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Case No: BL-2020-001110

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

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

28/07/2022

Before :

MR JUSTICE FANCOURT

- -

Between :

HASKELL ELIAS	**Claimant**
- and -	
(1) DAVID MAMISTVALOV	
(2) SODA HOLDINGS LIMITED	**Defendants**

- -
- -

Ms Anna Scharnetzky (instructed by **Ellisons Solicitors**) for the **Claimant**
Mr Richard Eschwege (instructed by **Enyo Law LLP**) for the **First Defendant**

Hearing dates: 20, 22, 23, 24 June 2022

- -

Approved Judgment

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

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THE HON. MR JUSTICE FANCOURT

This judgment has been handed down by the court remotely, by circulation to the parties' legal representatives by email, and to The National Archives.

Mr Justice Fancourt :

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Introduction

1. The dispute in this claim is about who beneficially owns the only issued share in the Second Defendant company, Soda Holdings Limited ("Soda").

2. Soda was incorporated in England and Wales on 31 May 2019 by the Claimant, Mr Elias, with one issued share registered in his name. The First Defendant, Mr Mamistvalov, contends that, as a result of agreements made with Mr Elias, he owns the share beneficially and that the share, if legally vested in Mr Elias, is held on resulting trust for him.

3. Mr Elias is an English businessman. He is a director and chairman of Elias Group, a family-owned dry cleaning business based in North and West London. Mr Mamistvalov is an Israeli businessman who lives in Tel Aviv. The two men met in a synagogue in Israel in about 2008 and became close friends.

4. In short, Mr Elias's case is that he caused Soda to be incorporated as a means of transferring apparent ownership of 51 acres of undeveloped land near Barnet, Greater London ("the Property") to Mr Mamistvalov, but with the intention that Mr Mamistvalov would hold the share in Soda as his nominee. This was done to enable Mr Elias to benefit from the appearance that the Property was not owned or controlled by him but beneficially owned by Mr Mamistvalov.

5. Mr Mamistvalov's case, in bare outline, is that he and Mr Elias entered into a sale and purchase agreement ("SPA") in November 2018 relating to an arbitration award in favour of Mr Mamistvalov, and that the agreement was then varied in

April 2019, when Mr Elias agreed to transfer ownership of the Property to Mr Mamistvalov in return for extended rights to seek to enforce the award. After the transfer of the Property by means of ownership of Soda, Mr Mamistvalov says that he discovered the unhappy history of the Property and wanted to 'unwind' his dealings with Mr Elias. He contends that this was first agreed and acted upon, but that the parties then changed their minds and reaffirmed the agreement as varied, but Mr Elias then wrongfully took steps to transfer the share in Soda back to himself.

6. Mr Elias denies that the SPA had any legal effect. He claims that it was a sham to enable Mr Mamistvalov to be in a better position to enforce the arbitration award in Georgia. He contends that there was no agreement to vary the SPA, as contended by Mr Mamistvalov, and that the Property was put into Soda's name and the share transferred to Mr Mamistvalov to put it beyond his wife's reach and improve the prospects of obtaining planning permission, but intending that Mr Mamistvalov would hold the share on behalf of Mr Elias.

7. Soda does not play any active part in this claim in its own right and will be bound by the Court's decision on beneficial ownership of its only issued share.

8. The accounts given by the two protagonists of the reasons for the SPA, the restructuring of the ownership of the Property, and what happened in their discussions thereafter, are quite different. Mr Elias effectively contends that the SPA and the Property transfer were unconnected matters, whereas Mr Mamistvalov, by his account of the alleged variation of the SPA, contends that they became closely connected.

9. What was clear from the evidence given at trial is that both Mr Elias and Mr Mamistvalov were untroubled by the idea that documents could be created with the intention of misleading others, and that the truth was a matter to be concealed from others when it was helpful to do so, to further their interests. The result is that the contemporaneous documents in this case cannot always be taken at face value. Further, what is said in the many transcripts of recorded conversations between the protagonists, and between them and third parties, include untruths and attempts to conceal the truth. Although the existence of the transcripts are of considerable benefit in trying to understand what was happening in 2019 and what each was seeking to achieve, they too have to be considered in the light of the surrounding circumstances and the parties' apparent motives and interests. It is rarely possible to extract a sentence or two out of context and identify what was really happening.

10. There are also concerns about the integrity of some of the documents relied on (though neither party served notice challenging the authenticity of a document disclosed) and the reliability of the disclosure exercise that has been conducted, in particular by Mr Elias.

11. I am satisfied that this is a case in which Mr Elias and Mr Mamistvalov have each acted dishonestly in certain respects and given evidence that is not the full and honest truth about what happened. I must therefore attempt to reach factual conclusions on the many disputed issues without being able confidently to rely

on the evidence given by either of them or on some of the documents. I shall return to the quality of the evidence in due course.

The Main Issues

12. The main issues relating to the question of who is the beneficial owner of Soda's share seem to me to be the following:

    i) Was the SPA a sham or did it take effect according to the objective meaning of its terms?

    ii) Was an agreement made to vary the SPA by transferring beneficial ownership of the Property to Mr Mamistvalov or his appointee in return for an extension of the time under the SPA for Mr Elias's company, Weightspace Company Ltd ("WCL"), to enforce and recover the full value of the arbitration award ("SPA variation")?

    iii) If not, on what basis was ownership of the share in Soda transferred by Mr Elias to Mr Mamistvalov on 25 June 2019?

    iv) Was an agreement made by Mr Elias and Mr Mamistvalov on 18 July 2019 to re-transfer the share in Soda to Mr Elias in return for the shares in WCL being transferred to Mr Mamistvalov ("the swap agreement")?

    v) If so, did Mr Elias and Mr Mamistvalov then subsequently agree to unwind the swap agreement, leaving in place the previous arrangement, whatever it was, or subsequently agree different terms?

13. Although these are the main issues to be resolved, there is a multiplicity of other issues and factual disputes, some of which have a bearing on the determination of the main issues.

14. There is however a broad factual context that is not in dispute, either because the parties' evidence demonstrates that it is agreed or because documents that are not disputed, such as the transcripts of telephone conversations and email communications between them, establish the facts. It is necessary to set out the context that is not in dispute in some detail in the next part of this judgment. I will indicate where the important disputes of fact arise.

Undisputed Factual Context

15. The Property was acquired in the name of Royley Holdings Corporation ("Royley"), a BVI company, in February 2002 for £265,000, with the aid of a bank loan of £150,000 secured on the Property. It was purchased from the trust of the Ohel David Eastern Jewry Congregation, of which Mr Elias and his father were trustees. Royley had an off-shore corporate director and shareholder, who nominally held the share on trust for Mrs Cissy Levi, Mr Elias's mother-in-law.

16. The other trustees were unhappy that Property had been sold to Royley. A local Rabbi, Abraham Levy, was also opposed to the purchase by Royley.

17. The matter was investigated between 2004 and 2006 by the Charity Commission. By a letter dated 3 March 2006, Mrs Victoria Crandon reported that the Commission had received written confirmation from Mr Elias's solicitor that he was not a connected person in relation to the sale nor were he or his family connected to Royley.

18. On 11 November 2011, Mrs Cissy Levi instructed the nominee shareholder to hold the share for the benefit of her daughter, Hadassa Shmuel ("Mrs Shmuel"), an Israeli resident. Mrs Shmuel had declared on 24 October 2011 that she held the share in Royley in trust for Mr and Mrs Elias, the ultimate beneficial owners. So by the end of 2011, if not from 2002, Mr and Mrs Elias were indirectly the beneficial owners of the Property.

19. In 2012, Mr Mamistvalov obtained in Israel an arbitration award in his favour against a Georgian citizen, Mr George Tchanturia ("the Award"). The value of the debt awarded was US$5,053,418 as at March 2010, but it bore interest at a monthly rate of 1% compound and, by the date of the Award, it was worth over $6.5 million. None of the debt has been paid by Mr Tchanturia who has since died, and he and his heirs in Georgia took steps to try to defeat the Award.

20. One of Mr Mamistvalov's companies also had the benefit of a claim against an Italian company, Arredo Luce, worth up to $500,000 with accrued interest. This was a claim for repayment of monies laid out for delivery of goods to be shipped to the Netherlands or the UK. In 2013, Mr Mamistvalov was considering factoring the Arredo Luce debt and took advice from Andrew Segal, which was said to be for the benefit of Mr Mamistvalov and Mr Elias.

21. Mr Mamistvalov and Mr Elias agree that they had not done business together before the SPA in November 2018. However, it appears that they discussed their separate business affairs and took an interest in each other's businesses. It had obviously occurred to Mr Mamistvalov before 2019 that Mr Elias might become involved in some of his business affairs. Apart from the factoring of the Arredo Luce debt, in 2015 Mr Mamistvalov sent Mr Elias a draft debt purchase agreement for the sale and purchase of the benefit of the Award for $6 million.

22. Royley sought planning permission for a residential development of the Property immediately after purchase of the Property. The Property is green belt land and, unsurprisingly, the application failed. Mr Elias has been seeking (through agents) to promote the Property for valuable development since then. This was continuing in a concerted way in 2017 and 2018. Development has always been thwarted, however. Mr Elias considers that Rabbi Levy, who was said to be very influential in Barnet, is the reason, or a reason, for the failure to obtain planning permission.

23. In time, the Property may benefit from a change in the planning status of the green belt, or a decision that exceptional circumstances justify granting permission nevertheless. As things stand, the land has an agricultural tenant, which produces a modest income, and some hope value. Mr Elias considered (and told Mr Mamistvalov) that the land's current value was in excess of £1 million. Mr Mamistvalov did not suggest that he knew or believed differently before he discovered the green belt and conservation area status of the land in about July or August 2019.

24. In October 2018, Mr Elias had a cash flow difficulty and was looking to borrow £200,000. He asked Mr Mamistvalov to lend him the money, but the request was declined. Mr Mamistvalov did, however, suggest that Mr Elias might like to factor the Arredo Luce debt for him, and that if successful he could make short term use of the money raised. Mr Mamistvalov told Mr Elias in a recorded conversation on 23 October 2018 that he should tell his bank that he had just bought the debt and seek to factor it. Mr Mamistvalov offered to sign an agreement and backdate it, to substantiate the purchase. Mr Elias made it clear that he needed the money "pretty rapidly".

25. The conversation on that day then turned to enforcement of the Award and Mr Elias gave Mr Mamistvalov the company details of WCL. The subject had clearly been raised before the conversation in which Mr Elias announced his urgent need for money. The conversation ended with Mr Mamistvalov promising to send details about "this small Italian debt", i.e. the Arredo Luce debt.

26. At about the same time, Mr Mamistvalov prepared a draft of a Recovery Services Agreement dated 22 October 2018, by which Krys & Associates Cayman Ltd ("Krys") was to agree with WCL to pursue enforcement of the Award in Georgia in return for a fee of 25% of recoveries. The balance was to be remitted to Mr Mamistvalov's bank account.

27. On 2 November 2018, Mr Mamistvalov forwarded to Krys the company details of WCL.

28. On 4 November 2018, Mr Mamistvalov prepared a draft of the SPA between himself and WCL in respect of the Award. Under it, the purchase price was to be 73% of the Total Debt, as defined, and the agreement was to subsist for 180 days on the basis of the engagement of Krys. The Total Debt at that time was over US$14 million. 25% of the Total Debt was to be retained by Krys and the remaining 2% was for WCL, potentially worth about $280,000 at that time.

29. On 5 November 2018, Mr Mamistvalov sent the hard copy draft SPA executed by him to Mr Elias to sign and separately sent Mr Elias a draft of the SPA by email. Mr Elias received the hard copies on 8 November and was told in a conversation with Mr Mamistvalov that day that another document to be signed was on its way. This was a power of attorney granted by WCL to Krys, which was sent on 9 November 2018 by email under the heading "Please sign this agreement with Krys" and the following text in the email:

> "in 3 copies:
> Send:
> 1 to Krys
> 1 to me
> 1 keep with you".

30. In a telephone conversation on 9 November 2018, Mr Elias agreed to "do exactly as you have instructed". It is common ground that there was no negotiation of the terms of the agreements and Mr Elias said that he did not read them. He then signed the documents on behalf of WCL. In this context, Mr Elias contends (and Mr Mamistvalov disputes) that the SPA was a sham.

31. Although WCL stood to benefit if recovery was made under the Award within 6 months, Mr Elias's need for cash was urgent, and this need continued to be addressed, to the extent it was addressed at all, by further discussion of the Arredo Luce debt. Mr Mamistvalov told Mr Elias on 27 November that he needed the debt to be sold before the end of the financial year and was willing to offer a significant discount. That left Mr Elias to try to find a purchaser of the debt. Mr Elias passed on the name of a possible purchaser on 10 December 2018 and Mr Mamistvalov provided detailed information about the debt on 19 December 2018.

32. Meanwhile on 11 December 2018, Mr Mamistvalov and Mr Elias had a conversation in which the state of Mr Elias's marriage was discussed and Mr Mamistvalov advised Mr Elias to get the Property out of the reach of Mrs Shmuel and Mrs Elias.

33. On 2 January 2019 – the sale of the Arredo Luce debt having got nowhere – Mr Elias told Mr Mamistvalov that he had a pressing need for £50,000 with which to pay his company's VAT. Mr Mamistvalov advised Mr Elias to enter the New York lottery and asked how plans for the Property were progressing.

34. A few further short conversations between Mr Mamistvalov and Mr Elias took place in January, and in this context Mr Mamistvalov contends that he and Mr Elias agreed that WCL's share of the recoveries from the Award would be increased to 14%. That would mean an increase in the value of WCL's share from about $280,000 to about $2,000,000. Mr Elias does not recall any such conversation and disputes that an email dated 14 January 2019 recording agreement on that increased share was sent or received.

35. On the following day, Mr Mamistvalov and Mr Elias had a further telephone conversation in which it was confirmed by Mr Elias that he was getting a mortgage on beneficial terms and stated by Mr Mamistvalov that he expected to hear in between 3 and 4 months about enforcement of the Award. Nothing was said (or alluded to) concerning a very recent demand for a large increase in his share of the Award recoveries.

36. At the end of January 2019, Krys learnt that an appeal hearing had been scheduled in Tbilisi on 6 February 2019, and Dentons – who had been retained to act for Krys in Georgia – advised that they would need a power of attorney from WCL and evidence that the benefit of the Award had been assigned by Mr Mamistvalov to WCL. Mr Elias was told by Mr Mamistvalov on 30 January that his role was passive and Mr Elias signed the power.

37. Two days later, on 31 January 2019, Mr Mamistvalov told Mr Elias to endorse 3 substitute pages of the SPA. These contained changes: (i) recording that as a result of recent business transactions Mr Elias was US$250,000 in credit; (ii) altering the period of validity of the SPA to 2 years instead of 180 days; and (iii) altering the clause that said that WCL only assumed rights under the Award on payment of the full recoveries to read that WCL assumed rights under the Award for the purpose of satisfying those conditions. Mr Elias duly signed the substitute pages.

38. Mr Mamistvalov then told Mr Elias in a call on 1 February 2019 that he might be required to sign an entirely new agreement. Mr Mamistvalov had drafted a deed of absolute assignment of the Award in return for payment of 73% of the realisable sums, sent it to Krys, and Krys arranged for Mr Elias to sign it.

39. Both the amended pages of the SPA and the deed of assignment referred to a purchase price of 73%, not 61%, which would have been the effect of an agreement to increase of WCL's share from 2% to 14%.

40. Mr Elias visited Israel from 17 to 20 February 2019. While there, he signed a "Mutual Rescission of Deed of Assignment", which rescinded the deed of assignment of the Award and stated that the latter was only entered into to show the Georgian courts that the parties were sincere under the SPA and would substitute WCL as the new plaintiff, and that "there was no real intent or will to amend or modify the [SPA] other than to comply with the advice of the Georgian lawyers of [WCL]… in order to avoid any potential risk that may damage the legal proceedings in Georgia".

41. Whatever was discussed between Mr Mamistvalov and Mr Elias in Israel, there was then a sequence of telephone calls on 25, 27 and 28 February to discuss what they should say to Summit Management Ltd in Gibraltar ("Summit"). Summit managed the corporate director and shareholder of Royley. The first conversations got diverted into an elaborate discussion of how Mr Elias was to install a secure telephone app on his mobile phone. It is evident from the third of these conversations that Mr Mamistvalov had got himself well briefed on the background to the acquisition of the Property and the Royley ownership structure, and that one solution considered was that Mr Mamistvalov would become the owner of the Property.

42. There were then several conference calls between Mr Mamistvalov and Mr Elias on the one side and Penny Haynes and Andrew Haynes of Summit on the other between 28 February 2019 and 27 March 2019. Summit were told that the existing structure, under which the share in Royley was held nominally on behalf of Mrs Shmuel, needed to be changed, in order to protect Mrs Shmuel from the impact of new laws in Israel and her failure to disclose there her interest. Summit raised tax considerations of unwinding the off-shore structure and Mr Elias was concerned to avoid any tax impact on him in the UK, and Mr Mamistvalov to avoid adverse tax consequences in Israel. The need to hide the true beneficial ownership from adversaries or perceived adversaries of Mr Elias was discussed.

43. Even though there are transcripts of the conversations between Mr Mamistvalov and Mr Elias, and between the two of them and Summit, there remain disputes about various matters that are being alluded to in the conversations. The transcripts are not always easy to make sense of because Mr Mamistvalov was not clear in stating his intentions, the parties were sometimes at cross-purposes, and Mr Elias seemed not to understand what Mr Mamistvalov was planning. It was Mr Mamistvalov who did the great majority of the talking in these conversations. There is accordingly a live dispute about the purpose that was intended to be served by removing the Property from the off-shore structure and transferring it into domestic ownership, and whether this was an agreed purpose or whether Mr Mamistvalov and Mr Elias had different purposes in mind.

44. What is uncontroversial is that Mr Elias was presented to Summit as being solely beneficially entitled to the Property, notwithstanding Mrs Shmuel's 2011 declaration of trust in favour of Mr and Mrs Elias. Further, it was explained to Summit that the essential idea was to move ownership of the Property away from Mr Elias and have someone else as the apparent owner – "keeping Haskell cloaked and just away from this".

45. The idea evolved in discussion that a first stage, to deal with tax issues, would be to transfer the Property into the ownership of an English company, of which Mr Elias would be the shareholder, and then later to transfer on the Property or share. However, Mr Elias remained concerned about the tax implications for him. In April 2019, Mr Mamistvalov was urging Mr Elias to proceed with the first transfer, but Mr Elias was not yet convinced and wanted specialist advice.

46. Against the background of those developments and lack of resolution, there is an email dated 24 April 2019 from Mr Mamistvalov to Mr Elias purporting to record agreement reached between them that Mr Elias would give Mr Mamistvalov the Property in return for a 1 year extension to the period of operation of the SPA (the SPA variation). The email states that the parties would sign the amendment when Mr Elias was next in Israel. It required WCL to transfer the Property to Mr Mamistvalov or his nominee by 23 June 2019.

47. The SPA variation is strenuously disputed by Mr Elias, who has no recollection of receiving the email or of discussing such a variation.

48. On 7 May 2019 Mr Mamistvalov told Mr Elias that he had engaged a solicitor at Squire Patton Boggs, Mr Timms, to advise on acquisition of the Property, and Mr Elias discussed with Mr Mamistvalov the future sale or development of the land to realise its development value. Mr Mamistvalov advised Mr Elias that the "most important thing is never lose control, Hezzi … Never lose control over your property …".

49. On 8 May 2019, in a conversation on which Mr Mamistvalov in particular relies, Mr Elias told him that relations with his wife had recently become very much better since they had moved into a new house. Mr Mamistvalov told Mr Elias how Mr Timms would be able to help in relation to the Property.

50. On 22 May 2019, the share in Royley was registered in Mr Elias's name.

51. On 31 May 2019, Soda was incorporated by Stanley Davis (corporate services providers) on behalf of Mr Elias, with him as the sole shareholder and director.

52. On 12 June 2019, Mr Elias instructed Summit to transfer the Property from Royley to Soda.

53. On 18 June 2019, Stanley Davis sent to Mr Elias documents to be signed. The email states:

> "Further to our recent correspondence in relation to Soda Holdings Limited I attach herewith the following documents for signature:

1. Board Minutes
2. Stock Transfer Forms
3. Form PSC01
4. Form PSC07…"

The draft minutes proposed the transfer of the share to Mr Mamistvalov. There was one stock transfer form to transfer the share to him, and one to transfer the share from him to Mr Elias. The PSC forms recorded that Mr Elias ceased to be and Mr Mamistvalov became a person with significant control of Soda.

54. On the same day, Mr Elias forwarded Stanley Davis's email to Mr Mamistvalov. There is a dispute about whether the stock transfer form Mamistvalov to Elias was attached to the forwarded email. The other attachments were attached to it.

55. On 25 June 2019, Mr Elias signed the stock transfer form in favour of Mr Mamistvalov together with the two PSC forms.

56. On 27 June 2019, a TR1 transferring the Property into the name of Soda was signed (and later registered at the Land Registry on 8 July 2019).

57. On 28 June 2019, Mr Elias emailed to Mr Mamistvalov a pdf of a stock transfer form for the share in Soda to be transferred from Mr Mamistvalov to Mr Elias. The form had a mark "D" in two places indicating where Mr Mamistvalov was to sign. The email said "Can you please sign where there is a D & return to me by email".

58. On 4 July 2019, Companies House confirmed that Mr Mamistvalov was registered as a person with significant control of Soda as from 25 June 2019. The confirmation was forwarded by Mr Elias to Mr Mamistvalov.

59. Mr Elias visited Israel in July 2019. He and Mr Mamistvalov met in a coffee shop on 18 July. The day before that meeting, Mr Mamistvalov sent Mr Elias a Whatsapp message:

> "I've been thinking, and after talking to my lawyers, I was trying to call you many times.
> They have analysed the situation for me with various possible outcomes with potential impacts on me.
> And the situation is too complicated and not always clear.
> I think it will be best if you could find a good trust worthy friend to assume my place.
> Spoke to Rav Hazut. I think that he OK with that and will sign all the documents you require.
> Just finished my meeting with him.

In a further message 3 minutes later, he added:

> "Or maybe Paul could find someone."

Paul is agreed to be a reference to Mr Elias's lawyer in London.

60. What was said in the meeting in the coffee shop is disputed. It is however agreed that at the meeting Mr Mamistvalov signed but did not date the Soda stock transfer form from him to Mr Elias. The document signed does not contain the "D" marks on the pdf version that Mr Elias emailed on 28 June 2019 but is otherwise identical.

61. Mr Mamistvalov's account of the meeting is that he told Mr Elias that he no longer wanted anything to do with the Property and signed the stock transfer form to unwind the effect of the SPA variation. He contends that it was agreed there that Mr Elias would take back the Property and that in return control of WCL would be given to him. Mr Elias disputes that any such swap was agreed. His account is that the stock transfer form was signed but not dated because it was provided at his request, as security for recovering control of Soda when Mr Elias needed to, and that the nominee arrangement effected by transfer of the share on 25 June 2019 remained in place.

62. On 22 July 2019 there was a meeting at Mr Mamistvalov's lawyers, where the parties did not reach a deal about the Property. On the following day, in a telephone conversation, it is clear that the parties had fallen out. Mr Elias did not want Soda back in his name, and Mr Mamistvalov did not want the share or the Property transferred to anyone other than Mr Elias. Mr Elias complained that Mr Mamistvalov was trying to obtain too much control over the Property.

63. On 24 July 2019, there is a Whatsapp exchange of some materiality. Mr Elias sent the following message at 2:36 pm:

> "David if your not interested in woking [*sic*] with me on the land for a 20% net of the profit do you mind if I start negotiating with other interested parties.

And then, 3 minutes later:

> "Are you still interested in assisting me in my personal situation",

to which Mr Mamistvalov replied:

> "Not interested in your land.
> Please transfer the shares as soon as possible.
> No problem on the personal issues.
> But please take share away.

He followed up within a minute with:

> "Yesterday when I said I'm not interested, i meant it",

And about 3 hours later with:

> "Hezi. Can you transfer weight space to me.

64. Late on the following day, Mr Mamistvalov sent a further Whatsapp:

> "Good evening Hezi. Yesterday afternoon I've asked you to transfer the shares of weight space to me. There are no assets at on WS balance and previously you've never objected to do so.
> The only thing on WS balance is my award.
> You haven't replied to request about WS. Is there a problem I should be aware off? [*sic*]

Mr Elias replied that he would do nothing on any front until he was back in London.

65. It is clear that the parties nevertheless continued to discuss the Property and a possible deal between them. They met at a synagogue on 28 July 2019 and a minute was signed recording Mr Elias's resignation and Mr Mamistvalov's appointment as a director of Soda. These were later sent to Companies House by Stanley Davis and resulted in Mr Mamistvalov being registered as the sole director of Soda. Mr Mamistvalov's case is that this followed agreement to unwind the 'swap' of the Property and WCL previously agreed.

66. On 29 July 2019, Mr Mamistvalov asked for further information about planning applications for the land. In a Whatsapp of that day, Mr Mamistvalov refers to an agreement about 51/49 control and said that "the signed paper will have to be relinquished".

67. Mr Elias had apparently required any agreement to be in writing. Mr Mamistvalov sent an email on 2 August 2019 recording an agreement that he would have a 30% override and equity share in earnings relating to the Property and Soda and further that he should have a controlling interest in Soda and the Property, with all decisions to be made by him. Mr Elias replied saying that it was not straightforward and that he would have to refer it to his lawyers.

68. On 4 August 2019, Mr Mamistvalov as director caused Soda to pass a resolution preventing any documents relating to Soda from being executed without a formal signature before an Israeli lawyer in Tel Aviv. The following day, he told Companies House not to process any instructions relating to Soda.

69. By about 9 August 2019, Mr Elias had sent some documents relating to Soda to Stanley Davis for entry in Soda's books. Mr Elias's case is that this was the undated stock transfer form signed by Mr Mamistvalov, to which he had added a date of 7 August 2019. Mr Mamistvalov disputes that any date was put on the form until March 2020, though he could have no knowledge of this. On 12 August 2019, Mr Elias further instructed Stanley Davis to "hold onto the transfer I instructed you to do regarding Soda", but then on 18 August he emailed: "Please Transfer in my name ASAP Very URGENT immediately".

70. Soda's books were not in fact updated to show Mr Elias as shareholder until 3 March 2020. It remains the case that its books show Mr Elias as the sole shareholder. Mr Mamistvalov claims that he is nevertheless the beneficial owner of the share.

The Main Disputed Issues

71. The many disputes of fact in this case include, surprisingly, the correct interpretation of things said and alluded to in the transcripts of recorded telephone conversations. As ever, it is unnecessary to decide every factual dispute in the case in order to resolve the claim and counterclaim. I will confine myself to deciding the factual disputes that matter.

72. There is no dispute of law other than the proper meaning and effect of the SPA and the SPA variation. Although the SPA has an Israeli law clause, neither side has pleaded reliance on foreign law or sought to contend that Israeli law is different from the laws of England and Wales in any material respect. Ms Scharnetzky, who appeared on behalf of Mr Elias, contended that in those circumstances I should apply English law. Mr Eschwege, who appeared on behalf of Mr Mamistvalov, did not dissent.

73. There is no dispute about the legal consequences of a finding of fact in favour of one party or the other. If it was agreed and understood that – subject to any profit sharing agreement that might be reached in relation to the development of the Property – Mr Mamistvalov held the share in Soda on behalf of Mr Elias, then Mr Mamistvalov cannot be the beneficial owner of the share that is registered in Mr Elias's name. If on the other hand there was a binding agreement that ownership of the Property would be transferred to Mr Mamistvalov in return for the SPA variation or the transfer of WCL, or both, and any later agreement to 'unwind' this was rescinded, then the beneficial ownership of the share remained with Mr Mamistvalov.

74. The principal factual disputes that I must resolve are:

    i) Did the parties agree in January 2019 an increase from 2% to 14% in WCL's share of realisations from the Award?

    ii) Did the parties agree the SPA variation in April 2019, or at any time?

    iii) What was the reason for the transfer of the Property to Soda and why did Mr Elias execute the stock transfer form in favour of Mr Mamistvalov on 25 June 2019?

    iv) What was the purpose of the stock transfer form in favour of Mr Elias that was sent by him to Mr Mamistvalov on 28 June 2019?

    v) What was agreed in the coffee shop on 18 July 2019 and why did Mr Mamistvalov sign the stock transfer form in favour of Mr Elias on that day?

    vi) Why did Mr Elias resign and why was Mr Mamistvalov appointed a director of Soda on 28 July 2019?

    vii) What if anything was agreed subsequently to the coffee shop meeting and before the parties fell out in early August 2019?

The meaning and effect of the SPA

75. It is convenient first to address the question of whether the SPA is a sham and what on its true interpretation it means. The disputed issue of interpretation of the SPA is whether WCL was liable to pay the full value of the Award (or 73% or 61% of it) at the end of the period during which the SPA was effective, regardless of the amount of recoveries made from Mr Chanturia's heirs by that time, or whether WCL is only liable to pay to Mr Mamistvalov 73% (or 61%) of any recoveries during the period of operation of the agreement. By the time of Mr Eschwege's closing submissions, a slightly different question had emerged, as an explanation of Mr Mamistvalov's evidence about his understanding of the SPA, namely whether WCL was obliged to achieve full recovery before the end of the term of the SPA.

76. Mr Elias repeated in evidence that he considered the SPA to be a "sham", or a "scam" and on occasions he said that what Mr Mamistvalov did was a "sting".

77. By "sham" it was evident that what Mr Elias himself meant was that it was never intended that WCL would buy or be liable to buy the Award from Mr Mamistvalov, but that it was intended only that WCL would lend its name to the effort to enforce the Award in the Georgian courts. Mr Mamistvalov was experiencing difficulty in enforcing in his name, as a result of some political difficulty arising from his relations with important Georgians. Mr Mamistvalov's attitude to the Georgian courts was that they were in the control of the Georgian state and not independent. Accordingly, the prospects of enforcing the Award were likely to be much improved if a company apparently unconnected with Mr Mamistvalov were the plaintiff, and Mr Elias contends that that is what he agreed to allow WCL to do, at Mr Mamistvalov's request.

78. The pleaded case on the SPA being a sham is:

> "…*[Mr Elias] understood [the SPA] was being executed for the sole purpose of ensuring that the Award could be enforced without risk to Mr Mamistvalov. It was at all times known and understood by both Mr Mamistvalov and Mr Elias that the [SPA] was a sham, which was never intended to be enforceable by either party. In particular, it was never intended that [WCL] would pay Mr Mamistvalov for the Award and nor was it intended that [WCL] would retain the value of the Award in the event that it was successfully enforced*."
> (Amended Reply and Defence to Counterclaim, para 7)

79. The classic statement in English law of what a "sham" is is the judgment of Diplock LJ in Snook v London and West Riding Investments Ltd [1967] 2 QB 786 at 802:

> "…it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if

> any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v. Maclure* and *Stoneleigh Finance Ltd v Phillips*), that for acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating."

80. A common example of a "sham" is where a legal relationship that the parties intend to enter into is dressed up as something with different legal effect. The paperwork is a pretence and the true agreement is concealed: see Antoniades v Villiers [1990] 1 AC 417 at 462-3 and 469-470. This is quite different in principle from a transaction that is merely artificial or uncommercial. As Arden LJ said in Stone v Hitch [2001] EWCA Civ 63:

> "…the fact that the act or document is uncommercial, or even artificial, does not mean that it is a sham. A distinction is to be drawn between the situation where parties make an agreement which is unfavourable to one of them, or artificial, and a situation where they intend some other arrangement to bind them. In the former situation, they intend the agreement to take effect according to its tenor. In the latter situation, the agreement is not to bind their relationship."

81. What is essential for a finding of sham is that the parties (not just one of them) subjectively intended that the documents signed were not to create the legal rights and obligations that they appear to do. As Fordham J explained in Isle Investments Ltd v Leeds City Council [2021] EWHC 345 (Admin), after reviewing the authorities, although the Court is astute to detect shams it starts with the presumption that parties to a written agreement, even an artificial one, intend to be bound by its terms.

82. It is necessary first to construe the SPA according to its terms. The SPA was prepared by Mr Mamistvalov based on previous drafts used by him. It does not appear to have been drafted by a lawyer for its purpose in 2018, though it may be based on a different agreement drafted by a lawyer that Mr Mamistvalov had used before. It is similar to the 2015 draft that Mr Mamistvalov previously sent Mr Elias.

83. It is called a "Debt Purchasing Agreement" and purports to be made by WCL (which is defined as "constitute[ing] its subsidiaries, principals and other affiliated companies, aliases entities and companies"), referred to as "the Purchaser", and Mr Mamistvalov, referred to as "David".

84. A preamble recites the details of the Award and that WCL expresses a wish to purchase the Award and Mr Mamistvalov a wish to sell the Award. A recital states:

> "The Parties have agreed to conclude a purchase agreement, Purchaser buying and David selling the Award, *in accordance and*

> *subject to the terms and conditions set forth in this Agreement*" (emphasis added)

85. Definitions are then set out, including one of "Total Debt Amount", which is the US$5,053,418 original claim plus compound interest from 25 March 2010, costs awarded and interest on the costs. "Delegates" is defined as third party professionals engaged by the Purchaser to provide services in relation to enforcement of the Award. "Full Purchase Amount" is defined as the "entire and complete value of the Purchase Amount per article 5.3 below, calculated at the final settlement date, at which last payment was made to David".

86. Clause 1 of the SPA states:

> "This Agreement forms a sale/purchase engagement between the parties, whereby David sells and Purchaser buys all the rights arising from the Award (of monetary nature and other) and all debt and/or financial obligations owed to David by the debtor… (referred to as 'Defendant') by virtue of the Arbitration proceedings as specified in the Award, shall be fully transferred to the Purchaser."

87. Clause 3 states:

> "The term of the Agreement shall commence on the date hereof and shall continue in existence until either of the Parties desires to dissolve the Agreement, according to conditions per Article 10 below. However, such unilateral disseverment or notice of termination by one of the Parties does not terminate the duties and obligations of each of the Parties agreed and stipulated in the provisions and articles in this Agreement."

88. Clause 5 contains the following "General Provisions", so far as material:

> "5.2 PURCHASER undertakes to purchase the Award at the price set forth in article 5.3 below – Purchase amount
>
> 5.3 "Full Purchase Amount" - shall be defined as the price in US$, at a value sum equal to 73% (Seventy Three percent) of the Total Debt, on the date of final and complete payment of the Due amount to David, in accordance with this agreement ….
>
> 5.4 Upon fulfilment of conditions provided in Sections 5.4.3 and 5.4.4 below, PURCHASER assumes all rights arising from the Award, including debt recovery-rights as well as ownership of Award and title, whereby Award title shall be completely transferred to PURCHASER, thus the award and all associated benefits shall be fully assigned to the Purchaser and Purchaser will have full rights to enforce the award and act upon it, becoming the authorized legal bearer/owner of the debt, empowered to take all legal actions to recover the full and entire debt (The debt amount) from the Debtor and/or his successors, according to the law.

5.4.1 *Provided, however*, In the event that conditions in sections 5.4.3 and 5.4.4 were not satisfied, this Agreement shall be automatically terminated, vacated and rescinded, without any Party being required to take any action to cause such termination, vacating and rescission. In such event, neither the existence of this Agreement, nor any of its terms may be used and will not be offered as evidence in any proceedings between or among any of the Parties (including, without limitation, as evidence of any agreement to make any payment or to release either Party of any liability).

….

5.4.3 Within 6 (Six) months from the commencement date, Purchaser will pay David the Full Purchase Amount net of any taxes payable to any UK authority (the "**Purchase Amount**") and net of any bank transfer charges incurred …..

5.4.4 All amounts and sums and the Full Purchase Amount shall be paid to the following bank account designated by David by wire transfer…

5.4.5 Fulfilment of provisions 5.4.3 and 5.4.4 above, to the bank account per Section 5.4.4 above, shall constitute full, final and complete performance of any and all payment obligations of Purchaser towards David pursuant to and on account of this Agreement

5.5.1 *In an event of annulment or termination of the agreement per article 5.4.1 above and per articles below, Purchaser's obligations per article 5.3 above to pay David the purchase price of all amounts collected and recovered from defendant and his successors, shall survive any and all annulment, avoidance or termination of this agreement*.

5.6 In the event that the full Purchase amount is not paid within 6 (Six) months from the date of this agreement, this agreement shall be automatically terminated, vacated and rescinded as per article 5.4.1 above.

5.7 in all events and circumstances, PURCHASER shall not be entitled and/or authorized to neither negotiate nor settle the debt with the debtor to the effect of reducing the Award debt value to without prior consent from David, authorised to amend the terms and provisions of the award. **In all events and circumstances PURCHASER will be committed to effect payments to DAVID as per Sections 5.4.2 to 5.4.4 above.**

……

5.10 for the purpose of enforcing the Award and recovering the Award Full value, it is hereby agreed that Purchaser may choose to take various actions and initiate proceedings to that effect, which actions and proceedings may require the purchaser to be represented as the principal creditor/beneficiary of the award before various

> official forums and venues in various jurisdictions and for that purpose Purchaser may be required to engage with third party professionals/service providers (Delegates), speciating in multi—jurisdiction judgement enforcement and assets recovery.
> It is hereby agreed that Purchaser may engage with third party Delegates, according to the provisions provided in the specific approval enclosed as Attachment C to this agreement.
>
> 5.11 In the event that all or part of the Award Full value is recovered during the lifetime of this Agreement, all such sums, shall be deposited in the Designated Bank account per 5.4.4 above
>
> 5.12 Any and all legal proceedings, with respect to the enforcement of the Award and its debt recovery proceedings, shall be coordinated with DAVID's Israeli legal representatives,…
> …..
> 5.14 All enforcement expenses (legal fees, duties, guarantees, security deposits etc) shall be born entirely on PURCHASER"

89. The following further provisions of the SPA are material:

> "6. It is hereby agreed that in the occurrence of conditions specified in section 5.4.1 above, where the Agreement has been automatically terminated, vacated and rescinded the Purchaser shall not have any claims nor entitlement to the Award and/or any rights and/or provisions associated with Award and the Award shall be deemed unrecovered nor settled, with respect to this Agreement and the Purchaser and/or Purchaser's former or present affiliated entities or individuals shall be barred and restricted of representation and/or actions in relation to the award and shall be obliged to fully disclose all actions taken in the matter hereof.
>
> ….
>
> 10. This Agreement shall be valid for a period of 180 (One Hundred and eighty) days from the date of signature thereof."

There are relatively standard "entire agreement" and "good faith and fair dealing" clauses.

90. Mr Mamistvalov's case in opening was that the SPA creates something akin to a conditional contract for the sale of the Award. Until the conditions are satisfied, WCL does not acquire title to the Award but nevertheless it is temporary title to pursue claims under the Award in its name. The conditions include payment into Mr Mamistvalov's designated bank account of the "Full Purchase amount" within the period of 180 days from the date of the SPA. The SPA automatically terminates after 180 days if the Full Purchase Amount has not been paid.

91. It is to be noted that the full purchase amount is 73% of the Total Debt, where Krys is entitled to deduct 25% of any recoveries under the terms of the RSA.

Thus, until 97.33% of the total liability under the Award has been realised by Krys, the condition in the SPA is not satisfied and WCL does not acquire title. Mr Mamistvalov's oral evidence at trial was, upon termination of the SPA at the expiry of the 180 day period for non-satisfaction of the condition, WCL is nonetheless liable to pay the Full Purchase Amount, or alternatively is in breach of an obligation to satisfy the condition within 180 days.

92. That is plainly not what, objectively construed, the SPA means and the argument was not pursued in closing submissions.

93. It is important to bear in mind the factual context in which the SPA was made. Mr Mamistvalov had been struggling to enforce the Award in Georgia and had suffered a defeat in the Georgian courts. An appeal against that reverse was to be heard in the Tbilisi Court of Appeal. Mr Mamistvalov wanted a front for the legal claim that would distance him from the proceedings. He wanted a shell or near shell company, without assets or liabilities, which is why WCL was provided by Mr Elias. Both men believed WCL to have no assets, even though in fact the April 2019 accounts of another Elias Group company show a debt owed by it to WCL.

94. WCL was to (and did) enter into an agreement with Krys under which Krys would, subject to direction from Mr Mamistvalov, conduct the recovery efforts using WCL's name but effectively on behalf and at the direction of Mr Mamistvalov. WCL had no obligation itself to pursue recovery, merely power to do so: clause 5.10. Its role, as Mr Mamistvalov later put it, was purely passive because the RSA had been put in place. Krys was to have a power of attorney from WCL. Krys was entitled to deduct the first 25% of any recoveries before passing the balance to Mr Mamistvalov.

95. There was therefore no expectation of WCL paying money to Mr Mamistvalov except indirectly out of such realisations as were achieved. It had no ability to pay otherwise in any event. There was every prospect (though doubtless Mr Mamistvalov hoped otherwise) that nothing would have been realised within 180 days of the date of the SPA. On 9 November 2018, Mr Mamistvalov did not know when the appeal would be heard in Tbilisi. He only heard on 30 January 2019 that it was to happen in February 2019. On termination of the SPA, Mr Mamistvalov would retain full title to the Award. The propositions that WCL thereupon became severally liable for over $14 million or was liable in damages for failure to realise that sum, as if it had guaranteed that Krys would be successful, are equally absurd. Such liability would have been of no assistance to Mr Mamistvalov in realising the debt under the Award.

96. Mr Elias points to the fact, in support of the sham allegation, that the SPA is termed a sale and purchase agreement and that clauses 5.2, 5.3 and 5.4.3 contain an apparently unqualified obligation to pay the Full Purchase Amount within 6 months. However the Full Purchase Amount cannot be quantified until the date of final and complete payment of the debt owed by Mr Tchanturia because, as defined, it includes compound interest up to the point of full payment of the debt. Moreover, the argument centred on clauses 5.2, 5.3 and 5.4.3 is an erroneous approach to the true construction of a contract. Any clause in a contract must be construed in the context of the contract as a whole, taking into account the facts

that were known or reasonably available to the parties when making it. That legal proposition is now so well-established that it is unnecessary to refer to authority and indeed the parties did not do so. I have borne fully in mind the approach explained by the Supreme Court in Arnold v Britton [2015] UKSC 36; [2015] A.C. 1619, per Lord Neuberger of Abbotsbury PSC and in Wood v Capita Insurance Services Ltd [2017] UKSC 24; [2017] A.C. 1173, per Lord Hodge JSC.

97. In my judgment, it is clear from reading the SPA as a whole that WCL only had a liability to pay sums to Mr Mamistvalov out of monies recovered by Krys. On expiry of the 6 months without full recovery, the SPA was to terminate on the basis that neither party could make use of its prior existence or terms in legal proceedings (cl. 5.4.1). Mr Mamistvalov therefore could not sue WCL for the amount alleged to be payable. Further, as clause 5.5.1 expressly states, in the event of termination at the end of the 6 months, it is the obligation to pay the amounts collected and recovered from Mr Tchanturia that survives, not an obligation to pay the Full Purchase Amount regardless of what has been collected and recovered.

98. The words in bold in clause 5.7 do not override the other terms of the contract. Their purpose is to emphasise that it cannot be a lesser amount than the Award debt that is payable. The first sentence of that clause removes the ability that WCL might otherwise have had to negotiate or compromise the amount of the debt. In my judgment, the second sentence emphasises that it is WCL's duty to pay the Full Purchase Amount, not a lower amount. That clause is subject to the other terms of the SPA, including the automatic termination provision.

99. This interpretation of the SPA makes good commercial sense, whereas an ultimately unqualified liability of a shell company to pay Mr Mamistvalov more than US$14 million, regardless of recoveries, does not. It was Mr Mamistvalov who chose the term of 180 days. There was no negotiation of the SPA terms. He must have considered that period sufficient to enable Krys to substitute WCL as plaintiff and pursue the appeal in Tbilisi. The security that Mr Mamistvalov said that he had already obtained over assets could then be enforced. If any recoveries were made during the 180 days, Krys took 25% and Mr Mamistvalov took 73%, leaving 2% to WCL as a fee for lending its name to the recovery attempt. But the critical thing was that Mr Mamistvalov obtained the benefit of using WCL's name as substituted plaintiff in Georgia.

100. The argument that both parties subjectively intended the SPA to have some different effect than it has, as I have explained it, is unsustainable. Indeed, Mr Elias's case of sham is in reality premised on the SPA being a sale and purchase agreement in the fullest sense, under which Mr Mamistvalov must sell and WCL must buy at the price stated. The SPA was not intended to have that effect and, properly construed, it does not. Mr Mamistvalov certainly intended the SPA to have the effect that it has: it was essential to his purpose that WCL had title during the subsistence of the SPA to sue on the Award, and that if WCL met any success 73% of recoveries would be passed to him. He also intended that he would not give up his rights to the Award unless and until he obtained 73% of the Total Debt, and that WCL would only have permanent rights to the Award once he had obtained that. Mr Elias signed the SPA unquestioningly. He does not say in his evidence that Mr Mamistvalov told him that it was intended to have some

different effect. He said only that Mr Mamistvalov assured him that he had to do nothing and that he was protected because the agreement would come to an end after 6 months. Both parties therefore intended the SPA to have effect in accordance with its terms, which were not an unconditional sale and purchase agreement at a price.

101. The effect of the SPA and RSA together was that Krys was obliged and WCL was entitled to substitute WCL as plaintiff in Georgia and appoint lawyers and other consultants to pursue enforcement of the Award. Recoveries would be shared out between Krys, Mr Mamistvalov and WCL while the SPA subsisted. After 180 days, the SPA would cease to have effect, save only for the obligation on WCL to deal with any monies actually recovered in accordance with its terms.

The witnesses

102. Both Mr Elias and Mr Mamistvalov were unsatisfactory witnesses, though in different ways.

103. Mr Elias in his witness statement properly (in conformity with para 3.7(1) of the Appendix to CPR PD 57AC) explained that he had poor recollection of the detail of the events in issue because he has suffered 'brain fog' and other 'long-Covid' effects. He said that he remembered the main events and essential points, and in the course of his cross-examination it appeared that he had quite a detailed memory of the coffee shop meeting on 18 July 2019 in particular. He said that by focussing on it he recovered some memory and that he recalled that it had played on his mind. However, he had no recollection of why Stanley Davis had been instructed to prepare two stock transfer forms in June 2019 and it was clear to me that he did have poor recollection of other events. 'Brain fog' is an apt description of Mr Elias's mental state, as I saw him. The content of his witness statement was limited, so far as detail of events is concerned, but that was quite proper in view of the terms of PD 57AC.

104. Mr Eschwege criticised Mr Elias for saying on occasions that he had not seen documents at the time, or not received emails, and for reverting under pressure of questioning to his 'mantra' that he had been the victim of a 'sting'. He also criticised Mr Elias, with some justification in my view, for not being honest about the fact that he was (or he and his wife were) from the outset intended to be the beneficial owners of the Property, and for lying to the Charity Commission about his connection to Royley.

105. Mr Eschwege said that Mr Elias had a selective approach to memory, being unable to recall things that were difficult for him to explain consistently with his case, yet having a professed clear recollection of other events that supported it.

106. My view, formed on the basis of hearing Mr Elias over a full day in the witness box, is that it is clear that he was struggling to remember the details of what happened. I do not accept that he was being selective, though I am doubtful that his memory of events that he says that he does recall is as good and clear as he gave the impression that it was. Mr Elias had a clear understanding of his case and repeated it frequently, but that is not the same as reliable testimony of what actually happened in 2018 and 2019. I do accept, however, that Mr Elias does not

recall receiving some of Mr Mamistvalov's emails, including the email of 14 January 2019 recording agreement on increasing WCL's share of the recoveries and the email of 24 April 2019 recording agreement on the SPA variation. Whether he now remembers receiving them is not, of course, conclusive of the question whether they were sent and received.

107. Mr Elias became quite emotional about what had happened, admitting to having been a fool to trust Mr Mamistvalov, and did become rather dogmatic about what he said was the truth. He frequently swore before his God that what he was saying was the honest truth. I am nevertheless cautious about accepting his positive evidence about the detail of disputed events that happened, save where it is corroborated by documents or other evidence or supported by inherent probability.

108. In these circumstances, the transcripts of the numerous telephone conversations are invaluable in more ways than one. They show exactly what was discussed between the parties at the relevant time (albeit in language that was often confusing), and they also demonstrate clearly the dynamic of their relationship. The recordings all pre-date Covid, so Mr Elias was not impaired on that account. Nevertheless, it was very clear to me that he had at the time only a limited understanding of what Mr Mamistvalov was advising him to do or why.

109. The two men are of quite different character. Mr Mamistvalov was a dominant force and clearly a controlling personality. I formed the view that he is very intelligent though with a tendency to over-complicate everything, and a desire to give the impression that he knows everything even when he does not. An example of this was his dogmatic assurance that there could be no tax consequences upon transfer of the Property out of the Royley trusts into the beneficial ownership of an English company or individual. English is not Mr Mamistvalov's first language though, like many Israelis, he speaks it fluently and confidently. He does not, however, express himself clearly, either in his style of speaking, which is often faltering and fragmentary, or in the language that he uses. During his evidence in the witness box, I often struggled to follow what it was that Mr Mamistvalov was trying to say. From the transcripts of the phone calls, it is evident that Mr Elias had exactly the same difficulty in 2019.

110. Mr Elias is a much more reticent and amenable man, naturally modest and willing to give way to others. He was consistently dominated, almost bullied, by Mr Mamistvalov in their conversations and, for whatever reason, invariably submitted to what Mr Mamistvalov thought should be done. Their conversations were at times extraordinary, with Mr Mamistvalov berating and criticising Mr Elias for being unfocused, slow-witted or too easy going. On occasions Mr Mamistvalov was coaching Mr Elias to be more like himself and less of an English gentleman in the way that he conducted his affairs. Mr Elias clearly trusted Mr Mamistvalov implicitly and was prepared to do what he said.

111. Mr Elias demonstrated himself to be suggestible, both in the conversations with Mr Mamistvalov that were recorded, and in cross-examination. He would frequently assent to a proposition put to him, but without really engaging with or evaluating it. There were occasions, in his evidence, where the transcript reveals that he agreed with matters that were put to him. For example: that the purpose

of re-structuring ownership of the Property was so that he could mortgage it, to resolve his finances; that it was not a purpose of the re-structuring to seek to alleviate the difficulty with Rabbi Levy; that Mr Mamistvalov was going to have beneficial ownership of Soda; and that the objective of protecting the Property from Mrs Elias could not work because she knew that she had an interest in it. The answers were skilfully extracted by Mr Eschwege but, given Mr Elias's difficulties of memory and limited understanding, I cannot simply take them at face value as admissions that his case has no proper foundation.

112. There is a considerable disparity between the nature of the business interests of Mr Mamistvalov and Mr Elias. The former carries on multiple businesses in the fields of infrastructure, water and agriculture, in Israel and internationally, as well as angel investments for hi-tech projects in Israel. He evidently operates at a level where transactions of millions of US dollars, Euros and pounds sterling take place. Mr Elias has a successful business in dry cleaning services operating in Greater London, and his companies have assets and turnover in the £100,000s.

113. What matters in this, for my purposes, are two main conclusions based on what I saw of each man in the witness box and read and heard in the recordings of their conversations. First, Mr Mamistvalov was the dominant force in all discussions, whether with Mr Elias alone or also with Mr and Mrs Haynes of Summit. He takes over and controls – on occasions manipulates – the conversation and often gives directions about what should be done. Mr Elias was generally submissive. Second, I am quite sure that Mr Elias did not properly understand half of what Mr Mamistvalov was explaining to him, despite saying "yes", "yeah" or equivalent expressions of assent when Mr Mamistvalov was talking, and even when asking Mr Elias whether he understood. My impression is that he was too embarrassed to say that he was muddled and could not understand, and too modest to challenge Mr Mamistvalov. Mr Elias is no fool but he is not (or no longer) a man of sharp intelligence and was no match for Mr Mamistvalov. He was out of his depth.

114. Mrs Elias gave evidence briefly. She was a straightforward and plainly honest witness, but her evidence for the most part does not impact on the matters in dispute. She was unaware at the time of the steps that her husband was taking in relation to the Property or WCL's involvement with the Award. She said, and I accept, that she did not want to be involved with Mr Mamistvalov, whom she did not trust, and she resigned as director of WCL for that reason. She said that Mr Elias told her in July 2019, when they were in Israel, that he had transferred the Property to Mr Mamistvalov. She was furious but knew nothing about a deal for the Property.

115. Mr Mamistvalov signed a witness statement which was almost wholly non-compliant with PD 57AC. Apart from having the certificate at the end that the PD requires, it failed to abide by any of its other main requirements. There was no identified list of documents that Mr Mamistvalov had reviewed to seek to refresh his memory – in the trial bundles, a list of documents followed his witness statement, but it was not identified either in the signed statement or on the list itself as being the list that the PD requires. The witness statement was exactly the kind of statement that the PD was introduced to prevent. It was not limited to matters personally observed that a witness would be able to give in examination in chief but was an extended commentary on what some of the documents stated,

with argument and opinions liberally provided. There was no indication about the strength of Mr Mamistvalov's recollection on the principally important issues in the case.

116. In reading Mr Mamistvalov's witness statement, I had no sense at all of the true voice of Mr Mamistvalov or what he was able to remember. His statement was clearly the product of very long hours by a team of lawyers attempting to put together a watertight narrative of those events and certain documents that advanced Mr Mamistvalov's case. Mr Mamistvalov admitted in cross-examination that what he said in his witness statement about dates of events was based on the documents and that he had no recollection of dates. His statement did not say so. As a result, I have considerable reservations about the reliability of what is asserted in Mr Mamistvalov's witness statement.

117. Mr Mamistvalov's true voice was clearly heard in court. His evidence was confusing. He rarely answered a question with a straight answer and often sought to take control of the 'conversation' with Counsel, arguing the points that he wanted to argue and asking rhetorical questions. He frequently interrupted questions and spoke over Counsel - sometimes, I consider, trying to divert from what he was being asked to something else that he wanted to say, and thereby manipulating the process of question and answer. He became quite agitated and angry on occasions. There was little attempt to confine himself to the facts, despite encouragement from the bench to do so. He was often evasive. I found him to be a witness on whose evidence (where disputed) I cannot safely rely, save where it is corroborated by other evidence or is inherently likely to be right.

118. In view of these conclusions about the witnesses, the contemporaneous documents, the view that I have formed of the character of the two protagonists and the relationship between them, business common sense and inherent probability are the best guides to the truth of what happened.

Disclosure failings

119. Mr Elias accepts that he failed to give extended disclosure in accordance with the directions of Master Pester dated 5 July 2021. HHJ Jackson, who heard the pre-trial review ("PTR") on 18 May 2022, described the failings as "catastrophic". Mr Mamistvalov issued an application relating to the deficient disclosure before the PTR and Mr Elias made a witness statement apologising for errors made and explaining his email accounts. He said that he had deleted his Whatsapp messages, no longer had the same mobile phone and had deleted his Protonmail account (address: Haskell@Elias.uk). His solicitor, Hayley Marie Songhurst of Ellisons also made a witness statement dealing with disclosure.

120. Judge Jackson was not satisfied with the explanation given and required Mr Elias to make a further witness statement explaining what he did. He explained that the Protonmail account lapsed in December 2020 when it was not renewed but that a back up had been made, though this only went back to August 2019. The reason given for that is that in late July or early August 2019 Mr Mamistvalov instructed him to delete all messages between them, and that this was to prevent Mrs Elias from seeing the arrangement for the share in Soda. A new search for documents and a new disclosure certificate were then made.

121. In his evidence, Mr Elias said for the first time that he did not destroy all messages but selected some to retain.

122. The documentary evidence shows that Mr Elias (or his son, on his behalf) received a reminder on 15 March 2021 to pay the annual fee for his elias.uk Proton e-mail account. It appears therefore that the account could not have lapsed for non-renewal until after that date.

123. Ms Songhurst made a further witness statement dated 15 June 2022, suggesting that on reflection she might perhaps have checked that Mr Elias had searched all his devices correctly, using the right keywords, and made it clear to him that he should send all responsive documents to her and should not carry out any filtering or assessment of relevance himself. She wished to stress, however, that in other cases where the client is a director of a successful company and does not volunteer that they do not understand what is required, she would not normally consider it necessary to raise such questions.

124. This evidence regrettably makes it clear that the fault for the "catastrophic" disclosure exercise is not entirely that of Mr Elias. It was Ms Songhurst's responsibility to ensure that disclosure searches were correctly carried out and all responsive documents reviewed. It is never appropriate for a solicitor to leave such matters entirely to a director of a company for either of the reasons given.

125. I am nevertheless not satisfied that the explanation for the absence of contemporaneous documents given by Mr Elias is correct. I find his evidence about the Protonmail account unreliable. There is only independent evidence of an instruction from Mr Mamistvalov to destroy an innocuous recording of a telephone conversation and nothing to support an instruction to eradicate all emails prior to August 2019. Other email accounts used by Mr Elias from time to time were not erased.

126. It follows that I cannot rely on the absence from Mr Elias's disclosure of an email or other document pre-dating August 2019 as evidence that no such document existed. I bear in mind the failure of Mr Elias in relation to disclosure and the inadequate explanation when assessing the probability of various factual matters being as he contends.

Resolving the factual disputes

The Origin of the SPA

127. Starting with the events of October and November 2018, I find that Mr Elias was in need of a short-term loan and Mr Mamistvalov was to some extent concerned to help his friend, but not so much that he was willing to lend money himself. Mr Mamistvalov had his own business concerns about some long outstanding debts. There was the Arredo Luce debt, which was for a "small amount" and for which Mr Mamistvalov himself had not issued legal proceedings, though he had had conversations with Dutch lawyers about the costs of doing so; and there was the Award, dating from 2012, which he had been seeking to enforce in Georgia for many years, where he recognised that the prospects of enforcement would be likely to be improved if someone other than him was the nominal plaintiff.

128. I find that Mr Mamistvalov genuinely thought that the Arredo Luce debt could easily be factored (or 'reverse factored', as he called it) for a significant discount, which he was willing to incur, and that this might quickly raise the kind of money that Mr Elias needed to borrow. In the event, things proceeded much more slowly than anticipated and Mr Elias's financial needs were met by a bank mortgage. I also find that the proposition that Mr Elias might provide a limited company to pursue the Award in Georgia in place of Mr Mamistvalov was nothing to do with resolving Mr Elias's financial difficulties. Mr Mamistvalov must have realised, and I find that he knew, that the timescale for a hearing of the appeal in Tbilisi and then (if successful) actually enforcing the Award was far longer than the relatively urgent needs of Mr Elias allowed.

129. The SPA was prepared by Mr Mamistvalov and signed by Mr Elias on behalf of WCL on 9 November 2018, in accordance with Mr Mamistvalov's direction. This was done in order to assist him with *his* financial difficulties, namely realising the very valuable Award, not for the purpose of resolving Mr Elias's short-term cash flow problem. I make that finding despite the fact that the 2% share for WCL written in the SPA, if full or nearly full recovery was made under the Award, would have provided WCL with approximately US$280,000, a sum roughly equivalent to £200,000. The 2% share was probably volunteered by Mr Mamistvalov in drafting the SPA because he knew some apparent consideration was required, and to tempt Mr Elias to engage. I find that Mr Elias was aware of the share that was being offered, despite his denial that he had any interest in it, but I do not accept that he bargained for the 2% share. I consider that Mr Mamistvalov was willing to offer it to obtain the agreement. It left him with 73% recovery, which was more than the 70% that he said that he had been able to negotiate with a Russian buyer previously.

130. What is important, however, is that the possible factoring of the Arredo Luce debt and the SPA were unconnected, even though they were each discussed during the 23 October 2018 telephone conversation. The SPA was Mr Elias helping his friend Mr Mamistvalov, at Mr Mamistvalov's suggestion, and in return obtaining a somewhat remote chance of a small share of the recoveries. That is because the 2% share would only be payable if 97.33% or more of the value of the Award were recovered within the 180 days for which the SPA was to operate. It was Mr Mamistvalov's needs that were paramount in entering into the SPA.

131. Mr Mamistvalov sought to contend that this was not so: he was making a generous offer to his friend and could just as easily have proceeded with an off-shore company as substituted plaintiff. I reject this argument. It was of considerable benefit to Mr Mamistvalov to be able to have as substituted plaintiff in Georgia an English limited company with a trading history (albeit one that was by then dormant) and an identifiable shareholder, rather than an off-shore shell company with no identifiable shareholder, which would have been assumed by anyone in Georgia to be a vehicle controlled by Mr Mamistvalov.

<u>The alleged increase in WCL's share</u>

132. The next matter in issue is whether, as Mr Mamistvalov now contends, he was left with nowhere to go when Mr Elias demanded an increase from 2% to 16% in his share of recoveries under the SPA. It is interesting that in his witness

statement Mr Mamistvalov does not say that he was in any sense held to ransom by Mr Elias in this regard, simply that Mr Elias had said that he needed some more money out of it, so that he could repay the mortgage debt. In cross-examination, he characterised the exchange very differently: "practically, he was grabbing me by the neck". The documentary evidence on which Mr Mamistvalov relies is the email dated 14 January 2019 alluding to an agreement that had been reached to increase the share to 14%. As to the preceding agreement itself, Mr Mamistvalov said in his witness statement that he wanted to help Mr Elias out; asked him how much he wanted; and when the answer came back "an additional 15%" Mr Mamistvalov said that he could agree a further 12%.

133. When cross-examined about it, he was reluctant to be drawn about the way in which the agreement at 14% was reached, but he accepted that the conversation in which he says the matter was discussed was "not tense and fraught … It was fair, it was assertive, just expressed my discontent".

134. There is no other documentary evidence that supports Mr Mamistvalov's case and much that is inconsistent with it. There is a recording and transcript of a telephone conversation between Mr Elias and Mr Mamistvalov on 15 January 2019 – a day or so after Mr Mamistvalov was allegedly grabbed by the neck and left with no option but to agree a substantial increase in WCL's share. I accept the argument of Ms Scharnetzky that the tone of that conversation, which was relaxed and implied that the parties had not spoken in detail for some time, as well as its content, with no mention of what is alleged to have been agreed shortly before, is quite inconsistent with there having been a difficult conversation in which Mr Mamistvalov was persuaded to pay Mr Elias seven times what had previously been agreed, an extra $1,750,000. I found Mr Mamistvalov's explanation for agreeing this, namely that "the show must go on" and "why increase the tension?" glib and unconvincing.

135. As for when the oral negotiation and agreement that the email of 14 January 2019 records took place, the email shows that it was not on 13 January. There are telephone records of one short and one very short conversation during the previous week, but Mr Mamistvalov accepted that the conversation in question could not have been one of those. He suggested in the witness box – but had not said in his witness statement – that they spoke on Whatsapp at the time and the conversation in question could have been over Whatsapp and so untraceable. This seemed to me to be no more than speculation, at a time when Mr Mamistvalov had no other explanation. It is true that there are, in some later transcripts of phone conversations or in emails, a few references to Whatsapp telephone calls, but it was not established that the parties were using Whatsapp voice calls at the time in question. A month or so later, Mr Elias, at Mr Mamistvalov's suggestion, installed S-phone software on his mobile telephone, to provide a secret means of communicating.

136. It is possible that a conversation took place shortly before 14 January 2019 on Whatsapp, but unlikely. It is unlikely because of the conversation on 15 January, which I have described, and because there are documents that postdate 14 January that are inconsistent with what Mr Mamistvalov says was agreed. These are: the 3 substituted, altered pages of the SPA that Mr Mamistvalov required Mr Elias to sign, one of which refers to a price of 73% (not 61%) of the total value of the

Award; and the Mutual Rescission of Deed of Assignment, which affirms and exhibits the original SPA. Given the purpose obviously intended (by Mr Mamistvalov) to be served by the amended pages of the SPA, namely to give a greater appearance of arm's length commerciality to the SPA, I do not accept that the increase in the consideration to 14% of recoveries would have been omitted if it had been agreed. Nor would Mr Elias, if he had held Mr Mamistvalov to ransom over the consideration, have signed those pages without checking to see that the change had been made. Further, I do not accept that it would be in Mr Elias's character to behave in that way towards someone whom he saw as his benefactor and friend.

137. I therefore find that no agreement was made to increase WCL's share of the realisations to 14%. I reject Mr Mamistvalov's evidence that it was. Given the absence of formal challenge to the 14 January 2019 email and Mr Elias's disclosure failings, I accept that the email was sent. In my judgment, it was sent to serve some other purpose that Mr Mamistvalov had in mind at the time, in connection with the work that Krys were doing in Georgia, and it may well be that Mr Elias has forgotten what it was, if he ever knew. I consider that it is likely that there was an understanding that it was no more than a piece of paper, like the substituted SPA pages and deed of assignment that followed it. Having seen from the transcripts Mr Elias's wholly compliant attitude to Mr Mamistvalov's requirements at the time, it is perfectly possible that he thought nothing of it, just as he thought nothing of the changed pages of the SPA or the deed of assignment, each of which on the face of it was favourable to WCL and could have been used to Mr Elias's benefit. Conversely, given the relationship between them and Mr Elias's character, Mr Mamistvalov would have been fully confident that Mr Elias would not try to use the piece of paper against him.

The early discussions about taking the Property out of Royley

138. By the end of February 2019, it is clear from the transcripts of conversations that Mr Mamistvalov and Mr Elias had discussed the Property and taking it out of the Royley trust structure. One possibility was that it would be transferred into Mr Mamistvalov's name. How did this arise?

139. The relevant context starts in a conversation on 11 December 2018 when Mr Mamistvalov advised Mr Elias to put some assets, in particular the Property, safely beyond his wife's reach for the future. He suggests that he could tell his wife that he needed to put it into a proper structure so that he could mortgage it. However, this was not the real reason, just a suggested pretext. The reason was to provide future security to Mr Elias, not to the bank. Mr Elias responded that he thought that the problems with his wife were now sorted out, but Mr Mamistvalov said:

> "Hezzi, I'm just saying for the future. Right now, it's sorted out. You never know because you've been having these ups and downs throughout your life. Right now, you know, to get control over the reins […..]
> Because as long as her sister is in the picture, like, you're not really having control."

Mr Mamistvalov in cross-examination argued that this was a reference to ups and downs with Summit, to whom Mr Elias had alluded in the conversation, but that is plainly not the case. The context for Mr Mamistvalov's advice was worries about Mr Elias's relationship with his wife, not his relationship with Summit. I accept Mr Elias's evidence that what was being discussed was protecting the Property from possible adverse claims or action by or on behalf of his wife in the event of a marriage breakdown.

140. The concern was that, under the Royley structure, the shares were owned by a corporate shareholder on behalf of Mrs Shmuel and Mrs Shmuel had declared that she held the shares for Mr and Mrs Elias jointly. Mrs Shmuel therefore had ownership so far as the corporate shareholder of Royley (in practice, Summit) was concerned, and Mrs Elias had a half share so far as Mrs Shmuel was concerned. All of this was inconsistent with Mr Elias being the sole beneficial owner of the Property, which is what he now aspired to be.

141. By the time of Mr Elias's visit to Israel in February 2019, his cash flow difficulty had been resolved by mortgaging other property, and the discussions that took place in Israel were therefore not about raising more money for short-term use. It is clear that the parties must have discussed the Property, its development potential and, in particular, removing it from the existing Royley structure. By the end of February 2019, the possibility of transferring it to Mr Mamistvalov had been raised.

142. Mr Elias said that it was all about protecting the Property from his wife and her sister, in case their marriage failed. In cross-examination, he disowned the suggestion that it was also about avoiding the difficulties with obtaining planning permission that had been caused by Rabbi Levy even though, by amendment, this was part of his pleaded case. At this stage – i.e. when the re-structuring of ownership was being discussed with Summit in February and March 2019, he said that the concern was with breakdown of his marriage.

143. Mr Eschwege submitted that Mr Elias's pleaded case was in disarray, being inconsistent with the evidence as it developed. The case pleaded is that it was in May 2019 that it was agreed that Mr Elias would implement an arrangement proposed by Mr Mamistvalov on or around 15 May 2019, namely that the Property would be transferred to an English company and the shares would be transferred to Mr Mamistvalov as a nominee for Mr Elias. However, it is clear that this was a conclusion to discussions that started at a much earlier time, and that plans evolved during the period of February and March 2019.

144. Any plan that Mr Elias had was soon overtaken by Mr Mamistvalov's own planning. As matters developed, it is clear to me that Mr Mamistvalov became aware of the opportunity of obtaining a degree of control over, and then a stake in, potentially valuable land. This was not Mr Elias's intention: in his understanding, if Mr Mamistvalov became the owner (directly or indirectly) of the Property, it was to hold it on his behalf. That was the product of Mr Mamistvalov's original suggestion that the Property should be taken out of reach of Mrs Elias and Mrs Shmuel.

145. The transcripts of the relevant conversations show that it was not Mr Elias but Mr Mamistvalov who first raised the question of avoiding the difficulties caused by Rabbi Levy's opposition to the development of the Property. The issue of giving the Property a new ownership front was indeed not dissimilar to the reason for transferring the Award into WCL's name. Opposition to applications for planning permission might be less adamant, or even disappear, if made on behalf of someone apparently unconnected with Mr Elias. That was because the opposition was not on environmental grounds but based on a desire to see Mr Elias not benefit from what was considered to be his wrongful conduct in acquiring the Property.

Discussions with Summit in February and March 2019

146. On 28 February 2019, Mr Mamistvalov rehearsed Mr Elias on what he was going to say to Summit to explain why he wanted the Property transferred out of Royley. It is clear to me that Mr Mamistvalov invented the reason that Mrs Shmuel was facing difficulties in Israel with taxation and transparency of corporate ownership and that her family did not want her to be exposed to awkward questioning about Royley that she might not be able to explain. Mr Mamistvalov also prompted Mr Elias that he should say that he was re-organising his interests and was not satisfied that the position with Royley was sufficiently stable. Mr Mamistvalov had identified that Royley had been struck off the register of companies in the BVI on three occasions. It was Mr Mamistvalov, not Mr Elias, who raised concern about Summit.

147. Within minutes of the start of the first conversation with Penny Haynes on 28 February 2019, Mr Mamistvalov had taken control of the conversation and was seeking to justify transferring the Property out of Royley. Andrew Haynes, who joined the conversation late, raised the problem of the tax consequences in the UK of doing that. Mr Mamistvalov suggested that the problem for Mrs Shmuel was more serious, like criminal tax evasion. Penny Haynes was not convinced.

148. After the Hayneses left the call, Mr Mamistvalov criticised Mr Elias for ending it too soon, when he was trying to make Penny Haynes realise that there was a serious problem in Israel with the existing structure. Mr Mamistvalov told Mr Elias that the first step was to "get [the land] out of her clutches" and that, as to where it would be transferred, Mr Elias should not worry about it as "I already have it planned". Mr Mamistvalov suggested that this had previously been discussed and agreed between them, but it is clear that Mr Elias did not recall that. Mr Mamistvalov went on to explain that his plan was that Mr Elias would come to Israel with some paperwork that appeared to raise a threat to Mrs Shmuel's interests, which would persuade her urgently to sign papers that included transferring rights to the Property over to Mr Elias (pages 12-14 of the transcript of 28.2.19).

149. It is clear from another conversation between Mr Elias and an unidentified Rabbi later that day that Mr Elias's motive was concern about his wife and money, nothing to do with the development of the Property. However, it was Mr Mamistvalov who was taking control of the situation and had sown the seed of using a transfer of ownership to side-step opponents of development of the Property.

150. The two men spoke again on 12 March 2019. By then Mr Mamistvalov's proposal to Mr Elias, before speaking to Summit, was that he would provide one of his BVI companies to Penny Haynes, for that company to hold the land (p.3 of the transcript). Mr Mamistvalov reassured Mr Elias:

> "We're going to sign an agreement so that your company and your land will be protected, whatever, if anything happens to me, whatever, in the future. You'll always be protected and we'll have to do it the right way."

It is understandable therefore that Mr Elias believed that any such ownership structure would hold the land for his benefit. There was indeed no reason for him to think that Mr Mamistvalov would be taking a beneficial share. The focus (as p.4 of the transcript shows) was on removing the Property from the reach of Mrs Elias and Mrs Shmuel, not taking it away from Summit. The Property was to be Mr Elias's beneficially, even if another company owned it. Mr Mamistvalov later explained to Ms Haynes that the owners of the new company were himself and his wife. Mr Mamistvalov said he was reluctant to put himself "in the front".

151. Mrs Haynes was uncomfortable because there was going to be no transparency as to the true beneficial owner, i.e. Mr Elias. At that point, Mr Mamistvalov raised with her the problem with the person (Mr Elias's "old nemesis") who was creating obstacles to getting planning permission for the land. Mr Mamistvalov then explained that he and Mr Elias had an arrangement where he had sold assets to Mr Elias "but it's okay, we are friends, and he asked for my help here to come in and see if I can help but that as well up to a certain extent … as long as I am not too overexposed". Referring again to Rabbi Levy, but not by name, Mr Mamistvalov said:

> "…if that guy, whoever it is there in London, we have a good idea who it is, if he comes to start … to, basically, he's going to end up facing me or my company, in a way, then I'll be able to handle it in a different way, okay? ….Er, that was the idea, basically, to put a face in front of it, myself, okay, my group …."

152. At that stage, it is therefore clear that Mr Mamistvalov is misleading Summit as to the true reason for changing the ownership structure, which was to get the Property out of reach of Mrs Elias and Mrs Shmuel. It was Mr Mamistvalov who suggested the benefit of his (or his company) being the apparent owner, in a way that could facilitate dealing with objectors to development of the Property, but that was on the basis that it was Mr Elias who would be the true owner.

153. In my judgment, it was in that way and for that reason that Mr Mamistvalov began to see himself as having some role and interest in the Property and its development.

154. In a further conversation the next day, Mr Elias suggested to Mr Mamistvalov that the Property could be put into an English company, with Mr Mamistvalov as the shareholder. This was therefore 2 months before the date pleaded in the Amended Particulars of Claim. Mr Mamistvalov pointed out that his wife would be a better choice, for tax reasons. Mr Mamistvalov reminded Mr Elias in

conversations with Summit to keep re-emphasising the problem with Mrs Shmuel's exposure in Israel.

155. On 25 March, Mr Mamistvalov told Mr Elias that he had to explain to Summit that it was he who funded the purchase of the Property in the first place. This was all part of the strategy to persuade Summit that it was appropriate to transfer the Property to new ownership on behalf of Mr Elias alone, rather than for Mrs Shmuel's or Mrs Elias's benefit. At all times Mr Mamistvalov was planning the strategy and rehearsing Mr Elias. The strategy also involved persuading Summit that Mrs Shmuel was at risk. Mr Mamistvalov told Mr Elias that he should tell Summit the following lie: that his adversaries in England were stirring things up in Israel in order to go after Mrs Shmuel when they realised that she was "in the front" so they decided to set the tax authorities onto her, and when Mrs Shmuel discovered that she "went bananas" over it, and Mrs Elias was making his life miserable because of it. In the event, however, it was Mr Mamistvalov who told Mr and Mrs Haynes that story.

156. At all times the purpose of the exercise was to keep Mr Elias's identity as owner "cloaked": p.2 of the transcript of the conversation on 27 March 2019. Any reference in discussions to Mr Mamistvalov "buying" the Property has to be read in that context and not as a reference to him buying it for valuable consideration.

157. As at that date, Andrew Haynes was unable to identify a "where do you want to end up" solution. He felt that he would struggle to identify a solution to all the issues identified, so he advised at least dealing with the tax issue by repatriating the land and paying any tax due while the Property was not too valuable. Mr Mamistvalov explained (p.9 of the transcript) that the idea was that there would be a new 'front' for the Property. The ultimate objective, he explained, was to enable Mr Elias to monetise the land but keeping him hidden. Andrew Haynes explained that that could not satisfactorily be done consistently with sorting out Mrs Shmuel's problem. He advised that the land should be put in a company in which Mr Elias was the shareholder, that the tax be paid, and then the land could be sold in the normal way. Mr Haynes was accepting as true the story about the threat to Mrs Shmuel in Israel.

158. Mr Mamistvalov again offered his wife as a potential shareholder in the new company. He suggested that he might buy the land from Mr Elias, and that the existing deal with Mr Elias in the SPA – where, he said, the debt was still unpaid – would be an answer to money laundering suspicions. Ultimately, the suggestion was made that the land would be put into a company in Mr Elias's name and then it could be sold to Mr Mamistvalov if Mr Elias wanted, so that he could take over the planning issues. The main concern then was the tax implications for both of them.

159. It is not clear from the transcripts whether Mr Mamistvalov was contemplating acquiring outright beneficial ownership of the Property, but if he was, he was certainly not planning to acquire it at market value, hence his concern about money laundering.

160. After the Hayneses had left the call, Mr Mamistvalov tried to persuade Mr Elias that there were no tax consequences for him because he was going to sell it on at

the same price – and "we'll flip it against the debt that you owe me, something like that, you understand?". Mr Elias answered "Yeah, yeah, yeah. Yeah" but he sounded confused and was clearly thinking, not truly agreeing to the proposition. I do not consider that he contemplated then, or at a later time, that he would exchange the Property for greater rights under the SPA. I accept Mr Elias's evidence that he was not really bothered about the Award, in the sense of seeking to obtain a valuable benefit under it, though he was well aware that if all went very well with enforcement and realisation his company stood to gain a relatively small benefit.

161. By the end of March 2019, I find that Mr Mamistvalov was interested in having control of the Property, not necessarily beneficial ownership of it, but his concern was how it could be done in a way that did not create money laundering risks or adverse tax consequences for him. He was certainly not concerned about adverse tax consequences for Mr Elias. Mr Elias, by this time, had been persuaded that there needed to be a two-stage approach of first repatriating the Property and then deciding what to do, at a second stage, by passing it on or selling it to someone else who would not have the same difficulty releasing the development value of the land.

The alleged SPA variation

162. From the end of March 2019, Mr Mamistvalov was urging Mr Elias to get on and effect stage 1. He warned him at one point that if he did not get on with it, other people – including Mrs Haynes – might see the potential of it. Ironically, Mr Mamistvalov warned Mr Elias in terms that he was on very, very thin ice because he might lose everything if other people got greedy. This was pressure calculated to encourage Mr Elias to act quickly. At this stage, I consider that Mr Mamistvalov wanted the opportunity to control the Property, though he was still giving the impression that he was acting in order to protect Mr Elias.

163. On 8 April 2019, Mr Elias told Mr Mamistvalov that he was still having problems with Mrs Elias. "You know, it's up and down like a yo-yo". Mr Mamistvalov replied, sardonically, that that was no news.

164. Ten days later, Mr Elias was expecting a visit from his wife's family, including Mrs Shmuel. Mr Mamistvalov advised him to drop into the conversation the steps that were being taken to protect her, to make sure that she did not have any problems with what was being done.

165. It was in that context that Mr Mamistvalov alleges that the SPA variation was agreed on 24 April 2019. There are no other recorded telephone conversations that precede it. In short recorded conversations in the week afterwards, neither the enforcement of the Award nor the Property are mentioned. On 1 May 2019, there was a discussion about lawyers that Krys might engage.

166. Mr Mamistvalov's case is that the SPA variation was agreed and the email dated 24 April 2019 sent to confirm it. If correct, that agreement created a connection between the Property and the Award: in effect, Mr Elias would have been using the Property to pay for a better chance of sharing in the fruits of the Award. Mr Mamistvalov says that what happened subsequently is consistent with the SPA

variation and inconsistent with the SPA terminating on about 5 May 2019, in that the parties did not act as if the SPA had ended. Mr Elias disputes that the email was sent or that any such agreement was reached, but it was not suggested to Mr Mamistvalov that he fabricated the email.

167. Mr Mamistvalov was unconvincing on the oral agreement on the SPA variation, and no facts relating to the way that the agreement (recorded in the email) was reached orally on or before 24 April 2019 was put to Mr Elias in cross-examination. Rather, it is the email itself that is relied on by Mr Mamistvalov as evidence of the agreement. But, contrary to the terms of the email, no variation of the SPA was subsequently documented.

168. As at 24 April 2019, the 180 days duration of the SPA was about to expire. The effect of that would be that WCL would not longer have temporary title to the Award and was no longer obliged to lend its name to Krys's attempts to enforce the Award. As at 24 April 2019, no progress had been made in Tbilisi.

169. The main beneficiary of the extension of the duration of the SPA was therefore Mr Mamistvalov, on whose behalf and in accordance with whose instructions Krys would continue to pursue recovery of nearly $15 million in WCL's name. In answer to a suggestion that: "it was in your interests to ensure that the arrangement with WCL, Krys and Dentons would continue" he replied "Of course". It is true that the extension of the SPA would preserve to WCL an incidental benefit worth nearly $300,000 in the (at that time) remote contingency that all or virtually all the Award debt was recovered. Mr Elias hoped that might come to fruition, but I accept that he was not concerned with or focused on it.

170. Looked at objectively and commercially, the notion that Mr Elias would agree to give away the Property (assumed by both parties to be currently worth more than £1 million and potentially much more than that) in return for a remote chance of being paid $300,000 is fanciful. Mr Elias may have been slow to follow Mr Mamistvalov's plans in their discussions but he was a businessman who knew the value of the Property. Mr Eschwege on behalf of Mr Mamistvalov tried to make it sound more plausible by arguing that the Property was effectively worth nothing in Mr Elias's hands because he could do nothing with it, i.e. not even sell it. But there was no evidence to that effect and it is plainly not the case. The Property was tenanted agricultural land and had some additional hope value. The difficulties allegedly caused by Rabbi Levy had been in connection with obtaining a valuable planning permission, in which context local people had a legitimate public voice and the opportunity to influence the outcome. There was no evidence that Rabbi Levy or others had taken steps to try to prevent a private sale of the Property, or that they could effectively do so (although Mr Elias had no intention of parting with the land, having invested years of effort in trying to obtain a very valuable planning permission).

171. It is not obvious to me why Mr Mamistvalov would have expected a substantial payment from Mr Elias, or property worth over £1 million, in return for WCL lending its name to Krys for a further year, even if WCL might possibly benefit from that. When asked about the discussions that Mr Mamistvalov said took place in Israel in February 2019, Mr Mamistvalov accepted that he did not ask Mr Elias for a payment in return for extending the time during which WCL would remain

the plaintiff in Georgia: "Of course not. I was there to help him". It is not easy to see what had changed in that regard by 24 April 2019 except that Mr Mamistvalov's interest in the Property had sharpened.

172. I accordingly reject without hesitation the case that the SPA variation was agreed with Mr Elias. As with the 14 January 2019 email, the 24 April 2019 was probably sent to Mr Elias but it was not acted upon, even if read. Mr Mamistvalov had nothing to lose by sending it, except communicating to Mr Elias his interest in acquiring the Property. The email was probably sent because Mr Mamistvalov considered that it served his interests in a way that only he really knew, but probably by showing that the Property that he was interested in acquiring was acquired for value. Although Mr Elias has no recollection of receiving the email, it was sent and probably received in the context of concerted attempts to disguise ownership of assets. If he saw it, he would have been likely to assume – deferring as ever to Mr Mamistvalov – that it was something that was to help to create a plausible front of ownership by someone else.

173. The reason why after 24 April 2019 the parties continued to act consistently with the SPA being on foot was not that they had agreed the SPA variation but that, first, it served Mr Mamistvalov's interests to do so, second, Krys had a power of attorney and were told by Mr Mamistvalov to carry on, and, third, Mr Elias was not at all concerned to stop WCL being used in that way.

Steps leading to the creation of Soda

174. At the time of the email of 24 April 2019, regardless of Mr Mamistvalov's motives, I consider that Mr Elias still believed that Mr Mamistvalov was willing to help him by creating a front of third-party ownership. Mr Mamistvalov advised Mr Elias on 7 May 2019 that the "most important thing is never lose control, Hezzi … Never lose control over your property …".

175. In a conversation on 8 May 2019, Mr Elias told Mr Mamistvalov that he was being more assertive in his marriage, as Mr Mamistvalov had advised, and Mr Elias told him that Mrs Elias was much calmer, and that it was much, much better now. Mr Mamistvalov told Mr Elias that he was trying to arrange a meeting with Mr Timms, and that he had told Mr Timms that the seller of the land was elderly and unable to deal with it, and that he, Mr Mamistvalov, wanted to buy the land and develop it. He said he wanted to get Mr Timms excited so that he would agree to be paid from the proceeds. (This seemed to be a general principle of Mr Mamistvalov in his dealings with lawyers, as he had been unwilling to pay a Dutch lawyer €12,000 up front to pursue the Arredo Luce debt. There is also, notably, another deception being practised on professional people by Mr Mamistvalov.)

176. There was, however, nothing in this conversation to make Mr Elias think that Mr Mamistvalov was intending to acquire the land as beneficial owner. The references to Mr Mamistvalov 'buying' the Property would have been (and were) understood by Mr Elias in the context of creating a 'front' of different ownership, as they had discussed. The fact that Mr Mamistvalov told Mr Elias that he was lying to Mr Timms about the circumstances of the purchase would have led Mr

Elias to believe that this was all a pretext to achieve what Mr Elias wanted to achieve.

177. I reject Mr Mamistvalov's argument that since all was now well in Mr Elias's marriage there was no longer a reason to transfer the Property to a nominee. Mr Elias's suggestion in a later conversation that he might buy Mrs Elias a £20,000 watch was "to keep her happy": it did not suggest that concerns about safeguarding the Property were now misplaced. There was, in my judgment, nothing at this stage to change Mr Elias's intentions, and it is too simplistic to suggest that everything changed because he told Mr Mamistvalov on 8 May 2019 that, for a while, marital relations had improved. What had perhaps changed since February 2019 is that a second reason for the transfer, namely to attempt to sidestep Rabbi Levy's opposition to development, had assumed greater significance for both protagonists.

178. Mr Mamistvalov's continuing concern about taking the Property into his name was the risk of money laundering allegations. He told Mr Elias in conversations on 15 and 16 May that any transfer had to be properly documented, so that the transaction could not be impeached by anyone – "a proper look so that no one will be able to scrutinise the transaction". Mr Mamistvalov suggested on 16 May that the Property might be characterised as a down payment in connection with the Award.

179. This was all window-dressing to give an appearance of validity to the proposed transfer to Mr Mamistvalov, his wife or his company for nil consideration. If Mr Mamistvalov were intending to buy the land from Mr Elias, the issue of money laundering would not have been live. It only arose because Mr Mamistvalov was not going to pay for the Property. In my judgment, Mr Elias did not follow exactly what Mr Mamistvalov was planning and, as was usual for him, simply acquiesced in what Mr Mamistvalov thought was best. Mr Elias remained concerned about the Property coming into his name first, for tax reasons, and was focused mainly on that.

<u>The transfer of the share in Soda to Mr Mamistvalov and the re-transfer to Mr Elias</u>

180. Once Soda was incorporated, the Property was transferred into its ownership. At some time prior to 18 June 2019, Mr Elias must have instructed Stanley Davis to prepare documents for the transfer to Mr Mamistvalov of the share in Soda. This can be inferred from Stanley Davis's email to Mr Elias dated 18 June 2019 attaching various documents. Mr Elias said, at the end of his evidence, that he could not now remember the reason why Stanley Davis produced the documents that were attached to the email, in particular not just a stock transfer form from Mr Elias to Mr Mamistvalov but also a stock transfer form from Mr Mamistvalov to Mr Elias.

181. Mr Eschwege suggested that on account of Mr Elias's inability to remember, I should reject the argument that there is any significance in the latter stock transfer form. I do not consider that to be the right approach. The preparation and sending of the form to Mr Elias, the sending of a pdf of that form to Mr Mamistvalov on 28 June and the signing of the form by Mr Mamistvalov on 18 July should be considered together as part of a picture of what was happening when Mr

Mamistvalov on the face of it became the sole shareholder of Soda and then signed a form to transfer the sole share back to Mr Elias.

182. The transfer signed by Mr Elias and the PSC01 and PSC07 forms signed by him resulted in Mr Mamistvalov being registered at Companies House, in place of Mr Elias, as a person with significant control of Soda, and in due course he was registered in Soda's books as the sole shareholder. On the face of it, these developments made him the beneficial owner of Soda and so of the Property, though it is notable that on the PSC01 form the service address for Mr Mamistvalov was given as Elias House in Perivale, not Mr Mamistvalov's address in Israel or the address in London to which the registered office of Soda was later changed.

183. However, these developments are also consistent with an understanding that Mr Mamistvalov was only to appear to be the owner of the Property. Both Mr Elias and Mr Mamistvalov have shown themselves willing to create documents to give a false appearance, as they had done in relation to the Award and had discussed in relation to the Property. As between them, beneficial ownership of Soda might be retained by Mr Elias if that was the agreement and understanding that they had reached. It was not suggested on behalf of Mr Mamistvalov that any intention to create misleading documents disqualified Mr Elias from asserting before the Court that he remained the beneficial owner.

184. Mr Mamistvalov's case is based on the SPA variation, but I have rejected the argument that this was agreed with Mr Elias. Mr Elias did not agree to sell the Property in exchange for extended rights under the SPA. At all times, Mr Elias believed that Mr Mamistvalov was going to hold the Property or a share in the company owning the Property on his behalf, to conceal his true ownership.

185. It is here that the draft stock transfer form from Mr Mamistvalov to Mr Elias is of real evidential value. Its preparation, and the sending of it to Mr Mamistvalov on 28 June 2019 with a request that it be signed and returned is inconsistent with Mr Mamistvalov's case. Although Mr Elias could not remember, the only reasonable inference to draw from its preparation is that it was intended that at some time after Mr Mamistvalov became the shareholder he would transfer the share back to Mr Elias. Such a document would have been otiose if the intention was for Mr Mamistvalov to acquire beneficial ownership of Soda in return for the extension of the SPA.

186. Mr Mamistvalov had no credible explanation for why the form was created, sent to him and then signed by him. Had his case about beneficial ownership of Soda been correct, he would surely have responded to the 28 June 2019 email asking for an explanation. His evidence that he created and brought the stock transfer form to the coffee shop meeting with Mr Elias on 18 July 2019 is plainly false. The document is that produced by Stanley Davis and sent to Mr Elias. Mr Elias created a different version of that document, as a pdf, with "D" written on it in two places. The version that was in fact signed by Mr Mamistvalov on 18 July did not have the "D" markings but was identical to the underlying Stanley Davis document. Only Mr Elias had a copy of this, according to Mr Mamistvalov, who says that this document was not forwarded to him on 18 June 2019. Mr Mamistvalov suggested that he must have removed the "D" marks, somehow; but

how he altered a pdf in that way, or why he would have done so, was not further explained.

187. I find that the version of the document that Mr Mamistvalov signed was brought to the coffee shop by Mr Elias. He said that he thought that it was because he was following up on the 28 June 2019 email in which he requested Mr Mamistvalov to sign it, as security. And, possibly, it was brought in view of the 17 July 2019 Whatsapp from Mr Mamistvalov, which said that Mr Mamistvalov had decided on legal advice that being involved with the Property was too complicated, with too many possible outcomes, and that Mr Elias needed to find a good trustworthy friend to take his place.

188. By that Whatsapp, Mr Mamistvalov indicated that he was no longer willing to be the owner of the share. He suggested, in evidence, that this was because he had had a conversation with Rabbi Levy the previous day and discovered that the Property was on green belt land and so was not developable, and also that the Property had effectively been stolen from the Jewish community in Barnet. I am unable to accept that evidence. Nothing was said about such matters in the Whatsapp, which gave a different reason for Mr Mamistvalov's not wishing to be the owner of the Property.

189. The reference to finding "a good trust worthy friend to assume my place" is clearly not to an arm's length purchaser of the Property but to a nominee. That is significant because it demonstrates that, at this time, what Mr Mamistvalov was resiling from was the understanding that he would hold the share as nominee for Mr Elias. If he had been resiling from the SPA revision, the email would inevitably have raised the question of the operation of the SPA or the transfer of WCL, or both. If Mr Mamistvalov had really decided that he did not want to acquire the Property as beneficial owner, because of the status of the land, what then happened within days, namely negotiations for him to take a minority interest in the income from the Property, makes no sense. It does make sense if what Mr Mamistvalov was doing was reneging on his agreement to hold the Property for his friend Mr Elias without any beneficial ownership passing to him: he was not willing to hold it gratuitously, but he was if he got a share of the profits.

190. Nor is there evidence that anything was said about green belt or Rabbi Levy in the meeting with lawyers on 22 July 2019, in the recorded telephone conversation of 23 July 2019, or in the Whatsapp exchanges on 24 July 2019. It is also clear from the Whatsapp exchange on 13 August 2019 that Mr Mamistvalov only found out about the green belt designation at that time, from a lawyer. If it was only the nature conservation status that Mr Mamistvalov had found out from a lawyer then, and he had known of the green belt status since 17 July 2019, the message would have been quite differently expressed. I reject Mr Mamistvalov's explanation of the 13 August 2019 exchange.

191. My conclusions on the events in the coffee shop meeting are accordingly that:

    i) Mr Mamistvalov had by 18 July 2019 decided not to be involved with the Property as nominee holder of the share in Soda;

ii) Mr Elias brought the stock transfer form and gave it to Mr Mamistvalov to sign, which he did (without dating it, for whatever reason);

iii) Mr Mamistvalov did not sign the stock transfer form on the basis that it was agreed that the Property would be exchanged for control of WCL. There was no such connection between them and no swap agreement, as affirmed in Mr Mamistvalov's former solicitors' (Shepherd + Wedderburn) letter dated 22 September 2020 ("*There is no connection between this alleged gifting of the company referred to and the substantially disputed other transactions in the Particulars of Claim with respect to the Company [Soda] and its assets*");

iv) Mr Elias did not want the share to be registered in his name again but Mr Mamistvalov was unwilling to hold it as nominee.

v) None of this affected where the beneficial ownership of the share lay, namely with Mr Elias. There had been no agreement that Mr Elias would sell or gift the share to Mr Mamistvalov, nor did Mr Mamistvalov pay anything or agree to pay anything for the transfer of the share. There had all along been and remained an understanding that Mr Mamistvalov would hold the Property and/or the share on behalf of Mr Elias, in order to hide his ownership and give the appearance to all others that Mr Mamistvalov owned the share and so the Property.

vi) The coffee shop meeting marks the time at which Mr Mamistvalov made it clear to Mr Elias that he was no longer willing to act as a nominee for Mr Elias. It also marks the time at which his ambition to take an interest in the Property, which had been growing over the previous 3 months, became his motivation. When Mr Mamistvalov said in cross-examination, rather theatrically, that he was "nobody's nominee, nobody's patsy", he was re-writing history so far as the understanding between him and Mr Elias before 18 July 2019 is concerned.

Negotiations for a joint venture

192. I consider that it is likely that a discussion followed in the coffee shop, or possibly very shortly afterwards, about Mr Mamistvalov taking an interest in the Property. It is clear that Mr Elias did not want the share in Soda to come back into his name. He had gone to considerable lengths to prevent ownership of the Property being linked to him or his family. He was willing to offer an interest to Mr Mamistvalov as the price of achieving that, but it was not a means of paying for his retaining an interest in the Award.

193. At this time, I find that his concerns about a divorce were receding and, as a result of Mr Mamistvalov's prompting, concerns about Rabbi Levy and any other opponents to development of the Property were in the forefront of his thinking.

194. Despite the 17 July Whatsapp and the signing of the stock transfer form, both parties accepted that a discussion took place about Mr Mamistvalov acquiring a beneficial share in the Property. The discussions that followed the coffee shop meeting led to a meeting at Mr Mamistvalov's lawyers on 22 July 2019. No deal

was agreed. It appears that a 20% stake for Mr Mamistvalov was discussed at that time. Mr Mamistvalov was no doubt highly interested in retaining the right to use WCL, but to suggest that it was Mr Elias seeking to protect his interest in the Award is not at all persuasive. I find that Mr Elias was not thinking about the Award. There had been no apparent progress in Georgia. What Mr Elias needed was for Mr Mamistvalov to hold the share in Soda in his name, on an agreed basis.

195. There was then a conversation between Mr Elias and Mr Mamistvalov on 23 July 2019 in which some rather wild allegations were made by Mr Mamistvalov, which again had nothing to do with WCL. They were about an alleged danger to Mr Mamistvalov in being involved with the Property. Mr Mamistvalov told Mr Elias that it would be a fraud for him to be involved and that Mr Elias must take the Property back into his own name. It is difficult to make sense of the conversation, and I do not consider that Mr Elias understood at the time what Mr Mamistvalov meant. However, it appears that Mr Mamistvalov was unhappy, even angry, at the outcome of the discussion at his lawyers' office the previous day. What is clear from the conversation is that the Award and WCL were not mentioned: it was all about the Property. I consider that Mr Mamistvalov had not given up hope of getting a share and was applying pressure to Mr Elias. Mr Elias, however, was unhappy with the extent to which Mr Mamistvalov was seeking to control what was to happen with the Property.

196. On the following day, 24 July 2019, Whatsapp messages (set out in para 63 above) show that the parties were moving towards a separation of their interests. Mr Elias wanted to treat with others, if Mr Mamistvalov was not interested, and Mr Mamistvalov either had, or was affecting to have had, enough of the Property. As an afterthought, Mr Mamistvalov later in the evening sent a message asking Mr Elias if he would transfer WCL to him. On the same day a draft transfer agreement relating to WCL was prepared on behalf of Mr Mamistvalov. On 25 July 2019, Mr Mamistvalov followed up referring to his request the previous day and asking Mr Elias whether there was a problem with transferring WCL (para 64 above).

197. In my judgment, 24 July 2019 was the first time that Mr Mamistvalov had asked Mr Elias to transfer WCL to him. There was no swap agreement made on 18 July in the coffee shop, but by 24 July it was clear (a) that Mr Mamistvalov was not interested in just being a nominee of the Property for Mr Elias, and (b) that he was unable to negotiate a satisfactory deal that would give him a share of it. Accordingly, knowing that he had signed a stock transfer form transferring control of Soda to Mr Elias, I find that he wanted to ensure that he could continue to make use of WCL's name to pursue the Award (not that Mr Elias had ever suggested that he could not do so).

198. Mr Elias was clearly unhappy with ownership of Soda (and so the Property) coming back to him. I find that he must have continued to press Mr Mamistvalov to hold the share in Soda in return for a share of the profits. By 28 July 2019, the two men met again. Mr Elias says that this was to receive a blessing at a synagogue; Mr Mamistvalov says it was to conduct a board meeting of Soda. It was clearly more than a religious occasion. There are documents apparently signed by Mr Elias recording his resignation as director of Soda and the appointment of Mr Mamistvalov in his place. Mr Elias's evidence was that he did

agree to appoint Mr Mamistvalov a director but does not recall signing a resignation form, but it appears that he must have done.

199. The clear narrative thread disappears at about that time because there are no transcripts of conversations between the protagonists. Mr Mamistvalov's explanation is that there was an agreement to revoke the prior agreement to swap the Property for control of WCL. That is not so because, as I have found, there was no swap agreement. I therefore reject Mr Mamistvalov's case that the company forms reflected the unwinding of the swap agreement. However, there appears to have been an agreement in principle reached at the synagogue whereby Mr Mamistvalov would have a degree of control over the affairs of Soda, and so over the Property. Mr Elias is unable now to explain what exactly happened.

200. I find that Mr Mamistvalov was probably continuing to press Mr Elias for an interest in and a position of some control over Soda. It is common ground that, at one stage, an agreement in principle was reached under which Mr Mamistvalov would have a 30% share of profits, but the stumbling block was control. Mr Mamistvalov wanted a 51% shareholding and complete executive control. I consider that Mr Elias probably signed the director resignation form and the other forms in anticipation of a joint venture deal. It would be consistent with Mr Elias's overriding aim to break any visible connection between the Property and him. But apparently no final agreement was reached.

201. If Mr Mamistvalov was to have such an interest then the share capital of Soda needed some attention, and the signed stock transfer form would no longer have been appropriate (in so far as it gave Mr Elias complete control over Soda as things stood) or necessary. It was probably in that context that Mr Mamistvalov raised the question of giving or tearing up the stock transfer form, as he says that he did.

202. On 29 July 2019, Mr Mamistvalov sent Mr Elias a Whatsapp pushing for rapid acceptance of his control proposal and stating that "The signed paper will have to be relinquished", which I consider to be a reference to the signed stock transfer form. That was clearly in contemplation of the joint venture deal being signed. But Mr Elias left Israel at the end of July 2019 and it is common ground that no agreement was reached after that.

203. Mr Mamistvalov sent Mr Elias the content of a draft shareholder agreement on 2 August 2019, spelling out what he wanted, and Mr Elias said in reply that he would have to take lawyers' advice. Mr Mamistvalov suggested that Mr Elias's lawyers should draft the agreement that he felt had been made in principle. It does not matter who it was who was unwilling to document the agreement. Before that happened, as there never was a concluded agreement on essential terms, Mr Mamistvalov at that stage purported to pass a board resolution on 4 August 2019 restricting the ability of Soda to execute documents and gave instructions to Companies House not to accept any filings that did not emanate from Israel. He says that he did so to avoid the risk of being left without WCL and without the Property. I consider that Mr Mamistvalov did so in order to try to give himself de facto control over any further filings (such as a new PSC01 to reflect the stock transfer to Mr Elias) or corporate changes.

204. There was no agreement reached following the coffee shop meeting as to Mr Mamistvalov acquiring beneficially the share in Soda or an interest in the Property.

Conclusions on factual issues

205. The route by which Mr Mamistvalov advanced his case at trial depended on his having been made the beneficial owner of Soda, pursuant to the SPA revision, then having agreed in the coffee shop to swap Soda for WCL, then subsequently having agreed to unwind that swap agreement. By that means he contended that the position was reached whereby WCL was controlled by Mr Elias, subject to the terms of the SPA revision while it was in force, and he remained the owner of Soda. However, the foundation stones for that argument do not exist. There was no SPA variation under which Mr Elias agreed to transfer Soda and the Property beneficially to Mr Mamistvalov, and there was no swap agreement on 18 July 2019. I have already given my reasons for those conclusions.

206. As at 18 July 2019, therefore, Mr Mamistvalov held the share in Soda on trust for Mr Elias. It was transferred to him on 25 June 2019 as nominee for Mr Elias and it was only on 18 July 2019 that he said that he was unwilling to hold it on that basis and signed the stock transfer form returning the share to Mr Elias.

207. Since beneficial ownership of the share in Soda remained with Mr Elias, he only needed to register the stock transfer form in order to give himself paper title to the share, by virtue of being registered in Soda's register. As beneficial owner, Mr Elias would in any event have been entitled to require Mr Mamistvalov to execute a further stock transfer form, on indemnifying him against any expense involved. It is unnecessary to analyse or resolve the dispute about whether the stock transfer form bearing the date 7 August 2019 was dated then or only dated in March 2020. Mr Mamistvalov would only have been entitled to prevent such registration if he had acquired beneficial ownership. Stanley Davis updated Soda's register in March 2020 and Mr Elias is shown as the registered owner. He therefore is the owner of the share in Soda (Companies Act 2006, s.112(2); Stock Transfer Act 1963, ss.1, 2(1)(a)).

208. Mr Elias wrongly forged Mr Mamistvalov's signature on a director's resignation form and board minutes for Soda dated 4 March 2020. Mr Mamistvalov was the lawful director at the time, so the form and minutes themselves are of no effect. They were registered at Companies House but were then 'reversed' by filings made by Mr Mamistvalov. But since Mr Elias is and always has been the beneficial owner of the share in Soda, he can exercise his power to remove Mr Mamistvalov at any time, at a general meeting or pursuant to the principle in Re Duomatic [1969] 2 Ch 365. Mr Elias is entitled to appoint himself a director and have Mr Mamistvalov removed from the Register at Companies House. It was argued that Mr Elias's will alone to remove Mr Mamistvalov was sufficient to amount to a decision of the board of Soda, within the *Duomatic* principle, but I was not persuaded that a state of mind, unevidenced by anything external, is sufficient.

209. For the reasons I have given, Mr Mamistvalov's argument that he is the beneficial owner of the share fails on the facts. I am unable to believe his account of the

alleged SPA variation, the swap agreement or the further agreement to rescind the swap agreement. His account makes no business sense and is improbable for that reason. It sits uncomfortably with the transcripts of conversations with Mr Elias and the contemporaneous documents, including the Whatsapp messages to which I have referred. It bears the hallmarks of an account that has been created after the event to fit the documents so far as possible.