Neutral Citation Number: [2021] EWHC 219 (Ch)

Case No: BL-2018-000509

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

Rolls Building
Fetter Lane
London
EC4A 1NL

8 February 2021

Before :

MRS JUSTICE BACON

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Between :

(1) HASAN DALKILIC
(2) SEVIM PEKIN — **Claimants**

- and -

(1) METIN PEKIN
(2) PARAGON PROPERTY INVESTMENTS LIMITED — **Defendants**

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Michael McParland QC and Bobby Friedman (instructed by **Trowers & Hamlins LLP**) for the **Claimants**
James Ayliffe QC and Tim Matthewson (instructed by **Freeths LLP**) for the **Defendants**

Hearing dates: 19–20, 23–27, 30 November, 1–3, 10–11 December 2020

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE BACON:

INTRODUCTION

1. This is a dispute about the ownership of a burger manufacturing business, Paragon Quality Foods Limited (**Paragon**), the shares of which are now held by the second Defendant (**PPIL**). The Claimants and first Defendant are all members of two closely connected Turkish Alevi families, and numerous members of both families have given evidence in these proceedings. The dispute has been ongoing for some years, and it has torn the families apart. It is a tragedy that this has now resulted in a four-week trial before me.

2. The Claimants' case is that Paragon was founded in 1995–96 by four family members together: the first Claimant Hasan Dalkilic (**Hasan**, generally referred to by family and friends as Hayri), Ali Pekin (**Ali**), Ali's younger brother Cafer Pekin (**Cafer**), and the first Defendant Metin Pekin (**Metin**) who is Ali's nephew. While legal ownership of the company eventually rested with Metin, the Claimants say that the company was in fact beneficially owned by all four "founders" in equal shares. The second Claimant Sevim Pekin (**Sevim**) is Ali's ex-wife. She says that she acquired part of Ali's share, amounting to 10% of the total beneficial interest in Paragon, at the time of her divorce from Ali, following an agreement reached at a family meeting in September 2000. It is accepted that Ali settled his claim with Metin at some point in 2012 as set out further below, although the circumstances of that are disputed and will be the subject of some of my factual findings. Cafer brought proceedings against Metin in 2015, which were eventually settled in February 2020. Hasan and Sevim say, however, that their claims have not been settled and remain outstanding.

3. On that basis, the Claimants seek (i) declarations that Hasan and Sevim were and are the beneficial owners of, respectively, 25% and 10% of the shares in Paragon, and that PPIL (and/or Metin) hold those shares on trust for them; (ii) orders for the transfer of the relevant shares to Hasan and Sevim, or alternatively an account by Metin for the value of the shares transferred to PPIL in breach of trust; and (iii) an account of profits and monies received by the Defendants from Paragon, and/or equitable compensation.

4. The Defendants' case is that all of the claims are groundless, since Paragon is and always was Metin's company alone. While various family members were employed by the company from time to time, Metin says that neither the Claimants nor any of the other family members ever had any beneficial entitlement to the shares. In any event, Metin says that he entered into an agreement with Hasan, Ali and Cafer at the second of two meetings in March 2012 (the **March 2012 meetings**), which he says settled any claims they might have had against him. In Ali's case, the Defendants say that also released Sevim's claim as Metin was unaware of any prior transfer of part of Ali's interest to Sevim, and in any event Ali's purported transfer to Sevim was ineffective as it was not in writing. The Defendants also say that Hasan and Sevim are barred from pursuing their claims on the grounds of laches and/or estoppel, and that the claims against PPIL are statute barred under the Limitation Act 1980.

5. Metin has also brought counterclaims against both Hasan and Sevim. Against Hasan, if there was no valid agreement in March 2012, Metin seeks restitution of the sums said to have been paid to Hasan pursuant to that agreement. Metin also seeks recovery of the sums paid to Sevim by Paragon to assist her following her divorce from Ali, which he says were a loan repayable on demand.

6. The Claimants were represented at the hearing by Mr Michael McParland QC and Mr Bobby Friedman, and the Defendants were represented by Mr James Ayliffe QC and Mr Tim Matthewson. Since the trial commenced during the second national lockdown due to the Covid pandemic, it was conducted entirely remotely using Microsoft Teams.

PRELIMINARY COMMENTS ON THE EVIDENCE

The witnesses on both sides

7. On the Claimants' side, apart from Hasan and Sevim themselves, evidence was given by seven other members of the Pekin and Dalkilic families: Ali, Cafer's wife Neslihan Pekin (**Neslihan**) who is also Metin's second cousin, Hasan's sister Medine Sadikoglu (**Medine**), Hasan's nephew Muslum Dalkilic (**Muslum**), Muslum's wife Gulay Dalkilic (**Gulay**), Ali and Sevim's oldest son Zulfikar Pekin (**Zulfikar**), and Ali's youngest sister Rojin Dersimli (**Rojin**). In addition the Claimants relied on the evidence of five further witnesses who had worked at or were customers of Paragon and/or Falcon, which was a previous business venture of Hasan and Metin: Alan Large, Stephen Gelder, Erdogan Ceviz, Taner Cakmak and Haydar Koc. The evidence of Hasan, Sevim and Medine was given entirely in Turkish with the assistance of a translator. Ali gave his evidence in a mixture of English and Turkish. The remaining witnesses gave their evidence in English, albeit that for some of them that was not their mother tongue.

8. Cafer did not give evidence for the Claimants, the reason being that his settlement agreement with Metin precluded him from providing a witness statement or otherwise assisting the Claimants in these proceedings.

9. For the Defendants, the principal witness was Metin himself. In addition, evidence on particular points was given by Metin's wife Zohre Pekin (**Zohre**), Zohre's brother Ali Cemal Baran, two older family friends of Metin from the Turkish community, Abbas Duzgun and Ali Yilmaz, three present and former employees of Paragon, Rebecca Taylor, Sarah Fletcher and John Healy, and finally Mustafa Kiamil, whose company JJ purchased Falcon and was a major wholesale customer of Paragon. All of those were cross-examined at trial, save for Mrs Fletcher who was at short notice unable to attend due to a family bereavement. The parties agreed that her evidence could be relied upon as hearsay. The evidence of Zohre, Mr Baran, Mr Duzgun and Mr Yilmaz was given entirely in Turkish with the assistance of a translator. Metin, Mrs Taylor, Mr Healy and Mr Kiamil gave their evidence in English.

10. The Defendants had also intended to rely on the evidence of two further family witnesses: Zeynel Pekin, who is the brother of Ali and Cafer, and Zeynel's wife Kiymet. They had provided witness statements covering a specific event in

November 2015 in which they (together with Rojin) had tried to negotiate an agreement between Metin and Cafer to settle Cafer's claim. During the course of the trial I was informed that they had decided that they no longer wished to attend to give evidence for the Defendants, and their witness statements were therefore withdrawn. In any event the evidence of that event is in my view of very limited relevance to these proceedings.

General comments on the approach to the evidence

11. Given the large number of witnesses and the nature of their evidence, both Mr McParland and Mr Ayliffe made submissions as to the approach to be followed in assessing the reliability of witness testimony. Both relied on, in particular, the comments of Leggatt J (as he then was) in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm), §§15–22. Those comments are well-known and I do not need to set them out in full here. It suffices to say that the judge drew attention to the fallibility of memory, in light of the fact that memories are fluid and vulnerable to interference and alteration when a person is presented with new information or suggestions about an event. He also commented that the process of civil litigation itself subjects the memories of witnesses to powerful biases, particularly where witnesses have ties to a party in the proceedings (which may include an employment relationship). The judge concluded at §22 that the best approach in the trial of a commercial case is to place little if any reliance on witness recollections of what was said in meetings and conversations, but rather to base factual findings on inferences drawn from the documentary evidence and known or probable facts. The principal value of oral testimony is, in light of that, "to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness".

12. Mr McParland also drew my attention to Lord Bingham's article "The Judge as Juror: The Judicial Determination of Factual Issues". In an extract from that article that was cited in *Kimathi v The FCO* [2018] EWHC 2066 (QB), §98, Lord Bingham considered that the main tests needed to determine whether a witness is lying or not include (i) the consistency of the witness' evidence with what is agreed or clearly shown by other evidence to have occurred, (ii) the internal consistency of the evidence, and (iii) the consistency of the evidence with what the witness has said on other occasions.

13. While *Kimathi* itself was a case on very different facts to the present case, the three principles set out above are, in my judgment, relevant across a wide spectrum of cases where the credibility of witness evidence is in issue, and they complement the comments of Leggatt J in *Gestmin*. It may be that in a case with ample contemporaneous documentary evidence available, the primary source of factual information is the documentary record itself. In other cases, however, where the documentary record is insufficient to form (in itself or when supplemented by the known or probable facts) a basis for factual findings or inferences, it may be necessary to consider the credibility of the witness evidence by reference to other considerations such as those set out by Lord Bingham.

14. In the present case, the contemporaneous documentation as to the events that led to the establishment of Paragon is sparse. In particular, none of the alleged agreements between the parties on the key issues in dispute were reduced to

writing at the time that the agreements were made (or said to have been made). The absence of written records does not, however, inevitably imply that no such agreements were made, since it was apparent that the family relationships and the culture of the Turkish community of which the families formed part led to business arrangements being made almost entirely orally rather than in writing. In the case of Hasan and Sevim, specifically, it is also relevant to take account of the fact that they had received minimal education in Turkey and therefore did not have a high level of literacy.

15. It was also apparent that various important contemporaneous documents that were created, such as the business plan prepared for Paragon and the company records listing the initial shareholdings in Paragon, were inaccurate and did not represent the true state of affairs. The responsibility for that lies squarely with Metin, who was the person that provided the information for those documents to the various accountants engaged for those purposes. The result was that Mr McParland was making submissions as to the interpretation of documents that the Claimants had never seen at the time, and most of the content of which they would not have understood even if they had seen them; and Mr Ayliffe was driven to contend that documents for which Metin was responsible, which were in important respects wholly fictitious, were nevertheless in other respects reliable evidence as to the agreements between the parties. Either way this was deeply unsatisfactory.

16. A further problem which added to the unsatisfactory nature of the documentary record was that when money changed hands it appears that this was frequently done in cash, even for very large transactions running to tens of thousands of pounds. As a result, while some of the relevant transactions could be verified by bank records, many could not.

17. For all of these reasons, while some factual findings can be made by reference to the contemporaneous documentary material, there are other issues for which it is inevitable that I have had to assess the reliability of the witness evidence by reference to other considerations. Where that has been necessary I have borne in mind that, as highlighted in the comments in *Gestmin v Credit Suisse* to which I have referred above, a witness may have a genuine conviction as to the truth of a particular fact, which is found to be incorrect or probably incorrect when the documentary record or other evidence is examined. A witness whose evidence is found to have been unreliable or not convincing on one issue in the case is therefore not necessarily to be regarded as unreliable in relation to other issues. There may, however, be some issues in relation to which the only conclusion that can be drawn is that the witness account is consistently unreliable or even deliberately untruthful. In such cases that will inevitably taint the court's perception as to the overall reliability of the witness. As will be apparent from the discussion of the facts, that is in my judgment unfortunately the case for several of the witnesses in these proceedings.

18. Where, notwithstanding consideration of the matters set out above, I have been unable to reach definitive conclusions as to relevant factual issues, I have set out my findings as to what I consider to be the probable version of events on the basis of the available evidence.

Specific comments on the witness evidence

19. Given the large number of witnesses and the varying issues covered by their evidence, I will not attempt to set out a comprehensive account of the evidence given by all of the witnesses and my views as to the reliability of that evidence. Instead I confine myself at this stage to the following preliminary observations:

    i) Given that the family witnesses on the Claimants' side were clearly very close, and were living together, working together and/or visiting each other frequently during the course of the events that are the subject of these proceedings, it is not surprising that the events in dispute were the subject of evidence from multiple witnesses. Contrary to some of the submissions of the Defendants, that does not in itself suggest collusion or fabrication.

    ii) Nor do I consider that the evidence of the family witnesses on either side should be discounted simply because of the family relationships between them. In any family dispute such as the present one, where other family members give evidence in the proceedings, it may be said that they are doing so out of loyalty to their respective family members. That does not of itself mean that their evidence should be treated with any more caution than the evidence of non-family witnesses who might likewise have ties of loyalty (such as through friendship or employment relationships) that lead them to give evidence in support of a particular party. Rather, the evidence must be tested on its own merits, on the basis of the considerations set out above.

    iii) In that regard, one concern that will inevitably be relevant for family witnesses is the possibility of distortion of memories over time, where issues have been discussed with other witnesses after the event. In this case the key disputed events were important matters in the life of the family which – as various witnesses explained – were frequently discussed within the family, and which presumably have also been discussed by them during the course of these proceedings. I accept that this may well have distorted people's memories: for example, someone with only a weak independent recollection of a particular event may have developed a stronger conviction of what occurred following discussions with others, and particular perceptions or recollections (whether accurate or not) may have been reinforced through subsequent discussions. Where detailed accounts have been given by some of the witnesses of what was said at particular meetings, I doubt that those witnesses have a reliable independent recollection many years after the events in question. That does not, however, in itself imply that there has been a conspiracy to concoct evidence in the way suggested by the Defendants. (In any event as I will discuss further below, for the main disputed factual issues I do not consider that it is necessary for me to decide exactly what was said at individual meetings.)

    iv) There were, however, some instances in which particular unusual features of the evidence given by certain witnesses led me to the conclusion that their evidence must have been coordinated. In particular, I have concluded

that Metin has influenced the evidence of (at least) Mr Duzgun and Mr Yilmaz.

v) The Defendants suggested that the Claimants' case was being driven by Ali and Zulfikar. Given Sevim's poor level of English it is unsurprising (and undisputed) that Zulfikar was assisting her, particularly in dealing with the solicitors. There was, however, no evidence before me showing any improper influence by either Ali or Zulfikar over the content of the evidence of any of the witnesses.

vi) I have some sympathy with Mr Ayliffe's comment that the cross-examination of Hasan was made more difficult than it would otherwise have been because Hasan refused to allow any part of the cross-examination to be conducted in English, despite the fact that (as became clear) his spoken English was far better than he initially claimed. I do not, however, think that this was an attempt to gain a tactical advantage. It is more likely that Hasan was concerned that if he tried to follow the questions in English, or gave any part of his answers in English, he might misunderstand something in a way that could be taken against him. That is an understandable concern on the part of a witness giving evidence in a language that was not his mother tongue, and I do not think that this in itself implies that the substance of Hasan's evidence was unreliable. It would, however, have been considerably more helpful to the court if Hasan had taken the approach that Ali adopted, which was to give answers in English where he could do so.

vii) Mr Ayliffe also commented in his closing submissions that both Hasan and Sevim frequently failed to answer the questions that were put to them. I do not think that is a fair characterisation of their evidence. In general I consider that both Hasan and Sevim were doing their best to assist the court during their cross-examination. On the occasions when they appeared to have difficulty answering questions I do not think that this was because they were being deliberately evasive. Rather, their difficulties reflected the fact that they are not sophisticated or well-educated people and therefore struggled to understand some of the questions, particularly those relating to legal and financial matters.

viii) The Defendants rightly did not claim that the non-family witnesses were part of any conspiracy to concoct a case against Metin, but did suggest that at least some of them bore grudges against Metin, having left Paragon following a dispute with Metin (Mr Ceviz) or having been sacked by Metin (Mr Cakmak). I do not consider that the circumstances under which some of the non-family witnesses left Paragon should have led them to give false evidence to the court; on the contrary I considered that their evidence was straightforward and genuine, as far as it went. None of those witnesses, however, had anything to say about the terms of Ali and Sevim's divorce, the March 2012 meetings, or the payments made by Metin following those meetings.

ix) Likewise on the part of the Defendants the Paragon employee witnesses and Mustafa Kiamil were in my judgment reliable, but their evidence was not materially disputed and did not undermine the Claimants' case on the key

issues in dispute. With the exception of one point in Mrs Taylor's evidence, none of those witnesses addressed the terms of Ali and Sevim's divorce, the March 2012 meetings, or the payments made by Metin following those meetings.

THE ISSUES IN DISPUTE

20. There are six central issues in the claim:

    i) When Paragon was established, was there an agreement for its shares to be held for Metin, Ali, Hasan and Cafer as to 25% each, such that they each became entitled to a 25% beneficial interest under an express, constructive or resulting trust and/or by way of estoppel?

    ii) Did Ali purport to transfer part of his shareholding, amounting to a 10% interest in the shares of Paragon, to Sevim in 2000 as part of their divorce settlement, and was that transfer effective as a matter of law?

    iii) Did Hasan agree to settle his claim to a shareholding in Paragon at the second March 2012 meeting with Metin? If so, did Metin pay the sums due to Hasan pursuant to that agreement?

    iv) Did Ali's settlement of his claim to a shareholding in Paragon also release Sevim's claim?

    v) Are Hasan and/or Sevim barred from asserting their claims on the grounds of laches and/or estoppel?

    vi) Is the claim against PPIL barred on limitation grounds?

21. In relation to the counterclaim, there are two key issues:

    i) Did Metin make payments to Hasan following the second March 2012 meeting which (if there was no agreement at that meeting) Hasan is now liable to repay?

    ii) Were the weekly maintenance payments to Sevim from Paragon a loan that Sevim is required to repay on demand, or were they a gift?

22. The issues in both the claim and the counterclaim turn largely on points of fact concerning the events surrounding the establishment of Paragon, the divorce settlement between Ali and Sevim, the March 2012 meetings, and the payments made after that meeting. Unfortunately, on almost every important point in the factual narrative the parties' versions of events are diametrically opposed. I will therefore set out, first, my findings on the facts, before addressing the issues set out above in light of those findings.

THE FACTS

Events prior to the establishment of Paragon

23. Both the Pekin and the Dalkilic families originate from the town of Pülümür in eastern Turkey, where they formed part of the Alevi community. There was a close family bond between the two families, known as *müsahiplik*, which is an Alevi tradition in which two families are regarded as effectively part of the same extended family. There is some dispute as to how close that relationship was in this particular case, which I do not need to resolve; it is sufficient to say that Hasan and his relatives have been treated as being essentially part of Ali's family, particularly during the course of the events that I describe below.

24. In the 1970s Ali's late father Ahmet moved to London, along with his younger children Rojin and Cafer. Ali remained in Pülümür at that time, and married Sevim in 1977. Shortly thereafter Ali's nephew Metin (the son of Ali's older brother Musa) went to live with Ali and Sevim, and he was initially brought up by them as one of their sons. It was, however, later agreed that Metin should be adopted by his grandfather Ahmet so that he could move to live with Ahmet in London and continue his education there.

25. The way in which the adoption was achieved is rather astonishing and only emerged during the trial. It appears that (for reasons that Metin was unable to explain) the family registered the adoption of a person with Metin's name but a date of birth around two years after his true date of birth, and later decided to register Metin as having died. Metin's passport was obtained with the new date of birth, and on all subsequent legal documents (including applications for health insurance, car insurance and life insurance) Metin used the new date of birth, knowing that it was false. It appears that the position has not ever, to date, been corrected.

26. On the basis of Metin's true date of birth, he was 15 years old when he moved to London in 1982. While he initially lived with Ahmet, his evidence was that between December 1984 and the spring of 1987 he was living independently, initially working full-time and then doing a combination of work and studying. Metin also said that during the summer of 1986 he went to work at a fish and chip shop in Crewe which had been set up by him and his friend Ihsan Ceylan, and that he returned to London in early 1987. There is a dispute about how long Metin did work in Crewe, and whether he did (as he said) obtain substantial sums from the business there. This is, however, not relevant to any of the issues in dispute so I do not need to make any findings on this point.

27. During 1986 Ali, Sevim and their children also moved to London, and it is common ground that in spring 1987 Metin returned to live with them. He went on to take O Levels and A Levels at school in London, following which he studied Political Economy at what is now Greenwich University, graduating in 1991 with a 2:1 degree.

28. Meanwhile, Hasan moved from Pülümür to London in 1988, and was in close contact with Ali and the rest of Ali's family, including Metin. His evidence, which was corroborated by the other witnesses for the Claimants and which I accept, is

that he regarded Metin as akin to a younger brother, and was extremely close to him.

29. In around 1990 Ali bought a shop in Doncaster which he converted to a kebab shop called The Best Kebab. He then moved his whole family to Doncaster, inviting Hasan, Cafer and Metin to move there with him. Hasan duly moved to Doncaster and worked in the shop; Cafer split his time between working for Ali and living in London; and Metin mainly worked for Ali at weekends, as he was still studying in London during the week.

30. In 1991 after Metin graduated he married Zohre in Turkey. Zohre moved to the UK in 1992, and shortly thereafter she and Metin obtained a council house that was two doors away from Ali and Sevim's house in Doncaster.

31. Following Metin's graduation and marriage he hoped to begin a career in banking, but despite applying for numerous jobs he was unsuccessful. He therefore decided to set up a distribution business obtaining fast-food products to be delivered to local takeaway and fast food shops. The business started at some point in 1992 and was incorporated as Falcon in September 1993. It went on to be very successful, growing to a turnover of over £1m within a few years. The circumstances surrounding the establishment of Falcon are, however, vehemently disputed by the parties, with both sides relying on their version of events to support their contentions about what later occurred with Paragon.

32. While the company accounts for Falcon listed Metin as holding 22,264 shares (77.4%), and Hasan as holding 6,500 shares (22.6%), the Claimants' case was that Hasan and Metin started Falcon together, that all of the capital investment was provided by Hasan, and that Metin and Hasan beneficially owned the company in equal shares. Hasan said that Metin had told him that he had put 77.4% of the shares in his name in order that Metin could speak to the bank without Hasan having to be there, but that the agreement was that they should own the company on a 50:50 basis. Metin's version of events was that he started Falcon as a sole trader, with Hasan joining him later to provide physical assistance, and that in return for this Metin agreed to give Hasan a shareholding of around 23% representing a compromise between Metin's offer of 20% and Hasan's request for 25%.

33. While it is not strictly necessary for me to resolve this issue, I consider it probable that Metin did start the business that became Falcon, with Hasan joining him after a short period of time. It is clear that Metin by that time had decided to set up his own business of some sort, and there is no dispute that the business initially operated from the back of his car. Metin was also ambitious, better educated than anyone else in his family, and was the best English speaker in his family at the time.

34. In addition, it is necessary to consider the very specific allocation of shares between Metin and Hasan, which Hasan's account does not satisfactorily explain. Even if Metin had decided to make himself the majority shareholder, notwithstanding an agreement for equal beneficial ownership, that would not explain the very precise division of shares that was chosen. It would have, rather, been much more logical to apportion the shares 51:49 (as later occurred with

Paragon) or alternatively some other round number such as 60:40 or 75:25. The only explanation of why Hasan would have had precisely 22.6% of the shares was Metin's account of a negotiated compromise between himself and Hasan.

35. While Metin sought to downplay the extent of Hasan's initial investments, it was common ground that Hasan did make financial investments into Falcon, and it was also common ground that one of the first purchases of the business was a company van, which Hasan said that he had purchased. I do not need to determine how much Hasan invested or what that was spent on, but the fact that Hasan was allocated 6,500 shares, listed in the accounts at £1 each, may well have reflected an initial investment by Hasan of around £6,500.

36. In any event, whatever the initial shareholdings, and whatever the initial investments into the company, the evidence indicated that as far as their families and employees were concerned Metin and Hasan were running Falcon together. That was clear from the evidence not only of the family witnesses, but also the non-family witnesses who would have no reason to lie on this point. As Mr Large said in his oral evidence "Metin was always the brains behind the business, but Hayri was always there … they did everything together, they were always together." That may well have given the impression that Metin and Hasan owned the business in equal shares from the outset, even if that was not actually the case.

37. It is also common ground that Hasan's shareholding in Falcon was 50% at least from around the end of 1995, upon the establishment of Paragon. Metin said that he had agreed to this in return for Hasan's agreement to take over more of the day-to-day running of Falcon, and to allow Falcon to provide financial and logistical support for the establishment of Paragon. I address this further below; for present purposes it suffices to say that at least from then on and until Falcon was sold in 2005, Hasan became entitled to a 50% shareholding and was therefore entitled to regard himself and Metin as being equal owners of the company. That may be another reason why the Claimants' witnesses thought that Metin and Hasan were always equal owners of Paragon.

The establishment and ownership of Paragon

38. At some point in the summer of 1995 Falcon started to have a problem with its main supplier of burgers, Mawbeef, who started imposing geographical restrictions on Falcon's distribution of its burgers. Metin therefore started discussing the possibility of starting a separate business manufacturing beef burgers. That business started life as a company called Sparks Burgers Limited, and it was incorporated on 5 February 1996. In August 1998 the company name was changed to Uncle Sam's Beef Burger Manufacturing Limited, and in July 1999 the name was changed to Paragon. For convenience I will refer to the company as Paragon throughout this judgment.

39. Initially, 100 shares in what was then Sparks Burgers were issued, with 51 allotted to Metin and the remaining 49 to Ali. On 13 August 1996 that was increased to 60,000 at £1 each, and at some point during the company's next financial year those shares were allocated to Metin and Ali in the same proportions, so that Metin held a total of 30,600 shares and Ali held 29,400. It is common ground that the legal title to the shares did not reflect the true ownership position of the

company on its formation, and the company accounts and annual returns were therefore on any view inaccurate in this regard. The dispute is as to what the true ownership position actually was.

40. The Claimants' case is that Paragon was established jointly by Metin, Hasan, Ali and Cafer, with equal initial investments of £15,000 each, and that it was agreed that they would own the business in equal shares, i.e. 25% each. Ali and Hasan also said that the four "founders" agreed that Metin and Ali would be the two shareholders listed on the company records, but that Metin and Ali held those shares for the four "founders" in equal proportions.

41. Metin by contrast contended that Paragon was always his business alone, with no agreement that anyone of his family would have an interest in the business; and that none of his family members ever contributed anything financially to the establishment of Paragon. He said that he had included Ali as a shareholder on paper only, with Ali's consent, in order to assist with obtaining bank loans and grant funding when the business started up, on the basis that he believed that it would improve Paragon's chances of obtaining a government start-up grant if there was a shareholder who was not already part of a well-established business; and that all of Ali's shares were held on trust for him as the beneficial owner.

42. The evidence on this point can be broken down into the following main issues: (i) the source of the initial capital for Paragon; (ii) the work said to have been done by the various individuals in the establishment of Paragon; (iii) the evidence of an agreement for joint ownership; (iv) the documentary record; and (v) the evidence of the witnesses other than the parties.

The source of the initial funding for Paragon

43. The starting point is that it is common ground that Paragon, unlike Falcon, required significant start-up capital to fund (at the very least) machinery and premises to house that machinery. Metin, however, did not have anything approaching the funds to capitalise the business. While he hoped to obtain a bank loan and potentially a government start-up grant, it was also necessary to provide an initial injection of capital into the business from somewhere.

44. The anticipated source of that capital injection was set out in a business plan which Metin started drafting at some point in late 1995, and which (in the version before the court) was dated December 1995. While Metin claimed in cross-examination that this was largely the work of his accountants, it is quite clear that the necessary factual information was provided to them by Metin. Indeed Metin did not ever claim that any other family members had ever had any substantial involvement with the drafting of this document.

45. Metin accepted that material parts of the business plan were inaccurate, including the parts of his CV that set out his qualifications and prior work experience. The business plan also presented "the team" as being Metin and Ali, which on any view misdescribed the intended arrangement. On the Claimants' case the description of the founding team should have included both Hasan and Cafer alongside Metin and Ali. On Metin's case, Ali was just a paper director/shareholder, inserted for presentational purposes – as Metin said in cross-

examination, "my thoughts were to maximise my chances of getting the grants, getting the bank funding". I therefore treat the narrative elements of the business plan with some caution: on either case it is clear that Metin was prepared to misrepresent the roles of those involved in Paragon for the purposes of a document that would be used to obtain funding for the new company. That is rather telling as to Metin's attitude to formal documents at the time.

46. What is also revealing is the detail of the proposed capital funding arrangements, which the business plan repeatedly stated were to include initial equity of £60,000 which represented shareholders' funds. The figure of £60,000 in shareholders' funds was also set out in the Paragon company incorporation documents as I have described. That is all consistent with the Claimants' case that the business was initially capitalised by contributions of £15,000 from each of Metin, Ali, Hasan and Cafer, giving a total of £60,000.

47. Metin's initial response to this, in a response to the Claimants' request for further information on this point, was to contend that the figure of 60,000 shares did not correspond to anything in particular, but was picked as a random figure to make Paragon look well-capitalised. During his cross-examination, however, Metin changed his case and accepted that the 60,000 shares recorded in the company accounts did indeed reflect the share capital in the company. He nevertheless maintained that the source of the funds was not contributions by Ali, Hasan and Cafer. Rather, he said that Falcon had made loans to him or Paragon of around £100,000, and that he had converted £60,000 of those loans to share capital.

48. I unhesitatingly reject that account. The question of how Paragon was financed has been a key issue in dispute throughout these proceedings, and was addressed in the pleadings and Metin's two witness statements, none of which made any suggestion that Falcon had been the source of the £60,000 share capital of Paragon. While it has always been common ground that Falcon loaned substantial sums to Paragon during the course of the first few years after the company was incorporated, the Defence described those loans as being to provide working capital, not share capital, and Metin contended in his second witness statement that those loans were repaid to Falcon.

49. There is equally no suggestion in either the business plan or the Falcon/Paragon company accounts of an arrangement under which £60,000 of loans from Falcon were converted to equity, and Metin did not suggest that he ever told Hasan that this had occurred. In his closing submissions Mr Ayliffe tried to rely on a reduction in the debt to long-term creditors listed in the Paragon accounts between the years 1997 and 1998, suggesting that this represented the conversion of some of Falcon's loans to equity. But there is nothing in those accounts (including the notes to the accounts) to corroborate that submission, and in re-examination when Metin was asked about this he suggested that the reduced debt figure reflected the fact that some of Falcon's loans had been repaid. There is therefore no support for Metin's new case in any of the evidence before the court.

50. The only plausible explanation for the £60,000 share capital for Paragon, in the evidence before the court, is therefore the Claimants' case that this reflected the initial contributions of Metin, Ali, Hasan and Cafer to the new business.

51. I do not consider that it is necessary for me to reach a conclusive view as to precisely how those contributions were funded. Since, however, there was considerable argument on this point I will set out what I consider can be established from the evidence.

52. In Ali's case, there is no dispute that he would have been able to fund his contribution, at least in part from his existing businesses. Sevim also said in her evidence that she contributed £5,000 of Ali's share from her savings. While nothing turns on this, I consider that her evidence on this point was entirely plausible.

53. Hasan said that his and Metin's contributions were taken directly from Falcon. That is consistent with the fact that there is no evidence of either Metin or Hasan having savings or other funds available to contribute £15,000 each from their own resources. In that regard, it is notable that the Falcon accounts for the year ending 30 September 1995 recorded a dividend of £33,000 having been paid. That was the only occasion throughout the period in which Falcon was trading in which a dividend was recorded in the accounts. Mr McParland said that this dividend must have included Metin's and Hasan's £15,000 contributions to Paragon.

54. Metin denied this, suggesting that the dividend reflected the fact that both he and Hasan routinely took part of their salary as cash payments. I accept that they most likely did so. But it is also clear from the evidence on both sides that these cash payments would have been off balance sheet, the source being the takings received from those customers who paid for their supplies in cash. By contrast the £33,000 dividend was formally recorded in the accounts and represented almost 80% of the declared post-tax profits for Falcon for that year. The only reason for entering this sum as a dividend would have been to report a capital extraction that was too large to have come from the cash takings received each week. There is no indication in the evidence before me of why such a sum would have been needed by Metin and Hasan around that time, other than the fact that it was required to fund Paragon.

55. Mr Ayliffe also argued that the timing of the dividend was inconsistent with the suggestion that it was used to fund Paragon, since it was recorded as having been taken in the year ended 30 September 1995, whereas Paragon was not incorporated until February 1996. I do not regard this as conclusive, given that the accounts do not disclose when exactly the dividend was taken, and Metin's own evidence was that by the time of the December 1995 Paragon business plan he had been working on the proposal for several months. While Hasan thought that the contributions from him, Metin, Ali and Cafer had been made around December 1995, it was clear from his evidence that he did not have a clear recollection of when those payments were made – indeed it would be surprising if he had been able to remember that, 25 years later.

56. On the basis of the evidence before me, therefore, I consider that it is probable that the Falcon dividend was used to fund Metin and Hasan's contributions to the new business.

57. Finally, as regards Cafer's contribution, both Hasan and Ali said that £6,000 of this was provided by Ahmet, with the remainder paid by Cafer. Metin accepted

that he had received a large sum (he said £9,000) from Ahmet around the time that Paragon was founded, but said that this was a repayment of various loans that he had made to his grandfather in 1985 or early 1986.

58. There is, however, no credible evidence either that Metin would have had the resources to loan that sum to his grandfather, or that Ahmet would have needed such a loan from Metin. By the time of the supposed loan, Metin was only 18, and had been working for about a year at a Turkish takeaway shop in Crystal Palace. It is inherently unlikely that he would have saved such significant sums during that year that he could loan his grandfather £9,000. That is confirmed by Metin's own evidence that when he helped Mr Ceylan to set up the fish and chip shop in Crewe in the summer of 1986, he did not make any substantial financial investment in that business; rather, he said that the capital costs were funded almost entirely by Mr Ceylan. Even when Paragon was set up 10 years later in 1995, it is clear that Metin did not have that sort of sum at his ready disposal, since even on his own case any capital contribution that he made to Paragon came from Falcon.

59. By contrast, at the time when Metin says that he made the loans to Ahmet, Ahmet owned two restaurants which provided employment for numerous members of the extended family, including Ali when he moved to London later in 1986. The evidence of both Ali and his younger sister Rojin was that Ahmet's restaurants were doing well enough to pay the bills and provide a decent income for the family. They said that it was inconceivable that Ahmet would have borrowed from Metin without them both knowing of it (which they did not). I consider that their evidence on this point was entirely credible.

60. The story of a loan from Metin to his grandfather has therefore, I consider, been put forward by Metin in order to explain away the large sum of money that Ahmet gave him in, or around the end of 1995 or start of 1996, as part of Cafer's contribution to the initial share capital of Paragon. There is no evidence before me of how Cafer funded his remaining contribution to Paragon, but there is equally no basis to doubt that Cafer's contribution was the same as that of the other three.

61. I therefore accept the Claimants' account that the initial capital investment was made by Metin, Hasan, Ali and Cafer in contributions of £15,000 each, making up the total of £60,000 initial shareholders' funds that is recorded in the business plan and company accounts. That in itself is a very strong indication that the intention was that all four should be equal shareholders in the new company.

Other contributions by Hasan, Ali and Cafer to the establishment of Paragon

62. It is undisputed that Metin was the director of the business, not only on the company records but also as a matter of fact. The success of the business over the subsequent years was also undoubtedly due to his energy, commitment and business skills. I do not, however, consider that he ran Paragon single-handedly from the outset. Rather, all three of Hasan, Ali and Cafer played a significant role in helping to get Paragon off the ground in the early years.

63. Hasan took over the day-to-day running of Falcon, to enable Metin to concentrate on Paragon. His incentive to do so may well have been Metin's agreement to increase his shareholding in Falcon to 50%, as set out above. That would not, however, in itself explain the fact that (as is common ground) Hasan allowed Falcon essentially to bankroll Paragon in the early years. While I have, for the reasons set out above, rejected Metin's case that Falcon's funds were converted to share capital by Metin, there is no doubt that Falcon did provide substantial financial assistance on an informal loan basis, in particular by paying the salaries of Paragon staff before Paragon had a regular cashflow. The unchallenged evidence from Hasan and Ali, as well as Muslum and Mr Large, was that sums of up to £5,000 were regularly taken from Falcon's safe and handed over to Metin or Ali to be taken to Paragon. No formal account was ever kept of the sums paid from Falcon to Paragon in this way; nor was any interest apparently charged on these loans. Falcon's vans were also initially used to collect and deliver Paragon's stock.

64. The fact that Hasan agreed to all of this is a compelling indication that he believed that he had a shareholding in Paragon. I do not accept the Defendants' suggestion that the prospect of a better supply of burgers and the consequent possibility of the expansion of Falcon's business would have explained Hasan's conduct in this regard.

65. It is also evident that Ali spent a lot of time working on the factory floor at Paragon until some point in the early 2000s. Metin initially denied this, claiming that Ali had not worked at Paragon before 2003. In his second witness statement Metin changed his story, and admitted that Ali had worked in the factory in the "late 1990s", but claimed that he had provided "very little assistance". By the time of the trial Metin's story had changed again: he admitted (eventually) that Ali was working full-time at Paragon for at least some of that period.

66. That admission belies the claim in Metin's witness statements that Ali was simply providing assistance as a family member. When Paragon was established Ali already had his own successful business in the form of The Best Kebab, but he sold that in 1997. As Ali said, it would have made no sense for him to sell that business simply to become an employee in the factory at Paragon, doing heavy manual work operating the machinery to make burgers. The only reason why he did that (and indeed did so on a full-time basis for, it appears, several years) was that he believed himself to be a shareholder in the new company and wanted to devote his time and energy to helping to set up the new business.

67. I do not accept that Metin could simply have forgotten Ali's role. Rather, I consider that the inaccurate account given in Metin's witness statements was an attempt to downplay Ali's involvement in order to avoid the conclusion that Ali was one of the founders of and shareholders in the company.

68. Metin's account that Ali had been included as a paper shareholder in order to have someone who was not part of a well-established business, to assist with obtaining a start-up grant, was in any event unconvincing, given that Ali *was* part of a well-established business by then: he had been running The Best Kebab since 1990. Indeed the business plan for Paragon positively prayed in aid Ali's success in running kebab shops in Doncaster, and his consequent knowledge and

understanding of the relevant market. It is far more probable, in those circumstances, that Ali was chosen to be the second legal shareholder precisely because of his business experience, as well as because he was the oldest and most financially secure of the four founders of Paragon.

69. As for Cafer, Metin accepted that Cafer worked full-time at Paragon from March 1997. That is inconsistent with Metin's assertions in his witness statements that Cafer also provided "very little assistance" and did so only because of family ties. While there is little doubt that, over time, Metin became unhappy with Cafer's work, he nevertheless continued to employ him until January 2015, when Cafer was removed from the Paragon payroll in circumstances that I will discuss below. The most revealing insight as to Metin and Cafer's relationship during that time came from Mr Ceviz, whose account (set out below) indicates that Metin included Cafer as a partner in the business following pressure from Ahmet. That is consistent with the Claimants' evidence that Ahmet had provided a large part of Cafer's initial financial contribution to Paragon, in order to secure Cafer's interest in the business.

70. There is conflicting evidence about the extent to which, at least during the initial years following the establishment of Paragon, Metin had meetings with Ali, Hasan and Cafer to discuss the business. I consider it probable that Metin did have some meetings with the other three, but equally it is in my judgment improbable that those meetings involved detailed reports regarding Metin's day to day decision-making. That does not undermine the Claimants' case as to the ownership of the company, since the evidence indicates that Ali, Hasan and Cafer were content for Metin to run the company and deal with any legal, financial and administrative matters.

Whether there was an agreement for joint ownership

71. The Claimants said that the financial and other contributions of Ali, Hasan and Cafer to the establishment of Paragon were made pursuant to an agreement for joint ownership, which was made over the course of various meetings during October to December 1995.

72. The Defendants denied that there was ever any such agreement, and Mr Ayliffe submitted that if any financial contributions were made then they must have been either a gift or loan to Metin. The Defence did not, however, claim that the initial financial contributions were made by way of a gift or loan – the pleaded case was simply that there were no such contributions from Ali, Hasan and Cafer. Nor is there, in any event, any evidence suggesting that Ali, Hasan and Cafer's financial contributions to Paragon were made by way of a gift or loan. Rather, the evidence set out above points clearly in the direction of the contributions having been made pursuant to an agreement for joint ownership of the company.

73. It is also relevant to consider what had happened with Falcon. Whatever the extent of Hasan's initial shareholding in Falcon, it is common ground that Hasan did have a shareholding in that business from early on, amounting to 50% at least from around the end of 1995. Metin's own evidence was that these shares were discussed and negotiated between himself and Hasan. With that in mind it is almost inconceivable that Hasan would provide a contribution of £15,000 into the

new business without that being reflected in a shareholding in the company. Nor do I consider it plausible that Ali and Cafer would have provided what were at the time significant sums for them, without a similar agreement.

74. I do not need to identify when, precisely, agreement was reached between Metin, Ali, Hasan and Cafer. Indeed it would be unrealistic to expect any of them now to recall when exactly their discussions took place, or how many meetings between them occurred. The date of the business plan indicates, however, that there had been discussions concerning the establishment of Paragon over the course of the previous months. I consider that the agreement was most probably concluded over the course of one or more discussions that took place in the period between September and December 1995.

The documentary record

75. Mr Ayliffe submitted that the Claimants' case regarding the ownership of Paragon was contradicted by the documentary record, including Falcon's accounts which referred to Paragon as "a company controlled by a director Mr M. Pekin", and Paragon's accounts which from 2004 onwards identified Metin as the ultimate controlling party. Mr Ayliffe also relied upon press articles describing Metin as the sole founder and owner of Paragon.

76. I do not consider that significant weight can be placed on any of this. In the first place, as I have already noted, Metin himself admitted that the Paragon company records (for which he was responsible) inaccurately described the ownership of the company, so it is quite plausible that the Falcon accounts (for which Metin was also responsible) were likewise inaccurate in that regard.

77. As for the press articles, the source of information for those would have been Metin himself (there is certainly no evidence that any journalists ever spoke to any of Hasan, Ali or Cafer, except that the Defendants said that Cafer gave the author of one article a tour of the Paragon factory), so I likewise do not consider that these can be regarded as reliable independent evidence of the ownership of Paragon. The only thing that can be drawn from those articles is that by some time in the early 2000s Metin was presenting himself, to the outside world, as being the sole founder and owner of the business. That is consistent with the evidence of various Paragon employees who have given evidence for the Defendants in these proceedings (as I will discuss below), but it is of little if any probative value as to the true state of affairs regarding the establishment of the company some years earlier.

Evidence of other witnesses

78. The Claimants' case that Paragon was founded and owned in equal shares by Metin, Ali, Hasan and Cafer was supported not only by the evidence of Ali and Hasan, but also the evidence of every single one of the other witnesses for the Claimants. While that evidence was of course in large part hearsay, it was remarkably consistent, and included evidence from non-family witnesses. While some of the latter had apparently fallen out with Metin in the past, as I have already said I do not consider that this would have led them to give false evidence

in these proceedings, particularly given the passage of time since their last dealings with Metin.

79. In particular, as to the evidence of those non-family witnesses:

i) Mr Gelder had worked for Falcon from 1993–1996, and for Paragon for a few weeks in 2004. His evidence was that while he was at Paragon Metin had told him that Ali, Hasan and Cafer were also partners in the company.

ii) Mr Cakmak had worked for Ali at The Best Kebab before joining Paragon full time in around 1996, where he worked until 2002. His evidence was that he understood Paragon to be owned jointly between Metin, Ali, Hasan and Cafer, and said that this was well-known within the Turkish community in Doncaster.

iii) Mr Large, who had worked at Falcon between 1995–2005 and then at Paragon from 2006–2009, was close to the whole family and described them as good friends. His evidence was that he understood that Metin, Ali, Hasan and Cafer were equal partners in Paragon.

iv) Mr Ceviz worked at Paragon from 2002–2008 as a sales representative, and considered himself close to both Metin and Hasan, who he had known as friends since around 1990. His evidence was that Metin always made it clear to him during his conversations that Paragon had four partners. As he explained in cross-examination, Metin did so in terms of some frustration:

> "Metin, a number of times he told me that they were partners. The reason he told me this is not because he wanted to tell me; he was like upset with them. He says, 'Look Eddie ... Look, I have three partners, but they do nothing for the company. They are useless.' … me and Metin was spending lots of time together. Even weekends we were going to see customers. … and he was always saying behind their backs, 'Look, I have got three partners. I'm doing all the work and they just partner. Nothing else. They do nothing else.' That is what Metin told me, not once, not twice, but more than …
>
> '… I made Cafer partner', he says, 'not because I like him. I know him because I grow up with him, because of his father' … He said, 'He insisted on me to have him as a partner because he is, like, you know, he was not capable of anything. …' So he says, 'Otherwise, I wouldn't have Cafer as a partner', but he did because of his father."

80. It is also notable that apart from Metin's wife Zohre, not a single witness from the Pekin and Dalkilic families has been prepared to give evidence supporting Metin's case as to the ownership of Paragon.

81. Nor was Metin's case supported by the evidence of any employee who was working at either Falcon or Paragon when Paragon was first established and during its initial years of trading. While Mrs Taylor, Mrs Fletcher and Mr Healy

all said that they had only ever reported to Metin, and understood him to be the sole owner of Paragon, they only joined the company in 2001, 2002 and 2006 respectively, and by 2001 Metin was indeed both the managing director and the sole legal shareholder of Paragon. None of these employees, however, claimed to have any knowledge of the initial investments into the company, nor any knowledge of the family discussions that are in issue in these proceedings. Mr Kiamil likewise only gave evidence of his dealings with Metin and Paragon since 2005, and did not profess any knowledge of the circumstances in which Paragon was established.

Conclusion on the ownership of Paragon

82. For the reasons set out above, I find as a matter of fact that Paragon was established on the basis of an agreement that Metin, Ali, Hasan and Cafer should beneficially own the company in equal shares.

83. That conclusion is also supported by my findings regarding the terms of Ali and Sevim's divorce, the sale of Falcon, the March 2012 meetings (including the meeting with Mr Duzgun) and the December 2012 payment to Ali, all of which I address below.

Ali and Sevim's divorce

84. The circumstances of Ali and Sevim's divorce are of considerable importance to the issues in the present case. Unfortunately, almost all of the relevant facts were disputed.

85. The starting point is that on 21 February 1999 Ali transferred the entirety of his legal shareholding in Paragon to Metin for no consideration, resulting in Metin holding the legal title to 100% of Paragon's shares. The Claimants said that this occurred because by that time Ali and Sevim had started to have marital difficulties and were discussing a divorce. Ali's evidence was that he was concerned that Sevim would attempt to take half his shares, which (on their face) represented 49% of the Paragon shares. He said that he discussed this with Metin, who suggested that Ali should transfer all of his shares to Metin.

86. Metin by contrast said that this had nothing to do with Ali and Sevim's divorce; rather, he said that Ali transferred the shares to him because once the business was up and running there was no need for Ali to remain as a nominal shareholder in the company.

87. In 2000 Ali and Sevim did eventually decide to divorce, and both of them went to solicitors to discuss the financial terms of that divorce. The family assets to be divided were limited, with the key assets being the family house and (the Claimants say) Ali's shareholding in Paragon. The Claimants said that at a family meeting in September 2000 at Hasan's house, which was attended by Metin, Ali agreed that Sevim would receive 10% of the total shares in Paragon – i.e. a little less than half of Ali's beneficial share. Ali, Sevim, Hasan, Muslum and Gulay all gave accounts of the meeting in their witness statements and their oral evidence. Gulay said that the proposal that Sevim should get some of Ali's shares in

Paragon had come from her, following a discussion between her and Sevim before the meeting as to what Sevim wanted from the divorce.

88. The Claimants also said that it was agreed at that meeting (at least provisionally) that Sevim would receive a maintenance payment of £200 per week from Paragon in the form of a weekly wage, although there was no expectation that Sevim would actually work at Paragon. Muslum and Hasan said that this suggestion came from Hasan, and that Metin agreed to this – albeit that Hasan said Metin only did so reluctantly, following a further discussion about a week later between Metin, Ali, Hasan and Cafer (at which Cafer also agreed to the transfer of 10% of the shareholding to Sevim from Ali).

89. Metin denied that the family meeting in September 2000 ever took place, and said that even if it did he was not present at it, nor was he aware of the terms of the share transfer agreement that the Claimants say was reached at the meeting. In relation to the weekly payments to Sevim from Paragon, his evidence (supported by Zohre on this point) was that these were separately requested from him by Sevim, and were a loan which Sevim is now required to repay. That is the foundation of his counterclaim against Sevim.

90. I will address in turn the main disputed factual issues arising from the above accounts, as follows: (i) the circumstances of Ali's transfer of his shareholding to Metin in 1999; (ii) the circumstances in which Ali agreed to transfer Sevim part of his shareholding in Paragon; (iii) Metin's knowledge of that agreement; and (iv) the terms of the agreement for Sevim to receive a weekly payment from Paragon.

Ali's transfer of his shareholding to Metin

91. In light of my findings above on the establishment and ownership of Paragon, I do not consider it at all plausible that Ali would have agreed in 1999 that he had no shareholding in Paragon. It is in my view far more probable that Ali transferred his shares to Metin in an attempt (misguided though it was, and ultimately unsuccessful) to prevent Sevim from seeking to obtain part of his shares in the event of a divorce.

92. Although Metin suggested that Ali and Sevim's marital difficulties did not emerge until 2000, Ali was not cross-examined on this point, and Sevim and Zulfikar both confirmed in their oral evidence that the marriage had started to break down by 1998. That is consistent with the timing of Ali's share transfer to Metin.

Ali's agreement to transfer part of his Paragon shareholding to Sevim

93. The parties' submissions and witness evidence concerning Ali's agreement to transfer part of his Paragon shareholding to Sevim must be assessed by reference to the contemporaneous correspondence between Ali and Sevim's solicitors regarding the terms of the divorce. Both sides rely on that correspondence as supporting their different versions of events.

94. The first relevant letter was from Sevim's solicitors on 6 October 2000. In that letter there was no mention of an agreement between Sevim and Ali. Instead the solicitors asked various questions about Ali's financial position, including the following:

> "Insofar as Paragon Quality Foods is concerned, we are instructed by our client that until quite recently [Ali] was a 50% shareholder in this business and, has only recently transferred his shares to another party with a view to defeating any claim our client may have against this business. We would therefore invite your client to confirm that this is in fact the correct position and, we would ask that we be provided with copy business accounts for the last three financial years."

95. Ali's solicitors appear to have sent an initial response on 1 November 2000, which was not before the court. Subsequently, however, in a letter on 10 November 2000, they said:

> "We have seen our Client and it appears that our respective Clients have spoken and had reached an agreement, which appeared to us to be unworkable. We explained to our Client therefore for you to advise your Client fully as to what settlement should be in this case he needs to provide the information you have requested …"

96. Sevim's solicitors responded on 11 December 2000 in the following terms:

> "We are able to confirm that our respective clients have spoken direct and, we understand that your client has agreed to transfer to our client 10% of his shareholding in Paragon Quality Foods. We would be obliged if you could please confirm that you have received similar instructions."

97. That letter was forwarded to Ali by his solicitors on 14 December 2000. On 20 December 2000 Ali wrote back to his solicitors in the following terms:

> "With reference to your letter dated 14 December 2000, I am writing to inform you that I agree to the following proposals:-
>
> 1. Transfer 10% of Share holding in Paragon Quality Foods.
>
> 2. Continue to meet the Mortgage instalments on the former matrimonial home until such time as the mortgage is discharged and, that until that date my former wife will remain in occupation.
>
> 3. That upon discharge of the mortgage the former matrimonial home be transferred into the sole name of my former wife.
>
> 4. That upon completion of 2 & 3 above a Clean Break be achieved.
>
> 5. Each party is responsible for their own costs.

> I hope this is satisfactory, if you require any further information please do not hesitate to contact me."

98. On 9 January 2001 Ali's solicitors wrote to Sevim's solicitors confirming their understanding that:

> "… 10% of the total share holding in Paragon Quality Foods Limited which presently are held in the name of our client's Brother Metin Pekin … will be transferred to your client.
>
> There are 60,000.00 shares in the Company, thus your client would have transferred to her 6,000.00 shares. The transfer would be directly from Metin Pekin to your client, obviously that transaction would have to be referred to in the recitals as Metin is not a party to these proceedings."

99. A Statement of Information was subsequently filed with the County Court, listing Ali as the divorce Petitioner and Sevim as the Respondent. The section of that document requiring the parties to set out a brief statement of the background circumstances stated that:

> "The Petitioner's Husband's Brother [this should have said the Petitioner's brother] has also transferred just less than half the shares he is holding for the Petitioner to the Respondent in Paragon Quality Foods Limited, where the Respondent works. It is a family run business, no dividends are presently paid."

100. As a preliminary point regarding this correspondence, it is evident that there is an inconsistency between the Claimants' case that an agreement was reached in September 2000, and the fact that the agreement was not mentioned by the solicitors until November 2000. The Claimants' explanation – supported by the evidence of both Gulay and Sevim – was that Gulay attended the meetings between Sevim and her solicitors given that Sevim's English was very poor (this was common ground), but she only did so from October or November 2000 and had not been at Sevim's first meeting with her solicitor. Gulay said that at the first meeting that she attended it was apparent to her that the agreement for the transfer of part of Ali's shareholding in Paragon had not been raised with the solicitors, so she (Gulay) mentioned this. She also said that when Ali found out that she had done so he "had a fallout" with her.

101. The Defendants' contrary explanation was that there was no agreement between Ali and Sevim before the 6 October 2000 letter. Rather, the queries in that letter about Ali's interest in Paragon must have prompted Ali to assert that he had an interest in order to offer part of this to Sevim in the divorce negotiations, all the while knowing that he did not have any such interest and that Metin was in fact the sole owner of Paragon.

102. I do not consider that anything turns on the question of when, exactly, an agreement was reached between Sevim and Ali. It may be that, as the Claimants said, an agreement was reached in September 2000, but was simply not communicated by Sevim to her solicitors at that time. It could equally be the case

that the Claimants are mistaken about the month of the agreement, given the passage of 20 years between then and now, and that the discussion in fact took place after the letter of 6 October was sent. What is clear is that at some point before 11 November 2000, Ali and Sevim had reached an agreement, which (as the subsequent correspondence made clear) included an agreement for Ali to transfer to Sevim 10% of the Paragon shareholding.

103. Given the evidence of the family interactions at the time and the undoubtedly fractured relationship between Sevim and Ali, it seems unlikely that this agreement was reached by discussions between Ali and Sevim alone. It is far more probable, in my judgment, that this was discussed and agreed with the participation and support of other family members. That supports the Claimants' case of a family discussion of some kind.

Metin's knowledge of the agreement between Ali and Sevim

104. Whatever the circumstances in which the agreement was reached, it is inconceivable that Metin would not have known about it. Metin lived, at the time, two doors away from Sevim, and he admitted in cross-examination that Sevim had treated him like a son. He was the person who (as he accepted in cross-examination) had previously helped Sevim with matters such as correspondence, because of her poor level of English. He also had more legal and financial expertise than anyone in the rest of the family. The families were very close and frequently ate dinner together. It is highly improbable in those circumstances that any important family discussion concerning Ali and Sevim would have occurred without Metin's knowledge and participation.

105. For the same reasons, Mr Ayliffe's suggestion that Ali would have been careful to conceal from Metin the terms of his agreement with Sevim is in my judgment fanciful. Ali would have known that any attempt at concealment would have been doomed to failure, since Metin would have found out either directly from Sevim or another family member, or through some other means, for example if Sevim had asked him to explain correspondence from her solicitor.

106. Metin's denial of any knowledge of the arrangement was in any event further undermined by the fact that it was clear from the evidence that Ali (like Sevim) needed someone to assist him at his meetings with his solicitors, and Ali said that it was Metin who accompanied him. Ali also needed help with correspondence, the most obvious example being the 20 December 2000 letter set out above, which was sent by Ali to his solicitors setting out his position on the divorce proposals, in terms that he would (even now) be incapable of drafting himself. That letter must therefore have been drafted by someone other than Ali. Ali said he believed that Metin wrote the letter for him.

107. The Defendants' response to a request for further information on this point conspicuously did not deny that Metin helped both Ali and Sevim with the divorce arrangements. Rather the response stated that while Metin did not recall attending any meetings with Ali's solicitor, he accepted that it was possible that he did so. By the time of the trial, however, this had hardened to a categorical denial that Metin had assisted Ali in any way with the divorce proceedings. Metin claimed that he was unhappy at Ali's conduct, and suggested that there were

others in the family who could have helped Ali, such as his son Zulfikar, or Cafer or Muslum.

108. All of these suggestions are unlikely. Zulfikar was only 19 at the time, and living with Sevim; it is very improbable that he would have assisted Ali in those circumstances. Nor is it probable that Muslum would have done so given that his wife Gulay was helping Sevim. As for Cafer, there was no evidence of his involvement in any of the divorce discussions at all, save for the Claimants' evidence that he agreed to the weekly payment from Paragon and the transfer of the shares. Nor was there evidence of anyone else from the family who would have been able to help Ali; and indeed on the evidence before me I consider that (apart from Gulay) Metin was the only family member whose level of English was good enough to have drafted the 20 December letter.

109. Metin must, therefore, have known about Ali's proposal to transfer part of his shareholding to Sevim, and cannot have objected to it, because if he had done so the 20 December letter would not have been written in the terms that I have set out above.

110. As a separate point, the Defendants have referred to the fact that in the years following the divorce there was no further documentary reference to Sevim's shareholding, which they say undermines the Claimants' case on this point. Sevim's evidence, however, was that after the agreement was made, Metin said that he would take care of her shares for her, and that she trusted him to do so. Given the comments that I have already made about the parties' tendency to make oral rather than written agreements, I am not surprised that Sevim did not take any further steps to record the arrangement in writing, once the terms of the agreement had been confirmed in the solicitors' correspondence and court documents referred to above.

111. By contrast, as I will discuss further below, it appears from the evidence that Ali did discuss Sevim's shareholding with Metin in the context of the settlement of his own shareholding claim, and that discussion was reflected in the amended version of the document signed by Ali in December 2012 recording his agreement with Metin. That supports the Claimants' case as to both Sevim's interest and Metin's awareness of it.

112. One further context in which one might perhaps have expected Sevim's interest to have been mentioned was the correspondence in 2015 and 2016 concerning Cafer's claim against Metin. I will discuss this correspondence below. For present purposes the point that the Defendants have relied upon is that Cafer's letter of claim in July 2015 set out a schedule of what Cafer said were the changes in the beneficial shareholding in Paragon over time, without referring to any interest of Sevim in the company.

113. I do not, however, think that this can be decisive when set against the other evidence that I have referred to above. The issue of Sevim's interest was of little or no relevance to Cafer and his claim, and none of the witnesses have suggested that Cafer was involved in the divorce negotiations between Ali and Sevim, save to the very limited extent described above. Cafer was of course also not able to be cross-examined as to the reasons for omitting reference to Sevim in the

schedule to the July 2015 letter. While the Defendants also suggested that Zulfikar should have corrected this point given that he was helping Cafer with his claim, Zulfikar's evidence during his cross-examination (which was not challenged on this point) was that he did not remember ever seeing the July 2015 letter from Cafer's solicitors or discussing it with Cafer.

114. Finally on this issue, the Defendants say that Sevim did not raise the issue of her shareholding during 2012 or the years thereafter. For the reasons that I set out further below, I consider it probable that Sevim did speak to Metin about this on several occasions from 2012 onwards.

The weekly payments to Sevim from Paragon

115. The correspondence between Sevim and Ali's solicitors concerning the divorce settlement also referred to the issue of Sevim's weekly payments from Paragon, albeit in terms indicating that Sevim would be obtaining a wage for working at Paragon. It is common ground, however, that although Sevim started to receive a weekly payment from Paragon in around February 2001, which continued until January 2013, she did not ever actually work at Paragon. That is, I find, consistent with the Claimants' account of an agreement that Sevim should be put on the Paragon payroll in order to receive what was, essentially, a weekly maintenance payment.

116. Metin and Zohre both claimed in their witness statements that Sevim agreed with Metin that she would repay the money that she received from Paragon. In cross-examination, however, Metin accepted that it was never his intention to enforce repayment of the money from Paragon.

117. I prefer the Claimants' evidence on this point, which was both internally consistent and consistent with the known facts concerning Sevim's situation. The reality is that there was no prospect of Sevim ever being able to repay these sums, the whole purpose of the arrangement being that she had no means of earning an income for herself after her divorce from Ali.

Conclusion on the divorce settlement

118. I find, therefore, that Ali did agree to transfer part of his beneficial interest in Paragon, amounting to 10% of the total shares in the company, to Sevim as part of the divorce settlement; and that Metin was aware of that agreement and did not object to it. I also find that Metin agreed to the payment by Paragon of a weekly maintenance payment for Sevim, through the Paragon payroll, and that this was agreed by Metin (and Ali, Hasan and Cafer) to be a gift to Sevim rather than a loan.

119. Following the conclusion of the divorce arrangements, during the course of 2002 and 2003 both Metin's family and Sevim's family (without Ali) moved to houses that were again only a few doors apart in a different street in Doncaster. Ali moved to London, remarried, and remained living and working in London for the remainder of the time period relevant to these proceedings.

The sale of Falcon

120. The next relevant event was the sale of Falcon. This was a successful business, although it was never as profitable as Paragon. In 1995 its turnover was £1.5m, with reported post-tax profits of £41,539. By 2004 its turnover had risen to over £6m, with reported profits of £110,334. In April 2005 the business was sold to JJ Property Investments (**JJ**), owned by Mr Kiamil, for £1.57m. As with so much else in this case, the circumstances of the sale were hotly disputed.

121. Hasan's evidence was that Metin approached him in early 2004 and proposed a sale of Falcon so that the proceeds could be invested in Paragon. Hasan said that after the sale part of his share of the proceeds was indeed invested in Paragon, by way of a loan that was not repaid to him until 2007.

122. Metin said that nothing of the sort occurred; rather, he claimed that he wanted to sell Falcon because he was unhappy with how Hasan was running the company, and that he (Metin) did not have time to deal with Falcon alongside running Paragon. While the records show that a sizeable investment was indeed immediately made in Paragon following the sale of Falcon, Metin denied that this included any contribution from Hasan, and said that it was in fact made entirely by him.

123. I reject Metin's account of the sale of Falcon. It is quite clear that Falcon was indeed sold to capitalise Paragon, and that Metin did so in part with Hasan's share of the proceeds.

124. The background to the transaction was that in 2004, having had healthy profitability since the start of trading in 1997, Paragon declared a loss of over £250,000. The accounting period ran to February each year, so by early 2004 Metin would have known that the company was loss-making. The position did not improve (indeed it slightly worsened) during the next financial year. During the same period Paragon's indebtedness increased from around £700,000 to over £3.3m. That is consistent with Hasan's account that Metin approached him with a request to invest in Paragon. Indeed, Metin himself said in his first witness statement that in 2005 Paragon was in need of working capital as a result of its move to larger premises and consequential significant increase in overheads.

125. Metin nevertheless asserted in his oral evidence that he did not need to sell Falcon to raise capital, because Falcon's profitability was such that he could easily have obtained a loan of up to £500,000 from Falcon. That claim is utterly fanciful. Falcon's reported profits in 2003 and 2004 were £27,335 and £110,334 respectively. Even allowing for the fact that (as I have indicated) it appears that substantial cash sums were collected from customers that were not always reported in the accounts, there is no evidence whatsoever that there were undeclared takings in the magnitude of £500,000 floating around and available for Metin to channel into Paragon. Nor is there any evidence that Metin ever asked Hasan if he would be willing for Falcon to provide a loan of that sort to Paragon at that time, which would have been the obvious thing to do if Falcon did indeed have surplus profits on the scale claimed by Metin.

126. The sale of Falcon was therefore the only way of raising capital to inject into Paragon. That was quite clearly the reason why Metin asked Hasan to sell the company. It is quite possible that Metin also, by that point, wanted to direct his energies into the business that he saw as being (in the long term) a far more profitable operation. But I do not consider that this was the primary reason for selling Falcon.

127. What happened upon the sale can be traced through the contemporaneous documents and bank records:

    i) The initial net proceeds of the sale, following the deduction of legal costs, were £1,170,651, representing £585,325 for each of Metin and Hasan. The solicitors dealing with the sale distributed two thirds to Metin and one third to Hasan: Hasan was paid £390,217.17 and Metin was paid £780,434.67. That meant that Hasan was owed £195,107.83. Metin claimed in cross-examination that he did not know why this happened, and refused to accept that his solicitors were doing this on instructions, but there can only be one explanation for this: that Metin had told the solicitors to divide up the proceeds in that way.

    ii) The account of what was paid contained handwritten annotations by Metin, which included figures of £195,000 and £200,000. The figure of £195,000 can only refer to the sum that Hasan was *prima facie* due following the distribution by the solicitors – no other explanation for that figure has been offered.

    iii) Metin received his share of the funds on 26 April 2005. He claimed in evidence that he was retaining the £195,000 owed to Hasan pursuant to an agreement to equalise the distributions at a later stage. The justification, he said, was that some deduction would need to be made from Hasan's equalisation payment to reflect a greater share of the tax burden that would be borne by Metin. He steadfastly denied that any of that £195,000 was used to invest in Paragon. His bank records, however, contradict that denial. What happened was that the entirety of the funds received by Metin (which included Hasan's £195,000) went straight into Metin's mortgage offset bank account, where they were defrayed in two ways: first they paid off the debit balance on that account of over £160,000; secondly, a payment of £600,000 was immediately injected into Paragon by way of what was described in the accounts as a director's loan from Metin. That necessarily involved putting Hasan's money into Paragon, since Metin could not have made that loan using his share of the proceeds alone (especially given that he had already used some of those proceeds to pay off his mortgage).

    iv) Following the sale, it is common ground that Hasan spent time chasing up Falcon's debtor payments, and recouped significant sums owed to Falcon as at the date of the sale. Under the terms of the sale agreement, that led to further payments by JJ to Hasan (£150,000 in February 2006) and Metin (£124,517 in June 2006).

    v) The tax on the proceeds of the sale fell to be paid by Metin and Hasan on 31 January 2007. On 27 January 2007 Falcon and Paragon's accountant

Tony Mindham emailed Metin to advise him of the tax payments that would be due from him and Hasan, amounting to £105,461.98 for Metin and £20,446.62 for Hasan.

vi) Taking those figures into account, Metin had received a net total of £804,873 and Hasan had received a net total of £519,771, meaning that Metin owed Hasan a balancing payment of around £142,500. That was set out in a handwritten calculation by Metin written on the email from Mr Mindham.

vii) Metin did not, however, make any equalisation payment to Hasan at that time. Rather, Metin's bank statements show that almost eight months later, on 19 September 2007, Metin received a bank transfer for £141,252.11. That transfer was from Paragon by way of partial repayment of the director's loan, as the Paragon accounts confirmed. Along the way, Metin had also added interest due to him of over £100,000 on the loan.

viii) Metin then gave Hasan a cheque for £125,000. Metin's handwritten notes on the Tony Mindham email stated that the previously calculated figure of £142,500 was "cancelled" and "replaced with" £125,000, after taking into account "other adjustment" and then Turkish words which translate as "collected in hand". The evidence was conflicting as to whether that meant that Metin paid an additional £17,500 in cash (Hasan's account) or whether it meant that the figure of £142,500 was reduced to take account of further cash sums that Hasan had collected as being due to Falcon (Metin's account). While nothing turns on this point, I consider Metin's explanation to be more likely. Indeed the fact that just short of £142,000 was withdrawn by Metin from Paragon at the time of the payment to Hasan suggests that Metin was originally intending to give Hasan a cheque for the full £142,500, but then reduced that figure when he met Hasan on the basis of the monies that had been "collected in hand".

128. The inescapable conclusion from this flow of funds is that Metin used the monies due to Hasan on the sale of Falcon (together with Metin's own receipts from the sale) to inject capital into Paragon by way of a large director's loan, which was falsely described in the Paragon accounts as being a loan from Metin alone. The sum due to Hasan, after adjustments for the tax paid and other cash collected by Hasan, was then repaid two and a half years later, through a partial repayment of the loan, when Paragon had returned to profitability.

129. That is consistent with Hasan's case that he was told by Metin (and believed) that he was loaning Paragon £195,000. There would otherwise have been no reason for Hasan to allow Metin to retain such a large sum of money owing to him, interest free, for that length of time. Notably it was not suggested by Metin that Hasan had any idea that Metin was using the monies due to Hasan in order to make a loan to Paragon recorded as being from Metin alone, and for which Metin charged a substantial amount of interest.

130. The reason why Metin, in these proceedings, has denied that Hasan made any investment in Paragon following the sale of Falcon, is that Hasan's agreement to sell Falcon in order to capitalise Paragon quite obviously supports Hasan's case

that he was a shareholder in that business. As Hasan said in his evidence, Falcon was doing well, he enjoyed the work he did there and he was a joint owner of the company with Metin. It would have made no sense for him to liquidate that business and invest a large part of the proceeds into a company that was entirely owned by someone else, who would then reap the rewards of any investment. The only reason that Hasan thought it was worth selling Falcon was that he believed that he was a shareholder of Paragon, and Metin persuaded him that it would be worthwhile to make a substantial further investment in that business.

131. I also note for completeness that various of the Claimants' witnesses said that they were told that Hasan's monies from the sale of Falcon were put into Paragon. Among the family witnesses were Muslum, who said that he told Hasan at the time that Hasan should not be putting so much money in if Cafer and Ali were not doing the same. Mr Large also said that he was told by both Metin and Hasan that the proceeds of the sale of Falcon were invested in Paragon. His evidence is particularly relevant as he was working for Falcon up to the time of its sale to JJ, and then after a short break moved to work at Paragon. As someone who was also very close to the family, having been one of Falcon's first employees, I would expect him to have been told by Metin and Hasan why Falcon was being sold.

132. My findings as to the events surrounding the sale of Falcon are also relevant in addressing a related claim by Metin that in 2005, at the time when Paragon was desperately in need of capital, he approached each of Hasan, Ali and Cafer to ask them to invest in Paragon, and they all refused. In the case of Hasan, as I have just set out, I find that Hasan agreed to sell Falcon to invest in Paragon, and that part of the funds due to him on the sale of Falcon were indeed used by Metin to make that investment. It is therefore incorrect to say that Hasan refused to help.

133. Regarding Ali and Cafer, it is agreed that they did not invest further at that time, but Ali and Hasan said that this was because Metin never asked Ali and Cafer to do so. While I do not need to resolve this point, I note that an approach by Metin to all three men would have been consistent with the fact that they were the three other beneficial shareholders in Paragon at the time. The fact that Ali and Cafer did not invest further does not, however, imply that they were abandoning the company (as Metin later claimed) or disclaiming any interest in it. Rather, it is clear that neither Ali nor Cafer had the sums available to invest the hundreds of thousands of pounds that Paragon needed at the time. The only source of that amount of money was the sale of Falcon, which was why Metin resorted to that in order to address Paragon's liquidity problems.

Transfer of shares to PPIL

134. On 11 February 2009 Metin incorporated PPIL as a holding company to hold the assets of Paragon. Metin was and remains the 100% shareholder of PPIL. On 25 June 2009 he transferred the legal title in Paragon's shares to PPIL. There is no dispute as to the facts of the transfer; nor is it disputed that Metin did not notify any of Ali, Hasan, Cafer of Sevim that he was doing this. There is, however, a dispute as to the effect of this transfer on the Claimants' claims, which is the subject of the last of the legal issues on the claim that I have to decide.

Ali, Hasan and Cafer's activities in the years prior to 2012

135. In the years between the sale of Falcon and the March 2012 meetings it is common ground that Ali was living and working in London, and Cafer continued to work at Paragon.

136. As for Hasan, he initially used his share of the proceeds from Falcon (when he received them, as I have described above) to invest in local properties. That is consistent with Mr Kiamil's evidence that, when he asked Metin and Hasan what their plans were following the sale of Falcon, Hasan said that he was going to work on other projects. It appears, however, that Hasan's other business ventures did not go as expected, and in October 2010 he was put on the payroll at Paragon. Paragon's records showed that he remained on the payroll until 30 March 2012, receiving around £250–£300 per week. Metin said that this was done as a favour to Hasan, that he never actually worked at Paragon, and that he later repaid the money. Hasan disputed this and said that he was doing a general business development role, working with some of the previous Falcon customers to generate more business at Paragon. He said that he was only at the Paragon factory once every week or few weeks.

137. Mr Healy, who was at the time (and remains) the head of sales at Paragon said that he only saw Hasan sporadically at Paragon. He was not aware of Hasan having any sales or business development role at Paragon, although he accepted that Metin might have agreed that Hasan should visit some of his old Falcon contacts for this purpose.

138. I consider that Mr Healy's evidence was reliable. While Hasan may have done a small amount of work for Paragon during that time, there is no evidence of him doing the amount of sales or business development work that would reflect the weekly salary that he was being paid by Paragon. It therefore seems far more probable that, for the most part, his salary from Paragon was paid as a favour to him. Equally, however, there is no evidence of this ever being repaid by Hasan, and I consider that it is most likely that it was neither repaid nor intended to be repaid.

The March 2012 meetings

139. Hasan's employment at Paragon came to an abrupt end following the two meetings in March 2012 between Metin, Ali, Hasan and Cafer. What occurred in those meetings is a central issue in this case. The basic question is whether at the second of those two meetings Metin agreed to settle the claims of Ali, Hasan and Cafer to shareholdings in Paragon by paying them £250,000 each (the Defendants' case) or whether no such agreement was reached at all (the Claimants' case). Unfortunately, as with the other key factual issues in this case the parties have advanced wholly opposing accounts of both the March meetings and what happened thereafter.

140. Since the case advanced by each side turns on a rather long sequence of interconnected events, I will start by summarising the parties' rival versions of those events, before considering the available evidence relied on by each side.

The Claimants' version of events

141. The Claimants' account was that at some time in March 2012 Metin told Ali, Hasan and Cafer that he wanted to have a meeting with them, which took place at Paragon's offices. During the course of that meeting Metin told them all that Paragon was struggling, and offered to buy Ali and Hasan's shares for £50,000 to each of them. Ali and Hasan were outraged at the low level of Metin's offer, refused to accept it, and the meeting ended in acrimony.

142. Following that meeting Metin sent Abbas Duzgun, who was (and remains) a close family friend of Metin, to meet Hasan in Doncaster. At the meeting Mr Duzgun gave Hasan a set of notes handwritten by Metin (the **Duzgun notes**), containing comments relating to Metin's proposal for the purchase of Ali and Hasan's shares.

143. Metin then called a second meeting, which took place on the last Saturday in March 2012 (i.e. 31 March 2012), again at Paragon's offices. Prior to the meeting Hasan had obtained Paragon's accounts from Companies House, and had asked Gulay to look at them for him. In addition to Metin, Ali, Hasan and Cafer, the meeting was attended by Zulfikar and three friends from the Turkish community: Mr Duzgun, who came with Metin, and Ali Yilmaz and Sabri Zamur, who travelled from London with Ali. There is a dispute about the precise status of these three men within the Turkish community in London and Doncaster, which I do not have to resolve; it is clear that whatever their status, the intention was that the three non-family attendees would act as mediators to try and resolve the dispute.

144. It is common ground that the meeting once again became very acrimonious. The Claimants' evidence was that Metin repeated his claims that the business was doing badly; Hasan disputed that on the basis of the company accounts. Metin eventually offered to pay Ali and Hasan £250,000 each for their shares in the business. Hasan and Ali said that they wanted an independent valuation of the company, which Metin refused. The only thing that Metin did agree during the meeting, according to the Claimants, was that Paragon owed Hasan £100,000 relating to a debt that Paragon had owed Falcon but had not repaid before Falcon was sold. Hasan eventually became almost sick with stress and left the meeting with Ali, no agreement on the share purchase having been reached. Cafer then came out of the building and asked Ali and Hasan to return to his house for dinner. Ali and Hasan felt that they could not refuse, so went there with Cafer, Mr Yilmaz and Mr Zamur. About 20 minutes later Metin and Mr Duzgun turned up, unexpectedly. At that point, according to the Claimants, the atmosphere became tense and hostile, and Ali and Hasan left as soon as they could.

145. It is common ground that Ali did nevertheless agree to sell his shares to Metin for £250,000. Ali's evidence was that he agreed this at some point in April 2012, and was paid partly through monies transferred to Hasan's sister Medine in Istanbul, partly by a cheque from Metin in December 2012, and the rest in cash.

146. The Claimants' case was that Hasan by contrast did not ever reach agreement with Metin as to the sale of his shares, and did not receive any money from Metin in that regard. All that Hasan did receive from Metin, he said, was £40,000 in April 2012, and £30,000 in around May 2012 brought to him by Haydar Gungor,

both of which Hasan said related to the £100,000 debt owed to him by Paragon, which had been discussed during the second March meeting.

147. As for Cafer, it is undisputed that he continued to be employed by Paragon for almost three years after the March 2012 meetings. In January 2015 a dispute arose over Cafer's involvement in Zulfikar's business Hallgate, which Paragon had assisted by making available its credit line. Around the same time, according to the Claimants, Metin sought to buy out Cafer's shareholding in Paragon, but Cafer refused. Metin then dismissed him, and in July 2015 Cafer's solicitors sent a letter of claim to Metin. Metin again sought to settle Cafer's claim in November 2015; Cafer again refused. Cafer issued his claim form in November 2018, and there was an initial order that his proceedings be managed together with the present proceedings. In February 2020, however, Metin settled Cafer's claim for £3 million.

148. The Claimants' account of the March 2012 meetings and the subsequent payments was supported by the witness evidence of Hasan, Ali and Zulfikar (who all attended the second meeting), as well as Sevim, Neslihan, Muslum, Gulay, Medine and Rojin (who didn't attend the second meeting but gave evidence on what happened before or after that meeting, as relevant from their knowledge).

The Defendants' version of events

149. Metin said that the first March meeting was initiated by Ali and Hasan, who turned up at Paragon out of the blue and were joined by Cafer. According to Metin, Ali claimed that the three of them were entitled to be paid some money for their support in establishing Paragon, and threatened that if Metin did not pay them they would take legal action against him claiming that they had each invested £15,000 in return for a 25% share in the business. Metin said that he regarded their demands as "essentially blackmail" and refused them.

150. Metin said that he was then approached by Mr Duzgun, who said that Ali had asked him to intervene in the dispute. Metin explained his position to Mr Duzgun, making some handwritten notes as an *aide memoire*, but not intending for those notes to be handed over. Mr Duzgun met Ali, Hasan and Cafer at Cafer's house, and Ali took the notes.

151. Ali then insisted on a further meeting at short notice. At that second meeting, Metin said that Ali sought a payment of £300,000 for each of him, Hasan and Cafer. Metin eventually gave in and agreed to pay each of them £250,000 in full and final settlement of their claims. He said that they accepted this, following which, according to his first witness statement, "We all shook hands and they hugged me and wished me luck and success".

152. After the meeting, Metin said that he took Ali to one side and proposed that the amount that Sevim owed Metin for her wages from Paragon should be deducted from Ali's payment. Ali agreed and was happy with this arrangement. After the meeting everyone went to Cafer's house for dinner, and everyone was in a good mood save for Metin, who was unhappy that he would have to pay a large amount of money to settle the dispute but was relieved that it was over.

153. Metin said that Ali was paid £125,000 in cash in May 2012, and the remainder by cheque and cash in December 2012. Hasan was paid partly by the transfers to Medine, partly through £40,000 which Metin borrowed from Mr Baran for that purpose, and partly through the repayment of £23,000 in respect of a loan that Metin had made to Zulfikar. Metin agreed that £30,000 was paid through Mr Gungor in an attempt to settle the separate debt of £100,000 claimed by Hasan, but said that this was the only payment in relation to that debt (which Metin disputed).

154. Cafer was paid, Metin said, through cash payments of £150,000 between 2012 and 2015, leaving a balance of £100,000 which was paid following an agreement for Paragon to provide financial support to Hallgate. Metin said that he regarded Cafer's subsequent claim as a "try on" which he eventually reluctantly settled for pragmatic reasons.

155. The Defendants' account of the March 2012 meetings and the subsequent payments was supported by the witness evidence of Metin, Mr Duzgun and Mr Yilmaz (who all attended the second meeting), as well as Zohre and Mr Baran (who didn't attend the second meeting but gave evidence relating to some of the payments after the meeting).

The available evidence: overview

156. While it is common ground when and where the two March meetings took place, and who attended each meeting, there is no contemporaneous record of what transpired at either meeting. The only direct evidence of the meetings was therefore the recollections of the witnesses, which may well be unreliable and/or subject to biases for the reasons discussed above.

157. In particular, although each of the witnesses that attended one or both of the two meetings (Ali, Hasan and Zulfikar for the Claimants, Metin, Mr Duzgun and Mr Yilmaz for the Defendants) gave a description of the discussion at those meetings, some witnesses in more detail than others, I do not consider it likely that any of them would have a detailed independent recollection of what was said, more than eight years on. I do not, therefore, place any specific weight on the detailed narrative of any witness concerning that meeting.

158. Nor, in any event, is it relevant for me to reach any granular conclusions as to who said what at the meeting. The relevant question is the outcome of the meeting: was an agreement reached for the settlement of the claims of any or all of Ali, Hasan and Cafer, or was no settlement agreement reached at all?

159. In that regard, it is necessary to consider the credibility of the parties' opposing accounts by reference to the available documents dating from before and after the meetings, the known or probable facts concerning the relevant period of time, and my assessment of the reliability of the evidence given by the various witnesses. Specifically, I consider, in broadly chronological order:

    i) The circumstances of the first March meeting;

ii) The subsequent meeting with Mr Duzgun, and the note produced at that meeting;

iii) The dinner hosted by Cafer after the second March meeting;

iv) The May 2012 payment to Ali;

v) The December 2012 payment to Ali;

vi) The payments said to have been made to Hasan;

vii) Metin's subsequent relationship with Ali and Hasan;

viii) The payments said to have been made to Cafer;

ix) The correspondence relating to Cafer's claim; and

x) The evidence of the mediators.

The first March meeting

160. Metin's account that the first meeting was initiated out of the blue by Ali, Hasan and Cafer, and his claim that they effectively blackmailed him by demanding payment on threat of court proceedings is, in my view, implausible. There is absolutely nothing in the evidence before me to suggest that any of the three men were sufficiently aggrieved with Metin by that point to have behaved in such a way. Quite the contrary, at the time in question Cafer was still working at Paragon where he reported to Metin, Hasan was receiving a weekly salary from Paragon for which (as I have found) he was probably not doing much work, and Ali had for some years made a new life for himself in London.

161. It is not disputed that Ali had significant financial difficulties around that time. As Ali said in his first witness statement, several of the businesses he had set up in London had failed, he had borrowed around £120,000–£130,000 from friends within the Turkish community, and he was coming under pressure from those friends to repay what he owed them. Ali may well have hoped to obtain some money from Paragon to help relieve his financial pressure – and indeed his own evidence was that this was the reason that he did (reluctantly) settle with Metin at some point in April 2012.

162. Nevertheless, given the long-established and close family relationships I do not consider that those difficulties would have led Ali, out of the blue, to confront Metin and threaten him with court proceedings unless a payment was made to him. There is nothing in the evidence before me concerning Ali's character, or the history of his relationship with Metin, that would lend credence to such a demand.

163. I also note that on Metin's case Ali, Hasan and Cafer did not ask for any specific sum of money to be paid to them. That undermines his claim that they were blackmailing him in an attempt to extort money from him. The suggestion that Cafer was part of this blackmail attempt also sits ill with the fact that Metin continued to employ Cafer not only immediately following the meeting but also

for almost three years thereafter. Unsurprisingly, in his closing submissions Mr Ayliffe played down the label of "blackmail". That was, however, the phrase used repeatedly by Metin in his evidence.

164. Mr Ayliffe submitted that there was no reason for Metin suddenly to have convened the meeting, and that it was more likely that the others did so following what had been a "spectacularly successful year's trading by Paragon in 2010/11". I consider that explanation to be improbable. There was no evidence before me suggesting that any of Ali, Hasan or Cafer had ever looked at the Paragon company accounts before 2012 (or that they would have had any reason to do so). The first evidence of any of them doing so was a bank record showing a payment by Hasan to Companies House on 26 March 2012, which supported Hasan and Gulay's evidence that Hasan had downloaded the Paragon accounts from Companies House before the second March meeting, in order to establish the truth of Metin's claim that the company was struggling. Even then, Gulay said that she did not explain to Hasan that Metin had taken dividends from Paragon, because – as she frankly put it in her oral evidence – if she had done so, she would then have had to explain to Hasan what dividends were, and "honestly that would have been more of a headache to explain than anything else". I found her evidence to be entirely credible on this point, and in my judgment even if Hasan had looked at the Paragon company accounts it is extremely unlikely that he would have been able to understand them without assistance from someone such as Gulay. That is no doubt why there is no indication that he sought to do so before 2012.

165. By contrast Metin would have known precisely what Paragon's financial situation was, and during the year ended February 2011 he had for the first time taken a significant dividend from Paragon (of £645,411), without informing any of Ali, Hasan or Cafer. Metin was therefore the one person who would have been aware of the increasing value of Ali, Hasan and Cafer's shareholding and their entitlement to a share in any dividends that had been (and would in the future be) paid. That would have given him an obvious motivation to seek to resolve the situation by buying out at least some of the other shareholders.

166. The Claimants' account of the circumstances of the first meeting therefore seems inherently more plausible than the Defendants' version of events. I find, therefore, that it is probable that the meeting was indeed initiated by Metin rather than Ali, and that the purpose of the meeting was an attempt by Metin to buy out the shareholdings of Ali and Hasan. That finding also undermines the Defendants' repeated assertions that Metin believed (or had come to believe, by then) that he was the sole owner of Paragon.

167. While I do not need to reach any conclusion as to the precise terms of Metin's offer, I consider it probable that it was sufficiently insubstantial that Ali and Hasan refused it on angry terms, as they have said. There is certainly no dispute that no agreement was reached at that meeting.

168. What is not clear is why Metin would have treated Cafer differently to Ali and Hasan. The Claimants' evidence that he did so at both the first and the second March meeting is, however, supported by the terms of the Duzgun notes, the circumstances of the dinner hosted by Cafer, my findings on the payments to Cafer, and the solicitors' correspondence relating to Cafer's claim against Metin,

all of which I will discuss below. That indicates that Metin was content to leave the situation at least partly unresolved at that stage.

169. The other point that is not entirely clear is why there was no discussion of Sevim's interest in Paragon at this point. Sevim's evidence was that Metin told her around that time that he would buy her shares from her, but wished to reach an agreement with Ali and Hasan first. As discussed below, that account is in my view plausible. Equally, however, it seems likely that Metin privately hoped that a settlement with Ali would enable him to avoid any further claim from Sevim, as is apparent from the evidence concerning the December 2012 document signed by Ali, as well as Sevim's account of her conversation with Metin shortly thereafter.

The meeting with Mr Duzgun

170. Whoever initiated the contact between Metin and Mr Duzgun, it is common ground that Mr Duzgun spoke to Metin after the first March meeting, and was given a set of handwritten notes regarding the dispute between the parties. Mr Duzgun's story, in his witness statement, was that he then met Ali, Hasan and Cafer at Cafer's house, passed on what Metin had wanted him to say, and that Ali then took the notes from him. The Claimants' account was that Ali was in London at the time, and that in fact Mr Duzgun met Hasan in Doncaster and handed over the notes to him.

171. The question of who Mr Duzgun met and where that happened is not important and I do not need to resolve it. I do, however, find that Metin intended the notes to be given to Hasan and Ali, rather than writing them solely as an *aide memoire* for Mr Duzgun. The notes, as they stood, would have been largely unintelligible to an unconnected third party without a great deal of explanation, and it was apparent from Mr Duzgun's evidence that he did not in fact understand their content. I accept, however, that he did understand that Metin was offering to pay Ali and Hasan to end their claims to an interest in Paragon.

172. The notes were written in Turkish but provided to the court with an English translation. There were three pages of notes. Page 1 started:

> "2005 → Went down < <u>Money was lost</u>
>
> …
>
> Hayri's money has never entered Paragon. I kept the money for tax purposes and for the accountant to prepare records. It was paid 1 year later.
>
> Hayri's money has not <u>entered</u>.
>
> <u>2005</u>
>
> Everybody left and ran away.
>
> The factory had a debt of 2 million at that time.

THE PARTNERSHIP HAS ENDED"

173. Page 2 started:

> "15 Ali Pekin
> 9 Cafer + 6 Metin
> 15 Hayri has put
> 15 Metin has put"

There followed a set of calculations that Metin explained as a "hypothetical proposal" for Ali, Hasan and Cafer to buy him out for £2.5m.

174. Page 3 contained the following figures:

> "15,000 x 2 = 30,000
>
> £30 x 4 = 120,000"

175. The entire tenor of this set of notes is consistent with the Claimants' case that Metin recognised that Ali, Hasan and Cafer had an interest in Paragon, and was attempting to buy out Ali and Hasan. The words "THE PARTNERSHIP HAS ENDED" speak for themselves – that can only have reflected a recognition that there had originally been a partnership, contrary to Metin's steadfast denials in these proceedings; and it is clear that Metin was seeking to argue that the conduct of his partners had brought that arrangement to an end.

176. The first page of the notes provided a purported justification for the termination of the partnership, namely that the others had not supported Metin in 2005 when Paragon was experiencing financial difficulties. On the basis of the factual findings that I have already made, Metin's statements on this page of the notes were comprehensively inaccurate: Metin did not keep Hasan's money for tax purposes, but used that money to invest in Paragon; and Hasan was only repaid two and a half years later, not one year later as Metin claimed.

177. Metin suggested that the figures on the second page of the notes described the claims made by Ali, Hasan and Cafer in the first March meeting, rather than representing his position at the time. That does not make sense: on Metin's case, since Ali, Hasan and Cafer had each claimed that they had invested £15,000 in Paragon, the notes should simply have recorded "15" for Cafer, rather than "9 Cafer + 6 Metin". The figures are therefore, in my view, explicable only as reflecting Metin's position as to what each of them had put into Paragon at the outset. That again is flatly inconsistent with Metin's case in these proceedings, but consistent with the Claimants' case save for the figures for Cafer.

178. It is common ground that the third page represented Metin's offer. Metin said that this was an offer to all three of Ali, Hasan and Cafer, and that he had authorised Mr Duzgun to offer £50,000 each. That is, however, inconsistent with the figure of £120,000 recorded. In my judgment it is more likely that the calculations reflected – as the Claimants contended – an offer to buy out Ali and Hasan alone. That is the only plausible explanation of the figures "15,000 x 2 = 30,000": what

Metin appeared to be suggesting was that his offer would quadruple Ali and Hasan's initial investment ("£30 x 4 = 120,000").

The dinner hosted by Cafer

179. My findings regarding the Duzgun notes are consistent with the Claimants' evidence that at the second March meeting (as with the first meeting) Metin's proposals were directed solely at Ali and Hasan, and that Metin did not make any offer to buy out Cafer. The Claimants' evidence on this was also consistent with the fact that it was Cafer who invited everyone (including Metin) to have dinner at his house following the meeting.

180. I accept Mr McParland's submission that it is highly improbable that an invitation like this would have been extended by Cafer to Metin, or indeed would have been accepted by Metin, if (as Metin claims) Cafer had gone into the meeting seeking to extract a large sum from Metin following what was commonly agreed to have been a very acrimonious meeting earlier that month, and had indeed (on Metin's account) successfully extracted a sum from Metin that was close to what Metin claimed had been demanded in the meeting. Rather, the fact that Cafer made and Metin accepted that invitation indicates that Cafer was (as the Claimants' witnesses said) present at the meeting as a neutral participant only, and was not the subject of Metin's proposals.

181. Mr Ayliffe suggested that Metin would not have attended the dinner if an agreement had not been reached, at least with Ali and Hasan. I do not think that I can draw that inference. The evidence before me indicated that Metin and Mr Duzgun arrived at Cafer's house some time after the others, and the parties have given completely opposing accounts of what happened thereafter, with each side's account being consistent, in principle, with their case as to the outcome of the meeting.

The May 2012 payment to Ali

182. The Claimants do not dispute that Ali did agree to settle his claim with Metin for the sum of £250,000, albeit that Ali said he did so after the meeting rather than at it. Metin said that he initially attempted to deduct £125,000 from that sum, pursuant to the side-agreement that he purportedly reached with Ali at the second March meeting to the effect that part of Ali's settlement sum would be set off against the monies owed by Sevim to Paragon in repayment of the wages that she had received from Paragon since 2001. Metin relied on that purported side-agreement to support his case that Sevim's payments from Paragon were a loan rather than a gift.

183. While I consider that Metin probably did seek to reduce his settlement with Ali to £125,000 on account of the wages paid over the years to Sevim (and indeed that would explain part of the Claimants' account of the dealings with Medine's account in Turkey, which I discuss below), I consider it very improbable that Ali ever agreed to this. Ali had by then been divorced from Sevim for over a decade, and the evidence before me indicated that they had not spoken at all since their divorce. Ali had meanwhile moved to London, remarried, and had a child with his second wife. It is implausible that in those circumstances he would have

agreed to a reduction in his settlement sum to take account of any payments that had been made to Sevim.

184. Whatever Metin's initial negotiation attempts with Ali may have been, it is common ground that they ultimately settled on a sum of £250,000 for Ali's shares, and it is also common ground that the first £125,000 of that was paid by Metin to Ali in May. There is a dispute as to how that was paid, and a separate question of whether the settlement with Ali also purported to settle Sevim's interest in Paragon.

185. The following facts are agreed:

i) Hasan's sister Medine had a sterling bank account in Istanbul, where she lived. The bank statement indicates that the account was opened at some point before 24 April 2012.

ii) The first payment into that account was a payment from Zohre of £148,000 on 25 April 2012. This was followed by a payment from Metin of £39,000 on 8 May 2012. The payments came from accounts held by Zohre and Metin in Turkey.

iii) Hasan was in Turkey from 16 May 2012 until 11 June 2012, and again from 16 July 2012 until 28 August 2012.

iv) Ali was in Turkey from 19–25 June 2012, the dates of which have been confirmed by Turkish immigration documents.

v) On 20 June 2012 (i.e. the day after Ali arrived in Turkey) Medine withdrew £60,000. This was the first payment out of the sterling account, following the incoming payments from Zohre and Metin.

vi) On 23 August 2012 Medine withdrew £3,000 from the account.

vii) On 3 October 2012 Hasan transferred £16,500 to the same account, and on 5 November 2012 Medine withdrew £16,497.

viii) There were no other payments out of the account in 2012, but there were various payments out during the course of 2013 and 2014, which reduced the balance of the account to nil. The account was closed in January 2018.

186. Ali's explanation of these facts was that Metin told him that he could pay £125,000 in May, but that the money was in Turkey in a sterling account and Ali would have to collect it there. Since Ali did not have a sterling account in Turkey, it was agreed that the money would be held for Ali by Medine, and Ali would collect it from her. That is why Ali collected £60,000 from Medine on 20 June 2012, which he said that he then invested in a car hire business in Istanbul called Hedef. Thereafter Ali directed that the remaining funds held by Medine should be spent in various ways, including further investments in Hedef.

187. Ali's account was endorsed by the evidence of Medine, who said that Metin had previously asked her to open a sterling account for him in Turkey, which she did in April 2012; that Metin and Zohre between them had made the payments into

the account set out above; and that Metin had then asked her to hold £125,000 of that for Ali. According to Medine, Metin later asked her to hold the entirety of the amount in the account for Ali. She gave evidence that was very similar to that of Ali in relation to the specific payments that she had subsequently made from the account.

188. Metin agreed that he had paid Ali £125,000 but said that he did so in cash, using money that (by March 2012) he already had in the safe at Paragon. He said that he had accumulated this sum over the course of time from cash repayments of loans that he had made to friends and family. The cash was, he said, handed over to Ali at Paragon's offices on an unspecified date in May 2012, with no witnesses present. He said that the transfers into Medine's account were for Hasan and not Ali. This last point was central to his case that he had settled Hasan's claim in March 2012, since the money transferred to Medine made up the largest part of the £250,000 sum that he said that he had paid Hasan pursuant to that agreement.

189. At the outset, contrary to Mr Ayliffe's submissions, I do not think that any conclusions can be drawn, one way or the other, from the fact that the payments by Metin and Zohre were made to Hasan's sister Medine. It is clear that Medine was close to Metin, who she had known since childhood, and her evidence was that Metin had stayed with her occasionally when he visited Turkey. While Metin and Zohre held sterling accounts in Turkey, there is no evidence that either Hasan or Ali, or any of their other close family members, did so. If, therefore, Metin did want to transfer funds to either Ali or Hasan in Turkey, Medine was an obvious choice of intermediary.

190. I also do not consider that anything turns on the evidence as to when Metin and Medine first discussed the possibility of Medine holding funds for Metin, or the question of whether or not the initial agreement was that Medine would hold those funds for Metin's business purposes. The material point is that when the two payments were made into Medine's account, they were undoubtedly made for the purposes of being transferred to either Ali (the Claimants' case) or Hasan (the Defendants' case).

191. A further argument advanced by Mr Ayliffe was that if Metin had wanted to transfer money to Ali via Medine, he would have instructed Medine to hold the full £187,000 in the account for Ali from the outset, rather than holding only £125,000 for Ali initially with the instruction to hold the remainder for Ali following later. I do not accept that submission; the Claimants' account is in fact consistent with Metin's own evidence that he initially sought to persuade Ali to accept only £125,000 in settlement of the claim.

192. There was more force in Mr Ayliffe's submission that Metin's evidence of a £125,000 cash payment to Ali was consistent with the fact that Ali needed the money quickly because of all of his debts. By contrast it was, Mr Ayliffe said, improbable that despite having settled with Metin precisely for that purpose, Ali would then use the settlement funds (which on Ali's case he received through Medine) to make further investments rather than paying his creditors.

193. I did not find Ali's explanations on this point very satisfactory. On Ali's account, the financial pressures on him led him very reluctantly to settle with Metin in

April 2012: as he put it in his witness statement, "my desperation took over and I eventually agreed to the £250,000". However, according to Ali in his oral evidence, his creditors then suddenly backed off, allowing him to use at least the first £125,000 of the settlement sum in other ways, including for another business venture. That was not in my view a very compelling story.

194. Equally, however, as Mr McParland pointed out, there are a number of difficulties with Metin's claim that he paid Ali £125,000 in cash in May 2012, which render that claim unconvincing. In particular:

i) It is very odd that (on Metin's account) there were no witnesses to such a large sum in cash being handed over by him, despite the fact that it would have been very easy for him to get someone at Paragon to witness the transaction. Among others, both Cafer and Muslum were working at Paragon at the time. This is to be contrasted with other payments that are agreed to have been made by Metin around that time, which were witnessed by third parties, such as the payment of £40,000 to Hasan on 29 April 2012, which was borrowed from and witnessed by Mr Baran, and the payment to Ali in December 2012, which was witnessed by both Mr Duzgun and Mr Yilmaz.

ii) There is likewise no evidence of any receipt being obtained from Ali for payment of this sum in May 2012. Again, that is to be contrasted with the fact that Metin did obtain a receipt for the payment of £40,000 to Hasan on 29 April 2012 – and indeed that receipt was signed by all three of Metin, Mr Baran and Hasan. If Metin really did, within weeks of that payment, make a far larger cash payment to Ali, it is difficult to understand why he did not record that in writing at the time in a similar manner. (As set out further below, while Metin did obtain a written record of his payment to Ali in December 2012, which referred to the May 2012 payment, neither of the two versions of the December document specified how the May payment was made.)

iii) Metin's own evidence was that he struggled to raise the funds to pay Ali and Hasan, such that he had to borrow the £40,000 from Mr Baran in April 2012. That is inconsistent with his suggestion that at the same time he had £125,000 sitting untouched in his safe. If that had been the case, he could have used that to pay Hasan in April 2012, without having to borrow from his brother-in-law. When asked about this in his cross-examination, Metin was unable to explain the inconsistency and indeed forgot about the cash payment that he claimed was made to Ali in May:

> "Q. … Why were you borrowing money from Cemal Baran to pay Hayri when next month you are paying £125,000 in cash, supposedly, from one of your safes?
> A. My Lady, it is not a month. When we paid Cemal Baran it was April, when I paid Ali Pekin it was part cheque part cash in December, so the times are not correct –
> Q. I said May, you paid him £125,000 in May, in cash?
> A. Okay, yes, I have paid him. Yes, I have paid him."

195. There is also no doubt that, as I have set out above, Ali arrived in Turkey the day before Medine withdrew £60,000 in cash from her sterling account, and Medine's evidence that she paid that cash sum to Ali was not challenged. The only way that these facts could be squared with Metin's case would be if (as the Defendants suggested) Ali collected that sum on behalf of Hasan. There is, however, no evidence that this occurred. Moreover, if the money in Medine's account was indeed being held for Hasan, and if he had wanted to withdraw £60,000, he could have collected that himself during one of his two visits during the summer of 2012. The notion that Hasan would have left Turkey on 11 June, only to ask Ali to collect the money for him nine days later, is highly improbable.

196. Hasan's payment into the account on 3 October 2012 and Medine's corresponding withdrawal on 5 November 2012 also tend to corroborate Ali and Medine's evidence that the transfers into Medine's account were for Ali and not Hasan. Irrespective of the purpose of the October/November transaction (which was disputed), the flow of monies indicates that Hasan needed to make a payment into the account in order for Medine to use that for some particular reason. If, however, Medine was already holding a far larger balance in her account for Hasan, there would have been no need for Hasan to transfer any money in; Medine could simply have paid out from the funds that she already held for Hasan.

197. For completeness, I note that there are various disputes as to the evidence of Ali and Medine regarding the remaining payments that were later made from Medine's account, during the course of 2013 and 2014. I do not consider that I need to resolve those points; it is sufficient to say that nothing in the evidence connected Hasan to any of those payments, save for the fact that Hasan was in Turkey when Medine withdrew £3000 in cash on 23 August 2012. I do not consider that that latter fact, without more, implies that Hasan received that cash withdrawal; and the Claimants' evidence was that Hasan did not receive it. Rather, Medine said that the sum was used to pay for medical treatment for Ali's aunt.

198. My conclusion is that notwithstanding Ali's unsatisfactory explanation of his financial situation in and around April and May 2012, I prefer, overall, the Claimants' evidence as to how Ali was paid the first tranche of the settlement sum from Metin.

The December 2012 payment to Ali

199. The question of how precisely the remaining £125,000 of Ali's settlement figure was paid to him by Metin (and in particular the extent to which that was paid by cheque, cash, or through the remaining money held by Medine) is not something that I need to resolve: I do not consider that anything turns on this point, given the findings that I have already made. The terms of the written agreement made by Ali in December 2012 are, however, relevant to the issues in these proceedings.

200. It is common ground that on 16 December 2012 Ali went, at Metin's request, to Mr Duzgun's house, accompanied by Mr Yilmaz, and that he received from Metin at least a cheque. There is some dispute about whether he also received, at that

time, a cash sum. What is not disputed is that throughout this transaction Ali remained in his car outside the house, and Mr Yilmaz acted as a go-between. It is also undisputed that two documents were written, both in Turkish. The first read as follows (in translation):

> "For my share (25%) in Paragon, I made a deal with Metin Pekin for £250,000.
>
> In May 2012, I received £125,000 of the cost of my share. Also, I received £75,000 in December 2012.
>
> We agreed that I will receive the remaining £50,000 in mid-June 2013.
>
> Since the money paid to Sevim Pekin is paid from our joint account, I do not count the money given to her.
>
> The money that I received is the money that corresponds to my share in the factory.
>
> I will take care of the money problem with my children, it is my responsibility."

201. This document was signed by Ali but not by anyone else. It is common ground that this was (following the negotiations made through Mr Yilmaz) replaced by a second version of the document, as follows (again in translation):

> "I have transferred my shares at Paragon to Metin Pekin for £250,000.
>
> I do not accept that the money paid to Sevim Pekin up until now, went from my own shares.
>
> I received £125,000 of my money in May 2012 and I received the remaining £125,000 in December 2012.
>
> My relationship with Paragon has ended."

202. That version of the document was signed by Ali, Mr Yilmaz and Mr Duzgun. A space was left for the signature of Metin, but the copy of the document provided to the court was not signed by him. It is nevertheless common ground that this was the final version of the agreement.

203. The reason for the two versions was disputed. Ali said that Metin had provided the text for the first version, but that after signing it he (Ali) was unhappy with the content and therefore negotiated the second version. In particular, Ali said that he disputed the reference to a 25% shareholding in Paragon, in circumstances where he only retained a 15% shareholding following his divorce from Sevim. His evidence was that Metin refused to amend the reference to specify 15% rather than 25%, but did agree that the agreement could be changed to refer to "my shares" without a percentage figure.

204. Metin denied that account in its entirety, saying that Ali had provided the first version and that he (Metin) was not happy with this, which led to the second version. Mr Yilmaz agreed that Metin had asked for the document to be changed, but in cross-examination gave a very confused account of this and was unable to explain what Metin had objected to in the first version.

205. Having regard to the changes made between the two versions of the document, I consider it more probable that the original version was drafted by Metin, and that Ali asked for changes to be made to that version. Ali's account is a coherent and plausible explanation of the removal of the 25% figure and its replacement with an unspecific reference to "my shares". It is also notable that the first version of the agreement provided for £50,000 of the outstanding settlement figure to be deferred to the following year, whereas the second version provided for the total outstanding sum to be paid in December 2012. This was a change to Ali's advantage, and is therefore indicative of a first draft that was provided by Metin but subsequently renegotiated at Ali's behest.

206. I therefore accept Ali's account that Metin originally sought to provide that the settlement with Ali would cover the entirety of Ali's original 25% shareholding in Paragon, without taking into account the transfer of part of his beneficial interest to Sevim, but that Ali ultimately refused to enter into an agreement on those terms. On that basis the final agreement referred only to "my shares". That indicates that both Ali and Metin knew that Ali's share was not 25%, which could only have been due to the transfer to Sevim.

207. Accordingly, in my judgment, the settlement agreement with Ali only determined his 15% shareholding in Paragon, and did not address (or purport to address) Sevim's ownership of the remaining 10% of Ali's original shareholding.

208. Two further points fall to be made regarding the December 2012 documents. The first is that the explicit acknowledgement in both versions that Ali did indeed have a shareholding in Paragon, which was (in the language of the second version) "transferred" to Metin for £250,000, is further unambiguous evidence supporting the Claimants' case in these proceedings as to the ownership of the company.

209. The second is that although Mr Ayliffe suggested that the December documents reinforce the Defendants' case that a settlement was also reached with Hasan and Cafer, in fact I consider that the opposite is true: the December documents referred exclusively to Ali, and neither Hasan nor Cafer ever signed anything similar. The absence of any document recording a settlement with Hasan or Cafer or any payments pursuant to such a settlement tends to support the Claimants' case. Nor is there any reason why Hasan should have reached an identical agreement to the agreement concluded by Ali, given that his situation was very different to that of Ali by then.

The payments said to have been made to Hasan

210. It follows from my findings above that Hasan did not, in my judgment, receive payment from Metin via the transfers to Medine. It is, however, agreed that he did receive a payment of £40,000 on 29 April 2012 which Metin borrowed from

Zohre's brother Mr Baran, plus a payment of £30,000 from Metin taken to Hasan by Mr Gungor in around May 2012, and a payment of £27,000 from Zulfikar in around September 2012.

211. It is common ground that the £30,000 payment by Mr Gungor related to a debt of £100,000 that Hasan said was owed to him by Paragon. Metin said, however, that the other two payments were (alongside the money held by Medine) part of the £250,000 settlement he said had been agreed with Hasan at the second March 2012 meeting.

212. Hasan by contrast said that the £40,000 payment was (like the £30,000 payment) in settlement of the separate debt of £100,000 and was not part of any settlement in relation to his shareholding. The repayment from Zulfikar was, Hasan said, a repayment of loans made by Hasan to Zulfikar in 2005, 2006 and 2012, rather than anything to do with Metin.

213. Starting with the issue of the £100,000 debt from Paragon, Hasan's evidence was that at the time of the sale of Falcon Metin had told him that Paragon owed Metin and Hasan £100,000 each in repayment of loans made by Falcon to Paragon over the years. He said that he raised this at the second March meeting, and that Metin – after some prevarication – agreed to pay Hasan this sum, separate to the question of the settlement of the claims in relation to the shareholdings. Ali and Zulfikar both corroborated that account of Metin's agreement at the meeting.

214. Metin denied that any such conversation had taken place regarding this sum when Falcon was sold, but accepted that Hasan's claim had been asserted in the second March meeting. A subsequent statement from Mr Duzgun, obtained by Metin in connection with Cafer's claim and discussed below, stated that Paragon owed Falcon £100,000, but that this would be "sorted between Metin Pekin [and] Hasan Dalkilic". As discussed below, I consider it probable that the content of this statement was drafted or at least significantly influenced by Metin. Given that, in addition, it is agreed that at least the £30,000 paid by Mr Gungor in around May 2012 related to that alleged debt, I consider it probable that Metin did agree to pay at least some part of the £100,000 claimed by Hasan separately from the settlement of the shareholding claims.

215. The question is therefore whether the £40,000 from Mr Baran was also made in relation to the £100,000 debt claimed by Hasan. The only documentary evidence relating to that payment was a very short receipt that was written (in Turkish) at the time, and which read (in translation):

> "29/04/12
> I received 40 from Cemal Baran and gave it to Hayri."

There followed the signatures of Metin, Mr Baran and Hasan.

216. The wording of the receipt indicates that it was written by Metin, and Mr Baran confirmed in his witness statement that Metin had requested this. Notably, however (and unlike the document signed by Ali in December 2012), the receipt does not record the purpose of the payment. It does not, therefore, allow any

inference to be drawn as to whether the payment related to the £100,000 debt or a settlement agreement for Hasan's shares.

217. Apart from the evidence of Metin and Hasan, the only other evidence of the purpose of this payment came from the witness evidence of Zohre and Mr Baran. Both said in their witness statements that Mr Baran had agreed to lend the money to Metin, and that the money had been collected by Hasan from Metin's house in the presence of Mr Baran. Zohre said explicitly that the money borrowed from her brother was put towards the £250,000 that Metin had agreed to pay for Hasan's claim, whereas Mr Baran's witness statement simply said that Metin needed the loan as part of the money he had agreed to pay to Ali, Hasan and Cafer.

218. Curiously, however, when they were cross-examined, both Zohre and her brother added a further detail that had been absent from both of their witness statements, which was that when Metin handed over the money to Hasan he had specifically said that this was part of the payment of Hasan's £250,000. Even more strangely, Mr Baran repeated this point almost word-for word six times during the course of his cross-examination, rather than answering the questions put to him. By way of example:

> "A. … they asked to borrow 40,000 lira from me.
> Q. How long did it take you to get that money?
> A. I already had my own business. I had this money in my savings and it took me about a week to gather it and as a package I gave it to Metin Pekin and he called Hayri. … Hayri came, he said to him, 'Take it Hayri, this is part of your 250,000, this is a part of it', and then he thanked him because he gave it to him."

And then only a few questions later:

> "Q. It doesn't say that on the note, does it Mr Baran?
> A. This 40,000 lira. I gave it to Metin and he then gave this money to Hayri, saying, 'Take this, this is a part of your 250,000 lira', and then he said, 'Thank you'. I don't know anything else. That is all I know."

And again a few questions later:

> "Q. You did not mention anything about the £250,000 in your witness statement, why not?
> A. That's all I know. I know nothing else. … I gave the 40,000 to Metin and then Metin gave the money to Hayri, by saying, 'Take this, this is a part of your 250,000'. That's all I know. I know nothing else."

219. It is difficult to avoid the conclusion that Mr Baran had essentially memorised this phrase before coming to court, and had also discussed the point with Zohre. It is, moreover, implausible that Zohre and Mr Baran would now have an independent recollection of the specific phrase used when a sum of money was handed over from Metin to Hasan eight years ago. I therefore do not consider that their evidence on this point was reliable and I place no weight on it.

220. Two factors do, however, make it likely in my judgment that this payment did indeed (as Hasan said) relate to the £100,000 debt rather than to the larger sum of £250,000 under a settlement agreement (claimed by Metin).

221. The first is that the £40,000 payment was made the month before the £30,000 payment by Mr Gungor which it is agreed related to the £100,000 debt. If Metin was trying to settle that debt, it is improbable that Hasan would have accepted only £30,000, and far more probable that he would have demanded a larger sum (even if not the full £100,000 claimed). Since there is no evidence of any other payment being made by Metin to Hasan around that time, it seems likely that the £40,000 and £30,000 taken together were an attempt to settle the £100,000 debt.

222. The second factor is that Metin's case regarding the purpose of the £40,000 payment only makes sense if that is seen as part of a package together with, at the very least, the monies transferred to Medine. If, however (as I have found), none of the sum sent to Medine was ever held for Hasan, then that would leave only this payment of £40,000 and the subsequent £27,000 payment from Zulfikar. It is, however, implausible that Hasan would have accepted only £67,000 in settlement of a £250,000 debt. For this further reason the £40,000 payment was in my judgment most likely to have been part of a settlement of the £100,000 debt.

223. That leaves the question of the £27,000 payment that Hasan received in September 2012. There was no dispute that this sum was paid to him by Zulfikar by way of a bank transfer; the question is what the purpose of that payment was. Metin's case was that he had loaned Sevim £25,000 in 2011 for a new takeaway shop, the Armthorpe Grill, which Sevim set up with her sons; that he then asked Sevim to repay £23,000 of that to Hasan as the final tranche of the sums owed under the settlement agreement; and that Sevim agreed to do so. Zohre supported that account, saying that she had gone with Metin to discuss this with Sevim, and that Sevim had later told her that she had paid Hasan.

224. Hasan, Sevim and Zulfikar all denied that Metin had anything to do with that payment. They said that the repayment was made from Zulfikar, not Sevim; that it was in repayment of various sums lent by Hasan to Zulfikar, not Sevim, in the course of 2005, 2006 and 2012, for various of Zulfikar's businesses; and that Sevim had not been involved in any of those businesses, nor had she ever asked Metin for a loan.

225. Metin and Zohre's account seems improbable for various reasons. In the first place, there is no evidence that Sevim was ever involved with any of her sons' businesses. Sevim described herself as "a housewife with no education" who had never run a business in her life, and even now she speaks very little English. The Armthorpe Grill was Zulfikar's business, and I consider it likely that Zulfikar organised any loans he needed, rather than asking Sevim to do so. Indeed Zulfikar accepted that he had taken loans from various friends and family to set up that business, but said that he had not borrowed any money from Metin.

226. The £27,000 payment from Zulfikar to Hasan also does not correspond either to the sum that Metin claimed that he loaned Sevim (£25,000) or the sum that Metin said Sevim agreed to repay Hasan (£23,000). Indeed, when Zohre was cross-

examined about the loan, she was very confused about its amount, suggesting variously that it might have been £45,000 or £20,000.

227. In addition, Metin's case was that this repayment was the final tranche of a total of £250,000 paid to Hasan after the second March 2012 meeting. As with the £40,000 payment, that explanation falls away if, as I have found, the transfer to Medine was for Ali rather than Hasan. It is also notable that, unlike the final payments to Ali, there was no receipt or other document recording that this was the final part of any settlement sum.

228. In his closing submissions Mr Ayliffe submitted that Metin could not have known about the payment by Zulfikar to Hasan when relying on it in the Defence, unless he had indeed made the loan as he claimed. As Mr McParland responded, however, Metin's case did *not* correspond to the facts of the payment: he relied on a purported payment of £23,000 from Sevim to Hasan, rather than the payment of £27,000 from Zulfikar to Hasan that was actually made, and the Defence notably gave no details of when that payment was said to have been made.

229. Mr Ayliffe also said that the timing of the repayment suggested that this was linked to Metin's payments to Hasan. Zulfikar explained, however, that he repaid Hasan after receiving a payment of £30,000 in relation to the Armthorpe Grill, and he wanted to clear his debts before he started his degree at Sheffield University (where he was studying from 2012–2015). That is in my judgment a credible explanation. Furthermore, while Mr Ayliffe is correct to say that there is no evidence of the cash loans said to have been made by Hasan to Zulfikar in 2005 and 2006, it is quite apparent that cash loans were frequently made between family and friends within the Turkish Alevi community, without any documentation of those at the time.

230. For these reasons, I find that the £40,000 payment was most likely to have been a part repayment of the £100,000 debt claimed by Hasan; and I find that the £27,000 repayment from Zulfikar was most likely a repayment of loans from Hasan to Zulfikar, rather than a repayment to Hasan of a loan from Metin to Sevim.

231. On that basis, I find that Metin did not pay Hasan any sums in settlement of his shareholding. That both answers the counterclaim against Hasan, and supports the Claimants' case that Metin had not reached any agreement with Hasan (whether in March 2012 or subsequently) for the settlement of Hasan's claim to a shareholding in Paragon.

232. Mr Ayliffe submitted that Metin would have continued to try and settle Hasan's claim, if a settlement had not been reached at the second March meeting. I do not, however, consider that such an inference can be drawn from the facts. On the contrary, while I have already found that Metin had a motivation for attempting to buy out Ali and Hasan, the evidence that Metin did not even attempt to buy out Cafer in 2012 suggests that he was willing for the shareholding interests to remain in part unresolved at that stage. In Hasan's case, in particular, Metin may have hoped that the payments that he did make to Hasan would encourage Hasan to drop any further claim that he had against Metin. Indeed Hasan suggested in his evidence that Metin led Cafer to believe that he had settled with Hasan, on the

basis of these payments. That is consistent with Metin's failure to make further attempts to settle Hasan's claim.

Metin's subsequent relationship with Ali and Hasan

233. It is common ground that whatever happened at the second March meeting led to a bitter falling-out between Metin and both Ali and Hasan, who had previously counted among his closest family members. Ali, it is undisputed, has not spoken to Metin since 2012, and said in cross-examination that Metin had "ruined our life". Metin's evidence was that Ali had told other family members not to attend the wedding of Metin's daughter in 2016, and the documentary record shows that Ali made insulting comments about Metin (particularly referencing Metin's conduct in relation to the ownership of Paragon) in a social media post in 2016.

234. Metin claimed in his first witness statement that he initially had a relatively normal relationship with Hasan. I do not believe that. The same witness statement went on to say that Metin had seen Hasan on a social occasion shortly after the March meetings and it was clear that Hasan did not want to speak to him; and that when Metin invited Hasan to his daughter's wedding in 2016 Hasan refused the invitation and told Metin that their friendship was over. Metin's second witness statement confirmed that he had taken Hasan off the Paragon payroll at the end of March 2012, because he no longer wanted to help him. All of that is consistent with Hasan's evidence that he tried to have nothing more to do with Metin after their dispute.

235. None of that sits well with Metin's claim that at the end of the March 2012 meeting, having reached the agreement that he says was concluded, everyone shook hands, hugged him and wished him luck and success; that everyone was in a good mood at the dinner at Cafer's house, which was a joyful and happy event because the dispute was resolved; and that at the end of the dinner they all wished him luck again. In my judgment, in light of what is known about the subsequent relationships between those involved, Metin's account of the end of the meeting seems rather improbable.

236. Mr Ayliffe submitted that it was inherently improbable that Hasan would have done nothing to assert his claim to an interest in Paragon in the years following the March 2012 meetings, if there really had been no settlement at that time, knowing that Ali had settled with Metin, and also knowing that Cafer had started proceedings against Metin several years later. Hasan's response (when questioned on this point in cross-examination) was to say that he asked both Metin's father and Mr Yilmaz to intercede, on various occasions between 2014 and 2016, without success, and that he did not know that he might be able to bring a claim in legal proceedings until he heard from Cafer in 2016 that Cafer had instructed solicitors to commence proceedings against Metin.

237. Having seen Hasan's evidence in these proceedings, I consider that his explanation is plausible. Hasan is not a sophisticated businessman, and his financial means are far more limited than those of Metin. As I have already commented, his education was minimal, and I consider it quite credible that he did not believe that he had any means of redress until Cafer brought proceedings against Metin. While I do not reach any conclusive findings as to the approaches

said to have been made by him to Metin via third parties, it is in my judgment not only plausible but quite probable that if Hasan did seek to pursue the matter he would have done so through intermediaries such as Mr Yilmaz, rather than attempting to speak to Metin directly.

The payments said to have been made to Cafer

238. I have already addressed several matters suggesting that Metin did not attempt to buy out Cafer's shareholding in March 2012. I address here Metin's case that he did indeed pay Cafer £250,000 following the second March meeting.

239. Metin's position was that he made cash payments of £150,000 to Cafer between 2012–2015, leaving a balance of £100,000 which was discharged by providing over £100,000 of meat without charge to a business called Hallgate, which had been set up (Metin said) by Cafer and Zulfikar. Metin said in his witness statement that Cafer had agreed that the final £100,000 of his payment would be met in that way.

240. The Claimants' Reply admitted that Metin paid Cafer £150,000 but denied that this related to a settlement of Cafer's shareholding claim. In the event there was little argument on this point. There was, however, considerable argument and evidence on the alleged payment of £100,000 to Cafer through Hallgate, which the Claimants robustly denied.

241. Zulfikar's evidence was that Hallgate was his company alone and not a partnership with Cafer. It appears that Cafer did, however, assist him with the company in various ways. Irrespective of Cafer's precise status in Hallgate, it is common ground that Metin agreed to assist the company by providing it with Paragon's credit line, to facilitate the purchase of stock.

242. There was then a dispute between Metin on the one hand and Cafer and Zulfikar on the other, which resulted in Cafer being removed from the Paragon payroll in January 2015. (Metin said that Cafer had in fact ceased to work at Paragon at some point before that. That point is connected with the question of Cafer's exact status at Hallgate, which I do not need to resolve.)

243. Cafer then instructed his solicitors to send a letter before claim in relation to Cafer's shareholding in Paragon. Metin's response was to instruct Mrs Taylor at Paragon to call in the debt owed by Hallgate under the credit line, which she did in an email on 30 July 2015. The amount outstanding (as set out in an invoice attached to that email) was by then over £400,000. Hallgate was unable to pay Paragon and went into administration.

244. Metin claimed that the request for payment excluded the £100,000 that Metin had written off. That was the way in which, he said, his final payment of £100,000 to Cafer was settled. However the invoice attached to Mrs Taylor's email made no reference to £100,000 of the debt being written off, and Mrs Taylor confirmed in her oral evidence that Metin had not ever mentioned to her that he had agreed to write off £100,000 of that debt. That, in my judgment, conclusively establishes that Metin did not pay Cafer £100,000 through a write-off of part of Hallgate's debt to Paragon.

245. That supports the Claimants' case that Metin had not settled Cafer's shareholding claim before Cafer instructed his solicitors in 2015. If there were, however, any doubt on that point the solicitors' correspondence, which I will now address, unambiguously contradicts Metin's assertion that he settled Cafer's claim between 2012–2015.

The correspondence relating to Cafer's claim

246. Cafer's solicitors, Addleshaw Goddard, sent their letter before claim on 24 July 2015. The subsequent correspondence has been relied upon by both the Claimants and the Defendants, in particular for what it says (or does not say) about the outcome of the March 2012 meetings. I will therefore set out the material passages from the correspondence, before commenting on the inferences that I consider should be drawn from that material.

247. Starting with the 24 July 2015 letter, after rehearsing Cafer's case as to the establishment of Paragon and his beneficial ownership of 25% of the Paragon shares, the solicitors wrote as follows:

> "On 16 December 2012 you entered into a written agreement with Mr A. Pekin which recorded the transfer of his beneficial shareholding in Paragon to you in consideration for a payment from you of £250,000, which was paid in two instalments of £125,000, the first in May 2012 and the second in December 2012. …
>
> We understand that a similar arrangement was reached by you with Mr H. Dalkilic around the same time and that he also received £250,000 in respect of his beneficial shareholding in Paragon.
>
> We have been informed that both Mr A. Pekin and Mr H. Dalkilic believe the consideration you paid for the beneficial ownership of their shares was significantly less than the market value of their shares at the time.
>
> We understand that during the time you were in discussions with Mr A. Pekin and Mr H. Dalkilic regarding the acquisition of their shares in Paragon, you assured Mr C. Pekin that he would be treated differently in view of his many years of hard work, alongside you, to build up Paragon to a successful business. …"

248. No mention was made, in that letter, of any settlement agreement made in March 2012 (or indeed any settlement with Cafer at all). Metin's solicitors, then Irwin Mitchell, responded on 19 August 2015 denying Cafer's entitlement to any share in Paragon. That letter likewise did not refer to any March 2012 settlement agreement. Instead what was said in response to the passage above was that:

> "The context of the agreement with Mr A. Pekin and Mr H. Dalkilic are entirely distinct from your client's current claim and the basis of the reasoning for entering into a settlement with Mr A. Pekin and Mr Dalkilic is irrelevant to the basis of your client's speculative claim."

249. There was subsequently an attempt by various family members to broker a settlement of Cafer's claim, which was unsuccessful. (This was the subject of the withdrawn evidence of Zeynel and Kiymet Pekin, and was also addressed by Rojin.) As a result, Addleshaw Goddard revived the correspondence on 13 April 2016, with a letter that included the following comments:

> "The existence of the [agreement for joint ownership of Paragon] is further supported by the agreement reached between your client and Mr Ali Pekin which resulted in a settlement payment by your client to Mr Ali Pekin in respect of his 25% shareholding in Paragon. …
>
> We note the attempt in your letter to separate the basis on which settlement payments were made to Mr Ali Pekin and Mr Hayri Dalkilic in respect of their 25% shares in Paragon from our client's claim. It is clear that those settlement agreements and the reasoning behind them is directly relevant to our client's claim. The only difference in circumstances is that our client has not been prepared to enter into a settlement agreement with your client that does not reflect the true value of our client's shares in Paragon, nor his share of the dividend payments made by Paragon.
>
> … your client indicated to our client that he would be treated differently from Mr Ali Pekin and Mr Hayri Dalkilic (i.e. more favourably, due to the ongoing nature and scope of his involvement with Paragon) when settlement discussions in respect of their 25% share in Paragon were taking place."

250. Irwin Mitchell replied on 5 May 2016 continuing to deny any entitlement of Cafer to a share in Paragon, stating that "It is of note that your client has at no time previously sought to assert his alleged entitlement to a shareholding in Paragon at any stage during the alleged 20-year subsistence of the trust." In relation to the settlement said to have been reached with Ali and Hasan, the letter continued:

> "We have already stated that the context of the agreement with Ali and Hayri are entirely distinct from your client's current claim and the basis of the reasoning for entering into a settlement with Ali and Hayri is irrelevant to the basis of your client's speculative claim. In any event it is denied that your client has ever been presented with a settlement agreement in respect of his shareholding in Paragon or otherwise."

251. It is common ground that Zulfikar was assisting Cafer with his claim against Metin, and on 18 May 2016 Zulfikar sent a letter to Addleshaw Goddard commenting on other aspects of the 5 May letter from Irwin Mitchell. On 3 July 2016 Zulfikar sent a further letter commenting on what he said had happened at meetings between him, Cafer and Metin in January 2015 to address the dispute concerning Hallgate. In that letter Zulfikar commented:

> "Metin specifically wanted me to be present during these discussions as I had also been present at a previous meeting in 2012, when Metin

> made an agreement to purchase Ali Pekin's and Hayri Dalkilic's shares."

252. Addleshaw Goddard forwarded that letter to Irwin Mitchell on 1 August 2016. Irwin Mitchell's response on 1 September 2016 included the following comments:

> "The fact your client has done nothing over the course of 20 years to claim an interest in Paragon or seek to protect any alleged interest is compelling and will be foremost in the Court's consideration should your client issue proceedings.
>
> Furthermore your client was aware of negotiations as far back as 2012 with regard to the shareholdings of Ali Pekin and Hayri Dalkilic yet made no overtures at that time to suggest that he believed he had a shareholding in Paragon. That would, of course, have been an appropriate and opportune time to have asserted such an interest and we maintain that it is noteworthy that your client has only sought to establish a claim against our client in light of a recent breakdown in their personal relationship …"

253. There are several observations to be made about this correspondence. The first is that none of the letters from the solicitors on either side made any mention of Cafer having agreed to settle his claim to shares in March 2012 or indeed any other occasion. Indeed the letters from Irwin Mitchell on behalf of Metin asserted repeatedly that Cafer was in an entirely different position to Ali and Hasan, and that whatever agreement was reached with the latter had nothing to do with Cafer; and they also asserted repeatedly that Cafer had done nothing during the previous 20 years to claim an interest in Paragon. That is irreconcilable with the position advanced by Metin in these proceedings concerning Cafer's involvement in the March 2012 meetings, his agreement to settle his shareholding, and the payments supposedly made by Metin to settle that claim.

255. When cross-examined on this point, Metin said that the letters were written by his lawyers and that he had not looked at them carefully due to his business and other commitments. That is implausible. The letters were written by Irwin Mitchell on Metin's instructions, and the first response sent on 19 August 2015 stated explicitly at the outset that "We have now met with our client for the purposes of going through your letter dated 24 July 2015 …". If Cafer had agreed to settle his shareholding at a meeting in March 2012, and Metin had subsequently paid him the amounts due under that agreement, that would have been the simplest and most obvious response for the solicitors to give from the very outset of the correspondence. But in three letters over the course of thirteen months Irwin Mitchell made no suggestion that this was the case.

256. What is particularly remarkable about this is that it is evident that the issue of what had occurred during the second March 2012 meeting was very much in Metin's mind as soon as he received the first letter from Cafer's solicitors, since it is common ground that following that letter Metin immediately contacted all three of the non-family mediators at that meeting (Mr Duzgun, Mr Yilmaz and Mr Zamur) to ask them to give him statements about that meeting. As discussed

further below, Mr Duzgun and Mr Yilmaz both provided statements at the end of July 2015 saying that Cafer had been at the meeting and had (alongside Ali and Hasan) agreed to settle his claim for £250,000.

257. Both of those statements were therefore available by the time that the first response from Irwin Mitchell was sent to Cafer's solicitors. Had Metin provided those statements to his solicitors, it is inconceivable that they would have written three successive letters in the terms set out above.

258. The inescapable inference is that having gone to the trouble of obtaining those statements Metin decided not to give them to his solicitors. Instead, as is apparent from the solicitors' correspondence, Metin's solicitors were told that Ali and Hasan were in a completely different position to Cafer. That cannot plausibly be attributed to an oversight or misunderstanding on Metin's part – Metin fully understood the case against him, had immediately sought to marshal evidence, and thirteen months elapsed between the receipt of the Duzgun and Yilmaz statements and Irwin Mitchell's third letter on 1 September 2016 during which he could have informed his solicitors of what he contended to be the correct position. The fact that he evidently did not do so, and in fact told his solicitors the opposite to the position recorded in the statements, is a strong indication that he did not genuinely believe that a settlement had been reached in the terms set out in the Duzgun and Yilmaz statements.

259. The second notable feature of the correspondence is that although the solicitors' correspondence proceeded on a shared understanding that Metin had settled the claims of Ali and Hasan, none of the letters made any mention of that agreement having been reached in March 2012. Quite the contrary, the only reference to the date of an agreement was in the first letter from Addleshaw Goddard on 24 July 2015, which said that the agreement with Ali was made in writing on 16 December 2012, and commented that "[w]e understand" that a similar arrangement was made with Hasan around the same time.

260. That indicates that Cafer had (like Metin) not told his solicitors that Metin had settled any claims at the second March meeting. That can only indicate that Cafer did not consider that any settlement had been reached at that meeting, since if there had been such an agreement it would have been the obvious thing to mention when referring (as the letter did) to Ali and Hasan's claims. The vague comments regarding Hasan also indicated that Cafer knew very little about the terms of the agreement he believed to have been reached between Hasan and Metin. That is consistent with Hasan's suggestion, in his oral evidence, that Metin had led Cafer to believe that he had settled with Hasan, relying on the money that he had paid in relation to the £100,000 debt.

261. The *only* reference in the entirety of the correspondence set out above to any agreement having been made in March 2012 was in Zulfikar's letter of 3 July 2016, where Zulfikar said that he had been present at a meeting during 2012 when Metin "made an agreement to purchase Ali Pekin's and Hayri Dalkilic's shares".

262. As the Defendants noted, that statement was clearly inconsistent with Zulfikar's evidence in these proceedings, in which Zulfikar gave a detailed account of the

failure of Metin to reach any agreement for the purchase of Ali and Hasan's shares during the second March meeting.

263. In his witness statement Zulfikar said that his July 2016 letter was poorly worded, and that he meant to say in his letter that Metin had sought to purchase Ali and Hasan's shares, rather than actually agreeing to do so. In cross-examination, however, he put forward an alternative explanation: that Ali and Hasan had indeed agreed to sell their shares in principle, but subject to a valuation of Paragon.

264. Neither of these explanations are natural interpretations of the wording of Zulfikar's letter. I would therefore tend to agree with Mr Ayliffe that on its face the letter supports Metin's case as to the existence of a settlement agreement with Ali and Hasan (if not with Cafer). Equally, however, I do not entirely discount the possibility that Zulfikar's letter was badly drafted on this point, particularly in circumstances where there is no doubt that this was a passing comment made as part of a discussion of a quite different issue. It is therefore necessary to assess Zulfikar's account alongside the other evidence, which I will do below.

The evidence of the mediators

265. The Defendants have placed considerable weight on the fact that Metin's evidence was supported by the evidence of Mr Duzgun and Mr Yilmaz, who were two of the three mediators who had attended the second March meeting at the behest of Metin and Ali. Mr Duzgun and Mr Yilmaz gave very similar accounts of the meeting, saying that Metin had originally offered to pay Ali, Hasan and Cafer £50,000 each; that they had rejected the offer but had put forward a counter-proposal of £300,000 each; and that agreement had eventually been reached for Metin to pay them £250,000 each, following which Ali, Hasan and Cafer all shook hands with Metin, hugged him and wished him luck. Thereafter, according to Mr Duzgun and Mr Yilmaz, they all went to Cafer's house to celebrate, and everyone was happy with the agreement that had been reached.

266. That evidence, Mr Ayliffe said, was particularly compelling given that Mr Yilmaz had been brought to the meeting by Ali, not Metin, and it was common ground that Mr Yilmaz had been (at the time) a close friend of Ali. Mr Ayliffe also noted that the Claimants had initially indicated that they intended to call the third mediator Mr Zamur as a witness, but ultimately did not do so. He invited me to draw from that an adverse inference to the effect that Mr Zamur was unwilling to support the Claimants' version of events.

267. In order to assess the evidence of the mediators it is necessary to start by considering the statements that were provided by them in July 2015. It is not disputed in that regard that after Metin received the first letter from Cafer's solicitors he contacted all three of Mr Duzgun, Mr Yilmaz and Mr Zamur to ask them to make statements confirming that an agreement had been reached at the second March meeting with all three of Ali, Hasan and Cafer.

268. Ali Yilmaz produced a handwritten statement on 30 July 2015 (in Turkish), which was translated for the court as follows:

> "I Ali Yilmaz, is one of the three arbitrators who arbitrated to solve a dispute between Metin Pekin and Cafer Pekin, Ali Pekin and Hasan Dalkilic. Other arbitrators were Sabri Zamur and Abbas Duzgun.
>
> On request from Ali Pekin we met at Paragon office in March 2012. Present in the meeting were Metin Pekin, Ali Pekin, Cafer Pekin, Hasan Dalkilic, Sabri Zamur, Abbas Duzgun and me Ali Yilmaz.
>
> After debate and negotiations the agreement everyone approved is as below.
>
> 1. After this date everyone is bound by this agreement. Metin Pekin will pay Cafer Pekin, Ali Pekin and Hasan Dalkilic £250,000.00 each. Cafer Pekin, Ali Pekin and Hasan Dalkilic had confirmed that they have no further claims from Metin Pekin and said our relationship with Paragon is now finished.
> 2. These Payments will be done latest within three years.
> 3. Once the agreement was reached everyone shook hands with one another and wished Metin Pekin luck and everyone altogether went to Cafer Pekins house for dinner.
> 4. Cafer Pekin at his house called me outside and said to me Ali brother, I have worked at Paragon tell Metin to pay me an additional £50,000.00. I reminded him that this was mentioned in the meeting and was rejected and explained to him it would not be right for me tell him this again."

269. Abbas Duzgun produced a typed statement the next day (also in Turkish), the translation of which read:

> "I Abbas Duzgun Confirm that, I attended the meeting that took place in March 2012 at paragon offices as an arbitrator regarding the dispute over shareholding in Paragon between Metin Pekin and Cafer Pekin, Ali Pekin and Hasan Dalkilic.
>
> Ali Yilmaz and Sabri Zamur from London also attended the meeting as arbitrators.
>
> After discussions and negotiations the agreement that everyone had approved is as below.
>
> 1. Metin Pekin will pay Cafer Pekin, Ali Pekin and Hasan Dalkilic £250,000.00 each for all their shares and claims. The payment will be made as soon as possible but it may take few years to pay everyone in full.
> 2. Apart from this payment Cafer Pekin, Ali Pekin [and] Hasan Dalkilic will not claim anything else from Metin Pekin or Paragon.
> 3. Paragon Owes Falcon Foods £100,000.000 but it was suggested that this was to be sorted between Metin Pekin [and] Hasan Dalkilic.

> 4. Metin Pekin offered Cafer Pekin to either leave employment at Paragon or continue working there if he wished to so.
>
> Metin Pekin, Cafer Pekin Ali Pekin and Hasan Dalkilic accepted these points and shook hands over it. Cafer Pekin Ali Pekin and Hasan Dalkilic [wished] Metin Pekin good luck and success. Following this agreement everyone went to Cafer Pekin[’s] house for dinner and issue was settled [in] a friendly manner.”

270. Both statements were signed and dated at the bottom. Metin also tried to contact Mr Zamur. A text message from Metin to Mr Zamur on 2 August 2015 read (in translation):

> “I have talked to Ali Yilmaz, you told him that you do not remember Cafer’s name being mentioned and that you do not even remember going to Cafer’s house for dinner altogether. How can you forget all of these? In the end, if this matter goes to trial, everyone will be required to give a statement under oath.”

No response from Mr Zamur to this message was disclosed, nor was any statement forthcoming from Mr Zamur.

271. When cross-examined about the circumstances in which his statement was produced, Mr Duzgun claimed three times that he had just written the statement down “to remind myself” of what happened, because he knew from Metin that there was going to be court proceedings. He denied that Metin had influenced the content of the statement, and said that he could not remember whether he gave it to anyone, before backtracking and admitting that he must have given it to either Metin or Metin’s solicitors.

272. Ali Yilmaz by contrast did accept in cross-examination that Metin had asked him to write down what he had witnessed at the meeting, but denied that Metin had told him what to write. He also repeatedly denied that he had asked Mr Zamur to write a similar letter.

273. I am afraid that I regard Mr Yilmaz and Mr Duzgun’s evidence on this as being untruthful. In the first place, Metin accepted that he had asked them both to produce those statements very shortly after he received the first letter from Cafer’s solicitors. In those circumstances, Mr Duzgun’s repeated assertion that he had just written the statement “to remind myself” was an absurd and obvious lie. It is also quite clear from Metin’s text message to Mr Zamur that Mr Yilmaz had contacted Mr Zamur to seek to persuade him to provide a similar statement, contrary to Mr Yilmaz’s denials of this in his evidence to the court.

274. As to the content of the statements, although not identical both statements used strikingly similar formatting and language, of the sort that (as was clear to me from their oral evidence) neither Mr Duzgun nor Mr Yilmaz would have used if they had simply written down their recollections. The only possible explanation for the production of such similar formal statements, a day apart, is that Metin had told Mr Duzgun and Mr Yilmaz what to write, or at the very least had significantly influenced the content of their statements, contrary to the evidence

that both Mr Duzgun and Mr Yilmaz gave to the court. In my judgment, therefore, the content of those statements cannot be relied upon as representing the independent recollections of Mr Yilmaz and Mr Duzgun.

275. That likewise undermines the reliability of the evidence that they have given in these proceedings. It is also notable that there are specific differences between the accounts given in the July 2015 statements and the evidence that Mr Duzgun and Mr Yilmaz gave in these proceedings which indicate that their evidence has been coordinated by Metin and does not represent their independent recollection. In particular:

    i) The list of attendees given by both Mr Duzgun and Mr Yilmaz in their July 2015 statements omitted Zulfikar. Metin originally adopted the same position: the original Defence stated that Metin did not recall Zulfikar being present at the second March meeting. The amended Defence, however, accepted that Zulfikar was present at that meeting, and the witness statements of Mr Duzgun and Mr Yilmaz for these proceedings then included Zulfikar in their lists of attendees. Both of them claimed that they had simply remembered Zulfikar's attendance when preparing their evidence for these proceedings. I do not consider that to be a credible explanation of the identical changes in their evidence on this point.

    ii) Mr Duzgun's July 2015 statement said that it was agreed at the second March meeting that Paragon owed Falcon £100,000. That point was omitted, however, from Mr Duzgun's witness statement. Metin likewise denied that any such agreement had been reached during the meeting (while accepting that Hasan had raised the matter). Mr Duzgun's oral evidence when asked about this was rather confused.

276. The evidence of both Mr Duzgun and Mr Yilmaz in these proceedings was also confused and inconsistent in other respects. In particular, Mr Duzgun quite remarkably claimed that he didn't know what Metin was paying £250,000 for, denying that the dispute was about the shareholdings of Ali, Hasan and Cafer, and saying that he didn't ask in detail because this was family business. That was inconsistent with both the terms of his July 2015 statement, and his witness statement in these proceedings which stated that the dispute concerned Ali, Hasan and Cafer's claims to interests in Paragon. It was also inconsistent with what he said was the purpose of his separate meeting with (he said) Ali, Hasan and Cafer between the two March meetings, to which I have referred above. Similarly Mr Yilmaz's witness statement had stated that the dispute concerned the ownership of Paragon, but when cross-examined Mr Yilmaz sought to deny that there was any mention of shares at the meeting, and claimed that he didn't know what Metin's payments were for.

277. I do not accept that Mr Duzgun and Mr Yilmaz could have been as oblivious to the purpose of the payments that were discussed as they sought to portray in their oral evidence. As their witness evidence and the July 2015 statements made clear, they knew that what was under discussion was a payment by Metin to settle claims to shares in Paragon (whether those claims were made by Ali and Hasan alone, or also by Cafer as Metin now says).

278. It was nevertheless evident that Mr Duzgun and Mr Yilmaz were unable to remember very much at all about the discussion during the meeting. That, however, rather indicates that the specific details that they do purport to have remembered are not reliable recollections. In those circumstances, and given my conclusions as to the untruthful nature of other aspects of their evidence, I consider that their evidence cannot be regarded as reliable and I do not place any weight on it as representing their recollections of the second March meeting. The one point that I do nevertheless draw from Mr Duzgun's July 2015 statement, regarding that meeting, is (as I have already said) that it indicates that *Metin* believed that there had been an agreement to settle Hasan's claim to a separate £100,000 owed to him by Paragon.

279. Mr Ayliffe submitted that there was no reason for either of Mr Duzgun or Mr Yilmaz to give dishonest evidence in these proceedings, given Mr Duzgun's relationship to the whole Pekin family and the fact that Mr Yilmaz was Ali's friend. Some possible explanations were offered by the Claimants, but I do not need to make any findings on this; the matters set out above are sufficient for me to conclude that the evidence of these two witnesses was unreliable and untruthful, whatever their motivations for this may have been.

280. Regarding the evidence of Mr Zamur, it is apparent that he has been unwilling to provide evidence in support of either the Claimants or the Defendants, notwithstanding the apparent requests to do so from both sides (Metin in July 2015, and the Claimants apparently more recently). In those circumstances I do not consider that I can draw an adverse inference either way from his non-participation in these proceedings.

Conclusion on the March 2012 meetings

281. As I have noted above, the central question is the credibility of the parties' opposing accounts of the outcome of the second March meeting.

282. In all respects save for two points I have found the Claimants' account to be credible and consistent with the other evidence, including the contemporaneous documentation. The two exceptions are Ali's explanation of the extent of his financial difficulties in and around April to June 2012, and Zulfikar's explanation of the inconsistency between his letter of 3 July 2016 sent to Cafer's solicitors and the evidence that he has given in these proceedings. I have some difficulties with the evidence on both of these points for the reasons that I have set out above.

283. My concerns with the Defendants' account are, however, significantly more profound. For the reasons discussed above, I have rejected the evidence of Mr Duzgun and Mr Yilmaz as being untruthful and unreliable. I also found the evidence of Metin and (where relevant) Zohre to be either implausible or at the very least improbable on almost all the points on which I have been able to test it against the other evidence. In my judgment, therefore, both of them were also unreliable witnesses.

284. In particular, and having regard to the evidence as a whole, I have found as follows:

i) Metin's account of being blackmailed by Ali, Hasan and Cafer at the first March meeting is implausible. It is probable that the meeting was initiated by Metin, in an attempt to buy out the shareholdings of Ali and Hasan but not Cafer.

ii) That is supported by the terms of the Duzgun notes, which I consider were intended to be provided to Ali and Hasan.

iii) The circumstances of the dinner hosted by Cafer are also indicative of Cafer not being the subject of Metin's proposals in March.

iv) While Ali did settle his claim, it is implausible that he ever agreed to reduce his settlement figure to take account of the sums paid to Sevim through the Paragon payroll.

v) It is most likely that the transfers by Metin and Zohre into Medine's account in Turkey were for Ali rather than Hasan. There is nothing connecting Hasan with any of the withdrawals from that account, and Metin's claim that he paid Ali £125,000 in cash in May 2012 was not convincing.

vi) The document signed by Ali in December 2012 explicitly acknowledged that Ali did have a shareholding in Paragon. It also confirmed, in my judgment, that Ali only settled his claim to 15% of the shares of Paragon, and did not enter into any agreement in relation to the 10% shareholding that he had agreed to transfer to Sevim under their divorce settlement.

vii) The payment to Hasan of £40,000 in April 2012, which Metin borrowed from Mr Baran, most likely related to a separate debt of £100,000 which Hasan had claimed was owed to him from Paragon, rather than representing part of a settlement of Hasan's claim to an interest in Paragon.

viii) The payment to Hasan of £27,000 from Zulfikar in September 2012 was most likely a repayment of loans from Hasan rather than representing an indirect payment from Metin.

ix) Metin did not, therefore, pay any sums to Hasan in settlement of Hasan's claim to a shareholding in Paragon.

x) The fact that Metin's relationship with Ali and Hasan was irreparably damaged after the second March meeting is also inconsistent with Metin's claim that that meeting ended with an amicable settlement of their dispute.

xi) The documentary record shows that Metin did not pay Cafer £100,000 through the company Hallgate as part of a settlement agreement with Cafer, contrary to Metin's claims.

xii) In the solicitors' correspondence concerning Cafer's claim against Metin, from July 2015 to September 2016, no mention was made by either Cafer or Metin's solicitors of a settlement agreement having been concluded at the second March meeting. That indicated that neither Cafer nor Metin considered that there had been a settlement at that meeting with any of Ali,

Hasan or Cafer. That correspondence also indicated unequivocally that no settlement had been reached with Cafer on any occasion subsequently.

xiii) The Duzgun and Yilmaz statements in July 2015 were not the independent recollections of either of those witnesses, but were produced at the behest of Metin, and I consider that Metin told them what he wanted them to write or at least significantly influenced the contents of those statements. Metin apparently withheld those statements from his solicitors, indicating that he did not consider that a settlement had been reached in the terms set out in those statements.

285. Having regard to those findings, I do not consider that my concerns about some specific aspects of the Claimants' evidence are decisive when set against my acceptance of the majority of the Claimants' evidence on the issues set out above. Those findings contradict Metin's account of the second March meeting and support the Claimants' case as to the outcome of that meeting.

286. I therefore accept the Claimants' account of the second March meeting and I find that Metin did not reach agreement with any of Ali, Hasan or Cafer at the meeting for the settlement of their claims to shares in Paragon. I also find that Hasan did not receive the payments alleged to have been made to him by Metin in settlement of his claim, but he did receive a total of £70,000 relating to a separate £100,000 debt that was discussed at the second March meeting.

Sevim's dealings with Metin in 2012 and thereafter

287. Sevim said that around the time of the March 2012 meetings, when she heard that Metin was trying to buy out his business partners from Paragon, she asked Metin what he was going to do with her 10% shareholding, and he replied that he would buy the shares from her at a fair price, but that he needed to reach an agreement with Ali and Hasan first. Thereafter it is common ground that the weekly payments to Sevim from Paragon ceased in January 2013, at the direction of Metin. Sevim's evidence was that when this happened she went to Metin's house, and that initially Metin said that it was a problem that he would sort out. When she still did not receive any payment from Paragon, she spoke to Metin again who told her that she had received the money from her shares as a result of Ali's settlement, and that no further payment was due to her.

288. Sevim also said that she went to Metin's house twice in 2017 to discuss her shareholding in Paragon, and that on both occasions Metin promised her that he would sort it out. On the second occasion, Sevim said that she asked for this to be written down with witnesses, and Metin refused. It was at that point, Sevim said, that she told Metin that she would have to go to a solicitor. Sevim said that Zohre was present during that conversation, but that she had said that she was not getting involved with the matter.

289. Metin's evidence was that he had agreed with Sevim after the March 2012 meeting that he would keep her on the payroll until the end of the year, but he denied that there had been any discussion of her shareholding in Paragon at any time. Zohre also denied that there was any conversation about Sevim's shareholding in Paragon.

290. I have already rejected Metin's evidence on all of the main factual issues in this case, and have likewise concluded that Zohre was an unreliable witness. By contrast I have accepted the main points of Sevim's evidence in so far as it related to the factual findings that I have made (in particular the ownership of Paragon, the terms of her divorce settlement and the payment from Zulfikar to Hasan in September 2012). I therefore consider Sevim's evidence to be more reliable, in general, than that of Metin and Zohre.

291. Sevim's account is also inherently plausible. Given that the family knew that Metin was attempting to buy out Ali and Hasan's shares in early 2012, it is probable that Sevim did raise the question of her own shareholding around that time. It is also, I consider, quite probable that after Ali settled with Metin, Sevim would have had a discussion with Metin about her own claim – indeed it would be surprising if she had not done so, particularly given that Metin had also stopped her weekly maintenance payments from Paragon. While nothing turns on the precise response of Metin on those occasions, it is plausible that after settling with Ali for £250,000, and having (it appears) tried but failed to reduce that to £125,000 to take account of the payments from Paragon to Sevim, Metin was reluctant to acknowledge any further payment due to Sevim, as the negotiations between him and Ali concerning the wording of the December document indicated.

292. Sevim's account of a further attempt to raise the issue with Metin in or around 2017 is also, I consider, credible. She would inevitably have known by then that Cafer had instructed solicitors in relation to his claim, not least because her son Zulfikar was assisting Cafer with that claim. That may well have been one reason why Sevim raised the issue again, and it would also explain why, when Metin was ultimately recalcitrant in relation to her request for a written agreement, Sevim said that she would have to instruct solicitors. That is also consistent with the fact that these proceedings were then commended in February 2018.

293. Metin's contrary suggestion that Sevim commenced proceedings without ever previously discussing her shareholding with him is, in my judgment, implausible. Zohre accepted that Sevim was a frequent visitor to their house, up to and including 2017, and it is undisputed that Metin and Sevim were extremely close, as I have already found. In those circumstances I consider it very unlikely that Sevim instructed solicitors without attempting to settle the matter amicably with Metin.

294. I therefore find that Sevim most likely did speak to Metin about her shareholding on several occasions from 2012 onwards, before commencing these proceedings.

ISSUES IN THE CLAIM

Issue (i): the initial ownership of Paragon

295. In light of my factual findings set out above, there was in my judgment an agreement that the shares of Paragon should be held for Metin, Ali, Hasan and Cafer as to 25% each.

296. The facts do not indicate that there was ever an express trust for those beneficial interests. Rather there was simply an agreement that the four "founders" of Paragon would own the company in equal shares. That agreement gave rise to a constructive trust of the type discussed by the Court of Appeal in *Paragon Finance v Thakerar* [1999] 1 All ER 400, at 408j–409e.

297. In that passage Millett LJ distinguished between two types of case in which a constructive trust would be imposed: the first, where the defendant has assumed the duties of a trustee by a lawful transaction which preceded the breach of trust and is not impeached by the claimant, and the second where the trust obligation arises as a consequence of an unlawful transaction that is impeached by the claimant. Millett LJ described the first of those categories as follows (at 409b–e):

> "A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of the property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another. In the first class of case, however, the constructive trustee really is a trustee. He does not receive the trust property in his own right but by a transaction by which both parties intend to create a trust from the outset and which is not impugned by the plaintiff. His possession of the property is coloured from the first by the trust and confidence by means of which he obtained it, and his subsequent appropriation of the property to his own use is a breach of that trust. Well-known examples of such a constructive trust [include] *Pallant v Morgan* [1952] 2 All ER 951, [1953] Ch 43 (where the defendant sought to keep for himself property which the plaintiff trusted him to buy for both parties) … In these cases the plaintiff does not impugn the transaction by which the defendant obtained control of the property. He alleges that the circumstances in which the defendant obtained control make it unconscionable for him thereafter to assert a beneficial interest in the property."

298. In the present case, when Metin and Ali initially acquired the legal title to the shares of Paragon, they did so pursuant to an agreement where, while not expressly creating a trust, it was intended from the outset that those shares should be held for Metin, Ali, Hasan and Cafer equally, corresponding to the four equal contributions that had been made to start up the company. That gave rise to the first type of constructive trust discussed in *Paragon Finance v Thakerar*. Likewise, once Ali had transferred his legal shareholding to Metin in 1999, Metin held 75% of the totality of the shares on a constructive trust for Ali, Hasan and Cafer in equal portions.

Issue (ii): Ali and Sevim's divorce settlement

299. I have found as a matter of fact that Ali agreed to transfer 10% of the shares in Paragon to Sevim as part of their divorce settlement, leaving himself with a 15% interest in the company, and that Metin was aware of that agreement.

300. However, while the Statement of Information filed with the court to obtain Ali and Sevim's divorce order stated that Metin had "transferred just less than half

the shares he is holding for [Ali] to [Sevim]", no such transfer was in fact made by Metin, nor is there any document by which Ali transferred any part of his beneficial interest in the Paragon shares to Sevim.

301. In those circumstances the question arises whether the transfer from Ali to Sevim of a 10% interest in the Paragon shareholding was effective as a matter of law.

302. Mr Ayliffe submitted that it was not, having regard to the requirements of s. 53(1)(c) of the Law of Property Act 1925, pursuant to which:

> "a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will."

303. Mr McParland's initial response was to contend that there was indeed a disposition in writing within the meaning of s. 53(1)(c), in the form of the 20 December 2000 letter from Ali to his solicitors, and/or the Statement of Information filed with the court.

304. I accept that both of those documents are evidence of an agreement to transfer the shares to Sevim, but that does not mean that either of the documents actually implemented that agreement. Plainly they did not do so: the 20 December 2000 letter was simply an agreement to a set of proposals, which included the transfer of 10% of the Paragon shareholding to Sevim, and the Statement of Information recorded (inaccurately, as it turned out) that the relevant shares had already been transferred.

305. As noted by the court in *JSC Bank v Skurikhin* [2019] EWHC 1407 (Comm), §214, the language of s. 53(1)(c) is mandatory and requires a disposition under that subsection to be "in writing", not merely evidenced in writing, by contrast with s. 53(1)(b) which is expressed as an evidential requirement. It follows that the requirements of s. 53(1)(c) are not met unless there is a written disposition of the relevant interest, as opposed to a mere agreement to do so or a record of the disposition having been made. The 20 December 2000 letter and the Statement of Information did not, therefore, meet the requirements of s. 53(1)(c), whether individually or taken together.

306. Section 53(2) of the Law of Property Act 1925 states, however, that:

> "This section [i.e. including s. 53(1)(c)] does not affect the creation or operation of resulting, implied or constructive trusts."

307. On that basis, Mr McParland's alternative case was that Ali's agreement to transfer his equitable interest in the 10% shareholding to Sevim was made for consideration, such that a constructive trust was created, and the transfer to Sevim under that constructive trust did not then need to be in writing. He relied in particular on §3-30 of *Guest on the Law of Assignment* (3rd edition), which comments:

> "An agreement for valuable consideration to assign an interest in property, provided that the agreement is specifically enforceable, gives rise to a constructive trust and the assignor holds the property as trustee for the assignee. It is not easy to ascertain the effect of this principle on whether an agreement to assign an equitable chose is required to be in writing by section 53(1)(c). The argument is that no writing is required for an agreement for value to assign an equitable interest because such an agreement causes a constructive trust of the equitable interest to arise, which vests the equitable title to the interest in the assignee by operation of law. The creation of a constructive trust is excluded from the application of section 53(1)(c) by section 53(2)."

308. That was the approach adopted by Lord Radcliffe in *Oughtred v Inland Revenue Commissioners* [1960] AC 206. Although his analysis has (as noted in *Guest*) been doubted, it was followed by the Court of Appeal in *Neville v Wilson* [1997] Ch 144, §§157–158, and more recently by HHJ Norris QC in *Singh v Anand* [2007] EWHC 3346 (Ch), §144(j)–(l).

309. Mr Ayliffe did not seriously dispute the substance of this analysis, which I consider to be correct. The constructive trust that arose on Ali's agreement was – again – the first type of constructive trust discussed by Millett LJ in *Paragon v Thakerar*, in the passage cited above. Nevertheless, Mr Ayliffe said that the consequence of this was that if (as I have found) Ali's settlement in 2012 related only to his 15% of the shares in Paragon, and not Sevim's 10% interest, then that 10% shareholding would be held by Metin (or more accurately PPIL) on trust for Ali, who in turn would hold on sub-trust for Sevim. On that analysis Mr Ayliffe submitted that Sevim would have had to join Ali to the proceedings, which she has not done.

310. While there is some logic to that submission, I do not think that it is correct as a matter of law. As Mr Friedman pointed out in reply submissions for the Claimants on this point, the question for the purposes of this issue is whether there was a valid transfer to Sevim of a beneficial interest in 10% of the Paragon shareholding. If a constructive trust arose on the basis of Ali's agreement to transfer that interest (which I have found that it did), then that was effective to dispose of the interest to Sevim without a requirement for writing, on the basis of s. 53(2).

311. That being the case, Sevim is entitled to the declaration sought in the Particulars of Claim that she is the beneficial owner of 10% of the shares in Paragon. Sevim may therefore call for those shares to be transferred to her (subject to the points arising from the interposition of PPIL, which I will discuss below), and the court will vindicate her entitlement arising under the constructive trust.

312. In circumstances where Ali has no active duties to perform as trustee for Sevim, it is difficult to see why there should be any need to join him to the proceedings. That point was recognised in the *obiter* comments of HHJ Pelling QC in *Sheffield v Sheffield* [2013] EWHC 3927 (Ch), §84, discussing the 19th century case of *Grainge v Wilberforce* 5 TLR 436:

> "That case was concerned with what Chitty J called '… *the principle that where A was trustee for B who was trustee for C, A held in trust for C and must convey as C directed …*'. This case would appear to be concerned with whether it was necessary to join B into a transaction by which A was to transfer property to C. The Court held that there was no such need."

313. More recently in *Re Charlotte Street Properties* [2019] EWHC 1722 (Ch), §59, HHJ Halliwell considered that *Re Lashmar* [1891] 1 Ch 258 was authority for the proposition that, where property is held on sub-trust and the sub-trustees themselves have no active duties to perform, the sub-trustees are not entitled to assert any claim to the property and the trustee can thus act on the directions of beneficiaries under the sub-trust. That does not require the court to treat the sub-trust as having been terminated (though as a matter of formality, as Mr Friedman noted, Sevim and Ali could do so). Rather it simply amounts to a recognition of Sevim's interest as the ultimate beneficial owner of the 10% shareholding.

314. My conclusion on issue (ii) is therefore that Ali's transfer of a 10% shareholding in Paragon was effective as a matter of law, and that Sevim can assert her claim to that shareholding without joining Ali to these proceedings.

Issue (iii): whether Hasan settled his claim and received payment under that settlement

315. My conclusion on issue (iii) follows from my factual findings above: I have found that Hasan did not settle his claim to ownership of shares in Paragon, nor did he receive any payment from Metin for his shareholding.

Issue (iv): whether Ali's settlement with Metin also released Sevim's claim

316. My conclusion on issue (iv) likewise follows from my factual findings above: I have found that Metin was on notice of Ali's agreement to transfer 10% of the Paragon shares (from Ali's shareholding) to Sevim as part of their divorce settlement, and I have also found that Ali's settlement with Metin in the course of 2012 related only to the remaining 15% of shares in Paragon that Ali beneficially owned. Sevim was not party to that agreement, nor did the agreement purport to determine any claim that she had to shares in Paragon.

317. It follows that Ali's settlement did not release Sevim's claim to a shareholding in Paragon.

Issue (v): laches and estoppel

318. The Defendants' case is that the Claimants' claims are in any event barred on the grounds of laches and/or estoppel, on the basis that (according to the Defendants) both Hasan and Sevim stood by and failed to raise their claims to shares in Paragon.

319. In *Patel v Shah* [2005] EWCA Civ 157, Mummery LJ observed at §33 that the effect of unconscionable conduct by the claimants is to release a defendant trustee

from the equitable trust obligation which binds his conscience as the holder of the legal title for the benefit of others. He continued, however, that:

> "In the case of an ordinary trust by way of gift to trustees for the benefit of the beneficiaries, where the beneficiary is not required or expected to do more than receive what has been given for his benefit, it will obviously be extremely rare for laches and delay on the part of the beneficiary to make it unconscionable for that beneficiary to assert his claim to the beneficial interest, or for the trustee to claim that he has been released from the equitable obligations that bind his conscience."

320. In that case, Mummery LJ considered that the general "commercial setting" of the facts of the case made it a different kind of case from that of a beneficiary under a gift trust, on the basis that the defendants and the predecessors in title to the claimants were participants in a "collaborative commercial venture", buying and selling properties with a view to a quick profit, with the trusts being an "incidental equitable consequence" or vehicle to accomplish that commercial aim (§34). He also noted that the claimants had lain low and not asserted claims until a decade after the properties were bought, when they discovered that the venture had become profitable.

321. More recently, in *P&O Nedlloyd v Arab Metals* [2007] 1 WLR 2288, Moore-Bick LJ commented as follows at §61:

> "… if and to the extent that a limitation period is applicable to the claim, it is difficult to see why mere delay should defeat the claim until the limitation period has expired. … Equally, however, I can see no reason in principle why, in a case where a limitation period does apply, unjustified delay coupled with an adverse effect of some kind on the defendant or a third party should not be capable of providing a defence in the form of laches even before the expiration of the limitation period. The question for the court in each case is simply whether, having regard to the delay, its extent, the reasons for it and its consequences, it would be inequitable to grant the claimant the relief he seeks."

322. Both laches and estoppel have subsequently been considered by the House of Lords in *Fisher v Brooker* [2009] 1 WLR 1764, a case on which both parties relied in their submissions. In that case defences of estoppel and laches ultimately failed despite the claimant's delay of 38 years in making a claim to a share of the musical copyright in a hit song in relation to which the claimant was a joint author. Lord Neuberger said:

> "63. Fourthly, in so far as the respondents' argument is put on the basis of estoppel, they would have to establish that it would be in some way unconscionable for Mr Fisher now to insist on his share of the musical copyright in the work being recognised. As Robert Walker LJ said in *Gillett v Holt* [2001] Ch 210, 225D, 'the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine'

> of estoppel. Given that their case at each of the three stages is based on the fact that Mr Fisher did not raise his entitlement to such a share, one would expect the respondents to succeed in estoppel only if they could show that they reasonably relied on his having no such claim, that they acted on that reliance, and that it would be unfairly to their detriment if he was now permitted to raise or to enforce such a claim. As was also said in *Gillett v Holt* [2001] Ch 201, 232D, the 'overwhelming weight of authority shows that detriment is required' although the 'requirement must be approached as part of a broad inquiry' into unconscionability.
>
> 64. Fifthly, laches is an equitable doctrine, under which delay can bar a claim to equitable relief. In the Court of Appeal, Mummery LJ said that there was 'no requirement of detrimental reliance for the application of acquiescence or laches' [2008] Bus LR 1123, para 85. Although I would not suggest that it is an immutable requirement, some sort of detrimental reliance is usually an essential ingredient of laches, in my opinion. In *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, 239–240, Lord Selborne LC, giving the opinion of the Board, said that laches applied where 'it would be practically unjust to give a remedy', and that, in every case where a defence 'is founded upon mere delay … the validity of that defence must be tried upon principles substantially equitable'. He went on to state that what had to be considered were 'the length of the delay and the nature of the acts done during the interval, which might affect either party, and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy'."

323. Even the very lengthy passage of time in that case did not, Lord Neuberger, considered, give rise to a defence of laches. He noted in particular (at §79) that in order to defeat the claim on that basis the respondents had to "demonstrate some 'acts' during the course of the delay period which result in a 'balance of justice' justifying the refusal of the relief to which Mr Fisher would otherwise be entitled", which the respondents were unable to do.

324. Whether put on the basis of laches or estoppel, the essential bases of the defences in this case are the contentions that Hasan did not raise his claim to an interest in Paragon until March 2012, and thereafter did nothing until 2018; that Sevim did not make any claim at all until 2018; and that at least from the first half of the 2000s Metin believed and made clear to the world that he believed himself to be the sole owner of Paragon, devoting his life to building up the company in reliance on that belief. It was suggested that if Hasan and Sevim had asserted interests in Paragon at an earlier stage, Metin would have left Paragon and would have established a new solely-owned business. The Defendants also complain that the Claimants' delay has prejudiced a fair trial of the claims, since memories will have dimmed over the years since the relevant events, and relevant documentation has been destroyed or is no longer available.

325. On the basis of my findings above, I do not accept those contentions. In Hasan's case, Metin was well aware of Hasan's beneficial ownership in Paragon from the

outset and throughout the 2000s. That was the basis on which Hasan agreed for Falcon to be sold in 2005, in order to capitalise Paragon. Metin's acknowledgement of both Hasan and Ali's interests in Paragon was also the reason why he initiated the March 2012 meetings in order to attempt to buy them out of the business.

326. As to the events after 2012, as I have already noted Hasan claimed in cross-examination that he had attempted to reach a settlement with Metin at various times in the following years, through Metin's father and Mr Yilmaz, but I have not made any conclusive finding on that point. Irrespective of whether or not that happened, however, Metin was throughout that time aware that no settlement had been reached with Hasan (by contrast with the position regarding Ali). Despite that knowledge Metin continued to dedicate his time and energies to running Paragon. There is no evidence that he did so in reliance on a belief or assumption that Hasan had abandoned his claim; nor did the Defendants point to any specific action on Hasan's part which might have indicated the abandonment of his claim. Accordingly, even if Hasan did indeed (contrary to his evidence) do nothing to assert his claims between 2012 and 2018, his delay was less than six years, and there were no acts during that period which result in a "balance of justice" justifying the refusal of relief in respect of Hasan's claim.

327. As for Sevim, I have found that Metin was aware of Ali's agreement to transfer part of his shareholding to Sevim in 2001 as part of their divorce settlement. While there is not any evidence that this was discussed further during the course of the next 10 years, there is equally no evidence that Metin believed (for any reason) that Sevim's interest had been abandoned during that time, still less that he relied in any way on any such belief. I have also found that the two versions of the December 2012 document signed by Ali indicate that Metin and Ali discussed the fact of Sevim's interest in Paragon at that time; and I have found it probable that Sevim additionally discussed her claim to a shareholding in Paragon with Metin on various occasions from 2012 onwards. As with Hasan, the Defendants have not identified any acts during the course of these periods that would justify a refusal of relief to Sevim.

328. It is no doubt the case that memories will have dimmed in the passage of time since the initial establishment of Paragon, which means that witness accounts as to precise details of events many years earlier may well not be reliable. That is the reason for testing the witness evidence in various ways that I have done in relation to the disputed matters of fact in this case, including by reference to contemporaneous documentary evidence where available.

329. In addition, as will be apparent from the factual findings that I have made, the main disputes of fact in this case do not turn on the precise details of when and where discussions took place, and what exactly was said in individual meetings. Rather they concern states of affairs that persisted over substantial periods of time, or were the subject of multiple discussions between the relevant individuals concerned: whether Hasan, Ali and Cafer were the joint owners of Paragon; whether Metin knew that Ali had transferred (or had purported to transfer) part of his shares to Sevim; whether Sevim's payments from Paragon were by way of a gift or loan; and whether Metin settled Hasan's claim in 2012. The Defendants do not suggest (nor does the evidence indicate) that these are matters which the

parties concerned may simply have forgotten during the passage of time, even if some of the details concerning the surrounding events remain unclear.

330. The only other matter relied upon in relation to the laches/estoppel defence is the suggestion that relevant documentation may have been destroyed. This was only faintly pursued at the trial, and the only examples given were documents concerning the genesis, shareholdings and running of Falcon, the early years of Paragon, and Ali and Sevim's divorce. The issues regarding Falcon are, however, of limited relevance to these proceedings, given that the ownership and management of Falcon from 1995 onwards are matters that are common ground.

331. Regarding Paragon, I do not, therefore, consider that there is a serious possibility that any further documents might have come to light that could have changed my factual conclusions, even if (for example) the present proceedings had been commenced in 2012 rather than 2018, and the Defendants did not identify anything further that might have existed to support their case. As I have set out above, my conclusions as the ownership of Paragon are based on numerous sources of evidence, including documents drafted by Metin himself.

332. As for the divorce documentation, the material before the court is unequivocal evidence of an agreement by Ali to transfer part of his shareholding to Sevim, and I have concluded that Metin must have been aware of the terms of that agreement. The suggestion by the Defendants that advice might have been given that could have supported their case in these proceedings is wholly speculative, and any such advice would in any event have been of peripheral relevance given my clear findings of fact on the basis of (again) numerous different sources of evidence.

333. I do not, therefore, consider that any material prejudice has been caused to the Defendants by virtue of the passage of time before the Claimants initiated the present proceedings. There is therefore, in my judgment, no basis for a defence of laches or estoppel in relation to the claims of Hasan or Sevim.

Issue (vi): limitation in relation to PPIL

334. The final issue in relation to the claim is the question of whether any limitation defence arises in relation to the claims against PPIL (including in relation to the declarations sought as to the ownership of the shares, the payment of dividends, and for 25% and 10% of the shares in Paragon to be transferred to Hasan and Sevim respectively) in circumstances where the legal title in Paragon's shares was transferred by Metin to PPIL in 2009.

335. Both parties rely on s. 21 of the Limitation Act 1980, which is entitled "Time limit for actions in respect of trust property". The material provisions of that section for present purposes are as follows:

> "(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action –
> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
> (b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or

> previously received by the trustee and converted to his use.
>
> …
>
> (3) Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued. …"

336. It is common ground that s. 21 will apply to a constructive trust where the trustee is a "true" trustee in the first type of case described by Millett LJ in *Paragon v Thakerar*, cited above. By contrast, as the Supreme Court confirmed in *Williams v Central Bank of Nigeria* [2014] AC 1189, s. 21 does not apply to the second type of constructive trust described by Millett LJ in *Paragon v Thakerar*, being cases where a constructive trust is imposed as a means of providing equitable relief in relation to an unlawful transaction that is impeached by the claimant. In Millett LJ's words:

> "The second class of case is different. It arises when the defendant is implicated in a fraud. Equity has always given relief against fraud by making any person sufficiently implicated in the fraud accountable in equity. In such a case he is traditionally though I think unfortunately described as a constructive trustee and said to be 'liable to account as constructive trustee'. Such a person is not in fact a trustee at all, even though he may be liable to account as if he were. He never assumes the position of a trustee, and if he receives the trust property at all it is adversely to the plaintiff by an unlawful transaction which is impugned by the plaintiff. In such a case the expressions 'constructive trust' and 'constructive trustee' are misleading, for there is no trust and usually no possibility of a proprietary remedy; they are 'nothing more than a formula for equitable relief' …"

337. Millett LJ commented further that in the second type of case the so-called trustees have no real trust powers or duties, and are in reality "neither trustees nor fiduciaries, but merely wrongdoers" (p. 412f–g). While he acknowledged that there is a case for treating fraudulent breach of trust differently from other frauds (as recognised by s. 21(1)(a)), he considered this to be so "only if what is involved really is a breach of trust" (p. 414b).

338. Applied to the facts of the present case, the Defendants' starting point was that the transfer of the shares to PPIL was carried out by Metin as a *bona fide* corporate restructuring, which was motivated by commercial and tax considerations and not carried out with any intention of prejudicing the Claimants' interests in Paragon. Following that restructuring, the claims for transfers of the relevant shareholding lie *prima facie* against PPIL and not Metin.

339. In that regard, however, Mr Ayliffe argued that PPIL must be regarded as the second type of constructive trustee set out above, on the basis that the transfer of shares from Metin to PPIL was impeached by the Claimants as being in breach of trust. On that basis his submission was that s. 21(1) was not engaged, and

therefore pursuant to s. 21(3) the normal limitation period of six years will apply. That period began to run in June 2009 when the shares were transferred to PPIL, and expired in June 2015, well before the commencement of the present claims. Accordingly, he submitted, the claims against PPIL are time-barred.

340. I cannot accept that argument. There is no evidence that Metin transferred his shares to PPIL with the intention of defeating any beneficial interests in Paragon. Quite the contrary, I have found that Metin sought to buy out Hasan and Ali's interests in Paragon, and ultimately did purchase Ali's beneficial shareholding, without any suggestion that the transfer to PPIL stood in the way of such a transaction. The amended Defence admits, moreover, that if Ali, Hasan, Cafer or Sevim did (contrary to the Defendants' primary case) have any beneficial interest in the shares at the time of the transfer to PPIL, PPIL was on notice through Metin of that beneficial interest. PPIL did not, therefore become a constructive trustee on a purely remedial basis on the basis of a wrongful transaction in which it asserted a title adverse to the trust, but rather received trust property on the basis of a lawful transaction knowing that it belonged to an existing trust.

341. *Lewin on Trusts* (20th edition) confirms at §50-069 that this situation is treated as a constructive trust of the first kind for the purposes of limitation, such that the trustee cannot raise a limitation defence in cases falling within s. 21(1) of the 1980 Act. As is noted further at §50-070, "it seems not to matter whether the recipient received the trust property as a fiduciary or, if it does, it is sufficient that he received it with notice of the trust and not adversely to the trust."

342. On that basis the claim falls squarely within s. 21(1)(b) as a claim to recover trust property in the possession of the trustee (i.e. PPIL), and no limitation period applies.

343. It is therefore unnecessary for me to consider in detail the various alternative arguments advanced by the Claimants in this regard. Suffice it merely to add that if (contrary to my conclusions above) the Defendants were right to say that PPIL was a constructive trustee of the second kind, as a recipient of trust property pursuant to a breach of trust, there would in that case in my view have been considerable force in the submission of Mr Friedman (on this point) on the basis of *Re Pantone 485* [2002] 1 BCLC 266, §43, that Metin's transfer of trust property to a company wholly owned by him amounted to a conversion of the trust property for his own use. In that event, even if a claim against PPIL were to fall outside the scope of s. 21(1)(b) of the 1980 Act, the Claimants would have been able to pursue their shareholding claim against Metin himself, which would then have fallen squarely within the scope of s. 21(1)(b).

Interest on dividends

344. It follows from my findings above that the Claimants are also entitled to a share of the dividends taken by Metin from Paragon (amounting to a total of £4,836,002), together with interest at an appropriate rate. Both parties have relied upon expert evidence to support their submissions as to what that rate should be. While this was the subject of some initial submissions at the trial, it seems to me that this should be addressed in further submissions after this judgment has been handed down. I therefore say no more about that here.

THE COUNTERCLAIMS

345. The counterclaim against Hasan is for payments from Metin following the second March 2012 meeting, if in fact there was no settlement agreement reached between Metin and Hasan at that meeting. It follows from my factual findings above that Metin did not make any settlement payments to Hasan following that meeting. The counterclaim against Hasan therefore fails.

346. The counterclaim against Sevim is for repayment of the weekly maintenance payments made to her from Paragon, from February 2001 to January 2013, on the basis that these are said to have been a loan rather than a gift. Again, it follows from my factual findings that I reject that claim: the payments from Paragon were, I have found, made by way of a gift with no intention that they should ever be repaid. In any event, I also note that even if there had been an agreement for Sevim to repay these sums, any repayment would have been due not to Metin but to Paragon, which is not a party to these proceedings.

CONCLUSION

347. For the reasons set out above I find that Hasan is the beneficial owner of 25% of the shares in Paragon, and Sevim is the beneficial owner of 10% of the Paragon shares; and those shares are held on trust for them by PPIL. Hasan and Sevim are therefore entitled to require PPIL to transfer the relevant shares to them. I will hear further submissions on the rate of interest applicable to the claim for dividends, and the remaining aspects of the relief sought by the Claimants. The counterclaims by Metin are rejected.

348. As a final comment, I should record that the coordination of a four-week remote trial during the Covid pandemic, with witnesses giving evidence from different locations across the UK, and a large part of the cross-examination being conducted through interpreters, was not an easy task. Given the nature of this case and the parties involved, it was also unsurprising that emotions ran high at times on the part of witnesses on both sides of the case. It is a tribute to the professionalism of counsel and solicitors on both sides that despite these challenges the hearing was conducted courteously, efficiently and within the agreed trial timetable. I am very grateful to them all for their efforts in this regard, and for their very helpful written and oral submissions.