Neutral Citation Number: [2020] EWHC 1175 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No. CR-2019-2014/2022**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

CHANCERY DIVISION

INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice,

Rolls Building, Fetter Lane,
London EC4A 1NL
Date 4 May 2020

Before

Mr Peter Knox QC
(sitting as a Deputy Judge of the High Court)

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Between :

HOMES OF ENGLAND LIMITED

Petitioner

- and -

(1) HORSHAM HOLDINGS LIMITED

(2) DNG HOLDINGS BEDFORD LIMITED

(3) NORTH STREET HORSHAM DEVELOPMENT LLP

(4) DAVIDIA PROPERTIES LIMITED

(5) DNG BEDFORD PROPERTIES LIMITED

(6) DNG BEDFORD PROPERTIES (3) LIMITED

(7) OXFORD PROPERTY INVESTMENTS LIMITED

(8) NICK SELLMAN (HOLDINGS) LIMITED

(9) MR ANTHONY SIMON CHRISTOFIS

(10) MR SHAUN TERENCE SAVAGE

(11) MR NICHOLAS JAMES SELLMAN

(12) MR MATTHEW JOHN WILLIAMS

Respondents

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Mr NIRAJ MODHA (instructed by Acuity Legal Limited) for the **Petitioner**

Mr STUART BENZIE (instructed by Laytons LLP) for the **First to Seventh, Ninth, Tenth and Twelfth Respondents**

Mr ZACHARY KELL (instructed by Morgan LaRoche) for the **Eighth and Eleventh Respondents**

Hearing date 1 May 2020

Approved Judgment

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

Introduction

1. In this application, the Petitioner seeks an interim order restraining the Respondents until trial of its petition under s.994 of the Companies Act 2006 from paying out the sum of £500,000, currently held in a solicitors' client account, to any of the Respondents other than the First Respondent. It also seeks a further order preventing the First Respondent from disposing of that sum otherwise than to the Petitioner.

The parties

2. The Petitioner is a 25% shareholder in the First and Second respondents, along with the Seventh Respondent (who has 50%) and the Eighth Respondent (who has 25%). The First Respondent now owns the Fourth Respondent and is a member of the Third Respondent, and the Second Respondent now owns the Fifth and Sixth Respondents. The dispute arises out of two residential property developments, one carried out in Horsham by the First Respondent, through the Third and Fourth Respondent ("the Horsham property"); the other in Bedford, by the Second Respondent, through the Fifth and Sixth Respondents ("the Bedford property"). In both cases, as I understand it, the residential units have been built, or largely built, but they have not yet all been sold.

3. I shall call these first six respondent entities Horsham Holdings (R1); DNG Holdings (R2); North Street (R3); Davidia Properties (R4); DNG Properties (R5); and DNG Bedford (3) (R6). As for the other respondent companies (i.e. the Petitioner's co-shareholders in the first two respondents), I shall call them Oxford Property (R7), and Nick Sellman Holdings (R8).

4. As for the individual respondents (nos 9 to 12), they are all directors of the first six respondent entities (or in the case of North Street (R3), which is an LLP, they appear to be regarded as such). I shall call them Mr Christofis, Mr Savage, Mr Sellman and Mr Williams. Although the entities carried out separate developments through separate entities, it appears from the papers that there was a fair amount of intermingling of their finances through intercompany loans.

5. As for the Petitioner, this is solely owned by Mr de la Gorce, and he is its sole director. In addition, at least until 22 May 2019, he was a director of each of the first six respondents (or in the case of North Street (R3), treated as such).

The background

6. It is necessary to say a few words about the original acquisition of the properties, the shareholders' agreements, and the financing of the two developments in order to understand the issues on this application.

The acquisition of the properties

7. The Bedford property, which is at 25-27 St Johns Street, Bedford, was acquired by DNG Properties (R5) on 28 July 2014, and it consists of a building and a carpark.

8. The Horsham property, which is at North Street, Horsham, and North Point, North Street, Horsham, was acquired by North Street (R3) and Davidia Properties (R4) on 3 February 2016.

9. At the time, the acquiring companies were controlled jointly by the Petitioner and Nick Sellman (R8), and in each case, the properties were acquired with the assistance of finance from the Petitioner and Amicus Finance plc. The residential developments then began.

The shareholders' agreements

10. Before either development was completed, it was agreed in 2016 that Oxford Property (R7) would join in the ventures. As a result, Horsham Holdings (R1) was established in October 2016, in order to own North Street (R3) and Davidia Properties (R4), and DNG Bedford Holdings (R2) was established in February 2017, in order to own DNG Properties (R5) and DNG Bedford (3) (R6).

11. The shareholders' agreement in relation to Horsham Holdings (R1), which was made on 5 October 2016, provided for the respective shareholdings mentioned above (i.e. 50% for Oxford Property, and 25% for each of the Petitioner and Nick Sellman Holdings (R8)). It went on to record in clauses 4.2 to 4.4 that:

> "4.2 On the date of this agreement, finance has been provided to the Company by way of a loan from Amicus Finance PLC secured against the Property, and by way of a loan from Shareholder A [i.e. the Petitioner], which on the 17th October 2016 amounts to £1,295,699.78. The latter is agreed to be repaid in priority after any loans secured on the property have been repaid at the date of sale or refinance of the Property, whichever comes first, together with the interest accrued from the date of this agreement at the rate of 1.25 percent per month. Any funds contributed or sourced by Shareholder C [i.e. Oxford Property (R7)] are then to be repaid along with any agreed interest or charges before any distribution or dividend or other payment is made to the Shareholders.
>
> 4.3 Any finance required by the Company, including but not limited to construction works to convert the building into residential, will be borrowed by way of bank facility from the Company's bankers or from other normal market sources upon terms agreed in writing by all the Shareholders.
>
> 4.4 To the extent that such financing provided for in Sub-clause 4.2 is not possible or is not available on terms acceptable to all the Shareholders for whatever reason, it is agreed that Shareholder C [Oxford Property (R7)] will be responsible to source all funds required by the Company."

12. The shareholders' agreement in relation to the Bedford property appears to have been entered into in relation to DNG Properties (R5) on 15 November 2016 (DNG Bedford Holdings (R2), which now owns it, was not established until February 2017). This had an identical provision, save that in clause 4.2 the sum of the finance referred to was £934,000.

13. Oxford Property (R7) also agreed to provide assistance to the Petitioner and Sellman Holdings (R8) on a further development in Banbury, called the Crown House development, which was carried out through Crown House Banbury Limited, and to which I refer below. This resulted in a further shareholders' agreement between the three of them which was, as I understand it, on materially the same terms as the other two, although it is not clear what financing the Petitioner provided on this development. As I explain below, the arrangements made when the Petitioner, Oxford Property (R7) and Sellman Holdings (R8) eventually sold their shares in this company have an important bearing on a central issue in the case.

The financing arrangements

14. At the instigation of Oxford Property (R7), a number of financing arrangements appear to have been entered into for the two developments, and in particular it

replaced the finance from Amicus Finance plc with financing from the Redwood Partnership in the sum of £2.6 million on 20 September 2016. This financing was granted to DNG Properties (R5) and secured over the Bedford property. The Petitioner has a number of complaints about these financing arrangements with the Redwood Partnership, but they are not material to its current application.

15. By April 2020, according to the Respondents, the Redwood Partnership's lending had been reduced to about £1.4 million, and it held a second charge over the Bedford property, behind another lender, BLME of about £6.5 million. By this stage, it seems, the Crown House development had been completed (in about mid-2017); and the residential units at the Horsham property had been built, as had 47 units on part of the Bedford property called Meridian House. However, the other part of the Bedford property, which consisted of a car park, had not been built upon, because neighbouring land had to be acquired in order to take advantage of the planning permission.

The proceedings

16. By 2018, relations appear to have deteriorated, and on 1 August 2018, the Petitioner served demands on North Street (R3) and DNG Properties (R5) for repayment of its loans. It does not appear from the papers before me what the demand was for, but in its petition in these proceedings, it claims that the sums due, as at 31 March 2019, were £2,297,665.29 and £1,514,448.23 respectively. They were not satisfied.

17. On 1 November 2018, the Petitioner and Mr de la Gorce issued proceedings against the same first eight Respondents as in these proceedings in the High Court in Cardiff, seeking, amongst other things, information about the developments, which His Honour Judge Keyser Q.C. ordered to be provided by summary judgment granted on 13 May 2019 and by further order on 22 July 2019 after, it seems, some of the information previously ordered had not been provided. The Petitioner, as I understand it, is also claiming an account of profits in those proceedings, and the trial was due to take place on 23 to 25 March 2020, but it was vacated because of the COVID-19 lockdown.

18. In the meantime, the Petitioner issued these proceedings in London on 20 March 2019, complaining, in essence, of (a) wrongful exclusion from the management of the Horsham and Bedford developments, (b) failure to provide details of sales, (c) failure to give priority to the repayment of its loans ahead of other loans, and (d) the excessive rates of interest charged on the Redwood Partnership loans. It claims an order that the co-shareholders (i.e. Oxford Property (R7) and Sellman Holdings (R8)) buy out its 25% shareholdings at a fair value; alternatively a reverse order that they sell their shareholdings to the Petitioner at a fair value. The complaints are all disputed by the Respondents. Their case, in essence, is that they were called in by Mr Sellman and Mr de la Gorce in 2016 to rescue the Bedford development, the Crown House development and the Horsham development, which they successfully managed to do by putting to advantage their contacts in the property business. They say that, on a proper construction of the shareholders' agreements, the Petitioner's loans are not

repayable on either development until either (a) the development has been sold, or (b) the building element of the development has been completed and, instead of being sold, has been re-financed into a long-term financial arrangement.

Previous orders

19. At the commencement of the proceedings, a number of orders were made against the Respondents, which culminated in an order made by the late Henry Carr J on 16 April 2019, by which the Respondents undertook to pay any money paid by a purchaser of a residential unit at the Horsham development into Horsham Holdings (R1)'s solicitors account, and not to dispose of it:

> "… otherwise than in the ordinary course of business of [Horsham Holdings (R1), North Street (R3) and Davidia Properties (R4)] without first giving the Petitioner or its solicitors two clear days' written notice by email: (i) stating the identity of the intended disponee; (ii) explaining the amount and purpose of the intended disposal; and (iii) supplying any invoice or written demand or other documents supporting the intended disposal".

20. By further order made on 31 July 2019, Mr Lance Ashworth Q.C., sitting as a deputy Judge of the High Court, ordered that:

> "The Respondents and each of them must not enter into any transaction which has the purpose or effect of obtaining finance on behalf, or refinancing any existing indebtedness, of the First, Third and Fourth Respondents, without either the prior written consent of the Petitioner, or further order, or first agreeing to pay off the Petitioner's alleged loan to the First and Third Respondents immediately upon the receipt of such finance or refinance as a result of entering into such transaction".

21. The trigger for this order was that the Respondents wanted to take out further financing from an entity called Castle Trust, and to subordinate the Petitioner's loans to this further financing. This financing would replace the existing financing from Fortwell Capital Limited ("Fortwell"). The Judge, however, did not see why the Fortwell finance could not be repaid from the sales of the properties. He observed:

> "Therefore, bearing in mind that this is an interlocutory stage and I have to look at the balance of convenience in this matter, in my judgment, it is more convenient to grant an order restraining the respondents from entering into this finance without at least agreeing to pay off the petitioner's indebtedness under the loan agreement. There are good reasons quite simply that this is not all above board and that the conduct is prejudicial and intended to be prejudicial to the position of the petitioner."

The current application

22. The reason for the Petitioner's application is that on 20 April 2020, Horsham Holdings (R1)'s solicitors, Messrs Peter Brown & Co, informed it that, at the request of DNG Bedford (3) (R6), it proposed within 48 hours to pay the sum of £589,911.53 to the Redwood Partnership. This £589,911.53 was a sum which Horsham Holdings (R1) had recently received, on 16 April 2020, by way of return of overpayment from Fortwell (i.e. the financier mentioned above). The justification advanced by Messrs Peter Brown for paying over this sum was that Horsham Holdings (R1) owed to DNG Bedford (3) (R6) £900,000: therefore there was no reason why Horsham Holdings (R1) should not pay over the £589,911.53 in part satisfaction of this indebtedness.

23. Coincidentally, around the same time as this overpayment was reimbursed, the Redwood Partnership made it clear that it was not prepared to wait any longer, and was going to take enforcement action against DNG Properties (R5) and therefore against the Bedford development.

24. Thus, as put in Mr Geoffrey Broomhead's letter of 15 April 2020 to Mr Savage:

> "Shaun per our conversation. To put into writing what I have said. As I have, I hope, made clear whilst we have been extremely patient because of all the ligation [sic] that has occurred between the DNG parties we cannot continue to take no action. We can see no quick end to your internecine warfare. The primary lenders loan [i.e. BLME] continues to sit in front of us and the value of real estate is taking a battering as a result of the lasting damage to the economy due to the pandemic.
>
> Our position only gets worse as time goes on. In the absence of a substantial payment to reduce our exposure immediately we will be enforcing our rights and take whatever money we can get from a fire sale."

25. In other words, the threat is that the Redwood Partnership will enforce its alleged charge over the Bedford property owned by DNG Properties (R5) by reason of the latter company's indebtedness. This in turn, it is said, will damage the interests of DNG Bedford Holdings (R2) (i.e. DNG Properties (R5)'s owner), and of the shareholders of DNG Bedford Holdings (R2) (i.e. the Oxford Partnership (R7) and Nick Sellman Holdings (R8), and indeed the Petitioner itself). Hence, it is said, DNG Bedford (3) (R6) is not just entitled to call in the debt, but it needs to call it in so that it can be applied to reducing the amount owed to the Redwood Partnership, and thereby reduce the risk of enforcement action by it. This will enure to the benefit of all those interested in the Bedford property.

26. The Petitioner, however, objected to the proposed payment, and on 22 April 2020 it issued this application on short notice to the Respondents seeking to restrain it. That application came on before Mr Justice Birss on 24 April 2020, but it was adjourned for a full hearing which took place before me on 1 May 2020, on undertakings by the Respondents not to dispose of the £589,911.53 then in question. Since then, the sum in question has been reduced to £500,000, because the Respondents accept that the debt was no greater than this.

The Petitioner's case

27. The legal bases of the Petitioner's objection are:
    (1) There is no debt owed by Horsham Holdings (R1) to DNG Bedford (3) (R6) in the first place, and the documents which have been provided by the Respondents to show that it exists are forgeries. Therefore, there being no debt, it would be contrary to Horsham Holdings (R1's) best interests to dispose of the £500,000, and a wrongful act of prejudice contrary to s.994 of the 2006 Act.
    (2) Even if there is such a debt, it would be a breach of the shareholders' agreement between itself, Oxford Property (R7) and Nick Sellman Holdings (R8) for Horsham Holdings (R1) to make such payment, because the terms of the alleged loan giving rise to the debt were agreed without its consent, and further, the loan is unsecured. Further, such payment would not be in the company's best interests.
    (3) Further, even if such debt exists, all the directors of Horsham Holdings (R1), that is to say, the ninth to twelfth respondents, have a direct interest in seeing to it that the amount due to the Redwood Partnership is repaid, because (as is accepted) they have all given personal guarantees for that indebtedness. Therefore, in seeking to procure its payment, they are illegitimately preferring their own interests over those of Horsham Holdings (R1) and indeed those of DNG Bedford (3) (R6), and for this alternative reason, the payment should be restrained.

28. The Petitioner further contends that the balance of convenience or (more appropriately) the least risk of injustice, favours the grant of an interim injunction restraining the payment, because there is a real risk that, if it is made, Horsham Holdings (R1), because of its increasingly precarious position, will not be able to pay this part of its indebtedness to it if and when it is ordered to do so. Conversely, it says, there is no risk of prejudice to the Respondents (and in particular, Horsham Holdings (R1) and DNG Bedford (3) (R6)) because in reality the Redwood Partnership will not seek to enforce its loan against DNG Properties (R5). This is because (if it has a charge at all) it has only a second charge over the Bedford development, and if it were to seek to enforce it by fire sales, all the proceeds would land up going to the first charge holder, BLME. Further, it says that the potential loss which the Respondents have said will be suffered by the DNG Bedford companies (i.e. R2, R5 and R6) of £3.75 million is just a figure plucked out of the air.

The Respondents' case

29. The Respondents, however, contend that although there may previously have been some misunderstanding over the position, it is clear beyond argument from their witness evidence and documentation that it has now produced that Horsham Holdings (R1) owes DNG Bedford (R6) £500,000 on a secured loan, and has done so since August 2017. Further, they say, it is apparent from email correspondence in July 2017 that the Petitioner consented to this loan when it was made, so they are entitled to pay it over in priority to any rights the Petitioner has under the shareholders' agreement relating to the Horsham property. Therefore, the question of the balance of convenience, or least risk of injustice, does not arise.

30. Further, they say, even if this question does arise, the least risk of injustice would be to allow them to make the payment, because if it turns out that it was wrongly made, then the Petitioner will have claims in compensation under s.994 of the 2006 Act for unlawfully causing Horsham Holdings (R1) to pay monies away against the ninth to twelfth respondents (its directors), who are individuals who, one can presume, could easily pay an award of £500,000 if such was made against them. Conversely, they say, the Petitioner's proposed undertaking in damages is hopeless, because even on the most favourable basis, its latest financial statements filed with Companies House for the year ended 31 May 2019 show a balance sheet deficit of £1.75 million, and the Petitioner's more up to date evidence of the equity it has in various projects is hopelessly optimistic.

31. Finally, the Respondents say that as the application was made on short notice, the Petitioner was obliged to make full and frank disclosure of points that could have been taken against it, but failed to do so. In particular, it is said, the Petitioner failed to disclose an email of 25 July 2017 which showed that Mr de la Gorce knew that it was proposed that DNG Bedford (3) (R6) would advance £500,000 to Horsham Holdings (R1) by way of loan. Therefore, I should in any event refuse to make an order even if I were otherwise minded to do so.

32. The issues, therefore, are broadly as follows:
    (1) Has the Petitioner made out a sufficient case on the merits for the grant of interlocutory relief?
    (2) If so, what does the balance of convenience, or more accurately, the need to minimise injustice, require by way of order?
    (3) Is the Petitioner in any event debarred from such relief as might otherwise have been appropriate by reason of its alleged non-disclosures?

The first issue

Preliminary point

33. A preliminary point on this issue is, what test does the Petitioner have to satisfy on the merits of the case in order to justify the grant of the injunction it seeks? Does it have to satisfy only the *American Cyanamid* test, i.e. that its case raises a serious question to be tried? Or does it have to go further, as contended by the Respondents, and satisfy the test that applies on an application for the granting of a freezing order, i.e. that it has a "good arguable case", and there is a real risk of dissipation or secretion of assets. (See, for example, *Metropolitan Housing Trust v. Taylor* [2015] EWHC 2897 (Ch) at paragraph 19 per Warren J.))

34. In my judgment, on the first order which it seeks (i.e. to restrain the disposal of £500,000 to any of the Respondents) the Petitioner need satisfy only the *American Cyanamid* test. This is because this order is not seeking to restrain Horsham Holdings (R1) from disposing of this sum even in the ordinary course of business, but to restrain it from disposing of it for a particular purpose, i.e. the repayment of the disputed loan of £500,000. Further, it is seeking to do so by reference to particular

considerations relating to that payment, i.e. the non-existence of the loan it is supposed to be repaying, alternatively its contractual rights under the Horsham Holdings shareholders' agreement, alternatively the alleged breach of fiduciary duty such payment would involve. (The second order gives rise to different considerations, with which I deal below.)

35. Further, the considerations which require a court to exercise "a careful and anxious judgment" when a proprietary claim is made (for which, see *HM Revenue & Customs v. Begum* [2010] EWHC 2186 (Ch) at paragraph 35, quoting Sir Thomas Bingham's judgment in *Wrigley & Co Ltd. v. Wright*, 23 June 1993, unreported) have no application in this case. First, this is not a proprietary claim or even a claim that is analogous to one. It is merely, as I have said, a claim to restrain payment of a sum of money for a particular purpose which, it is said, would amount to a legal wrong. Second, the considerations referred in the *HM Revenue & Customs v. Begum* case apply when a defendant wishes to finance his litigation, in which case the court needs to give anxious consideration to the proprietary claim to ensure that its effect is not to deprive the defendant of the ability to finance his litigation. Here, however, there is no suggestion that the Petitioner's claim will deprive Horsham Holdings (R1), or DNG Properties (R5) or DNG Bedford (3) (R6), of any finance they need to defend this litigation.

36. In my judgment, each of the Petitioner's grounds of objection to the proposed payment raises a serious issue to be tried which, if proved, would justify the grant of a final injunction.

The Petitioner's first objection

37. First, although Horsham Holdings (R1) has recently produced copies of a loan document dated 4 August 2017, together with an undated legal charge, under which DNG Bedford (3) (R6) agreed to lend it £500,000, there are a number of peculiar features which cast serious doubt on whether these documents reflected the fixed intentions of the parties at the time, and indeed on whether either party was properly authorised to enter into the same by their respective boards of directors.

38. The origin of the alleged loan is the sale, in about July 2017, by the Petitioner, Oxford Property (R7) and Nick Sellman (R8) of their shareholdings in Crown House Banbury Limited, the sale being to Cherwell Council, upon the completion of the development. This development, the Respondents say, had been assisted by a loan from DNG Bedford (3) (R6) to Crown House Banbury of £900,000 odd. It would appear that after taking into account repayment of loans, other than this £900,000 loan, and professional expenses, there was a surplus of about £1 million, and the question arose, what to do with it.

39. On 25 July 2017, the following correspondence took place about this surplus, which I set out in full because all the parties recognise its importance and in one way or another rely on it.

(1) At 11.34, Octopus (a lender on the Crown House project) emailed over to Mr Savage and a Mr Nicholas Christofi (no relation to the ninth respondent) a redemption statement.

(2) At 11.40, Mr Nicholas Christofi emailed this on to Messrs Savage, Sellman and de la Gorce. He said:

> "Please note of the surplus funds £500k has to go into the Horsham deal which was a condition of the loan in which Paul Braham gave an undertaking". [Paul Braham was of Peter Brown & Co, Horsham Holdings (R1)'s solicitor.]

(3) At 11.49 Mr Savage replied: "Yes it's taken into account".

(4) At 12.19 Mr de la Gorce wrote to Mr Savage and the others:

> "Thanks Nick
>
> Shaun can you confirm if the summary below is correct please? Out of the sale price
>
> - £2.9m goes to Octopus
> - Circa £1m is repaid to DNG Bedford, from which DNG Bedford lends £500k to Horsham
> - £675l repays HoE's equity
> - £xx ? repays OPI's equity
>
> The rest is shared via management charges and dividends?"

(5) At 13.10 Mr Savage replied to Mr de la Gorce:

> "See below, however, it's not completely straight forward, with a bit of luck we don't have to repay the car park, but do have to pay the contractor about £300k for the work on Bedford so the £1m we can split.
> Plus some other bits and pieces also needs to be paid on Crown like the surveys and consultants, but Alice is compiling a list of these now, and we are going to insist Cherwell pay 50% of this could give us another £30-£60k."

(6) Further, in the same email, he made the following entries in red type against Mr de la Gorce's comments:
   (a) Against Mr de la Gorce's comment "*circa £1m is repaid to DNG Bedford, from which DNG Bedford lends £500k to Horsham"*, he added *"hopefully not repaying the car park"*.
   (b) Against Mr de la Gorce's comment *"£xx ? repays OPI's equity"*, he added the figure *"818,662.51"*.

40. Naturally enough, the Respondents rely on Mr de la Gorce's comment *"Circa £1m is repaid to DNG Bedford, from which DNG Bedford lends £500k to Horsham"*. This,

they say, shows that he knew that the intention was that DNG Bedford (3) (R6) should (a) receive the surplus of £1 million and then (b) pay on £500,000 of it to Horsham Holdings (R1).

41. However, the Petitioner relies on Mr Savage's reply, which suggests that the £1 million surplus would not have to be repaid to DNG Bedford (3) (R6) (i.e., presumably, to enable it to discharge lending on the carpark at the Bedford property). Instead, "we" could "split" it, i.e. the surplus could be paid as a profit to the three shareholders.

42. On 4 August 2017, two documents appear to have been signed by way of deed by Mr Savage and Mr Christofis at the offices of the Respondents' then solicitors, Mr Adrian Jeremiah of Peter Lynn and Partners, who witnessed the signatures. The first was an "Intra-Group (On-Demand) Loan Agreement" between Horsham Holdings (R1) and DNG Bedford (3) (R6). The preamble recorded that they wished *"to formalise by this document the previous oral agreement into a written agreement"*; and the body recorded that DNG Bedford (3) (R6) agreed to lend the £500,000 to Horsham Holdings (R1) without interest, and repayable on sixty days' notice. The second document was an undated deed between the same parties by which Horsham Holdings provided security for the loan by a first legal mortgage over its shares in Davidia Properties (R4) and a charge over its interest in North Street (R3).

43. However, although it seems almost certain that these documents were indeed signed on this day, as Mr Jeremiah has confirmed that they were, and an office diary for Mr Savage notes the meeting on this day, there are four curious features about these documents.
    (1) No evidence has been adduced by Mr Savage or anyone else that in fact there was an oral agreement by which DNG Bedford (3) (R6) was to lend the £500,000 to Horsham Holdings (R1), or who were the individuals said to be involved.
    (2) There is no evidence that either the board of Horsham Holdings (R1) or of DNG Bedford (3) (R6) actually authorised the entry into either agreement or even met to discuss it. In particular, Mr de la Gorce was a member of both boards, but his evidence, which is not contradicted, is that he did not give his approval to this arrangement.
    (3) The effect of leaving the legal charge undated (which Mr Jeremiah says must have been an oversight) is that on the face of it it has no legal effect, because the final clause provides that *"This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it"*.
    (4) The charge was not registered at Companies House, as one would have expected it to have been in the normal course of events.

44. A few days later, on 9 August 2017, the question of what to do with the £1 million surplus was the subject of further emails.

45. Thus:

(1) At 10.31, Peter Brown & Co (who had acted, it seems, as solicitors on the sale of the Crown House Banbury shares) emailed Mr de la Gorce and others, saying that he was ready to circulate the balance of funds, but needed their authority to do so. It seems that he attached the Crown House completion statement, showing a £5.9 million sale price, less costs and other deductions, to leave *"Profit available before shareholders debts"* of £2,710,186.80; and shareholders debts totalling £2,228,202.02, including *"DNG Bedford Properties 3 loan payable"* of £813,813.70. This left a profit of £481,984.78, which was expressed to be taxable, and *"Funds transferred to Horsham Holdings/Redemption of Loan (500,000.00)"*: thus leaving an amount to be refunded of (£18,015.22).

(2) At 11.45 am, Mr de la Gorce wrote to Peter Brown, Mr Christofis and Mr Sellman:

> "These figures are not agreed. As we do not own Crown House any more, the £500k sent to Horsham needs to be lent from a different entity.
>
> My understanding is that the profits of the sale are in the region of £1.1m and this is the figure that needs to be split. [Oxford Property (R7)] is the entity which is expected to provide further funds to Horsham so the £500k needs to be accounted as a loan from [Oxford Property (R7)] and deducted from the proceeds from Crown's sale.
>
> If my understanding is incorrect please advise. We have discussed that we will need to agree on the figures before making transfers."

(3) At 11.53 am, Peter Brown replied:

> "This isn't my understanding.
> We had authority on the last refinance to pay 500k from these proceeds.
> That was agreed with the lenders and as far as I am concerned with all parties last time.
> I have given undertakings on that basis so cannot now release 500k.
> This was in the completion statement last week and what I was asking was re the proceeds of sale after that 500 payment.
> Perhaps discuss with Anthony?"

(4) At 11.53, Mr de la Gorce replied:

> "I know you have given an undertaking. I am not asking not to send the 500k. I am only saying that these funds are not a cost to Crown House but should be considered as a loan from [Oxford Property (R7)] paid out of its share of proceeds calculated on the £1.1m profits."

(5) Peter Brown then copied this to Mr Christofis, who in turn copied it to Mr Savage.

(6) At 13.34 Mr Savage emailed Mr de la Gorce, Mr Williams, Mr Christofis and Mr Sellman, but not Peter Brown, as follows:

(a) "I'm sure you will understand why I've not copied in the solicitors. Paul quite rightly will not release funds until you confirm you are happy. If in the unlikely event you do not agree we will leave all funds with Paul until we meet up.

(b) After saying he had not seen the completion statement, so his figures might be wrong, he continued:

"Amount left with Paul and we call profit £571,000. To be split 25% Sellman, 25% Holmes of England, 50% [Oxford Property (R7)]."

(c) And then:

"£500,000.00 to be sent to Horsham to repay Fortwell Capital as agreed when we signed the loan agreement with Fortwell. This we have sent direct from the solicitors to the lenders solicitors, so none of us have touched it, in my mind this was a expense from Crown *and will arrive as a directors loan to Horsham (so tax from Crown, and cost to Horsham)*." [Emphasis in italics added.]

(d) "When the council bought Crown House our contract (JCT) with the builder was for £1.9m, however I changed it to £2.6m, and doing this will knock £700k off the build at St Johns [i.e. the Bedford property], again this will be paid by us and will appear as a directors loan, so again TAX free from the directors." [Capitals as in original.]

(e) "So this will give us a profit of £1.771m, far above your £1.1 below."

(f) "In addition as you know we refinanced St Johns Car Park [the car park at the Bedford property] and used the money on Crown House, this means when we sell the car park or build and and [sic] sell, we will show a £1.1m loan which we will repay and loose [sic] the fact that it fell part of Crown House Octopus repayment."

(g) "Regarding the funds going to Horsham, prior to our time we have had to pay £60k on bills owed by you and Nick with another £220k which Alice is currently fighting. Once Fortwell are repaid we are going back to them as we have increased the planning and agreed storage units below against rising the value. This will allow us to draw funds back, again in the way of a loan. This will allow us all to take our money back and repay our loans, but show it as left in in accordance to our investment, so again tax free."

(h) "I fully appreciate that you have not seen the above, but all is done in the best intentions of all partners. What we don't want to do is scare our own solicitors and lenders with a internal dispute. Are you ok with the above alternatively please feel free to call me."

46. Mr Modha for the Petitioner places considerable reliance on this email. He says that:

(1) It was deliberately not sent to Peter Brown & Co, which is not surprising, as it shows that the council had bought the Crown House Banbury shares at an

overvalue of £700,000, because the price of the relevant JCT contract had been inflated by this amount.

(2) The intention was that although £500,000 would be paid (or had been paid) to discharge Horsham Holdings (R1)'s liability to Fortwell, this would be treated, not as a payment to Horsham Holdings (R1) by or on behalf of DNG Bedford (3) (R6), but as one by the directors, hence the reference to treating the sum as a directors' loan.

(3) There is no reference in this email to the agreements executed, or said to have been executed, on 4 August 2017.

(4) Therefore, either those agreements were not in fact executed at all, or at least it was not intended that they should have legal effect.

47. Mr Benzies and Mr Kell resisted this interpretation of events, and contended that Mr Savage's emails of 25 July 2017 and 9 August 2017 were merely floating possible ideas as to how to treat the profits made on the sale of the Crown House shareholdings in a tax efficient way, but this could not alter the legal effect of the documents which, they say, were undoubtedly signed on 4 August 2017, because in fact, no directors' loans were in fact made or recorded in Horsham Holdings (R1's) accounts. Further, they contended that Mr de la Gorce plainly did consent to the proposed loan, as evidenced by his apparent acceptance of the idea in his email of 25 July 2017 timed at 11.45 am.

48. However, the difficulty with the first point is that if those documents had been signed on 4 August 2017 with the intention of creating legal relations between Horsham Holdings (R1) and DNG Bedford (3) (R6), there was nothing left to discuss. Further, as I have said, there is no evidence that board authority was given for the execution of these documents. As to the second point, Mr de la Gorce's email of 25 July 2017 merely sets out his understanding of the current proposal; and when he revisited the point in his email of 9 August 2017, his expectation was that Oxford Property (R7) would have to be the entity providing the £500,000 to Horsham Holdings (R1), not DNG Bedford (3) (R6).

49. In my judgment, therefore, there is a real issue to be tried as to whether the loan agreement and the legal charge, which I accept were very likely to have been signed by Mr Savage and Mr Christofis on 4 August 2017, were intended to reflect either company's actual intentions as at that date, or as to whether either company was properly authorised to enter into the agreement.

50. I am fortified in this conclusion by the following points:

(1) Despite His Honour Judge Keyser Q.C.'s orders of 13 May 2019 and 22 July 2019 requiring provision of disclosure of all relevant financial information, including all inter-company loan agreements, the Respondents failed to provide the 4 August 2017 documents pursuant to these orders.

(2) On 13 November 2019, Mr Savage made a witness statement in support of an application to vary Mr Lance Ashworth Q.C.'s judgment, by allowing the Respondents, amongst other things, to enter into a loan agreement with Castle Trust. In that application, he exhibited an outcome statement which set out all Horsham Holdings (R1)'s liabilities, including its debtors. There was no mention, however, of the alleged sum due of £500,000 to DNG Bedford (3) (R6).

(3) Pursuant to an order made by ICC Judge Jones on 22 October 2019 requiring the production of up to date development accounts for each project, including an account of "funds borrowed", Messrs Laytons on 9 December 2019 for the Respondents (save the eighth and eleventh) sent to the Petitioner's solicitors a schedule that showed that DNG Bedford (3) (R6) had borrowed monies from Horsham Holdings (R1) in the sum of £141,632.40; but nothing in that schedule or any other document mentioned the alleged £500,000 owed the other way.

(4) On the same day, and pursuant to the same order, Laytons also sent over a document dated 20 November 2019 called "Management Report Horsham Holdings Ltd 20 November 2019", prepared by "Accounts Master". This contained a detailed breakdown of the company's profit and loss and balance sheet as at 31 October 2019, but again, no mention was made of the alleged £500,000 debt due to DNG Bedford (3) (R6). It did, however, show that DNG Bedford (3) (R6) owed Horsham Holdings £86,427 (which consists of three loans the subject of written agreements). It also showed that Horsham Holdings (R1) owed DNG Properties (R5) £161,433.

(5) Mr Savage's explanation for the failure of these documents to mention the loan is that they were prepared by his colleague, Ms Melville-Taylor, and that she was not aware of the loan. However, this does not explain why she was not aware of the loan, but aware of all the other information in the documents.

(6) On 19 December 2019, Mr Sellman sent to Mr de la Gorce a proposal overview relating to the Horsham development, which mentioned loans and outstanding interest (i.e., loans from Fortwell, Oxford Property (R7), and BML) but again no mention was made of the alleged loan from DNG Bedford (3) (R6).

51. I should emphasise that I do not conclude from all these factors that no loan was in fact made.

52. First, I bear in mind the Respondents' evidence (from Mr Savage, Mr Christofis, Mr Sellman and Mr Broomhead) that at a meeting on 23 September 2019 at the Institute of Directors between them there were discussions which involved Horsham Holdings selling properties or obtaining re-financing so it could repay intercompany debt due to the Redwood Partnership. Indeed, Mr Christofis say that he has no doubt that Mr de la Gorce *"understood fully that Horsham had (and has) a debt to DNG and all parties understood that Horsham would repay that debt to DNG to allow it to repay Redwood"*. However, the difficulty with this evidence is that it is disputed, and it is not easy to square with the Respondents' failure to mention the alleged debt in the correspondence before and after the meeting to which I have referred above.

53. I also bear in mind Mr Savage's evidence that, although the loan is not specifically identified, nonetheless it is contained within the inter-company loan figures of £982,414 and £966,414 in DNG Bedford (3) (R6)'s financial statements filed at Companies House for the periods ended 28 February 2018 and 31 January 2019; and within the figure of £517,107 said to be due to interconnected companies in Horsham Holdings (R1)'s unaudited financial statements filed at Companies House for the year end 30 June 2018.

54. However, given all the oddities, this evidence is not sufficient to persuade me that there is no serious issue to be tried as to whether, in fact, the parties actually intended, and had authority, to enter into a binding loan agreement and legal charge on 4 August 2017 for the alleged £500,000 loan. And if the parties did not actually intend or authorise this, so Horsham Holdings (R1) does not owe this sum to DNG Bedford (3) (R6), then there is plainly a reasonable case for saying that it would be contrary to Horsham Holdings (R1)'s interests to pay this sum away to DNG Bedford (3) (R6), or to the Redwood Partnership, as it is not suggested, as I understand it, that any particular benefit would accrue to Horsham Holdings (R1) from this payment, nor is there any compelling evidence that it would.

The Petitioner's second objection

55. Second, as I have said above, there is clear evidence that Mr de la Gorce, both in the contemporary emails recited above and in his witness statement, did not consent to the £500,000 being treated as a loan by DNG Bedford (3) (R6) to Horsham Holdings (R1). On this basis, there is a serious issue to be tried, for saying that the loan was incurred in breach of clause 4.3 of the Horsham Holdings shareholders' agreement, which, as said above, requires *"Any finance ... will be borrowed by way of bank facility from the Company's bankers or from other normal market sources upon terms agreed in writing by all the Shareholders"*.

56. On the face of it, this did not allow for the sourcing of finance from DNG Bedford (3) (R6) without the Petitioner's written agreement. It is true that the £500,000 (alleged) loan does not carry interest, but one can see why the Petitioner might have wanted to prevent indiscriminate intercompany lending between the companies in which the co-shareholders had an interest in order to preserve its right to priority in repayment.

57. As the loan was (reasonably arguably) incurred in breach of the shareholders' agreement, it is also reasonably arguable, to give business efficacy or as a matter of obvious implication, that its repayment by Horsham Holdings before repayment of the Petitioner's loan would likewise constitute a breach which the Petitioner is entitled to restrain, absent any suggestion, or at least compelling evidence, that its repayment to the DNG Bedford (3) (R6) is in the company's best interest.

58. Further, the loan was not "secured on the property", which is defined in the shareholders' agreement as the Horsham property (i.e. Park House North, North Street, Horsham, and North Point, North Street Horsham): it was secured only on Horsham Holding's interest in North Street (R3), and its shares in Davidia Properties (R4). Further, as I have mentioned above, the charge was not dated, so on the face of it it has never taken effect. For each of these reasons, therefore (no charge on property, and not taking effect), it is reasonably arguable that clause 4.2 does not allow the loan to be paid in priority to the Petitioner's loan, because the only loans that can be so paid are those that are *"secured on the property"*.

59. I should add that on all these points on the second objection, I would regard the arguments not just as raising a real issue to be tried, but as fairly strong.

The Petitioner's third objection

60. Finally, it is not disputed that the four directors of Horsham Holdings (R1) will stand personally to benefit from the proposed payment to the Redwood Partnership by virtue of their liabilities to it under their guarantees. On the face of it, therefore, they are plainly in a position where their duty to consider the company's best interests conflicts with their own interests. Neither party has drawn my attention to the articles of association, and so it is not clear to what extent they would be allowed to enter into transactions for their own benefit. However, given that there is no obvious benefit to Horsham Holdings (R1) itself from the proposed payment, there is in my judgment a serious issue to be tried (indeed I would say a reasonably strong case) for saying that in breach of fiduciary duty they are wrongly preferring their own interests to those of the company in wanting to make the payment to the Redwood Partnership, such as to entitle the Petitioner to injunctive relief under s.994 of the 2006 Act.

The second order which the Petitioner seeks

61. As I have said, the second order which the Petitioner seeks is to restrain Horsham Holdings (R1) from making any disposal of the £500,000 save to repay the indebtedness to the Petitioner. However, this cannot succeed, because Horsham Holdings (R1), even if it cannot pay this sum to or at the direction of DNG Bedford (3) (R6), is entitled to use it for paying its (non-finance) debts accruing in the ordinary course of business.

The second issue: the balance of convenience

62. It is common ground between the parties that my task, having considered the merits of the dispute, is to consider the course of action which *"is likely to involve the least risk*

of injustice" (see *Zockoll Group v. Mercury Communications (No. 1)* [1998] FSR 354 at 365 per Phillips LJ), that is to say, the course which involves the least risk of irremediable prejudice (see *National Commercial Bank Jamaica Ltd v. Olint Corporation Ltd: Practice Note* [2009] 1 WLR 1405 (paragraph 19) per Lord Hoffman).

63. In my judgment, this means that one must consider not only the prejudice to Horsham Holdings (R1) and the Petitioner, but also the prejudice which is likely to result to any other party as a result an interim order, unless there would be no injustice in such prejudice.

64. Although Mr Modha sought to persuade me otherwise, there is a real risk of prejudice to all the Respondents, and therefore injustice, if an order restraining payment is made.
    (1) As for Horsham Holdings (R1), it would be exposed to a claim for breach of contract if the payment is not made in 60 days.
    (2) As to DNG Bedford (3) (R6), it is in my judgment a material prejudice in itself if it is deprived of the use of the £500,000 when it is entitled to have it, regardless of whether it intends to apply the sum to pay off some of its co-subsidiary's indebtedness. Further, if it is not paid now, then on the Petitioner's own evidence, which says that Horsham Holdings (R1) has little or no equity given its debts, the consequence may well be that it will never receive the use of this money in the future.
    (3) As to DNG Properties (R5) and DNG Bedford Holdings (R2), it is obvious that their position will be considerably improved if the former can reduce its indebtedness to the Redwood Partnership, and thereby at the very least reduce the amount of interest clocking up at 23% p.a. on a debt of over £1.4 million. That of itself is a significant benefit of which it will be deprived if I restrain payment.
    (4) Further, I am not prepared to ignore the risk of the Redwood Partnership carrying out its threat to take enforcement action. Mr Modha urged upon me that on Mr Savage's own figures, there would be no point in the Redwood Partnership carrying out its threat, because if it were to do so there would be fire sales of the unsold properties which would yield only £7 million "even on a good day", which would mean that, after BLME's first charge for £6.4 million and costs, there would be little or nothing left for the Redwood Partnership. However, one does not know what calculations the Redwood Partnership will make, or indeed what arrangements it might make with BLME in the event of enforcement action being taken. Further, this does not address Mr Savage's point that at the moment, the land next to the car park, which is necessary to develop it under the existing development, is "under option" for £305,000; but if enforcement action is taken, this option will be lost.
    (5) Further, if DNG Properties (R5)'s financial position is materially damaged, then so too will be that of DNG Bedford Holdings (R2), Oxford Property (R7) and Nick Sellman Holdings (R8).

(6) Finally, the ninth to the twelfth respondents will also suffer prejudice by reason of the non-reduction of their liabilities on their guarantees if I restrain payment. Albeit the personal benefits to them would not be a justification for authorising the payment out, nonetheless if a side benefit of such payment out is that they would benefit, I do not see why this should not be, at least to some extent, a material consideration.

65. Further, I am not satisfied that the Petitioner's cross-undertaking in damages is even remotely satisfactory. As I have said, according to its latest filed accounts up to the end of May 2019, there would appear to be a deficit on the balance sheet of about £1.75 million. Further, according to Mr Sellman's evidence, even this figure is based on optimistic estimates of the value of its investments in property development companies, as is the net equity figure in the schedule of equity as at 21 April 2020 exhibited to Mr de la Gorce's statement. Whether this is right, I cannot tell, but it is incumbent on the Petitioner to put forward a satisfactory undertaking, and here it has not done so.

66. The question then arises, what is the best way forward to cause the least injustice?

67. In Mr Benzie's skeleton for the Respondents (save the eighth and eleventh), he took the point that there was unlikely to be any prejudice to the Petitioner by refusal of an order, because if the payment was indeed wrongly paid out, it would have remedy under s.994 of the 2006 Act against the directors, i.e. the ninth to the twelfth respondents.

68. In my judgment, there is some force in this, but the position is not as watertight as it could be. For instance, if it turns out that payment should not have been made because this was prohibited by the Horsham Holdings shareholders' agreement, they may say that they acted mistakenly and in good faith, so they should be exonerated from liability. In the course of the hearing, therefore, I suggested to Mr Benzie (and, I believe, to Mr Modha) that one way forward would be to dispose of the matter upon the Respondents giving suitable indemnities to the Petitioner in the event that payment out caused a loss. Neither of them, however, had any instructions on the point.

69. On the day after the hearing, I wrote to the parties suggesting that the provision of such indemnities by the DNG Properties (R5) and DNG Bedford (3) (R6), and by the ninth to the twelfth defendants, and inviting submissions on whether it would be open to me to make an order which, in effect, authorised the proposed payment upon the provision of the same.

70. By replies received yesterday evening, as requested, the parties all agreed that in principle I would have such a power under s.37(2) of the Senior Courts Act 1981. Further, Mr Benzie pointed out that I also have an express power under CPR rule

3.1(3) to impose conditions on any order I make, which could include the provision of an indemnity; and that it is clear that the High Court has an inherent equitable jurisdiction to order an indemnity on a final basis (see *CH v. WH (Financial Provision: Approval of Consent Order)* 2017 4 WLR 178 per Mostyn J at paragraph 9), so there is no reason why I cannot do so on an interim basis. I accept these submissions. Further, Mr Modha agreed that, if I were to find (as I do) that the Petitioner was not entitled to the relief it has actually sought, it would be appropriate to make the order envisaged, although he suggested that the sum to be paid out should be £500,000 less the cross-sum of £86,427 plus interest which appears to be due from DNG Bedford (R6) to Horsham Holdings. Mr Benzie and Mr Kell for the Respondents also agreed, without prejudice to their primary arguments on the merits, and without prejudice to their arguments that in effect they had already offered this, and that this shows why the Petitioner's application should fail.

71. Accordingly, and subject to my consideration of the non-disclosure issue, I propose that the Petitioner's application should be disposed of by permitting the proposed payment by the Horsham Holdings (R1) (in a sum to be determined before me at today's further hearing) to the Redwood Partnership, upon condition that the Fifth, Sixth, and Ninth to Twelfth Respondents indemnify the Petitioner against any loss it sustains as a result of the payment, if it is later found that it was not lawful for the company to make it.

Non-disclosure

72. I accept that as this was an application on short notice, the Petitioner had a duty of full and frank disclosure (see *C.E.F. Holdings Limited v. Mundey* [2012] EWHC 1524). Further, I accept that some criticisms can be made of the way the Petitioner presented its evidence when making its application.

73. Thus, I accept that Mr de la Gorce's first witness statement of 22 April 2020 and the skeleton argument should have drawn the court's attention not only to the August 2017 emails (as they did) but also to the emails of 25 July 2017 (which they did not do). However, for the reasons I have already given, I do not agree that these July 2017 emails were materially damaging to the Petitioner's case: indeed, they help it, although they do at least show that he was aware at that point that there might be a loan by DNG Bedford (R6) to Horsham Holdings (R1). Further, for this reason, the omission was not in my judgment a deliberate one, but by oversight.

74. I accept also that both Mr de la Gorce's first witness statement and the skeleton argument overstated the case for the Petitioner by alleging so hastily that the 4 August 2017 documents were forgeries. However, the long history of non-disclosure of these documents before then despite the orders of His Honour Judge Keyser Q.C. and ICC Judge Jones provided, at least at that point, reasonable grounds for doubting their authenticity. Further, this was all the more understandable, given (a) the speed with which the Petitioner had to act (i.e. on just 48 hours' notice), (b) the incomplete copy

of the loan agreement that was initially produced by the Respondents' solicitors (it was missing one of the two signature pages), and (c) the metadata of the documents, which appeared to show (on the mistaken interpretation the Petitioner's advisers gave them) that the documents had only very recently been created.

75. Finally, I accept that neither Mr de la Gorce's first witness statement, nor the Petitioner's skeleton argument, sought to rehearse the Respondent's defences. However, the existence of the relevant agreements, and the relevant terms of the shareholders' agreement, were disclosed to the court, and so it was obvious what the nature of the defence was going to be.

76. It was submitted that the application failed to draw to the court's attention the correct test in law, i.e. that as this was in effect a proprietary claim, or one for a freezing order, the applicant had to show to a high level of assurance that its application was justified. However, as I have already found, this was not the test on the first order sought, which was plainly the main substance of the application. As to the second order, paragraphs 21 and 22 of the Petitioner's skeleton argument did draw to the court's attention the relevant test for such an order.

Miscellaneous matter

77. On 29 April 2020, it came to the Petitioner's attention that payments had been or were going to be made out to Messrs Laytons from Horsham Holdings (R1)'s funds. Mr Modha suggested that these were evidently to assist one or more of the other Respondents to resist the Petition and the application, which would be a quite improper use of such funds. In argument, Mr Benzie explained that there was no impropriety, and that the Horsham Holdings (R1) funds had been put to proper use. As there is no proper application before me, and there is no evidence on which I can sensibly make a decision, I decline to rule on this point. If the Petitioner wants to take it, then it can of course do so in correspondence; and if it is not satisfied with the answers, it can make an appropriate application then.

Disposal

78. Accordingly, I shall order that upon the provision of indemnities to the effect set out above, the Respondents may procure the First Respondent to make the intended payment to the Redwood Partnership. I shall hear counsel as to the terms of the order and any consequential orders as to costs.

3 Hare Court, Peter Knox Q.C.

Temple EC4 7BJ 4 May 2020

(Corrected on 7 May 2020 after editorial corrections from the parties.)