

Neutral Citation Number: [2022] EWHC 3180 (Ch)

Case No: BL-2020-000672

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (Ch.D)**

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Date: 12<sup>th</sup> December 2022

**Before:**

**MR NICHOLAS THOMPSELL**  
**sitting as a Deputy Judge of the High Court**

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**Between:**

**SHABBIR GHEEWALLA**

**Claimant**

**- and -**

- (1) SAFFANA RASUL  
(2) AKEELA AHMED (claim discontinued)  
(3) HIDAYAT ALI RASUL

**Defendants**

**Mr Clifford Darton KC for the Claimant**  
**Dr Tariq Mahmood**  
**for the First and Third Defendants**

Hearing dates: 21 - 24 November 2022

**JUDGMENT**

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**MR NICHOLAS THOMPSELL:****1. INTRODUCTION**

1. This judgment relates to a claim made by Mr Shabbir Gheewalla (whom I shall refer to as ‘**Mr Gheewalla**’ or the ‘**Claimant**’) for a consultancy fee for the 30-month period from 30 April 2014 to 31 December 2016. He claims a fee equal to one third of the profits of the partnership known as the “Ambassador Hotel Group Partnership” (the ‘**Partnership**’). This, he says, is due to him pursuant to the terms of two oral agreements that he says were made in December of 1996 (the ‘**1996 Alleged Agreement**’) and March 2003 (the ‘**2003 Alleged Agreement**’) (together the ‘**Alleged Agreements**’).
2. If the court considers that this claim is not made out, Mr Gheewalla claims in the alternative a *quantum meruit* award for the services that he provided to the Partnership during this period.
3. Originally, Mr Gheewalla’s claim was made against the two partners in the Partnership. These were his daughter, Mrs Akeela Ahmed MBE (‘**Mrs Ahmed**’) and his niece Dr Saffana Rasul. (I will refer to Dr Rasul as the ‘**First Defendant**’ or ‘**Mrs Rasul**’, not intending any discourtesy in failing to recognise her qualification, but in recognition that these matters do not refer to her professional role and many of the events occurred when she was not yet a doctor.) However, the Claimant discontinued his claim against the second Defendant, and this was confirmed by a consent order made by Deputy Master Nurse dated 22 June 2020.
4. Mr Gheewalla’s claim is said to be made against the two partners individually and in their capacity as Partners in the Partnership. However, Mr Gheewalla (through his counsel) accepts that notwithstanding this discontinuance, his daughter will remain jointly liable for any award made against the First Defendant.
5. Mr Gheewalla also claims against Mrs Rasul’s husband, Mr Hidayat Rasul (‘**Mr Rasul**’ or the ‘**Third Defendant**’) for inducing or procuring the alleged breach of the Alleged Agreements.
6. Following directions provided by Deputy Master Teverson through an order dated 4 October 2021, the determination of these matters was to be dealt with initially through a trial as to liability only, on the basis that if a finding be made that monies were due to Mr Gheewalla, the amount owing to him should be determined by a further hearing. Accordingly, this judgment deals only with the question of liability.

## 2. THE EVIDENCE

7. The oral evidence presented at trial comprised testimony from the Claimant and from the First and Third Defendant. It was, in my view, regrettable and significant that neither Mrs Ahmed nor Mrs Munira Shaikh ('**Mrs Shaikh**') (nor any other members of the family said by Mr Gheewalla to be present at the alleged 2003 meeting) were called, with the result that there was no-one who could corroborate either side's version of events.
8. Mr Gheewalla was cross-examined at length over more than a day. It was clear from his evidence that he had a good grasp of all aspects of the business of the Partnership. He gave his evidence confidently, fairly straightforwardly, and calmly, although the passion with which he believed that he was being unfairly treated by being denied any reward from his work over many years was clear.
9. That is not to say, however, that I think that all of his evidence was to be trusted. There was some lack of consistency in elements of his description of the sources of the money which he said that Mrs Shaikh had advanced, or arranged to be advanced to the Partnership. There were also certain elements of how he describes things had worked (particularly in relation to the use of special purpose vehicle companies to receive the rent from the apartments) which did not make a great deal of sense. His evidence about the birth of the Partnership was difficult to square with his earlier witness statements in what I define below as the 'Partnership Proceedings'.
10. My feeling is that there was more than a small degree of rationalisation after the event to justify transactions, or to put legal descriptions on transactions after they occurred. It is clear that the Partnership and the wider family businesses were run with no, or almost no, formality. Relationships and transactions were largely left inchoate unless and until there was a need to define them to meet the needs of some outside party such as a bank lender or HMRC. Mr Gheewalla, and indeed the rest of the family while they were getting on, made little distinction between the businesses of the Partnership and the other businesses being run within the family (in particular, hotels in Brighton and Hull).
11. Mrs Rasul appeared as a witness. He was cross-examined for more than half a day. Whereas Mr Gheewalla seemed to be enjoying his day in court, the same certainly could not be said of Mrs Rasul. I had the distinct impression that she was most ill-at-ease. I do not read anything into her demeanour, however, as regards the truthfulness of her answers. She had been accustomed in the past to being dominated by her uncle, Mr Gheewalla. I think it is likely that, whilst she now had (with the support of her husband) the courage to contradict Mr Gheewalla, she was still dealing with the memory of earlier incidents where she

or her children had felt threatened by him.

12. I comment below on the conclusions that may be drawn from her willingness to sign a legal charge that, on her own account, was a sham.
13. It was clear that Mrs Rasul had little involvement in the business side of running the Partnership and had left this largely to Mr Gheewalla and to her husband.
14. The only other witness was Mr Rasul, who was cross-examined for slightly less than half a day. He presented himself confidently and generally had a good grasp of the business. I have no reason to doubt his belief in the truthfulness of his answers. However, some of his conclusions (such as the accusation that, Mr Watson, the accountant to the Partnership, had mislead him as to the figures that would appear in the 2003 Accounts discussed below) were not reliable, in my judgement.
15. During the period for preparation for the trial both the Claimant and the Defendants were unrepresented by solicitors (having engaged counsel on a direct access basis). Perhaps naturally as a result of this, the documentary evidence presented to the court (comprising nearly 5,000 pages) was not as well organised or sifted for relevance than it might have been. In fact, very little of the documentary evidence was referred to at trial. The evidence that was referred to comprised chiefly earlier pleadings or draft pleadings or letters before action in this and other actions and some scanty accounting information.

### **3. FACTUAL BACKGROUND**

16. It is useful first to lay out certain facts and events that are relevant to the claim.
17. Mrs Ahmed is Mr Gheewalla's daughter. Mrs Rasul is his niece. Mrs Rasul lost her father in 1988 and both Mr Gheewalla and Mrs Rasul agree that Mr Gheewalla had played a quasi-parental role in relation to Mrs Rasul when she was younger.
18. The existence and nature of the Partnership has been a matter of dispute. Mrs Ahmed (with the support of Mr Gheewalla) at one point brought proceedings to contest that any partnership existed between her and Mrs Rasul, claiming instead that the partnership was between herself and her aunt, Mrs Munira Shaikh, and that Mrs Rasul was involved only as a nominee for Mrs Shaikh. Mrs Ahmed later amended her case to admit the existence of a partnership between her and Mrs Rasul, but continued to trial with a view to establishing that the partnership shares were the proportions 65/35 in her favour, rather than 50/50 as averred by Mrs Rasul.

19. This matter (which I will refer to as the ‘**Partnership Proceedings**’) was heard by Nugee J (as he then was) in the case of *Rasul v Ahmed* [2016] EWHC 3191 (Ch) (‘*Rasul v Ahmed*’). He determined (or at least confirmed, after Mrs Ahmed admitted the point) that there had been a partnership between Mrs Ahmed and Mrs Rasul. He determined that the partners (or erstwhile partners) were to be considered joint owners of the properties that were the partnership assets. He ordered the taking of accounts (including an account of any contributions made by Mrs Rasul to the Partnership/Hotels) and (ii) the sale of the four sites (previously hotels but by now in all but one case converted into apartments) that are owned by the Partnership.
20. The Partnership was originally formed in 1996 with the purchase of the Ambassador Hotel in Great Yarmouth. There remains a dispute about how the purchase of the hotel was financed. The purchase price was £150,000. Mrs Rasul maintains that she provided her one-half share of this (£75,000) in cash. She was unable to substantiate this during the Partnership Proceedings. Late in the current proceedings she produced some documentation which had not been available in the Partnership Proceedings which she said demonstrated contributions in excess of £60,000 but there was no proper opportunity to test the provenance or relevance of this material.
21. The question of her contribution at this stage was just one of many questions that arose as to how the Partnership was funded. Mr Gheewalla contended that there had been very substantial funding from (or via) Mrs Shaikh, which had been lent at a substantial (and annually compounded) rate of interest (initially 10%, and later, he averred, 15%) and which was still in large part outstanding - to the extent that the Partnership, in his view by 2014, had no net assets. Mrs Rasul acknowledged that some loans had been made from members of the family for the purchase of the further hotels that were acquired by the Partnership, but averred that these had been repaid out of profits.
22. Almost no documentary evidence was offered to substantiate these payments, or the terms on which they were provided.
23. The only contemporaneous document that appeared to evidence lending was a legal charge that was registered over the Ambassador Hotel in favour of Arzu Marali (a cousin of the two partners) registered in 1997 and acknowledging a debt of £153,000 advanced at 10% interest.
24. Mr Gheewalla’s case was that Arzu Murali was acting as a nominee for Mrs Shaikh. This was because Mrs Shaikh, as a Shia Muslim, living in Saudi Arabia, and married to a husband who was regarded as a descendant of the Prophet, and who had a role in assisting pilgrims in making the Haj, did not want to be seen as lending money to a business that included the sale of alcohol.

25. Mrs Rasul had a different explanation for the charge. Her evidence was that she had been induced by her uncle, Mr Gheewalla, to sign this as a means of protecting her interest in the Partnership in the event of a divorce from Mr Rasul, or to protect herself from other creditors. In other words she was suggesting that the document was a sham that was intended to be available for use, if necessary, to mislead the court or creditors should the need arise. This explanation, whether or not true, casts some doubt about Mrs Rasul's integrity that is only mitigated in part by the consideration that I find it likely that at this point she was very much under the influence of her uncle. If it is true, it also casts doubt on Mr Gheewalla's integrity.
26. I have no doubt that Mrs Rasul was persuaded by her uncle to sign this document but I am unable to choose between the different accounts of its alleged purpose (or of what Mrs Rasul had been told of its purpose). Fortunately, I do not consider that I need to do so in order to determine the matter before me.
27. Apart from this, the only significant documentary evidence for indebtedness of the partnership to Mrs Shaikh was a final account for partnership produced in 2003 purporting to show the balance sheet position in 2001. This had been produced by the Partnership's accountant, Mr Watson (probably, in my view, relying heavily on instructions from Mr Gheewalla) and appeared to show a figure of £93,000 by way of bank loans and £992,464.34 as other loans. Mr Gheewalla's evidence was that the "other loans" referred to the monies owing to Mrs Shaikh, or investors standing behind her, and perhaps including an element of rolled-up interest.
28. Mrs Rasul acknowledged that she had signed these accounts but gave evidence that she had considered, on the basis of discussions with Mr Watson, that this figure related to monies owing at other hotels operated by the family in Brighton.
29. Mr Rasul went further and said that when a draft of the balance sheet was seen by him it did not include this figure. He later confirmed (though counsel) that the figures that he had seen were draft figures in a first draft, part of which was produced to the court (having been one of the attachments produced to a witness statement given by Mrs Rasul in the Partnership Proceedings). Unfortunately, the draft version available to the court did not include a balance sheet. However, it is noteworthy that the figures given in the draft version of the profit and loss statement differed substantially from those in the final version, lending some credibility to Mr Rasul's claim to have seen a very different version. I should, however, make it clear that I do not accept his suggestions that Mr Watson was deliberately attempting to mislead him and Mrs Rasul.

30. A great deal of time in cross-examination was spent in trying to establish the true figures of the indebtedness that the Partnership had or may have had to Mrs Shaikh at different points. This was to the extent that at one point I had to query whether we were trying Mr Gheewalla's claim in contract or Mrs Shaikh's possible claim in debt. Despite the attention lavished on this point, the evidence to determine this matter simply was not there. It will require a major exercise in forensic accounting to establish this question. Certainly, I am currently in no position at present to make any determination about this.
31. Whatever the financing arrangements, the Partnership was over the ensuing years able to acquire three further hotels in Great Yarmouth: the Birkland Hotel (acquired in April 1998); the St George's Hotel (acquired in October, 1998); and the Redruth Hotel (acquired in April 1999).
32. These hotels had a period of successful trading, the Partnership having secured contracts to accommodate guests placed there by local authorities, leading to very high rates of occupancy. However, legal difficulties relating to planning and a dispute with the London Borough of Newham led to a disastrous loss of trade and by 2003 three of the hotels had been closed and boarded up, with only the St George's Hotel continuing in operation.
33. Early in 2003 a decision was made to convert the three boarded up hotels into flats.
34. By the period in question for the current proceedings (April 2014 to December 2016) the conversion had been completed and the former hotels now comprised some 51 apartments that were being let out on assured shorthold tenancies.
35. During this period, Mrs Rasul was largely estranged from Mr Gheewalla and Mrs Ahmed. She and her husband took no part in the lettings business. Rentals from the lettings business were paid into Mrs Ahmed's personal account. It seems that from there they were diverted into various companies described by Mr Gheewalla as special purpose companies that paid dividends to children of Mrs Shaikh. Mr Gheewalla described this as being as a means of repaying loans or interest to Mrs Shaikh, but the explanation of this made little sense to me. For an unexplained reason, the shares in these companies were ultimately transferred into the ownership of Mrs Ahmed.

#### **4. THE ALLEGED AGREEMENTS**

##### **(A) The 1996 Alleged Agreement**

36. Mr Gheewalla's pleaded case is that the Mrs Ahmed and Mrs Rasul orally



agreed on formation of the partnership in December 1996 and at the same time agreed that Mr Gheewalla would be entitled to consultancy fees equal to one-third profits of the Partnership business (before deduction of the consultancy fees). This agreement was (in the final version of the Amended Particulars of Claim) said to have made in the front room of the basement flat located at the West Pier Hotel in Brighton. (This hotel was in the ownership of another partnership between Mrs Shaikh and Mr Gheewalla's wife, and was the property where the partners and Mr Gheewalla all lived at that time.) Mr Gheewalla proposed that the Ambassador Hotel, and all hotel businesses going forward, ought to be owned by the First and Second Defendants as equal partners, with the Claimant working for the Partnership as a consultant for a fee of one third of the profits. The First and Second Defendants agreed to this proposal, the hotel was purchased, and the business was conducted in the manner proposed.

37. Mr and Mrs Rasul deny that there was any such meeting. Mrs Rasul accepted that there were discussions about the formation of the partnership, but considered that the proposal emerged over several conversations and does not recall the particular meeting referred to by Mr Gheewalla. She was adamant that there had never been any discussion of a proposal for to receive a consultancy fee, and certainly not one based on a percentage of profits. She did understand that Mr Gheewalla was, over the period of the Partnership business, undertaking work in representing the Partnership, but she had understood that he was doing so, not in the expectation of any remuneration, but as the representative of his daughter who, as is acknowledged on all sides, has never taken any active part in the business.

**(B) The 2003 Alleged Agreement**

38. . Mr Gheewalla's pleaded case in relation to the 2003 Alleged Agreement is that in March 2003 the Partnership was "restructured". This was in the context that Mrs Shaikh had requested the return of her investment and the Claimant and the Defendants had become interested in, and discussed, expanding the business and in particular the property development side of the business. Specifically there was a proposal to convert three of the hotels in Great Yarmouth into 51 flats for resale.
39. Again, according to Mr Gheewalla, there was a meeting at the West Pier Hotel to discuss the expansion of the business. At this meeting, Mr Gheewalla said that he was willing to continue working for the business, but he needed payment for the hard work he had been and would be doing. Mrs Rasul agreed that he would be paid and the basis of his payment would be stay the same as previously agreed. In other words, he would be paid one third of all profits of

the business (calculated before taking account of this fee) - but with the clarification that this would include profits or gains in respect of the property development of 51 flats for resale.

40. Again, the Defendants deny that any such meeting took place. They agree that there had been discussions leading to the decision to pursue development of the hotels into flats, but they deny that this had anything to do with Mrs Shaikh pressing for repayment. They deny emphatically that there was an agreement that Mr Gheewalla would be acting as consultant and would be paid on any basis, and certainly on the basis claimed.

**(C) How to choose between the differing accounts**

41. Mr Gheewalla's accounts of the naissance of the Alleged Agreements is utterly denied by Mr and Mrs Rasul. It is necessary for the court to choose between these very different accounts.

42. In relation to all of the witness evidence, for the most part this relates to events that occurred many years ago. I remind myself of the warnings made by Leggatt J (as he then was) in *Guestmin SGPS SA v. Credit Suisse (UK) Ltd* [2013] EWHC 3650 (Comm) ('*Guestmin*') regarding the malleability of memory, particularly in the context of litigation (see *Guestmin* [16] to [20]).

43. The approach recommended in *Guestmin* was to place little reliance on witnesses' recollections of what was said in meetings and conversations many years ago. Instead, the court should base factual findings from the documentary evidence and known or probable facts to the extent that it is possible to do so.

44. As was noted by Leggatt J in the later case of *Blue v. Ashley* [2017] EWHC 1928 (Comm) ('*Ashley*'), the *Guestmin* approach has been widely followed and approved by the courts and has received support in research by academic psychologists (see *Ashley* at [68]).

45. Of course, there may be cases where the court has little to go on by way of contemporaneous documentary evidence. This is one such case. The approach that the court should take in such cases was considered by the Court of Appeal in *NatWest Markets plc and another v Bilta (UK) Ltd (In Liquidation) and others* [2021] EWCA Civ 680 ('*Bilta*') where the court, at [51] said:

“Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence; the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or

adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness box, especially when their version of events was challenged in cross-examination. Provided that the judge is alive to the dangers of honest but mistaken reconstruction of events, and factors in the passage of time when making his or her assessment of a witness by reference to those matters, in a case of that nature it will rarely be appropriate for an appellate court to second-guess that assessment.”

46. Mr Darton, in drawing my attention to this line of cases, suggested that the approach that the court should take from it when dealing with conflicting oral evidence in a matter that occurred many years ago, should be:

- (i) to test the oral evidence against the contemporaneous documentary evidence and the known or probable facts (as per *Bilta* at [49]); and
- (ii) to consider the overall plausibility of the evidence and the supporting or adverse inferences that can be drawn from other documents (as per *Bilta* at [51]; and
- (iii) to consider the extent to which the Alleged Agreement Agreements have left a “documentary footprint” (as per *Ashley* at [65]).

47. I agree that this is the approach that the court should take. I would add, however, one further consideration arising from a case that Mr Mahmood reminded me of, *Weisniewski v Central Manchester Health Authority* [1996] EWCA Civ 596 (*‘Weisniewski’*). This is to take appropriate notice of the fact if there is evidence that is not before the court that a party might be expected to have adduced if that party’s case were true.

48. In *Weisniewski*, Brooke LJ (as he then was) delivered the Court of Appeal’s unanimous judgment in a matter relating to medical negligence. After considering prior authority, he derived the following principles:

“(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

**(D) Matters pointing towards the existence of the alleged consultancy**

49. There are a number of matters that could be regarded as pointing towards the existence of the consultancy.

**(i) *Bargaining power***

50. First, Mr Darton draws my attention to the relative bargaining position of the parties at the time of the alleged 1996 Agreement. He argues that Mrs Rasul was in a weak bargaining position. She was, in Mr Darton's submission, dependent on monies being sourced from Mrs Shah to finance the purchase. She had nowhere else to live. She had had very little experience in the hotel business. Neither could she rely on her partner, Mrs Ahmed (or rather Miss Gheewalla as she then was), who had no experience, was only 18 and was still in education. It was therefore, in his submission, reasonable and probable that had Mr Gheewalla asked for a share in profits, Mrs Rasul would have acceded to it. Mr Darton argues further that Mrs Shaikh (who in his submission was key to financing the enterprise) would have insisted on Mr Gheewalla's involvement so as not to put her money at risk in a partnership run by two inexperienced young women.

51. Mrs and Mr Rasul deny this account. They say that they were able to provide their half of the purchase price for the Ambassador Hotel from their own resources. Furthermore, they had had business experience in running a post office and had obtained some hands-on experience of running a hotel when helping out in one of the Brighton hotels.

52. Despite these points (and without making any determination as regards the initial financing of the purchase of the Ambassador Hotel), I agree with Mr Darton that the Defendants were in a weak position. Had a proposal for a profit share in favour of Mr Gheewalla been put to them, they would have engaged with it and at the very least have considered some form of remuneration for Mr Gheewalla.

53. However, this does not mean that that is what happened.
54. I put to Mr Gheewalla the question why, if he had wanted a one-third share in the profits of the Partnership, he had not just put himself forward as a partner. He answered that it had been his intention to help build up this business to benefit his daughter and his niece, Mrs Rasul, whom he regarded as being almost a daughter. If this was a reason for him not to have a partnership share, it was also a reason for him not to ask for any other form of continuing profit share.

**(ii) *The Partnership Accounts of 2003***

55. In January of 2003, final accounts for the Partnership's previous years of trading were drawn up and ultimately submitted to the Revenue. The accounts were signed by Mrs Rasul, although I do not think it likely that she had any significant hand in their preparation. These accounts purport to show that in 2001 that the Partnership had indebtedness that included both bank indebtedness and "*Other indebtedness*". Mr Darton, on behalf of Mr Gheewalla argues that the "*Other indebtedness*" was a reference to the lending provided by or via Mrs Shaikh, such that there was no way at this point that the redevelopment could progress without the cooperation of Mrs Shaikh. As a result, in Mr Darton's submission, the arguments concerning relative bargaining strength addressed above may be considered to apply again at this stage, and they make Mr Gheewalla's account of the 2003 Alleged Agreement more probable in that it shows that Mrs Rasul, if pressed to do so might have agreed to these terms.
56. Again, however, it does not mean that the point was in fact put to her.
57. As I have already described, the financial position is disputed by Mr and Mrs Rasul.
58. It is clear that Mrs Rasul did not take the time to acquaint herself with a detailed understanding of the finances of the hotels and left these matters to her uncle and to her husband. She did, however, appear to understand that, for whatever purpose, these accounts included figures relating to the Brighton hotels. This basis for her understanding seems to have been accepted in the Partnership Proceedings (see *Rasul v Gheewalla* at [26]).
59. Mr Rasul went further, and suggested that, although he agreed that he would look through any accounts before his wife would sign them, he did not see the final version of the 2003 Accounts. Instead, had been taken by Mr Watson, the accountant, through a prior version of the accounts. This version did not include these entries and therefore told his wife that she could sign the accounts.

Later in the trial, he confirmed, through counsel, that a draft version of these accounts that was contained in the Defendant's bundle was the one that he had reviewed.

60. I do not find that Mr Gheewalla, for all the emphasis that he has put on this, has done enough to establish reliably the amount of any indebtedness to Mrs Shaikh in 2003 (or indeed at any particular level at any point). Better evidence will be needed before the court can place reliance on this point. However this is largely irrelevant as, I do not find the existence of any indebtedness to Mrs Shaikh to be determinative of the question whether the two Alleged Agreements were in fact made.
61. However, there is another aspect of the 2003 Accounts that is relevant to this question. The 2003 accounts (which purport to cover profit and loss on the Ambassador Hotel for the 36 months to 21 January 2001) include an entry of £40,000 relating to a management fee. Mr Gheewalla argues that this refers to management fees paid to him from the Partnership, and evidences that he was receiving a consultancy fee and that Mrs Rasul knew about this.
62. Again, Mrs Rasul explained this that she had understood any management fee as referring to the Brighton hotels, and that this had been explained to her by the accountant. Again, Mr Rasul robustly suggested that this was not in the version of the accounts that he had seen.
63. The draft accounts (covering the same period), which are the ones that Mr Rasul claims he did see (but which were not put to him while he was giving evidence), do not include a figure for "Management Fees" but do include figures under the "Administration and Expenses" heading of £120,000 against the entry ("Mrs G") and £90,000 against the entry ("Mr G"). These sums are unexplained but it seems likely that the references were to Mrs Gheewalla and to Mr Gheewalla.
64. I find that there is credible evidence that Mr Gheewalla was taking money or benefits-in-kind out of the Partnership businesses before 2003 and I consider it more likely than not that Mrs and Mr Rasul were aware of this. In my view, this has relevance to his claim that there was a common expectation that Mr Gheewalla would receive some reward for work undertaken, but it is not enough to demonstrate that the expectation was on the terms of the Alleged Agreements – especially given the absence of any document confirming the calculation of such fees by reference to profits.

***(iii) Newham Proceedings***

65. In 2001 Mr Gheewalla and Mrs Rasul were parties to a dispute with the London Borough of Newham. The court was taken to a partial copy comprising

(unfortunately only) the first two pages of their Particulars of Claim, which included an averment that Mr Gheewalla was a consultant working on behalf of the Partnership. The court was also taken to a copy of a skeleton argument produced by counsel for Newham which further stated that Mr Gheewalla was a consultant working on behalf of the Partnership and was entitled to a percentage of the Partnership profits.

66. Mrs Rasul denied any familiarity with these Particulars of Claim and believed them to have been produced by Mr Gheewalla or on his instructions. It appears that she did receive the Particulars of Claim by fax around midnight one evening. There is no evidence whether she saw the skeleton argument produced by counsel for Newham.
67. I do not consider that I should place very much reliance on these documents to evidence that there was an agreement in the terms that Mr Gheewalla suggests. It was natural that, if he wanted to act as a party in the dispute with Newham, Mr Gheewalla would need to demonstrate his standing to be involved. I am sure that it was fair for him to describe himself as a consultant since it is clear that at this time he was acting on behalf of the Partnership with the consent of the other partners. This is not good evidence, however, that he was doing so under the terms of the Alleged Agreements. Indeed, on their face, the Newham Particulars of Claim suggest that Mr Gheewalla was “employed”, rather than having a self-employed consultancy arrangement, and to this extent is incompatible with his current claim.

**(E) Matters pointing against the existence of the alleged consultancy**

68. A number of matters point against the existence of the consultancy.
69. First, there is the inherent unlikeliness that Mr Gheewalla would have asked Mrs Rasul for a profit share, if Mr Gheewalla believed in 1996 and in 2003 that Mrs Rasul was not really a partner in the Partnership, but was merely a nominee for her aunt. Whilst the argument that Mrs Rasul was a nominee was abandoned at trial by Mrs Ahmed, it is inconsistent of Mr Gheewalla to have (on his earlier evidence for the purpose of those proceedings) stated his belief in this position but nevertheless seeking to agree a consultancy agreement with Mrs Rasul.
70. Secondly, there is inherent unlikeliness that if Mr Gheewalla did want a profit share he would have chosen to do so by means of a consultancy arrangement rather than a partnership share - especially in the circumstances of the 2003 Alleged Agreement when, on his evidence the expectation was a sale of the redeveloped apartments. A consultancy agreement could easily be terminated just at the point the major uplift in value was sought.

71. Also, Mr Gheewalla's oral evidence that in 2003 the Partnership was heavily burdened with debt, with compound interest growing on that debt at 15% per annum makes it unlikely that, if he was at that stage looking for remuneration for his work, he would have chosen to do so on the basis of a profit share where that profit share would be calculated after repayment of that debt and might leave him with nothing.
72. Thirdly, and importantly, with the sole exception of the documents produced in relation to the Newham case, in 20 years no mention was made of the existence of a consultancy agreement entitling Mr Gheewalla to a third of the profits. This is despite the fact that Mr Gheewalla has seen fit to make numerous accusations against Mr and Mrs Rasul including accusations relating to misappropriation and concealment of earnings; theft; fraud; and deceit. Neither was this issue raised during the Partnership Proceedings, where it would have been relevant to the financial analysis that was made during that case. Even in the current proceedings, it is relevant that the detailed circumstances of the meetings at which the Alleged Agreements were said to have been made were only included in Mr Gheewalla's Amended Particulars of Claim at a very late stage.
73. Another potentially relevant point relates to the bankruptcy proceedings which Mr Gheewalla was subject to in 2002. Unfortunately, the papers provided to the court did not include a copy of any initial statement made by Mr Gheewalla of his assets in 2002. However, it seems unlikely that at this point he alleged any claim for unpaid consultancy fees, as if he did his trustee in bankruptcy might be likely to have contacted the Partnership about this.
74. I am inclined, however, not to place any reliance on this point for two reasons. First, because it is possible that at the point of his bankruptcy Mr Gheewalla considered he had already been paid anything due to him under his consultancy. Secondly, because the court was provided with a copy of the final report produced by the trustee in bankruptcy in 2021 in which, although he does not mention a consultancy arrangement, he does mention rights Mr Gheewalla may have against the Partnership.
75. With the exception of an ambiguous reference discussed above in the 2003 Final Account, I was not referred to any evidence that Mr Gheewalla's consultancy ever gave rise to any entries in any tax returns for the partnership or for Mr Gheewalla.
76. I consider it also significant that, despite Mr Gheewalla holding that the 1996 Alleged Agreement was made in front of Mrs Ahmed and that she and a number of other family members were there to witness the 2003 Alleged Agreement,



Mr Gheewalla has called no such witness.

77. I commented on Mrs Ahmed's absence as a witness at the Pre Trial Review and made special provision for her to be given a chance to provide a witness statement and to appear at the trial. Mr Gheewalla originally stated he would take this opportunity and indeed asked for a short extension of time to allow this to happen as Mrs Ahmed had been travelling. Despite my granting this extension, Mrs Ahmed did not provide a witness statement.
78. Had Mrs Ahmed produced a witness statement that supported Mr Gheewalla's account of events, no doubt she would have been cross-examined by reference to the witness statement she produced in relation to the Partnership Proceedings (but which was not put into evidence after she dropped her claim that her partnership was not with Mrs Rasul but was with Mrs Shaikh). It seems to me more likely than not that this prospect would have been unattractive to her as contradictions between Mr Gheewalla's current account of the birth of the partnership and her earlier evidence would have been uncomfortable for her to deal with.

**(F) My finding in relation the Alleged Agreements**

79. In Sir Arthur Conan-Doyle's short story "*The Silver Blaze*", Sherlock Holmes famously solved the case by reference to "*the curious incident of the dog in the night-time*" - the curious incident being that the dog did not bark. A similar analysis may be applied in relation to the Alleged Agreements.
80. An agreement entitling someone to one third of the profits of a partnership that owns four hotels, is a very important thing. It is entirely unlikely that if such an agreement existed it would not have left a more substantial "documentary footprint" (to borrow the language from *Bilta*) over a period something like 20 years than was the case here.
81. Following the principles outlined in *Weisniewski* I consider that the other matters I have listed above that go to the inherent improbability of a one-third profit share being agreed, is strengthened by the deafening silence over the existence of such an agreement (with the one exception of the Newham proceedings) and the Claimant's failure to bring forward any of the witnesses who should, on his evidence, have been able to attest to the existence of the arrangement.
82. Having taken full regard to the arguments put forward for and against the existence of the Alleged Agreements, in my view the evidence for the Alleged Agreements is thin at most. Certainly, it is insufficient to discharge the Claimant's burden of proof in relation to this matter. This is so whether or not

one accepts his view of the financing arrangements for the Partnership (as to which I make no finding). Accordingly, I find that the Alleged Agreements in the terms argued for by Mr Gheewalla did not exist and Mr Gheewalla's claim for breach of a consultancy agreement must fail.

83. As I have found that the Alleged Agreements did not exist, the claim against Mr Rasul that he caused a breach of the Alleged Agreements must also be dismissed.

## **5. THE QUANTUM MERUIT CLAIM**

### **(A) Constituents of a Quantum Meruit Claim**

84. As Mr Gheewalla's claim in relation to the Alleged Agreements has failed, I must turn to his *quantum meruit* claim against Mrs Rasul.

85. In cases like this, a *quantum meruit* claim is based on the equitable principle that the court should rectify cases of unjust enrichment. Where a claimant has acted in the reasonable expectation of payment for services rendered, a claim may succeed where the following requirements are made out:

- a. the defendant has been enriched by the receipt of the services; and
- b. the services were freely accepted.

86. In the current case, to meet the first of these requirements Mr Gheewalla needs to show that Mrs Rasul has been enriched by the receipt of his services.

87. In relation to the second point (free acceptance) the point may be broken down to include the following matters. In order for there to be free acceptance of services it is necessary that the defendant to the claim:

- a. was aware that the services were being provided;
- b. was or should have been aware that there was an expectation by the person providing the services that the services would be paid for; and
- c. had an opportunity to reject the services concerned but did not do so (see the comments of Arden LJ (as she then was) in the Court of Appeal decision in *Benedetti v Sawiris* [2010] EWCA Civ 1427 ("*Benedetti*") at [4]).<sup>1</sup>

88. Whilst the court heard a great deal about what Mr Gheewalla had done for the Partnership over the life of the Partnership, it is important to note that, in his Amended Particulars of Claim, Mr Gheewalla is claiming only in relation to the

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<sup>1</sup> The judgment when this case reached the Supreme Court in *Benedetti v Sawiris* [2014] AC 938 did not overturn the Court of Appeal decision on this point.

period from 30 April 2014 to 31 December 2016. In applying the tests mentioned above, they must be applied in relation to this period.

89. The position in this case is complicated by the fact that the properties were not solely held by Mrs Rasul. I will discuss the implications of this below, but meanwhile, just considering Mrs Rasul's position, I will apply the tests described above.

**(B) Has there been enrichment?**

90. Mr Gheewalla's Amended Particulars of Claim describe the consultancy work that he was undertaking as comprising "*raising finance, enhancing, organising and integrating the development of the business, including converting three former hotels located in Great Yarmouth into 51 flats, managing the construction work and administrating the workings of the developed flats on AST*".
91. During the relevant period, the development (and its financing) had already taken place and the main business of the Partnership, (to the extent it still existed – see further below) was the running of a portfolio of 51 assured shorthold tenancy apartments.
92. The St George's Hotel was still operating as a hotel. However, during this period it appears that it was operating under an informal lease granted (it appears without the consent of Mrs Rasul) to a company called Vermont Ltd which was owned and operated by the Claimant. The lease was granted, according to Mr Gheewalla, for a period of 30 years, with no obligation to pay rent. Mr Gheewalla says that this was justified on the basis that substantial repairs were needed at the hotel.
93. There are strong doubts about both the propriety and the effective implementation of these arrangements. I agree with a point made by Mr Mahmood that on its face the lease does not appear to provide good value to the owners of the hotel - the expected profits of running a hotel over thirty years with no rent to pay would seem to exceed the value of any likely level of repairs needed. Furthermore, there appears to be no written document reflecting the lease, and no reporting of the lease to the Land Registry. No doubt, the parties will have further discussions about these arrangements.
94. For the current purposes, however, I consider that the alleged existence of these arrangements is sufficient for me to conclude that any work that Mr Gheewalla was undertaking in relation to the St George's Hotel was not being performed by him in the expectation of any payment from Mrs Rasul (or Mrs Ahmed).

95. Neither do I consider, insofar as Mr Gheewalla may have been making any financing or refinancing arrangements during this period, his efforts were being undertaken for the benefit of Mrs Rasul, or that she would have known about these efforts and understood that Mr Gheewalla expected to be paid by her for such work.
96. As a result, I will consider that only work that falls into consideration for the purposes of his *quantum meruit* claim was the work undertaken by Mr Gheewalla in relation to the management of the apartments during the relevant period.
97. Mrs Rasul denies that there has been any significant work undertaken by Mr Gheewalla during this period that has benefited her or the partnership (to the extent that it still exists). Her understanding was that the apartments were being managed by a firm of letting agents and that this meant that there were no services required from Mr Gheewalla.
98. I do not accept Mrs Rasul's position on this point. Even where professional management services are provided, they will only go so far. The lettings agency will require instructions from somebody, even where they were offering a full management service, they would need someone to instruct them on tenancy matters and are matters where repairs were required. There is no suggestion that anyone other than Mr Gheewalla was performing this role in relation to the 51 flats. If he had not been undertaking this role, then there would have been a need to appoint someone else to do this and pay that person a salary or a management fee. Mr Gheewalla's services meant that Mrs Rasul and Mrs Ahmed were saved this expense, and to that extent were enriched.
99. The matter is complicated, however, by Mr Gheewalla's conduct in failing to pay any of the rents over to Mrs Rasul (or into a joint bank account for Mrs Rasul and Mrs Ahmed), which may be considered to call into question whether Mrs Rasul has had any benefit from his efforts.
100. Mr Darton argued that any claim that there was impropriety in the way the rents were handled should be dealt with as a separate question. It does not take away from the point that there was value in Mr Gheewalla's work in ensuring that the apartments were being managed and rents were being collected and to that extent Mrs Rasul (as well as Mrs Ahmed) was enriched. In the absence of any specific argument being made on behalf of the Defendants that this point should operate as a defence against the *quantum meruit* claim, I will accept Mr Darton's argument on this point. If Mrs Rasul wishes to pursue this point, she will need to do so by means of a claim or counterclaim.

**(C) Was Mrs Rasul aware of the services?**

101. Although it was Mrs Rasul's evidence that she was not aware that Mr Gheewalla was performing a management role in relation to the apartments, I do not consider this to be credible. She would have understood that somebody needed to be representing the Partnership in relation to the lettings over and above any role undertaken by a managing agent – her husband had earlier performed this very role and she and her husband were by then themselves operating a number of their own letting properties. She also would have understood from her past dealings with the Partnership that Mr Gheewalla would have performed this role.

**(D) Was Mrs Rasul aware that Mr Gheewalla expected to be paid?**

102. Mrs Rasul's evidence is that she had always understood that Mr Gheewalla was being involved in the Partnership arrangements solely in order to represent his daughter and to look after his daughter's interests (and in the early days at least, also gratuitously to benefit her as his niece).

103. However, I do not think this view is sustainable for two reasons.

104. First, Mr Gheewalla had previously taken money or benefits out of the Partnership businesses for his own purposes and I consider that Mrs Rasul would have been aware of this and this can be expected to have caused her to realise that Mr Gheewalla would have expected further payment if he was undertaking further work.

105. Secondly, the argument that he was looking solely after his daughter's interests needs also to be considered in the light of the following fact. During most of the period of the Partnership, and certainly during this period, Mrs Rasul herself was not actively working within the partnership or former partnership businesses. For the most part, her interests were being looked after by Mr Rasul. Mr Rasul had at various times required to be rewarded for this, and indeed during a period shortly before the relevant period for Mr Gheewalla's claim had been paid around £50,000 a year for looking after the 51 apartments. It is difficult to see why Mrs Rasul would have thought that her husband, when performing duties from which both partners (or erstwhile partners) would benefit, would expect to be paid without also considering that Mr Gheewalla, when performing similar duties would not expect to be paid.

**(E) Did Mrs Rasul otherwise have an opportunity to reject the services?**

106. In the early days of the Partnership, I consider that it is more likely than not that Mrs Rasul was so under the influence of her uncle, Mr Gheewalla that she

would have found it difficult to stand up to him. However, by the time in question, she had already shown that she was able to stand up to him. She was by then far more financially independent, with her practice as a doctor and with a burgeoning buy-to-let portfolio. I do not think that at this point, any argument that she did not have an opportunity to reject the services would succeed. It had been open to her during and before this period to ask Mr Gheewalla to desist from managing the rental portfolio and to make it clear that she would not pay for this.

**(F) Relevance of Mrs Ahmed's knowledge**

107. It may be seen from my analysis above that even if we consider only Mrs Rasul's knowledge, all of the elements necessary for an unjust enrichment claim are present.

108. Even if this were not the case, Mr Darton suggested that Mr Gheewalla's case might succeed against her based on Mrs Ahmed's knowledge.

109. The analysis in relation to this point is complicated by two matters.

110. The first is that there has been no evidence before the court as to what was the state of Mrs Ahmed's knowledge, except that there has been evidence that Mrs Ahmed has been receiving rents initially into her bank account. However, it does seem more likely than not that she would have known and approved of her father's activities.

111. The second is that whether Mrs Ahmed's knowledge could be brought into account engages various complicated legal questions, not least that of how far the partnership was still in existence.

112. Whilst Mr Gheewalla avers that the partnership was "restructured" in 2003, this was not the analysis accepted in *Ahmed v Rasul*. In that case Nugee J appears to have accepted Mrs Ahmed's contention that the partnership came to an end in 2000 (see at [4]) and that the accounts produced in 2003 were intended to be final accounts.

113. There was also in the Trial Bundle a letter dated 2nd July 20002 from Mr Watson to HM Customs and Excise which stated that there had been a cessation of the Partnership on 20 May 2002.

114. I take it therefore that by the time in question the Partnership had ceased and that the former hotel properties should be regarded either (i) as properties are being held by a partnership in winding-up or (ii) as merely beneficially co-owned so that the co-owners' relationship at this time was no longer subject to

any aspect of partnership law.

115. If the properties are to be regarded as part of the assets of a partnership in winding-up, then questions would arise as to the ability of a partner to bind another partners once a partnership is in winding up and how far this is relevant to the knowledge elements of an unjust enrichment case.
116. The question is different if the winding up of the Partnership is to be regarded as having been completed at the relevant time. In that case, the only relationship between Mrs Rasul and Mrs Ahmed would have been (i) that of co-owners of property (in relation to the property that they owned jointly) and (ii) trustee and beneficiary (in relation to property that is owned legally by Mrs Ahmed but, according to order of Nugee J, was held beneficially by them both). If this is so then it is still less clear whether Mrs Ahmed's knowledge and consent would suffice to allow the claim against Mrs Rasul.
117. There was no time during the trial for these points to be explored in depth. However, given what I have found in relation to Mrs Rasul's own state of knowledge it is not necessary for me to reach any conclusion on the relevance of Mrs Ahmed's knowledge and, interesting as they are, I will resist the temptation to explore these questions any further.

## 6. CONCLUSION

118. Having considered this matter carefully, I consider that Mr Gheewalla's claim in contract for a one-third share of profits is not made out.
119. I consider, however that his *quantum meruit* claim based on the doctrine of undue enrichment is made out and that I should make an order accordingly.
120. In accordance with the directions given by Deputy Master Teverson I will, instruct that there be a further hearing to assess quantum.
121. It is important that that hearing should reflect my findings that the only services to be valued for the purposes of the *quantum meruit* claim of the services actually provided by Mr Gheewalla in relation to the management of the 51 flats during the relevant period. An assessment should be made of the time spent by the Claimant in undertaking this activity during the relevant period and expert evidence should be obtained as to be expected rate of payment for the type of work conducted by him.
122. I will make an order accordingly.