



Neutral Citation Number: [2021] EWHC 501 (Ch)

Case No: BL-2019-001888

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 11/3/2021

**Before:**

**MASTER CLARK**

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**Between:**

**BALASUBRAMANIAM UTHYAVEL**

**Claimant**

**- and -**

**RAJATHURAI RAVIRAJ**

**Defendant**

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**Edward Francis** (instructed by **JW Solicitors**) for the **Claimant**  
**Jonathan Upton** (instructed by **Greater London Solicitors Limited**) for the **Defendant**

**Hearing dates:** 9, 10, 11, 14 December 2020  
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**Approved Judgment**

I direct that this approved judgment, sent to the parties by email on 11 March 2021, shall be deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

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## **Master Clark:**

1. This is the trial of preliminary issues in a claim concerning the ownership of the business and freehold sites of two convenience shops in South London. The protagonists are Mr Balasubramaniam Uthayavel, the claimant, and Mr Rajathurai Raviraj, the defendant. Sadly, though not unusually, the trial was characterised by high levels of emotion and acrimony.
2. The two sites are:
  - (1) 131 Wrythe Lane, Sutton, Carshalton SM5 2RU (“131 Wrythe Lane”), where St Helier Food & Wine (“the St Helier business”) traded;
  - (2) 66 High Street, Caterham, CR3 5UH (“66 High Street”), where the business entitled Costcutter traded, later changing its name to R U Food & Wine (“the Costcutter business”).
3. The issues to be determined are:
  - (1) whether the parties traded in partnership in the St Helier business;
  - (2) whether 66 High Street (owned in joint names) is a partnership asset; if not, on what terms was it acquired;
  - (3) whether the parties traded in partnership in the Costcutter business;
  - (4) if so, whether the freehold of 131 Wrythe Lane (owned in the defendant’s sole name) is a partnership asset;
  - (5) if the freehold of 131 Wrythe Lane was not a partnership asset, whether the defendant holds it on constructive trust for himself and the claimant in equal shares;
  - (6) whether the monies held in the following accounts in the joint names of the claimant and the defendant were partnership monies, beneficially jointly owned, or beneficially owned by the defendant:
    - (i) Barclays bank account no. 20799629 (“the Barclays account”);
    - (ii) Alliance & Leicester (later Santander) account no. 5992931 (“the St Helier Santander account”);
    - (iii) Alliance & Leicester (later Santander) account no. 6283454 (“the Costcutter account”);
  - (7) if there was a partnership between the parties, the terms of that partnership, in particular, as the shares in which they were interested in capital and profits, and liable for partnership debts and losses;
  - (8) what, accounts, if any should be taken between the parties on dissolution of any partnership, or ordered in respect of the above properties, businesses and bank accounts.

## **Legal principles**

4. The legal principles as to the formation and terms of partnership were broadly agreed by the parties, and are set out below in summary.
5. Whether a partnership does or does not subsist between any particular persons is a mixed question of law and fact, and not a mere question of fact: *Keith Spicer Ltd v Mansell* [1970] 1 W.L.R. 333.
6. Partnership is a legal relationship arising under the Partnership Act 1890, defined in section 1(1) in the following terms:-

“Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.”

7. Section 2 of the 1890 Act sets out a series of mainly negative rules governing whether a partnership exists:-

“In determining whether a partnership does or does not exist, regard shall be had to the following rules:

- (1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

...

- (3) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business ...;”

8. As explained by the editors of *Lindley & Banks on Partnership* at paragraph 5-03 (after noting that the rules will in many cases be of limited application on the facts):-

“In cases of the latter type, the statutory rules in effect give way to a principle so fundamental that it is not expressly stated in the Act itself, namely that, in Lord Lindley’s original formulation:

‘in determining the existence of a partnership ... regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case. Although this principle is no longer expressed it is still law.’”

9. Section 20 (1) of the 1890 Act provides that:-

“All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.”

### **Evidence – overview**

10. My approach to the evidence is, so far as possible, to base my conclusions in relation to disputed matters on the documentary evidence. However, many of the agreements or arrangements between the parties were made orally; and in relation to many of them there is a direct conflict of evidence between the claimant and the defendant. It is necessary therefore to assess the reliability of each of these two key

witnesses. In doing this, I have taken into account the following factors, so far as relevant<sup>1</sup>:

- (1) the consistency of the witness's evidence with what is agreed or clearly shown by other evidence to have occurred;
- (2) the internal consistency of the witness's evidence;
- (3) consistency with what the witness has said on other occasions;
- (4) the credit of the witness in relation to matters not in issue in the claim;
- (5) the demeanour of the witness.

11. I have also kept in mind that:

- (1) demeanour is not of itself a reliable indicator of truthfulness;
- (2) lack of fluency in English can affect the way in which a witness responds to questions;
- (3) the fact that a witness has been untruthful about some things does not show that they have been untruthful about everything (*Martin v Kogan* [2021] EWHC 24 (Ch));
- (4) a witness may lie to bolster a true story, or to try to bolster a false one (*Martin v Kogan*);
- (5) a witness' evidence may be wholly wrong without his or her having lied – their recollection may be distorted by reinterpretation of what happened, or even delusion (*Martin v Kogan*).

### **Witnesses**

12. All of the witnesses in this claim were born in Sri Lanka, and spoke Tamil as their first language. None of them were fully fluent in English. It was clear that the statements of the non-professional witnesses had not been drafted in their own words (contrary to the guidance in para 19.2 of the Chancery Guide). This was very unsatisfactory and increased the difficulty of evaluating the weight to be given to their evidence.

### ***Claimant's witnesses***

13. The claimant's witnesses were:

- (1) the claimant;
- (2) Thayamanthy Suresh, the claimant's sister;
- (3) Subramaniam Suvendrarajan, the defendant's brother in law;
- (4) Somasundaram Jayandra, a mortgage broker.

### ***Claimant***

14. The claimant was not an entirely satisfactory witness. In his oral evidence, he contradicted himself on a number of points in his witness statement, for example, as to whether, when the business at 131 Wrythe Lane was acquired there was a separate deed of assignment of the assets and goodwill, whether the solicitor who acted in the transaction knew that he was interested in the purchase (though not a named party). I approach his evidence with some caution.

### ***Thayamanthy Suresh***

15. Ms Suresh did not have strong English. Although she is not independent of the claimant, she gave her evidence clearly and straightforwardly.

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<sup>1</sup> identified by Professor Hazel Genn in "Assessing Credibility" published in the Tribunals Journal 2011

*Subramaniam Suvendrarajan*

16. The evidence of Mr Suvendrarajan was challenged on the basis that he had been dismissed by the defendant from his job at St Helier for stealing. He responded robustly by explaining that he left the shop for family reasons, which it is not necessary to set out. There was no evidence from the defendant that Mr Suvendrarajan had stolen from him, and these allegations are not therefore a basis for concluding that his evidence was not honest, notwithstanding his clearly manifested strong feelings of anger towards the defendant.

*Somasundaram Jayandra*

17. Mr Jayandra was also a clear straightforward witness, who was independent from the claimant.

*Defendant's witnesses*

18. The defendant's witnesses were:
- (1) the defendant;
  - (2) Thavothini Raviraj, the defendant's wife;
  - (3) Rajaratnam Kalaiyalahan, a chartered accountant, who prepared accounts and tax returns for both businesses;
  - (4) Karalasingam Jeevarajah, who described himself as a cousin of the claimant;
  - (5) Mageshwaran Manogaram, a family friend of Mr and Mrs Raviraj.

*Defendant*

19. I consider the defendant to be an unsatisfactory witness. When giving evidence in relation to matters that supported the claimant's case, he put forward explanations which were either demonstrably false (e.g. that the van used by the St Helier business could not be parked anywhere else – see para 44 below) or highly implausible. I do not place any reliance on his evidence where it is unsupported by contemporaneous documents.

*Thavothini Raviraj*

20. Mrs Raviraj's evidence was that she had a high level of involvement with the St Helier business, working there both before and after her children were born. She is understandably invested in the outcome of the claim. She sought to put forward arguments in support of her husband's case, and was very emotional when giving evidence. I approach her evidence with caution.

*Rajaratnam Kalaiyalahan*

21. Mr Kalaiyalahan presented as a straightforward witness. However, he had difficulty explaining the treatment of property income in the defendant's self-assessment tax returns in different years, or the amount of tax relief attributable to financing costs. It was clear from his evidence that he did not carry out any real interrogation of the trading figures provided to him. He was unaware that 66 High Street was jointly owned by the claimant and the defendant. I find his evidence of limited assistance as to the actual arrangements between the parties, which were not reflected in the documents he submitted to the Inland Revenue.

*Karalasingam Jeevarajah*

22. Mr Jeevarajah had a very limited command of English. He said he was the cousin of the defendant, but could not explain their precise relationship. He did not write his witness statement, and first spoke to the defendant's solicitor after the witness statement was sent to him. He was not able to read it without assistance, and had signed it after the solicitor had read it out to him translated by her into Tamil. I do not consider that his evidence is of any significant weight.

*Mageshwaran Manogaram*

23. Mr Manogaram also had a very limited command of English. His witness statement was not in his own words. The address given in it was incorrect, and although the statement refers to "each occasion" when the defendant had countersigned passport applications as "proprietor", in cross-examination he accepted that this had happened on only one occasion. I find his evidence of very limited assistance.

**Facts**

24. The claimant and the defendant were longstanding friends, having met at Lewisham College, where they were both studying, in 1991. In 1997, the claimant became the shop manager of a convenience shop within a Total petrol station at 123 Wrythe Lane. In 2001, he recruited the defendant as a customer services assistant at that shop.

*Acquisition of 131 Wrythe Lane and the St Helier business*

25. A short distance away from the petrol station, at 131 Wrythe Lane, was a sub post office and convenience shop called Tudor Post Office. The building was owned by Mr Nasir Ahmad, and he and his wife ran the shop and the post office. The claimant visited the post office regularly, and became friendly with both of them.
26. In the second half of 2002, Mr Ahmad asked the claimant whether he would be interested in buying both the post office and convenience shop business. The claimant told the defendant about this opportunity. Eventually, Mr Ahmad agreed to sell the shop business (but not the post office) for £35,000. This involved the grant of a lease of the ground floor shop itself, the transfer of the existing fixtures and fittings, and the assignment of the goodwill in the business. The stock was to be bought separately at value. Mr Ahmad required a deposit of £5,000 (non-refundable but to be deducted from the purchase price).
27. The claimant's evidence was that contractual restrictions in his employment contract with Total prevented him from setting up or operating any business on his own account. He therefore, he said, discussed and agreed with the defendant that the defendant would acquire the business and take the lease of 131 Wrythe Lane in his sole name, to be held for their joint benefit as partners. It was also agreed, he said, that they would own the business in equal shares, would contribute to its costs equally and would share equally in its profits and losses.
28. Whether this express agreement was made is a central issue in the claim. The defendant denies that there was any such agreement. His case is that he is the sole beneficial owner of the St Helier business. His written evidence states that the claimant had no intention to start up a business because of his personal problems and financial circumstances, and denied ever discussing going into partnership with

him. However, in his oral evidence, he said that the defendant had said that he could earn more money at the petrol station than in the business. This shows that the parties *did* discuss the claimant going into the business. As for his reasons for not doing so, the inconsistency between the defendant's written and oral evidence as to this indicates neither explanation is true.

29. In any event, there is contemporaneous documentation showing that the claimant had the financial resources to contribute to the price of the business. On 4 March 2003, he withdrew £2,525 from his savings account. On 16 and 17 June 2003, he withdrew cash of £4,100, £6,900 and £2,500 on 3 different credit cards, making a total of £13,500. The defendant did not suggest any other purpose for which these monies were used.
30. As for the claimant's reasons for not being a party to the lease, it is not, in my judgment, implausible that his employment contract would have prohibited him from being involved directly or indirectly in a competing convenience shop business, though one would expect a geographical limitation on the restriction (see, for example, *J. H. Dewhurst Limited v White* (unrep, 28 January 1955)). As to whether his employer Total would have found out if he breached such a restriction, he said that staff members at the Total convenience store regularly used the Post Office, and would have quickly learned that he was part of the "new management". I accept this evidence.
31. A firm of solicitors, Raja & Co, were instructed to act in the acquisition of the business. The claimant's oral evidence was (contrary to his written evidence) that he did not meet the solicitor, Mr Raja, and that Mr Raja was not told that the claimant had an interest in the lease, and I so find. The lease was granted for no premium and for a term of 15 years on 17 June 2003. It was witnessed by the claimant in the post office at 131 Wrythe Lane. Mr Ahmad produced the lease for the defendant to sign.
32. As for payment, the defendant said that he paid the whole of the deposit of £5,000 and the whole of the purchase price of £30,000, plus solicitors' costs. There was no documentary evidence of those payments. He claimed, without stating an amount, that his cousin Mr Jeevarajah helped him; and similarly, without specifying an amount, Mr Jeevarajah claimed to have given the defendant financial help to buy the St Helier business. In his oral evidence, Mr Jeevarajah said he had lent the defendant £8-9,000 in 2003, even though at the time was employed at a convenience shop on a weekly wage of £200. I reject that evidence. I do not accept that the defendant paid the full purchase price of £35,000 solely from his own resources, and I find that the parties contributed equally.
33. On 18 June 2003, a valuation of the stock at 131 Wrythe Lane was carried out. The invoice for this was addressed to the defendant. On 12 August 2003, a provisional off licence was granted in the joint names of the claimant and the defendant. This was followed on 21 August 2003 by their application for a full off-licence, in which the defendant was referred to as proprietor and the claimant as manager. I accept the claimant's evidence that this was because the agent who applied for the licence, Lockett & Co, were provided with a copy of the lease, and applied for the licence on the basis of the ownership shown on the face of the lease.

34. The defendant alone was registered for VAT for the St Helier business, and filed Tax Returns on the basis that he was solely entitled to the business. Mr Kalaiyalahan's evidence was, and I find, that he was not told anything to indicate that the defendant was not a sole trader.

*The Barclays account*

35. In August 2003, the parties opened the Barclays account. This account was in their joint names "trading as St Helier Food & Wine", and referred to them as partners, both in the address for the account and, importantly, below the signature line on cheques, so as to identify the capacity in which cheques were signed. The defendant's evidence was that it was the bank's decision to describe them as partners. I consider it very unlikely that the bank would have referred to the parties as partners unless it had been told that, particularly when being held out as a partner gives rise to liability for the debts of the partnership (under s.14(1) of the Partnership Act 1890). I therefore reject the defendant's evidence on this issue and find that the parties told the bank that they were partners.
36. The defendant's reasons for opening a joint account were also unconvincing. He said it was to enable the claimant to go to cash and carry outlets and help running the shop when he (the defendant) was away in Sri Lanka. First, as the defendant acknowledged, the claimant could have been an authorised signatory on the account (or could have been an additional cardholder on a business credit card). Secondly, the defendant's passport does not show extensive travel to Sri Lanka. Thirdly, it is inherently implausible that the sole owner of a business would open and operate the principal current account used for the purposes of the business in joint names with another, even if a close friend.
37. The defendant claimed to have used the Barclays account for his personal payments and transactions. In fact, the statements themselves showed very few non-business payments, and the vast majority of transactions in the account were business ones. He conceded that payments for his personal credit cards would only be made from the account by default (to avoid the bill being unpaid) if he failed to pay by his usual other means.

*Barclays merchant account*

38. At the same time as opening the Barclays account, the parties also set up a merchant account with Barclaycard for processing of card payments at the Wrythe Lane shop. The reasons given by the defendant for the Barclays account being in joint names could not apply to the merchant account, and its existence points to there being a partnership.

*Commencement of trading of the St Helier business*

39. The claimant's evidence is that he was extensively involved in all aspects of setting up the shop for trading: setting up cash and carry and other trading accounts, and arranging the purchase of new equipment. He says he decided on what range of stock to offer and on its arrangement and layout and on pricing. He negotiated, he says, discounts and special offers; and dealt with staff shifts and days off. The opening hours of the shop were 6am to 11pm, 7 days a week. From the initial opening until 2005, the claimant says that he and the defendant worked full time in



the shop, one working a morning shift and the other the afternoon/evening shift with a 1 hour overlap. They both drew £250 a week because that was all the business could afford. The defendant agrees that the claimant received £250 a week, but says that these were wages for a 5½ day week. In the light of my findings above, and the claimant's experience as a convenience store manager, I accept that the claimant was involved in setting up the shop; and I prefer his evidence as to the hours he worked to that of the defendant.

*The Barclays business loan*

40. In February 2005, the parties took out a business loan of £18,000 in their joint names, which was used to fund shopfitting works. The loan monies were paid into the Barclays account, and the monthly repayments of £394.25 were paid out of the account. The defendant said that the loan was in joint names because the Barclays account was. In my judgment, it is very unlikely that the claimant would not have exposed himself to this liability unless he considered himself to be benefitting from the investment in the St Helier business for which the loan was used. I find that the claimant was a party to the loan because he considered himself to be a partner.

*Santander joint account*

41. In 2005, the parties opened the St Helier Santander account in their joint names. This was used for monies from PayPoint, the National Lottery and newspapers. Even if the reasons put forward for the Barclays account being a joint account were accepted, it is difficult to see why the claimant needed to be a party to this second joint account, unless he were trading in partnership with the defendant.

*Claimant starts working at Gatwick Airport*

42. In April 2005, the claimant took another job, working for Servisair at Gatwick Airport. He continued to work part time in the St Helier business. His evidence, which I accept, was that he continued to be paid £250 a week, but the defendant's drawings were increased to £500 a week to reflect his greater role in the business.

*Toyota van*

43. In 2005, the claimant bought a Toyota HiAce van. This was registered in his name, with the defendant as a named driver. It was kept at 131 Wrythe Lane and was used to carry stock bought from the cash and carry shops for the St Helier business.
44. The defendant's evidence was that the van was kept at 131 Wrythe Lane because the road at the claimant's home was narrow, and it was difficult for larger vehicles to pass if his van was there. The evidence before me included photographs of the road, Woodcrest Walk, Reigate, Surrey. It was clear from these that a van could have been parked there, and there was also a layby where a van could easily be parked. I reject the defendant's evidence that the van could not be kept outside the claimant's house, and find that it was kept at 131 Wrythe Lane because it was extensively used in that business.
45. More importantly, this van and its successor (see para 64 below), were the only vans used for the St Helier business. The costs of registering, insuring and repairing the van were paid for by the St Helier business, in the main from the Barclays account. There was no reason for such arrangements if, as the defendant alleges, the claimant had no interest in the St Helier business, particularly since he

was not working full time at the shop from April 2005 to September 2006. I find that the van was a partnership asset.

*Joint off licence*

46. On 4 October 2005 an off-licence for 131 Wrythe Lane was granted jointly to the claimant and the defendant, under which the defendant was the designated premises supervisor, and given a personal licence number. This was followed on 18 October 2005 by the grant of a personal licence to the claimant, which enabled him also to act as the designated premises supervisor.

*Claimant stops working at Gatwick Airport*

47. In September 2006, the claimant left his job at Gatwick Airport and returned to work full time at the shop.

*Purchase of 66 High Street and commencement of Costcutter business*

48. On 2 May 2008, the parties completed their purchase of 66 High Street. This was a commercial property consisting of a ground floor shop with a flat above. It was 9 miles by road and a 25 minute drive from 131 Wrythe Lane. The price paid was £380,000, of which £304,000 was provided by a NatWest mortgage. The defendant's evidence was that the balance was paid by him and the claimant.
49. £40,000 of the balance was paid on 26 March 2008 by bankers' draft from the Barclays account, funded by cash paid into the account on the same day. The remainder, together with stamp duty, legal costs and fees, totalling £50,081 was paid from the Santander St Helier account. The statements for this account at this time were not in the evidence, but a cheque for this amount, drawn on that account and signed by the defendant was. He said that the cheque was not accepted by the conveyancing solicitors, but he did not suggest that the funds to complete the transaction came from any other source. The claimant's evidence, which was not contradicted by the defendant, and which I accept, is that the cash for both payments came from the St Helier business.
50. The arrangements for the purchase of 66 High Street shed light on the parties' arrangements in respect of the St Helier business. If, as the defendant contends, he was the only beneficial owner of that business, then all of the total sum of £90,081 would have been his funds. It is difficult to see why he would have agreed to a 50/50 split in the ownership of 66 High Street if that were the case.
51. The defendant's evidence was also that it was agreed that the claimant would run the shop on the ground floor, and that he (the defendant) would let out and receive the rent for the flat on the first floor. It was agreed, he said, that the claimant would take sole responsibility for the mortgage, in return for rent free occupation of the shop. I reject this evidence for 2 reasons. First, even given the vagaries of the rental market, it would be obviously unfair to the claimant, who could have no reason to accept that he should bear the whole burden of the mortgage (80% of the price paid), leaving the defendant free to take the rent from the flat. Secondly, the Barclays account statements show the vast majority of the mortgage payments being made from that account for the period April 2012 to October 2017. The defendant's evidence that he "sometimes" paid the mortgage from the Barclays

account (and was refunded in cash by the claimant) is untrue, given the frequency and number of the payments.

52. The claimant's evidence was that they agreed to set up together a second convenience shop in the ground floor of 66 High Street, let out the residential flat above, using the income from the letting to meet the monthly mortgage payments, with any shortfall being met from the general business takings. The store was to be an extension of their existing business at 131 Wrythe Lane.
53. There is no documentary evidence as to how the mortgage payments from 2008 to 2012 were paid. The claimant's evidence is that they were funded from the rental income from the flat at 66 High Street. This, he said, was paid in cash by the tenants to the staff at the Costcutter business, and taken by the claimant to the St Helier business where it was put in the safe. The defendant agreed as to the source of the mortgage payments. However, his evidence is that it was agreed that only "initially" and "for a matter of months" the mortgage payments would be met from the flat rental income, after which he would be entitled to receive all of the rental income. The effect of this evidence is that the claimant did not honour this agreement, and that the defendant never received any rental income to which he was entitled over a period of over 10 years. He does not give evidence of any complaints made by him about this, nor any steps taken by him to direct the rental income to himself. I find this part of his evidence inherently implausible and reject it.
54. As noted, from April 2012 to October 2017, the mortgage payments were made from the Barclays account. After October 2017, the payments were made in cash directly into the NatWest mortgage account.
55. The new shop was refurbished and fitted out at a cost of £51,612.50, invoiced to the claimant. This was because, he said, because he was able to recover the VAT on the invoice. There is no documentary evidence as how it was paid. The claimant says that the invoice was paid by the defendant using his personal credit card, and that he reimbursed himself for this expenditure in cash from the accrued takings of the business held in the safe at 131 Wrythe Lane. The defendant's evidence is that the shop refit was entirely at the claimant's expense. Given the arrangements between the parties as to the purchase of the property, I consider it most likely and find that it was ultimately paid for from the joint resources of the parties.
56. The shop opened for business on 2 July 2008. It operated under a franchise agreement with Costcutter, and opened under that name. The shop had a diary (for the academic year 2008-2009), in which the defendant wrote:

"COSTCUTTER open on 2<sup>nd</sup> of July 2008 - by bala and Amman – our 2<sup>nd</sup> building. 3<sup>rd</sup> ??"
57. This is a key piece of contemporaneous documentary evidence. It is a clear acknowledgement by the defendant that the Costcutter shop was the second business that he and the claimant were going into. The defendant's efforts to give it another meaning were wholly unconvincing. He said that the reference to "2<sup>nd</sup> building" meant his 2<sup>nd</sup> building, his first building being his home at 99 Warwick

Road. This does not explain why it is referred to as “our” 2<sup>nd</sup> building i.e. his and the claimant’s. He also said that the “first building” could not be 131 Wrythe Lane, because at that stage he did not own the freehold, an unconvincing distinction.

58. The diary was used to record staff hours (up to November 2014) and electricity readings (up to August 2016). It also contained, in the defendant’s handwriting, a list of names and telephone numbers: suppliers and tradesmen (including the shopfitter referred to above) and personal numbers of the defendant, including his family and “Sumitra” (with whom he had an extra-marital relationship). In an attempt to explain why these latter numbers were in the diary, the defendant said that it had been kept and used at 131 Wrythe Lane initially and brought to 66 High Street later. I reject this evidence. There is nothing in the diary (which only starts in July 2008) to indicate that it was used anywhere other than 66 High Street, and it shows a high degree of involvement by the defendant in that business.
59. In about August 2008, the parties opened the Costcutter account, the name on the account being “Costcutter”. Both parties were signatories and had debit cards on this account. The defendant’s evidence was that this was to make it easier to help out in the claimant’s business when he required it i.e. when the claimant was on his annual holiday in Sri Lanka. I reject this explanation for the same reasons as I rejected the explanation put forward by the defendant for the claimant being a joint account holder of the Barclays account. I find that the Costcutter account was opened as a joint account for the Costcutter business, in which both parties were actively involved.
60. On 5 August 2008, the defendant completed an application form for an electricity supply to 66 High Street, backdated to 2 May 2008. In this the company name is stated as Costcutter, and its owners as the defendant and the claimant. The form is signed by the defendant. Underneath his signature is that of the witness, and the address “65 [or possibly 66] High Street, Caterham”, and “Position: partner”. The defendant’s evidence was that he was not sure if it was handwriting. He could not give any explanation as to why the form had been completed that way. I find that it was completed by the defendant, and that he described himself in it as a partner in the Costcutter business.
61. The defendant also applied in his name for new trading accounts with Smiths News and PayPoint for the Costcutter business. Both parties were keyholders for the ADT alarm at the shop. On the premises licence for the sale of alcohol, he is named as the designated premises supervisor. I note that this was granted to “R U Food & Wine”, which became the trading name of the shop when the Costcutter franchise ended in 2010.
62. The obvious derivation of the name “R U” is the second names of each of the parties. Although the defendant submitted that the “R” derived from “Rama” and that this was a name by which the claimant was known, there was no evidence that this was the case in the statements of any of the defendant’s witnesses, and it was denied by the claimant. I do not accept that the claimant was known as “Rama”, and I find that “R U” derived from the names “Raviraj” and “Uthayavel”, reflecting their joint involvement in the business.

63. The claimant alone was registered for VAT and completed Tax Returns, prepared for him by Mr Kalaiyalahan on the basis that he was a sole trader as R U Food & Wine. Again, I find that Mr Kalaiyalahan was not told anything by either party to indicate otherwise.

*The second van*

64. In October 2011, a Mercedes Sprinter (reg no. KV08 WFM) was bought and registered in the claimant's name. There was no documentary evidence as to how the purchase price was provided. All of the costs of the van, such as road tax, insurance, servicing and repairs were paid from the Barclays account. The defendant was a named driver on the insurance policy. All of this points to the parties having a joint interest in the van, and I so find. Although by this stage the parties owned 66 High Street, the van continued to be parked at 131 Wrythe Lane. The defendant's explanation for this was that there was no room to park it at 66 High Street. He persisted in this even when shown a photograph of the rear parking area (which was plainly large enough to park a van) and the sales particulars for the property, which stated that it had a parking space for 2 cars. I find that there was room to park the van at 66 High Street, but that the parties chose to keep it at 131 Wrythe Lane.

*Purchase of freehold of 131 Wrythe Lane*

65. In June or July 2012, Mr Ahmad offered to sell the freehold of 131 Wrythe Lane, consisting of the ground floor shop and 2 residential flats.
66. There is an issue as to the purchase price of the freehold. The claimant says that it was £500,000, but that Mr Ahmad insisted that only £350,000 should be recorded as being paid, with the remainder paid in cash. The defendant's evidence is that the purchase price was as shown on the documents with no cash top up. It is not necessary for me to decide this issue, but I note that this allegation by the claimant is consistent with his allegation that Mr Ahmad required part of the price of the St Helier business to be paid in cash and undocumented.
67. The parties went together to the offices of Mr Jayandra and he completed an application form for a mortgage loan. The defendant sought to explain the claimant accompanying him by saying that they went to most places together at that time – I do not find this convincing. The more likely explanation is that the claimant came because he was involved in the purchase. Taking this and Mr Jayandra's evidence (which I accept), I find that the initial application made jointly, and that this was refused, because the accounts for R U Food & Wine showed poor trading. However, the lender, Shawbrook Bank, indicated that it was willing to make the loan to the defendant alone on the basis of the St Helier accounts. The transaction proceeded on that basis.
68. The loan granted by Shawbrook Bank was for £224,980. The monies needed to pay the balance of the purchase price were provided as follows:
- (1) £1,000 was paid directly to the conveyancing solicitors from the Barclays account on 23 October 2012;
  - (2) £35,000 (presumably the 10% deposit on the recorded price of £350,000) was paid from a Lloyds bank account in the name of the defendant and his wife ("the Lloyds account") on 17 October 2012;

- (3) £99,598, being the amount required to complete, was paid to the solicitors by cheque drawn on the Lloyds account.
69. As to the source of those monies, £14,000 was transferred from an account in the claimant's name, £55,598 from a St Helier account, and sums totalling £64,000 were paid into the account using a paying in book. The claimant's case is that the balance of the purchase price was funded from cash from the business. The defendant's counsel submitted that it was not credible that such substantial amounts, including on the claimant's case, a further £150,000 would have been held as "cash in the safe". However, it is clear that a substantial part of the business was conducted in cash transactions. The bank statements for both the Barclays and St Helier Santander accounts show that cash from the business was not regularly banked. Instead, when it was required for other property purchases, cash held in the business was converted into bank credits in the Santander by putting it in the ATM (see para 72 below), and then transferred out of the account. The amount of cash so converted and transferred out of the joint accounts in this way is substantial. It appears to exceed the profits generated from the business as they are recorded in the accounts and tax returns. I do not therefore consider it implausible that large amounts of cash were held in the St Helier safe.
70. The defendant's case is that the balance was from his own funds. However, in his written evidence he gives no details of the source of those funds, and details of transactions in the Lloyds account (in the form of screenshots of a mobile banking app) were only disclosed on the first day of the trial. In his oral evidence, he said that he received money from his (extended) family, "cousins out of London" who transferred money to the Santander account. As well as being new evidence, there was no support for this from the other witnesses called by the defendant.
71. I find that the purchase monies for the freehold of 131 Wrythe Lane were derived directly or indirectly from the St Helier business. If that business was a partnership, then it is inconceivable that the claimant would have agreed to those funds being used if the property was not to be held by the defendant as a partnership asset.

*November 2012 note*

72. The evidence included a photograph of a post it note from 131 Wrythe Lane in the claimant's handwriting. It states "*You taken ATM money £5000. Me only £4400. Balance £600*". The factual context of this note is that there was an ATM machine in the shop, ownership of which was retained by the provider. The defendant's agreement with the provider provided that when a customer withdrew cash from the machine, that amount was credited to the Santander account by the provider. The cash for the machine was provided from the cash held by the St Helier business.
73. The meaning of the note is clear, and the claimant confirmed in his evidence that the note recorded that the defendant had taken £5,000 in cash from the ATM. The defendant's unsatisfactory evidence was that he did not remember the note and could not explain its meaning, even though his counsel cross-examined the claimant on it, suggesting that it referred to money which the defendant had borrowed from the claimant for the ATM.

*Abortive sale of 66 High Street*

74. Between July 2012 and April 2015, the parties tried to sell 66 High Street. The defendant accepted that he was the only one who gave instructions regarding the sale to the estate agent, Nationwide Businesses Limited. The agent's notes record on 12 May 2014 "SELLING AS PARTNERSHIP SPLIT". The defendant, while not accepting that he said this, did not suggest that anyone else could have, and could not explain why he would have said it.

*Car payments*

75. From June 2013 to January 2016, regular monthly payments of £700 left the Barclays account to each of the parties' personal bank accounts. The claimant's case is that these were car allowances. The defendant's case is the claimant asked him to transfer part of his pay into his account to pay the finance charges for his vehicle. The defendant also had a finance agreement on one of his cars, so he would often make the transfers together. In fact, every payment is on the same date for each and (with one exception) for the same amount of £700. The defendant's explanation for the payments was that the claimant asked to be paid by bank transfer once every 4 weeks. However, the equality of the amounts supports the claimant's version of events, which I accept.

*Defendant's purchase of 77 The Drive*

76. On 13 February 2017, the defendant and his wife completed the purchase of a residential property, 77 The Drive, Wallington. The purchase price of £685,000 was funded by a mortgage of £299,965 with the balance of the price (and other costs and fees) paid to the conveyancing solicitors in tranches of £190,000 on 19 December 2016 and £241,487.30 on 12 January 2017.
77. The claimant alleges that funds from the St Helier business were used in the purchase of 77 The Drive, and relies upon the following transfers

<b>Date</b>	<b>Amount (£)</b>	<b>Paying account</b>	<b>Receiving account</b>
1/11/2014	65,000	Barclays	Lloyds Bank mandate No. 2
27/1/2015	40,000	Barclays	Lloyds Bank mandate No. 2
30/12/2016	30,000	Barclays	Lloyds Bank mandate No. 2
3/1/2017	4,000	Barclays	Unnamed D account
9/1/2017	20,000	Barclays	Lloyds Bank mandate No. 4
<b>Total</b>	<b>159,000</b>		

78. These sums are said to have been borrowed from the business or to be drawings which are to be taken into account in any accounts ordered in the dissolution of the partnership. The defendant accepts that the purchase of 77 The Drive was (partly) funded from monies from the St Helier business, so whether he is to be required to account for these monies depends on whether it was a partnership.

*2017: breakdown in the relationship*

79. The parties' relationship began to deteriorate during 2017. Again, the parties' evidence as to why this was is diametrically opposed. The claimant's case is that there was a marked decrease in the takings from the St Helier shop. The defendant's evidence is that the claimant was borrowing money both for the liabilities of the Costcutter business, and that "for a short time [the claimant] also

asked me to transfer the money towards the 66 High Street mortgage repayments and would repay me in cash”. In fact, as already noted, the mortgage payments for 66 High Street were regularly (though not always) paid from the Barclays account from April 2012 to October 2017. I do not accept the defendant’s evidence on this point.

80. In early 2018, the claimant discussed with his sister the fact that his name was not on the title or the mortgage for 131 Wrythe Lane. She went to see the defendant (without the claimant’s knowledge) to ask him to put the claimant’s name on the title and the mortgage. The defendant accepted that Thayamanthy had come to see him to discuss the claimant, but, for the first time in his oral evidence, said that this was to discuss her concerns that the claimant was driving a mini-cab. This evidence was not supported by his wife. I accept Thayamanthy’s evidence as to why she went to see the defendant, and that he agreed to put the claimant’s name on the title and the mortgage.
81. The defendant also accepts that the parties approached a mortgage broker introduced to them by Thayamanthy’s accountant. Neither side disclosed any documents relating to the mortgage application. The claimant’s case is that the defendant ultimately refused to go ahead, and on his sister’s advice he consulted solicitors.
82. The defendant’s case in his written evidence was that the claimant had suggested buying into the St Helier business using his half share of the proceeds of 66 High Street. His response was not to say “no” to the idea and to tell the claimant to wait and see how much 66 High Street would sell for. They never got as far as discussing figures. The visit to the mortgage broker is not mentioned.
83. However, at trial, this had changed to a positive case that towards the end of 2017 there was a buyer for 66 High Street offering £390,000 and that the mortgage was £230,000 -so that the claimant would have had about £80,000 to buy into the St Helier business. The mortgage broker was said to have been approached for this purpose. As well as being both inconsistent with and adding to his witness statement, it is unsupported by any evidence that 66 High Street was on the market at that time, it having been taken off the market in April 2015. I therefore reject the defendant’s explanation as to the purpose with which he and the claimant approached the mortgage broker, and, accepting the claimant’s evidence, find that its purpose was to obtain a joint mortgage as part of putting the claimant’s name on the title of 131 Wrythe Lane.

*Daily reconciliation sheets*

84. From February 2018 to June 2018, and in September and October 2018, the claimant retained the daily reconciliation sheets which were completed in the St Helier shop, headed “Shift reconciliation sheet” and which the parties referred to as “shift sheets”. They show, by category of item sold (e.g. scratch cards), the cash amounts received in the shop, and cash amounts paid out. They were filled in during the day by different staff members, including the claimant.
85. The sheets show sums taken in cash by both the claimant (on Thursday) and the defendant (on Sunday). Initially, both took £700 weekly. From 15 April 2018, the



defendant's weekly payment increased to £800. The claimant's payment only increased to £800 from 10 May 2018, but at the same time, the increase is shown as backdated for the previous 5 weeks as recorded at the bottom of that same sheet.

86. The defendant's counsel submitted that the sheets should be approached with a high degree of suspicion. He relied upon the fact that the originals were only made available for inspection at a relatively late stage, and that the defendant's lawyers were only given 2 hours to do so. He also relied upon the fact that the parts of the sheets relied upon by the claimant were in his handwriting.
87. As to this, the copy shift sheets (which were provided in June 2020) were in the hearing bundle. They are sufficiently legible for the information set out above to be apparent. I therefore don't accept that the defendant needed to see the originals to understand and consider them, particularly since they are a type of document with which he is very familiar. I therefore reject the submission that he had had insufficient time to consider the shift sheets.
88. The claimant accepts that the payments made to him were recorded on the shift sheets by him. To that extent, they are self-serving. The significance of the sheets is that they show equal amounts being taken by the claimant and the defendant.
89. The defendant accepted in cross examination that the claimant was receiving £700 per week, although he was unsure if this had risen to £800; he disputed that the payments were drawings on a par with his own, rather than simply an employee's wage. However, the equality of the payments supports the claimant's case that they were drawings rather than wages. This is particularly so, given that the defendant kept no record of the sums taken by him and the defendant. The information recorded in the shift sheets was not transferred to any other record. When asked how Mr Kalaiyalahan was able to prepare the business' accounts without this information, the defendant said that Mr Kalaiyalahan prepared the accounts on a "standard basis", which I infer means without reference to records of financial information. The upshot is that the defendant has no documentary basis with which to challenge the information recorded on the shift sheets.
90. The diary sheets also show monthly cash payments of £750 to the claimant. His case is that this was a car allowance, matching the payment of £749.50 paid (from January 2016 onwards) from the Barclays account to BMW Financial Services in respect of the defendant's car.
91. As noted above, the defendant denies that the claimant ever received a car allowance. He was not able, however, to give any explanation as to why the claimant is shown as receiving £750 cash a month in the shift sheets in addition to his regular payments of £700/£800 per month.

*April 2018 note*

92. Also in evidence was a photograph of a post-it note in the defendant's handwriting, clipped to a Barclays cheque with the date 5 April 2018. This states "*Amman [the defendant's nickname] taken today £5000. You take £5000*". On its face, it is an instruction by the defendant to the claimant that, as the defendant had drawn £5,000 from the business, the claimant should or may do so.

93. It was put to the claimant in cross examination that this note related to a loan of £10,000 which the claimant had made to the defendant on 5 October 2012 to buy a car; it was suggested that the claimant had asked for the money back, but when the defendant came with £10,000 in cash to repay the loan, he in fact took or retained £5,000 of it because he needed it. When the defendant's attention was drawn to the date on the cheque, he said that the loan in 2012 was just an example, and that the repayment to which the note referred related to a loan on another occasion. I reject this evidence as implausible, and an attempt to adjust his evidence once the implausibility of the loan occurring in 2012 became apparent.

*July and October 2018 notes*

94. The final series of notes comprises a written exchange between the claimant and the defendant commencing on 13 July 2018, continuing in the day or so following, and taken up again on 20 October 2018.
95. The claimant's note dated 13 July 2018 to the defendant accompanying the cash from the day's trading in the safe in the St Helier shop states "*You taken ATM Money (6000). My money £2000 now*". The defendant's written response stated that the amount taken by him was in fact £5,000 (five tranches of £1,000) and that "*when I have a money I pay back ok; past, you took the money so many tims, when you had a money you paid*"; and then by way of post-script: "*From 2013 January Tax Credits + money per month £730 and I lost which is now £48910*".
96. In a further note dated 20 October 2018, the claimant set out "*You [the defendant] taken ATM money £5000*" and "*I taken £2000 (13/7/18)*". This is followed by "*Balance £3000?*" and then a list of further money totalling £2,400 which he had by then taken in cash in addition to the £2,000.
97. Again, on the face of the notes, their meaning is reasonably clear, and the claimant confirmed in his evidence what that was: the defendant had taken £5,000 from the ATM (as the claimant had discovered), and so the claimant was taking equivalent sums in cash from the business to equal matters up. The defendant's evidence was what the notes in fact meant was that the defendant had borrowed £5,000 from the claimant; and that the claimant himself in the past had often borrowed money from the defendant. The suggestion that the claimant was lending money to the defendant at this stage, was wholly at odds with the state to which their relationship had by then declined with neither even talking to the other. I reject it as implausible. The only tenable explanation for these notes is that the parties regarded themselves as entitled to withdraw equal matching amounts of cash from the St Helier business.
98. The defendant also provided an explanation for his reference to the loss of tax credits "*from 2013*", stating that he in fact meant that he had lost the same from 2008 to 2013. He could not explain why the note then said that his resulting losses were "*now*" £48,910. This is yet another example of how the defendant's evidence required a tortuous reading of contemporaneous documents.

*November 2018 – complete breakdown in relations*

99. On 30 November 2018, on a day when the claimant would normally have opened up the St Helier shop, the defendant went there early and opened it up. When the claimant arrived, the defendant remained at the till and ignored him. Eventually, the claimant left, and did not return to the shop after that date. On 28 February 2019, the claimant served a notice of dissolution of the partnership.

*Sale and repossession of 66 High Street*

100. Following his exclusion from the St Helier business, claimant was no longer able to use funds from the St Helier business to fund the mortgage payments for 66 High Street, and arrears built up. The bank appointed receivers and sold the property at auction in December 2019. The net proceeds of sale are held by the receivers pending the outcome of this claim.

**Whether the parties traded in partnership in the St Helier business**

101. I find that the parties expressly agreed that the defendant would acquire the lease and the business at 131 Wrythe Lane in own name for the parties' joint benefit and that they would trade there as equal partners.
102. I make this finding on the basis of the following factual matters found by me (or undisputed):
- (1) the claimant's contractual restrictions preventing him from involvement in a business competing with that of his employer meant that he did not want to be named on the lease of the business;
  - (2) the claimant had the financial resources to make a one half contribution to the purchase price, and did so;
  - (3) the claimant was named jointly with the defendant on the off-licences granted in respect of the business in August 2003 and October 2005
  - (4) the opening of the Barclay's account in joint names, and asking the bank for the account name to be "The Partners";
  - (5) the opening of the Barclays merchant account in joint names;
  - (6) the loan of £18,000 for the purposes of the St Helier business in joint names;
  - (7) the opening of the Santander St Helier account in joint names;
  - (8) the 2 vans (and the only vans) used in the St Helier business were in the claimant's name, but all the costs of and expenses relating to them were paid by the St Helier business;
  - (9) as shown by shift reconciliation sheets, the equal amounts paid to the claimant and the defendant from the St Helier business and the equal car allowances;
  - (10) the fact that the defendant kept no record of the amounts paid to the claimant, just as he kept no record of his own drawings;
  - (11) the parties' dealings with each other, as recorded in the post-it notes that they left for each other – in particular, the clear arrangement that whatever sums one of them took out of the business, the other was entitled to take the same amount.

**Whether 66 High Street was a partnership asset (and, if not, on what terms was it acquired); and whether the parties traded in partnership in the Costcutter business**

103. I find that 66 High Street was acquired with the intention that it should be an addition to the existing partnership business; that the claimant and the defendant agreed to set up and operate together a second convenience shop from the ground

floor premises, and to refurbish and let the flat above, using the income therefrom to service the mortgage, with any shortfall paid for out of general partnership funds; and that they carried this agreement into effect.

104. I make this finding on the basis of the following factual matters found by me (or undisputed):
- (1) the property was purchased in joint names and beneficially jointly owned;
  - (2) the mortgage instalments were paid initially from the Costcutter account, and from April 2012 to October 2017 from the Barclays account;
  - (3) the defendant's extensive involvement (contrary to his case) in the Costcutter business:
    - (i) applying in his name for new trading accounts with WH Smith and PayPoint;
    - (ii) applying for the electricity account;
    - (iii) being named as designated premises supervisor on the premises' licence;
    - (iv) his entries in the Costcutter diary kept at 66 High Street, including telephone numbers which were personal to him.
  - (4) the entry in the Costcutter diary "COSTCUTTER open on 2nd of July 2008 - by bala and Amman – our 2nd building. 3rd ??"
  - (5) the setting up of another bank account, the Costcutter account, in the joint names of the parties;
  - (6) the choice of the name "R U Food & Wine", with the initials referring to Raviraj and Uthayavel;
  - (7) the defendant holding himself out as a partner in his written application for an electricity supply account;
  - (8) the defendant instructing the estate agent, Nationwide Businesses, that the parties were selling the property because of a "partnership split";
  - (9) the rent from the 1<sup>st</sup> floor flat was paid in cash and added to the general partnership funds.

#### **Whether the freehold of 131 Wrythe Lane is a partnership asset**

105. I find that the freehold of 131 Wrythe Lane was bought for the benefit of the claimant and the defendant as partnership property.

106. I make this finding on the basis of the following factual matters found by me (or undisputed):
- (1) the initial application for the mortgage loan for the purchase of the property was made in joint names, and was refused because the accounts for the Costcutter business showed poor trading;
  - (2) the mortgage payments in respect of the loan which partly funded the purchase were paid from the St Helier Santander account, and were funded from the rental income from the 2 flats above the shop;
  - (3) the monies used to pay the balance of the purchase price were derived directly or indirectly from the St Helier business;
  - (4) in early 2018, the defendant agreed to put the claimant's name on the title of the property (and, consequentially, the mortgage).

#### **Bank accounts**

107. It follows from the conclusions reached above that the three bank accounts were all partnership accounts and the monies in them, partnership monies.

### **Terms of the partnership**

108. I find that the partnership between the claimant and the defendant was one under which they shared the capital and profits and were liable for the debts and losses of the partnership in equal shares.

109. I do so on the basis of the finding of fact that the claimant and the defendant expressly agreed this at the outset. However, even if they had not expressly so agreed, section 24(1) of the 1890 Act would apply so as to provide for such equal shares.

### **Accounts**

110. It follows, from the finding of the subsistence of the partnership and its dissolution, that dissolution accounts will be ordered.

111. However, I am also asked to determine three issues arise in respect of those accounts:

- (1) Whether the defendant should account for various sums drawn from the Santander account and paid to non-partnership accounts (and subsequently used in the purchase of 77 The Drive);
- (2) Whether the claimant should account for the rental income in respect of the flat at 66 High Street, Caterham;
- (3) Whether the claimant should account to the defendant for loss and damage resulting from the appointment of LPA receivers of 66 High Street.

112. None of these issues are found in either the list of issues to be determined as preliminary issues (dated 11 May 2020) or in my order dated 19 May 2020 setting out the issues to be tried as such.

113. As to (1), the defendant accepted that the funds in the Santander account were derived from the St Helier business. Since I have found that this was a partnership business, it follows that the funds were partnership funds. In the dissolution accounts, both parties will have to account for all their drawings from the partnership, and there is no need to make a separate order in respect of a particular series of drawings.

114. As to (2), I have rejected the defendant's claim that the claimant account to him personally in respect of the rent. However, since the rental income received from the flat at 66 High Street is partnership income, it will need to be brought into the dissolution accounts, and it is unnecessary to make a separate order in respect of it.

115. As to (3), the factual basis of this claim is that the claimant agreed to be solely responsible for the mortgage payments. I have rejected that allegation. It follows that the claim for this account must fail.