



Neutral Citation Number: [2024] EWHC 2304 (Ch)

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

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

Date: 6 September 2024

Before :

Louise Hutton KC
(sitting as a Deputy High Court Judge)

Case No: BL-2019-001029

Between :

ANTHONY DONNELLAN

Claimant

- and -

ALAN WARD
LUXAP LIMITED
EBONAIR INVESTMENT SA
MAUREEN HELEN WARD
GABRIELA ELENA DOROBAT

Defendants

EBONAIR INVESTMENT SA

Part 20 Claimant

- and -

RICKY ALAN KEANE

Third Party

IAN WILTON KEEN

Fourth Party

BOBI HOWARD

Fifth Party

Between :

RICKY ALAN KEANE

Claimant

- and -

ALAN WARD
CHELSEA BRIDGE APARTMENTS LIMITED

Defendants

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Between :

RICKY ALAN KEANE

Claimant

- and -

LUXAP LIMITED
CHELSEA BRIDGE APARTMENTS LIMITED
PERSONS UNKNOWN
EBONAIR INVESTMENT SA

Defendants

EBONAIR INVESTMENT SA

Part 20 Claimant

- and -

RICKY ALAN KEANE

Part 20 Defendant

Philip Coppel KC and Alistair Cantor (instructed by **Wilson Barca LLP**) for **Mr Anthony Donnellan, Mr Ricky Keane, Ms Bobi Howard and Mr Ian Keen**
Timothy Polli KC and Tim Hammond (instructed by **Awan Legal Associates Ltd**) for **Mr Alan Ward, Luxap Ltd, Ebonair Investment SA and Chelsea Bridge Apartments Ltd**
Angus Gloag (instructed by **Awan Legal Associates Ltd**) for **Mrs Maureen Ward and Ms Gabriela Dorobat**

Hearing dates: 7 – 10, 13 – 17, 20 – 22 May and 7 June 2024

APPROVED JUDGMENT

Louise Hutton KC:

INTRODUCTION

1. This was the trial of three sets of proceedings directed to be heard together.

Claim No. BL-2019-001029: the Partnership Proceedings

2. Mr Donnellan’s primary claim is for a declaration as to the existence of a partnership between him and Mr Ward and for relief flowing from the existence of that partnership.
3. Mr Donnellan is a mortgage broker and Mr Ward is a property developer. The dealings between Mr Donnellan and Mr Ward and related parties on each side date back to 2007 and concern a number of properties in which Mr Donnellan and Mr Ward were involved.
4. In very brief summary, Mr Donnellan says that in 2012 Mr Ward expressly agreed to go into partnership with Mr Donnellan for the ongoing development of Creative House (a property Mr Ward had acquired through a wholly-owned company in 2003) and future projects, with their respective interests (including in Creative House itself) to be 25% (Mr Donnellan) and 75% (Mr Ward).
5. Mr Ward says that there was no such partnership and that the interests in Creative House are ultimately held by his wife, Mrs Ward (the Fourth Defendant in the Partnership Proceedings), his former girlfriend, Ms Dorobat (the Fifth Defendant in the Partnership Proceedings), and a Panamanian company, Ebonair Investment SA (“**Ebonair**”, the Third Defendant in the Partnership Proceedings).
6. It is common ground that a number of the flats in Creative House are held by Mr Keane, a friend of Mr Donnellan, and by Ms Howard, a former girlfriend of Mr Donnellan, as nominees. However, while Mr Keane, Ms Howard and Mr Donnellan say that Mr Keane and Ms Howard hold their interest in those flats for the alleged partnership, Mr Ward and Ebonair say that Ebonair is the ultimate beneficial owner of the flats. By Part 20 Claim in the Partnership Proceedings, Ebonair seeks declarations that Mr Keane and Ms Howard hold their flats on trust for it and related accounts and inquiries, including against Ms Howard’s father, Mr Keen.

Claim No. BL-2021-001903: the Arbitration Claim

7. Mr Keane brings a claim to enforce what he alleges to be a valid arbitration award made by Ms Howard (as arbitrator) against Mr Ward, alternatively against Chelsea Bridge Apartments Limited (“**CBA**”), for the payment of monies said to be due to Mr Keane arising out of the development of properties other than Creative House in which Mr Keane, Mr Donnellan and Mr Ward were involved.

8. Mr Ward says that he is not a party to the arbitration agreement. He says that the agreement is with CBA and not with him. Mr Ward and CBA deny that the award means what Mr Keane says it means and dispute its validity, and in the alternative, if Ms Howard's calculations are found to constitute an award determining that Mr Ward or CBA must pay any monies to Mr Keane, they bring a counterclaim seeking to challenge the Award out of time.
9. The proceedings were originally issued in the Technology and Construction Court and were subsequently, by order dated 16 October 2020, transferred to the Chancery Division to be heard together with the Partnership Proceedings.

Claim No. PT-2021-000953: the Possession Proceedings

10. By claims originally issued in the Wandsworth County Court, Mr Keane seeks possession of Flats 13 and 14 against (i) Luxap Limited ("**Luxap**", a company which runs a business granting short lets of the flats in Creative House), (ii) CBA, and (iii) persons unknown. Ebonair was subsequently joined to the proceedings on its application and the claims were transferred, initially to Central London County Court, and then transferred to this Court to be heard together with the Partnership Proceedings and the Arbitration Claim.
11. The dispute between the parties in the Possession Proceedings is the same as one of the disputes in the Partnership Proceedings, namely whether Mr Keane holds the relevant flats as nominee for Ebonair as the Ward Parties say or, as Mr Keane contends, for the alleged partnership.

The Parties

12. Mr Coppel KC and Mr Cantor appear for Mr Donnellan, Mr Keane, Ms Howard and Ms Howard's father, Mr Ian Keen (referred to during the trial as "**the Donnellan Parties**"). Mr Polli KC and Mr Hammond appear for Mr Ward, Luxap, Ebonair and CBA ("**the Ward Parties**"). Mr Gloag appears for Mrs Ward and Ms Dorobat.

THE STRIKE OUT APPLICATION

13. At the start of the hearing on Thursday 23 May 2024, when oral closing submissions were to be heard, Mr Coppel KC made an oral application to strike-out the Defences of Mr Ward, Mrs Ward and Ms Dorobat.
14. The application was made in the following circumstances.
15. At the end of the last day of oral evidence, Tuesday 21 May 2024, I adjourned the trial to Thursday 23 May 2024 for one day of oral closing submissions, with written closings to be filed on the afternoon of Wednesday 22 May 2024.
16. During that last day of evidence, Mr Gloag was told by Ms Dorobat, who gave evidence on that day, that there might be disclosable documents available to her which had not been disclosed. He obtained copies of some of those documents

and showed those documents to counsel for the other parties during adjournments on that day.

17. In addition to those documents, the Ward Parties, Mrs Ward and Ms Dorobat then disclosed further documents on Wednesday 22 May 2024 at 5pm and again later that evening. Between those two batches of disclosure, the parties filed their written closing submissions.
18. At the outset of the hearing on Thursday 23 May 2024, Mr Coppel KC applied orally for the Defences of Mr Ward, Mrs Ward and Ms Dorobat in the Partnership Proceedings to be struck out pursuant to CPR 3.4(2)(c). In answer to a question from me, Mr Coppel KC made it clear that he was asking for the Defences of Mr Ward, Mrs Ward and Ms Dorobat to be struck out and was not making any application for any of those witnesses to be recalled. Mr Polli KC and Mr Gloag both submitted that they needed more time to respond to the application being made.
19. A further one day hearing was therefore fixed for the hearing of the strike out application and then (if appropriate) the oral closing submissions, and the parties agreed directions for that hearing. I heard oral submissions on the strike out application on 7 June 2024 before going on to hear the oral closing submissions on the trial immediately afterwards.

The Donnellan Parties' submissions on the strike out application

20. The Donnellan Parties submitted that the Defences of each of Mr Ward, Mrs Ward and Ms Dorobat should be struck out. It was said:
 - a. Analysis of the material provided showed that the great bulk of it had not previously been provided to the Donnellan Parties.
 - b. Examination of that material revealed it would have been a rich source for the Donnellan Parties to use in cross-examination. It was too late for that position now to be remedied so the injustice has been done.
 - c. Mr Ward and Ms Dorobat were unapologetic.
 - d. The disclosure of material produced as a result of requests made on or after 21 May 2024 to counsel who had been instructed for Mrs Ward in relation to Mr Ward's bankruptcy compounded the injustice. It was said Ms Dorobat's excuses were irreconcilable with her being professionally represented and the relevance of Creative Constructions Limited ("**Creative Constructions**"), the company with which the documents were concerned, had been obvious from the outset of the Partnership Proceedings.
21. The Donnellan Parties submitted the Court had power to strike out the Defences pursuant to CPR 3.4(2)(c) and that, although a strike out would only ordinarily be made at this very late stage of proceedings where the relevant default had

made the fair trial of the claims impossible or prevented the Court from doing justice, this was such a case.

22. In particular, the Donnellan Parties submitted that their counsel had been deprived of “*various rich seams of incontrovertible material with which they could and would have cross-examined each of Mr Ward, Mrs Ward and Ms Dorobat*” and that it was not for the Donnellan Parties to prove that this would have clinched the case.
23. It was said that to strike out the Defences was the only proportionate response in the relevant circumstances, namely:
 - a. The scale of the non-disclosure;
 - b. The circumstances of the non-disclosure;
 - c. The time the disclosure was in fact provided; and
 - d. The absence of any legitimate explanation.

The submissions on behalf of Mr Ward

24. As to the relevant disclosure obligations, Mr Ward submitted that:
 - a. Extended disclosure in accordance with Model D was ordered on 2 December 2021. “Extended Disclosure” is “extended” in the sense that it goes beyond “initial” disclosure.
 - b. Model D is “narrow search-based disclosure”. The purpose of issue-led disclosure is to limit the searches required and the volume of documents to be disclosed (referring to paragraph 6.6 of CPR Practice Direction 57AD).
 - c. The order of 2 December 2021 set out the issues for disclosure in a Schedule to that order.
25. There were 11 issues identified in the Schedule to the 2 December 2021 Order and Mr Ward submitted that he gave disclosure in accordance with those issues. It was submitted that:
 - a. None of the issues in the 2 December 2021 Order concerned or referred to Mr Ward’s bankruptcy or Mr Ward’s dealings with his joint trustees in bankruptcy (the “**Joint Trustees**”).
 - b. Neither Mr Ward’s bankruptcy nor the liquidation of Creative Constructions feature substantively in the parties’ pleadings.
 - c. It was notable that, although the Donnellan Parties made several applications for specific disclosure during the course of the proceedings (as did the Ward Parties), none of those applications sought disclosure

of any of the Ward Parties' dealings with either Mr Ward's Joint Trustees or the liquidator of Creative Constructions. It was pointed out that Mr Donnellan knew of Mr Ward's dealings with the Joint Trustees. It was said that those matters were simply not regarded by either party as relevant to the issues identified in the 2 December 2021 Order.

26. It was submitted on behalf of Mr Ward that what changed was that Mr Donnellan's Counsel chose to cross-examine Mr Ward predominantly by reference to his dealings with the Official Receiver and with the Joint Trustees. It was submitted that it was therefore unsurprising that it was only after that cross-examination that documents relevant to that line of cross-examination were produced.
27. Even if it was found that Mr Ward had failed to comply with his disclosure obligations under the 2 December 2021 Order, it was said to be profoundly unfair for the Donnellan Parties to say that the failure was wilful, contumelious or otherwise egregious, or otherwise deserving of a strike out application.
28. It was said that the documents identified by Mr Donnellan as not previously seen were either publicly available documents, administrative correspondence looking to progress the liquidation or correspondence addressing concerns/complaints about the status/role of Charles Russell Speechly (who represented the liquidator and previously represented the Donnellan Parties in these proceedings). Insofar as they could be said to be tangentially relevant to the issues in the 2 December 2021 Order, nothing in them was inconsistent with Mr Ward's (or Ebonair's) case. There would have been no proper reason to cross-examine Mr Ward on any of those documents.

The submissions on behalf of Mrs Ward and Ms Dorobat

29. It was submitted that there was little analysis by the Donnellan Parties as to what they would have done with the new material or where they say it would have led, despite the fact they had now had ample time to analyse it.
30. It was submitted that the reason why there had been no attempt to recall any of the relevant witnesses to put any of the new material to them to rectify the alleged prejudice was that the Donnellan Parties did not in fact want to put any of the new material to any of the witnesses.
31. It was submitted that to strike out the Defences would be wholly disproportionate, and that a fair trial was clearly still possible.

The authorities

32. The Donnellan Parties recognise that where a strike out application is made at this stage of proceedings, at least for a failure to give disclosure (or late disclosure), the other party's case will usually only be struck out where the default has made the fair trial of the claims impossible or prevented the Court from doing justice.

33. That accurately reflects the position stated in the judgment of Chadwick LJ (with whom Ward and Roch LJJ agreed) in *Arrow Nominees v Blackledge* [2000] BCC 561 at [54-56]:

“54. It would be open to this court to allow the appeal against the judge's refusal to strike out the petition on that ground alone. But, for my part, I would allow that appeal on a second, and additional, ground. I adopt, as a general principle, the observations of Millett J in Logicrose Ltd v Southend United Football Club Ltd (The Times, 5 March 1988) that the object of the rules as to discovery is to secure the fair trial of the action in accordance with the due process of the court; and that, accordingly, a party is not to be deprived of his right to a proper trial as a penalty for disobedience of those rules – even if such disobedience amounts to contempt for or defiance of the court – if that object is ultimately secured, by (for example) the late production of a document which has been withheld. But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled – indeed, I would hold bound – to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.

“55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court. The court does not do justice to the other parties to the proceedings in question if it allows its process to be abused so that the real point in issue becomes subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself. That, as it seems to me, is what happened in the present case. The trial was ‘hijacked’ by the need to investigate what documents were false and what documents had been destroyed. The need to do that arose from the facts (i) that the petitioners had sought to rely on documents which Nigel Tobias had forged with the object of frustrating a fair trial and (ii) that, as the judge found, Nigel Tobias was unwilling to make a frank disclosure of the extent of his fraudulent conduct, but persisted in his attempts to deceive. The result was that the petitioners' case occupied far more of the court's time than was necessary for the purpose of deciding the real points in issue on the petition. That was unfair to the

Blackledge respondents; and it was unfair to other litigants who needed to have their disputes tried by the court.

“56. In my view, having heard and disbelieved the evidence of Nigel Tobias as to the extent of his fraudulent conduct, and having reached the conclusion (as he did) that Nigel Tobias was persisting in his object of frustrating a fair trial, the judge ought to have considered whether it was fair to the respondents – and in the interests of the administration of justice generally – to allow the trial to continue. If he had considered that question, then – as it seems to me – he should have come to the conclusion that it must be answered in the negative. A decision to stop the trial in those circumstances is not based on the court's desire (or any perceived need) to punish the party concerned; rather, it is a proper and necessary response where a party has shown that his object is not to have the fair trial which it is the court's function to conduct, but to have a trial the fairness of which he has attempted (and continues to attempt) to compromise.”

34. In *Dadourian Group International Inc. v Simms* [2009] EWCA Civ 169 at [233], Arden LJ (giving judgment on behalf of the Court) stated that paragraph [54] of Chadwick LJ's judgment “is not to be read as meaning that a litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial is to be taken to have forfeited his right to take part in a trial in every case. Chadwick LJ is careful to emphasise that the court's power to strike out the proceedings was not a penalty for disobedience with the rules.”
35. In *Masood v Zahoor* [2010] 1 WLR 746, Mummery LJ, giving the judgment of the Court of Appeal, said at [72-73]:

“72. We accept that, in theory, it would have been open to the judge, even at the conclusion of the hearing, to find that Mr Masood had forged documents and given fraudulent evidence, to hold that he had thereby forfeited the right to have the claims determined and to refuse to adjudicate upon them. We say “in theory” because it must be a very rare case where, at the end of a trial, it would be appropriate for a judge to strike out a case rather than dismiss it in a judgment on the merits in the usual way.

73. One of the objects to be achieved by striking out a claim is to stop the proceedings and prevent the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined. Once the proceedings have run their course, it is too late to further that important objective. Once that stage has been achieved, it is difficult to see what purpose is served by the judge striking out the claim (with reasons) rather than making findings and determining the issues in the usual way. If he finds that the claim is based on forgeries and fraudulent evidence, he will presumably dismiss the claim and make appropriate orders for costs. In a bad case, he can refer the papers to the relevant authorities for them to consider whether to

prosecute for a criminal offence: we understand that this was done in the present case.”

36. Finally on the authorities to which I was referred, in *Summers v Fairclough Homes Ltd* [2012] 1 WLR 2004, Lord Clarke (giving the judgment of the Supreme Court) said at [43]:

“We agree with the Court of Appeal in *Masood v Zahoor* at para 72 quoted above that, while the court has power to strike a claim out at the end of a trial, it would only do so if it were satisfied that the party's abuse of process was such that he had thereby forfeited the right to have his claim determined. The Court of Appeal said that this is a largely theoretical possibility because it must be a very rare case in which, at the end of a trial, it would be appropriate for a judge to strike out a case rather than dismiss it in a judgment on the merits in the usual way. We agree and would add that the same is true where, as in this case, the court is able to assess both the liability of the defendant and the amount of that liability.”

The position in this case

37. I do not consider that the Donnellan Parties have made out their allegation that there has been any significant breach of the order for disclosure made on 2 December 2021. I accept the submission made on behalf of Mr Ward that, if the documents now produced had been considered to be relevant to the issues in the case identified in the Schedule to the 2 December 2021 order, then –

- a. some such documents would (or should) have been disclosed by the Donnellan Parties, and
- b. specific disclosure applications could have been made for anything that was not provided.

38. In this respect, Mr Polli KC made the point that the note of the interview carried out with Mr Ward on behalf of his Joint Trustees, on which a large part of Mr Coppel KC's cross-examination of Mr Ward was based, had not been disclosed by any party but was included in the trial bundle relatively shortly before trial (presumably because by that time the decision had been taken to cross-examine by reference to it). He also reminded the Court that it appeared from documents that had been referred to at trial that Mr Donnellan had funded some of the investigations carried out by the liquidator of Creative Constructions, and was undoubtedly aware of at least part of the conduct of that liquidation.

39. I consider it significant that the Donnellan Parties knew throughout these proceedings of Mr Ward's bankruptcy and of some of his dealings with his Joint Trustees, and knew of the liquidation of Creative Constructions and some of the liquidator's investigations, and never sought any of this disclosure from the Ward Parties, by letter or application. I accept the submission made on behalf of Mr Ward that the reason Ms Dorobat identified documents of this type as relevant during trial was because of the issues raised in the cross-examination

of Mr Ward. The fact the Donnellan Parties themselves did not raise any issue about the alleged non-disclosure of these categories of documents supports my conclusion that neither side in the Partnership Proceedings considered these categories of documents to be documents that should have been disclosed until Ms Dorobat raised the issue during the trial.

40. In any event, there is in my view a clear difference between the conduct which in the authorities has led to a party's case being struck out and the alleged disclosure failures on which the Donnellan Parties rely in making this application. There is in my view a very substantial difference between the alleged disclosure failures relied on by the Donnellan Parties in making this application and, in particular:

- a. the conduct of Mr Tobias in *Arrow Nominees*, who had forged replacement documents and placed them in the files of an accountant (described by the judge in a passage repeated by Chadwick LJ at [30] as "conduct of most profound dishonesty, involving what was obviously a careful and deliberate strategy on his part to perpetrate a fraud on the court");
- b. the conduct of Mr Masood in *Masood v Zahoor*, who in the passage set out above was described as having forged documents and given fraudulent evidence.

41. The significant differences between those instances and the allegations on which this strike out application is based are that:

- a. In this case, the application is based on allegations of late disclosure, not of forgery.
- b. The documents involved are very much less significant. I do not accept Mr Coppel KC's submission that the late disclosure has made a fair trial impossible. The Donnellan Parties have had the opportunity to rely on the documents now produced in making their closing submissions, and none of them have in fact been said to be particularly relevant. I have concluded that none of the documents in question are of any particular significance to any of the issues I have to decide.
- c. It is correct that the Donnellan Parties did not have the opportunity to cross-examine on the just-disclosed documents that were not publicly available. I asked Mr Coppel KC to show me in the bundle of just-disclosed documents any particular points which he relied on, and he then made submissions on the documents he relies on but none of the points were points which were unknown to the Donnellan Parties and could not in any event have been put. For example, Mr Coppel KC submitted a letter from Charles Russell Speechlys (the solicitors for the liquidator of Creative Constructions) to Mr Ward on 25 September 2019 showed that the liquidator's investigations included the transfer of interests in Creative House from Creative Constructions to Ebonair, but (i) the fact of those transfers was known to the Donnellan Parties, (ii) it

is likely the Donnellan Parties were aware the liquidator had considered those transfers, (iii) it would in any event have been clear to all parties the liquidator was likely to have considered those transfers, and (iv) I do not consider that the Court can take anything relevant from the fact that the liquidator's investigations included those dispositions. Mr Coppel KC did not suggest that the Court could or should take points of any particular relevance to the issues in the proceedings from any of the newly-disclosed documents, but instead identified points which he said he would have wanted to put to a witness in cross-examination.

42. For these reasons, I do not accept Mr Coppel KC's submission that the fact these documents have been disclosed only at this stage has made a fair trial impossible or prevented the Court from doing justice. The situation is in my view substantially different to that in *Arrow Nominees* and in *Masood*. It is significant that even in *Masood*, where there had been such serious wrongdoing in relation to the evidence, the Court of Appeal found that, because the proceedings were so far advanced, the claim should not have been struck out rather than determined on its merits. As the Court of Appeal held was the position in that case (in the passage set out above), it is difficult to see what appropriate case management purpose is served here by a strike-out application rather than the Court making findings and determining the issues in the usual way, because I am entirely satisfied that the late disclosure does not make it impossible for the Court to do so.

43. I have therefore concluded that the strike out application should be dismissed and go on to set out my findings and determine the issues raised at trial.

THE EVIDENCE AT TRIAL

44. While there is some agreement between the parties as to the facts of the case, many of the relevant facts, particularly concerning the dealings between the parties which are central to the issues I have to decide, are disputed. Much of the oral evidence I heard was substantially disputed and contradicted by evidence from one or more of the other side's witnesses.

45. The disputes extend to the underlying documents: the Donnellan Parties contend that a number of documents on which the Ward Parties rely are forged or back-dated. Further, as appears from the history of the parties' dealings set out below, parties on both sides (and almost all the witnesses who gave evidence at trial) admit that they at various times signed, or procured the signing of, documents that were untrue when they were signed, or participated in some way in transactions which were designed to give an untrue or inaccurate impression of the true position. Less reliance than usual can therefore be placed on the documentary record in seeking to establish the underlying facts.

46. Finally, there were said to be serious disclosure failings on both sides and, whatever the reasons for the gaps, the documentary record is very far from complete.

The Witnesses

Mr Donnellan

47. It is common ground that Mr Donnellan is an extremely effective mortgage broker. I formed the view that Mr Donnellan is used to getting his way by force of character. It was clear from Mr Donnellan's cross-examination that he feels very strongly about the merits of his case and I accept the Ward Parties' submission that in his cross-examination he was "*a man on a mission*" to win his case and that he attempted to be domineering. Mr Donnellan repeatedly tried to "win" his cross-examination by arguing with the cross-examiner rather than answering the questions put, or by interrupting the question being asked in order to make a point, and on one occasion had to be asked not to shout while giving his evidence.
48. I also consider that there is some truth in the Ward Parties' submission that Mr Donnellan has developed a conspiracy theory mindset, treating Mr Ward as an arch-conspirator and being overly ready to allege that any document Mr Donnellan did not immediately recognise or regard as helpful to his own case was forged (as Mr Donnellan did when asked to look at one of the several Fidepar notes summarising relevant dealings: he almost immediately said it was a forgery because it was not the document he remembered, when the true position was that it was simply a different note prepared by Fidepar).
49. Mr Donnellan's evidence demonstrated that he was happy not to follow rules which he regarded as unduly technical and that he was willing to procure and participate in dishonest business arrangements. For example:
- a. Mr Donnellan said that it was "very pedantic" and "ridiculous" to suggest that the person who signed the customer verification form for one of the mortgages he arranged for Mrs Ward had to have seen the original relevant identity documents and be able to confirm that any associated photograph bore a good likeness to the applicant, although that was what the relevant form said was required.
 - b. In September 2013, Mr Donnellan arranged for Mr Keane to execute two declarations of trust in respect of each of the various flats he held as nominee, one declaration that Mr Keane held on trust for Mr Donnellan, and one declaration that Mr Keane held on trust for Renson Park S.A. ("**Renson Park**", a company beneficially owned by Mr Donnellan). Mr Donnellan's position was that this gave him an "either/or" (an option to use whichever declaration would be more useful in the circumstances) and he had no answer when it was put to him in cross-examination that this was "not right". I accept the Ward Parties' submission that this "either/or" arrangement was dishonest.
50. I accordingly accept the Ward Parties' submission that the evidence shows that Mr Donnellan is willing to behave dishonestly to achieve what he considers his legitimate ends. While Mr Donnellan's evidence was careful, well-thought out and in some ways accurate (reflecting a large amount of work he had clearly done himself to prepare the case for trial), I formed the view that he was willing

to say what he considered necessary to obtain what he regards as the right result of this trial. I am therefore unable to accept his evidence as reliable except when it is supported by reliable documents or the inherent probabilities of the case.

Mr Keane

51. Mr Keane is a close friend of Mr Donnellan. Mr Keane respects Mr Donnellan's business ability and trusts him to look out for Mr Keane's interests where they are involved in business together. Mr Keane and Mr Donnellan's case is that Mr Keane has a half-share in the 25% interest in Creative House which they say Mr Donnellan has pursuant to the alleged partnership between Mr Ward and Mr Donnellan, and Mr Keane therefore has a financial interest in the success of Mr Donnellan's claim in the Partnership Proceedings.
52. Mr Keane accepted that he has no direct knowledge of what was discussed between Mr Donnellan and Mr Ward in relation to any partnership and that he relied throughout the relevant dealings, particularly in relation to Creative House, on what he was told at various times by Mr Donnellan. He expressly confirmed that what he knew about the alleged partnership was what he had been told by Mr Donnellan. He also accepted at various points during cross-examination that he could not remember the dates on which events happened, although he could generally (but not always) remember the order of events. Many of his answers were put in terms of what he believed (by the time of trial) he would or would not have done in particular circumstances (for example, "I would say ...", "I would imagine ...").
53. Mr Keane signed the various declarations of trust by which he purported to declare (on the same day) that he held the same property on trust entirely for Mr Donnellan and entirely for Renson Park. It was put to him that this was dishonest but Mr Keane failed to engage with the point being put to him. Mr Keane was, at best, prepared to sign documents simply on Mr Donnellan's say so as part of the nominee arrangements which Mr Donnellan had put in place.
54. Mr Keane and Mr Ward fell out in relation to the later projects on which the parties were involved. I formed the view that Mr Keane was determined to give evidence to support his case and that of his friend, Mr Donnellan, against Mr Ward, and I consider that his own interest and determination to support his friend Mr Donnellan mean that his evidence cannot be relied on except when it is supported by reliable documents or the inherent probabilities.

Ms Howard

55. Ms Howard is also a friend of Mr Donnellan, having been in a relationship with him from 2002 to 2009. Ms Howard was an FSA (as it then was) regulated mortgage broker and ran a company with Mr Donnellan called Your Home Matters Limited, although her evidence was that it was mainly Mr Donnellan who dealt with the customers while she dealt with the administration.
56. Like Mr Keane, she respects Mr Donnellan's business ability and trusts him to look out for her interest when she is involved in business with him. She agreed

to hold flats in Creative House because she was asked to do so by Mr Donnellan, and he told her that he would pay her for doing so from his interest in Creative House. He later told her he would be able to, and would, pay her £300,000 for holding the flats.

57. Ms Howard became involved in the matters in issue at this trial at a time of great personal difficulty. She had been very ill and undergone a number of operations since December 2013 and her mother had been diagnosed with terminal cancer, from which she ultimately died in July 2014.
58. The proposal that she hold flats in Creative House was made to her in February or March 2014. It was put to Ms Howard that with her background in mortgages she would have understood that the reason why the deposit monies for the flats transferred into her name were paid via her father was because mortgage lenders want to know where the deposit comes from: if the deposit monies are seen to be coming from a vendor that is a problem because it looks like an incentive, and if they seem to be coming from a third party, lenders get worried about whether the third party will have rights over the property. Ms Howard said she understood the point being made to her that the reason the deposit money was paid to her from her father's account was because it was easier to say to the lender that the deposit money was a gift from a parent. Ms Howard accepted she should have been more vigilant but said that as a result of her own illness and her mother's painful terminal illness (for part of which she was looked after at home by Ms Howard), she "left it all to Tony to sort it out and deal with".
59. As I explain further below, I find that Ms Howard became involved in these transactions because she believed they would be profitable for Mr Donnellan and trusted that he would make sure she also benefited when he did so. Having thrown in her lot with him in relation to these transactions, she has kept to that position, instructing the same legal teams during the proceedings. I formed the view that Ms Howard regards her own interests in these proceedings as inseparable from Mr Donnellan's. She is not an independent witness and I formed the view that her evidence also was not reliable unless supported by reliable documentary evidence or the inherent probabilities.

Mr Ward

60. I accept the Ward Parties' submission that Mr Ward is "a property man" and the Donnellan Parties' submission that he is hard-working and intelligent. In cross-examination he sought to answer the questions put to him, many of which concerned his bankruptcy and what could be gleaned from Companies House records as to the success (or otherwise) of the various companies in which he has been involved.
61. The cross-examination in relation to companies which are not involved in these proceedings did not, I consider, take matters much further forward. Some of the cross-examination in relation to Mr Ward's bankruptcy was relevant: in particular, the note of his bankruptcy examination on 16 March 2010 provides a contemporaneous independent record of what he said to the examiner at that time about his business and assets. I keep in mind, however, that the full records

of Mr Ward's bankruptcy were not before the Court and that the issues at this trial are different (or at least to be considered in a different context) to the issues that arose in Mr Ward's bankruptcy.

62. The documents in the case show that Mr Ward was (like Mr Donnellan) prepared to make untrue statements where he considered it to be necessary to achieve what he wanted. He made a dishonest statutory declaration on 19 July 2011, including the untrue statement that he had always been and remained solvent, in order to obtain a loan for further work on Creative House from Handf Finance. Mr Ward said he did so because he was not the same "Alan Ward" whose bankruptcy by order made in Durham County Court had been registered in 2008 and located during the process of obtaining that loan, and because Mr Richard Barca (who is Mr Donnellan's solicitor in these proceedings and who acted for Ebonair in connection with the loan from Handf Finance) told him to (knowing of Mr Ward's bankruptcy), but that does not explain how Mr Ward considered he could honestly make that declaration.
63. As I set out below, I have concluded that Mr Ward's driving aim throughout the transactions in respect of Creative House with which this trial was concerned was to retain control as far as he could of Creative House. In order to do so, he was prepared to make false statements (such as the false statutory declaration referred to above) and, having heard his evidence at trial (which I consider in further detail in making findings of fact below), I have concluded that I cannot rely on that evidence except insofar as it is supported by reliable documents or the inherent probabilities.

Mrs Ward

64. It is common ground that Mrs Ward had little involvement in the running of any property development business after her youngest son was diagnosed with autism around 2000. From then on, she has been his full-time carer. Her evidence was that it was Mr Ward who was running the various property companies in which they were involved and Mr Ward who was making the decisions, but that he would tell her what was going on.
65. Mrs Ward reiterated in cross-examination her evidence that she was independently wealthy and herself invested money in Creative House, but accepted that (as far as she knew) there was not clear documentary evidence showing that she had substantial independent wealth or that she had invested a significant part of her own wealth into Creative House.
66. Mrs Ward attended Court only for her cross-examination. I accept the submission made by the Ward Parties that Mrs Ward did not seem fully aware of the issues in the case. I formed the view that, on occasion, she had not fully understood a question put to her, or at least the issue it was intended to address. The Donnellan Parties submitted that her evidence did little to answer questions about Mr Ward's account of events. I accept that submission and I find that the Court cannot be confident that her evidence was not effectively a reflection of

what she had been told by Mr Ward was the position and therefore, as the Donnellan Parties submit, of limited utility on any of the matters at issue.

Ms Dorobat

67. Ms Dorobat, who was at the time in a long-term relationship with Mr Ward, purchased a flat in Creative House (Flat 12) on 3 March 2010.
68. The issues on which she gave evidence related to her flat and I set out below my findings on those issues. Ms Dorobat's evidence on those issues was substantially supported by very late disclosure she provided immediately before, or at, trial. On an application made at the start of the trial, I permitted the documents then provided to be admitted because they were limited in number and of critical relevance to the particular issues arising in relation to Ms Dorobat's flat. The position is the same in respect of the two or three documents she located and provided during trial which were directly related to the purchase and the redemption of the mortgage on her flat.
69. Ms Dorobat was undoubtedly keen to emphasise her case that she owns her flat but I formed the view that she was an honest witness. I consider that her very late disclosure of relevant documents was the result of the fact that she had not understood the key factual issues in relation to the claim affecting her flat and the type of evidence required to establish her case (in particular, as to who provided the money for the deposit and who provided the money to repay her mortgage in full a few years later).

Ms Hamieh

70. Ms Hamieh's evidence was plagued by translation and other technical difficulties. She gave evidence via video link from Lebanon. Her evidence started with a list of corrections to her witness statement, some of which were of significant effect. She then gave evidence via a single interpreter in court in London. Despite the continued efforts of counsel (both in examination in chief and cross-examination) and the interpreter, Ms Hamieh gave long answers which often did not answer the question and it was difficult to obtain any clear answer to many of the questions put. This was no doubt in part genuinely due to the translation and technical issues, and Ms Hamieh also explained that she was affected by ill-health and found it difficult to sit for long periods. The cross-examination therefore proceeded with frequent short breaks. Nevertheless, I formed the clear view that Ms Hamieh is an intelligent and competent woman who was taking advantage of the practical difficulties involved in giving evidence remotely in a foreign language to avoid giving clear answers rather than genuinely trying to assist the Court.
71. Some of her evidence was simply difficult to believe. For example, despite the fact that Ms Hamieh had provided a witness statement for trial dealing with the key issues in relation to Ebonair and had been described by Mr Ward as the decision-maker who he dealt with on behalf of Ebonair, Ms Hamieh insisted during her cross-examination that she could not answer any questions about

anything that happened after 2015 because after that date she was in bad health and relied on her son Hassan.

72. Ms Hamieh and her family are closely tied to Mr Ward and his family by friendship, by the marriage of two of Ms Hamieh's sons to two of Mr Ward's daughters (meaning they have shared grandchildren), and by their business dealings. I formed the view that I could not rely on the truthfulness of Ms Hamieh's evidence because Ms Hamieh was an entirely partisan witness, determined to protect the position of Mr Ward, his family and Ebonair. Ms Hamieh was clearly of the view that Mr Donnellan was trying to obtain property that was not his and should not be allowed to get away with it. When challenged in cross-examination on her position that Mr Donnellan's agreed entitlement for his work on the financing arrangements for Creative House was £50,000 per year, she replied that her position was true, and continued, "*if Tony was in Lebanon he would be shot. He would be shot. The law in the UK is different from the law in Lebanon. This is not something that is acceptable in our law. We are speaking about different laws ...*".
73. Most significantly, it was a key issue at trial whether Ebonair is owned, as the Ward Parties say, by a group of investors represented by Ms Hamieh and for whom Mr Khawaja is effectively a nominee, or whether Ebonair is beneficially owned by Mr Ward. Despite this, Ms Hamieh resolutely refused to identify the other investors she says she represents and insisted that there is no documentary evidence at all of their dealings. Her evidence is that she has not received any dividends or other payments from Ebonair since the loan of £1.65m she says was made by Ebonair to Mr Ward in 2000 pursuant to the Loan Agreement.
74. As set out in more detail below, I do not accept the Donnellan Parties' submissions that it is simply incredible that wealthy investors from Lebanon would seek to invest substantial funds outside Lebanon using a structure such as that described by Ms Hamieh and Mr Ward, with a "*front man*" such as Mr Khawaja, and that Ms Hamieh's evidence to this effect should simply be rejected out of hand.
75. I do not, however, consider it credible that in such a situation there could be no documentary evidence at all of the dealings between the group of investors Ms Hamieh says she represents, particularly in circumstances where the funds invested have remained out of the hands of the investors, and outside Lebanon, since 2000. Nor do I accept that, if there were such a group of investors, they could not have been safely identified to the Court for the purpose of these proceedings in order to disprove the allegation made by the Donnellan Parties in these proceedings that Ebonair is owned and controlled by Mr Ward.
76. In all the circumstances, I consider that I cannot rely on Ms Hamieh's evidence except insofar as it is supported by reliable documents or the inherent probabilities.

Mr Khawaja

77. It is common ground that Mr Khawaja is a “front” for the true owners of Ebonair, whoever they may be. The Ward Parties’ case is that Mr Khawaja is an appropriate front because he is trusted by Ms Hamieh and her group of investors and he is obviously not wealthy so not at personal risk (Mr Ward described him during his cross-examination as a “simple peasant”, a description with which Ms Hamieh agreed). The Donnellan Parties do not dispute that (as they put it) Mr Khawaja is “a simple man, unfamiliar with the ways of the urban, business world, to say nothing of Panamanian bearer shares, trusts, nominees and the London property market”.
78. The Ward Parties submitted in closing that Mr Khawaja “fulfils a specific role for Ebonair”, namely as the signatory to documents for Ms Hamieh’s group of investors, and that he therefore knows only what he has been told by Ms Hamieh so that little weight can be given to his evidence save that, they submitted, he can properly confirm documentation that he has signed (or not signed).
79. Mr Khawaja’s evidence, like that of Ms Hamieh, suffered from technical problems resulting from giving evidence by video-link from Lebanon through a single interpreter in court in London. Given those technical difficulties, the fact Mr Khawaja cannot read documents in English, and his role acting on the direction of Ms Hamieh, I formed the view that Mr Khawaja’s evidence, both in his written statement and in cross-examination, was not something on which the Court can rely as providing any independent support for the Ward Parties’ case, even so far as it relates to documents which he did or did not sign.

Fadi Braiteh

80. Two of Ms Hamieh’s sons gave evidence at trial, identifying themselves in their witness statements as Hadi Hassan and Hassan Braiteh. At the start of his evidence, Hadi Hassan stated that he had changed his name to Fadi Braiteh. I therefore refer to him in this judgment as Fadi Braiteh (or, without intending any disrespect, as Fadi). Ms Hamieh stated at several points during her cross-examination that she relied for certain issues or at certain times on her son Hassan and that any questions on those issues should be addressed to him. Mr Cantor put it to Fadi in cross-examination that this was a reference to him (because he was previously known as Hadi Hassan), but Fadi said (and I accept) that this was a reference to his brother Hassan.
81. Both the Ward Parties and the Donnellan Parties submitted that Fadi’s evidence was, in the event, of limited value. Without making any criticism of Fadi, I agree with that. In general terms, it was clear that Fadi had played the role his mother had asked him to play by holding interests in Creative House for Ebonair. He did not claim to have independent knowledge of the facts going to the issues which the Court is asked to decide.

Hassan Braiteh

82. Hassan Braiteh’s witness statement was short.

83. The Donnellan Parties submitted that it was notable for skirting factual issues which are relevant to the issues in dispute at this trial and which the contemporaneous documents show Hassan was involved in, and asked the Court to infer that Hassan avoided these issues because any evidence he had to give would have been helpful to the Donnellan Parties and not the Ward Parties. I do not consider this point to be well-founded: most of the matters relied on by the Donnellan Parties in support of this submission are allegations of oral communications, at least one is an allegation involving a third brother (not Hassan), and where it does appear from contemporaneous documents that Hassan was involved (for example, the charge granted by Fadi to Hassan over the Freehold in Creative House), that was addressed (albeit briefly) in Hassan's statement. Further and in any event, Hassan attended trial for cross-examination and the Donnellan Parties had the opportunity to put questions to him about any matters in dispute on which they properly considered he was likely to be able to give relevant evidence.
84. I do consider, however, that it is difficult to reconcile the clear impression given by Ms Hamieh during her cross-examination that her son Hassan had dealt with a significant number of issues in relation to Creative House on her behalf for Ebonair, and the impression given by Hassan's statement that he had very limited knowledge of or involvement in any relevant matters.

Recorded meetings

85. One issue that was addressed in Hassan's statement was his covert recording of a 2016 meeting between Mr Donnellan, Ms Howard, Mr Mills, Mr Keane and Mr Ward at Creative House. The circumstances in which that and two other meetings in August 2016 were recorded and, in particular, what had thereafter happened to the recordings, were hotly disputed between the parties in the run up to the trial.
86. At the start of this trial, I decided that the recordings (and transcripts of those recordings) which had been made available should be admissible in evidence at this trial (for the reasons set out in the short ruling I gave on 10 May 2024).
87. The recordings of the meetings that have been disclosed are short and highly selective. It is said by the Ward Parties that the recordings have been obtained by the Donnellan Parties and heavily edited by them to produce these highly selective extracts. The Donnellan Parties say that the editing had been done before they obtained the recordings. Even absent any suggestion of deliberate cherry picking, there would be a clear risk of the extracts presenting an inaccurate picture of the meetings as a whole. I cannot decide the rights and wrongs of the argument as to how these extracts have come to be available in this form, but the fact that all that is available is a small proportion of much longer meetings means that there is a clear need for caution in relying on what is recorded as having been said at those meetings, and I have kept in mind that it is said by the Ward Parties that the extracts which have been disclosed have been cherry-picked by the Donnellan Parties, although the Donnellan Parties dispute that.

Expert evidence

88. The court heard expert evidence of Panamanian law from Ms Khatiya Asvat, called by the Donnellan Parties and from Mr Giovanni Gottlieb, called by the Ward Parties. I am grateful to both experts who were seeking to assist the Court.
89. For reasons explained below, I have not ultimately found it necessary to address the question they debated as to whether the Deed of Trust dated 1 April 2009 said to be governed by Panamanian law satisfied the formal requirements of Panamanian law or whether it was invalid and ineffective because it did not do so.
90. The Court also had before it three reports prepared by Mr Matthew Haddow, a chartered accountant instructed as a single joint expert to identify (in summary) the monies raised by mortgages on and sales of the various properties which are the subject of these proceedings and, where possible, to identify where those monies went and what money is unaccounted for. Mr Haddow explains that he has had to provide three reports (rather than one) because of documents and information being provided late, and that he still does not have a fully complete or consistent set of documents which would enable him to carry out a comprehensive tracing exercise.
91. I am grateful for Mr Haddow's reports, which were relied on in relation to various issues by the parties and which I have found useful in preparing this judgment.

THE FACTS

Ebonair and the Loan Agreement

92. It is common ground that, as recorded in a bearer share certificate issued on 31 December 1996 and in Ebonair's Share Register, Ebonair was incorporated in Panama on 24 December 1996.
93. The Ward Parties say that Ebonair has at all material times been beneficially owned and controlled by Ms Hamieh and a group of investors in Lebanon, fronted by Mr Khawaja so that the wealth the Lebanese investors hold through Ebonair is not visible within Lebanon. It is said that the situation in Lebanon makes it unsafe for individuals living there to appear wealthy and that Mr Khawaja is an appropriate front because he is trusted by Ms Hamieh and her group of investors and he is obviously not wealthy so not at personal risk. The Donnellan Parties say that this account of Ebonair's ownership is incredible and preposterous (as it was put by Mr Coppel KC and Mr Cantor in their written closing submissions) and that, at all material times, Mr Ward has been the beneficial owner of Ebonair.

The Transfer of Subscription Rights

94. The documents include a "**Transfer of Subscription Rights**" dated 31 December 1996 by which Hernan Hernandez Obaldia as subscriber transferred

the right to and interest in one share in Ebonair to Mr Khawaja. The bearer share certificate I have referred to above is in respect of one hundred shares in Ebonair. The transfer of subscription rights is a copy (rather than original) document and the Donnellan Parties say that the Transfer of Subscription Rights has been forged to support the Ward Parties' case.

95. One of the points made by the Donnellan Parties in support of their submission is that the transfer refers to only one share, while the bearer share and the share register record that there were one hundred issued shares in Ebonair from 31 December 1996 until 15 October 2015. However, the Donnellan Parties' expert on Panamanian law, Ms Asvat, explained that the reference to one share in the Transfer of Subscription Rights did not determine the number of shares that would then be issued by way of a resolution of the company's board of directors. She also expressly confirmed that the Transfer of Subscription Rights is the type of document that used to be used to transfer subscription rights in Panamanian companies, particularly before KYC requirements in Panama were tightened in 2011. I find that the fact the Transfer of Subscription Rights refers to one share, rather than one hundred shares, does not indicate that the document is forged.
96. Mr Khawaja was asked about the Transfer of Subscription Rights in cross-examination. He told Mr Coppel KC that it was his signature in the document in the third line (where his name appears written in English and then followed by writing in Arabic, his evidence being that the writing in Arabic was his signature). He did not (and does not) understand anything in the document because it is in English (a language he does not know), but said that he was given the document by Ms Hamieh to sign, and signed it, in 1996. Mr Khawaja's evidence that he signed the document was not then challenged by the Donnellan Parties during Mr Khawaja's cross-examination.
97. It was put to Mr Ward in cross-examination that he had had the Transfer of Subscription Rights prepared, and Mr Ward denied that, saying the document dates from 1996 and he had had no involvement with Ebonair at that time. It was put to Ms Hamieh in cross-examination that the Transfer of Subscription Rights was falsified and she denied it.
98. It is common ground that the company was incorporated in 1996 and its shares issued in 1996 (as recorded in Ebonair's share register). It follows that any genuine transfer of subscription rights was necessarily created in 1996, before the shares were issued. The bearer share (in respect of one hundred shares) was undoubtedly held by Mr Khawaja by 2009.
99. Although I do not consider that the evidence concerning this particular document which I have set out above establishes on the balance of probabilities that the Transfer of Subscription Rights was not completed with Mr Khawaja's name in 1996, the conclusions I have reached in relation to other documents produced in relation to Ebonair in these proceedings provide considerable weight to support the argument that the document was, in fact, not completed with Mr Khawaja's name and signed by him in 1996 but sometime in 2009 or later. It is not a question I consider it necessary to decide.

The Loan Agreement

100. The documentary record in respect of Ebonair continues with a loan agreement dated 3 July 2000 (“**the Loan Agreement**”) between Mr Ward (then using his previous name, Mr Alasfar) as the Borrower, Mrs Ward (referred to in the document as Mrs Alasfar) as the Guarantor and Ebonair as the Lender. The document provides for Ebonair to make a loan facility of £1.65m available to Mr Ward, the loan to be drawn down in instalments on written request by the lender with the sums advanced to be “notarised by the Borrower in the Lender’s schedule”. The Loan Agreement also records that:

- a. Ebonair’s obligation to advance the loan monies is conditional on Mr Ward’s undertaking to use the monies only to acquire and develop real property, and that Mr Ward will, within 21 days of acquiring any property, enter into a mortgage deed charging the property to secure Ebonair’s monies used in respect of that property.
- b. The loan is repayable at any time on demand.
- c. Mr Ward shall pay interest on the loan “equal to 50% of the profits made on each transaction”.

101. Mr Ward, Mrs Ward and Ms Hamieh each gave evidence that the Loan Agreement was a genuine agreement entered into on 3 July 2000. The Donnellan Parties say that the document is a sham prepared by or on behalf of Mr Ward at some point in 2009. Mr Ward, Mrs Ward and Ms Hamieh all denied that when it was put to them in cross-examination.

102. As addressed in more detail below, a bankruptcy petition was presented against Mr Ward on 12 March 2009 and he was made bankrupt by order dated 17 August 2009. The evidence of any funds having been advanced pursuant to the Loan Agreement starts with Mr Ward identifying Ebonair as one of his creditors in his bankruptcy interview on 16 March 2010. He is recorded to have said he thought he owed them “around £3.5 million. They initially lent £1.65 million to invest in property i.e. they left it for me to buy, sell and develop property in exchange for a 40% profit on any project”. In cross-examination, he said that 40% was a mistake in the note of what he said and that he would have said interest of 50% of the profit (in accordance with the terms of the Loan Agreement).

103. When it was put to Mr Ward in cross-examination that the Loan Agreement was a sham, fabricated by him to better his position in his bankruptcy, he denied that allegation, saying it made no sense “to protect myself against 19,000” (a reference to the £19,000 debt on which the bankruptcy petition was based). I do not accept that this is a proper answer to the question being put, or that Mr Ward believed it to be a proper answer. The consequences of bankruptcy do not depend on the size of the petition debt, as Mr Ward is undoubtedly aware given the enquiries his Joint Trustees pursued at least until 2013 (on the basis of the correspondence in evidence at this trial) after the bankruptcy order was made in August 2009. Mr Ward was sufficiently concerned about these enquiries at the

time to send Mr Donnellan a chart on 16 February 2013 setting out an account of the dealings with Creative House ahead of Mr Donnellan's interview by Mr Ward's Joint Trustees. Mr Ward's response that it would make no sense to create the Loan Agreement "to protect himself against 19,000" is therefore unconvincing.

104. One of the points made by the Donnellan Parties in relation to the Loan Agreement is that the address given for service on Ebonair in the draft mortgage at Schedule 1 to the agreement is 1, Rue De Hesse, 1204 Geneva, Switzerland. This is the address of Fidepar SA ("**Fidepar**"). It is Mr Ward's own evidence that Fidepar was appointed agent for Ebonair only in 2009, i.e. about nine years after the purported date of the Loan Agreement.

105. In their written closing submissions, the Ward Parties submitted that it was Mr Ward, not Fidepar, who was the European agent appointed in 2009. However, this is not what Mr Ward said:

- a. In his witness statement, he said (emphasis added), "In late 2008 and early 2009, Huda put her Middle Eastern agent named Mahaba in contact with me. He was to introduce me to Fidepar SA so I could open an account there for Ebonair. Ebonair needed an agent in Europe to be the contact for any dealings that were going to be in London, and also as it had been difficult to communicate with Panama because of the time difference."
- b. In cross-examination, Mr Ward explained that by late 2008 / early 2009 Ms Hamieh wanted an agent for Ebonair in Europe, but Mr Khawaja could not travel to Europe to deal with the agent in respect of Ebonair. Mr Ward said Ms Hamieh therefore asked Mr Ward to hold the bearer share certificate in Ebonair and take it "to create an agent in Europe", and to that end Ms Hamieh introduced Mr Ward to Mr Mahaba who said that he knew Fidepar which was a registered agent in Geneva and Mr Mahaba would take Mr Ward there to meet Fidepar. He continued, "So we [Mr Ward and Mr Mahaba] went there, did everything, but the shares had to be the ownership officially as far as the agent is concerned no one else, I was the beneficial owner, I was the owner of those shares or the owner of the company."

106. Mr Ward's evidence was clearly that he was asked to, and did, arrange for Fidepar to be appointed as "the European agent" which Ebonair needed at that time, not that he himself was being appointed as "the European agent". In any event, whether Fidepar and/or Mr Ward are characterised as "the European agent", it was Mr Ward's evidence that Fidepar only started acting for Ebonair in 2009: see the words from Mr Ward's witness statement which are underlined above, and also his account in cross-examination of going to Fidepar with Mr Mahaba and presenting himself as the beneficial owner of Ebonair in order to engage Fidepar to act as Ebonair's agent.

107. Ms Hamieh's witness statement referred to Ebonair deciding to appoint "an agent for our company in Europe" and meeting Mr Mohaba Hassan, who

“recommended a company called Fidpar [sic]”. Ms Hamieh said that she arranged for Mr Hassan to communicate with Mr Ward to finalise the arrangements and “Consequently, we decided to appoint Fidpar [sic], and Mr Alasfar became our agent with Fidpar [sic].” She thus referred to Fidepar as Ebonair’s agent, and Mr Ward as Ebonair’s agent with Fidepar. Again, her evidence was (like Mr Ward’s) that the role of Fidepar started when it was engaged by Mr Ward on introduction by Mr Mohaba Hassan. It is clear from Mr Ward’s evidence that that was in 2009, and not before.

108. Mr Donnellan’s evidence was that he introduced Mr Ward to Mr Mahaba in or around May 2009, after Mr Ward asked Mr Donnellan to introduce him to an offshore tax specialist to (Mr Donnellan says) assist Mr Ward in his various property development projects. The Donnellan Parties’ submission at trial was that Mr Ward’s involvement with Ebonair arose from Mr Donnellan’s introduction of Mr Ward to Mr Mahaba. Mr Donnellan’s evidence was that at a meeting in December 2015, Mr Ward told him that he “had fabricated the Loan Agreement to deceive his creditors and protect the marital home”, that “Ebonair had not traded prior to [Mr Ward’s] purchase of Ebonair” and that “any documents before that date were fabricated by him”.

The 2009 Trust Deed

109. It was common ground that Fidepar was told in 2009 that Mr Ward was the beneficial owner of Ebonair, and that Mr Ward remained registered in Fidepar’s records as the beneficial owner of Ebonair until the events in 2013 described below. The trial bundle included a document dated 30 June 2009 titled “Declaration of Diligence and Responsibility [sic] Release” by which Mr Ward declared that he was “the real Beneficial Owner” of Ebonair, and an “Information Sheet” also dated 30 June 2009 and signed by Mr Ward stating that he was the beneficial owner of Ebonair.

110. The need for Mr Ward to present himself as the beneficial owner of Ebonair in order to appoint Fidepar as agent and carry out potential transactions on Ebonair’s behalf was Mr Ward’s explanation as to why a deed of trust in respect of the Ebonair share was allegedly created on 1 April 2009 (the “**2009 Trust Deed**”). The 2009 Trust Deed recites that whereas Mr Ward “shall have possession of and retain day to day control of the Bearer Share of [Ebonair], [Mr Ward] shall have no beneficial interest in the Company”. The 2009 Trust Deed provides that it is governed by Panamanian law.

111. However, the Ward Parties’ case as to who in fact held the bearer share at particular times shifted during trial. Mr Ward stated in his witness statement that “In 2009 a single bearer share was entrusted to me when I signed that I held it on trust. That agreement is dated 1 April 2009 and is how I came to have the share in my hand. The share was entrusted to me so that where Ebonair needed to undertake transactions in its corporate name, I could do so on behalf of the Company” (i.e. Ebonair). That reflected the position taken in the statements of case. Mr Ward’s Amended Defence in the Possession Proceedings pleads that Mr Ward “was for a long time entrusted by Ms Hamieh and Mr Khawaja with possession of the bearer share” before going on to say that he always held it as

a nominee for the ultimate beneficial owners of Ebonair. The Amended Defence and Counterclaim in the Possession Proceedings pleads that “Between April 2009 and 2015, [Mr Ward] has been trusted with possession of the sole bearer share in [Ebonair]”.

112. As set out above, Mr Ward said in cross-examination that Ms Hamieh gave him the bearer share in order to enable him to appoint Fidepar as Ebonair’s agent in 2009 (and that that was why the 2009 Trust Deed was required). As the Ward Parties submitted in closing, Mr Ward’s evidence later in cross-examination was that in fact the bearer share remained in Lebanon apart from when it came to London in 2011 (for the purpose of borrowing money from Handf Finance) and in 2015, when Mr Donnellan then took it to Geneva to be cancelled. Mr Ward was challenged on that during his cross-examination by Mr Coppel KC, and Mr Ward insisted that he did not in fact take the bearer share to Geneva in 2009. He said Ms Hamieh “kept it with her” and that “The trust document was to protect them while these certificates are in London because initially we thought we were going to do a lot of dealings in London with the banks. So every time you go to the bank you show them the share certificate. So every time the certificate comes to London they will be protected with this document. Once it goes back to them, they are fine.”

Sums said to have been advanced pursuant to the Loan Agreement

113. Mr Ward, Mrs Ward and Ms Hamieh all gave evidence, not only that the Loan Agreement was genuine but that substantial sums were lent by Ebonair pursuant to the agreement. Mr Ward and Ms Hamieh said that the full £1.65m sum referred to in the Loan Agreement was lent to Mr Ward by Ebonair. Ms Hamieh said that she had sent £1.65 million to Mr Ward, and that the money came from her entire group of investors.
114. Other than the deed of variation which I consider below, there is no documentary evidence at all predating 2009 of the sums said to have been advanced by Ebonair to Mr Ward under the Loan Agreement. No bank statements or records evidencing the alleged payments were produced. Mr Ward and Ms Hamieh said that Ebonair did not have a bank account but used the bank accounts of various individuals to move funds, but this does not explain the absence of bank statements, or records of bank payments, made from those other people’s bank accounts, or any other documentary records of such payments.
115. As I have set out above, Ms Hamieh said that there were no documentary records at all of the dealings between her and the other investors she represents. I do not accept that if £1.65m had been invested by Ms Hamieh and a group of investors in Mr Ward’s property transactions in 2000 and they had (as Ms Hamieh says is the case) received no dividends or other payments from Ebonair since then, there would be no documentary records at all of relevant dealings or communications between the investors.
116. This all has to be considered in circumstances where the Ward Parties have not provided evidence from any of the other investors whom Ms Hamieh is said to represent. As I have said, I do not accept the Donnellan Parties’ submission

that the idea that a group of wealthy investors might choose to invest substantial funds outside Lebanon using a Panamanian company with Mr Khawaja acting as a “front” in order to protect their identity and therefore their safety, should simply be rejected without more as incredible. However, that does not alter the position the Court is asked to consider, which is that:

- a. there is no contemporaneous documentary evidence of funds being transferred pursuant to the Loan Agreement, and
- b. there is no witness evidence that the £1.65m referred to in the Loan Agreement was in fact transferred other than from Mr Ward himself and members of his own family (Mrs Ward and Ms Hamieh), both of whom also have a direct personal interest in the outcome of the Partnership Proceedings: Mrs Ward is a defendant in her own name and Ms Hamieh is (on the Ward Parties’ case) directly interested through Ebonair which is also a defendant.

The Deed of Variation

117. Mr Ward said in his witness statement that the Loan Agreement was amended in 2001 to provide for Ebonair to be paid interest on the amount of the loan, rather than for Ebonair to have 50% of the profit on each transaction as provided by the Loan Agreement itself. No evidence of any such amendment was originally in the trial bundle but a Deed varying the Loan Agreement (the “**Deed of Variation**”) was produced during trial. It is a deed purportedly dated 28 December 2001 which refers to the original Loan Agreement and provides that clause 4.1 of that Loan Agreement be varied so that, in place of a 50% share of the profit on each transaction, the Borrower (Mr Ward) shall instead pay interest to the Lender (Ebonair) at the rate of 8% per annum on the balance outstanding until 28 December 2010, increasing thereafter to 9.5% per annum. There was no explanation of why the Deed of Variation, purportedly dated 28 December 2001, provided for the interest rate to increase from 8% in 2001 to 9.5% from 28 December 2010 onwards.

118. It seems to me that the most likely explanation is that this document was in fact prepared after the letters from Ebonair to Mrs Ward also dated 28 December 2010 (the context of which is explained below). The letters provided as follows:

“As on the 28th December 2010 and in accordance with the Loan Agreement dated the 3rd of July 2000, the sum of £2,600,000 is due from you and to secure our interest, we have instructed our Solicitors to place a charge on your properties.

“Please note that from 28th of December 2010 interest is charged at 9.5% compound on the total outstanding Loan.

“Our solicitors will write to you with the details.”

119. Those letters did not refer to a Deed of Variation, which is surprising if one was in existence by then. Instead the letters simply refer to the Loan Agreement and then state that interest is to be charged at 9.5% compound on the total outstanding loan from 28 December 2010 onwards.

Conclusions on the loan documents

120. Looking at the overall picture, I have concluded that the Loan Agreement was created in 2009 or later (and the Deed of Variation was created after 28 December 2010) in order to stand as evidence of a loan of £1.65m from Ebonair to Mr Ward in 2000 which was never in fact made, for the purpose of protecting (or hiding) assets from Mr Ward's Joint Trustees. The matters I particularly rely on in reaching this conclusion are:
- a. There is no contemporaneous documentary evidence of the loan being made other than the Loan Agreement and the Deed of Variation;
 - b. The only witness evidence of the loan being made is given by Mr Ward and other members of his family;
 - c. The Loan Agreement, dated 3 July 2000, gives Fidepar's address as Ebonair's address for service, despite the Ward Parties' evidence that Fidepar was only introduced to and engaged by Ebonair in 2009;
 - d. The Deed of Variation is not referred to in the letters sent by Ebonair to Mrs Ward dated 28 December 2010 but that letter states that interest is charged at 9.5% from that date onwards, and the Deed of Variation, dated 28 December 2001, provides for the interest rate to increase from 8% for the first time on 28 December 2010 (9 years later) when it is said to rise to 9.5%. The most likely explanation is in my view that the Deed of Variation was created after 28 December 2010 to justify an increased interest rate claimed by the 28 December 2010 letters.
121. In their closing submissions, the Ward Parties relied on the fact that the Loan Agreement was referred to in the charge over Flats 1 to 9 Creative House granted by Mrs Ward in favour of Ebonair dated 10 January 2011 and registered at the Land Registry and to related correspondence with Mortgage Express in February 2011 (in turn referring to the letters from Ebonair to Mrs Ward dated December 2010 which I have referred to above), but (i) these documents all came into existence after 2009 and (ii) those documents are all based on assertions made by Ebonair itself about sums lent, and so do not go to demonstrate that the Loan Agreement was in fact in existence before 2009.
122. In all the circumstances (including the matters in relation to Ebonair's involvement in Creative House set out later in this judgment) I have also concluded that, on the balance of probabilities, the Trust Deed was not created in April 2009 and is not a genuine document. There is no independent evidence of its existence in 2009, and the evidence as it emerged at trial was that Mr Ward did not take the bearer share with him to Geneva in 2009 so on any view there was in fact no reason for it to be prepared at that time. As the Donnellan Parties point out, it is the Ward Parties' case that the original document was in English. The Arabic translation in the trial bundle was prepared later, in 2019, but that 2019 translation is certified by a Mr Dawl who also certified the signature of

Mr Khawaja on the original Trust Deed, said to have been signed ten years earlier.

Creative Constructions Limited and Creative House

123. Creative Constructions was originally called Creative Comfits 2002 Limited until its name was changed on 30 December 2004. It was incorporated on 19 December 2002 and acquired by Mr Ward for the purpose of developing a property in London called Creative House, which is on the south side of Prince of Wales Drive in Battersea. Mr Ward was at all times thereafter the sole shareholder in Creative Constructions. Mr Ward was appointed a director of Creative Constructions on 6 June 2003. He subsequently resigned on 24 November 2009 after he was made bankrupt, but was reappointed on 12 January 2011.
124. Creative Constructions purchased Creative House for £1.4m plus VAT on 18 August 2003. Mr Ward's evidence was that the initial purchase of Creative House was funded by a loan of £1.05m from Bank of Scotland with the balance of the purchase price funded by the sale of Mrs Ward's properties.
125. The original development of Creative House started in 2003 and finished around 2006. By that time Creative House contained 2 commercial units and 14 residential units. Mr Ward gave evidence that once the original development was finished, in 2005 or 2006 he replaced the original development loan from Bank of Scotland with a cheaper commercial loan from Bank of Ireland.
126. The Donnellan Parties disputed that the balance of the purchase price was contributed by Mrs Ward from her funds rather than Mr Ward's own funds being used.

Mrs Ward's purchase of Flats 1-11 and 13-14 and Ms Dorobat's purchase of Flat 12

Flats 1-11 and 13-14 purchased by Mrs Ward with mortgages arranged by Mr Donnellan

127. It is common ground that Mr Donnellan was introduced to Mr Ward in 2007 by a mutual acquaintance, Nigel Zone. Mr Donnellan had arranged mortgages for Mr Zone and there was discussion about Mr Donnellan arranging a mortgage on a building owned by Creative Constructions near King's Cross, but this did not in fact take place.
128. Several months after his first meeting with Mr Donnellan, Mr Ward says he contacted Mr Donnellan to ask him to arrange mortgages in connection with the purchase by Mrs Ward of the leaseholds of most of the residential flats in Creative House. Mr Donnellan arranged mortgages and by the end of 2008, Mrs Ward had purchased 13 of the 14 flats in Creative House.
129. The Donnellan Parties' case was that this purchase of 13 leaseholds by Mrs Ward from Creative Constructions was not a genuine transaction but a scheme

to obtain mortgage funds. Mrs Ward's evidence was that these were genuine transactions by which she obtained the flats (and it is not in dispute that the intention, at least in general implemented, was that the mortgages would be paid from income received by renting out the flats). Mr Donnellan's evidence in cross-examination was that Creative Constructions used part of the funds it received from its sale of those flats to Mrs Ward to pay down some (but not all) of the loan owed to Bank of Ireland.

130. While there is no dispute that the leaseholds were purchased in Mrs Ward's name and that the mortgagee in each case was Mrs Ward, Mr Donnellan's case is that he met Mr and Mrs Ward at the Café Rouge in Dorking in Surrey in or around December 2007 and that at that meeting, Mrs Ward signed various mortgage application forms and confirmed that she was applying for the various mortgages for Mr Ward because he could not do so himself because he was the director of Creative Constructions which at the time owned the freehold of Creative House. Mr Donnellan's pleaded case was that he was instructed jointly by Mr and Mrs Ward to apply for loans in respect of Flats 1, 5, 6, 7, 8 and 9 in Creative House on that basis. I understand it to be his case that he was instructed to arrange the subsequent mortgages he arranged for Mrs Ward on the same basis, namely that Mrs Ward was acting as trustee for Mr Ward.

131. The Ward Parties, and Mrs Ward, say that Mr Donnellan's account of these transactions is simply untrue. They deny that there was any meeting as alleged, whether at the Café Rouge in Dorking or elsewhere, deny that Mrs Ward told Mr Donnellan she would hold the mortgages or flats for Mr Ward, and they deny that Mrs Ward was acting as nominee or trustee for Mr Ward.

132. There is no documentary evidence of the meeting alleged by Mr Donnellan to have taken place with Mr and Mrs Ward in Dorking in December 2007, but I consider it not unlikely that there would be no documentary evidence if the meeting had taken place. I therefore put little, if any, weight on this point.

Ms Dorobat's flat, Flat 12, purchased with a mortgage arranged by Mr Donnellan

133. A similar factual dispute arises later in the chronology and it is convenient to consider it here. On 3 March 2010, Ms Dorobat (who was at that time in a long-term relationship with Mr Ward) purchased Flat 12 in Creative House. She did so with a mortgage with Santander UK plc arranged by Mr Donnellan. Ms Dorobat says that she never met Mr Donnellan while the mortgage was being arranged (or afterwards), but Mr Donnellan says that he met Ms Dorobat and Mr Ward in the roof space at Creative House on or around 18 November 2009 for Mr Donnellan to complete the mortgage application forms for Flat 12 on behalf of Ms Dorobat (as well as "hundreds of times" after that). Mr Donnellan's case is that at that meeting Mr Ward confirmed to Mr Donnellan that Flat 12 (being acquired by Ms Dorobat) and all the flats purchased in Mrs Ward's name would be held on trust, ultimately for his sole benefit, and that Ms Dorobat confirmed that she was helping Mr Ward by acting as a trustee because of his poor credit rating, and that she would be relying on him to make the mortgage payments because she herself would not have sufficient funds to do so. Ms Dorobat and Mr Ward deny there was any such meeting, or that Ms

Dorobat ever told Mr Donnellan she would hold the flat on trust for Mr Ward's sole benefit.

134. Again, there is no documentary evidence of the alleged meeting between Mr Ward, Ms Dorobat and Mr Donnellan having taken place.

135. I have considered whether the meetings with Mrs Ward and Ms Dorobat are likely to have taken place so that Mr Donnellan could meet his clients, Mrs Ward and Ms Dorobat, before submitting the mortgage applications on their behalf (whether to enable him to verify his client's identity or otherwise). Mr Donnellan, towards the end of his second day of cross-examination (at this point by Mr Gloag for Mrs Ward), said that he must have met Mrs Ward because he needed to get her identification documents and to get the mortgage application signed. However, near the beginning of the first day of his cross-examination by Mr Polli KC, Mr Donnellan made it clear that he regarded it as "very pedantic" and "ridiculous" to suggest that the person who signed the mortgage application document verifying the customer's identity had to have seen the client and the relevant identity documents (which was what the relevant form in fact required). In light of that evidence, I do not think there is any support for Mr Donnellan's case to be found in the suggestion he seemed to be making by the end of his second day of cross-examination that it is likely he would have met Mrs Ward or Ms Dorobat in person in order to submit their mortgage applications, rather than have dealt with the applications as described by Mr Ward, Mrs Ward and Ms Dorobat, i.e. by providing the forms in each case for Mr Ward to pass on to Mrs Ward or to Ms Dorobat for signature and then for Mr Ward to return the signed forms and any necessary identification documents to Mr Donnellan.

136. In the case of Ms Dorobat's flat, Flat 12, Ms Dorobat's evidence was that she paid the deposit using money provided by her family. The Donnellan Parties contended that the funds were provided by Mr Ward, relying on a bank statement of Mr Ward's showing a receipt of £126,725 on 11 January 2010. Mr Ward explained in his evidence that Ms Dorobat's brother-in-law, Trevor Horsley, provided the deposit and initially paid it to Mr Ward because Mr Horsley understood from Ms Dorobat that she was buying the flat from Mr Ward. Mr Ward then explained that the money could not just be paid to him directly but had to go through solicitors, and repaid the money to Mihaela Dorobat (Ms Dorobat's sister, married to Mr Horsley). That repayment, of £125,000, is shown on Mr Ward's bank statement on 27 January 2010.

137. I find that the deposit for Ms Dorobat's flat was paid by her using money transferred to her from her sister Mihaela, apparently from funds provided by Mr Horsley, as evidenced by a credit advice from Barclays showing the transfer of £123,000 into Ms Dorobat's account on 1 February 2010 (recorded as "By order of: Mihaela D Dorobat, c/o Trevor, MKBH Electro Mech LLC") and by a debit advice showing the transfer out of Ms Dorobat's account on 2 February 2010 of £123,469.89 to "Hobson and Lathan Clients Account" in respect of "Flat 12 Creative House".

138. The evidence of Mr Ward and Ms Dorobat was that Ms Dorobat paid her mortgage instalments herself from 2010 onwards until her mortgage was paid off on 4 May 2018 by a redemption payment of £277,177.77 using funds provided again by Mr Horsley. Ms Dorobat gave evidence that she was and is very close to her twin sister who was married to Mr Horsley, and that Mr Horsley was an extremely successful and wealthy businessman. It was put to Ms Dorobat in cross-examination that it was not correct that Mr Horsley funded the redemption payment for her mortgage. Ms Dorobat then provided:

- a. a screenshot of a mortgage redemption statement sent to her on 27 April 2018 recording the amount required to redeem her mortgage as £277,402.77; and
- b. an email sent to Mr Horsley (who has since died) with the subject “Gift Deed” referring to a transfer of £277,402.77 from one of his bank accounts to Santander (Ms Dorobat’s mortgagee) on 4 May 2018.

139. I find that the deposit for Ms Dorobat’s flat and the fund for the redemption payment were provided by Mr Horsley. Ms Dorobat’s evidence on this point was clear and convincing and supported by the documents she produced (albeit at an extremely late stage in the proceedings).

140. It was put to Ms Dorobat in cross-examination that the mortgage instalments paid on her flat between the purchase in 2010 and the redemption of her mortgage in 2018 were paid using money provided by Mr Ward, rather than by Ms Dorobat herself. Ms Dorobat accepted that she had no other significant source of income during this period other than funds provided to her by Mr Ward, but she did not accept that this meant Mr Ward paid her mortgage. Her position was that Mr Ward gave her money for her to spend as she wished, and that the money given to her was hers. She therefore, she said, paid her mortgage herself. I accept that evidence. It is clear that, as Ms Dorobat accepted, Mr Ward was funding her lifestyle generally but I accept her evidence that the money was given to her as a gift and that it was up to her how she spent it. Ms Dorobat said: “No, I paid my mortgage. I paid everything from the money he was giving me every month, right. I was going shopping. I was making sure to pay for my bills, to pay my mortgage ... by Alan giving me all this years he didn’t own me. He didn’t own my life. He didn’t own the lipstick I bought. So I was just in a relationship where the man he took care of me and he did.” In those circumstances, I find that Ms Dorobat paid her mortgage instalments herself. The money she used to make those payments had been given to her and it was her money when she used it to pay the mortgage instalments.

Did the meetings alleged by Mr Donnellan with Mrs Ward and with Ms Dorobat take place?

141. The Ward Parties and Mr Gloag submitted in closing that there was no evidence of the alleged meetings with Mrs Ward at the Café Rouge in Dorking, nor with Ms Dorobat in the roof space at Creative House, because although those meetings were pleaded in the Amended Particulars of Claim dated 14

September 2020, they were not referred to in Mr Donnellan's witness statement for trial.

142. As Mr Gloag submitted, the effect of CPR 32.2 and CPR 32.6 is that the contents of a statement of case are not evidence in a trial, even though verified by a statement of truth: *Arena Property Services Limited v Europa 2000 Limited* [2003] EWCA Civ 1943 at [18], and also *Kimathi & Ors v The Foreign and Commonwealth Office* [2018] EWHC 2066 (QB) at [33-35].

143. In cross-examination, Mr Gloag put to Mr Donnellan that not only was there no evidence of the alleged meetings with Mrs Ward and Ms Dorobat in Mr Donnellan's trial witness statement, but that there was no reference to those meetings in the original Particulars of Claim. The original Particulars of Claim expressly alleged that Mrs Ward and Ms Dorobat took no active part in the events giving rise to the proceedings "except as registered proprietors of certain leasehold interests" and that they had been joined as parties in order to be bound by the result and any consequential orders the Court might make. The result was applications by Mrs Ward and Ms Dorobat to strike out the claim against them. That led to a successful application by Mr Donnellan to amend his Particulars of Claim (the decision to grant permission being appealed and upheld). On appeal, Adam Johnson J held that there was plainly an issue as to the beneficial ownership of the relevant properties, that it made good sense for it to be resolved in these proceedings, and that the Amended Particulars of Claim qualified the bald assertion that Mrs Ward and Ms Dorobat played no active part in the events giving rise to the proceedings and alleged that Mrs Ward and Ms Dorobat agreed to act as trustees for Mr Ward and/or had knowledge of circumstances giving rise to a trust.

144. I accept that the fact that no reference to the alleged meetings with Mrs Ward and Ms Dorobat was made in Mr Donnellan's statement of case in the Partnership Proceedings until after their strike out applications were issued is something which I can take into account, along with all the other relevant facts and matters said by one side or the other to be relevant to the issue whether the alleged meetings took place.

145. Both Mr Polli KC and Mr Gloag put to Mr Donnellan in cross-examination that it was strange there was no mention of the alleged meetings with Mrs Ward and with Ms Dorobat in his trial witness statement and Mr Donnellan's answers made clear that he was adopting that account of those meetings. As the Donnellan Parties submitted in closing, Mr Donnellan accordingly gave oral evidence at trial that those meetings took place. The question I have to decide is whether that evidence was true.

146. Mr Donnellan explained during his cross-examination by Mr Gloag that Mrs Ward bought the 13 leases in Creative House with mortgage finance to pay Creative Constructions the sale price, part of which was then used to pay off the Bank of Ireland loan in relation to Creative House because he (Mr Donnellan) "could not do it in the director's name. Even back then you couldn't do that." In other words, Mr Donnellan's evidence was that the flats had to be bought by Mrs Ward rather than Mr Ward because it was not possible, even when

regulatory requirements were lighter than they are now, for Mr Ward, as the director of Creative Constructions, to purchase flats from that company in order to raise funds to pay off the company's debt.

147. That provides an explanation why the flats were bought by Mrs Ward but does not answer the question whether the flats were in fact owned by her or held by her for Mr Ward. I understood Mr Donnellan's evidence to be that the mortgagee had to be told the flats were being purchased by Mrs Ward, but that it could be assumed from that explanation as to why she and not Mr Ward was the purchaser, that she was in fact a nominee for Mr Ward. In my view, however, in light of the evidence at trial generally as to Mr Ward's business dealings, it is just as likely that Mrs Ward was in fact the beneficial owner (rather than a nominee for Mr Ward), particularly because the purpose of the transaction was to obtain funds by way of mortgage which would be paid to Creative Constructions as vendor to pay off part of Creative Constructions' debt and to enable it to continue to develop its remaining interests in Creative House. That would be the result whether Mrs Ward held the new leaseholds as nominee for Mr Ward or held them in her own name for herself.

148. One of the factors that seems to me to be relevant in assessing the credibility of Mr Donnellan's account of events is that his case is that the partnership he claims existed between him and Mr Ward came into being by oral agreement in January or April 2012. In Further Information provided on 29 March 2021, it is said that the partnership was agreed on 27 April 2019, but it is common ground that this was a typographical error for 27 April 2012. Mr Donnellan's witness statement (referred to and relied on in the skeleton argument) states that Mr Ward "came to [Mr Donnellan] offering a full-time partnership arrangement" "[d]uring March and April 2012, following the successful procurement of investment and subsequent rejuvenation of the development (and prevention of foreclosure)". The date given in the skeleton argument filed on behalf of Mr Donnellan was "In or about January 2012". The meeting he says took place with Mr and Mrs Ward at the Café Rouge in Dorking is said to have taken place in or around December 2007, and the meeting with Mr Ward and Ms Dorobat in the roof space of Creative House on or around 18 November 2009. As I have explained, I do not believe that Mr Donnellan would have considered it necessary to meet Mrs Ward or Ms Dorobat in order to submit mortgage applications on their behalf. Nor do I consider Mr Ward would have considered that necessary, or that Mrs Ward or Ms Dorobat would have done so (as they were relying on Mr Ward to assist them sort out the mortgage finance and I find would have been guided by him as to whether it was necessary for them to meet Mr Donnellan).

149. In those circumstances, it seems to me to be much less likely than not that Mr Donnellan would have met Mr and Mrs Ward in Dorking in or around December 2007:

- a. As I find Mr Donnellan would not have considered the meeting necessary for any regulatory or compliance purpose, I do not accept that any of the relevant parties would have considered it necessary or useful

for there to be a meeting in December 2007 to complete Mrs Ward's mortgage forms.

- b. I do not accept that, at the time of the alleged meeting, 4½ years before the alleged partnership is said to have been agreed, Mr Donnellan would have considered there to be any need for him to ask questions in Mrs Ward's presence about the capacity in which she was buying the flats.
- c. Mrs Ward's youngest son Mark was born in 1997 and diagnosed with autism a few years later. It was Mrs Ward's unchallenged evidence that since around 2000, she has been Mark's full-time carer and has stopped any involvement in the property business, either selling her properties or leaving their management to her husband, on the basis that she would be consulted only when a buy or sell decision was to be made. Unless a meeting away from her son was considered to be really necessary by Mr Ward or Mr Donnellan (which I find was not the case), Mrs Ward would not have attended one.

150. For essentially the same reasons, I do not accept that any of Mr Donnellan, Mr Ward or Ms Dorobat would have considered it necessary for there to be a meeting between Mr Donnellan and Ms Dorobat in November 2009 to complete her mortgage application for Flat 12. Mr Donnellan would not have considered it necessary for any compliance purpose, and on his case as to the partnership, it was still about 2½ years before Mr Ward proposed a partnership between them.

151. In any event, as I have found that the deposit for her flat was provided by Mr Horsley (not Mr Ward), I do not consider that Mr Dorobat would have said at a meeting in November 2009 (or at any other time) that she would hold or was holding Flat 12 for Mr Ward. After the flat was purchased, I have found that Ms Dorobat paid the mortgage from funds given to her for her to spend as she wanted Mr Ward, from what she regarded and I find was, then her own money, and that Mr Horsley then provided the funds for her to pay off her mortgage. Ms Dorobat would not have paid the mortgage from her own funds or asked or allowed her brother-in-law to pay off the mortgage on a flat she was holding for Mr Ward.

152. When asked in cross-examination by Mr Gloag about whether he had sent any written communication to Mrs Ward confirming she was holding her interest on Mr Ward's behalf, Mr Donnellan replied, "Of course, she was. She wouldn't even know how to pay a bill herself." When asked a similar question about Ms Dorobat's position (if there were any documents showing that the alleged partnership entitled Mr Donnellan to claim Ms Dorobat's flat), Mr Donnellan's response, twice, was "Who paid her mortgages?". Those answers seem to me to indicate that Mr Donnellan believed that Mrs Ward and Ms Dorobat held their flats for Mr Ward because Mr Ward had (or Mr Donnellan assumed Mr Ward had) paid for them.

153. In the light of all the evidence, I have concluded that Mr Donnellan's evidence about the alleged meetings with Mr and Mrs Ward and later with Ms

Dorobat and Mr Ward, and his evidence about the statements said to have been made at those meetings by and in front of Mrs Ward and by Ms Dorobat, is not true and was made up to support Mr Donnellan's claim to an interest in Creative House. I find that neither of those meetings happened and that the alleged statements were not made.

Mr Ward's bankruptcy

154. On 17 August 2009, Mr Ward was made bankrupt. The bankruptcy petition had been presented on 12 March 2009.

155. The Donnellan Parties put much emphasis on Mr Ward's bankruptcy. First, they relied on it as the reason why (they say) Mr Ward used Ebonair to hold assets, namely to hide them from his trustee in bankruptcy. The Donnellan Parties submitted in closing that the 2009 bankruptcy provides "essential context" for Mr Ward's actions in relation to Ebonair, and establishes a motive for him to have used Ebonair in the manner the Donnellan Parties say he did.

Transfer of interests in Creative House to Ebonair

156. The particular transaction relied on by the Donnellan Parties in support of their contention that Ebonair was used by Mr Ward to hide assets is that Creative Constructions (of which Mr Ward was the sole shareholder) disposed of the freehold of Creative House and the leasehold interests in the roof and ground floor spaces in Creative House to Fadi Braiteh and that Fadi Braiteh later transferred these property interests to Ebonair. The way the Donnellan Parties put this in closing was that the transactions smacked of an effort by Mr Ward to place valuable assets beyond the reach of the Joint Trustees.

157. Mr Ward disclosed his directorship in Creative Constructions in his bankruptcy interview on 16 March 2010, saying he had resigned about three months before the interview, and that his son James was now the director. He also said that his shares in Creative Constructions (he held all the shares at all material times) were (along with his shareholdings in his other companies) no longer worth anything because the companies owed more to the banks than they were worth.

158. There were a number of transactions by which interests in Creative House (or charges over interests in Creative House) were transferred to Ebonair around this time.

Bank of Ireland charge

159. It is common ground that Ebonair purchased the Bank of Ireland charge over Creative House (granted in December 2006). This is recorded in the agreed chronology as having happened in May 2010. There was little evidence on this transaction at trial. Ms Hamieh said in her witness statement that this was done to "to safeguard our [i.e. Ebonair's] investment", i.e. Ebonair's alleged loans to Mr Ward pursuant to the 2000 Loan Agreement. I have held that that Loan Agreement was a sham created by or on behalf of Mr Ward, and that no sums

were in fact advanced by Ebonair before Mr Ward's bankruptcy. Ms Hamieh's witness statement states that Ebonair "paid the bank for the mortgage. Alan sent us the necessary funds to London, and our lawyer handled the remaining process" (emphasis added). It was put to Ms Hamieh in cross-examination that Mr Ward bought the Bank of Ireland charge for Ebonair using his own money, albeit not with specific reference to this sentence in her witness statement. Ms Hamieh denied that that was the case, stating that Ebonair sent off or transferred £570,000 to Bank of Ireland. It is not clear to me whether Ms Hamieh intended her witness statement to state that Mr Ward (rather than Ebonair) sent those funds for the repayment of the Bank of Ireland charge, or whether what was intended was that Mr Ward helped to transfer Ebonair funds to London to repay the charge. As set out above, there were real logistical issues with Ms Hamieh's cross-examination which made it difficult to put questions referring to specific parts of her witness statement, and there had also clearly been translation issues with her witness statement. The only contemporaneous documents recording this transaction are:

- a. the Bank of Ireland statement for Creative Constructions which shows the Bank of Ireland charge being repaid in full by a payment of £570,038.63, together with an early repayment fee of £4,802.98, on 15 and 16 February 2010 (using funds received by Creative Constructions via a CHAPS payment from "Central Law" on 12 February 2010); and
- b. the office copy entry as at 28 June 2010 for title no. TGL224018 (i.e. the Freehold) showing a restriction dated 26 February 2007 referring to Ebonair as the chargee pursuant to the charge dated 22 December 2006 (which it is common ground is the charge originally granted to the Bank of Ireland).

160. In the circumstances, there is no basis on which I can find that Ebonair had a source of funds other than Mr Ward for the purchase of this charge. It may be that Mr Ward would regard funds provided by him as given to Ebonair and that it then used them to purchase the charge. In either event, it seems to me that the point of the transaction, as far as Mr Ward was concerned, was to avoid any independent third party obtaining an interest in Creative House.

Roof Space, Ground Floor and Freehold of Creative House

161. It is also common ground that Creative Constructions then:
- a. granted a headlease of the Roof Space of Creative House ("the Roof Space") to Ms Hamieh's son Fadi for a premium of £250,000 on 17 June 2010;
 - b. granted a headlease of the Ground Floor of Creative House ("the Ground Floor") to Fadi for a premium of £250,000 on 2 July 2010; and
 - c. sold the freehold interest in Creative House ("the Freehold") to Fadi for a premium of £90,000 on 24 July 2010.

162. The Ward Parties rely on the email valuation of 4 May 2010 from Barnard Marcus which advises putting the Ground Floor and Roof Space in an auction to be held on 26 May 2010 with a guide price of “£225,000+” each, with a reserve of £250,000-£300,000 “To Achieve Well in excess of reserve”, and the Freehold with a guide price of “£40,000+”, with a reserve of £45,000-£50,000 “To Achieve Well in excess of reserve”.
163. The trial bundle includes bank statements showing payments by Fadi of £250,000 for each of the Roof Space and Ground Floor and £90,000 for the Freehold, together with completion statements.
164. The trial bundle also includes three deeds of trust, each dated 4 July 2010, providing that Fadi is to hold each of the Roof Space, Ground Floor and Freehold on trust for Ebonair. Mr Donnellan challenges the authenticity of these trust deeds.
165. An argument was at one point advanced that the trust deeds were of no legal effect because Fadi was the legal owner of the properties and it was not possible for Ebonair to grant a trust over property it did not legally own. The trust deeds are unusually worded because they refer to Ebonair (the beneficiary) as “the Grantor”, but they clearly provide that Fadi holds each of the property interests (the ground floor, roof space and freehold) on trust for Ebonair (rather than Ebonair holding them on trust for Fadi). The argument that the trust deeds were of no legal effect because of any issue as to their wording was not pursued at trial.
166. Secondly, Mr Donnellan said that these trust deeds were not genuine contemporaneous documents because (he said) the signatures did not match the known signatures of Ebonair’s directors and there were no records held by Fidepar to corroborate the claim that Ebonair’s directors signed the trust deeds. Mr Donnellan applied for expert handwriting evidence in respect of the trust deeds and the loan agreement. That application was adjourned with permission to restore if so advised after exchange of witness statements, but was not then restored and pursued. It was put to Ms Hamieh in cross-examination that the three trust deeds were a sham arranged by Mr Ward, and Ms Hamieh denied that, saying Mr Ward had no involvement.
167. Mr Ward’s evidence (in his witness statement and repeated in cross-examination) was that he had suggested to Ms Hamieh that Ebonair should buy the Roof Space, Ground Floor and Freehold after they were valued by Barnard Marcus.
168. Ms Hamieh also gave evidence that Mr Ward suggested these purchases to her (representing Ebonair) and that Ebonair transferred funds to the bank account of her son Fadi in London to make the purchases. She said that she arranged for the purchase to be made in Fadi’s name so that she would have “immediate control” over what was acquired, by which I understood her to mean direct control, and that she also “held [her] other son accountable for the property, so that if one of them made a mistake, the other would notify me”. This seems to have been a reference to a charge dated 10 October 2011 by which

Fadi acknowledged receipt of £172,000 from his brother Hassan Braiteh and charged the Freehold with payment of that principal sum plus interest. There is no suggestion from the Ward Parties that Fadi Braiteh did in fact receive £172,000 from his brother Hassan Braiteh (their case is that the funds were provided by Ebonair, paid from the account of a third brother, Rabih Mohamed Brayteh in Lebanon) and the charge seems to have been viewed, as Ms Hamieh described it, as a way of holding Fadi accountable for the funds provided to him, on the Ward Parties' case on behalf of Ebonair, to purchase the property.

169. Fadi's evidence was that he held the interests in Creative House he purchased for "my mother and ... her company", using funds transferred to him by her from Lebanon. He denied that he held the property on trust for Mr Ward (his father-in-law). He had little recollection of any of the underlying documents and said that each time it was necessary for him to sign something, his mother would "confirm the instructions to sign" and Mr Ward would help him to sign the relevant document or he would go to a solicitors' office to sign the document.

170. Hassan Braiteh's evidence was that he held a charge over the Freehold held in the name of his brother Fadi because he was asked to by his mother. In cross-examination it was put to him that he was asked to become chargee of the Freehold by Mr Ward to help Mr Ward (also his father-in-law) shield his assets from his bankruptcy, but Hassan Braiteh continued to say that these transactions had nothing to do with Mr Ward.

171. The outcome of the dealings in 2010 were that the Bank of Ireland charge over the Freehold was purchased by Ebonair, and the Freehold, Ground Floor and Roof Space in Creative House which had been held by Creative Constructions (wholly owned by Mr Ward and which company he had told his trustees in bankruptcy was worthless) were sold to Fadi, holding for Ebonair. The total paid in respect of these transactions, on the Ward Parties' case by Ebonair, was c.£1.165m.

172. There is documentary evidence that these sums were all paid by or on behalf of Ebonair, but as the Donnellan Parties point out, no evidence as to the source of those funds. The Ward Parties have disclosed bank statements of Fadi showing the receipt of funds to purchase the Freehold, Ground Floor and Roof Space, transferred on to the solicitors Sloan & Co in the total of £590,000, from Rabih Mohamed Brayteh, who it is common ground is another son of Ms Hamieh's. There is, however (as was put to Ms Hamieh in cross-examination) no documentary evidence which goes to indicate the ultimate source of those funds: that it was Ebonair (as the Ward Parties contend) and not Mr Ward (or one of his companies) as the Donnellan Parties contend.

173. The Ward Parties submitted in closing that the Donnellan Parties were wrong to say that Ebonair's role was to hide Mr Ward's assets from his Joint Trustees because Ebonair acquired the interests it purchased in Creative House for market value, and that if Ebonair (or Fadi) were being used to hide Mr Ward's assets that could only be because Mr Ward provided the funds with which Ebonair (or Fadi) acquired their interests in Creative House. The Ward

Parties submitted that that was unlikely because “the full investigatory powers of [Mr Ward’s] trustee in bankruptcy and/or [Creative Constructions’] liquidators were unable to find any evidence of [Mr Ward] shifting his own personal funds or assets into Ebonair”.

174. It is not clear exactly what investigations were carried out by Mr Ward’s Joint Trustees or the liquidator of Creative Constructions, and the Court does not know what evidence and information was or was not provided to those insolvency practitioners. The task for the Court at this trial is to decide the issues between the parties before it on the basis of the evidence adduced at trial (there being no suggestion that any finding binding on this Court has been made in Mr Ward’s bankruptcy or in the liquidation of Creative Constructions). The issues at this trial concern what Mr Ward thought was necessary to protect his assets from the Joint Trustees or the liquidator of Creative Constructions, not whether the Joint Trustees or the liquidator could in fact have pursued and recovered those assets.

175. I accept that Ebonair paid what looked like market value for the particular interests in Creative House which it purchased in June and July 2010. However, this does not provide a complete answer to the questions in issue at this trial. It is clear from the overall factual narrative (summarised above and below) that Mr Ward’s aim throughout was to maintain overall ownership of Creative House, albeit he might have to involve other individuals or entities to help him do so, with a view ultimately to being able to sell it as a whole. As Mr Polli KC put to Ms Howard in cross-examination, the purpose of the financing scheme using nominees “was to sell flats and raise money while still keeping control of the flats”, and that control would have been lost if one of the flats was sold to “an independent wholly unconnected party”. In just the same way, control would have been lost if the Roof Space, Ground Floor and Freehold had been sold to an independent third party purchaser and there was therefore benefit to Mr Ward in avoiding the interests acquired by Ebonair being sold instead to an independent third party. At the time the Roof Space, Ground Floor and Freehold were transferred to Ebonair they were the only interests in Creative House not held by Mrs Ward or Ms Dorobat, so those transactions kept the entirety of the property within what can (on any view) be described as Mr Ward’s sphere of influence.

Flats 10, 11, 13 and 14 transferred to Fadi (holding for Ebonair)

176. The Ward Parties say that at some point after the purchase by Fadi of the Freehold it became apparent that the solicitor acting for Mrs Ward at the time she was granted leaseholds for Flats 10, 11, 13 and 14 (before the purchase of the Freehold by Fadi Braiteh) had failed to register those leases against the Freehold. Accordingly, the purchase of the Freehold by Fadi was effective to extinguish those leases, and he successfully resisted proceedings brought by the mortgagees who had lent Mrs Ward funds on the security of those flats. The result was that Fadi obtained ownership of the leasehold interests in Flats 10, 11, 13 and 14 as well as the Freehold (and the Roof Space and Ground Floor), all of which he held for Ebonair.

Charges placed over Mrs Ward's Flats 1, 2, 3, 4, 5, 6, 7, 8 and 9 in favour of Ebonair

177. As I have set out above, Ebonair sent letters dated 28 December 2010 to Mrs Ward stating that as at that date £2.6m was due from her as guarantor under the Loan Agreement and that Ebonair had instructed its solicitor to place a charge on her properties to secure its interest, and that compound interest would run at 9.5% from 28 December 2010 onwards on the total outstanding loan. At the time, Mrs Ward was the owner of Flats 1 to 9 in Creative House.
178. A letter dated 3 February 2011 from Mortgage Express to Mr Rodney Evans (apparently acting for Ebonair) refers to Mrs Ward as the customer of Mortgage Express and the relevant properties (i.e. those of Mrs Ward's flats subject to mortgages from Mortgage Express) as being Flats 1, 5, 6, 7, 8 and 9. Those flats remain registered in the name of Mrs Ward and the Land Registry Office Copy entries for each of them includes (a) a charge dated December 2007 in favour of Mortgage Express registered in February 2008 and (b) a unilateral notice in respect of an equitable charge dated 10 January 2011 made between Mrs Ward and Ebonair registered on 17 January 2011 (as well as a unilateral notice in respect of a contract for sale dated 5 April 2013 made between Mrs Ward and Ebonair and registered on 25 April 2013). The charge over Flats 1, 5, 6, 7, 8 and 9 dated 10 January 2011 was executed by Mrs Ward and recorded that the charge was to secure all monies due under the Loan Agreement.
179. It appears that charges were also placed by Ebonair in January 2011 over Flats 2, 3 and 4. Those charges, also based on the sums due from Mrs Ward as guarantor of the sums said to be due from Mr Ward to Ebonair under the Loan Agreement (as described in the 28 December 2010 letters from Ebonair to Mrs Ward), were in due course relied on by Ebonair to obtain possession of those flats from Mrs Ward in proceedings described below.
180. In the meantime, the result of these dealings was that each of the flats held by Mrs Ward in Creative House by December 2010 was subjected to a charge in favour of Ebonair which would (unless the charges were successfully challenged) have to be repaid before any value would be available for creditors of Mr Ward or Creative Constructions if any claims on their behalf were made against Mrs Ward's flats.

Further development of Creative House and the nominee financing scheme

181. In mid to late 2010, planning permission was granted to develop the Roof Space into two flats and the Ground Floor into two flats and one office.
182. Mr Donnellan's evidence was that in January 2011 Mr Ward asked Mr Donnellan to help him raise finance for the further development of the interests in Creative House then held in the name of Fadi. Mr Ward did not substantially disagree: his witness statement stated that in 2011 he suggested to Ms Hamieh that Creative House could be further developed. I find that Mr Ward approached Mr Donnellan to raise finance for that purpose.

183. Mr Ward, in his witness statement, explained his motivation for developing Creative House – in which it is his case that he at this time had no legal or beneficial interest - as follows: “My interest lay in maximising the profits that would accrue to Maureen’s flats. Huda and her associates in Lebanon would also benefit from the increased value that would be attained by the flats Ebonair owned.” As set out above, by January 2011, Ebonair also held second charges over Mrs Ward’s flats.
184. Mr Donnellan said that Mr Court, the principal of Handf Finance Limited, a local bridging finance firm, refused to lend to Fadi after he met him because he was not impressed by him.
185. In March 2011, Fadi transferred the headleases for the Ground Floor and Roof Space to Ebonair for no consideration. Mr Donnellan said that this resulted from the unsatisfactory meeting with Mr Court: Mr Ward decided that the way to deal with Mr Court was to request Fadi to transfer the Ground Floor and Roof Space head leases to Ebonair. Mr Donnellan’s evidence was that Mr Ward at that time had the bearer share certificate for Ebonair in his possession and told Mr Donnellan Ebonair was wholly owned by him. Mr Donnellan introduced Mr Court to Mr Ward in March 2011 and Handf Finance offered an initial loan of £275,000 to Ebonair. Mr Donnellan said that Mr Ward agreed to provide a personal guarantee for the loan, to produce the bearer share certificate and to declare that he was the beneficial owner of Ebonair and that the instructions on behalf of Ebonair came solely from himself, which Mr Donnellan said Mr Ward did at the meeting with Mr Court and Mr Donnellan.
186. Mr Donnellan said that he then introduced Mr Ward to Mr Barca to act on behalf of Ebonair and Mr Ward in connection with the loan from Handf Finance.
187. The trial bundles also contained a translated document dated 3 June 2011 addressed to Mr Barca authorising him to act on behalf of Mr Khawaja, as the holder of the sole bearer share of Ebonair, signed by Mr Khawaja. When Mr Donnellan was shown this document in cross-examination he said it was not a genuine document. The document was shown to Mr Khawaja during his cross-examination and he confirmed that the signature on the document was his signature although he said he could not remember signing it.
188. There is no documentary evidence of the meeting between Mr Donnellan, Mr Ward and Mr Court at which Mr Donnellan says Mr Ward declared himself to be the beneficial owner of Ebonair. Mr Ward’s pleaded case is that he represented to Mr Court that “as the person in possession of the said bearer share, he was entitled to cause [Ebonair] to borrow against the security of the freehold estate in Creative House” and that that representation was true, but that he did not represent that Creative House was his property. In cross-examination, Mr Donnellan referred to an attendance note prepared by Mr Barca of a later meeting on 16 December 2011 recording that at a meeting at his offices on that day, also attended by Mr Donnellan, “Alan Ward produced an original bearer share in Ebonair Investments SA in the presence of Tony Donnellan and stated that Creative House was his property. I took a copy for the file.” The “Accounting Date” for the attendance note is recorded as 30 September 2016.

Mr Polli KC put it to Mr Donnellan that this note did not involve any statement about the ultimate beneficial owner of Ebonair. Mr Donnellan's response was, "He stated that Creative House was his property. If that is not the beneficial owner and the owner of Creative House, then I do not know what is."

189. Mr Ward agreed in cross-examination that he was required to produce the bearer share certificate for Ebonair at his meeting with Mr Court. He also expressly accepted in his witness statement that at the meeting with Mr Barca in 2011 "I had to sign to say I owned Ebonair. I signed the necessary documents I was asked to sign and the loan came through."

190. In those circumstances, I find that the effect of what Mr Ward represented to Mr Court was that he owned Ebonair, and accordingly also owned (through Ebonair) the Ground Floor, Roofspace and Freehold of Creative House.

191. Going back to the time of the first advance from Handf Finance in mid-2011, there is an email dated 15 July 2011 from Mr Barca to Mr Ward, copied to Mr Donnellan, which apparently originally attached a search carried out by Mr Barca of the registers kept pursuant to the Land Charges Act and showing two bankruptcy orders to have been made, one in December 2006 against an Alan Ward living at an address in County Durham and one in February 2008 against an Alan Ward living at a different address in County Durham. Mr Barca's email stated, "The mortgagees require a letter signed by you to say that you are not the Alan Ward referred to on this search".

192. The bundle contains a "Statutory Declaration" made by Mr Ward pursuant to the Statutory Declarations Act 1835 and witnessed by Mr Barca on 19 July 2011 by which Mr Ward confirmed that the entries in that search do not relate to him in any way and that "I have always been and remain solvent". While it may be true that the individual or individuals recorded in the exhibited search as having been made bankrupt in 2006 and 2008 were not Mr Ward, it is not true that Mr Ward had always been solvent. As set out above, he was made bankrupt by order dated August 2009. Further, Mr Barca was told this at the time because he wrote to Mrs Ward on 10 March 2010 after meeting with Mr Ward about acting on Mrs Ward's behalf in relation to a possible application to annul Mr Ward's bankruptcy. When this letter was put to Mr Donnellan in cross-examination, Mr Donnellan agreed that the 10 March 2010 letter from Mr Barca suggested that Mr Donnellan had introduced Mr Ward and Mr Barca in early 2010, rather than in early 2011 as he said in his statement. Mr Donnellan, however, denied remembering in July 2011 that Mr Ward had been made bankrupt. Mr Barca has throughout this litigation acted for the Donnellan Parties and has not been called to give evidence by any party. It is possible that he had forgotten by July 2011 that Mr Ward was made bankrupt by order dated August 2009. In any event, however, it is certainly not possible for the Court to conclude from the statutory declaration witnessed by Mr Barca that Mr Donnellan did not know Mr Ward had been made bankrupt in 2009.

193. Handf Finance advanced £275,000 to Ebonair on 3 August 2011. That loan was ultimately repaid on 27 April 2012.

194. Handf Finance provided further advances to Ebonair, each of £50,000 on 19 December 2011, 6 January 2012 and 28 February 2012, and of £40,000 on 28 March 2012. Those loans were also ultimately repaid on 27 April 2012.
195. Finance was thus initially provided by Handf Finance, but Mr Donnellan's longer term plan (according to Mr Ward) was for the flats Ebonair owned to be transferred to nominees who would hold them for Ebonair but raise finance on them in their own name, relying on their own credit rating. Mr Donnellan agrees that this was the scheme, save that he says the nominees were to hold the flats for the partnership. It is common ground that Ebonair was unable to raise further finance in its own name because it was a Panamanian company. The nominee scheme proposed by Mr Donnellan was to use nominees resident in the UK.
196. The initial nominee was Mr Keane. His pleaded case is that he holds his interests in Creative House on trust and says that he holds for the partnership or joint venture which he has been told exists between Mr Donnellan and Mr Ward.
197. The trial bundle contained an offer from Handf Finance dated 10 January 2012 to Mr Keane of £580,000 to be secured by a first legal charge over the headleases of the Roof Space and Ground Floor at Creative House. This offer was not taken up. Mr Keane's evidence was that instead he ultimately obtained a mortgage loan of £900,000 from West One, pursuant to their offer issued on 6 March 2012. The bundle contains a mortgage valuation prepared by Robert Sterling for West One dated 12 March 2012 which valued Flats 15, 16, 17 and 18 and the commercial unit on the ground floor of Creative House (i.e. the flats and office space in the Roof Space and Ground Floor) at £1.6m.
198. Mr Donnellan's pleaded case is that the partnership was agreed on 27 April 2012. This is the date on which his financing scheme for Creative House was put into practice, being the date on which Mr Keane became the leasehold proprietor of Flats 15, 16, 17 and 18 (i.e. the residential flats in the Ground Floor and Roof Space) and of the office space in the Ground Floor. In evidence, Mr Donnellan said the partnership agreement was reached before 27 April 2012 and came into effect on that day. Keane Battersea Limited became the registered proprietor of the headleases for the Ground Floor and Roof Space on 21 May 2012 (the same day on which the leases for Flats 15, 16, 17 and 18 were registered).
199. It is common ground that thereafter various mortgages were taken out against the security of these properties and that Mr Keane was and is personally liable for repaying the mortgages. It is also common ground that the flats which were part of this scheme were let out under the management of Luxap which, until July 2022, passed the necessary part of the income to Mr Keane to pay the mortgages on those flats.
200. It is in dispute exactly how much was raised by mortgage finance in this way and exactly where those funds went, but those are not issues the Court is asked to resolve at this trial.

201. On 30 May 2012, Mr Keane granted charges to Ms Hamieh over Flats 13 and 14, which described Ms Hamieh as having lent £300,000 to Mr Keane in respect of those flats. They were executed as deeds by Mr Keane and by Fadi Braiteh (on behalf of Ms Hamieh). In cross-examination Mr Polli KC put to Mr Donnellan that the reason why Mr Keane granted these charges to Ms Hamieh was because it was “really Ebonair’s money” that was being raised on the flats. Mr Donnellan said they were a sham (in that they did not reflect any loan from Ms Hamieh to Mr Keane, which is common ground) but Mr Ward wanted those charges simply as a mechanism to stop Mr Keane raising money on the flats and then running off with the money. The charges were discharged on 25 July 2012 and 21 August 2012 respectively, which Mr Donnellan said was after the mortgage finance was drawn down from West One.
202. The trial bundle included valuations of Flats 10, 13 and 14 as at 29 June 2012, giving present market values of £350,000, £500,000 and £500,000 respectively. The Donnellan Parties relied on these valuations in support of their case that Creative House was not in good shape as at July 2012, which they say explains why Mr Ward offered Mr Donnellan partnership in April 2012.
203. Mr Ward did not accept that Creative House was not in good shape in mid-2012. During cross-examination by Mr Gloag, he was asked about the condition of the flats in 2011 and said that they were in very good condition.
204. The valuations as at June 2012 demonstrate that it was necessary for the buildings works underway at the time to be completed in order for the full value of the property to be realised: in each case the “present market value” for each flat was considerably less than the “market value, assuming completion of the flat refurbishment and the block alterations as described” in other parts of the valuation report, namely £500,000, £750,000 and £750,000 respectively.
205. However, those valuation reports are broadly positive in that they each state that, “All the other flats in the building are currently vacant and are being refurbished, whilst the creation of the additional units [two penthouse flats in the roof space and two ground floor flats and an office] is being undertaken” and commented that “during the course of our inspection for valuation purposes we observed that the property is undergoing complete internal refurbishment. Sanitary fittings are of good quality and new kitchen fittings were about to be installed at the time of our inspection. The flat has been redecorated.” Mr Coppel KC put those valuations to Mr Ward during cross-examination to say that all the flats were being refurbished as well as the work done to convert the roof space and the ground floor. Mr Ward said it was not correct that the other flats were being fully refurbished, rather that after being used for short lets, they needed to be painted, mastic put in the bathrooms, the kitchens checked to ensure they were working properly etc.
206. However, Mr Ward’s evidence in his witness statement was that the money raised by the finance arrangements put in place pursuant to Mr Donnellan’s finance scheme were used “to proceed with a wholesale renovation of Creative House, as well as [to] release greater funds for the further work” (the reference to “the further work” being to the work to create two flats in the Roof Space and

two flats and an office in the Ground Floor). Mr Ward's pleaded case was that as a result of works being carried out to Creative House, it was not possible to let any of the flats in it between about 2011 and 2013. This was consistent with Ms Dorobat's evidence that she moved out of her flat, Flat 12, between November 2011 and summer 2013 because of the works that were going on in the block. The Ward Parties' case in closing was that there had been a "redevelopment" of Creative House by Ebonair in 2012 which had gone well (and therefore permitted Ebonair to extract funds to lend to CBA to invest in subsequent projects, as described below).

207. I find that there were substantial works to Creative House ("a wholesale renovation") from 2011 which meant none of the flats could be lived in or rented out between 2011 and sometime in 2013. Mr Ward's reluctance to admit the scale of those works during cross-examination demonstrated his reluctance to give evidence which would be used by the Donnellan Parties to support their case.

208. Mr Keane explained in his evidence that once the finance was provided pursuant to the nominee scheme, he opened a bank account with Barclays Bank, which he intended to be used to pay for work to Creative House. Mr Ward was given control of this bank account and he made substantial payments from it for purposes other than work to Creative House, including payments to Mrs Ward and to Ms Dorobat. The Donnellan Parties say that these payments support their case that Mr Ward is the ultimate beneficial owner of Ebonair because they demonstrate he regarded funds which, on his case belonged to Ebonair as the beneficiary of the flats held by Mr Keane as nominee (on the Donnellan Parties' case they were funds belonging to the partnership as the beneficiary of the flats held by Mr Keane), as available to him to spend as he wished. I accept that those payments do indicate that Mr Ward had a personal interest in the funds. That is consistent with both –

- a. the Donnellan Parties' case that Mr Keane held for the partnership (in which case Mr Donnellan and Mr Ward would have regarded themselves as interested in the funds in that bank account), and
- b. the Ward Parties' case that Mr Keane held for Ebonair, but only on the basis that Mr Ward had an interest of some sort in Ebonair, so as to explain his use of that money to make payments to other companies he owned and controlled, to Mrs Ward and to Ms Dorobat.

209. Mr Keane gave evidence that Mr Donnellan also obtained further private loans to fund the development of Creative House, each of which he said was agreed with an interest rate of 18% p.a., as follows:

- a. £100,000 from Mr Barca;
- b. £50,000 from Mr Keane;
- c. £300,000 from Thomas Mills;

- d. £150,000 from Mark Ford; and
- e. £330,000 from Mr Donnellan.

210. Mr Donnellan says that on 12 October 2012, Mr Ward confirmed the terms of their partnership in a conversation with him. Mr Ward agrees that he travelled to Spain with Mr Donnellan over this date but denies there were any discussions about any partnership.

211. I accept Mr Polli KC's submission that it is hard to see why there would have been any need to have a further conversation confirming the terms of the partnership if it had in fact already been agreed in (or by) April 2012. Mr Donnellan's explanation was that by this stage in October 2012, it was clear that his scheme of using nominees to raise funds had worked, and that it made sense for Mr Ward to say he was pleased with what had happened. I see that that may have happened, but it does not explain why, if a partnership had already been agreed (rather than, say, proposed or mooted as a possibility), Mr Ward would have repeated the terms of the arrangement (as Mr Donnellan's witness statement stated he had: "Mr Ward confirmed he wished to continue working under the existing 75 / 25 per cent arrangement, based on the investment I had brought in and the work I had done so far. Mr Ward asked if my share included any contributions arising out of the working relationship with Mr Keane and I confirmed that it did"). The terms in which this is put in Mr Donnellan's witness statement seem inconsistent with his evidence that a binding partnership agreement was reached in or by April 2012 providing for a 25/75 split of partnership assets including Creative House and future properties (if it was, there would be no need for Mr Ward to confirm he wished to "continue working" on that basis because of the investment Mr Donnellan had brought in and his work so far, or for Mr Donnellan to confirm that Mr Keane would be paid from Mr Donnellan's "share").

212. Mr Donnellan had suggested in his witness statement that "[f]ollowing our trip to Spain and Mr Ward's comments on continuing our partnership agreement", he and Mr Ward had begun looking into other projects "on the agreed 75 / 25 per cent basis" and that accordingly they had at this point agreed to purchase 35 St George's Road through Keane Waterloo Limited ("**KWL**", a company wholly owned by Mr Keane). Mr Keane's witness statement also stated that Mr Donnellan and Mr Ward agreed to buy 35 St George's Road after the trip to Spain and after what he referred to as Mr Ward's "assertion that his intention was to extend the partnership agreement". In fact, Mr Donnellan's witness statement went on to make clear that contracts on this property were exchanged in September 2012, before the trip to Spain, and Mr Donnellan accepted in cross-examination that that was the correct order of events. Mr Keane also accepted in cross-examination that he did not know the relevant dates so was not in a position to say whether Mr Donnellan and Mr Ward decided to exchange on this property before or after the Spain trip. Ultimately, this purchase did not go ahead.

213. On 23 November 2012, a bridging facility given to Mr Keane by West One in respect of Flats 15, 16, 17 and 18 and the Office Space in Creative House

completed. The completion statement (apparently from Hoffman-Bokaei Solicitors) records £828,114 as having been received from West One, from which payments were made of £237,050.17 to Barclays to redeem a mortgage on Flats 17 and 18, £102,000 to redeem a loan from Wilson Barca, and £3,085 to pay Hoffman-Bokaei's costs, leaving a balance of £485,978.83.

214. The correspondence between the solicitors for the Joint Trustees and Mr Ward continued. Mr Donnellan's evidence was that he received a call in October 2012 from the solicitors for the Joint Trustees asking for a meeting with Mr Donnellan to provide information. He said that this was when he first learnt of the bankruptcy.
215. On 16 February 2013, Mr Ward emailed a chart to Mr Donnellan which appears to be a summary of the dealings with Creative House for the purpose of Mr Donnellan's meeting with the solicitors for the Joint Trustees, which ultimately took place on 7 March 2013.
216. The correspondence shows that Mr Ward had met his Joint Trustees, or their representatives, on 30 January 2013. On 1 February 2013, the Joint Trustees' solicitors emailed to Mr Ward's solicitors a list of information they were awaiting, and the Joint Trustees' solicitors chased Mr Ward for that information on 14 March 2013, saying that if it was not provided they would seek orders for its production at a hearing listed for 23 April 2013. The list of information sought included (a) details of the dealings of Mr and Mrs Ward and Mr Ward's companies with Ebonair, (b) details of Mrs Ward's investments in Mr Ward's companies, and (c) details of loans said to have been made by Ms Dorobat, apparently to Mr Ward or his companies.
217. On 23 October 2013, instructions were sent to counsel by Hoffman-Bokaei on behalf of Ebonair seeking advice as to Ebonair's tax position in relation to leases they had bought from Creative Construction and sold "making a huge profit". Tax counsel provided an Opinion dated 1 November 2013. The instructions and the opinion, but not the documents provided with the opinion, were included in the trial bundle. Counsel's summary of the facts disclosed in those documents included:
- a. the purchase by Ebonair of the Roof Space, Ground Floor and Freehold of Creative House for a total price of £590,000;
 - b. the three deeds of trust dated 4 July 2010 providing that Fadi Braiteh held for Ebonair; and
 - c. the fact that between 2 May 2012 and 21 May 2013, parts of the Roof Space, Ground Floor and Freehold were sold to Mr Keane for a total sale price of £3,025,000.

Potential redevelopment of the Creative House site as a "landmark building"

218. In November 2012, the occupiers of Flats 1-14 were sent notices from Wandsworth Council that the gas works site opposite Creative House was

applying to demolish the existing steel structures on the site. Mr Donnellan's evidence was that he checked the planning history and found that Creative House had a low density housing allocation because it was within the designated blast zone of the gas works, and realised that the demolition provided the opportunity to redevelop the Creative House site with higher housing density.

219. The Donnellan Parties rely heavily on the emails in December 2012 concerning the proposal for a replacement building on the site of Creative House as evidence of the existence of a partnership between Mr Ward and Mr Donnellan in relation to Creative House:

- a. Those emails start with an email on 1 December 2012 from Mr Ward to Mr Donnellan at 2115 about the costs / profits of a larger building with 14 floors. Mr Ward repeatedly states his calculations as "We have ..." or "Then we have ...", ending with "In addition. We wii [sic] have £8,600,000 to move forward. DOES THIS MAKE SENSE TO YOU??".
- b. A second email at 2146 the same evening provides calculations for "[t]he alternative" which Mr Ward says is "to go 20 floors at 4 large 2 bed flats per floor". Again, Mr Ward repeatedly says that option "will give us ...", "will leave us with ..." etc., ending with "This is less than the first option, but we have £17,000,000.00 to move forward with and an equity of £32,000,000.00 left in the property, where as the first option will leave us with £22,400,000.00 equity left in the property and £8,600,000.00. The final thing is the total profit of the project. The first option gives us a profit of £31,000,000.00 in total, where as the second option will give us £49,000,000.00 total profit. I hope your [sic] not drunk to understand all this, because looking at these figures and I get high."
- c. Mr Ward sent Mr Donnellan a further email at 1623 the following day, 2 December 2012, with a "WORST CASE SCENARIO" involving 14 floors with 56 units, leaving profit of £31m, annual income after mortgage payments of £1.703m and "£7,000,000.00 in our hand to invest".

220. Those emails seem to have followed a meeting attended by Mr Ward and Mr Donnellan with Mr Graham of Rolfe Judd Architecture Ltd on 30 November 2012. Mr Graham emailed Mr Ward and Mr Donnellan on 7 December 2012 referring to that meeting and saying his firm hoped to put together before Christmas a feasibility study, illustrating what might be achievable on the Creative House site as a residential redevelopment, and a planning statement setting out the context and parameters that would need to be considered in developing the proposal. Mr Graham asked for confirmation of "the instructing party" and who should be invoiced for the feasibility study. Mr Ward replied on 7 December (copying Mr Donnellan) saying that "We met with mr hunter, head of team in Wandsworth and he is very keen to see new proposal ... We mentioned to him the possibility of the removal of the existing building and he suggested to submit proposal to him ... Please proceed with the feasibility study and the billing will be to luxap ltd".

221. Rolfe Judd sent a feasibility study for the Creative House site to Mr Ward on 21 December 2012. On 22 December 2012, Mr Ward replied, “Why did you stop at 14 floors?” and forwarded his email to Mr Donnellan.
222. On 30 December 2012, there was a further exchange of emails between Mr Ward and Mr Donnellan about the redevelopment options for the Creative House site. Mr Ward emailed Mr Donnellan some calculations for a 60 unit building, saying “We will have GDV of £26m and if we borrow 65% we will receive £17m and an annual interest payment of £1m at an interest rate of 6%. This will mean that we will be left with 7m to invest and an annual income of £1.1m.”
223. On 1 January 2013, Mr Donnellan sent Mr Ward part of the “*Public Realm Strategy*” for Nine Elms and on 2 January 2013 Mr Ward forwarded that link to Mr Rudolf at Rolfe Judd referring him to the “tall buildings marker”. Following further emails on this issue between Mr Ward and Mr Rudolf, Mr Rudolf suggested a meeting on 8 January 2013 and Mr Ward forwarded that email to Mr Donnellan.
224. Mr Donnellan’s evidence was that he and Mr Ward ultimately decided not to proceed with Rolfe Judd because they were not happy with the design and density they proposed for the site, and instead met with and then appointed Terry Farrell and Partners to design a new tower for the Creative Site, comprising 140 residential units. Farrells’ fee was £350,000 plus VAT. Mr Donnellan and Mr Ward also appointed a number of other consultants to help with the planning application.
225. As described in more detail below, in July 2013, Mr Donnellan was making arrangements to acquire an offshore company for himself because he was going to move to Portugal for tax purposes if everything went well on Creative House, and he had had discussions with Ms Benoit at Fidepar about the tax position in those circumstances. It is clear that both Mr Donnellan and Mr Ward anticipated at this time that the redevelopment might be extremely profitable.
226. The emails in September and October 2013 show Mr Donnellan in contact with Farrells and forwarding various emails on to Mr Ward. Mr Donnellan’s evidence was that, along with Farrells and Dp9 (planning consultants), he attended a pre-application meeting with Wandsworth Council on 9 October 2013. Mark Hunter (Head of Vauxhall Nine Elms Battersea Planning for Wandsworth Council) told the Creative House team at this meeting that any new building would have to be below 70 metres in height because otherwise it would appear in the silhouette of the Palace of Westminster in the protected view from Waterloo Bridge. Farrells advised after the meeting that the maximum height that was likely to be achievable would be around 20 storeys.
227. The emails on 8 / 9 October 2013 between Mr Donnellan and Farrells show Mr Donnellan referring to meeting with “my investors” on a trip to Lebanon.

228. Farrells had another meeting with Mr Hunter and others from Wandsworth Council on 18 October 2013 and were advised that a building of 15 storeys would be more acceptable and that it might be necessary to test the impact on views of the chimneys at Battersea Power Station from Queenstown Road.
229. On 5 December 2013 at a third meeting with Wandsworth Council, the Creative House team were told by Wandsworth Council that the proposed building would be visible from Queenstown Road in front of the Power Station chimneys and that it would be difficult for the Council to support an application that obscured any part of the view of the chimneys, so the new building would have to be redesigned, taking this into account.
230. Mr Donnellan's evidence was that he then called Farrells and Dp9 on 18 December 2013 to confirm that he and Mr Ward did not want to proceed at that time with the planning application, and would rather wait and see what planning proposals were put forward for the gas works site and then proceed.
231. On 8 March 2014, Mr Donnellan emailed a report to Mr Ward to which Mr Ward replied "The density is higher than the gas. It will mean 48 units for us". It is not clear what report was sent by Mr Donnellan but Mr Ward's reference to the gas indicates it concerned planning for the Creative House site.
232. In November 2014, Mr Donnellan exchanged emails with Robert Schon, a solicitor in London. In an email on 5 November 2014, he thanked Mr Schon for a meeting on Friday and said he planned "to go to Lebanon next month and discuss the content of our meeting with my overseas investors". When this email was put to Mr Donnellan in cross-examination he said that it was "nonsense", and that it was from his (Mr Donnellan's) email address but sent by Mr Ward. He accepted that that was not evidence given in his witness statement but said there were lots of things not in his statement.
233. Mr Donnellan's evidence was that he made contact with Farrells again in January 2015 because the owners of the gas works site had entered into an agreement with Berkeley Homes and had planning permission for a tower 26 storeys high on their site. Mr Donnellan said "the partnership" agreed that Farrells would redesign the proposed Creative House building up to about 20 storeys and take into account the view from Queenstown Road in the context of the recently approved applications for the gas works site and for Taylor Wimpey's scheme for Battersea Park East. Mr Donnellan was involved in further emails relating to the proposed redevelopment in January 2015, which he forwarded on to Mr Ward, leading to a brief exchange between them about rights to light.
234. On 28 April 2015, Mr Ward, Mr Donnellan and Farrells met Wandsworth Council for a fourth pre-application meeting. On 14 May 2015 they met Emma Waterfall of Cascade Communications (a PR consultant for Vauxhall Nine Elms Battersea's Strategy Board who was in regular contact with the leader of the Council) and Dp9 to discuss a potential scheme for Creative House. Ms Waterfall informed Mr Ward and Mr Donnellan that the leader of the Council did not like the current Creative House building but did not consider a 20 storey

redevelopment was realistic. Mr Ward and Mr Donnellan were told that a building taller than the current one was achievable as long as the height could be justified in the context of the surrounding sites, and that a beautiful building design would increase their chances of getting permission for a taller building.

235. Mr Donnellan's evidence was that he and Mr Ward ultimately decided in June 2015 to sell (rather than redevelop) Creative House.

Dealings with Fidepar in 2013

236. As set out above, it is common ground that Fidepar was told in 2009 that Ebonair was beneficially owned by Mr Ward. The Donnellan Parties say that this was the true position. Mr Ward says that it was not the true position but that it was necessary, if he were to engage Fidepar as agent for Ebonair, that he should tell Fidepar that he was Ebonair's beneficial owner.

237. Mr Ward gave evidence in cross-examination that in early 2013, when he was speaking to Ms Benoit of Fidepar by telephone, she commented on the fact Creative House was now a prime location because of the move of the US Embassy nearby and other developments in the area. Mr Ward replied yes, it was a shame he didn't own it any more, and Ms Benoit asked who owned it, and then explained Swiss law did not allow trust documents between Mr Ward (the registered beneficial owner) and the actual beneficial owner. She said the actual beneficial owner had to come to Fidepar's offices in person or send his identification documents in order to be registered as the beneficial owner. Mr Ward's evidence was that that was why Mr Donnellan went to Lebanon, collected Mr Khawaja's original identification documents and took them to Fidepar, so Mr Khawaja could be registered as the true beneficial owner. This evidence is consistent with Fidepar's Note dated 8 November 2021 of its telephone calls with Mr Ward between 2009 and 2016 which includes a note of a call on 20 February 2013 during which Mr Ward mentioned he acted as beneficial owner under a private trust agreement for the actual beneficial owner, and that Fidepar informed him Swiss laws were strict and that "full KYC of actual BO [beneficial owner] mandatorily needs to be provided".

238. As set out above, Mr Ward's trustees in bankruptcy were during the opening months of 2013 asking questions and chasing for information about his dealings with Ebonair (among other matters).

239. It is common ground that Mr Donnellan flew to Geneva in May 2013 to deliver documents relating to the beneficial ownership of Ebonair to Fidepar. Those documents included:

- a. A handwritten letter dated 28 April 2013, signed by Mr Ward, stating that he had transferred ownership of Ebonair to Mr Khawaja on 1 April 2009;
- b. A certified translation dated 10 February 2006 of the identity of Mr Khawaja; and

- c. An “Information Sheet” dated 1 April 2009 (stamped by Fidepar as received on 23 May 2013) which identifies Mr Khawaja as the beneficial owner of Ebonair and which included, under the heading “Comments”, the statement, “I give full authorisation to sign and receive all documents and information to my agent: Anthony Donnellan of 124 Prince of Wales Drive, London SW8 4BJ”. The document is apparently signed by Mr Khawaja.
240. It is also common ground that Mr Donnellan flew to Lebanon before going to Geneva in May 2013 to pick up the documents Fidepar had said were required for Mr Khawaja to be registered as the beneficial owner of Ebonair. However, Mr Donnellan’s evidence was that when he travelled to Lebanon to do this, no-one turned up to meet him and that after his return to London, on or around 20 May 2013, Mr Ward handed him the documents including the “Information Sheet” said to be signed by Mr Khawaja and a copy of Mr Khawaja’s identification document, as well as the handwritten letter dated 28 April 2013 referred to above, for Mr Donnellan to take those to Fidepar in Geneva.
241. By email dated 17 May 2013, Ms Morallet of Fidepar referred to a telephone conversation Mr Donnellan had had with Valerie of Fidepar the previous day, and set out the documents required for a change of the beneficial owner of Ebonair which included written confirmation from Mr Ward (as the previous beneficial owner) confirming the identity of the new owner and that Mr Ward was no longer the owner.
242. The Note provided by Fidepar (dated 10 September 2019) of Mr Donnellan’s visits to Fidepar in Geneva between 2013 and 2016 recorded that this visit to Fidepar took place on 23 May 2013 and that Mr Ward confirmed Mr Donnellan’s visit beforehand “and the fact that [Mr Donnellan] had full access to the file”.
243. It was put to Mr Ward in cross-examination that the letter dated 28 April 2013, by which Mr Ward confirmed that he had transferred the ownership of Ebonair to Mr Khawaja on 1 April 2009, showed that he had had ownership of Ebonair until 1 April 2009. Mr Ward said no, it was referring to the trust deed dated 1 April 2009 (by which Mr Ward declared he held as trustee for Mr Khawaja), and maintained that what was said in the 28 April 2013 letter was therefore true. In their written closing submissions, the Ward Parties maintained that the effect of the trust deed was that even when Mr Ward held the bearer shares in Ebonair, he never held them beneficially. It follows, therefore, that on the Ward Parties’ case, the 28 April 2013 letter was untrue, but that that was (on their case) a necessary consequence of what Mr Ward said was the necessary misleading of Fidepar in 2009 in telling them (admittedly untruly, on Mr Ward’s case) that he was the beneficial owner of Ebonair.
244. The Information Sheet received by Fidepar on 23 May 2013 was said by both sides to be forged. The Ward Parties’ case was that it was forged by Mr Donnellan in order to enable him to give instructions to Fidepar in relation to Ebonair. The Donnellan Parties say that it was forged by or on behalf of Mr Ward (being the document Mr Ward gave to Mr Donnellan to take to Fidepar

in Geneva), and that that is supported by the fact the date written on the Information Sheet is 1 April 2009, the same date as the date of the Trust Deed.

245. Mr Ward stated, in cross-examination, that it was obvious the signature on the Information Sheet had not been forged by him (Mr Ward) because he is an Arabic speaker, and the forger has forged the wrong signature. A copy of Mr Khawaja's identification card was provided to Fidepar at the same time in May 2013, and it is said that that card contained both a signature of Mr Khawaja and a signature which Mr Ward said was the signature of the issuing authority. He said it was the signature of the issuing authority that had been copied on to the Information Sheet, rather than Mr Khawaja's signature, and Mr Ward said that this mistake would not have been made by an Arabic speaker. There is no expert evidence before me in relation to this issue and no specific answer to Mr Ward's point about the signature was made at trial by the Donnellan Parties. The Court cannot, however, without expert evidence from any independent reader of Arabic or a handwriting expert, decide whether the point made by Mr Ward about the signature on the Information Sheet being forged by a non-Arabic speaker is correct. I am reinforced in that conclusion by the fact that the same signature (said by Mr Ward to be the signature applied on behalf of the issuing authority for Mr Khawaja's identification card) appears to be on at least one other document produced by the Ward Parties themselves as signed by Mr Khawaja, namely the instructions to Mr Barca (put to Mr Donnellan in cross-examination as signed by Mr Khawaja, and which Mr Khawaja confirmed in cross-examination were signed by him).

246. Neither side advanced a convincing argument as to how the Information Sheet document was produced and why. So far as the dealings with Fidepar are concerned:

- a. The note from Fidepar dated 10 September 2019 of calls with Mr Donnellan in relation to Ebonair records that on 16 May 2013, Mr Donnellan requested the list of documents needed in order to proceed with the change of beneficial owner and continues, "As confirmed by Mr Ward, AD now has full access to the file and becomes the instructing party." This shows that Mr Donnellan had, with Mr Ward's consent, already been given access to the file and been recognised as "the instructing party" before Fidepar received the 23 May 2013 Information Sheet.
- b. The Fidepar note of its calls with Mr Ward records that on 23 May 2013 during the visit of Mr Donnellan to Fidepar's offices, it was confirmed that Mr Donnellan now had complete access to the file with confirmation of the change in beneficial owner and KYC documents.
- c. Further, Mr Ward knew that Mr Donnellan was able to deal with Fidepar on behalf of Ebonair from May 2013 onwards. That is made clear by Fidepar's notes of its dealings with Mr Ward and Mr Donnellan in respect of Ebonair. The evidence from Fidepar is that it had contact only with Mr Donnellan and not with Mr Ward from May 2013 to August 2016.

The Ward Parties' suggestion that Mr Donnellan forged Mr Khawaja's signature on the Information Sheet in order to obtain authority to give instructions to Fidepar in relation to Ebonair without Mr Ward being aware of what he was doing is inconsistent with the above evidence. My conclusion from the evidence above is that Mr Ward was aware in 2013, when the Information Sheet was provided to Fidepar, that Mr Donnellan was being given authority to deal with Fidepar on behalf of Ebonair

247. The most likely explanation for the production of the Information Sheet seems to me to be that Mr Ward wanted to ensure that the documents provided to Fidepar would not cause problems if they became available to the Joint Trustees or any others inquiring into his affairs. Accordingly, he ensured that the Information Sheet recorded that he had transferred beneficial ownership to Mr Khawaja on 1 April 2009 (before his bankruptcy order was made). Despite the fact that the Trust Deed is purportedly dated 2009, I have concluded (as set out above) that it was prepared later as further "evidence" to protect the position in respect of occasions after 2009 on which Mr Ward held the bearer share in Ebonair, or represented himself to be its holder or Ebonair's owner (including in his original dealings with Fidepar in 2009, and in his 2011 dealings with Handf Finance).
248. On 4 July 2013, Mr Donnellan called Fidepar asking about acquiring another Panamanian company. He said in his witness statement that he did so at the request of Mr Ward, but he volunteered in cross-examination that that was not correct and that Renson Park (the new Panamanian company) was to be a vehicle for him (Mr Donnellan). He was planning to move to Portugal for tax reasons if everything went well with the redevelopment of Creative House and said that he had discussed the tax position in those circumstances with Ms Benoit of Fidepar. On 5 July 2013 he called to confirm that acquisition and ask when he could collect the documents.
249. Mr Ward's evidence in his witness statement was that Mr Donnellan proposed the use of a second Panamanian company to hold the leasehold flats separately from the freehold of Creative House and that this was investigated until Mr Ward discussed it with Ms Hamieh who said she was not interested in another company being involved. Mr Ward said that he then knew nothing about Renson Park until 2019.
250. On 23 July 2013 Mr Donnellan visited Fidepar's office in Geneva to collect the corporate documents for the new Panamanian company, Renson Park, and delivered documents identifying himself as the beneficial owner of Renson Park. Fidepar's file notes record that he also brought eleven declarations of trust to be signed by the directors of Renson Park, nine with Mr Keane and two with Keane Battersea Limited. Mr Donnellan then collected those eleven declarations of trust (now signed by the directors of Renson Park) on 23 August 2013.
251. In his witness statement, Mr Donnellan described those declarations of trust as having been executed at Mr Ward's request by Mr Keane "with me [Mr

Donnellan] over his legal interests at Creative House, to cover the possibility of his [Mr Keane's] death". Mr Donnellan said that Mr Ward was concerned that without such trust deeds, Mr Keane's legal interests would fall into his estate if he died and was concerned about this because of what Mr Donnellan called Mr Keane's "problematic purchase of Manor Road" (addressed below).

252. The Declarations of Trust in the trial bundle are as follows:
- a. Declarations of trust dated 16 September 2013 by Mr Keane declaring that Mr Keane holds Flats 13 and 14 on trust for Renson Park.
 - b. Declarations of trust dated 16 September 2013 by Mr Keane declaring that Mr Keane holds Flats 10, 11, 13, 14, 15, 16, 17 and 18 and the Ground Floor Office in Creative House on trust for Mr Donnellan.
253. It follows from Fidepar's file note that there were in fact trust deeds in favour of Renson Park for all of Flats 10, 11, 13, 14, 15, 16, 17 and 18 and the Ground Floor Office in Creative House (not just Flats 13 and 14), because it records nine declarations of trust with Mr Keane. This was the position stated in Mr Ward's witness statement and put to Mr Donnellan in cross-examination and it was not disputed.
254. Mr Polli KC put to Mr Donnellan in cross-examination that Mr Ward would never have agreed to Mr Keane declaring the properties were held on trust for Mr Donnellan and that Mr Donnellan's statement that the declarations of trust were asked for by Mr Ward was just not true. Mr Donnellan repeated his explanation that Mr Ward "wanted me to get the trust deeds signed either in Ebonair or my personal name in case there was any issue with Mr Keane dying. The same for Bobi Howard as well."
255. Mr Polli KC also put to Mr Donnellan that properties could not be held on trust for Renson Park and on trust for Mr Donnellan at the same time. Mr Donnellan said that it was "an either/or" and that the deeds "were there to protect the partnership if Mr Keane died and it would not go to his wife and children because we would have a major problem". Mr Polli KC put it to Mr Donnellan the "either/or" approach he described was not a proper way to manage affairs and that property could not be held on trust simultaneously for two people at the same time pursuant to two different trusts. Mr Donnellan appeared to accept it was "not right". He gave no explanation of why two different trusts were necessary if the aim was to deal with the question of what would happen on Mr Keane's death and to prevent the properties going into Mr Keane's estate. As set out later in this judgment, there was discussion at the time of the proposed sale of Creative House in 2016 of Mr Keane transferring his flats to Renson Park to avoid capital gains tax liabilities. I find that the use of "either/or" trust deeds is an example of Mr Donnellan's willingness to execute dishonest documents to try to avoid tax or legal requirements which he regards as unjustified or unduly technical.
256. I do not accept Mr Donnellan's evidence that Mr Ward proposed trust deeds by which Mr Keane declared he held his flats for Mr Donnellan and/or a

company wholly beneficially owned by Mr Donnellan. Mr Ward consistently demonstrated a concern about losing control of interests in Creative House and consistently acted to keep all the interests in the property within his sphere of influence (at the lowest). I do not consider it credible that Mr Ward would have proposed, or agreed to, Mr Keane declaring he held the flats for Mr Donnellan or a company wholly owned by Mr Donnellan. Further, no adequate explanation was given by the Donnellan Parties as to why, if the partnership was in existence as they contend, Mr Donnellan did not arrange for Mr Keane to declare that he held the flats on trust for the partnership. When Mr Donnellan was asked for an explanation in cross-examination, he said that Mr Keane would not have been prepared to do that after the falling out between Mr Ward and Mr Keane over Manor Road because Mr Ward would have “control” over Mr Keane, but that is inconsistent with the case advanced by Mr Donnellan and Mr Keane that Mr Keane did in fact at all material times hold his flats on trust for the partnership. Mr Donnellan also said in cross-examination that Mr Keane would not have been prepared to execute declarations of trust in favour of Ebonair, but that is inconsistent with the declaration of trust executed by Mr Keane in favour of Ebonair in respect of the shares in KWL in 2015 (see below).

The Manor Road Site

257. On 10 March 2013 Mr Keane and Mr Mills exchanged contracts for the purchase of 14 Manor Road, London SE25 4TA (“**Manor Road**”). Planning permission was not in place and Mr Donnellan had therefore advised Mr Keane not to go ahead. Nevertheless, after Mr Keane and Mr Mills exchanged contracts, Mr Donnellan helped Mr Keane with finance to develop the property (“**the Manor Road Development**”). West One offered finance if a charge was given over one of the flats at Creative House and if Mr Donnellan gave a personal guarantee. Mr Donnellan’s evidence was that Mr Ward agreed to give a charge over Flat 17 and it was registered in favour of West One. Mr Donnellan also said in cross-examination that he had provided a personal guarantee of the finance provided by West One, although he agreed that guarantee had not been disclosed.

258. In April 2014, the freehold title to Manor Road was registered to KWL.

259. The Donnellan Parties say that, although KWL was wholly owned by Mr Keane, at this point the alleged partnership between Mr Donnellan and Mr Ward acquired an interest in Manor Road because Mr Keane and the alleged partnership agreed that Mr Keane held his 100% shareholding in KWL on trust in the following proportions: Mr Keane 34%, Mr Donnellan 16.5% and Mr Ward 49.5% (i.e. Mr Keane 34% and the alleged partnership 66%).

260. The Ward Parties say that it was agreed between Mr Ward on behalf of CBA and Mr Donnellan on behalf of Mr Keane that Ebonair should fund the Manor Road project by way of a loan to CBA. They say it was agreed between Mr Donnellan, Mr Ward and Mr Keane that:

- a. Ebonair would lend money to CBA and CBA would use that money to invest in the Manor Road project by buying out Mr Mills’ interest;

- b. Mr Keane and CBA would buy out the interest which the Ward Parties understood Trevor Sharp had in the project;
 - c. Mr Ward would become involved as agent for CBA in order to protect the interests of CBA and Ebonair;
 - d. The Manor Road site would be held on trust for Mr Keane and CBA in the proportions in which they had and would contribute to the costs of its acquisition and development; and
 - e. CBA would be credited with all sums invested so far from Creative House.
261. Between 16 June 2014 and November 2015, Mr Ward sent Mr Donnellan a series of emails attaching spreadsheets showing the expenses of the Manor Road project.
262. The spreadsheet produced by Ms Howard in summer 2016 describes the investors as (a) “RK” (Mr Keane) and (b) “CBA equity” (a reference to Chelsea Bridge Apartments Limited). The Ward Parties say that CBA was used because it was VAT registered. The Donnellan Parties say that CBA was the main contractor for the Manor Road Development but not the counterparty to the agreement with Mr Keane. I address the question whether CBA was the second investor below, but at present refer to the second investor as “CBA” (reflecting the description in Ms Howard’s spreadsheet).
263. After various contributions by CBA to the Manor Road Development in 2013, on 9 April 2014 CBA advanced a further £200,000 to the Manor Road Development, which was used to repay Mr Mills his £200,000 outstanding loan, leaving Mr Keane and CBA as the only investors in the Manor Road Development.
264. Mr Donnellan also said that he and Mr Ward, having instructed architects and solicitors to assist, managed to resolve the planning issues: a Section 106 appeal in respect of the affordable housing requirement applicable to the property failed, but the affordable housing requirement was subsequently reduced by negotiation as reflected in a deed of variation dated 18 June 2014. That deed of variation records that West One Loan Limited was the mortgagee of the property.
265. On 22 June 2015, Mr Donnellan travelled to Geneva and provided to Fidepar a Declaration of Trust which had been executed by Mr Keane in order for it to be executed by the directors of Ebonair. The declaration recited that Mr Keane was sole legal owner of 100% of the shares in KWL and that Ebonair had contributed “the monies necessary for the funding of [KWL] and for the development of its properties”. As set out above, KWL was the registered proprietor of the Manor Road site from March 2014 onwards. By the deed, Mr Keane declared that he held his shares in KWL in trust for Ebonair. Fidepar had

that declaration of trust executed by the directors of Ebonair and returned it to Mr Donnellan on 23 July 2015.

266. Mr Donnellan's evidence was that by the end of September 2015 all the developed properties at Manor Road were sold or under offer, but that Mr Ward was unhappy with the extra tradesman costs incurred and was withholding supplier monies. By this time, Mr Keane and Mr Ward had fallen out, a dispute which was intended to be resolved in July / August 2016 by Ms Howard determining what was due (as set out further below).

Possession proceedings in respect of Flats 2, 3 and 4

267. Mr Donnellan's evidence was that in early September 2013 Mr Ward instructed Mr Donnellan to bring proceedings on behalf of Ebonair to foreclose on the loan said to be outstanding from Ebonair to Mrs Ward (pursuant to the alleged 2000 Loan Agreement) in relation to Flats 2, 3 and 4. In fact, the documents in the bundle show that Mr Donnellan instructed Hoffman-Bokaei solicitors to go ahead with the possession proceedings in respect of Flats 2, 3 and 4 on 23 July 2013. Mr Ward explained these proceedings in his witness statement by saying that he and Ms Hamieh discussed the large loan due from Mr and Mrs Ward to Ebonair in 2013 and decided that the value of the Flats 2, 3 and 4 meant that "it made no sense to carry on discharging mortgages" on those flats. Mr Ward said that he suggested to Ms Hamieh that she (i.e. Ebonair) could take those three flats in part settlement of the debt and Ms Hamieh agreed, so Mr Donnellan was instructed to deal with the proceedings as agent of Ebonair because Mr Ward could not act against his wife.

268. I note that this evidence presents a very different picture to that pleaded in Mr Ward's Amended Defence (verified by a Statement of Truth signed by Mr Ward), in which it is alleged that Ms Hamieh and/or Mr Khawaja were by 2013 "in the thrall of [Mr Donnellan]" who was therefore in practice in control of Ebonair and that he caused Ebonair to commence the proceedings in respect of Flats 2, 3 and 4. Mr Ward's Amended Defence alleged that Mr and Mrs Ward "were furious with what [Mr Donnellan] was causing [Ebonair] to do" but that there was nothing they could do to resist.

269. A witness statement made by Mr Donnellan in those proceedings dated 14 October 2013 was in the trial bundle. In making that witness statement, as agent of Ebonair, Mr Donnellan relied on and exhibited the 2000 Loan Agreement. He stated that Ebonair had registered a charge on each of Flats 2, 3 and 4 on 10 January 2011. (The circumstances in which those charges were registered in favour of Ebonair are summarised above.) Mr Donnellan then stated that Mrs Ward had not made any payments since January 2013 and that Mr Donnellan had, on behalf of Ebonair, requested payments since February 2013 for the whole of the loan amount but those communications and requests for payment had been ignored. The exhibit was said to include those requests for payment (as well as the 2000 Loan Agreement and the 10 January 2011 charge). The full exhibit was not included in the bundle for this trial.

270. Mr Donnellan's evidence was that he had relied on what Mr Ward told him about the 2000 Loan Agreement at the time. The evidence set out in his witness statement, which he asserted was correct in cross-examination, was as follows:

"Mr Ward had told me that his wholly owned company Ebonair had loaned himself and Mrs Ward the sum of £1.85M in July 2000 from funds ultimately provided from his father's estate in Iraq. Mr Ward told me those funds that were used [sic] to invest in Mr Ward's various property developments.

"Mr Ward explained that the charges were secured over all of Mrs Ward's properties to protect his investment in case his wife left him due to his mistress Ms Dorobat being known to her.

"Mr Ward provided a purported loan account statement for Ebonair which set out the outstanding loan balance and alleged interest payments made by Mrs Ward. However, this must be a work of fiction as Mr Utip [an English solicitor who has held a power of attorney for Ebonair since August 2016] has now stated that Ebonair does not have and never has had a bank account in any jurisdiction.

"On 17 September 2013 Hoffman Bokaei Solicitors drafted a witness statement for me to sign outlining a claim against Mrs Ward, for the recovery of loaned monies against her properties based upon the loan account statement provided by Mr Ward.

"Mr Ward confirmed to me that the witness statement drafted by Hoffman Bokaei was a true reflection of the loan agreement between himself, his wife and Ebonair.

"Mrs Ward did not contest the application and an order was obtained through the Court for Ebonair to sell Mrs Ward's properties."

271. The Ward Parties put to Mr Donnellan in cross-examination that there would have been no need for these possession proceedings if (as is Mr Donnellan's case) Mrs Ward held all her flats in Creative House on trust for Mr Ward, because Mr Ward could simply have required her to hand the flats back to Mr Ward and/or Ebonair. Mr Donnellan said no, the issue was that Bank of Scotland held second charges over Flats 2, 3 and 4 and so if the properties had been transferred by Mrs Ward to Ebonair, Bank of Scotland would have wanted the sum due to it, which he was told was about £1m. Mr Polli KC put to him that that was not the case because the second chargee would take the surplus of the proceeds of sale after payment to the first chargee. Mr Donnellan said that that was not the case because "if the money, if Ebonair foreclose on their charge and this is the most important thing ... So you pay off the main lender, yes, and then the money never went to the Bank of Scotland because it was a repossession". Mr Donnellan also said in cross-examination that the reason for the possession proceedings by Ebonair was really to protect Mr Ward's position with the Joint Trustees.

272. I understand Mr Donnellan's point on the Bank of Scotland to be that because Ebonair claimed to be owed considerably more than the value of the properties, then if Ebonair were the first chargee, there would be no sums remaining after payment to Ebonair, because the sums due to Ebonair would have been said to be greater than the value of the flats themselves. However,

that does not appear to have been the case in respect of these flats. Bank of Scotland had a first charge on the flats and therefore had to be paid before any sums were paid to Ebonair, as reflected in the completion statements for the sale of Flats 2, 3 and 4 in June and July 2014, which show that Bank of Scotland was paid from the sale proceeds before any balance was available to be paid out on instructions from Ebonair.

273. The Ward Parties submitted in closing that Mr Donnellan's evidence that by repossessing Flats 2, 3 and 4 and exercising its power of sale, Ebonair was able to avoid the need to pay Mrs Ward's mortgagee any part of the proceeds of sale was "obviously nonsense". For the reasons set out above, it seems to me that Mr Donnellan's point was not "nonsense" but that he was seeking to make a point against the Ward Parties' case that is not available on the facts. Ebonair had to pay Bank of Scotland in respect of its charges on Flats 2, 3 and 4 before becoming entitled to the sale proceeds. Mr Donnellan's point, therefore, is no answer to the Ward Parties' point that the possession proceedings were unnecessary if Mrs Ward held her flats as a nominee for Mr Ward.

274. There is, however, substance in Mr Donnellan's other response in cross-examination to the Ward Parties' point (the Ward Parties' point being that if Mrs Ward held as a nominee, there was no need for court proceedings because Mr Ward could simply have directed her to transfer the flats to him or Ebonair). Mr Donnellan's response was that the fact Ebonair sold these properties pursuant to an exercise of its power of sale following court proceedings may have helped to protect the transactions from further investigation by the Joint Trustees. A straightforward transfer of Flats 2, 3 and 4 to Mr Ward (or Ebonair) by Mrs Ward, followed by a sale for the benefit of Mr Ward (or Ebonair), would be more vulnerable to scrutiny than a sale following court proceedings brought by Ebonair as a purported creditor of Mrs Ward and chargee of her flats.

Ms Howard's purchase of Flats 2, 3 and 4

275. The Donnellan Parties say that there was a meeting between Mr Ward, Mr Donnellan and Ms Howard at a pub in Tadworth, Surrey in 2014. The Donnellan Parties pleaded that that meeting took place in May 2014. The evidence of Mr Donnellan and Ms Howard was that it in fact took place in February or March 2014. Mr Donnellan's evidence was that at that meeting Mr Ward asked Ms Howard if she would become the legal owner of Flats 2, 3 and 4 (the flats obtained by Ebonair by the proceedings against Mrs Ward) until planning in respect of the redevelopment of Creative House was completed, which Mr Ward said would take approximately 2 years. Ms Howard and Mr Donnellan say that Mr Donnellan spoke to Ms Howard after the meeting and said that he would be happy to pay her £300,000 (from what Mr Donnellan says is his own 25% interest) at the end of the two years when planning was secured and they were ready to develop.

276. Both Mr Donnellan and Ms Howard say that at that meeting Mr Ward confirmed the existence and terms of the partnership alleged by Mr Donnellan, including stating that Mr Ward owned 75% of Creative House and Mr Donnellan owned 25%. Mr Ward denies that the meeting took place or that he

had any direct dealings with Ms Howard in relation to her acting as nominee. He said that Mr Donnellan told him that what was proposed was the same as in respect of Mr Keane.

277. It is not disputed that it was agreed that Ms Howard would become the legal owner and mortgagee of Flats 2, 3 and 4, on terms that she would be paid the sums required to make the mortgage interest payments. She was also paid 3 months' contingency funds, totalling £9,351.79.

278. It is common ground that Luxap did in fact make payments in respect of the mortgage instalments until July 2022. Ms Howard made payments from her own funds after that but stopped making payments in January 2023 as she could no longer afford to do so.

279. The Land Registry transfer records that on 20 June 2014, Flat 3 was transferred by Ebonair, acting under the power of sale in its charge of 10 January 2011, to Ms Howard. The completion statement for the sale by Ebonair of Flat 3 shows a completion date of 20 June 2014 and a sale price of £500,000 which, after payment to redeem Bank of Scotland's first charge of £220,086.80 and of Hoffman Bokaei's fees of £1,254, left £278,659.20 payable to Ebonair. The completion statement records that that £278,659.20 was paid out as follows:

- a. £190,000 to Mr Ian Keen (Ms Howard's father) on 23 June 2014;
- b. £30,000 to N.E. Gamel (said by Mr Donnellan to be Mr Utip's ex-girlfriend or wife);
- c. £50,000 to Chelsea Bridge Apartments Limited; and
- d. £8,659.20 to Mr Donnellan (as part of a larger transfer of £25,000).

280. The Land Registry transfer records that on 27 June 2014, Flat 4 was transferred by Ebonair, acting under the power of sale in its charge of 10 January 2011, to Ms Howard. The completion statement for the sale by Ebonair of Flat 4 shows a completion date of 27 June 2014 and a sale price of £500,000 which, after payment to redeem Bank of Scotland's first charge of £254,319.21 and of Hoffman Bokaei's fees of £1,254, left £244,426.79 payable to Ebonair. The completion statement records that that £244,426.79 was paid out to Mr Ian Keen on 27 June 2014.

281. The Land Registry transfer records that on 8 July 2014, Flat 2 was transferred by Ebonair, acting under the power of sale in its charge of 10 January 2011, to Ms Howard. The completion statement for the sale by Ebonair of Flat 2 shows a completion date of 8 July 2014 and a sale price of £500,000, which after payment to redeem Bank of Scotland's first charge of £216,810.54 and of Hoffman Bokaei's fees of £1,254, left £281,935.46 payable to Ebonair. The completion statement records that that £281,935.46 was paid out as follows:

- a. £16,340.80 to Mr Donnellan (as the balance of a total transfer of £25,000);

- b. £141,558.75 to Chelsea Bridge Apartments (in 4 separate payments);
- c. £50,000 to N.E.Gamel;
- d. Another £30,000 to Mr Donnellan;
- e. £20,000 to Sarah Scanlon;
- f. £21,390.02 to “Ricky Keane P/O 7 Norbury Road, Thornton Heath”;
- g. £1,003.61 in an additional interest payment to Bank of Scotland; and
- h. £1,642.28 applied to discharge Hoffman Bokaei’s costs of the possession proceedings.

282. Ms Howard and Mr Donnellan executed deeds of trust for each of the flats by which Ms Howard declared that she held each of Flats 2, 3 and 4 in trust for Mr Donnellan. Mr Donnellan in turn covenanted with Ms Howard that as long as the flats were vested in her name, he would discharge all outgoings related to them and would indemnify her in respect of all costs, expenses, liabilities or demands arising out of or in any way connected with the ownership of those flats. No party relies on these trust deeds. Ms Howard explained in her witness statement that she was told by Mr Donnellan that the trust deeds would only be used in the event of Ms Howard’s death, and that the reason why they were granted in favour of Mr Donnellan alone (rather than Mr Donnellan and Mr Ward as the partners in the partnership for which she understood she was holding the flats) was so that her family would only have to deal with Mr Donnellan in the event of her death. Ms Howard was asked whether the idea that, as far as the outside world was concerned, the trust deeds would not exist unless she died, did not strike her as a dishonest pretence, but Ms Howard said no, because Mr Donnellan and Mr Ward knew that she would have no issue in handing the flats over to them in two years’ time when they got planning permission for the redevelopment of Creative House.

The transactions involving Mr Keen

283. The fact that funds were transferred from Ebonair to Mr Ian Keen (Ms Howard’s father) led to claims being made in these proceedings by Ebonair against Mr Keen. The claims were for accounts and enquiries as to what happened to the total sum of £684,426.79 said to have been paid to Mr Keen. The Part 20 claim against Mr Keen also originally sought judgment against Mr Keen in the sum of £684,426.79 but leave to remove the claim for judgment in that particular sum was given by a consent order dated 19 November 2020.

284. Mr Keen’s Defence to the Part 20 Claim does not deny the receipt of the payments alleged in the total sum of £684,426.79. The third expert report of Mr Haddow records Mr Keen as having received (and paid away) only £434,426.79 (i.e. the total of the two payments to Mr Keen recorded on the Hoffman Bokaei completion statements referred to above).

285. The trial bundle also contains an email from Mr Hoffman of Hoffman Bokaei to Mr Donnellan dated 1 May 2014 recording a payment to Mr Keen of £250,000 on 24 March 2014. That, added to the £434,426.79, produces the total pleaded by Ebonair. Mr Haddow's spreadsheet setting out the payments in and out of Mr Keen's bank account show the receipt of £250,000 on 24 March 2014 from Hoffman Bokaei (reference Donnellan) and then shows that sum being paid out of Mr Keen's bank account by two cheques, one for £130,000 on 2 April 2014 and one for £120,000 on 8 April 2014. Mr Haddow's spreadsheet for Ms Howard's bank statement ending in digits 6363 shows a credit of £130,000 on 31 March 2014 and a credit of £120,000 on 4 April 2014. On 12 June 2014, a payment of £250,000 was made from that bank account of Ms Howard's to Wilson Barca.
286. The bundle contains an email dated 23 June 2014 from Mr Donnellan to Hoffman Bokaei instructing a payment of £190,000 to Mr Keen (the payment recorded in Hoffman Bokaei's completion statement for Flat 3 as having been made on 23 June 2014).
287. It was not disputed by the Ward Parties at trial that the sums that were received by Mr Keen were received by him in order for him to transfer them on to his daughter, Ms Howard, for the purpose of her "purchase" of Flats 2, 3 and 4 and that the sums he received were transferred on. Mr Donnellan agreed with Mr Polli KC in cross-examination that the reason why the funds were paid through Mr Keen's account to Ms Howard was that mortgage lenders want to know where deposit monies have come from and that mortgage lenders "do not really query it" if it looks like the money for a deposit has been gifted by a parent. Mr Polli KC put to Mr Donnellan that that was why the money had to go via Mr Keen, and Mr Donnellan agreed, "Yes, of course".
288. Mr Keen was unable to attend trial because of serious ill-health.
289. In cross-examination of Ms Howard, Mr Polli KC sought to make the point that the Defence to the Part 20 Claim pleaded on behalf of Mr Keen was taking a position on the issues in the case on the basis of what he had been told by Mr Donnellan. The key paragraphs of the Defence to the claim pleaded against Mr Keen are as follows:

"Paragraph 31 is denied. Mr IW Keen has been told by Mr Donnellan and believes that Ebonair was at all material times aware through its beneficial owner Mr Ward of each of the said payments, which were made with its knowledge and consent. Mr IW Keen's sole involvement in the events giving rise to these proceedings has been to receive the monies alleged and to forward them to his daughter Ms Howard in connection with her acquisition of Flats 2, 3 and 4 Creative House. Mr IW Keen believes from Mr Donnellan and Ms Howard that the same was done with the consent of Ebonair and its beneficial owner, Mr Ward.

"Mr IW Keen avers that, as he believes Ebonair and its beneficial owner Mr Ward know and knew, both at the time and throughout the time since,

he, Mr IW Keen, has retained none of the said sums as has been demonstrated to Ebonair by the provision, (after the issue of the Part 20 Claim) to its solicitors of both his bank accounts and those of Ms Howard for the relevant period.”

290. This does not, in my judgment, involve Mr Keen taking any active position beyond stating that he received the relevant payments and forwarded them to his daughter in connection with her acquisition of Flats 2, 3 and 4. It is clearly stated that his belief as to Ebonair’s knowledge or consent is based on what he has been told by Mr Donnellan and Ms Howard.

291. I find that the funds Mr Keen received were all transferred on to his daughter, Ms Howard, and that there is no basis on which any further accounts or enquiries are required in respect of the payments totalling £684,426.79 received by Mr Keen. The claim against him will accordingly be dismissed.

Highfield Hill and Chronicle Heights

292. Old Street Homes Limited (“**OSH**”, a company wholly owned by Mr Donnellan) acquired property at 16 Highfield Hill, London SE19 39S (“**Highfield Hill**”), on a date between March and May 2015 (the Donnellan Parties say it was acquired in May 2015 and the Ward Parties say it was on 20 March 2015). On 31 March 2015, Mr Ward emailed a Paul Brettel about that property, copying Mr Donnellan and saying “After a lengthy discussion with Tony yesterday, we decided on the 3 detached houses scheme and to submit without a pre app.”

293. It is common ground that OSH acquired the freehold of the former Cricklewood Library, at 152 Olive Road (“**Chronicle Heights**”) on 29 April 2015.

294. As with the Manor Road Development, the parties disagree as to whether the agreement to develop Chronicle Heights and Highfield Hill was between Mr Keane and the alleged partnership between Mr Ward and Mr Donnellan (as the Donnellan Parties contend), or between Mr Keane, with Mr Donnellan acting as his agent, and CBA, with Mr Ward acting as its agent (as the Ward Parties contend).

295. In June 2015, Mr Ward and Mr Donnellan were involved in discussions with architects and designers about Chronicle Heights. On 6 June 2015, Mr Ward emailed Ms Howard attaching expenses spreadsheets for Highfield Hill and Chronicle Heights, saying “these expenses are up to date”. On 7 June 2015, Mr Ward emailed the completion statement for Chronicle Heights (from April 2015) to Ms Howard, copying Mr Donnellan.

296. Between July 2015 and May 2016, Mr Ward sent Mr Donnellan a series of emails attaching spreadsheets apparently showing the expenses of the Chronicle Heights project.

297. On 28 December 2015, Mr Ward sent to Mr Donnellan an email setting out expenses and profit calculations for Highfield Hill.
298. On 7 March 2016, Mr Donnellan sent Mr Ward a statement of account headed “Extension of Loan to Old Street Homes”.

Proposed Sale of Creative House

299. Mr Donnellan’s evidence was that in June 2015, he and Mr Ward decided to sell Creative House and that they met Tom Scaife of Knight Frank to discuss the sale, after which Mr Scaife sent Mr Donnellan his proposed terms for the sale of Creative House, on the basis of Mr Scaife’s view that a price of more than £20 million could be achieved. There is a Fidepar memo recording that on 27 July 2015, proof of identity for the directors of Ebonair were sent directly to Mr Scaife.
300. On 26 June 2015, there was an exchange of emails between estate agents and property developers and Mr Ward about meeting “the owner at Battersea” (i.e. at Creative House). Mr Ward then forwarded those emails fixing a time for the meeting to Mr Donnellan.
301. In July 2015, emails were being sent to Mr Ward about the sale of Creative House, with Mr Ward forwarding those emails on to Mr Donnellan and on occasion asking him to sort out various requests for documents being made, apparently in relation to proposed offers for the site. Mr Ward was also emailing Mr Donnellan separately to discuss the proposed sale. By September, emails from the agents were being sent to Mr Ward and Mr Donnellan.
302. On 15 September 2015, Mr Donnellan was granted a general power of attorney for Ebonair. Mr Ward’s evidence was that this was in order that Mr Donnellan would be able to sign on Ebonair’s behalf the transfers necessary when Creative House was sold. Mr Ward did not give evidence about why he was not given the power of attorney. It seems most likely that Mr Ward remained keen to avoid a connection being made between Mr Ward and Ebonair by anyone investigating his affairs.
303. The proposed sale also required a transfer of the Freehold of Creative House from Fadi Braiteh (holding on behalf of Ebonair) to Ebonair. That transfer of the Freehold to Ebonair was registered on 23 September 2015.

Immobilisation of Ebonair’s shares

304. In June 2015, Fidepar notified Mr Donnellan (as set out above, between May 2013 and August 2016 Fidepar contacted Mr Donnellan and not Mr Ward in respect of Ebonair) that a new Panamanian law imposed new requirements in respect of bearer shares, and set out the three possible options. Mr Donnellan chose the conversion of bearer shares to registered shares issued in the name of a nominee company of Fidepar’s. Fidepar had offered that option as allowing Fidepar “to reinforce the confidentiality of the beneficial owner’s identity”.

305. On 15 October 2015 the bearer share in Ebonair was cancelled and a share certificate was issued certifying that Sunwell Holding Corp. held the entire share capital of Ebonair (100 shares with a par value of USD 100 each).
306. On 5 November 2015, Global Holding Group SA executed a trust declaration acknowledging and declaring that Sunwell Holding Corp. acted as nominee shareholder of Ebonair for and on behalf of Mr Fawzi Khawaja as the beneficial owner of 100% of Ebonair and therefore held the share certificate for Ebonair on trust for Mr Khawaja. According to a memo from Fidepar dated 17 November 2015, that trust declaration was provided to Mr Donnellan on 17 November 2015. Mr Donnellan was asked about this document by Mr Polli KC in cross-examination, and said he did it because it was what Mr Ward asked him to do and that Mr Ward told Mr Donnellan at the time it would not make any difference to their partnership agreement. Mr Donnellan said he believed Mr Ward “because I had the ... Sorry, not ‘I’, we had the flats of Ricky [Mr Keane] and Bobi [Ms Howard]. I would not have surrendered those leases until we got paid. It wouldn’t matter to me what this was.”

Offer from Medina Investments for Creative House

307. On 15 June 2016 there was an exchange of emails between Mr Armstrong of Ideal Land and Mr Ward and Mr Donnellan about Saqib Butt of Medina Investments, a potential purchaser for Creative House.
308. On 28 June 2016, Mr Donnellan (using his power of attorney for Ebonair) executed a mortgage over the freehold of Creative House giving Mr and Mrs Mills a charge in respect of a loan of £500,000 said to have been made by them to Ebonair. Mr Donnellan’s signature was witnessed by Ms Howard. It is not disputed that Mr Ward was unaware of this charge at the time it was granted.
309. Emails about the potential sale of Creative House to Medina Investments continued from 29 June 2016 and it is common ground between the parties that on 6 July 2016, Medina Investments offered to purchase Creative House for £20 million. It is also common ground that that offer was accepted: Mr Donnellan says by the partnership, and Mr Ward and Ebonair say by Ebonair. The parties agree that the sale subsequently fell through due to disagreements between Mr Donnellan on the one hand and Mr Ward and Ebonair on the other.
310. The evidence was that the terms of the offer included a £800,000 non-refundable deposit to be paid on exchange of contracts, and then delayed completion while planning permission was obtained.
311. The emails in respect of this offer show that what was envisaged was that Ms Howard, Mr Keane, Mrs Ward and Ms Dorobat would all surrender (or transfer) their leases, so that the entire freehold of Creative House could then be sold to Medina. The charges over the flats held by Ms Howard and Mr Keane would be redeemed from the proceeds of sale of the freehold. There were concerns on both sides (i.e. from Mr Donnellan and Mr Ward) as to whether the registered owners of the various properties would cooperate in the sale as planned and how much any party registered as the owner of an interest in

Creative House would have to be paid from the overall sale proceeds, and it seems to have been these disagreements which led to the sale to Medina Investments falling through.

312. Mr Ward appears to have learned of the charge over the freehold of Creative House in favour of Mr and Mrs Mills on or shortly before 19 July 2016. Mr Donnellan's evidence was that Mr Ward was "extremely agitated" when Mr Donnellan and Mr Ward met that day and Mr Ward asked Mr Donnellan about the charge. Mr Donnellan's evidence was that he asked Mr Ward why he was concerned about the charge given that the funds lent by Mr and Mrs Mills were owed by both Mr Ward and Mr Donnellan, and Mr Ward replied that Mr Donnellan was "devious" and had "outmanoeuvred him" at Creative House.
313. Mr Ward said in cross-examination that he learned in July 2016 that (a) Mr Donnellan had given a charge over Creative House to Mr Mills, (b) Renson Park did not belong to Ebonair but to Mr Donnellan, and (c) all the flats held by Mr Keane as nominee were said to be held by him for Renson Park, and that his conclusion was that "We are in trouble because those guys are going to grab the flats and go." This evidence was in part contradicted by what was stated in his witness statement, which was that he only learnt of the existence of the Declarations of Trust by which Mr Keane declared he held his flats for Renson Park in 2019 (when two Declarations of Trust were disclosed in response to a Part 18 request), but I accept that Mr Ward concluded his (or Ebonair's) interest in Creative House was at risk when he learnt of the charge given to Mr and Mrs Mills.
314. Mr Ward's pleaded case in the Arbitration Proceedings is that the sale of Creative House to Medina did not proceed because (a) he (and through him, Ebonair) learnt of the charge granted by Mr Donnellan to Mr and Mrs Mills over Ebonair's freehold interest in Creative House; and (b) Mr Donnellan indicated that he would only agree to Ms Howard and Mr Keane surrendering the leases of the flats they held if they received a large sum of money from the proceeds of sale. Mr Keane's Reply is that he has been told by Mr Donnellan that Mr Donnellan made no demand for the payment of a substantial sum of money to Ms Howard and Mr Keane, because Mr Donnellan was due to receive a 25% share of the purchase price and that (as between Mr Donnellan and Mr Keane), Mr Keane would receive half of that 25%.
315. On 8 August 2016, the power of attorney given to Mr Donnellan on behalf of Ebonair was revoked. It appears from an email of 13 September 2016 from Ms Benoit of Ebonair to Mr Donnellan that Mr Donnellan rang Fidepar to ask about the power of attorney on 13 September 2016 and that Ms Benoit confirmed the revocation by their email of that day, copied to Mr Utip. Ms Benoit stated in that email that if Mr Donnellan wanted any further information, he should contact Mr Utip who had been "hired by the UBO" of Ebonair.
316. Meetings took place between Mr Donnellan, Mr Ward, Mr Keane, Ms Howard and others on 9, 16 and 22 August 2016. As I have set out above, recordings of at least parts of those meetings were made and incomplete recordings of parts of those meetings were disclosed in these proceedings.

317. It is clear from the extracts of the 9 August 2016 meeting that Mr Ward had not known at the time about the charge put on Creative House to secure the loan made by Mr Mills. During the meeting Mr Keane and Mr Donnellan accepted, with hindsight, that Mr Ward should have been told at the time and apologised for not telling him, but said that the charge caused no harm because Mr Mills' loan had to be repaid in any event. Mr Ward agreed that Mr Mills had to be, and said he would be, repaid.
318. It appears from the recordings that during the 9 August 2016 meeting, Mr Donnellan claimed that Mr Keane would have to surrender his leases to Renson Park to avoid substantial capital gains tax liabilities. He said that whereas Ms Howard had purchased her leases for £500,000 each and could surrender them at that value, the leases held by Mr Keane had increased significantly in value since he purchased them. Mr Donnellan then said Renson Park would in turn surrender the leases to Medina, and Mr Ward said, or to Ebonair.
319. During the 16 August 2016 meeting, the Donnellan Parties say that Mr Ward asked Ms Howard to act as mediator to resolve the dispute between Mr Keane and Mr Ward as to how much was owed to Mr Keane and she agreed to do so. Mr Ward's evidence was that the proposal was for Ms Howard to prepare an account for the Manor Road Development to calculate what was due in respect of that project as between Mr Keane and CBA.
320. On 17 August 2016, Ms Howard sent a text message to Mr Ward and Mr Keane as follows:
- “I'm going to draw up an agreement for you both to sign on Monday that you both agree to this arbitration process so that we can reach some agreement and close this off. To be honest my initial reaction was not to do this as I don't want to get caught in any crossfire between you. However, if I can help solve this situation I will do it. I'm going to be completely fair and go through my numbers with you, giving you time to challenge and present additional information / evidence for me to take away to consider. I will then present my final findings to you both. Thank you.”
321. On 20 and 22 August 2016, there was an exchange of text messages between Ms Howard and Mr Ward in which, among other things, Mr Ward asked Ms Howard to take into account the £69,000 he believed had been taken out by Mr Donnellan. Ms Howard replied “Any deal between you and Tony is a separate matter. I am only concerning [sic] my arbitration to you and Ricky.”
322. Ms Howard produced a written agreement to be signed by Mr Keane and Mr Ward. Mr Ward signed a counterpart on 22 August 2016 and Mr Keane signed a counterpart on 6 September 2016. Mr Keane says that that written agreement satisfies the requirements of section 5 of the Arbitration Act 1996.

323. On 30 August 2016 (i.e. before Mr Keane signed what he alleges to be the arbitration agreement) Ms Howard circulated a spreadsheet with her draft calculations. The email attaching that spreadsheet included the following text:

“Please see attached final file in respect of the request for a fair calculation of payment for Ricky’s investment in Manor Road, Norbury Road, and funds that he paid towards Battersea works. The bottom line number for Ricky is circa £460k, including the agreed 18% interest.”

324. The spreadsheet sets out the contributions to, and expenses of, the Manor Road Development and then a division of profits. The spreadsheet was available at trial in the format in which it was circulated (an Excel spreadsheet) and it is apparent from the spreadsheet that the 34%/66% split between the investors RK and CBA is the result of a calculation of the proportionate contributions made by RK on the one hand and CBA on the other.

325. On 28 September 2016, Ms Howard sent an email to Mr Keane and Mr Ward with the subject, “Fw: Final arbitration file Manor Road / Norbury Road”. The email stated as follows:

“Good afternoon Ali and Ricky,
I have returned from my break and I am pleased to say that I have now received a signed copy of the Arbitration Agreement from Ricky.
I have attached copies of both agreements and the final file for you both.
My file is now closed
Kind regards,
Bobi”

326. Mr Keane says that this constituted Ms Howard publishing her final award pursuant to the arbitration agreement.

327. The sum shown as payable to Mr Keane on Ms Howard’s spreadsheet (no changes were made to the spreadsheet circulated on 30 August 2016 before it was circulated as the final version on 28 September 2016) is £459,596. Mr Keane’s claim against Mr Ward is for 75% of that sum, on the basis of a pleaded allegation that the “business relationship between Mr Ward and Mr Donnellan was one in which their interests were divided 75%/25% in Mr Ward’s favour” and that Mr Keane has reached agreement with Mr Donnellan to secure payment of such amount as is due from him under the alleged award.

328. The wording of the agreement said to constitute the binding arbitration agreement is as follows:

“Arbitration Agreement

The undersigned hereby consents to voluntarily agree to submit any dispute with Ricky Keane and Alan Ward to final and binding arbitration.

You agree that any and all controversies, claims, or disputes arising out of, relating to or concerning any interpretation, construction, performance or breach of the Manor Road agreement by and between you and the company entered into as of 1st April 2014.

You further consent that any arbitration will be administered by Bobi Howard for the sum of £200.

You also agree that the arbitrator shall have the power to award any remedies applicable following investigation.

The decision of the arbitrator shall be final, conclusive and binding on the parties of arbitration.

You acknowledge and agree that you are executing this agreement voluntarily and without any duress and undue influence by company or anyone else.”

329. It was signed by Mr Ward, whose name is written underneath his signature, together with the date he signed (22 August 2016), and by Mr Keane, whose name is likewise written underneath his signature, together with the date he signed (6 September 2016).

THE ISSUES

330. The main issue at trial was whether Mr Donnellan and Mr Ward agreed to enter into a partnership or joint venture to carry on the business of developing Creative House and other properties. Mr Donnellan’s case is that the partnership was for the redevelopment of Creative House and such other properties as he and Mr Ward might in due course acquire and/or develop, and that the whole of Creative House was an asset of the partnership, with profits being shared 25% for Mr Donnellan and 75% for Mr Ward.

331. One of the main points made by the Ward Parties in denying that claim is that Mr Ward did not own any interest in Creative House by early 2012 (the time the partnership is alleged to have been agreed), so could not have reached any such agreement. I therefore start by considering who owned the various interests in Creative House at the relevant time.

The Ownership of Creative House

The Freehold and Ebonair

332. Ebonair is the current registered freehold owner of Creative House, having been registered as owner when the Freehold was transferred to it by Fadi Braiteh on 23 September 2015 (Fadi having held that interest for Ebonair since it was transferred to him in 2010).
333. The Donnellan Parties’ case is that Mr Ward is and was at all relevant times the beneficial owner of Ebonair and is (and was in 2012) therefore ultimately

beneficially entitled to the Freehold. They say Ebonair is used by Mr Ward as a way of hiding his assets, in particular from his trustees in bankruptcy.

334. On the Ward Parties' case there is much that is at best unclear about the ownership and control of Ebonair. They say that it is a vehicle for an undisclosed number of mostly unidentified wealthy individuals in Lebanon to invest their money outside Lebanon. The group is said to be an informal one made up of close friends and family who socialise together. The ownership structure is said to be deliberately opaque because it is said the unstable situation in Lebanon makes it dangerous for any individual to be identifiable there as wealthy. Mr Khawaja, a man of no personal wealth, is said to act as the nominee shareholder in Ebonair, on behalf of the Lebanese group of investors in order to protect their identities.
335. The Donnellan Parties submitted that this account of Ebonair's ultimate ownership is inherently incredible. It does not seem to me that this account is so incredible that it can simply be rejected on that basis alone.
336. However, I see no reason why evidence of the existence of the other investors who are said to be ultimately interested in Ebonair could not be provided in these proceedings. Given the significance as an issue in these proceedings of the ownership of Ebonair, which is a party to and represented in these proceedings, the complete absence of any evidence of or information about the ultimate interests in Ebonair weighs against the credibility of the Ward Parties' case on this issue.
337. The Donnellan Parties' written closing submissions argued that if the Court considered Ebonair to be an entity separate from Mr Ward, then it would need to satisfy itself that Ebonair was properly represented in these proceedings. The submission made (in writing only) was that in the absence of documentary evidence such as apostilled minutes of a meeting of Ebonair's Board of Directors, the Court should conclude Ebonair's directors have not duly authorised the pursuit of the claims made by Ebonair and the defence of the claims made against Ebonair at this trial, and that Ebonair's Defence should be struck out. No such issue was identified in the List of Issues agreed between the parties for trial and the issue is unpleaded and was accordingly not an issue on which disclosure was ordered or evidence given. I do not therefore address it further in this judgment. The trial before me proceeded on the basis that Ebonair was represented by Leading and Junior Counsel (Mr Polli KC and Mr Hammond) instructed by Awan Legal Associates Ltd.
338. The evidence given by Ms Hamieh that there are no written records at all recording the interests in Ebonair or the performance of its assets, despite the value of the sums invested and the fact (on Ms Hamieh's evidence) that the investors have received no dividends at any point during Ebonair's existence, is not credible. There has been no disclosure (beyond the few specific documents referred to above) that would support the Ward Parties' case as to the independent existence of Ebonair as an investment company ultimately owned by Ms Hamieh and her group of investors. The Ward Parties explain the absence of bank records by saying that Ebonair has no bank account in any jurisdiction

and this was not challenged by the Donnellan Parties (although the Fidepar Note dated 8 November 2021 records visits of Mr Ward to Geneva to open a bank account for Ebonair with Credit Suisse Geneva on 2 December 2009 and 15 April 2010).

339. As I have recorded in this judgment, there are a number of documents and other evidence which make clear that Mr Ward declared himself to be the beneficial owner of Ebonair at various times, including when Fidepar was engaged as Ebonair's agent in 2009 (information that was not corrected until 2013), and when Ebonair borrowed from Handf Finance in 2011.
340. For the reasons I have set out above, I have found that the 2000 Loan Agreement and the Deed of Variation are shams created for the purpose of hiding assets from Mr Ward's trustees in bankruptcy. This provides reason to consider that Ebonair is beneficially owned and/or controlled by Mr Ward: if Mr Ward did not control Ebonair, he could not have the documents created and/or supported by its apparent owners, and if he was not beneficially interested in Ebonair, there would be no value to him in using those documents to transfer valuable assets to Ebonair. That was what I have found Mr Ward did by the transfers of interests in Creative House, initially in 2010 to Fadi Braiteh holding for Ebonair. As set out above, Ebonair took advice from tax counsel in 2013 in light of the "huge profit" Ebonair had made on the transfers in Creative House to Mr Keane, and it is common ground that any ultimate sale of the entirety of Creative House has at all material times been expected to generate substantial profits for all those beneficially entitled to interests in Creative House at the time of any sale.
341. Further, the fact that after the transfer of Creative Constructions' interests in Creative House to Ebonair (which Mr Ward says he has no financial interest in), Mr Ward continued to work to increase the value of those assets raises the question of why he continued to do so. Similarly, on the Ward Parties' case, it was Ebonair through CBA (not Mr Ward personally) which had a financial interest in the subsequent development projects (Manor Road, Highfield Hill, Chronicle Heights) which are the subject of these proceedings and yet Mr Ward put considerable time and effort into them.
342. I take into account the fact that, on the Ward Parties' case, Ebonair is owned by a group of investors including Ms Hamieh, who is the mother of the husband and the ex-husband of two of Mr Ward's daughters, and therefore part of Mr Ward's extended family. So far as concerns Creative House, Mrs Ward had flats in the property at all material times which Mr Ward was responsible for managing for her (and I accept he would in any event have a family interest in increasing the value of her assets), and that (and Ms Dorobat's flat) might also provide some explanation for Mr Ward's ongoing involvement in the Creative House project. Mr Ward's evidence in his witness statement was that after Creative Constructions sold its interests to Ebonair, he had an ongoing interest in maximising the profits that would accrue to Mrs Ward's flats.
343. However, while Mr Ward's interest in Mrs Ward's flats, and the close relationship between Mr Ward's family and Ms Hamieh's family, provide an

explanation for a certain amount of ongoing involvement by Mr Ward in Creative House, I do not consider that they adequately explain:

- a. The extent of Mr Ward's work in relation to Creative House and his apparent commitment to Creative House as a whole. For example, the renovation of Creative House after the purchase of Creative Constructions' interests by Ebonair was primarily going to increase the value of Ebonair's interests rather than the value of Mrs Ward's flats. Further, Mr Ward's undisputed distress when he discovered the charge in favour of Mr and Mrs Mills put over the Freehold (which was owned by Ebonair, not by Mrs Ward) is hard to explain if Mr Ward has no interest in Ebonair.
- b. The fact that Mr Ward seems to have regarded himself as entitled to use Ebonair's assets for his own benefit (making payments, for example, to Ms Dorobat and to Mrs Ward). As set out above, Mr Ward made substantial transfers from the account set up by Mr Keane to receive the mortgage monies on the flats held in Mr Keane's name. If Mr Ward had no interest in Ebonair, which was on his account the beneficial owner of Mr Keane's flats, then those transfers would be entirely unexplained transfers of Ebonair's funds for Mr Ward's own personal benefit.

344. As I have set out above, I also consider the history of Creative House to provide clear evidence that Mr Ward's overriding determination has been to retain all the interests in Creative House within his sphere of influence. I recognise that this point does not by itself demonstrate that Mr Ward has some beneficial interest in and control over Ebonair, but in my judgment it provides strong support for my conclusion to that effect.

345. As I have explained above, I also consider the point made by the Ward Parties in its written closing submissions, that the suggestion Ebonair was used as a vehicle to protect Mr Ward's assets on his bankruptcy is "somewhat bizarre", is a bad one:

- a. There was in fact value in the assets transferred from Creative Constructions to Ebonair in 2010, even if they were transferred at market value, as demonstrated by Ebonair's own instructions to counsel seeking tax advice on the "huge profit" made on its sale of leasehold interests to Mr Keane.
- b. The anticipated profit that was going to be made on the sale of the whole of Creative House to Medina demonstrates that Mr Ward was right to regard (as I have found he did) it to be in his financial interests to retain sufficient control over all the interests in Creative House that he could sell the whole property in one transaction.

346. In light of all the evidence at the trial, I have therefore concluded that Mr Ward has at least a beneficial interest in Ebonair. I do not conclude he is Ebonair's sole beneficial owner: the evidence given (and the manner in which it was given) by Ms Hamieh leads me to conclude that she (perhaps in addition

to others) also has some beneficial interest in the company, but I am satisfied that Mr Ward has a significant beneficial interest in Ebonair and is in a position to exercise at least significant control over its actions.

347. In particular, I am satisfied that the fact Ebonair (rather than Mr Ward personally) held interests in Creative House at the time the alleged partnership between Mr Ward and Mr Donnellan is said to have been agreed (in the first few months of 2012) is not a reason why Mr Ward could not have reached the alleged partnership agreement with Mr Donnellan in the terms Mr Donnellan alleges. I consider later in this judgment whether such an agreement was in fact reached.

Flats 1, 5, 6, 7, 8 and 9

348. Flats 1, 5, 6, 7, 8 and 9 are registered in the name of Mrs Ward and have been since February 2008. The Donnellan Parties say that Mrs Ward holds the leases of Flats 1, 5, 6, 7, 8 and 9 on implied constructive trust for the benefit of Mr Ward.

349. I accept the Ward Parties' submissions that as Flats 1, 5, 6, 7, 8 and 9 are registered in Mrs Ward's sole name, the burden is on the Donnellan Parties to prove the existence of a trust. "[T]he starting point where there is sole legal ownership is sole beneficial ownership": *Stack v Dowden* [2007] 2 AC 432 at [55].

350. The Donnellan Parties' case is that Mrs Ward holds her flats "on implied constructive trust for the benefit of [Mr Ward]".

351. Neither party cited any authority as to what the requirements were for an implied constructive trust. The Ward Parties submitted in their written closing submissions that the requirements were:

- a. "Some kind of agreement, arrangement or understanding that, although [Mrs Ward] was to be the sole legal owner, she would hold the flats on bare trust for [Mr Ward] – that can be inferred from the surrounding circumstances; and
- b. Reliance by [Mr Ward] on that agreement, arrangement or understanding such that it would be unconscionable for [Mrs Ward] to deny that bare trust."

352. That was not disputed by the Donnellan Parties in closing and I accept that those are the requirements for a constructive trust as alleged by the Donnellan Parties. See, for example, *O'Neill v Holland* [2020] EWCA Civ 1583 at [27-36].

353. In their written closing, the Donnellan Parties submitted that the Court should hold that Mrs Ward held her flats on trust for Mr Ward because:

- a. The evidence (it was said) did not support the Ward Parties' case that Mrs Ward purchased the flats using pre-existing wealth held by Mrs Ward.
- b. It was said that the more likely explanation for Mrs Ward's purchase of the flats was to realise further funding for Mr Ward to use for property development while retaining control of Creative House. There was no evidence Mrs Ward actually paid Creative Constructions the deposits due for the purchase of the flats but the mortgage loans raised (with Mr Donnellan's help) for the purchase of the flats from Creative Constructions undoubtedly raised large sums.
- c. The fact that Fadi Braiteh took advantage, when he purchased the Freehold, of the fact that Mrs Ward's solicitors had failed to register Flats 10, 11, 13 and 14 to deprive Mrs Ward of those flats and acquire them for the benefit of Ebonair, and that this caused little or no family division, is explicable if Mrs Ward held her flats for Mr Ward, because the outcome of the litigation was that Mrs Ward's liability to pay her mortgages came to an end, and Fadi (for Ebonair) obtained those flats mortgage-free, and was thus able to remortgage them and raise further finance.
- d. Mr Donnellan's evidence of the meeting at Café Rouge is consistent with Mrs Ward holding the flats for Mr Ward.

354. The Ward Parties submit that these points do not evidence the necessary agreement, arrangement or understanding, or detrimental reliance by Mr Ward on that understanding. With the exception of the statements alleged to have been made at the Café Rouge meeting which would evidence the necessary agreement, arrangement or understanding between Mr and Mrs Ward, I agree with that submission.

355. Further, and in any event, addressing each of the Donnellan Parties' points in turn:

- a. While there was some evidence at trial to support the submission that Mrs Ward was independently wealthy by reason of money inherited from her own family, I accept that the position is not at all clear and there is certainly no compelling evidence that Mrs Ward used substantial wealth of her own to purchase the flats. On the other hand, there is no evidence that deposits were in fact paid for these flats. Mr Donnellan himself insisted during cross-examination that no deposit was required for Mrs Ward's purchase of Flat 7 ("Back in the day at Mortgage Express you could get 85% loan to value with no deposit.") It was not therefore necessary for Mrs Ward to have had substantial independent wealth in order to purchase the flats herself. Alternatively, it may be that Mrs Ward was given the money for any deposits that were required by Mr Ward because the aim of the transaction was to raise mortgage funds for Creative Constructions to use for further work on Creative House, and Mr Ward was accordingly happy to give the necessary money for

any deposits to Mrs Ward and for her then to hold the flats for herself (rather than as a nominee for him).

- b. The fact that the purchase monies for the flats (paid using the mortgages on those flats obtained by Mrs Ward) were paid to Creative Constructions as vendor and then used by Mr Ward for further development of Creative House or his property development business generally is consistent with Mrs Ward holding for Mr Ward, but is also consistent with Mrs Ward holding the legal and beneficial interest for herself.
- c. The evidence at trial gave a clear picture that Mr and Mrs Ward both regarded their business dealings as for the benefit of their family, and that Mrs Ward was in general content for Mr Ward to act on her behalf in business matters or to act herself in accordance with advice or direction given by him. In the circumstances, the suggestion that the sale and purchase of Mrs Ward's flats was intended to raise further funding for Mr Ward's property development business while ensuring he did not lose control of the flats purchased by Mrs Ward does not provide evidence of the constructive trust the Donnellan Parties contend for. That is the case even if the decision that Mrs Ward, rather than Mr Ward, should purchase the flats using mortgage finance came after the Wards learned (from Mr Donnellan or otherwise) that lenders would not advance funds for Mr Ward to purchase the flats himself, because he was a director of the vendor, Creative Constructions. The evidence is entirely consistent with Mr Ward having decided to rely on Mrs Ward's general willingness to act in accordance with his advice or direction in respect of her own assets. The evidence also shows that Mr Ward had reason to consider it advantageous to reduce risk by ensuring family assets were held by Mrs Ward (for herself, rather than held in her name for Mr Ward) rather than by him.
- d. The fact that Fadi Braiteh obtained the Freehold free of Mrs Ward's interest in Flats 10, 11, 13 and 14 because it had not been registered, and that the episode seems to have caused little, if any, family argument (which might have been expected if a son-in-law deprived his mother-in-law of four London flats) is not inconsistent with Mrs Ward holding the legal and beneficial interest for herself. As the Donnellan Parties point out, there is no evidence that Mrs Ward paid any substantial deposits for the flats, mortgage finance was used to pay Creative Constructions for the purchases, and the mortgage instalments appear to have been paid by renting the flats out. In those circumstances, if as the Donnellan Parties say seems to be the case, the mortgage liabilities came to an end at the conclusion of the litigation and her son-in-law ended up holding the flats for Ebonair, Mrs Ward may not have lost out financially and may have considered the benefit to her family more than adequate compensation.

- e. As set out above, I do not accept Mr Donnellan's evidence that that there was a meeting between Mr and Mrs Ward and Mr Donnellan at the Café Rouge in Dorking in or around December 2007.

356. The Donnellan Parties have therefore not established that Mrs Ward holds Flats 1, 5, 6, 7, 8 and 9 on trust for Mr Ward and I find that Mrs Ward holds those flats for herself.

Flat 12

357. Flat 12 has been registered in the name of Ms Dorobat since 3 March 2010.

358. The Donnellan Parties plead their claim in respect of Ms Dorobat's flat on the basis that she holds Flat 12 on implied constructive trust for the benefit of Mr Ward, save to the extent her mortgage was redeemed by a member of her family so (the Donnellan Parties say) giving her a personal financial interest in her flat to that extent, albeit not an interest which could thwart a sale of Creative House as a whole by the Partnership.

359. I have set out above my conclusions that:

- a. the initial deposit and the ultimate redemption funds for Ms Dorobat's flat were paid using funds provided by her sister's partner,
- b. Ms Dorobat paid her mortgage instalments from funds which were her own (albeit they had entirely or in substantial part been given to her by Mr Ward) and, therefore, paid her mortgage instalments herself, and
- c. there was no meeting between Mr Ward, Ms Dorobat and Mr Donnellan in the Roof Space at Creative House in or around 18 November 2009 as Mr Donnellan claims.

360. For these reasons, I reject the Donnellan Parties' claim that Ms Dorobat held her flat on trust for Mr Ward.

Flats 2, 3, 4, 10, 11, 13, 14, 15, 16, 17 and 18

361. As set out above, Flats 2, 3 and 4 were sold to Ms Howard by Ebonair acting as mortgagee in possession.

362. As also set out above, Flats 10, 11, 13, 14, 15, 16, 17 and 18 were demised to Mr Keane either by Fadi Braiteh acting as nominee for Ebonair, or by Ebonair itself.

363. It is common ground that Ms Howard and Mr Keane are nominees: each of them admits and avers that that they hold their flats as nominees. The question is whether they are nominees for Ebonair (as the Ward Parties say) or for the Partnership (as the Donnellan Parties say). That depends (as the Donnellan Parties expressly accepted in their written closing submissions) on whether there was a partnership as alleged by the Donnellan Parties.

Was there a partnership between Mr Donnellan and Mr Ward?

364. Section 1(1) of the Partnership Act 1890 provides that “Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.” There are accordingly three conditions for a partnership to exist (as set out in *Lindley & Banks on Partnership*, 21st edition at paragraph 2-02):

- a. A business,
- b. Carried on by two or more persons in common,
- c. With “a view of profit”.

365. It is also the position that “Partnership is the result of an express or implied agreement, even in those cases where the creation of a partnership was not intended”: *Lindley & Banks* at paragraph 5-14. That proposition was cited with approval in *Achom v Lalic* [2014] EWHC 1888 (Ch) where Newey J (as he then was) said at [177]:

“On the other hand, partnership depends on agreement. While partnership is ‘more than a simple contract’, it is ‘a consensual arrangement based on agreement’ (Lord Millett in *Hurst v Bryk* [2002] 1 AC 185, at 194). Co-ownership need not be the result of agreement, but ‘[p]artnership is’ (to use words of Lord Lindley quoted in *Lindley & Banks on Partnership*, 19th ed., at paragraph 5-08). In *McPhail v Bourne* [2008] EWHC 1235 (Ch), Morgan J noted (at paragraph 256) that ‘it is a precondition to the existence of a partnership that there is a binding contractual relationship between the parties’. If I am right in thinking that no binding contract was concluded between the parties, no partnership can have come into being either.”

366. The necessary agreement may be an agreement implied or inferred from conduct rather than express agreement: see *Lindley & Banks* at paragraph 5-14 (above) and also *Phillips v Symes* [2002] 1 WLR 853 at [43] per Hart J, cited by the Court of Appeal in *Greville v Venables* [2007] EWCA Civ 878 at [36].

Mr Donnellan’s case

367. Mr Donnellan’s case is one of express agreement. The case pleaded in Mr Donnellan’s Amended Particulars of Claim is that:

“In numerous conversations between Donnellan and Ward, those parties agreed to carry on the business of the redevelopment of Creative House, the two of them in common with a view of profit, and, additionally, such other properties as they might acquire and/or develop and/or invest in and/or hold and/or sell, thereby creating a relationship of partnership between them (“the Partnership”) – see also the Claimant’s Revised Further Information dated 19 August 2019 at Responses 7 & 8.

“The Partnership was agreed orally; there being no written partnership agreement or deed, it was one to which the provisions of the Partnership Act 1890 (‘the Act’) applied and was a partnership at will.

“It was expressly agreed in the course of the said conversations that Donnellan and Ward would share in the profits and losses of the redevelopment of Creative House and such other properties as they might acquire and/or develop and/or invest in and/or hold and/or sell in the proportion 25%/75% in Ward’s favour.

“It was further agreed in the course of the said conversations that Donnellan would be entitled to drawings of £50,000 a year and that Ward would be entitled to drawings of £150,000 a year – see also the Claimant’s Revised Further Information dated 19 August 2019 at Responses 9 to 12 inclusive.”

368. Further Information was requested of that allegation and was provided by Mr Donnellan on 29 March 2021 as follows:

“Request 7: When is it on the Claimant’s case that the Claimant says a partnership was first agreed? What were the words said?

“Response 7: The partnership was agreed on 27th April 2012.¹ Following the successful procurement of investment and subsequent rejuvenation of the development (and the prevention of foreclosure), Mr Ward came to the Claimant offering a full time partnership arrangement. Mr Ward said “if I had been in partnership with you [the Claimant] 10 years ago we would be worth at least £100m and would be flying around in private jets” and that “if you [the Claimant] had been my partner at the time of the Coldharbour lane [sic] development in Brixton and the Southville development in Vauxhall, you could have prevented the repossession of both sites”.

“Request 8: at the time of agreement is it the Claimant’s case that partnership assets were agreed and if so what were they?

“Response 8: Mr Ward was in a weak position financially and had no means of refinancing the roof space and ground floor leases through his offshore company Ebonair. The whole of Creative House was unoccupied and producing no income at all and in need of total refurbishment, due to lack of funding. Mr Ward therefore required the Claimant’s help to raise the necessary funds to redevelop the whole of Creative House. It was agreed that the proceeds of the income and eventual sale of the whole of Creative House would be split 75/25% in Mr Ward’s favour. The partnership assets were the whole of Creative House.”

¹ The Further Information actually states 27th April 2019, rather than 27th April 2012, but it is agreed that this is a typographical error and I have therefore corrected the quoted text.

369. In his witness statement for trial, Mr Donnellan stated at paragraphs 97-98:

“During March and April 2012, following the successful procurement of investment and subsequent rejuvenation of the development (and prevention of foreclosure), Mr Ward came to me offering a full time partnership arrangement.

“Mr Ward told me that had I been in partnership with him ten years ago “we would be worth at least £100m and would be flying around in private jets” and he further said, had he been his partner at the time of his Coldharbour lane [sic] development in Brixton and his Southfield development in Vauxhall, I could have prevented the repossession of both sites.”

370. In cross-examination, it was put to Mr Donnellan that “your evidence today is not that there was a meeting on 27th April, is it?”, and he replied:

“No, there was a meeting all the way through and it was suggested that once Ricky completes then the Partnership comes into effect. Because if the money wasn’t drawn down and Ricky didn’t go on the mortgages, there wouldn’t have been a Partnership, or if there was money raised somewhere else with another party or Ward didn’t accept it.”

371. Both the Amended Particulars of Claim and the Further Information of 29 March 2021 were verified by Statements of Truth signed by Mr Donnellan. As is apparent from the relevant passages set out above, Mr Donnellan’s pleaded case differed from his witness evidence, and the two versions of Mr Donnellan’s case were not consistent with each other. The pleaded case involved a meeting on 27 April 2012 at which the partnership was expressly agreed, while the case advanced by Mr Donnellan’s witness evidence did not involve a meeting on that date. In fact in cross-examination, Mr Donnellan expressly agreed that there was no meeting on 27 April and said instead that 27 April was in fact the date on which the partnership arrangement which had been expressly agreed before then would “come into effect”. This is a significant difference: the Further Information set out particular words that it was alleged were said at the meeting on 27 April 2012 which Mr Donnellan accepted in cross-examination did not take place, and the Further Information stated that those words were said after the mortgage finance was procured (i.e. after 27 April 2012).

372. In opening and closing submissions, Mr Coppel KC accordingly relied on the evidence of the parties’ dealings as supporting the existence of the partnership alleged to have been expressly agreed, in circumstances where the only evidence as to the express agreement came from Mr Donnellan himself (unsurprisingly, given that Mr Ward disputes any such agreement was reached).

Relevant findings in relation to Ebonair and Creative House

373. I take into account the findings I have made that Mr Ward has a beneficial interest in Ebonair, is able to exercise a substantial degree of control over

Ebonair and that he has made use of Ebonair to protect his assets from his Joint Trustees and/or the liquidator of Creative Constructions. It follows from those findings that the Ward Parties cannot rely on the argument that Mr Ward could not have agreed to place a substantial part of the Creative House property into the partnership because he did not own and control any substantial interest in Creative House.

374. As also set out above, however, I have found that Mrs Ward's flats are owned by Mrs Ward (and not held by her as nominee for Mr Ward) and that Ms Dorobat's flat is owned by Ms Dorobat (and not held by her as a nominee for Mr Ward). While the evidence in relation to the possible sale to Medina shows that for the purpose of any such sale of Creative House as a whole, Mr Ward relied on the fact that Mrs Ward would act in accordance with his advice or direction in relation to her flats, and hoped that Ms Dorobat would do so too, he was not in a position to contribute the value of their flats to any partnership unless Mrs Ward or Ms Dorobat agreed to him doing so. It is clear from the evidence that Ms Dorobat did not do so and would not have done so (given the contribution made by her family to the purchase of her flat), and there is no suggestion that Mrs Ward did so.

375. Mr Donnellan's case is that the partnership was "to carry on the business of the redevelopment of Creative House ...". The Ward Parties say that Mr Donnellan was not involved in any redevelopment work there but was simply involved in raising finance, consistent with his usual role as a mortgage broker. It is notable that Mr Donnellan's case as to why Mr Ward offered him partnership was that it was a reward for obtaining finance, rather than any other role.

376. The parties do not agree as to the condition of Creative House by the second half of 2010/first half of 2011, when it is common ground planning permission was granted for two further flats to be created in the Roof Space and two flats and an office to be created in the Ground Floor. As I have set out above, the Ward Parties say that Creative House was generally in good condition, while the Donnellan Parties say it was not. I have found (above) that there was clearly a need for work to be done to the building generally (a renovation) as well as the work to be done in creating the new flats in the Roof Space and Ground Floor and an office in the Ground Floor, and the finance raised by Mr Donnellan's financing scheme with Mr Keane as a nominee was used to complete that work. The Ward Parties' own case in closing was that there had been a "redevelopment" of Creative House by Ebonair in 2012 which had gone well (and therefore permitted Ebonair to extract funds to invest in subsequent projects), and I accept that submission.

377. Mr Donnellan said that he had a role supervising the building work going on at Creative House in 2012 while Mr Ward said that he did not. There is little documentary evidence on this issue. What can be seen is, as Mr Polli KC put to Mr Donnellan in cross-examination, a distinction between the frequent emails passing to and fro between Mr Ward and Mr Donnellan in relation to the development of Manor Road and Chronicle Heights (subsequent projects in which Mr Donnellan was involved) and the lack of emails between Mr Ward

and Mr Donnellan in relation to work carried out on Creative House. I find that Mr Donnellan has not established that he was involved in any significant way with the building work at Creative House in 2012.

378. The Ward Parties say that Mr Donnellan was paid for his work in raising finance for Creative House by the commissions he received in the usual course as the mortgage broker. Mr Ward's evidence set out a list of the transactions involving Mr Keane and that list identifies 12 mortgages/remortgages between April 2012 and July 2014. The Ward Parties also say that it was agreed that Mr Donnellan would be paid £50,000 per year by Ebonair for so long as the nominee financing arrangements continued. Mr Donnellan's case is that £50,000 per year was agreed as the drawings to which he would be entitled from the partnership.

The Donnellan Parties' submissions

379. The Donnellan Parties put particular weight on two emails in which Mr Ward expressly referred to Mr Donnellan as his business partner.

- a. By an email dated 8 May 2016, with the subject "Highfield Hill", Mr Ward emails some architects, copying Mr Donnellan, and saying: "Hi David, Tony, my business partner, Sent you some details for the above site. We are very anxious to start work on the planning issues and it will be very helpful to meet with you to discuss. Regards, Alan Ward".
- b. By an email dated 29 July 2016, with the subject "Chronicle heights, 152 olive road", Mr Ward emailed Mr Vango at Barnard Marcus estate agents, saying: "Dear Mr Vango, My business partner Anthony and myself received your e mail regarding the valuation for the above site. Please note that these are just initial thoughts from us and nothing more, and we do not expect to see the site or these figures appearing anywhere on your site or otherwise. Finally, I would like to thank you for your co operation in this matter. Regards, Alan Ward". Mr Ward then forwarded the email to Mr Donnellan.

380. They also rely on the emails from August/September 2016 onwards when Mr Ward and Mr Donnellan fell out. These start with Mr Donnellan's email to Mr Ward on 12 August 2016 which is as follows:

"Ali,

I agree that you are entitled to 75% of the true net profits of all our development sites. In addition I am to receive £50,000 per annum in income from the service apartment business in Battersea which was agreed in 2012.

The net profits needs to be calculated once all the finance costs legal fees and other expenses are taken into account, and the true cost of the building work is known and agreed. As you know large sums of money have not been accounted for.

I am confirming this at your request, but it has always been agreed that you have no voting rights in Old street homes ltd and that will continue to remain so.”

381. The Donnellan Parties say that that email, and the correspondence between the parties, including the subsequent correspondence between solicitors, is consistent with Mr Donnellan’s case as to partnership. Indeed, in their written closing submissions the Donnellan Parties submitted that the evidence on partnership “culminates with the events of August-September 2016”, namely the correspondence beginning with the 12 August 2016 email.
382. In fact, I consider the emails and documents from 12 August 2016 onwards are of little value in considering whether there was a partnership as alleged by Mr Donnellan. By 12 August 2016, the parties had fallen out and both sides were taking positions against each other with an eye to how their statements might be used in the future. That correspondence therefore does not, in my view, carry significant weight as evidence of whether Mr Ward and Mr Donnellan carried on business in partnership from April 2012 onwards.
383. Further, although the Donnellan Parties submitted that the 12 August 2016 email “makes clear that the Partnership embraces Creative House”, that is not clear on the face of the email. In my view the email could be read either as excluding Creative House on the basis it is not one of “our development sites” (the reading Mr Ward advanced in his cross-examination) or as including it because it is one of those development sites.
384. So far as concerns the emails of 8 May and 29 July 2016 in which Mr Ward refers to Mr Donnellan as his partner, the Ward Parties pointed to statements from the authorities to the effect that “partner” is used colloquially and that its use does not therefore indicate the existence of the legal relationship of partnership. It is sufficient for me to refer to one: “The use of the term ‘partner’ in ordinary speech is wider and looser than its meaning as a concept of English law. The fact that the parties referred to themselves as ‘partners’ therefore does not determine the nature of their legal relationship”: *Al Nehayan v Kent* [2018] 1 CLC 216 at [121] per Leggatt LJ (as he then was). The Ward Parties also correctly observed that Mr Donnellan himself described Ms Howard as his “business partner” during his cross-examination at trial, when he was referring to the fact that she and he ran a limited company together rather than being in the legal relationship of partnership. I consider that the two emails relied on here are examples of the word “partner” being used in a colloquial sense and therefore evidencing only that Mr Donnellan was involved in the projects the emails concern (Chronicle Heights and Highfield Hill). I also accept the submission that in any event the emails are of no assistance in determining whether there was a partnership in relation to Creative House (rather than Chronicle Heights and Highfield Hill) because they do not concern Creative House.
385. The Donnellan Parties also rely on what they call the “commercial realities” of the situation. They submit that in 2012 Mr Donnellan was running a successful and lucrative business as a mortgage broker, which they say had been

benefited by the financial crisis in 2008 because it “put a premium on his services”. They say that he spent a considerable amount of his time working in relation to Creative House and the other developments and that he would not have been prepared to spend that time away from his other work if he was not to receive from it more than he would have done from his mortgage broking business. They say that the £50,000 per annum that was agreed would not have been enough to persuade him to spend the time he did on Creative House and the other developments unless he was also to benefit by a 25% interest in the partnership.

The Ward Parties’ submissions

386. The Ward Parties’ submissions on the claim that there was a partnership are as follows.

387. First, they say that there is no reason why Mr Ward would have entered into the alleged partnership. They say Mr Donnellan’s job, as a mortgage broker, is to introduce finance and that was what he did in respect of Creative House. There is no reason, they say, why Mr Ward should have decided to give Mr Donnellan a partnership for doing his job. I accept that Mr Ward’s interest in property assets meant that he would be reluctant to give anyone else an interest in any of his property assets unless it was absolutely necessary for him to do so.

388. Mr Donnellan’s pleaded case (in the Further Information dated March 2021) is that Mr Ward was grateful because Mr Donnellan’s financing arrangements had prevented foreclosure, and that in 2012 Mr Ward was “in a weak position financially and had no means of refinancing the roof space and ground floor leases through his offshore company Ebonair. The whole of Creative House was unoccupied and producing no income at all and in need of total refurbishment, due to lack of funding. Mr Ward therefore required the Claimant’s help to raise the necessary funds to redevelop the whole of Creative House.”

389. I do not accept the Donnellan Parties’ case that any lender had been threatening foreclosure in respect of Creative House:

- a. Mr Donnellan stated in his witness statement that the Bank of Ireland loan to Creative Constructions was due to expire in 2007 or 2008, and that was why Mr Ward asked Mr Donnellan to raise finance on Mrs Ward’s flats.
- b. In fact, the account statement for the Bank of Ireland loan to Creative Constructions showing its repayment in full two years later, on 16 February 2010, records that that repayment involved an “early repayment fee” of nearly £5,000.
- c. Mr Donnellan tried to maintain in cross-examination that, contrary to what the statement recorded, that “early repayment fee” was in fact an “exit fee” rather than a fee for repaying the loan early.

- d. I accept the Ward Parties' submission that that evidence was unconvincing, and I find it is an example of Mr Donnellan being prepared to make assertions that are not true in order to bolster his case.

I therefore do not accept that the Bank of Ireland loan was due to expire, either in 2007 or 2008, and that there was therefore an imminent risk of foreclosure or repossession.

390. So far as concerns Handf Finance:

- a. Mr Donnellan maintained in cross-examination that Handf Finance was dissatisfied with progress on the work at Creative House in January 2012 and only reluctantly released a further advance of £50,000 in January 2012 after Mr Donnellan reassured Mr Court (of Handf) that Mr Donnellan was going to provide private money and get the development back on track. Mr Donnellan said in his witness statement that after the January 2012 advance was made, Mr Court informed him that Mr Donnellan would have to find a new lender or "someone else to be the borrower" because he no longer trusted Mr Ward with the release of Handf's monies.
- b. In fact, the Statement of Account for a "Further Advance" to Ebonair from Handf Finance shows that after the second £50,000 part of the further advance was paid on 6 January 2012 (the first having been paid on 19 December 2011), Handf Finance advanced a third payment of £50,000 on 28 February 2012 and a further £40,000 on 28 March 2012.

I therefore do not accept that there was an imminent crisis for financing the work at Creative House in January 2012.

391. I do accept, however, that in early 2012 Ebonair needed to put longer term finance in place in order to be able to fund the work of converting the Ground Floor and Roof Space. Mr Ward expressly accepted in his witness statement that further funds were required for the conversion of the Ground Floor and Roof Space into 5 units and that Ebonair could not raise any more finance because it was a Panamanian corporation. This was when Mr Donnellan's scheme of using Mr Keane as a nominee owner (initially of headleases of the Ground Floor and Roof Space, and then of the flats as they were created) to raise finance was proposed and then in due course put into action. I also consider that the fact that Mr Donnellan proposed the scheme he did (using Mr Keane and then in due course, Ms Howard, as nominees who would hold the flats and take mortgages secured against them in their own names) indicates that it was not straightforward to raise the finance required.

392. The Ward Parties say, however, that the agreed £50,000 per year for Mr Donnellan reflected a reward for him for coming up with this unusual scheme of finance (which he would receive in addition to the commissions he received on each mortgage arranged) so, in all the circumstances, the nature of the financing scheme does not weigh heavily in favour of the Donnellan Parties'

case as to the existence of a partnership on the terms they allege, including Mr Donnellan being given a 25% interest in Creative House itself.

Discussion of the alleged partnership in respect of Creative House

393. A point that could weigh heavily in favour of the existence of a partnership is the question of how Mr Keane and Ms Howard were to be paid for their services in acting as nominee owners of various of the flats in Creative House in order to raise mortgage finance. As has turned out to be the case, this exposed them to considerable financial risk. Mr Ward's evidence was that he repeatedly asked Mr Donnellan about this and "what was in it for Ricky", and that Mr Donnellan told him each time, "Don't worry about that. I will look after Ricky."

394. Mr Donnellan and Mr Keane both said that the arrangement was that Mr Keane would receive 50% of Mr Donnellan's share in Creative House. Mr Donnellan recognised in the evidence given in his witness statement that the arrangement with Mr Keane was made "[w]hilst his deal with Mr Ward had yet to be agreed", but said he told Mr Keane that he was seeking 25% from Mr Ward if they "managed to save Creative House from foreclosure".

395. Although this point lends some weight to the partnership claim, the timing of the arrangements with Mr Keane seems to me to indicate that in fact what happened was that Mr Donnellan did, as Mr Ward says, tell Mr Ward that he would take care of Mr Keane, and that Mr Keane was persuaded by Mr Donnellan's confidence that Mr Donnellan would be able to "look after" him, whatever position Mr Donnellan managed to agree with Mr Ward. Mr Keane wanted to help his friend Mr Donnellan. Mr Keane's evidence in his witness statement was that Mr Donnellan explained to him that he was "in discussions with Mr Ward who beneficially owned the property" and that Mr Ward would give Mr Donnellan a significant share of the property if Mr Donnellan could raise finance. Mr Keane's witness statement also stated (inconsistently with the evidence of Mr Donnellan himself) that Mr Donnellan promised Mr Keane that Mr Keane would be given "half his [Mr Donnellan's] 25% share of Creative House". On Mr Donnellan's case, this could not have been something Mr Donnellan was able definitely to offer Mr Keane until after the finance arrangements involving Mr Keane were in place. I have concluded that the true position was that Mr Keane wanted to help his friend, he trusted Mr Donnellan's ability to get himself a good deal for his work on Creative House, and that Mr Donnellan's assurance he would look after Mr Keane from that was sufficient for Mr Keane.

396. Similarly, Ms Howard's evidence in her statement was that she was willing to hold as a nominee as Mr Donnellan asked as long as her liabilities and costs were provided for, as she was assured they would be, and on the basis of Mr Donnellan telling her that she would receive an unspecified share of his profit "when the [Creative House] site was sold/developed". In cross-examination, although she insisted that Mr Ward was present at the meeting when Mr Donnellan said she would receive something from his 25% share in the proceeds of sale of Creative House, Ms Howard said that the focus of the discussion at

the meeting was about what would happen if there were problems with the rental market and she could not pay the mortgage, rather than what she would be paid for doing this, consistent with her evidence that it was not agreed how much she would stand to gain.

397. The discussion with Ms Howard (in 2014) was also in a very different context, that of work on the planning process necessary for the proposed redevelopment of the Creative House site into a “landmark building” which would be worth around £80 million. In that context, including that Ms Howard was being asked by her former boyfriend, Mr Donnellan, to hold the flats as a nominee for no more than 2 years while planning was obtained, I consider that she believed she could be confident that Mr Donnellan would ensure she was well paid. In her witness statement, she said that Mr Donnellan contacted her after the meeting and said that he would be “happy to pay [her] £300,000 at the end of the two years when the planning was secured, and they were ready to develop”. This illustrates Mr Donnellan’s confidence that permission would be granted to redevelop Creative House as a landmark site and that he would obtain substantial benefit from that planning permission being granted to reward Ms Howard (and Mr Keane) for their involvement in the financing scheme.

398. Having heard the evidence of Mr Donnellan, Mr Keane and Ms Howard, I formed the clear view that:

- a. Mr Donnellan would have expressed to them complete confidence that he would arrange a good deal for himself with Mr Ward;
- b. Both Mr Keane and Ms Howard had enormous confidence in Mr Donnellan to get himself a good deal; and
- c. Both Mr Keane and Ms Howard wanted to help Mr Donnellan and trusted him to make sure they did not lose out as a result, and to provide for them from whatever he ended up getting from his dealings with Mr Ward in relation to Creative House.

399. The declarations of trust made by Mr Keane and Ms Howard in favour of Mr Donnellan (and/or Renson Park) rather than in favour of the alleged partnership also seem to me to weigh against the existence of the alleged partnership, and to provide further support for what I have concluded about Mr Keane and Ms Howard relying on Mr Donnellan to look after them in doing as he asked in relation to the flats held in their names.

400. The evidence of how the parties conducted themselves overall from 2012 onwards does not seem to me to demonstrate the existence of a partnership agreed by or around April 2012. As the Ward Parties pointed out in closing, Mr Donnellan was able to point to very little of what *Lindley & Banks* describes at [7-31] as the “usual evidence of partnership”, i.e. the types of evidence frequently relied on in order to provide the existence of an alleged partnership.²

² The types of evidence listed are: accounts; admissions; advertisements; agreements and other documents; bills, circulars and invoices; bills of exchange; brochures; business cards; conduct; draft

I take into account the fact that the projects were all run with considerable informality and that it could therefore properly be said on behalf of Mr Donnellan that the nature of the business meant that very few documents of this type came into existence at all, and that that is why there was little evidence of this type to support the case of a partnership. However, I consider that it is appropriate to take into account the absence of any reliable contemporaneous documentary evidence of the existence of a partnership.

401. In particular, the absence of any attempt to prepare or agree accounts in respect of Creative House weighs heavily against Mr Donnellan's case that there was a partnership between him and Mr Ward including Creative House as one of its assets and which entitled Mr Donnellan to 25% of the partnership's profits. Unless accounts were prepared, there was no way in which profits could be calculated. Even if the intention was for profits to be calculated once the property was sold, the ongoing costs of the business would have to be taken into account and it is significant that there is no evidence of any costs in relation to Creative House being regularly accounted for in the context of the alleged partnership. I accept the Ward Parties' submission that there is a clear distinction in this respect between the evidence in relation to Creative House and the properties in which the parties were later involved. As I have set out above, there are frequent emails passing between Mr Ward and Mr Donnellan in relation to the expenses incurred in the development of those subsequent properties, and the calculation of the parties' various entitlements led to Mr Ward and Mr Keane's falling out. There is no such evidence in relation to Creative House and I find that this weighs heavily against the existence of the alleged partnership.

402. I have considered whether the extracts of the meetings in August 2016 which were recorded provide evidence of the partnership alleged by Mr Donnellan. Whatever the reason for very limited extracts being available, I accept the Ward Parties' submission that the fact that such short extracts are all that is available means that the recordings of those meetings have to be approached with great care. Further:

- a. The fact the extracts are so broken up means that it is difficult to be certain which property or properties the participants in those meetings are talking about at any particular time, or to be sure what is meant by any particular statement.
- b. The meetings post-date the falling out between the parties and take place at the same time as the August 2016 emails which I have explained above are of relatively little evidential value because they show the various parties taking positions against one another, rather than simply reflecting what any party genuinely understood to be the position.

agreements; financial support; holding out; joint bank accounts; joint property; judgments; letters, memoranda, text messages and emails; loans; meetings; names; payment of money into court; profit and loss share; recitals in agreements; registers etc; releases; tax returns; terms of the supposed partnership; use of property; wages; witnesses.

- c. The meetings took place in the particular context of the proposed sale to Medina (which included delayed completion while planning permission was obtained), a sale which did not ultimately take place.

For all these reasons, I do not consider the evidence of what was said at these meetings to be of any significant weight in supporting the case of the Donnellan Parties or the Ward Parties as to the alleged partnership. I note that the Donnellan Parties (who applied for this evidence to admitted at trial) put no particular reliance on this evidence in their written or oral closing submissions.

403. As to the point made on behalf of Mr Donnellan that he did more work in relation to the alleged partnership business than he would have done if no partnership had been in place, I do not accept that that is the case:

- a. The evidence is that Mr Donnellan arranged a considerable number of mortgages in respect of Creative House from April 2012 onwards. As the mortgage broker who arranged those mortgages, Mr Donnellan received commissions. The Ward Parties also say that it was agreed he would receive £50,000 per year while the financing scheme using nominees remained in place. There was therefore a significant financial reward for Mr Donnellan's involvement in the financing arrangements for Creative House.
- b. There is evidence that Mr Donnellan was also involved in meetings and other preparatory work for the potential complete redevelopment of Creative House as a "landmark site" from December 2012 onwards. It may be that there was an expectation or agreement as to how Mr Donnellan would benefit from such work if planning permission was granted and the redevelopment took place (that possibility is supported by the emails exchanged between Mr Ward and Mr Donnellan in December 2012 about the large profits they expected if the redevelopment went ahead), but in the event that did not happen, and that is not the basis of the claim Mr Donnellan has advanced.
- c. I find that there is no evidence on which the Court can rely of Mr Donnellan carrying out other significant work (i.e. work other than in relation to the potential complete redevelopment as a "landmark site") in relation to Creative House. The lack of emails involving Mr Donnellan about the work that was actually carried out on Creative House is in marked contrast to the emails in respect of subsequent development properties passing between Mr Donnellan on the one hand, and Mr Ward or those carrying out the work on the other.

I have therefore concluded that, at least in relation to Creative House, the evidence does not show the existence of a business being carried on by Mr Ward and Mr Donnellan in common with a view to profit.

404. I find that there was no agreement for a partnership in relation to Creative House. In reaching that conclusion I have taken into account all the facts and matters set out above. The matters which seem to me conclusive are:

- a. Mr Donnellan's changing case as to when and how the agreement for the partnership was reached. If there had in fact been an express agreement for partnership reached between Mr Donnellan and Mr Ward, that would have been identified more consistently in the statements of case and in Mr Donnellan's evidence.
- b. There is no contemporaneous documentary evidence that from around April 2012 onwards, the way in which the things operated at Creative House changed to reflect the partnership basis on which Mr Donnellan says it was now held. There are no records (for the purposes of internal accounting/book-keeping, or for tax or any other purpose) evidencing that at that stage any such agreement, or any agreement involving profit-sharing, had been reached.
- c. There is no evidence that the parties tried to calculate the ongoing profits or losses of the business of Creative House.
- d. The evidence does not establish that Mr Ward and Mr Donnellan carried on a business in common with a view to profit in relation to Creative House from April 2012 onwards. Mr Donnellan's role was as a mortgage broker and in arranging finance.
- e. It is the case that Mr Donnellan was also involved in subsequent discussions about obtaining planning permission for the proposed redevelopment of Creative House as a "landmark site", which in the event did not take place. That was a different project to the development work at Creative House that was already underway in 2012 and then completed in 2012/2013. Mr Donnellan's work in relation to the potential "landmark redevelopment" does not demonstrate the existence of a partnership agreement (whether express or implied) with effect from April 2012 onwards in the terms Mr Donnellan alleges.

405. In the alternative to his claim that there was a partnership between himself and Mr Ward, Mr Donnellan claims that the business said to be the business of the partnership was carried out by him and Mr Ward "as a joint venture between the two of them" which is alleged to have given rise to fiduciary duties between them and to entitle him to the equitable remedy of an account. As part of that claim, he claims in the alternative to the claim that Creative House and its flats are assets of the partnership that they are the subject of the joint venture.

406. For the same reasons as I have set out above in relation to the partnership claim, I do not consider that there is evidence of a business in relation to Creative House carried on by Mr Ward and Mr Donnellan as a joint venture from April 2012 onwards.

Consequences for Mr Keane and Ms Howard as nominee holders of flats in Creative House

407. It follows from my decision that there was no partnership between Mr Ward and Mr Donnellan that:
- a. Mr Keane holds Flats 10, 11, 13, 14, 15, 16, 17 and 18 on trust for Ebonair (not for the alleged partnership); and
 - b. Ms Howard hold Flats 2, 3 and 4 on trust for Ebonair (not for the alleged partnership).
408. Mr Keane and Ms Howard expressly accepted in the closing submissions filed by the Donnellan Parties that if they were nominees holding their flats for Ebonair, then Ebonair is entitled to an account from each of them of the monies raised on the security of their flats. It follows from my finding that Mr Keane and Ms Howard were each nominees for Ebonair that I will direct Mr Keane and Ms Howard each to provide such an account.
409. I also accept that Ebonair is entitled to have those flats transferred into its name and will order that Mr Keane transfer Flats 10, 11, 13, 14, 15, 16, 17 and 18 to Ebonair and that Ms Howard transfer Flats 2, 3 and 4 to Ebonair.
410. The Ward Parties seek an account from Mr Keane in respect of the monies paid to Mr Keane by or on behalf of Luxap to enable him to pay the mortgages put in place in respect of his flats in Creative House (no such account is pursued against Ms Howard, her relevant bank statements having been provided to the Ward Parties before and during trial).
411. As I understand the position advanced in the Donnellan Parties' closing submissions, Mr Keane does not dispute his liability to provide such an account but submits that any liability he is under as a result of such an account should take into account by way of set off his entitlement an indemnity from Ebonair in respect of any arrears and penalties to which he is liable on the mortgages on his flats in Creative House by reason of his position as nominee. I do not understand the Ward Parties to dispute that the account should take into account Mr Keane's liability to arrears and penalties in respect of mortgages on the flats registered in his name.

Partnership or joint venture in relation to Manor Road, Chronicle Heights, Highfield Hill and Norbury Road

412. As set out above, Mr Donnellan's pleaded case is one of express agreement of a partnership in relation to "the redevelopment of Creative House ... and, additionally, such other properties as they might acquire and/or develop and/or invest in and/or hold and/or sell".
413. So far as concerns the properties which the parties were subsequently involved in developing (namely, Manor Road, Chronicle Heights, Highfield Hill and Norbury Road, together "**the Subsequent Properties**"), the Donnellan Parties' case is that those developments were carried on between Mr Keane on the one hand and the partnership on the other.

414. Mr Ward's case is that pursuant to an agreement between Mr Keane, on the one hand, and CBA, on the other, Mr Keane and CBA entered into joint ventures in respect of the Subsequent Properties on terms that they would share the profits in the proportions in which they invested in those developments.
415. It follows from my findings on the partnership alleged by the Donnellan Parties that there was no partnership between Mr Donnellan and Mr Ward in existence at the time when the parties to these proceedings became involved in the Manor Road Development. The Donnellan Parties adduced no evidence of any express agreement for a partnership between Mr Donnellan and Mr Ward coming into existence at that time or later, and did not submit that a partnership came into existence between them at that time.
416. For this reason and, in addition the reasons set out below in relation to the Arbitration Claim (in summary, because these are the terms I consider are demonstrated by Ms Howard's spreadsheet in relation to the Manor Road Development), I accept the Ward Parties' case that the development of the Subsequent Properties was in fact pursuant to joint ventures between Mr Keane and CBA (rather than between Mr Keane and the alleged partnership) on terms that they would share the profits in the proportions in which they invested in those developments.
417. I also accept that those joint ventures gave rise to fiduciary duties on each party to account. No submissions were made on this issue and I did not understand any party to dispute that there should be directions for accounts and enquiries. "Joint venture" is not a term of art and each such relationship has to be examined on its own facts and terms to see whether it does carry any obligations of a fiduciary nature: *Ross River Ltd v Waveley Commercial Ltd* [2013] EWCA Civ 910 at [34] per Lloyd J. The dealings between the parties involved the property being developed being held by a company which was not under the control of Mr Ward (Highfield Hill and Chronicle Heights were acquired by OSH and Manor Road was acquired by KWL) and the way in which the developments were conducted involved each party putting trust and confidence in the other (and their agents) in their dealings with monies invested in the projects and the profits realised: the relevant funds were held and dealt with by different individuals and went in and out of different bank accounts, rather than through one account held only for the joint venture, and the evidence indicates that significant payments were made in cash. The transactions made in this way extended to the investment of funds resulting from one project being reinvested in the next project. Each party was thus entrusted with power to act for the benefit of the other party, in particular in dealing with assets subject to the joint venture, but was not under that other party's immediate control or supervision. This indicates that each party was subject to fiduciary obligations in respect of the joint venture's assets including an obligation to account: see *Ross River* at [51-52] and [59-60].
418. The agreed basis of the parties' dealings was that profits would be shared in proportion to the contributions made and that requires an accurate accounting of contributions, costs and expenses, and profits. Absent an effective accounting

obligation, the parties' agreement provided no method of supervising either party's dealings with the assets of the joint venture.

419. In all these circumstances, I find that there was a fiduciary obligation on each party to account for the funds invested in respect of each project and any profits generated from each project. The existence of that fiduciary obligation is in my view a necessary part of the contractual relationship agreed between the parties, rather than an obligation which alters the effect of the parties' agreement.

THE ARBITRATION CLAIM

420. There were very few oral submissions on this claim and the trial bundle does not contain all the statements of case and orders made in the claim. I set out below my conclusions based on the materials available to me and the submissions made at trial (which were mostly in writing).

The procedural history of the claim and the pleaded issues

421. The first formal document available at trial is the order made by Jonathan Acton Davies KC sitting as a Deputy Judge in the Technology and Construction Court on 22 February 2019. That order consolidated one set of proceedings brought by Mr Keane and another set of proceedings brought by Mr Ward and CBA and directed that they continue as an action on the arbitration award by way of proceedings under CPR Part 7. This claim does not therefore involve an application for enforcement under s.66 Arbitration Act 1996. The order gave directions for statements of case, disclosure and a case management conference.

422. Mr Keane filed Particulars of Claim dated 15 March 2019. By that statement of case, Mr Keane alleges that:

- a. What is characterised as “a ‘home-made’, short-form written agreement to arbitration” was produced by Ms Howard;
- b. That agreement satisfies the requirements of s.5 of the Arbitration Act 1996;
- c. The parties to the arbitration agreement were Mr Keane and Mr Ward and that those are the parties whose dispute Ms Howard had jurisdiction to determine;
- d. On the true construction of the Arbitration Agreement, its scope concerned the investment made by, among others, Mr Keane and Mr Ward in the Manor Road development and the future use of the net proceeds of that development (by way of loan of Mr Keane's share) in the acquisition and development of Chronicle Heights and Highfield Hill, together with further investments in Creative House and Norbury;

- e. “The essence of Ms Howard’s task as arbitrator entailed the taking of an account of the development at Manor Road and the related developments at [Chronicle Heights, Highfield Hill, Creative House and Norbury]”;
- f. Ms Howard published her award by her email of 28 September 2016;
- g. The Award “sufficiently” satisfies the requirements of s.52 Arbitration Act 1996;
- h. “[T]he effect of the Award is to declare as between Mr Keane and Mr Ward that he was owed £459,596 by Mr Ward and Mr Donnellan, jointly and severally” and that the references in the spreadsheet to CBA are “simply a misnomer and in fact, properly understood, were intended to be references to Mr Ward personally”;
- i. Mr Keane demanded payment from Mr Ward by email on 3 October 2016 “of the amount of the Award” (that email was not in evidence at trial) and that Mr Ward has failed to pay with the result that Mr Keane has suffered loss and damage in the equivalent amount;
- j. The business relationship between Mr Ward and Mr Donnellan was one in which their interests were divided 75%/25% in Mr Ward’s favour and that, after the Award, “Mr Donnellan reached agreement with Mr Keane to secure payment of such amount as is due from him”, so that Mr Keane in these proceedings limits his claim on the Award against Mr Keane to 75% of the sum awarded, namely £344,697, alternatively the equivalent amount in damages for breach of the Arbitration Agreement, plus interest;
- k. In the alternative, if the Court concludes the other party to the Arbitration Agreement and the Award is CBA, Mr Keane seeks to recover “the same sum or amount of damages and interest from CBA on the same basis as set out above, with all necessary changes”;
- l. And Mr Keane claims £344,697, alternatively damages; and interest.

423. The Defendants filed a Defence on 15 April 2019 which, in summary, contended that Mr Ward signed the Arbitration Agreement on behalf of CBA rather than on his own behalf, and that Ms Howard was appointed to calculate and settle by reference to the spreadsheet records it was said she had retained through the Manor Road Development, the exact proportion of the investments made by Mr Keane and CBA. The Defendants denied Mr Keane was entitled to the sum he claimed and advanced a counterclaim for the sum they said Ms Howard’s spreadsheet showed to be due to CBA as its share of the equity and profits of the Manor Road Development, calculated as £782,597.

424. On 15 April 2019, Mr Keane filed a Reply and Defence to Counterclaim denying the Defendants' entitlement to the sums it claimed by its Part 20 Claim.
425. It appears from the order of Pepperall J dated 14 June 2019 that the first CCMC listed for that day was adjourned on the Court ordering the Defendants to serve a draft Amended Defence and Counterclaim by 28 June 2019 and, if Mr Keane did not consent, to apply for permission to amend.
426. On 16 October 2020, Kerr J heard the re-listed CCMC. At that hearing Kerr J granted permission to the Defendants to amend their Defence and Counterclaim in the form of a draft exhibited to Mr Ward's evidence, subject to the following issues being reserved to the trial judge:
- a. Whether, by the Amended Defence and Counterclaim, the Defendants or either of them are resiling from allegations and/or withdrawing admissions concerning the compliance of the arbitration award of Ms Bobi Howard of 28 September 2016 with the provisions of the Arbitration Act 1996; and
 - b. If so, whether they should be entitled to do so; and/or
 - c. Whether the Defendants should be permitted to challenge the validity of the arbitration award of Ms Bobi Howard of 28 September 2016 out of time.
427. Kerr J gave directions for disclosure and for the exchange of witness statements. He also transferred the proceedings (subject to the consent of the Chancellor which I understand was subsequently given) to the Chancery Division to be heard together with the Partnership Proceedings.
428. By the Amended Defence and Counterclaim dated 23 October 2020, the Defendants admitted that it was agreed by Mr Keane and CBA that Ms Howard would resolve a dispute that existed between them, but averred that:
- a. The dispute was not as to whether money was owed by one party to another but as to the respective shares in which Mr Keane and CBA had invested in the Manor Road Development;
 - b. Properly construed, Ms Howard's spreadsheet did not determine whether money was owed by one party to another, but only the respective shares in which Mr Keane and CBA had invested in the Manor Road Development;
 - c. If, which was denied, the spreadsheet did constitute a determination that Mr Ward or CBA was liable to make a payment to Mr Keane, then Ms Howard had thereby exceeded her substantive jurisdiction and leave to enforce the Award should be refused pursuant to s.66(3) Arbitration Act 1996;

- d. Ms Howard's spreadsheet did not constitute a valid Award within the meaning of the Arbitration Act 1996.

429. The original Counterclaim was entirely replaced by a claim that if and insofar as Ms Howard's spreadsheet purported to determine that Mr Ward or CBA owe money to Mr Keane because of the way that the proceeds of the Manor Road Development were used in the subsequent developments and the terms on which it had been agreed those monies should be so used, then:

- a. Such determination fell outwith the scope of the agreement to arbitrate and Ms Howard therefore exceeded her substantive jurisdiction within the meaning of s.67 Arbitration Act 1996;
- b. There was a serious irregularity affecting the Tribunal, in that –
 - i. Ms Howard failed to act fairly and impartially as between the parties within the meaning of s.68(2)(a) of the 1996 Act; and/or
 - ii. The effect of the Award is uncertain and ambiguous within the meaning of s.68(2)(f) of the 1996 Act; and/or
 - iii. Ms Howard failed to comply with the requirements as to the form of the Award, contrary to s.68(2)(h) of the 1996 Act.

With the result that Mr Ward and CBA were entitled to a declaration that the Award is of no effect insofar as it purports to determine that Mr Ward or CBA owe money to Mr Keane.

430. Mr Ward and CBA alleged that those matters would cause them substantial injustice, there was no arbitral process of appeal or review by which they can obtain the relief they seek and the relief they seek is not available under s.57 Arbitration Act 1996.

431. To the extent necessary they sought an extension of time to bring that challenge more than 28 days after the date of the Award pursuant to s.80(5) Arbitration Act 1996 and CPR 62.9.

432. Mr Ward and CBA admit that the written agreements constitute an agreement in writing within the meaning of s.5 of the Arbitration Act 1996.

The parties to the alleged Arbitration Agreement

433. I consider first the identity of the second party to the alleged Arbitration Agreement. It is common ground that Mr Keane was one party, but while he says that the second party was Mr Ward, the Ward Parties say that the second party was CBA.

434. The text of the entire Arbitration Agreement is set out above.

435. *Jurisdiction and Arbitration Agreements and their Enforcement*, 3rd edition, by Joseph, states as follows at paragraph 7.43 (footnotes omitted):

“Where an English law contract is signed by a person in his own name then, although the question is one of construction of the written document, prima facie he is deemed to contract personally and not as agent. In order to prevent personal liability from arising, the signatory must be able to demonstrate from other portions of the contract that he did not intend to bind himself as principal. The position stated in *Bowstead & Reynolds* is that extrinsic evidence is not admissible to contradict the written contract, unless it is evidence of custom or usage or is to rectify the bargain or to demonstrate mistake and hence that no contract has come into existence at all. The House of Lords in *Shogun Finance Ltd v Hudson* has now authoritatively restated this to be the position. Where a contract is in writing, extrinsic evidence is not admissible to contradict the written document, but where a contract is equivocal as to whether a person has signed as agent or not, then extrinsic evidence is admissible to resolve this question.”

436. I have concluded that the fact the agreement refers to “any and all controversies, claims, or disputes arising out of, relating to or concerning any interpretation, construction, performance of breach of the Manor Road agreement by and between you and the company entered into as of 1st April 2014” (emphasis added) means that the contract is (at least) equivocal as to whether Mr Ward signed as agent of “the company” or on his own behalf. If the agreement is not between Mr Keane and a company then it is not possible to give any meaning to that part of the agreement, whereas if the agreement is between Mr Keane and a company represented by Mr Ward, then it is possible to construe the agreement in a way that gives effect to the reference to Mr Keane, Mr Ward and the company, although that I accept that (as the Ward Parties submitted in closing) that construction renders the agreement “explicable (albeit less clear than ideal)”. Accordingly, extrinsic evidence is admissible to resolve this question.

437. The available evidence includes Ms Howard’s spreadsheet which, as I have set out above, was sent to the parties in draft before Mr Keane signed the Arbitration Agreement, and then sent, without change, to the parties as Ms Howard’s final decision. The spreadsheet identifies the two investors in the Manor Road Development as Mr Keane and CBA. In calculating their proportionate investment, and accordingly their proportionate entitlement to the profits, those are the two legal persons that are identified. As CBA is a company, and was represented by Mr Ward, it would on this basis appear that the correct construction of the Arbitration Agreement is that Mr Ward was signing as agent for CBA.

438. Further:

- a. There was no suggestion that the reference to “the company” was to any other company.

- b. Mr Keane’s evidence was that Mr Ward signed the Arbitration Agreement in his personal capacity.
 - c. Ms Howard’s evidence was that she used the initials CBA to mean Mr Donnellan and Mr Ward, because that was what she had used on previous documents she had produced in relation to Chronicle Heights.
 - d. This evidence from Ms Howard is consistent with the evidence given by Mr Keane and Mr Donnellan that the investors in the Manor Road Development were Mr Keane (on the one hand) and the alleged partnership between Mr Donnellan and Mr Ward (on the other hand). However, I have found that there was no such partnership.
 - e. Mr Ward’s evidence was that he signed the Arbitration Agreement “on behalf of CBA, whose money it was”.
 - f. Mr Keane signed the Arbitration Agreement after Ms Howard circulated her draft spreadsheet, which identified the two investors as (a) Mr Keane and (b) CBA.
439. Finally, as I have set out above, the spreadsheet shows that Ms Howard calculated the appropriate proportionate division of profits between the investors identified in the spreadsheet as Mr Keane and CBA as 34% (Mr Keane) to 66% (CBA) by calculating their proportionate investments in the project. The spreadsheet therefore demonstrates that that division of profits was not the result of an agreement for a 34%/66% split of which Ms Howard was informed and which she applied to the profits generated by the project, but the result of a calculation of their proportionate investment.
440. In these circumstances, I conclude that the investors in the Manor Road Development were Mr Keane and CBA, and that Mr Ward signed the Arbitration Agreement on behalf of CBA. In particular:
- a. CBA is the only “company” which it is suggested is being referred to in the Arbitration Agreement.
 - b. I have found there was no partnership between Mr Donnellan and Mr Ward, and so no basis on which the 66% contribution Ms Howard found was made by CBA should be attributed in part to Mr Donnellan (the basis of his alleged 16.5% interest is that that is 25% of the 66% contribution by CBA which he says is a reference to the partnership).
 - c. It is no party’s pleaded case that Mr Ward alone was an investor in the Manor Road Development with Mr Keane: the Ward Parties’ case is that the investor with Mr Keane was CBA and the Donnellan Parties’ case is that the investor with Mr Keane was Mr Ward investing as part of the alleged partnership with Mr Donnellan.
441. It follows that Mr Keane’s claim on the arbitration award against Mr Ward fails and will be dismissed.

The alternative claim against CBA

442. The Ward Parties submitted in their written closings that if I held that Mr Ward was not a party to the arbitration agreement, then “the arbitration claim ends there”. However, Mr Keane’s arbitration claim includes an alternative claim against CBA “with all necessary changes”.
443. As I have set out above, I find that the Arbitration Agreement is capable of workable construction as between Mr Keane and CBA.
444. It is, in my view, sufficiently clear that what Ms Howard purported to do by her Award was to determine the contributions of Mr Keane and CBA to the Manor Road Development and calculate their entitlement to the profits by dividing the profits (which she calculated in the spreadsheet) in the same proportion as their contributions.
445. The spreadsheet in addition:
- a. Records £50,000 as due to Mr Keane as a result of an investment of £50,000 by Mr Keane in respect of “Battersea – Westbrook Road”;
 - b. Records payments to Mr Keane of £19,000 on 26 May 2015 and of £100,000 on 30 September 2015;
 - c. Calculates the proportionate split of the profits of the Norbury Road project by applying the same 34%/66% division of profits;
 - d. Calculates compound monthly interest on the total sum she calculated to be due to Mr Keane (reflecting what she had been told had been agreed about Mr Keane’s entitlement to compound interest).
446. I have considered whether the fact that Ms Howard has given evidence that she considered the other investor to be Mr Ward personally, rather than CBA, affects her Award. I do not consider that it does. It is common ground that the issues which were in dispute and which Ms Howard was appointed to determine were issues of calculation: hence her appointment and her use of a spreadsheet to determine those issues.

Declaratory award?

447. The first issue is whether the award is, as Mr Keane himself alleges, a declaratory one. As set out above, Ms Howard initially (and before Mr Keane had signed the arbitration agreement) circulated the spreadsheet under cover of an email dated 30 August 2016 as follows:

“Please see attached final file in respect of the request for a fair calculation of payment for Ricky’s investment in Manor Road, Norbury Road, and funds that he paid towards Battersea works. The bottom line number for Ricky is circa £460k, including the agreed 18% interest.”

448. On 28 September 2016, she sent a further email as follows:

“Good afternoon Ali and Ricky,
I have returned from my break and I am pleased to say that I have now received a signed copy of the Arbitration Agreement from Ricky.
I have attached copies of both agreements and the final file for you both.
My file is now closed
Kind regards,
Bobi”

449. The distinction between a declaratory and an executory judgment was considered by the Court of Appeal in *London Steam-Ship Ltd v Kingdom of Spain* [2022] 1 WLR 3434, where the Court cited with approval at [104] the following passage from Zamir & Woolf, *The Declaratory Judgment*, 4th ed (2011), para 1-02:

“A declaratory judgment is a formal statement by a court pronouncing upon the existence or non-existence of a legal state of affairs. It is to be contrasted with an executory, in other words coercive, judgment which can be enforced by the courts. In the case of an executory judgment, the courts determine the respective rights of the parties and then order the defendant to act in a certain way, for example, by an order to pay damages or to refrain from interfering with the claimant’s rights; if the order is disregarded, it can be enforced by official action, usually by levying execution against the defendant’s property or by imprisoning him for contempt of court. A declaratory judgment, on the other hand, pronounces upon a legal relationship but does not contain any order which can be enforced against the defendant. Thus the court may, for example, declare that the claimant is the owner of certain property, that he is a British subject, that a contract to which he is a party has or has not been determined, or that a notice served upon him by a public body is invalid and of no effect. In other words, the declaration simply pronounces on what is the legal position.”

450. In the *London Steam-Ship Ltd* case, the Court of Appeal decided that the awards in that case were “merely declaratory” of the parties’ existing rights and obligations. This was because each award “did not order Spain to do or to refrain from doing anything, or to pay money. It merely declared what Spain’s obligations (and the Club’s rights) were under the Club Rules”. Here, there is no order in the award that either party to the award should do anything or pay any money; instead there is a declaration setting out (in the form of a spreadsheet account) the proportionate division of the profits of the Manor Road Development and the sum Ms Howard calculated as due to Mr Keane as a result (taking into account Westbrook Road, Norbury Road, the payments already made to Mr Keane and compound interest).

451. In the *London Steam-Ship* case, the Court of Appeal also referred to the reasons of the arbitrator as making clear that the only relief sought was for a declaration of rights, and that that was sought for defensive reasons. There is

nothing in the reasons here (i.e. Ms Howard's calculations using the spreadsheet) which expressly addresses the question of whether the relief is declaratory but I consider that the fact that Ms Howard gave her award in the form of a spreadsheet with a covering email, and that the reasons for her decision are provided in the form of calculations in the spreadsheet, supports my view that the award she was making was declaratory rather than executory. Her award was setting out an account in relation to the parties' dealings (so declaring the position) rather than making an order, and consistent with that her reasons are the calculations.

452. It might be argued (although I had no argument on this issue) that the email in August initially circulating the spreadsheet did indicate a requirement to pay money, but I do not consider that argument to have any real merit as it is clear that the 30 August 2016 email was no part of the award which Mr Keane seeks to enforce. Mr Keane's pleaded case is that by the email on 30 August 2016 Ms Howard circulated a draft award, and that she then published her award by her email of 28 September 2016.

453. I therefore conclude that Ms Howard's award is indeed (as alleged in Mr Keane's Particulars of Claim) a declaratory award, rather than an executory one.

454. The Award made by Ms Howard is an award declaring the sums due to Mr Keane as set out in Ms Howard's spreadsheet in respect of (a) the Manor Road Development, (b) Battersea – Westbrook Road and (c) Norbury Road on the basis compound interest is payable on those sums up to the date on which Ms Howard gave her Award, and taking into account the sums already paid to Mr Keane.

455. Mr Keane has brought an action to enforce the Award. On such an action (by contrast to the position on an application to enforce an award by the summary mechanism provided by s.66 of the 1996 Act), the claimant must show both that the submission to arbitration was valid, and also that the arbitrators had substantive jurisdiction over the dispute put to them. The effect of a declaratory award is then to give rise to a *res judicata* which the defendant cannot go behind.

456. However, although on an action on the award, the burden is on the claimant to prove that the submission to arbitration was valid and that the arbitrators had substantive jurisdiction over the dispute put to them, s.73 of the 1996 Act will apply to prevent a defendant from raising such objections late: Merkin, *Arbitration Law* at [19.03]. Section 73(1) provides:

“If a party to arbitral proceedings takes part, or continues to take part, in the proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement or the tribunal or by any provision of this Part, any objection –

(a) that the tribunal lacks substantive jurisdiction,

(b) that the proceedings have been improperly conducted,

(c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part, or

(d) that there has been any other irregularity affecting the tribunal or the proceedings,

he may not raise that objection later, before the tribunal or the court, unless he shows that, at the time he took part or continued to take part in the proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.”

Can CBA pursue challenges under s.67 and s.68 Arbitration Act 1996?

457. By amendment of their counterclaim, Mr Ward and CBA sought to introduce a challenge to the award under s.67 (substantive jurisdiction) and/or s.68 (serious irregularity).

458. Those challenges are clearly out of time, having been first advanced in the Amended Defence and Counterclaim which appears to have been filed in draft in July or August 2019, nearly three years after the Award was published.

459. Mr Ward/CBA sought an extension of time on a number of grounds. They cited the decision of Popplewell J (as he then was) in *Terna Bahrain Holding Co WLL v Al Shamsi* [2012] EWHC 3283 (Comm) at [27-34] setting out the factors to be taken into account on such an application. The first point made in that passage is that the 28 day time limit for challenges under s.67 and s.68 provided by s.70(3) “reflects the principle of speedy finality which underpins the Act, and which is enshrined in s.1(a). The party seeking an extension must therefore show that the interests of justice require an exceptional departure from the timetable laid down by the Act. Any significant delay beyond 28 days is to be regarded as inimical to the policy of the Act.” Popplewell J went on to identify the relevant factors as follows (saying that the first three in the list are the primary factors):

- a. The length of the delay;
- b. Whether the party who permitted the time limit to expire and subsequently delayed was acting reasonably in the circumstances in doing so;
- c. Whether the respondent to the application or the arbitrator caused or contributed to the delay;
- d. Whether the respondent to the application would by reason of the delay suffer irremediable prejudice in addition to the mere loss of time if the application were permitted to proceed;
- e. Whether the arbitration has continued during the period of delay and, if so, what impact on the progress of the arbitration, or the costs incurred

in respect of the arbitration, the determination of the application by the court might now have;

- f. The strength of the application;
- g. Whether in the broadest sense it would be unfair to the applicant for him to be denied the opportunity of having the application determined.

460. I address the grounds advanced by CBA in turn. First it is said that the arbitration agreement was not and is not clear, and that the arbitration award was not and is not clear. While I accept that neither document is entirely clear, the arbitration agreement, which Mr Ward signed, is headed “Arbitration Agreement” and Mr Ward was therefore on notice as to what the document he chose to sign purported to be. His evidence in his witness statement was that “the use of the title ‘Arbitration’ was not something [he] took notice of”, but there was no reason for him not to pay attention to the heading of the document and if he chose to ignore it, I do not consider that CBA can now rely on the fact to justify an extension of time to challenge the Award beyond the time provided by the Act. Further (and so far as concerns the points that neither the agreement nor the award were clear) Mr Ward (and through him CBA) was on any view on notice that the Award, the result of the arbitration agreement, was said to be binding by the time that Mr Keane presented a bankruptcy petition. No application challenging the award was advanced promptly at that stage.

461. On the contrary, it was said (although the relevant documents were not included in the trial bundle) that when these proceedings were first issued, CBA’s response was to issue its own application for enforcement, saying that the Award showed a larger sum to be payable by Mr Keane to CBA. The result was that two orders for enforcement were made and each side then applied to set aside the order made against them. Those were the applications that led to the order of Jonathan Acton Davis QC on 22 February 2019 which I have summarised above. That claim for a sum said to be payable by Mr Keane to CBA was the counterclaim originally pleaded in these proceedings. That, in my view, weighs against permission being granted for CBA now to pursue an application to set aside the Award. When the claim against it was issued, CBA considered the position and, with the benefit of legal advice, decided to seek payment of a sum it said was due to it under the Award rather than challenge the Award.

462. CBA then says that it was not unreasonable for it to have understood that Ms Howard was asked to determine the proportions in which Mr Keane and CBA contributed to the Manor Road Development and had done just that and only that. It is clear from any reasonably careful review of the front spreadsheet produced by Ms Howard that she has taken into account the undoubtedly related issues (given the way in which the parties dealt with each other) of:

- a. A £50,000 investment in respect of “Battersea – Westbrook Road”;
- b. A calculation of profit due to CBA and Mr Keane on the basis of a 66%/34% split between them of the profit from Norbury Road;

- c. Payments already made to Mr Keane; and
- d. Calculations of compound interest on the sum she calculated as due to Mr Keane.

I therefore do not accept the submission that it was reasonable for CBA not to have challenged the Award sooner on the basis that the exercise carried out by Ms Howard was unclear.

463. Next it is said by CBA that, although Mr Keane sought to enforce the Award with bankruptcy proceedings against Mr Ward, the bankruptcy petition was opposed by Mr Ward and Mr Keane subsequently discontinued the bankruptcy proceedings. It is said that CBA reasonably understood from that discontinuance that Mr Keane recognised and accepted that they were correct as to the meaning and effect of the purported Award. I do not consider that this provides good reason for no application to set aside the Award to be advanced until the Amended Defence and Counterclaim was put forward (at that point in draft) in summer 2019. Leaving aside any other issues, the fact that the original Defence and Counterclaim advanced no such application in my view demonstrates conclusively that this is not an argument with any merit: by the time Mr Keane issued his Arbitration Claim, there was no possible basis for Mr Ward or CBA to consider that Mr Keane accepted their position on the Award, but no application to set aside the Award was made in the original Defence and Counterclaim or at all until summer 2019. In the context of the period provided by the 1996 Act for any challenge to be brought this is a very substantial delay.

464. It was also said that Mr Keane was only seeking to enforce the Award “in order to obtain advantage for himself and/or Mr Donnellan in the wider dispute involving Creative House and how the monies raised thereon were used and/or paid away”. It does not seem to me that this can provide any freestanding basis for extending time for an application to set aside the Award, and I do not consider that it changes my conclusions on the other grounds advanced by CBA.

465. In their written closing submissions, the Ward Parties emphasised the following three points:

- a. It was said there would be no irremediable prejudice to Mr Keane if Mr Ward and CBA were permitted to advance their Amended Defence. I do not consider that this is correct. The very substantial delay since the Award was given in 2016 will necessarily make any decision on the same issues more difficult because of the passing of time, and the delay in the resolution of the dispute is in any event prejudicial.
- b. It was said that Mr Ward’s case regarding Ms Howard’s partiality is a strong one. I accept that Mr Ward and CBA did not know the full details of Ms Howard’s involvement as a nominee of flats in Creative House at the time but they at all material times knew that Ms Howard was Mr Donnellan’s former girlfriend and that she had been willing to help by

acting as a nominee to hold some of the flats in Creative House, for which she was to be paid by Mr Donnellan.

- c. It was said that the case on lack of reasons is a strong one. I have set out above my view that the spreadsheet prepared by Ms Howard makes clear the basis for her calculations and accordingly the reasons for her calculation that the sum of £459,596 is due to Mr Keane.

466. I have concluded that none of the grounds identified by CBA justifies the extension of time sought to permit it to pursue a challenge under s.67 or s.68. Whatever the issues that may exist relating to the arbitration process, CBA (by Mr Ward) signed an arbitration agreement, received an arbitration award, and took no steps to challenge it in accordance with the provisions of the 1996 Act until nearly 3 years after the Award was given, and then only by seeking to substantially amend the Defence it had originally filed in response to Mr Keane's claim. The grounds relied on by CBA do not justify the extension of time sought.

467. It is therefore not necessary for me to consider further (i) whether the Amended Counterclaim involves the Ward Parties resiling from allegations and/or withdrawing admissions concerning the compliance of the Award with the provisions of the Arbitration Act 1996 and, if so, whether they should be entitled to do so, and (ii) the merits of the challenges Mr Ward and CBA sought to pursue by their Amended Counterclaim.

468. I find that the Award is effective to declare the sum due to Mr Keane from CBA as set out in Ms Howard's spreadsheet in respect of (a) the Manor Road Development, (b) Battersea – Westbrook Road and (c) Norbury Road, taking into account the payments made to Mr Keane recorded in the spreadsheet and including compound interest on those sums due up to the date on which Ms Howard gave her Award.

THE POSSESSION CLAIM

469. By claims originally issued in the Wandsworth County Court on 25 July 2018, Mr Keane brought possession proceedings in respect of Flats 13 and 14 against (i) Luxap, (ii) CBA, and (iii) persons unknown. By order of 20 August 2018, those two claims were consolidated and Ebonair was (on its own application) joined as Fourth Defendant. By order of 15 October 2018, directions were given, including that after exchange of evidence the claim should be transferred to the Chancery List at Central London County Court for trial directions. Following various further applications, the claim was transferred to the Chancery Division to be heard together with the Partnership Proceedings and the Arbitration Claim.

470. The dispute between the parties, set out in the statements of case filed in this claim, is whether Mr Keane held these flats as nominee for Ebonair. The Defendants plead that Mr Keane holds both flats as bare trustee for Ebonair which holds a 100% beneficial interest in the leaseholds and that Ebonair is,

pursuant to s.12 of the Trusts of Land and Appointment of Trustees Act 1996, entitled to possession of Flats 13 and 14.

471. A mortgage was obtained from Shawbrook Bank Limited against the leaseholds of Flats 13 and 14 in June 2013, and was for some time paid using the rent received by Luxap from renting out those flats (as agreed with Mr Keane and Mr Donnellan when the nominee scheme was initially proposed by Mr Donnellan). I was told at trial that Shawbrook had obtained possession orders in respect of Flats 13 and 14 but had not yet enforced those orders.
472. The Ward Parties submit that the decision on these claims should necessarily follow the decision made on the Part 20 Claims made by Ebonair against Mr Keane in the Partnership Proceedings, and the Donnellan Parties do not dispute that: they submitted in their opening submissions that there were no separate issues (other than costs) to be determined in the Possession Proceedings.
473. I have held above that Mr Keane holds the flats in his name in Creative House on trust for Ebonair (rather than for the alleged partnership). It follows that the possession claims he brings against Luxap, CBA and Ebonair should be dismissed, and Ebonair's counterclaim for a declaration that it holds a 100% beneficial interest in the leasehold of Flats 13 and 14 is granted.