Neutral Citation Number: [2017] EWHC 2767 (Ch)
Case No: CR-2015-006989

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/11/2017

Before :

THE HONOURABLE MR. JUSTICE MARCUS SMITH

- -

Between :

VB FOOTBALL ASSETS

Petitioner

- and-

(1) BLACKPOOL FOOTBALL CLUB (PROPERTIES) LIMITED
(formerly SEGESTA LIMITED)
(2) OWEN OYSTON
(3) KARL OYSTON
(4) BLACKPOOL FOOTBALL CLUB LIMITED

Respondents

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Mr. Andrew Green, Q.C. and Mr. Fraser Campbell (instructed by **Clifford Chance LLP**) for the **Petitioner**
Mr. Alan Steinfeld, Q.C. and Mr. Eric Shannon (instructed by **Haworth Holt Bell Solicitors**) for the **Respondents**

Hearing dates: 12 to 16, 19 to 23, 26, 28 to 30 June 2017, 3, 7 July and 6 November 2017

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APPROVED JUDGMENT

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Mr. Justice Marcus Smith:

A. INTRODUCTION

(1) Factual overview

1. The Fourth Respondent, Blackpool Football Club Limited ("Blackpool FC"[1]), was formed on 26 July 1887, and became a limited company in May 1896. It played its first league match in 1896.

2. English football has five national leagues.[2] From the top, they are:

   i) The Premier League;

   ii) The Championship;

   iii) League One;

   iv) League Two; and

   v) The National League.

3. For the season just finished, Blackpool FC played in League Two, and has secured promotion to League One, where it will play in the 2017-2018 season. The history of Blackpool FC's performance in English football, since 2007-2008 is as follows:

Season	Division
2007-2008	Championship
2008-2009	Championship
2009-2010	Championship
2010-2011	Premier League
2011-2012	Championship
2012-2013	Championship
2013-2014	Championship
2014-2015	Championship
2015-2016	League One
2016-2017	League Two

4. Prior to 5 June 2006, when (as will be described) a further 7,500 ordinary shares were issued, Blackpool FC's issued share capital was 30,000 £1 ordinary shares. Of these shares, 1,393 (or 4.64%) were owned by 192 individual shareholders (the "Minor Shareholders"). The rest, 28,607 (or 95.36%) were owned by the First Respondent,

[1] A list of terms, together with a reference identifying where each term is first used in the Judgment, is at Annex 1.

[2] There are other, non-national, leagues, but they are irrelevant for the purposes of this Judgment.

Blackpool Football Club (Properties) Limited. Blackpool Football Club (Properties) Limited was previously known as Segesta Limited, and that was the name by which it was referred to during the course of the trial. I shall refer to it as "Segesta" in this Judgment.

5. Segesta itself is 97.2% owned by the Second Respondent, Mr. Owen Oyston. The Third Respondent, Mr. Karl Oyston, is Mr. Owen Oyston's son.

6. As is usual, the Fourth Respondent (Blackpool FC) was joined so as to be bound by the outcome of these proceedings. It did not play an active part in the hearing before me. The effective Respondents (to whom I shall refer as the "Respondents" and which definition excludes Blackpool FC) were Segesta (the First Respondent), Mr. Owen Oyston (the Second Respondent) and Mr. Karl Oyston (the Third Respondent).

7. The Petitioner, VB Football Assets, is a limited liability company registered under the laws of Latvia. Until 3 December 2013, VB Football Assets was 100% owned by Mr. Valeri Belokon. Since 3 December 2013, a company known as AS BFFH has been the sole shareholder of VB Football Assets. AS BFFH is 50% owned by Mr. Belokon and 50% by Mr. Belokon's brother, Vilori.

8. In 2005, Mr. Belokon was introduced to Mr. Owen Oyston. In time, the suggestion was made that Mr. Belokon invest in Blackpool FC. The negotiations regarding this investment and the agreement that was reached are considered in detail in this Judgment. For the present, the following points are to be noted:

    i) By an agreement in writing dated 5 June 2006, made between Blackpool FC, VB Football Assets, Segesta and Mr. Owen Oyston, VB Football Assets acquired 7,500 newly issued ordinary shares in Blackpool FA for a consideration of £1,800,000 (or £240 for each new share) (the "Subscription Agreement").

    ii) The Subscription Agreement thus gave VB Football Assets a 20% stake in Blackpool FC. On 7 July 2006, Blackpool FC issued 7,500 new shares to VB Football Assets. The shares in Blackpool FC were thus held:

        a) 1,393 (or 3.71%) by 192 individual Minor Shareholders.

        b) 28,607 (or 76.29%) by Segesta.

        c) 7,500 (or 20%) by VB Football Assets.

    iii) By an agreement in writing dated 5 June 2006, made between Ms. Vlada Belokon (Mr. Belokon's daughter) and Segesta, Ms. Belokon agreed to lend to Segesta the sum of £1,000,000 (the "First Vlada Loan Agreement").

    iv) By an agreement in writing dated 14 April 2007, made between Ms. Belokon and Segesta, Ms. Belokon agreed to lend to Segesta the sum of £1,700,000 (the "Second Vlada Loan Agreement").

    v) There were other agreements between the parties, which will be referred to in due course. However, it was common ground that these three agreements constituted the written basis on which VB Football Assets became a

shareholder in Blackpool FC, albeit that the Second Vlada Loan Agreement was concluded some months later.

vi) What was controversial was whether these three agreements set out the entire agreement between the parties or whether they were supplemented by an oral understanding (legally binding or otherwise) reached between Mr. Owen Oyston and Mr. Belokon. This is one of several difficult factual questions that will have to be resolved in the course of this Judgment, and I will not anticipate the point, save to observe that Mr. Belokon, if no-one else, was under the impression that there was at least a "gentleman's agreement" between himself and Mr. Owen Oyston along the lines that, in return for the total of £4.5 million that he had paid over (i.e., £1.8m pursuant to the Subscription Agreement, £1m pursuant to the First Vlada Loan Agreement and £1.7m pursuant to the Second Vlada Loan Agreement), he would, in due course, receive a shareholding on a par with that of Segesta and that, in the meantime, Blackpool FC would be run jointly. I shall refer to this supplement to the written agreements as the "gentleman's agreement". This sub-paragraph is intended to do no more than identify the fact that Mr. Belokon considered such an agreement to exist: this is important in terms of understanding the sequence of events. I stress that this sub-paragraph says nothing about whether there in fact was a gentleman's agreement or, if there was such an agreement, what its terms were. However, I do find that Mr. Belokon subjectively had that belief.

9. Prior to VB Football Assets' acquisition of a shareholding in Blackpool FC, Blackpool FC had four directors:

i) Mr. Karl Oyston (chairman);

ii) Mr. Owen Oyston;

iii) Mrs. Vicki Oyston;

iv) Mr. Gavin Steele. Mr. Steele subsequently resigned as a director: the decision to get rid of him was made at a meeting on 23 May 2010,[3] but not actually effected until some time before April 2011.[4]

10. On the acquisition of its shareholding, Mr. Belokon and an employee of Mr. Belokon, Mr. Normunds Malnacs, became directors of Blackpool FC.

11. When considering subsequent events, it is a helpful and useful shorthand to refer to the "Oyston Side" and the "Belokon Side" as broad descriptors of the majority and 20% minority interests in Blackpool FC respectively. This is also a convenient way of referring generally to the persons acting on each Side. Essentially, on the Oyston Side were:

i) *Mr. Owen Oyston.* Mr. Owen Oyston is a businessman, and the majority shareholder of a number of companies, including Segesta. I shall refer to these companies as the "Oyston Group". They include Blackpool FC and Segesta, as

[3] See paragraph 115 below, Item 11 in the minutes there set out.
[4] See paragraph 222 below, Item 1.3a in the minutes there set out.

well as other companies described more fully in the course of this Judgment. Mr. Owen Oyston is, as I accept, a long-time supporter of Blackpool FC.

ii) *Mr. Karl Oyston.* Mr. Karl Oyston, Mr. Owen Oyston's son, is also involved in the Oyston businesses, in particular as a director and the chairman of Blackpool FC.

iii) *Mrs. Vicki Oyston.* Mrs. Oyston is the wife of Mr. Owen Oyston. Although nominally a director of Blackpool FC, and of other companies within the Oyston Group, her role was generally an inactive one.

iv) *Mr. Howard Belton.* Mr. Belton is a tax advisor of some 50 years' experience. He has provided tax advice to Mr. Owen Oyston, and companies within the Oyston Group, since 1985. Between 1985 and 2000, Mr. Belton was a senior consultant with KPMG. Between 2000 and 2008, Mr. Belton worked with Baker Tilly. He now works through his own business, Howard Belton & Associates. Notwithstanding his moves between firms, Mr. Belton has advised Mr. Owen Oyston for over 30 years.

v) *Mr. Anthony Dempsey.* Mr. Dempsey is a solicitor and a member of Atticus Legal LLP, a firm of solicitors. Prior to that, he was a partner in another firm of solicitors, Wacks Caller. He has acted for Mr. Owen Oyston, and companies within the Oyston Group, since the 1990s.

vi) *Mr. Anthony Cherry.* Mr. Cherry is a chartered accountant and chartered arbitrator. He is the director and shareholder of AI Cherry Ltd. He is – and has for a number of years been – the auditor of Blackpool FC, Segesta and of a number of other companies within the Oyston Group, and prepared the corporation tax returns for Blackpool FC, Segesta and other Oyston Group companies. As will be seen, his role went well beyond this, and he acted as a tax and business adviser of Mr. Owen Oyston and the Oyston Group.

vii) *Mr. Roderick Dyer*. Mr. Dyer is the financial controller of Blackpool FC and its company secretary. He also has or has had this role within Segesta and other Oyston Group companies. He is a qualified management accountant.

viii) *Mr. James Rawlinson.* Mr. Rawlinson was a former solicitor, who provided Mr. Owen Oyston with business and legal advice.

ix) *Mr. Ken Chadwick.* Mr. Chadwick was what Mr. Dempsey described as "a very experienced lawyer",[5] who advised Mr. Owen Oyston.

x) *Mr. David Stephenson.* Mr. Stephenson was an accountant employed by the Oyston Group.

xi) *Ms. Rosemary Conlon.* Ms. Conlon worked for Mr. Owen Oyston in various capacities, but mainly as a personal assistant and administrator.

12. On the Belokon Side were:

[5] Transcript Day 8, p.20.

i) *Mr. Valeri Belokon.* Mr. Belokon is a businessman. He was originally the owner of 100% of VB Football Assets, and is now the indirect owner (through AS BFFH) of 50% of VB Football assets, the other 50% being owned by his brother, Vilori. He is the founder, and chairman of the council, of JSC Baltic International Bank ("Baltic International Bank") and the founder of Belokon Holdings. He was, as will be described, a director of Blackpool FC.

ii) *Ms. Vlada Belokon.* Ms. Belokon is the daughter of Mr. Belokon. She features as a named party to various of the agreements between the Oyston Side and the Belokon Side, but does not appear to have played an active role at all.

iii) *Mr. Normunds Malnacs.* Mr. Malnacs is a former employee of Mr. Belokon or one of his companies. Mr. Malnacs was employed by Mr. Belokon as a director of Blackpool FC between July 2006 and August 2008 and again between November 2009 and March 2013.

iv) *Mr. Kaspars Varpins.* Mr. Varpins is employed by AS BFFH. As such, he has, amongst other things, been a director of Blackpool FC, a role he took up in succession to Mr. Malnacs in March 2013.

v) *Ms. Anita Lase*. Ms. Lase – who also goes by the name Ms. Matisone – is a senior lawyer employed by Belokon Holdings.

vi) *Ms. Anda Beinare.* Ms. Beinare is a lawyer, working under Ms. Lase, employed by Belokon Holdings.

vii) *Mr. Michael Sheitelman.* Mr. Sheitelman is an employee of Mr. Belokon or one of his companies, who was involved in the negotiation of Mr. Belokon's purchase of a 20% shareholding in Blackpool FC.

13. Relationships between the Oyston Side and the Belokon Side in terms of running Blackpool FC up to Blackpool FC's promotion to the Premier League in 2010 were – at least so far as Mr. Belokon was concerned – essentially harmonious and in accordance with, or at least not infringing, his understanding of the gentleman's agreement. Mr. Malnacs had, perhaps, a different view of this and, again, this is a matter which will be explored.

14. Compared to the Championship, distributions to clubs participating in the Premier League are vast. During the course of the four seasons that Blackpool FC played in the Championship (2011-2012; 2012-2013; 2013-2014; 2015-2016), Blackpool FC received (for each season) £3,550,000. During its one season in the Premier League (2010-2011), Blackpool FC received £42,995,000, plus "parachute" payments intended to cushion difficulties clubs experience when demoted from the Premier League of:

i) £17,600,000 (2011-2012);

ii) £14,400,000 (2012-2013);

iii) £8,000,000 (2013-2014)

iv) £8,000,000 (2014-2015).

These payments (including the £42,995,000 received during the course of the 2010-2011 season) total £122,995,000.

15. Unfortunately, this vast influx of cash brought with it disharmony and what VB Football Assets contends was unfairly prejudicial behaviour on the part of the Oyston Side. The seeds for this began at a meeting between Mr. Owen Oyston, Mr. Karl Oyston, Mr. Belokon and Mr. Malnacs at the Dorchester Hotel on 23 May 2010. At this meeting, Mr. Owen Oyston "proposed to the meeting that he and [Mr. Belokon] should each have a facility to borrow between £3m and £5m". The notes of the meeting record that Mr. Belokon and Mr. Malnacs "listened but were non-committal".

16. It will be necessary to consider these matters in far greater detail, but I find that two related events led to the fracturing of the relationship between the Oyston Side and the Belokon Side:

    i) First, came a payment out of Blackpool FC in the amount of £4.2m. This payment was made on 17 September 2010 and was (according to VB Football Assets) done without the consent of, and was objected to by, the Belokon Side.

    ii) Secondly, at a meeting between Mr. Owen Oyston and Mr. Belokon, in or around May 2011, Mr. Belokon adverted to the gentleman's agreement and its performance. This, again, is a matter that is controversial between the parties, on which specific factual findings will have to be made. For present purposes, it is sufficient to note that Mr. Belokon considered that Mr. Owen Oyston was reneging on the gentleman's agreement. Mr. Owen Oyston, of course, denies the existence of any such agreement and accordingly denies the "breach" even of a non-legally binding agreement. Again, this sub-paragraph says nothing about what agreement (if any) was, or was not, reached between Mr. Owen Oyston and Mr. Belokon and whether it was or was not breached. What is important is that the mismatch between the respective understandings of Mr. Owen Oyston and Mr. Belokon effectively brought the previously good relationship between them to a more-or-less abrupt end.

17. I appreciate that Mr. Owen Oyston and Mr. Karl Oyston sought to put forward a different view in their oral evidence. They suggested that Mr. Belokon's attempt unilaterally to exit Blackpool FC was a course of action that had nothing to do with them, but with difficulties related to Mr. Belokon's other affairs.[6] I set out in Section

[6] See, for example, the evidence of Mr. Karl Oyston at Transcript Day 11, p.122; p.137 ("I think Mr. Belokon's issues were away from Blackpool. They were what caused his unilateral exit from the club and failure to engage"); and p.152 ("I do think the whole thing has just been a form of an attempt to get out of the football club and out of the two deals that Mr. Belokon did with maximum revenue and to force us to buy him out at terms that he was content with, which was £24 million when we finally found out about it").

See also the evidence of Mr. Owen Oyston at Transcript Day 12, p.22 ("It's a very frustrating time because we could never get to grips with resolving some of the issues because Mr. Belokon, who is the only person, my Lord, who could make a decision – nobody else could make a decision on behalf of VB Football Assets – just didn't turn up. He disappeared"); pp.34 to 35 ("We know – they were trying to control the board and we know why they were trying to control the board and that's again exposed in all the emails I have just referred to and the fact that Mr. Belokon, because we had turned down the proposal he made to us of £24 million, my Lord – he wanted £24 million plus interest, £14 million down, £10 million on loan over a number of years, which would have come to over £30 million, which would have bankrupted the football club. So that is the choice we had to make. We said "No" to him and that's why we are here today. If we had paid him that money, then of course, he

B below my assessment of the various factual witnesses called by both sides, but I should make clear now that in assessing the evidence before me, I have had well in mind the approach of Lord Goff in Grace Shipping v. Sharp [1987] 1 Lloyd's Rep. 207 at 215:

"In such a case [where witnesses were seeking to recall events and telephone conversations of five years earlier] memories may very well be unreliable; and it is of crucial importance for the judge to have regard to the contemporary documents and to the overall probabilities…"

This is precisely such a case: the witnesses, giving evidence in 2017, were all seeking to recall events of some years previously. I have therefore paid careful regard to the contemporary documents. I have, in particular, reviewed the contemporary documents before me for evidence supporting the assertions of Mr. Owen Oyston and Mr. Karl Oyston that the cause of the fracturing of the relationship was something other than that articulated in paragraphs 15 and 16 above. I have found no such evidence. What is more, the documents tell a clear and unequivocal story, that is internally consistent and entirely persuasive. The events are fully considered in Section C, but it is worth stating at the outset that that narrative, based on the contemporary documents, as supplemented by the witness evidence, tells only one story.

18. Although Mr. Malnacs continued as a director representing the Belokon Side on the board of Blackpool FC until March 2013, and was then succeeded in the role of director by Mr. Kaspars Varpins from March 2013, the period from May 2011 was characterised by:

    i) A significant withdrawal from the affairs of Blackpool FC by Mr. Belokon – during which time, Mr. Belokon sought to negotiate an exit from the club. Such an exit was not, however, concluded with either a third party or with the Oyston Side;

    ii) Increased hostility between the Oyston and Belokon Sides, manifesting itself in acrimonious communications between the parties, disagreement at board meetings and briefings through the media.

19. During this period:

    i) Further payments out of Blackpool FC were made, to which it is said the Belokon Side did not consent. No dividends were paid.

    ii) It is said by VB Football Assets that it was excluded from decisions of Blackpool FC and from information regarding Blackpool FC.

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would have rode over the sunset with the money and we would never have seen him again and that's the reality"); p.48 ("Can I tell you the evidential basis is that the Courts of Appeal of Paris, the French Republic, handed down a judgment on Mr. Belokon that he is a money launderer and should not benefit from the proceeds of crime, that he is avoiding – evading taxes to the tune of £5.9 billion, huge sums of money, so I don't think it is fair you should criticise me for paying my taxes…"); p.52: (…[Mr. Malnacs] could not get hold of [Mr. Belokon]. He was just busy doing his own thing and travelling the world, so we never – we hardly ever saw him. Two board meetings from April 2010 to today, that's what he came to and that was when his bank was seized in 2010. I think he had other commitments – a massive problem because his bank, apparently, had cost him over US$100 million".

iii) In 2014, over the objections of VB Football Assets, the board of Blackpool FC adopted amended articles of association which – so it is said by VB Football Assets – was an act unfairly prejudicial to VB Football Assets.

20. Mr. Belokon failed in his efforts to have VB Football Assets' interest in Blackpool FC bought out and, on 15 September 2015, a petition alleging unfair prejudice under section 994 of the Companies Act 2006 was commenced by VB Football Assets (the "Petition").

(2) The allegations of unfair prejudice made in the Petition

21. Section 994 of the Companies Act 2006 provides, so far as material:

> "(1) A member of a company may apply to the court by petition for an order under this Part on the ground-
>
> (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
>
> (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
>
> (1A) For the purposes of subsection (1)(a), a removal of the company's auditor from office-
>
> (a) on grounds of divergence of opinions on accounting treatments or audit provisions, or
>
> (b) on any other improper grounds,
>
> shall be treated as being unfairly prejudicial to the interests of some part of the company's members."

22. Section 996 provides:

> "(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
>
> (2) Without prejudice to the generality of subsection (1), the court's order may-
>
> (a) regulate the conduct of the company's affairs in the future;
>
> (b) require the company-
>
> (i) to refrain from doing or continuing an act complained of, or
>
> (ii) to do an act that the petitioner has complained it has omitted to do;
>
> (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
>
> (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

23. In essence, two broad questions fall for determination:

i) First, there is the question of whether the court is satisfied that the Petition is well-founded. In essence, the question is whether the affairs of Blackpool FC have been conducted in a manner by the Respondents that is unfairly prejudicial to the interests of VB Football Assets as a member of Blackpool FC.

ii) Secondly, assuming that the Petition is well-founded, what is the appropriate form of relief?

24. The Petition contends that the affairs of Blackpool FC have been conducted by the Respondents to the unfair prejudice of the interests of VB Football Assets in the following respects:

i) VB Football Assets complains that substantial payments were made out of Blackpool FC which were improper. They were improper in that they were made without VB Football Assets' consent and/or were for the personal benefit of Mr. Owen Oyston and/or Mr. Karl Oyston.[7] VB Football Assets also complains that there was a failure by Blackpool FC to pay dividends.[8] Although this failure to pay dividends is pleaded as a separate ground of unfair prejudice, distinct from the allegedly improper payments out of Blackpool FC, I consider these two grounds to be closely related, and I will deal with them together in this Judgment.

ii) VB Football Assets complains that it was excluded from the management of Blackpool FC.[9] In essence, it is contended that whereas Mr. Belokon and Mr. Malnacs and thereafter Mr, Varpins were directors of Blackpool FC, they were excluded from receiving material information about Blackpool FC, including information needed for board meetings; and that decisions that should have been made by the board, were made outside board meetings.

iii) VB Football Assets complains that the adoption, by Blackpool FC, of new articles of association, was unfairly prejudicial.[10]

(3) The structure of this Judgment

25. Clearly, the question of the appropriate relief on the Petition cannot begin to be considered without a conclusion first being reached on the allegations of unfair prejudice that are advanced by VB Football Assets. Equally clearly, these allegations of unfair prejudice cannot sensibly be considered without detailed findings being

[7] See paragraphs 27 to 29 and 34 to 50 of the Petition.
[8] See paragraphs 51 to 52 of the Petition.
[9] See paragraphs 30 to 33 of the Petition.
[10] See paragraphs 53 to 57 of the Petition.

made on the facts that underlie them. As I have already indicated, there were a number of factual matters which were highly contentious as between the Oyston and the Belokon Sides, particularly in those areas where events were undocumented, and recollections differed.

26. The structure of this Judgment is as follows:

i) Section B considers the evidence of the witnesses of fact called by each party. It does not consider the evidence of the experts called by the parties: this expert evidence was relevant only to the question of relief, and is considered in Section J.

ii) Section C is a necessarily lengthy statement of the relevant facts, in broad chronological order. Where necessary and appropriate during this Section, I make specific determinations of the factual disputes between the parties. However, this Section makes no effort to grapple with the questions of the existence of unfair prejudice or relief: Section C is intended to be factual only.

iii) Section D considers in general terms what must be established by VB Football Assets in order for the Petition to succeed. Sections E to H then consider the broad allegations of unfair prejudice advanced by the Petitioner, namely:

a) Section E considers, in fairly general terms, the relationship between Blackpool FC and the other companies in the Oyston Group. It is necessary to do so, because that relationship informs two of the three allegations of unfair prejudice made by VB Football Assets, namely the allegation that there were substantial payments out of Blackpool FC that were improper (see paragraph 24(i) above) and that VB Football Assets was excluded from the management of Blackpool FC (see paragraph 24(ii) above). Section E considers the nature of the cash flows between the companies within the Oyston Group, and the extent to which certain of these were unfairly prejudicial.

b) Section F considers, in rather greater detail, certain specific payments out of Blackpool FC which are said to be improper, as well as the failure by Blackpool FC to pay dividends.

c) Section G considers the allegation that the Petitioner was excluded from Blackpool FC.

d) Section H considers the allegation that the alteration of the articles of association of Blackpool FC was unfairly prejudicial.

iv) Section I considers the contention advanced by the Respondents that VB Football Assets should, in any event, be denied relief (were the granting of relief otherwise to be appropriate) on various grounds, which are pleaded in paragraph 42 of the Amended Points of Defence.

v) Section J considers the question of relief. This Section contains my assessment of the expert evidence that was adduced before me. As I have noted, the expert

evidence only went to the question of relief and I do not need to consider it at any earlier stage.

27. The orders I am minded to make for the disposition of the Petition are set out in Section K.

B. THE FACTUAL WITNESSES

28. As I have explained in paragraph 17 above, I have tested the evidence of the various factual witnesses against the contemporary documents, conscious that the later recollection of these witnesses is fragile and that the contemporary documents may provide a better and clearer record of events. In making this comment, I should make clear that I intend no criticism of any of the witnesses.

(1) VB Football Assets' witnesses

29. VB Football Assets called the following witnesses:

i) *Mr. Belokon*. Mr. Belokon gave a single witness statement dated 8 March 2017 ("Belokon 1"). Belokon 1 was given in Russian – Mr. Belokon's first language – and translated into English – Mr. Belokon's second language. Mr. Belokon gave evidence over three days, on 13, 14 and 15 June 2017 (Days 2, 3 and 4 of the trial). Mr. Belokon was an affable witness, who gave his evidence with the assistance of an interpreter. Although Mr. Belokon's English was undoubtedly good – indeed, outstanding for conversational purposes – it rapidly became clear when he came to give evidence that Mr. Belokon's original plan of giving evidence in English, with occasional interpreter support, lost a great deal of the nuance that Mr. Belokon was trying to convey. With my active encouragement, and certainly for the second and third days of his evidence, Mr. Belokon essentially gave his evidence in Russian, which was translated for him into English. Although this inevitably slowed the proceedings down, it was in my judgment necessary in the interests of receiving Mr. Belokon's evidence properly.

There are two other points of detail about Mr. Belokon's practice that I should note, for they are relevant in terms of evaluating the evidence he gave:

a) First, and unsurprisingly for a Latvian businessman, many of Mr. Belokon's employees were native Latvian speakers. Latvian was Mr. Belokon's third language, and he tended to speak to his employees either in Russian or in English, but <u>not</u> in Latvian. They, in turn, would write to Mr. Belokon in either Russian or English, which would not have been their first language. There was thus some potential for points to be "lost in translation", particularly in communications with the Oyston Side, which spoke only English.

b) Secondly, Mr. Belokon transacted orally. By this, I mean that he did not tend to author documents, nor did he tend to read them. Rather, he gave his instructions orally and, when a document had to be brought to his attention, it was either summarised or broadly translated for him by one of his employees.

I consider that Mr. Belokon gave his evidence honestly. He was very clear when he could not remember something; and equally clear when – a document, for example – might have passed under his nose with only the broadest of explanations as to what was going on. Mr. Belokon was, as I accept, a busy businessman, with multiple interests, who delegated the detail and outlined what he wanted his staff to achieve. Because Mr. Belokon was clear in demarcating what he knew as opposed to what his staff knew, I consider that I can place considerable reliance on what, strategically, Mr. Belokon thought he was achieving in his dealings with the Oystons. Of course, whether his subjective intentions were in fact realised in the communications crossing the line between the Belokon Side and the Oyston Side is an altogether different matter, which goes to the heart of the issues that were before me.

ii) *Mr. Malnacs.* Mr. Malnacs gave a single witness statement dated 7 March 2017 ("Malnacs 1"). He gave evidence on 16 June 2017 (Day 5). Mr. Malnacs' first language was Latvian, his second English. Both Mr. Belokon and he agreed that his Russian came a poor third. His witness statement and his oral evidence were both given in English, and his English was formidable. He had no need of – and did not have – a Latvian interpreter. He was an impressive witness, who gave his evidence clearly and honestly. He was in no sense in awe of his boss, although Mr. Malnacs obviously respected Mr. Belokon. I consider that Mr. Malnacs' evidence was entirely independent of Mr. Belokon's: Mr. Malnacs was his own man. This was particularly clear in his assessment of the Oyston Side and in his view of Mr. Belokon's relationship with the Oyston Side. Mr. Malnacs considered Mr. Belokon too trusting of the Oyston Side, and too dismissive of Mr. Malnacs' own reports of the state of play at Blackpool FC.[11]

iii) *Mr. Kaspars Varpins.* Mr. Varpins gave a single witness statement dated 9 March 2017 ("Varpins 1"). He gave evidence on 19 June 2017 (Day 6) and 20 June 2017 (Day 7). Again, Latvian was his first language, and English his second. Varpins 1 was in English and Mr. Varpins gave his evidence in English. Mr. Varpins' English was not of the same standard as Mr. Malnacs', and Mr. Varpins' answers in cross-examination tended to be short and to the point. It would be idle to speculate whether Mr. Varpins' answers would have been materially any different had he given his evidence in Latvian. He gave his evidence honestly. I am unsure, however, to what extent his evidence actually was of assistance to the Court. That is no criticism of Mr. Varpins. Mr. Varpins came on the scene when the relationship between Mr. Belokon and the Oyston Side had fractured. Throughout Mr. Varpins' tenure as a director, the relationship between the Belokon Side and the Oyston Side was not a fruitful one and there was a good deal of mutual antipathy and mistrust – and so, lack of co-operation – on both sides. Although Mr. Varpins was cross-examined in detail on the events that occurred during his tenure as director, my sense was that – particularly after the commencement of these proceedings, but even

[11] Transcript Day 5, p.12: "Apparently, he trusted Owen Oyston much more than me…He believed Owen much more than me." It was clear from Mr. Malnacs' evidence that he considered the "partnership" at Blackpool FC unequal from the start; that he communicated this to Mr. Belokon; but that Mr. Belokon did not accept this until much later on. See, in particular, Transcript Day 5, pp.7*ff*.

before then – there was little that Mr. Varpins could add to the documents before me in the chronological files. What is more, I am of the view that those documents are much the least important in terms of understanding the grounds that underlie the Petition. These grounds predate Mr. Varpins' arrival on the scene; and it is no fault of Mr. Varpins that I have found his evidence essentially irrelevant.

(2) The Respondents' witnesses

30. The first four witnesses called by the Respondents (Mr. Belton, Mr. Dempsey Mr. Cherry and Mr. Dyer[12]) were drawn from Mr. Owen Oyston's trusted team of advisers. In cross-examination, Mr. Belton was asked:[13]

> **Q (Mr. Green, Q.C.)** Is the position that Owen Oyston had a team of trusted advisers and you and Mr. Cherry were a core component of that team?
>
> **A (Mr. Belton)** Yes.[14]

I consider this to be as true of Mr. Dempsey and Mr. Dyer, as it was of Mr. Belton and Mr. Cherry. Because of their involvement in decisions made by the Oystons, which were being probed by VB Football Assets during the course of the trial, there was a natural and unsurprising tendency to be defensive.

31. Whilst I consider all four of these witnesses were doing their best to assist the court, their relationship with Mr. Owen Oyston (which generally had subsisted over many years) inclined them to lack objectivity when the business of the football club was being critically examined:

i) *Mr. Belton.* Mr. Belton gave a single witness statement dated 18 April 2017 ("Belton 1"). He gave his evidence on 20 June 2017 (Day 7). Subject to the qualification I have made, he was an entirely straightforward witness. His recollection of events of long ago, where he had had a second-order (albeit nonetheless important) involvement was understandably hazy, but he was careful to differentiate between what he knew or remembered, and what he accepted he must have known, but had forgotten (because, e.g., a letter, whose content he had forgotten, was addressed to him).

ii) *Mr. Dempsey.* Mr. Dempsey gave a single witness statement dated 24 February 2017 ("Dempsey 1"). He gave evidence on 20 June 2017 and 21 June 2017 (Days 7 and 8). Like Mr. Belton, he was a straightforward witness. He had an impressive command of the documents, and a singular knack of reconstructing from the documents what he thought must have happened. But he had a significant, and I am sure unconscious, bias towards the interests of the Oyston Side.

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[12] Formally speaking, Mr. Dyer was an employee and not an adviser, but nothing turns on this.
[13] Transcript Day 7, p.112.
[14] Quotations from transcripts and documents have been "tidied up": typographically errors, mis-references and obvious missed words have been corrected.

Thus, when giving his understanding of some of the draft contractual documents passing between the Oyston and the Belokon sides, Mr. Dempsey was dogmatic in suggesting a meaning that would not be the interpretation of the reasonable bystander. His construction of the provisions of a draft of the Subscription Agreement dealing with the respective roles of Mr. Karl Oyston and Mr. Belokon, whilst I am sure honestly held, was *(i)* not the meaning I consider a reasonable bystander would attach to it, *(ii)* one that favoured the Respondents' contentions and *(iii)* not necessarily the view that the Oyston Side's counterparties would have had:[15]

Q (Mr. Green, Q.C.)	So, did these clauses then have nothing to do with the right to management as per your paragraph 14 of your statement?[16]
A (Mr. Dempsey)	Effectively it – that was preserving the existing position that Karl Oyston was running the football club and Mr. Belokon would help out by trying to sort out some overseas players.
Q (Mr. Green, Q.C.)	So your reading of clauses 5 and 6 is that they made clear, did they, that Karl Oyston was in fact taking a very much more dominant role in the management of the club going forward if this agreement was signed?
A (Mr. Dempsey)	When you say taking over – he has always had a dominant role in the management. At this stage, he was managing it, and this wasn't intended to disturb it.
Q (Mr. Green, Q.C.)	So you are suggesting that the wording of clause 6 makes it clear that Karl Oyston was going to continue managing all aspects of the UK operations and Mr. Belokon would have no right to do so?
A (Mr. Dempsey)	Yes.
Q (Mr. Green, Q.C.)	Mr. Dempsey, that's a somewhat unreal reading of paragraphs 5 and 6?
A (Mr. Dempsey)	I drafted it, so I know what it was intended to cover.
Q (Mr. Green, Q.C.)	I see.
Q (Marcus Smith J.)	But if you were an outsider, a reasonable person reading it, would you accept that that person might read it rather differently?
A (Mr. Dempsey)	We were all in the room at the time. Mr. Belokon's representatives were there. We knew what the situation was on the ground and how the business operated, and it wasn't intended that that would change.

[15] Transcript Day 7, pp.157-158.

[16] Paragraph 14 of Dempsey 1 expressed the view that this draft of the agreement made Mr. Belokon was a "consultant" only, and that Mr. Belokon was not anticipated to have further management rights.

Similarly, Mr. Dempsey's evidence regarding the interrelationship between the Subscription Agreement and the two Vlada Loan Agreements was overly protective of the Oyston Side. Whilst, in cross-examination, Mr. Dempsey had to concede that the two Vlada Loan Agreements could not be self-standing transactions, he was unwilling to accept the consequence of this, namely that they were part of a wider transaction.[17]

iii) *Mr. Cherry.* Mr. Cherry gave a single witness statement first made on 24 February 2017 and amended on 6 April 2017 ("Cherry 1"). He gave evidence on 21 and 22 June 2017 (Days 8 and 9 of the trial). Perfectly understandably, he had no self-standing recollection of events, and essentially confined himself to commenting on documents that must have passed before him. I make no criticism of this.

As I have noted, Mr. Cherry was the auditor of Blackpool FC (and other Oyston Group companies, including Segesta). As such, it was incumbent upon him to maintain a degree of independence from the companies he was auditing. At least so far as Blackpool FC was concerned, I consider that such independence was lacking. Mr. Cherry acted as an advisor to the Oyston side in respect of transactions materially affecting Blackpool FC. No auditor, properly having regard to his responsibilities, should have placed himself in this position. In cross-examination, Mr. Cherry accepted that he had provided general tax advice relating to Blackpool FC to the Oyston Side and without the participation of the Belokon Side:[18]

Q (Mr. Green, Q.C.)	Since 2006, your work for the Oyston companies has involved you advising Owen Oyston in private meetings to which VBFA and its directors on the board of Blackpool Football Club were not privy, hasn't it?
A (Mr. Cherry)	From time-to-time, I would attend various meetings at Mr. Oyston's request, yes you're right.

Although Mr. Cherry maintained that he did not accept instructions which he felt might conflict with his role as auditor,[19] and that his firm had systems in place (including "hot" and "cold" reviews of audit files) to maintain standards, I consider that his participation in a number of the dealings described further in Section C to have been inconsistent with his position as auditor, namely:

a) His advice regarding the Oyston Side's control of Blackpool FC (Section C(26)).

[17] See Transcript Day 8, pp.26*ff*. This point is considered further at paragraph [*] below.
[18] See Transcript Day 8, p.45.
[19] Transcript Day 8, p.46.

b) His advice given regarding the Protoplan payment (Section C(30)).

c) His intervention in the drafting of the meeting notes and, indeed, his participation in the meeting itself, on 17 December 2010 (Section C(33)).

d) His presence at the tax meeting on 27 July 2011 (Section C(42)).

Obviously, the fact that the auditor of Blackpool FC was effectively "in the pocket" of the Oyston side is something that I will bear in mind when considering the allegations made in the Petition. For the purposes of evaluating Mr. Cherry's evidence, it seems to me that I can place little weight on his explanations of the transactions in which he participated, to the extent that explanation purports to be given by an auditor. These views are not entitled to the weight that would normally attach to the opinion of an auditor.

iv) *Mr. Dyer.* Mr. Dyer gave a single witness statement dated 9 March 2017 ("Dyer 1"). He gave evidence on 22 and 23 June 2017 (Days 9 and 10 of the trial). On the whole, Mr. Dyer was a straightforward witness, but again he showed a propensity to tow the Oyston Side's line, for instance in his assertions that there was no intention to allow the Belokon Side to acquire more than a 20% shareholding,[20] and in his suggestion that there was nothing odd in communications relating to Blackpool FC going only to the Oyston Side, and not to the Belokon Side. The following exchange relates to an email dated 15 April 2011 (considered further at paragraph 221 below), which was sent to "everyone":[21]

Q (Mr. Campbell)	Did it not surprise you at the time, as the financial controller, that this email was copied to Mr. Cherry, the club's auditor, Mr. Belton, who had nothing to do with the club except that he was personal adviser to Mr. Oyston, but wasn't copied to the club's finance director [Mr. Malnacs]?
A (Mr. Dyer)	Yes, it's not actually to the board of Blackpool Football Club, though, is it. It's actually to chairman's office, Ian Cherry, Howard Belton and Karl [Oyston], and I have just been copied into it.
Q (Mr. Campbell)	That's rather my point, Mr. Dyer. Isn't it odd that an email which is about the interrelated transaction between [Blackpool FC], Segesta and Owen Oyston, isn't copied to the man who the Respondents are keen to emphasise was at the time the club's finance director?
A (Mr. Dyer)	I think the point I was trying to make was that would be a matter for the Blackpool Football Club board, so that would have been a matter

[20] See paragraph 4 of Dyer 1; Transcript Day 9, pp.61-62.
[21] Transcript Day 9, pp.130-131.

	for the chairman to circulate it then on to the directors or discuss it with the directors.
Q (Mr. Campbell)	You were the company secretary, Mr. Dyer, weren't you?
A (Mr. Dyer)	I was.

32. The fact is that the evidence of Messrs. Belton, Cherry, Dempsey and Dyer reflected their position as long-standing and loyal advisers to the Oyston Side, and I consider their evidence in that light.

33. During the course of their cross-examination, Mr. Owen Oyston and Mr. Karl Oyston both sought to suggest that they – Owen and Karl Oyston – were not the key decision-makers in regard to Blackpool FC, but that they merely acted in accordance with advice given to them.[22] In this way, they sought to distance themselves from the corporate actions of the Oyston Group.

34. I do not find this plausible and I do not accept this evidence. In the ordinary course, it is not advisers who determine what happens. They provide advice for the decision-maker and, having given that advice, if instructed to take certain steps by the decision-maker, they do so. That, I consider, is how the Oyston Side operated. The documents that I have seen, and the evidence that I have heard, bear out the fact that it was Mr. Owen Oyston and Mr. Karl Oyston – and not their team – who effectively ran the show.

35. Both Mr. Owen Oyston and Mr. Karl Oyston showed themselves as decisive people who knew their own minds:

    i) *Mr. Karl Oyston.* Mr. Karl Oyston gave a single witness statement dated 9 March 2017 ("KO 1"). He gave evidence on 23 and 26 June 2017 (Days 10 and 11 of the trial). He was an argumentative witness, who gave speeches rather than answering questions. I found him generally incapable of answering a question straightforwardly. He had a marked tendency, not to give evidence, but to advocate. This was not aided by the fact that his actual recollection of events was extremely poor. Although, therefore, I consider that he sought to tell the truth as he saw it, he was an unimpressive witness, and I cannot place very much weight on his evidence. As a person, Mr. Karl Oyston seemed to me to be a forceful character, capable of firm and probably harsh leadership. When crossed, he could react badly and be quite rude, as his documentary exchanges with Mr. Malnacs show. Fundamentally, however, it was not he, but his father, who set the strategic direction for Blackpool FC (and, indeed, for the Oyston Group as a whole), with Mr. Karl Oyston implementing the strategy determined upon by Mr. Owen Oyston. To this extent, Mr. Karl Oyston was subordinate.

    ii) *Mr. Owen Oyston.* Mr. Owen Oyston gave a single witness statement dated 9 March 2017 ("OJO 1"). He gave evidence on 28, 29 and 30 June 2017 (Days

[22] See, for example, Transcript Day 10, p.78 (cross-examination of Mr. Karl Oyston) ; p.86 (cross-examination of Mr. Karl Oyston).

12 to 14 of the trial). Mr. Owen Oyston is a successful businessman and a devoted fan of Blackpool FC. I accept that, over the years, he has put a great deal of his time and money into Blackpool FC, to the club's very considerable benefit. Mr. Owen Oyston is capable of great charm, which he is perfectly capable of deploying to secure his own ends. He was an extremely courteous witness. Like Mr. Karl Oyston, his evidence to me contained substantial elements of advocacy, and many of his answers to Mr. Green Q.C.'s questions were long and basically unresponsive to the question being posed. Mr. Oyston also showed a capacity for embellishing his evidence with detail which appeared nowhere in his witness statement. I am quite sceptical as to the evidential worth of such embellishment. As with Mr. Karl Oyston, I am prepared to accept that Mr. Owen Oyston was doing his best to assist the court. As a rule of thumb, however, recollection does not improve over time, but is rather degraded as a witness tries, iteratively, to work out what his recollection actually is. I consider that Mr. Owen Oyston's memory suffered in this way.[23]

C. FACTUAL NARRATIVE

(1) The original ownership of shares in Blackpool FC

36. Prior to 5 June 2006, when (as will be described) a further 7,500 ordinary shares were issued, Blackpool FC's issued share capital was 30,000 £1 ordinary shares. Of these shares, 1,393 (or 4.64%) were owned by 192 individual shareholders. The rest, 28,607 (or 95.36%) were owned by Segesta.

(2) The Oyston Group

37. Segesta itself is 97.2% owned by Mr. Owen Oyston. Its directors are, and at all material times were, Mr. Owen Oyston and Mr. Karl Oyston. Blackpool FC, as has been described, was substantially owned, and so controlled, by Segesta. Segesta itself was substantially owned, and so controlled, by Mr. Owen Oyston.

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[23] A small instance occurred in Transcript Day 12, pp.54 to 55. Mr. Owen Oyston was being asked about some minutes, which recorded that Mr. Owen Oyston had declared a conflict of interest to the Blackpool FC board. The minutes said nothing about him leaving the meeting, but Mr. Owen Oyston suggested a positive recollection that he had:

Q (Mr. Green, Q.C.)	There was no genuine discussion at this meeting about the fairness and propriety of this payment, was there?
A (Mr. Owen Oyston)	Well, I wasn't there for the relevant part, Mr. Green.
Q (Mr. Green, Q.C.)	Did you actually leave the meeting?
A (Mr. Owen Oyston)	I left the meeting.
Q (Mr. Green, Q.C.)	It doesn't say that, does it?
A (Mr. Owen Oyston)	Well, I did.
Q (Mr. Green, Q.C.)	You now recall that?
A (Mr. Owen Oyston)	Well, just through all the documents and everything and discussions with people, yes, I left the meeting for a short time.
Q (Mr. Green, Q.C.)	Do you have a clear recollection of doing so?
A (Mr. Owen Oyston)	Not clear, but it's a long time ago…
Q (Mr. Green, Q.C.)	Do you have an unclear recollection of doing so?
A (Mr. Owen Oyston)	Yes.
Q (Mr. Green, Q.C.)	You do?
A (Mr. Owen Oyston)	Well, I left the board.

38. As I have noted, Segesta forms part of the Oyston Group, a group of companies owned and controlled by the Oyston family. In addition to Blackpool FC and Segesta, three other companies in the Oyston Group need to be described:

    i) *Zabaxe Ltd.* Zabaxe Ltd ("Zabaxe") was a "service" company within the Oyston Group. As such, it was the nominal counterparty for goods and services required by the Oyston Group and the invoices for such services were directed to it and paid by it. It also acted as the employer of employees retained by the Oyston Group, like Mr. Dyer. Zabaxe was 100% owned by Mr. Owen Oyston. Its directors were Mr. Owen Oyston, Mr. Karl Oyston and Mrs. Oyston. In the early 2000s, the then finance director of Zabaxe misappropriated some funds – the detail is immaterial – but the consequence of this was that the "service" functions of Zabaxe were transferred to another company, Denwis Ltd ("Denwis"), in around 2002. Zabaxe became dormant at about this time.[24] It may (in around 2010) have been revived,[25] but the evidence was that for most of the first decade of the 2000s, Zabaxe was dormant.

    ii) *Denwis.* Like Zabaxe, Denwis was a "service" company. It, too, was 100% owned by Mr. Owen Oyston. Its directors were Mr. Owen Oyston and Mrs. Oyston.[26]

    iii) *Protoplan Ltd.* By the time of the trial, Protoplan Ltd ("Protoplan") had been wound up, and (in contrast to the other companies described in this paragraph) I was not provided with details of Protoplan's shareholders and directors. It is to be inferred, however, that Protoplan was substantially owned and controlled by Mr. Owen Oyston, and I so find. Protoplan was a construction company that did work on the Blackpool FC stadium.

    iv) *Blackpool Football Club Hotel Ltd.* Blackpool Football Club Hotel Ltd ("Blackpool FC Hotel") is 100% owned by Segesta. Its director is Mr. Karl Oyston. Blackpool FC Hotel operates a hotel located in the stadium in which Blackpool FC plays, known as "Blackpool Football Club Hotel". I understand that this hotel was operated by another member of the Oyston family, a Mr. Sam Oyston.[27]

(3) Blackpool FC's use of the football ground

39. The ground or stadium at which Blackpool FC played was not actually owned by Blackpool FC but by Segesta. As at June 2006, the stands at the ground comprised the North-West and West Stands, which had been demolished and reconstructed in the period 2000 to 2005. These stands opened for football use in 2002. The fitting out of

[24] Transcript Day 7, pp.137-138; Transcript Day 8, pp.91-92; Transcript Day 9, pp.182-183; Transcript Day 10, pp.2-3.
[25] See Transcript Day 10, p.97.
[26] Mr. Owen Oyston, in his evidence in-chief (Transcript Day 12, p.4), indicated that OJO 1 should be read as follows: "[Denwis] substituted for [Zabaxe] for a period of time, albeit the employees' services provided and concept remained the same. Thus, any reference to Zabaxe in this statement also includes the period when Denwis stood in its shoes".
[27] Paragraph 7 of Dyer 1; Transcript Day 5, pp.181-182; Transcript Day 9, pp.84-85.

these stands to include hospitality areas and office space was completed by or during the course of 2005.

40. I was provided with a chronology of the development of the stadium, together with costs, by the Respondents. It is appended to this Judgment as Annex 2. I should stress that this chronology was not agreed by VB Football Assets, and it was not supported by any witness called by the Respondents. It was not possible, in the course of the trial, to traverse the detail of this chronology – in particular, the costs it is said by the Respondents were incurred. On the other hand, it was not disputed by VB Football Assets that the Oyston Side had, over time, spent money on the stadium. Indeed, an "undisputed" but necessarily less populated chronology, setting out what was agreed by VB Football Assets, was helpfully produced by VB Football Assets. Nevertheless, because of its greater detail, I use the chronology at Annex 2 as a broad guide to the stadium's development, without making any express findings as to the accuracy of the detail, and fully recognising that its content is not agreed by VB Football Assets.

41. I have seen no legal document setting out the terms on which Blackpool FC was entitled to use the ground. The only document on this point is a document constituting Attachment 6 to the Subscription Agreement. This purports to provide "details of Blackpool FC's occupation of stadium". The attachment provided as follows:

"Blackpool [FC's] occupation of the Stadium at Seasiders Way, Blackpool owned by [Segesta]. The occupation falls into 2 categories: –

1) Serviced Accommodation permanently occupied listed as follows:

   i) ticket office

   ii) shop

   iii) gold bond offices as defined on the plan (form part of the rear of the shop/ticket office)

   iv) changing rooms and offices

   v) Squires Gate training ground, pictures, pavilion, gym and offices

   vi) seating area of the stadium

   vii) football pitch (NB Blackpool [FC] has committed to allowing the use of its facilities at minimum/nil cost to the local community for a small number of local football finals)

   viii) car parking sufficient for customers using the ticket office and shop during business hours

   ix) groundsman's store both internal and external

   x) ground maintenance store both internal and external (NB the football club currently utilises space at homefarm, Lytham for storage on a rent free basis, this arrangement will continue at the discretion of Oyston Estates unless of course [Blackpool FC] wish to terminate)

> NB [Segesta] to have the right to use the pitch, seating area and changing rooms for non football events in return for payment to [Blackpool FC] of 1/3 of the profit for the event, provided that the event does not interfere with the scheduled or ongoing use of such facilities by [Blackpool FC]
>
> 2) Areas [Blackpool FC] has a right to occupy on a match day:
>
> i) the concourse for spectators
>
> ii) the Board room and directors box
>
> iii) North Stand car park (such areas that do not form part of the serviced office accommodation agreements and reserved to the Primary Healthcare Trust/social services/nursery/drop in centre)
>
> iv) all other areas of car parking available and required for use by directors and customers on a match day
>
> v) [Blackpool FC] will have a match day access to all areas of the Stadium other than those areas occupied by external parties currently being Primary Healthcare trust/social services/nursery/Blackpool and Fylde college…
>
> (NB it is envisaged that Travelodge/Primary Healthcare Trust/Social Services/BFCP offices, London Clubs/resort casinos will occupy further areas in the near future).
>
> If requested by [Segesta], [Blackpool FC] will relocate any or all of its football club activities to such alternative location(s) within the Fylde coast with improved or enlarged facilities as may be required by [Segesta] (for example if [Blackpool FC] is promoted to the Premiership).
>
> The above rights are to be exercised by [Blackpool FC] on the basis of that no rental payments or service charge payments are payable by [Blackpool FC]'s to [Segesta]. Maintenance, staffing and utility costs are covered elsewhere in this Agreement in Clause 8(i) and schedules 3 and 4. This Agreement has no term."

42. It is entirely unclear whether Attachment 6 purported to summarise the legal arrangements already subsisting between Blackpool FC and Segesta or whether it amounted to a statement made for the purposes of the Subscription Agreement, intended to be binding, setting out for the first time the rights of Blackpool FC.

43. Moreover, it is not clear from this document whether the entitlement in Blackpool FC to access the stadium with no rental payments was limited to the stadium as constructed at the date of Attachment 6, or whether it extended to any parts of the stadium to be developed in the future.

44. I shall proceed on the basis that Attachment 6 set out the pre-existing basis upon which Blackpool FC was entitled to use the ground, and that this was binding in law on Segesta and legally enforceable by Blackpool FC.

45. I shall also proceed on the basis that Blackpool FC's entitlement to use the "seating area of the stadium" as *per* paragraph 1) vi) of Attachment 6 extended to the seating area as it existed from time to time. In other words, if the seating was extended, the

extended seating became the "seating area of the stadium" within the meaning of Attachment 6. Of course, I recognise that Attachment 6 simply deals with Blackpool FC's rights of occupation. It says nothing about rights to the revenue – the "gate" receipts – derived from attendance at football matches.

(4) Financial support by Mr. Owen Oyston

46. In general, in the years up to 2006, Blackpool FC had been loss-making. Blackpool FC had, to the extent necessary, been funded by Mr. Owen Oyston. This support is disclosed in the accounts of Blackpool FC for the year ending 31 May 2005. These accounts, I should say, appeared as Attachment 1 to the Subscription Agreement, and formed part of the agreement. Essentially, these accounts showed:

    i) In the balance sheet, that Blackpool FC owed £5,415,200 (these amounts falling due within one year).

    ii) Note 12 to the accounts provided a breakdown of this figure. The bulk of the debt comprised "[a]mounts owed to group undertaking": £3,784,890. Additionally, £400,137 was "[d]irectors' accounts and unsecured loans". The note went on to provide:

> "The amount owed to group undertaking represents the amount due to the parent, [Segesta]. The maximum balance outstanding during the year was £3,931,716.
>
> Directors' accounts and unsecured loans includes £400,137 (2004: £400,137) owed to the director, Mr. OJ Oyston. The maximum balance owed to Mr. Oyston was £603,539. During the year a loan in the amount of £200,000 was taken from the director Mr. OJ Oyston, this amount was fully repaid during the year ended 31 May 2005 stop the company was charged interest of £3,403 on the loan of £200,000 from Mr. OJ Oyston.
>
> The unsecured loans are interest free and repayable on demand."

(5) Mr. Belokon is introduced to Mr. Owen Oyston

47. In 2005, Mr. Belokon was introduced to Mr. Owen Oyston. In time, the suggestion was made that Mr. Belokon invest in Blackpool FC. It was as a vehicle for this investment that Mr. Belokon established VB Football Assets although, as will be seen, Mr. Belokon's daughter, Vlada, does feature as a party to some of the agreements.

(6) The Subscription Agreement

48. The Subscription Agreement was concluded on 5 June 2006 between Blackpool FC, VB Football Assets, Segesta and Mr. Owen Oyston. It provided as follows:

    i) Blackpool FC would increase its ordinary share capital from £30,000 to £37,500 by issuing 7,500 new shares of the same class. These new shares would be subscribed to VB Football Assets for a total consideration of £1,800,000 (clauses 1 to 3).

ii) Blackpool FC undertook to use the subscription price of £1,800,000 "only for purposes of acquisition of new players and for their salaries appearance money bonuses and other benefits" (clause 4).

iii) Blackpool FC undertook to elect the representative of VB Football Assets – Mr. Belokon – as Blackpool FC's president. The role of president was a limited one, confined to consultation and acting as a spokesperson (clause 5).

iv) Save in relation to a short-term loan in the amount of £210,000 advanced by Mr. Owen Oyston to Blackpool FC, Segesta and Mr. Owen Oyston undertook as follows as regards the indebtedness of Blackpool FC described in paragraph 46 above (clause 6(a)):

a) Blackpool FC would not be required to repay these loans from any of the revenues generated by Blackpool FC's football team. Rather, the loans would be repaid out of the income derived from the occupation of the stadium by third parties.

b) Apart from the right to use this income to repay the loans made to it, in accordance with a schedule of repayments set out in Attachment 5 to the Subscription Agreement, Blackpool FC derived no claim to these revenues, which would be the property of Segesta.

c) If the schedule of repayments set out in Attachment 5 was not complied with, with the result that the loans remained outstanding, then these would be waived.

v) There was a provision (in clause 6(b)) to ensure that VB Football Asset's 20% shareholding was not diluted.

vi) There was a provision (in clause 8) to ensure that conference/catering and stadium overheads would not be borne by Blackpool FC.

vii) Clause 9 provided:

> "[Blackpool FC], with [Segesta's] approval, confirms that, subject as referred to below and are subject to the disclosures in the attached documents (1)-(7), to the best of its knowledge, information and belief, there are no additional obligations of [Blackpool FC] which have not been disclosed in these documents. In the event that there is any breach of this confirmation by [Blackpool FC/Segesta], then [Segesta] will make good to [Blackpool FC] any costs suffers as a result of such obligations (provided that in any such case there shall be offset against such costs any benefits or assets of [Blackpool FC] which are not contained in the disclosed documents). In keeping with a practice over the years, Owen Oyston has recently made a short-term loan of £210,000 to [Blackpool FC] which loan it is intended will be repaid by [Blackpool FC] by the end of May 2006. The [Blackpool FC]'s financial statements (comprising its audited accounts for the year ending in May 2005 (1), its management accounts for January 2006 (including balance sheet) (2) and schedule of football club costs for February 2006 (3 and 4)) which are attached to this agreement form an integral part of this agreement. [Blackpool FC], with [Segesta's] approval, confirms that such financial statements show all the liabilities and commitments of [Blackpool FC]."

viii) Clause 10 provided as follows:

> "Save as previously disclosed in and save as provided for by this Agreement, [Blackpool FC] undertakes to keep the business of the [Blackpool FC]'s as practised over the years."

ix) Clauses 11 and 12 made provision in the event of a "change of control" of Segesta (clause 11) or VB Football Assets.

x) Clause 13 provided:

> "The parties hereto hereby confirm that they will act with all good faith with regards to each other in relation to all aspects of this Agreement. The present agreement may not be altered, modified or amended in any way, except by mutual written agreement signed by the parties."

xi) Clause 16 provided that all correspondence between the parties in relation to the Agreement should be in English.

(7) The First Vlada Loan Agreement

49. The First Vlada Loan Agreement was between Ms. Belokon and Segesta and provided as follows:

"WHEREBY:

(1) VB, or such other person, firm, company or corporation as he in his absolute discretion shall nominate, will within 14 days of the signing of this Agreement, loan to [Segesta] the sum of £1,000,000…interest-free ("the Loan").

(2) The Loan is to be used for the purpose of the construction of the South Stand at Blackpool [FC] ("the Stand") by [Segesta] or by such other person, firm, company or corporation as it in its absolute discretion shall nominate and is for a term of 20 years ("the Term") from the date of the 1st repayment of the Loan referred to in clause 3 hereof.

(3) When the Stand has been practically completed and when the Stand has achieved an annual occupancy of 75% for an annual serviced accommodation income of £600,000 (whichever is the lower), then [Segesta] will on each annual occasion on which such level of occupancy or income is derived, make a repayment of part of the Loan to VB or to such other person, firm, company or corporation as he in his absolute discretion shall nominate, in the sum of £50,000 provided always that the repayment of the Loan shall commence no later than the 3rd anniversary of it being made.

(4) [Segesta] and VB hereby agree that there is no right to any repayment in respect of the Loan or any part of it whether of capital or interest other than as set out in this Agreement."

50. I did not hear evidence from Ms. Belokon. Mr. Belokon's explanation for her being a party to this and to subsequent agreements was that he wanted to get her involved in Blackpool FC.[28] However, her role seems to have been little more than that of a cypher. As will be seen, Ms. Belokon was also party to the First South Stand Agreement dated 1 July 2008.[29] However, when that agreement was cancelled and replaced with the Second South Stand Agreement dated 21 August 2008, to which Ms. Belokon was not a party, this seems to have been done entirely without her knowledge or consent.[30] For the purposes of this Judgment, I shall treat Ms. Belokon as synonymous with VB Football Assets.

(8) The Second Vlada Loan Agreement

51. The Second Vlada Loan Agreement was made some months later, on 14 April 2007. There was no evidence before me dealing explicitly with the relationship between the Subscription Agreement, the First Vlada Loan Agreement and the Second Vlada Loan Agreement:[31]

Q (Marcus Smith J.)	Do you have any case as to why the Vlada 2 Loan was made later than 5 June 2006, the date of the Vlada 1 Loan and the [Subscription Agreement]?
A (Mr. Green, Q.C.)	My Lord, there is in fact no evidence on either side or indeed in the documents dealing with this.

52. The Second Vlada Loan Agreement was again between Ms. Belokon and Segesta and provided as follows:

> "WHEREBY:
>
> (1) VB, or such other person, firm, company or corporation as she in her absolute discretion shall nominate will, within 14 days of the signing of this Agreement, loan to [Segesta] the sum of £1,700,000…("the Loan") interest free for a term of 20 years ("the Term") from the date of the first repayment of the Loan.
>
> (2) [Segesta] hereby undertakes that upon receipt of the Loan, [Segesta] will (i) transfer by way of gift, 50% of the Loan (i.e. £850,000) to Blackpool [FC]…and (ii) use the remaining 50% of the Loan (i.e. £850,000) for the purpose of the construction of the South and/or South-West Stands at [lack pool FC] by [Segesta] or by such other person, firm, company or corporation as it in its absolute discretion shall nominate.
>
> (3) When the South Stand has been practically completed and when the South Stand has achieved an annual occupancy of 75% or an annual serviced accommodation income of £600,000 (whichever is the lower), then [Segesta] will, on each annual occasion on which such level of occupancy or income is achieved, make a repayment of that part of the Loan which is not transferred to [Blackpool FC], (i.e. the capital sum of £850,000), to VB or to such other person, firm, company or corporation as she in her absolute

[28] Transcript Day 2, pp.12, 110, 119; Transcript Day 3, pp.7*ff*.
[29] See Section C(10).
[30] See Section C(11).
[31] Transcript Day 2, p.67.

discretion shall nominate, in the sum of £42,500 PROVIDED ALWAYS that, in any event, the repayment of the Loan shall commence no later than the 5 June 2009."

(9) The nature of the agreement reached between the parties

(i) The rival contentions

53. It was the contention of VB Football Assets that the terms of these three agreements (the Subscription Agreement, the First Vlada Loan Agreement and the Second Vlada Loan Agreement) did not set out the totality of the understanding between the parties. Paragraph 17 of the Petition alleges that the Subscription Agreement:

> "…was entered into, in the context and on the basis of a common understanding and intention shared by Mr. Belokon (on behalf of [VB Football Assets]) and [Mr. Owen Oyston] (on behalf of the First to Third Respondents) that: (1) Mr. Belokon would arrange the provision of loans in the sum of £2,700,000; and (2) pending the contemplated future conversion of those loans into a further tranche of shares in [Blackpool FC] to lead to parity between [VB Football Assets] and [Segesta], [Blackpool FC] would be run as a quasi-partnership between [VB Football Assets] and [Segesta]. Specifically, that quasi-partnership would involve: (1) [VB Football Assets] having equal rights in the management of [Blackpool FC] (including the right to appoint two of the five directors of [Blackpool FC]) and equal rights to profits generated by it; and (2) the business of [Blackpool FC] being conducted on the basis of mutual consultation and cooperation, and unanimity."

54. What the Petition alleges is, therefore, a further understanding that goes beyond the words of the three written agreements in two respects:

i) First, that the loans advanced pursuant to the First and Second Vlada Loan Agreements were advanced in contemplation of the conversion of these debts into equity, such that there would be a parity of shareholding between VB Football Assets and Segesta.

ii) Secondly, pending that conversion of debt into equity, there would be a "quasi-partnership" giving VB Football Assets an equal share in the profits, and a say in the conduct of Blackpool FC's business, which would be conducted on the basis of unanimity.

55. These contentions were denied by the Respondents. Paragraphs 10 and 11 of the Amended Points of Defence plead (in response to paragraph 17 of the Petition):

> "10. In the premises paragraph 17 is denied. In particular it is denied that the Subscription Agreement was entered into on any such "common understanding and intention" as to the matters then mentioned as is their stated. In particular the Subscription Agreement: –
>
> a. did not provide for the acquisition of any further shares in [Blackpool FC] by [VB Football Assets] or any other person. Accordingly the Respondents denied the assertion that the loans were in fact payments for further shares.

b. did not provide for [VB Football Assets] being treated in any way other than as a 20% shareholder in [Blackpool FC]. Accordingly the Respondents denied the assertion that [Blackpool FC] would be run as a quasi-partnership equal powers and control.

c. did not provide any right for [VB Football Assets] to appoint any directors let alone an equal number.

d. is presumed to be an entire agreement and is not subject to any further terms or understandings or other agreement not contained within an expressed to be part of it.

11. If the matters pleaded in paragraph 17 had been the intention of the parties to the Subscription Agreement they could and would have been readily expressed in that Agreement. Furthermore:

a. If, which is denied, [VB Asset Holdings] held such understanding or intention as alleged paragraph 17, it was not an understanding shared by any of the other parties to that Agreement.

b. In so far as [VB Asset Holdings] may claim that the omission of such terms from that Agreement was in order not to lose the tax benefits from substantial losses sustained by [Blackpool FC] is in previous years, and to defeat the Revenue, then such agreement would be tainted by illegality and would therefore be unenforceable.

c. [Mr. Owen Oyston] was throughout the lengthy discussions and negotiations consistent in not jeopardising [Blackpool FC's) tax losses and in not losing control of [Blackpool FC] without first having a public flotation of [Blackpool FC] to enable him to recover some monies for the millions that he had invested in it over the years to ensure its survival.

d. [Mr. Owen Oyston] was clear in not offering parity of shareholding except in the case that a public flotation was possible and he referred to this in a letter to Mr. Belokon of the 3 April 2006…This was also reflected in a proposal (which did not come to fruition) dated 6 May 2006. It was made absolutely clear to [VB Football Assets] that utilisation of the tax losses and no parity until flotation upon a recognised stock exchange or AIM were 'Red Line' conditions.

e. [VB Football Asset's] case is that the 'Original Loans' were to be for the purpose of the acquisition of shares/options in [Blackpool FC]. However [VB Football Assets] agreed to invest these original loans in a 50:50 1000 year joint commercial venture with [Segesta] from which the potential revenues accruing to [VB Football Assets] from the joint venture would repay the loans to [VB Football Assets]. Accordingly [VB Football Asset's] case that such loans were for the purchase of shares is not understood."

56. The battle lines were thus clearly drawn in the pleadings. The Respondents denied the existence of any kind of agreement going beyond that set out in the written agreements.

(ii) Analysis: was there a wider agreement; and, if so, what was its nature and what were its terms?

57. Although the provisions of neither of the Vlada Loan Agreements are particularly clear in terms of Segesta's repayment obligations, their uncommerciality is evident notwithstanding this lack of clarity:

i) Both loans are for substantial sums of money, yet they are (expressly) said to be "interest free".

ii) There is, in the case of each of the loans, some uncertainty as to whether Segesta would even be obliged to repay the principal sum:

a) The repayments under the First Vlada Loan Agreement appear to be conditional both upon practical completion of the South Stand and upon the South Stand achieving either a certain level of annual occupancy or a certain level of annual serviced accommodation. Although, as I have said, the drafting of the First Vlada Loan Agreement leaves a great deal to be desired, the better construction of the agreement is that unless these preconditions are met, Segesta is not obliged to make an annual repayment of £50,000. Given the term of the loan and the no recourse provision in clause (4), unless in each of the 20 years of the term of the loan the preconditions are met, the full £1 million will not be repaid.

b) The provisions of the Second Vlada Loan Agreement are to similar effect. Moreover, Segesta is only obliged to repay that half of the loan that does not form part of VB Football Assets' gift to Blackpool FC.

58. In my judgment, the loans cannot be regarded as agreements separate in their own right. Viewed as self-standing agreements, they make no commercial sense. They need to be seen in a broader context.

59. The link between the three agreements emerges from the history of the negotiations and dealings between the parties both before and after 5 June 2006, when the Subscription Agreement and First Vlada Loan Agreement were concluded. Prior- and post-contract negotiations can be considered for the purpose of establishing whether an agreement was partly oral and – if so – what the terms of that agreement were: see McMeel, The Construction of Contracts, 2nd ed. (2011) at [5.99] and [5.151] to [5.156]. They can also, as part of an inquiry into whether unfair prejudice exists, be relevant to the existence of "equitable considerations".[32] I therefore turn to consider the history of the negotiations.

60. In a letter dated 8 December 2005, Mr. Belokon proposed that he be allowed "to trade as Blackpool Football Club and to operate the Football Club and fulfil all its obligations to the Football League", with a 20-year lease/licence, on match days only, of the football ground. The letter referred to a "purchase price that we discussed at our recent meeting", although there is no evidence as to what that price was.

[32] See paragraphs 311 to 319 below.

61. The next communication was a letter from Mr. Dyer dated 14 March 2006 to Mr. Belokon, copied to a Mr. Nicholas Louis, who apparently was acting as a go-between between the parties. The letter appears very much to envisage running Blackpool FC on a "joint venture basis":

> "**Subject to contract**
>
> I have spoken to Owen and Karl to see how we can simplify an entity in which you can participate on a joint venture basis on known risk levels and which could have a very healthy and profitable future.
>
> …
>
> I am pleased to advise you that we have spent £9.4 million on the construction and fitting out of the North and West Stands, using family money. So apart from a small overdraft of £250,000 arranged to support our cashflow we have no borrowings whatsoever other than loan to Owen.[33] The loans to Owen carry no interest and Owen is prepared to undertake not to call the monies in during the period of any joint venture that we might undertake together. In any event a joint venture company will have no debt and no liens against it. It will be a completely new company, designed jointly for this specific purpose and without baggage.
>
> You will see from the spreadsheets that we have selected 3 years from our recent past:-
>
> 2001/02 in which we made an operating profit of £904,758
>
> 2003/04 in which we made an operating profit of £373,248
>
> 2005/06 our worst year on record, which will show an operating loss of £483,576
>
> …
>
> To create clarity I am specifying those costs centres which will form part of the proposed joint venture company in which the Oystons/Belokon Holdings would have parity (50/50). I list them below…"

62. This letter appears to have been regarded by Mr. Owen Oyston as the basis for an agreement going forward. In an email to Mr. Rawlinson sent on 22 March 2006, Mr. Owen Oyston attached the letter – that is, the letter of 14 March 2006 described in paragraph 61 above – "which formed the base of our agreement" and which "Rod helped me to produce". He instructed Mr. Rawlinson: "Could you please convert this letter into a formal contract keeping it as simple as possible".

63. Neither the letter of 14 March nor Mr. Owen Oyston's email of 22 March specify any price. However, on 30 March 2006, Mr. Dempsey was asked to call Mr. Owen Oyston as a matter of urgency to talk about the deal and was provided with a copy of the letter in order to do so.[34] Mr. Dempsey's handwritten notes, made at this time, refer to a

[33] Self-evidently, from the context, what is meant is loans "from" Mr. Owen Oyston to the company. I infer that "loans to Owen" means monies "due to" him.

[34] See also, Transcript Day 7, pp.140-141. Mr. Dempsey made the perfectly fair point that the letter was dated 14 March 2006, and he was brought in on 30 March 2006. Things could, therefore, have moved on. However, in light of the totality of the evidence, I reject this. Mr. Dempsey was provided with a copy of the letter because it reflected the then state of play.

"joint company", "we need control to enable us to carry forward tax losses" and "£4.5m", which I consider to be a reference to the price being discussed between Mr. Owen Oyston and Mr. Belokon.

64. This reference to carrying forward tax losses was prescient. In the years up to 31 May 2005, Blackpool FC had accumulated tax losses in the amount of £10,284,085.43.[35] Of course, these tax losses could be used for the benefit of Blackpool FC itself but – as the letter of 14 March 2006 made clear – Blackpool FC was not actually making any profits over a sustained period, and that trend was likely to continue.

65. It was possible, provided certain conditions were met, for Blackpool FC to surrender its tax losses to the benefit of another company in the Oyston Group. However, the conditions that had to be satisfied were stringent:[36]

    i) Blackpool FC had to be a member of the Oyston Group, meaning that it had to be a 75% subsidiary. A company was a 75% subsidiary of another company if not less than 75% of its ordinary share capital was owned by the parent company.

    ii) In addition, the parent company had to be beneficially entitled to not less than 75% of the available profits of the subsidiary.

    The rules contain a number of anti-avoidance provisions. In particular, an option arrangement varying the parent's entitlement to the profits or assets of the subsidiary would be considered on the basis of the least helpful future possible outcome when considering the parent/subsidiary relationship. In other words, if there was an option – even if unexercised – for another person to acquire shares in the subsidiary from the parent, such that the parent's interest would fall below 75%, that would be sufficient to prevent the subsidiary from being treated as a member of the group for the purposes of group tax relief.[37]

66. Blackpool FC's losses – the "Tax Losses" – were thus an important benefit to the Oyston Group, worth several million pounds. As Mr. Dempsey's handwritten note anticipated, the Tax Losses were discussed with Mr. Owen Oyston. In a later, longer but less clear, handwritten note, Mr. Dempsey suggested that the joint venture proposed in the 14 March 2006 letter "means that the joint venture company would pay full tax and could not use existing [Blackpool FC] losses". Similarly, Mr. Cherry (in a handwritten note of a telephone call he had with Mr. Owen Oyston on 31 March 2006) refers to the fact that "(they/we) Joint Company could lose tax losses of 10 million".

67. It is evident from Mr. Dempsey's note that alternative structures were debated, involving a loan by Mr. Belokon, a right to 50% share of the profits and the right "to convert loanstock into 20% of ordinary shares in [Blackpool FC] at any time". I do not suggest that these alternative structures would have preserved the Tax Losses for the benefit of the Oyston Group: they would not have done, given my understanding of the tax position. What is clear, however, is that there were, from a relatively early

[35] This figure is set out in a letter dated 8 August 2006 from Mr. Cherry to Mr. Karl Oyston.
[36] This summary of the law derives from a joint note on the tax position provided to me by the parties.
[37] The same pertained if the option arrangement related to the parent's beneficial entitlement to the subsidiary's profits.

stage, discussions between Mr. Oyston and his advisers as to how to retain both the deal in principle that had been reached with the Belokon Side and the benefit of the Tax Losses.[38]

68. It appears that Mr. Owen Oyston met representatives of Mr. Belokon on 31 March 2006. This is evidenced by further handwritten notes, which appear to be the notes of several different persons. These refer to the parties wanting "to keep the essence of agreement intact as set out in letter but give (i) more substance (ii) more value". The notes also refer to an investment split of 20% held by the Belokon Side, 75% held by the Oyston Side and 5% held by others, with "[s]hare options to take [the Belokon Side's] shareholding to equal amounts to Oyston Family". Again, the thrust of these notes involves attempting to keep the in-principle deal that had been reached, but also to retain the benefit of the Tax Losses.

69. The first draft agreement contains the following provisions:

> "1. ["Belokon Holdings" – the name of the vehicle Mr. Belokon was then envisaging would be used to acquire his interest in Blackpool FC] will subscribe for new shares in [Blackpool FC] equal to 20% of the enlarged share capital, subject to compliance with rules relating to minority shareholders and such that [Segesta] retains at least 75% of the enlarged share capital. The total subscription price payable by [Belokon Holdings] will be £4,500,000.
>
> The retention of a 75% holding by [Segesta] is necessary to enable the new venture to utilise the existing £10,000,000 worth of tax losses. These losses would not be available otherwise or to a newly established joint venture company as was initially proposed.
>
> 2. [Blackpool FC] will grant [Belokon Holdings] an option to subscribe for further new shares, subject to compliance with rules relating to minority shareholders, such that BH's total holding after such exercise will be the same percentage of the enlarged share capital of [Blackpool FC] as that held by [Segesta]. The total subscription price payable on the exercise of this option will be the nominal value of the new shares. (This will be approximately £15,714 on the basis of the current capital structure.) To preserve the tax losses, this option may only be exercised in the event of and conditional upon the admission of [Blackpool FC's] entire share capital to trading on a recognised stock exchange or the Alternative Investment Market.
>
> …
>
> 4. [Belokon Holdings] and [Segesta] will enter into a shareholders agreement relating to the operation of [Blackpool FC]. Its provision will include agreements that:
>
> …
>
> 4.4 [Belokon Holdings] will be entitled to appoint a director of [Blackpool FC] and for so long as that person is Valeri Belokon for him to hold the title of "President of Blackpool [FC]" or "Chairman" or such other similar title as is required by [Belokon Holdings] and agreed to by [Blackpool FC] (such agreement not to be unreasonably withheld or delayed).

[38] See also, the note of a call between Mr. Cherry and Mr. Owen Oyston on 31 March 2006 referring to loss of the Tax Losses to the Oyston Group, and other difficulties.

5. [Blackpool FC] will enter into an agreement with (XYZ) Limited under which (XYZ) Limited will provide the services of Valeri Belokon as a consultant to assist [Blackpool FC] with its business strategy and in particular the development of its relationships with overseas clubs and players. The fee payable to (XYZ) Limited will be an amount equivalent to 50% of the net profits of [Blackpool FC] each year (subject to the adjustments referred to at clauses 4.1 and 4.2 above and after deducting any dividends to [Belokon Holdings]).

6. [Blackpool FC] will enter into an agreement with (ABC) Limited under which (ABC) Limited will provide the services of Karl Samuel Oyston as a consultant to assist [Blackpool FC] with its business strategy and in particular its UK operations. The fee payable to (ABC) Limited will be an amount equivalent to 50% of the net profits of [Blackpool FC] each year (subject to the adjustments referred to at clauses 4.1 and 4.2 above).

7. The agreements referred to at paragraphs 4 and 5 above will include provisions that if (XYZ) Limited waives its consultancy fee (or any part of it) in any year, then (ABC) Limited will do likewise."

70. It is quite clear, and I so find, that this draft agreement was drawn up with a view to preserving the intent of the agreement set out in the letter of 14 March 2006, whilst ensuring that the benefit of the Tax Losses was also preserved. This, in my judgment, explains:

i) The purchase of only 20% of the shares in Blackpool FC for the same (previously agreed) consideration (£4.5 million) together with an option to acquire further shares leading to parity between Belokon Holdings and Segesta for a nominal amount.

ii) The reference to a shareholder's agreement between Belokon Holdings and Segesta.

iii) The attempt to provide a 50% - 50% divide of the profits of Blackpool FC through the "consultancy" agreements in clauses (5) and (6).

71. I do not suggest that Mr. Belokon was in agreement with this re-structured proposal, but I do find that it reflects the thinking of Mr. Owen Oyston. In a letter dated 3 April 2006, Mr. Owen Oyston sought to persuade Mr. Belokon of the virtues of the re-structured proposal and of joining him in "our joint venture":

"If you still want to form a new company, we will try to accommodate this but you will now know that there are some intrinsic problems which are difficult to overcome. Firstly in the history of the football industry no one has ever transferred players from one company to another in the circumstances that we are discussing. To attempt to do so would be costly and ultimately, we are advised by the Football League's lawyers, unsuccessful. Secondly we do have a serious problem where we may not be able to exploit the very substantial tax losses that currently exist within Blackpool FC. We believe we have a very good chance of using these tax losses if we do our venture within the Football Club. Any withdrawal of these tax losses will affect us both adversely, although we are still attempting to find a route through this.

…

> May I stress, if I was in your position with any significant reservations about a transaction or deal, then I simply wouldn't do it. So I fully understand your stance and should this prove to be a stumbling block to our joint venture, it certainly will not affect our friendship or the prospect of our doing other business in the future. Both Karl and I are very comfortable and happy with you, your colleagues and your organisation and furthermore we trust you. It is unlikely that we can have such a relationship with another buyer and it is almost certain that we will not do business with anyone else if we cannot do business with you. Therefore there is no pressure upon you to make a quick decision. The only pressure upon us all is the pressure of the fans and the media.
>
> …
>
> If the current proposals which I faxed to you on Friday [This is the draft agreement described at paragraph 69 above] were to materialise, then on flotation you would enjoy the same number of shares and the same capital gain as myself, even though our total investments would be substantially unequal. I have agreed to this because I really believe that you and your team and Karl and I can work together and create an exciting outcome and if we were successful in reaching the Premier League, the sums would be so substantial that I would not be concerned about the extent of my past investment. I was able to confirm with Karl and advise your colleagues over the weekend that on joining the Premier League each club receives approximately £37m from television rights alone. This includes two parachute payments in the event that the club is relegated after one season. This figure of £37m does not take into account the increase in sponsorship, ticket sales and other associated revenues which would increase dramatically. It is my view in these great circumstances that Blackpool Football Club would be worth not less than £100m and probably a great deal more. I stress this is my opinion. I have never mentioned this potential before because I am sure, like me, you are aware of it and also aware of what our relatively modest investments could produce if we are successful."

As I have noted, Mr. Owen Oyston is capable, when he wants to be, of both charm and persuasion, and this is an example.

72. It would appear that the Oyston Side was confident that some deal would be reached with Mr. Belokon. On the same day as this letter, Mr. Karl Oyston gave an interview to the Blackpool Gazette announcing that "a deal with millionaire banker Belokon had been agreed" and that "a substantial amount of cash" would be put into the club.

73. However, the negotiations were by no means complete. In a letter to Mr. Dyer, dated 5 May 2006, Ms. Lase wrote as follows:

> "As a result of our negotiations on purchase of shares of Blackpool [FC] we would like to agree on the following terms.
>
> As we have already discussed [Belokon Holdings] will purchase shares of [Blackpool FC] equal to twenty per cent of the share capital. At the same time [Belokon Holdings] and [Segesta] would conclude the Intent agreement about purchasing the additional amount of [Blackpool FC] shares. So the amount of bought shares of [Blackpool FC] and the amount of shares going to be purchased by [Belokon Holdings] would constitute the total amount of shares mutually agreed going to be the property of [Belokon Holdings].

> [Belokon Holdings] would like to pay for twenty percent of [Blackpool FC] shares proportionately to the amount of these shares taking into consideration the total price of [Blackpool FC] shares mutually agreed.
>
> At the same time [Belokon Holdings] would issue a long-term credit to [Segesta]. This credit would be issued in the amount of the rest sum of the total price of [Blackpool FC] shares determining the obligation of [Segesta] to use this credit as payment for purchasing rest of [Blackpool FC] shares according to Intent agreement.
>
> So the price of the purchased shares of [Belokon Holdings] and the credit amount issued to [Segesta] together would constitute the total price of [Blackpool FC] shares mutually agreed.
>
> In order to secure the credit obligations [Segesta] should issue a pledge in favour of [Belokon Holdings]. Besides that [Belokon Holdings] would like to receive from [Blackpool FC] and [Segesta] approval that there are no additional obligations of [Blackpool FC] not announced to [Belokon Holdings].

74. This letter took the proposal in the first draft agreement a little further:

    i) The consideration for the shares was reduced from £4,500,000 (for, essentially, a 50% parity stake[39]) to a *pro rata* amount to reflect the purchase of only 20%. This would give a consideration of £1,800,000 (being two-fifths of £4,500,000), which was the consideration in fact stated in the Subscription Agreement.

    ii) The difference between £1,800,000 and £4,500,000 – £2,700,000 – would be advanced as loans to Segesta, but with a view to the purchase of the remaining 30% of Blackpool FC. This appears to be the genesis of the Vlada Loan Agreements, although no drafts of these agreements existed at this time.

75. The letter obviously received careful attention from the Oyston Side – marked-up versions of the letter were sent to Mr. Dempsey and Mr. Cherry.

76. There was a meeting on 5 May 2006 between Mr. Owen Oyston, Mr. Karl Oyston, Mr. Dyer, Mr. Rawlinson and Mr. Dempsey, with Mr. Cherry joining by telephone.[40]

77. On the same day, Mr. Dyer responded (to Ms. Lase) to provide the confirmations sought by her regarding the liabilities of Blackpool FC:

> "We can confirm that there are no off balance sheet liabilities of [Blackpool FC].
>
> All the assets and liabilities are clearly disclosed on the balance sheet on the sets of financial statements that you have received. There are a number of post balance sheet events which will/have affected [Blackpool FC] which are:
>
> 1. [Mr. Owen Oyston] has made an additional temporary loan to [Blackpool FC] of £210,000 which is to be repaid by the 31st May 2006.
>
> …

[39] It was not, of course, precisely 50%, because of the Minor Shareholders.
[40] Transcript Day 7, p.166.

4. The overdraft facility of £250,000 is in place until the end of June 2006. This is currently fully utilised but will be repaid by the 30th June 2006. This is a working capital arrangement.

On the balance sheets you have received, you will have noted the loan between [Blackpool FC] and [Segesta] and the loan to [Mr. Owen Oyston]. The current arrangements under which [Blackpool FC] is entitled to retain income of serviced accommodation are terminable at any time at the sole election of [Segesta]. In the interim the property related income will be used to repay the loan to [Segesta]. There will be no call upon the football, shop or Gold Bond revenues detailed on the schedule to repay the [Segesta] loan. Owen Oyston will not seek repayment of his loan (other than the temporary loan of £210,000) unless agreed by the Board."

This, clearly, was the precursor to clause 9 of the Subscription Agreement.[41]

78. The next draft agreement reflected the split between purchase of shares and an option to purchase shares suggested by Ms. Lase. The draft:

i) Provides for the purchase of 20% of the enlarged share capital in Blackpool FC for £900,000. This is a figure that is one-fifth of the original £4,500,000 consideration agreed. It is unclear why a figure of one-fifth (rather than two-fifths) was selected.

ii) Provides for an option to subscribe for further shares so that, after exercise of the option, Belokon Holdings' share in Blackpool FC "will be the same percentage of the enlarged share capital of [Blackpool FC] as that held by [Segesta]." The price of the option, on exercise, was £2,600,000. This would – on the exercise of the option – give a total consideration of £3,500,000. The option was only exercisable on the satisfaction of certain conditions, notably the utilisation of the Tax Losses and the listing of Blackpool FC's shares.

iii) However, pending the exercise of the option, with immediate effect, Belokon Holdings would lend £2,600,000 "which shall be interest free and repayable only on the completion of the exercise" of the option. The money lent was to be used solely for the purposes of Blackpool FC.

iv) Provides for an additional loan, in the amount of £1,000,000 made by Belokon Holdings to Segesta "for construction purposes". The aim was to use the money to construct the South Stand at the stadium, and the draft agreement envisaged repayment of the loan over a 20 period out of the serviced accommodation at the South Stand.

79. The total consideration was thus £4,500,000, but divided between a payment for shares (£900,000) and two loans (£2,600,000 and £1,000,000). One of these loans – the loan for £2,600,000 – was explicitly linked to the option to purchase further shares. A triptych of agreements was, therefore, contemplated.

80. Mr. Dyer and Mr. Owen Oyston faxed Ms. Lase a message on 5 May 2006, making clear that:

[41] See paragraph 48(vii) above.

> "We are incorporating the points you have raised within the existing agreement and we will let you have a copy of this amended agreement, incorporating your points, as soon as possible.
>
> I left a hand written document with Valeri for his consideration. Valeri promised to send a copy of it as I did not retain one for myself. Could you please fax a copy to me? Does Valeri wish to incorporate my proposal also within the terms of the agreement of not?"

This "hand written document" is also referred to in the next communication described. It has not been possible to identify the document.

81. On 8 May 2006, Ms. Lase wrote to Mr. Owen Oyston:

> "Tomorrow Valeri will arrive in Riga and I hope he will give me the handwritten document you have mentioned in your letter.
>
> Today I have conversation with him. He is interested to start the process as soon as possible. In such order he think that better is to separate the purchasing process in steps. Valery's idea is that these steps wouldn't be compulsory connected one with other. In first step he would like to buy 20% of Football club shares in way of taking part in new shares emission. After that you and Valeri would look at the results of first step and make decision about way and urgency of next steps.
>
> Before starting to prepare any documents connected with upper mentioned Valeri's idea I would like to know how do you feel about such schedule of deal."

82. The Respondents placed a great deal of reliance on this letter, suggesting that it represented a substantive change of approach on the part of Mr. Belokon. Specifically, it was suggested by the Respondents that this letter indicated that Mr. Belokon now wanted to acquire 20% of the shares only, and then see how matters developed. In short, according to the Respondents, this letter represented an end to the plan for a "joint venture", with Mr. Belokon now wanting simply to acquire a 20% stake and then "see how it went".[42]

83. I do not consider the Respondents' reading of Ms. Lase's letter to be correct, and I reject it. I do not consider that this letter was intended to change the substance of what was agreed. The proposal, instead, was to progress independently and as self-standing agreements the three elements of the deal – *(i)* the acquisition of the shares, *(ii)* the option and option-related loan, and *(iii)* the second loan – so as to progress matters more quickly. There is no evidence of any fundamental re-think of the deal, and I reject the suggestion that this communication from Ms. Lase constituted such a re-think.[43] The Respondents' reading of this letter is also, as will be seen, inconsistent with subsequent events.

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[42] See, in particular, the evidence of Mr. Owen Oyston at Transcript Day 14, p.17.

[43] This was also the evidence of Mr. Belokon: see Transcript Day 2, pp.76*ff*. However, for the reasons I give below, I am inclined to give rather more weight to the documents, than to later oral testimony.

84. At the time, the Respondents regarded the proposal as a fairly unremarkable development of the existing proposals, rather than a dramatic shift. An email from Mr. Owen Oyston's personal assistant to Mr. Dempsey stated:

> "The story continues…please see the attached email below. Could you call Owen on his mobile when you receive this email…"

85. Mr. Owen Oyston responded positively to this proposal on 9 May 2006, enclosing two draft press releases relating to Mr. Belokon's purchase of shares and stating:

> "Needless to say in answer to your question we feel entirely relaxed about your proposals of proceeding step by step in order to achieve the fulfilment of our agreement.
>
> The whole of the Oyston family are delighted to embrace Valeri and his colleagues into this exciting venture."

86. Consistent with the suggestion that the various agreements be disaggregated, the next draft agreement, produced by the Belokon Side, dealt only with the purchase of 7,500 shares for a consideration of £1,800,000. There is no reference to any loans, nor to any option. This agreement was marked up by hand by the Oyston Side and resulted in various communications going back and forth between the Oyston Side and the Belokon Side.

87. On 22 May 2006, Mr. Rawlinson circulated to various of Mr. Owen Oyston's advisers (including Mr. Belton, Mr. Dempsey and Mr. Cherry) "the more significant emails and replies from Belokon Holdings". The plan was to meet, to discuss, the next day.

88. On 23 May 2006, there was a meeting between the Belokon Side and the Oyston Side. Evidently, and unsurprisingly, the documentation of the various agreements was discussed. There are no detailed notes of what was discussed. On 26 May 2006, Mr. Dempsey sent to Mr. Rawlinson the latest versions of the transaction documents. On 31 May 2006, Mr. Dempsey sent to Ms. Lase an updated version of the draft Subscription Agreement and a draft[44] of a "loan agreement". The loan agreement was commented upon by another person on the Belokon Side, Ms. Beinare.

89. On 5 June 2006, the Subscription Agreement and the First Vlada Loan Agreement were executed. The terms of these agreements have already been described: see Sections C(6) and C(7). Neither agreement makes any reference to an option to purchase further shares; furthermore, the total consideration payable under these agreements totals £2,800,000 (i.e. £1,800,000 under the Subscription Agreement and £1,000,000 under the First Vlada Loan Agreement).

90. Viewing the matter as at the date the Subscription Agreement and the First Vlada Loan Agreement were concluded (that is, 5 June 2006), what can be said is that these two agreements do not set out the whole story. These two documents do not represent

[44] Unless a document has been lost, this would be the first draft of the First Vlada Loan Agreement.

the complete final agreement between the Oystons and the Belokons. That is for the following reasons:

i) Just as suggested in Ms. Lase's letter of 8 May 2006, the parties were proceeding step-by-step, agreeing what could be agreed, and continuing to work on that which was not yet agreed – namely, the option and option-related loan.

ii) Secondly, unless seen as two parts of the triptych of agreements described in paragraphs 69 to 79 above, with a third instalment to come, the agreements make no sense:

a) There is the sheer uncommerciality of the First Vlada Loan Agreement.

b) There is the fact that, when one compares the deal that was reached on 5 June 2006 with what was proposed early on in negotiations, Mr. Belokon got very much the worse of the bargain. Early on in the negotiations, Mr. Belokon was paying £4.5 million for just under 50% of Blackpool FC; by this stage, viewed on the face of the documents, he was paying £2.8 million for 20% of Blackpool FC, with the dubious prospect of receiving £1 million back after many years assuming the First Vlada Loan was repaid. Looking at the price Mr. Belokon was paying for each percentile of Blackpool FC:

i) Under the original proposal, Mr. Belokon was paying about £98,000 for each percentage share in the company (i.e. £4,500,000 / 46%).

ii) Under the Subscription Agreement and the First Vlada Loan Agreement, Mr. Belokon was paying about £140,000 for each percentage share in the company (i.e. £2,800,000 / 20%).

Of course, it may be that Mr. Owen Oyston got the better of Mr. Belokon in negotiations. Mr. Owen Oyston may have negotiated a better deal or, in Mr. Dempsey's words, Mr. Belokon may have got "a beating up".[45] Although I have no doubt that Mr. Owen Oyston could be a formidable negotiator, had the outcome of the negotiations been a "beating up", that outcome would have looked different. There would have been one agreement, the Subscription Agreement, whereby Mr. Belokon either purchased fewer shares or paid more money for the same amount of shares. The existence of the First Vlada Loan Agreement and – subsequently – the Second Vlada Loan Agreement does not look like the result of hard bargaining.[46] It looks like an incomplete statement of what was originally agreed. The point was

[45] Transcript Day 7, p.175.

[46] Indeed, it was Mr. Dempsey's evidence at one point that there had not been a beating up: "No. As I say, I can't recall the detail of how we got to it, but no, I don't think there was a beating up": Transcript Day 7, p.175.

made very clearly during the course of the following examination of Mr. Dempsey:[47]

Q (Mr. Green, Q.C.)	Looking at the agreement now, Mr. Dempsey, it's pretty clear, isn't it, that this loan was not intended as a free-standing commercial loan?
A (Mr. Dempsey)	It was part of the suite of documents that we had agreed.
Q (Mr. Green, Q.C.)	It was part of a wider transaction, wasn't it, Mr. Dempsey?
A (Mr. Dempsey)	It was part of a suite of documents that we had agreed.
Q (Mr. Green, Q.C.)	Do you suggest that it was simply coincidence that the value of the two loans, as ultimately signed, was £2.7 million, which, together with the £1.8 million under the Subscription Agreement, gives a total sum of £4.5 million?
A (Mr. Dempsey)	I don't suppose we should find that surprising given that originally it was thought that the amount of money going – being – what's the phrase? – committed, whether shares or ultimately shares plus loans, was £4.5 million.
Q (Mr. Green, Q.C.)	So, you don't think it was coincidence? You think there was express agreement at this time that Mr. Belokon, in addition to the £1.8 million advanced under the Subscription Agreement, would be advancing £2.7 million under two loans, giving a total of £4.5 million?
A (Mr. Dempsey)	Yes, but the crucial point was that it was – the way – the way in which that commitment, if I can put it that way, in a neutral sense, was being made by him was different. Originally, there was talk of it being for shares and then it became a shareholding of 20% for £1.5 [*sic*] plus loans, which were repayable.
Q (Mr. Green, Q.C.)	Mr. Dempsey, do you consider it plausible that, perhaps outside your presence, Mr. Oyston and Mr. Belokon agreed that £1.8 million would be paid for 20% of the shares, the balance of £2.7 million needed to achieve shareholding parity would be paid by the mechanism of the two loans, and that once the tax losses had been

[47] Transcript Day 8, pp.26*ff*. See also the cross-examination of Mr. Owen Oyston at Transcript Day 14, pp.21 to 30, pp.41 to 42.

	utilised, Mr. Oyston and Mr. Belokon would sort out the transfer of the additional shares to Mr. Belokon needed to achieve parity?
A (Mr. Dempsey)	The question at the beginning of that was…?
Q (Mr. Green, Q.C.)	Do you consider it plausible that outside your presence Mr. Oyston and Mr. Belokon so agreed?
A (Mr. Dempsey)	Not really, no.

91. Subsequent events bear out the intention of the parties to continue negotiating a third agreement that would achieve both the objective of protecting the Tax Losses and Mr. Belokon's desire for a parity shareholding with Segesta:

i) In an interview with the Blackpool Gazette dated 8 July 2006, Mr. Karl Oyston described the deal with Mr. Belokon as "an initial 20% investment, a take of the football club shares, with an option to take 50%". There is also an interview with Mr. Belokon in the Gazette of 12 June 2007, where Mr. Belokon is quoted as saying:

> "Frankly speaking, Owen has always treated me as an equal partner. If you wish, I could say he has treated me as a gentleman."[48]

ii) In an email dated 6 August 2006, Mr. Rawlinson informed Mr. Oyston that:

> "I've just taken a call from Howard [Belton] which you need to consider urgently as the information affects the proposed agreement with Valeri considerably. I apologise if I did not understand it all correctly and you will probably feel it necessary to speak to him yourself to clarify the points.
>
> He said if an option is granted to VB [Football Assets] to acquire more shares in [Blackpool FC] then, irrespective of when and upon what terms the option can and is to be exercised, then Group Relief will be lost, as the option is considered to be exercised at the date it is granted, even if it is not exercised.
>
> Group Relief can be maintained at 100% up to when the option is granted, but is lost when the option is granted, although Howard did then go on to mention 'Consortium Relief', which apparently gave you similar protection but at which point, I'm sorry to say, I lost track of what he was explaining."

It is clear from this email that the Oyston Side was working on an option agreement, but were hitting technical difficulties with – unsurprisingly – the preservation of the Tax Losses.

[48] In his communications, Mr. Owen Oyston also uses the terms of partnership: "…we are partners…"; "an honourable and fearless partner".

iii) In a letter dated 8 August 2006, Mr. Cherry described in some detail the position regarding the Tax Losses and the options available in that regard. The letter made clear that the tax relief on these losses would be lost to the Oyston Group if Blackpool FC ceased to be a 75% subsidiary of Segesta. The letter did not however consider the effect of granting an option to buy shares which, if exercised, would cause Segesta's share in Blackpool FC to fall below 75%. This is, perhaps, surprising, given the state of play. Mr. Cherry's letter was really addressing points that were in the past.

iv) In a memo dated 8 August 2006, Mr. Rawlinson advised that Mr. Belton:

> "…considers that an agreement to act 'in unison' is a form of veto and, as such, because it imputes a degree of control, such agreement would fall foul of 's.416' in the tax legislation and seriously affect Group Relief.
>
> He confirmed that an agreement 'not to act to the detriment' of the Club or similar words would not cause the same problems and would be acceptable."

It is significant that neither form of words – neither "in unison" nor "not to act to the detriment" - appear in either the Subscription Agreement or in the First Vlada Loan Agreement. It appears that Mr. Owen Oyston, at least, was contemplating a further agreement conferring further powers on VB Football Assets. An email from him to Mr. Rawlinson dated 7 August 2006 asks Mr. Rawlinson to "confirm that [Mr. Dempsey] and yourself will be able to meet with [Mr. Belokon] tomorrow night should it be necessary with the final draft which will include Tony's list of powers to be granted to VB [Football Assets]". I infer that these words were related to this draft agreement. It would appear that the Oyston Side was looking to draft some form of shareholders' agreement; but again, the Tax Losses were preventing the parties from articulating what they actually wanted to agree.

v) There is a handwritten memo entitled "T. [probably Mr. Dempsey] Call from [Mr. Belton] Tuesday 8th August c. 4.30pm re: Latvian Agreement and proposed Option to [Mr. Belokon]" which states:

> "You may recollect the lengthy conversation with [Mr. Belton] yesterday when he said that the granting of an option to [Mr. Belokon] for additional shares in [Blackpool FC] was not possible if [Blackpool FC] wished to preserve its tax losses, as the Revenue automatically considered that the option was exercisable on grant, as opposed to when it was actually exercised, thereby preventing the use of all the losses."

Clearly, there was now an appreciation that even an option to buy shares in the future could impact the Tax Losses.

vi) In a letter dated 11 August 2006, Mr. Owen Oyston wrote to Mr. Cherry in the following terms:

> "Clear with the Inland Revenue, that we are in order to offer an option to Valeri's company and avoid any loss of our tax losses in [Blackpool FC] because its share capital has all been used up and it would require a vote of the Directors to produce more share capital. This is what you have discovered and it was you who found this information and in fact asked Howard to look at the Inland Revenue's Guidance notes relating to it. I would be grateful if you could submit this to the Inland Revenue for their clearance as soon as possible for the reasons discussed."

vii) This is the last document to raise the issue of an option and the problem of its effect on Blackpool FC's Tax Losses. The next relevant communication is a letter dated 8 February 2007 from Mr. Oyston to Mr. Belokon:

> "As discussed between us in the Fenwick Arms, sitting by the warm fireside, just before Karl's significant birthday, I enclose the first draft of an agreement for your consideration, which agreement you will see intentionally follows the format of the previous agreement."

The date of the meeting in the Fenwick Arms is unknown, but it is to be inferred that it took place during the winter months. Neither Mr. Owen Oyston nor Mr. Belokon had any recollection of this meeting, and (apart from this one documentary reference) there is no evidence relating to it. The draft agreement which accompanies this letter is of the Second Vlada Loan Agreement.

viii) The Second Vlada Loan Agreement was concluded on 14 April 2007.

92. In light of this evidence, I conclude that:

i) As at the conclusion of the Subscription Agreement and the First Vlada Loan Agreement, the parties had in mind the agreement of an option to the benefit of VB Football Assets for the purchase of further shares in Blackpool FC so as to give VB Football Assets a parity of interest with Segesta. I infer that the consideration would have been £1,700,000 and that there would have been an option-related loan in this amount.

ii) In addition, either as part of this option agreement or as a separate self-standing shareholders agreement, VB Football Assets' position was going to be protected by the granting of certain powers.

iii) The parties' intentions in regard to the option were thwarted by the advice that the granting of such an option and the granting of such powers (whether in a shareholders agreement or otherwise) might cause the benefit of the Tax Losses to be lost.

iv) The parties therefore decided that the deal would continue, but informally, in order to preserve the Tax Losses. There was a gentleman's agreement along the lines of that pleaded in paragraph 17 of the Petition. Contrary, however, to what is pleaded in paragraph 17, I do not consider that this gentleman's agreement was concluded at the time of the Subscription Agreement. For at least a couple of months, the plan was for there to be a third agreement in the

form of an option and option-related loan. It was only when it was clear that the option would be unwise in terms of Blackpool FC's Tax Losses that the parties chose another course. That course was to execute the Second Vlada Loan Agreement which brought the consideration up to £4.5 million, but to leave all other matters – like the option and the restrictions on Segesta - at an informal level. I consider that that decision was reached at the meeting that took place at the Fenwick Arms "just before Karl's significant birthday".

93. It would, of course, have been open to the parties to agree to evade the tax consequences of granting an option by having a formal but secret side agreement. That, in all likelihood, would have been illegal.[49] I do not consider that I should conclude that the parties elected an illegal or potentially illegal course without clear evidence. The parties should be presumed to proceed lawfully and I do not consider that I should go out of my way to find illegality. There is no substantial evidence of any intent to go beyond a gentleman's agreement. To the contrary, there is some evidence that the parties considered this to be a gentleman's agreement unenforceable in law. That evidence lies in:

    i) *Mr. Belokon's reaction when Mr. Oyston breached the gentleman's agreement.* As I describe in greater detail below,[50] Mr. Belokon's reaction was not to sue, but to walk away or to try to walk away from Blackpool FC. Whilst it would be dangerous to read too much into this, I consider this reaction to be indicative of how the parties regarded the agreement that they reached.

    ii) *The manner in which the Oyston Side used their legal rights to run Blackpool FC.* Again, as will be evident later on in this Judgment, the Oyston Side behaved as if they were – as a matter of law – in the majority. They, I find rightly, considered themselves unconstrained by any rights to parity that Mr. Belokon might have – and that is because he had no rights to parity, but merely a non-legal understanding or gentleman's agreement.

94. I conclude that the gentleman's agreement was reached between Mr. Owen Oyston and Mr. Belokon at the meeting referenced in Mr. Owen Oyston's letter on 8 February 2007 – that is, the meeting in the Fenwick Arms.[51] This meeting stands at the juncture when attempts to negotiate an option to buy shares ceased, and instead a draft of the Second Vlada Loan Agreement was put forward. At this point, as I find, Mr. Owen Oyston persuaded Mr. Belokon that:

    i) The only way to preserve the Tax Losses was to abandon any form of legal option to purchase further shares;

    ii) Mr. Belokon should enter into a further loan agreement, to bring the paid up consideration to £4.5 million;

    iii) He, Mr. Owen Oyston, would (when it was possible without prejudice to the Tax Losses) give VB Football Assets a parity shareholding with Segesta and,

[49] I did not receive detailed submissions on the question of illegality, but there is clearly a difference between a non-binding, non-enforceable, agreement to do something and a binding, but secret, agreement to do the same thing.
[50] See Sections C(38) and C(41).
[51] See paragraph 91(vii) above.

in the meantime, would (voluntarily) treat VB Football Assets as an equal partner in Blackpool FC. Although I doubt very much that the language used by Mr. Owen Oyston and Mr. Belokon was as per paragraph 17 of the Petition, that in substance is what I find the gentleman's agreement consisted of.

95. There are a number of points on this aspect of the case that I should mention, before proceeding with the factual narrative:

i) First, it was objected that Mr. Owen Oyston was a man who was insistent upon formalising matters in writing. Mr. Cherry said this:[52]

> "I have never known him go into a gentleman's agreement. He usually insists on everything being written down. In fact, he is over-reliant on the written page, if I were to veer that way. I don't want to make a character assessment of him because I don't really have sufficient knowledge of him going into gentleman's agreements to be able to say that he would or would not honour them."

I reject this evidence. Mr. Owen Oyston was perfectly capable of entering into unwritten agreements and making highly informal arrangements – as the buy-out of the Travelodge demonstrates.[53] I have no doubt that Mr. Oyston would enter into (or would say he was entering into) a gentleman's agreement, if he considered it in his interests to do so.

ii) Secondly, I am very conscious that I have inferred the existence of the gentleman's agreement from the documentary evidence. I consider that this evidence is the best evidence on which to base my judgment:[54]

a) Of the oral evidence that I heard, the only evidence to which any weight can attach is that of Mr. Belokon and Mr. Owen Oyston. Both Mr. Malnacs and Mr. Varpins came on the scene after the conclusion of the Second Vlada Loan Agreement. Both believed in the existence of the gentleman's agreement, but they had no basis for that belief save for what Mr. Belokon had told them.

b) Mr. Belton, Mr. Dempsey, Mr. Cherry, Mr. Dyer and Mr. Karl Oyston all dismissed the existence of a gentleman's agreement. It is unsurprising that they should have done so, given their relationship with Mr. Owen Oyston: but I do not consider their evidence to be worth very much on this point. None of them were present on the occasion when I consider the gentleman's agreement was concluded; and none could explain the critical fact that, taken by themselves, the three written agreements appeared to be incomplete when viewed in their overall factual context.

c) Mr. Belokon, unsurprisingly, asserted the existence of a gentleman's agreement,[55] but he did so in terms so vague and unspecific that I do

[52] Transcript Day 8, p.77.
[53] See paragraph 213 below.
[54] See paragraph 17 above.

not consider that I can place very much weight on his oral say-so. I do not consider such vagueness and lack of specificity surprising: we are talking about an agreement that was, by definition, not a legal one; one that was made informally; and one that was made over 10 years ago. Thus, whilst Mr. Belokon's evidence supports the documentary evidence, it is so frail that without the documentary evidence I have described, I would be unable to reach the conclusion that I have done.

d) Mr. Owen Oyston, of course, denied the existence of the gentleman's agreement. Self-evidently, I do not accept that denial. But I do not consider that it follows that Mr. Owen Oyston was lying when, in his evidence, he denied the existence of the agreement. I consider that the more likely case to be that, as Blackpool FC became rich through Premier League payments, Mr. Owen Oyston persuaded himself that the written contracts represented all that he owed Mr. Belokon. There are indications in the later events that Mr. Owen Oyston avoided discussing the question of parity of shareholding and equal control until Mr. Belokon forced the issue; when Mr. Belokon did so, he got an answer that he did not like, and which resulted in the breach between the Belokon and Oyston Sides.

iii) I shall, in the later narrative, highlight these aspects of Mr. Owen Oyston's conduct. I have considered whether this later behaviour of itself supports the existence of a gentleman's agreement. I have concluded that it does:

a) As is described in Section C(12), Ms. Beinare raised the question of an equal shareholding – and explained her understanding as to why this was formally impossible – in an email dated 17 June 2009. That email makes plain an expectation that a parity of interest was the informal intention. The response of the Oyston Side was not to deny this, but to side-step the issue.

b) Again, when Mr. Belokon himself raised the question of parity with Mr. Owen Oyston, Mr. Owen Oyston did not deny the point, but side-stepped it: see paragraph 125 below.

I should make clear that I regard this after-the-event material merely as supportive of a conclusion that I have reached on the basis of the material described above. Even without this after-the-event material, I would have reached the same conclusion.

(10) The First South Stand Agreement

96. Later on in 2007, in an undated letter to Mr. Belokon, Mr. Owen Oyston referred to discussions that he and Mr. Karl Oyston had had with Mr. Belokon in Latvia, regarding the further development of the stadium – specifically, the South Stand. A proposed draft agreement was attached, which had the following terms:

i) Mr. Belokon would advance the sum of £5,750,000.

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[55] Transcript Day 2, pp.9-11, 14, 28, 29 and 34*ff*.

ii) This money would be used solely and exclusively for the construction and fitting out of the South Stand.

iii) The profits of the South Stand – from football revenue, commercial revenue and all other sources – would, after payment of 10% of the profits to Blackpool FC, be split equally between Mr. Belokon and Segesta for a term of 99 years.

97. Ms. Lase raised a series of questions regarding this proposal in November 2007, which were answered. On 27 May 2008, Mr. Owen Oyston reported on the pre-construction position regarding the South and South West Stands. Mr. Owen Oyston continued to press for an investment by Mr. Belokon, and a further draft agreement was produced in June 2008.

98. On 1 July 2008, an agreement was made between Ms. Belokon, Segesta, Blackpool FC, VB Football Assets and Mr. Owen Oyston. This agreement (the "First South Stand Agreement"):

i) Referenced in the recitals the Subscription Agreement, the First Vlada Loan Agreement and the Second Vlada Loan Agreement. The South Stand Agreement stated that, under these agreements, the sum of £1,850,000 remained to be repaid by Segesta. (This figure was calculated as the £1,000,000 due under the First Vlada Loan Agreement, and the £850,000 due under the Second Vlada Loan Agreement. Although the Second Vlada Loan Agreement was in the amount of £1,700,000, half of this was a gift to Blackpool FC and not repayable by Segesta: see Section C(8)).

ii) Identified as its purpose an agreement "to fund future development of the South Stand and South West Corner Stand at Blackpool [FC]".

iii) Provided that the sum of £4,750,000 would be advanced by Ms. Belokon for this purpose, while Segesta would commit £1,000,000.

iv) The agreement contained the following profit share provision:

> "The Parties together agree that after the deduction of (i) all items of revenue expenditure (and any expenditure of a capital nature in excess of the amounts provided by the parties pursuant to this agreement) in relation to the South Stand and South West Corner and (ii) all such monies as are required to repay monies to any Mortgagee on the terms of a mortgage advance made to Segesta in connection with the South Stand and the South West Corner or either of them and (iii) any corporation or other taxes that may fall due, from all income of the South Stand and the South West Corner (including income from football revenue, commercial revenue and all other revenue sources), that the remaining income ("the Income") shall be divided annually between the Parties on a 50/50 basis for a term of 1000 (on thousand) years from the date of this Agreement, such equally divided payments to be made within 21 days of the certification of Income by [Blackpool FC's] Auditors. The share of such net income that would otherwise be an entitlement of [Ms. Belokon] shall be treated as a repayment of the [sums due under the First and Second Vlada Loan Agreements] until satisfaction, and shall then be treated as repayment of the South Stand Loan until satisfaction and then the remainder shall be treated as income of [Ms. Belokon].

v) Clause 18 provided that:

> "This Agreement supersedes all previous Agreements between the Parties and in the case of any conflict between this Agreement and any other Agreement between the Parties, this Agreement shall prevail save that insofar as the previous Agreements between the Parties have not been varied or modified by this Agreement, then the previous Agreements shall remain in full force and effect."

It is difficult to know what to make of this provision. Because there was some debate as to the effect of the First South Stand Agreement on the First and Second Vlada Loan Agreements, I should say that it is my concluded view that these agreements both remained in force, but their repayment provisions were varied so that they were to be repaid out of the profits of the stands as defined in this agreement.

(11) The Second South Stand Agreement

99. The First South Stand Agreement did not endure for very long. It was replaced by a further agreement (the "Second South Stand Agreement"), made between VB Football Assets, Segesta, Blackpool FC, VB Football Assets and Mr. Owen Oyston on 21 July 2008. Ms. Belokon, as I have mentioned, was not a party to this agreement, despite having been a party to the First South Stand Agreement, and dropped completely out of the picture.[56] The Second South Stand Agreement replaced the First South Stand Agreement (see Recital (E)).

100. The terms of the Second South Stand Agreement were broadly similar to those of the First South Stand Agreement:

i) VB Football Assets loaned £4,750,000 to Segesta "for the construction and fitting out of the South Stand and South West Corner" at Blackpool FC (Clause (1)).

ii) Segesta committed £1,000,000 to the construction and fitting out of the South Stand (Clause (2)).

iii) The share in profits was as per the First South Stand Agreement (Clause (6)(A)).

iv) The provision regarding the superseding of prior agreements is similar (Clause (23)).

The benefit of this agreement came to be assigned to Baltic International Bank in 2016. The importance of this will become apparent later on. For the present, all that needs to be noted is that there was litigation concerning the entitlements under the Second South Stand Agreement between Baltic International Bank and Segesta in the Queen's Bench Division of the High Court (Manchester District Registry). That resulted in a judgment of Her Honour Judge Moulder (as she then was) under neutral

[56] See paragraph 50 above.

citation [2017] EWHC 339 (QB). As I understand it, permission to appeal that judgment to the Court of Appeal has been given.

(12) Ms. Beinare's email regarding the ownership of Blackpool FC

101. In an email dated 17 June 2009, Ms. Beinare emailed Mr. Rawlinson in the following terms:

> "The initial intention of Valeri was to acquire in its ownership 50% of the share capital in [Blackpool FC]. At present he owns only 20% and all the other invested sums of money are not invested in share capital, but issued as loans. Such situation is because of UK legislation rules that allow to surrender the [Blackpool FC] losses to Segesta if Segesta owns not less than 75% in share capital of [Blackpool FC].
>
> We understand the importance to preserve Segesta's rights to use [Blackpool FC's] losses, still we are thinking about legal ways how to change the present situation more closer to the initially planned one. We are having an idea that 30% of share capital of [Blackpool FC] could be pledged in favour of Valeri to ensure the loans. To my mind, in this situation, Segesta could still use the rights to have taxation relief due to surrender of losses. At the same time, the pledge of the shares would bring the present situation closer to the initial agreement between Valeri and Mr. Oyston.
>
> I would like to get your opinion from legal point of view regarding possibility to pledge 305 of [Blackpool FC] share capital in favour of Valeri and at the same time to preserve Segesta's rights to use the [Blackpool FC] losses."

102. Mr. Rawlinson forwarded this communication to Mr. Owen Oyston. Mr. Rawlinson responded to Ms. Beinare as follows:

> "When the initial, principal Agreement dated the 5th June 2006 ("the Agreement") was signed, there were exhaustive and detailed discussions about this point, over a period of many weeks.
>
> When the Agreement was signed, it was not possible to accommodate what you are now proposing, either in writing or orally, as such an arrangement would have damaged the tax losses available and this would have caused Owen substantial losses and, indeed, would cause Mr. Belokon losses in the future from his income from the South Stand and the South West Corner.
>
> The tax advice we received at the time of the Agreement, which Owen, Mr. Belokon and his advisers accepted, is that we could not give a written or even an oral agreement without losing the benefits of the accumulated tax losses, which would result in a very substantial loss of income for Mr. Oyston and so that is one of the reasons why the status quo was preserved on the signing of the Agreement. Indeed, as I said previously, Mr. Belokon will benefit substantially from these losses when the [South West Corner] and [South Stand] come on stream in terms of revenue."

103. It is worth observing that the only reason Mr. Rawlinson put forward for not adopting the course suggested by Ms. Beinare was the Tax Losses. There was no response along the lines "parity was never agreed". It is also worth observing that – certainly until the First and Second South Stand Agreements – Mr. Belokon would have been

indifferent as to the preservation of the Tax Losses: the only beneficiary – apart from Blackpool FC itself – would have been the Oyston Group.

(13) The player trust

104. At one of their meetings, Mr. Belokon floated the idea of a "player trust", whereby he would fund (on terms favourable to Blackpool FC) the purchase of new players for the club. Mr. Owen Oyston reacted enthusiastically and a trust agreement between VB Football Assets and Blackpool FC was agreed.

(14) The board meeting of Blackpool FC on 12 November 2009

105. The board of Blackpool FC met on 12 November 2009. Mr. Malnacs was re-appointed as a director and "would overview accounting department". Mr. Owen Oyston was the "Commercial Director" and Mr. Karl Oyston the "Football Director". Mr. Steele, the only other director apart from Mr. Belokon, was "Youth Director".

(15) The Zabaxe debt

106. In a draft letter dated 17 December 2009 – which was, however, sent in some form to Mr. Belokon – Mr. Owen Oyston informed Mr. Belokon that Blackpool FC had, in 2000, owed some £944,642.28 to Zabaxe. That debt had been paid by Segesta in the form of shares in Blackpool FC. The letter then stated that "[a]s a result of a legal technicality, that has now come to light, the share issue to Zabaxe was invalid." Accordingly, the shares returned to Segesta and the debt owed by Blackpool FC revived. Mr. Owen Oyston proposed that a deed be entered into, whereby Zabaxe would release Blackpool FC from the debt in exchange for Segesta agreeing to pay the debt. The letter concluded that "I thought that I should set out the situation and its background fully so that you and [Mr. Malnacs] are fully aware of the situation when the matter is brought up at the Club's Board Meeting".

107. There is something of an air of unreality about all this formality. Zabaxe, Segesta and Blackpool FC were all controlled by Mr. Owen Oyston, although Blackpool FC was the only company having a significant third party minority shareholder in the shape of VB Football Assets' shareholding. Previously, there had been no mention of Zabaxe holding shares in Blackpool FC.

108. The matter caused a degree of confusion in the Belokon camp (see Ms. Beinare's email of 18 January 2010) and resulted in an email from the Oyston Side saying that "[t]his whole procedure is to the advantage of [Blackpool FC] and to the disadvantage of Segesta, as the burden is being removed from [Blackpool FC] and being taken on board by Segesta."

109. In any event, on 22 March 2010, Blackpool FC passed the following special resolution:

> "(a) [Blackpool FC] enters into a novation agreement with [Zabaxe] and [Segesta] whereby [Zabaxe] releases [Blackpool FC] from its debt of £944,652.28 in consideration of [Segesta] accepting liability for the debt in place of [Blackpool FC] and promising to repay the same to [Zabaxe].

(b) the Company Secretary and Directors are authorised to carry out such steps and execute such documents on behalf of [Blackpool FC] required to implement these resolutions."

(16) Blackpool FC's promotion into the Premier League

110. In May 2010, Blackpool FC secured promotion to the Premier League. As a result, it would have been clear to all that a large influx of money would be coming Blackpool FC's way.

(17) The Enterprise Investment Scheme case

111. On 21 May 2010, the First-tier Tribunal (Tax) handed down judgment in Segesta Limited v. The Commissioners for Her Majesty's Revenue and Customs [2010] UKFTT 235 (TC). The decision, which was an appeal against HMRC's refusal to authorise Segesta to issue Enterprise Investment Scheme ("EIS") certificates to Mr. Owen Oyston in respect of a subscription by him in December 1999 for shares in Segesta, gave rise to a charge to tax, payable by Mr. Owen Oyston, of several million pounds. I shall refer to this decision as the "EIS Decision".

(18) Post-promotion meetings

112. Shortly after Blackpool FC secured promotion, on 23 May 2010, Mr. Belokon, Mr. Karl Oyston, Mr. Owen Oyston and Mr. Malnacs had a meeting at the Dorchester Hotel. According to Mr. Belokon, this was one of a number of celebrations of Blackpool FC's promotion to the Premier League (see paragraph 34 of Belokon 1: "I celebrated [Blackpool FC's] promotion with Owen Oyston, Karl Oyston and Normunds Malnacs on numerous occasions, including at the Dorchester on 23 May 2010 and at Claridge's on 25 June 2010").

113. These meetings were not, however, purely celebratory. Some took place well after promotion; and matters of substance were discussed. Unfortunately, precisely what was discussed at these meetings is a matter of contention, exacerbated by the fact that there are relatively few pertinent contemporary documents. It will be necessary to consider a number of these meetings. The first of these, as I have noted, was the meeting at the Dorchester Hotel.

(19) The Dorchester meeting: 23 May 2010

114. A meeting took place at the Dorchester Hotel on 23 May 2010 between Mr. Owen Oyston; Mr. Karl Oyston; Mr. Belokon and Mr. Malnacs.

(i) The minutes

115. Minutes of the meeting were kept, although it was unclear who by.[57] What is clear is that the minutes were produced (inferentially in soft copy) to Mr. Owen Oyston, who inserted or had inserted in **bold** his own comments, under the heading "OJO's views"

[57] Counsel considered that Mr. Karl Oyston kept these minutes (see e.g. Transcript Day 3, pp.12*ff*; Transcript Day 5, p.48), but he did not accept this (see Transcript Day 11, p.19). I do not consider that anything turns on this.

(i.e. Mr. Owen Oyston's views[58]). These bold parts were not seen by the Belokon Side. The relevant parts of these minutes – including the bold parts setting out Mr. Owen Oyston's views – are set out below:

4.	**[Mr. Owen Oyston's] personal loan**
	[Mr. Owen Oyston] proposed to the meeting that he and [Mr. Belokon] should each have a facility between £3m and £5m. [Mr. Belokon] and [Mr. Malnacs] listened but were non committal.
	[Mr. Owen Oyston's] views
	I learnt today that I have lost the EIS court case in London, surprise, surprise! And I am asking Carol Barrie and the Barrister to see if we can make the payments over 3 years or more, but in any event this sum will now have to be paid and it will be over £3m but I am waiting for the exact figure and terms. **There is no reason why we cannot put between £5m and £10m, once we receive it, into [Mr. Belokon's] bank as a gesture of goodwill at, say, between 6% and 7% interest or thereabouts.** **After consideration, with another court case pending which could cost around £1.7m, but which I think if there is any tiny justice in the world, I should win as we did everything according to the book and the HMRC were just being bloody minded because of the other court case we believe and because of their participation in the conspiracy against me which we can prove as we have the actual tape recordings. Therefore I would like a <u>minimum of £5m and maybe a couple of million more</u> so you and I can buy a few things and not have to sell Travelodge, the apartment in Spain or anything else for that matter apart from the rubbish I want to get rid of such as Oyston Mill and certain properties. I am going to get rid of all the complicated rubbish which is time consuming and going to streamline the companies and delegate to individuals who I believe have got the capacity. This will reduce my load and that of [Ms. Conlon] so we can get involved in the bigger deals etc.**
10.	**Tax Losses**
	Discussion took place to bringing to an end the current arrangement with [Mr. Belokon] so that he can become an equal shareholding partner. [Mr. Owen Oyston] said he would discuss it with his tax people to see what the ramifications were and whether or not it could be done without damaging the tax losses which were preserved as part of the agreement with [Mr. Belokon].
	[Mr. Owen Oyston's] views
	I see no reason why we should change the existing agreement although I will look into the tax ramifications and to this end I am asking [Mr. Cherry]/[Mr. Belton] to read the agreements thoroughly and give me their view of it. Also I will ask [Mr. Rawlinson] to thoroughly assess the existing contract so we know exactly what the position is at this moment. [Ms. Conlon] to ask [Mr. Rawlinson] to send the agreements, agree a fee for the advice in relation to this matter and then have a brief meeting if necessary

[58] Transcript Day 11, pp.24 to 25; Transcript Day 12, p.120.

	with [Mr. Cherry]/[Mr. Belton] and [Mr. Rawlinson] sitting in to finalise the matter. If you remember [Mr. Cherry] and [Mr. Belton] were involved with the original agreements.
11.	**Directors**
	[Mr. Karl Oyston] recommended that we remove a certain director on the grounds that he cannot keep his mouth shut and is very dangerous therefore, especially in the Premiership where there will be plenty of journalists willing to listen. [Mr. Owen Oyston] said that also he did not behave like a director, not just because he discussed matters with the staff which were private board matters, but also because he never reported to the board on anything he was involved in and when Ministers came to the ground he did not communicate this fact with anyone else, treating the Club as his own personal fiefdom.
	[Mr. Owen Oyston's] views
	He should go.
12	**5 year plan**
	[Mr. Belokon] said when he felt up to it as he was very tired, he would respond to these points and also come up with a 5 year plan as he had 4 years ago when his prediction was uncannily accurate.
	[Mr. Owen Oyston's] views
	Paganism here we come.

(ii) Mr. Belokon's recollection

116. Mr. Belokon describes a meeting at the Dorchester Hotel in the following terms:[59]

> "At the celebration on 23 May 2010 at the Dorchester Hotel I asked again about formal shareholder parity. Owen Oyston reassured me that he would discuss with his tax advisors the possibility of formally making me an equal shareholder. As [Blackpool FC] would not accumulate further losses due to Premier League money, I thought it likely that we could now arrange for formal parity. At the celebrations Owen also raised the possibility of taking a minimum of £5 million out of the Club to pay litigation costs, potential future litigation costs, and other personal "things" regarding which I was not given any further detail. He said that I should do the same. I dismissed the discussion at the time and I had no interest in the proposal. My view was that the new cash available in the Club should be used to invest in the squad and consolidate our position in the Premier League. At no point did I agree that Owen should take any money from the Club for his or his family's personal use."

117. This is broadly consistent with the minutes. In cross-examination, Mr. Belokon accepted the accuracy of point 10 of the minutes, namely that he raised the question of

[59] Paragraph 35 of Belokon 1.

an equal shareholding, to become, in his words "*de jure*",[60] and that Mr. Owen Oyston did not say no, but said that he had to discuss the matter with his tax people.[61]

(iii) Mr. Malnac's recollection

118. Mr. Malnacs said the following in relation to this meeting:[62]

> "35. On the day after the Club's victory over Cardiff in the play-off final, I attended a celebratory dinner with Mr. Belokon, Karl and Owen Oyston. Owen and Karl Oyston were very excited by the prospect of the large sums of money that would flow into the Club from the Premier League. For the purposes of providing this witness statement I have reviewed what appear to be Owen Oyston's notes of that meeting. As far as I can recall these notes reflect the topics discussed. They show Karl's and Owen's desire to benefit personally from the Club's new found riches. At point 4 of these notes, Owen suggested that he and Mr. Belokon should be able to take personal loans from the Club of between £3-5 million. The note records that myself and Mr. Belokon did not agree. We were not happy with the suggestion that millions of pounds should be flowing out of the Club. Mr. Belokon and I wanted the Premier League money to be invested in the Club. It was likely that the Club would need to purchase players during the summer transfer window and we considered that any funds the Club had should be used for that purpose, not for loans to directors.
>
> 36. I recall that at this evening Mr. Belokon was very tired and uninterested in discussing business and we were non-commital about any of the Oyston's suggestions at that time. Owen's note describes various uses he had in mind for the Club's new-found money. These included paying off a judgment from the tax authorities relating to one of his other companies, re-financing the Travelodge hotel that he owned, and avoiding the sale of a flat that he had purchased. Mr. Belokon and I did not agree to any of those courses of action.
>
> 37. At the same meeting, we raised that this was an appropriate time for Mr. Belokon to receive a further 30% of the shares in the Club to give him parity with Segesta. Owen seemed reluctant now that the Club was so valuable but said he would look into it."

119. Mr. Malnacs acknowledged that the minutes were much more detailed than his unaided recollection, but he did not dispute their accuracy.[63] He did make the following observation in cross-examination:[64]

> "It was strange to me, you just won, everyone is ecstasy, and they start counting money and talking how to get this money out of the club, so that was strange. And second, it was time to raise this question of parity, and Oystons says we have to talk with our tax advisers. We did not suggest that there is need to agree on price or whatever. We just basically said yes, we have to – but first we have to talk to tax adviser."

[60] Transcript Day 3, p.13.
[61] Transcript Day 3, p.14.
[62] Paragraphs 35 to 37 of Malnacs 1.
[63] Transcript Day 5, pp.48-49.
[64] Transcript Day 5, p.49.

(iv) Mr. Owen Oyston's recollection

120. Mr. Owen Oyston's witness statement does not specifically mention the Dorchester meeting. Indeed, paragraphs 48 to 53 of Owen Oyston 1 – which describe Blackpool FC's promotion to the Premier League – do not contain any specific description of any meeting between Mr. Belokon, Mr. Malnacs, Mr. Karl Oyston and Mr. Owen Oyston.

121. In cross-examination, Mr. Owen Oyston accepted that the minutes "are a reflection of what we discussed".[65]

(v) Mr. Karl Oyston's recollection

122. Mr. Karl Oyston's witness statement also does not specifically mention the Dorchester meeting. Like the statement of Mr. Owen Oyston, paragraphs 13 to 17 of Karl Oyston 1 – which describe Blackpool FC's promotion to the Premier League – do not contain any specific description of any meeting between Mr. Belokon, Mr. Malnacs, Mr. Owen Oyston and Mr. Karl Oyston.

123. Mr. Karl Oyston accepted that he had no reason to disagree with the minutes, although he made the perfectly fair point that these were minutes, and would not have recorded everything that was said.[66]

(vi) Synthesis

124. I consider the minutes to be a reliable statement of what was said at the Dorchester meeting. I also consider that the interpolations of Mr. Owen Oyston, as recorded in those minutes, essentially reflect Mr. Owen Oyston's thinking.

125. In my judgment, the position at the time of the Dorchester meeting was as follows:

i) Mr. Owen Oyston was under some financial pressure, if only because of the EIS Decision. He was concerned about having to realise assets, and wanted a loan from Blackpool FC. Mr. Belokon was "non commital". I find that Mr. Belokon did not, on this occasion, agree to any loan or other payment out of Blackpool FC.

ii) Mr. Belokon's disinclination to accede to a disbursement of significant monies out of Blackpool FC was something of critical importance to Mr. Owen Oyston, although I equally have no doubt that Mr. Owen Oyston did not let this show. As subsequent events demonstrate, Mr. Owen Oyston took steps, very shortly after this meeting, to progress payments out of Blackpool FC. As will be seen, the Belokon Side were not involved in these steps, and this was clearly deliberate on the part of the Oyston Side.

iii) In his response to Mr. Belokon, Mr. Owen Oyston continued to use the Tax Losses as a reason for keeping Mr. Belokon's shareholding at 20%. The Tax Losses, of course, were no longer a problem: Blackpool FC would itself be

[65] Transcript Day 12, p.120.
[66] Transcript Day 11, pp.26 to 28. Mr. Karl Oyston was not, however, able to supplement the minutes with any useful independent recollection.

receiving monies from the Premier League in such an amount that the Tax Losses could be used in relief of the charge to tax on these sums. (In the event, that is exactly what happened.) I find that the reliance on the Tax Losses was nothing more than a device to avoid discussion of the point at this meeting.

iv) This reliance, by Mr. Owen Oyston, on the Tax Losses as a reason for avoiding making any further commitment to giving VB Football Assets an equal shareholding to Segesta is highly significant. It, in my judgment, corroborates the existence of the gentleman's agreement. Had there been no gentleman's agreement, Mr. Owen Oyston's reaction would have been very different: it would have been along the lines of "I don't want to sell any more shares in Blackpool FC" or "How much are you prepared to pay for additional shares?". It would not have been, "I need to consider the effect of this on Tax Losses". Mr. Owen Oyston was asked about this:[67]

Q (Marcus Smith J.)	Could you explain then why your reaction was simply that you would discuss it with your tax people. Wouldn't your first reaction have been…
A (Mr. Owen Oyston)	I'm so sorry. I can't hear you. I do apologise.
Q (Marcus Smith J.)	I'll speak up Mr. Oyston. It's my fault. My question is this. The document refers to Mr. Belokon wanting to bring to an end the current arrangement?
A (Mr. Owen Oyston)	Yes.
Q (Marcus Smith J.)	So that he can become an equal shareholding partner?
A (Mr. Owen Oyston)	Yes.
Q (Marcus Smith J.)	And it records your reaction as being you would want to discuss it with your tax people?
A (Mr. Owen Oyston)	Yes, indeed, absolutely.
Q (Marcus Smith J.)	And my question is: why wasn't your first reaction to say the price for the shares needs to be negotiated.
A (Mr. Owen Oyston)	That was my first reaction, but I didn't express it then. I did express it later, because I assumed that's what he meant. I never assumed that there was any other arrangement. I naturally assumed that's what he wanted, a price for more shares, to bring them up to parity…"

I regard the failure to mention price to Mr. Belokon as unnatural in the circumstances, and as supportive of the existence of the gentleman's agreement. The same is true of what was said expressly: the reference to the Tax Losses harked back to the original negotiations, when these very Tax

[67] Transcript Day 12, pp.128 to 131.

Losses thwarted the parties from reaching the agreement that they wanted to reach.

v) Mr. Owen Oyston's "views" in bold, not disclosed to Mr. Belokon, show an intent to stick to the letter of the written agreements, rather than the gentleman's agreement I find to have existed. The note in bold below point 10 in the minutes suggests that, even at this early stage, Mr. Owen Oyston was minded to renege on the gentleman's agreement; although he was not going to say so to Mr. Belokon. This is why the minutes record Mr. Owen Oyston having recourse to the tax problems, rather than saying outright that there was no agreement for Mr. Belokon to acquire an equal shareholding with the Oystons in Blackpool FC.

126. It is my conclusion that, from this point on, the Oyston and the Belokon Sides were in opposition, although that was not yet evident to Mr. Belokon. Mr. Owen Oyston took Mr. Belokon's "non committal" response as a "No", and proceeded to take steps to circumvent it.

(20) Getting money out of Blackpool FC

127. On 26 May 2010, Ms. Conlon sent the following email to Mr. Belton and Mr. Dyer:

"Can you let Owen and Ian Cherry have copies of the notes Owen gave you at the last meeting and the latest draft of the Trust document as soon as possible? Owen is wanting to meet with you, Ian and Rod on the 10th June, probably at Sharrow Bay now, with an overnight. Is this ok for you? Ian will be contacting you today to discuss how Owen can pay the tax from the moneys coming into [Blackpool FC]. Ian thinks that [Blackpool FC] could buy the shares back and this would not have tax implications and be a simple way of sorting out the problem. Furthermore, the £944K that is now owed as a loan from Zabaxe to Segesta, could also be repaid with the money coming out of Zabaxe via Owen's loan account. Please discuss these matters with Ian because Ian is having a tel con with Michael Sherry, our barrister, tomorrow and I am sending a copy of this note, in strict confidence, to Ken and to Rod asking them to be present at the tel con."

128. Ms. Conlon followed this up with a further email later that day, to Mr. Belton and Mr. Cherry:

"Howard, I forgot to mention to you and Ian about the £4,361,000 that is currently owing to Protoplan from [Blackpool FC]/Segesta. What would happen if this loan was repaid by [Blackpool FC] in one fell swoop and furthermore would it be possible to sell further shares to Valeri which of course would reduce my 75%?

As you will appreciate, Valeri is anxious to become a full partner in terms of shares, even though there is a contract signed which is valid for the next few years and which restricts him to 25%. Can you put this on the agenda as well please for our meeting at Sharrow Bay on the 10th/11th.

Also, Ian, can you ask Michael Sherry the ramifications of repaying this £4.36m and how would it affect my tax situation?

I am hoping Ian can put a note to Michael Sherry before the tele con setting out these various points. Which would include also, are there any grounds for appeal? I have told Carol to tell HMRC we are considering an appeal, but if they are realistic on the repayment programme of the tax, we might not appeal."

129. Mr. Cherry responded on the same day:

"Owen

This loan is repayable by Segesta to Protoplan and could be repaid by Segesta without any tax implications. However Segesta does not have any funds. It previously assigned the benefit of the stadium rental to [Blackpool FC] and this has reduced the loan due from [Blackpool FC] to Segesta to aound £2,000,000. You may wish to consider rescinding the arrangement and taking the rental receipts into Segesta immediately.

The overall problem is that any income from football will go into [Blackpool FC] and it is my understanding that you agreed not to take this money out when you agreed the loan arrangement with Valeri Belokon. However, this year's income will almost certainly utilise all the tax losses available and leave [Blackpool FC] with a considerable profit. It will be possible to declare a dividend and pass 80% of the profit to the holding company. Thereby putting Segesta into funds. Not unreasonably when you consider that Segesta will have to build the Stadium to accommodate the Football Club. I have asked Rod to let me know when he has further details about the timing of the receipts."

130. These discussions, which occurred almost immediately after the Dorchester meeting, did not involve the Belokon Side, and I find that to have been deliberate. Mr. Owen Oyston cannot have been unaware of the fact that Segesta had no money, but that Blackpool FC did (or would have) because of its promotion to the Premier League.

131. Mr. Owen Oyston's plan seems to have been to identify debts owed by Segesta to other companies in the Oyston Group, and to treat these obligations as obligations to be discharged by Blackpool FC, at least indirectly through payments from Blackpool FC (which had money) to Segesta (which did not). To this end, two debts were identified:

i) First, the Zabaxe debt described in Section C(15) in the amount of £944,642.28. It will be recalled that the discussions regarding this debt were that it should <u>not</u> be paid by Blackpool FC.

ii) Secondly, a debt owed by Segesta to Protoplan in an amount of £4,361,000, incurred in relation to construction work previously done at the stadium.[68]

132. There was no evidence before me regarding precisely how these debts had been incurred by Segesta. However, given the details provided by the Respondents regarding work done at the stadium (which is replicated in Annex 2 to this Judgment), and given that VB Football Assets did not challenge the fact that money had been

[68] Transcript Day 11, pp.55 and 60 to 61.

spent on the stadium by the Oyston Side in the past, I proceed on the basis that these particular debts were debts properly incurred by Segesta.

133. But that does not mean to say they were Blackpool FC's debts. So far as Blackpool FC was concerned, the Oyston Side was in something of a straightjacket:

i) Blackpool FC's indebtedness (and specifically, its indebtedness to other companies in the Oyston Group) had been disclosed to the Belokon Side during the course of negotiating the Subscription Agreement, and warranted accurate and complete.[69]

ii) Apart from a short term loan to Mr. Owen Oyston in the sum of £210,000, Blackpool FC's indebtedness would (without recourse) be paid not out of revenues generated by Blackpool FC's football team but out of the income derived from the rents from third parties leasing the commercial properties in the stadium in accordance with the schedule of payments set out in Schedule 5 to the Subscription Agreement.[70]

134. Thus, even assuming the Zabaxe and Protoplan debts were debts properly incurred by Segesta:

i) It is entirely unclear whether these were debts owed by Blackpool FC to Segesta, and I am not prepared (having seen no evidence on the point) to assume that they were.

ii) Even if they were, they were not disclosed by the Oyston Side as part of the disclosure preceding the conclusion of the Subscription Agreement, and the Subscription Agreement expressly regulated how the debts that were disclosed should be repaid.

iii) Furthermore, the Subscription Agreement expressly provided that revenues generated by Blackpool FC's football team should not be used to discharge such debts.

135. Concern regarding this straightjacket was expressed in communications over the next few days. Mr. Cherry expressed the view that clause 6a(i) of the Subscription Agreement precluded the use of the Premier League monies in this way. I consider that he was right, for the reasons I have given in paragraphs 133 to 134 above.

136. Mr. Rawlinson disagreed with Mr. Cherry's position. He was asked by Mr. Owen Oyston whether there is "any undertaking that we cannot draw money out" and in an email dated 26 May 2010, he asserted:

> "With reference to your question about 'drawing money out', there is nothing I can see that would prohibit this. The loans are what they are – loans and they would not normally and do not contain any provisions preventing or restricting such a withdrawal. The [Subscription Agreement] deals with the acquisition of shares by VBFA and has nothing to do with distributions or drawing money out, which are considerations of the Board."

[69] See paragraphs 46 and 48(iv) and (vii) above.
[70] See paragraph 48(iv) above.

137. This, of course, fails to address the purpose for which monies were being drawn out. No doubt monies could be paid away e.g. to acquire a football player. The question was whether the monies could be paid away to discharge the (past) Zabaxe and Protoplan debts.

138. On 27 May 2010, there was the following exchange. Mr. Oyston asked Mr. Rawlinson (but in an email copied to Mr. Belton and Mr. Cherry):

> "Jim
>
> You said yesterday that there were no constraints. Is that not the case? If there are constraints it won't prevent [Mr. Owen Oyston] taking out a loan against cash in the football club will it? Also will it prevent Zabaxe being repaid? Also will it prevent £4.m+ which is owed to Protoplan being repaid?"

Mr. Oyston was thus contemplating the payment out of Blackpool FC of around £10 million – about £1m to Zabaxe; a loan of about £5m to himself; and a payment to Protoplan of about £4m.

Mr. Cherry replied:

> "The problem we face is that Segesta has no funds and therefore cannot pay any monies either as loan repayment, trade debt repayment or share repurchase. Any funds are likely to arise in [Blackpool FC]. Therefore we should immediately rescind the arrangement to let [Blackpool FC] have the use of the stadium income. This can then accrue in Segesta before being used to pay Protoplan as at present.
>
> A separate agreement needs to be negotiated with Belokon Holdings to allow the repayment of the Segesta outstanding loan. This is I understand from Rod around £2,000,000.
>
> A further method needs to be agreed to realise funds into Segesta from [Blackpool FC] both to facilitate the stadium development and the repurchase of [Mr. Owen Oyston's] shares.
>
> As an alternative [Mr. Owen Oyston] could consider the sale of some of his shareholding to [Mr. Belokon] to make him an equal partner in the whole business…"

139. Mr. Rawlinson responded, stating that the question was "simply…whether or not 'we', presumably Segesta, were restricted by the various Agreements from withdrawing funds generally from its own account and I cannot see anything in those Agreements to prevent that". His email went on to say:

> "Furthermore I understand that Ken [Chadwick] and [Mr. Owen Oyston] and Ken and yourself had conversations yesterday, to which I was not a party and of which I was not aware when sending my reply to [Mr. Owen Oyston], but having spoken to Ken this afternoon, his understanding of the situation was that Segesta required monies to:
>
> i) fund the remainder of the construction of the Stadium and

ii) re-purchase by Segesta of the shares it issued to [Mr. Owen Oyston] in December 1999, at the same consideration i.e. £4,147,413 and

iii) repay to [Zabaxe] the loan due from [Segesta] under the Novation Agreement i.e. £944,653.28 and

iv) repay in full the outstanding monies due to Protoplan.

These monies would presumably come from the funds to be received from the Premier League by [Blackpool FC] but the question is: How can this be done? Do you have any ideas?"

(21) The tax meeting

140. On 1 June 2010, a meeting took place between Mr. Owen Oyston, Mr. Chadwick, Mr. Rawlinson, Mr. Dyer, Mr. Cherry and – joining the meeting late – Mr. Belton. Detailed minutes were taken. The Belokon Side was not represented. Mr. Owen Oyston stated the objective of the discussion very crisply at the outset:[71]

"Need to get funds without going through [Mr. Belokon] and without tax."

141. Mr. Cherry's immediate response was that the agreements with VB Football Assets meant that this could not be done without the consent of Mr. Belokon. This resulted in an uncompromising directive from Mr. Owen Oyston to Mr. Rawlinson that he (Mr. Rawlinson) "send the agreements to barrister as he wants to break it".

142. There was also some discussion about Mr. Belokon wanting a parity shareholding. Mr. Owen Oyston is recorded as saying:

"[Mr. Belokon] wants parity in shares although there is no agreement for this but no price agreed."

This, of course, is rather different to what Mr. Owen Oyston told Mr. Belokon at their meeting at the Dorchester.[72] To the Oyston Side, Mr. Owen Oyston was stating that Mr. Belokon had no right to parity. Legally speaking, that was, of course, entirely right.

(22) Preparing to put the matter to the board of Blackpool FC

143. There had been no discussion of taking monies out of Blackpool FC with the Belokon Side since the Dorchester meeting. In an email dated 8 June 2010 and entitled "1st tranche of £13m", Mr. Owen Oyston wrote:

[71] I regard the meaning of these words as self-evident. Mr. Owen Oyston sought to suggest that this sentence referred to taking money out of outlets for cash other than Blackpool FC (Transcript Day 12, pp.147 to 148). I reject this evidence.
[72] See Section C(19).

> "I intend to put this motion to the board for their approval. It is likely that there will be an attempt to control the payments made to Segesta which I will resist because it is important that we have unbridled access to funds in view of the urgencies involved and the new season moving ever closer.
>
> It is likely that they will ask (a) why do we need to put the money into Segesta and (b) why can't we control it as a board as payments are required etc etc
>
> My answer is that Karl must be unfettered in terms of his right to his ability to sign contracts and daw down monies without having rigid control, although I am entirely relaxed that the board appoints an independent person (and Normunds) to oversee the spend and to report back to the board accordingly.
>
> **For possible inclusion to be discussed:**
>
> Furthermore should I say that Owen wishes to borrow up to £5m over a period of time for personal reasons and he would like to draw down part of the £5m from this first tranche of £13m (probably in the region of £2.5m - £3m).
>
> Could Ian and Howard explain the implications of this; what interest I should pay for it (if any) and how we get the money to the IR tax free; and indeed do we advise them and get their agreement in advance?
>
> The Appeal that we intend to make against the Tribunal's decision will at least give us time and perhaps a chance to negotiate with the IR, so will be asking Ken to drive on with this appeal immediately."

144. This email is remarkable in the absence of consideration that it gives both to the interests of Blackpool FC and to the minority shareholders, including (but not limited to) VB Football Assets. Given that there had been no material communication with the Belokon Side since the Dorchester meeting, it is evident that Mr. Owen Oyston read "non commital" as "no".

145. Mr. Karl Oyston's response was:

> "I agree on the whole and think we may overkill if we share too much information so would advise less is best. Don't forget I currently have signatory control over [Blackpool FC] finances so can transfer money to Segesta for building work or whatever you require.[73] Let's for once not over egg the pudding?"

(23) The Blackpool FC board meeting of 25 June 2010/Dinner at Claridge's

(i) Introduction

146. On 22 June 2010, Mr. Malnacs confirmed that the next Blackpool FC board meeting would be on 25 June 2010 at Mr. Belokon's bank office at 77 Brook Street. His email

[73] Again, I accept the natural meaning of these words: the money would be transferred to Segesta for whatever purposes Mr. Owen Oyston might have. I reject Mr. Karl Oyston's denials in this regard: Transcript Day 11, pp.51 to 54.

ended with the statement that "[i]t would be very useful if Karl could send an agenda and any information in advance".

147. In the event, no material was circulated in advance of the meeting; and the meeting did not take place in the formal environment of JSC Baltic International Bank, but informally over dinner, at Claridge's Hotel.[74]

(ii) The evidence in Belokon 1

148. In his witness statement, Mr. Belokon says:[75]

> "During further celebrations on 25 June 2010, at Claridge's Hotel, we discussed a number of matters in very general terms, including developing the Stadium to meet Premier League requirements, [Blackpool FC's] future in the Premier League, and the potential profits that would flow from this. Our discussions were, in accordance with the informal setting, not of a nature as to lead to concluded decisions or agreements. Again, Owen talked about ways for both of his companies and mine to receive cash from the Club, out of the new Premier League money. While I was happy for the shareholders to receive an appropriate dividend, I again made clear that the majority of the money should be used to consolidate the Club's success."

(iii) The evidence in Malnacs 1

149. In his witness statement, Mr. Malnacs says:[76]

> "38. At a further dinner to celebrate the Club's promotion I met with Mr. Belokon, Karl Oyston and Owen Oyston at Claridge's hotel in London. At that event, Karl Oyston proposed that the East Stand in the Stadium needed to be re-developed to increase capacity and maximise the revenue that [Blackpool FC] would earn from ticket sales, as a result of the higher attendances that were expected during the Premier League season. The Oystons also explained that it was necessary to build a media centre before the Premier League season began in August, in order to comply with Premier League requirements. The East Stand was owned by Segesta and outside of the scope of the [Second South Stand Agreement]. However, as a major shareholder in the Club, we expected VBFA to be presented with financial information by Segesta on plans, like these, to develop the Stadium and we expected to agree the details before any work began. This was required by Clause 8 of the Shareholders Agreement. Mr. Belokon and I listened to the proposals at Claridge's, which were of a general nature.
>
> 39. The meeting at Claridge's was an informal occasion, not a [Blackpool FC] Board meeting, and no resolutions were passed or minutes taken. While we had planned to hold a Board meeting that day at Mr. Belokon's London offices, ultimately this did not take place. I took the conversation with the Oystons at face value: that they were informing us of their intention to develop the East Stand. While there had been some discussion about how to use the additional funds available to [Blackpool FC] this did not include business plans or budgets for using this money to finance the East Stand redevelopment. A number of proposals were mentioned but none were agreed."

[74] Transcript Day 5, pp.58-60.
[75] Paragraph 36 of Belokon 1.
[76] Paragraphs 38 to 39 of Malnacs 1.

(iv) The evidence in OJO 1 and KO 1

150. The meeting is addressed in neither Mr. Owen Oyston's, nor in Mr. Karl Oyston's, witness statement.

(v) The "aide memoire" attached to Mr. Owen Oyston's email of 22 September 2010

151. In terms of a document evidencing what was said at this meeting, there is what purports to be a note, by Mr. Owen Oyston, of what was (or some of what was) discussed.[77] That note was attached to a lengthy email sent by Mr. Owen Oyston to Mr. Malnacs on 22 September 2010 (which I consider further at the appropriate point in the chronology) in which Mr. Owen Oyston wrote:

> "Subject to Contract
>
> Dear Normunds
>
> I enclose the list of liabilities and debtors of [Blackpool FC] and [Segesta] which [Mr. Dyer] sent to you on the 24th August 2010 showing £6.6m owing to [Mr. Belokon] and companies and £5,983,682 owing to me and my companies. I assume your request for this information from [Mr. Dyer] was stimulated by my discussions with [Mr. Belokon] concerning the repayment of various monies.
>
> You may recall that [Mr. Belokon], yourself, [Mr. Karl Oyston] and I met for an informal meeting at Claridges Hotel on the 25th June 2010 and after a private discussion with [Mr. Belokon] it was agreed verbally to repay monies to [Mr. Belokon] and his companies and monies to me and my companies. It was [Mr. Karl Oyston] who proposed this initially and I embraced it because I thought it demonstrated fairness and reward for the parties who had supported the Club in difficult times. [Mr. Karl Oyston] also felt that that it would make the Football Club so much stronger when it had discharged its liabilities and borrowings.
>
> …
>
> I am sure that [Mr. Belokon] will recall that I asked him if he wanted the repayment of the various loans that he and his companies had made to [Blackpool FC] and Segesta and he replied in the affirmative.
>
> Following our private meeting, I then wrote a brief note to [Mr. Belokon] which eventually I decided not to send but instead to read to him at our next meeting, so it became an aide memoire.[78] I enclose this document now, which I used when reciting my proposals to [Mr. Belokon], which I thought he had approved. Indeed, I have discussed these repayments as well as other private matters relating to the possible floatation of the Club etc, on other occasions with [Mr. Belokon]. Again, I was reluctant to put anything in writing to [Mr. Belokon] concerning such a delicate matter, but with [Mr. Belokon's] agreement I have now instructed an agent who is seeking further information before proceeding with the task at hand. (ie the flotation or sale of [Blackpool FC]

[77] This is the only purportedly contemporary or near contemporary document recording the relevant discussions. For completeness, I should mention and email exchange between Mr. Malnacs and Mr. Karl Oyston regarding Mr. Steele, but that does not help on the matters at issue.

[78] Mr. Owen Oyston could not specifically recall whether the aide memoire had been read to Mr. Belokon; nor could he explain why the document could not simply have been sent to Mr. Belokon (Transcript Day 13, pp16 to 21). It was accepted that Mr. Belokon would have had knowledge of the aide memoire after it was received by Mr. Malnacs.

The reason why I did not send it and did not discuss it at the board meetings is, to be blunt, that I was concerned that a certain gentleman might leak the information inadvertently to third parties and I felt it was mutually beneficial to both [Mr. Belokon] and myself in not airing our discussions and agreements publicly.

…

I did advise [Mr. Belokon] also that I was seeking a loan from [Blackpool FC] to deal with certain personal matters, but until now I had decided not to ask for a loan, but to fall in line with my agreement with [Mr. Belokon] to repay the outstanding moneys.

In short, I am simply implementing what we agreed to do at various meetings, being the only sensible course of action to take, especially now we have decided to either float or sell [Blackpool FC]. It makes absolute sense to settle all these matters as it won't make one jot of difference to the price of the shares or the purchase price that we might receive. Indeed it may well encourage a buyer to pay more because we have a clean balance sheet.

After so many years of having such a good relationship between the board members, I am very sorry that there has been such a misunderstanding."

152. Mr. Owen Oyston's attached "aide memoire" concerning the meeting on 25 June 2010 read as follows:

"**Draft 1 : 30th June 2010**

My Dear [Mr. Belokon],

May I confirm the discussions and agreements that we reached in principle at our informal meeting at Claridge's Hotel in London on the 25th June 2010?

This is not a comprehensive list but covers some of the main points which will come into operation after receipt of sufficient monies coming into [Blackpool FC] from the Premier League.

1. It was agreed to repay to [Mr. Belokon] or to his Companies certain monies as follows:

   (A) The sum of £1,000,000 loaned to [Segesta] under the short form of Agreement dated the 5th June 2006

   (B) The sum of £850,000 being part of the monies the subject of the loan to [Segesta] under the Agreement dated the 14th 2007.

   (C) On releasing the South Stand and South West Corner Stands back to Segesta, Segesta will repay £4,750,000 subject to tax advice from Baltic International Bank ("BIB") and [Mr. Cherry] and/or [Mr. Belton].

2. It was agreed that Segesta will complete the South Stand and the South West Corner stand and erect the new temporary de luxe stand with roof etc to accommodate over 5,000 people and the media centre.

3. [Blackpool FC] will loan £13,000,000 to Segesta to carry out the above and its other obligations agreed at the meeting."

153. The "aide memoire" thus purports to show that the parties had reached a number of agreements "in principle" regarding the use of the Premier League funds. However, there is no evidence as to when the "aide memoire" was composed. It is entirely possible that it was written significantly after the event, with the aim of persuading the Belokon Side, in conjunction with the 22 September 2010 email, that significant disbursements out of Blackpool FC had been agreed. Certainly, the "aide memoire" stands in significant contradistinction with the witness statements of Mr. Belokon and Mr. Malnacs, which recall a discussion with regard to the spending of Blackpool FC's money, but without the degree of firmness of conclusion expressed in the "aide memoire". With that in mind, I turn to the cross-examination of the various witnesses.

(vi) Evidence given in cross-examination

154. Mr. Belokon's evidence[79] was that there was a discussion about the monies coming into Blackpool FC, including the paying of dividends, but he recollected a disagreement between himself and the Oyston Side with regard to investment in the club:[80]

> "…unfortunately, that's where we disagreed with Oystons family. They thought they didn't want to invest any more and they thought that the amounts that already had been invested were enough…"

155. Mr. Belokon recollected seeing or having summarised to him – after the event, and probably by Mr. Malnacs – the aide memoire.[81] His view was that "we had a discussion but we didn't come to a final conclusion".[82] To be fair, the aide memoire does not itself purport to set out final conclusions or decisions, but I consider that Mr. Belokon's recollection of the Claridge's meeting is that the aide memoire over-stated the "agreements that we reached in principle" (to quote from the opening words of the aide memoire). The furthest Mr. Belokon was prepared to go was that the matters in the aide memoire were discussed.[83]

156. Mr. Malnacs's evidence was along similar lines. He accepted that promotion to the Premier League entailed work being done to the stadium and that the Belokon Side was not, in principle, opposed to Blackpool FC spending this money. However, this was an informal dinner, and he expected matters to be discussed and agreed in greater detail and with more formality:

> **Q (Mr. Steinfeld, Q.C.)** That was, as we know, something like £1.9 million in all that was paid out on that. That was something which was essentially agreed, wasn't it, that £1.9 million – you didn't know the exact sum, but that the work was agreed to be done at that meeting?

[79] Transcript Day 3, pp.15*ff*, 26*ff*.
[80] Transcript Day 3, pp.16-17.
[81] Transcript Day 3, pp.29*ff*.
[82] Transcript Day 3, pp.31-32.
[83] Transcript Day 3, pp.32-35.

A (Mr. Malnacs)	We did not object. So basically, I would say "Yes".
Q (Mr. Steinfeld, Q.C.)	Yes.
A (Mr. Malnacs)	But, of course, with the assumption that later all agreements and paperworks would be done.
Q (Mr. Steinfeld, Q.C.)	Yes. They might have needed to – one of the things that would have to be negotiated or, if I can put it this way, dealt with later -
A (Mr. Malnacs)	You don't negotiate these things when you are wining and dining.

157. Mr. Malnacs was absolutely clear that there were no agreements in principle at this meeting, at least in his presence.[84] Indeed, Mr. Malnacs' view was that some of the matters listed in the aide memoire were not even discussed at this dinner.

158. Mr. Owen Oyston and Mr. Karl Oyston, on the other hand, sought to attach a higher degree of formality or significance to what was said at the meeting. Thus, the reference, in the aide memoire, to a loan of £13 million to Segesta was used as a basis for contending that the Belokon Side had been put on notice of the intention to pay £4.2 million to Protoplan:[85]

Q (Mr. Green, Q.C.)	So your position is that those words themselves [i.e. Blackpool FC will loan £13,000,000] were the notification or are you saying that you have a recollection that at the meeting Mr. Malnacs and Mr. Belokon were expressly told £4.2 million will be paid to discharge Segesta's debt to Protoplan?
A (Mr. Karl Oyston)	No, they were told that [Blackpool FC] will loan £13 million to Segesta to carry out the above and its other obligations agreed at the meeting. So that's as far as it goes, but, yes, that's what I would say.

(vii) Synthesis

159. To the extent that the Respondents seek to contend that any agreement, even an agreement "in principle", was reached at this dinner on 25 June 2010, I reject that contention. I consider the aide memoire to be a relatively unreliable list of what may or may not have been discussed. It is an *ex post facto* attempt – produced by Mr. Owen Oyston to persuade the Belokon Side to his point of view – to render as relatively formal decisions (even if "in principle") what were in fact highly informal and relaxed discussions.[86] If there had been any serious intention on the part of the

[84] Transcript Day 5, pp.63*ff*.

[85] Transcript Day 11, p.78. As well as other payments: see the cross-examination of Mr. Owen Oyston at Transcript Day 13, pp.28 to 30 and 41.

[86] It is not necessarily the case that Mr. Owen Oyston was deliberately setting out to deceive. It is perfectly possible that he persuaded himself that this is what happened. In an email dated 21 September 2010, internal to the Oyston Side, Mr. Owen Oyston refers to his "verbal agreement" with Mr.Belokon as to the repayment of monies to Mr. Belokon. Given that in other internal communications, Mr. Owen Oyston was extremely frank

Oyston Side to get the Belokon Side to commit to certain spending, then there would have been a discussion and a record of that discussion along the lines of the minutes described at paragraph 115 above (i.e., those of the Dorchester meeting).

160. In my judgment, there was a deliberate decision at the time on the part of the Oyston Side to keep the discussion informal, because Mr. Owen Oyston knew that a specific discussion would result in disagreement, given his plans for the Premier League monies coming to Blackpool FC.

(24) Preparations for making payments out

161. In an email to Mr. Belton dated 26 July 2010, with the subject "Trust Fund", Mr. Owen Oyston asked Mr. Belton:

> "Can you confirm that everything is in order with this transaction and we can now proceed to draw out £6.9m from [Blackpool FC] to Segesta and other companies as on the 6th August 2010?"

This email makes no mention of the intended purpose of the £6.9m drawing. It is addressed to no-one on the Belokon Side.

162. Mr. Belton replied saying:

> "Yes. Funds can be withdrawn from [Blackpool FC] to Segesta and then to the various companies but there should be letters between the companies asking for funds to be paid to them to show an audit trail".

163. On 2 August 2010, Mr. Cherry emailed Mr. Owen Oyston:

> "Now that the time is upon us when the first receipt of monies from the Premier League will be forthcoming it is worth reiterating the strategy that we put in place in June.
>
> As you remember we transferred your Protoplan shares into a trust. That triggered a capital gain at the favourable rates that existed of 18% before the budget. That gain will be due for payment on the 31st January 2012.
>
> The second part of the strategy was for Segesta to repay Protoplan the outstanding monies due of around £4.6million. [Mr. Dyer] has the exact amounts.
>
> In addition Segesta was to repay around £900,000 owed to Zabaxe and £250,000 owed to [Mr. Owen Oyston] personally. Both of these amounts would be transferred to [Mr. Owen Oyston] in settlement of his loan accounts.
>
> You would need to give [Mr. Dyer] instructions to make the transfers when the Premiership monies are received."

---

about his intentions, this email suggests that, by 21 September 2010 at least, Mr. Owen Oyston has indeed persuaded himself that the aide memoire reflected what had been agreed.

164. In order to produce the "audit trail" mentioned by Mr. Belton (see paragraph 162 above), demands for repayment (dated 3 August 2010) were produced. The first of those letters is expressed to be from Mr. Owen Oyston personally to Blackpool FC and it reads as follows:

> "As you are aware, I have loaned to [Blackpool FC] various sums over the past few years. These loans were made because of my love for the Football Club without any thought of repayment.
>
> Now that we have achieved our dream of entering the Premier League I am seeking repayment of the loan moneys totalling £275,942.28 and I therefore give notice of calling in the loan and would be pleased to receive the funds within the next thirty days."

165. The second letter is expressed to be from Ms. Conlon on behalf of Protoplan to Segesta and it seeks repayment by Segesta of the debt of £4,200,581.63 owed by it in connection with the construction by Protoplan of the North, North West and West Stands of the stadium in 2003.

166. The third letter is expressed to be from Ms. Conlon on behalf of Zabaxe to Segesta and it seeks repayment by Segesta of the debt of £944,652 owed by it in connection with a loan.

167. All three of these letters are described on their face as "draft", and it is not definitely known whether "final" versions were produced. None were before the Court, but there is some later reference (see paragraph 176 below) to these letters from which it can be inferred that they were, indeed, sent.

168. Mr. Owen Oyston produced a file note dated 5 August 2010 in connection with these various debts entitled "Segesta/[Blackpool FC] repayment of moneys to [Mr. Owen Oyston]/Zabaxe/Protoplan" in which (*inter alia*) he noted:

> "…
>
> 6. £4,200,581.63 owed to Protoplan for construction.
>
> 7. £944,652 owed to Zabaxe.
>
> 8. RD charged with raising these cheques after clearing with HB/JR.
>
> …
>
> 10. Have agreed to pay [Mr. Belokon] the money he put into the south stand over the year 2010/11 rather than from this first tranche.
>
> 11. [Mr. Owen Oyston]/[Mr. Cherry]/[Mr. Belton]/[Mr. Dyer]/ to meet over dinner in private room next Thursday. Meet 2pm at Clifton Arms. [Mr. Dyer] will prepare an agenda for the meeting. [Mr. Rawlinson]/[Mr. Stephenson] to attend.
>
> 12. All funds [Mr. Karl Oyston] needs must come out of Segesta apart from the bonuses. Segesta cannot pay these direct as in the future if there are problems creditors could come back against [Blackpool FC]."

169. To the extent that this file note represents that the Belokon Side was in agreement with these steps (and the reference in point 10 to an agreement with Mr. Belokon tries to give this impression), the file note is misleading. None of these matters had been agreed with the Belokon Side. None of the communications referenced in this Section were seen, at the time, by the Belokon Side.

(25) The meeting on 12 August 2010

170. Item 11 of Mr. Owen Oyston's file note (paragraph 168 above) referred to a meeting to be held between Mr. Owen Oyston, Mr. Cherry, Mr. Belton and Mr. Dyer "over dinner in private room next Thursday". This meeting took place on 12 August 2010. There is a handwritten note of (some of) the discussion at that meeting. The author is unknown. Reproduced, but in typed not handwritten form, the material parts of the note read:

> "Flip 850 (1), 1000 (1), 4750 (2), repayments to VB
>
> Repayments to PP 4.2 (1), OJO/ZAB (2) – schedule staggered"

These lines appear to relate to the "strategy" of making repayments to VB Football Assets on the one hand and to Mr. Owen Oyston and his associated companies on the other.

171. Obviously, the content of such a rough, handwritten, note must be treated with caution, simply for fear of misreading something that is not pellucid. With that caution in mind, my reading of the first quoted line is that the references to repayments of "850", "1000" and "4750" to "VB" are references to the repayments of the debts of £850,000, £1,000,000 and £4,750,000 owed by Segesta to VB Football Assets pursuant to the Second Vlada Loan Agreement, the First Vlada Loan Agreement and the Second South Stand Agreement respectively. Similarly, I consider that the second quoted line is likely to relate to the repayment of debts owed to Protoplan (for which the amount of £4,200,000 is specified), Mr. Owen Oyston and Zabaxe, which are, of course, the repayments contemplated in the email correspondence and letters of demand set out above. The numbers in brackets ("1" and "2"), which are circled in the handwritten note, may be an indication of the order in which the repayments were going to be made.

(26) Mr. Karl Oyston's position as chairman

172. Although, ultimately, he remained in place as chairman of Blackpool FC, on 18 August 2010 Mr. Karl Oyston emailed Mr. Malnacs, Mr. Belokon and Mr. Owen Oyston to explain that by reason of his personal circumstances (bankruptcy), he had to resign as chairman. Given that Mr. Karl Oyston remained in place, the point is of marginal importance, save to note that Mr. Cherry was concerned that, as a result, the Oyston Side might lose control of the Blackpool FC board. In an email to Mr. Owen Oyston dated 19 August 2010, Mr. Cherry noted:

"…the remaining directors of [Blackpool FC] are yourself, [Mrs. Oyston], Gavin [Steele], Normunds [Malnacs]. Without a chairman it means the Oyston family no longer control this Board. You may wish to consider appointing a nominee as soon as possible."

(27) Mr. Malnacs' query regarding the liabilities of Blackpool FC

173. In an email dated 24 August 2010, Mr. Malnacs asked Mr. Dyer for a statement of Blackpool FC's liabilities "to Segesta and related companies".

174. Mr. Dyer responded promptly on the same say, providing figures not merely for Blackpool FC, but also for Segesta (which Mr. Malnacs had not requested):

"[BLACKPOOL FC]

	£
[Mr. Owen Oyston] Loan account	275,942
SEGESTA	
[Mr. Owen Oyston] Loan account	562,506
[Protoplan] ([Mr. Owen Oyston])	4,200,582
[Zabaxe] ([Mr. Owen Oyston])	944,652
[Ms. Belokon] Loan account	1,850,000
[VB Football Assets] Loan account	4,750,000"

175. This list would not have troubled Mr. Malnacs. The only liability of Blackpool FC that Mr. Dyer had identified was that owed to Mr. Owen Oyston – and this had been identified prior to the Subscription Agreement. The other figures were all liabilities <u>of Segesta</u>. It will, however, be noted that two of these items – the Protoplan debt of £4,200,582 and the Zabaxe debt of £944,652 – were to be discharged by Blackpool FC, according to the discussions that had taken place on the Oyston Side. That point was not made by Mr. Dyer to Mr. Malnacs.

(28) The payment of the £4.2 million Protoplan debt and the initial response of the Belokon Side

176. In an email dated 25 August 2010, Mr. Dyer informed Mr. Cherry, Mr. Belton and Mr. Owen Oyston that "I am going to action the 4.2m repayment from Segesta to Protoplan per that company's letter seeking repayment of all their outstanding monies". This rather suggests that the draft letters of demand referenced in paragraph 167 above were actually sent.

177. The sum of £4,200,604.63 was paid out of Blackpool FC's account with NatWest (account number 91854954) on 17 September 2010.

178. It is to be inferred that Mr. Malnacs queried this payment – although his initial query was either made orally to the Oyston Side or else has not survived in the documents before me.

179. In any event, Mr. Owen Oyston sought to justify this payment. On 22 September 2010, Mr Owen Oyston emailed Mr. Malnacs in the terms set out in paragraph 151 above, referring to the Claridge's meeting, seeking to explain the payment, and enclosing the 30 June 2010 file note set out in paragraph 152 above. Mr. Owen Oyston's email also referred to the list of liabilities of Blackpool FC and Segesta referenced in paragraph 174 above.

180. On 23 September 2010, Mr. Malnacs wrote a memo to Mr. Belokon, Mr. Owen Oyston and Mr. Karl Oyston in the following terms:

> "Following our earlier discussions, this is a formal notification that on September 17, 2010 Blackpool [FC] has made a payment in amount of GBP 4,200,581.63 to Segesta…This transaction seems to be out of scope of the concluded agreements between the two major shareholders. Therefore, I would like to draw your attention for a need for a board meeting to resolve the issue and sign necessary agreement, if deemed necessary."

181. Mr. Karl Oyston responded in an email the next day, 23 September 2010:

> "Hi all, please find below a schedule of the monies I wish to repay to the shareholders along with the timing of payments. This process will involve the dismantling of at least two of the shareholder agreements along with no doubt many other issues that Normunds, Rod and myself will work on so that solutions and ongoing policies can be agreed. To that end I have asked Rod to prepare a schedule of income that should rest with both [Blackpool FC] and Segesta along with a suggestion on how future joint costs should be apportioned. I have asked Rod to conduct an exercise to evaluate the best way to deal with the areas that [Blackpool FC] currently uses within the stadium that are also none match day income generators and I will formulate a strategy with Normunds regarding these.
>
> 1/ 4,200,000 Segesta paid
>
> 2/ 1,850,000 Vlada Jan 10th 2011
>
> 3/ 4,750,000 VBFA Jan 30th 2011
>
> 4/ 562,506 OJO Jan 30th 2011
>
> 5/ 944,652 Zabaxe Aug 15th 2011
>
> 6/ 275,942 OJO Aug 15th 2011
>
> The concept is relatively simple and the issues are also relatively easy to resolve. I would like to propose that following our internal deliberations we have a meeting to discuss the issues we identify along with any others we fail to."

182. It will be noted that items 2 and 3 involve payments back to the Belokon Side, and that the payments to the Oyston Side and to the Belokon Side are roughly equivalent.

Thus, the payments to the Oyston Side (Items 1, 4, 5 and 6) total £5,983,100, whilst the payments to the Belokon Side (Items 2 and 3) total £6,600,000. Of course, as the list acknowledges, apart from the Protoplan payment (Item 1), none of these other payments had been made – they were all executory.

183. Mr. Malnacs acknowledged receipt the same day, but said nothing of substance in response.

184. It is plain that, notwithstanding Mr. Owen Oyston's attempts to justify the payment, the payment had not been agreed by the Belokon Side. Paragraph 39 of Belokon 1 states:

> "Normunds [Malnacs] informed the other board members by way of a written memo that this payment had never been approved and was out of the scope of the [Subscription] Agreement. I then asked Karl and Owen to meet me in Latvia to discuss why this payment had been made…"

185. I accept this evidence.[87] However, given the terms of Mr. Karl Oyston's 24 September 2010 communication, it is clear that far more than just the payment of the £4.2 million would be in issue: the Oyston Side was proposing a whole series of payments out of Blackpool FC funds.

(29) The meeting in Riga, Latvia, on 7 October 2010

186. The meeting in Latvia is not discussed in either OJO 1 or in KO 1. Mr. Belokon describes it in paragraph 39 of Belokon 1:[88]

> "…I made it very clear at our meeting in Riga on 7 October 2010 that the Oystons' actions were unacceptable and not in the spirit of our equal partnership. The Oystons persisted in maintaining that the payment was in line with the agreements concluded between the parties. Notwithstanding my objections at this meeting, the money was not paid back into the Club."

187. Paragraph 55 of Malnacs 1 states:

> "Mr. Belokon arranged a meeting with Karl Oyston and Owen Oyston in Riga on 7 October 2010 to discuss the payment, which I also attended. It was clear to me before that meeting and at all times that Mr. Belokon had never approved the contents of Owen's aide-memoire. It was during this visit that Karl and Owen Oyston explained that the purpose of the £4.2 million payment was to settle an undisclosed debt owed by Segesta to Protoplan Limited, a company owned by Owen Oyston. Mr. Belokon was not happy with the Oystons' actions and made this clear at this meeting. The Oystons seemed to think that somehow the payment of £4.2 million was within the spirit of the agreements between [VB Football Assets] and [Blackpool FC] and Segesta."

[87] Which is consistent with the evidence Mr. Belokon gave in cross-examination: Transcript Day 3, pp.39 to 40.
[88] See also Transcript Day 3, p.40, to similar effect.

188. In cross-examination, Mr. Malnacs stressed that the removal of the £4.2 million was a serious matter.[89]

189. I accept that Mr. Belokon's purpose in calling the meeting was to make clear that he had not sanctioned and that he disapproved of the payment away of the £4.2 million. However, to the extent that he and Mr. Malnacs suggested that this was the only matter discussed in Riga (and I am not at all sure that they were suggesting this), I reject that. As I have already noted in paragraph 181 above, Mr. Karl Oyston was proposing a whole series of payments out – to both the Oyston and the Belokon Sides – and I find it inconceivable that these payments were not discussed.

190. This conclusion is supported by a whole series of emails, both between the parties and within each side, debating how the relationship between the Oyston Side and the Belokon Side might be restructured. These documents show a wide-ranging debate between the two sides seeking to resolve the question of, essentially, how the Premier League monies should be used and (relatedly) how their relationship should be rearranged. I consider that these communications reflect the sort of discussion that took place in Riga.

191. It is unnecessary to set out the detail of the proposals going between the Oyston and the Belokon Sides. That is because no way forward was agreed, either at the meeting in Riga, nor in its immediate aftermath. The last, Riga-related communication was on 13 October 2010, without common ground having been found. However, the difference in viewpoint between the Oyston Side and the Belokon Side was now clear to the Belokon Side. As I have found, I consider that the Oyston Side had been conscious of the difference in view since the Dorchester meeting in May 2010.

(30) Debate regarding the nature of the Protoplan payment

(i) Communications between the Oyston Side and the Belokon Side

192. Between 13 October 2010 and 11 November 2010 there are no written communications between the Oyston and the Belokon Sides of any significance. On 11 November 2010, Mr. Malnacs sent a "slightly amended balance sheet, as, in my opinion, it more precisely reflects reality". The draft balance sheet has not survived in the documents, but indication of what it contained can be gleaned from Mr Dyer's response:

> "The balance sheet that I sent through does reflect reality and follows advice from the senior partner [that is, Mr. Cherry] at [Blackpool FC]'s external auditors. The amounts forwarded to Segesta, for payments and construction costs relating to the stadium development, are shown as advanced management fees.
>
> This will have significant tax benefits to [Blackpool FC] when these fees are realised through the P&L as management charges from Segesta (subject to the Boards approval) as they will be taxable expenses and hence give [Blackpool FC] future savings in corporation tax."

This email classified the Protoplan payment as an advanced management fee.

[89] Transcript Day 5, p.104.

193. Mr. Malnacs' response was as follows:

> "Thank you for useful explanation. However, what is certain difference between 1,5M advance which was used for the construction of the East Stand and was approved the board and 4,2M payment whose status is still to be resolved."

194. From this, it is clear that the Protoplan payment to Segesta remained to be approved.

(ii) Debate internal to the Oyston Side

195. At around the same time, there were a series of emails internal to the Oyston Side, apparently seeking to justify the Protoplan payment and to consider further payments out of Blackpool FC:

i) The first email is from Mr. Cherry to Mr. Owen Oyston:

> "Dear Owen
>
> You have asked me to comment on the 2006 agreement between yourself and Valerie Belokon. As you have the time when the agreement was signed there were outstanding loans between yourself and BFC and also between Segesta (then BFC Properties Ltd) and BFC.
>
> In addition there was an outstanding debt (not a loan) between Protoplan and Segesta for the building of the original two stands.
>
> The loan agreement provided that no monies outstanding between BFC and Segesta should be repaid other than out of the proceeds of the rental income from the PCT. The mechanism was that the rental income belonged to Segesta but Segesta assigned the right to BFC which then used the money to repay the loan account between BFC and Segesta then use the monies to pay Protoplan. Unfortunately Protoplan was not party to the agreement and had always expected that Segesta would obtain bank borrowing to repay the cost of building the stadium. This proved difficult for Segesta and Protoplan was forced to take a long-deferred repayment of its debt. At May of this year Protoplan was still owed around £4.2 million.
>
> When the club obtained promotion to the Premier League it was required to carry out in a very short time a number of building projects including building a new stand and upgrading certain facilities and finishing the fit out of the south and south-west stands. Due to the outstanding debt with Protoplan it was felt that it would be difficult if not impossible to find a firm willing to undertake this work if the previous construction work was not fully settled. The decision was made therefore to loan monies from BFC to Segesta to repay the Protoplan debt and fund the construction and upgrade of the stadium.
>
> My understanding is that this does not contravene the 2006 agreement as all the loans outstanding at that time have been dealt with in accordance with the agreement.
>
> This is an entirely new loan say the 2010 loan which will be shown as such in financial statements. It is up to BFC and Segesta to decide how the loan should be repaid and whether or not interest should be payable by Segesta. However I would point out that BFC are the main beneficiary of the work done initially by Protoplan and then later to complete the stadium as without this work they would not be able to

play in the Premier league and qualify for the substantial broadcasting payments and prize monies of around £100,000,000 which will follow. As such the funding of the construction works and repayment of an outstanding trader debt to Protoplan seems a small price to pay.

I would also point out that when the original agreement was drafted in 2006 neither party envisaged that the club would reach the Premier league in 2010 nor that the prize for doing so would be so great.

Please let me know if I can assist further."

ii) The second email is from Mr. Dyer to Mr. Owen Oyston:

"I currently have the amounts paid to Segesta of 4.2M and the 1.5M for the East Stand has separate loans to Segesta on the balance sheet.

Following recent discussions with [Mr. Owen Oyston] and an in-depth discussion with Ian Cherry, there have been suggestions on how these should be recorded in the accounts of [Blackpool FC].

Ian's conclusion is that these should remain on the balance sheet as loans but should be consolidated into one low from [Blackpool FC] to Segesta of 5.7M titled 'Stadium development loan 2010' as Segesta needed these loans to complete paying for and constructing the Stadium for the benefit of [Blackpool FC].

Then Segesta can charge management charges for the stadium use, which can be used to offset elements of these loans or even be paid.

A loan agreement between [Blackpool FC] and Segesta therefore for the above amount to reflect this does need to be drawn up.

The East stand alone cannot be taken out of the balance sheet and put through the P&L as a management charge cost item as we had previously discussed, as these costs may be deemed to be of a capital nature.

In accordance with the above I have prepared the attached draft balance sheet, which after approval I will circulate to Normunds and the Board.

As far as effect on the profit forecasts I will also be circulating, I will make it clear that they could be subject to management charges from Segesta this year for use of the stadium which would reduce the profit, or shall I leave that out for now for the Board to discuss?"

iii) The third email is from Mr. Cherry to Mr. Owen Oyston:

"Owen

1. The [Blackpool FC] will receive at least £100,000,000 income from the Premier League in broadcasting rights and prize monies even if they finish last and are relegated after this year. That income is dependent upon the stadium meeting certain

criteria. The monies advanced have enabled this to happen. And a relatively small at £6 Million in comparison to the rewards.

2. Protoplan is a building company set up to develop the initial two parts the stadium which were completed in 2002. Any debt owed to Protoplan is a trade debt.

3. Protoplan never received any interest on the outstanding debt.

4. It would have been impossible to carry out the additional works with existing debt to the constructor of the stadium unpaid after 8 years.

5. [Blackpool FC] has never paid any rental income to Segesta for the use of the Stadium.

Hope this is sufficient."

196. In addition Mr. Rawlinson sent to Mr. Owen Oyston a detailed memorandum regarding the effect of the various agreements with the Belokon Side. Mr. Rawlinson was asked and sought to answer two questions:

i) The first concerned the extent to which Blackpool FC was restricted in dealing with the incoming funds from the Premier League.

ii) The second was whether there was any obligation upon Blackpool FC to share any of these funds with the Belokon Side.

Mr. Rawlinson's conclusion was as follows:

"In summary, in my opinion and subject to [Blackpool FC] complying with normal Company Law requirements, it can lend whatever it wants, to whomsoever it wants, whenever it wants, without the concurrence, agreement or approval of VB [Football Assets] and neither [Blackpool FC] nor Segesta has any obligation under either the Principal Agreement or the Loan Agreement to share any of the Premier League funds with VB [Football Assets] or its Associates."

197. In an email dated 19 November 2010, Mr. Owen Oyston wrote to Mr. Karl Oyston in the following terms:

"Further to our conversation I have asked Sarah to arrange a convenient time when Ian, you and I can sit down and formalise the way forward over the next 5 years. I know we have had various discussions on the subject but we now need Ian to produce a report which will spell out the best way forward (e.g. Segesta to be paid by way of management charges from Blackpool [FC] etc). You might also spell out that Segesta has every right to borrow money from its subsidiary (Blackpool [FC]) but in the interest of fairness and diplomacy (nothing to do with business) we will consider the various routes for the future which we can then discuss the next Board meeting.

What is nonsense, as we said, is that the minority shareholder should seek to control the company and the significant resources that have come into the company."

(31) A (further) proposal from the Belokon Side

198. On 23 November 2010, Mr. Malnacs sent to Mr. Karl Oyston "the first draft proposal on how we could proceed with the various issues. I have listened to your dad, Valeri and I try to take into account all parties interests. This is definitely not the final product, just first draft of my proposal. Please, have a look and then let's discuss. Like I wrote earlier, it would be good to meet you on Sunday or early next week, so we could move forward and prepare final paper by Saturday." Obviously, this was a continuation of the discussions the parties had had in Riga and immediately thereafter.

199. The discussion paper which accompanies this email stated:

"**Investment restructuring/payment back to shareholders**

You and your dad has repeatedly stated that you want shareholders investments paid back. The major disagreement is about what constitutes "investment". Since Valeri became shareholder, the shareholders have made the following investments: Valeri: equity 1,8m, Vlada's gift (payment for remaining 30% of shares) 850k, Vlada's loan to Segesta 1,85m, SS construction 4,75m, Trust fund 1,5m; your dad (Segesta) has invested 1m in SS construction. Valeri and your dad agreed that they start at a blank sheet, with [Blackpool FC] without liabilities except loans to [Mr. Owen Oyston] (400,136) and Segesta (3,793,719) which should be repaid only from serviced income accommodation revenue.

The three payments you listed (4,2 to Protoplan, 562K to [Mr. Owen Oyston], 944 to Zabaxe) as "investments", all incurred before Valeri's involvement and are not mentioned in the signed agreements, hence they should not be repaid by the [Blackpool FC] football revenues. I understand your dad's desire to cover all pre-Valeri football losses, but then it should be explicitly agreed with Valeri. Thus, at the moment, from Valeri's point of view 4,2m [Blackpool FC] transfer to Segesta is a loan whose status and terms should be clarified.

From discussions with Valeri, I understand that he is ready for certain concessions. Prior to his involvement, [Blackpool FC] had accumulated transferable loss of 10,8m (in accordance to Rod) which could be considered your dad's benefit. At 28% corporate income tax this would have brought 3,024m in tax savings to Segesta. Then it is no secret that [Blackpool FC]'s financial success is down to Valeri's beliefs and readiness to risk money and your ability to fight players wages and agents. I think your dad and Valeri agreed to pay you a bonus of 1m. the two components together would constitute slightly over 4m. maybe with some bargaining Valeri would agree to declassify 4,2m as expense for [Blackpool FC]? This expense would also help us reduce your profit for the year, with no corporate tax payable assuming we stay up and pay bonuses.

But then your plans to repay the other two amounts should be scratched.

Valeri has stated that he does not wish to dismantle the existing agreement, but is happy to negotiate and conclude new agreements. This implies that Segesta would start repaying the loan to Vlada (2 x 92,500 for 2009 and 2010), and to VBFA for South Stand profit for season 2009/10 (estimated at 63,361). Segesta would also be entitled 63,361.

Shareholding

Since this season will definitely use up accumulated loss of the previous years, there is no reason why we should not formally increase Valeri's shareholding to parity with your dad. We should set a timetable for this.

…

East Stand

East Stand is being financed with [Blackpool FC] money, with total cost estimate about 1,9 million. [Mr. Owen Oyston] insists that the stand should be the property of Segesta who owns the land and planning permission. In this case, from accounting point of view, this 1,9 million is considered [Blackpool FC] loan to Segesta. Since [Blackpool FC] is the only beneficiary, it would make sense that [Blackpool FC] "writes off" the debt. It could be done by Segesta invoicing [Blackpool FC] for management services in the amount of construction costs spread over say 5 years (roughly 400,000 a year). New agreement for this should be drafted. All income from East stand would be property of [Blackpool FC] (initial agreement Article 8(ii) and annex 6).

…

Liquidity management and investments

Good financial performance will leave us with spare cash.

We agreed to invest some company cash into investments. I think we already agreed that we will diversify our investments and avoid risky assets. Decisions would be made on each case separately.

It seems to me that the two shareholders are happy to take out some money in form of profit. We should find some ways to take profit out without tax and balance sheet implications – to reduce tax burden and do not spoil balance-sheet (create liabilities)"

200. Mr. Karl Oyston's response to this draft was quite negative:

"Normunds, before we go any further I want to take some strategic financial planning advice initially from Ian Cherry and thereafter from whoever answers the points that we need further advice upon. It seems nonsensical that we attempt to resolve any issue without being in possession of this information. I would suggest that we requested an adjournment of the board meeting pending this advice and I have asked for the meeting to be arranged by Rosemary.

I have read your first draft which perhaps underlines how far the board is split on where we go from now and how we deal with the massive influx of cash and unprecedented profits. My feeling is that it should be dealt with as the shareholders wish and neither should stymie or seek to control the other and I believe this is possible. Let me know if you agree to the advice prior to our meeting? I'm happy in the meantime to continue working on the draft."

201. Mr. Malnacs responded:

"Of course, advice from Ian Cherry is always useful and would be needed sooner or later. However, I am not sure what you mean by "strategic financial planning" advice? Ian cannot help us to decide on the future of trust fund, what we do with East stand, etc. I see more need for his advice on how to do transactions from tax point of view once we have agreed on key points.

I am not sure about delaying this process. As I said earlier, our financial year ends end of December, and we need to agree on things and make necessary transactions by then. Anyway, you do want to meet Ian, let's do it together early next week.

Let's try to talk today – I'm eager to know what you seem to be no happy about with my proposal."

202. For only a few days, Mr. Malnacs appears to have kept a diary for the purpose of keeping Mr. Belokon informed. His entry for 29 November 2010 states:

"Discussion with Karl [Oyston] on investment restructuring. He reiterated his vision to repay investments to shareholders. He considered there is no difference between [Mr. Owen Oyton] and [Mr. Belokon] investments and he wants everything to be paid back to investors. If [Mr. Belokon] gets back his 4,75 [South Stand] investment, he still would be entitled to [South Stand] profit. However, he suggested to draft new agreement outlining all revenue streams. Karl was quite hesitant to settle 50/50 shareholding parity now, but believed it could be done after the end of fiscal year. He emphasised that Segesta owns 80% and technically could do whatever they want. We agreed to pay back players trust fund asap – will do the calculations make payment on Wednesday. Karl did not like the idea of paying dividends, has then money should be paid also to the small shareholders (around 3% shares), he would rather prefer to return money to shareholders through management fees. This indeed will not be bad, as would decrease taxable income. He thought that all issues should be resolved on meeting with our auditor likely to scheduled December 17."

(32) The Belokon Side inquires about corporate governance

203. In an email dated 2 December 2010, Ms. Beinare asked Mr. Rawlinson for his help in understanding "the provisions regarding quorum required for meeting of Directors, as well as majority of votes necessary to make the decisions. Can you help me with this?"

204. This provoked a concerned internal communication from Mr. Owen Oyston's personal assistant to Mr. Rawlinson:

"Please do not respond to this until you have met with Owen with Ian Cherry on standby on the phone. We will say to Anda [Beinare] that any director who has support of over 75% of the shares can call for a special resolution and put forward this resolution is to the board. They need to understand that they have no control. Can you please tell [Mr. Owen Oyston]:

1. If he can call an EGM with Segesta's 76% share of [Blackpool FC]?

2. What the quorum is in the Articles of Association?

3. Highlight any restrictive clauses or clauses relevant to control in the Articles.

4. Get a copy of the Memo & arts asap and take [Mr. Owen Oyston] through them when he comes in."

(33) The meeting on 17 December 2010

205. On 17 December 2010, a meeting on "shareholders investments" took place. The note of the meeting was prepared by Mr. Malnacs (see his email of the same date). The note recorded as present Mr. Owen Oyston, Mr. Karl Oyston, Mr. Cherry, Mr. Rawlinson and Mr. Malnacs. The note stated:

"1. 4,2m payment. The Oystons and Ian Cherry believe that the payment was valid and in spirit with the original agreement. Moreover, from the legal point of view, the original agreement does not preclude [Blackpool FC] to make the payment to settle [Blackpool FC] mother company traded debt which incurred to build the West and North Stands. This has allowed [Blackpool FC] to achieve Premier League status.

[Mr. Owen Oyston] reiterated that in his private conversation with Valeri [Belokon], Valeri wanted to get all his investment back – this is the reason why the 4,2m payment was made.

[Mr. Cherry] confirmed that the 4,2m payment can be classified as advanced management fee and written off as a cost about 1m a year. This would reduce [Blackpool FC] taxable income.

2. East Stand

The Oystons propose the following:

- [East Stand] is Segesta property,
- Stand was financed by [Blackpool FC] and now Segesta owes [Blackpool FC] 1,5m
- If Valeri agrees with other arrangments, then Segesta will get x% of East Stand revenues until debit is repaid and then all revenue is BFC revenue. If there are disagreements, Segesta might keep rights to get all East Stand revenue and just repay the 1,9m debt.
- There is a need to draw an agreement on [East Stand] loan.

3. South Stand

The Oystons propose the following:

- Valeri gets back his 4,75m investment
- South Stand agreement is scrapped
- Currently the [South Stand] fit-out is financed by [Blackpool FC] which will create [Blackpool FC] loan to Segesta
- [South Stand] revenue is split into football and non-football revenue; football revenue is allocated to [Blackpool FC], non-football revenue to Segesta – first to repay [Blackpool FC] loan for fit-out, then profit

4. Valeri's investments repayment:

- [Mr. Cherry] confirmed, in case Valeri chooses to get back his investments, both 4,75m to [VB Football Assets] and 1,85m to Vlada, there is no problem these monies to be repaid from Segesta.

- Originally, Karl proposed the following payback schedule:

  1/ 4,200,000 Segesta paid

  2/ 1,850,000 Vlada Jan 10th 2011

  3/ 4,750,000 VB [Football Assets] Jan 30th 2011

  4/ 562,506 [Mr. Owen Oyston] Jan 30th 2011

  5/ 944,652 Zabaxe Aug 15th 2011

  6/ 275,942 [Mr. Owen Oyston] Aug 15th 2011

Which is missing Vlada's 850K payment (gift) to BFC. The Oystons are happy to repay this money as well.

…

6. 50/50 shares parity

[Mr. Owen Oyston] said he has never received any offer from Valeri about buying shares. Nobody wanted to comment on this and thought that [Mr. Owen Oyston] should speak with Valeri directly on this subject."

206. Mr. Malnacs circulated his note, and received the following drafting suggestion from Mr. Cherry, who suggested that the "final situation proposed" be summarised:

"In summary the proposal is for both major shareholders to receive payment of the whole of the monies loaned to [Blackpool FC] (please set out the schedule as per Karl). Thereafter [Belokon Holdings] will be left with a 20% stake in [Blackpool FC] which has cost some £1.8 million. That shareholding would be worth considerably more than this cost in todays value. For example Blackburn Rovers FC recently sold for £50 million. The group as a whole would have no external debt. After the accumulated losses of £13.85 million have been wiped out [Blackpool FC] is free to declare a dividend which will accrue 20% to [Belokon Holdings]. At the current rate of profitability the club should make circa £20 million in 2012. Even if half of this amount is retained it will still leave [Belokon Holdings] with a potential dividend of £2 million in 2012. In addition [Belokon Holdings] benefits from the use of the stadium and all football related revenues even though it has not paid anything towards the construction of the stadium. By any reckoning this is a fair division of revenues. Furthermore Segesta will be responsible for the repayment of any loans advanced from [Blackpool FC] (subject to agreement on the East Stand). [Belokon Holdings] will continue to accrue the right to future dividends."

207. The Oystons were, however, plainly concerned that Mr. Belokon was not agreeing or going to agree to the proposals being made. Indeed, Mr. Malnac's note really does no more than set out the parties' positions: there is no record of any agreement.

208. Subsequently, a draft note (it is not clear who produced it, but it must have been someone on the Oyston Side) raised concerns about Segesta "spending from the proceeds of the moneys coming into [Blackpool FC] from the Premier League"

without consent from Mr. Belokon. This draft resulted in an email from Mr. Owen Oyston to Mr. Karl Oyston, urging that the issues be ironed out and Mr. Malnacs' concerns satisfied.

(34) The proposal to discharge the mortgage over the Travelodge

209. The "Travelodge" is a hotel located nearby the stadium in which Blackpool FC plays, and is owned by Segesta.

210. On 4 February 2011, Mr. Owen Oyston emailed Mr. Karl Oyston in the following terms:

> "You will recall that we were left with a Travelodge mortgage of £4.7m and the mortgage lasts for only 5 years which means we have probably just about 3 years to run. I think we should pay this mortgage off or reduce it dramatically in accordance with our wish to extricate ourselves from Banks.
>
> Can you put your thinking hat on about how we best deal with it and I am sending a copy of this to Ian and Howard to seek their advice on how best to deal with it as the money would have to come from Segesta/[Blackpool FC]."

211. Mr. Malnacs (who did not see this communication) was asked to consider the costs of early repayment of the mortgage, although he was not told why he was being asked to undertake this task. His considered view was that there was a cost to early repayment, which would be substantial (about £132,000). The mortgage also had a hedging element, with a third party, to ameliorate the effect of interest rate changes.

212. Without the involvement of the Belokon Side, the Oyston Side began to consider how a transaction to repay the lending in respect of the Travelodge might be structured. In an email to Mr. Karl Oyston, copied to Mr. Owen Oyston, Mr. Rawlinson set out his understanding of what was intended:

> "Following our conversation yesterday, can I please set out what I understand to be what you want in this matter, to be put into a form of Agreement between [Blackpool FC], Segesta and [Mr. Owen Oyston].
>
> [Blackpool FC] will loan Segesta c. £4,894,035 interest free (or whatever is needed to discharge the charge in favour of Lloyds TSB), to enable Segesta to discharge the outstanding Mortgage/Loan Lloyds has over the Travelodge.
>
> Owen will enter into a Legal Charge of the Travelodge in favour of Segesta as security for the loan and the payment to Lloyds by Segesta.
>
> Owen will then, at his absolute discretion, pay to [Blackpool FC], 22 equal annual payment of £222,446.14 (to equal the full amount of the loan of £4,894,035.18), such payment to be payable quarterly at £55,601.04 per quarter.
>
> [Mr. Karl Oyston] suggested that the difference between the annual rent receivable from Travelodge) currently £451,448 p.a., which rent is subject to upward only review in accordance with the Index of Retail Prices) and the amount to be paid by Segesta to [Blackpool FC] under this arrangement (£222,446.14), with that difference currently being

£228,991.86, should, at the absolute discretion of Segesta, be split equally between Segesta and [Blackpool FC].

I'm unclear as to whether or not that difference, in this example £228,991.86, i.e. c £114,000 each to [Blackpool FC] and Segesta, if the payment being made to [Blackpool FC] is in further accelerated payment/reduction of the Loan or is a gratis payment.

Can I please have comments and observations asap, so that I can prepare the required agreement?

I understand [Mr. Owen Oyston] wants to complete this by the end of the month and if I hear from you soon, I can deal with that time limit fairly easily."

213. Mr. Rawlinson spoke further with Mr. Owen Oyston and, on 18 February 2011, circulated to Mr. Karl Oyston and then to the Oyston Side more generally the following further thoughts:

"[Mr. Stephenson] has advised [Mr. Owen Oyston] today that the hedging fund arrangement is with a third party and therefore Lloyds cannot negotiate a deal. In these turbulent times, Mr. Oyston is anxious. However, if the capital to Lloyds TSB is paid off, then, of course, there would be no further interest to be paid to Lloyds. We would then only pay the interest to the third party hedging fund which, this quarter, would be £25/27,000. If interest rates climb, these payments will reduce and if interest rates fall, the fund may even have to pay us interest. However, in such an uncertain world, [Mr. Owen Oyston] would like to pay off the mortgage completely and the hedging fund penalty of c. £131,000, which takes the repayment to c. £4,894,035.18 and he thinks we are well rid of them.

The other incentive to pay off the Lloyds mortgage/hedging fund arrangement, is that the £4.894 million would have a safe home. The information you gave your Dad over the phone, which apparently, you say, appeared in the Evening Gazette, should indicate caution, if you know what he means.

Therefore [Mr. Owen Oyston] is suggesting the following, which will not be documented or legally binding

1. [Blackpool FC] loans Segesta c. £4,894,035.18, which includes the c. £131,000 to get rid of the hedging fund.

2. Segesta then redeems the mortgage with Lloyds, including the hedging fund arrangement.

3. [Mr. Owen Oyston] will not enter into a Legal Charge of the Travelodge site, in favour of Segesta…, or anyone else. The loans will be informal and effected in the next 2 or 3 days, without any written documentation. This will avoid the months and months of to-ing and fro-ing between the various parties.

4. [Mr. Owen Oyston] will continue to receive the income from the Travelodge, as now and currently at £451,448 per annum, for a minimum of 25 years and a maximum of 50 years, as Travelodge have an option for a further 25 year term at the expiration of the first 25 year term.

5. [Mr. Owen Oyston] proposes to pay Segesta the sum of £250,000 per annum which leaves £201,000 clear from the Travelodge income, before tax.

6. [Mr. Owen Oyston] proposes that Segesta pays to [Blackpool FC], the sum of £200,000 p.a., At its discretion, which Segesta can then continue to pay, if it so wishes, for up to 50 years.

7. Segesta retains the difference of £50,000 p.a. therefore Segesta and [Mr. Owen Oyston] will receive a total of £251,000 annually.

8. Over the informal and potential 50 year repayment programme, which payments are at the discretion of Segesta, [Blackpool FC] will receive £10,000,000 plus a discretionary percentage increase, based upon the 5 yearly rent reviews.

9. The £200,000 p.a. payment to [Blackpool FC] represents 4.09% on the loan of £4,894,038.18 which will increase as [Blackpool FC] receives its share of the rent reviews.

10. Karl is to invest simultaneously in BIB, up to a maximum of £2 million (depending on funds) as a sign of our good faith and on the best terms possible, in accordance with Normund's email.

11. The whole of these arrangements are to be effected immediately and on an informal basis."

214. In fact, contrary to the original intention that these arrangements be undocumented, steps were taken to draw up some draft agreements. In an email dated 24 September 2011, Mr. Rawlinson listed the agreements to be drawn up:

"Just so that I'm clear on what you require.

As I see it, you want 3 documents/agreements as follows:

1. An Agreement between [Blackpool FC] and Segesta under which [Blackpool FC] loans to Segesta the sum of £4,900,000, such loan to be repaid by Segesta to [Blackpool FC] by up to 50 years at the rate of 250,000 in respect of capital and interest. If the repayments are in respect of capital and interest, what is to be the interest rate applied and how with the annual payment of £250,000 to be apportioned between capital and interest?

2. An Agreement between Segesta and [Mr. Owen Oyston] for an interest-free loan to be made from Segesta to [Mr. Owen Oyston] in the sum of £4,900,000 (or in the exact sum of the redemption monies to be paid to Lloyds??) For a period of up to 3 months.

3. In the event that [Mr. Owen Oyston] makes the loan of £2,000,000 to Segesta set out below, an Agreement between Segesta and [Mr. Owen Oyston] that Segesta will repay the £2,000,000 within 4 months.

4. An Agreement between [Mr. Owen Oyston] and Segesta for [Mr. Owen Oyston] to sell the Travelodge to Segesta for £6,500,000 (plus VAT of £1,300,000), totalling £7,800,000.

Unless and until I am instructed otherwise, all these agreements are presently to remain unsigned and undated.

I understand that to cover the difference between the initial loan of £4,900,000 and the sale price (including VAT), of £7,800,000 (the difference being £2,900,000), [Mr. Owen Oyston] it is prepared to loan Segesta up to £2,000,000 (I believe interest free) from his personal account, if [Blackpool FC] can loan to Segesta the balance of the difference, £900,000. When Segesta recovers the VAT, which is to be repaid to [Mr. Owen Oyston] within 4 months of it being loaned, Segesta repays the VAT to [Mr. Owen Oyston].

What about the difference between the loan from [Mr. Owen Oyston] of the £2 million and the VAT repayment of £1,300,000 i.e. £700,000? Where does this come from? Presumably from the monies which Segesta holds in its accounts?"

(35) Payment of £4.9 million in respect of the Travelodge

215. On 24 February 2011, £4,900,023 was withdrawn from Blackpool FC's NatWest account (account number 91854954) and paid into Segesta's HSBC account (account number 22005204).

216. In a memo dated 2 March 2011, Mr. Rawlinson sent to Mr. Owen Oyston (copied to Mr. Belton and Mr. Cherry) three first drafts of the various agreements he had drafted.

217. In an email (sent, in fact from Mr. Rawlinson's email account, but authored by Mr. Owen Oyston) dated 10 March 2011, Mr. Owen Oyston explained the state of play to Mr. Belton:

"Howard,

As you know, [Blackpool FC] has loaned to Segesta £4.9m.

Segesta in turn has paid this £4.9m as part of the purchase price for the [Travelodge] from [Mr. Owen Oyston] as at price of £6.5m (subject to valuation) plus VAT. Stamp duty payable by Segesta must also be taken into account.

The difference between £6.5m and £4.8m is £2.6m.

As you also know, it is my intention to permit Segesta to owe me personally this £2.6m which will be reflected in my Segesta loan account. This money can then be paid in the future when Segesta is in funds.

I understand that the full VAT of £1.3m is payable when the transfer has been completed in order for it to be later refunded.

Can the completion date take place just before the VAT repayment date, so that the £1.3m will only be out for a short time ([Mr. Stephenson] says this can be done)?

…

[Blackpool FC] will loan the £1.3m to Segesta and receive it back on the VAT repayment date. [Blackpool FC] will also loan the Stamp Duty of £260,000.

I'm now leaving [Mr. Rawlinson] to finalise these negotiations and complete the various agreements on the basis as outlined already."

(36) Discovery of the payment

218. In an email sent by Mr. Malnacs to the Blackpool FC board, Mr Malnacs identified various outstanding issues requiring resolution. The first of these was the payment of £4.2 million by Blackpool FC to Segresta which Mr. Malnacs said "did not have board approval and was not agreed upon".

219. The fourth issue that Mr. Malnacs identified related to the Travelodge payment:

> "On February 24, 2011 [Blackpool FC] made a transfer of 4.9 million to Segesta. I understand the monies used to refinance Segesta loan from a commercial bank and now Segesta owes money to [Blackpool FC]. I still have not been informed about the terms of the [Blackpool FC] loan to Segesta. It is disappointing and not in line with good corporate governance that the Club has provided a long-term credit without board's approval and prior information."

220. Mr. Karl Oyston responded in an email dated 18 March 2011. He made the point that a meeting between Mr. Owen Oyston and Mr. Belokon to agree matters ought to precede any board meeting of Blackpool FC, which was probably good common sense, given the situation. As regards Mr. Malnacs' fourth point – the £4.9 million loan – he said:

> "As far as the funds utilised to provide [Blackpool FC] with a far higher return both immediate and longer term from removing the external funder from the Travelodge and Segesta taking ownership, I will provide a copy and details of the agreement as soon as I have finalised the finer points. Rest assured the return is substantially higher and more secure than any other use of money we have as yet identified."

(37) Further progression of the Travelodge transaction

221. In an email dated 15 April 2011, Mr. Rawlinson circulated to "everyone" (that is, everyone on the Oyston Side and no-one on the Belokon Side[90]) final drafts in relation to the transactions between Blackpool FC, Segesta and Mr. Owen Oyston. The email not only attached the draft agreements, but also a proposed notice and agenda for a meeting of the board of Blackpool FC.

222. No date was given for that meeting, but a meeting (albeit not one of the Blackpool FC board) appears to have been held on 12 April 2011. The minutes of that meeting were circulated by Mr. Owen Oyston to Mr. Cherry and Mr. Belton on 15 April 2011. These minutes record as present Mr. Owen Oyston, Mr. Belton, Mr. Cherry and Mr. Rawlinson, with apologies from Mr. Karl Oyston. The minutes state:

1	**Relationship between [Blackpool FC], Segesta and Owen Oyston and the provision of funds for the purchase of**	

[90] In cross-examination, Mr. Karl Oyston did not accept that the exclusion of the Belokon Side was deliberate: Transcript Day 11, pp.107 to 108. He did not, of course, draft this email, and so cannot speak directly to the writer's intention. In the circumstances – the fact that the email was not sent to the Belokon Side and use of quotation marks around "everyone" – I conclude that there was a deliberate intention to keep the Belokon Side out of the loop.

	Travelodge by Segesta from Owen Oyston.	
1.1	[Blackpool FC] is to lend to Segesta…£8,060,000…which is made up from the following:- £6,500,000 (Sale Price) + £1,300,000 (VAT) + £260,000 (Stamp Duty)	
1.2	[Mr. Cherry] referred to the email sent by Normunds Malnacs dated 18th March 2011 and said that he agreed with Normunds that [Blackpool FC] should have Board approval for the bigger transactions. [Mr. Cherry] suggested that a Board meeting should take place in May and should ratify the points 1 and 4 made by Normunds in the above mentioned email.	
1.3	[Mr. Cherry] mentioned the composition of the Board and advised that this needs to be looked at carefully before the Board meeting took place as there is a potential situation in which [Mr. Owen Oyston] could be outvoted by the members of the Board. [Mr. Cherry] advised that he understood the current Board members to be O Osyston, V Oyston, G Steel, N Malnacs, V Belokon and questioned whether Karl had been reappointed as a Director or not. [Mr. Cherry] said that he knew that [Mr. Karl Oyston's] resignation was written but would need to check if it was ever filed or not.	
1.3a	Re Mr. G Steele, [Mr. Owen Oyston] advised that he had been removed as a Director of [Blackpool FC] and that this was done some time ago. [Mr. Owen Oyston] advised that Mr. Steele offered his resignation and if the Board was unanimous then it would be approved. This happened. [Mr. Rawlinson] checked with Rod Dyer at [Blackpool FC] who confirmed that Mr. G Steele had been removed as a Director.	
1.3b	Going back to the issue regarding [Mr. Karl Oyston's] position on the Board. [Mr. Cherry] advised that if [Mr. Karl Oyston] is not a Director then this could potentially cause problems for [Mr. Owen Oyston] in terms of being outvoted on matters. Also important to check that [Mr. Karl Oyston] is elected as Chairman of [Blackpool FC] as if [Mr. Karl Oyston] if elected Chairman then he would carry the casting vote. If this is not the case then [Mr. Owen Oyston] may wish to consider appointing another Director, however this would need careful consideration as they would hold the balance of power. [Mr. Owen Oyston] would need to be sure that they would vote with the Oyston family. [Mr. Cherry] advised that it would also be important that Vicki [Oyston] was in attendance in person or at least by telephone. [Mr. Rawlinson] to check that [Mr. Karl Oyston] is a Director and elected Chairman.	JR
1.4	[Mr. Owen Oyston] said that he just wanted to get everything in relation to this transaction signed and approved and then the Board well ratify what has been done when the Board	

	meeting takes place.	
…		

223. In an email exchange between Mr. Rawlinson and Mr. Dyer on 18 April 2011, it was noted that Blackpool FC had already advanced £4,900,000, leaving a balance of £3,160,000 to be paid over. This money would not be available until the week ending 10 June 2011.

224. In anticipation of a meeting of the Blackpool FC board, a further draft of the proposed agreement between Blackpool FC and Segesta was circulated. On this occasion, one of the recipients was Mr. Malnacs, who on reading the agreement discovered that Blackpool FC would be lending not £4.9 million, but £8.06m:

> "I thought you needed 4,9m to refinance bank loan? Now you want 8.06m?"

225. The meeting of the Blackpool FC board was fixed for 14 May 2011. There is, however, no evidence that such a board meeting ever took place.[91] It may be that the meeting at Grange St Paul's took the place of a board meeting. If so, it was a very select gathering: present only were Mr. Owen Oyston and Mr. Belokon.

(38) The meeting at Grange St Paul's in May 2011

226. In terms of finding the facts, this is another controversial meeting. Neither Mr. Malnacs nor Mr. Karl Oyston can assist, for neither was present. It is best to begin with what Mr. Belokon and Mr. Owen Oyston said in their respective witness statements.

227. Mr. Belokon's recollection (as per his witness statement) was as follows:[92]

> "I met with Owen Oyston on 8 May 2011 at Grange St Paul's to discuss the payments of £4.9 and £4.2 million from the Club to Segesta. I did not receive an adequate explanation as to why the Club's funds had been transferred to Segesta. At this meeting I also raised with Owen when I would receive the remaining 30% of the shares in the Club that we had agreed I would receive. Owen refused to confirm when the remaining shares would be transferred to me. It was clear at this meeting that I would have to exit my investments in the Club."

228. Mr. Belokon was able to date the meeting to the weekend of 7 or 8 May 2011, because he recollected it took place after a very significant football match between Blackpool FC and Tottenham Hotspur, which took place on Saturday 7 May 2011.[93]

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[91] Counsel for VB Football Assets produced a schedule of Blackpool FC board meetings, derived from references to such board meetings in the documents. According to that schedule, there was no board meeting on 14 May 2011 (or, indeed, in 2011, in the period up to October 2011). Of course, this is not conclusive.

[92] Paragraph 44 of Belokon 1.

[93] The result was a 1-1 draw. Had Blackpool FC won, they would have stayed in the Premier League: Transcript Day 3, p.90.

Mr. Oyston's diary records him being abroad on 7 May, but meeting Mr. Belokon at Grange St Paul's on 8 May 2011 for a drink. Mr. Belokon accepted that the meeting might well have been on 8 May 2011.[94]

229. Mr. Belokon's recollection was that he simply had a meeting with Mr. Owen Oyston, and that no subsequent dinner was involved, whereas Mr. Owen Oyston asserted that after the meeting at Grange St Paul's, they went on to dinner at Claridge's. The significance of this dinner will become apparent, but Mr. Belokon's evidence was:[95]

"I don't have a recollection of us meeting and then going to Claridge's."

His evidence was that he did not have dinner with Mr. Oyston.[96]

230. Mr. Oyston's witness statement says as follows:[97]

"56. In December 2010 although [Mr. Malnacs] has suggested that the date could have been in May 2011, I was having dinner in Claridge's Hotel with [Mr. Belokon and another dinner guest in the main restaurant. At the time we had been promoted to the Premier League. [Mr. Belokon] appeared agitated and resentful. I could sense there was something wrong. Suddenly, he expressed the view that he wanted me to make up his shares to 50% in [Blackpool FC]. I said "how much are you prepared to pay?". I reminded him if he had 50% of the shares he would have control, he just stared at me. He later said "One way or another I'll get that 50%". He then turned to my guest: "Don't get too attached to Owen, he'll be dead in 12 months!" My guest was visibly shaken by this remark. And then he said: "And Karl will be dead within two years!" [Mr. Belokon] had more to drink and became more argumentative and aggressive, saying "I want half the shares". At first I wondered whether this was some kind of macabre joke. But it was not said with any humour at all and did not appear to be a joke. He repeated the statement more than once, stressing that he felt he deserved 50% because of what he had done for the club. As the night progressed he drank more and became visibly disturbed and I tried to ameliorate the situation., I recall thinking that the problems of Kyrgyzstan with his bank were troubling so I did not react to his aggression.

57. This traumatic event was central to the breakdown of the relationship. I simply had refused to be bullied into giving shares away for nothing to satisfy [Mr. Belokon's] share demands. No one travelled to Latvia again for meetings and even when we had planned meetings in the UK, security was always a priority. When [Mr. Belokon] came to Quernmore Hall to meet with me there was security in place. I did tell [Mr. Malnacs] about it, and that we were concerned. We discussed it and he said "You've got to find a solution to the problem". At no time did [Mr. Belokon] make any claim that night or later that there was any private or secret arrangement between us until years later when he made his legal claims on 14th September 2015."

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[94] Transcript Day 4, pp.3 to 6. Mr. Malnacs – although not present at the meeting – was present at the football match, and was confident that the meeting took place on 8 May 2011: Transcript Day 5, pp.139 to 140.
[95] Transcript Day 4, p.5.
[96] Transcript Day 3, pp.103 to 104
[97] Paragraphs 56 to 57 of Owen Oyston 1.

231. As I have noted, no-one suggests Mr. Malnacs attended this meeting; nor does anyone suggest Mr. Karl Oyston attended, although Mr. Karl Oyston did say (paragraph 34 of Karl Oyston 1 and in cross-examination[98]) that he was told about the conversation shortly afterwards. I am not inclined to attach very much weight to this corroboration. The evidence of the "guest" would have been helpful, and Mr. Owen Oyston could, no doubt, have produced evidence from her. He declined to do so, and neither VB Football Assets nor the Court was inclined to press him on this. The upshot is that Mr. Owen Oyston has deprived himself of potentially valuable evidence, which might have borne out his story. It would, no doubt, be permissible to draw inferences from Mr. Owen Oyston's failure to call the "guest" or to produce evidence from her: it might be suggested that the fact that Mr. Owen Oyston did not call the "guest" is of itself suggestive that the story is untrue. However, I decline to decide this point relying upon inferences drawn from evidence not called. I propose to evaluate what happened in light of the evidence that was before me.

232. The opening words of paragraph 56 of OJO 1 indicate a degree of uncertainty about the date of the meeting. In his evidence in-chief, Mr. Owen Oyston accepted that his December 2010 date was incorrect, and that the meeting took place in or around May 2011. He therefore accepted that the second sentence of this paragraph ("At the time we had been promoted to the Premier League") had to be incorrect.[99]

233. Mr. Owen Oyston's witness statement also lacks the critical detail of the initial meeting at Grange St Paul's, leading on to the dinner. Although in cross-examination Mr. Owen Oyston added further detail, the fact that this detail emerged in the course of cross-examination, rather than in his evidence in-chief, only underlined the fragility of Mr. Owen Oyston's recollection.[100]

234. I am driven to conclude that the dinner did not take place. I consider that Mr. Belokon's recollection of a simple meeting at Grange St Paul's is more reliable than Mr. Oyston's somewhat baroque version. What is more, the story of the threats I find inherently unbelievable:

    i) Having seen both Mr. Belokon and Mr. Owen Oyston in the witness box, I find it hard to believe that a person like Mr. Belokon could utter such blood-curdling threats as to cause serious perturbation to a person like Mr. Owen Oyston. Mr. Belokon, of course, denied making the threats Mr. Owen Oyston said he had made.[101] Mr. Malnacs stated – in a different context – "I have never seen him angry" (referring to Mr. Belokon), and this accords with my impression of Mr. Belokon.[102]

    ii) Had such threats been made, and had they been regarded as credible by Mr. Owen Oyston, then I do not consider that the future communications between the Oyston Side and the Belokon Side would have continued (as they did)

[98] Transcript Day 11, pp.2*ff*; p.11; p.18.
[99] Transcript Day 13, pp.45*ff*; Transcript Day 14, pp.1*ff*.
[100] Transcript Day 13, pp.45*ff*; Transcript Day 14, pp.1*ff*.
[101] Transcript Day 3, pp.91*ff*.
[102] Transcript Day 5, p.26.

much as before. I consider there would, at least, have been a change of tone – and there was not.[103]

235. Having determined the major factual bone of contention between Mr. Belokon and Mr. Owen Oyston on the point of the threats, there is not actually much between their two versions, apart from that. Mr. Belokon had two concerns: the payments away of £4.2 million and £4.9 million and the question of parity. He was meeting Mr. Owen Oyston to see if there was a way forward. There was not, as both Mr. Belokon and Mr. Oyston agree. When the meeting ended, the divisions between the two camps were greater than ever.

236. Mr. Malnac's description of the aftermath of this meeting – and in particular, its effect on Mr. Belokon – is compelling and I accept it:[104]

Q (Mr. Steinfeld, Q.C.)	If you weren't at the meeting -
A (Mr. Malnacs)	We had game on 7 May and then I was with my children. I went home and Valeri said: okay, I'm meeting Owen tomorrow, you can go home, it will be private meeting. So there is some chance we meet in the evening, and Valeri did not tell me that, but I think it was next day and also at afternoon, not 8th, I send him a text, how was your meeting, and he just reply, it's very bad. So he apparently came back to Latvia, we met –
Q (Mr. Steinfeld, Q.C.)	We haven't had disclosed that exchange of emails, as a matter of interest?
A (Mr. Malnacs)	I didn't say emails, it was text.
Q (Mr. Steinfeld, Q.C.)	Texts.
A (Mr. Malnacs)	Yes. Very bad, simple question, simple answer.
Q (Mr. Steinfeld, Q.C.)	Oh, I see, just texts, sorry. Simple question, you asked how did it go and he said very bad.
A (Mr. Malnacs)	Yes.
…	
Q (Mr. Steinfeld, Q.C.)	…So the meeting went very badly. Did he tell you in what respect it went very badly?
A (Mr. Malnacs)	Exactly. He – Owen – refused parity, we looked each other in eyes and he understood he had been betrayed, because as I told earlier, I gave all these signals, I raised all these issues and probably Mr. Belokon thought, maybe it's my exaggeration, it's my problem and then he met Owen, looked into his eyes and he realised this, I was right and Mr. Belokon will not – my apologies, Mr. Owen Oyston will not keep his promise.
Q (Mr. Steinfeld, Q.C.)	And his reaction was, "I want to exit my investment

[103] Although Mr. Karl Oyston sought to corroborate Mr. Owen Oyston's version of events, he could not provide any help in terms of the date of these alleged threats.
[104] Transcript Day 5, pp.139*ff*.

and resign"?

A (Mr. Malnacs) I think that's very normal reaction.

Q (Mr. Steinfeld) Whether it's normal or not, I'm just asking you whether that was his reaction?

A (Mr. Malnacs) Yes.

(39) Mr. Owen Oyston's reaction after the Grange St Paul's meeting

237. In an email dated 16 May 2011, Mr. Owen Oyston made the following request of Ms. Conlon:

"**Re Valeri Belokon File in particular the negotiations and paperwork that led to the 2006 contract**

Rosemary could you get this file(s) at and I want [Mr. Rawlinson] to go through the file(s) and dig out any information which shows that I never agreed to give my shares to [Mr. Belokon] in relation to parity.

[Mr. Cherry] has already found some documentation which shows that [Mr. Belokon's] people were seeking an option at the same price to be paid for the 20% but at the end of the day because of the tax implications we couldn't agree to it.

My last memory on subject is that I did agree to selling the shares that would give him parity with me but no price was ever discussed or finalised other than the initial paperwork from [Mr. Belokon's] people as mentioned above.

Please can you dig out the file(s) and send with my post this evening."

238. The next day, on 17 May 2011, an email was sent to Mr. Chadwick on behalf of Mr. Owen Oyston:

"Please can you get to [Blackpool FC] tomorrow at 9am to speak to [Mr. Dyer] about the [Belokon] agreement.

There appears to be a misunderstanding between [Mr. Belokon] and [Mr. Owen Oyston] over what was agreed at the time he bought the 20% of the [Blackpool FC] shares. At a recent meeting in London he told [Mr. Owen Oyston] that he believed that when he bought the 20% stake in [Blackpool FC] there was a clear understanding that he will also be buying share parity with me (i.e. with the same number of shares that [Mr. Owen Oyston] has).

Owen would therefore like you to go through all the files to find any correspondence, emails, documentation, agreements which will further offer clarification to this misunderstanding. But if you start with [Mr. Dyer] as the football club he will give you anything he has on the matter which may be of assistance."

239. Mr. Cherry was also asked for his views, and reviewed his old files. In a letter dated 18 May 2011, he summarised his understanding of the agreement that had been reached between the parties.

240. All this is entirely consistent with the battle-lines having been drawn between the Oyston Side and the Belokon Side: Mr. Owen Oyston was making sure of his position, and was preparing for battle.

(40) The meeting at the Savoy in June 2011

241. Another meeting took place between Mr. Owen Oyston, Mr. Karl Oyston, Mr. Belokon and Mr. Malnacs. The meeting is not specifically discussed in OJO 1 or KO 1. The witness statements of Mr. Belokon and Mr. Malnacs say as follows.

242. Paragraph 45 of Belokon 1 states:[105]

> "I waited until the end of the Premier League season to inform Karl and Owen of my decision to exit my investments. This took place at a meeting at the Savoy in June 2011, at which Normunds Malnacs was also present. At this meeting I told Owen and Karl that I intended to exit my investments in [Blackpool FC] and asked them to prepare a proposal for this exit…"

243. Mr. Malnacs' statement is confused by reason of the uncertainty in the Respondents' case as to the timing of the meeting when threats were said to have been made by Mr. Belokon. Malnacs 1 states:

> "70. Despite a notice of Board meeting and agenda being circulated, a board meeting did not in fact take place and I never agreed to the terms of the Travelodge loan being entered into by the Club. A meeting did, however, take place at the Savoy hotel in London in around June 2011, at which Mr. Belokon, Owen Oyston, Karl Oyston and I were present. I have read the comments at paragraph 20(a) of the Defence, which refers to a further meeting at Claridge's on 1 December 2010. I am not aware of such a meeting taking place.
>
> 71. I confirm that Mr. Belokon did not threaten any of the Oyston family at that meeting. It was, however, at this meeting that Mr. Belokon made a firm statement to the Oystons that he was thinking about exiting his investment in the club…It was at this meeting that Owen Oyston showed me a letter from Ian Cherry in which he stated that Mr. Belokon was entitled to 50% of the shares in the Club."

244. Mr. Malnacs' statement refers to a letter, authored by Mr. Cherry and shown to him, on this occasion, by Mr. Owen Oyston after Mr. Karl Oyston and Mr. Belokon had left, which apparently confirmed Mr. Belokon's entitlement to a parity shareholding. In an email to Mr. Karl Oyston dated 20 June 2011, Mr. Malnacs made reference to this letter:

> "Once you left us in Savoy, we, of course, kept drinking and discussing our issues. Then your dad showed me a letter from Ian Cherry. I was pretty drunk by then, but I think that according to Ian's records the intentions were that [Mr. Belokon] initially pays 1,8m for 20% and

[105] Mr. Belokon's evidence in cross-examination was substantially the same: Transcript Day 4, p.6.

provides 2,7m loan which is turned into purchase price for the remaining 30% once parity is to be established. In addition, Valeri would have to pay some nominal few quid."

245. In cross-examination, Mr. Malnacs maintained this recollection, and I accept that he genuinely believed it.[106] It was not possible for Mr. Malnacs to identify the document he was shown, but it does seem to me overwhelmingly unlikely that Mr. Owen Oyston would show to anyone on the Belokon Side a document that undermined so fundamentally his position. What I suspect Mr. Owen Oyston showed Mr. Malnacs was either the draft Subscription Agreement, which did contain an option to buy further shares[107] or the letter from Mr. Cherry to Mr. Oyston summarising the history of the negotiations which made reference to this draft.[108] No doubt Mr. Owen Oyston was seeking to persuade Mr. Malnacs of the correctness of his (Mr. Owen Oyston's) position, and Mr. Malnacs misunderstood. In any event, I reject the suggestion that there exists some formal statement on paper of the gentleman's agreement.

(41) Mr. Belokon seeks to exit Blackpool FC

246. By this stage, Mr. Belokon clearly just wanted to extract himself from Blackpool FC on some reasonable basis. Both Mr. Belokon and Mr. Malnacs drafted letters of resignation from the Blackpool FC board in May, but they did not send them. Mr. Belokon also drafted a letter setting out the basis on which he could be bought out – the draft is dated 7 June 2011 – but this, too, was not sent.

247. Mr. Owen Oyston, too, was applying his mind to how relations between the Oyston Side and the Belokon Side might be improved. There are – again in draft and not sent – various letters trying to put matters on a better footing.

248. Mr. Karl Oyston took a far harder line, and it was he who drafted the email that was in fact sent to Mr. Belokon. This email, dated 13 June 2011, referred to "our recent Board meeting" and simply listed the various agreements that had been reached between the Oyston and Belokon Sides. It concluded:

> "As you may be aware I would like to discuss some small-scale restructuring to allow the income from the Football Club to go directly into the Football Club and a split of non-football revenue but this is entirely a matter for the Board. The Football Club has also funded much of the fit out for the South Stand and will of course be funding construction and fit out of the South East corner along with construction of the East Stand. These matters need to be discussed and the position confirmed.
>
> I would also like the Board's views on investing money between £3 and £5 million in London which should hopefully have a far higher return than current Bank rates. We currently have approximately £6 million on the NatWest money market and £2 million with BIB, the first parachute is payable half in August circa £8 million and the rest over the season. I would welcome anyone's views on investments that will yield security and an acceptable return."

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[106] Transcript Day 5, pp.29*ff*.
[107] See paragraph 69 above.
[108] See paragraph 239 above.

249. This letter was followed by the following email sent on 20 June 2011:

> "Hello all, following on from our meeting in London I have as requested been looking at the agreements I previously sent to you all with a view to unravelling them.
>
> When the agreements are taken in isolation it is a relatively simple process.
>
> The two initial loans totalling 2.7m will simply have to be repaid albeit early.
>
> The loan for the South and South-West stands similarly can be repaid in total 4.75m.
>
> The trust fund that was created to buy players has now had the capital repaid but there remains a potential further payment dependent upon the sale of any or all of three players. My view is that this must run until the players depart by whatever means as this may well only take a further couple of years.
>
> The most difficult aspect is of course the shareholding in [Blackpool FC] that was initially purchased for 1.8m. I would suggest that [Mr. Belokon] is free to sell the shares if he so wishes and that the club will provide a fallback price of 1.8m should [Mr. Belokon] not be able to dispose of the shares elsewhere.
>
> Ideally all of the above repayments would be over a period of time so that the club can attempts to return to the Premier League and not be starved of capital.
>
> I haven't discussed this with any of you or any of the clubs legal tax advisers as I'm keen we keep matters between ourselves at this stage.
>
> I am of course hopeful that all of the above will not become a reality as I believe we have done such great things as a group that our collaboration should continue."

In essence, the proposal was that the Belokon Side receive back what they had paid into the club, without taking into account the Premier League monies that Blackpool FC was receiving.

250. Mr. Malnacs' response was sent on the same day:

> "I have not managed to speak to [Mr. Belokon] yet about his expectations about price of his investments. I hope it was not him involved in fighting scenes at Ascot race! :)
>
> Is not that I expect or hope anything to change, but you might be interested in the following. Once you left us in Savoy, we, of course, kept drinking and discussing issues. Then your dad showed me a letter from Ian Cherry. I was pretty drunk by then, but I think that according to Ian's records the intentions were that [Mr. Belokon] initially pays 1,8m for 20% and provides 2,7m loan which is turned into a purchase price for the remaining 30% once parity is to be established. In addition, [Mr. Belokon] would have to pay some nominal few quid.[109]
>
> As I wrote above, I don't know [Mr. Belokon's] thoughts, but I can give you my thoughts on your valuations.
>
> 2,7m – fairly easy – just early repayment, I wonder if [Mr. Belokon] would want some interest for it.

[109] This is the passage quoted in paragraph 244 above.

4.75m – investment in [South Stand]. He invested (and risked) money to make return. You (your dad) had provided quite specific figures on expected return over 999 years. So, I would expect that [Mr. Belokon] would expect some return on that amount – not just return of the nominal.

Trust fund – no idea if [Mr. Belokon] is happy to still keep the interest.

Shares: If he bought bottom of league one club shares for 1,8, I imagine he will expect to sell them at substantially higher price, especially taking into account of this and the subsequent years profit to which he is entitled to. If I were you, I would buy the shares yourself – you might not be able to deal as swiftly with the future partners as you did with me and [Mr. Belokon]."

251. Mr. Belokon sought to get an improved offer. On 30 June 2011, he wrote:

"I wanted to thank you once more for our common journey in the English football – you must agree with me that we had many memorable moments to remember all our lives! Unfortunately, I have decided to exit our partnership for the reasons we both are well aware of stop as I stated, I want to exit the club in the most favourable way for you and the Blackpool Football Club. Therefore, in our London meeting I offered you to prepare a proposal for the purchase of all my investments into [Blackpool FC].

As you remember, it was you who convinced me to invest in Blackpool FC in various ways. I set quite an ambitious target, which, I hope you agree, was reached with my direct and substantial contribution. Now I have received a proposal from Karl (see the attached) to buy back all my investments. I would like to ask your official confirmation in writing within seven days that this is indeed your as a shareholder proposal. In case of not receiving any message, I will take it as confirmation.

As I said earlier, I would like to focus on good things in our partnership and remain in good relations."

252. Mr. Owen Oyston responded on 12 July 2011. Although the tone of the letter is much more conciliatory than that of Mr. Karl Oyston's email ("I have read your letter with great sadness and I asked [Mr. Malnacs] if you would convey my sincere wish that you rethink your intention to pursue the course of action outlined in your letter. We have extraordinary relationship and I think it is in our mutual interest to continue it"), the offer was substantially the same as that made by Mr. Karl Oyston.

253. At this stage, therefore, Mr. Belokon was holding, contrary to his expectations, a minority interest in Blackpool FC where (because of the controlling majority interest) his wishes were being overridden. Moreover:

i) He considered – and I consider him justified in this – that Mr. Owen Oyston had reneged on a non-legal understanding that he and Mr. Owen Oyston had.

ii) Assuming no third party interest in his stake in Blackpool FC (which was probably quite a safe assumption[110]), the only exit that Mr. Belokon was being offered by the Oyston Side was payment "at par", i.e. Mr. Belokon would get out what he put in, no more no less, notwithstanding the fact that Blackpool FC was now considerably richer than it had been in 2006.

(42) The "tax meeting" on 27 July 2011

254. On 27 July 2011, a "tax meeting" was held with Mr. Owen Oyston, Mr. Cherry, Mr. Rawlinson, Mr. Belton and Ms. Conlon all present. The minutes or notes of that meeting discuss various aspects of the Oyston businesses. At paragraph 3.4 there is recorded a discussion as to whether the minority shareholders in Blackpool FC should be bought out. Paragraph 3.5 then notes:

> "[Mr. Cherry] says [Mr. Belokon] would be foolish not to take his loans back and then sit on the shares as the shares of only cost him £1.8m and these are worth appreciably more in due course if not now. [Mr. Cherry] thought the Club was worth £50m as we still have the parachute payments now out of the Premiership…"

255. A later, mis-numbered, paragraph 3.2 records Mr. Owen Oyston noting that the profits of Blackpool FC would be £10 million in this current year, and that even taking into account Blackpool FC's previous losses (i.e. the Tax Losses) some tax would have to be paid by the Club. The minutes go on to note:

> "Best to pay the tax at Corp Tax rate currently 30% and leave the money in. Once [Mr. Belokon] gone could distribute the profit as dividend to Segesta and no tax consequences as it is a dividend within the group. Then leave the money there until we need to use it. This is after getting rid of [Mr. Belokon's] and the minority shareholders interests. Have plenty of capital allowances and claim all expenses we are entitled to. The dividends are paid out of post-tax monies."

(43) Conclusion of the Travelodge loan agreement by Blackpool FC and further payments in respect of the Travelodge and payment of the Zabaxe debt

256. On 8 August 2011, the agreement whereby Blackpool FC agreed to lend money to Segesta was concluded. It was signed by Mr. Dyer on behalf of Blackpool FC and Mr. Owen Oyston on behalf of Segesta.

257. The loan agreement provided as follows:

> "1. [Blackpool FC] has agreed to lend to Segesta the sum of £8,125,000 (Eight Million one hundred and twenty five Thousand Pounds) ("the Loan") for the purposes of acquiring the freehold and property situate thereon and known as the Travelodge Hotel Bloomfield Road Blackpool more particularly registered with Title Absolute at HM Land Registry under Title Number LA 97016 ("the Property").

[110] Mr. Belokon did not try to sell his interest. But, given the state of affairs described so far, it seems most unlikely that anyone would offer him more than the terms being offered by the Oyston Side, of getting his money back.

2. The Loan is apportioned as to £6,500,000 for the purchase price of the Property, £1,300,000 for the VAT payable to HMRC on the purchase price of the Property and £325,000 for the stamp duty payable to HMRC on the transfer of the Property.

3. The Loan is to be repaid as is hereinafter set out.

NOW IT IS HEREBY AGREED between the Parties as follows:

IN CONSIDERATION of the Loan made by [Blackpool FC] to Segesta, Segesta hereby agrees (but at its absolute discretion):

1. To repay to [Blackpool FC] within 14 days of receiving the refund from HMRC of the VAT paid on the purchase of the Property in the sum of £1,300,000 and

2. To repay to [Blackpool FC] within 28 days after the date of the transfer of the Property the further sum of £1,600,000 ("the Further Sum") in reduction of the Loan

3. To pay the balance of the Loan (being the Loan, less the VAT and less the Further Sum) to [Blackpool FC] together with the interest at the rate of 4.58% p.a. by up to either 50 annual payments of £250,000 p.a., ("the Annual Payment") or up to a maximum of £12,760,000, whichever comes first, in respect of capital and interest, such payments to be paid quarterly, each in the sum of £82,500, with the first payment to be made on the ____ day of _____ 2011.

4. That in the event that the rent payable under a Lease of the Property ("the Lease") in favour of Travelodge Hotels Limited for a term of 25 years (with an option for a further term of 25 years) computed from the 21st April 2008 at an initial years rent of £451,448 ("the Rent") subject to upwards only reviews of the Rent every five years from 21st April 2008 and otherwise reviewed in accordance with and upon the terms as set out in the Lease (the benefit of which Lease is to vest in Segesta), increases or decreases ("the Increased or Decreased Rent") from the current annual figure receivable of £451,448 then, in those circumstances, Segesta hereby agrees that the Annual Payment referred to in clause 1 above will be increased or decreased pro rata from the Annual Payment compared to the Increased or Decreased Rent."

258. It will be necessary to consider the terms of this loan, and its financial reasonableness, in due course: this is done in paragraphs 363 to 364 below.

259. On 30 August 2011, Mr. Rawlinson confirmed that the sum of £944,652.28 in respect of Zabaxe had been paid by Blackpool FC to Segesta, and that the balance of the £8,125,000 in respect of Travelodge (being an amount of £3,225,000) had also been paid. These two amounts total £4,169,652.28. This sum was transferred out of Blackpool FC's NatWest bank account on 30 August 2011.

(44) The "Global Witness" letter

260. On 21 September 2011, Mr. Karl Oyston received a letter from "Global Witness", a non-governmental organisation based in London that campaigns for greater transparency in the natural resource and banking sectors. This letter raised a number of questions regarding Mr. Belokon's relations with Blackpool FC. Mr. Karl Oyston forwarded the letter to Mr. Owen Oyston and to Mr. Belokon, but otherwise determined to ignore it.

(45) Mr. Belokon's letter of 4 October 2011

261. In a letter dated 4 October 2011, Mr. Belokon signalled his intention that he and Mr. Malnacs be "substituted with other two of my representatives in Board member positions. Neither of them would be based in Blackpool, nor would they take active part in football club management. They would only follow the economic affairs of the company and would fulfil other responsibilities of members of a board".

262. Mr. Owen Oyston's reaction (expressed in an internal memo) was that Mr. Belokon's decision meant that he was not selling his shares, and that "[t]he fact we will save the best part of £10m by not buying him out gives us a great opportunity to invest further monies in this chaotic market". Accordingly, the Oystons withdrew the offer they had made to buy Mr. Belokon out.

263. Ultimately, although Mr. Malnacs was (as will be described) replaced by Mr. Varpins, Mr. Belokon did not cease to be a director, although he did not actively participate in Blackpool FC.

(46) Mr. Malnacs' inquiry about payments away

264. Mr. Malnacs continued to inquire about payments out of Blackpool FC. Thus, on 7 December 2011, he emailed as follows:

> "It came to my attention that there have been several payments from [Blackpool FC] accounts to Segesta amounting more than 13.6m GBP in August and November. I request explanation about the status and purpose of the payments to all board members. I also would like explanation why all board members were not notified in advance about such a substantial transfers? Again."

265. It is not clear precisely which payments away Mr. Malnacs had in mind when writing this email. Although the payments of £4.2m (see Section C(28)), £4.9m (see Section C(35)) and £4.1m (see Section C(43)) amount to just under £13.6m, they were not made in the time-frame identified by Mr. Malnacs. It is worth stressing again that payments other than the ones described so far were being made out of Blackpool FC. The payments on which this Judgment focusses are those of which VB Football Assets makes specific complaint. It is not necessarily the case that these other payments were made for purposes unrelated to Blackpool FC. Although I have expressed certain reservations about the content of Annex 2 to the Judgment (see paragraph 38 above), I do accept (as did VB Football Assets) that some payments – albeit not transparent to the Belokon Side – were made to the benefit of Blackpool FC. Mr. Malnacs' email may well be a reference to such payments; it is certainly illustrative of the fact that important information was being kept from the Belokon Side by the Oyston Side.

266. This request for information did not result in any improvement in the relationship between the Oyston and Belokon Sides. Mr. Karl Oyston responded to this request in the following terms:

> "Frankly Normunds you could not be more offensive or less use to the company if you tried.

Your attitude and manner leave much to be desired.

You have been of no assistance to the company whatsoever for many months, may I remind you that as a director you have afiduciary duty to the company along with a duty to attend board meetings, not only if they interest you.

Your demands for information that is not ready to distribute as a result of board meetings not taking place and decisions not being made are not helpful and show a massive lack of both acumen and judgement.

Perhaps you should step down without delay and let your replacement attend a board meeting so important decisions can be made that will affect the future direction of the company and its shareholders?

It is maybe time for you to stop point scoring in an attempt to justify your position and do what is right for the company and its shareholders?"

(47) A proposal that "certain bonuses" be paid

267. In a memo dated 4 January 2012, Mr. Owen Oyston sought the payment to himself of "certain bonuses":

"As you know I have asked you to read carefully all the documentation and contracts that we have had with [Mr. Belokon] since the beginning to ensure that there are no prohibitions, restrictions or limitations in [Blackpool FC] paying to its directors bonuses in relation to their past services to [Blackpool FC] for which they were not remunerated.

As you are aware, I have served 25 years in the harness of [Blackpool FC] and in the initial year saved them from extinction, loaned money interest free, converted loans into shares to strengthen [its Blackpool FC's] balance sheet, made temporary loans every time they were in trouble, again interest-free and provided financial support for their borrowings. So now after the success of the Premier League and the strong financial position of the Club, the chairman is putting down on the agenda a proposal that certain bonuses are paid.

The question is…are we able to do this without any problems or restrictions?"

268. In an email to Mr. Karl Oyston dated 5 January 2012, Mr. Owen Oyston proposed that the club pay bonuses of £5 million to himself, £1 million to Mr. Belokon and £50,000 to Mr. Malnacs.

(48) Mr. Malnacs' view of matters appears in a "draft note to new [Blackpool FC] members"

269. In an undated note to the proposed new Blackpool FC board members, Mr. Malnacs made the following comments about the transfers of money out of Blackpool FC:

"On September 17, 2010 [Blackpool FC] made a transfer of 4,2m to its parent company Segesta. The payment was not approved by the board, nor was agreed with [Mr. Belokon]. I wrote an official memo to the board members…, but an agreement has never been reached. On December 17, 2010 in an official meeting…the Oystons claimed that the payment was in

spirit with the concluded agreements and should be written off as management fees over few years. However, in company's interim audit… the transfer is classified as a loan to Segesta.

On February 24, 2011 [Blackpool FC] made a transfer of 4.9 million to Segesta to refinance Segesta loan from a commercial bank. As I pointed out in a memo to the board…it was disappointing and not in line with good corporate governance that the Club has provided a long-term credit without board's approval and prior information…I still have not been informed about the terms of the [Blackpool FC] loan to Segesta.

In August and November [Blackpool FC] made transfers to Segesta in amount of 13,9m. I did not get answer why it has been done. Possibly to repay debts to [Mr. Belokon], possibly partially for constructing SE corner?"

270. Although the last paragraph in the above quotation refers to the possibility of a repayment to Mr. Belokon, I am not aware of any such repayment having been made by the Oyston Side.

(49) The 20 January 2012 board meeting

271. On 20 January 2012, a meeting of the Blackpool FC board took place. Amongst others, Mr. Karl Oyston and Mr. Malnacs were present; Mr. Owen Oyston and Mr. Belokon were not. There are two versions of the minutes of this meeting, one set written by Mr. Malnacs in an ironic and somewhat bitter tone,[111] the other set written in a more standard form by an unknown person. Both deal with the transfers of money out of Blackpool FC. Mr. Malnacs' version reads:

"On December 7, 2011 Mr. Malnacs enquired on the transfers from [Blackpool FC] accounts to Segesta amounting more than 13.6m GPB in August and November. Mr. Oyston explained that they were very worried about the NatWest financial health and decided to transfer money to Lloyds TSB which has the healthiest balance sheet in English bank industry. The transfers were made to Segesta as it takes time to open an account for [Blackpool FC]. The balances as Lloyds yielded little or no interest, which Mr. Malnacs wasn't happy about."

272. The other version reads:

"**Clarification of loans to Segesta**

[Mr. Malnacs] sought this clarification and [Mr. Morozov] asked if there were any written agreements in place. [Mr. Karl Oyston] and [Mr. Dyer] replied that the only written agreement currently being finalised was for Segesta's purchase of a Travelodge Hotel. For the rest of the loans agreement needs finalising by the Board, this involves agreements on income and costs between Segesta and [Blackpool FC] (in conjunction with the current South stand agreements) for the East stand and the south-east corner.

Points of view were put forward by [Mr. Karl Oyston] and [Mr. Malnacs], and it was left that this would be a separate agenda item for detailed discussion at the next Board meeting."

[111] Mr. Malnacs said: "It's pretty clear I was very ironic. Probably I was a little bit bitter, because I thought that's it, I'm stepping down" (Transcript Day 5, p.181); Mr. Dyer said: "I think these are Normunds' sarcastic, spoof minutes". Whilst I accept these comments about the tone, I consider them to be reliable so far as their substance is concerned.

273. It will readily be apparent that the "official" minutes are rather less informative than the "spoof" minutes. The reference in the "spoof" minutes to movements of monies from Blackpool FC's NatWest account to another account in the name of Segesta involved a transfer of some £5.5m, ostensibly to ensure that these monies were housed with the most financially robust institution, given the prevailing financial difficulties.

274. Mr. Dyer explained this in his witness statement (paragraph 22 of Dyer 1) on which he was cross-examined:[112]

Q (Mr. Campbell)	Can I ask you about paragraph 22 of your witness statement please? You say this: "As at May 2014, £5.5 million of the £28.6 million was still cash in the bank." Pausing there, when you say "cash in the bank", you mean in bank accounts of Segesta?
A (Mr. Dyer)	I do, yes.
Q (Mr. Campbell)	And you say: "A main objective of this was to protect [Blackpool FC] funds in the uncertain economic climate by putting funds in different banks as to those which [Blackpool FC] banked with"?
A (Mr. Dyer)	Yes, that was one of the main objectives, yes. Mr. Oyston senior was very conscious of the economic climate. He liked to make sure all of the group's funds were in different bank accounts – in different banks, in case one got into trouble, then the others would be okay.
Q (Mr. Campbell)	There was absolutely nothing to stop, was there, [Blackpool FC] opening new accounts?
A (Mr. Dyer)	It's actually quite difficult for a football club to open bank accounts, believe it or not.
Q (Mr. Campbell)	It's quite difficult -
A (Mr. Dyer)	Yes.
Q (Mr. Campbell)	- to approach a bank and say: I've got £5 million, could you accept it please?
A (Mr. Dyer)	Yes, it still is. Banks won't touch football clubs with the proverbial 10-foot bargepole a lot of the time.
Q (Mr. Campbell)	Your evidence is that a bank will not accept a deposit from a football club?
A (Mr. Dyer)	No, my evidence is that a football club finds it very difficult, even with that kind of background, to open a bank account with a different bank.

[112] Transcript Day 9, pp.140*ff*.

Q (Mr. Campbell)	I can see that it might be the case if a football club wanted an enormous overdraft -
A (Mr. Dyer)	No, it's the case anyway, with any football club.
Q (Mr. Campbell)	Is it your evidence that football clubs find it hard to find stockbrokers to take their money to put in the stock market?
A (Mr. Dyer)	I don't see…
Q (Mr. Campbell)	If you want to diversify your holdings of cash, one option would be to put some of it in stocks, wouldn't it? Did you explore that?
A (Mr. Dyer)	No, I didn't explore that. As I say, it wasn't my decision to do it.
Q (Mr. Campbell)	Whose decision was it?
A (Mr. Dyer)	I said it was Mr. Oyston senior, I think it was.

(50) Further signs of a deteriorating relationship and a failure to provide information

275. A further sign of the deteriorating relationship between Mr. Malnacs and Mr. Karl Oyston can be seen in an email exchange between them in late January 2012. Essentially, Mr. Malnacs wanted more information, and in particular wanted relevant information to be provided sufficiently ahead of board meetings to enable Mr. Malnacs, if necessary, to consult with Mr. Belokon. Mr. Karl Oyston did not directly respond to these points, but instead criticised Mr. Malnacs:

> "Normunds, maybe a good idea would be for you to stop complaining all the time and actually do something positive. You are as capable as I am of researching and presenting ideas to the board to minimise our corporation tax payment. Why not spend your time on worthwhile activity as I am a little bit tired of your constant sniping from the sidelines whilst doing nothing helpful or productive.
>
> I am currently busy with the end of the transfer window. You seem to have gone from being nearly full-time in club activities to nil, unless you have more pressing matters I suggest you prepare the information you wish the board to be given and I will review and look to approve it adverse distribution. Rod will no doubt be willing to assist in your task notwithstanding your unforgivable insults directed at him last week."

276. It is clear that the Oyston Side limited the information that the Belokon Side received from the narrative so far: there were discussions, and payments made, of which the Belokon Side was entirely ignorant. Whilst I equally have no doubt that Mr. Malnacs received some information, he did not receive the information he wanted or needed and he did not receive it when he needed it.

277. Mr. Campbell explored this with Mr. Dyer in cross-examination.[113] The following exchange gives an indication of the extent to which the Oyston Side was prepared to keep Mr. Malnacs informed:[114]

Q (Mr. Campbell)	It's right to say, isn't it, Mr. Dyer, that you were well aware that those discussions were happening at a level somewhat above your level and that you were well-aware that you should not respond to any information requests from Mr. Malnacs, but instead leave it to [Mr. Karl Oyston]?
A (Mr. Dyer)	Not necessarily, no.
Q (Mr. Campbell)	You say "not necessarily"?
A (Mr. Dyer)	Mm-hm.
Q (Mr. Campbell)	You are – I don't wish to be rude – in this period a company secretary who hasn't attended board meetings for two years and you are a financial controller who reports to a financial director [i.e. Mr. Malnacs], who it seems you are not prepared to give any information to, except through the chairman of the board [i.e. Mr. Karl Oyston]. Is it fair to say that you were operating on the basis that Karl Oyston was to deal with Mr. Malnacs and that it wasn't for you to respond to any information requests in the meantime?
A (Mr. Dyer)	I don't think I had any information requests in the meantime.

278. Mr. Dyer's failure to answer these straightforward questions speak volumes.

(51) The 2 February 2012 board meeting and aftermath

279. The next meeting of the Blackpool FC board took place on 2 February 2012. Neither Mr. Belokon nor Mr. Malnacs were present; Mr. Owen Oyston and Mr. Karl Oyston, as well as Mr. Dyer, were present. Mr. Malnacs had requested that the board meeting be put off, partly because Mr. Belokon could not be in London and partly because he felt it would only be worth meeting after he had received further information. Mr. Karl Oyston declined to put off the meeting, and it went ahead as planned.

280. Item 6.3 of the minutes records a proposal that Blackpool FC was to make an accrual of £7 million for directors and staff of the company from the previous financial year. This would appear to be a continuation of the idea of making a payment to the directors of Blackpool FC as described in Section C(47). Mr. Karl Oyston was to "prepare a tax efficient recommendation for [the] distribution of [a] payment that will be approved by the Board at the next meeting, with payments to be made shortly afterwards".

281. On receipt of the minutes, Mr. Malnacs responded by an email dated 8 February 2012:

[113] Transcript Day 9, pp.159*ff*.
[114] Transcript Day 9, pp.159 to 160.

"As I stressed before, it only makes sense for us Latvians to attend board meetings, if relevant information has been circulated in advance so I have time to study it and consult with [Mr. Belokon] if necessary. Please, let me to remind company secretary Mr. Dyer that he still has not supplied me with the requested information:

1. Full list of debtors as of end financial year 2010/11.

2. Full list of creditors as of end financial [year] 2010/11.

3. Split of Segesta 'advanced management fees'."

282. Mr. Malnacs followed up with an email to Mr. Karl Oyston on 13 February 2012 in which he wrote:

"Let me kindly remind you and your team that you still have not provided answers to my questions or draft audit report. If we don't get the requested information, we do not see much sense coming to the board meeting this Friday. Please, do send the requested information immediately, so we can prepare for the board meeting."

283. In a subsequent email to Mr. Cherry on 16 February 2012, Mr. Malnacs wrote:

"I was told that at the moment you are finalizing [Blackpool FC's] draft report for year 2010/11. [Mr. Karl Oyston] wants us to approve it at the board meeting already this Friday. I am definitely not ready to approve the audit on such a short notice, especially since I have not been given accounts-related answers to my questions, and certain differences of opinion between the two major shareholders you are aware of.

Therefore, would [you] kindly send us draft report as soon as possible so we can study, and, if necessary pose questions?

I believe that it is very important that the accounts reflect the two payments in question (4.2m and 4.9m) as separate entities, since they were not made with the board's permission or consultation and the two major shareholders have not reached an agreement on their status yet. I don't understand why [Mr. Dyer] puts them together in 'advance management fees', which I believe, is not correct."

(52) The £11 million payment proposal

284. Also on 16 February 2012, Mr. Karl Oyston sent an email to Mr. Malnacs, attached to which were the draft audited financial statements for 2010-2011. In his email, Mr. Karl Oyston wrote:

"Please find enclosed a copy of the draft financial statements for [Blackpool FC]. I have gone through them in detail with [Mr. Dyer] and am happy that they will be presented to the board at the board meeting tomorrow for approval.

You will note at page 13 there is an amount of Group undertakings of £11,521,885 which represents the total amounts owed by Segesta. This is the amount that is affected by the restructuring agreements regarding the South & South East stands and requires discussion as

soon as the major shareholders can be assembled at a board meeting, which I will leave you to arrange. This also includes the now concluded agreement between Segesta and [Blackpool FC] in relation to the Travelodge. We will let you have a copy in due course.

You will also see a note on page 11, note 8.1 relating to an accrual for remuneration payable to [Zabaxe] on behalf of my father's long term involvement and support of Blackpool FC. Zabaxe has agreed to make a loan, if requested and following advice on terms of such a loan from [Mr. Cherry] and [Mr. Belton], to Blackpool FC of up to £8.177m."

285. Thus, the original proposal (discussed at the 2 February 2012 board meeting) for a payment to the directors of Blackpool FC had changed from "a payment of £7m for directors & staff of the company" to a payment of £11,000,000 from Blackpool FC to Zabaxe "on behalf of my father's long-term involvement and support of Blackpool FC".

286. The draft audited financial statements for 2010-2011 appended to the email, which reflected this payment, were due to be approved by the board at a meeting on the following day, 17 February 2012. The £11 million payment was listed in the draft audited financial statements under the heading "Directors' remuneration" as an entry for "Emoluments and other benefits".

287. Mr. Malnacs objected to the draft audited financial statements and in particular to the £11 million proposed payment. In an email addressed to Mr. Karl Oyston dated 16 February 2012, Mr. Malnacs wrote:

"As I expected, the draft audited financial statement includes a few things that <u>are not acceptable</u> to me and [Mr. Belokon]. This is reason I requested draft report at least few days before the board meeting – not less than 24 hours – so we can discuss and maybe agree.

First, how could you decide on making 11 million worth emolument to one shareholder, without board's other major shareholder's approval or at least a meaningful discussion?! This is out of any acceptable corporate governance norms, even without mentioning the moral aspect of the transaction! We don't question [Mr. Owen Oyston's] contribution to the club, but any transfers of that size must be agreed with the board or the other shareholder.

As I mentioned before, neither am I happy with how the Segesta debt to [Blackpool FC] is reflected in one figure [of] 11.5m. We want clear split of that amount into [its] components. I really can't understand why despite so many requests I still can't get a split of that amount?

These are only two issues that I noted in such a short notice. I am sure I would have more questions once I have studied the draft report in more detail. In any case, neither me nor [Mr. Belokon] are happy with the draft report and we request postponement of the board meeting where the audit is approved. We understand that the approved audit report must be filed with the company house shortly; however, you have had enough months to timely prepare the audit report, so we can analyse, discuss and approve it."

288. Mr. Karl Oyston's reply of the same date was addressed to the board and was as follows:

"Further to [Mr. Malnacs'] email I think the time has come for me to make some suggestions as to how we resolve the current position which is affecting the performance of [Blackpool FC] and its prospects of success. I will not postpone tomorrow's Board Meeting scheduled to approve this year's accounts and will not debate the various matters relating to the accounts via email. I would suggest that we consider arriving at a point whereby either [Mr. Belokon] or [Mr. Owen Oyston] take each other's shares in [Blackpool FC] and to that end I suggest that [Mr. Malnacs] obtains [Mr. Belokon's] instructions on the following 2 options: -

Option A

[Mr. Belokon] makes an offer to [Mr. Owen Oyston] to buy the whole of his shareholding in [Blackpool FC].

Option B

[Mr. Belokon] proposes a sale price for his own shares to [Mr. Owen Oyston] alongside an agreement that allows [Blackpool FC]/Segesta to repay all loans and terminate all arrangements between those parties.

I obviously haven't discussed this with either [Mr. Belokon] or [Mr. Owen Oyston] in much detail but feel I must for the good of the company and my sanity attempt to find some solution to the current unsatisfactory position. It is of extreme distress that we worked so well together to achieve so much and having done so seem intent on stagnation and reversal of fortunes."

289. Mr. Malnacs' response, again of the same date, was as follows:

"I fully agree that this saga can go forever and is not in the interests of anybody. My personal view is that indeed it is much better solution if any of the two parties just sell the shares to the other.

In the summer [Mr. Belokon] wanted out and asked for valuation of his shares and investments. Please, be reasonable and agree that your proposal was not near right either from financial or morals positions. I have not spoken to [Mr. Belokon] for a while, but imagine he still could be open to a reasonable offer. When I have a chance I will try to speak to him about your proposal, [Mr. Karl Oyston].

As for audit report, I am really tired of repeating – we need time to analyse the figures before approving the audit. We can have a reasonable board meeting discussion only [if] we have had information for few days. So, please, postpone the meeting tomorrow. Otherwise, I have no option, but not to approve the audit and report it to our auditor and, if necessary, to pursue the matter further. Again, it is not in anybody's interests. Please!"

290. Mr. Malnacs took the further step of writing a letter to Mr. Cherry on 17 February 2012 to reiterate his objections regarding the draft audited financial statements, stating:

"This is to officially notify you as Blackpool FC auditor that I am not able to approve [Blackpool FC's] draft audit report for season 2010/11 prepared by you.

Despite several requests to share above mentioned draft report at least few days in advance of the board meeting, I received it only on February 16, 2012 evening, with the board meeting

scheduled on February 17, 2012 at noon to approve it. Needless to say, this is not an adequate time to study the draft report, especially given the fact that recently I have been denied financial information form Mr. Dyer and Mr. Karl Oyston on few occasions. Even a quick view at the draft report highlighted at least two issues:

1. £11,000,000 emolument to Mr. Owen Oyston was never discussed or agreed at a formal board meeting or meeting between the two major shareholders. It is not acceptable to propose an emolument of such a magnitude without proper discussions and on such a short notice, and in an environment of number of unresolved issues between the two major shareholders.

2. I also believe that the draft audit should single out two [Blackpool FC] payments (£4.2 and £4.9m) to its parent company Segesta which, again, were made without board's approval and prior information.

Apart from these two issues, there is additional time needed to study the draft report in details. I have asked Mr. Karl Oyston to postpone the board meeting for a week, but he seems to be ignoring my request. Therefore, in case the board meeting goes ahead as planned today and the draft audit report is approved, I request that the final audit reflect my disagreements above."

291. Mr. Cherry's responded to Mr. Malnacs by a letter of the same day, in which he stated:

"I feel that many of the items need to be discussed with your fellow directors/shareholders rather than ourselves.

…

The only point for which I feel I can reply is regarding the loan from [Blackpool FC] to Segesta. We believe that the disclosure is adequate to comply with accounting standards and Companies Act Disclosure and does not require any further detail.

…

I regret I am unable to act on the final paragraph of your letter to amend financial statements without Board approval."

(53) The 17 February 2012 board meeting

292. As planned, a meeting of the Blackpool FC board took place on 17 February 2012. In attendance were Mr. Karl Oyston, Mr. Owen Oyston and Mr. Rod Dyer. Mrs. Oyston and Mr. Malnacs participated in the meeting by telephone, the latter for a limited period only.

293. The minutes record as follows:

"Matters arising – further to paragraph 6.3 of last meetings minutes where it was agreed to make an accrual of £7M for directors and staff. Following further discussions with the company's advisors it was advised that the amount be lifted to £11m and paid as

remuneration to the director Mr OJ Oyston. The payment would be made to the director's service company Zabaxe Ltd.

Mr. OJ Oyston disclosed to the meeting his interest in Zabaxe Limited and the remuneration, and therefore would not take part in the agreement of this proposal. After discussion the meeting confirmed the accrual and payment to Zabaxe Limited of £11M, proposed by [Mr. Karl Oyston], seconded by [Mrs. Oyston] and passed by the meeting.

At this point [Mr. Malnacs] was invited to join the meeting by telephone conference so that his opinions could be heard. [Mr. Malnacs] initially stated he could not discuss his objections on the phone, but then he wanted his objections to the course of action that we being approved by the Board noted, these had also been put in writing to the auditor and the auditor had responded.

It was pointed out that aspects of the information requested by [Mr. Malnacs] related to Segesta Limited and not [Blackpool FC] so these requests had not been complied with.

At this point the conference call with [Mr. Malnacs] came to an end."

294. Even on the face of it, there are a number of oddities about this minute:

i) Mrs. Oyston did not generally attend Blackpool FC board meetings. The 17 February 2012 meeting appears to be the only such meeting she attended since 1999. It would appear that Mrs. Oyston had been asked to join the meeting, because Mr. Owen Oyston was going to recuse himself on the issue of the payment. However, like Mr. Owen Oyston, Mrs. Oyston was at that time also a director of Zabaxe.

ii) It is curious that Mr. Malnacs was only invited to give his views – which, of course, were already known – after the vote had been taken.

295. The draft financial statements reflecting the £11 million payment were approved by the board after Mr. Malnacs had left the meeting and, ultimately, the payment was incorporated in Blackpool FC's finalised audited financial statements.

296. In a note attached to his email dated 20 February 2012, Mr. Malnacs followed up with the board to note his disappointment that his objections had not been taken into account and to object to the content of the minutes. That note read as follows:

"Thank you for the draft minutes of your [fruitful] and honest board meeting. I hereby would like to express my objections and propose changes to the draft minutes.

1. Apologies and participation

First, I disagree with my participation status in the meeting. As I clearly stated on the outset of the short phone conversation, I was not prepared to participate in the meeting as I was not given sufficient time to analyse the information provided and consult with Mr. Belokon, if necessary. I have clearly and repeatedly stated that I need information for the board meeting at least three days before the meeting. Otherwise I don't see sense coming and participating in the meeting unprepared. I only asked the board to take into account my two objections mentioned in my official letter to our auditor dated February 16th: i) £11 emolument, ii) non-

[segregation] of [Blackpool FC] loan to Segesta. Sadly, but foreseeably the board meeting failed to respond to my objections.

2. Minutes of previous meeting

I already raised my objections to paying £11m emolument to Mr. Owen Oyston without proper discussions with the other major shareholder. On February 14, 2012 I clearly asked Mr. Karl Oyston and [Mr. Dyer] to provide any details (see attached email) about the proposed emolument payments, but did not get any answer. The proposed structure is clearly disadvantageous to Mr. Belokon and not acceptable on financial or moral grounds.

I have sympathies with [Mr. Karl Oyston's] disappointment not to be able to convene for a full board meeting, including Mr. Belokon for some time. However, given the history of making major decisions without board discussions or approval (i.e. £4.2m and £4.9m transfers), it might seem pointless to attend the board meeting since the decisions are made outside the boardroom. In addition, I am always willing and willing to participate in board meetings and represent Mr. Belokon, if you do send me the relevant information at least three days prior to the board meeting."

(54) The payment of £11 million is made

297. The payment of £11 million was made on 21 February 2012, as can be seen from Zabaxe's bank statement for the relevant period. The contemporaneous invoice drawn up by Zabaxe (also dated 21 February 2012) describes the payment as "director's remuneration". As will become clear, this payment came to be described differently.

(55) Publicity surrounding the payment

298. The payment was criticised in the media after Blackpool FC's 2010-2011 accounts were filed at Companies House and thus made publicly available. An article published online by the Daily Mail on 3 March 2012 entitled "REVEALED: The Premier League owner who was being paid £11m while his club were being relegated" was particularly critical:

"For [Blackpool FC's] financial accounts for that 2010-11 campaign, filed in the past 48 hours and relating to their first season in the top flight for 39 years, reveal that one of [Blackpool FC's] six directors was paid a staggering £11 million in remuneration for the season that ended with the club's relegation back to the Championship.

And the unnamed director, paid through his company, Zabaxe, was [Mr. Karl Oyston's] father, Blackpool's multi-millionaire majority shareholder, [Mr. Owen Oyston].

…

Already supporters, politicians, players and industry observers have condemned the £11m director's remuneration as 'shocking' and 'barely believable'.

…

The £11m paid to a single director is understood to be more than for the wages paid to [Blackpool FC's] first-team and the manager combined during their one season in the Premier League."

299. Mr. Karl Oyston subsequently gave an interview to the Guardian, which resulted in an article being published online on 6 March 2012 which quoted Mr. Karl Oyston as having said as follows:

> "We have done all this on professional advice. We were advised that if we left the money in the football club it could attract a very large tax bill, which would fall on the football club.
>
> The money has been paid to my father's company, and if the club needs it for the next stage of development, which is to build a new training ground, I am sure my father will lend it to the club interest-free, as he always has over 25 years of ownership
>
> …
>
> The £11m was paid out as part of sound tax planning – we are UK-based and believe in paying our taxes but still have to plan sensibly. I understand, it was paid to Zabaxe as a salary and people will draw the conclusion it is a salary to my father. We could have explained it better. But the money is in an Oyston company; the football club is an Oyston company too, and that money is there should we require it.
>
> But frankly, after the way he has supported the club all these years, if it was an £11m salary to my father, so what?"

(56) Exit Mr. Malnacs; enter Mr. Varpins

300. Mr. Varpins became a director of Blackpool FC in March 2013, replacing Mr. Malnacs. However, whereas Mr. Malnacs was (at least for periods of time) based in Blackpool, Mr. Varpins was not. He knew very little about the club, when he joined the board.[115]

(57) 2013 onwards

301. I do not consider the events from March 2013 onwards to be of assistance in determining the Petition. Apart from some further payments made out of Blackpool FC which VB Football Assets contend were not for the benefit of the club and were unfairly prejudicial, the period between March 2013 and 29 September 2014 (when VB Football Assets' then solicitors wrote to the Respondents complaining about a number of matters, some of which ultimately found their way into the Petition) is characterised by ever more destructive conduct between the Oyston Side and the Belokon Side. This ranged from venting grievances in public, to arguing about whether or not to take further forward a proposal to buy Blackpool FC, to the Oyston Side not finalising the accounts of Blackpool FC because of the Belokon Side's failure to consent to them. It is unnecessary to consider this conduct. The fact is that the reason for this is the history described in Sections C(28) to C(56) – the denial of the gentleman's agreement; the payments out of Blackpool FC; and the overruling of the minority Belokon Side by the majority Oyston Side.

[115] Transcript Day 6, p.16.

302. These factors lead to the stalemate that has persisted from 2013. It is these factors (considered in Sections E, F and G) – plus the question of the articles of association, which I consider separately in Section H – that will determine the outcome of the Petition. The later conduct is no more than a symptom arising out of these earlier grievances.

303. The period after 29 September 2014, when VB Football Assets' solicitors sent a letter before action, strikes me as still less relevant.[116] By this time, both VB Football Assets and the Respondents had solicitors advising them on their conduct. Even more so than the previous period, I do not consider the events of this period helpful to the questions I must determine. If anything, it is the conduct prior to March 2013 – plus, perhaps, the question of the change to the articles of association – that will be determinative. If this conduct was unfairly prejudicial, then I do not see how it can be cured by the Respondents' later conduct; if it was not unfairly prejudicial, then I fail to see how the later conduct can make it so.

D. UNFAIR PREJUDICE: SECTION 994

(1) Introduction

304. Section 994 of the Companies Act 2006 provides so far as material:

> "(1) A member of a company may apply to the court by petition for an order under this Part on the ground-
>
> (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
>
> (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
>
> (1A) For the purposes of subsection (1)(a), a removal of the company's auditor from office-
>
> (a) on grounds of divergence of opinions on accounting treatments or audit provisions, or
>
> (b) on any other improper grounds,
>
> shall be treated as being unfairly prejudicial to the interests of some part of the company's members."

305. The requirement of section 994 are relatively clear and the law was not extensively debated before me. In order for the Petition to succeed, VB Football Assets must show:

i) That it has standing to petition, i.e. that it is a member of Blackpool FC.

[116] I gave the parties an indication to this effect during the course of Mr. Varpins' cross-examination (Transcript Day 7, pp.95*ff*).

ii) That the acts or omissions of which it complains consist of the management of the affairs of Blackpool FC.

iii) That the conduct of those affairs has caused prejudice to its interests as a member of Blackpool FC.

iv) That the prejudice is unfair.

(2) Standing

306. It was not disputed that VB Football Assets is a member of Blackpool FC. Nor was it disputed that Blackpool FC itself was an organisation in respect of which a remedy might be granted pursuant to sections 994 and 996 of the Companies Act 2006. VB Football Assets obviously has standing to bring the Petition.

(3) The acts and omissions of which VB Football Assets complains consist of the management of the affairs of Blackpool FC

307. The acts and omissions complained of by VB Football Assets were set out in paragraph 24 above. Essentially:

i) VB Football Assets complains that substantial payments were made out of Blackpool FC which were improper. They were improper in that they were made without VB Football Assets' consent and/or were for the personal benefit of Mr. Owen Oyston and/or Mr. Karl Oyston. Relatedly, VB Football Assets complains that there was a failure by Blackpool FC to pay dividends.

ii) VB Football Assets complains that it was excluded from the management of Blackpool FC. Whilst Mr. Belokon and Mr. Malnacs were directors of Blackpool FC, they were excluded from receiving material information about Blackpool FC, including information needed for board meetings. Furthermore, decisions that should have been made by the board, were made outside board meetings.

iii) VB Football Assets complains that the adoption, by Blackpool FC, of new articles of association, was unfairly prejudicial.

308. I consider that all three of these grounds amount to "acts" or "omissions" of Blackpool FC within section 994(1)(b)). They also relate to the conduct of Blackpool FC's "affairs" (within section 994(1)(a)). It is clear law that all three terms – "acts", "omissions" and "affairs" – are to be widely construed, although they must, clearly, be acts, omissions or affairs of the company in question. In Re Unisoft Group Ltd (No. 3) [1994] BCLC 609 at 611, Harman J. stated in relation to the terms "act" and "omission":

> "…the words are wide and anything that the company does or fails to do can be relied upon. But wide as the category of acts may be it is necessary that the act or omission is done or left undone by the company itself or on its behalf, Thus, voting at a general meeting, whether annual or extraordinary, may result in a resolution being passed or defeated. The resolution is, obviously, an act of the company notwithstanding that the votes which pass or defeat it are the votes of members which are their private rights which…can be exercised as they choose. The

acts of the members themselves are not acts of the company and cannot found a petition under [section 994]."

309. The words "affairs of the company" are also wide and should be construed liberally.[117] They encompass all matters which may come before the company's board for its consideration; but matters which are not considered by the board are not necessarily incapable of being a part of that company's affairs. The phrase includes all aspects of the company's affairs and business.

(4) "Prejudice" to "interests" which is "unfair"

310. A member who has presented a section 994 petition must establish that the conduct of the company's affairs of which he complains is unfairly prejudicial "to the interests of [the company's] members generally or some part of its members (including at least himself)".

311. Paragraph 6.65 of Minority Shareholders[118] says this on the meaning of "interest":

> "The primary source of a petitioner's rights as a member, and hence of his 'interests', is the constitution of the company, and a breach of his rights arising under the memorandum or articles will usually affect his interests as a member. Such interests include the 'real value of [the petitioner's] shares and extend, at least in quasi-partnership cases, to 'outsider rights', such as the right to be a director. Rights conferred by collateral agreements such as shareholders' agreements may also affect the petitioner in his capacity as member…".

312. The interests of a member are not limited to his strict legal rights under the constitution of the company or under collateral agreements. As Hoffmann J. noted in Re A Company (No. 00477 of 1986) [1986] BCLC 376 at 378-379, "[t]he use of the word 'unfairly' in [section 994], like the use of the words 'just and equitable' in section 122(1)(g) of the [Insolvency Act 1986] enables the court to have regard to wider equitable considerations…".

313. The requirement of "prejudice" is also to be liberally construed. In O'Neill v. Phillips [1999] 1 BCLC 1 at 15, Lord Hoffmann said that "the requirement that prejudice must be suffered as a member should not be too narrowly or technically construed". Whilst "prejudice" may often be economic – in the sense that the value of the petitioner's shareholding is diminished or jeopardised[119] – prejudice is capable of being established otherwise than in a pure economic sense. In Re Coroin Ltd (No. 2) [2012] EWHC 2343 at 630 David Richards J. stated:

> "Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member. So,

[117] Re Neath Rugby Ltd (No. 2), [2009] EWCA Civ 291, [2009] 2 BCLC 427 at [50].
[118] Joffe, V., Drake, D., Richardson, G., Lightman, D. & Collingwood, T, Minority Shareholders: Law, Practice and Procedure, 5th ed. (2015).
[119] See Slade J. in Bovey Hotel Ventures Limited, unreported but quoted in paragraph 6.77 of Minority Shareholders.

for example, removal from participation in the management of a company and the resulting loss of income or profits from the company in the form of remuneration will constitute prejudice in those cases where the members have rights recognised in equity is not at law, to participate in that way. Similarly, damage to the financial position of a member in relation to a debt due to him from the company can in the appropriate circumstances amount to prejudice. The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of the member as such, without any financial consequences, may amount to prejudice falling within the section."

314. The conduct complained of must not merely be prejudicial, but unfairly so. One element without the other will not suffice:[120]

"The conduct must be both prejudicial (in the sense of causing prejudice or harm to the relevant interest) and also unfairly so: conduct may be unfair without being prejudicial or prejudicial without being unfair, and it is not sufficient if the conduct satisfies only one of these tests…"

315. "Fairness" is obviously a flexible concept, but it must "be applied judicially and the content which it is given by the courts must be based on rational principle".[121]

316. In Grace v. Biagioli [2006] 2 BCLC 70 at [61], the Court of Appeal deduced the following principles from the speech of Lord Hoffmann in O'Neill v. Phillips [1999] 2 BCC 1:

"(1) The concept of unfairness, although objective in its focus, is not to be considered in a vacuum. An assessment that conduct is unfair has to be made against the legal background of the corporate structure under consideration. This will usually take the form of the articles of association and any collateral agreements between shareholders which identify their rights and obligations as members of the company. Both are subject to established equitable principles which may moderate the exercise of strict legal rights when insistence on the enforcement of such rights would be unconscionable.

(2) It follows that it will not ordinarily be unfair for the affairs of a company to be conducted in accordance with the provisions of its articles or any other relevant and legally enforceable agreement, unless it would be inequitable for those agreements to be enforced in the particular circumstances under consideration. Unfairness may, to use Lord Hoffmann's words, "consist in a breach of the rules or in using rules in a manner which equity would regard as contrary to good faith"…; the conduct need not therefore be unlawful, but it must be inequitable.

(3) Although it is impossible to provide an exhaustive definition of the circumstances in which the application of equitable principles would render it unjust for a party to insist on his strict legal rights, those principles are to be applied according to settled and established equitable rules and not by reference to some indefinite notion of fairness.

[120] Per Neill L.J. in Re Saul D Harrison & Sons plc [1995] 1 BCLC 14 at 31.
[121] Per Lord Hoffmann in O'Neill v. Phillips [1999] 2 BCLC 1 at 7.

(4) To be unfair, the conduct complained of need not be such as would have justified the making of a winding-up order on just and equitable grounds as formerly required under section 210 of the Companies Act 1948.

(5) A useful test is always to ask whether the exercise of the power or rights in question would involve a breach of an agreement or understanding between the parties which it would be unfair to allow a member to ignore. Such agreements do not have to be contractually binding in order to found the equity.

(6) It is not enough merely to show that the relationship between the parties has irretrievably broken down. There is no right of unilateral withdrawal for a shareholder when trust and confidence between shareholders no longer exist. It is, however, different if that breakdown in relations then causes the majority to exclude the petitioner from the management of the company or otherwise to cause him prejudice in his capacity as a shareholder."

317. Unfairness can either consist of some breach of the terms on which it has been agreed that the affairs of the company should be conducted or arise out of "equitable considerations". In Re Saul D Harrison & Sons plc, [1995] 1 BCLC 14 at 19, Hoffmann L.J. stated:

"How can it be unfair to act in accordance with what the parties have agreed? As a general rule, it is not. But there are cases in which the letter of the articles does not fully reflect the understandings upon which the shareholders are associated. Lord Wilberforce drew attention to such cases in a celebrated passage of his judgement in Ebrahimi v. Westbourne Galleries Ltd [1973] AC 360 at 379, which discusses what seems to me to be the identical concept of injustice or unfairness which can form the basis of a just and equitable winding up…Thus the personal relationship between a shareholder and those who control the company may entitle him to say that it would in certain circumstances be unfair for them to exercise a power conferred by the articles upon the board or the company general meeting…"

318. In O'Neill v. Phillips [1999] 2 BCLC 1 at 7-9:

"One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights and certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modifications, been carried over into company law…there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules when using the rules in a manner which equity would regard as contrary to good faith.

This approach to the concept of unfairness in [section 994] runs parallel to that which your Lordships House, in Ebrahimi v. Westbourne Galleries Ltd [1973] AC 360, adopted in getting content to the concept of 'just and equitable' as a ground for winding up…

I would apply the same reasoning to the concept of unfairness in section [994]…Lord Wilberforce…said that it would be impossible 'and wholly undesirable' to define the circumstances in which the application of equitable principles might make it unjust, or equitable (or unfair) for a party to insist on legal rights what exercise them in a particular way. This of course is right. But that does not mean that there are no principles by which those circumstances may be identified. The way in which such equitable principles operate is

tolerably well settled and in my view would be wrong to abandon them in favour of some holy indefinite notion of fairness…"

319. It is plain that such equitable considerations can really only be held to apply in the case of private companies: in the case of public companies, where shareholders have subscribed for shares on the basis of published documents, it is difficult to infer a legitimate expectation from arrangements outside the ambit of the formal constitution of the company (including, perhaps, public documents such as the prospectus).[122]

320. Blackpool FC, however, is a private company and – if the facts warrant it – there is space for equitable considerations or legitimate expectations to be taken into account when considering whether unfair prejudice within the meaning of section 994 exists. For the reasons given in Section C(9)*(ii)* above, I find that the legal agreements concluded between the parties regarding VB Football Assets' participation in Blackpool FC (that is, the Subscription Agreement, the First Vlada Loan Agreement and the Second Vlada Loan Agreement) did not set out the entirety of the understanding between Mr. Belokon and Mr. Owen Oyston.

321. I have found that the parties, quite deliberately and in order to preserve the Tax Losses, did not incorporate into these agreements the understanding according to which Mr. Belokon was, in due course, to acquire parity of shareholding in the Blackpool FC and, in the meantime, was to have a joint say in the operation of Blackpool FC. As I have determined in paragraphs 92 to 94 above, the non-contractual understanding between Mr. Belokon and Mr. Oyston was:

    i) That the loans advanced pursuant to the First and Second Vlada Loan Agreements were advanced in contemplation of the conversion of these debts into equity, such that there would be a parity of shareholding between VB Football Assets and Segesta.

    ii) That, pending that conversion of debt into equity, there would be a "quasi-partnership" giving VB Football Assets an equal share in the profits, and a say in the conduct of Blackpool FC's business, which would be conducted on the basis of unanimity.

322. Accordingly, when considering the three grounds of unfair prejudice summarised in paragraph 307 above, I do so not merely on the basis of the strict legal rights subsisting between Segesta and VB Football Assets, but also on the basis of the legitimate expectation that I have described and found to exist.

323. The next sections consider the various allegations of unfair prejudice advanced by VB Football Assets.

[122] See Re Blue Arrow [1987] BCLC 585 at 590 per Vinelott J.

E. THE GENERAL OPERATION OF BLACKPOOL FC

(1) Duties on directors

324. As has been described, Blackpool FC is part of a group of privately-owned companies comprising the Oyston Group. Although Mr. Karl Oyston is the chairman of Blackpool FC, it is Mr. Owen Oyston who calls the shots, and Mr. Karl Oyston implements these.[123]

325. As well as sharing, in effect, a common owner in the shape of Mr. Owen Oyston, the companies in the Oyston Group (including Blackpool FC) tend to share common advisers and employees. Thus, as has been described, Mr. Cherry is the auditor not only of Blackpool FC, but of other companies within the Oyston Group. The same is true of Mr. Dyer, in his role as financial controller.

326. There is nothing instrinsically wrong in such organisation. However, it can lead to a blurring in terms of relevant officers losing sight of the duties that they owe to a specific company, with perhaps an improper focus on the interests of other companies in the group or other interests altogether.

327. The duties that a director owes to his company are trite. A director is obliged:

i) To act within his powers and to exercise those powers for a proper purpose pursuant to section 171 of the Companies Act 2006.

ii) To promote the success of the company for the benefit of its members as a whole pursuant to section 172 of the Companies Act 2006.

iii) To exercise reasonable care, skill and diligence, pursuant to section 174 of the Companies Act 2006.

iv) To avoid placing himself in a position of conflicting personal interests, pursuant to section 175 of the Companies Act 2006.

328. It will be necessary to have in mind these elemental duties in respect of the allegations of unfair prejudice that are made by VB Football Assets.

(2) Transfers of money between entities within the Osyton Group

329. Mr. Dyer was the financial controller of about seven or eight companies within the Oyston Group.[124] Making transfers of monies between these companies was – mechanically speaking – extremely straightforward. It simply required the authority of the cheque signatory – Mr. Owen Oyston in a couple of cases, Mr. Karl Oyston in all cases – and Mr. Dyer would create an entry in the ledgers of the paying company and the payee company as appropriate.[125]

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[123] See Transcript Day 11, pp.23 to 24 and p.40. The minutes made at the Dorchester Hotel – referenced in Section C(19)(*i)* above demonstrate that it was Mr. Owen Oyston's views that held sway.
[124] Transcript Day 9, p.78.
[125] Transcript Day 9, pp.78 to 81.

330. In cross-examination of Mr. Dyer, Mr. Campell hypothesised an instruction from Mr. Karl Oyston for Blackpool FC to pay an invoice for tractors received by another company in the Oyston Group as he sought to explore how the Oyston Group dealt with the potential conflict of interests that might arise:[126]

Q (Mr. Campbell)	The reason I ask you about conflicts of interest is, it's perfectly possible, isn't it, that it might not actually be in Blackpool FC's own interests to pay for one of Oyston Estates' tractors?
A (Mr. Dyer)	It's never had a detrimental effect on Blackpool Football Club.
Q (Mr. Campbell)	Let me ask you the question again: it's perfectly possible, isn't it, that it might not be in the interests of one group company to pay out money, recognised notionally as a loan on the ledger, for the benefit of another company's business. Do you accept that as a general proposition?
A (Mr. Dyer)	Can you just repeat that proposition for me please?
Q (Mr. Campbell)	Of course. It's possible, at least in theory, isn't it, that it might not be in the financial interests of a group company from which a payment is made out, giving rise to a notional loan in the ledgers to another group company for whose benefit that payment is made?
A (Mr. Dyer)	I don't think any of the payments have had any detrimental effect on any of the companies.
Q (Mr. Campbell)	I'm asking you a theoretical question, given your role in all those different companies. Is that at least in theory a danger which you accept could exist, or do you simply not turn your mind to it?
A (Mr. Dyer)	I don't think we should deal in theory.
Q (Mr. Campbell)	We will be coming on to some of the particular payments that were made a little later, but it's fair to say, isn't it, from your answer that you don't have in place any particular safeguards to ensure that when you create a ledger loan from one company to another that it's actually in the interests of the lending company to do so; you don't have any particular procedures in place to manage any risks?
A (Mr. Dyer)	I wouldn't say that was absolutely correct, no.
Q (Mr. Campbell)	Could you tell the Court what are your procedures and safeguards to manage that potential risk of conflict of interest?
A (Mr. Dyer)	The procedures and the safeguards are we see what the payment is for and we record it correctly in the ledgers of the company that it's for.
Q (Mr. Campbell)	I can see entirely from a bookkeeping perspective that

[126] Transcript Day 9, pp.81 to 83.

	ledger entries need to be accurate. I'm asking you slightly more broadly from a corporate governance perspective, given that you are more than just a bookkeeper, you are also the company secretary. Do you have any procedures in place to assess whether any given transaction is actually in the interests of the company from whom the money is being drawn?
A (Mr. Dyer)	Probably no specific ones, no, but as I said, none of them have been to the detriment of any of the companies.
Q (Mr. Campbell)	Is it fair to say, Mr. Dyer, that you work on the basis of the Oystons' instructions and your essential role is to fill out the ledgers accordingly?
A (Mr. Dyer)	No, it's not, no, no.
Q (Mr. Campbell)	Have you ever refused to make a payment when Karl Oyston has requested you to do so?
A (Mr. Dyer)	No.
Q (Mr. Campbell)	Can you imagine ever refusing to make a payment if Karl Oyston requested you to do so?
A (Mr. Dyer)	Probably not, no.

331. I consider in paragraphs 349 to 354 and 375 to 379 below the suggestion of Mr. Dyer that none of the payments out of Blackpool FC had a detrimental effect on the company. For the present, it suffices to say that I regard the suggestion as entirely incorrect. What matters for present purposes is the fact that Mr. Dyer's answers demonstrate a complete failure to consider the separate position of Blackpool FC.

332. Of course, Mr. Dyer was just company secretary and financial controller of Blackpool FC. He did as he was told by Mr. Owen Oyston and Mr. Karl Oyston. But his answers demonstrate exactly the state of mind Mr. Owen Oyston and Mr. Karl Oyston had towards Blackpool FC. Essentially, Mr. Owen Oyston and Mr. Karl Oyston considered they were free to move monies about the Oyston Group pretty much as they pleased and without specific consideration of the position of Blackpool FC:

i) In answer to a question from Mr. Green, Q.C., Mr. Karl Oyston said:[127]

> "Oh, in my time in charge of the football club money had flowed freely between the parent and subsidiary and from our group companies into the football club without documentation at times. I think sometimes we did document them and sometimes they were interest-bearing and odd one that wasn't, as did my father…"

ii) Asked about the classification of the £4.2 million payment away to Protoplan, Mr. Karl Oyston said:[128]

[127] Transcript Day 11, p.65.
[128] Transcript Day 11, pp.65 to 66.

Q (Mr. Green, Q.C.)	Prior to agreeing to make this £4.2 million loan to Segesta, was there, so far as you recall, any consideration by the Blackpool FC board members, including the Oyston directors, as to whether the making of that loan was in the commercial interest of Blackpool FC?
A (Mr. Karl Oyston)	I don't recall without looking. No, I don't recall.
Q (Mr. Green, Q.C.)	Of course, at the time of making the payment, which was September 2010, it hadn't even been decided by those who caused the payment to be made as to how it would be categorised, had it?
A (Mr. Karl Oyston)	I think that's not something I would have been involved in, in any event, but I'll take your word for it.
Q (Mr. Green, Q.C.)	So you would be unconcerned about a £4.2 million payment out of Blackpool FC without knowing whether it was to be categorised as a loan or in any other way?
A (Mr. Karl Oyston)	I didn't say I was unconcerned, I said it was something that I wouldn't be involved in necessarily or how it was categorised. That's where I was led by [Mr. Dyer] and, obviously, Ian Cherry, the auditor.

iii) Asked about the "absolute discretion" provision in the Travelodge loan agreement – where the repayment provisions of Segesta to Blackpool FC were at Segesta's "absolute discretion"[129] – Mr. Owen Oyston's response was as follows:[130]

Q (Mr. Green, Q.C.)	Mr. Oyston, given that the loan terms being discussed involved repayment at Segesta's absolute discretion, how could it possibly be said that this loan was more secure than any other use of the money that we have yet identified?
A (Mr. Owen Oyston)	Because I control both companies and I would not let Blackpool FC suffer any prejudice.
…	
Q (Mr. Green, Q.C.)	How could this proposed loan, repayable at the borrower's absolute discretion, be more secure than any other available investment?
A (Mr. Owen Oyston)	Because I control both companies, I could override that clause, that's why.
…	

[129] See paragraph 257 above.

[130] Transcript Day 13, pp.120 to 121 and 135 to 136. In similar vein, see the cross-examination of Mr. Karl Oyston, Transcript Day 11, p.118.

Q (Mr. Green, Q.C.)	Presumably, your view was that if you had to have a written loan agreement, rather than the undocumented verbal agreement that you were previously talking about,[131] you could at least remove its teeth by having it give you total discretion as to whether you make repayments?
A (Mr. Owen Oyston)	I had total discretion anyway.
Q (Mr. Green, Q.C.)	You didn't. If you had a binding contract -
A (Mr. Owen Oyston)	I control every company in the Oyston Group. So I have total discretion.
Q (Mr. Green, Q.C.)	Well, you didn't have total discretion as to whether or not to repay the loan amounts unless the agreement gave you total discretion?
A (Mr. Owen Oyston)	I could have changed the loan agreement.
Q (Mr. Green, Q.C.)	I see.
A (Mr. Owen Oyston)	I have total discretion.

333. Paragraph 7 of Dyer 1 refers to certain payments made by Blackpool FC to both Segesta and Blackpool Football Hotel Ltd, Segesta's 100% owned subsidiary. He referred to these payments as "intercompany loans" by Blackpool FC, and was cross-examined on these:[132]

Q (Mr. Campbell)	You refer in paragraph 7, as I've just read out, to: "There have been since 2010 two intercompany loans". Just to be clear, you don't mean by that, do you, that there have been since 2010 two written loan agreements?
A (Mr. Dyer)	No, I don't.
Q (Mr. Campbell)	And nor do you mean, do you, that in 2010 a lump sum loan was advanced to each of those parties, which has since been used and repaid?
A (Mr. Dyer)	No, I don't.
Q (Mr. Campbell)	What you mean is that since 2010 various payments for the benefit of those companies have been made from Blackpool FC's bank accounts and you have recorded them on the appropriate ledger to show a running total of an intercompany balance; is that right?
A (Mr. Dyer)	That's the concept, yes, but I wouldn't say that all of them had not been to the benefit of Blackpool FC.
Q (Mr. Campbell)	I didn't ask you anything about that, Mr. Dyer…

[131] See paragraphs 213 and 214 above.
[132] Transcript Day 9, pp.87 to

334. These payments were disclosed by the Respondents in their Reply to VB Football Assets' Request for Further Information. This document (the Reply to the Request for Further Information) was served shortly before the trial of the Petition. Annexed to the Reply were ledgers, detailing the historic transaction activity on the loan account between Blackpool FC and Segesta, both as regards loans made for footballing purposes purportedly made for the benefit of Blackpool FC and loans that were acknowledged not to be for the benefit of Blackpool FC. As is pleaded in the Reply:

    i) In the period up to 31 May 2014:

        a) The total loan from Blackpool FC to Segesta was £28.6 million. The loan was said to be interest-free and repayable on demand.

        b) Of this, £5.5m remained in Segesta's bank account.

        c) Of the £23.1 million spent, the Respondents asserted that £21.3 million was spent for footballing purposes for the benefit of Blackpool FC.

        d) That left £1.8 million not for the benefit of Blackpool FC.

    ii) In the period from 1 June 2014 to 31 May 2016, there was a further £685,000 paid away which, it was acknowledged, was not for the benefit of Blackpool FC.

335. The total monies paid away not to the benefit of Blackpool FC was thus about £2.5 million.

336. Mr. Dyer was cross-examined on the detail of the entries in the ledgers, focussing on the payments admitted not to have been for the benefit of Blackpool FC. It emerged that a number of these payments, although made to Segesta in the first instance, were in fact used for a range of purposes for the benefit of various other businesses within the Oyston Group, including (for example) a number of Mr. Owen Oyston's agricultural businesses.[133] Many of the descriptions ascribed to these payments in the ledgers are both brief and imprecise and it was evident that it was not always possible, even with the assistance of Mr. Dyer, to establish the nature and purpose of the payments from the ledgers.[134] Indeed, it was Mr. Dyer's evidence that Mr. Karl Oyston would only occasionally tell him the purpose of a particular loan when instructing him to record it.[135] No written record, beyond the entry in the ledger, was kept regarding the payments that were made.

337. Mr. Karl Oyston gave evidence in his cross-examination that he would have been the ultimate decision-maker in that regard, although it was probable, at least in some instances, that he would have initiated those transactions following discussions with Mr. Owen Oyston.[136] When asked about the potential for conflicts of interest, Mr.

[133] Transcript Day 10, p. 29.
[134] Transcript Day 10, p.30.
[135] Transcript Day 10, p. 28.
[136] Transcript Day 11, pp. 116 to 117.

Karl Oyston's evidence was that this did not form part of the thought process when making the payments.[137]

338. Clearly, these payments were made without conscious thought as to whether they were proper or not. That is evident both from the foregoing paragraphs, and from the fact that the pattern of payments out of Blackpool FC and the *modus operandi* of the Oyston Group remained exactly the same before and after both the solicitors' letter of 29 September 2014 was sent and the Petition issued. The Oyston Side did not seek to reform or change its practices even after it was likely that litigation, alleging misuse of monies (amongst other things), would be started by the Belokon Side.

339. Mr. Dyer accepted in cross-examination that the procedure in place for the movement of funds out of Blackpool FC to Segesta and onwards to other companies within the Oyston Group did not change, either with the receipt of the solicitors' letter or the service of the Petition.[138]

340. It is obvious that the Oyston Side saw nothing objectionable in their *modus operandi*, even though it entirely ignored the specific duties owed to Blackpool FC and the fact that Blackpool FC's ownership was, actually, very different to that of the rest of the Oyston Group. It is clear that there were fundamental breaches of the duties owed to Blackpool FC, as these have been set out in paragraph 327 above.

(3) Classification of the payments

341. In the ledgers, the payments were described as loans, and that is what the Respondents alleged they were. Mr. Dyer was asked about their terms:[139]

Q (Mr. Campbell)	These loans, as you put them, or running intercompany balances, as I characterise them, what are the repayment terms attaching to them?
A (Mr. Dyer)	They are both repayable on demand; I think.
Q (Mr. Campbell)	Interest?
A (Mr. Dyer)	Interest-free.
Q (Mr. Campbell)	And any security?
A (Mr. Dyer)	No security.

342. The "loans" were also, as has been noted, undocumented. The only basis upon which it can be asserted that these were loans is on the say so of Mr. Dyer (and the other witnesses called by the Respondents) and because that is how they are described in the accounts of the relevant companies.

343. I do not consider that it is appropriate to accept the label given to these transactions by the Respondents. I consider that the term "running intercompany balances" far more accurately describes their nature. They arose almost without conscious thought on the

[137] Transcript Day 11, p.119.
[138] Transcript Day 10, p.31.
[139] Transcript Day 9, p.88.

part of the Oyston Side, automatically out of the way in which the companies in the Oyston Group were run. Their characterisation – once thought was given to the transactions – would turn on what most suited the Oyston Side. Obviously, for the purposes of this litigation, it was safest or most plausible for the Oyston Side to characterise these transactions as "loans". But, as I say, that is a label I am not prepared to accept without more.

344. It is clear, and I so find, that the Oyston Group classified transactions in the manner that best suited the Oyston Group at the time. Mr. Owen Osyton could, if necessary, use his "absolute discretion" to turn "loans" into something else if that suited. The one thing that the Oyston Side was disinclined to do, was to distribute monies by way of dividend, since that would involve payment of monies to persons other than the Oyston Side (notably the Belokon Side and the Minor Shareholders).[140]

345. There are two instances where the classification of payments changed. The first is the treatment of the £4.2 million payment to Protoplan; the second is the treatment of the £11 million payment, initially by way of director's remuneration:

i) *The £4.2 million payment to Protoplan.* The £4.2 million payment to Protoplan was made on 17 September 2010.[141] It is not clear how the Oyston Side considered that payment at the time it was made. When Mr. Malnacs queried the payment,[142] no very clear justification for the payment was advanced, but by November 2010 the classification of "advance management fees" had been adopted, apparently on the advice of Mr. Cherry.[143] Yet, in the end, the payment was treated as a loan by Blackpool FC to Segesta, repayable by Segesta,[144] albeit that the basis for this shift is entirely unclear.

ii) *The £11 million payment.* The £11 million payment – which was made to Zabaxe[145] – was originally intended as a director's bonus,[146] but was ultimately treated as a payment to Zabaxe for services rendered by it to Blackpool FC. Quite when this recharacterization occurred is unknown, but it appears to have occurred as a result of an investigation into the payment by HMRC. HMRC was concerned that – if the payment was to Mr. Owen Oyston as a director – then he had not paid the tax chargeable on this amount. This resulted in a meeting with HMRC on 30 September 2013, in which Mr. Cherry and Mr. Dyer both participated. Detailed notes of the meeting were kept by an employee of Mr. Cherry's firm, and although these notes were never agreed with HMRC, I take them as an accurate record of what Mr. Cherry and Mr. Dyer wanted to convey to HMRC. During the course of this meeting, Mr. Cherry and Mr. Dyer sought to explain why the payment was properly made to Zabaxe and not to Mr. Owen Oyston personally. This involved the making of a series of what I consider to be misrepresentations to HMRC. These misrepresentations can be summarised as follows:

[140] See paragraphs 202 and 255 above.
[141] See paragraph 177 above.
[142] See paragraph 178 above.
[143] See paragraph 192 above.
[144] Transcript Day 11, pp.66 to 79.
[145] See paragraph 297 above.
[146] See paragraphs 267 and 286 above.

a) *That Mr. Owen Oyston had no role in the day-to-day running of Blackpool FC.* This was essentially untrue: as I have noted, Mr. Owen Oyston was the directing mind of Blackpool FC, and was significantly involved in the operation of the club.

b) *That Zabaxe had provided back office services as an active service company.* No mention was made of the fact that Zabaxe was dormant for most of the early 2000s, during which time it could not have provided such services, which were provided (in all probability) by Denwis.

c) *That Blackpool FC was a property business with a football club attached.* This statement failed to distinguish between the different roles and rights of Blackpool FC and Segesta, and was fundamentally untrue. Segesta held the relevant property rights. Blackpool had some, possibly contractual, rights in terms of occupancy of the stadium, but it was entirely wrong to suggest that Blackpool FC was a "property business".

346. These two examples demonstrate that the manner in which transactions in which Blackpool FC participated were classified could be a fluid and subjective thing, essentially controlled by the Oyston Side. For that reason, I am unable to accept the internal classification given to certain transactions within the Oyston Group.

347. In light of the foregoing, I treat the payments by Blackpool FC to Segesta described in paragraphs 334 to 335 above in the following way:

i) I have little confidence in the distinction drawn between payments made which are said to have benefitted Blackpool FC and payments which did not. The distinction is one made entirely by the Respondents on the basis of documentation – specifically the ledger – which (as has been described) contains minimal data.

ii) The distinction between payments benefitting Blackpool FC and payments not benefitting Blackpool FC could not be explored at the trial. That was because there was no (or very limited) disclosure; and the information was provided so late that it could not fully be analysed by VB Football Assets.

iii) It is not, therefore, possible to make specific findings in relation to the distinction drawn by the Respondents. However, as I noted in paragraph 40 above, I accept that <u>some</u> money was spent in developing the stadium, and that <u>some</u> of this expenditure is likely to have benefitted Blackpool FC. Even this question is fraught with difficulty, because Segesta, and not Blackpool FC, owns the ground, with Blackpool FC only having a limited right of use.[147] Money expended on the ground might not benefit Blackpool FC. The payment to Protoplan is an example of precisely such a case.

[147] See paragraphs 39 to 45 above as to the respective rights of Segesta and Blackpool FC. The difficulty in differentiating stadium expenditure benefitting Blackpool FC and stadium expenditure benefitting Segesta is well illustrated by Mr. Green, Q.C.'s cross-examination of Mr. Karl Oyston at Transcript Day 11, pp.122 to 126.

iv) I proceed on the basis that the payments stated by the Respondents to be for the benefit of Blackpool FC were indeed for the club's benefit, even though I have considerable misgivings in that regard. I only do so because *(i)* some of the money spent on the stadium is likely to have benefitted Blackpool FC and *(ii)* the burden of showing a misuse of money lies on VB Football Assets, which I do not consider it has discharged, despite the obvious financial mismanagement at Blackpool FC.

v) So far as the £2.5 million referred to in paragraph 335 is concerned, the Respondents admit that these payments were not for the benefit of Blackpool FC. I do not, however, accept that these payments were, in substance, loans. I consider that the true nature of these payments was as a disguised dividend to Mr. Owen Oyston, by making payments to companies under his control and in which he was beneficially interested, with no particular obligation to repay. As Mr. Owen Oyston himself noted, whether repayment occurred or not was a matter within his discretion.

vi) The £5.5 million referred to in paragraph 334(i)(b), or such of it as remains unspent, is harder to classify. It seems to me that I should not treat this money as a disguised dividend because it remains unspent in Segesta's hands and could either be returned to Blackpool FC or spent on football related matters benefitting Blackpool FC.

348. However, I find that the £2.5 million referred to in paragraph 335 constituted a disguised dividend to Mr. Owen Oyston.

(4) Unfair prejudice

349. The manner in which Blackpool FC's assets are disbursed obviously affects the interests of the members: certainly, it affects the interests of VB Football Assets and the Minor Shareholders, although I consider the interests of Segesta, as majority shareholder also to be affected. It is in the interests of all members of a company for that company's spending to be properly monitored and controlled. Here, clearly, that did not happen.

350. The prejudice to VB Football Assets (and, indeed, to the Minor Shareholders) is obvious: paying away significant monies to no benefit to Blackpool FC detrimentally affects the company's value. The £2.5 million could have been used to provide a return to Blackpool FC or it could have been spent on football-related matters, like a new training pitch or new players.

351. Because the payment away was a disguised dividend to the Oyston Side – so that *ex hypothesti* VB Football Assets and the Minor Shareholders did not benefit – there was clear discrimination between the interests of Segesta and those of the other members of the club. That discrimination – which benefited Segesta and disadvantaged the other members – was plainly unfair.

352. Accordingly, in relation to the payment out of £2.5 million, I am satisfied that the Petition is well-founded, and that there has been unfairly prejudicial conduct within the meaning of section 994 of the Companies Act 2006. I should make clear that I

would consider such unfair prejudice to exist even if the legitimate expectation arising out of the gentleman's agreement did not.

F. UNFAIR PREJUDICE: SPECIFIC PAYMENTS AWAY AND THE FAILURE TO PAY DIVIDENDS

(1) The payments in question

353. As has been described, the manner in which payments were made for and on behalf of Blackpool FC left a great deal to be desired. Even where payments were for the benefit of Blackpool FC – as I have found some to be – the payments were made in an irregular and undocumented way. That, of course, explains why there were a number of payments that (as I have found) were unjustifiable in that they cannot have been for the benefit of Blackpool FC, but were for the benefit of the Oyston Side. These payments amount to £2.5 million and I consider that they are most appropriately to be viewed as hidden dividends paid to the Oyston Side.

354. Relatively little is known about the manner in which the £2.5 million was disbursed. However, amongst these payments out of Blackpool FC are a series of payments that were considered, in far greater detail, both by the Oyston Side before the payments were made and during the course of these proceedings. These payments are as follows:

Date of payment	Amount	Nature	Cross-reference in Judgment
17 Sep 2010	£4.2m	Payment to Segesta in respect of Protoplan	Section C(28) Section C(30)
24 Feb 2011	£4.9m	Payment to Segesta in respect of Travelodge	Section C(34) Section C(35)
30 Aug 2011	£4.169m	Payment to Segesta in respect of Travelodge and in respect of the Zabaxe debt	Section C(15) Section C(37) Section C(43)
21 Feb 2012	£11m	Payment to Zabaxe (director's remuneration)	Section C(47) Section C(52) Section C(54)
Total	**£24.269**		

355. These payments will now be considered in turn below.

(2) Payment of £4.2 million to Segesta in respect of Protoplan

356. A payment of £4,200,604.63 was made out of the Blackpool FC bank account to Segesta on 17 September 2010.[148] Despite the contentions of the Oyston Side to the contrary, I find that this payment was not consented to by the Belokon Side.[149] I do not consider that this specific payment was either discussed or agreed to at the dinner

[148] See paragraph 177 above.
[149] See Sections C(19), C(20), C(21), C(22), C(23) and C(28).

at Claridge's, the terms of the aide memoire notwithstanding[150] and the Oyston Side kept the arrangements for the payment away from the Belokon Side. The Belokon Side only discovered that the payment had been made, after it had been made.[151]

357. I have no reason to doubt that £4,200,581.63 was owed by Segesta to Protoplan for stadium related construction work, from which Blackpool FC derived an indirect benefit. Although, of course, Blackpool FC did not own the stands, it had the benefit of their use, and I proceed on this basis.

358. Even so, this payment was not in accordance with the representations and promises made by the Oyston Side when VB Football Assets acquired its interest in Blackpool FC. The amounts owed by Blackpool FC were identified to the Belokon Side before the Subscription Agreement was entered into,[152] and plainly did not include this amount. Moreover, the indebtedness that was identified to the Belokon Side was to be discharged from non-football revenues and specifically in the manner described in paragraph 48(iv) above. I find that the concerns articulated within the Oyston Side as to the lawfulness of this payment to be well-founded.[153] Nevertheless, the Oyston Side proceeded to make the payment.

359. The £4.2 million payment was, I find, another disguised dividend. Using Segesta's debt to Protoplan as a pretext, the Oyston Side caused Blackpool FC to make a payment in that amount to Segesta, even though:

    i) Blackpool FC was under no obligation to make the payment and derived no benefit from it.

    ii) The payment was not a proper one, given the terms of the Subscription Agreement and the financial disclosure that was made prior to the conclusion of the Subscription Agreement.

360. As such, the payment was unfairly prejudicial to the interests of VB Football Assets for exactly the same reasons as are set out in paragraphs 349 to 352 in relation to the payment away of £2.5 million. Again, I should make clear that even if the gentleman's agreement had not been made, I would regard this conduct as unfairly prejudicial within section 994 of the Companies Act 2006.

(3) The payments in respect of the Travelodge

361. There were two payments made in respect of the Travelodge: £4,900,023 on 24 February 2011[154] and a portion (£3,225,000) of the payment of £4,169,652.28 made on 30 August 2011.[155] Both payments were made out of Blackpool FC's account into Segesta's account.

362. In each case, the payments were made in the teeth of the Belokon Side's opposition. Most of the communications regarding the transaction were internal to the Oyston

[150] See Section C(23).
[151] See Section C(28).
[152] See paragraph 46 above.
[153] See Sections C(20) and C(30)*(ii)*.
[154] See paragraph 215 above.
[155] See paragraph 259 above.

Side, and it is plain that the Belokon Side was kept out of the discussions relating to the transaction.

363. The payments in respect of the Travelodge are not gratuitous on the part of Blackpool FC. Mr. Karl Oyston sought to justify the payments on the basis that they were pursuant to an agreement providing a return "substantially higher and more secure than any other use of money we have as yet identified";[156] and it is correct to say that the Travelodge loan agreement ultimately concluded provided for payments of interest to Blackpool FC.[157]

364. It is, therefore, necessary to consider the terms of this transaction:

i) Although the Travelodge loan agreement provided for payment of interest and repayment of capital by Segesta, these (re)payments were at Segesta's "absolute discretion", a provision that (even assuming the loan agreement were otherwise commercial) would render it uncommercial.

ii) Perhaps unsurprisingly, not all of the interest due to Blackpool FC was paid by Segesta. When this was put to Mr. Karl Oyston and Mr. Owen Oyston in cross-examination, they suggested that this failure was an oversight, and they undertook to ensure Segesta made good the missed payments.[158] Oversight or not, I consider that this underlines the uncommerciality of the transaction.[159]

iii) Even disregarding the "absolute discretion" in Segesta as to whether to pay or not, the transaction does not seem particularly uncommercial:

a) Essentially, Blackpool FC advanced £8.125 million, receiving (in addition to the covenant to repay) interest of £250,000 *per annum*, which is a rate of around 3.1% *per annum*.[160]

b) However, the money that was lent by Blackpool FC to Segesta was used by Segesta to discharge the borrowing which had been used to acquire the Travelodge in the first place. This meant that Mr. Owen Oyston received – unencumbered by any mortgage, due to the loan to Segesta – the payments made by the tenant of the Travelodge, which amounted to £451,448 *per annum*.[161]

c) In other words, the Oyston Side was removing the commercial lending from the equation, by substituting for that lending, borrowing from the (inevitably compliant) Blackpool FC, at a fixed rate of interest, while receiving the far higher payments from the tenant of the Travelodge. In effect, the Oyston Side was using Blackpool FC as the provider of

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[156] See paragraph 220 above.
[157] See Section C(43).
[158] Transcript Day 11, pp.80*ff*; Transcript Day 13, pp.91 to 92.
[159] Mr. Owen Oyston suggested that there was a *quid pro* quo for the loan, in the form of a deposition made by the Oyston Side with JSC Baltic International Bank (Mr. Belokon's bank): see Transcript Day 13, pp.97*ff*. Even if there was such a *quid pro quo* – and there was no evidence for it, beyond Mr. Owen Oyston's say so – I do not consider that this affects my conclusion as to the commerciality of the Travelodge loan.
[160] See paragraph 257 above.
[161] See paragraph 213 above.

substitute capital, on terms that a commercial bank (by definition) would not provide.

d) A more commercial transaction would, I consider, have involved Blackpool FC more fully participating in the profits accruing from the lease of the Travelodge. Obviously, the history of the negotiation of the Travelodge loan involves the Oyston Side determining what is in its own best interests, and then simply imposing these on Blackpool FC.

365. I conclude that the payments in respect of the Travelodge unfairly prejudiced VB Football Assets and the Minor Shareholders. The payments were made without the consent of these members, and to the evident benefit of those controlling the majority shareholder, Segesta. Essentially, the Oyston Side used the monies received by Blackpool FC to replace commercial lending (by a bank) with uncommercial lending (by Blackpool FC). The Oyston Side – but no other members in Blackpool FC – thereby benefited.

366. Although the payment made in respect of the Travelodge cannot be described as gratuitous, the terms of the loan by Blackpool are sufficiently uncommercial for the payments away to be classified (as I have the other payments) as a hidden dividend. Normally, of course, a dividend is paid without a countervailing obligation to pay interest on the dividend, which the Travelodge loan agreement obliged Segesta (subject to its absolute discretion) to pay. But, in reality, the Travelodge loan enabled the Oyston Side to substitute commercial lending for uncommercial lending and ultimately it is this that persuades me that this was a disguised dividend to the Oyston Side.

367. As such, the payment was unfairly prejudicial to the interests of VB Football Assets for exactly the same reasons as are set out in paragraphs 349 to 352 above in relation to the payment away of £2.5 million. Again, I should make clear that even if the gentleman's agreement had not been made, I would regard this conduct as unfairly prejudicial within section 994 of the Companies Act 2006.

(4) Payment of the Zabaxe debt

368. Although the debt to Zabaxe was the first to be mentioned by the Oyston Side in December 2009,[162] the payment in respect of it was only made on 30 August 2011, as part of the larger payment of £4,169,652.28. The Zabaxe debt amounted to £944,652.28.[163]

369. Like the payment of £4.2 million to Protoplan, the payment of the Zabaxe debt amounted to the payment of a debt owed by Segesta and extant well-before the Subscription Agreement. In these circumstances, all the points made at paragraphs 356 to 360 above in relation to the Protoplan payment pertain. What is more, subsequent to the conclusion of the Subscription Agreement, the Oyston Side stated in terms that this debt was not for the account of Blackpool FC.[164] Yet, nevertheless, the payment was made.

[162] See Section C(15).
[163] See paragraph 259 above.
[164] See Section C(15).

370. For substantially the same reasons as for the payment in respect of the Protoplan debt, I find that the payment in respect of the Zabaxe debt was a disguised dividend, and unfairly prejudicial to VB Football Assets. I should make clear that even if the gentleman's agreement had not been made, I would regard this conduct as unfairly prejudicial within section 994 of the Companies Act 2006.

(5) Payment of "directors' remuneration" of £11 million

371. The payment – of £11 million – was made by Blackpool FC to Zabaxe on 21 February 2012.[165] As has been described – see paragraph 345(ii) above – the nature of the payment was translated from director's remuneration to Mr. Owen Oyston for past services to an indemnification of Zabaxe in relation to past costs incurred by it on behalf of Blackpool FC.

372. Whatever the classification of the payment, whether it be as a payment to Mr. Owen Oyston personally or to Zabaxe as a service company, it was made without the consent of the Belokon Side, who opposed it.[166]

373. The justification for the payment appears to have been the past services rendered by Zabaxe and/or Mr. Owen Oyston (whether by himself or through Zabaxe). Although this constituted the justification for the payment, I do not understand the Respondents to contend that the £11 million was paid in discharge of any particular obligation. Certainly, no such obligation was shown to exist. Although a number of invoices were produced by the Respondents, ostensibly to show services rendered to Blackpool FC by Zabaxe that were of service to the club, these invoices fell far short of demonstrating any such past benefit to the club.[167] Most of the invoices related to work and consultancy done in relation to the relocation of the stadium to Whyndyke Farm, which never took place and cannot conceivably have benefited Blackpool FC.

374. I find the payment of £11 million to have been essentially gratuitous and in essence a disguised dividend. For the reasons given in paragraphs 349 to 352 above, it was unfairly prejudicial to the interests of VB Football Assets and the Minor Shareholders. I should make clear that even if the gentleman's agreement had not been made, I would regard this conduct as unfairly prejudicial within section 994 of the Companies Act 2006.

(6) Non-payment of dividends

375. It is trite that the declaration of dividends is a matter within the discretion of the directors of a company and that if the directors, in their discretion, consider that no dividends should be paid, a court should be slow to question that discretion and slow to substitute its decision for that of the directors.

376. This, however, is not a case where no dividends were paid. Leaving on one side the very real concerns that I have about decision-making and the exclusion of the Belokon Side (which I consider in the next section) the fact is that the payments I have considered were disguised dividends to the Oystons. They were not actually

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[165] See Section C(54).
[166] See Section C(53).
[167] Transcript Day 10, pp.81 to 83; Transcript Day 11, p.140; Transcript Day 12, pp.7 to 8, 10-22, 46 to 47, 76 to 78, 90*ff*.

dividends, because that would have involved paying the Belokon Side and the Minor Shareholders at the same time and at the same rate. It is noteworthy that although there was discussion of paying money to the Belokon Side, no payments were ever made. Equally, Mr. Owen Oyston fully appreciated that dividends would involve paying others, and for that reason did not do so.

377. A failure to pay dividends can only be regarded as unfair prejudice if there is some inconsistency in the way the company behaves as regards different members. Thus, if a dividend – or something in substance a dividend, even if dressed up as something different – is paid to one member and not another that is an indicator of unfair prejudice.

378. It is clear that the payments considered in this section amounted to unfairly prejudicial conduct for this reason. The Oyston Side has – using the Premier League monies – by wrongly classifying the transactions and using its majority control of the company, simultaneously enriched itself, prejudiced Blackpool FC and behaved in a discriminatory manner towards the other members of the club.

379. In their witness statements, Mr. Owen Oyston and Mr. Karl Oyston protested that they spent sufficiently on Blackpool FC, and Mr. Steinfeld, Q.C., on their behalf, emphasised that spending does not guarantee success in football. I accept that some money was spent on the club; and I accept that spending does not guarantee success in football. But neither point is relevant to the question of unfair prejudice. The fact is that Blackpool FC, through its single season in the Premier League, received considerable sums of money and considerable sums of money were paid away not to the benefit of the club, but for the personal benefit of the Oyston Side. What the club would have done with these monies, had it retained their benefit, I cannot say. But being cash rich is obviously better than being cash poor. The club might have spent the monies unwisely – who can say? The fact is, it never had the opportunity.

G. UNFAIR PREJUDICE: EXCLUSION FROM THE COMPANY

380. Clearly, the extent to which the Belokon Side was entitled to participate in the affairs of Blackpool FC turns on whether VB Football Assets' interest was that of a 20% minority shareholder or whether, in equity, its rights were more extensive than this.

381. By reason of the gentleman's agreement that I have found to exist,[168] I find that VB Football Assets had a legitimate expectation that it was entitled to be treated as an equal partner in the governance of Blackpool FC.

382. It may be that until the Dorchester meeting on 23 May 2010,[169] the Belokon Side was treated as an equal partner in Blackpool FC. Certainly, Mr. Belokon did not assert otherwise, although Mr. Malnacs had different views.[170] From the Dorchester meeting onwards, however, the Oyston Side systematically and deliberately excluded the Belokon Side from crucial decisions that were being made on Blackpool FC's behalf. This was because Mr. Owen Oyston took the view that Mr. Belokon was not going to agree to using the Premier League monies that Blackpool FC was going to receive to

[168] See Section C(9).
[169] See Section C(19).
[170] See paragraph 29(ii) above.

fund non-football-related loans to either the Belokon Side or the Oyston Side. I have no doubt that Mr. Belokon would have been prepared to talk about a dividend being declared, but I find that he was unenthusiastic about Mr. Owen Oyston and Mr. Belokon each having a loan of £3 million to £5 million funded by Blackpool FC.[171] Mr. Owen Oyston clearly wanted to – and did – extract far more money than Mr. Belokon would have been prepared to countenance.

383. It is clear from the chronology that immediately after the Dorchester meeting (which took place on 23 May 2010), Mr. Owen Oyston began the process of extracting money from Blackpool FC.[172] This process involved the quite deliberate exclusion of the Belokon Side,[173] and represented the first step towards the division between the Oyston Side and the Belokon Side that now exists. Mr. Owen Oyston attempted once more to persuade Mr. Belokon at the Claridge's dinner,[174] failed, and then made the Protoplan payment anyway.[175] I have found that that payment was made without the knowledge of the Belokon Side. When the Belokon Side found out, unsurprisingly, relations began to deteriorate. Although efforts were made – by both sides – to find common ground, these efforts failed.[176]

384. Instead of stopping with the Protoplan payment, the Oyston Side then began work on the Travelodge re-financing, which again was conducted to the exclusion of the Belokon Side.[177]

385. It was at the meeting at Grange St Paul's that Mr. Belokon tried to bring Mr. Owen Oyston back to the terms of the gentleman's agreement, and failed.[178] At this point, Mr. Belokon came to understand that he truly was a minority shareholder and that his views would only be respected if they were consistent with those of the Oyston Side. He sought to exit the club[179] and, when that failed, opted for non-participation.

386. I do not find that the Belokon Side was completely excluded from the affairs of Blackpool FC. Mr. Malnacs obviously played a role as director, and received information in the course of his duties as director. But Mr. Malnacs and the rest of the Belokon Side were excluded from decisions concerning Blackpool FC where the Oyston Side anticipated they would disagree. As it happened, these decisions were the ones of the greatest significance to the club, and of the greatest prejudice to it. In the case of these decisions, the Oyston Side effectively decided matters outside the board of directors of Blackpool FC.[180]

387. Plainly, this was conduct on the part of the Oyston Side that was unfairly prejudicial to the interests of VB Football Assets. As was noted in Re Guidezone [2000] 2 BCLC at [175], "[i]n the case of a quasi-partnership company, exclusion of the minority from participation in the management of the company contrary to the agreement or

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[171] See paragraph 115 above, item 4 in the minutes.
[172] See Section C(20).
[173] See paragraph 130 above.
[174] See Section C(23).
[175] See Sections C(24) and C(28).
[176] See Section C(29).
[177] See Section C(34), C(35) and C(36).
[178] See Section C(38) and paragraph 236 above in particular.
[179] See Section C(41).
[180] See, for example, Sections C(21), C(37), C(47) and C(50).

understanding on the basis of which the company was formed provides a clear example of conduct by the majority which equity regards as contrary to good faith".

H. UNFAIR PREJUDICE: THE ALTERATION OF THE ARTICLES OF ASSOCIATION

(1) The facts

388. In late 2013 and early 2014, there were discussions between the parties regarding the Oyston Side's proposal that Blackpool FC should adopt new articles of association. The individuals most heavily involved in those discussions were Mr. Varpins on behalf of VB Football Assets and Mr. Dyer (and to a lesser extent, Mr. Karl Oyston) on the Oyston Side, although both sides also had the benefit of legal advice in relation to the proposal.

389. Broadly, the proposal was that Blackpool FC's existing articles of association (the "Old Articles"), which had been adopted many years previously in 1951 (albeit that a number of amendments to the Old Articles were made after that date), should be replaced with more modern articles of association, which would be more closely aligned with the Model Articles provided for by the applicable company legislation.

390. I do not understand there to be any disagreement between the parties that the Old Articles needed to be changed because they were out-dated and, in a number of respects, were not fit for purpose. Mr. Varpins accepted as much in his evidence in cross-examination.[181]

391. Initial legal advice obtained by Mr. Karl Oyston on 20 January 2013 identified particular aspects of the Old Articles that needed updating and highlighted a number of further provisions that the Oyston Side should consider including in any new articles of association in order to "provide more flexibility generally". Those additional suggestions included provisions regarding restrictions on the transfer of shares, "drag along" rights and the appointment and removal of directors. The minutes of a Blackpool FC board meeting held on 20 September 2013, some eight months after that advice was obtained, record that the "Articles of Association for [Blackpool FC] are to be updated and modernised. [Mr. Dyer] to send [a] copy to [Mr. Varpins]".

392. On 27 September 2013, Mr. Dyer sent an email to Mr. Varpins, attached to which was "a copy of the updated and modernised articles we are going to adopt" (the "Draft New Articles").

393. On 16 October 2013, having taken legal advice of his own, Mr. Varpins expressed reservations about the changes anticipated by the Draft New Articles, which he described as "massive and going beyond minority shareholding matters". In a subsequent email to Mr. Dyer on 27 November 2013, Mr. Varpins made it clear that the Belokon Side could not accept the Draft New Articles because of the significant limitations they were seen to impose on VB Football Assets' rights as a minority shareholder. Further, Mr. Varpins specified certain aspects of the Draft New Articles that were particularly troublesome to him, namely:

[181] Transcript Day 6, pp.22 to 23.

i) The broad rights conferred upon the majority shareholder, including to constitute the board and allot shares;

ii) The "drag along" rights benefitting a selling majority shareholder, which were unaccompanied by "tag along" rights in favour of a minority shareholder; and

iii) The absence of any provisions ensuring VB Football Assets' right to participate in the company's management.

394. The minutes of a board meeting held on 29 November 2013 record that a vote on the adoption of the Draft New Articles was deferred until the next board meeting, so as to allow the parties' legal teams to discuss and resolve the issues in that regard.

395. In an email dated 29 November 2013, Mr. Dyer wrote the following in response to Mr. Varpins' stated concerns about the Draft New Articles:

"Our legal people have responded with the following points following your e-mail and yesterday's discussions regarding the Articles:

1. At the moment the Articles are an old style 1984 Table A format. Table A itself has been updated three times, the last (2006) being the most comprehensive set of changes, whereas the Articles have not really been updated since then (save for ad-hoc changes).

2. The "shareholder agreements" between Segesta and VB [Football Assets] still stand and would provide VB [Football Assets] the protection they originally sought. For example, there are pre-emption rights in favour of each party if one party wants to sell their shares.

3. They still have their representation on the Board – it is the board that controls the direction of [Blackpool FC] (other than matters reserved to the shareholders).

4. The changes do mean that certain things require the consent of a majority or should be done if the majority require – that will ensure the direction of [Blackpool FC] is maintained and [that it] is not constantly fighting battles with errant minority shareholders.

5. The changes will not mean that a majority can force a minority to sell their shares unless there is a "drag-along" i.e. a bona fide sale (subject to the pre-emption rights in the "shareholder arrangements" referred to above).

If your legal people want to discuss anything further with ours then let us know and we will send over contact details."

396. Mr. Varpins responded on 5 December 2013 and explained that he and his lawyers nevertheless felt that the Draft New Articles "essentially protects majority shareholder's rights" and as a result, "we would like to see that our [shareholder's rights] are ensured". Mr. Varpins went on to suggest that the parties' legal advisers be in direct contact so that agreement could be reached on a "mutually acceptable version".

397. Subsequently, probably on 20 December 2013, there was indeed a conference call between the parties' legal advisers to discuss the Draft New Articles. In cross-

examination, however, Mr. Varpins gave evidence that "in that conference call we understood that [the Oyston Side's legal advisers] are not willing to do any compromises and basically safeguarding our interests was not in their scope"[182] and further, that "I got the clear message when I talked with the Oyston lawyers – the message was that we are not going to adopt your proposed changes because that's not our scope of works".[183]

398. In an email dated 20 December 2013, which followed that telephone conference, the legal adviser to the Oyston Side wrote to Mr. Karl Oyston and Mr. Dyer as follows:

> "Ideally, it would be preferable to have [VB Football Assets] in agreement on the changes to the articles – technically, the articles can be adopted without their consent. However, unlike the other minority shareholders, they may have the funds to look at a possible action for unfair prejudice (as previously advised)."

399. During the period following that telephone conference, each side appeared to be expecting the other to take the next step to progress the matter, but neither did. In an email dated 29 January 2014, in advance of the 5 February 2014 board meeting at which a vote on the Draft New Articles was to due to take place, Mr. Varpins reiterated his objections, stating as follows:

> "Regarding the [Draft New Articles], we had a phone conversation with your lawyer Akeel Latif. We have repeatedly indicated that the [Draft New Articles] in their current form are not acceptable for us as they treat us unfairly. We have also explained it to Akeel. As they stand today, they are not drafted in the spirit of fair cooperation among partners. Essentially, we are being treated similarly as these large number of minority shareholders.
>
> We suggest to include in these [Draft New Articles] some exemptions for us as your partners to grant similar rights in relation to voting, representation in the board, changes to share capital etc. Unfortunately, we will have to vote against [the Draft New Articles] in their proposed form."

400. The minutes of the 5 February 2014 board meeting record that the "change in the Articles is mainly a housekeeping exercise and [Mr. Karl Oyston] confirmed that as far as he was concerned they do not override the shareholders agreement or diminish [VB Football Assets] in any shape or form". The Belokon Side's position that the Draft New Articles "favoured the majority shareholder and treated minority shareholders unfairly" was noted, with Mr. Varpins and Mr. Belokon (by proxy) voting against the adoption of the Draft New Articles and Mr. Karl Oyston and Mr. Owen Oyston (by proxy) voting for it. Ultimately, Mr. Karl Oyston used his casting vote as chairman to approve the circulation of a special resolution to shareholders seeking the approval of the adoption of the Draft New Articles. The minutes note that further time would be allowed for consultation between the parties' legal teams in order to attempt to give comfort to the Belokon Side and in particular to confirm that the Draft New Articles would not supersede the provisions of the Shareholders' Agreement.

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[182] Transcript Day 6, pp.30 to 31.
[183] Transcript Day 6, pp.52 to 53.

401. Mr. Varpins' evidence in cross-examination was that in spite of the various assurances and apparent attempts at cooperation, in reality "there was never a willingness to even listen and change anything".[184] Mr. Varpins maintained his objections to the adoption of the Draft New Articles, suggesting to the Oyston Side in an email dated 19 March 2014 that a complete redraft would be required in order for the parties to reach agreement in that regard. The minutes of a board meeting on 15 May 2014 record that a "letter was given to [Mr. Varpins] to see if this would give comfort as regards the [Draft New Articles]". It is agreed between the parties that this letter (the "Comfort Letter") was never signed or dated and as such, it exists only in draft form. The operative passage of the Comfort Letter reads as follows:

> "We refer to those agreements set out in the appendix to this letter (Agreements). We hereby confirm that, while [VB Football Assets is] a shareholder of [Blackpool FC], insofar as the Agreements conflict with the articles of association (as amended from time to time) of [Blackpool FC] then, as between you, [Blackpool FC] and [Segesta], the terms of the Agreements shall prevail to the extent permitted by law."

The documents listed as being appended to the Comfort Letter were the Subscription Agreement, the First Vlada Loan Agreement, the Second Vlada Loan Agreement, the First South Stand Agreement and the Second South Stand Agreement. Accordingly, the intention behind the Comfort Letter appears to have been to address the Belokon Side's concern that the Draft New Articles might interfere with the terms of the written agreements between the parties.

402. However, Mr. Varpins' evidence in paragraph 36 of Varpins 1 (and indeed, in cross-examination[185]) was that while he remembered that the provision of such a written assurance was discussed, he did not recall receiving the Comfort Letter around the time of the 15 May 2014 board meeting. It is nevertheless recorded in the minutes that Mr. Varpins was to review the Comfort Letter with his legal team, while Mr. Dyer began the process of adopting the Draft New Articles.

403. Meanwhile, as is clear from an exchange of emails between Mr. Karl Oyston, Mr. Dyer and their legal adviser in the days following that board meeting, the Oyston Side was considering making an amendment to the Draft New Articles regarding the quorum for board meetings. Mr. Dyer's initial idea was that the quorum of three directors pursuant to the Draft New Articles should be reduced to two, given that in practice at the time Mr. Karl Oyston and Mr. Varpins were the only directors attending board meetings. The response from the lawyer for the Oyston Side was that the "quorum was set at 3 so that [Mr. Belokon] and [Mr. Varpins] could not, themselves, form a quorum". After some consideration of how to deal with that issue, Mr. Karl Oyston decided the matter as follows by an email dated 20 May 2014:

> "…better that we make it two [directors] rather than three, [and] I suppose a solution is to make sure I am one of the two [directors] as chairman or in the event of a conflict [of interests] I nominate someone to chair the meeting in my absence. Two is better as it makes life at this end less complex as Dad and I can be a quorum without involving anyone else.

[184] Transcript Day 6, p.48.
[185] Transcript Day 6, p.57.

There is no likelihood of things becoming any easier or a deal being reached.

Can we make the change as described and get the notice [to shareholders] out please?"

404. Ultimately, Companies House records show that Blackpool FC adopted the Draft New Articles on 9 July 2014 (the "New Articles"), with the passing of a written special resolution on the same date. While the New Articles are broadly based on the Model Articles, there are also a number of material derogations that form the substance of VB Football Assets' complaint in this regard. Mr. Karl Oyston's suggestion regarding the quorum for board meetings was also reflected in the New Articles (Article 3.7).

405. While packs containing the written special resolution were sent out to shareholders on 8 July 2014, it would appear that the pack intended to reach VB Football Assets was not received, having allegedly been sent to the address listed on the register of shareholders, which was by that time no longer the correct address. Once Mr. Belokon had received the pack, he wrote to Mr. Dyer on 4 August 2014 in order formally to "vote against" the adoption of the New Articles, albeit that on the face of it they had been adopted nearly a month earlier. VB Football Assets' particularised objections to the New Articles were set out in detail in VB Football Assets' solicitors' letter before action of 29 September 2014, which contended that the Oyston Side's stated agenda of updating the Old Articles was misleading, with the changes effected (both as compared to the Old Articles and the Model Articles) going far beyond mere modernisation. The effect of those changes, it was said, was "simply to strengthen the position of the majority shareholders at the expense of minority shareholders".

406. The matter of Blackpool FC's Articles of Association has continued to be an issue between the parties. Draft minutes of a board meeting held as recently as 8 March 2017 record the ongoing debate in that regard, with Mr. Karl Oyston proposing (and, together with Mr. Owen Oyston, voting in favour of) a reversion to the Old Articles. Mr. Varpins' position, as recorded in those minutes, was that such a reversion would be inappropriate in circumstances where the matter was the subject of ongoing litigation, but in any event he had had insufficient time to discuss the matter with Mr. Belokon and, accordingly, he had no mandate to vote. As regards the Comfort Letter, Mr. Karl Oyston appears to have taken the position in this meeting that VB Football Assets ignored the letter, which in any event by that stage "no longer applied and is now just for information". I have already noted that Mr. Varpins doubted whether he ever received the Comfort Letter, and that same uncertainty is recorded once more in the minutes of this meeting. As is clear from the following section of the minutes, which concluded the parties' discussions on the topic, no resolution of the issues was reached:

"[Mr. Varpins] suggested that the Club's lawyers should draft new articles for the Board to comment on. [Mr. Karl Oyston] pointed out that [Mr. Varpins] should draft new articles as we had failed to agree for the past 3 years on the articles that the lawyers have previously drafted. [Mr. Karl Oyston] confirmed that we had no time or appetite to lead on this matter for a second time. [Mr. Varpins] said he would need to speak to lawyers."

(2) The parties' contentions

407. VB Football Assets' case is that the New Articles departed from the statutory Model Articles in a number of material respects to the benefit of Segesta as a majority shareholder and in a manner unfairly prejudicial to the interests of VB Football Assets as a minority shareholder. For example, VB Football Assets says that the New Articles actively depart from the Model Articles in:

    i) Allowing a majority of the directors to resolve without cause to remove a director (Article 4.2(b));

    ii) Allowing the directors, in certain circumstances if they consider a shareholder has not provided sufficient information requested by them regarding a possible transfer of shares in breach of the pre-emption provisions, to deny the shareholder rights to vote or receive dividends, or to require it to sell its shareholding at a minority discount (Article 12.7);

    iii) Providing that a shareholder in various circumstances (including a change of control) can be forced to sell its shares at a minority discount (Article 15.2); and

    iv) Granting the shareholder majority "drag along" rights, enabling them to force a minority shareholder to sell its shares to a *bona fide* arm's length third party purchaser at a price negotiated by the majority (Article 16.1).

408. The Respondents, so VB Football Assets contended, ensured that the New Articles were adopted in the face of Mr. Varpins' continued objections in that regard.

409. In cross-examination, Mr. Karl Oyston denied that the changes brought about by the adoption of the New Articles were designed for any purpose other than that of updating the Old Articles.[186] The submission was made on behalf of the Respondents (and the position was taken by Mr. Karl Oyston in cross-examination[187]) that VB Football Assets' hand as a shareholder was in fact no weaker under the New Articles than it was under the Old Articles. That point was put to Mr. Varpins in cross-examination, and he accepted that certain of his objections, including (for example) as regards the right of a majority of directors to remove a director (Article 4.2(b)), would have applied equally under the Old Articles.[188] Mr. Varpins, however, made it clear that as far as he was concerned, the fact that an objection might have applied equally to the Old Articles did not render that objection without merit. As he put it himself: "[if] the parties want to agree on something new, then you just agree on something new that you are happy with".[189]

410. The Respondents' position was that VB Football Assets, and in particular Mr. Varpins, took a contrived and obstructive approach to the adoption of the New Articles, their aim being to bolster their case in these proceedings. That position, it was said by Mr. Karl Oyston in cross-examination, is supported by his view that Mr. Varpins, "having complained about the [New Articles], then stymied the readoption of the [Old Articles], which was farcical at best".[190] If Mr. Varpins' concern was truly

[186] Transcript Day 11, p.149.
[187] Transcript Day 11, p.149.
[188] Transcript Day 6, pp.39 to 40.
[189] Transcript Day 6, p.68.
[190] Transcript Day 11, p.150.

to ensure the adoption of appropriate articles of association for the benefit of Blackpool FC, as opposed simply to frustrating progress in order to make hay for the Petition, it is said that Mr. Varpins and his legal advisers would have produced an amended draft that was acceptable to VB Football Assets. Mr. Varpins never took that step and, instead, say the Respondents, he expressed his objections in general terms, eventually declaring unhelpfully that a full redraft of the Articles of Association would be required. Mr. Varpins' response to that stance was simply that irrespective of how they compared to the Old Articles, the New Articles:[191]

> "Were really unfair to the minority shareholders and the minor directors, and when I was reading them, I just had the understanding that we simply cannot accept them. And rather than trying to propose some amendments for some particular points, our proposal was that our lawyers sit together and redraft an acceptable version … [but] that was never accepted and it was pushed through by [the] Oystons to approve their version."

411. In cross-examination, Mr. Varpins denied that VB Football Assets was seeking to build up a dossier of complaints for the Petition[192] and he repeatedly gave evidence to the effect that he took the approach he did because he did not feel that the Oyston Side was genuinely willing to cooperate and that, in those circumstances, to engage a UK law firm in order to produce a redraft of the articles of association would be a waste of time and money. In Mr. Varpins' own words: "to engage in such a quite complicated legal exercise, one needs to be willing to collaborate. What worth is it that we spend an enormous amount of time redrafting something and then the other party simply says no, that is not interesting, we are not going to do it? The practice that the Oystons have always been doing with all our proposals".[193]

412. By contrast, the Respondents contended that the Oyston Side took a constructive and accommodating approach to the issue by encouraging productive cooperation between the parties' lawyers, offering assurances in response to Mr. Varpins' stated concerns (including by way of the Comfort Letter) and ultimately offering to revert to the Old Articles. Further, the Respondents dispute that there is any merit to the particular objections to the New Articles set out in the Petition and, in any event, maintain that the Oyston Side has taken no steps pursuant to the New Articles that are in fact prejudicial to the VB Football Assets.

(3) Conclusion

413. I do not consider that the adoption of the New Articles in and of itself constitutes unfair prejudice to the interests of VB Football Assets, even on the basis that VB Football Assets would be treated as an equal partner in Blackpool FC pursuant to the gentleman's agreement. (If there were no gentleman's agreement, then VB Football Asset's contentions would be even weaker.)

414. The changes made by the New Articles cannot be said to be so clearly unfair to VB Football Assets as to constitute unfairly prejudicial conduct to the detriment of the interests of VB Football Assets in Blackpool FC. What is more, albeit late in the day,

[191] Transcript Day 6, pp.29 to 30.
[192] Transcript Day 6, p.61.
[193] Transcript Day 6, p.53. See also pp.51 and 56.

the Respondents have offered to put the clock back and revert to the Old Articles, thereby removing such prejudice as might be said to exist. That offer has been refused by the Belokon Side.

415. The factual basis on which this ground of the Petition is advanced is simply an unfortunate reflection of the extent to which the relationship between the parties had soured by the time the issue of the adoption of the New Articles came to a head. In short, I consider – much for the reasons given in Section C(57) – that the issues surrounding the articles of association are not in any way unfair prejudice, but rather a symptom of unfairly prejudicial conduct occurring before March 2013.

I. RELIEF SHOULD BE DENIED BECAUSE OF THE CONDUCT OF MR. BELOKON

(1) The contentions of the Respondents

416. Paragraph 42 of the Amended Points of Defence provides as follows:

> "…it is averred that the Petitioner should in any event be denied any relief by reason of the following matters which render it inequitable that he should be granted such relief, namely:-
>
> a. The failure to reveal to the Respondents the change in its ownership viz:
>
> i. Until the service of proceedings between the Petitioner and the First Respondent in an action numbered HC-2015-003998 the Respondents believed that the Petitioner was at all material times owned 100% by Mr. Belokon. Those proceedings, however, indicated that the Petitioner is in fact owned 50% by Mr. Belokon's brother Vilori Belokon.
>
> ii. Under Football Association and Football League regulations [Blackpool FC] has to disclose the identity of individuals with beneficial interests or ownership in the Club of 10% or above. Such disclosure has to be made annually. Individuals owning 10% of a football club are subject to the scrutiny of a "fit and proper person" test and it is not certain that Mr. Belokon's brother would pass that test. The failure by the Petitioner to disclose truthfully its ownership, or change of ownership, has thereby placed [Blackpool FC] in breach of the rules of the Football Association and the Football League.
>
> b. The Petitioner by Mr. Belokon making the threats and menaces against the Second and Third Respondents at the Claridges dinner referred to above.
>
> c. The Petitioner by Mr. Belokon maliciously feeding confidential information and mis-information and misleading comments detrimental to [Blackpool FC] to certain individuals and/or groups of supporters as stated above resulting in defamatory statements in the media being made against the Second and Third Respondents as aforesaid.
>
> d. The Petitioner by Mr. Belokon giving briefings to the media which contained confidential information and mis-information and misleading comments to the Club as stated above.[194]

[194] It was sought to add to this list by amendment, but the amendment was not allowed. Mr. Belokon was cross-examined on these matters for the purposes of credit, but I was not assisted by them.

(2) The law

417. In the case of a winding-up petition on the just and equitable ground, the petitioner must come to the court with "clean hands", and inequitable conduct on his part may bar his remedy.[195] There is no similar rule in the case of a section 994 petition.[196]

418. However, as was described in Re London School of Electronics, such conduct can be relevant in two ways:[197]

    i) It may render the conduct on the other side, even if it is prejudicial, not unfair.

    ii) Even if the conduct on the other side is both prejudicial and unfair, the petitioner's conduct may nevertheless affect the relief which the court thinks fit to grant.

419. I will consider the effect of the conduct relied upon by the Respondents, to the extent it is relevant to relief, in Section J. In terms of the petitioner's conduct rendering otherwise unfairly prejudicial conduct merely prejudicial, and not unfair, it seems clear that the mere fact that the petitioner is a wrongdoer, even in relation to the company of which he is a member, is not enough to deny him or her a remedy under section 994.[198] What is required is some connection or nexus between the petitioner's conduct and the alleged unfair prejudice. Thus, in Re RA Noble & Sons (Clothing) Ltd,[199] the petitioner's controlling shareholder had shown a lack of interest in obtaining the financial information to which the petitioner was entitled. In light of this factor, the conduct of the majority shareholder in the company could not be regarded as unfair. Similarly, a covert strategic decision to leave a director with the burden of running a company and free to continue drawing excessive remuneration with a view to recover it from him at a later date might justify a court in debarring a petitioner from pursuing a complaint of excessive remuneration.[200]

(3) Analysis and conclusion

420. In this case, I do not consider that the facts and matters pleaded in paragraph 42 of the Amended Points of Defence are such as to deny VB Football Assets relief under section 994 of the Companies Act 2006.

421. Parsing the various allegations in paragraph 42 in turn:

    i) *Failure to notify the change of ownership (paragraph 42(a)).* This was admitted by VB Football Assets, but is clearly an administrative slip. Whilst I appreciate the importance of the authorities knowing who is beneficially interested in a football club, it would entirely disproportionate and wrong for this error to deprive VB Football Assets of a remedy. Moreover, I fail to see

[195] Paragraphs 5.66 and 6.271 of Minority Shareholders.
[196] Paragraph 6.271 of Minority Shareholders; Re London School of Electronics [1985] BCLC 273 at 279*ff*; Re Baumler (UK) Ltd [2005] 1 BCLC 92 at [180] to [181].
[197] [1985] BCLC 273 at 279.
[198] Paragraph 6.272 of Minority Shareholders; Re London School of Electronics [1985] BCLC 273 at 280.
[199] [1983] BCLC 273 at 292.
[200] Paragraph 6.274 of Minority Shareholders.

how there can be any nexus between this failure and the unfair prejudice that I have found to exist.

ii) *Threats (paragraph 42(b)).* I have concluded (in Section C(38)) that these threats were not made. The point, therefore, fails on the facts.

iii) *Maliciously feeding confidential information to third parties (paragraph 42(c) and (d)).* It is certainly true that both sides engaged in a media war, each briefing against each other in the press and (no doubt) to fans. That, as I have found,[201] was a consequence of the conduct of the Oyston Side prior to March 2013. I do not find that any confidential information was leaked by the Belokon Side to third parties,[202] with the limited exception that Mr. Malnacs communicated the content of one board discussion to an ex-director, Mr. Steele. Whilst, obviously, confidentiality should have been maintained, this conduct was entirely unrelated to the unfair prejudice I have found to exist.

422. I reject the contention that the Petition should be denied on these grounds.

J. RELIEF

(1) The applicable principles

423. Section 996 provides:

"(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may-

(a) regulate the conduct of the company's affairs in the future;

(b) require the company-

(i) to refrain from doing or continuing an act complained of, or

(ii) to do an act that the petitioner has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

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[201] See Section C(57).

[202] Section C(55) describes the publicity surrounding the payment of £11 million to Mr. Owen Oyston/Zabaxe. However, in cross-examination, Mr. Belokon and Mr. Malnacs denied leaking this to the press, and I accept their evidence. The information was, of course, publicly available from Companies House.

424. As Oliver L.J. noted in Re Bird Precision Bellows Ltd, the effect of this wording:

> "…is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company…"

425. In terms of the approach to be taken, the following points hold good:

i) Obviously, the discretion must be exercised judicially and on rational principles. As is noted in paragraph 6.282 of Minority Shareholders:

> "Once unfair prejudice has been established, the judge is obliged to consider the whole range of possible remedies and choose the one which on his assessment of the current state of relations between the parties is most likely to remedy the unfair prejudice and deal fairly with the situation which has occurred. 'The Court must do what is fair'. In carrying out this task, the court can have regard to the effect of its order on third parties (particularly creditors) and their interests, although the weight to be given to their interests will depend on the circumstances."

ii) The range of orders that can be made span the broad spectrum from: doing nothing (see, e.g. Antoniades v. Wong [1995] 2 BCC 682); to ordering a share purchase or "buyout" (generally, but not necessarily, of the shares of the petitioner), thus enabling a "clean break"; to more or less detailed regulation of the conduct of the company's affairs. This third course involves a "bespoke" solution and runs the risk of perpetuating an impossible relationship of joint management. It has been adopted comparatively rarely – no doubt because "solutions" seeking to impose co-operation tend not to work precisely because co-operation is required – but examples are Sikorski v. Sikorski [2012] EWHC 1613 and Re Neath Rugby Ltd (No. 2) [2008] BCC 390, on appeal [2009] 2 BCLC 427.

iii) When considering the appropriate remedy, the Court is not bound by the relief sought by the petitioner. In Re Neath Rugby Ltd (No. 2) [2009] 2 BCLC 427 at [85], the Court of Appeal stated:

> "It was suggested that on a petition under section 994 the court cannot award relief that the petitioner does not seek. In the present case, the correctness or otherwise of that proposition is academic, since ultimately, when it was apparent from the judge's judgment that Mr. Hawkes would not be able to buy out Mr. Cuddy, he agreed to the order proposed by the judge being made on his petition. On any basis, therefore, the judge had power to make the order he did. But I would not want it to be assumed that that proposition represents the law. The terms of section 996 are clear: once the court is satisfied that a petition is well-founded, 'it may make such order as it thinks fit', not 'such order as is sought by the petitioner'…"

I am very conscious that this course may be more theoretical than realistic, particularly if the course that the court is minded to take predicates co-operation between warring factions. But, equally, the fact that a petitioner advocates one course, does not make it fair or appropriate.

iv) One aspect of fairness that must be borne in mind is that the remedy must be proportionate to the unfair prejudice found. In the case of relatively modest unfair prejudice, a buyout order may be disproportionate. Equally, it is necessary to bear in mind the conduct of the petitioner. In this case, I do not consider that the facts and matters relied upon by the Respondents as set out in Section I should in any way alter the relief that I would otherwise be minded to grant.

(2) Approach

426. In order to gain an appreciation of how proportionate (or disproportionate) a buyout order might be, I propose to consider first what a fair price would be for VB Football Assets' interest in Blackpool FC. Once a figure for a buyout has been derived, it will be easier to see whether such an order would be appropriate in all the circumstances. Accordingly, I secondly consider the merit of the options alternative to a buyout in light of the price that the Respondents would have to pay to buyout VB Football Assets' interest in Blackpool FC.

(3) The value of Mr. Belokon's share in Blackpool FC

(i) The expert evidence

427. VB Football Assets and the Respondents each called an expert to assist me on the value of VB Football Assets' share in Blackpool FC. VB Football Assets called Mr. David Mitchell, a partner at BDO LLP and the Head of the UK Valuations Team within BDO. Mr. Mitchell is a fellow of the Association of Certified Chartered Accountants, a Chartered Tax Advisor, a member of the Society of Share and Business Valuers and a member of the Royal Institution of Chartered Surveyors.

428. The Respondents called Mr. Gerald Krasner, a partner in Begbies Traynor (Central) LLP. Mr. Krasner is a chartered accountant, but with very specific football club-related experience: in 2004, he led the consortium that bought Leeds United AFC and he was the administrator of both Bournemouth AFC and Portvale Football Club. He was instrumental in the sale of both of these latter clubs.

429. Mr. Mitchell provided the court with one report, dated 24 March 2017 ("Mitchell 1"). Mr. Krasner provided two reports, dated 24 March 2017 ("Krasner 1") and 18 May 2017 ("Krasner 2"). The experts also submitted a joint statement (the "Joint Statement") dated 12 April 2017. Mr. Mitchell and Mr. Krasner gave oral evidence on Day 15 (3 July 2017).

430. Whilst it cannot be said that there was a meeting of minds as between the experts – for their approaches were very different – I was assisted by both. I found both Mr. Mitchell and Mr. Krasner to be honest and, in their own very different ways, expert, witnesses. Mr. Mitchell took what may be called a traditional accounting approach to valuing Blackpool FC. Mr. Mitchell's primary approach was to value Blackpool FC

as at 2010 (when Blackpool acceded to the Premiership) using a discounted cash flow valuation method. This involves estimating anticipated cash flows in future periods, which were converted by him to a present value using a discount rate.[203] It is at first sight odd, to use a 2010 valuation date. However, given the complaints that are made of the Oystons in the period between 2010 and 2013, which I have largely found to be substantiated, it seems to me justifiable that an early date (which excludes the Oyston Side's improper conduct) be adopted.[204] Mr. Mitchell found that Blackpool FC had a discounted cash flow value of £48.084m.[205] On this basis, Mr. Mitchell derived an enterprise value of Blackpool FC (the value of the business before any financing considerations[206]) of £59.7 million.[207]

431. Mr. Krasner took a very different approach. In paragraph 1.6 of Krasner 1, he stated that "[w]hen considering the valuation of a Football Club, the main item which will determine this is the respective division of the [English Football League] in which the Football Club finds itself". At the time of Mr. Krasner's report, Blackpool FC was in League 2. It gained promotion after Krasner 1 was submitted. Mr. Krasner's valuation of Blackpool FC was impressionistic ("more an art than a science"). His conclusion in paragraph 4.11 of Krasner 1 was that:

> "…the average value for a Football Club in League 2 would be circa £3.5m and in League 1 (on the basis that the Football Club has a chance of promotion) would be £5m. However, due to the matters referred to above, principally the reserves in the Football Club, I am of the opinion that Blackpool would command a figure of between £5m and £6m. I have, therefore, taken a midway figure of £5.5m as the valuation…"

(ii) Assessment of the opposing expert viewpoints

432. The valuations of Mr. Mitchell and Mr. Krasner thus stand starkly opposed at £59.7 million and £5.5 million for Blackpool FC. The reason for this discrepancy is that whereas Mr. Krasner was essentially valuing the club, and placing relatively little weight on the influx of cash that occurred as a result of Blackpool FC's single season in the Premier League, Mr. Mitchell was focussing essentially only on this inflow of cash and was disregarding the risks to that cash, even if the club was properly run. The fact is – as Mr. Krasner emphasised – people like Mr. Belokon did not put money into a football club as an "investment". It may be that some Premier League clubs – the Manchester Uniteds or Arsenals of this world – sitting safely in the Premier League, can be run in this way: although I am uncertain, even of this, given (for instance) the difference participation or non-participation in the European Cup can make to the revenue of a club, even if it sits relatively safely in the Premier League.

433. I do not consider that the measures of Mr. Mitchell – specifically his discounted cash flow, and the other calculations he did as cross-checks – are appropriate in the case of a football club like Blackpool FC. Assuming, for the moment, that Blackpool FC had

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[203] See paragraphs 4.19 of Mitchell 1.
[204] For the reasons I give below, although a justifiable approach, I do not consider that it places sufficient weight on how a football club might develop or fail if the revenue it received would properly be spent.
[205] See paragraph 8.16 of Mitchell 1.
[206] See paragraphs 4.10*ff* of Mitchell 1.
[207] See paragraph 8.2 of Mitchell 1.

been properly run, and the Premier League monies received by Blackpool FC had been spent in the interests of the club, there is no guarantee that success would have followed. The money might – even if prudently spent – have been lost. In short, whilst I understand why Mr. Mitchell adopted a 2010 valuation, so as to avoid the misappropriations of the Oyston Side, in doing so he has failed to take due account of the risks inherent in football. With no disrespect to Mr. Mitchell – his report was based on standard valuation approaches and was impeccable[208] – I consider the tools he used unsuited to this case.

434. That does not, however, mean that I accept the approach of Mr. Krasner, for that disregards – or, at least, places insufficient weight on – the large amount of money Blackpool FC did in fact receive. Inevitably, that fund increased the value of Blackpool FC, and to leave it out of account would be entirely wrong.

(iii) The approach to be adopted

435. In my judgment, the appropriate approach in this case is as follows.

436. I have found that there was a legitimate expectation that VB Football Assets would have a joint share in the profits of Blackpool FC and would, at some point, have a parity of shareholding with Segesta. I therefore consider that the interest of VB Football Assets should be treated not as a 20% interest in Blackpool FC, but as one equivalent to that of Segesta, that is as a 48.145% interest in Blackpool FC.[209]

437. In these circumstances, I consider that a minority discount would be inappropriate, when seeking to value VB Football Assets' interest.

438. In terms of valuing VB Football Assets' 48.145% interest in Blackpool FC, I consider that the starting point should be a recognition that Segesta (or, perhaps more accurately, the Oyston Side) should have treated VB Football Assets (or, perhaps more accurately, the Belokon Side) equivalently and in a non-discriminatory manner. I have found that the Oyston Side caused Blackpool FC to make a series of payments that were, in fact, disguised dividends to the Oyston Side. These dividends should have been made equally to the Belokon Side. I consider that the starting point in assessing the appropriate buyout price is to approach matters as if the Oyston Side had behaved in a non-discriminatory way and paid to VB Football Assets what the Oyston Side paid to itself. In this way, VB Football Assets will receive a share in the profits of Blackpool FC, calculated by reference to what the Oyston Side considered it appropriate to pay itself.

439. As I have found, the concealed dividends paid out of Blackpool FC to the Oyston Side were as follows:

    i) The £2.5 million that the Respondents accept was paid away without benefiting Blackpool FC.[210]

    ii) The £4.2 million payment in respect of the Protoplan debt.[211]

[208] See paragraph 6.323 of Minority Shareholders.
[209] 100% less the Minor Shareholders' 3.71% interest divided by 2 gives 48.145%.
[210] See Section E.

iii) The £4.9 million payment in respect of the first part of the Travelodge refinancing.[212]

iv) The £4.17 million payment in respect of the second part of the Travelodge refinancing and in respect of the Zabaxe debt.[213]

v) The £11 million payment in respect of services rendered by Zabaxe.[214]

These payments total £26.77 million.

440. Deeming these payments to have been made to the Belokon Side, and using them as the starting point for valuing VB Football Assets' interest in Blackpool FC, puts VB Football Assets in the position it would have been in had the unfairly prejudicial conduct in relation to these payments not taken place.

441. There remains the value to be attributed to the 48.145% interest in Blackpool FC that I consider – given the gentleman's agreement – represents VB Football Assets' true interest in Blackpool FC. As to this, I have for the reasons given in paragraph 433 above rejected as inappropriate Mr. Mitchell's approach. Given the approach I have taken in relation to the payment to VB Football Assets of the equivalent of the disguised dividends actually received by the Oyston Side, Mr. Mitchell's approach is doubly inappropriate as it would involve a degree of double counting.[215]

442. I consider that the key to valuing VB Football Assets interest in Blackpool FC is to recognise that Mr. Belokon did not put money into the club as an investment, but because he wanted to support the club. It seems to me that his aim of supporting the club having come to naught, he should be able to unwind the transaction, and should receive back what he paid. I therefore consider that Mr. Belokon should be repaid the money he paid to acquire his shareholding in Blackpool FC. These payments total £4.5 million, comprising:

i) £1,800,000 paid pursuant to the Subscription Agreement.

ii) £1,000,000 paid pursuant to the First Vlada Loan Agreement.

iii) £1,700,000 paid pursuant to the Second Vlada Loan Agreement.

443. I have considered whether the £4,750,000 paid pursuant to the Second South Stand Agreement should be added to this amount, and have concluded that it should <u>not</u> be. It seems to me that the Second South Stand Agreement was separate from the purchase of shares in Blackpool FC, albeit a linked investment given the close relationship between Blackpool FC, Segesta and the football ground. There is also a link between the repayment of the First and Second Vlada Loan Agreements and the payment provisions in the Second South Stand Agreement. It also needs to be borne in mind that the benefit of the Second South Stand Agreement has been assigned to

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[211] See Section F(2).
[212] See Section F(3).
[213] See Section F(3) and Section F(4).
[214] See Section F(5).
[215] Mr. Mitchell's approach did not differentiate between the shareholding and the disguised dividends. Mr. Mitchell simply sought to value Blackpool FC.

Baltic International Bank, a distict legal person albeit one closely linked to Mr. Belokon.

444. Whilst this approach takes full account of what VB Football Assets paid for its interest in Blackpool FC and ensures that VB Football Assets shares in Blackpool FC's success in reaching the Premier League, I recognise that it gives no weight to the potential for Blackpool FC's possible future success. That is deliberate. As I have described, the difficulty of valuing a club like Blackpool FC is that its future is inherently unpredictable. It might – as it has done – achieve great success and reach the Premier League again; or it might – as it also has – sink to League 2, or worse. It is impossible to say what will happen: for that reason, I have declined to make any prediction at all, and simply make provision for VB Football Assets to receive back what was paid - £4.5 million.

445. Accordingly, if the appropriate form of relief is that the Respondents should buyout the interest of VB Football Assets, I consider that the price should be set at £31.27 million. I should make clear that this price would involve the unwinding of all contracts between the Oyston Side and the Belokon Side (including, for example, the Second South Stand Agreement and, to the extent they still exist, any rights under the player trust) so as to create a "clean break". There is one, potential, obstacle to this course, which is the assignment of the benefit of the Second South Stand Agreement to Baltic International Bank. However, Baltic International Bank has indicated, through VB Football Assets legal representatives, that it is content that the agreement should be unwound, so that Baltic International Bank will have no future rights to profit share under the Second South Stand Agreement. Should I proceed to order a "clean break" along these lines, it will clearly be necessary appropriately to formalise this indication of Baltic International Bank. It is obvious to me that a "clean break" can only be achieved by a comprehensive unwinding of all agreements and understandings between the Oyston Side and the Belokon Side, including those agreements that have been assigned to related parties like Baltic International Bank. Having considered the appropriate terms of a buyout, I now turn to consider whether it is, in fact, that appropriate order for relief.

(4) The appropriate order for relief

(i) Factors militating against buyout

446. Were I minded to order a buyout of VB Football Assets' interest in Blackpool FC, then the order would be that the Respondents (i.e., not including Blackpool FC) pay £31.27 million for VB Football Assets' interest in Blackpool FC.

447. The question, however, that I posed at the outset of this exercise, remains. Is this relief appropriate, given the other options that might exist? As to this:

i) In effect, the order I have described impliedly legitimizes the conduct of the Oyston Side by treating the Oyston Side's payments to itself as dividends, to which VB Football Assets is equally entitled. The order simply gives VB Football Assets parity, in circumstances where the payments out of the club were done – as I have found – without regard to the interests of Blackpool FC. In short, what the buyout order does is to allow VB Football Assets to share in

what was the illegitimate stripping of Blackpool FC by the Oyston Side, in conduct that was not in the best interests of the company.

ii) Nor can I be under any illusions as to where the £31.27 million would come from. Even if the Respondents, excluding Blackpool FC, were the ones subject to the buyout order, the money would (at least indirectly) come from the club. A buyout order would, I have no doubt, result in the further impoverishment of Blackpool FC.

iii) Prior to closing submissions, I asked both parties whether it was legitimate to take the interests of Blackpool FC into account. The answer was "No". I do not consider the position to be as straightforward as that "No" would suggest. In Re Neath Rugby Ltd (No. 2) [2009] EWCA Civ 291 at [84], Stanley Burnton L.J. stated:

> "Mr. Chivers also submitted that the judge wrongly took into account the matters to which he referred in para [291](iii) and (iv) of his judgment. He submitted that only the effect on shareholders of Neath and the shareholders in that company are relevant when the court makes an order under section 996. I reject this submission. If upheld, it would mean that the interests of the creditors of the company could not be taken into account. Their interests are clearly relevant, and may be decisive in deciding what order should be made under the section. I do not see why the court should close its eyes to the interests of others, and the effect of any order made under section 996 on them, although of course the weight to be given to their interests will depend on the circumstances…"

At first instance, Lewison J. said this in Re Neath Rugby Ltd (No. 2) [2007] EWHC 2999 (Ch) at [252]:

> "…It is, of course, the case that in deciding what relief to grant on a petition under section 994 the court is not adjudicating on a "contest of virtue". It is also the case that the dispute upon which I have to adjudicate is one between the petitioner and respondent, and not one between the company and outsiders. But where the company in question is owned in equal shares, and its most valuable asset is an equal share in a joint venture with a third party, I agree with Mr. Parker that the position of the joint venture is a factor to which the court can have regard."

iv) Clearly, third party interests can be taken into account. Certainly, it seems to me that the interests of the Minor Shareholders – 3.71% of the company – would be prejudiced by the buying out of Mr. Belokon. I appreciate that the interest is not a great one: but it is not immaterial either.

v) It does seem to me that the interests of Blackpool FC are relevant at least when considering the proportionality of a buyout order. I pay particular regard to the words of Lewison J. in Re Neath Rugby Ltd [2007] EWHC 2999 (Ch):

> "246. Where unfair prejudice has been established, the remedy must also be proportionate to the unfair prejudice found. It may be disproportionate to order a buy-out of one shareholder's shareholding where the unfair prejudice is

> relatively modest: Re Phoenix Office Supplies Ltd [2003] 1 BCLC 76, per Jonathan Parker L.J. By the same token, the exercise of jurisdiction under section 996 is not a punishment for bad behaviour.
>
> …
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> 290. I have found that to a limited extent the cross-petition is well-founded. I have also found that some of the allegations in the petition are well-founded. But although I have found that some of the allegations of unfair prejudice alleged in the petition have been established, they are the less serious ones. Those which pertain to the internal affairs of the Ospreys are not conduct of the affairs of Neath. It would be disproportionate to require Mr. Cuddy to sell the Cuddy share to Mr. Hawkes on the grounds that I have found established, if a less drastic remedy can be devised. In conducting himself as a director of the Ospreys Mr. Cuddy has acted in what he considered to be the best interests of the Ospreys; and in accordance with clause 8 of the shareholders agreement stop in so doing he was not in breach of any duty owed either to Neath or to Mr. Hawkes. There is no justification for terminating or imperilling his position on the board of the Ospreys as a Neath representative, which was one of the fundamental terms of the Hawkes/Cuddy agreement. On the other hand he failed to consult Mr. Hawkes on the StadCo variation…, and has failed to keep them informed about the negotiations with the WRU. That can be cured for the future by giving Mr. Hawkes a voice (and eyes and ears) in the Ospreys boardroom. The spirit of the Hawkes/Cuddy agreement can be preserved by giving Mr. Hawkes the ability to enlarge the board of Neath thus giving him effective control of it. This solution means that any demerger can be avoided, as can any winding up."

vi) Given that Mr. Belokon freely caused VB Football Assets to enter into what was effectively an equal partnership with Segesta, it does seem to me that it would be disproportionate to order a buyout without serious consideration of whether the relationship between the Oyston Side and the Belokon Side can be restored.

vii) I need to consider whether there can be fashioned a bespoke arrangement that is fair in terms of the relief it accords to VB Football Assets for the following reasons:

a) The risk of prejudice to the Minor Shareholders.

b) The fact that a buyout condones – indeed, duplicates – the wrongs done to the company.

c) The fact that the order I envisage carries with it at least a sense of being disproportionate given Mr. Belokon's and VB Football Assets' decision to invest in Blackpool FC in the manner than they did.

(ii) A bespoke arrangement?

448. Two alternatives to a buyout of VB Football Assets suggest themselves. One is easily dismissed, and that is a buyout by VB Football Assets of the Oyston interest in

Blackpool FC. This was – when canvassed – opposed by all concerned and it is easy to see why:

i) It would, to say the least, be an unusual order.

ii) It would involve co-operation between Blackpool FC and Segesta which – given that Blackpool FC would be owned by the Belokon Side and Segesta by the Oyston Side – could not be guaranteed (to say the least). One could readily imagine (to take but one example) disputes arising as to Blackpool FC's rights to use the stadium owned by Segesta.

iii) It would, in all probability, involve imposing obligations on Mr. Belokon that he says he does not want.

449. The second alternative involves, as Lewison J. sought to do in Re Neath Rugby Ltd (No. 2), seeking to establish or re-establish the spirit of the agreement or partnership between the Belokon and the Oyston Sides.

450. This has an obvious attraction, in that it would put matters back to the "golden age" when Blackpool FC was rising through the divisions and would cost less in terms of monetary re-arrangement. What this would entail is:

i) Formalisation of a parity of interest between the Belokon and the Oyston Sides. I would envisage an order obliging Segesta to transfer to VB Football Assets 10,553 shares, giving Segesta 18,054 shares and VB Football Assets 18,053 shares. I do not consider the difference of one share to be material, given the presence of the Minor Shareholders.

ii) Rules regarding the membership of the board of directors. As to this:

a) For the reasons I have given, I consider that Mr. Karl Oyston should be excluded from the board. Although I have serious misgivings about Mr. Owen Oyston, I do not envisage a similar exclusion for him.

b) The board should comprise eight directors, three appointed by the Oyston Side and three appointed by the Belokon Side. I would anticipate that one of these three would be Mr. Belokon, and the other two directors like Mr. Malnacs. One further director would be selected by the Minor Shareholders (who would be chairman, with a casting vote) and one further director appointed jointly by the Oyston and the Belokon Sides, but failing agreement to be named by the Minor Shareholders.

iii) The auditor would need to be independent. There could be no question of Mr. Cherry carrying on this role. The same goes for the "financial controller". There could be no question of Mr. Dyer carrying on this role.

iv) It would be necessary to formalise the arrangements whereby Blackpool FC has the use of the stadium where it plays. As I have described,[216] the present arrangement is both informal and unclear.

v) The Oyston Side would repay to Blackpool FC four of the payments that I have found to be disguised dividends, namely:

a) The £2.5 million that the Respondents accept was paid away without benefiting Blackpool FC.

b) The £4.2 million payment in respect of the Protoplan debt.

c) The £944,652.28 in respect of the Zabaxe debt.

d) The £11 million payment in respect of services rendered by Zabaxe.

The payments in respect of the Travelodge refinancing (i.e. the £4.9 million and the £3.225 million) I would permit to stand, provided that the Travelodge loan agreement was re-written to ensure Segesta's payment obligations under it were properly enforceable by Blackpool FC.

451. It is fair to say that I canvassed this option in the broadest of terms with the parties. Three objections emerged, all valid but perhaps not conclusive. First, the level of Mr. Belokon's disenchantment. He did not want to continue his association with Blackpool FC. Secondly, the question of whether the Oystons could be trusted. Thirdly, the fact that – particularly given the mistrust – this would involve the court in too much administration. There is force in all of these points. However:

i) Mr. Belokon is getting his grievances rectified. If this course is achievable, then it is fair, and it represents the closest to what VB Football Assets is entitled to.

ii) As to whether the Oyston Side can be trusted, self-evidently they have abused their majority powers to the detriment of both the Belokon Side and Blackpool FC itself. Nevertheless, this ability to abuse their majority powers only arose because they had them: the arrangements that I am contemplating will constrain the ability of the Oyston Side to abuse their position.

iii) I accept that the costs of achieving a satisfactory arrangement would be considerable, and that there is clearly a risk well above the *de minimis* of this court getting drawn into the sort of commercial negotiations that it should steer well clear of.

(iii) Conclusion

452. The temptation to attempt a bespoke arrangement is considerable, notwithstanding the clear difficulties that arise. However, on 26 September 2017, Mr. Steinfeld, Q.C. wrote a letter (copied to Mr. Green, Q.C.) informing me of certain developments since the hearing of the Petition had concluded. That letter stated:

[216] See Section C(3).

"My clients have asked me to update you on the following developments that have occurred since the trial was adjourned in case they have any impact on your judgment:-

1. On 23 August 2017, [Blackpool FC] received a letter from Mr. Belokon dated 22 August 2017 giving notice of his resignation from the board. I am instructed that my clients were told by the English Football League that such resignation followed discussions between the Football League and Mr. Belokon and Clifford Chance [VB Football Assets' solicitors] concerning the implications as regards his eligibility to continue as a director of a football club playing in the English Football League of his recent conviction in Kyrgzstan for money laundering offences and fraud.

2. I am instructed that my clients have recently been told by the English Football League's in-house solicitor that the League has now decided that Mr. Belokon should, in view of that conviction, be disqualified from acting as a director of a football club playing in the English Football League."

453. Of course, I know nothing about the events that have brought this exclusion of Mr. Belokon about, and it does seem extraordinary that a conviction not on the merits but based on non-attendance by Mr. Belokon should have this effect. But, as I say, I know nothing of the background.

454. I must proceed on that basis that it is now no longer possible for Mr. Belokon, or his nominees, to sit on the board of Blackpool FC. In those circumstances, the bespoke scheme propounded in paragraph 450 simply cannot work. Accordingly, it is not necessary for me to consider whether, absent these new developments, a bespoke arrangement would have been appropriate.

455. In all the circumstances, a buyout order in the terms described in paragraph 445 above is the only appropriate form of relief pursuant to section 996 of the Companies Act 2006. I should make clear that this buyout order contemplates the unwinding of the Second South Stand Agreement by Baltic International Bank so that Baltic International Bank will have no future rights to profit under that agreement. Nothing in this Judgment is intended to affect sums already paid under this agreement or found to be payable in the proceedings between Segesta and Baltic International Bank described in paragraph 100 above.

K. DISPOSITION

456. I appreciate that I have not heard submissions in relation to Mr. Steinfeld, Q.C.'s letter set out in paragraph 452 above. That letter has been material in my consideration as to the appropriate relief to grant under section 996 of the Companies Act 2006. Before making a final order, it seems to me appropriate to invite the parties, if so advised, to make any submissions in relation to the content of that letter and the relief I am minded to order.

457. Subject to that, and subject to an appropriate form of order being drawn, I order that the Respondents purchase the entire interest of VB Football Assets in Blackpool FC (including Baltic International Bank's interest in the Second South Stand Agreement) for a sum of £31.27 million.

Annex 1

Terms and abbreviations used in the Judgment

(paragraph 1, fn 1 of the Judgment)

aide memoire	Paragraph 152
Baltic International Bank	Paragraph 12(i)
Belokon 1	Paragraph 29(i)
Belokon Side	Paragraph 11
Belton 1	Paragraph 31(i)
Blackpool FC	Paragraph 1
Blackpool FC Hotel	Paragraph 38(iv)
Cherry 1	Paragraph 31(iii)
Comfort Letter	Paragraph 401
Dempsey 1	Paragraph 31(ii)
Denwis	Paragraph 38(i)
Draft New Articles	Paragraph 392
Dyer 1	Paragrpah 31(iv)
EIS	Paragraph 111
EIS Decision	Paragraph 111
First South Stand Agreement	Paragraph 96
First Vlada Loan Agreement	Paragraph 8(iii)
gentleman's agreement	Paragraph 8(vi)
Joint Statement	Paragraph 429
KO 1	Paragraph 35(i)
Krasner 1	Paragraph 429
Krasner 2	Paragraph 429
Malnacs 1	Paragraph 29(ii)
Minor Shareholders	Paragraph 4
Minority Shareholders	Paragraph 311
Mitchell 1	Paragraph 429
New Articles	Paragraph 404
OJO 1	Paragraph 35(ii)
Old Articles	Paragraph 389
Oyston Group	Paragraph 11(i)

Oyston Side	Paragraph 11
Petition	Paragraph 20
Protoplan	Paragraph 38(iii)
Respondents	Paragraph 6
Second South Stand Agreement	Paragraph 99
Second Vlada Loan Agreement	Paragraph 8(iv)
Segesta	Paragraph 4
Subscription Agreement	Paragraph 8(i)
Tax Losses	Paragraph 66
Travelodge	Paragraph 209
Varpins 1	Paragraph 29(iii)
Zabaxe	Paragraph 38(i)

Annex 2

Chronology of the development of the Blackpool stadium

(paragraph 40 of the Judgment)

1.	2000	New floodlight tower	£21,421
2.	2000-2005	Demolition of Old Stands. Construction of New North, North-West and West Stands. Fitting out of New North-West and West Stands for hospitality areas and office space. Opened for football use in February 2002 and completed 2005.	£9,484,807
3.	2002	Additional land at Bloomfield Road	£5,000
4.	2002	Tarmacing and paving of entrance road.	£19,123
5.	2006	Tarmac training ground	£8,222
6.	2007	Additional land purchased at Bloomfield Road	£99,000
7.	2008-2009	North Stand fit-out.	£985,475
8.	2008-2010	South Stand and South-West Corner construction and fit-out.	£6,862,033
9.	2010	New East Stand, including floodlights, turnstiles, ticketing and access systems. Opened 28 August 2010.	£2,091,365
10.	22 March 2010	Phase One of South Stand and South-West Corner redevelopment completes, allowing fans to sit in the stands.	
11.	28 August 2010	East Stand completed.	
12.	2010-2012	South East Corner Stand construction.	£2,466,806
13.	2011	Highways improvement due to increased capacity.	£250,500
14.	2011	New turnstiles.	£48,136.
15.	2011-2013	South Stand, South East Corner and Travelodge fit-out.	£3,057,528
16.	2012	Traffic barriers.	£4,807
17.	2013	New Stadium seats.	£147,810
18.	2013	Travelodge opens in South Stand and South East Corner.	