Neutral Citation Number: [2021] EWHC 1695 (Ch)

Case Nos: CR-2019-000853 CR-2019-004394

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**INSOLVENCY AND COMPANIES COURT (ChD)**
**RE: HAZ INTERNATIONAL LTD (No.02476286)**
**AND RE: THE COMPANIES ACT 2006**
**AND RE: THE INSOLVENCY ACT 1986**

The Rolls Building, 7 Rolls Buildings,
Fetter Lane, London EC4A 1NL

Date: 09/07/2021

**Before** :

**ICC JUDGE PRENTIS**

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**Between :**

**KUDDUSI CAN IL** **Petitioner**
**(also known as K JAN IL)**
**- and -**
**(1) ABDURREZZAK YESILKAYA**
**(also known as ABIT YESILKAYA)**
**(2) HAZ INTERNATIONAL LTD**

**Respondents**

**And between:**
**HAZ INTERNATIONAL LTD**

**Claimant**

**-and-**
**KUDDUSI CAN IL**

**Defendant**

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**Christopher Buckley** (instructed by **Collyer Bristow LLP**) for the **Petitioner/ Defendant**
**Matthew Morrison** and **Gregor Hogan** (instructed by **RadcliffesLeBrasseur LLP**) for the **Respondents/ Claimant**

Hearing dates: 25-29 January, 1-5 February, 12 March 2021

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# JUDGMENT

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**ICC JUDGE PRENTIS:**

## Introduction

1. A little over a fortnight after the meeting which finally recognised the disintegration of their business and personal relationship, on 23 February 2016 Abdurrezzak Yesilkaya ("Mr Yesilkaya") emailed Kuddusi Can Il ("Mr Il"), copying in his solicitor:

> "Since we have decided that we cannot continue our partnership I always hoped we can keep a friendly relation… I told you this, and now I am giving you this in writing. I am very much interested for a smoot transition. But it seems to be you prefer to fight, I don't want to fight. But if necessary and if I am forced too, God help, you will see how I can fight".

2. In hindsight, that quotation illustrates many things. Its idiomatic English (which unless sense is lost I have preserved in all quotations, whether they are the parties' own, or that of translators) gives some idea of the strong character of Mr Yesilkaya, and rightly implies an equally strong character in Mr Il; it reflects their once deep friendship, and partnership, and the bitterness of its loss; one can hear as well the voices of Mr Yesilkaya as patriarch, magnanimous so far as can be, fearsome if crossed; and here is the threatening of the bloody battle which this has become.

3. Mr Il had joined Haz International Ltd (the "Company") in 1990. It was wholly owned by Mr Yesilkaya, who was also its sole director. Mr Il was appointed director on 23 April 1993, and received 5,400 shares in two equal tranches: on 24 March 1995 following an issue which took the issued share capital to 18,002, and on 31 January 2007 by transfer from Mr Yesilkaya (a single further share was transferred in 2011, but that is immaterial). From 1 September 2011 Mr Il and Mr Yesilkaya were joined as shareholders by Mr Yesilkaya's sons, Akin and Deniz, to whom their father also transferred 2,700 shares each. From then Mr Il has continued to hold his 30% of the shares, Mr Yesilkaya his 40%, and the sons their 15% each.

4. On 17 May 2017 Zakir Arslan was appointed as third director at a general meeting. On 23 May 2018 Mr Il was suspended, and on 16 July 2018, following a disciplinary hearing before Mr Arslan, his employment was terminated for gross misconduct. He was removed as director by general meeting held on 15 October 2018.

5. On 1 February 2019 Mr Il presented a petition, primarily under section 124 of the *Insolvency Act 1986* (the "IA86") seeking the just and equitable winding up of the Company, but in the alternative, pursuant to section 994 of the *Companies Act 2006* (the "CA06") on the ground of unfair prejudice, relief by an order that Mr Yesilkaya purchase his shares at fair value (the "Petition"). The Respondents to the Petition are Mr Yesilkaya and the Company.

6. On 16 April 2019 the Company issued a claim against Mr Il as former director for breach of the duties owed it under the CA06, largely coinciding with the basis on which he was removed (the "Claim").

7. This judgment follows the trial of the Petition and the Claim. The taking of evidence was confined to 10 days, a period which doubled the parties' earlier estimate as, after repeated agreed adjournments for exchange of witness statements, it was only early in the new year that the parties realised that there was considerably more evidence than anticipated; the trial was to be held remotely, which inevitably increased length; many of the witnesses' first language was Turkish; and many were located outside the jurisdiction. The parties are to be commended for thereupon liaising with Ms Prosser, the listing officer, which enabled additional convenient days to be found and the trial to proceed; so, too, for the immense trouble taken by the respective counsel and those behind them in presenting their client's case: combined, the closing submissions weighed in at around 250 pages.

8. It is Mr Il's case that since March 1995, when he first received shares, but anyway since before 2003, when he says the second tranche was promised him, the Company was operated as a quasi-partnership between himself and Mr Yesilkaya. Mr Yesilkaya denies that, but says that were there such a relationship then it must have been terminated either in September 2011, when

he gave shares to his sons, or on 8 February 2016, when it was agreed that Mr Il would leave the Company and his shares bought out. So, although Mr Yesilkaya agrees that trust and confidence has broken down between them, he denies that Mr Il is entitled to any relief thereby.

9. Mr Il has also pleaded a "Fundamental Understanding", arising between the same dates, and which he says has been breached by Mr Yesilkaya, that:

9.1 he would be "free to run the Company without interference" from Mr Yesilkaya;

9.2 he "would remain employed by the Company" (in closing Mr Buckley acknowledges that this should be extended by a proviso, "unless guilty of gross misconduct"); and

9.3 "if [he] kept his salary low and the Company prospered he would be rewarded" by Mr Yesilkaya.

10. Finally, Mr Il relies upon two breaches of duty by Mr Yesilkaya as director of the Company, which derive from the Company's role within the Haz Group.

10.1 He says that Mr Yesilkaya wrongly diverted UK sales of metal manufactured by Haz Metal Sanayi ve Ticaret A.S. ("Haz Metal Turkey" or "HMT") from the Company to Haz Metal Fixing Systems UK Limited ("HMUK"). This is denied, although Mr Il is said to have agreed it anyway.

10.2 He says that Mr Yesilkaya wrongly caused the "Disputed Debts" to be included in the Company's accounts for the period to 30 September 2017 filed on 28 June 2018, in that they were overstated with a view to decreasing the value of his shareholding; were in favour of other Haz Group companies which he or his family controlled; and were wrong, the true debts being those at Annex B to his petition. These debts, which were first demanded by letter from Mr Yesilkaya's solicitors of 5 December 2016 (and which is also therefore said to be improper), are said to be $1,313,074 due to HMT; $240,711 due to Haz Mermer Sanayi ve

Ticaret A.S. ("Haz Mermer") ; and €43,187 due to Haz Metal Deutschland GmbH ("GmbH"). Mr Yesilkaya says that the debts are indeed due, or at least that Mr Il is unable to discharge the burden on him to show that they are not.

11. The Company has its own case against Mr Il, which is also submitted as a reason why it would be unjust or inequitable to grant him either ground of relief on his petition. He is said to have breached his duties as its director in:

11.1 failing to report adequately to Mr Yesilkaya and/ or Mr Arslan on the Company's financial affairs, whether following requests for information or not;

11.2 on 28 February 2017 filing without authority, and having signed them purportedly but wrongly on behalf of the board, the Company's annual accounts to 31 March 2016 (which did not include the Disputed Debts);

11.3 failing to provide full and true accounts for monies paid from the Company to his own account or otherwise, being £74,998 between September 2016 and September 2017; £59,090 within the accounting year end 2017; and $1,217,689 by six payments made between 11 February and 12 November 2015;

11.4 in the financial year to 2017, and without consultation, increasing his own and his son's salary;

11.5 causing payments to be made of the Company's money but not to its benefit to Collyer Bristow and Kinas, solicitors' firms; and to his girlfriend, Ms Ozlem Morgan;

11.6 disclosing information confidential to the Company to a competitor, Is Yapi Ve Yapi Malzemeleri Sanayi Ve Ticaret A.S. ("Is Yapi");

11.7 failing to account for profits assumed to have been made by the Company on the Oslo Project, being $1.29m, and on the Pakistan 1 Project, the Yemen Project, and the London Project, being $735,000;

11.8 diverting to International Construction Contracting Limited ("ICC") from the Company the Pakistan Phase 2 Project, the Seychelles Project, and the Kosovo Project; and Company staff; and

11.9 misappropriating valuable stock held at the Company premises including tools and fixing systems, personal computers and the documents accessible through them.

12. There is then a separate claim by the Company for recognition of its beneficial ownership of Willow Tree Cottage, registered since purchase in Mr Il's name only.

13. Except that he acknowledges a duty to provide an account in the event that the Court is not satisfied that a full account has yet been given, all these claims are denied by Mr Il.

14. Finally by way of introduction, in email exchanges between 3 and 7 February 2015 the parties provided some of their own historical background, beginning with Mr Yesilkaya.

"1. When you joined Haz Marble [ie the Company] in 1990 you had '0' (zero) idea of marble installation.
2. You completed Canary Wharf with full support of Haz Jeddah.
3. Your next projects was run by Engineers, Architects and Stonemason trained by Haz Marble and sent to you, as always best of the best.
4. 90% of your staff today (office and/ or field) are sent to you by 'mother company'.
5. We have sent you (and sending) Material (fixing systems, stone etc.) for cost price to help you finance your expenses. Please check your accounts: you will see that you have sold material with 80%-150% profit for end-user.
6. We are still sending you your fixing systems without L/C which you can never get from any other fixing system supplier. In other words: we have and are financing you Mr Can.
7. Haz International when established had '0' value, as any other company. But there is a small difference. You approached all your

projects using reference of Haz Marble, one of the most reputable installation company worldwide. All the doors was widely open to you because you are part of Haz Marble.

8. At the beginning Haz Int. was '0'. You too, Mr Can. Now you own your own house, you are driving Mercedes SUV car, you have financed your children's education during your employment by Haz Int., you had the liberty to fly anytime anywhere (and this was no seldom). Nobody, I repeat, nobody asked you what are you doing and where and why are you going. And now, if Haz Int. has a value, you are the one who mostly profited from this development".

15. Mr Il's answer described the remarks about his Mercedes and children's education as "laughable" and said this:

"We had a gentleman's agreement between us. At the outset you said you had no time for Haz UK. If I was interested to work together you would support as much as you could. I was to find work and do it. I can proudly say I have managed successfully with your support when forthcoming and without when it wasn't. You never gave work or found work for Haz UK but yes it is correct support was given but against inflated invoices. The cooperation worked peacefully for 18 years.

All of a sudden the wind started blowing from different direction. You started changing your attitude. You started a tactical cold war with me. Tried to dismiss me and take away my rights unlawfully rather than to talk to me and see if we could solve it between us.

I have been requesting you to disclose your plans for the last min 5 years. You have not spoken to me for about 5 years not only about your plans but also about Haz UK business. You are now claiming that I am now acting as I wish and I do not cooperate and/ or consult with you anymore. You will have difficulties to prove this in the eyes of the British Law. I have no choice but to act in the best interest of Haz UK as I have been doing for the last 25 years with or without you.

> You told me we cannot work together anymore 2-3 years ago. Now you are telling me your plans are to run Haz UK together with me. Have you changed your plans again?"

16. This spat they managed to plaster over, in the apparent closest of terms. Mr Il wrote to Mr Yesilkaya:

> "You are like a brother, like a father to me. I was like a little brother to you".

Into which Mr Yesilkaya inserted his response:

> "I have always considered you as a 'brother' and always treated you that way. I shared everything with you (even my personal stuff!!)".

## The witnesses

17. This is a case with two large-charactered protagonists, each with a surrounding supportive cast.

## Witnesses for Mr Il

Mr Il

18. As we shall see, Mr Il has devoted most of his working life to the Company and for most of that he ran it without interference. His knowledge of it was, and remains, unparalleled. His sense of grievance with Mr Yesilkaya has developed from origins which cannot be entirely ascertained to become his focal point. His belief in his being wronged has spilled into the working and re-working of the elements of the Disputed Debts in his conviction and desire to prove that they are false, using records of the Company to which he ensured he maintained access by removing his computer. The actual facts are no longer put and set for him, and, despite his manifest charm and abilities, he is

a man who would not now credit Mr Yesilkaya with anything which he was not absolutely obliged to.

19. Mr Morrison and Mr Hogan described Mr Il's evidence as "obfuscatory and evasive". At times it was. He certainly had a tendency to invite Mr Morrison to ask a different question which would in his view be more revelatory of the truth. But he was also a man under considerable pressure, not just from the litigation, but because the questioning was swift, and required a great deal of concentration in what remains an adopted language.

20. The imbalance in his evidence is such that it must be treated with considerable caution, and in particular set against the terms of the contemporary documents.

Jan Michael Il ("Jan Junior")

21. Jan Junior is Mr Il's son. As Mr Il is generally known as "Jan", Jan Junior is often so described.

22. Considering that he was round the office full time from 2005 to 2016, part-time for two years before that, and on his father's case centrally involved in ICC throughout, Jan Junior's evidence was curiously off-hand and of little assistance. He was very protective of his father, and in cross-examination spent time explaining his father's earlier answers rather than providing his own. At the same time there seemed a discomfort that his father had remained involved in his business life, when he wanted to spread his own wings.

23. Jan Junior was a witness capable of vivid and convincing recollection- a meeting with Mr Sakellarios at a restaurant, when Jan Junior ordered fillet steak- but also one who seemed hidebound and rarely expansive with the facts. He is also someone capable on his own account of supporting false positions to meet other ends: he permitted ICC to send a letter of 23 February 2017 to the visa section of the Pakistan Embassy in London representing that his father was "employed by ICC Limited as a Consultancy Director" when, he says, his father was neither employed nor carried out that role; but such statements were needed for a visa to be obtained. Again, therefore, I must treat his evidence with caution.

Mark Adams

24. Having graduated from the University of Surrey in 1990, and from 1994 to 2003 being employed by another company in the same area of business, Mr Adams was with the Company from April 2003 to the end of August 2016, and then part-time from November 2016 to June 2017. He joined the Company as an administrator, coordinating orders, arranging shipments with HMT (with whom he was "very heavily involved"), acting as "main point of contact" with GmbH and helping with running the office. Over time he became office manager, handling tendering, sourcing, pricing, payments, contract negotiations and some aspects of the intra-Group debt.

25. From this considerable vantage point Mr Adams gave meticulous and impressive evidence, coloured only by his dislike of Deniz, by whom he was less than impressed.

Irfan Selcuk

26. Mr Selcuk is director and owner of Is Yapi. He gave straightforward, intelligent evidence, describing not only Is Yapi's dealings with the Company and the quality of the information it received, but also more generally how businesses operate and tender in the stone installation business. His evidence is of only marginal relevance now, though, as very sensibly, having heard it, the Company at closing dropped its claim that Is Yapi had benefitted from the Company's confidential information. That such a flimsy claim had been brought at all, ignoring as it did industry practices which must have been known to the Company, reflects its total approach to this litigation.

Suleyman Gul

27. Mr Gul is a civil engineer who was site manager for the Company from September 2014 through (he says) to April 2016 overseeing the completion of the Chief of Mission Residence in Islamabad, and remedial works on Pakistan Phase 1. His services were then used by ICC, for whom he oversaw Pakistan Phase 2 and was involved in the Kosovo Project and the Seychelles Project.

28. Mr Morrison and Mr Hogan submit that Mr Gul was a dishonest witness "or at best a witness who was not privy to the details of what was in fact going on and chose to believe what he was told by Mr Il and Jan Junior in a distinctively Nelsonian manner". Given his role, I do not doubt that Mr Gul did not know all that was going on, but it was clear from his evidence that he trusted both Mr Il and Jan Junior. With those small caveats, Mr Gul was an honest and clear witness, as well as a man not lacking confidence in his own abilities. His independence was demonstrated by his knowing disagreement with Mr Il's evidence, and that of Mr Sagnic, on the date on which the Chief of Mission Residence ended. A combination of his limited knowledge and his self-belief is, in my view, what has led to his honest but not fully correct account of the awarding of the Pakistan Phase 2 contract.

Hamit Sagnic

29. Mr Sagnic is a builder and was a long-term employee of the Company. However, he would not work for it after Mr Il left, as he had had a "very bad experience" working for Mr Yesilkaya's Haz Marble Industry and Trade LLC ("Haz UAE"): long hours; his salary paid late; his passport confiscated so he was unable to visit his family. He then joined ICC working on Pakistan Phase 2 until May 2018.

30. Mr Sagnic concentrated hard on the questions, and his evidence was credible.

Ercan Uysal

31. Mr Uysal's story has some similarities to Mr Sagnic's. He is a stone mason, working for the Company from May 2005 to December 2017; he had worked for the Company despite previous poor experiences with Haz UAE, and went on to work for ICC on Pakistan Phase 2. He gave his limited evidence in a straightforward manner, including his denial that he had ever told Mr Yesilkaya that Mr Il had taken Company tools and equipment to Willow Tree Cottage.

Murat Atak

32. Mr Atak is also a stone mason. He worked for the company from November 2009 to November 2017, and then for ICC at the Nishkam School in London. As he said "We are only workers. Whoever provides us with work, we just go and do it". His evidence was similarly down to earth, and credible.

Other witnesses for Mr Il

33. There were no other witnesses; but it is said there should have been. In particular, I am invited to draw *Wisniewski* adverse inferences from the lack of attendance of Mr Sakellarios in respect of ICC, and Ms Morgan as to the payments she received. On instructions, Mr Buckley says there has been a falling out between Mr Il and Mr Sakellarios. I have no reason to gainsay that. I have no explicit explanation for the non-attendance of Ms Morgan, but my conclusions will not depend on drawing any adverse inferences from that.

34. I am also reminded that it would be unfair to place any material reliance on letters which we have, supportive of Mr Il but without accompanying statements; these are from Darrin Snider and Andrew Senderak of B.L. Harbert International, LLC ("BL Harbert"); Colin Campbell of Cawdor Stone Limited; and Kevin Ramsey, of Ramsey Stone Consultants Ltd.

## Witnesses for Mr Yesilkaya and the Company

Mr Yesilkaya

35. Mr Yesilkaya's evidence was that of the patriarch of the Haz Group which he created. Delivered pithily, in excellent English, his answers at times were attractively magnanimous; too much so for his counsel, who tried desperately in re-examination to repair the damage done to what had been his case on the Seychelles Project; and it was a pity for Mr Yesilkaya that in the end he allowed his answers to be led where his counsel wished. I reject entirely the suggestion made on his behalf in closing that his agreement to certain of Mr Buckley's propositions was a product of a desire to speed up the process, or of not understanding the English system. Mr Yesilkaya is nobody's fool, and in

my view knew precisely what he was doing. He is also astute enough to recognise that in hindsight he himself did not perform his duties as director with the necessary amplitude: the Company was running well under Mr Il; other companies in the Group needed his attention more; he had no need to spend time getting involved.

36. That leads to two points on the assessment of his evidence. The first is that it is largely based on reconstruction from documents, a task which the Court is better placed to carry out, having heard from both sides and having the history presented to it. The second is that Mr Yesilkaya's constructs post-date his bitter falling out with Mr Il, such that he can see in or imply from the documents only negatives in Mr Il's regard.

37. The latter point has affected his evidence. Its generous foregoing of points was mixed with contentions which he ought not to have allowed to be put as they were. One of those was the Is Yapi claim. Another example is that Mr Yesilkaya ought to have been upfront about the system for paying company wages for foreign projects, instead of allowing the naked implication that this was just Mr Il feathering his nest: Mr Yesilkaya was aware contemporaneously of the system, which he had helped create and had approved, by payment of these wages to Mr Il's personal bank account for the good reason of avoiding bank charges; indeed, at times payments had been made to his own account for the same reason.

38. There was also troubling evidence, affecting both Mr Yesilkaya and Mr Il, which I will describe below and which is wrapped up within the Disputed Debts, about surreptitious payments of supposed dividends from the Company. Mr Yesilkaya's evidence on this was much less than fulsome, albeit that in the event I will prefer it to Mr Il's.

39. So, like Mr Il's, I will treat Mr Yesilkaya's evidence with caution.

Deniz

40. I will address Deniz's role with the Company and HMT below. Again, despite many years with the Company his direct knowledge of matters in issue was

slight. To his credit, he acknowledged this, although it did not prevent his evidence from being notably abrasive. He described his own roles fluently and convincingly.

Mr Arslan

41. Mr Arslan began work for Haz Mermer in 1982. He is a longstanding lieutenant of Mr Yesilkaya's and, until his appointment as additional director of the Company, friend of Mr Il's. All aspects of his evidence were favourable to Mr Yesilkaya, including an improbable conversation with Mr Il about Willow Tree Cottage. Troublingly, his evidence that the Company has ongoing business through having secured a contract for the US Embassy in Erbil, Iraq, was wrong. That lack of care over what seemed an absolute point means that I cannot place a great deal of reliance on what Mr Arslan says, without corroboration.

Mr Elma

42. Mr Elma worked for Haz UAE from December 2006, transferring to the Company in July 2007 as a site manager. He left in 2017 having set up his own company, H&M International Construction Limited ("H&M") with Mr Eskinoba. Through H&M he worked on ICC's projects in Kosovo and the Seychelles, but says they were not paid.

43. Mr Elma's evidence was partisan and of mixed quality. He was nervous, uncertain over some dates and, on his own admission, wrong about others. He was in the end right, though, about there being a meeting in Pakistan attended by Mr Il in January 2016.

44. Again, this is evidence which requires careful analysis against the contemporaneous documents.

Mr Eskinoba

45. Not just because they are now in business together, the same conclusion applies to Mr Eskinoba, who is a civil engineer who worked for Haz UAE between 2007 and 2012, and in 2014 moved to the Company. He confirms

that their relationship with Mr Il was not good by December 2017, as they had had further problems being paid by ICC for the Nishkam School Project.

Other witnesses

46. Again, there are none, but there might have been. The accounting firm Perrys took over accounting functions in the summer of 2017. Their Mr Hale and Ms Gibbons made a formal visit to the Company on 15 June 2017 to inspect its records. Their not being called as witnesses does not lead to any presumptions, but was unhelpful given that one of the complaints is that Mr Il removed accounting records, which has caused the accountants to be "denied the opportunity to verify [the Company's] true financial position… or have only been able to do so at great time and expense".

## Law

Just and equitable winding-up

47. By section 122(1)(g) IA86 a company may be wound up by the court if it "is of the opinion that it is just and equitable" that it be so. A petitioning contributory must have held their shares (relevantly) by original allotment or registered in their name for at least 6 of the 18 months before commencement of the winding up. By section 125(2) on a contributory's just and equitable petition

> "the court, if it is opinion (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy".

48. The just and equitable jurisdiction has recently been re-visited by the Privy Council in *Lau v Chu* [2020] UKPC 24, [2020] 1 WLR 4656. Delivering the judgment of the Board, this is Lord Briggs:

> "18. The well-known leading case on whether a company is a quasi-partnership is *Ebrahimi v Westbourne Galleries Ltd* ( *In re Westbourne Galleries Ltd) [1973] AC 360*. It contains a summary of the circumstances in which the relationship between the members of a company may cause their strict legal rights to be subjected to equitable considerations which has stood the test of time. At pp 379-380 Lord Wilberforce said this:
>
> > "The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force.
> >
> > "The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure.
> >
> > "That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

"It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, 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' interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.

"It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves. To refer, as so many of the cases do, to 'quasi partnerships' or 'in substance partnerships' may be convenient but may also be confusing. It may be convenient because it is the law of partnership which has developed the concepts of probity, good faith and mutual confidence, and the remedies where these are absent, which become relevant once such factors as I have mentioned are found to exist: the words 'just and equitable' sum these up in the law of partnership itself. And in many, but not necessarily all, cases there has been a pre-existing partnership the obligations of which it is reasonable to suppose continue to underlie the new company structure. But the expressions may be confusing if they obscure, or deny, the fact that the parties (possibly former partners) are now co-members in a company, who have accepted, in law, new obligations.

> "A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in."

49. Where the ground claimed for winding-up is that trust and confidence has been lost, then it is necessary for the petitioner to establish the foundation that there is a quasi-partnership relationship to be imposed on the company's affairs. Lord Briggs distinguished the quasi-partnership scenario from the ordinary position thus:

> "14. A just and equitable winding up may be ordered where the company's members have fallen out in two related but distinct situations, which may or may not overlap. First, a winding up may be ordered to resolve what may conveniently be labelled a functional deadlock. This is where an inability of members to co-operate in the management of the company's affairs leads to an inability of the company to function at board or shareholder level. Functional deadlock of this paralysing kind was first clearly recognised as a ground for a just and equitable winding up by Vaughan Williams J in *In re Sailing Ship Kentmere Co [1897] WN 58* , a decision on the jurisdiction conferred by section 79 of the (UK) Companies Act 1862 (25 & 26 Vict c 89).
>
> 15. Secondly, where the company is a corporate quasi-partnership, an irretrievable breakdown in trust and confidence between the participating members may justify a just and equitable winding up, essentially on the same grounds as would justify the dissolution of a true partnership. This jurisprudence was developed as an aspect of the law of partnership in England in the mid-19th century, and is exemplified in the following passage from the judgment of Sir John Romilly MR in *Harrison v Tennant (1856) 21 Beav 482* , 496–497:
>
> > "I do not base my decision upon any particular reported case, but upon the principle that the circumstances under which the

> parties entered into the partnership have, by matters over which they have no control, materially altered, that these altered circumstances have, combined with the conduct of the parties themselves, produced a mistrust which the court cannot say is unreasonable; and that, taking all these things together, it is impossible that the partnership can be conducted upon the footing on which it was originally contemplated, without injury to all these persons concerned, and that taking all these matters together, it makes this a case in which, in my opinion, it is the duty of the court to pronounce a decree for the dissolution of the partnership."

It is clear, for example from *Pease v Hewitt (1862) 31 Beav 22* and *Atwood v Maude (1868) LR 3 Ch App 369*, 373, that a dissolution of a partnership might be ordered even where both parties were to blame for the breakdown in mutual trust and confidence.

16. This ground for the dissolution of a partnership was developed as the basis for the just and equitable winding up of a company in the UK in the early 20th century, where the relationship between the members approximated to that of partners…

17. The important potential distinction between the two types of breakdown case is this. If there is a complete functional deadlock, then a winding up may be ordered regardless whether the company is a corporate quasi-partnership. But if the company is of that type, then a breakdown of trust and confidence may justify a winding up even where there may not be a complete functional deadlock. In the former case winding up is a remedy for paralysis. In the latter it is the response of equity to a state of affairs between individuals who agreed to work together on the basis of mutual trust and confidence where that trust and confidence has completely gone. But of course both may exist together…".

50. In principle, it is no necessary bar to the establishment or continuation of a quasi-partnership relationship that it is between some only of the members. However, as Fancourt J in *Re Edwardian Group Limited* [2018] EWHC 1715 (Ch), [2019] 1 BCLC 171 discussed at [130]-[136], such a relationship is unlikely to arise or subsist in a way which is binding on the company except where it is between members constituting a majority of voting rights. Likewise, unless between a majority, relief by way of winding-up would be a remote prospect.

51. As to the section 125(2) disapplication, Lord Briggs said this with reference to the materially-identical BVI provision:

> "20. It is well established that winding up is a shareholders' remedy of last resort. But this does not mean that winding up is unavailable to members if they have any other remedy. The member retains a significant element of choice in the remedy to be sought, even though the court has the last word. As is clearly enshrined in section 167(3) of the 2003 Act, the court carries out a three stage analysis, asking:
>
> (a) Is the applicant entitled to some relief?
>
> (b) If so, would a winding up be just and equitable if there were no other remedy available?
>
> (c) If so, has the applicant unreasonably failed to pursue some other available remedy instead of seeking winding up?
>
> 21. The legal burden of proof is on the applicant at stages (a) and (b). But it shifts to the respondent at stage (c): see *Moosa v Mavjee Bhawan (Pty) Ltd (1966) (3) SA 131* , 152 and *Asia Pacific Joint Mining Pty Ltd v Allways Resources Holdings Pty Ltd [2018] ACSR 227* , paras 32 and 43. Section 167(3) is in substantially the same terms as was section 225(2) of the UK Companies Act 1948 . In *In re a Company (No 2567 of 1982) [1983] 1 WLR 927* , 933, Vinelott J held that "other remedy" in section 225(2) was not limited to a statutory remedy provided only by the court. For example, an unreasonable refusal to accept a fair offer for the applicant's shares

> might bar relief by way of winding up. The Board agrees with this analysis."

52. A further bar to relief is established in the imposition of the equitable doctrine of clean hands. As Lord Cross stated in *Westbourne Galleries* at 387G,

> "A petitioner who relies on the 'just and equitable' clause must come to court with clean hands, and if the breakdown in confidence between him and the other parties to the dispute appears to have been due to his misconduct he cannot insist on the company being wound up if they wish it to continue".

53. This is, though, treated as a doctrine of degree. In *Lau v Chu* Lord Briggs put it this way, in relation to trust and confidence:

> "19. The *Ebrahimi* case reinforces the principle that an applicant for a just and equitable winding up is not barred from his remedy merely because the breakdown or deadlock upon which he relies has been caused to some extent by his own fault. As Lord Cross put it, at pp 383–384:
>
> > 'People do not become partners unless they have confidence in one another and it is of the essence of the relationship that mutual confidence is maintained. If neither has any longer confidence in the other so that they cannot work together in the way originally contemplated then the relationship should be ended—unless, indeed, the party who wishes to end it has been solely responsible for the situation which has arisen.'"

54. In her separate judgment, Lady Arden also placed the doctrine within the strict effect of the recognition of quasi-partnership rights.

> "84. In *Ebrahimi* and many other cases, one of the fundamental understandings between the quasi-partners was that they would all be entitled to be involved in the management and share in the profits of the business. By analogy with the rights of partners, the power of

> expulsion was to be interpreted strictly (see *Blisset v Daniel (1853) 10 Hare 493* ). In particular, in the case of the power to remove a director, that meant that, if the quasi-partners exercised their power to remove one of their number as a director against his will, without justification and giving him an opportunity to put his case, and paying him the full value of his share in the company, the court would make an order for the winding up of the company on the just and equitable basis: see per Lord Wilberforce at p 380. Exclusion from management might be justified if there was serious misconduct or where the quasi-partner in question came to the court without 'clean hands' (per Lord Cross of Chelsea at pp 386–387)."

55. It would therefore appear that unclean hands will bar what would otherwise be the remedy of a winding-up where against the particular factual and relational background their state was such as to mean that it was no longer either just, or equitable, or it was otherwise inappropriate, to grant that remedy.

Unfair prejudice

56. It is for Mr Il to demonstrate under section 994 CA06 that the Company's affairs "are being or have been conducted in a manner that is unfairly prejudicial" to himself as member; and to do so he must show both unfairness and prejudice. By section 996, if he discharges that burden, then the court "may make such order as it thinks fit for giving relief in respect of the matters complained of". Here, that is submitted to be the purchase of Mr Il's shares at a price to be fixed, but not to be discounted for his minority holding, and to take into account any found failings of monetary effect; the valuation date is suggested as 31 March 2016. However, the parties are agreed that the terms of any such relief should be the subject of further argument after judgment.

57. Neither party has addressed the court on the constitution of the prejudice element. Given its potential bases of breakdown of trust and confidence, wrongful exclusion, diversion of business, and the Disputed Debts, it is manifest.

58. As set out by Lord Hoffmann in *O'Neill v Phillips* [1999] 1 WLR 1092, unfairness is a concept primarily directed at a breach of the rules on which the parties have agreed the business should be conducted; the breach may consist of commission or omission. While the rules will include a company's articles, they may extend to formal shareholders' agreements, as well as to informal understandings from which it would be unconscionable to resile. Such agreements may also constitute quasi-partnerships, the law on which is set out above.

59. Mr Buckley also relies on *O'Neill v Phillips* for the proposition, itself not disputed even if its application to our facts is, that where there is a quasi-partnership, it would be unfair to exercise voting rights to remove a co-partner without "giving him the opportunity to sell his interest at a fair price": 1102H.

60. As to the effect of the Claimant's misconduct, in *In re Sprintroom Limited* [2019] EWCA Civ 932 at [83] the Court of Appeal, having considered cases where exclusion for breach had been justified, concluded that "there is no rule of law that every breach of fiduciary duty will necessarily render exclusion from management fair: it is always a question of fact and degree". In collateral support for their case that the exclusion of Mr Il was fair, counsel for the Respondents have drawn my attention to the facts of most of those cases: *Woolwich v Milne* [2003] EWHC 414 (Ch); *Grace v Biagioli* [2005] EWCA Civ 1222, [2006] 2 BCLC 70; *Kelly v Hussain* [2008] EWHC 1117 (Ch); *Re Flex Associates Ltd* [2009] EWHC 3690 (Ch), as well as a later decision of my own, *Re The Nags Head Reading Limited* [2019] EWHC 2810 (Ch), [2020] BCC 70. Those are of marginal assistance. The underlying principle appears no different from that described above in respect of barring what would otherwise be a remedy for just and equitable winding-up: there may be defaults on the part of the successful claimant which are of enough significance to render conduct neither unfair nor prejudicial, or otherwise to bar substantive relief.

Breaches of duty

61. By section 171 CA06 a director must "only exercise powers for the purposes for which they are conferred". Absent the unusual scenario of express provision, the purposes must be deduced "from the mischief of the provision conferring it, which is itself deduced from its express terms, from an analysis of their effect, and from the court's understanding of the business context": *Eclairs Group Ltd v JKX Oil & Gas plc* [2015] UKSC 71, [2016] 1 BCLC 1 at [30]-[31]; Lord Sumption observed that "it is usually obvious from its context and effect why a power has been conferred".

62. By section 172(1) CA06 a director "must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole…".

63. That is a subjective duty, in that the primary analysis is of the director's own state of mind. If, though, he did not apply his mind to the particular decision, then the test will be "whether an intelligent and honest man in the position of a director of the company concerned could, in the circumstances, have reasonably believed that the transaction was for the benefit of the company": John Randall QC sitting as a Deputy High Court Judge in *Re HLC Environmental Projects Ltd* [2013] EWHC 2876 (Ch), [2014] BCC 337 at [92b], drawing from *Charterbridge Corp Ltd v Lloyds Bank Ltd* [1970] Ch 62, and *Extrasure Travel Insurances Ltd v Scattergood* [2003] 1 BCLC 598.

64. The existence of this duty may mean that a director is obliged to disclose to the company his own misdoings: *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244, [2005] 2 BCLC 91. That is a continuing obligation.

65. By section 174 CA06 a director is under the non-fiduciary obligation to exercise the reasonable care, skill and diligence appropriate to his role and to his particular knowledge, skill and experience.

66. Section 175 CA06 reads:

> "(1) A director of a company must avoid a situation in which he has, or can have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

> (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).
>
> …
>
> (4) This duty is not infringed-
>
> > (a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
> >
> > (b) if the matter has been authorised by the directors.
>
> (5) Authorisation may be given by the directors-
>
> > (a) where the company is a private company and nothing in the company's constitution invalidates such authorisation, by the matter being proposed to and authorised by the directors…
>
> (6) The authorisation is effective only if-
>
> > (a) any requirement as to the quorum at the meeting at which the matter was considered is met without counting the director in question or any other interested director, and
> >
> > (b) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.
>
> (7) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties."

67. This is an extensive provision capturing, subject to the qualifications at (4), even an indirect interest which possibly may conflict with the company's, even arising from (say) an opportunity of which it could not take advantage.

68. In *Newgate Stud Co v Penfold* [2004] EWHC 2993 (Ch), [2008] 1 BCLC 46 David Richards J observed at [240] that where there was a dealing between a company and a person with whom a director of that company had a close personal relationship, "there exists the potential for the exercise of fiduciary

duties to be influenced by personal considerations. If a director causes his company to enter into a transaction with a close relation, or a spouse or other partner, there is a significant risk that the director will be compromised by a desire to favour the other party". At [242] he stated the law as being that "the resolution of this issue lies in putting on the fiduciary the burden of showing, in a case where the fiduciary does not have a personal interest in the transaction but where on the facts there exists a real risk of conflict between duty and personal loyalties, that the transaction was demonstrably in the best interests of the company…".

69. It is not necessarily the case that an opportunity will come within the subsection (4)(a) qualification just because it is outside the usual area of a company's business. In *Re Allied Business and Financial Consultants Ltd; O'Donnell v Shanahan* [2009] EWCA Civ 751, [2009] BCC 822 Rimer LJ, giving the lead judgment, discussed the effect of the partnership authority *Aas v Benham* [1891] 2 Ch 244, in which the Court of Appeal, reversing Kekewich J, had found that a partner in a shipbroker, using information coming to him as such, was not liable to account to the partnership for profits made through the formation of a ship-building company, as that was outside the partnership's business. He held at [67] that such principle "is of no relevance in considering the extent and application of the 'no profit' and 'no conflict' rules so far as they apply to fiduciaries", it being a case particular to its own facts, where the fiduciary duties had been "circumscribed by the contract of partnership".

70. The section's mode of authorisation by directors is overlaid by section 180(4)(b): if the director has complied with the company's requirements in its articles for dealing with conflicts of interest, then it will not be infringed. Here, the company was subject to regulation 85 of the 1985 Table A: "provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office… may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise interested".

71. Through section 180(4)(a) the *Duomatic* principle (*In re Duomatic Ltd* [1969] 2 Ch 365) of approval by informal consent of all shareholders is also retained.

72. Whether absolution is sought through section 175(4)(b), or regulation 85, or *Duomatic*, the director is obliged to make "full and complete disclosure", ensuring the potential approvers an informed position: *The Nags Head* at [27].

73. By section 178(1) the "consequences of breach… of sections 171 to 177 are the same as would apply if the corresponding common law rule or equitable principle applied".

74. So for a breach of section 171, 172 or 175 the company would have its equitable remedies, beginning with accounts and inquiries as to its loss and the director's gain; for section 174, its remedy would lie in damages.

75. A director is anyway under an obligation to account for his stewardship of the company's affairs, and to provide an account of his own dealings with company property, of which he is treated as being a trustee. The failure to keep or produce documentary records is not a matter which a director can pray in aid when facing liability for dealings with the company's property: *Re Mumtaz Properties Ltd* [2012] 2 BCLC 109. Once a transaction between the company and its director is demonstrated, the burden is on the director to explain it, albeit that that may be by reference to other evidence: *Re Idessa (UK) Ltd* [2011] EWHC 804 (Ch), [2012] BCC 315; *Toone v Robbins* [2018] EWHC 569 (Ch), [2018] BCC 728.

76. By section 1157(1), though the director may be liable for negligence, default, breach of duty or breach of trust, "if it appears to the court… that he acted honestly and reasonably, and that having regard to all the circumstances of the case he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit".

Real property held on trust

77. It is the Company's claim that Mr Il holds Willow Tree Cottage for its sole benefit under an express, constructive, or resulting trust. Its claim was

modified in closing to recognise that were the resulting trust analysis appropriate, it could not be the sole beneficiary.

78. The Company recognises that an express trust would require the meeting of section 53(1)(b) *Law of Property Act 1925*:

> "a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust...".

79. Whether there has been a declaration "depends on an objective assessment of the words and conduct of the settlor": Morgan J in *Ong v Ping* [2015] EWHC 1742 (Ch) at [63].

80. The necessary writing may be a letter (*Kaki v Kaki* [2015] EWHC 3692 (Ch)); an affidavit (*Barkworth v Young (1856) 4 Drew 1)*, and so, presumably, a witness statement; or, these days, doubtless, an email.

81. The constructive trust argument is put in two ways in the Company's opening submissions.

82. First, it is noted that the principle of a search for the parties' intentions concerning the property, whether expressed or inferred, and determined from their whole course of dealing, may apply not just to the pure *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432 situation of a registration in joint names, but also to a sole-name registration.

83. The principles in *Stack v Dowden* are not limited to domestic contexts, *Marr v Collie* [2017] UKPC 17, [2018] AC 631, although the relevant intentions must be set against the particular commercial background: Baroness Hale in *Stack v Dowden* at [69].

84. Inferences may arise from a contribution to purchase price, including through payment of mortgage instalments: *Megarry & Wade: The Law of Real Property* 9th ed. at 10-026.

85. Secondly, the Company suggests that *Matchmove v Dowding* [2016] EWCA Civ 1233, [2017] 1 WLR 1044 is authority for this: "a constructive trust can arise where the parties have reached an agreement which, although not giving rise to a binding contract at common law, is considered by them to be immediately binding such that the purchasing party's conscience is affected". Leaving aside the point that this is not pleaded out, this sounds no more than an application of usual constructive trust principles. At [29] the Court of Appeal recorded:

> "There was no dispute between the parties that a common intention constructive trust could arise where (i) there was an express agreement between parties as to the ownership of property (ii) which was relied upon by the claimant (iii) to his or her detriment such that (iv) it would be unconscionable for the defendant to deny the claimant's ownership of the property."

86. What this does emphasise is that the burden of proof on this lies on the Company.

87. The Company in the further alternative seeks relief on a resulting trust analysis, as an alleged provider of purchase monies.

## Findings

88. This is primarily the story of relationships between Mr Il and Mr Yesilkaya, and between each of them and the Company. I have endeavoured to set out my findings on the issues within the broad chronology. The headings in this section are no more than waymarks.

Mr Yesilkaya and the Haz Group

89. Mr Yesilkaya is Turkish. He was born on 17 August 1939. He founded what became Haz Mermer in Jeddah in 1978. Haz Mermer itself was incorporated in Turkey in 1988, with a head office in Iskenderun. It is a supplier of natural

stone, particularly marble, travertine, granite, slate and limestone, and from it has developed what is known as the Haz Group.

90. As Grant Thornton, Istanbul, stated in their 14 July 2016 auditor's report for the years ended 31 December 2015, this is not a group because of parent: subsidiary relationships, but because of the common control of Mr Yesilkaya and his family. That report identifies seven members of the Group, including Haz Mermer; HMT, incorporated in 1993 and providing "services in the design and supply of stainless steel fixing systems for natural stone installation"; and GmbH, which operates as a producer of metal fixings and stock holder of products for European projects. The Company is listed as an eighth member, but "as of" 31 December 2015 was excluded for reasons which are not clear.

91. By 2019 Group turnover was $58m.

92. Mr Yesilkaya says that:

> "Together with my fellow directors, I have at all times controlled the operations of the Haz Group".
>
> "I have built both technical experience and strong global commercial relationships… This knowhow has provided the platform for me to build and successfully manage the operations of the Haz Group which spans some 25 countries, has carried out projects in more than 40 countries and has employed more than 2000 masons, management teams and design architects".

93. Mark Adams aptly described Mr Yesilkaya as "Group Chairman". Overall, as at 31 December 2015 he personally held 88.92% of the issued shares in the eight Group companies.

The Company, before Mr Il

94. The Company was incorporated on 1 March 1990 as Lesgrove Construction Limited, changing its name on 10 April 1990 to Haz Marble (UK) Limited. Mr Yesilkaya had been offered the chance to supply and install stone at

Canary Wharf, and wished to do so through an English company rather than through Haz Mermer. Although appointed as director on 30 March 1990, and acting as sole director until the appointment of Mr Il, even in its early days he was content to leave its day-to-day business to another, being initially Haluk Savas, described as the "local administration manager" or "commercial manager".

Mr Il, and his joining the Company

95. Mr Il joined the Company soon afterwards, in June 1990. He had been born on 1 August 1960 in Turkey, but had lived and worked in the UK since 1978, after his A levels taking a "thin sandwich" BEng civil engineering course at the Polytechnic of Central London, with two 6-month working placements. He graduated in 1987, and from 1988 to 1990 was back in Turkey working as an estimator and quantity surveyor for "one of the biggest construction companies in Turkey" on projects such as Istanbul Airport.

96. His return to England was prompted by an advertisement in a Turkish newspaper, seeking an engineer at the Company. Mr Savas interviewed him, and he was successful. Mr Il started at the Company as a site engineer at Canary Wharf under the supervision of Mr Savas, who was running it with a handful of employees from his residence in East Dulwich.

97. Mr Yesilkaya perceived Mr Il as then being "a young [civil] engineer who was looking for employment", but "without any background or experience in the natural stone industry". However, he "soon found his feet and proved to be a good engineer". From the beginning, a friendship developed between them.

98. When that beginning was does not matter. In cross-examination Mr Il said it was in March 1991, but that was the month when Mr Savas left, and it was to Mr Il that Mr Yesilkaya turned as a replacement. It is more likely that they first met on Mr Yesilkaya's annual two-night visit to London in 1990 or earlier on in 1991. Mr Yesilkaya knew enough about Mr Il to appoint him as general manager of the Company "as a result of his hard work". Mr Savas' departure seems to have been consequent on a falling out with Mr Yesilkaya;

certainly it meant that the Company could no longer use his home for its operations, and had to trade from a site container.

Promises

99. Mr Il's appointment as manager came with a number of promises. Mr Il says that one was that he would be appointed as a director, which occurred on 23 April 1993, the same day as he was appointed company secretary. Given Mr Yesilkaya's control of his other companies, and that on any view he and Mr Il had not known each other long, that seems unlikely at such an early stage. But it is likely that Mr Yesilkaya promised that they would talk about "rewards, remuneration and benefits in the future", with its indication of an increase in pay. With the new role came responsibility and long working hours, often 7 days a week; a regime Mr Il maintained for the Company until 2016.

100. Mr Il says there were more such talks in 1992, and in about May 1992 Mr Yesilkaya first raised the prospect of shares in the Company as a reward for his hard work.

101. While Mr Yesilkaya recalls an earlier date for completion of Canary Wharf, and believes Mr Il's appointment as manager post-dates that, nothing turns on that: he acknowledges he was keen that Mr Il should continue working for the Company. He needed him, as I think, both to complete Canary Wharf and to assist the Company in building other business. In that context, these representations are plausible. So too is Mr Il's recollection that "whenever I reminded him of his promises [of rewards], he would try to motivate me to continue working and devoting myself to the Company's business by telling me that the Company was mine".

The Company's business, and role within Haz Group

102. The core of that other business became the design, supply and installation of stone flooring and cladding, especially marble, and its metal fixing systems, particularly at United States Embassies and diplomatic zones around the world. Mr Yesilkaya says that "in more recent times it has focussed upon fixing systems and only supplies stone if this is specifically requested by the

general contractors with whom it works". The extent to which the Company's business included the supply of "labour only" for installation work is in dispute, and will be addressed below.

103. In an email of 6 February 2015 to one Hassan Mahmoud, Mr Yesilkaya described the Company as "a sister Company of Haz Group… operational in the following activities: (1) Natural stone: Design, supply and installation of Natural stones within UK and international Market… (2) Marketing and Sales of Haz group products" including HMT's "fixing systems and other metal products" for the construction industry.

104. Having a UK-registered company was, and remains, desirable for Mr Yesilkaya. Mr Il says that when he was appointed, Mr Yesilkaya told him that "the Company would play an important role within the Haz Group because having a company in the UK would give the Group more credibility and the Company would develop a client base in the UK for products produced by the Haz Group".

105. As to the second of those roles, Mr Adams confirmed that if the supply was in the UK then the contract would tend to be forwarded by another Haz Group company to the Company, but that was only the generality: there was no obligation to forward it.

106. As the first of those two roles shows, the Company's core trade was not limited to the UK (although it was to carry out work at the new US Embassy in London). Again, though, neither was it the only company within the Haz Group which operated in that sphere. Instead, Mr Il recalled Mr Yesilkaya preventing the Company from tendering for certain projects where other Group companies were also tendering: examples were given of the Bibliotheca in Alexandria, and the US Embassy in Yerevan (for which the Company tendered anyway, and won). Mr Il identifies Haz Mermer as tendering for US Embassies in Ankara, Dhahran (Saudi Arabia) and Colombo; and as undertaking Erbil, for which the Company also tendered. In general, though, after Haz Mermer completed the US Embassy in Istanbul, Mr Yesilkaya had instructed Mr Arslan to ensure that such projects were sent to the Company.

107. This is an important point to draw out early, as it is a theme of this case and a distinguishing factor between this Company and many others: its business was never wholly its own: it was dependant on the placing of business, or non-competition, by others within the Group: and who got what was ultimately determined by the largest shareholder, and director of each, Mr Yesilkaya. In fact, partly because of the perceived prestige of its English incorporation, the Company did well from this arrangement. For example, its 2009 Moscow project was for ENKA Contracting, Haz Mermer's main client, yet directed to the Company by Mr Yesilkaya.

108. Similarly, while the Company benefitted from the "Haz" branding, and while all necessary supplies were readily available through other Group companies, there was no obligation on it to obtain such supplies, whether of metal, or workers, or anything else, from those companies. On 15 April 2015 Mr Yesilkaya wrote to Mr Il in an email:

> "Regarding the prices of Haz Metal: Not only Haz Int, but **all of my companies** are free to buy goods from wherever they want. Nobody is forcing you to work with Haz Metal or Haz Marble".

109. In the event, only around one-quarter of the 1,000 or so staff it has employed have come from Group companies. Mr Yesilkaya insisted that they were the best the Group had to offer, but there is no determining whether that was so. What it did offer was a ready supply, with ready recommendations, to a manager and then director who was finding his feet in a specialised market.

110. Where the Company has utilised or supplied Group companies there have, regrettably, been no written contracts. That has now led to the Disputed Debts, and to argument over whether the Company was entitled to advantageous pricing from other Group companies. Mr Yesilkaya's view was that:

> "Since its establishment in March 1990, the Company has had the benefit of preferential pricing and payment terms from Haz Group", which permitted it to "establish itself in the UK market"; and

> "Where goods and services were supplied to the Company by companies within the Haz Group, the Company was offered favourable prices and enjoyed generous payment terms".

111. Perhaps that was intended to be so, but as he recognised in cross-examination, it was not always borne out. He was "surprised" when he saw that on 4 September 1998 Haz Mermer was charging the Company a 15% uplift for overheads on booking workers' tickets to the Bahamas for a total of $36,993.

112. Certainly Mr Adams' view was that HMT's pricing was less than generous, and not always even competitive with rivals. In August 2011 he was trying to squeeze it on its pricing for a contract in Oslo. On 1 August he wrote:

> "We are struggling here to understand the policy you have regarding pricing. As you know we are tendering for a US Embassy project. We need to submit our keenest possible offer to secure the contract. It is rather surprising therefore that by sending one quick e-mail to you, we get a reduction of 25% on two items and a reduction of 14% on all the others. The obvious question is why were we given such high rates in the first place?"

113. Later the same day he wrote again, having received an explanation that they were not dealing with standard items:

> "I still cannot understand how a standard product such as a 'U' channel can possibly be 55% higher than the standard list price".

114. The next month was another Oslo example. HMT and a rival, Fischer, had quoted for a rainscreen, HMT at $667 per square metre, Fischer $371. HMT's, though, was for 316 grade steel, Fischer's aluminium. In the end, and having been told of its rival's price, through the aegis of Deniz HMT and GmbH "jointly developed an alternative stone façade" using aluminium at $111.15 per square metre.

115. A final example, this time a quotation for a museum in Oslo in November 2015. The Company quoted, using HMT's pricing. It was told it was too high. It went back to HMT, which dropped its price by 44%.

116. These are, of course, a few examples among many over the years, but they are ones which were addressed at trial. Based on them, the pricing which was obtained from HMT was not automatically sweetened. But there were times when HMT were co-operative in finding alternative competitive solutions, perhaps more so than a non-Group company.

117. One benefit of the Group was that when after Canary Wharf, as Mr Yesilkaya says ,"we struggled to find new products", the Company could keep going by establishing a UK presence by the import of marble from Haz Mermer and steel product from HMT.

118. What the Group did not do, though, then or ever, was provide direct financial support. Its support was indirect: product, expertise a phone call away, extended payment terms on invoices. Mr Il says Mr Yesilkaya "promised to send the Company US$5m worth of metal fixing systems but failed to do so". That is the sort of promise which Mr Yesilkaya might make in expansive mode, but not one which could sensibly be taken at face-value: what would be the point, unless there was a market? Equally unreal, though, was Mr Yesilkaya's suggestion that it was a failure of Mr Il's management that the Company could not live off its Canary Wharf profits: its accounts to 31 March 1994 show a negative balance sheet of £12,938; and Mr Yesilkaya's contemporaneous view of Mr Il was positive.

Mr Il's appointments, and Mr Yesilkaya's role

119. The appointment of Mr Il as director (and secretary) in April 1993 fulfilled at least one of the promises made to him by Mr Yesilkaya. It was also for practical reasons: it had become clear to Mr Il during 1992 that the Company needed a UK-based director, in particular for signing documents. In his view, his appointment "simply formalised" his existing role rather than adding to it.

120. That was because Mr Yesilkaya was, and until recently remained, an absentee director. That was no surprise to Mr Il. Mr Yesilkaya told him on appointment that "he would be responsible for the day to day running [of] the Company", but also says that was to be subject to his supervision. At trial Mr Il has sought to minimise that qualification, but that is him, with the current state of relations, reflecting on the many hours he put in for the Company, managing, and indeed directing, its business day-to-day and year-by-year: "I ran the Company from A to Z with little or no help"; he now regards Mr Yesilkaya as having "'dumped' his business on me, financially and physically…".

121. The first element of the Fundamental Understanding, the existence of which is averred to post-date this appointment, but be evidenced by matters surrounding it, is that it was agreed or understood that "the Petitioner would be free to run the Company without interference from [Mr Yesilkaya]". That is unsustainable as a proposition of legal effect: Mr Yesilkaya remained bound to perform his duties as a director even if he had left the Company's operations to Mr Il.

122. It is also unjustifiable on the facts. Mr Yesilkaya was at this point the sole shareholder, and from the first granting of shares to Mr Il has remained by far the majority shareholder. He it is who controls the Haz Group companies, sisters (or cousins) in the Company's business.

123. It is also contrary to Mr Il's own evidence, that "on a number of occasions [he] approached [Mr Yesilkaya] to discuss matters concerning the running of the Company and for assistance, including financial assistance for the Company; but that the majority of such approaches were either ignored or dismissed by [Mr Yesilkaya]"; that from appointment Mr Yesilkaya was telling him "that the Company was mine as much as his, that I was his partner", even if this quotation ends "and that I was free to run the Company as I thought best"; and that, after the completion of Canary Wharf and at a time when the Company was just surviving, Mr Yesilkaya told him that it was "yours and mine", and that he was his partner.

124. Indeed, it is also contrary to other representations which Mr Il avers and I accept. So, around the time he was appointed as director, Mr Yesilkaya told him "to keep his salary low so the Company's business could grow and he would be rewarded in the future"; and that the Company would "play an important role" in the Haz Group. Any force that there was in those vague representations, which Mr Il bought into, derived from Mr Yesilkaya's ability to reward Mr Il, by salary from the Company or otherwise through dealings with the Haz Group. I add that I agree with Mr Il that those representations were made, contrary to Mr Yesilkaya's recollections, because in a company with (at the time) little business but with potential derived from its being a part of the Haz Group, this is just what Mr Yesilkaya might have said, always willing to make grand promises to secure his ends as not bound by them. Mr Yesilkaya's blunt position that Mr Il's salary was "never discussed" is hugely improbable, and I reject it.

125. Thus, although remote and inactive, Mr Yesilkaya remained a director; and when he desired to, he could enforce his will in his own interests.

Mr Il's loans to the Company

126. There was another, more surprising, distinction between Mr Il and Mr Yesilkaya. Even before he became a director or shareholder, and through to December 2013, it was Mr Il who was making loans to the Company to keep its business afloat. Between 2 July 1992 when he loaned £5,000, and 9 December 2013 when he loaned £10,000 he made 11 loans totalling £194,386. (There may have been other loans, and some may be outstanding, but Mr Il says he does not have access to the Company's records to confirm.)

127. In cross-examination, Mr Yesilkaya was understandably sensitive on the point. He was willing to acknowledge that Mr Il had provided funding, but said that was because he was a director. The loans pre-dated formal appointment, and holding the same office had not enabled Mr Yesilkaya to open his pocket even when he had promised Mr Il on a number of occasions between 1995 and 2010 that he would provide the Company with capital, to purchase premises or to widen its business into property development. Mr Yesilkaya's justification is

that "It was always understood between P and R1 that the working capital of the Company would be funded from its profits"; but, as I have said, that is an unrealistic and unsustainable proposition.

128. This lending did not just come from Mr Il's resources. On 5 December 2002 he emailed Mr Yesilkaya to inform him that he had loaned the Company £30,000 from giving a second mortgage over his house, and about $12,000 had been loaned via his sister.

129. Indeed, even after the 2013 fracture in their relationship, it was still Mr Il who was willing to lend. On 3 September 2014, following delays in payment from Zafer Construction for Yerevan, he told Mr Yesilkaya that he had applied for a loan on his house, "just in case". Mr Yesilkaya replied "As a major shareholder of Haz Int I would like to inform you that, I strictly oppose this move. I do not want your private wealth to be used for this company". He had been happy enough before.

Mr Il becomes a shareholder

130. Even at the time, Mr Il was aware that he was being taken advantage of: working long hours for a modest salary, providing capital, on the promise of better things to come including a shareholding. He was telling Mr Yesilkaya this before and after he became a director.

131. On 24 March 1995 he was rewarded. There was a fresh issue of shares in the Company, and a gift to Mr Il from Mr Yesilkaya of a 15% holding.

132. Mr Yesilkaya says this gift was "in recognition of his responsibilities towards the Company".

133. This date is the earliest at which Mr Il says he and Mr Yesilkaya became quasi-partners. That core allegation is one to be reviewed from the second allotment, in January 2007.

134. Becoming a member made no difference to Mr Il's role, or to Mr Yesilkaya's; just as the later transfer made no difference.

135. In his evidence, Mr Yesilkaya blends the periods.

> "From the early 1990s to around 2013, I had a strong working relationship with Mr Il and I saw my role as that of a mentor";
>
> "From around the mid-1990s it was understood that Mr Il would manage the day-to-day activities of the Company in the UK subject to my overall control and as a fellow director";
>
> Mr Yesilkaya acted "in a supervisory capacity in respect of all UK operations", but Mr Il "would regularly seek my counsel on technical matters";
>
> "I maintained broad strategic control of the Company's international business and acted as a co-ordinator within the Haz Group in respect of new opportunities and the supply of products and staff to Company projects";
>
> "As time progressed, Mr Il learned about the industry. However, [he] continued to seek my advice and my oversight of Company projects has remained vital to the Company's ability to operate. To be clear, at no time did I give up overall control of the Company";
>
> "…we were very close friends. We would speak on an almost daily basis".

The Company's business progresses

136. The progression of the business was such that on 30 March 1998 it changed name again, at Mr Il's request: "Haz International Ltd" was perceived to reflect its business and aspirations, including by now UK sales of HMT metal and Haz Mermer stone. Mr Yesilkaya agreed "because of his desire to support the Petitioner and the Company, and despite opposition from managers of other companies in the Haz Group..". Mr Il was now, on his own account, finding the Company business, and managing all aspects of projects from tender through to completion.

137. The relationship was not without blemishes. Mr Il says he tried to resign a number of times, but allowed himself to be sweet-talked back. Making allowances for that context, the importance of Mr Il to the Company and his genuinely close friendship with Mr Yesilkaya, emerges through passages from emails from Mr Yesilkaya. On 28 February 2003 he wrote a letter beginning

> "Dear Can, as the Subject
>
> Dear Can, as my brother
>
> Dear Can, as my partner
>
> and Dear Can, as the owner of London office,
>
> Leaving is not an option. I will never accept that. You are not a person to live by receiving handouts from the English government… You are stressed right now. We have overcome the bad days so far by discussing- crying over it and we, as a group, have the greatest chance of our lives…
>
> I would never think of shutting down England. Nobody, including me, gave you orders since the day Canary Wharf was completed, and nobody can do that. I have always tried to talk to you and give advices- guide you as a brother…".

138. One other example can be taken, from a 15 May 2003 missive of Mr Yesilkaya's.

> "Do not ever use the phrase 'I will get my coat and leave', which I do not want to hear, and which I will not and cannot let happen. That place is yours, as much as it is mine".

A promise of further shares

139. Mr Il says it was at the latest by this month that the quasi-partnership and fundamental understanding were established. He also says it was around now that Mr Yesilkaya told him that he was considering transferring further shares to him so as to make them equal shareholders in the Company, firstly as a

reward for his hard work and commitment to the Company; and secondly, to provide some protection from any interference in its management by Mr Yesilkaya's sons.

140. I think this is an example of Mr Il's revisionism, and seeking to take advantage of Mr Yesilkaya's literal words in the missives I have quoted above. Mr Yesilkaya may have had doubts about whether his sons could stand in his large footsteps, but there is no suggestion that there was then any threat that they would interfere in the Company's management, nor that any ability of theirs to do so was not contingent on their father's approval. As to the equality of shareholding, Mr Yesilkaya's words cannot be taken literally. Such equality is vastly unlikely given his control of the other companies in Haz Group, and Mr Il's own case that Mr Yesilkaya would promise much which was not delivered. It is also contrary to his case that in early 2003 Mr Yesilkaya had already signed a stock transfer form transferring a further 15% shareholding to Mr Il, albeit that the transfer was not effected until 31 January 2007.

141. As to what lay behind that transfer, Mr Yesilkaya has given a mixed assortment of explanations: "…it was believed that [Mr Il] was committed to the success of the Company"; it and the 1995 issue were a "gesture" to Mr Il "to support him". More elaborately, the earlier issue was:

> "simply [a] gesture of goodwill designed to encourage the ongoing loyalty of an employee/ director that had been with the Company for five years. This is common practice, particularly in a scenario where it may not have been possible to vastly increase an employee's salary whilst the Company sought to establish a presence in a new market";

and the later was a "standard business practice" progression from that:

> "I remember specifically deciding that a figure of 30% was sufficient to encourage Mr Il's loyalty, whilst retaining majority control of the Company".

142. I do not doubt that Mr Yesilkaya deliberated over the figure, and that those were indeed factors. But as he acknowledged in cross-examination, there were other reasons: Mr Il was given his shares because of his "extraordinary efforts" and because of the "personal relation of us both: I wanted him to secure his future and I gave him his 30%".

143. That has the savour of truth. So too did Mr Yesilkaya's firm reaction- "Never ever!"- to the suggestion that he had promised Mr Il 50%, "and to leave him to run the company as there was no one else able to do so": his sons were "learning"; but he needed someone to be CEO of the Group, and although he never discussed it with Mr Il, he was Mr Yesilkaya's "candidate" as his "favourite".

Quasi-partnership

144. It is in my judgment plain that from 1995 and the first allotment of shares to Mr Il this was a company which was a quasi-partnership between himself and Mr Yesilkaya. They had a special and close relationship. Mr Yesilkaya, always with a view to his own good as well, was mentoring Mr Il. Mr Il committed to the Company not just long hours, but his personal funds as well. Promises were made that he would be rewarded, as he was through these share issues. There would never be a realistic outside market for his shares. When given them he was a director, and it must have become implicit that he would be entitled to remain such while he kept his shares, barring serious misconduct.

145. The relationship sings from Mr Yesilkaya's letters quoted above: even if all the literal contentions, including that of partnership, are set aside, nobody is suggesting that the contents are mere formalistic politenesses. Albeit that they were not equal shareholders, this was their company.

146. That position was maintained until the breakdown of their relationship, and its effects permeate the winding-down of the relationship as well. There continued to be lapses, and it was Mr Yesilkaya who would smooth them over. On 31 March 2009 he was reassuring Mr Il:

> "HAZ UK is a source of pride. Everyone looks up to it. I entrusted the children to you. You are speaking of allergy to HAZ UK. It is absolutely untrue".
>
> "I supported you in everything you asked for the last 20 years. I sent you the best employees… You need this job and I need you… how can the man who made HAZ UK what it is now, step aside?"

147. On 8 April 2011 we have this:

> "I am terribly upset that you are so pessimistic about my relationship with you… What did I tell you after Dubai? OK, do not expect any help from me from now on. I said because you are capable of doing your own job now. The company is getting professional… I just want to say that my commitment to and trust in you has never changed since the day I met you".

148. On 21 April 2013 this, comparing Mr Il to others within Haz Group:

> "You are the only one who had 30% shares, given to you free, you are the only one who run the Company without any control, you are the only one who used the company as your own, you are the only one who came and gone whenever you wanted. All this freedom was given to you by me".

149. Mr Il was indeed special. He was one of a handful of non-family members who were given shares in a Group company. His reputation was such that within the Group he was known as "the lord", a moniker given him by Mr Arslan and adopted even by Mr Yesilkaya; and he was so called because he was perceived as "untouchable".

150. Mr Yesilkaya needed Mr Il. Although there had necessarily been communications about the Company's business when Mr Il was starting, Mr Yesilkaya's active interest diminished, doubtless as he trusted Mr Il. So, for example, when in September 2014 an issue arose over the Yerevan Project, Mr Il had to tell Mr Yesilkaya that Zafer Construction was withholding $441,000

out of the contractual value of $1m, had confiscated workers' passports, and that the project was 70% completed. But then Mr Il was asking Mr Yesilkaya for his assistance, requesting him to deal with the owners of Zafer; and in reply Mr Yesilkaya said "I wrote him and assured him Haz Groups intention to complete this job in good manner".

151. This speaks to what Mr Yesilkaya described in his cross-examination as "high-level oversight". It is something he now regrets:

> "You owed a duty to keep yourself informed as to company matters?"
>
> "Yes."
>
> "Which you didn't discharge."
>
> "No, I didn't. From 1990 to 2016 I asked no questions. I'm paying for it now".

152. This relationship was not interrupted when on 1 April 2007 Mr Il resigned as company secretary. Neither did Mr Yesilkaya's transfer of shares to his sons Deniz and Akin on 1 September 2011 affect matters: it was no more than a divesting of some of his interest, leaving himself with 40% and his sons with 15% each. Although, as we shall see, Deniz was working for the Company, he never became a director in name or deed; and Akin had no connection with it beyond this shareholding. That Mr Il signed the board resolution confirming the transfer does not speak to any alteration in his relationship with Mr Yesilkaya.

Jan Junior joins the Company

153. Both Mr Il and Mr Yesilkaya had a son who worked for the Company.

154. Jan Junior was with the Company part-time between July 2003 and November 2006 while he studied, and then full-time until March 2016. He completed various ACCA papers, as well as courses on SAGE and payroll accounting;

and holds an HNC in construction management from London South Bank University, which he attended part-time between 2013 and 2014.

155. For the Company he undertook a variety of tasks, including driving the forklift in the warehouse when required. Mr Adams said that he dealt with "accountancy-related issues, banking, general administration, office work and warehouse work".

156. Jan Junior told the Court that he had "few if any" dealings with Mr Yesilkaya early on; and their degree of warmth depended on the state of relations between him and his father.

Deniz joins the Company; his salary; its recharge to HMT

157. Deniz was born in 1976 and joined the Company in 2009. He had worked for HMT since 1997, as he continued to do, building his technical knowledge of the industry and his contacts; he also continued to work for GmbH. Both continued to pay him a salary.

158. Mr Il says his employment had been discussed since 2007, as Mr Yesilkaya was keen to ensure that Deniz did not have to complete military service. Mr Yesilkaya confirmed that that was a motivation, but it was also "to pursue business development activities for the sale of products produced by the Haz Group which would also benefit the Company"; and as matters turned out, Deniz's intended temporary stay in England was extended.

159. From Deniz's point of view "I decided that I wanted to experience working abroad. As the potential heir… I felt it was essential to gain experience abroad and strengthen my English language skills". He considered his responsibilities at the Company similar to those he had with HMT and GmbH: coordinating the sale and marketing of HMT product, including on occasion liaising between the Company and HMT when there were production or pricing issues.

160. That his stay was originally intended to be relatively short can be seen from another excerpt from Mr Yesilkaya's 31 March 2009 letter to Mr Il, telling

him that he could not rely on Deniz running the Company if he didn't: "Deniz will be back immediately after completing his time regarding military service. He belongs to Turkey". That intention was despite the representations made to the British Consulate in Istanbul in a 3 April 2008 letter signed off by Mr Adams for the Company with a view to assisting his visa application: Deniz was to be employed by the Company "for the next five years in the role of Marketing and Development Manager"; he was looking for accommodation for himself, his wife and two children, who would be with him "for the duration of his employment".

161. In hindsight, Mr Il says he now suspects that Deniz was really introduced to force him out of Company, and for Mr Yesilkaya "to take over the management through Deniz". That is not credible. In 2008 and 2009 Mr Il and Mr Yesilkaya remained very close; the March 2009 letter states the opposite; and not only was Deniz never appointed a director of the Company, but his lack of involvement with it is one of Mr Il's complaints: here he was, taking three salaries, yet rarely in the office (and both Jan Junior and, more cogently, Mr Adams, said the same).

162. It is, as well, curious that Mr Il was concerned about Deniz's salary, or the hours he was working for the Company: Mr Il says that he agreed with Mr Yesilkaya that Deniz's salary would be recharged to HMT. Indeed, but for his claimed figure of $481,007 paid to Deniz, the Company would owe HMT a significant sum of around $340,000 on that part of the Disputed Debts.

163. In December 2014 the Company sent a letter to the Saudi Arabian Embassy in London in support of an entry visa for Deniz to meet Linder Facades Ltd. It confirmed that he was its "marketing coordinator", and that it would cover his travel expenses.

164. On 19 September 2015 Mr Il himself wrote a reference for Deniz, following a request from Van Mildert tenancy reference agency. He stated that Deniz had worked for the Company since December 2008; his role was "marketing coordination and business development within the Haz Group"; and his "current basic salary is £55,000".

165. Mr Il says that he had not been aware that Deniz was formally employed by HMT and GmbH as well as the Company until informed in an email of 28 May 2015 from Ahli United Bank. For a man as well-informed as Mr Il I find that unlikely (and Mr Yesilkaya said "I can only laugh" when it was put to him), especially as there is no recorded reaction to the news, or effort to get GmbH to chip into the Company's salary payments as well. In cross-examination Mr Il said that it was "not up to me" what job title he was given, and that he was "employed by Group"; the Company was not benefitting from his services.

166. But Deniz was doing work of benefit to the Company, as shown by the minutes of management meetings in 2010: in-between, for example, those recording his agreement on behalf of HMT to bear the cost of a 40/25 HDG channel which had failed because of faulty material are low-detailed recommendations on marketing.

167. It was also Deniz who dealt with the employment of Jon White in September 2012. When Mr White sent Deniz a list of points and questions on a draft employment contract Deniz sent the matter up to Mr Il for his approval, but with his recommended acceptance. On 5 September 2012 Mr Il replied: "We'll fix Jon White's contract together when you come to England. At this stage, I'm not doing anything on my own. You started the conversation with Jon White, you complete it or we'll complete it together". (Of this Mr Il said in cross-examination "They can have their company, I'm not interested. I'm only interested in 30%".)

168. Thus there are both representations to the outside world that Deniz is employed by the Company in an executive role and evidence that he was carrying out tasks for and to the benefit of the Company, even if he was, as Mr Il said, "in practice free to do what he wanted and to travel as he chose", and working for others at the same time.

169. Both those aspects are inconsistent with the notion that all of Deniz's salary was to be recharged to HMT. So too is that there was no ongoing recharge, notwithstanding ongoing business between the companies; and that the

recharge does not appear in the Company's filed accounts (although, as we shall see, that is a point which counts for much less than usual, neither party contending that they are accurate).

170. There is another unlikelihood in Mr Il's account, which is that the agreement to recharge Deniz's salary to HMT was to be kept secret from Deniz. Deniz was working for HMT, and at the least influential in its affairs. How could it be kept a secret?

171. I am also concerned at the lack of detail in Mr Il's allegation; and that it is said to arise in 2007, 2 years before Deniz was actually employed.

172. There is, though, the occasional flicker in the evidence that something was going on over Deniz's salary. At one point in his cross-examination Mr Yesilkaya agreed that "additional amounts were to be backcharged". So, in January 2014 Deniz needed to renew his visa, which entailed a journey to Croydon. On 6 January he wrote to Mr Il:

> "there is a little problem. It is the requested employment confirmation letter. An annual income of 46,000 pounds is stated in the letter. I learned that this is the minimum salary for me to get a visa… They want both the letter and proof of me getting this salary. Can you please pay the salary for January 2014 according to this level?... This would be an advance payment for January. I have to send the documents by Wednesday."

He then adds this:

> "I talked about this with my father. He confirmed it and told me that, if necessary, we would deduct it from HAZ Metal's account."

173. That indicates that any recharge would be as to excess only; the recharge was not automatic; and that there was no current agreement to recharge.

174. In the same vein, at the end of the same year, on 3 December, Deniz wrote to Mr Il:

> "Hello brother,
>
> I need to move into a new house and have a slightly higher level of income as I discussed with you earlier. I discussed the matter with my father. He is also aware of it.
>
> I need a yearly gross salary of £55,000 to get a mortgage!
>
> Can we please make it happen for November? I need a pay slip and bank transfer! Also, a letter from you!".

175. Mr Il raised the matter in an email of 6 April 2015 to Mr Yesilkaya in which he made a number of complaints about what are now the Disputed Debts. Interestingly, he put it this way:

> "…even though the wages for Deniz was said to be paid by Haz Metal, I have not included these in the balance sheet. (The cost of Deniz to Haz UK is around $500,000. Please consider this as well)."

176. That does not sound like an agreement that Deniz's wages, or any part of them, would necessarily be paid by HMT. It sounds instead as though there had been discussions that some or all might in the end be attributed to HMT, but that would be a matter for Mr Yesilkaya and the overall fairness of the position between the Group companies. Mr Yesilkaya's reply is consistent with that:

> "About the issue for Mr. Deniz's wages, how do you expect me to answer that here? It is obvious that we have to discuss this and Haz UK in detail in the near future".

177. On 24 November 2015 was a further, and ever more heated, exchange, beginning with Mr Il's request to HMT's accountant Muhsin Girisen, and copied to Deniz and his father, asking him to "process" Deniz's salary from March 2009 to March 2015. This drew a response from Mr Yesilkaya:

> "What kind of support do you have to charge the salaries paid to Deniz Yesilkaya to Iskenderun since his stay in London?
>
> Please do not create more disturbance.
>
> Have a nice working day."

The Company being said to owe HMT more than $1m, which it could not pay, Mr Il was not put off.

> "What kind of supporting documents do you want? Deniz is not working for Haz UK. Please give me the supporting documents that he is working on behalf of UK. Also, he is the one who says bill my salaries to Haz Metal. Why are you putting this responsibility on me? You are the one who said 'ok bill then' in our meeting, you are changing your mind".

(Why Deniz was asking for his salary to be billed has not been clarified. It also seems to have been open to Mr Yesilkaya to change his mind.)

Mr Yesilkaya denied there had been any change of mind.

> "I do not remember that this issue was also discussed that evening. There have been so many things to talk about that I may have forgotten.
>
> There is one thing I know: When such matters are spoken, I said, 'Then talk- get it done'. (as I always do).
>
> But it is suitable to say to the person who has been there for so many years, whose insurance and tax has been paid, now, 'You haven't done anything- you get your salaries by Iskenderun.'"

Mr Yesilkaya then invited those copied in to "come to a conclusion" on the totality of the HMT: Company debt "without the two sides breaking each other".

178. I am unable, therefore, to detect any agreement that some, let alone all, of Deniz's salary was to be reimbursed to the Company by HMT. At most, and as we shall see consistently with other undocumented inter-company debts, they were to be dealt with by negotiation and subject to the ultimate approval of Mr Yesilkaya.

179. One can sense a certain "needle" behind this issue, the Company bearing the employment of the occasionally-present Deniz; doing so because, though Mr Il and Mr Yesilkaya had their own relationship, in the end this was a Company controlled by Mr Yesilkaya; and, doubtless, because the working-all-hours Mr Il had to deal with Deniz, whose work was never intended to be dedicated solely to the Company. Mr Buckley put to Mr Yesilkaya that Deniz's employment was "a source of tension", to which his answer was "Seems like that, definitely".

180. It did not assist that Deniz and Mr Il did not get on. Deniz said:

> "I found Mr Il to be temperamental and unpredictable… he was not happy when not included in routine communications",

and after Deniz joined

> "it quickly became clear to me that Mr Il was not happy… and I felt his resistance and disapproval of me coming to the UK and being involved in the Company".

181. Deniz did not always help himself. On 25 November 2015, the day after the exchange over his employment, he was capable of writing to Mr Il, unlike him a director of the Company:

> "Do not forget that I am a member of a family that represents 70% of this company… You are working for us, not the other way round".

182. I doubt that was a point of which Mr Il was ever unaware. It is one which permeates the next topic, in which Deniz was also involved, being Mr Yesilkaya's alleged diversion of HMT metal sales from the Company to

HMUK, within which is as well the first catastrophic rupture between Mr Il and Mr Yesilkaya, in January 2013.

HMUK, HMT metal sales in the UK, and Jon White

183. HMUK was actually not incorporated until 10 October 2016, three days before non-binding heads of terms were agreed between Mr Il and Mr Yesilkaya by which Mr Il's shares would be bought out. Deniz was appointed its director, HMT taking 500 of the 1,000 issued shares, Deniz and Akin 150 each and their father the balance.

184. Mr Il says that it was incorporated "to take over the sales within the UK of metal manufactured by [HMT] that had previously been undertaken by the Company, and its customers include previous customers of the Company". Its creation caused some confusion among the Company's customers: the Company still sold some HMT products, but was undercut by HMUK; other customers, for example Euro Accessories on 16 August 2017, sent payment to the Company, not to HMUK.

185. Mr Yesilkaya agrees that there is a sharing of some customers, but draws a distinction: HMUK is in the "business of designing, supplying and installing metal fixings [which] is distinct from that of the sale of metals".

186. That is at best an addition to the HMT business rather than a different business. In cross-examination Mr Yesilkaya agreed that before HMUK, UK sales of HMT metal fixings were through the Company, but averred that that was an aspect which Mr Il had failed to establish in the UK; that was unsatisfactory because, as Deniz said, "the Company was carrying our flag in the UK markets".

187. As that indicates, the origins of this diversion lie much earlier.

188. Deniz's evidence was not entirely square with his father's. He recalled that the Company started to sell HMT metal fixing systems to third parties in 1999, and from then UK enquiries to the Haz Group would be directed to the

Company. The expansion into the sale of metals came from there. So, the Company was dealing with both aspects, as was HMUK.

189. Where there was agreement between them was the perceived lack of enthusiasm of Mr Il for this side of the business, and its lack of success, which puzzled Deniz as the fixing systems were profitable in other local markets, notably Turkey and Germany. It was because of that that they wished Jon White to be hired. In his evidence Mr Il conveyed his ongoing upset at Mr White's appointment, which pours from the contemporaneous evidence as well.

190. Jon White was appointed to help Deniz "to build the Haz Metal brand under the Company name". That was because of the perception, no doubt grounded in reality, that Mr Il had "failed to establish the Haz Metal brand in the UK". Indeed, he had shown himself "incapable of incorporating the Haz Metal brand within the Company", and had obstructed Deniz in his efforts.

191. Mr Il never welcomed the presence of Mr White. He was Deniz's appointment.

192. On 5 December 2012 Mr White wrote Mr Il, Mr Adams and Deniz a note "to let you all know that we have a visitor coming to our offices on Thursday 13th (next week)". He was Aidan Monaghan, managing director of Simply Precast Accessories, who "is currently looking for an alternate cast-in channel supplier to BVT Rausch". He was to have an initial meeting with Mr White and Deniz, and then "It is likely that we will have a short tour of the warehouse as well". He ended "Let me know if this proposed meeting date clashes with any other activities at the office so I can arrange an alternate venue in time".

193. Mr Il's reaction to this polite and positive note was astonishing; it was surely the release of pent-up anger and frustration at Deniz and Mr White and aspects of the Company's business over which he did not have total control. Certainly, he chose to copy in Mr Yesilkaya as well.

> "I am struggling trying to make sense out of your below e-mail. Why you sent this e-mail to us (Mr Mark Adams and myself)?

> Neither me nor Mr Mark Adams has a clue about anything you are doing in this office. It is like you are running your own business in our office. You chose to write this e-mail from the office instead of consulting me in the office…
>
> I am surprised and to a certain degree shocked with your behaviour (lack of professionalism, self-discipline, courtesy and even common manners)."

He then listed complaints, including that Mr White was not in the office all the time (hardly surprising, given his marketing role), and when he was, you

> "disturb and distract everybody who are trying to earn your mistakenly agreed high salary".
>
> "I therefore require you not to come into this office until further notice.
>
> I hereby request Mr Deniz Yesilkaya and or Mr Abit Yesilkaya to consider your position in Haz".

194. Mr Il said that on reading this Deniz stormed into his office and "screamed abuse, telling me that I was not part of Haz and… I didn't know my limitations".

195. Deniz had reason to be upset. Mr White's appointment had been at the behest of himself and his father, to try to boost HMT metal sales in the UK with some dedicated marketing. In February of that year there had been a decision to retain them for the time being within the Company; a decision supported by the employment of Mr White. On 14 February Mr Yesilkaya had written to Mr Il:

> "I told you that we are considering the separation of metal business. You are free to do whatever you want in stone and installation works".

Mr Il replied the same day:

> "You did not tell me that you were considering the separation of metal business. You told me to think about whether I would consider separating the metal business. I do not remember that we finalised this matter".

196. The next day Mr Yesilkaya responded:

> "I told you that I wanted to lift the burden of metal business (debt burden) from you and relieve you. I also told you that I would not make my final decision without talking to you".
>
> "The metal business is the 'main fields' of Deniz and me… You are free in your decisions other than the metal business. On the other hand, I am seriously considering the separation of the metal business. I will sit with you and decide".

197. Mr Il says he was "very concerned to hear this", but his attitude to the metal business had not changed in the meantime.

198. I doubt that Deniz screamed at Mr Il, but am sure he made his upset known. He must then have sat down to write the email he sent not an hour after Mr Il's.

> "…you should have consulted me before you made this move. New recruits need guidance and leadership. If there was anything that was disturbing you about Jon White we could of communicated this in a manner that would have been more productive.
>
> The reason we recruited Jon was to develop a business for Haz Metal… I was in contact with him throughout the time he was here and was following the contacts he was making for Haz Metal. This was something no one was pursuing in the London office and I had hopes that this type of contacts to the market would have eventually brought in some business for Haz Metal. I am terribly disturbed with your actions... I have no option but to separate the activities of Haz Metal from Haz International. From today on I will work on to

> establishment of Haz Metal UK and do not want your interference in Haz Metals business".

199. The next day Mr Yesilkaya opined, copied to Jon White, Mr Il, Deniz and Mr Adams.

> "Mr. Deniz informed Mr. Can K. IL that from this day on Haz Metal UK (under registration) will work separately and have no direct relation to Haz International UK".

200. While HMUK was not incorporated for some years, it seems to me that from the time of those exchanges it can be said that the HMT metals business was liable to be removed from the Company; and Mr Il could have no complaint about that, because his own conduct had caused it.

201. But what these exchanges reveal is a more fundamental point as to why there has been no unfair prejudice in the removal of the business: it was never the Company's: the Company was no more than a holder of a right to market, subject always to the immediate withdrawal at the behest of its majority owner and the owner of HMT: as Mr Yesilkaya said, "The bottom line is I had no obligation to market the Haz Metal products through the Company". There was no unfairness in such withdrawal, because those were the terms on which it received the business. Actually, there is no evidence of prejudice either, because in among Mr Il's financial calculations is nothing which demonstrates that this business was ever profitable to the Company.

2013: Mr Yesilkaya tries to remove Mr Il

202. Mr Il's outburst was to have wider reverberations beyond Mr White's inevitable resignation in February 2013.

203. On 17 January 2013 Elizabeth Stewart, an architect in the UAE at BDP.Mena LLC, wrote to one Arcelie at Haz Mermer; her UK colleagues had been in touch with Mark Adams requesting stone samples; "however now they have been informed that once a project is assigned to one of the HAZ offices, in this case the Abu Dhabi office, there is no communication between offices".

204. Arcelie forwarded the message to Mr Yesilkaya.

205. On 21 January 2013 Mr Yesilkaya sent an email to Mr Il, copied to Deniz and Mr Adams and Mr Arslan.

> "We consider Haz Marble as a group and we expect from all our offices to act like this. The answer of Mr Mark Adams… is inappropriate and wrong."

206. On the same day Deniz walked into Mr Adams and Mr Il, shouting "who do you think you are". Mr Adams remained phlegmatic, as in his view it was all a "misunderstanding" over sample supply.

207. Mr Il replied the same day.

> "I have no objection to Haz UK being considered part of Haz Group and in fact tried very hard to act accordingly. However it is very difficult to believe that is the case from your side. There are many examples…".

He complains about "your disguised and insincere plans" and "serious threats to me"; his emails not being responded to; then gives the example of Deniz on 6 December who "screams out much abuse at me including that I am not part of Haz and he does not get on with me etc. etc. Most disgustingly his very comment 'You don't know your limitations'".

208. Mr Yesilkaya was having none of it.

> "I am fed up 'pampering' you. Do not forget: YOU HAVE RESIGNED several times, taking in consideration your temper, I asked you to stay and give you all support nobody had in Haz Marble since 1978. You are the only one who had 30% shares, given to you free, you are the only one who run the Company without any control, you are the only one who used the company as your own, you are the only one who came and gone whenever you wanted. All these freedom was given to you by me. Now you have gone too far. You are released from your duties as General Manager

> of Haz Int. You are not allowed to sign any contract in the name of Haz Int. any more. I am coming soonest to London to discuss how to finalize our relation with you".

209. Neither was Mr Il.

> "I would remind you that I am a shareholder and a director of the company not as such per your description a 'General Manager'. I did not receive my shares for nothing- I have worked tirelessly for the company and have invested my own money in the company, making it a successful venture… I have given up huge amounts of my time, nearing to 23 years x 365 days x 24 hours of my life, travelling all over the world including geographically dangerous places thus dangering my life for the company and have grown the company with little assistance from anyone.
>
> When Haz International Ltd was established in 1990 there was no or little capital investment from either of us. So this current value of Haz International Ltd has in fact come to YOU 'free'…
>
> It is not for you to 'release' me from my duties. You have no right to do so. I will continue to run the company in the way I have done, letting you know of material facts relating to the company. I wish to protect my shareholding and interest in the company…".

210. It did not change Mr Yesilkaya's mind:

> "…As major shareholder of Haz Int, I repeat you are released from your duty as Director of Haz Int. You are for sure still share holder. We started with good intention and in very friendly manner. Let finish our cooperation in same manner".

211. Mr Yesilkaya accepted that he did not know that under English law he could not dismiss Mr Il as a director in this fashion, but "It was my intention- definitely!".

212. Mr Il took legal advice on his position.

213. On 6 February 2013 there was a meeting at the premises on the Great North Road, with solicitors present for both sides. Mr Yesilkaya was by now cognisant of English law. "At the meeting" says Mr Il "he claimed that he wanted to work with me".

Ongoing strains

214. This rupture in the relationship was never truly healed.

215. From 30 May 2013 was an exchange of emails, beginning with Mr Il complaining about Deniz, the proposed Haz Metal UK, and the non-reconciliation of dealings with Group companies. In response Mr Yesilkaya raised "the Barn", being Willow Tree Cottage, "formally registered under your name. If we are talking about 'separation', about selling off assets, what is to happen with that?"

216. Within the same chain is this from Mr Yesilkaya:

> "The arrow has left the bow. You do not want to work with us anymore. The person that you are trying so hard to 'humiliate' is my son. I never uttered a single bad word in 23 years about your children; as a matter of fact, I always supported you… You can sell your share to whomever you want. Because I am not currently a buyer. I do not have money".

217. On 17 June 2013 Mr Il was writing to Deniz:

> "I'm not a general partner of HAZ. I realize that you don't have to do everything with me. You want to make metal and abrasive. I have no objection… How it should be done, you decide. You plan whatever suits you, but you need to contribute to the HAZ UK costs. DO NOT SHARE WITH ME ANY POSSIBLE INCOME FROM Metal and Abrasive Works. I HAVE NO WISH WITH IT AND I WILL NOT HAVE ANY REQUEST. Let's understand or separate. I don't want stress anymore".

218. The metals business was indeed HMT's to do with as it wished. Further, although the actual transfer was not to occur for 3 years, there is nothing which indicates any alteration to Mr Il's acquiescence, expressed here. Whether *Duomatic* would apply as well does not matter.

219. Even Mr Il's generosity and attempts to maintain the Company's finances led to fighting.

220. On 3 September 2014 Mr Il informed Mr Yesilkaya that the Company was $300,000 short on payments from Zaher, but had promised to pay a Mr Gokhan $262,000 by the end of the month; Mr Il says of this promise "I cannot fail and I am not going to fail, I have applied [for] a loan on my house just in case".

221. Mr Yesilkaya's response, already quoted above, is "As a major shareholder of Haz Int. I would like to inform you that I strictly oppose this move. I do not want your private wealth to be used for my company".

222. To which Mr Il replied:

> "The sites are not bringing income. People are paying late. I cannot run the projects. I need some monies from somewhere. I have no other means to generate monies except to get a personal loan. I am not doing any favour to anybody by doing this. I need Haz UK to continue more than anybody else".

223. By 2 February 2015 Mr Yesilkaya was complaining that:

> "After 24 years of cooperation with you… the circumstances of our cooperation has dramatically changed. You are acting as you wish and you do not cooperate and/ or consult with me anymore".

224. Mr Il said nothing had changed from his side, so Mr Yesilkaya proposed a board meeting at which the respective solicitors would be present; as he had "decided to make some changes" to the Company and the Group.

225. "I don't want confrontation" said Mr Il to this. For the moment, the relationship remained.

ICC is incorporated, and begins trading

226. Another consequence of the arguments of December 2012 to February 2013, and the proposed separation of the HMT business, was the incorporation of ICC on 13 May 2013. Mr Il knew about this: "of course" I was aware, he said in cross-examination, "you think he [Jan Junior] would do something like that without my knowing it?"; but he kept it secret from Mr Yesilkaya.

227. ICC's issued share capital of 100 £1 shares was subscribed by Jan Junior. Its registered office was, and has always been, Mr Il's home, where Jan Junior was only occasionally resident even before his departure from it in about 2016.

228. Mr Il states that "It was Costas Sakellarios' idea to set up… and he did so with Jan Jnr, who is the sole director". Mr Sakellarios was the "director and owner of Pisani plc… a well-known stone supplier in the UK", including to the Company. "ICC was set up to buy and sell machinery and stone slabs for the benefit of Pisani, which it did between 2013 and 2014 under Mr Sakellarios' supervision. After that, it was dormant or largely dormant and only started working on projects from August/ September 2016, by which time the Company was in run off. It never competed with the Company".

229. I say now that although it had featured large in Mr Il's case, the "run off" argument was laid aside by Mr Buckley in closing. That was right: Mr Il remained a director of the Company until removed, and at the least until December 2017 the Company maintained active operations at the US Embassy in London.

230. Jan Junior also says that ICC was incorporated at Mr Sakellarios' suggestion, made while he and his father were visiting Pisani's offices. Mr Sakellarios "said he wanted to set up a purchasing company where his involvement would not be apparent to third parties as he was well known in the market and that made it difficult for him to negotiate good prices".

231. Jan Junior recalls that his father said he could not get involved, but he, Jan Junior, agreed to it: he and Mr Sakellarios were friends, introduced through Jimmy Karagozlu of Marble Fantasy. ICC was indeed originally "set up to buy and sell machinery", but "naturally developed into other areas". "Costas couldn't get good prices, especially from India, as people there thought he had loads of money, and he'd fallen out with some companies".

232. Jan Junior considered that Mr Sakellarios was "fully involved in ICC". After its incorporation, Mr Adams saw no change in Mr Il's commitment to the Company, and he believed ICC to be owned by Jan Junior and Mr Sakellarios.

233. On Jan Junior's account, it was only on 17 September 2013 that he agreed to hold 50% of the shares in ICC for Mr Sakellarios, which interest Mr Sakellarios surrendered on 11 February 2016 (three days after the meeting at which Mr Il and Mr Yesilkaya agreed they would separate), because Jan Junior wanted to move ICC into property development. That was also why his sister Elysia became a 30% shareholder at some point in the year ended 31 March 2018, as she had worked as an estate agent.

234. I accept that Mr Il had no direct interest in ICC: he was never a director nor a shareholder, nor had he any interest in its shares. But it is difficult to conceive that ICC could ever have been incorporated, or carried out its business, without his being in the background to be turned to if need be. In cross-examination Mr Il gave his view that "My son is interested in property development, nothing else. He's not interested in stone at all". Jan Junior attributed that to his father's nervousness, and said while he was interested in property development he retained an interest in stone and construction. The evidence is that Jan Junior did run ICC; but he lacked his father's depth of experience, and allowed his father to interfere when he wanted. Jan Junior said that until "about 2014/2015, Mr Sakellarios oversaw ICC's purchases and sales (although my father would sometimes give assistance or advice when I asked him)".

235. Mr Il agreed that Jan Junior "sometimes asked me for help or advice, which I naturally gave to him as my son- just as I had when Mr Sakellarios was still

involved", but "I did not work direct for ICC". Instead he provided it with his "consultancy services"; it used "my expertise and advice". Mr Il says he helped Jan Jnr with ICC "as a father and in the honest belief that I was not harming the Company or breaching my duties as a director. If my son asked me something, I would of course try to help as best I could, but nothing I did to help him could have harmed the Company…".

236. It was also Mr Il's later intention (if not, perhaps, his son's), averred in cross-examination, that after October 2016 and once the deal with Mr Yesilkaya had been carried through and he had left the Company he would himself run ICC in the open.

237. As Mr Buckley recognised, we do not have a full account of ICC's trade. It does appear that there was initial trade, then a lull through 2015 until 2016.

238. The information we do have does show that Mr Il was involved from the outset.

239. As early as 28 June 2013 Mr Il was signing "For ICC Limited" a purchase order for polished Black Galaxy stone with Krishna Stone-Tech (P) Ltd. of Karnataka, India worth $26,400 and marked for his attention while addressed to ICC at Pisani's address. In cross-examination Mr Il confirmed that he was authorised by ICC to sign on its behalf; this was a general authority.

240. On 8 July 2013 Mr Il was signing an "Invoice" reference "Buyer's Order ICC 002", ICC being the consignee of polished Black Pearl granite slabs from Gem Granites PVT Ltd of Chennai, for which it was to pay $12,470.

241. On 19 August 2013 Mr Il was signing for ICC an invoice for Valley White granite from Chariot International PVT Ltd of Karnataka, for $19,895. There had been three previous revisions of this invoice, which indicates ongoing oversight of this order by Mr Il.

242. It was not all Mr Il. Someone at Pisani signed a September 2013 proforma invoice from the same supplier for more polished Black Pearl granite for 890,660 Indian rupees. There is a 14 October 2013 invoice from Geotrans UK

Limited for £1,404 for carrying 27,000kg of polished granite slabs, loaded in Chennai, from Southampton to Pisani's premises in Matlock. The invoice is to ICC at Pisani's Feltham address, but marked for the attention of Mr Il. ICC's own first invoice, of 31 July 2013 to Fox Marble plc, €165,000 for "two marble gang saws (50%)", also bears the Feltham address.

243. The first involvement we have for Jan Junior is his letter of 17 September 2013 on ICC-headed paper to NatWest Bank, Customer Relation Department, in Bishopsgate. He writes to Aaron Shury "Further to our meeting last month at the Feltham office we have a few changes and requests that we would like made"; so, as would be expected of ICC's director, he had been present. The first request is to change the mailing address to Jan Junior at the Feltham address. Among others are to add Mr Sakellarios to the online banking and as a signatory, and this: "I would like to give authorisation to both Mr Costas Sakellarios and Mr. K. Jan Il to speak to Natwest on behalf of ICC".

244. Jan Junior said that it was useful to have his father authorised, as he worked 18 hour days and if Jan Junior could not do something then he could. Mr Il must have known enough about ICC's business to be able to speak to NatWest on its behalf.

245. On 19 September 2013 Jan Junior and Mr Sakellarios formalised their agreement as to the ICC shares. It was signed by Jan Junior two days before Mr Sakellarios, the signatures witnessed by a George Veskoukis. This was when Jan Junior was eating fillet steak, at a restaurant in Kew Gardens, with Mr Sakellarios and Mr Veskoukis; he had already signed on 17 September, but Mr Sakellarios could not in the event attend the meeting fixed for that date. The short document was said to be between ICC and Mr Sakellarios; it confirmed that he owned 50% of its shares; and that "The parties will not withdraw salaries. The parties will only withdraw dividends at the end of each financial year".

246. Later the same day, Mr Sakellarios emailed Carlos Zanarotti of Stone Projects, that ICC "which Jan owns" be put forward for a potential contract as well as the Company. Which Jan is not immediately clear but, copied to Mr

Sakellarios, Mr Zanarotti's first communication had been to Mr Il the evening before: "I spoke to Costas today about a large project in the City of London for which I was asked by the person in charge of the stone package to recommend a couple of stone contractors with experience in similar high end jobs to tender…". He wanted to know "if your company has done similar work". If successful, Mr Zanarotti expected a payment of 2.5% commission due after receipt of each payment from the client.

247. The email was sent to Mr Il at the Company. Copied to Mr Sakellarios, at lunchtime on 19 September Mr Il replied: "We have the capacity and ability and experience to do any size project anywhere in the world", and he listed out US Embassy projects. The 2.5% introduction fee was confirmed. "What an impressive list of projects" responded Mr Zanarotti. It was then that Mr Sakellarios invited the name of ICC to go forward as well.

248. Neither Mr Il nor Jan Junior knew Mr Zanarotti. Mr Il had never worked with him, and actually the Company had never worked on a hotel project. Mr Il stressed that the introduction was from Mr Sakellarios, who could place it anywhere.

249. So far as it goes, that is right; and I accept Mr Il's evidence that word of mouth recommendations were normal within the industry, as was the payment of commission. However, this episode is the first to point up Mr Il's difficulties over ICC: once presented, the opportunity was one he was obliged to try to win for the Company rather than any other company. I say no more, first because there is no particularised complaint against Mr Il over this, and secondly because given how the industry worked, it is not inconceivable that allowing a rival a clear run at an opportunity might be in the best interests of the Company were it benefitting in other ways.

250. On the same basis, I accept that a purpose behind the incorporation of ICC was to assist Pisani in obtaining supplies. On 22 October 2013 ICC invoiced Pisani £22,406 + VAT for the Black Galaxy it bought on 28 June, being cost + 10%. On 6 November 2013 ICC did the same for supplies of polished Lemon Spice and polished Absolute Black Regular.

251. Mr Il agreed that he was "involved in trade of supplying stone from ICC to Pisani"; "I am involved in the Company and ICC and Pisani- circulating stone". So on 28 April 2014 the Company invoiced "Pisani (ICC)" £14,908 + VAT for five types of stone, which had apparently already been sold under an invoice of 23 October 2013 by ICC to Pisani for £16,399 + VAT. Ignoring the invoice dates, ICC has sold the stone to Pisani, again at cost + 10%.

252. On 29 December 2013 Mr Sakellarios emailed Mr Il about a €60,000 invoice rendered to ICC at its registered office by Campagnola e Fedeli srl of Verona, being part of a "deposit for used machine". "This invoice was paid direct by Fox on our behalf so we need to somehow get the accounts right upon our return. We have also paid another €50,000 from Pisani as well".

253. Mr Sakellarios is there treating Mr Il as part of ICC, and as someone who knows its business without further explanation; and is addressing him, not even copied to Jan Junior, about its accounting matters, both simple (the €50,000) and more complex (Fox).

254. To give another example of Mr Il's difficulties (again not one with a pleaded complaint), on 6 February 2014 Haris Tsimsirlis of Pisani emailed Mr Il at the Company with "the real costs from our supplier" for the Rosso Verona stone which the Company required for the Yemen project, asking him to name an appropriate price "so we can make a slight profit". Mr Sakellarios intervened to say that actually the real price was now €2 more per square metre. Mr Il responded that he still wanted a "discount from the original offer", but "You can allow 10% for Pisani and 10% for ICC"; and then he adds "Hopefully ICC will be able to fund this purchase".

255. On one view, ICC has been cut into the deal when it need not have been, and so at the expense of the Company.

256. One can also see that, as Jan Junior accepted, his father is here deciding the margin of 10% to ICC.

257. On 8 July 2014 ICC invoiced the Company for the Rosso Verona with a 10% uplift.

258. The supply of tools by ICC is thus far slight, apart from the deposit for the used machine. But when in July 2014 the Company's usual tool supplier, Toolbank, closed its account because of late payments Mr Il used ICC "to get around [the] ban" as "There is no other tool supplier who can match their range… and prices". He did the same in 2015 when he asked Jan Junior to use ICC's name to order supplies. Mr Il paid for these on his own credit card, and then charged the Company the £7,047.

259. ICC was also at least potentially dealing in stone during 2015. On 24 September Mr Il from his Company email was communicating with Ravi at Gem Granites asking for samples of all its stones: "We can try to promote your products in UK as your agent". Correspondence ensued, leading later that evening to Mr Il expressing interest in "Black Galaxy and Steel grey". When Ravi gave prices for those he copied in Info@icc-limited.com, explaining that he was receiving a bounceback from Mr Il's address. Next day was more correspondence about the rates. "3% is not enough" Mr Il said. "Also please pay attention not to mix Haz and ICC. They are two separate companies. At present Haz is the buyer. Perhaps my name and my sons name is confusing…". Ravi denied any confusion: the ICC address was one from which Mr Il had responded during this exchange. Mr Il agreed it was a "mistake" from him; "It has not caused any problem so far".

260. This small exchange does show the confusion in the minds of others as to the roles of the Company and ICC, and of Mr Il and Jan Junior.

261. It also shows that Jan Junior was correct in cross-examination to say that ICC had never been dormant, as it was looking for work, with "a few bits happening".

262. On 11 February 2016 Jan Junior and Mr Sakellarios each signed a document confirming the cancellation of their 19 September 2013 agreement and "allows ICC to dispose the company in any way; closing, bankruptcy, selling wholly and selling shares". Until the donation to his sister, all the shares were therefore held by Jan Junior.

263. It is difficult not to relate that waiver to the 8 February 2016 meeting. It is notable that on Jan Junior's recollection the waiver was consequent on an anticipated change in ICC's business, albeit to property development.

Late 2015 to early 2016: manoeuvres

264. The November 2015 arguments over the recharging of Deniz's salary to HMT had strained relations further at a time when Mr Il and Mr Yesilkaya already seem to have been looking over one another's shoulders. On 6 November 2015 Mr Il had written to Mr Yesilkaya:

> "You asked/ demanded me to sell my shares in Haz UK property to you (or somewhere else) a few years ago. I could not respond to your request in a strangled situation without money. If your wish is still the same, I'm ready right now. Let's find out the value of the property and perform this process".

265. This related to Willow Tree Cottage, and will be addressed further below. Mr Yesilkaya's response was in part:

> "…instead of doing this in writing, it will be more convenient if we sit down and talk one day when I get there.
>
> We both know that after what has been written/ said in the last one or two years, we cannot continue as if nothing had happened.
>
> We both, you and me, are waiting that the things 'cool down'.
>
> We sit at a convenient time and talk about continue- okay."

266. To which Mr Il replied:

> "I don't expect it to cool down. I am not angry with you (if I am angry, what happens?) so I should not wait until it will be cooled down. I'm disappointed and resentful…
>
> Okay or continue, you will decide. I did not necessarily think we should continue.

> I am not in a position to ask for your decision. My request is not only legal, but I also ask you to take your evaluations in our gentleman's speeches that we have made over the last 20 years.
>
> I will not repeat my complaints that I have done to you. You say let's sit down and talk in a good time, ok I've always waited for this".

267. It is Mr Il's evidence, which I accept, that there was a meeting on 20 November; the parties' contemporaneous recollection of it I will describe in a moment, but both regarded it as having been constructive. In that light, Mr Il's attempt to recharge Deniz's salary a few days later was perceived not only as personal, but aggressive.

268. The result was not just the unpleasant hiatus already described.

269. On 7 December Mr Yesilkaya also went on the front foot. He wrote Mr Il two emails which must have been pre-prepared as they were sent at the same minute; they also both carry the strong aroma of professional advice. One was a statement, the other an explanation.

270. The statement read:

> "In my capacity as a director, I will be arranging for a firm of accountants, nominated by myself, to inspect the company's accounting records for the last three years. I believe that these should be retained at the Company's registered office. Please confirm the location… so that I can arrange for an independent review of these.
>
> My inspection… should not be interpreted with any malice. I need to discuss and report to other members of my family and need to satisfy myself as a director… as to the Company's present financial position, its financial stability and its ability, in particular, to meet liabilities which are due to creditors including but not limited to other Haz entities".

271. Thus, Mr Il's raising of the purported accounting issue over Deniz has been countered by Mr Yesilkaya's over the debts due to Haz Group companies; what became the Disputed Debts.

272. The explanation

> "…is in English as it might be useful if you save it as company-document.
>
> We met recently and I outlined to you concerns that I have regarding the conduct of the business of the Company…
>
> I felt that our meeting was positive and we agreed to move forward, collectively promoting the Company in its best interests for the benefit of ourselves and the other shareholders.
>
> I am happy for the day-to-day management of the Company to continue to be undertaken by yourself… We need, however, to ensure that my role as director and representing the majority of the shares of the Company, is properly observed…".

He suggested monthly board meetings; regular management accounts, and Mr Il to provide with those a trading update.

273. Before ending with a re-iteration of the statement, Mr Yesilkaya also professed himself "concerned as to the lack of financial information from the Company over the past few years". That has the hollow hand of professionals behind it, ignoring (or in ignorance of) the role which Mr Yesilkaya had chosen for himself. Mr Yesilkaya was also at all times well-capable of asking for financial information, if he had any desire for it. However, perfectly properly, Mr Yesilkaya did from now seek consultation on the annual accounts before filing at Companies House, having previously been signed off by Mr Il without circulation among shareholders. "We need to implement a proper procedure in this respect".

274. On 9 December Mr Il replied to Mr Yesilkaya's "carefully drafted e-mail".

> "I don't feel it is necessary to mention that you are at liberty to inspect Haz UK's financial records at any time… our meeting on 20th November… [was] good and positive".

He considered a regular monthly meeting "a good idea", and said that once finalised Mr Yesilkaya had always received a copy of the annual accounts. Somewhat ironically, in hindsight, he said

> "The Company's accounts are prepared by a professional accountancy firm. The accounts cannot be manipulated in any way by me or you or any other shareholders".

275. On 22 January 2016 Mr Yesilkaya told Mr Il that Deloitte would be instructed, but it seems they never were.

The 8 February 2016 meeting

276. On 8 February 2016 Mr Yesilkaya was in London for his granddaughter's birthday. He came to the office. "I shook his hand" says Mr Il,

> "but said I couldn't welcome him. He asked why and I told him it was because he was not being straight with me, that he had pretended to be nice when we met on 20 November 2015, and then sent emails saying he wanted to appoint Deloitte to investigate me. I then said we should sit down and go through the documents and sort out our differences. Mr Yesilkaya would not agree to this. Tired of his treatment of me, I then told him I could not continue working in the Company anymore and that either he would have to buy my shares in the Company, or I would bring a claim for unfair prejudice. In response, Mr Yesilkaya agreed to buy my shares, but no figure or anything else was discussed".

Mr Yesilkaya then went to tell the Company's employees that Mr Il was leaving.

277. That is Mr Il's benign account of the meeting which recognised the ending of the relationship, which both sides agree had broken irretrievably by now.

While Mr Yesilkaya probably did want them to remain on friendly terms, as he expressed in the email with which this judgment opened, the meeting itself cannot have been so calm. Mr Il says that after it Mr Yesilkaya "started telling people that I was leaving the Company and had no authority to act or sign on its behalf. He also spread lies that I had been stealing from the Company". Deniz left the Company immediately afterwards, Mr Il having sworn at him and his family "in very insulting terms and I decided that I'd had enough", "I had made clear to everyone… that I would only return to work in the office of the Company once Mr Il had left for good". I accept that evidence, just as I accept Mr Adams' that, after the meeting, Mr Yesilkaya came to his room to ask if he wanted to continue to work for the Company; Mr Adams said he did, and Mr Yesilkaya was pleased; but Mr Adams was made redundant on 31 August 2016 for lack of work, albeit he helped out part-time, at Mr Il's request, between November 2016 and June 2017. Jan Junior also left shortly after the meeting, at the end of March. Mr Il says he was made redundant, as there was no more work, and anyway he could not stay on if Mr Yesilkaya was taking over.

278. It is a curiosity, which nobody has given much evidence about, why, having drawn this line, matters at the Company sauntered on as before: Mr Adams confirmed that Mr Il continued with "little if any change". Mr Il's primary explanation that everything was in run-off seems beside the point, and has anyway been abandoned. Mr Yesilkaya has said nothing. Probably he was too busy to follow matters through, and after his return to the UAE Mr Il just found himself still sitting in his office in charge. Mr Il says that between the meeting and his supposed leaving date of 1 April he "did not understand what [Mr Yesilkaya] expected my role to be and how I was supposed to hand over the management to him on 1 April… [Mr Yesilkaya] took no steps to take over the running of the Company… and I therefore had to continue overseeing" the two remaining projects, Oslo (which completed in October 2016) and the London Embassy (completing December 2017). That position is largely borne out by the correspondence, but it addresses only his status as director, not as vendor.

279. On 13 February Mr Yesilkaya had emailed Mr Il (copied to his solicitor) as after the "unpleasant" meeting, he wished to record what was agreed "to avoid any misunderstanding":

> "1. You will continue your duty, as it was until now, without interference by me, until 31.3.2016.
>
> 2. After closing the accounts by 31.3.2016 we will employ a reputed appraisal company to value Haz Int.
>
> 3. From 01.04.2016 you will hand over your duty to other director (A. Yesilkaya) to assure a smooth transmission.
>
> 4. Haz Group will buy you out and your partnership/ your involvement by Haz Int will end on 01.05.2016".

280. Mr Il replied on 17 February, within which the next day Mr Yesilkaya inserted his own responses (here italicised).

> "I confirm our agreement to cease my involvement… and I repeat the conditions as below.
> 1. Accounts for 31st March 2016 are completed very quickly, i.e. by 15th April 2016.
> *Very good.*
> 2. Two valuers are invited to value the company. One valuer from your side one valuer from my side. If these two valuations are not satisfactory, we call in the third one.
> *An independent Appraisal Company, nominated by you, will be all right for me. I need only the name of the company for info approval purpose only.*
> 3. My rights are bought out by 30th April 2016 and payment received in my account.
> *…From 01.04.2016 you will not be involved in day to day business anymore… a final date cannot be set now, as we have to wait until the third party complete their report* [this also responds to Mr Il's point 5: "Please note that we are depending on third parties… So the

> dates may need to be flexible]. *During this time you will be untitled to your normal income but not involved in day to day business…*
> …
> I also wish a smooth transition. Please clarify your expectations in avoidance of any misunderstanding.
> *Sir, we worked 25 years together, had good and bad times, we become friends. But live is full of surprises, you never know what comes ahead. But one thing I learned: Partnership is a difficult matter*".

281. The valuation date was agreed, and it was for Mr Il to nominate a valuer.

282. His date for hand-over of 1 April he qualified in his response to point 3 on 18 February:

> "You either buy my rights out after company valuation or I will object to you taking solo charge… It is not in your discretion whether I stay within the company or not".

283. On 20 February Mr Yesilkaya re-iterated the valuation date of 31 March:

> "As agreed, I will not interfere in day-to-day business of Haz Int until this date". Mr Il was then to present "all documents to an evaluation company", but until preparation of the appraisal he was not to be involved in the daily business.
>
> "About your staying in the Company or not this is definitely your own decision" but "there will be no more 'one man show'… We, two directors… shall sit down and define who is responsible for what. But, as representative of the 70% shares, there will be no decision without my approval".

There is ambiguity there as to whether the consultation was to be before or after 1 April; but there is no reason that it should not extend to the later period were Mr Il not to depart.

> "There is nothing I wish more than a very smooth transition… That meance: You close the accounts by 31.03.2016, call a company for evoluation, put the appraisal report on the table, we discuss + we agree, you receive your share, we close the subject".

284. On 23 February Mr Yesilkaya wrote again.

> "We repeatedly spoke about your last working day. We set the final day as 31.03.16. Then you said 'Maybe the balance sheet and other documents may take longer. Let not put specific date but, we shall try to finalize it as soon as possible.
>
> Upon your request, we agreed that you stay in the office the finalize the appraisal but you will not be involved in the day-to-day business of Haz Int.
>
> You are partner until your shares are paid. But, you cannot expect from me to accept that you run the company after 31.03.16…
>
> As a buyer and director of the company I want you to 'refrain' interfering in day-to-day works of the company…
>
> I also offered you, you will be paid your salary until shares are transferred...
>
> …In case we do not come to an understanding of buy-out, or if you changed your mind to sell your shares (I told you before- nobody can force you to do so) We have to sit down and find a way to run Company together".

Again, at the least Mr Yesilkaya was expecting to be consulted on matters while Mr Il was still present.

285. It was from the next part of this missive that the quotation in paragraph 1 of this judgment was taken. Here, we can set out how it continued, after "I don't want to fight. But if necessary and if I am force to, God help, you will see how I can fight."

> "But again, Mr Can, why this all? We have people to pay we have projects to complete. I invite you to be calm and let our solicitors try to find an amicable solution… This is my last trial to close this subject in a friendly manner."

286. Mr Il agreed in cross-examination that following the 8 February meeting he thought he would be selling his shares and resigning as a director, which must be right. For Mr Yesilkaya it is said that the meeting marked the end of their quasi-partnership. As Mr Yesilkaya's letter shows, that is only partly right. The trust and confidence which had been between them was now certainly ended, but its effects remained: for the purposes of winding-down their relationship they were still treating each other as "partner", and as though the relationship subsisted.

Mr Il transfers telephone numbers

287. The day after Mr Il received the 23 February letter he filled in O2 forms in a "Transfer of Ownership- Business Application Pack" to transfer five mobile telephone numbers from the Company to ICC, where they were to go onto a "Business Essentials" tariff. Mr Il signed the forms for the Company, Jan Junior for ICC. The transfer completed on 15 March.

288. Mr Il must have perceived commercial benefit in transferring these numbers from the Company to ICC. His excuses have been partial: these were business numbers, but "not all of them" were used to conduct the Company's business, or would be known to its clients and customers; some had become "mainly personal numbers". Jan Junior said that one of the numbers was his sister's, which had been transferred onto the Company's tariff (no further explanation was given, although his sister did not work for the Company). He said his number was one he had used for 10 years, and his father had used his for 20 years. The implication from that is that they would be well-known to those seeking to deal with the Company.

Mr Il's view of Mr Yesilkaya's intent

289. It has been submitted on behalf of Mr Il, both as to the February 2016 agreement and the October 2016 agreement, that there was never any real intent on the part of Mr Yesilkaya to buy out Mr Il. As to the first of those periods, that was not Mr Il's view at the time. Moreover, although Mr Yesilkaya was being accommodating in the correspondence, there is nothing there which indicates that the agreement to purchase was insincere, especially set against the manifest breach in their relations. Mr Il's is also a submission with a large hole, unfilled with any account of why he did not do what it was in his hands to do, and nominate an "independent Appraisal Company".

Mr Il prepares his ground

290. It was not only through the telephone numbers that Mr Il was preparing the ground for when he did depart.

291. On 16 March 2016 he did choose to consult with Mr Yesilkaya about a potential project (different from the ongoing Oslo project).

> "I know that our Metal quote in Oslo Museum is high, but we could have labour chances.
>
> Although you told me not to take labour jobs for years (at least with Metal), I have taken and completed a lot of labour-only jobs over the years for us to stay in business.
>
> Therefore, I will not engage in labour-only Projects during my remaining term in office".

292. This letter needs setting into the Pakistan Phase 2 negotiations. So does another similar exchange, of 20 April.

293. Behind the scenes there was some solicitors' correspondence. On 20 April Mr Il wrote to Mr Yesilkaya to quote from a letter he had been sent:

> "[Mr Yesilkaya] does seek, however, reinstatement of appropriate discussions as between our respective clients with regard to matters to be decided at director level. Your client should not make

> unilateral decisions nor enter into contractual obligations for and on behalf of the company without due consideration and discussion with Mr Yesilkaya".

Mr Il protested:

> "I don't remember any discussion between us regarding above" (which was to ignore the February correspondence). "However I would like to confirm that I am not signing anything new since 8th February… I also would like to advise you that I have full filled your long-standing desire not to become a subcontractor to a competitor stone contractor and take on installation only project for the last 2-3 years."

He then referred to his still dealing with the ongoing London and Oslo projects;

> "I am more than happy to consider and incorporate if there is anything specific you like me to do".

294. The next morning Mr Yesilkaya replied, to describe his solicitors' wording as "juristically formulated expressions. No comment". I reject Mr Il's suggestion that he therefore assumed that he could ignore it: that is given the lie by his writing his own letter in reply.

295. Mr Yesilkaya also said he would be three days in London from 2 May, and "I hope we can have something in hand to discuss our further steps", by which he must have meant a valuation, or at the least the name of Mr Il's proposed valuer.

296. Before turning to Pakistan Phase 2, as to events before the October 2016 meeting it can be noted that on 4 June 2016 HMT ceased supplying the Company, and a container of product, though in English customs, was diverted to GmbH; "On my instructions", said Mr Yesilkaya: "My instruction: if payment assured, can deliver new orders". Payment was an issue. The

instruction was issued because on 2 June Mr Il had at last provided draft 31 March 2016 accounts, not including the Disputed Debts.

Pakistan Phase 2

297. Although the core of the Company's business was work on US Embassies and Consulates, it had significant competition in the field: Mr Il says that of the 74 such projects for which the Company tendered, it obtained 14.

298. Pakistan Phase 2 was the second phase of a larger project. The Company had been contracted for Pakistan Phase 1, which it commenced in 2012 and finally completed in July 2014, it having expanded from the original installation-only contract. In June 2014 it had also been contracted for the Chief of Mission Residence in Islamabad, which began at the end of 2014 and finished in late April or May 2016.

299. The tendering process for Pakistan Phase 2 went through a number of iterations, under the control of BL Harbert as general contractor. Mr Il says that the Company's first tender was in April 2014, on a "full package" basis, meaning it comprised design for the systems, including structural calculations, the supply of stone and fixings, and the supply of labour for their installation. The tender was a significant undertaking for the Company, requiring detailed and lengthy work by Mr Il, Mr Elma and Ms Hisir among others.

300. The contract was then apparently segmented. On 4 November 2014 Mr Hadley told Mr Il that ASI Stone Imports Inc was to supply the stone, as their quote "was quite a bit cheaper than yours". More encouragingly, he continued:

> "…we fought long and hard for you to get entire package, as being in the best interest and offering the best overall value for the project.
>
> However, all of us here in ISB sincerely hope you will still be interested in the installation side of things? Pls. advise/ confirm".

301. It is not contentious that at some point this was an offer in which the Company confirmed its interest. As this was an active project, and as the Company was

anyway dealing with BL Harbert in respect of Pakistan Phase 1 and the Chief of Mission Residence, it is likely that was shortly after this letter. It is also likely that at some, if not all, of the ensuing meetings between BL Harbert and Mr Il the question of Pakistan Phase 2 was mentioned and discussed.

302. Certainly by 6 November 2015 Mr Il was sufficiently sure of the position that he could email Mr Yesilkaya describing "projects and works… proceedings one way or another"; among those was Pakistan Phase 2, "being [beginning] in May"; that sentence continued "+ there are 3 projects we have serious discussions". Pakistan Phase 2 has seemingly gone beyond that stage.

303. That said, there was no contract as yet. On 16 January 2016 the Company sent its quotation to BL Harbert in its fifth revision. Mr Il agreed in cross-examination that the quotation, even for supply only, had taken a long time to produce, and this was a "valuable contract".

304. Mr Il had always been planning a meeting in Pakistan in January 2016: he had told Mr Yesilkaya on 9 December 2015 that he needed to go there in mid-January. This meeting apparently took place shortly after submission of the fifth revision quotation. Mr Il agreed that it had discussed Pakistan Phase 2. Mr Elma recalls that at the meeting BL Harbert expressed disappointment that the Company had not been awarded the contract in the first place, and that, rather than asking it to discount its prices in this quotation, was told "we could in fact increase our rates". While recognising that it is Mr Elma, and not Mr Il or Mr Gul, who has correctly recalled the occurrence of this meeting, I have doubts about his recollection of its content. His points on BL Harbert's disappointment appear to derive from having seen its letter of 4 November 2014; and by January 2016 that emotion was 15 months behind, and the contracting process had progressed considerably. From what I have seen, it is also not credible that BL Harbert would invite a compensatory increase in rates.

305. That said, the 4 February 2016 sixth revision was in a larger sum, but that was because, as referred to in Mr Il's covering email, it now included inflation at

5% for the two-year works programme; it had also provided for labour requirements more consistently. The email ended:

> "As previous stated,
>
> We have been given revised drawings and told there are changes to the quantities. We have started on the new take offs. However we are prepared to enter into agreement based on the attached offer, subject to finalising quantities.
>
> We have arranged one drilling machine (around $34,000) and one cutting machine (about $10,000) and cutting blades, drilling bits. These are to be shipped to Islamabad within 2-3 weeks".

Those last remarks indicate, again, that Mr Il regarded the Pakistan Phase 2 contract as one which was pretty certain; and that the Company, which was doing the work, would be the counterparty.

306. It was Mr Elma, copied to Mr Il and Mr Adams, who had made the initial enquiry about the stone drill. He had emailed "Mr Giovanni" on 26 January "looking for to purchase a FO5200 stone drilling machine" and asking for a quotation and delivery date. On 28 January Giovanni Molino of NEWTEC Tongiani Srl replied, and correspondence ensued. On 5 February Mr Elma added 1,000 10mm drill bits to the order, and by 8 February the Company had Mr Molino's quotations for those and for the drilling machine.

307. 8 February was the separation meeting.

308. On 14 March the Company finalised and despatched its quotation for Pakistan Phase 2.

309. On 16 March Mr Il sent Mr Yesilkaya the letter quoted above, including

> "Although you told me not to take labour jobs for years (at least with Metal), I have taken and completed a lot of labour-only jobs over the years for us to stay in business.

> Therefore, I will not engage in labour-only Projects during my remaining term in office".

310. The next day Mr Il flew to Pakistan, as he says to "conclude the Chief of Mission Residence Project in Islamabad", which was at practical completion. The meeting, though, ranged more widely, to cover "everything".

311. Mr Gul's recollection of the meeting was limited. His knowledge of the tendering process for Pakistan Phase 2 had been slight, although he had been copied into the 4 February quotation. He recalled Mr Hadley telling Mr Il that the Company had been in contact about Phase 2, but "BL Harbert had no intention of giving the work to the Company".

312. That obviously marked a significant and recent shift.

313. Mr Il's own account is that at the meeting he asked Mr Hadley if he had heard about his difficulties at the Company. Mr Hadley replied that he had heard rumours, and that "someone from the Company had written to him asking for the work on Pakistan 2. He did not tell me who this was but said he was not going to give the work to the Company". Mr Il then told him that he would be leaving, and was "no longer authorised" to enter into contracts for the Company.

314. I believe Mr Gul when he tells me what he heard. Of course, Mr Il heard the same. But Mr Il's reaction makes no sense. He knew that the Company had been tendering over many months, was expecting the contract, and had made preparations to carry it out. I find it remarkable that Mr Il, who still controlled every aspect of the Company's business, did not question who it was who had "written" to ask for the work outside of the tendering process: that would be an undermining of Mr Il's authority, about which, as we have seen, he was very sensitive; and I cannot think that he had become any less sensitive because of the 8 February agreement. I assume, therefore, that he knew who had written. That he then made no objection to the Company not being given the contract also indicates to me that he had, at the least, the sense that it was going to fall where he wished. That was why he had written to Mr Yesilkaya the day before, professing that he would take no more installation-only

contracts for the Company: a bizarre protestation otherwise from someone who was actively causing the Company to tender, and attending a meeting the next day on behalf of the Company at which the tender, now at its final stage, and with the known goodwill of BL Harbert towards the Company in its respect, would doubtless be discussed. Mr Hadley's statements were no more than playing to the crowd, being Mr Gul, naïve as to what was going on around him, but believing, when it came, that the offer to him to carry out the works was entirely founded on his own merit.

315. The 16 March letter to Mr Yesilkaya was therefore just a gimmick, a creating of his own rules, which on 20 April he got the chance to reaver, as above:

> "I also would like to advise you that I have full filled your long-standing desire not to become a subcontractor to a competitor stone contractor and take on installation only project for the last 2-3 years."

316. As seen, the Company was genuinely tendering for this valuable contract which it had every indication and belief it would receive. It was doing so even after 8 February. The excuse put forward by Mr Il that this installation-only project was contrary to Mr Yesilkaya's wishes is just that: that principle had never been an immutable one, and for months everybody had considered the Pakistan Phase 2 project a desirable company opportunity. Mr Yesilkaya's evidence on the Company's approach to installation-only contracts was convincing. While it was "absolutely" his "strong view that the Company should not do installation only", "and we practised this for 30 years" there was never "a definite instruction" never to do them; but they had tended to be undertaken only when there was otherwise an idle workforce. He viewed installation-only work as inherently "dangerous", projects quoted on the basis of 6 months work turning into 3 years work; at least selling stone, profit was immediate and predictable

317. Mr Il has promoted other excuses. Denying that his 16 March letter was "to clear the way to ICC taking over the project" he averred that his directorship obligations had been overridden at this point, and were to stop from 1 April,

when Mr Yesilkaya was to be responsible for running the Company. So why was he attending the meeting at all? And why was he not telling Mr Hadley to wait until then, when there would be an authorised person to contract for the Company?

318. In his witness evidence he said that while he had sent quotations "at the beginning of 2016… in the end [I] decided I could not pursue the contract because of what had happened between me and Mr Yesilkaya… and Mr Yesilkaya's opposition to installation-only work". That first reason is not one which he was telling Mr Hadley. It is also inconsistent with his recollection that it was Mr Hadley who told him that the Company would not receive the project.

319. Mr Il has also tried to rewrite the history of the stone drilling machine by reassigning its project. In his statement he says that he had originally intended to buy it for the Company's use on the London Embassy Project; but after 8 February, and with his looming departure on 1 April, "I decided it was better not to proceed with an expensive purchase by the Company and that I should save its money and use other machines to do the drilling on the London Embassy Project. However, it was too late to cancel the purchase and I therefore went ahead and bought it with my own money and asked Jan Jnr to import it through ICC". Its being for the London Embassy project is untenable in light of the evidence above, including Mr Il's own letter of 4 February. It is also, again, inconsistent with Mr Hadley terminating the Company's part in the quotation process.

320. We last saw the drill-ordering process on 8 February. That was where it was left until on 21 March Mr Il, from his Company email, and copied to no-one else, wrote to Mr Molino: "we are now ready to order the attached machinery and its accessories". So, Mr Il was by now aware of a need for the machinery. Where was it needed, and by when? "We would also like you to advise us of the freight cost to us in UK and to Islamabad… We will be making the full payment on 1st April".

321. The Company now no longer being involved in Pakistan Phase 2, the machine must have been for someone else. It cannot have been for the Chief of Mission Residence, because that was about to end, and this ordering process had been put on hold while Pakistan Phase 2 was being allocated.

322. On 23 March Mr Il confirmed the machine was to be sent to the Diplomatic Enclave in Islamabad. He also enquired about "another scenario: we are also buying a cutting machine from a company in Rimini- Italy. We may combine the machines together and ship them together". The cutting machine was the other machine referred to in the 4 February email.

323. There was then a delay. Mr Il now wanted the machine without the drill bits, at least for the moment. On 27 April he confirmed he had personally transferred €28,500 for it.

324. That communication post-dated another visit by Mr Il to Pakistan. On 21 April he wrote to Mr Hadley and another at BL Harbert, copied to Mr Gul, with reference to his "site visit earlier this week". He confirmed that, aside from tennis court copings, the Chief of Mission Residence was complete and the Company paid up; and that Mr Gul would be leaving the Company as of 30 April. "Finally, Haz is not interested in ONLY INSTALLATION projects". Mr Il still seems to be smoothing that path, just as he had in his letter of the previous day to Mr Yesilkaya.

325. Mr Gul's employment contract with ICC, as a project manager, commenced from 1 May. Mr Gul said that although Pakistan Phase 2 had not then commenced, he required the contract for a work permit. On 24 May ICC created a "to whom it may concern" letter, confirming that Mr Gul "is employed by ICC Limited on US Embassy Islamabad- Pakistan Project since 1st May 2016". He had left the Company as there was no more work for him there.

326. Mr Gul had been offered the project by BL Harbert as a sub-contractor: he had a "really good relationship" with them, and to his mind they did not mind what company he operated through as "I'm really good at what I do". He required a company because "I was a young and broke engineer". He approached Jan

Junior as they knew each other, were the same age, and Jan Junior "a nice guy". There was also Mr Il in the background, if needed, although by this time Mr Gul regarded himself as knowing more. An English company would be perceived better than a Turkish or Pakistani one, and as Mr Gul would run the site there was little for Jan Junior to do other than paperwork and to find the necessary finances. Were expenditure to overrun, that would be a matter for ICC to bear rather than Mr Gul.

327. It can be inferred that these arrangements were agreed by 27 April, when Mr Il paid for the drilling machine. On 6 May Mr Molino informed Mr Il that the machine was in production, and shipping might commence 20 June. In reply Mr Il stated that "the payment is made from my personal account. Thus the machine will belong to me and I will request the invoice not to be issued to the company".

328. On 17 June Mr Il told Mr Molino "I would like to terminate my involvement here. My son will take over and write to you from now onwards from his own company".

329. There is a similar story over the drill bits. On 9 June, "Further to your communication with my father", Jan Junior ordered 500 10mm core drill bits from Thaler. Their Monika Schmoelzl replied, copying Mr Il, asking whether the invoice should go to the Company, and the pro-forma to ICC. Mr Il responded: "Can you please not mix the two companies. Can you please delete your below and my this e-mail and write direct to ICC?".

330. The same day, Mr Il asked Granite City Tool to reinvoice himself personally, as the payor, for certain items billed and to be delivered to the Company.

331. ICC commenced work on Pakistan Phase 2 in August or September 2016, concluding in August 2018. The quantities and pricing had apparently changed from the Company's last quotation, but ICC had not itself gone through any quotation process.

332. I am left in no doubt that Mr Il deliberately switched the Pakistan Phase 2 opportunity away from the Company and, so far as he was able, to his son's

company, ICC. He tried to create his own justification for his actions in his sleight-of-hand emails to Mr Yesilkaya. Contrary to his fiduciary duties, which remained owing to the Company throughout, he failed to act in good faith to promote its best interests in the negotiations over the project in March 2016; and he failed to inform Mr Yesilkaya of what he was doing, or that a competitor of the Company was seeking to take this business away from it, and that despite being told by Mr Yesilkaya and his solicitors that decisions concerning the Company were no longer his alone.

333. It follows that, although there is no evidence that Mr Il benefitted financially in any way, these are serious, multiple, and self-interested defaults which would by themselves justify his removal as director of the Company. He was playing the Company and its business for his own ends, notwithstanding that from 8 February he knew he was shortly to depart, and that the Company would be valued as at the end of March.

Jan Junior's salary and redundancy; and Ms Morgan's salary

334. Jan Junior left the Company at the end of March 2016, which was also the last month Ms Morgan received a salary from the Company. The salaries and Jan Junior's redundancy payment of £9,245.18 were fixed by Mr Il without consultation with Mr Yesilkaya. Save in respect of the redundancy payment, by when Mr Yesilkaya had told Mr Il, as he was entitled to do, that he was not to make decisions without consultation, Mr Yesilkaya and Mr Il agree that these matters were left to Mr Il: "Deciding staff salaries was one of my responsibilities as a director and not something in which Mr Yesilkaya took any interest"

335. So it is not open to the Company, without more, to make complaint before March 2016 that Mr Il was deciding these matters alone.

336. For Jan Junior, the more is that his salary was increased largely, from £27,000 to £35,000 in the last year of his employment; that he was awarded a redundancy payment; and that the increase and payment were manifestly excessive.

337. As to the salary, I have no outside comparators to indicate that £35,000 was excessive for the duties Jan Junior was carrying out; and without those I am not satisfied that it was at such a level as to be manifestly excessive, or that the sharp rise from the previous year by itself indicates excess. There was a ring of truth to Mr Il's "I ran the Company as if my own- I wouldn't pay [Jan Junior] less or more because he's my son". It was also Jan Junior's evidence, which I accept, that over the years his role had increased as the Company had become more successful.

338. His redundancy payment ought to have been a matter of consultation. However, except in submissions, it is not suggested that he was not entitled to a payment for redundancy, or that his redundancy was not genuine; and Perrys record that either Mr Elma or Mr Eskinoba received a termination payment of £9,101 in April 2017 together with 3 months gross pay totalling £10,000. Nor, again, do I anyway have any evidence as to the degree to which it was excessive. Instead I was told, and again I accept, that Mr Il typed figures into a government website, and this was the figure produced.

339. The position with Ms Morgan is more problematic.

340. Between August 2011 and March 2016 she received £58,704.93 in salary from the Company. Mr Il says that her employment was Mr Yesilkaya's idea, proposed at a restaurant in Izmir, while the three were having dinner before being joined by some Italian proposed investors.

341. Mr Il was anyway looking out for her interests, and using the Company to do so where needed. Oddly, we have an employment contract between the Company and her with a start date of 1 October 2009 and a salary of £30,000. She was to act as "International Communication & Language Officer", with responsibility for "Teaching English as Foreign Language". Her salary was to be paid "By cheque (?)", which perhaps shows that this was not a final version. She was to work from 8-5 Monday to Friday, and have 20 working days holiday a year.

342. This is an especially odd document as then, and at all relevant times, Ms Morgan has lived in Turkey, where she teaches English at a school. She is in England only during holidays.

343. Mr Il's explanation was that this contract was signed, and created so that Ms Morgan could obtain a UK work permit. The salary named in it was her Turkish salary. Although she did obtain a work permit then, it was not until 2011, after Mr Yesilkaya suggested it at dinner, that she worked for the Company. There is an email of 12 October 2010 from Mr Adams to Mr Il and an adviser at Ferguson Snell saying that:

> "Ms Morgan is currently applying for her son to join her in the UK. She has been asked by the British consulate in Istanbul to confirm her UK bank account details".

Whether that is a proper requirement is what Mr Adams wants advice on, as

> "At present she does not have a bank account here. She receives a salary of £27,000pa which is paid in cash".

344. Again, that salary is explained as one coming from Turkey.

345. It seems to me likely that there was a dinner in 2011 attended by Mr Il, Ms Morgan and Mr Yesilkaya at which her employment by the Company was mentioned. That dinner was not an intimate dinner for three, but a large dinner after a fair in Izmir, as Mr Yesilkaya recalled. It was that discussion which led Mr Il to cause the Company to employ Ms Morgan.

346. What the dinner did not approve, though, was the Company making gifts to Ms Morgan. She remained in full-time employment in Turkey. The work she could carry out for the Company was necessarily limited. The only specific work which Mr Il is able to point to is the translation of certain health and safety documents in the office, which does not sound onerous, and her assisting Mr Sagnic with his English. I accept that she did try to help Mr Sagnic, but that work was exiguous: lessons every 3 to 4 weeks, and some

notes in-between. For this, Ms Morgan was paid a salary through the Company's payroll.

347. Mr Il protested that "Her remuneration was reasonable for the services she supplied, and she was only paid when she did work for the Company". Even if the last were right, which it is not, her hourly rate was manifestly excessive.

348. There is no evidence that Ms Morgan at any time carried out the substantial work for the Company which a salary average of around £12,800 a year would justify. Her employment and the payment of her salary were in breach of Mr Il's duty to act in the Company's best interests, as well as being tainted by unapproved self-interest.

349. At closing, the Company dropped its claims in respect of Mr Il's own salary.

The 13 October 2016 Heads of Terms

350. Although the 8 February meeting had acknowledged that the relationship was in its final stage, not only were matters not finalised, but few steps had been taken to enable them to be. In the meantime, Mr Il was running the Company as usual.

351. On 23 August 2016 Mr Il signed a letter, the origins of which are unelucidated by anyone but which may be assumed to lie in lawyers' negotiations. He as "the undersigned, acknowledge and accept the terms of this letter" which was then dated August 2016. It was from Haz Mermer as Buyer to himself as Seller, and marked "Subject to contract". It was headed "Proposed share acquisition Haz International Limited ('Company') by the Buyer". The August 2016 date was struck through and redated in hand 13 October 2016, when it was approved by Haz Mermer.

352. The intent behind the letter is described in its clause 1.3.

> "The purpose of this letter is to record the main terms of the Proposed Transaction, so that we can work towards the conclusion of a definitive legally binding agreement(s)… It is expressly

> understood and agreed that the contents of this letter are subject to contract…".

The exception to that covered the confidential information associated with the transaction and its negotiation.

353. The overall scheme is this.

> "2.1 The total payment (Purchase Price) to be made by the Buyer or such entity nominated by the Buyer for the purpose, in the acquisition of the Sale Shares shall be such sum as shall equate the open market value of the Sale Shares as at 31 March 2016."

As with the 8 February agreement, 31 March 2016 was chosen as the relevant date. Whether open market value comprehended a minority discount is not apparent.

> "2.2 The Company's accountants having produced draft accounts to 31 March 2016, on the instructions of the Seller, it is the intention of the parties that the Company shall finalise and approve such accounts as soon as is reasonably practicable following the date of this agreement".

The draft accounts having been produced by Mr Il, both sides were to seek to agree them, and by clause 2.3 both parties were obliged to use

> "reasonable endeavours to agree the Purchase Price as soon as reasonably practicable following the Company's production of its annual accounts to 31 March 2016".

There was a further route by clause 2.4: if the parties could not agree the Purchase Price within 5 business days after conclusion of its clause 5.1.2 due diligence exercise, either party could refer to an independent valuer under the provisions of clause 3.

354. By clause 4.1 Mr Il was to "continue as a director of the Company until Completion".

355. Clause 5 set out "key conditions".

> "5.1.2 a due diligence exercise being carried out by the Buyer… the results of such being satisfactory to the Buyer. The Seller shall… provide any reasonable information or documentation… including but not limited to access to the financial accounting records of the Company for the last three complete and the present financial years and shall fully cooperate with the Buyer and its appointed accountants. The Buyer shall use reasonable endeavours to complete the due diligence exercise within 28 days… from the date upon which such accountants are provided with full statutory accounts (including the detailed profit and loss account pages) for the years ended 31 March 2014, 31 March 2015 and the draft statutory accounts (also including the detailed profit and loss account pages) for the year ended 31 March 2016".

The obligation to produce those full statutory accounts rested on Mr Il as Seller. The other relevant condition was

> "5.1.3 the Company carrying on its business in the normal and ordinary course until Completion with normal operating expenditure".

The Buyer wished to buy the Company with, so far as possible, its business in the same financial state as at 31 March 2016.

356. The Heads of Terms were subject to contract. Nevertheless they provided a set of mutually agreed steps to give effect to the parties' separation and the extraction of Mr Il from the Company with recompense on an agreed basis for his shares. They failed.

357. The next day, RadcliffesLeBrasseur for Mr Yesilkaya and his side sent Collyer Bristow for Mr Il a dozen pages or so of requests compiled by Perrys. "I would be obliged", wrote Mr Blair, "if these could be passed to the company's accountants and if they could be asked to respond to the various enquiries as quickly as possible… It would be helpful if the due diligence questionnaires

could be completed and returned, if practicable by 31st October". Perrys would then wish to visit the Company's office and/ or accountants to examine its financial records. "It would be helpful, maybe, if we could aim for this to occur some time during, or following, week commencing 31st October".

358. There were 72 requests under headings concerning tax and employees, and 31 more relating to the unaudited financial statements which had been provided for year ends 31 March 2014 and 2015, and the draft accounts for year end 2016.

359. On 18 October Mr Il forwarded these requests to Sheila Rodgers, copied to Mike Melling, at TaxAssist, the Company's accountants, enclosing Mr Blair's email and the due diligence requests. "Can you please reply to them if possible latest by their suggested time scale by 31st October 2016 (I know you are away until 20th and you will have lots to catch up on your return- I can only request)". He confirmed that it had been agreed that additional fees "up to $5k" would be covered by the Company.

360. On 20 October Mr Blair wrote to his counterpart Mr Billins noting that information was awaited, and enclosing a "hold harmless" letter between the accountants for when the Company's records came to be inspected.

361. On 31 October Ms Rodgers informed Steve Hale at Perrys and Mr Blair that she had only that day returned to work, having been on sick leave since the end of her holiday. "I will work through the questions and reply to you as soon as possible". Mr Hale having asked when that might be, early the next morning she said "I hope to get the questionnaire completed this week so if we say 10 November for your planning purposes".

362. "Obviously" wrote Mr Blair to Mr Billins the next day, "the time within which the accountants take to deal with enquiries raised is going to impact on the timeframe our clients discussed".

363. Nothing being heard, on 14 November Mr Hale wrote to Ms Rodgers seeking an update. Mr Blair forwarded the email to Mr Billins on 16 November.

364. Something had been happening. On 2 December Mr Il wrote to Ms Rodgers

> "I have not heard anything from you since our last meeting on Tuesday 15th November 2016. I tried to telephone you few times but without luck.
>
> I am under pressure to send back the filled in questionnaire. Can you please update me on the status?"

The letter ended:

> "I finally would like to advise you that unless I receive a positive reply by Monday, the solicitors will be writing to you direct as lots of things are depending on the accounts and questionnaire".

365. The reference to the "accounts" may seem surprising, as at this stage the parties were addressing the due diligence questionnaires. In-between those excerpts from his letter, though, Mr Il had turned to the 31 March 2016 annual accounts, due for filing at the end of December and which anyway would require settling as part of the Heads of Terms process. "Please remember my concern regarding the big profit shown on your accounts (£1,350,429) and our basic excel spreadsheet calculations (£957,308). Can you please also check these… for me to sign the accounts?" That large profit essentially derived from the treatment of the Disputed Debts. It appears that even Mr Il had his doubts.

366. Having still heard nothing, on 5 December RadcliffesLeBrasseur wrote formally seeking payment of the Disputed Debts in full by 19 December: the $1,313,074 due to HMT, the $240,711 to Haz Mermer, and €43,187 to GmbH. Absent payment they had advised there were "a number of options", including the Company

> "being adjudged insolvent. Should this happen, our clients will look to ensure that any appointed officeholder pursues to the fullest extent those individuals responsible for the Company's demise. Should such individuals be unable to satisfy any claim made against

> them, our client will urge the officeholder to institute bankruptcy proceedings…".

367. I will address this letter below. It was borne of Mr Il's apparent inaction, and intended to move matters along.

368. On 16 December Ms Rodgers emailed Mr Billins acknowledging a letter of his of 13 December.

> "I would hope to be able to provide the questionnaire for Mr K C Il to sign by the evening of Tuesday 20 December".

369. She then turned to the annual accounts, which "would have been prepared within our standard time of 4 weeks", but required "a fully reconciled Sage ledger" which Mr Il and Jan Junior had agreed to provide (Jan Junior was assisting although no longer employed by the Company, the accounts falling within his period of employment). Without it, she had instead been trying to match invoices to banking transactions. She had "provided an explanation for the difference in the 2 amounts" on the accounts, but "to do more would require a detailed one to one tick between the sage ledger that we were given to prepare the accounts and cash based vat schedules prepared by Mr K C Il".

370. Mr Il responded the next day to say "I feel badly let down". "I feel embarrassed to be in this position with our company accountants, who has been preparing the company's accounts since 2009". "The 70% Share Holders have their solicitors and accountants who are bombarding me from every direction".

> "Since it was agreed that I was to leave Haz, first thing I did was write to you on 12th February 2016, explaining the situation and requesting a confirmation from you whether you would have time to do 31 March 2016 accounts quickly. Your confirmation was positive."

He had sent "all relevant accountancy documents" on 14 April, but received draft accounts only on 2 September, and those "I strongly believe… have big

mistakes which needs to be corrected". He had forwarded the due diligence questionnaire on 18 October;

> "We are yet to receive that and you are yet making another promise to reply by 20th December".

371. It was a promise met: on that date Ms Rodgers sent the due diligence questionnaire.

> "I have completed the questions as best I can using the information that we discussed when we met…
>
> There are several questions that I do not have the information to reply to so I have included a comment on the side of the document to highlight these…
>
> I am in the office tomorrow so if you have any queries please let me know".

372. She then turned to the annual accounts.

> "I was not aware that you were still waiting for a reconciliation between the excel schedules that you had produced based on bank and cash transactions and the accounts that are based on the purchase and sales invoices that were posted on sage. We had a discussion after you sent the email about the different bases of the 2 documents and how some of the payments that you had recorded on your schedules related to invoices that had been recorded in the previous financial year so were not a charge in the accounts to 31.3.2016".

The word "charge" should probably be "change". Whatever, Ms Rodgers is telling Ms Il that, on the basis of what has already been filed, not all his amendments were legitimate.

373. Nothing was forwarded to RadcliffesLeBrasseur. Mr Il has not given evidence on what communications ensued between himself and Ms Rodgers, or what

efforts he made to answer the queries, or how otherwise he was making reasonable endeavours to pursue the Heads of Terms.

374. On 13 February 2017 Mr Blair emailed Mr Billins, having heard nothing since an email of theirs extending time to 20 January for a response to the Disputed Debts, and otherwise since an email from TaxAssist, apparently prior to Christmas, "which stated that they had been 'asked by Mr K C Il to advise you that he is out of the country until the New Year and he will finalise the accounts and Due Diligence review on his return'". Mr Blair also noted his client's concern that the 2016 accounts ought to have been filed by 31 December, and that Mr Yesilkaya had yet to be consulted over them.

> "In the light of the above, our clients propose that Mr Zakir Arslan, General Manager of Haz Mermer… be appointed as an additional director of the company and that such person together with [Mr] Yesilkaya and Perrys… be immediately provided with full access to all accounting records for the company".

The letter also requested

> "that Mr Il resign as a director with immediate effect waiving all rights to any form of compensation from loss of office. It is clear from the actions mentioned above in isolation and also from the matters which have been mentioned in our previous correspondence, that Mr Il has failed to observe his obligations and duties as a director".

Were he not to "cooperate as requested above, then our clients will take steps to force his removal".

> "Please note that despite agreeing terms (subject to contract) for the acquisition of your client's shares, your client has singularly ignored all attempts by our clients and their accountants to progress with due diligence in respect of such acquisition. None of the above however is intended to impose any requirement on your client regarding his

> shareholding in the company, and relates solely to his position as director".

375. Thus, so far as Mr Yesilkaya and Haz Mermer were concerned, the Heads of Terms remained operative, save for their desire to delete clause 4.1.

376. Six minutes later, Mr Billins replied.

> "In fact I am pleased to say that the Accounts have been finalised after considerable pressure from us and have been on my desk since last Tuesday but I had to deal with an urgent injunction. I am sending them over to you today for your client's approval together with the answers to your client's due diligence questionnaire. Once your client has approved the Accounts, they can be filed…
>
> Your suggestion that my client resign as a director is rejected".

377. Counsel for Mr Yesilkaya have sought to characterise the questionnaire responses as "inadequate". As a first step in a process they seem to me sufficient, although some questions were still met by "???", which after four months consideration is puzzling. Those which counsel criticise, such as replying "Documents available in the office" to requests to list the Company's top ten customers and suppliers, do not seem so unhelpful when Mr Yesilkaya was broadly aware of the Company's business: whatever his lack of engagement, this was not a sale to an independent third party. They can also make no legitimate complaint about the reply to a question seeking job costings for projects in the 2014, 2015 and 2016 year ends "Not maintained".

378. What had been intended as a clean final process in accordance with the Heads of Terms had through the passing of time become muddied. The annual accounts were one issue, and their filing was by now urgent. Overlapping with that was the issue of the Disputed Debts, reflected or not in those accounts. There was then the due diligence process, leading to fulfilment of the Heads of Terms.

379. Mr Il may well aver that "I did all that I could to comply with my obligations… to provide financial due diligence… Unfortunately, I was very badly let down by TaxAssist". As I say, he has failed to evidence exactly what positive steps he took between October 2016 and February 2017 to ensure progress compliant with the Heads of Terms, and in particular what communications he had with his accountants. Set against that, Mr Yesilkaya through his solicitors was trying to ensure compliance with the Heads of Terms, to the extent of using the Disputed Debts as a stick. In the context of the Heads of Terms I can see nothing unfair in their doing that, even if they were wrong in the amounts demanded (which I will address further below): a motivation was to carry through the Heads of Terms, not hinder them; and at some point within the valuation process the Disputed Debts would have to be addressed.

380. That considerable time at this trial has been occupied with the arid ground of the Disputed Debts may be said to show that they could never have been agreed, and resolution never carried through under the Heads of Terms. That would be to ignore the ability to appoint an Independent Accountant as expert valuer under clause 3, albeit that such appointment was (absent other agreement) itself only available once the Buyer's due diligence had concluded.

381. On 16 February Mr Blair remarked on Mr Billins' "surprising, almost immediate response". He re-iterated that Mr Yesilkaya did not have proper insight into the accounts, and therefore could not approve them; and contrary to the statement in them, he had not approved them at a board meeting on 23 August 2016, and considered that the meeting must have occurred in his absence. Doubtless, said Mr Blair, Mr Billins had advised Mr Il on his duties, and

> "If, bearing in mind those duties, your client is of the opinion that the documentation supplied should be filed with HMRC and Companies House, then no doubt your client will act accordingly. Please could you confirm when documentation has been submitted and send us a copy of the accounts as signed by your client".

382. Mr Blair had not had long to review the accounts sent on 13 February. If he did, he would have seen that whereas those for the same period sent on 2 September claimed for the Company a profit in the year of £1,350,429 and a positive balance sheet of £2,702,809 (as against £992,614 the year before), these had a profit figure of £456,139 and a balance sheet of £1,798,753. One of the factors in that was the difference in cost of sales: £2,772,285 in the September version, £4,589,182 in February's; an extraordinary variance for accounts prepared by professionals. Mr Blair may fairly have assumed that if Mr Il chose to file accounts without further consultation, they would be in substantially the latest form, resembling February's and not September's.

383. As he has done throughout trial, Mr Il continued to worry the figures. Ms Rodgers wrote to him on 24 February, after he had requested "adjustments" by an email the day before which included different figures for stock and cash at bank. There must have been significant other adjustments as well, as her draft accounts now had a profit of £899,284, with cost of sales £2,996,494, and a balance sheet back up at £2,241,898.

384. On 28 February, without further consultation with Mr Yesilkaya, Mr Il filed the 31 March 2016 accounts at Companies House. His report, and TaxAssist's, were dated 22 February, even though this filed version, which matched that sent on 24 February, was not settled until at least then.

385. Aside from the significant profit for the year, the boost in the balance sheet from the previous year's £992,614 came largely from two elements. Debtors increased from £31,211 to £311,237, and creditors within one year diminished from £1,455,606 to £484,846. The latter was consequent on a writing down to zero, from £934,547, of amounts owed to group undertakings. As though matters were not enough of a jumble, the 2015 accounts, signed off by Mr Il without consultation with Mr Yesilkaya, actually gave a figure of £98,360 for current Group creditors. They stated in their note 11, related party transactions, that at the year end the Company owed Haz Mermer £71,590, and Haz UAE £836,187, being "a long term loan with no set repayment date". It may be gleaned that the £934,547 comprises the £98,360 plus a retemporalised Haz UAE debt. On these accounts, as at 31 March 2016 the

Haz Mermer debt, one of the Disputed Debts, is precisely zero; HMT and GmbH do not appear at all.

386. On 3 March Mr Hale contacted Ms Rodgers about the due diligence, enclosing the hold harmless agreement. As his annual leave was imminent "I would like to move quickly on this. Are you available next week at all?". He also understood from somewhere that the 2016 accounts had been amended since February, and asked for a copy.

387. On 23 March Mr Blair wrote a long missive to Mr Billins, in part responding to one of his of 17 March. He complained that Mr Yesilkaya had not been consulted over the filed version of the 2016 accounts, and noted that they made no reference to the Disputed Debts; that Mr Yesilkaya therefore believed them to be inaccurate; and that it was premature for Mr Il to make an offer on their basis:

> "…any attempted valuation of the shareholding… cannot properly progress until such time as its financial records are properly adjusted to reflect its true indebtedness".

388. He also complained that Mr Yesilkaya was still not involved by Mr Il in board decisions, which was why on 6 March the Company had received a request from the requisite percentage of shareholders to convene a general meeting for the appointment of Mr Arslan as director. Mr Blair sought to agree a convenient date for that.

389. By 21 April Mr Blair was writing again, still without response: as there had been none, Mr Yesilkaya was convening a general meeting for 17 May. As Mr Billins had originally suggested it, Mr Blair asked if Mr Il would not simply consent to the quicker and cheaper option of a directors' appointment. Neither had Mr Il completed the form sent on 6 April to consent to the release of TaxAssist's papers to Perrys.

390. Mr Billins answered on 27 April to convey Mr Il's belief that, while Mr Yesilkaya was entitled to call the meeting, the appointment of Mr Arslan

> "he considers to be a retrograde step completely contrary to the spirit of the Heads of Terms… He had understood it to be your client's wish to resolve the shareholders' dispute by negotiation and reasonable compromise"; it would be a "confidence boosting measure, to adjourn the meeting generally".

391. That was bold. As Mr Blair wrote on 30 April

> "Since we exchanged the heads of terms our client's accountants have requested financial records; these have not been provided. Accountants appointed by your client, with no reference to ours, have not communicated with our client's accountants to any meaningful degree and have failed in all requests to afford the ability to inspect accounting records and progress due diligence".

There was then reference to filing the purportedly approved 2016 accounts.

Mr Arslan is appointed; the Heads of Terms are terminated

392. On 17 May, without the attendance of Mr Il, Mr Arslan was appointed director. As one of the rare individuals who had been a director and shareholder in other Group companies, Mr Arslan could, as Mr Yesilkaya confirmed, be expected to vote the right way: asked if he was meant to be neutral, Mr Yesilkaya retorted "Definitely not!"; "Absolutely" it gave him control of the board: "I needed a third director", "This is for the Company to run smoothly". As Mr Yesilkaya explained, part of running smoothly was "to oversee the sale of Mr Il's shares and his transition out of the Company". Mr Arslan was someone with a deep knowledge of Group business and appreciation of the family's role; he was also a friend of Mr Il's. "I had always thought that I had a very sincere and close relationship with Mr Il", as he told the Court.

393. Also on 17 May, Mr Yesilkaya and Haz Mermer terminated the Heads of Terms process. Mr Blair wrote two emails which must be quoted from. The first contained this:

> "…the Buyer no longer wishes to progress with the acquisition of your client's shares in accordance with the Heads of Terms.
>
> The Buyer's decision arises from the failure to supply to it and its accountants any financial information to enable the Buyer to undertake its due diligence.
>
> My instructions are that the Buyer may be prepared to reconsider the position once a degree of certainty can be established as to when financial information can be provided and when an appropriate degree of due diligence can be undertaken, with any certainty".

394. There was then an email directed at ongoing duties.

> "Mr Abit Yesilkaya wishes me to confirm that in no way does the decision of the Buyer not to proceed with the proposed acquisition, influence his requests as a director of the company to be provided with full financial information and records with regard to the company's affairs.
>
> Abit Yesilkaya still requests the provision of financial information from TaxAssist and from Mr Il so that he has the opportunity to consider, in detail, the present financial position of the company and in this respect, requests provision of financial records for the past six years".

He then sought an update on the 31 March 2017 accounts.

> "It would appear inappropriate for TaxAssist to produce the last year's company accounts. Does your client agree?"

395. Again, we have no explanation for Mr Il's ongoing lack of engagement with the Heads of Terms. The positive correspondence from October 2016 is one-sided. The current failure of the process was Mr Il's. Mr Il could have no complaint that Mr Yesilkaya in May 2017 considered the process at an end, not least because, if he chose even now to take the steps up to turning the handle, the door would open.

Perrys visit; the removal of computers

396. On 15 June 2017 Perrys accountants attended the Company's premises. According to the formal report which they compiled, Mr Hale's and Zoe Gibbons' visit

> "was undertaken with a view to understand whether the accounting records were in suitable order for a subsequent and more detailed review to be undertaken of the financial accounts of the company for the years ended 31 March 2013 to 31 March 2016 inclusive".

397. It seems that the visit did not start well, as Mr Il had landed from Turkey the previous evening and not understood that they were to arrive at 8.30 am. There was also some tension as to its purpose. In his email to Mr Hale and Ms Gibbons of 17.07 that afternoon, Mr Il repeated his "strong objection to the word 'investigation'. Director's cannot investigate one another in this manner, solicitors cannot order investigations either. Investigations require court order(s)". The rest of his email was polite and constructive: "It was a pleasure to meeting you both this morning"; he apologised for being late; "I like to extent that you are most welcomed to inspect the company's accounts under a structure, please let me know so I can assist". He listed some of his own "suggestion/ (desire)", including that Perrys be appointed to prepare the 2017 accounts, and that "2016 accounts' accuracy is checked"; he promised to forward TaxAssist's "various draft versions".

398. One of Mr Il's manifold alleged failings as a director is that in early 2018 he removed computers which caused the accountants to be "denied the opportunity to verify [the Company's] true financial position… or have only been able to do so at great time and expense"; so when Mr Yesilkaya and Deniz inspected the premises on 23 May and 14 June 2018, "many of the files one would expect to find in relation to company projects were absent". As against that, Mr Il has repeatedly stated that the Company's financial records are and were always available at its premises.

399. Mr Il did remove computers with financial information: we have seen the results of that during trial, and it is a point on which he was particularly

nervous. He did not deny that the computers had corporate financial information on them, nor that he had access to that, nor that he had deleted some items. It was plainly wrong of him to remove the computers without permission. That does not mean that the paper files which he asserts were present also disappeared. Having seen Mr Il's obsession with figures, I am sure that such files did exist. Absent clear evidence as to what documents or categories of documents are missing, which would ideally (and easily) have come from Perrys, I cannot find that the Company lacks information consequent on the removal of the computers.

400. Perrys' view of the state of the files at the June 2017 inspection was positive. Their report records being "shown to an office in the building where there were shelves with a series of lever arch files". For the year ends 2015-2018 these included sales invoices, purchase invoices, reimbursed expenses, payroll, bank statements, loan statements, correspondence with HMRC and Companies House, and VAT returns. "Files were clearly marked and appeared to be in good order".

401. Mr Hale and Ms Gibbons "carried out a brief review" of the file documents. Among other things they noted that

> "Most of the company's running costs are incurred by Mr Il and then reimbursed to him on a monthly basis. These are supported by expenses claims attached to which are supporting invoices.
>
> Each month site subsistence payments are made to workers on site, normally 10 or 11 individuals. The amounts vary between £200 and £300 per individual per month and there is a signature page where each worker signs for the receipt of the money".

402. Their conclusion was that:

> "With regards to the main purpose of the visit, that is to ascertain whether the company has systems in place and the records to enable accounts to be prepared, it is our opinion from our review that it does".

Ongoing situation

403. The extraction of Mr Il did not progress, and the advent of Mr Arslan did not improve relations.

404. On 12 October 2017 they held a board meeting. Mr Yesilkaya circulated the brief minutes of this again "unpleasant" meeting on 18 October. No doubt they are partisan, but they refer to Mr Il's shouting and insults, and to his more legitimate querying of the now $1.6m said to be due to Group companies.

London Embassy

405. The only project in which the Company was now engaged was the London Embassy, which completed in December 2017. Mr Il says he stayed with the Company because he wanted to finish it and "make sure it was successful". I am sure he was best placed to do that, but that was not why he remained at the Company: its completion did not lead to his resignation.

406. On 21 November he made a site visit to check on progress. Mr Atak was not there. Mr Elma explained that was because he had been sent to the North Wharf Garden Project ("North Wharf"), being run by his and Mr Eskinoba's H&M. Mr Il insisted that Mr Atak be returned, as he was needed; and he was.

407. It is a matter of some irony that the North Wharf installation project was passed to H&M, and not to the Company, by Mr Yesilkaya.

2018: clearing the premises

408. With the cessation of the London Embassy, the Company had no ongoing business, and nothing on the horizon.

409. Mr Il says he continued to visit the offices regularly to deal with outstanding issues including HMRC and utility bills; and he cleared the premises of the accumulated "junk": concrete blocks and sand and other detritus. It was also around this time that he removed the computers. It is his case, which I accept, that the deletions he made were of documents which he believed were subject to US Government contractual security provisions which, albeit light

(sensitive but unclassified), required documents not to be moved out of company control. Having the computers in hand also permitted ICC access to their data records, should it need it, for, for example, Pakistan Phase 2 and Kosovo.

410. The Company now says that the stock which Mr Il cleared was valuable, and infers it was taken for use by him or ICC.

411. Its evidence is little. Mr Elma recalls tools going from early 2016, and tools and computers such that nothing was left by the end of 2017. Mr Eskinoba has the Summer of 2017 as when he saw Mr Il taking "computers, printers and tools from the Company's office to the worker's house known as Willow Tree Cottage". How he followed their journey is not explained; nor is the value of the tools taken. Mr Uysal, whom Mr Yesilkaya describes as the "storekeeper" was resolute in his belief that no tool or stock of value had been transferred, there had just been a tidying-up exercise.

412. The value of the computers themselves has been restored already. As to the other items, it seems to me that aside from a whittling down of stock as the London Project was completed, it was tidied up and disposed of. That is the more likely because the £1,500 of tools which had some value were by agreement with its Ibrahim Karagozlu, whose evidence was unchallenged, transferred to Marble Fantasy and set against its debt of £20,980 + VAT.

2018: Mr Il's removal

413. At a board meeting which he did not attend, on 23 May 2018 Mr Il was suspended as, according to the minutes, "following the preparation of draft accounts by Perrys accountants, and their subsequent email communications in that regard there is evidence to suggest that:

4.1.1 Mr Il has awarded himself a pay rise without reference to or authority of the Company's board of directors;

4.1.2 Mr Il has used Company monies to pay for personal legal fees;

4.1.3 Mr Il has retained and paid employees on the Company payroll, despite the Company having no on-going projects;

4.1.4 Mr Il has used Company monies to pay the mortgage in respect of the property known as Willow Tree Cottage;

4.1.5 Mr Il has used Company monies to pay invoices raised by the company of a former employee, Mr M. Ali Elma, despite the Company having no on-going projects;

4.1.6 Mr Il has engaged in the diversion of work (including the US Embassy project in Kosovo), from the Company to a rival company owned by his son".

414. Some of those matters have been essayed at trial. The third, fourth and fifth are indications of the ongoing distance between Mr Yesilkaya and Mr Arslan and the Company of which they too were directors.

415. The same day a more formal letter, with expanded grounds, was sent. It stated that the suspension "does not imply any assumption that you are guilty of any misconduct". He was informed that his email account had been suspended, and all passwords and keys should be handed up.

416. On 16 July Mr Il was informed of the outcome of a disciplinary hearing held before Mr Arslan on 3 July: his employment was "terminated for gross misconduct without notice".

417. Mr Il's appeal was heard on 24 August. He was removed on 15 October.

## The Disputed Debts

418. The Disputed Debts are those demanded by RadcliffesLeBrasseur's letter of 5 December 2016 (the "Demand Letter"): $1,313,074 due to HMT, $240,711 to Haz Mermer, and €43,187 to GmbH.

419. Mr Il pleads that no sum is, or was then, due; and that actually HMT owed the Company $139,679, Mermer was owed $54,463 but that was subject to a larger set-off for faulty stone, and GmbH owed the Company $366,605. Mr Yesilkaya was therefore wrong to cause the Company on 3 May 2018 to file accounts for the period ended 30 September 2017 (the annual period having been extended 6 months) which included the Disputed Debts. He says that they were included in the 2017 accounts, and the Demand Letter written, so as to diminish the value of his shareholding, and force him to accept that diminished value, as well as to force the Company into liquidation.

420. Mr Yesilkaya makes reflective complaint that the Disputed Debts ought to have been included within the 31 March 2016 accounts which Mr Il unilaterally filed on 28 February 2017.

421. In opening Mr Buckley modified his client's pleaded position: he could not say that no debts were owed to those companies, but averred that they had been inflated to a "considerable degree".

422. Mr Il and Mr Yesilkaya have each relied on figures down to the last cent. They cannot be tracked through the annual accounts, and we have no expert evidence. It was agreed at the outset of trial that the parties would concentrate on the facts behind certain "big ticket" items. Those are still only a stepping-stone to the real issue behind each complaint, which is motivation based on contemporary belief. By closing, the relative lack of importance of the actual figures had become more apparent to all.

423. Some aspects I have already dealt with. There was no agreement to recharge Deniz's salary to HMT; and hence (on these hypotheses) HMT was owed certainly around $350,000 by the Company. A reason behind the sending of the Demand Letter was to spur Mr Il's engagement with the Heads of Terms process. The inclusion of the Disputed Debts has a significant effect on the Company's balance sheet, and hence the value of Mr Il's shares.

424. As discussed in the context of Deniz's salary, financials between the Company and Group were complicated by the lack of written contractual terms, and the ultimate ability of Mr Yesilkaya to determine any dispute over debts. That

unusual fluidity, demonstrated also by the variance in the drafts of the 2016 accounts, has caused Mr Il to reach back to 1997 for the HMT and Mermer accounts, and 2007 for GmbH. The filed accounts are a sideshow. As Mr Il wrote to Mr Yesilkaya on 1 April 2015

> "We didn't put much care on the balance sheet since 6-7 years. The reason being: 1. You had left it to me, I was doing the best of my capacity. 2. There was not much revenue and expenses, so there was not much profit. If we take care of the issues above [inter-Group debts], our balance sheet will be transparent. We can see all our debts and receivables".

425. By the same email Mr Il told Mr Yesilkaya that in the 31 March 2015 balance sheet the Company would be shown as owing HMT $390,224; but there were disputes over $675,350, and "agreed disputes" of $233,532.

426. On 3 April 2015 Mr Il emailed Deniz.

> "Haz Metal- Haz UK discrepancies started since 2008. I have written to you on number of occasions over the last seven years, but you ignored them all.
>
> I acknowledge there are outstanding accounts between Haz UK and Haz Metal: Outstanding $390,000
>
> Haz Gramerit: $114,000 which will be cleared within April 2015. This amount excludes all Haz Cream materials which are not sellable.
>
> Haz Germany: around $12,000 in favour of Haz UK".

427. Deniz replied to say that HMT had $1,248,793 on its books, and that there had been numerous emails and correspondence "however we could not come to an agreement". He wants this issue resolved between Mr Il and Mr Yesilkaya. "Upon your decision we will level the accounts between the two companies so that we inform the auditors with the correct balance amount".

428. As Mr Il says in his statement, "the inter-company balances between the Company and other Haz Group companies have always been very messy and difficult to follow"; and he blames that on Mr Yesilkaya's redirection of liabilities within Group.

429. Further, his own reworked figures have never crystallised. As indicated as well by his opening shift in position, Mr Il acknowledged orally that he had "found mistakes" in his pleaded Annex B figure for HMT of $139,679. His schedule at exhibit B now has $236,663.97. While on 6 June 2016 he told Gokhan Eren, accountant at HMT, copied to Mr Yesilkaya and Deniz, that at 31 March 2016 $74,652 was due from the Company to HMT, based on an opening $1 entry on 18 February 2008 representing an invoice, his exhibits now have the Company being owed $327,272 at that date, because his calculations have delved back to 1997.

430. Mr Adams confirms he was "aware of a serious financial dispute" between the Company and HMT, Mermer and GmbH, but his involvement was only in identifying and reporting issues over inaccurate invoices, defective materials, and inflated rates and commissions.

431. Mr Yesilkaya's figures derive from the workings of Zafer Kutlu, the "Sworn-In Certified Public Accountant registered in Turkey" for HMT and Mermer. He has taken his entries from those companies' accounting records. He has looked from 18 February 2008 only, as that was originally Mr Il's starting point.

The HMT debt: 2008 balance

432. Given that by the beginning of April 2015 everybody acknowledged significant historic disputes, it is of no assistance to consider whether the account from 2008 should begin with $1 or $327,272 in light of represented balances in the meantime.

The HMT debt: interest

433. The lack of written contractual terms has meant that nobody is sure whether interest ought to be charged by HMT, or, if charged, how it should be treated. It makes up $292,944 of HMT's claim.

434. In his 1 April 2015 email interest of nearly $110,000 was one of the disputed items. Mr Il observed that the interest would require recalculation once other disputed amounts had been resolved. "We will pay for interest if we have to". Mr Yesilkaya replied "Invoice for interest is something done in accordance to the law. We have to do this", but then asked the accountant, Muhsin Girisen, for a way out: "Muhsin, if there is any other way, make an agreement with [the Company]".

435. This was consistent with earlier correspondence.

436. On 12 March 2012 Mr Il objected to Deniz about the addition of interest. Deniz replied "We will take this matter back into the board and will notify you of the received decision at a later date".

437. On 20 October 2012 Mr Il told Mr Eren, copied to Deniz, that the interest "that we have objected will remain in the accounts and will be paid by Haz UK on the first available date, unless a different decision is received from Abit".

438. Typically, no determination seems to have been reached before the April 2015 correspondence.

439. The reply to Mr Yesilkaya's query for Mr Girisen came from Mr Eren, the General Manager at HMT. On 14 April he wrote what he described as an "extremely transparent and impartial" missive, by which he (notably) recognised around $220,000 of the debts which Mr Il said were disputed. "Interest invoices will be paid in accordance with the decision taken by our Executive Board. It has been cut in accordance with the laws. No return is possible".

440. At this stage it looks as though interest had to be charged, but the possibility of avoiding that obligation of Turkish law remained open for discussion.

441. What happened is told by an email from Mr Yesilkaya to Mr Il of 1 July 2017.

> "Let's get to the interest bills. Can, I expected a more accurate action from you. We told you that we have to make the invoices for interests according to Turkish law and that we'd have to pay big penalties otherwise and also that you do not have to pay. What is the use of writing this over and over again? Masturbation?"

442. As between HMT and the Company interest was charged; but the Company did not have to pay. Mr Yesilkaya told the Court that the "Company does not have to pay"; put "So therefore HMT should not claim interest?" he replied: "They have to by law. But I'm paying".

443. In re-examination he said that that was a concession which he had withdrawn after Mr Il sought to re-open Deniz's salary. I cannot accept that. Mr Il's attempts dated from 2015. The 1 July 2017 email makes reference to the contemporaneous state; and does not qualify it with withdrawal.

The HMT debt: Moscow refund

444. This, too, was a long-standing saga, relating to the quality of materials supplied by HMT to the Company for its work on the White Square Office Centre in Moscow. There is considerable overlap with the interest issue.

445. In the 1 April 2015 email Mr Il wrote "There is $300,000 sum from WSOC Moscow project from 2018 [sic] that needs to be returned". Mr Yesilkaya's 5 April reply was

> "WSOC is a topic I know. I have been saying 'I will take care of it' since day one. I asked Haz Metal. Can, why should Haz Metal pay for material you have ordered and not used? This doesn't make sense. Haz wants their money. It is not possible for me to say no to this. HAZ Int has to pay".

446. Deniz and Mr Il had been trying to resolve the issue since 2010. On 12 March 2012 Deniz wished to leave it to his father, as Mr Il wished, recollecting that a year ago "we both gave up" a process of a settlement through an HMT

discount "from the total anchorage cost". As HMT continued to send large sums to Russia, "we deleted these 300 thousand dollars among us". Mr Il replied lamenting the current "serious financial problem" at the Company meaning he "will not accept the decision" "to put the responsibility of Haz Rus on Haz UK", by dropping the $300,000. This sequence ended with Mr Il's proposal that "For now, let us hold Haz Rus, not Haz UK, responsible for this money, and then demand it. Let's debit Haz Rus".

447. Mr Il's 11 October 2012 email to Mr Eren proposed, as with the interest, that it be left in the accounts and, subject to a different decision by Mr Yesilkaya, paid by the Company.

448. After further April 2015 interchanges, Mr Yesilkaya wrote Mr Il a formal email of 12 May, copied to Mr Eren and Mr Girisen of HMT.

> "I decided to conclude this matter as follows, as the majority will be assumed by the Yesilkaya family anyway, whether it is London or Iskenderun.
>
> I request everyone to accept this matter without objection…
>
> There is $300,000 from WSOC Moscow construction site from 2008, which should be refunded… It was completely accepted despite the green text below [which contained Mr Eren's objections]…
>
> This matter is thus resolved".

449. On 2 June Mr Girisen circulated a short email to the same persons. "Apart from the 300,000 usd, we are crediting the invoiced amount of 260,251.70". The $300,000 was a known credit. Mr Eren also sent a short email. "Now that we have reached a mutual agreement, I hope you find it acceptable that I ask you for a payment plan".

450. On 11 June the Company sent HMT an invoice including the $300,000.

451. On 23 June Mr Il wrote that while the Company owed HMT $467,367, it would not be paid because he would offset Deniz's salary.

452. In cross-examination Mr Yesilkaya said that he paid the $300,000 personally, and closed the accounts. However, "After the breach in relations, I deleted this bonus… The reaction of [Mr Il] was so bad, I withdrew it"; "I reviewed my decision".

453. To my ears that acknowledges that a compromise had occurred, which Mr Yesilkaya subsequently wished to revisit.

454. The minutes to the "unpleasant" board meeting of 12 October 2017 also record Mr Yesilkaya as stating "we were trying to help you, overtaking some cost, like 300.000 dollar issue, which I was paying it from my own pocket…".

455. To the extent that he had actually paid the $300,000 then HMT could not claim it from the Company. Even if not paid, as with the interest the Company had been relieved from payment.

The HMT debt: Mr White

456. Mr White's unhappy episode we have already covered. He was the Company's employee.

457. On 15 April 2013 Mr Il threatened Deniz and Mr Girisen that he would charge HMT "for John White's expenses of $40,000". Deniz responded that "Loading these costs to Haz metal is not accepted at this stage". Again, that appears to be a recognition that his father might always decide otherwise.

458. Mr Yesilkaya agreed in cross-examination that there had been a suggestion that HMT would support Mr White's salary. There is no evidence, though, that this was ever decided upon.

The Haz Mermer debt

459. Having gone back to 1 June 1992, Mr Il agrees that the Company owes Haz Mermer $54,463. As with the HMT debt, it seems to me that even in the

context of a largely family company, such historicism is highly unlikely to be a legitimate approach; but it also not one which the Court is invited to review.

460. Mr Il's initial position was that the acknowledged debt was subject to a larger credit "for supply of defective and unusable stock", including materials for Yemen which arrived broken because of "bad packaging", or were defective, being kitchen tops unfinished at the edges. He says he agreed with Haz Mermer's "factory manager" that these would be replaced at half price, but after completion of project Mr Yesilkaya objected that it was not for the factory manager to agree.

461. In his statement of 19 January 2021, served shortly before commencement of trial, Mr Il elaborated a little. The defective stone was invoiced between November 2011 and July 2014. The factory manager was one Dincer Demir, who agreed with Mr Il a 50% discount (rather than replacement at 50%), which equated to $72,602. Mr Yesilkaya "refused to recognise" the agreement as Mr Demir had no authority.

462. I do not find it surprising that occasionally stone was supplied which was defective. I am surprised, though, that if that stone was supplied in November 2011 it was not until after July 2014, and other intervening faulty supplies, that an agreement was made. We are given no details of this agreement, or of action which the Company took following it; we have no invoices or credit notes. I do not know where a factory manager fits into the hierarchy of Haz Mermer, or with whom questions as to defective stone would normally be raised or had in the meantime been raised. I have no evidence of their negotiations, or when they took place. As the November 2011 invoice had been outstanding over 30 months, there must surely have been more dealings over it prior to July 2014 or thereabouts.

463. Mr Il has failed to prove this agreed reduction.

464. This late statement also introduced a new ground for a set-off. On 29 July 2015 Haz Mermer rendered an invoice for $39,183. Deniz had ordered this stone through one Koray Yalcin, "sales representative" at Haz Mermer. Deniz had no authority to order the stone without Mr Il's knowledge; and anyway, as

it was supplied sale or return, it "should have been returned and the invoice cancelled".

465. I am unconvinced by this either. It is a new ground. It does not explain when Mr Il found this out, or what action he took; or why he did not himself return the stone. As he states the Company still had it on his departure, it may be that it has decided to keep it.

The GmbH debt.

466. For this the big ticket is the challenge. Mr Il says that the €43,187 debt is offset by a $400,000 loan from the Company made on 13 February 2007 (and we have evidence of its transfer on that date) "on the instructions of Mr Yesilkaya".

> "He had asked me to visit him in Germany. When we met, he told me that [GmbH] was in financial difficulties and asked me to send the company US$400,000, in return for which he would give the Company shares in [GmbH]. I questioned why the Company would want to invest in a company that was in financial difficulties, to which Mr Yesilkaya gave no response. No formal loan agreement was entered into and the money lent has not been repaid. Instead, Mr Yesilkaya has had this debt to the Company reallocated to Haz UAE".

467. That is a curious and obviously incomplete story. What happened to the share issue? If this was a bare loan, surely even the Company would have it recorded in its accounts?

468. That something else is going on is apparent from Mr Il's discussion in his 1 April 2015 email.

> "…from the info I got from Deniz, the $400,000 sent from HAZ UK account is still shown as debt in HAZ GmbH account. 1 way to clear this is, HAZ GmbH can send the $400,000 to HAZ UK, I will

send it the same minute to HAZ UAE. Then you can decide on how to send it to HAZ GmbH".

469. In other words, Mr Il's view is that this is not money which is liable to be used as an off-set, but circulated so as to clean up GmbH's accounts.

470. Mr Yesilkaya prevaricated, but to the same end.

> "I think there was a transaction like this with Germany, I don't remember the details. Wera is on vacation for 3 weeks, I cannot ask her.
>
> Deniz, Can we close this account with mutual receipts instead of transferring monies? Talk to Wera and close it this way. I don't think Germany can transfer 400".

471. On 6 April Mr Il and Mr Yesilkaya exchanged emails. "I don't understand how mutual receipts work" said Mr Il, "But please, let us close the issue. Tax offices of European Economic Community are in contact". Mr Yesilkaya also wanted finality.

472. On 12 May 2015 there was another exchange. Mr Yesilkaya wrote to Mr Il "Since the subject about Germany does not concern any one else, I am writing it separately". That does not sound like a corporate arrangement. Mr Yesilkaya's memory has returned.

> "Years has passed, but thankfully my memory is still intact.
>
> After deliberating the subject, I can remember it clearly.
>
> You had money, and I had wanted to distribute this as dividend.
>
> Against the 400 you sent to Germany you took 200. And this was the first official money you got apart from your wages…
>
> Therefore, the sum you sent to Germany should not be on the books.
>
> If I am mistaken, please talk to me. No one else has to know".

473. "You remember the essence of the subject" was Mr Il's reply.

> "Haz UK is not asking for a reimbursement of the sum from Germany. As you remember, we agreed to split the money in half and closed the account.
>
> The Sum sent to German should not be in the books: This is not possible. The money was sent through Haz UK's official bank accounts. This sum is seen as debit in Germany's accounts. This got the attention of the German Revenue Office. Since the transfer was done without an invoice, the account is still open.
>
> Germany has to find a way to close this issue about $400. My idea is, Germany sends the $400,000 to London, I will transfer this $400 to UAE and close the issue".

474. The $400,000 was agreed to be some, or all, of an extraction of monies from the Company by way of a pseudo-dividend. But it is not Mr Il's case that the $400,000 falls to be set off as a (say) restitutionary claim any more than it is Mr Yesilkaya's or the Company's that paying a supposed dividend in this way was a breach of Mr Il's duties. In the context of their unrestrained battles, the failure to take those points attests to the real nature of this payment.

475. In 2016, when GmbH asked for its debt to be paid, Mr Il decided to recharacterise the $400,000. On 2 June he wrote

> "I like to advise you that I will welcome any legal action on Haz UK. I have been awaiting for an opportunity to conclude the US$400,000 which has been outstanding amount which was sent from Haz UK to Haz GmbH as a loan on 15 February 2007".

476. Which drew this from Mr Yesilkaya on 7 June:

> "You are blackmailing me! It will backfire Mr.Il;

> The money you sent to Germany on 16.02.2007 was dividend you have distributed and transferred on my behalf to… GmbH and… GmbH booked it as payment from A. Yesilkaya.
>
> Do not forget; you took for yourself 200.000,00 US $ as well.
>
> You have also transferred dividends in 2015 and 2016 to my Abu Dhabi accounts. (You had also your 30%)…
>
> How you did book them, I don't know. Did you included them in Haz Int's tax certificate, I don't know".

477. Mr Il's response was that the monies he had received were not a dividend, as he had received them from Mr Yesilkaya. His view in cross-examination was that that meant they were no part of these arrangements. He also maintained that "on paper" GmbH did owe this as a debt.

478. In a 1 July 2017 email Mr Yesilkaya gave more details of other dividends.

> "…we received money unofficially from companies who sold goods. In addition, we both have paid under the title of 'profit distribution' at least three times.
>
> -You got 200 when 400 were sent to Germany.
>
> -On 01.10.2015, 500 were transferred to AbuDhabi and your share of 150 to Adana.
>
> -On 17.03.2017, 500 were paid to me and you asked me for authorisation for your share to be paid to you there… How did these payments, the distribution of profit, have been registered in the books?"

479. There is evidence in the bundle of the alleged further transfer in 2015. On 22 September Mr Il wrote to Mr Yesilkaya

> "As you are aware, and as planned, I will be sending $500,000 to HAZ UAE. Can you send me account details.

> I would like to ask you to send my 30% share, which sums to $150,000, to my account in Turkey… Adana Branch.
>
> If you checked the financial statements, HAZ UK owes HAZ UAE (I can't recall the exact amount, but it is around $1million). We need to clear this debt. Therefore, I need to send this amount to HAZ UAE account".

480. Neither side was cross-examined on this, and it is not easy to make sense of the remarks about the $1m due to Haz UAE from the Company. But on 28 September the $500,000 was transferred, and by 7 October Mr Il and Mr Yesilkaya were causing the onward transfer of Mr Il's $150,000: the bank was told the purpose of transfer was "Employee Payments".

481. On 14 October Mr Il wrote to Mr Yesilkaya: "The Money has arrived. Thank you".

482. I note as well that in its Reply the Company stated that "payments were historically made to, or at the direction of, both Mr Il and Mr Yesilkaya in proportion to their respective shareholdings".

483. Neither party has given a full and proper account of these payments, for reasons which are not difficult to discern.

484. Mr Il's contention that the $400,000 is a loan which can be set off is hopeless.

The effect of the Disputed Debts

485. It follows that, looking at big ticket items only, HMT's claim falls to be reduced by nearly $600,000 for interest and WSOC, but Haz Mermer's and GmbH's claims are unaffected. Put another broad way, dollar claims have dropped from about $1.55m to $950,000, and euro claims of 43,187 remain.

486. How Mr Il caused the Company to file 2016 accounts which wrongly did not include any of the Disputed Debts I have already described; but not how Mr Yesilkaya caused the Company to file 2017 accounts which wrongly included all of the Disputed Debts.

487. It was an explicit choice. Appointed as the new accountants for the Company, on 3 May 2018 Ms Gibbons of Perrys circulated draft accounts for the period to 30 September 2017 to its directors, Mr Il, Mr Yesilkaya, and Mr Arslan.

> "Following my previous emails as I have not had any further queries regarding the accounts and following instruction from Jan on 21 April to submit the accounts, I now attach the finalised accounts for your kind attention.
>
> Please note that per my previous email of 29 March 2018 these accounts do not include any outstanding amounts to Haz Group, which I understand are in dispute".

The accounts adopted those filed by Mr Il for 2016. They recorded a loss for the period of £382,587, and a reduced balance sheet of £1,402,945.

488. This time Ms Gibbons did get a reply, immediate, from Mr Yesilkaya.

> "I can not sign a statement not including a claim of about 1.5 millions of US Dollars… Anything else will not be accepted".

489. On 27 June 2018 Mr Hale circulated updated drafts.

> "Abit, it was a pleasure to meet you. Thank you for providing us with the information relating to the intercompany ledgers.
>
> Gentlemen, we have incorporated the intercompany balances into the accounts as prior year adjustments and attach copies for your attention".

He reminded the directors that a majority vote was enough, although Mr Il was by now suspended.

490. These accounts were filed the next day. The restated 2016 accounts now showed a loss for that year of £278,329 and a balance sheet which had plummeted from £2,241,898 to £600,920. In the period to 30 September 2017 the Company had made a further loss of £382,587, and its balance sheet was now down to £218,333.

491. Both the 2016 and the 2017 filed accounts (the latter including the restated 2016) are objectively wrong.

492. Both Mr Il and Mr Yesilkaya are partly correct on the Disputed Debts. I do not think that either knew that they were not wholly correct. But rather than consult, or let the Heads of Terms process run its course through (if need be) to determination by an expert, each wanted to file accounts in the form they did precisely because they were advantageous to them personally, and despite knowing that there were fundamental differences over the figures. In that, each was in breach of the duties owed as director to the Company; and Mr Yesilkaya is not absolved by Mr Arslan having joined in his decision.

493. That mutuality of breach indicates what we already know, which is that there has been a breakdown of trust and confidence. It goes no further because neither Mr Il on one side nor Mr Yesilkaya and/ or the Company on the other can ground relief when they themselves, or in the case of the Company those in charge of it, have been guilty of the same conduct.

494. Likewise, although the Demand Letter performed a legitimate role in the Heads of Terms process, another motivation behind it was to reduce Mr Il's financial horizons. However, other than as a further manifestation of the uncontentious breakdown in trust and confidence, that seems to me of no effect. It is otiose to complain that it threatened winding up when that was never followed through; and hence, no prejudice was suffered. Neither was its sending otherwise unfair, when it was a part of a non-binding mode of settling differences between shareholders and was designed to promote such settlement.

495. The Disputed Debts have indeed been arid ground.

## The Seychelles Project

496. On 21 September 2016 Mr Il was contacted on LinkedIn by Grant Heyer, a project executive at Avalon Project Management. He was having difficulties

attaching basalt cladding on some residences in the Seychelles, and wanted advice. Mr Il gave him his company email address and Mr Heyer wrote at greater length explaining that "the stone just falls off… there is a large heat issue. With that, add rain and humidity…". He asked for "Your thoughts and views on the kerf anchors and could you arrange a cost for them?"

497. A week later, from the same address and on behalf of the Company, Mr Il forwarded "the proposed design for your project", giving prices for two alternative systems at $1.85 or $2.75 and a projected shipping time of 3-4 weeks. "We used pin systems unlike you mentioned leaf systems as requires less cutting on the stone. I hope this is of interest and look forward to hearing from you again".

498. That email must have been copied to Mr Adams, as he was cc'd to the reply. There followed some interchanges about details, and then on 7 October Mr Il, copied to Mr Adams, said they would prepare a pro forma invoice for 3,500 sets at $1.85, carry out some structural calculations, and provide shipping options.

499. Further correspondence led to agreement that it would be best if the Company performed a pin test on basalt and granite samples, which would be cut from the stones in the Seychelles and passed on. On 13 October Mr Heyer was promising their despatch. Mr Il chased on 28 October, to be told they should be sent that week.

500. On 31 October Mr Il told Mr Heyer, copied among others to Ms Hisir who must have been involved, that the "drawings for 4 residences are not very clear. We need drawings to show structural steel structure where you would like us to design from". He enclosed a pro forma invoice for the "first part of the project", incomplete as freight needed adding. "I will arrange fixer to come and do the installation… I can make a visit to the project site if you like me too".

501. The samples arrived. On 15 November Mr Heyer wrote "I will be ready to make quick decisions with the design after the tests. As mentioned before, I

may even need 2 guys for a month to come put up the stone on the suspended steel structure and the difficult areas". "Not a problem at all" said Mr Il.

502. Mr Il sent the test results on 16 December; "we will pass these onto our design engineer who will now complete the calculations and the design accordingly". That was Is Yapi.

503. On 6 January 2017 Mr Heyer told Mr Il that the "work permits are in for the workers". Mr Il apologised for the delay, as the office had been closed over Christmas and New Year; and agreed to postpone his own visit.

504. Subject to some minor details, on 25 January Mr Heyer told Mr Il that "I am comfortable with proceeding with all 4 buildings based on this". The fixings were to ship from Is Yapi in Turkey.

505. In May 2017 Mr Il helped out further by contacting Nathan Liu at Shenzhen Kangli Stone Co., Ltd, on behalf of Mr Heyer. "This project is a long project. There will be repeat orders in the next two years. Please treat it accordingly". On 6 May Mr Il told Mr Liu that the material had been approved, but the client would order direct as he was leaving his job, and "Haz has no finance to pay you in advance".

506. All these dealings were between Mr Heyer and the Company; and the Company had provided an invoice for its services. Mr Il says that although the Company was going to provide the fixings as well, as that now had to be through Is Yapi, as HMT had withdrawn its product, he came to the view that rather than link the Haz name with Is Yapi it would be better if Mr Heyer ordered direct: a perfectly proper position. Seemingly in order to distance himself from the imprecise allegations that the Seychelles dealings were a conflict (Mr Yesilkaya says they concerned an Embassy in the Seychelles!), Mr Il has also relied on Mr Heyer being his personal contact, which would not avoid conflict; that the Company was winding-down, which has been abandoned; and that it was taking on no new projects, which is wrong as in May 2017 it was through Mr Il tendering for Erbil.

507. What that leaves is the provision of the workers. There is a jolt in the correspondence when Mr Heyer says the work permits are ready: the actual hiring of the workers isn't there.

508. That is because Mr Il passed this aspect onto Mr Gul, who himself, as must have been expected, referred it to Jan Junior at ICC. Mr Elma and Mr Eskinoba were also brought on board, and each signed a contract, probably slightly back-dated to 9 December 2016, for 20% of the net income. Jan Junior says that Mr Elma and Mr Eskinoba were meant to manage the work, but made little real effort. Workers were there from March to April 2017, and again from September 2017 to April 2018.

509. Mr Gul recollected that Mr Eskinoba never went to the Seychelles; and while he had gone at the start, he only returned on Mr Eskinoba's departure. In his view it was a "small project", too small for the Company. While there was a plan to build more villas, that was not carried through. He said that Mr Il had visited the site, but didn't actually do anything.

510. Mr Il also says this was a "small repair job, and therefore not the sort of job the Company would tender for"; it "was simply too small and it would not have been cost-effective" for the Company; but he wanted to assist Mr Heyer, so put him in touch with Mr Gul. In cross-examination he described the job as two men overseeing others from India. Nothing had been built since 2017.

511. I have already addressed the point that in March and April 2016 Mr Il had tried to set his own rules by averring that installation-only contracts would no longer be part of the Company's business. He was wrong in that. That does not mean that this small scale, far away, repair job was ever the Company's business, even if in theory it could have taken ICC's place as the contracting party. The job would require funding, to be raised from somewhere; it might mean bearing losses, especially inappropriate with the Company in its state of ownership; and not even Mr Elma and Mr Eskinoba aver that actually the project was profitable such that they ought to have seen a return.

512. Conclusive is Mr Yesilkaya's own view. He knew the facts, and had heard Mr Il and his witnesses being cross-examined. The Seychelles job was "nothing.

Not even worth a telephone call… something to do to be friendly"; Mr Il was "free to decide this in any way, in any direction"; if he had a cousin, he could pass it on to them.

513. This, then, was not a situation which could reasonably be regarded as likely to give rise to a conflict of interest, or the pursuit of which was otherwise in breach of Mr Il's duties.

514. There is a very small rider. It still seems to me that, despite its marginal status, a director acting responsibly would inform his fellow directors about the approach and its result, not to seek unnecessary absolution, but to keep them generally appraised of the Company and the marketplace in which its business operated. That failure is very minor, and not causative of relief, or the denial of relief.

## The Kosovo Project

515. On 14 August 2014 the Company tendered for the "Natural Stone Works" at the US Embassy in Pristina, Kosovo. The detailed work for that tender, with its associated costs, was the Company's. The general contractor was again BL Harbert. A revised tender was presented on 18 February 2016.

516. On 7 March 2016 Rick Healy of BL Harbert informed Mr Il that it was "going to self-perform the installation on this Project, so we are only looking for stone and sub-frame supply".

517. On behalf of the Company which a month before he had agreed to leave, on 23 March Mr Il submitted a fresh tender for the supply of stone at $3,407,795.

518. On 31 March 2016 Mr Healy informed Mr Il and others that the stone supply contract had been awarded to ASI and not the Company.

519. There matters lay until 8 March 2017 when David Johnson of BL Harbert wrote to Jan Junior's email.

> "Mr Jan,

> Greetings to you. Paul Hadley provided your new email address and explained that you are now an independent contractor.
>
> You may have been involved in the HAZ bid for supply of stone for the NEC in Kosovo. As you are probably aware the supply bid was won by ASI.
>
> However, an opportunity has arisen for the installation of the exterior façade stone on the project.
>
> Please drop me a line and outline whether you are interested to investigate this with us".

520. This was an email address which Mr Il was able to access and use. It is suggested that the ambiguous "Mr Jan" is intended as him rather than his son.

521. That is linguistically unlikely. Mr Healy would associate Mr Il with the Company, and be in no doubt of his involvement with its tenders, or knowledge of their outcome.

522. This was also not an email out of the blue. Mr Gul says that in early 2017 he had been telephoned by BL Harbert (he does not say by whom) about Kosovo. While they had chosen to do the installation work themselves they now needed additional manpower to speed up. They asked if ICC would be interested. Mr Gul spoke to Jan Junior about it, and then suggested to BL Harbert that they write formally to him. That account tallies with the 8 March email, and coming from Mr Gul, who at the time was directing Pakistan Phase 2 for ICC, is plausible. Jan Junior recollected that BL Harbert was "incredibly impressed" with Mr Gul's work.

523. This fresh approach, then, was not to the Company or Mr Il, but to ICC and Jan Junior.

524. Mr Il soon found out about it because Jan Junior told him.

525. ICC provided a quote for its role in June 2017. By October 2017 it had commenced, Mr Gul co-ordinating the work on site, and having picked the

workers, but hiring a former classmate from university as site manager. As with the Seychelles Project, he, Mr Elma and Mr Eskinoba each had a contract with ICC, this backdated to 8 March, giving them 20% of net income. Mr Elma and Mr Eskinoba do not seem to have done much for it, and they left before it was completed, Mr Elma says because they were not paid by Mr Il for a job in England. Mr Gul's recollection was that they departed after about a year because the contract was unprofitable. There is nothing to gainsay the last point.

526. On 5 October 2017 Jan Junior emailed Mr Johnson to ask "if you need more installers?... Also, I would like to visit the site again". On the language, there is no doubt that this was Jan Junior's email. Adam Hunt, a "Finance & Admin Manager" replied that he was welcome to come, suggesting "around the week of 23 October" as a couple of weeks notice was needed to collate the necessary paperwork. After a pause, on 21 October Mr Il wrote, from his son's email address, that he would like to visit the site on 9 or 10 November, and enclosing a copy of his passport.

527. I do not draw from that visit that it was Mr Il supervising the Kosovo Project. As we have seen, he was a man fond of foreign travel and with a love for and a need to feel involved in his industry; he also wanted, he would say in a fatherlike way, to keep an eye on his son.

528. As with the Seychelles Project, this is one issue among many and we are not overflowing with details. This is another small job, with known supervisors but a scratch workforce, of doubtful profitability and with expenditure required for its performance at a time when the parties were separating. Again, I consider that the section 175(4)(a) exception applies, but again subject to the qualification that as a reasonably diligent director Mr Il ought to have mentioned the job to enable the Company's board the better to assess its business. Again, and even though this is the second example, such breach is immaterial to relief either way.

The diversion of the Company's personnel

529. The Company's claim focuses on Mr Gul's working for ICC after having worked for the Company; and Mr Elma and Mr Eskinoba; and that "almost the entirety of ICC's Turkish labour force working on the Pakistan 2 Project and the Kosovo Project were former employees". None of those facts is disputed, except the proportion of the Pakistan Phase 2 labour force.

530. Mr Il is said to have wrongly facilitated their retention by ICC; caused the Company to lose the benefit of their services; or encouraged them while employees to move to ICC.

531. All those claims fail.

532. Without more, that these men worked for ICC, or continued to do so, is no breach. Mr Yesilkaya is aware of that, as he caused Mr Elma and Mr Eskinoba to work on the North Wharf Garden Project while they were also working for the Company; and they recruited others to it.

533. Mr Elma and Mr Eskinoba carried through all their work for the Company as its employees or, after visa difficulties, through their own company H&M. They were professional men, carrying out their business, well able to make their own decisions, as shown by their leaving the Seychelles Project and the Kosovo Project. From July 2017 they were plying their trade through their own company, and Mr Elma confirmed in cross-examination that from then they were free of the Company. On Mr Elma's own evidence, it was only in June or July 2017 that Mr Il mentioned to them the possibility of work with ICC, which they rejected until completion of the London Embassy. That is wrong, given that they were already dealing with the Seychelles Project. Mr Eskinoba says the approach was the beginning of 2017, which could be right; he links that to the Nishkam School Project in London. These recollections underline the unreliability of their evidence. In any event, they do not say that their ICC work interfered in any way with their work for the Company.

534. Mr Gul had become his own master even before he left the Company of his own free will at the end of April 2016. I have already described the paths he was making for himself.

535. Mr Sagnic said that he left the Company after the Pakistan Phase 1 remedials, as there was no more work for him. Shortly thereafter he was recruited by Mr Gul to ICC for Pakistan Phase 2. He wished to work in Pakistan for family reasons.

536. Mr Uysal left the Company in December 2017 after completion of the London Embassy. He then asked Mr Il if he could find him a job.

537. Mr Atak left the Company at the same time. He said he was never offered work by Mr Il, although Mr Elma and Mr Eskinoba had offered him work on ICC's Nishkam School, and had purloined him to the North Wharf Garden Project.

538. No doubt there was a transfer of staff from the Company to ICC, and elsewhere. After the London Embassy, the Company had no ongoing projects. As Mr Yesilkaya said, all the workers therefore had to be sent away. To repeat a quote from Mr Atak "We are only workers. Whoever provides us with work, we just go and do it".

539. I should add that the allegation in the Company's particulars that Mr Il wrongly caused it to pay salaries to the Company's workers of £16,548 in October 2017 and £13,313 in November 2017 is not pursued: it was based upon an erroneous end-date for the London Embassy.

Did P provide R with adequate accurate information?

540. This thin allegation is that "Mr Il failed to provide any formal written reports of his management" which is then followed by "Mr Yesilkaya was only provided with intermittent, incomplete and partial email updates". So Mr Il did not keep Mr Yesilkaya "apprised of the steps he was taking and the financial performance"; and if some information was given, it was not at "sufficiently regular intervals".

541. Despite his own appointment as its director, Mr Yesilkaya had deliberately left management of the Company to Mr Il and chose not to be involved. As Mr Il

said, he could ask for information whenever he wanted; that could be by specific request, of which none are pleaded, or by putting in place a formal and regular system, which is not alleged.

542. In his evidence, Mr Yesilkaya expands, building on his theme. He says the failure to receive "detailed or written reports of his management of the affairs of the Company" was "frustrating" and "it made it very difficult for me to assist in the management of the Company and its finances". That is unreal. It is also internally inconsistent, as he has earlier said that at times they were speaking every day as, until 2013, great friends.

543. As Mr Il said, Mr Yesilkaya "was always too busy running the rest of Haz Group and had little time to spare for the Company. He generally had no interest in knowing the detail of what the Company was doing and preferred to leave everything to me". Reaching back into the relationship, I see that on 26 February 2002 Mr Il sent Mr Yesilkaya the balance sheet for the quarter ending 31 December 2001. He apologises for its content. "I have not forgotten that you said there was no need for a detailed balance sheet, just do not look at unnecessary parts". On 2 February 2015, having been sent the 31 March 2014 year end accounts, Mr Yesilkaya wrote: "Since you have been appointed as Director to Haz Int. I have always accepted and signed all documents you have provided to me, even without looking into the details and questioning anything what so ever. But not this time".

544. When in April 2013 Mr Yesilkaya sent Mr Il "the revised Monthly Information Report" for completion, a standard form for Group companies updating the status of each project, it was not a success: on 2 May Mr Yesilkaya observed that it was only Mr Il who had complied.

545. Standardised Group reporting was reinstated by Mr Arslan in May 2015. There is no allegation of breach by Mr Il.

546. Mr Adams could not recall Mr Yesilkaya ever complaining about a lack of financial information.

547. There is a second limb, being that between May and October 2018 "Mr Arslan made repeated requests", especially about the Oslo Project. The complaint is either that "No, alternatively no satisfactory, responses were received".

548. That period is between Mr Il's suspension and removal. He was still subject to a duty to account for his current and previous dealings, but it is notable that Mr Arslan makes no complaint about any earlier period, though he had been appointed a year before. His evidence identifies not one request in the relevant period. The most it says is that at the meeting on 12 October 2017, "Mr Il refused to answer any questions about Company expenditure" and "refused to disclose the financial situation of the Company". With the heat of the meeting, Mr Arslan must recognise that those refusals cannot be held against Mr Il.

549. Thirdly, specific complaints are made: the filing of the 2016 accounts without consultation; non-co-operation with the Heads of Terms, and so on. These are dealt with elsewhere.

Ought Mr Il to account for certain receipts and uses of Company monies?

550. There are four sets of monies.

551. $1,217,689 was transferred from the Company's bank to Mr Il's Turkish account between 11 February and 12 November 2015.

552. £59,090 was withdrawn from the Company's bank for "sundry expenses" between 1 April 2016 and 30 September 2017 (the Company's extended 2017 year-end).

553. £74,988 was withdrawn from the Company's bank in cash between September 2016 and September 2017.

554. Those are pleaded, and derive from Perrys' work.

555. In his statement at paragraph 138 Deniz set out certain transfers from the Company's account to Mr Il's, between December 2012 and July 2015. They

were a mixture of dollar and sterling transactions, which equate to about £462,185.

556. Of the $1.2m, Mr Il says that these transfers were "properly made to pay salaries and other local expenses on the Oslo Project, Yemen Project and Pakistan 1 and to reimburse me for payments of salary and other local expenses".

557. There were two reasons behind this. The first was the avoidance of bank charges. As Mr Il wrote to Mr Yesilkaya on 9 March 2009 in relation to WSOC, "We have saved big amounts on transfer expenses with the system that we implemented for salary payment (as devised by Alper)". Alper was Alper Ozbozdoganli, an administrator at the Company; with Mr Yesilkaya's approval, the system originally involved payments to his account, which Mr Yesilkaya and Mr Girisen helped open. Mr Il says, though, that as Mr Yesilkaya neither liked nor trusted Mr Ozbozdoganli, from 2009 payments were made to his account instead: those for MKH-5 Moscow in 2009; Tijuana Mexico in 2010; Dubai in 2011; Karachi in 2012; Oman in 2012; Yemen between 2013 and 2015; and those for Pakistan Phase 1, the Chief of Mission Residence and Oslo.

558. The second reason was that, to ensure that workers were paid regularly, on occasion Mr Il himself advanced monthly wages for which he was due recoupment. Once, in Yemen, there was "a near riot due to late payment of salaries".

559. Mr Yesilkaya accepted that he knew that Mr Il's Turkish account was used for payment of Company salary and expenses. It was a "system we used to accelerate and simplify payments".

560. In earlier times, Mr Yesilkaya had also himself received significant payments from the Company. These are compiled in Annex C to the Petition, and total $652,649 over the period July 1994 to February 2002. We have some evidence of these: a suite of debit advices on which Mr Il has written "Labour + Material for Moscow".

561. "These payments and the expenses they paid are all properly documented in the Company's accounting records" says Mr Il. "Further, the salaries and other local expenses… would have been tabulated by the relevant site managers on the projects".

562. In cross-examination Mr Elma was shown examples of monthly sheets which he or Mr Eskinoba would produce for the Oslo Project, recording expenses. These would be sent to the Company, and money transferred from Mr Il. "I knew that salaries were paid by his personal account from Turkey". He was aware of a folder containing these receipts.

563. Perrys' report following the 15 June 2017 visit records that "Much of the company's running costs are incurred by Mr Il and then reimbursed to him on a monthly basis. These are supported by expenses claims attached to which are supporting invoices".

564. The 2016 and 2017 expenses and cash withdrawals Mr Il says will have been "legitimate expenditure on the Company's running costs including the London Embassy Project", but he requires access to the Company's books and records to verify the items.

565. In his evidence, and throughout trial, Mr Il has sought to justify the particular transactions, in no little part through the strenuous efforts of Mr Buckley. That has necessarily been by a sampling method. It is incomplete. As to all four categories the Company is entitled to an account, in the taking of which Mr Il and his advisers must have full access to all relevant Company documentation. The account is limited to an explanation of the transactions: it does not extend to extraneous complaints such as Mr Yesilkaya made in cross-examination, for example that there is "no evidence these workers have done these hours": that is a different point.

566. From the evidence at trial, I am not satisfied that any further relief should be granted, or adverse inferences drawn as to these payments.

Is Mr Il accountable for stripping monies from Oslo, Yemen, Pakistan 1 and London?

567. Mr Il told Perrys on their inspection that he allowed "a net profit margin of between 10% and 15%" when pricing a job, and that detailed costing records were not maintained.

568. The Particulars of Claim observe that the Oslo Project had a value of $8.5m, Pakistan Phase 1 $2.3m, Yemen $1m, and London $1.6m. The "project manager" for Oslo has confirmed a 15% margin; and for the others the Company says it "is to be inferred", it does not say from what, that it ought to have made "a profit of at least 15% totalling a minimum of US$735,000". It further infers that all these profits have been diverted to "Mr Il and/ or those connected with him".

569. Mr Yesilkaya confirmed that his case was that Mr Il had "pocketed profits".

570. These are nasty allegations to be made and maintained on such thin evidence. Counsel may well now throw in a 2020 transfer of $300,000 by Mr Il to ICC and wonder where he got it, and that ICC must have been funded by him somehow, and that Mr Il is someone capable of diverting Company business; but those are late and indirect makeweights. Mr Yesilkaya and Mr Arslan have been in control of the Company since May 2017, and Mr Il has been forcibly inactive since May 2018. Perrys have been instructed. Where is the evidence of direct investigation and direct findings? As Mr Buckley stressed, it is no part of the Company's case that it has not received the monies due on each of these projects in full. It follows that it must be relying on transfers out of those monies. Which? When? To whom?

571. This ground fails.

Is Mr Il accountable for payments to Collyer Bristow?

572. Collyer Bristow are now Mr Il's solicitors, but previously acted for the Company. Formally in issue are payments to them on 13 April 2017 of £2,640, and payments on 20 July 2017 of £4,830 and £5,280; these total

£12,750. Later raised is another payment, of £3,600 on 8 February 2017. The Company says it has paid for advice not for its benefit, but personal to Mr Il.

573. Invoices have been provided for the payments of £3,600 and £2,640, but not the others.

574. The £3,600 invoice dated 30 January 2017 was rendered to the Company. Its narrative states that the charges are "in relation to various matters, in particular in dealing with the failure of the accountants to deal with the due diligence questionnaire… and in relation to their failure to produce accounts; also dealing with correspondence from the solicitors for Haz Metal".

575. The £2,640 invoice dated 22 March 2017 was also rendered to the Company. Its narrative states that the charges are "in relation to your dispute with the company's auditors as to the delays in producing the annual accounts and in dealing with claims made by HAZ Metal and the other companies within the HAZ Group". Mr Il's Defence says that it "related to advice in respect of the problems with its accountants and advice in respect of, and work done responding to" the Demand Letter.

576. Of the 20 July payments, for which we do not have invoices, Mr Il's Defence says these were originally settled by Mr Il personally but he reclaimed the monies on that date as he "considered that it was appropriate for him to do so as he considered that the work done related to the affairs" of the Company.

577. I find letters from Collyer Bristow instructive. On 31 August 2018 they said that the invoices we have related "primarily" to the Demand Letter. The July payments were for two invoices rendered to Mr Il "concerning a variety of matters including the issues relating to the statutory accounts of the Company as well as to our client's position as a director… All the matters… are in relation to the affairs of the Company and properly payable by it".

578. RadcliffesLeBrasseur pursued that letter, though not until 2 November 2018. It asked for time entries for the invoices, as "it is not easy from the narratives alone [to determine] that the advice given was purely to the company"; that was a fair remark, especially given that Collyer Bristow themselves said they

related "primarily" to the Demand Letter. It also asked for the other two invoices and their time narratives, together with, ambitiously, the client care letter. Collyer Bristow's response of 20 November 2018 to all these was:

> "We have provided you with sufficient evidence to show that the Company was paying invoices which were for its benefit rather than simply for our client's benefit. The information which you now require is inevitably privileged".

579. There is no reason why privilege would attach to work for the Company's benefit.

580. Mr Il conceded in cross-examination that he had in his discretion attributed the invoices where there was overlapping work.

581. The July payments of £10,110 were on invoices which were rendered to Mr Il, are not going to be produced, and the details of which are privileged. I am satisfied that the work for which they billed was primarily for Mr Il; and he is liable to reimburse the Company this sum.

582. The February and April payments appear on their face mainly, but not entirely, for the Company's benefit; but I am troubled why, if so, time narratives are said to be privileged. It seems to me that Mr Il must reimburse these sums totalling £6,240 as well.

583. The Company's claim in respect of payments to Kinas Solicitors has been dropped, correctly. They provided it with employment law advice and services.

## Willow Tree Cottage

584. On 17 October 2005 Mr Il was registered, as he remains, as sole legal owner of Willow Tree Cottage, Hartspring Lane, Bushey. The Land Register records that the purchase price paid on 23 September 2005 was £550,000. On the same date Mr Il charged the property to Birmingham Midshires. Though now

in the name of Bank of Scotland, theirs is the only charge on the property. The charge secures the £439,951 borrowed by Mr Il for the purchase on an interest-only mortgage. The £110,049 balance he met personally.

585. The property was bought to aid the Company. It had vacated its premises at 451-453 North Circular Road, which it had been renting since selling them in April 2000, in May 2005, after refusing the long lease offered by the landlord. It had moved into a rented single room elsewhere on the North Circular Road and, as it had done before with Mr Savas, used space in Mr Il's home in Robin Lane. Willow Tree Cottage would provide office and storage space.

586. The Company's own bank, NatWest, had not been willing to lend to it, and it seems neither would any other institution. Mr Yesilkaya blames the Company's lack of funds, or creditworthiness, on Mr Il's mismanagement, without specifying in what he was meant to have failed. That appears to be a cover for the fact that, again, while Mr Il was prepared to put his hand in his pocket to aid the Company of which he was a director and shareholder, Mr Yesilkaya was decidedly not. Mr Yesilkaya may proclaim the Group's policy as being to own its own premises (except in the UAE where there had been local law complications), and that it had "always been known by all involved" that Willow Tree Cottage was "entirely beneficially owned by the Company", but does not explain how on purchase that was to be achieved here, when the Company, or Group, was contributing nothing.

587. While claiming entire beneficial ownership, the Company's particulars smudge the issue.

> "It was orally agreed between Messrs.Yesilkaya and Il that Mr Il would obtain the Mortgage to fund the purchase of Willow Tree Cottage, but that Haz International would pay all mortgage payments and expenses… such that it would be its beneficial owner".

At what point would it be its beneficial owner? What was to happen in the meantime? It was this arrangement which was apparently "confirmed" by Il to Mr Arslan at their 6 June 2017 meeting. I do not accept that evidence.

588. There is a further difficulty with this contention, and with Mr Yesilkaya's purported oral agreement (and indeed, as counsel belatedly recognised, with a claim to full beneficial ownership on a resulting trust basis): Mr Il himself had paid 20% of the purchase price.

589. Mr Yesilkaya says that at the time of their agreement, Mr Il did not tell him that he was paying anything. I find that incredible: it was basic information, especially as Mr Yesilkaya says they did discuss the mortgage. But even if it were right that Mr Il had not told him, it means that Mr Il agreeing that the Company would obtain full ownership (at some point) by paying the mortgage and expenses is supremely unlikely. His holding 15% of the Company at the time would not appear adequate compensation for what he had paid, and what he was liable for on the mortgage, at a time when the Company was in tight financial straits.

590. From its purchase until 2018 the Company used Willow Tree Cottage, initially as a store and offices, and later to accommodate workers as well. By 2007 the Company's financial state was sufficiently improved that it could fund the purchase of its own premises, which it still owns, at 154 Great North Road, Hatfield. (It was that purchase which appeared in the Company's annual accounts beginning in 2008, and not, contrary to Mr Yesilkaya's recollection, Willow Tree Cottage's.) Its use as accommodation was following an enforcement notice served by Hertsmere Borough Council on 28 June 2006, requiring cessation of use for business purposes.

591. The Company therefore paid rent to Mr Il throughout the period. It also, as the occupier, met the non-domestic rates. Whether the rent was above, or below, market rate (of course, there is a dispute as to that) does not matter and cannot be determined as we have no expert evidence. It was, though, as it turned out, paid, and was always sufficient to meet the mortgage. We do not know what, if any, capital has been repaid.

592. No writing compliant with section 53(1)(b) is specified in the particulars, and none has been otherwise identified. As above, neither can an express declaration of trust be discerned.

593. It is said that looking at the dealings as a whole a constructive trust can be inferred; and that that is supported by documents emanating from Mr Il which are inconsistent with his sole ownership.

594. On 7 April 2009 he wrote Mr Yesilkaya a general update on business matters within which was a discussion about "Willow Tree Cottage (Barn)".

> "The construction of a new building is not possible for this property. The only things allowed is to enlarge the current building and add pool, tennis court or similar areas of activities. As you know, this property is under my name. At the time of purchase, we were unable to acquire a commercial credit, so we bought it under my name, you were informed about this. We can transfer the ownership to the company by paying a 4% real estate tax. At the moment, the property is used to house the masons, and it is in ruins".

It must be said that the bucolic images "Willow Tree Cottage, Hartspring Lane" conjure are far from the dilapidated reality depicted in 2017 photographs.

595. In cross-examination Mr Il said that at this point he was thinking of leaving the Company, and had been for the previous year. That is not surprising: Mr Yesilkaya himself remarks on these periodic threats, and his comforting letter of 31 March 2009 dissuading Mr Il from this course has been quoted already. Mr Il said that he had told Mr Yesilkaya that he was thinking of refurbishing Willow Tree Cottage. Mr Yesilkaya said they could do it together, and if it was transferred to the Company, he would provide the money. So, said Mr Il, "I'm telling him what I can and cannot do". I find that evidence convincing, especially set against a transfer predicated on development; and Mr Yesilkaya agreed that they had planned to go into the development business.

596. It also receives some support from a much later email, of 7 June 2016 from Mr Yesilkaya to Mr Il.

> "Whom belong this premises? Legally it is yours, I know. But who is the real owner. Isn't Haz Int?

> During purchasing of the same, due to the then circumstances, the Land was registered on your name. Never the less, all repairs, renovations was done with the money of Haz Int. The instalment for the bank credits was paid by Haz Int.
> We have also discussed future planning how we can develop the area when Haz Int makes profit".

597. Planning had been discussed. Contrary to the Company's position now, and despite relations by June 2016 having broken, Mr Yesilkaya does not seek to derive any interest of the Company in Willow Tree Cottage except through payment for renovations (whatever those were), and, indirectly, payment of the mortgage.

598. He had another opportunity to assert the Company's interest when on 6 November 2015 Mr Il wrote, among other things:

> "You asked/ demanded me to sell my shares in Haz UK property to you (or somewhere else) a few years ago… If your wish is still the same, I'm ready right now. Let's find out the value of the property and perform this process".

599. Mr Yesilkaya's reply took Mr Il to be referring to Willow Tree Cottage rather than anything else.

> "I know that the old 'stall' was taken on your behalf because it could not be taken on behalf of the company and its installments are paid in some way every month. If the situation is something else, we can sit and talk about it".

600. All these exchanges have a degree of ambiguity, but they read to me as more consistent with beneficial ownership resting with the acknowledged owner, Mr Il; and ambiguity alone, especially when it may derive from second languages and translations, does not establish a constructive trust.

601. The Company also relies on a witness statement made by Mr Il in December 2012 in the Watford County Court. The Company was being sued by its

former accountants, Macilvin Moore Reveres LLP ("MMR") for non-payment of invoices. Within his statement Mr Il addresses minutes of a meeting prepared by MMR, which must have pre-dated TaxAssist's appointment in October 2010.

> "I do not believe they are an accurate reflection of what the meeting was about. The meeting was arranged for a number of reasons, but mainly to finalise Haz's accounts for the years in question [2006 and 2007 (it seems)]. The main issue was the mis-allocation of the Astana US Embassy project. The second issue discussed was that of tax relief on Haz's property purchase of Willow Tree Cottage… That was a major issue which had to be resolved, however there is no reference at all in the Minutes regarding that discussion".

602. In cross-examination, Mr Il said that the problem was not that tax relief had not been claimed, but that it had, which was one of the reasons behind an HMRC investigation. As Willow Tree Cottage never appeared in the Company's accounts, whether prepared by MMR or their successor TaxAssist, and whether before the HMRC investigation or after, I cannot find that the literal words here are an acknowledgement of ownership.

603. There is also an odd ICC document of 5 May 2016 concerning Yucel Il, Mr Il's brother. Addressed "Dear Sirs" and with "Jan M" (Jan Junior) at the bottom, it states that Yucel Il

> "has been known to us for over ten years, working with us on and off for a number of years… He has recently started working with us again, as an electrician.
>
> Mr Il has also been staying at the company accommodation in Watford for the last 4 years or so. When he is working with us, the rent is deducted directly from his salary. He is not know to have failed to pay rent…
>
> Further, in the unlikely event that he fails to pay rent, we undertake to pay future rents for him…".

604. Extrapolating from ICC's incorporation date of 13 May 2013, it is suggested that "the company accommodation" of Willow Tree Cottage means that it is Haz International's accommodation; and thus that this is an indication of ownership. It is not. This is apparently a reference for Mr Il's brother, who had at times worked for the Company, given by ICC to a property agency. As with other documents emanating from Jan Junior, it stretches facts, here by elision. It is not a document directed at, or even contemplating, the question of beneficial ownership.

605. Finally, one of the reasons for Mr Il's suspension on 23 May 2018 was that he "has used Company monies to pay the mortgage in respect of the property known as Willow Tree Cottage". If it was the Company's, what was the issue?

606. I am unable to infer a constructive trust, whether of 100%, or to any extent.

607. The resulting trust analysis also fails. The Company paid for its occupation of Willow Tree Cottage. Among the multitude of breaches pleaded against Mr Il, there is no challenge to this arrangement. The monies it paid were used to meet the interest-only mortgage, and perhaps for capital payments as well. In making those payments there was no intention that it should gain ownership: it was just an ordinary commercial transaction.

608. Willow Tree Cottage is beneficially, as well as legally, Mr Il's.

## Conclusions

609. Mr Il primarily seeks just and equitable winding-up. This was a quasi-partnership Company, to which Mr Il dedicated much of his working life, and whose affairs he managed, deliberately without Mr Yesilkaya's involvement, for around 25 years. He it was who invested time and his own money in its success. Assuming a valuation date of 31 March 2016, which would be consistent with the February 2016 agreement and the Heads of Terms, much

of the value of the Company would derive from his efforts, and not Mr Yesilkaya's.

610. The catastrophic loss of trust and confidence is demonstrated by these proceedings, into which both sides have thrown everything they could, but with both largely failing to establish their allegations or, as with the Disputed Debts, one's wrongdoing matching the other's.

611. The Company's business can no longer be conducted on the footing on which it was established.

612. So, without more, a just and equitable winding-up would appear an appropriate mode of severing the relationship and realising the Company's assets.

613. Even consolidated, the relatively minor defaults of purloining the computers, paying Collyer Bristow, and paying Ms Morgan would not displace that relief. But that leaves us with Pakistan Phase 2.

614. It may be said that Mr Il did not gain financial benefit from switching the project; that he did so only after the February 2016 agreement; and that as relations had already broken for reasons not obviously attributable to either side, it would be unduly harsh to deprive him of the relief to which he would otherwise be entitled.

615. The relief, though, is equitable. Its foundation here is limited to the failure of relations. Mr Yesilkaya, the other in that relationship and certainly no more to blame than Mr Il for that failure, does not want the Company wound up for reasons which are cogent. The Company is by name and ownership linked to the financially-successful Haz Group. While for the period of the Petition what would otherwise be its business- the ongoing project at Erbil, perhaps some others, and ongoing tenders- has been carried out by Haz Mermer, on resolution of the Petition it will be transferred back to the Company, assure its closing submissions. So it still has a role with the Group and, if it can be, the stigma of its winding-up, even as solvent, should be avoided.

616. Mr Il is applying to the Court for winding-up of a Company from which he deliberately sought to strip the business, at a time when he had been left temporarily in charge pending the agreed purchase of his interest, and when he had been told that decisions as to its business had to be collaborative. What is more, to later justify his actions, he deliberately wrote misleading correspondence to his fellow director and quasi-partner.

617. In my view, it would be both inequitable and unjust to give Mr Il the relief he seeks over the objection of his quasi-partner.

618. There being no separate grounds of unfair prejudice, it follows that there will be no relief on that claim, either.

619. For completeness, I add two points.

620. An immediate winding-up order would not anyway have seemed the fair course for three related factors: the Company's ongoing position and role within the Haz Group; Mr Il's interest being only 30%; and, of greatest weight, that agreements to split the ways were made in February and October 2016 and it was Mr Il who failed to progress them: in particular, and despite giving instructions and paperwork to the accountants in April 2016, by failing to ensure that the Company's 2016 accounts were drawn up swiftly, and by failing to provide the completed due diligence questionnaires until nearly 8 weeks after he had received them back from his accountant. At least after the Heads of Terms, all the keenness came from Mr Yesilkaya.

621. Those matters would indicate that further time ought to be given for settlement in light of the judgment.

622. The second point is this. Mr Il remains a significant shareholder in the Company, though through his own actions without entitlement to oversight as a director. The remaining directors, Mr Yesilkaya and Mr Arslan must still have regard to his interests, and to the success of the Company as a whole, especially given that the Court has been told that it is viable, and will have particular business transferred to it. Mr Il could still, on different facts, present a fresh petition.

623. The Petition is dismissed.

624. On the Claim, the Company is entitled to relief by way of account as to the application of the $1,217,689, £59,090, £74,988 and £462,185. It is entitled to reimbursement of the monies paid to Ms Morgan, and the £16,350 Collyer Bristow invoices. There can be no question of section 1157 relief: the payments to Collyer Bristow relieved Mr Il of his own liability, and those to Ms Morgan were far removed from any services she ever provided.

625. There is only one alteration of substance to the draft judgment which was circulated to the parties four weeks ago. My final paragraph invited them to agree an order, including as to costs and consequentials. It is with a distinct change of tone that I can record that they have done that, and more. I will in a moment approve the proposed order recording Mr Il's ownership of Willow Tree Cottage and the dismissal of his Petition; and staying the Claim on the Tomlin terms which will, one must hope, close the covers on this once happy relationship.