may by, goodwill is worth nothing unless it has power of attraction sufficient to bring home to the source from which it emanates".

51. In a case such as the present where there are competing claims to the goodwill, it is necessary first to identify the business to which such goodwill might putatively appertain and the owner or owners of the relevant business. Once that has been done, it is necessary to identify the distinctive nature of the services that are supplied under the so-called 'get-up' and ascertain who is most closely responsible for it and, most importantly, with whose business the public most closely associate it. In *Scandecor Development v Scandecor Marketing [1999] FSR 26*, the Court of Appeal thus considered that the UK distributor of a business supplying posters in the UK – with all its local connections - was the owner of the goodwill, not the original supplier.

52. Consistently with the proposition that the perceptions of the customer are critical, the courts will readily attribute goodwill to a writer or entertainer personally where that person has created or developed a name or non-de-plume and thus attracted a public following. This is the case regardless of whether a third party, such as a newspaper proprietor or broadcaster, has engaged them to provide such services. In *Landa v Greenberg (1908) 24 TLR 441*, the plaintiff contributed to a newspaper a weekly column for children under the nom-de-plume of "Aunt Naomi". Following her dismissal, she succeeded in a claim against the proprietor of the newspaper on the basis that the name constituted part of her own stock-in-trade as a writer and it had become identified with her. In *Hines v Winnick [1947] Ch 708*, the plaintiff was engaged to produce burlesque musical entertainment with a group of musicians in the name of "Dr Crock and his Crackpots". In the light of Eve J's guidance in *Landa v Greenberg (supra),* Vaisey J concluded that the name "Dr Crock" had become part of the plaintiff's stock-in-trade and

it was not open to the defendant to make use of that name in connection with any person other than the plaintiff. No doubt, these authorities can be reconciled with the judgment of Lord Neuberger's observations in *Starbucks v BskyB* (supra) on the basis that, in each case, the public associated the relevant name or non-de-plume more closely with the plaintiffs than anyone else and, as the plaintiffs' "stock-in-trade", the same could be treated as the asset of their personal business when marketing or negotiating the provision of their services.

53. Ownership of goodwill is generally to be assessed as at the date of the first alleged transgressions of the parties' rights on the basis that the transgressions are only actionable from that time. In Paragraphs 44-45 of the Particulars of Claim, Shua maintains that, on "18th January 2018", C&F contended that Shua would not be entitled to use the name "Bongo's Bingo" after 31st July 2019 and that, on 14th May 2019, C&F put out statements on Facebook and to the Press contending that it was the owner of the Bongo's Bingo Brand. The reference to 18th January 2018 is plainly an erroneous reference to an email dated 18th January 2019 from Mr Speed to Mr Burke and I shall thus treat it as such. For its part, C&F also maintain that Shua made misleading publications about its rights to hold events from 14th May 2019. Proceedings were ultimately commenced on 23rd May 2019.

54. I shall thus address the issue of ownership as at 18th January 2019, 14th May 2019 and 23rd May 2019 although, in doing so, it will be necessary for me to consider the historic devolution of the goodwill.

55. It is to be recalled that the first BB event was held in early April 2015. At that stage, Mr Lacey was in business as a self-employed entertainer, C&F operated the business of an entertainments venue with at least one licensed bar and Mr Burke was engaged as an employee of C&F to promote and arrange events at the Venue. Whilst an employee of C&F, C&F permitted Mr Burke to promote events in his personal capacity.

56. From the outset, BB was a conspicuous success. It generated significant goodwill and, in my judgment, it is overwhelmingly clear that the goodwill belonged to Mr Lacey in his personal capacity as a self-employed entertainer, not C&F nor Mr Burke. As I have mentioned, BB was an entertainment medium fusing bingo with rave and dance-offs. It

had a young demographic, in the age range of 18-25 years with a substantial student element, quite different – as Mr Falkingham pointed out in cross examination – from the general profile of C&F's customers. It incorporated and developed several of the ideas from Mr Lacey's own unique Pub Quiz at the Shipping Forecast, for example the elements of music, rave, mad prizes, comedy and dance-offs identified and confirmed, in evidence, by Mr Lacey. More significantly, it was created and developed by Mr Lacey himself, albeit with Mr Burke's encouragement. Mr Burke helped to promote the event and, no doubt, at times Mr Lacey discussed his ideas with Mr Burke. On some occasions, Mr Burke may have made his own suggestions. Indeed, Mr Burke said that, in his initial conversations with Mr Lacey, in 2015, he came up with the idea of combining "bingo with a kind of club night". However, the whole concept of BB was Mr Lacey's. On this aspect of the case, I accept the evidence of Mr Lacey himself. It was not seriously challenged in cross examination. Consistently with the proposition that Mr Lacey himself created and developed the whole concept, Mr Falkingham confirmed, in his witness statement, that the BB event was "heavily driven by (or dependent upon) [Mr Lacey's] personality" and that it was "as much about Jonny's persona as anything else".

57. Secondly, Mr Lacey was plainly the person with whom customers and, indeed, more generally the public, associated BB. Well before the first BB event was held, Mr Lacey was well known, in the local area, as "Jonny Bongo". BB incorporated the name by which he was known, a name through which he had already accumulated a substantial following. In cross examination, Mr Lacey confirmed that some 400-500 customers attended the first BB event at the Venue, most of whom had followed him from the quizzes he had previously held at local pubs. With the passage of time, Mr Lacey's profile has risen. In the period following Mr Burke's resignation from C&F, he started to present shows at Manchester, Leeds and Newcastle but he already had a significant local profile when the first BB event was held at the Venue. Moreover, at least until 2017, BB events were personally presented by Mr Lacey himself. He confirmed, in evidence that, until the birth of his son in 2017, he presented some "99% of the Liverpool shows".

58. Although Mr Speed indicated that C&F had itself played a significant part in creating the BB concept, in my judgment this is contrary to the evidence. When pressed in cross examination, it emerged that Mr Speed was relying on his suggestions about the lighting,

to which I have already referred. However, these suggestions did not form an essential part of the concept on which BB is based. C&F could reasonably be expected to provide suitable facilities and, indeed, to make recommendations in relation to the use of the facilities. More significantly, it would be entirely contrary to the evidence to suggest that C&F or, for that matter, the business it conducts from the Venue was or is, as Lord Macnaghten put it, the "the attractive force which brings in the custom" rather than Mr Lacey himself and the entertainment medium he has created. C&F and the Venue were not and are not an essential part of the concept on which BB was based. As Mr Falkingham himself recognised, BB's clientele did not match the general profile of C&F's customers. There is no reason to believe that BB cannot be held – as indeed it has been - at other venues managed by other companies, without compromising the overall expectations of customers.

59. Mr Berragan submitted that, at Mr Burke's request, C&F incurred expense in connection with the BB events that were held at the Venue between April and June 2015; no doubt, it continued to incur expense afterwards. He relies on the acquisition, using eBay, of a bingo machine for £120 together with £20 petrol in connection with the collection of the machine, and he points out that C&F incurred expense for items such as light, sound, staff and security. No doubt such expense was incurred in the expectation that C&F would continue to hold such events at the Venue. Conversely, C&F has also generated substantial revenue from bar receipts in respect of BB functions at the Venue, by now far in excess of its initial expenditure. However, these matters do not, in themselves, furnish C&F with an interest in the goodwill. It forms no part of C&F's case that Mr Lacey at any stage personally contracted to sell or dispose of the goodwill to C&F itself.

60. I am satisfied, on the evidence, that Mr Lacey was solely entitled to the BB goodwill until 22nd May 2019 when he entered into two separate transactions assigning the goodwill to himself and Mr Burke and, then, to Shua. There is no evidence that Mr Lacey contracted to sell or assign the goodwill to Mr Burke or Shua prior to 22nd May 2019 although it is implicit that, in carrying on business, Shua has utilised the BB goodwill with Mr Lacey's licence or permission. It follows that Mr Lacey was the sole owner of the goodwill on 18th January 2019 and 14th May 2019. However, by 23rd May 2019, ownership of the goodwill had been transferred to Shua.

(6) Ownership of the copyright in the Logos

61. Shua maintains that it is the owner of the copyright in two artistic works, created in February 2015 or thereabouts, as logos for BB. They are simply artistic impressions of the words "Bongo's Bingo". On behalf of Shua, it is contended that:

    61.1. Mr Burke engaged Mr Joe Murphy to draw logos for BB;

    61.2. pursuant to his instructions, Mr Burke created the Logos;

    61.3. the Logos are each an artistic work within the meaning of *Section 4* of the *Copyright Designs and Patents Act 1988* and copyright thus subsists in the works by virtue of *Section 1* of the *1988 Act*;

    61.4. as the author of the work, Mr Murphy was the first owner of the copyright; and

    61.5. on or before 22nd May 2019, Mr Murphy assigned the copyright to Mr Burke by an un-dated deed of assignment; Mr Burke then assigned the copyright to himself and Mr Lacey following which Messrs Lacey and Burke then assigned the copyright to Shua.

62. In evidence, Mr Burke has formally proved the essential parts of Shua's case and the relevant deeds of assignment have been filed in evidence. In response, it is submitted that Mr Burke initially engaged Mr Murphy to create the logos at a time he (Mr Burke) was in the employment of C&F and it can thus be inferred that he engaged Mr Murphy in his capacity as an employee of C&F. I was also invited to infer that the Logos would originally have been remunerated out of petty cash advanced by Camp or out of ticket sales.

63. This is not a significant aspect of the present case. However, I am satisfied Mr Burke did not engage Mr Murphy to create the Logos in his capacity as an employee of C&F. As I have already observed, Mr Burke was engaged as an employee of C&F between September 2014 and June 2015 but he did so on the understanding he would be at liberty to carry out promotional and other work during that period which did not fall within the scope of his contract of employment. This was an untidy arrangement and the boundaries were blurred. However, his work in promoting BB was generally not encompassed in his contract of employment and this is reflected in the fact that Mr Burke was remunerated

separately out of a share of the bar receipts in respect of BB events in addition to his salaried remuneration. Moreover, there is no convincing evidence that C&F paid for the Logos. However, in the hypothetical event that these aspects of C&F's case could be established, I am not satisfied that C&F has thereby acquired legal title to the Logos in the absence of an assignment. In Paragraph 66 of the Defence, it is alleged on behalf of C&F that it is entitled to "an equitable licence to use the Logos in the course of its business". However, this can be of no significant value to C&F if, as I have found, C&F has no interest in the goodwill of BB.

64. I am satisfied that Shua is the owner of the copyright in the Logos.

(7) The 15th June 2015 Agreement

65. The parties are in dispute as to the nature and effect of the 15th June 2015 Agreement and its terms. Based on the parties' statements of case in the Action, Mr Berragan submitted that it is common ground that a binding agreement was reached. The statements of case are each founded on an agreement based on the parties' respective interpretation of the 15th June 2015 Email. However, I am satisfied that, in considering this aspect of the case, it is open to me to determine whether, indeed, a binding agreement was reached. I have reached this conclusion for the following reasons.

    65.1. Firstly, by his order dated 22nd August 2019, HHJ Hodge QC identified, as an issue for preliminary determination, "the *existence*…of the 15 [June] 2015 agreement…" (My italics). Whilst the agreement was challenged on the grounds of waiver and estoppel, I was implicitly required to determine whether it took effect as a binding contract.

    65.2. Secondly, at all times the parties were and are in dispute as to the interpretation and effect of the terms putatively agreed and, in Paragraph 7 of their Points of Defence to the Petition, it was specifically pleaded on behalf of Messrs Burke, Lacey and Shua that "any arrangements entered into in respect of Liverpool as referred to in the alleged 15 June 2015 Agreement have never been enforced and were never intended to be enforced…" Again, to examine the merits of these issues properly, it is necessary for me to determine whether, on 15th June 2015, the parties entered into a binding agreement.

65.3. Thirdly, the discussions at the 15th June 2015 Meeting and subsequent exchange of emails were comprehensively explored in cross examination. The parties to the meeting, Messrs Falkingham and Burke were each called as witnesses. I took the opportunity to clarify their evidence and address the issues that were inherent in Mr Falkingham's evidence pertaining to whether the 15th June 2015 Agreement took effect as a binding contract. Having done so, I gave the parties' counsel the opportunity to re-examine. From their evidence, it was obvious there was, indeed, a significant issue whether the 15th June 2015 Agreement was a binding agreement. Counsel cannot have been in any doubt and this was reflected in their closing submissions. I am thus satisfied that for me to determine whether the 15th June 2015 Agreement amounted to a binding contract is not procedurally unfair.

66. The 15th June 2015 Meeting was held at Mr Burke's suggestion. By his email the day before, Mr Burke advised Mr Falkingham of his resignation with immediate effect and, having confirmed that he wished to continue working for C&F on a commission only basis, he suggested a meeting "to discuss moving forward". The meeting was held to discuss the future arrangements between C&F and Mr Burke. There was no reference in the email to Mr Lacey and it appears Mr Lacey was not advised of the meeting until after it had taken place. There is nothing to suggest that, prior to the meeting, Mr Lacey specifically authorised Mr Burke to enter into commitments on his behalf or, indeed, that he advised C&F that Mr Burke was authorised to enter into any such commitments on his behalf. Nor, indeed, was it envisaged Mr Lacey would attend personally. No point is now taken as to Mr Burke's authority to enter into contractual commitments on behalf of Mr Lacey and I accept Mr Falkingham assumed Mr Burke would seek to procure Mr Lacey's continued involvement without the need to satisfy himself about the extent of Mr Burke's authority. However, Mr Lacey's personal involvement and his rates of remuneration were not under discussion and his interest in the business goodwill of BB was not identified as a matter for discussion.

67. In my judgment, Mr Falkingham was generally a more reliable witness than Mr Burke; his evidence was clearer and more precise and, although there was a significant measure of common ground, I prefer Mr Falkingham's account of the meeting where there are differences between them. However, the meeting took place upwards of four years

before trial and inevitably the recollection of both witnesses has diminished in relation to the precise detail of the discussions that took place.

68. Immediately prior to Mr Burke's resignation the day before, Mr Lacey was regularly presenting BB events at the Venue in return for his event fee, C&F was already making a substantial return out of the bar receipts and Mr Burke was himself entitled to a 15% share in the receipts. They were each benefitting from the increasing success of the events and naturally they perceived it was in their interests for the events to continue at the Venue. On behalf of C&F, there was thus good reason for Mr Falkingham to meet with Mr Burke to do what he could to continue the existing arrangements – characterised by Mr Falkingham himself, in cross examination, as continuing the "de facto" position – pending the negotiation of new contractual arrangements and, with that end, to initiate such a negotiation. Based on Mr Falkingham's account, I am satisfied that the meeting was not long, lasting between half an hour and an hour and, as Mr Falkingham put it in cross examination, they "won't have gone into any great depth". Mr Falkingham's account of the meeting was broadly consistent with the evidence of Mr Burke who maintained, in re-examination, that the meeting was "probably about half an hour" in length.

69. In that length of time, Mr Falkingham did not have any realistic prospect of negotiating and concluding a contract on terms that properly disposed of the issues under consideration. However, he had a realistic expectation of procuring, at least for the foreseeable future, that BB events would continue to be held on the same basis as before albeit without the benefit of a scheme of contractual commitments. With a measure of good will, he would also have had a reasonable prospect of reaching some agreement, in principle, for the assumption of future contractual commitments, which could then be put in the hands of lawyers.

70. Based on the evidence of Mr Falkingham himself, I am satisfied this is what he achieved. There was no agreement about Mr Lacey's remuneration. No doubt, it was implicit Mr Burke would seek to procure that Mr Lacey continued to present events in return for fees on the same or at least a similar basis to his current arrangements but it wasn't suggested Mr Lacey or, indeed, Mr Burke himself was thus subject to contractual commitments to C&F, certainly not indefinite open ended commitments. However, it was agreed in principle that, for the time being, C&F would continue to hold BB events and, in return for

promoting and arranging such events, Mr Burke would be paid commission of 15% of bar receipts on the same basis as before.

71. Mr Falkingham also reached agreement, in principle, with Mr Burke that, at least for the time being, BB events in Liverpool should be held at the Venue in the future and this should be reflected in the contractual arrangements. In cross examination, however, Mr Falkingham accepted that the idea was not for C&F to present such events itself; it simply meant that, if and when Mr Lacey presented such an event in Liverpool, it would be held at the Venue. Such a contractual term would obviously require careful drafting.

72. Following the meeting, Mr Falkingham sent Mr Burke the 15th June 2015 Email. This included the provision for Mr Burke to be paid 15% commission on bar receipts or profits. It also provided that C&F would have "exclusivity" on BB in Liverpool. However, there was an additional provision for C&F to be entitled to "a 15% 'stake' in Bongos Bingo on the road". In cross examination, Mr Falkingham stated that this provision "hadn't really been discussed" at the meeting. It was apparently his idea and he put the word 'stake' in inverted commas because it wasn't clear to him what form it was going to take. "It was essentially a mirror image of what we were…of Josh's relationship with Camp & Furnace and then if it went on the road that Camp & Furnace would have 15 per cent … I called it 'stake'". Later, he confirmed that the expression was deliberately kept vague so that it could have meant a 15% share of income or 15% share of the business.

73. Although Mr Falkingham stated the additional provision "hadn't really been discussed", I took him to mean that, whilst he may have mentioned such a provision to Mr Burke – without referring, in precise terms, to any kind of formula – it did not form part of their discussions at the 15th June 2015 Meeting and, when preparing the 15th June 2015 Email, he thus took the opportunity to use the word 'stake' for the reason he gave. If the word 'stake' had been mentioned, it was placed in inverted commas for the same reason. Conversely, Mr Burke claimed to recollect the use of the word 'stake' – he said he was "pretty sure that the word was used" – but stated he understood this to mean 15% of the net profit generated from events outside Liverpool. In my judgment, Mr Falkingham's recollection on this issue is more plausible than Mr Burke's recollection as, indeed, is his recollection more generally of the 15th June 2015 Meeting. It is likely that Mr Burke's

understanding of the meaning of the word 'stake' is based on discussions that he has had about the 15th June 2015 Email subsequently.

74. On any analysis, I am satisfied Messrs Falkingham and Burke only reached agreement in principle. This is on the basis that, when the meeting was arranged, they can be taken to have been aware it would not be possible to enter into a comprehensive agreement disposing of all matters requiring consideration. For them both, the purpose of the meeting was to procure that, for the time being, BB events would continue to be held at the Venue on essentially the same basis as before and reach some understanding about the shape of their future contractual arrangements which could then be "ironed out" later. This is essentially what they achieved at the meeting itself. Pending a formal contract, it was agreed that BB events would continue to be held at the Venue, as before, and Mr Burke would continue to receive his 15% commission on bar receipts, described in the 15th June 2015 Email as "15% of contribution profit from the bar". Moreover, an understanding was reached that there would be provision in the formal contract for C&F to be granted "exclusivity in Liverpool" and rights in Bongo's Bingo on the road, quantified at 15% but otherwise not properly defined.

75. Mr Berragan submitted that, if any parts of the agreement were incomplete, the parties could be taken at least to have reached agreement on the essential provisions for a binding contract. In doing so, he referred me to *Chitty on Contracts (33rd ed)(2018) Paras 2-120 to 2-147*. I accept the proposition that it is possible for parties to enter into a binding contract on the understanding that additional terms would be negotiated and agreed later. However, in my judgment this did not happen in the present case. The parties did not enter into a binding contract at the meeting on 15th June 2015 nor in the subsequent exchange of emails. They reached an understanding that C&F would continue to hold BB events and pay Mr Burke his 15% commission for so long as it did so but this was no more than a continuation of the "de facto position" as Mr Falkingham described it. For so long as C&F held such events, Mr Burke would be entitled to his 15% commission but C&F were not under an obligation and, certainly not an obligation continuing into the indefinite future, to hold such events and pay Mr Burke commission. C&F had only a limited interest in the Venue; in all likelihood based on a yearly tenancy arising from an un-signed lease for a term of 10 years. Moreover, the provisions, in the 15th June 2015

Agreement, for "exclusivity" and a "15%" share were vague and inchoate. The parties could not reasonably be expected to treat them as contractual obligations until incorporated in a coherent contract.

76. I am satisfied that the parties did not reach a binding contract at the 15th June 2015 Meeting for several reasons.

    76.1. As Mr Falkingham put it, they "won't have gone into any great depth". The immediate need for the meeting arose from Mr Burke's decision to resign as an employee and it was held at short notice. There appears to have been no discussion at all about Mr Lacey's specific rights and obligations, including his rates of remuneration. Mr Falkingham was himself in the process of scaling down his involvement in C&F and, at least in part, no doubt he viewed the meeting as a holding operation.

    76.2. Secondly, for very good reason, Mr Falkingham deliberately kept vague the provision for C&F to have a 15% 'stake' in BB. At that stage, no one appears to have understood the underlying legal position, least of all Mr Burke. As it happens, Mr Lacey was entitled to the business goodwill and he was not in partnership with Mr Burke. It is at least implicit Mr Falkingham was aware C&F was not the owner of the goodwill but he would have been ill advised (as indeed would anyone else) to rely simply on the terms that he had negotiated, in principle, with Mr Burke. He can be taken to have been mindful of that.

    76.3. Thirdly, in answer to questions from me, Mr Falkingham ultimately accepted that, having reached agreement in principle, he was aware further detail would have to be ironed out before there could be a binding contract. Similarly, Mr Burke confirmed that, following the meeting, "I was expecting that there'd have to be like contracts and stuff in place for this to kind of move forward and just, I guess, to iron out the terms. I think, you know, the example of the exclusivity thing doesn't work if Camp and Furnace lost their licence, for example, you know. So I think it was just to get all the details out".

77. For the avoidance of doubt, I am also satisfied that the exchange of emails on 15th June 2015 did not give rise to a binding contract. In the 15th June 2015 Email, Mr Falkingham

did not promise to hold any further BB events but, in the event they were held he stated that commission would continue to be paid. However, he canvassed, in vague and inchoate terms, the provisions for "exclusivity" and a "15% 'stake'". He then referred to the need for a future meeting. In his response, Mr Burke agreed and stated that he would "get the Bingo contracts written up with my solicitor friend if that's ok". In the events that followed, Mr Burke omitted to refer the matter to a solicitor and Mr Falkingham did not pursue him.

78. It is not entirely surprising Mr Falkingham did not pursue Mr Burke. By that stage, Mr Falkingham was in the process of scaling back his involvement at C&F and, before long, he had ceased to have a role in the management of the company. For his part, Mr Burke stated that, having initially identified a solicitor to do the work for him, namely Mr Ian Roberts, he did not refer it to a solicitor. By way of explanation, he stated that "I was kind of waiting…I guess to be honest, I was probably expecting that Camp and Furnace would say no, you know, we've been doing business for 30 years or whatever, we've got someone who can write it up, I guess".

79. Following the 15th June 2015 Meeting, Mr Burke appears to have formed the impression that C&F was entitled to a 15% share in the profits generated from BB outside Liverpool notwithstanding the vague terms of his discussions with Mr Falkingham. To the extent that this is based on Mr Burke's perceptions from the meeting itself, it is obviously open to C&F to submit the parties must thus be taken to have entered into a binding contract. However, the issue is to be viewed objectively. Mr Burke's perception, following the meeting, was that further matters would have to be ironed out before contracts were in place. This is consistent with the proposition that the parties did not enter into a contract. If, notwithstanding this perception, Mr Burke formed the impression that C&F was entitled or had become entitled to a 15% share in the profits, he was mistaken.

80. Since the June 2015 Agreement did not amount to a binding contract, C&F did not thereby become entitled to a 15% "stake" in BB "on the road". This disposes of C&F's counterclaim for an account of "all revenues and costs of Bongo's Bingo outside Liverpool or associated or similar events in relation to which Mr Burke and/or Mr Lacey and/or the Claimant is liable to pay to the Defendant 15% commission". However, on the hypothesis my

conclusion is wrong, questions immediately arise as to the nature and effect of C&F's material rights and the extent to which they remain enforceable.

81. If Mr Burke did, indeed, enter into a contractual obligation to provide C&F with a 15% "stake" in BB "on the road", he would be personally liable to C&F to procure that C&F was provided with such a "stake". Since Mr Lacey does not take any issue about Mr Burke's authority to bind him to such a contractual obligation, he would be bound by any obligation to which Mr Burke might have purported to commit him. However, Shua is plainly not bound by any such obligation. Shua was not incorporated until upwards of four months after Mr Falkingham and Mr Burke entered into the June 2015 Agreement and it did not commence in business until the company's financial year ending on 31st March 2017. Mr Burke obviously didn't enter into the agreement as an agent for Shua and there is no evidence that Shua has done anything to adopt or otherwise assume Mr Burke's contractual obligations.

82. On behalf of Messrs Burke and Lacey, it is contended that C&F has waived its contractual rights under the June 2015 Agreement or is estopped from enforcing them by virtue of the allotment and transfer to C&F of 15% of the shares of Shua. This is based on the proposition that, by co-operating in the allotment and transfer of the shares to C&F, C&F acted consistently only with an implied promise to give up or release its rights under the June 2015 Agreement.

83. Since this is now no more than a hypothetical question, I shall deal with it shortly. On balance, I am satisfied that Messrs Burke and Lacey do, indeed, have a good defence to C&F's claim to a 15% 'stake' in BB on the road on this basis. In cross examination, Mr Speed confirmed that he treated the allotment of shares as "security" for Mr Burke's obligations under the June 2015 Agreement and it was at least implicit in his evidence that it was for this reason that he co-operated in the allotment and transfer of the shares. His evidence on this issue was vague but, at one point, he confirmed his perception that "there's something there, there's a value there, we're owed money" and he "felt that the deal wasn't being honoured, so I was just trying to get something at that point". He also stated that he regarded it as security for Mr Burke's personal liability. Although much of Mr Speed's evidence was unsatisfactory and is thus to be treated with caution, I have no reason to suggest this part of his testimony is incorrect. However, it must have been

obvious to Mr Speed and he can thus be taken to have been aware that, from Mr Burke's perspective, the shares were being allotted to him, on behalf of C&F, in satisfaction of Mr Burke's putative promise to provide it with a 15% "stake" in BB "on the road" and it was on this basis that Shua co-operated with C&F in arranging for the shares to be transferred to C&F.

83.1. Prior to the allotment and transfer of the relevant shares, there were two meetings between Messrs Speed, Keeling and Burke on 15th December 2015 and 8th January 2016 at which they discussed BB and the possibility of setting up a corporate vehicle. In Mr Keeling's minutes of the 15th December 2015 Meeting, it was recorded beside the word "Action" that he would seek "to understand how a new company would look and the costs of set up. Camp and Furnace would have a 15% stake".

83.2. In his witness statement, Mr Keeling himself accepted that Mr Burke had "agreed to the idea that a new limited company would be the best way to operate BB events 'on the road' and [he] had offered to help with the incorporation of that new company".

83.3. On 22nd January 2016, Mr Keeling emailed Mr Burke to obtain information from him to help in attending to the formalities for incorporation. However, by the time Mr Keeling left C&F in March 2016, he had not completed the formalities.

83.4. In the absence of further progress, Mr Burke decided to utilise Shua as the corporate vehicle for the business. At some point during the financial year ending on 31st March 2017 – it is unclear precisely when – Shua started to present the BB events.

83.5. Mr Burke engaged a local accountant to arrange for Mr Speed to be registered with 15% of the shares in Shua on the basis that he would hold such shares on behalf of C&F. Mr Speed was duly registered as such on 27th January 2017 but, at Mr Speed's request, the shares were registered in the name of C&F on 6th April 2017.

84. Although it would have been obvious to Mr Speed that the shares were being allotted and transferred in satisfaction of C&F's '15% stake' – whatever that may have meant - Mr Speed took no action at the time to advise or warn Mr Burke, or indeed anyone on behalf of Shua, that, following the issue of the shares, Mr Burke would remain liable to provide it with a 15% 'stake' in the business. Had he done so, I am satisfied that Mr Burke and

Shua would have taken immediate action to challenge the transaction. They would then have refused to co-operate further in the transfer of the shares. In my judgment, by co-operating with Mr Burke and Shua in connection with the allotment and transfer of the shares, Mr Speed promised by implication to accept such shares, on behalf of C&F, in satisfaction of the original promise. Mr Burke acted in reliance upon the promise by arranging for the shares to be allotted and transferred to Mr Speed and C&F.

85. For the avoidance of doubt, this would not have given rise to a compromise of C&F's rights, if any, to a share of the income from the business "on the road" prior to transfer of such business to Shua nor would it amount to a compromise of C&F's rights under the putative promise of "exclusivity".

86. In Paragraph 27 of the Petition, C&F itself contends that C&F's acceptance of the shares "represented a novation and/or variation of clause 3 of the 15 June 2015 Agreement". However it contends that, by virtue of the novation or variation, C&F is entitled to 15% of Shua's shares *in addition* to 15% of the "gross profits earned by [Shua] from running BB events outside Liverpool".

87. In the event I am wrong in my conclusions about the 15th June 2015 Agreement, this issue is thus not without significance. Whilst Mr Speed's perception was that C&F's shares were originally taken as security for Mr Burke's obligations, it counterclaims for 15% "of all revenues and costs of Bongo's Bingo events outside Liverpool" and, in addition, petitions for relief under *Section 994* of the *Companies Act 2006* on the footing that it is entitled to 15% of the shares in Shua. Consistently with this, Ms Hatty Buchanan confirmed her view, in cross examination, that C&F is entitled to a 15% "stake" in BB "on the road" in addition to its 15% shareholding. Whilst not overburdened with merit, C&F's case is logically founded on this proposition. However in my judgment, it is flawed since no one is under a contractual obligation to account to C&F for 15% of BB's "revenues" outside Liverpool.

(8) Is the management of Shua subject to the equitable constraints identified in Paragraph 28 of the Petition?

88. In Paragraph 28 of the Petition, it is stated that "…by virtue of the 15 June 2015 Agreement and the subsequent issue of shares to [C&F], the management of [Shua] is subject to the following …equitable constraints:

28.1 [Shua] must account to [C&F] for 15% of all gross profits (as defined…) earned from all BB events and associated events and business undertaken by [Shua] (not including for the avoidance of doubt any events in [C&F's] premises).

28.2 [Shua] must not hold any events in Liverpool unless either (i) they are held at [C&F's] premises or (ii) [C&F] gives its consent.

28.3 [Shua] must not make any payment to Mr Burke or Mr Lacey (or for their benefit) representing remuneration in any form, whether by way of salary, management or service charges, or otherwise, other than Mr Lacey's reasonable appearance fee, without also accounting to [C&F] for the appropriate proportion, namely 15/85ths of any such payments.

28.4 Mr Burke is obliged to manage [Shua] in accordance with his fiduciary and other duties as set out below, and with due regard to the interest of [C&F] as a minority shareholder with the said …equitable rights and expectations arising from the 15 June 2015 Agreement".

89. By an order dated 19th July 2019, Mr Lance Ashworth QC sitting as a Deputy Judge of the High Court thus directed that "the issue of whether the conduct of the affairs of [Shua] is subject to the *equitable* constraints set out in paragraph 28 of the Petition…be tried as a preliminary issue" (My italics). I shall refer to the so-called "equitable constraints" as the Paragraph 28 Constraints.

90. Is the conduct or management of the affairs of Shua subject to the Paragraph 28 Constraints? In my judgment, the answer is no.

91. In the context of a *Section 994* petition, "equitable constraints" are "equitable considerations which make it unfair for those conducting the affairs of the company to rely on their strict legal powers", *O'Neill v Phillips (supra) at 1099A-B* (Lord Hoffman). In this respect, the concept of unfairness runs parallel to the concept of "just and equitable" as a ground for winding up and the guidance of the House of Lords in *re Westbourne Galleries Ltd [1973] 1 AC 360* applies, *O'Neill v Phillips (supra) 1099 B-C.*

92. In *re Westbourne Galleries (supra),* Lord Wilberforce stated, as follows, at *379E-G.*

> "The superimposition of equitable considerations requires something… which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interests in the company - so that if confidence is lost, or one member removed from management, he cannot take out his stake and go elsewhere..."

93. Lord Wilberforce's elements were not intended to be exhaustive. However, they are based on or otherwise involve an agreement or understanding, implicit or otherwise, about the management of the affairs of the company. In the absence of any such element, there must be an identifiable conceptual basis for the equitable constraints on which a petitioner relies which can at least be tested with reference to the understanding of the parties at the time the company was formed or, at a specific point in time, afterwards, which is material to the understanding on which the affairs of the company are to be conducted.

94. In the present case, the Paragraph 28 Constraints are not obviously based on any of the elements identified by Lord Wilberforce nor do they relate to a common understanding at the time Shua was formed in relation to the management of the its affairs.

    94.1. Mr Burke ceased as an employee of C&F the day before the 15th June 2015 Meeting and the meeting was held with a view to the continuation of their working arrangements pending the formation of new contractual commitments. However, nowhere is it suggested that the relationship between Mr Burke and C&F was an association formed or continued on the basis of a personal relationship and there is certainly no suggestion of such a relationship between C&F and Mr Lacey. By the time Shua was formed, Mr Lacey was continuing to present BB events at the Venue, Mr Burke was still promoting such events and the events were being held pursuant to arrangements negotiated between Mr Burke and C&F. No doubt the contractual arrangements evolved once Shua commenced in business. However, I am satisfied

that the relationship between the parties was based on a working commercial arrangement, not a personal relationship involving mutual confidence.

94.2. At the time of the 15th June 2015 Meeting, it was envisaged Mr Lacey would continue to perform at the Venue. However, in the 15th June 2015 Email, Mr Falkingham did not purport to make any commitments to engage Mr Lacey; there was merely a commitment to pay Mr Burke 15% commission for so long as the existing arrangements continued. In any event, Mr Speed took the 15% shareholding as security for Mr Burke's commitments, not on the basis that C&F would participate in the conduct of Shua's business "on the road". Of course, the 15th June 2015 Meeting took place several months before Shua was formed. However, there was no understanding at the time it was formed or, indeed, at any time afterwards that C&F would participate in the conduct of Shua's affairs.

94.3. Moreover, there is no suggestion, in Paragraph 28, that C&F somehow relies on any restrictions on the transfer of members' interests, ie the third consideration identified by Lord Wilberforce in *re Westbourne Galleries (supra).*

95. In Paragraphs 28.1 and 28.2 of the Petition, C&F relies on Mr Burke's putative promises to C&F in the 15th June 2015 Agreement. At that stage, there is nothing to suggest the creation of a new corporate vehicle was envisaged. The constraints in these sub-paragraphs are not directed to the management of the affairs of a company; they are based on obligations Mr Burke is alleged to have assumed to C&F when he entered into the 15th June 2015 Agreement.

96. Paragraphs 28.3 and 28.4 are not based on any identifiable agreement between Mr Burke or Mr Lacey and C&F in relation to the management of Shua's affairs. Paragraph 28.3 is based on Mr Burke's inchoate promise, in the 15th June 2015 Agreement, to provide C&F with a "15% stake" in BB "on the road" and it has been elevated into a restriction on the remuneration of Mr Burke and Mr Lacey as employees of Shua. In Paragraph 28.4, C&F contend that Mr Burke is under a duty to manage Shua in accordance with "his fiduciary and other duties". No doubt as a director, Mr Burke owes fiduciary and other duties to the company. However, I am not satisfied that these can be characterised as "equitable constraints" so as to found a *Section 994* petition. Obviously, the members can expect a

company's affairs to be conducted in accordance with the Articles and other legally enforceable agreements and duties. If the company's affairs are not conducted in this way and unfair prejudice is thus caused to the members, it is open to them to present a petition. However, "the equitable considerations" to which Lord Hoffman referred in *O'Neill v Phillips (supra)* operate so as to provide members with specific grounds for challenge where the company's affairs are being conducted in accordance with the Articles and all relevant agreements. The equitable considerations apply, as Lord Hoffman put it, at 1099A-B, so as to "make it unfair for those conducting the affairs of the company to rely upon their strict legal powers".

97. In answer to the specific question before me, I am satisfied that the management of Shua is not subject to the constraints characterised as "equitable constraints" in Paragraph 28 of the Petition.

(9) Is C&F is entitled to hold BB events in Liverpool and, if so, is it an exclusive right?

98. For the reasons I have already given, the answer to the first of these questions is no and the second question does not arise.

98.1. Shua is now the sole owner of the business goodwill and is thus exclusively entitled to hold BB events in Liverpool.

98.2. In the hypothetical event that, contrary to my conclusions, the 15th June 2015 Agreement is a binding agreement it would not have been apt to furnish C&F with a right or, indeed, an exclusive right to hold BB events in Liverpool. Putting C&F's case at its highest, it would have operated to prohibit BB events elsewhere in Liverpool for so long as C&F was itself entitled to hold such events.

99. C&F is not entitled to hold BB events in Liverpool without Shua's licence or consent.

(10) Is C&F entitled to 15% commission in respect of events outside Liverpool?

100. For the reasons I have already given, the answer to this question is no. C&F does not have a contractual right to commission in respect of events outside Liverpool.

(11) Injunctive relief

101. Shua seek injunctive relief against C&F. C&F seeks injunctive relief against Shua together with Messrs Burke and Lacey.

102. Shua seeks injunctions restraining C&F from (1) promoting or hosting BB events otherwise than with Shua's permission (2) more generally, passing off BB as its own business; and (3) copying and displaying the Logos.

103. Injunctions (1) and (2) are based on the tort of passing-off.

103.1. I am satisfied Shua has established it was and is entitled to the BB business goodwill following the assignments on 22nd May 2019.

103.2. When proceedings were commenced, C&F had asserted on social media and advised the press it was the owner of BB. By that stage, it had also advertised, as "Bongo's Bingo", events it intended to hold in August 2019 without first obtaining the licence or consent of Mr Lacey or Shua.

103.3. In these circumstances, Shua applied for interim injunctive relief. When its application came before HHJ Hodge QC, on 12th June 2019, C&F undertook not to promote or accommodate future events or pass off its business as "Bongo's Bingo" save for the events that it had by then marketed to take place in August or September to November 2019 subject to specific qualifications and conditions.

103.4. I am satisfied that Shua is able to establish against C&F the essential requirements for a passing off action identified by Lord Oliver in *Reckitt & Colman v Borden (supra)*, namely (1) it is entitled to the BB goodwill; (2) C&F has misrepresented to the public that the events initially marketed to take place in August 2019 were BB events; and (3) Shua has thereby sustained or is likely to sustain damage by reason of C&F's misrepresentations.

103.5. Shua is thus *prima facie* entitled to injunctive relief subject to the considerations to which I shall refer later.

104. Injunction (3) is based on Shua's ownership of the copyright in the Logos. Again, I am satisfied Shua has established it is the owner of the copyright. Whilst C&F has historically challenged Shua's title to the copyright, this can be of little, if any, intrinsic value to C&F itself if it does not own the business goodwill. Conceivably, it might have some negotiating

value. In any event, at the hearing before HHJ Hodge QC on 12th June 2019, C&F undertook not to copy or issue copies of the Logos to the public. Since that time, there is no evidence that C&F has committed any infringement of Shua's ownership of the copyright or, indeed, that it intends to do so and it is inherently unlikely that it will do so if it does not own the business goodwill and is thus not entitled to hold BB events without Shua's consent.

105. In view of the fact that, until now, there has been no Court determination in relation to ownership of the BB goodwill or copyright in the Logos and, pending determination, the issues between the parties have been governed by C&F's qualified undertakings, I shall hear further from counsel about C&F's current intentions and its readiness to make future undertakings; and the form of the injunctive relief sought before I fully dispose of Shua's claim for injunctive relief. If C&F are unwilling to make undertakings to reflect the relief sought in injunctions (1) and (2), I am currently minded to grant a measure of injunctive relief. However, I am not minded to grant relief in respect of injunction (3).

106. C&F itself seeks injunctive relief based on its putative contractual rights under the 15th June 2015 Agreement and the proposition that it is the owner of the business goodwill of BB. Having failed to establish that the 15th June 2015 Agreement is a binding contract or that it has any interest in the business goodwill of BB, C&F is not entitled to injunctive relief against Shua itself or Messrs Burke and Lacey.

(12) Disposal

107. My answer to the preliminary issues is as follows.

107.1. Shua is the owner of the goodwill of BB.

107.2. Shua is the owner of the copyright in the Logos.

107.3. The 15th June 2015 Agreement was not and is not a binding contract.

107.4. If and to the extent that, contrary to my conclusions, the 15th June 2015 Agreement took effect as a binding contract for the disposal of a "15% stake" in BB, C&F has waived or is estopped from enforcing its rights to the same.

107.5. The conduct of Shua's affairs is not subject to the Paragraph 28 Constraints.

107.6. C&F is not entitled to hold BB events in Liverpool.

107.7. C&F is not entitled to 15% commission in respect of events outside Liverpool.

108. I shall hear further from counsel in relation to the claims for injunctive relief. I am satisfied that Shua is *prima facie* entitled to injunctions restraining C&F from promoting or hosting BB events otherwise than with Shua's permission and, more generally, passing off BB as its own business but not a free-standing injunction restraining C&F from copying or displaying the Logos.

109. C&F's claim for injunctive relief shall be dismissed.