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CR-2015-006989
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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

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

Date: 4 May 2021

Before:

THE HONOURABLE MR JUSTICE MARCUS SMITH

BETWEEN:

(1) OWEN OYSTON
(2) DENAXE LIMITED (formerly known as BLACKPOOL FOOTBALL CLUB (PROPERTIES) LIMITED)

Claimants/Respondents

-and-

(1) DAVID RUBIN
(2) PAUL COOPER

Defendants/Applicants

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- -

Mr Matthew Collings, QC and **Mr Gareth Darbyshire** (instructed by **HHB Law LLP**) appeared for the Claimants in the Part 8 Claim and the Respondents in the Declaration Application

Mr Mark Phillips, QC and **Ms Madeleine Jones** (instructed by **Stephenson Harwood LLP**) appeared for the Defendants in the Part 8 Claim and the Applicants in the Declaration Application

Hearing dates: 19 and 20 April 2021

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Approved Judgment

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

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Mr Justice Marcus Smith:

A. INTRODUCTION

1. Mr David Rubin and Mr Paul Cooper of David Rubin and Partners Limited (**DRP**[1]) (the **Receivers**) were the court-appointed receivers of certain assets belonging to Owen Oyston and Denaxe Limited (the **Receivership**).

2. Denaxe Limited (company number 01970661) was known from 17 February 2017 to 24 June 2020 as Blackpool Football Club (Properties) Limited. For around 10 years prior to that it was called Segesta Limited. It is referred to as Blackpool Football Club (Properties) Limited in most of the evidence, but the names Denaxe and Segesta also crop up. I am going to refer to it as **Segesta**, simply because that is the name used at the original trial of the section 994 proceedings before me back in 2017.

3. I shall refer to Segesta, together with Mr Oyston, as the **Claimants**.

4. The assets over which the Receivers were appointed included shares in Segesta, shares in Blackpool Football Club Limited (**BFC**), which operates Blackpool FC, Blackpool FC's stadium (the **Stadium**) and a hotel (the **Travelodge**). The Travelodge – as will become apparent – is an asset of particular significance in the matters before me.

5. The Receivers were appointed by an order dated 13 February 2019 (the **Receivership Order**) on the application of VB Football Assets (**VBFA**), by way of equitable execution of a judgment debt owed by the Claimants to VBFA.

6. In form, there are three matters before the Court:

   (1) The Receivers' application for declaratory relief dated 28 May 2020 under the "liberty to apply" provision of the Receivership Order (the **Declaration Application**).

   (2) The Claimants' Part 8 claim dated 30 January 2020 for an account and surcharge of the Receivers' accounts in their receivership of Mr Oyston's assets (the **Claim**).

   (3) An account of certain further remuneration and expenses incurred by the Receivers in the period since their conditional discharge.

7. In fact, there is considerable overlap between these three matters, and I propose to consider the many issues in dispute between the parties arising out of these matters in the order set out in Section E below. Before I do so, however, it is necessary to begin with some background.

[1] A list of the terms and abbreviations used in this Judgment is at Annex 1 to this Judgment, which identifies the paragraph in the Judgment where each term/abbreviation is first used.

B. BACKGROUND

(1) The original judgment

8. The Claimants' Claim for an account and surcharge and the Receivers' Declaration Application for declaratory relief in relation to the Receivership Order are made in a complicated receivership.

9. On 6 November 2017 VBFA obtained judgment of over £30 million (the **Judgment Debt**) against the Claimants (and certain related parties) following a 16 day trial before me. The judgment also included an order that Mr Oyston should buy out the Petitioner's minority shareholding in BFC.

10. Subsequently, VBFA made a number of attempts to enforce the Judgment Debt, none of which resulted in payment in full.

(2) The Receivership

11. VBFA (referred to, in the application, as the "Petitioner") applied to appoint receivers over a number of the Claimants' assets (the **Receivership Application**). On 13 February 2019, the application came before the Court at a one-day hearing at which the Claimants and VBFA were represented (the **Receivership Hearing**). The Receivers did not appear at the Receivership Hearing. I gave an unreserved judgment on that day, and I ordered that the Receivers be appointed over the shares in Segesta and all the properties owned by Segesta.

12. My order, the Receivership Order, was made on 13 February 2019, and was sealed on 20 February 2019. The Receivership Order:

(1) Appoints the Receivers and defines their powers (paragraph 1). In particular, paragraph 1(a) provided that the Receivers were appointed and entitled to:

> "...collect, get in, take possession of and/or receive the [Claimants'] rights, title, interest in the assets listed in the Annex to this Order (**Receivership Interests**) and/or sums payable to the [Claimants] from Receivership Interests (the **Sums Receivable**)..."

(2) Provided for regular reports by the Receivers to the Court (the **Reports**, paragraph 8).

(3) Provided (in paragraph 9) as follows:

> "The Receivers shall make payments to the Petitioner from the Receivership Interests and/or Sums Receivable in or towards satisfaction of what shall from the time being be due from the [Claimants] to the Petitioner by virtue of orders made to date, and any orders made in the future, in these proceedings, such payments to be made as soon as reasonably practicable."

(4) Provided (in paragraph 10):

> "The Receivers shall be entitled, pursuant to CPR 69.7(1) and (2), to be paid their reasonable fees, liabilities, costs, expenses and disbursements in accordance with the terms set out in the letter from the Receivers to the Petitioner's solicitors dated 11 December 2018 (**Costs**), such amounts to be retained by the Receivers and applied in

satisfaction of the Costs prior to any distribution to the Petitioner pursuant to paragraph 9 out of the Receivership Interests and/or Sums Receivable, in addition to the amounts due from the [Claimants] to the Petitioner by virtue of orders made to date, and any orders made in future, in these proceedings."

(5) Provided for a liberty to apply in the Petitioner, Mr Oyston and the Receivers (paragraph 16).

13. The Receivership Order was over the property set out at the Annex to the Receivership Order: as is clear from paragraph 1(a) of the Receivership Order, these were defined as the Receivership Interests; and the income flowing from the Receivership Interests was defined as the Sums Receivable.

14. The Receivership Interests comprised:

(1) Mr Oyston's 1,604,694 ordinary shares (out of a total of 1,650,616 shares; comprising a roughly 97% shareholding) in Segesta;

(2) Segesta's 28,607 ordinary shares (out of a total of 37,500 shares; comprising a roughly 76% shareholding) in BFC;

(3) Segesta's 100 ordinary shares (out of a total of 100 shares; comprising a 100% shareholding) in Blackpool Football Club Hotel Limited (**BFCH**);

(4) The "football" properties owned by Segesta (together with the shares in BFC, the **Football Assets**):

(a) The Stadium (Item 4(b) on the Annex);

(b) The Blackpool FC Training Ground (Item 4(c) on the Annex);

(c) The Blackpool FC Car Park (Item 4(d) on the Annex);

(d) Unused land adjoining Blackpool FC (Item 4(e) on the Annex).

(5) The freehold title to the hotel leased to Travelodge Hotels Limited (**THL**) on Seasiders Way, i.e., the Travelodge, owned by Segesta.

(6) Eight residential properties owned by BFCP (the **Residential Properties**):

(a) 33 Bloomfield Road, Blackpool (Item 4(f) on the Annex);

(b) 16 Henry Street, Blackpool (Item 4(g) on the Annex);

(c) 32 Henry Street, Blackpool (Item 4(h) on the Annex);

(d) 34 Henry Street, Blackpool (Item 4(i) on the Annex);

(e) 4 Martin Avenue, Lytham St Annes (Item 4(j) on the Annex);

(f) 20 Martin Avenue, Lytham St Annes (Item 4(k) on the Annex);

(g) 1-2 Hill House, Quernmore Park (Item 4(l) on the Annex);

(h) Postern Gate Lodge and Gardeners Cottage, Quernmore (Item 4(m) on the Annex; together with 1-2 Hill House, the **Quernmore Properties**).

(3) Conduct of the Receivership

15. In accordance with paragraph 8 of the Receivership Order, the Receivers provided detailed Reports to the Court as to the conduct of the Receivership. Those Reports record the challenges faced by the Receivers in the exercise of their powers and the conduct of their duties. These challenges are set out in an appendix to the Receivers' written submissions before me. I do not propose to read into this Judgment the detail of this appendix, but I should say that I accept its accuracy and – because it has a bearing on the level of the Receivers' Costs – I append it to this Judgment as Annex 2.[2]

16. The appendix to the Receivers' written submissions is appropriately entitled "Resistance to the Receivership" and that resistance, on the part of the Claimants, is a material factor going to the level of the Costs of the Receivers.

(4) The sale of the Football Assets

17. The process relating to the marketing and sale of the Football Assets is confidential, but I can describe it sufficiently in this open Judgment without disclosing confidential information.

18. The sale of the Football Assets (as a package) was a complicated process, which resulted in substantial time-costs for the Receivers, substantial legal fees of Stephenson Harwood (**SH**, the Receivers' solicitors) and counsel and substantial agents' fees.

19. This was for a number of reasons, but principally because:

(1) Even at the best of times, and in the case of the best run clubs, sale of a football club is a difficult and complex process, and ensuring proper value is obtained requires considerable skill and experience. In this case, a specialised marketing and due diligence exercise (by **Hilco**) was undertaken.

(2) More significantly, at the time, this was, by no stretch of the imagination, a well-run football club, and its assets and organisational structure were in a particularly difficult state. Blackpool FC was owned by BFC whereas the club's real estate, including the Stadium, was owned by Segesta. Buyers interested in acquiring Blackpool FC wanted both the club and the grounds, for obvious reasons. The sale was a number of linked transactions, of the business (i.e., the Football Club, as well as other income streams associated with it, such as hospitality facilities, a hotel and office space in the Stadium) and shares in Segesta, and of the various pieces of real estate. Potential purchasers unsurprisingly required extensive information and disclosure, which took up time and cost money.

[2] I should be clear that I am not adopting, word-for-word, everything said in Annex 2. I have not conducted a trial of the day-to-day, item-by-item, operation of the Receivership, and I make no specific findings of fact. But I do find as a fact, based on the totality of the evidence before me, that the Receivership was a complex one, rendered far harder by the issues raised by the Claimants and their lawyers over its course.

(3) The order made on the section 994 petition required Mr Oyston to buy out VBFA's minority shareholding in BFC. However, the prospect of Mr Oyston as a minority shareholder damaged the sale price of the club. VBFA therefore applied to vary this order. The application to vary was heard together with the Receivers' application for sanction of the sale. The Receivers secured an interested purchaser and applied, on 10 May 2019, for an order sanctioning the sale of the Football Assets. On 5 June 2019, I heard the application and made an order facilitating the sale.

(4) Mr Oyston, through his solicitors (Haworth Holt Bell LLP, **HHB**), then wrote to the buyer after the sanction application was disposed of threatening legal action if the sale completed. As a result, the Receivers were obliged to give the buyer an indemnity to preserve the deal. As a result of this, the sale of the club was delayed by almost a week, and legal costs were driven up by the fact that the transactional documents had to be amended.

(5) On 13 June 2019, the sale of the Football Assets completed. Included in the sale were the BFC shares, the Stadium, and two of the Residential Properties, 32 and 34 Henry Street. The sale price was £8,200,000.

(5) The sale of the Residential Properties

20. 33 Bloomfield Road, 4 Martin Avenue, 20 Martin Avenue and 16 Henry Street were sold at auction on 25 April 2019 for a total of £271,867.20.

21. Certain further properties – notably the Quernmore Properties – were not sold before the Receivership ended.

(6) The Travelodge

22. The sale of the Travelodge was not straightforward either. The final Report of the Receivers – dated 20 December 2019 – states at paragraph 2:

> "The Receivers are extremely experienced in the sale of property assets. Dealing with the Travelodge asset has been one of the most complex property assignments encountered in their experience."

23. Part of the reason was that – as with Blackpool FC – the asset was held in an irregular manner. At the outset of the Receivership, THL, the company operating the Travelodge hotel business, was occupying the building without a contractual lease in place. In addition, a rent review was outstanding from April 2018: this was undertaken by the Receivers.

24. The Receivers first ran a marketing process for the property in April 2019, which resulted in two serious offers. The Receivers considered that the lack of a formal lease was a factor in there being a relatively low level of interest. An offer was accepted in principle, but the buyer's due diligence revealed issues with the building's cladding which raised concerns in light of the Grenfell Tower tragedy. The offer was reduced by an unacceptable level and so the sale did not go ahead.

25. As a result of this, the Receivers took steps to negotiate a formal lease for THL and in parallel undertook a second marketing process. Both of these processes were lengthy.

26. The Receivers found a buyer for the Travelodge for £7.9 million. They also negotiated a new lease and back payments of rent from April 2018, with £123,366 due to be paid in respect of this by THL on the completion of the lease.

27. On 12 December 2019, at 10:16, VBFA requested that exchange on the Travelodge be delayed. On 13 December 2019, a similar request came from Clifford Chance on behalf of VBFA, and from Slater Heelis and HHB on behalf of the Claimants. Slater Heelis also wrote to SH on 13 December and 15 December 2019. The latter letter threatened injunctive action if the Receivers took any steps towards selling the Travelodge or finalising the lease. On 16 December 2019, at 18:48, the Claimants informed the Receivers that the Judgment Debt had been extinguished by settlement, so that work was to cease.

28. As a result, the sale of the Travelodge (and the related conclusion of a lease) never took place. It is the evidence of the Receivers, which I accept, that both the lease and the sale would have been finalised had it not been for the settlement. Indeed, given the timings, it is quite possible that the exchange of contracts (but not completion) would have taken place before settlement had occurred, had the Receivers not agreed to refrain from taking any further steps in the sale in response to the multiple requests received beginning on 12 December 2019. Thus:

(1) THL's lawyers, Addleshaw Goddard (**AG**), had confirmed on 11 December 2019 that it was happy with the lease and it was ready to be signed.

(2) On 13 December 2019, Mr Cooper signed the lease on behalf of the Receivers, and it was being held by his solicitors, Teacher Stern.

(3) On 12 December 2019, the intended buyers indicated that they were content to exchange contracts on the following day, 13 December.

(4) On 13 December 2019, the buyers informed the Receivers' agent that their solicitors were holding the full £7.9 million purchase price ready for exchange and completion.

(5) On 13 December 2019, the buyers' solicitors provided a final draft contract for sale.

(6) After the settlement, the buyers continued to express their willingness to complete (on 17 December 2019) and then their disappointment that the sale had not gone through (as reported by the Receivers' agent on 20 December 2019).

(7) The Receivers' agent informed them that THL was planning to sign the lease on 17 December 2019. Since Mr Cooper had not taken any steps towards finalising the lease after being urged not to do so on 12 December 2019, neither he nor his agents had put pressure on them to sign it any sooner.

29. An application to extend the Receivership was due to be heard on 17 December 2019. For obvious reasons, that application was never made, and, in the event, the hearing slot was instead used for the discharge of the Receivership, which I shall come to describe in due course.

30. In his evidence to me, Mr Cooper suggested that the imminent sale of the Travelodge brought about the settlement. In his fourth witness statement (at paragraph 43) he says:

> "Mr Oyston had not attempted to prevent the sale during the course of the ongoing work until the point at which contracts were due to exchange. I believe that Mr Oyston's desire to settle the proceedings was in a direct response to the threat of the extension of the receivership and the imminent sale of the Travelodge…But for the imminence of the sale of the Travelodge together with the application that threatened the extension of the receivership, I believe that the negotiations would not have been commenced and the settlement would not have been achieved."

31. This is not challenged in the Claimants' evidence, and I accept that this is likely to have been the case.

C. THE POSITION AT DISCHARGE

32. In paragraph 26 of their written submissions, the Receivers say that the Receivership was discharged before completion of the assignment undertaken by the Receivers. That overstates the case. Certainly, it is true that the Receivers had been appointed to realise all of the Receivership Interests described in the Annex to the Receivership Order and – by paragraph 1(a) of the Receivership Order – were "appointed and entitled" to do so. But the realisations were for a purpose – essentially, to pay the Judgment Debt down to zero – and, once that purpose was achieved, further realisations would require careful justification. Certainly, the Court would not, without more, sanction realisations pursuant to the Receivership Order to no purpose.

33. I will come to the hearing at which the Receivership was discharged in a moment. For the present, I must consider the position which pertained at that time, and which is set out in the final Report of the Receivers dated 20 December 2019.

34. The following data is material and – to be clear – I accept its accuracy, which was not seriously challenged by the Claimants:

(1) Realisations amounted to a total of £8,937,544.82. These figures are exclusive of VAT.

(2) Total payments made during the period of the Receivership were £8,936,128.63. Of these payments:

(a) £7,335,774 were distributions to VBFA. There were, in all, four distributions to VBFA, totalling this amount.

(b) The remaining amount is £1,600,354.63, which is Costs. Costs – as I have described in paragraph 12(4) above – compendiously includes "fees, liabilities, costs, expenses and disbursements". I propose – although the categorisation is perhaps not completely watertight, but it is convenient – to differentiate between:

(i) **Fees**, that is, the Receivers' remuneration (including, to be clear, the time costs of DRP, as well as those of the Receivers personally); and

(ii) **Disbursements**, that is, payments or obligations to third parties other than the Receivers and/or DRP.

The figure of £1,600,354.63 comprises two payments of the Fees and 39 payments of Disbursements.

(3) Amounts outstanding as at 19 December 2019 amounted to £690,161.95. These items include one item of Fees and sixteen items of Disbursements.

35. Had the transactions concerning the Travelodge completed and the Travelodge lease and Travelodge sale gone through, the Receivers would have realised a further £8,023,366, comprising:

(1) The £7.9 million Travelodge sale price; and

(2) A £123,366 back-payment of rent due from THL at completion of the lease.

36. More specifically, the Receivers made two Fee payments to themselves in the course of the Receivership: a payment of £510,000 on 17 June 2019; and a payment of £90,000 on 1 October 2019. As at 19 December 2019, a further £360,137.40 was said to be due. These amounts are inclusive of VAT. Accordingly, as at 19 December 2019, their total remuneration was £960,137.40 including VAT or £800,114.50 plus VAT.

37. The Receivers made distributions totalling £7,335,774 to VBFA, as follows:

(1) A distribution of £70,000 on 4 April 2019 (on the same day as £132,865.50 quarterly rental income was received from THL);

(2) A distribution of £200,000 on 24 May 2019 (on the same day that £291,000 was received for the sale of Residential Properties on Henry Street, Martin Avenue and Bloomfield Road);

(3) A distribution of £6,940,774 on 14 June 2019 (on the same day as £8,200,000 completion funds were received for the Football Assets);

(4) A distribution of £125,000 on 26 June 2019.

38. As is readily apparent, distributions tended to follow realisations, with some Costs payments intervening between realisation and distribution.

D. DISCHARGE

39. Following a settlement between the Petitioner, VBFA, and the Claimants, on 17 December 2019 Mr Rubin and Mr Cooper were conditionally discharged from their duties, at a hearing originally listed to deal with an application to extend the Receivership.

40. The **Discharge Order**, dated 17 December 2019 and sealed on 19 December 2019, provided as follows:

(1) Apart from paragraphs 8, 10 and 16 of the Receivership Order (which I have described in paragraph 12 above), the Receivership Order was discharged at 12:39 on 17 December 2019 (paragraph 1).

(2) The Receivers were to be at liberty to register a caution against the Travelodge in respect of the lien securing the fees, liabilities, costs, expenses and disbursements of the Receivers.

(3) Third party creditors of the Receivership estate were to be paid interest on sums due to them at the commercial rate in their agreement with the entities in the Receivership or – if there was no such rate – at 2% above the base rate from time to time (paragraph 3).

(4) The Receivers were obliged to submit their final account by 16:00 on 20 December 2019 (paragraph 4), which occurred. The final account formed part of the Receivers' final Report, which I have already referred to.

(5) Provision was made for the release and discharge of the Receivers, but also for the commencement and issue of claims against the Receivers (paragraphs 5 and 6). It is pursuant to these provisions that the Claim is made.

41. As I have already noted, the Receivers filed their final Report and final account on 19 December 2019.

42. The Claimants made the Claim on 30 January 2020.

43. The Receivers are not yet fully released: paragraphs 8, 10 and 16 of the Receivership Order continue in force.

44. In the period after the Discharge Order, both the Receivers' time-costs and their legal costs have continued to rise, although realisations have (obviously) not been made. It will be necessary to consider these costs, which I shall refer to as the **Post-Discharge Costs**. I use the term "Costs" as a general label to include both Fees and Disbursements, as defined in paragraph 34(2)(b) above. However, I should make clear that it may be necessary to differentiate between Fees, Disbursements and Costs occurring <u>during</u> the Receivership and Fees, Disbursements and Costs occurring <u>after</u> discharge of the Receivership. Where I use the terms Fees, Disbursements and Costs without qualification, I am referred <u>only</u> to Fees, Disbursements and Costs incurred (even if they were not paid) <u>during</u> the Receivership so defined. Where I refer to Fees, Disbursements and Costs post-discharge, I qualify them (by the words "Post-Discharge" or otherwise).

45. As well as questions relating to the Receivers' Fees and Disbursements (both before and after the Discharge Order), I must consider the position of third party creditors. Although the Receivers have settled some liabilities from DRP's office account and some using a loan facilitated by VBFA, I understand that a number of third party creditors remain unpaid, and that interest is accruing on their entitlements at their contractual rates (or at 2% above the base rate if there is no provision as to interest in the relevant contract), pursuant to paragraph 3 of the Discharge Order. The Receivers invite me to deal with the settlement of the account in this regard, and it seems to me entirely right that this matter be dealt with at this hearing. It seems to me appropriate to

treat any sums payable to third party creditors as Disbursements, unless I state to the contrary in this Judgment.

E. MATTERS FOR DETERMINATION

46. A number of matters or issues are controversial between the parties and fall to be resolved in this Judgment. Listing them in the order in which I propose to deal with them, they are as follows:

(1) *Issue 1.* Whether the hourly rates by way of which Fees of the Receivers are to be remunerated are inclusive or exclusive of VAT. Issue 1 is considered in Section G below.

(2) *Issue 2.* Whether Disbursements invoiced to DRP, and not to the Receivers personally, are recoverable. Issue 2 is considered in Section H below.

(3) *Issue 3.* As is common ground between the parties, the Fees are subject to a "cap". The parties were not, however, *ad idem* as to how the level of this cap was calculated. This issue, Issue 3, is considered in Section I below.

(4) *Issue 4.* This issue concerns the question of whether the Receivers can recover Fees and Disbursements incurred during the Receivership but unpaid as at the discharge of the Receivership. Putting the question another way, are the Receivers entitled to claim their Fees and Disbursements out of the Receivership Interests, the Receivership now being discharged pursuant to the Discharge Order? Or are they precluded from doing this, on the basis that, having failed to discharge these Fees and Disbursments out of recoveries made (having instead distributed these recoveries), these are Fees and Disbursements that cannot now be recovered out of the Receivership Interests? This issue is considered in Section J below.

(5) *Issue 5.* There was a dispute between the parties as to whether certain agents' costs were recoverable as Disbursements. This issue is considered in Section K below.

(6) *Issue 6.* This issue concerns whether the Receivers are entitled to have their pre-appointment legal costs and their Post-Receivership Fees and Disbursements paid. These questions, which I consider to be related, are considered together in Section L below.

(7) *Issue 7.* Whether there should be a further inquiry or detailed assessment of the sums claimed by the Receivers. This issue is considered in Section M below.

I should stress that I have ordered the consideration of these issues not by reference to the order in which the parties addressed me, but in an order that best enables the construction and interpretation of the documents and instruments before me. I obviously appreciate that such matters must be considered "in the round", and I have approached the matter in this way. The order in which I have chosen to address the issues before me is intended to show that the various issues are actually interconnected, in that a finding on one issue actually assists in determining another.

47. Before I turn to these issues, it is necessary to say something more general about the Receivers' duties and their performance of them.

F. GENERAL POINTS REGARDING THE RECEIVERS' DUTIES

48. In both his written and oral submissions, Mr Collings, QC, laboured the status of the Receivers as officers appointed by the Court and as fiduciaries, owing stringent fiduciary duties in their conduct of the Receivership. He stressed that the taking of an account is a serious and important matter, and that it was for the Receivers both to document the sums that had been and were being claimed as Fees and Disbursements (whenever incurred), and to bear the burden of proving that these Fees and Disbursements were properly incurred.

49. This was not challenged by the Receivers, and I accept everything that Mr Collings, QC stated in this regard.

50. However, it is important to note that neither the Declaration Application nor the Claim obliges me to conduct or to order the conduct of a line-by-line detailed scrutiny of the Receivers Fees and Disbursements. The burden of proof on the Receivers does not necessarily require this. Of course, where the materials produced by the Receivers suggests a level of incompetence or dishonesty or some other kind of failure as to warrant a line-by-line scrutiny, the Court will not hesitate to order it. However, such line-by-line scrutiny should only take place when appropriate and proportionate, and will not be directed by the Court automatically or as a matter of course.

51. In this case, although wide-ranging, the points articulated by the Claimants were directed to certain points, which I have identified in Section E above, and which (with one exception) are capable of a clear and distinct answer, without conducting a line-by-line scrutiny.

52. The exception is Issue 7 which consists of a generalised suggestion on the part of the Claimants that the Fees and Disbursements (whenever incurred) are too high (or excessive, unreasonable or disproportionate – the precise thrust of the attack varied). Of course, such suggestions must be taken seriously by the Court, and I have considered the materials adduced by the Receivers with some care, and specifically in light of the Claimants' points. Although I address this aspect of the Claimants' contentions in greater detail in Section M below, it is important that I make clear my general conclusion as to the conduct of the Receivership by the Receivers and by DRP. It is my view that – looking at all of the evidence before me – the Receivership was carefully and prudently exercised and run by the Receivers, and properly documented, both in the Reports submitted by the Receivers to the Court during and at the end of the Receivership, and in material produced subsequently (in particular in Mr Coopers' various witness statements). There is nothing in my review of this material that comes close to suggesting that I should oblige the parties to incur the costs (and the waste of time) that a line-by-line scrutiny would entail.

53. Since this conclusion has the effect of framing the more specific issues, which I consider next, it seems to me important that I state it at the outset. As I have noted, I consider the point again, in greater detail, in Section M below.

G. ISSUE 1: ARE THE FEES INCLUSIVE OR EXCLUSIVE OF VAT?

(1) The relevant materials

54. I have already referred to paragraph 10 of the Receivership Order.[3] This paragraph refers to the Receivers being paid their reasonable fees, liabilities, costs, expenses and disbursements in accordance with the terms set out in the letter from the Receivers to the Petitioner's (i.e., VBFA's) solicitors dated 11 December 2018.

55. This letter was before me when I made the Receivership Order and (as was not contentious between the parties) is to be treated as attached to and part of the Receivership Order. (The fact that it was not is due more to the electronic sealing and circulation of orders than anything else.)

56. I shall refer to the letter of 11 December 2018 as the **December Letter**. The December Letter itself states that "[t]he costs of the [Receivers] have been set out in the Letter of Engagement to VBFA, dated 26 November 2018."

57. This letter – and, as we shall see, there are in fact <u>two</u> letters of 26 November 2018 – was <u>not</u> before the Court at the time of the making of the Receivership Order and was not seen by the Claimants (or the Court) until relatively late in the day. Although the Claimants were rightly critical of this fact, they accepted that these letters formed part of the legal basis upon which the Receivers were acting and I proceed upon that basis. Nevertheless, it seems to me that the Receivers would have been well-advised to have placed all of the relevant contractual material before the Court and ensured its (virtual) annexation to the Receivership Order.

58. The desirability of that course of action becomes all the more clear when the two versions of the 26 November 2018 letter are considered. As to this:

(1) Mr Cooper explains the existence of two letters in paragraph 19 of his third witness statement:

> "The December Letter refers to the Former Receivers' letter of engagement dated 26 November 2018. The November Letter was not before the Court at the hearing of the Receivership Application. In fact, two versions of this letter were generated:
>
> 19.1 A version which I sent to VBFA on 26 November 2018 and which VBFA returned on 28 November 2018 signed by Valerijs Belokon on behalf of VBFA…
>
> 19.2 An amended version…which was signed by me on behalf of the Former Receivers and by Mr Belokon on behalf of VBFA on 4 December 2018. This letter is also dated 26 November 2018….This version supersedes the earlier version."

(2) It is not possible from the face of these letters to tell which is the contractually binding one. The potential for confusion is compounded – or made actual – by the

[3] See paragraph 12(4) above.

fact that Mr Cooper himself referred to and exhibited the wrong letter to his first witness statement.[4]

(3) I accept Mr Cooper's statement of the status of the two November letters, and proceed on the basis that – where questions of construction or interpretation arise – I must consider the interaction between the Receivership Order, the December Letter and the second 26 November 2018 letter, which I shall refer to as the **November Letter**. However, I do not consider, notwithstanding that explanation, that, when it comes to questions of construction, I can leave the first November letter (the **Superseded Letter**) out of account, even though I accept that it was "superseded". The Superseded Letter is not a pre-contractual draft or part of the pre-contractual negotiations. It is, on Mr Cooper's evidence, a concluded agreement between VBFA and the Receivers, albeit an agreement that was superseded before ever being performed. As an executory contract, albeit with a brief lifespan, that means that it forms part of the factual matrix: it seems to me that the November Letter that overtook the Superseded Letter is properly to be regarded as a contractual variation to an earlier concluded contract – even if the variations are not evident on their face, and can only be spotted if the two letters are viewed side by side.

(4) In his evidence, Mr Cooper sought to explain why there had been two 26 November 2018 letters. This was, at least in part, in response to probing from the Claimants. In particular – very late in the day – Mr Cooper provided a fourth witness statement, which apparently contained evidence confirmatory of Mr Cooper's evidence from VBFA. The Claimants objected to the introduction of this evidence – even going so far as to object to my reading it. In light of these objections, I have not actually read this material,[5] but I am satisfied nevertheless that I should refuse to admit it both on the ground of lateness (it was served on the morning of the first day of the hearing) and because (having had its content described in general terms by the Receivers) I am satisfied that its content will not assist me. The reason I say this is because the statement seeks to elucidate the contractual position as between VBFA and the Receivers by reference to material (e.g., the subjective and after-the-event explanations of the parties) that is simply not admissible on questions of contractual construction.

(5) Accordingly, I proceed on the basis that my consideration of the terms of the Receivers' appointment is confined to consideration of:

(a) The Receivership Order;

(b) The December Letter;

(c) The November Letter; and

(d) The Superseded Letter.

[4] See paragraph 20 of this third witness statement, where this is explained.

[5] Had Mr Phillips, QC, pressed me, I would have read this material *de bene esse*. But Mr Phillips did not press this late evidence very hard, and although he summarised its effect, he did not ask me to read it.

(6) In the course of his oral submissions, Mr Collings, QC appeared to suggest that there was something odd or suspicious or even dishonest about the manner in which the relations between VBFA and the Receivers were documented. When pressed, Mr Collings, QC quickly resiled from any such suggestion. He was quite right to do so. As I have stated, having considered all of the evidence before me, I am in no doubt as to the *bona fides* of the Receivers or indeed their general competence and capability. This is one aspect of a very complex receivership that might have been better documented, and there are other, minor slips in the record which are, in the scheme of things, entirely unsurprising. I should be clear that these matters do not in any way persuade me that the conduct of the Receivers was not of a very high standard. Given some of the attacks mounted by the Claimants on the Receivership and the Receivers, it is as well to make clear that I regard such generalised attacks as unjustified and without merit.

(2) The agreement as to VAT

59. The November Letter materially says this about the Receivers' Fees. The quotation below shows the differences between the Superseded Letter and the November Letter. Essentially, there are two deletions that are material, which are marked in ~~**bold strikeout**~~. These words appear in the Superseded Letter but not in the November Letter:

"Our fees will be calculated as the lower of:

- Time costs ~~**plus VAT**~~ incurred during the course of the assignment based on the following hourly charge out rates

	£
Senior / Managing Partners	550
Partners / Office holders	495
Managers /Senior Managers	350-395
Senior Administrators	220-295
Administrators	160-200
Cashiers and Assistants	150-295
Supports	120-150

- and 5% of realisations ~~**plus VAT**~~
- plus disbursements
- DRP will meet all property agents costs with regard to the sale of properties from their fees

At inception of the assignment, VBFA will provide a £30k loan, which is secured and payable out of the first property realisations made.

DRP have suggested that in respect of the football assets it would be optimal to utilise the services of a football public relations specialist. This cost will be met from DRP's fees.

In the event that realisations are not sufficient to meet VBFA's liability in full (currently £25.25m) DRP are prepared to reach an agreement with VBFA as to the payment of a fair and reasonable level of fees with regard to non-property related assets, namely the sale of any shares (most likely Closelink and Segesta, or any of its subsidiaries). Ongoing converations will be held in this regard once a better idea of the realisable values for certain assets are ascertained."

60. So far as Fees and VAT on Fees are concerned, the December Letter is not materially different. However, for completeness, I set out the relevant parts:

> "The costs of the Joint Receivers have been set out in the Letter of Engagement to VBFA, dated 26 November 2018. These are to be calculated as the lower of time costs and 5% of gross realisations. The Joint Receivers will meet the costs of instructing agents for the residential properties out of the realisations.
>
> David Rubin & Partners maintain detailed time ledgers and our hour charge out rates are as follows:…"

There is then set out a table materially identical to the table set out in the November Letter (see paragraph 59 above).

(3) The approach to construction

61. I have before me various disputes as to how the Receivers are to be remunerated. Specifically, in this Section, I am considering whether the rates in the table set out and described in paragraphs 59 and 60 above are inclusive or exclusive of VAT. This is an issue going only to Fees, and does not relate to Disbursements.

62. The relevant instruments that I am to construe are described in paragraph 58(5) above, and comprise the Receivership Order, and the various communications constituting the contractual relations between VBFA and the Receivers.

63. The principles of interpretation of contracts are sufficiently well-known for it to be unnecessary for me to set them out in detail in this Judgment. Certainly, I was not specifically addressed by either the Claimants or the Receivers on these principles. Where, in the course of this Judgment, I have regard to these rules or principles, I will, of course, set them out. For present purposes, it is sufficient to note that the process of construction is an objective one, considering the agreements reached between the parties in their factual matrix.

64. I was, however, addressed on the approach that should be taken in relation to the construction of orders. Because the Receivership Order features as the starting point for many aspects of the disputes between the Claimants and the Receivers, it is as well to set out the relevant rules (which are substantially based on the canons of contractual construction) now.

65. I regard the following as a statement of the approach that I ought to take:

(1) Whilst, of course, orders of the court are entirely different from contracts – they are unilateral instruments made by a judge alone after hearing argument (whether orally or on the papers) and usually after handing down a judgment – the general rules of construction form a good starting point when an order needs to be construed: *Sans Souci Limited v. VRL Services Limited*;[6] *Brennan v. Prior*.[7]

[6] [2012] UKPC 6 at [13].

[7] [2015] EWHC 3082 at [21]-[22].

(2) The factual matrix – if I may call it that – in the light of which orders are construed embraces pleadings, evidence, the circumstances of a hearing, judgments and submissions: *Gordon v. Gonda*;[8] *Sans Souci Limited v. VRL Services Limited*.[9]

(3) However, as Lord Sumption said in *Sans Souci* at [12] to [13], whilst a judgment (and, of course, other material) is always admissible for the construction of an order, that material cannot be used to contradict the "inescapable meaning of an order, by arguing that the circumstances described in the judgment could not have justified an order which meant what it clearly said." In short, if the order is clear, then (unless corrected or varied) it stands.

(4) Are the Fees inclusive or exclusive of VAT?

66. In order to resolve the question of whether the Fees are inclusive or exclusive of VAT, the process of construction is, in my judgment, as follows:

(1) The starting point is the Receivership Order, and in particular paragraph 10 of that Order. This says nothing about VAT, but simply provides that the Receivers shall be entitled to be paid their reasonable fees in accordance with the terms set out in the December Letter. (I appreciate, of course, that the Order says more than this: there are a number of other aspects of the Receivership Order that I will come to. But I have here set out the provisions material to the question at hand.)

(2) The Receivership Order thus directs to the December Letter. The material words in the December Letter were set out in paragraph 60 above. The December Letter is silent as to VAT, and simply states a series of hourly rates.

(3) Mr Phillips, QC contended that the natural reading of the December Letter was that the round figures (e.g., £550 for Senior/Managing Partners) were much more naturally seen as VAT exclusive. There is something in this point. By section 19 of the Value Added Tax Act 1994, the total amount paid in a VAT-able transaction is treated as including VAT, and it seems to me that, absent the actual figures, the December Letter is essentially neutral as to whether the hourly rates are inclusive or exclusive of VAT. However, again taking the example of the Senior/Managing Partner, it seems more natural to regard the rate as £550 plus VAT (i.e. £550 plus VAT of £110) rather then £550 inclusive of VAT (i.e. a rate of £458.33 plus VAT of £91.67). Accordingly, viewing the December letter on its own, I consider that the best construction is that the rates for the Fees are VAT exclusive.

(4) However, the process does not stop there. The December Letter refers in terms to the November Letter, and it is necessary to take into account its terms, for the December Letter expressly states:

> "The costs of the Joint Receivers have been set out in the Letter of Engagement to VBFA, dated 26 November 2018."

[8] [1955] 1 WLR 885 at 892-893.
[9] [2012] UKPC 6.

It seems to me that this sentence makes clear that it is the November Letter that is the more important document and that – if there is a mismatch between the December Letter and the November Letter – it is the latter that is to prevail.

(5) Since the November Letter is similarly silent on the question of VAT, it is – in my judgment – to be similarly construed as the December Letter. In short, the November and December Letters are consistent and, to my mind, set rates exclusive of VAT.

(6) However, for the reasons I have given, I do not consider that the Superseded Letter can be left out of account. Although the variation effected by VBFA and DRP to the contract between them was by way of a "cancel and rewrite", in that the November Letter simply replaced the Superseded Letter, that cannot alter the fact that the Superseded Letter was agreed between VBFA and DRP and was altered in the manner described in paragraph 59 above. The Superseded Letter, of course, makes express that the hourly rates are indeed exclusive of VAT.

(7) The question lies in the significance of the deletion of the words "plus VAT". It seems to me that the contractual intention is clear. The intention is to convert the previously VAT-exclusive rates in the Superseded Letter into VAT-inclusive rates in the November and December Letters. The deletion of the words "plus VAT" must be presumed to have a purpose. Although there is no express statement that the rates are VAT inclusive in the November and December Letters, the deletion of the words "and VAT" is unambiguous. Whereas in accordance with the Superseded Letter, VAT was chargeable as an addition to the net rate, that is not so in the November Letter, and the rates are thereby converted into VAT-inclusive rates. That position carries forward into the December Letter.

67. I appreciate that this may not have been the subjective intention of either or both of VBFA and/or DRP and/or the Receivers. But that is irrelevant in the objective process of construction; and there is no application to rectify the contract before me.[10]

(5) Conclusion

68. In relation to Issue 1, I conclude that the hourly rates by way of which the Fees are calculated are inclusive and not exclusive of VAT.

H. ISSUE 2: WHETHER DISBURSEMENTS INVOICED TO DRP, AND NOT TO THE RECEIVERS PERSONALLY, ARE RECOVERABLE

69. It is trite that appointment as a receiver is a personal appointment: as both parties accepted, appointments of receivers must be personal, that is they must be made to natural and not merely legal persons. By paragraph 1 of the Receivership Order, Mr Cooper and Mr Rubin were appointed Receivers. Their firm, David Rubin and Partners Limited, which I refer to as DRP, was not so appointed.

[10] I am not encouraging such an application: it would be late, and this is a case where third party interests are engaged, and it seems to me that the Claimants have a right to rely on the contractual materials as they appear to third parties.

70. It follows that had either Mr Cooper or Mr Rubin sought to retire or relinquish the role of Receiver, it would have been necessary for an application to have been made to Court, and for the appointment of Mr Cooper or Mr Rubin to be terminated and a fresh receiver appointed. This is simply a necessary and important aspect of the Court's control over the receivership process. That control is personal to the named receiver, and the Court will always know the identity of the specific person or persons who bear(s) responsibility for the receivership. That accountability is, quite properly, never eroded by entrusting the functions of a receivership to a non-natural person.

71. That does not, of course, mean to say that the receivers appointed in a receivership must do everything themselves. That would be impractical, even absurd, particularly in a complex receivership such as this. In this case, Mr Cooper and Mr Rubin formed a part of a larger firm – DRP – and it was DRP that was engaged by VBFA to act in the receivership. That is clear from all of the letters setting out the contractual relations between VBFA and the DRP, including in particular the November and December Letters. Thus, all of the letters are on DRP headed notepaper, and it is obvious that DRP is VBFA's contractual counterparty.

72. The terms of the letters also make this clear. Thus, the November Letter states:

> "The purpose of this letter is to outline the services to be provided by DRP and to confirm the basis for charging fees in respect of these services."

Under the heading the "DRP Team", the November Letter (which is signed by Mr Cooper as a partner in DRP) states:

> "David Rubin and I will lead our team and be responsible for dealing with all matters. We will be assisted by my Senior Manager, Adam Shama and his team consisting of Jon Chaplin, Ian Hardwick and Stephanie Bidaud. We may also call upon specialist staff as appropriate. We may change the staff working on this assignment should the need arise."

The table of hourly rates – set out in paragraph 59 above – reflects the range of persons within DRP that would working with the Receivers.

73. There is no inconsistency between the personal appointment of the Receivers pursuant to the Receivership Order and the contract for the provision of receivership services in the agreement between VBFA and DRP. The fact is that the contract between VBFA and DRP contains an element of <u>personal service</u>, whereby DRP will have to procure the services of Mr Rubin and Mr Cooper specifically. DRP was providing the services of Mr Cooper and Mr Rubin through the contract and the contract in no way abrogated their personal responsibilities as Receivers. By way of example, had Mr Cooper and Mr Rubin left DRP to join another firm, then either the Receivership Order would have had to have been amended, so as to appoint new receivers within DRP, or a new contract between VBFA and Mr Cooper and Mr Rubin's (hypothetical) new firm would have had to have been entered into.[11]

74. Thus, Fees (as I am defining them) embrace not merely the hours worked by the Receivers (Mr Cooper and Mr Rubin <u>personally</u>), but also the hours worked by those

[11] See, by way of example, *Paymex Ltd v. Revenue and Customs Commissioners*, [2011] UKFTT 350 (TC) at [94]*ff*, where (albeit in a different context) these issues are traversed.

others within DRP who acted – in accordance with the Receivers' directions and control – in the Receivership.

75. Equally, as the contract between VBFA and DRP makes clear, the Receivers may incur expenses in the form of Disbursements. The contract does not specify what these Disbursements might be – it simply says "plus disbursements" – and that is unsurprising, because the range of proper Disbursements is likely to be quite wide in any receivership, and certainly was in the case of this one.

76. In this case, Disbursements involved the engagement of various solicitors (notably SH, but others also) as well as property agents and others. In some cases, notably in the case of SH (but by no means exclusively so), the invoices were addressed to DRP and I anticipate that the retainer (or contract) was between the provider of the service and DRP. Certainly, I proceed on that basis.

77. The Claimants say that all such disbursements are irrecoverable. Quoting from their written submissions:

> "7.1 [SH's] invoices are all addressed to [DRP], which is its client…
>
> 7.2 It is unclear how these can amount to costs and expenses of the receivership, although an explanation has been sought. It also raises issues as to the indemnity principle in respect of hearings where [SH] has represented [the Receivers] personally, whereas bills have been directed to [DRP].
>
> 7.3 Pending a satisfactory explanation, these (and indeed all) bills to [DRP] are challenged."

78. No explanation is needed. For the reasons I have explained, the manner in which the Receivership was conducted is clear on the face of the documents. The legal basis upon which Fees and Disbursements were incurred is entirely transparent. This is a frivolous challenge on the part of the Claimants, and one that I reject.

79. Disbursements, whether invoiced to the Receivers or to DRP are in principle recoverable. Of course, whether they are proper Disbursements, apart from this, is a matter I must consider further.

I. ISSUE 3: THE LEVEL OF THE "CAP" ON FEES

(1) Introduction

80. Paragraph 10 of the Receivership Order refers to the Receivers being paid their Costs in accordance with the terms set out in the December Letter.

81. For present purposes, the relevant part of the December Letter states:

> "The costs of the [Receivers] have been set out in the [November Letter]. These are to be calculated as the lower of time costs and 5% of gross realisations. The Joint Receivers will meet the costs of instructing agents for the residential properties out of the realisations."

I have set out the relevant provisions in the November Letter in paragraph 59 above, and do not repeat it here.

82. As is clear, the Fees are calculated by reference to two alternative bases:

(1) Time costs; or

(2) 5% of gross realisations.

There is no such alternative in relation to Disbursements, and this point applies only to Fees.

83. So far as Fees are concerned, the lower of the two bases applies. Although Mr Collings, QC baulked at the label, it is right to say that the higher basis of charge is "capped" by the lower basis of charge. In this case, the Claimants' case was that the Receivers' time costs were higher than 5% of gross realisations, and that the Receivers' remuneration was therefore capped at 5% of gross realisations. The question before me is precisely how "5% of gross realisations" is calculated and what that figure is in the present case.

84. I should be clear that there was no suggestion by anyone that if the cap was higher than time costs, it should prevail. Should I conclude that the cap in fact exceeds the time costs of Fees, then only the time costs will be recoverable. Whilst that may be self-evident, it is nevertheless worth stating.

(2) The Claimants' case

85. As I have described, realisations were £8,937,544.82 (net of VAT, which seems to me to be the correct figure: recovery should not be inflated because of tax).[12] 5% of this sum is £446,877.24.

86. The Claimants contend that the contract calculates the 5% cap by reference to actual realisations, and that therefore any time costs above this amount are irrecoverable. Thus, according to the Claimants, the cap (in monetary terms) is £446,877.24.

87. In terms of the Fees to which the cap applies, I should make clear that I do not, in this Section, consider whether the cap extends to:

(1) Time costs incurred prior to the Receivership;[13]

(2) Time costs incurred after the Receivership.

These are matters considered further below.

88. If the Claimants are right, then the cap will (even if regard is had only to Fees incurred on a time cost basis during the Receivership) have a significant effect on the recoverability of the Receivers' time costs. I have set out the Receivers' Fees in

[12] See paragraph 34(1) above.

[13] Mr Phillips, QC, stressed that there were in fact no such time costs, and that the Receivers were only seeking recovery of pre-Receivership Disbursements. I accept that. Nevertheless, it seems to me important to understand exactly how the contract is intended to operate because that may shed light on how the Receivership Order, in combination with the contract, operates. Accordingly, even though it is an "empty set", I am not going to disregard entirely the issue of pre-Receivership Fees.

paragraphs 34 and 36 above. In summary, the Receivers made two payments to themselves in the course of the Receivership:

(1) A payment of £510,000 on 17 June 2019; and

(2) A payment of £90,000 on 1 October 2019.

As at 19 December 2019, a further £360,137.40 was said to be due. These amounts are inclusive of VAT. Accordingly, as at 19 December 2019, the Receivers' total remuneration was £960,137.40 including VAT or £800,114.50 plus VAT.

89. Given the conclusion that I have reached on Issue 1, it is clear that the net figure put forward by the Receivers of £800,114.50 is actually to be regarded as a figure inclusive of VAT. I consider that the cap ought to apply in relation to net fees (this was not, as I understand it, disputed by the Claimants) because the recoveries that define the cap are themselves net of VAT. Accordingly (and I am not making a finding as to the correct figure, but will leave the precise calculation to the order consequential on this Judgment) the net figure is something like £666,762. Clearly, even having regard only to time costs incurred during the Receivership, and on the basis of the hourly rates as they are in light of my conclusion on Issue 1, the cap bites to a significant extent if the Claimants are right.

90. Indeed, the Claimants – quite logically – say that not only can the Receivers not recover any unpaid amounts above the cap, but that – to the extent that they have received Fees in excess of the cap – such payments constitute improper over-payments, which should be restored as part of the account. Subject to the correct level of the cap being established, I did not understand the Receivers to disagree with this proposition (and it is difficult to see how they sensibly could).

(3) The Receivers' case

91. The Receivers contended that the cap was not 5% of actual realisations. The Receivers advanced two, different, contentions as to how the cap should be calculated, a primary contention and an alternative contention. These contentions were as follows:

(1) *The primary contention.* The Receivers' primary contention was as follows:

(a) The role of DRP and – within DRP, Mr Rubin and Mr Cooper – was to "[a]ct as Court Appointed Receivers over all assets determined by VBFA".[14] That was the scope of the services being provided by DRP according to the November Letter; and the December Letter did not alter that position.

(b) As Court Appointed Receivers, the Receivers' primary function was to realise sufficient of the assets the subject of the Receivership (i.e., the

[14] I am quoting from the "Scope of Services" section in the November Letter.

Receivership Interests)[15] in order to discharge the Claimants' debt to VBFA.[16]

(c) The Receivers contended that the cap was defined by reference to the realisations needed to satisfy the Claimants' debt to VBFA. Mr Phillips, QC referred me to the way in which Counsel for VBFA (Mr Isaacs, QC) had explained the operation of the cap when the application for the Receivership Order was made (to me) on 13 February 2019:[17]

> "The second point that's made in my learned friend's skeleton is that it would involve considerable cost and expense to appoint receivers. The responses to that are as follows: firstly, the costs of the proposed receivers would be reasonable and proportionate, particularly where the alternative is to have the Petitioner's solicitors seeking to try to arrange the sales. Excluding disbursements, the Receiver's fees have been agreed not to exceed £1.25 million on the basis [of] the valuations. That's 5% of the outstanding judgment debt."

After I clarified that this was 5% plus disbursements, Mr Isaacs, QC added:[18]

> "Now, that fee is both efficient and cost effective in absolute terms and also likely to compare favourably with the time costs of sales handled by the Petitioner."

(d) The Receivers contended that what I was told, in open court, about the Receivers' remuneration needed to be taken into account for the purposes of construing the contract and that – in light of what I had been told, as well as the terms used in the contract – "5% of realisations" meant:

5% of the sums needed to be realised in order to discharge the debt owed by the Claimants to VBFA as at the time of the commencement of the Receivership.

(2) *The alternative contention.* In the alternative, the Receivers contended that:

(a) "5% of realisations" was calculated by reference to the value of realisations actually received plus the value of realisations in relation to assets on which work to realise them had been commenced by the Receivers, but where those assets were not realised because of some intervening event.

(b) Such intervening event would, clearly, have to be something out of the control of the Receivers. Specifically, in this case, the intervening event was the settlement of the debt between the Claimants and VBFA which – as I have described[19] – resulted in both the Claimants and VBFA

[15] Which I have described in paragraph 14 above.

[16] I should make clear that I am not suggestiong that this would be the limit of the Receivers' recovery against the Receivership Interests. But this articulates the primary purpose of the Receivership.

[17] See the passage at p.38 of the transcript of the hearing before me on 13 February 2019. Emphasis added.

[18] At pp.38–39 of the transcript.

[19] See paragraphs 22–31 and 39 above.

requesting the Receivers not to proceed with the sale of the Travelodge and in the sale being abandoned by virtue of the settlement and the consequent discharge of the Receivers.[20]

(c) Accordingly, by reason of the requests not to proceed with the sale and the settlement itself,[21] the sale of the Travelodge never took place, and its value was never realised. However, as I have described,[22] significant work was done in seeking to realise the Travelodge asset and it was the Receivers' alternative contention that this value formed part of the "5% of realisations".

(d) The Travelodge is an asset of substantial value. The sale price that the Receivers had agreed with the intended purchaser was £7.9 million, and the Receivers therefore contended that the 5% cap was calculated as 5% of actual realisations (£8.9 million) plus assets (i.e., the Travelodge) not realised because of some intervening event (£7.9 million), resulting in a cap of c. £840,000 (being 5% of £16.8 million).

(4) Analysis

92. I am thus presented with three alternative contentions as to the meaning of the words "5% of realisations":

(1) *The Claimants' case.* The phrase means 5% of the money actually received by the Receivers on the sale of assets forming part of the Receivership Interests.

(2) *The Receivers' primary case.* The phrase means 5% of the realisations necessary to discharge the Claimants' debt to VBFA, as that debt stood at the commencement of the Receivership.

(3) *The Receivers' secondary case.* The phrase means:

(a) 5% of the money actually received by the Receivers on the sale of assets forming part of the Receivership Interests; plus

(b) 5% of the value of assets forming part of the Receivership Interests in relation to which the Receivers have done some work in order to realise that asset or assets, but where the realisation process has been interrupted by reason of some intervening event that is nothing to do with the Receivers.

93. It is important to stress that I do not regard any of these alternative constructions as involving the implication of a term. The fact is that the word "realisations" is susceptible of multiple meanings and needs to be given a definition. Mr Collings, QC sought to persuade me that the meaning of the word was plain. It meant, he said, "actual

[20] As Mr Collings, QC stressed, as soon as the judgment debt is paid, the receivership will be discharged: *Masri v. Consolidated Contractors International (UK) Ltd (No 2)*, [2008] EWCA Civ 303. This is what occurred in the present case: see the Discharge Order described in Section D above.

[21] As will be seen, Mr Collings, QC made much of this distinction. I consider it further below.

[22] See paragraphs 22-39 above.

realisations", and that is a phrase that all of us used as a convenient shorthand to describe the Claimants' case during the course of the hearing. But this phrase is, in itself, only a shorthand. Thus:

(1) "Realisations" has to be translated into a monetary value. In short, the word must be referring to the money received by the realisation of an asset. Otherwise, the 5% cap is impossible to calculate. There has got to be a sum of money by reference to which the amount of 5% can be computed.

(2) It is obvious that there is a temporal element to the definition of realisations. The term could refer *(i)* to assets the proceeds of which have in fact been received or *(ii)* to assets which could be, but have not yet been, sold. The word "actual", I accept, helpfully describes the first alternative but – I remind myself – "actual" is a word being read into the agreement as a part of the process of construction. Neither the November nor the December Letter actually uses the word "actual". The word I am construing is simply the word "realisations".

94. In short, although I was referred to the law regarding the implication of terms, I do not need to consider the law in this regard. I am engaged in a process of construction, not implication.

95. I turn to this process:

(1) It is trite law – as both parties accepted – that a receiver is entitled to recover his remuneration costs and expenses from the assets he or she has been appointed to receive – here, the Receivership Interests and the Sums Receivable. That is so, whether or not the receiver ought to have been appointed in the first place; and even if the order appointing the receiver has been discharged.[23]

(2) There is, however, an important distinction between a receiver's remuneration costs and his expenses or disbursements. Part 69.7 of the Civil Procedure Rules 1998 (**CPR**) provides as follows:

> "(1) A receiver may only charge for his services if the court –
>
> (a) so directs; and
>
> (b) specifies the basis on which the receiver is to be remunerated.
>
> (2) The court may specify –
>
> (a) who is to be responsible for paying the receiver; and
>
> (b) the fund or property from which the receiver is to recover his remuneration.
>
> (3) If the court directs that the amount of a receiver's remuneration is to be determined by the court –

[23] *Mellor v. Mellor*, [1992] 1 WLR 517; *Glatt v. Sinclair*, [2013] EWCA Civ 241.

(a) the receiver may not recover any remuneration for his services without a determination by the court; and

(b) the receiver or any party may apply at any time for such a determination to take place.

(4) Unless the court orders otherwise, in determining the remuneration of the receiver the court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account –

(a) the time properly given by him and his staff to the receivership;

(b) the complexity of the receivership;

(c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;

(d) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and

(e) the value and nature of the subject matter of the receivership.

(5) The court may refer the determination of a receiver's remuneration to a costs judge."

(3) These rules – as Mr Collings, QC stressed – apply only to a receiver's remuneration, and clearly imply that remuneration is particularly closely scrutinised and controlled by the Court, because the receiver is directly benefiting from the payments he or she receives. In this case:

(a) Paragraph 10 of the Receivership Order makes clear that the Fees are not going to be determined by the Court (although, to be clear, no-one was suggesting that the general supervisory jurisdiction of the court was thereby ousted) but in accordance with the December Letter.

(b) The effect of this is that unless the Fees are recoverable under the contract between DRP and VBFA, there can be no recovery of these Fees.[24] That is because, under CPR 69.7(1), a receiver may "only charge for his services" where the basis for this is specified, and the only basis specified is the December Letter (referencing, of course, the November Letter).

(4) As I have described, the December Letter was before me on 13 February 2019, and its effect explained to me by counsel.[25] It seems to me that that is an explanation that I must take into account when considering the meaning of the December (and November) Letters. That is because I have ordered that the Receivers' reasonable fees be paid "in accordance with the terms set out in the [December Letter]", and that must mean "in accordance with the terms set out in

[24] I stress that I am still only considering the Fees incurred during the Receivership. Pre- and post-Receivership Fees and Disbursements receive separate consideration.

[25] See paragraph 91(1)(c) above.

the [December Letter] as explained to me in court", because that is the basis on which I was persuaded to make the Receivership Order.

(5) It may, of course, be that the effect of the December Letter was (I have no doubt innocently) misdescribed to me by Mr Isaacs, QC, and I do not go so far as to say that I can rely on an explanation provided in court to override the otherwise clear words of the agreement contained in the December (and November) Letters. But where, as here, there are several plausible constructions of the December Letter, it seems to me that the way in which the operation of the December Letter was explained to me is something that I can and should take into account as a material factor in construing the contract. Mr Isaacs' explanation is a factor pointing in favour of the Receivers' primary construction.

(6) Although the Claimants' construction has a superficial attraction to it, in that it appears simple and easy to apply, that attraction is superficial. This became clear when Mr Collings, QC was making submissions in relation to the Receivers' alternative contention. Mr Collings, QC submitted that only "money in the bank" could count as realisations for the purposes of the contract and that even if the Receivers had exchanged contracts for sale of the Travelodge before the settlement, but had not completed that sale before the discharge of the Receivership, this could not amount to an "actual realisation". This contention strikes me as manifestly wrong, drawing an entirely unjustifiable distinction between the conclusion of an agreement for sale and its performance. It seems to me that a construction of the agreement that causes the promised for realisation not to count as a realisation for the purposes of the Fee cap in the contract is an untenable one.

(7) If the "promised for" proceeds of a realisation count for the purposes of the cap – as I consider they ought to, seeking to read the contract in a sensible and commercial fashion – then it follows that "actual realisations" – the Claimants' contended for construction – no longer works, without some kind of refinement so as to include future or potential realisations. Once this is appreciated, the initial attraction of the Claimants' construction falls away, and I do not consider it to be a plausible construction of the cap.

(8) Once it is clear that "realisations" must mean more than "money in the bank", the constructions advanced by the Receivers become much more attractive. It seems to me that the Receivers' primary construction is to be preferred over the Receivers' alternative construction. That is because:

(a) Although possible to formulate the trigger for allowing a future realisation to count as a "realisation", that trigger can (obviously) be framed in many different ways. It could be framed as including only future realisations that had been contractually agreed and were to be performed in the future (as per paragraphs 95(6) and (7) above; or it could be framed as including any attempt at realisation that has involved the Receivers in some work (which is the Receivers' alternative contention). Of the two, I much prefer the Receivers' alternative contention, because that provides some link between effort and reward (in the sense that the cap is higher, the more

realisations the Receivers attempt), but it would be fair to say that neither trigger clearly and unequivocally commends itself over the other.[26]

(b) On the other hand, the Receivers' primary construction – where the cap is defined by reference to the realisations that the Receivers are obliged to undertake in performance of their duties, i.e., those realisations necessary to discharge the debt owing to VBFA at the time of the commencement of the Receivership – provides a clear and sensible limit to the Receivers' fees. What, effectively, the contract is saying is that the Receivers should spend whatever time is necessary to perform their duty of realisation, but that they can only recover their time costs up to a sensible limit defined by the value of the assets that must be realised, namely 5%.

(c) It might be asked why the contract refers to "realisations" rather than (as Mr Isaacs, QC did) the "outstanding judgment debt". On consideration, the reason is clear: the assets the subject of the Receivership were hugely uncertain in terms of their value. Both Blackpool FC and the Travelodge represented, in different ways, very challenging realisations. The range of values attaching to Blackpool FC – as I know from the trial of the original section 994 dispute – was particularly wide. It was, I consider, quite possible for the realisation of the Receivership Interests to achieve less than the debt outstanding to VBFA.[27] If so, it would be neither reasonable nor proportionate to set the cap at the level of the "outstanding judgment debt". In short, if the debt was £20 million, but the realisable assets only worth £10 million, the cap should be £10 million, not £20 million. Thus, if – as was not the case here – the Receivership Interests were worth less than the outstanding judgment debt, that was a risk that was borne by the Receivers. Conversely, if (as did occur) the judgment debt was discharged in some other way, the cap on the Receivers' remuneration would be unaffected.

(5) Conclusions

96. For all these reasons, I conclude that the cap in relation to the Receivers' fees was 5% of the realisations necessary to discharge the Claimants' outstanding judgment debt to VBFA as at the date of the Receivership (13 February 2019). Since it would appear to be the case that the value of the Receivership Interests exceeds the outstanding judgment debt as it stood at 13 February 2019, the cap is (as Mr Isaac described it) at the level of c. £1.25 million.

97. If I am wrong, then I consider that the Receivers' alternative case represents the proper construction of the contract, in which case the cap is – as I have described - c. £840,000.

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[26] This, of course, is why Mr Collings, QCs' insistence that the sale of the Travelodge could never have been achieved (even if only by exchanging contract, and not completing) before the settlement, even if the requests not to proceed with the sale had not been made, misses the point. The time at which exchange or completion took place or would have taken place is only relevant if it goes to the trigger entitling the sums involved to be included within the definition of "realisation". Neither party was contending for a definition that embraced the value of assets where their sale had been agreed, but the sale not performed.

[27] Indeed, the November and December Letters make reference to that possibility.

J. ISSUE 4: RECOVERY OF FEES AND DISBURSEMENTS INCURRED DURING THE RECEIVERSHIP BUT PAID AS AT THE DISCHARGE OF THE RECEIVERSHIP

(1) The Claimants' contentions

98. As I have described in paragraph 34(3) above, the amounts outstanding as at 19 December 2019 – the date the Receivership was discharged – amounted to £690,161.95. These items include one item of Fees, and sixteen items of Disbursements. The element attributable to Fees was £360,137.40.[28]

99. The outstanding Fees:

(1) Will need to be re-assessed on the basis of my conclusions as regards VAT: see Issue 1 considered in Section G above; and

(2) Will obviously be subject to the cap that I have described. On my understanding of the figures, and in light of my findings as to how the cap operates (Issue 3 considered in Section I above), these Fees will all fall within the cap.

The Disbursements are not subject to any cap.

100. In principle, therefore, these items all ought to be recoverable by the Receivers. However, the Claimants contend that there should be no recovery of these sum even if the cap does not bite. The Claimants contend that the Receivers' outstanding Fees and Disbursements should have been recovered out of realisations made during the Receivership, and that if the Receivers have failed to retain sufficient assets to meet these amounts, then they simply cannot be paid (other than pursuant to any indemnity from VBFA).

101. In effect, the Claimants say that there is a prescribed "order of priority" in the Receivership Order which compels this outcome. The words the Claimants rely upon in the order are those in paragraph 10, which provides that Fees and Disbursements are "to be retained by the Receivers and applied in satisfaction of the Costs prior to any distribution to the Petitioner" (emphasis added).

102. It is the Claimants' contention that the effect of these words – in particular the ones I have emphasised – is that the Receivers are only entitled to their Costs[29] if they retain these prior to any distributions to the Petitioner. This construction would require the Receivers to ensure that all Costs were paid out of realised assets, and to postpone any distribution until those expenses and disbursements have been discharged.

103. The construction of paragraph 10 of the Receivership Order does not quite incentivise the Receivers to get in all of the Receivership Interests, discharge outstanding Costs, and only then distribute. But it does mean that the Receivers must be be extremely cautious and conservative in making distributions, if the Receivers want to be confident

[28] See paragraph 36 above.

[29] As I have explained in paragraph 34(2)(b), I am treating the two components of Costs, at least for present purposes of exposition, as comprising Fees and Disbursements.

of being able to discharge their Costs, lest Costs are incurred that cannot be discharged out of future realisations, which may not occur.

104. Thus, in the present case, to take a concrete example, the Receivers should have retained the realisations from the Football Assets so that they could discharge expenses incurred later in relation to the realisation of the Travelodge, which (in the event) never occurred.

105. In effect, the Claimants' contention implies a later distribution to VBFA than would otherwise occur. It creates a powerful disincentive against early distribution.

(2) Analysis

106. The Receivers contended that this is not the correct construction of the Receivership Order, and I am satisfied that the construction contended for by the Claimants is not the correct one. I conclude that there is no "priority effect" of the sort contended for by the Claimants, and that the Receivers can recover their Costs (that is, the Fees and the Disbursements as described above) even if they have distributed the recoveries that they have made.

107. I have reached this conclusion for the following reasons:

(1) It is important to begin with the general position. Generally speaking, receivers have a lien – for their remuneration and expenses and to secure their right of indemnity – over assets subject to the receivership order appointing them, whether or not these assets are in their hands. This lien survives the receivers' discharge.[30]

(2) The Court in *Mellor v. Mellor* rejected submissions that a receiver "should have taken the apple while it was in his grasp"[31] and rejected the contentions that a receiver had no right to be paid out of assets over which he or she was appointed but which had never reached his or her hands nor to be paid his or her remuneration post-discharge, when the assets were out of his or her hands. The Court held that if that were the case, it would have the counterproductive effect of incentivising the receiver to commandeer assets for his/her own benefit as soon as he/she took office in case the appointment should be short-lived and to maintain a possessory lien over assets at the end of the receivership should he or she remain unpaid.[32] That is precisely the concern that I have articulated in paragraphs 98 to 105 above.

(3) Of course, it is no doubt possible to abrogate the lien, and preclude the Receivers from having or enforcing it. But it seems to me – whilst no doubt possible (something on which I say nothing more) – that the lien is something that is so fundamental to the operation of the Receivership that it would require clear language in the Receivership Order to abrogate or eliminate it. That is both

[30] See *Kerr & Hunter on Receivers and Administrators*, 21st ed at [12-8]; *Mellor v. Mellor*, [1992] 1 WLR 517 at 521-2.
[31] At 521.
[32] At 521-522.

because of the need to encourage practitioners to make themselves available for difficult assignments such as this; and to avoid the perverse incentives of commandeering assets that I have just referred to.

(4) There is no such clear wording in this case. Indeed, the Discharge Order, in paragraph 2, states that "[t]he Receivers shall be a liberty to register a caution against the property Travelodge, Seasiders Way, Blackpool FY1 6JJ in respect of the lien securing the fees, liabilities, costs, expenses and disbursements of the Receivers". So, clearly, the lien is not in any way abrogated; to the contrary, the Discharge Order confirms its existence. Obviously, the continued existence of the lien is a powerful contra-indicator to the Claimants' construction of the Receivership Order.

(5) Furthermore, as I have indicated, the Claimants' construction leads to perverse incentives in the operation of the Receivership. Assets are got in and recovered; but the Receivers are incentivised against distributing to the Petitioner for fear of being unable to pay the Costs – and not only their own time-costs, but also third-party creditors. If this was the intention of the Receivership Order, it would require singularly clear expression.

(6) That brings me to the wording of the Receivership Order itself. I begin with paragraph 9 of the Receivership Order, which provides:

> "The Receivers shall make payments to the Petitioner from the Receivership Interests and/or Sums Receivable in or towards satisfaction of what shall for the time being be due…such payments to be made as soon as reasonably practical."

Thus, according to the express terms of the Receivership Order, the Receivers were obliged to act as they have acted, namely to distribute to the Petitioner, VBFA, as and when assets are recovered. That is as it should be. The Receivership Order contemplated that distributions would be made from time to time. The Receivers were obliged to make them as soon as reasonably practical. Paragraph 9 did not contemplate that no distributions would be made until the Costs of all realisations had been incurred and could be discharged.

(7) So, the Claimants' construction of paragraph 10 runs in the face of the express wording of paragraph 9. For the Claimants' construction to be right – and, as I say, I am satisfied that it is not – clear language would be required. The language is clear, but I consider that it points in diametrically the opposite direction. Paragraph 10 is not a (rather perverse) priority provision, but a facultative provision, making clear that the Receivers may – indeed, should – so far as consistent with their duties of getting in and distributing the Receivership Interests so as to repay the debt to VBFA owed by the Claimants, retain amounts due for fees, liabilities, costs, expenses and disbursements and apply the sum retained in satisfaction of those expenses "prior to any distribution" to the Petitioner.

(8) Properly construed, paragraphs 9 and 10 mean that the Receivers should satisfy outstanding Costs from the realisations when these are received, and make payments of the net sum to the Petitioner as soon as reasonably practicable, with any further Costs incurred in the ongoing Receivership to be discharged out of

> future receipts from the Receivership Interests or Sums Received in the ongoing Receivership; or, in this case, where the Receivership is discharged, by enforcement of the lien over the Receivership Interests – here, specifically, the Travelodge.

108. In short, the Receivers have conducted themselves exactly in accordance with the Receivership Order, and I reject the contention that the outstanding Costs cannot be recovered. They can, and should be, and (given the delays and the accruing interest) this needs to happen in short order, at least so far as the third-party creditors are concerned.

109. I have particular regard to the third-party creditors, who clearly need to be paid promptly. I did not understand the Claimants to be advancing any other ground for not paying these creditors. Indeed, the fact that the Claimants' "priority" argument meant that these creditors would be unpaid (absent payment from either the Receivers personally or VBFA, the Petitioner) is a further clear pointer that the Claimants' construction of the Receivership Order is incorrect.

K. ISSUE 5: WHO BEARS THE COSTS OF AGENTS' FEES?

110. The November Letter provides:

> "DRP will meet all property agents costs with regard to the sale of the properties from their fees."

111. This is very clear. Whilst – ordinarily – such costs would naturally be regarded as "disbursements" within the meaning of the November Letter (and so, Disbursements as I am using the term), this provision of the contract makes clear that such costs will <u>not</u> be Disbursements, but will be paid out of Fees.

112. The matter does not, however, end there. The December Letter provides (with emphasis added):

> "The costs of the Joint Receivers have been set out in the Letter of Engagement to VBFA, dated 26 November 2018. These are to be calculated as the lower of time costs and 5% of gross realisations. <u>The Joint Receivers will meet the costs of instructing agents for the residential properties out of the realisations.</u>"

113. The change is not particularly clearly flagged in the December Letter, but I am satisfied that the objective wording of the December Letter must be given effect to. The unambiguous meaning of these words is that, whereas under the November Letter, DRP was bearing the costs of <u>all</u> agents out of its Fees, the regime so far as agents for the residential properties were concerned would change, with their fees being paid for out of realisations. In other words, so far as residential agents were concerned, the position described in the November Letter was being changed back to the position that would <u>ordinarily pertain</u>, namely with these costs being paid for out of realisations. On the face of it, no change was made to the concession regarding the payment out of Fees of the costs of the non-residential agents.

114. Mr Phillips, QC, sought to contend that the contractual intention was different. The reference to "realisations" was in fact intended to be a reference to "fees". As a result, the true construction of the change wrought by the December Letter was to <u>retain</u> the

position of residential agents being paid out of fees, but to alter the position so far as non-residential agents was concerned, so that the concession made in the November Letter was effectively narrowed so as to exclude non-residential agents.

115. I am quite prepared to accept that Mr Phillips, QC was accurately describing the thinking of DRP and the Receivers. But absent a claim for rectification (which again, has not been made, and which I am not encouraging), the contractual wording is unambiguous. I do not see how I can properly read "realisations" to mean "fees", when the use of the word "realisations" makes perfect sense.

116. Accordingly, the Receivers cannot recover the costs of non-residential agents as Disbursements, although they can recover residential agents' fees. As I have indicated to the parties, precisely what falls within and without the definition of "non-residential agents' fees" is a matter that I will – if necessary – debate at a consequentials hearing, the parties having by then the benefit of this Judgment so as to enable them to finally resolve (and set out in an order) the issues between them. But I should make clear that I do not regard Hilco's costs as falling within this class. Mr Cooper has explained that Hilco were instructed for a fixed sum of £100,000 plus VAT and expenses to conduct the marketing and sale of Blackpool FC's business and assets. Mr Cooper summarises the work Hilco did (including creating sales and marketing materials, marketing the assets, and assisting with due diligence including by managing a due diligence room for the sale). I raised with Mr Collings, QC, in the course of submissions, whether he was contending that Hilco's fees were "non-residential agents' fees", and he confirmed that this was not the Claimants' contention. Accordingly, I did not hear much argument on the point, but it seems to me that Mr Collings, QC is right, given the nature of the services rendered by Hilco in the sale of a complex set of assets like the Football Assets.

L. ISSUE 6: WHETHER THE RECEIVERS ARE ENTITLED TO HAVE *(i)* THEIR PRE-APPOINTMENT LEGAL COSTS PAID AND *(ii)* THEIR FEES AND EXPENSES POST-RECEIVERSHIP PAID

(1) Introduction

117. So far, I have only been considering the questions of Fees and Disbursements incurred during the course of the Receivership. Here at issue are sums incurred either side of this period, either before the Receivership began or after it was discharged by the Discharge Order.

118. It will readily be appreciated that the recoverability of these items raises rather different considerations from the recoverability of Fees and Disbursements incurred during the course of Receivership. Although these costs arise on different temporal sides of the Receivership, what they have in common is that they were not incurred during the Receivership, and for that reason are considered together in this Section. Nevertheless, the analysis will begin with the pre-receivership costs.

(2) Pre-Receivership costs

119. There was some debate between the parties as to when, exactly, the Receivership commenced. The Claimants placed considerable weight on the mismatch between the making of the Receivership Order on 13 February 2019 and the sealing of that Order on

20 February 2019. Unless the Order expressly timed the commencement of the Receivership so as to commence at a later date, I am in no doubt that the Receivers were appointed on 13 February 2019, and that any costs incurred on or after that date will have been (provided they were otherwise recoverable) Fees and Disbursements within the Receivership.

120. As has been described to me, the Receivers incurred legal fees (payable to SH and to counsel) prior to this date, and the question is whether these are recoverable. The starting point is (again) paragraph 10 of the Receivership Order, which provides that Costs (defined as per paragraph 12(4) above) are to be paid in accordance with the terms set out in the [December Letter]. The wording of paragraph 10 strongly suggest that Costs are future costs ("shall be entitled…to be paid…"), but it seems to me that if the December Letter (and, of course, the November Letter referenced in that letter) clearly provided for the recovery of pre-Receivership Costs, then those costs would be recoverable as "Costs".

121. But neither the November Letter nor the December Letter in any way suggests that costs pre-dating the appointment of Mr Cooper and Mr Rubin as Receivers are recoverable pursuant to the terms of those letters. To the contrary, the November Letter states:

"**SCOPE OF SERVICES**

We will provide the following Services:

- Act as Court Appointed Receivers over all assets determined by VBFA."

This strongly suggests that the services begin with the appointment of Mr Cooper and Mr Rubin as Receivers, and that the incurring of "fees" (which, in the letter is "plus disburements") is co-extensive with this assignment. In short, the assignment begins on appointment (13 February 2019), and the liability to fees commences on the same date.

122. It seems to me, therefore, that there is nothing in either the Receivership Order or the December Letter (read so as to embrace the November Letter) to provide any basis for the recover of pre-Receivership costs (or fees – but these are not claimed).

123. Nor can the Receivers rely on any general proposition of law. As I have noted,[33] a receiver is entitled to recover his remuneration costs and expenses from the assets he or she has been appointed to receive – here, the Receivership Interests and the Sums Receivable. That is so, whether or not the receiver ought to have been appointed in the first place; and even if the order appointing the receiver has been discharged. Whilst that general proposition extends to costs incurred after the discharge of a receivership,[34]

[33] See paragraph 95(1) above.

[34] This was the Receivers' case (see paragraph 160 of the Receivers' written submissions):

"The Court is asked to order that the Receivers should recover their post-discharge remuneration as accounted for in full, and to declare that the provisions on fees in paragraph 10 and the December Letter apply only to fees incurred prior to the Discharge Hearing."

The Claimants, by contrast, contended that – whatever the general position – in this case Post-Discharge Costs were recoverable pursuant to the Receivership Order.

I do not consider (nor was this contended by the Receivers) that it extends to pre-receivership costs.

124. In my judgment, the Receivers can identify no basis for the recovery of their pre-Receivership costs, and these cannot be recovered.

(3) Post-Receivership costs

125. I should be clear that I am not referring to Fees or Disbursements incurred during the course of the Receivership but unpaid at the discharge of the Receivership. These, as I have described, are recoverable for the reasons I have given.

126. What I am here concerned with are the costs – both in terms of Post-Discharge Fees and Disbursements – that have been incurred since the Receivership was discharged by the Discharge Order. These sums are, on any view, very substantial, amounting to some £550,000.[35]

127. It was the Receivers' primary contention that their Post-Discharge Fees and Disbursements were not Costs within paragraph 10 of the Order nor covered by the December (and November) Letters. Rather, it was contended that these costs were recoverable as costs relating to the administration of the Receivership under the principle articulated in *Glatt v. Sinclair*.[36] Accordingly, these costs were not "Costs" as defined in the Receivership Order, and were not "Fees" or "Disbursements" as I have defined them.

128. The Claimants disputed this, and contended that these costs were "Costs" as defined in the Receivership Order, and therefore were "Fees" or "Disbursements" as I have defined them. In making those point, the Claimants placed particular reliance on the fact that, under CPR 67.7, the Receivers' could only recover their fees if the Court so directs, specifying the basis for such remuneration.[37] Thus, according to the Claimants, the Receivers could either recover their Post-Discharge Costs as Costs under paragraph 10 of the Receivership Order or not at all.

129. This dispute matters – or may matter, depending on the significance of my conclusions on Issue 3 – because on the Claimants' case the cap on Fees applies, whereas on the Receivers' case it does not. As to this:

(1) It seems to me that the Receivership Order and the December (and November) Letters are most naturally construed as applying only to Costs as they arise during the course of the Receivership. That is because it would be unreasonable to subject Post-Receivership Costs to a cap that was intended to ensure a limit on the Receivers' costs of realising the Receivership Interests. Applying the cap to Post-Discharge Costs would merely incentivise challenges to the Receivers in the knowledge that the cap would continue to apply, no matter how protracted or expensive these Post-Discharge challenges might be.

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[35] I am making no precise finding of fact here: I am dealing with the principle of recoverability.

[36] *Glatt v. Sinclair*, [2013] EWCA Civ 241 at [39].

[37] See paragraph 95(2) above.

(2) Accordingly, although the point is not clear-cut, the better view is that the Receivers' Post-Discharge Fees and Disbursements are recoverable independently of the Receivership Order and the November and December Letters.

(3) I do not consider that there is anything to the point made by the Claimants regarding CPR 67.7. One of the points of the Declaration Application was to obtain certainty in relation to the recoverability of Post-Discharge Fees and Disbursements. In short, by the Declaration Application, I am being invited to make an order regarding the Receivers' Post-Discharge Fees and Disbursements, and (for the reasons I have given) I am prepared to do so.

(4) That leaves the question of the basis on which the Receivers are to be remunerated. It seems to me – and the Receivers did not contend otherwise – that the basis for the calculation and the recovery of the Receivers' Post-Discharge Fees and Disbursements should be the November and December Letters, although (for the avoidance of any doubt) the cap should not apply to the Fees being charged, as it is inappropriate in this case. I am simply using the November and December Letters as the most appropriate source for computing the time costs of the various persons within DRP (including the Receivers) who have spent time in the Post-Discharge period. There is, of course, no cap on Disbursements, even in the Receivership period.

M. ISSUE 7: "LINE-BY-LINE" ANALYSIS OF THE SUMS CLAIMED BY THE RECEIVERS

130. Neither the Claimants' submissions, whether written or oral, nor the evidence adduced by the Claimants stooped to particularity in terms of a detailed analysis of the Receivers Costs, using that term to embrace all of the costs items considered in the course of this Judgment.

131. What was said, in essence, was that the costs were "too high" and therefore warranted a closer consideration, ideally by a Costs Judge. The closest the Claimants came to any specificity was in a report on legal expenses, produced for the Claimants, by a Mr Christopher McClure of The John M Hayes Partnership Limited, a firm of costs lawyers and law costs draftsmen.

132. In his report, Mr McClure provides his opinion on the reasonableness of the legal expenses incurred by the Receivers, in particular in relation to SH, although his report is by no means limited to SH's costs. His conclusion was that:

> "24. …in my preliminary view the level of costs sought by the [Receivers] in connection with legal expenses is, on balance, more than sufficient to justify a detailed examination of the same. Regrettably, the information presently available to the Claimants is inadequate to that end for the reasons I have given and, in my opinion, raises questions the Claimants are entitled to ask and which the [Receivers] – if they are to prove the reasonableness of the legal expenses claimed – are required to answer.
>
> 25. My opinion is the most appropriate forum for the parties to make their submissions on costs, and for the Court to make a determination on those issues, would be the costs assessment process outlined at CPR Part 47. There are principally two reasons for this.

> 26. Firstly, it would provide the [Receivers] with an opportunity to justify the reasonableness of the legal expenses claimed through the means of a detailed bill of costs. This would necessitate the provision of thorough descriptions of all work undertaken by [SH] and Teacher Stern[38] in order to support the time claimed. In turn, the Claimants would then be in a position to make an informed judgment as to the reasonableness or otherwise of the costs claimed and, where appropriate, question any aspect of the expenses claimed by way of points of dispute. In response, the [Receivers] would be at liberty to serve formal replies to the Claimants' points of dispute if so advised.
>
> 27. And secondly, in the event that costs cannot be agreed between the parties then the matter would be placed before a Costs Judgewho, in possession of the [Receivers'] file of papers (which, according to this process, are filed with the Court in readiness for the assessment hearing) and with the assistance of oral representations from the parties, would then conduct a line-by-line assessment of the reasonableness – CPR 44.4(3) refers – of all items in dispute *inter partes* by reference to the bill of costs, points of dispute and formal replies thereto.
>
> 28. The intended outcome of this process is to ensure that the Claimants' liability for costs extends only to a sum that is reasonable – no more, no less – as required by the [Receivership Order], whether by agreement between the parties or upon assessment by a Costs Judge."

133. I am in no doubt that there should be no detailed assessment of the Receivers' Costs (whether legal costs or otherwise, and whether during or after the Receivership), but that the Costs and Disbursements as identified by the Receivers should be recovered by them, in full (subject to the very limited concessions made during the course of this process), pursuant to the lien that they have over the Receivership Interests.[39] I have reached this conclusion for the following reasons:

(1) The process that Mr McClure describes is – if not explicitly, then at least implicitly – the process by which the costs of a successful party in litigation before the Courts (i.e., the party with a costs order in his or her favour) are assessed if they cannot be agreed. On a number of occasions, I mentioned to Mr Collings, QC that <u>if</u> this was "ordinary" litigation between Party *A* and Party *B*, there could be no question but that I would send the costs off for detailed assessment. The point I was making to Mr Collings, QC was that the present was a very different case, where the Receivers were entitled to have their costs out of a specific fund (the Receivership Interests), unless I was not satisfied that those costs were properly incurred – the burden, I accept, being on the Receivers – in which case I would either disallow those particular costs or – in a less clear cut case – put in place some further mechanism for a "line-by-line" analysis of the Receiver's Fees and Disbursements (whether during the Receivership or Post-Discharge).

(2) My point was that this is a completely different case from the one envisaged by Mr Collings, QC and Mr McClure: a detailed assessment is <u>not</u> the default. The

[38] Other lawyers instructed in the Receivership.

[39] I say that subject to the concessions made by the Receivers in their written submissions, and subject to any disputes that may arise in the articulation of this Judgment in an order. This is a matter that I return to in Section N below.

Receivers referred me to a passage in a decision of Kekewich J – *Re Buckton* – which instances the very clear difference between the present case and ordinary litigation costs:[40]

> "In a large proportion of the summonses adjourned into Court for argument the applicants are trustees of a will or settlement who ask the Court to construe the instrument of trust for their guidance, and in order to ascertain the interests of the beneficiaries, or else ask to have some question determined which has arisen in the administration of the trusts. In cases of this character I regard the costs of all parties as necessarily incurred for the benefit of the estate, and direct them to be taxed as between solicitor and client and paid out of the estate. It is, of course, possible that trustees may come to the Court without due cause. A question of construction or of administration may be too clear for argument, or it may be the duty of trustees to inform a claimant that they must administer their trust on the footing that his claim is unfounded, and leave him to take whatever course he thinks fit. But, although I have thought it necessary sometimes to caution timid trustees against making applications which might with propriety be avoided, I act on the principle that trustees are entitled to the fullest possible protection which the Court can give them, and that I must give them credit for not applying to the Court except under advice which, though it may appear to me unsound, must not be readily treated as unwise. I cannot remember any case in which I have refused to deal with the costs of an application by trustees in the manner above mentioned.
>
> There is a second class of cases differing in form, but not in substance, from the first. In these cases it is admitted on all hands, or it is apparent from the proceedings, that although the application is made, not by trustees (who are respondents), but by some of the beneficiaries, yet it is made by reason of some difficulty of construction, or administration, which would have justified an application by the trustees, and it is not made by them only because, for some reason or other, a different course has been deemed more convenient. To cases of this class I extend the operation of the same rule as is observed in cases of the first class. The application is necessary for the administration of the trust, and the costs of all parties are necessarily incurred for the benefit of the estate regarded as a whole.
>
> There is yet a third class of cases differing in form and substance from the first, and in substance, though not in form, from the second. In this class the application is made by a beneficiary who makes a claim adverse to other beneficiaries, and really takes advantage of the convenient procedure by originating summons to get a question determined which, but for this procedure, would be the subject of an action commenced by writ, and would strictly fall within the description of litigation. It is often difficult to discriminate between cases of the second and third classes, but when once convinced that I am determining rights between adverse litigants I apply the rule which ought, I think, to be rigidly enforced in adverse litigation, and order the unsuccessful party to pay the costs. Whether he ought to be ordered to pay the costs of the trustees, who are, of course, respondents, or not, is sometimes open to question, but with this possible exception the unsuccessful party bears the costs of all whom he has brought before the Court."

In my judgment, the non-litigation costs of the Receivers (broadly conceived) are recoverable simply by virtue of the ordinary rule the receiver can recover the costs and expenses of the receivership. The same applies in this case as regards the litigation costs of the Receivers, whether those costs have arisen in relation to

[40] [1907] 2 Ch 496 at 414-415.

the Declaration Application or the Claim. If I were obliged to categorise these costs in Kekewich J's schema, then the costs relating to the Claim are "catetory 2" costs and the costs relating to the Declaration Application are "category 1" costs. But, as Kekewich J makes clear, the difference between these costs is one of form, not substance, and their treatment is entirely consistent with the general rule that receivership costs are to be recovered.

(3) So, my starting point for the recoverability of fees and disbursements, to include litigation costs, is very different from that contended for by the Claimants. Mr Collings, QC sought to contend that this was not the general position by reference to Millett J's decision in *Re MC Bacon*:[41] but this is a case where the Judge found that the costs sought to be recovered from the estate were not expenses "properly incurred in the winding up" and that the litigation commenced by the liquidators was to this extent at their own risk. The liquidators were, quite simply, not permitted to be paid out of assets the subject of a floating charge. That is not this case.

(4) Of course, I accept that the Receivers cannot simply put forward a figure for their costs, even if it looks reasonable, and require that it be paid. Their costs must be justified, and (as fiduciaries) they will be held to a high standard when making that justification. It is here that I must draw – in response to the general allegations of excess and unreasonableness made by the Claimants – on the findings that I have made in Section F above. The Receivers have produced a vast amount of material in support of the Fees and Disbursements that they claim. That material begins with the very detailed Reports (together with voluminous exhibits and annexes) which the Receivers submitted to the Court during the course of the receivership. Beyond this, I have the multiple statements of Mr Cooper, one of the Receivers, and the detailed narrative bills of the various lawyers involved.

(5) I am satisfied that – although high – the Receivers' costs are justified, and that there is no call for further, line-by-line assessment. In paragraph 20 of his report, Mr McClure stated that "[w]hilst the ledgers supplied in relation to work undertaken to [SH] go further in their descriptions than do those of Messrs Teacher Stern, in many instances they still do not go far enough. The following examples serve to illustrate the inadequacy of some of the descriptions provided when held against the time spent/costs claimed…". Mr McClure then provided five examples, numbered (a) to (e). Mr Phillips, QC took me through two of these examples, and I am satisfied *(i)* that if one goes beyond the bare descriptions into the other documentation already provided by the Receivers, far more detail emerges, and *(ii)* that in the light of such detail, the costs claimed are justified. Mr Phillips, QC cannot be accused of cherry-picking: he expressed a willingness to go through each and every instance cited by Mr McClure, but I considered that this was unnecessary. The fact is that the Claimants have raised no serious case regarding the Receivers' Fees or Disbursements. Although, as I have said, the burden rests on the Receivers, where the Receivers' claims are properly documented and on the face of that documentation justified as reasonable and

[41] [1991] 1 Ch 127, in particular at 140-142.

proportionate, it is incumbent upon the Claimants to explain why this is not so, and raise at least a *prima facie* case for further investigation. This the Claimants have not done.

(6) In *Brook v. Reed*,[42] David Richards J (sitting in the Court of Appeal) described the guiding principles that ought to inform the Court when considering the remuneration of appointees like receivers. The list contains some obvious matters, which I have already considered, namely that it is for the receiver to provide full particulars of his or her claim, and to justify that claim, the burden being on the receiver and doubts being resolved against him or her. That is the approach I have followed, although I have also paid regard to the third factor – the professional integrity of the receiver. I confirm that I have had regard to the other matters set out by David Richards J in this paragraph. As I have stated, I consider the Receivers' costs to be fair and reasonable in light of the complexity of the Receivership and the issues that the Receivers have had to deal with. In terms of proportionality, the value at issue is undoubtedly high, and I expected – but have seen – documentation of a high order of specificity and proper detail. If a further exercise – other than the line-by-line analysis contended for by the Claimants – had suggested itself (and none was put forward) I would have considered it on its merits. But my view is that I would take a lot of persuading to require the Receivers to engage in significant further work in justifying their costs, given the work that has already been done in this regard. To be clear, I do not consider such further work to be proportionate.

134. I should say that I have considered carefully whether there should be some discount to reflect the fact that the Receivers have not been successful on each and every point. The Receivers have lost on Issue 1 and not completely succeeded on Issues 5 and 6. I do not consider – bearing in mind the points set out above – that any discount should be made. The Receivers were, in my judgment, entitled to take the approach they did on these (as well as on the other) issues, and I consider that they needed the guidance of the Court in order for the account to be completed.

N. CONCLUSIONS AND DISPOSITION

135. I have set out my conclusions on the issues before me, and do not repeat those conclusions here. As I have described, the issues before me and which I have determined were more in relation to the true meaning basis of the Receivers' remuneration and cost recovery under the Receivership Order, the Discharge Order and the November and December Letters. There may be minor points of controversy that remain to be resolved, and I indicated during the hearing that I was alive to the possibility of this.

136. I am going to invite the Receivers to put together a draft order dealing with all matters arising out of the Declaration Application, the Claim and the account for further remuneration, and to submit that draft to the Claimants for their agreement and/or comment. Whilst I would very much hope that substantial agreement can be reached in light of this Judgment, I will list the matter for further hearing in the next three weeks, so that any outstanding matters, not capable of agreement, can be resolved then.

[42] [2011] EWCA Civ 331 at [36].

137. Finally, for the sake of completeness, there are two secondary points advanced by the Receivers, which are academic in light of my conclusions, but on which I should say a few words. The Receivers contended that I could reach the same outcomes in their favour either by varying the Receivership Order under the liberty to apply contained in paragraph 16 or else correcting the Receivership Order under the "slip" rule. Neither of these points arises, given the conclusions I have stated, but I should briefly say that I would have been disinclined to take either course.

138. It is extremely difficult to see how any of the matters on which I heard argument could be determined by reference to the "slip" rule. I simply do not see how that jurisdiction could have been exercised.

139. So far as variation of the order is concerned, I accept that (under CPR 3.1(7)) I have a broad jurisdiction and/or a broad discretion, but the circumstances in which that discretion can be exercised has clearly been laid out in a series of cases, beginning with *Tibbles v. SIG plc*, [2012] EWCA Civ 518, and further elucidated in *Optis v. Apple*, [2021] EWHC 131 Pat); *Allsop v. Banner Jones*, [2021] EWCA Civ 7; and *Neurim Pharmaceuticals (1991) Ltd v. Generics UK Ltd*, [2021] EWHC 530 (Pat).

140. In this case, I would have been most disinclined to vary the Receivership Order under CPR 3.1(7). There is no change of circumstance to point to, and (although perhaps not a final order in the absolutely strict sense) the Receivership Order is much more "entrenched" than an "ordinary" interlocutory order. I can see no basis for varying the Receivership Order under CPR 3.1(7).

ANNEX 1

(paragraph 1, footnote 1 of the Judgment)

Terms and abbreviations used

TERM/ABBREVIATION	FIRST REFERENCE IN THE JUDGMENT
AG	§28(1)
BFC	§4
BFCH	§14(3)
Claim	§6(2)
Claimants	§3
Costs	§12(4)
CPR	§95(2)
December Letter	§56
Declaration Application	§6(1)
Disbursements	§34(2)(b)(ii)
Discharge Order	§40
DRP	§1
Fees	§34(2)(b)(i)
Football Assets	§14(4)
HHB	§19(4)
Hilco	§19(1)
Judgment Debt	§9
November Letter	§58(3)
Post-Discharge Costs	§44
Quernmore Properties	§14(6)(h)
Receivers	§1
Receivership	§1
Receivership Application	§11
Receivership Hearing	§11
Receivership Interests	§12(1)

Receivership Order	§5
Report(s)	§12(2)
Residential Properties	§14(6)
Segesta	§2
SH	§18
Stadium	§4
Sums Receivable	§12(1)
Superseded Letter	§58(3)
third party creditors	§45
THL	§23
Travelodge	§4
VBFA	§5

ANNEX 2

(paragraph 15 of the Judgment)

"Resistance to the Receivership": Adopted from the Annex to the Receivers' written submissions

(The **bold** references are to the witness statements, exhibits and bundles before the Court.)

1. From the outset of the Receivership the Receivers encountered obstructive conduct from the Claimants and their legal representatives. This had a significant impact on the Receivers' time-costs and legal costs.

2. One index of the extent to which the level of correspondence with the Claimants has driven up the expenses of the Receivership is the fact that the term "HHB" (ie Haworth Holt Bell, the Claimants' solicitors) appears approximately 112 times in SH's time narratives for the period to 18 December 2019: **Cooper-2 [13/205/12]**).

(i) Access to documents and information

3. Mr Cooper had to obtain access to company documents and information:

(1) Mr Cooper asked Ms Christopher for access to BFCP's and BFC's financial records and books on 21 February 2019 **[PSC1/2/5]**.

(2) SH emailed HHB on 21 February 2019 asking that they explain the obligation to co-operate with the Receivers and to provide them with such information and documents as they reasonably required to Ms Christopher (who was also HHB's client) **[PSC1/26]**.

(3) SH sent HHB a letter by email on 21 February 2019 setting out the BFC personnel with whom the Receivers required to meet and a schedule setting out the information which the Receivers required: **[PSC1/41]**.

(4) Mr Cooper received reports suggesting documents had been removed or destroyed: **[PSC1/11/51]**, **[PSC1/11-12/2]**.

(5) The first documents which were provided were a Memorandum of Association and Articles of Association for BFC made under the Companies Act 1948 to 1976 both dated 4 December 1980 **[PSC1/103-106] [PSC1/107-113]** and a Memorandum of Association and Articles of Association made under the Companies Act 1985 dated 22 November 1985 and 16 October 1985 respectively for Glenhaven Properties Limited (an old name of BFCP) **[PSC1/114-119]** and **[PSC1/120-126]**. The records of Companies House suggested that these documents had been superseded. These documents were provided on 27 February 2019 (and only for the purpose of supporting the Claimants'

claim that the boards of BFCP and BFC had been improperly changed): **[PSC1/95-102]**.

(6) The second documents which were provided were two licence agreements between BFCP and Denwis Limited dated 17 August 2012 **[PSC1/165-173]** and 1 January 2016 **[PSC1/174-179**] licencing Denwis Limited to use office space in the Stadium and a space on the top floor of the Stadium known as the Penthouse. These were provided on 4 March 2019 **[PSC1/162-164]**.

(7) On 8 March 2019 HHB informed SH that much of the information and material requested had already been sent to Clifford Chance and was therefore not available, and that the rest would be posted to the Receivers: **[PSC1/321-33]**. Clifford Chance had already provided the Receivers with what information it had: **[PSC1/223/25]**.

(8) On 11 March 2019 the Receivers received a package of documents from the Claimants including **[PSC1/225/29]** tangible assets lists for BFCP and BFC, some share certificates, some leases for non-football assets, keys to these, insurance policies, occupation agreements for various premises at the Club. The information and documents received is indexed at **[PSC1/327-329]**.

(9) On 18 March 2019 SH requested information which was missing from the package sent: **[PSC1/333-337]**; on 24 March HHB responded explaining much of the information was not in its clients' possession: **[PSC1/350-354]**.

(ii) Access to Key personnel

4. Mr Cooper was unable to access key personnel:

(1) Although the Receivers changed the boards of BFCP and BFC on 25 February **[PSC1/5/23] [PSC1/60-63]** staff were repeatedly told that the changes in the boards were ineffective: **[PSC1/7/33] [PSC1/77] [PSC1/8/37] [PSC1/79]**.

(2) Ms Christopher instructed staff not to attend work, apparently in order to prevent them speaking to Mr Cooper: **[PSC1/3/12]**, **[PSC1/136-137/36]**, **[PSC1/224/26]** (BFC's financial controller only returned to work on 8 March and confirmed this was because he had been told to go home and stay there by Ms Christopher).

(3) Michael Parsons of Denwis Limited, through HHB, resisted the Receivers' requests to meet with him in relation to the Company's financial affairs **[PSC1/197-199] [PSC1/355-356] [PSC1/361-2] [PSC1/381-384].** Given the lack of availability of financial documents and information to the Receivers, speaking to Mr Parsons was important to the Receivers.

5. These difficulties made matters difficult for Mr Cooper because BFCP's and BFC's financial affairs were complicated. In particular, payments of £1 million had left BFCP's account following the making of the Receivership Order on 13 February **[PSC1/8/26]**, **[PSC1/200-1]**, **[PSC1/133-134/25]**, £36,185,419 of intra-group loans were written off in the period leading up to the Receivership **[PSC1/219-220/9-11] [PSC1/239-258]**. The finances of various group companies were intertwined eg **[PSC1/136-137/36]**.

(iii) Increased involvement of Stephenson Harwood

6. SH's involvement was required at all stages, and the level of its involvement was driven up by the Claimants' and HHB's uncooperative attitude as well as by the complexities of the Receivership. For example:

   (1) SH were required to make multiple requests for documents and information: **[PSC1/85-86]** (26 February), **[PSC1/185]**, (4 March), **[PSC1/209]** (6 March).

   (2) These were met by repeated complaints from HHB about the Receivers' conduct and requests for access but for a long time no answers: **[PSC1/36-38]** (21 February), **[PSC1/51-54]** (21 February), **[PSC1/95-102]** (26 February).

(iv) Allegations made about the conduct of the Receivership

7. Repeatedly, serious issues and allegations were raised in correspondence from HHB, requiring SH to devote time to dealing with them, and then dropped or not progressed. For example:

   (1) On 25 February 2019 SH provided the notices regarding the change in directors of BFC and BFCP to HHB [**PSC1/69-70].** In a letter of 26 February HHB provided copies of the Old Articles and claimed that although BFCP and BFC had changed to what it referred as the New Articles in 2014, they had "reverted" to the Old Articles, and that since the changes in board had been undertake pursuant to the New Articles, they were invalid: **[PSC1/96/5] [PSC1/97/12]**. After SH sought corroboration of this "reversion" in the form of the special resolution which effected it (in circumstances where the supposed reversion was not reflected in the records kept at Companies House, and the Receivers had other no reason to think that the change had been made) they were told that it was recorded in Marcus Smith J's petition judgment **[PSC1/144]**. No paragraph reference to the judgment was given, so that SH were obliged to read the entire 457 paragraph long judgment, only to discover that it no part of it supported HHB's point. No corroboration was ever provided for the "reversion" to the Old Articles and the matter was dropped.

(2) One of the Receivers' appointments to the BFC board, Ben Hatton, stopped a payment of £17,000 to Denwis Limited from being made on 28 February 2019 because he could not verify how it related to BFC: **[PSC1/12/5]**. On 28 February HHB wrote to SH **[PSC1/150-151]** accusing Mr Cooper of "*serious misconduct*" and having "*procured the freezing of all accounts of staff employed by Denwis*". The letter also demanded that the Receivers procure that BFC pay £107,000 to HHB's client account for Mr Oyston on the basis that this represented funds which did not belong to BFC. The letter said that if this was not done within 24 hours then HHB would commence proceedings against Mr Cooper personally for "*inter alia, knowing receipt and breach of trust*."

(3) At 22.54 on 28 February 2019 HHB wrote to SH accusing the Receivers (and BFC's board) of illegally and criminally forcing entry to premises covered by a lease to Denwis Limited and posting security guards there and saying an injunction would be sought if the situation was not remedied by 12 noon on 1 March: **[PSC1/148] [PSC1/152]**.

(4) SH responded on 1 March **[PSC1/154-157]** pointing out that Mr Cooper, as Receiver of shares, was not in control BFC's bank account, had not been responsible for stopping the payment to Denwis Limited and could not procure the payment of £107,000 and that the Receivers had not forced entry to any part of the football ground or positioned security guards anywhere. Some locks had been changed by BFC's board but not so as to restrict Denwis Limited's access to its office space. It also pointed out that SH did not act for BFC or its board but only the Receivers.

(5) HHB did not respond to this letter. However, on 4 March it wrote to SH threatening injunctive relief against "*BFCP, its directors, staff and agents*" in relation to alleged breach of licence: **[PSC1/162-164]**. It also sent an identical letter to Ben Hatton (one of the Receivers' appointees to the BFC board) care of SH: **[PSC1/180-182]**. Again SH had to write to HHB to point out that it did not act for BFCP or its directors: **[PSC1/183]**.

(6) On 8 March 2019 Clifford Chance sent Mr Cooper with a copy of a letter from HHB to the Court dated 7 March, pointing out that two non-Receivership Interests appeared to have been put up for auction by the Receivers along with the Residential Properties: [**PSC1/323-325].** The Receivers had not instructed these properties to be auctioned. The Receivers immediately notified the agents, Lambert Smith Hampton and London Auction House, that these were not Receivership Interests and the agents corrected their notice on the website: **[PSC1/224/27]**. On 12 March HHB wrote to SH complaining the Receivers were selling property over which they had no power: **[PSC1/330]**. On 14 March SH responded explaining that this had been the agents' error and that it had been rectified as soon as the Receivers were made aware of it: **[PSC1/331-332].** On 19 March Clifford Chance wrote to HHB explaining what had happened: **[PSC1/345-346]**. It transpired that these were properties over which VBFA

had possession orders and that it was VBFA which had instructed they be sold. The agents had simply misidentified the seller.

(7) Notwithstanding that the misunderstanding had been immediately corrected, had not prejudiced the Claimants (as the properties were in any event to be sold by VBFA) and that it had been completely cleared up by SH's letter of 14 March and Clifford Chance's letter of 19 March, HHB continued to send letters complaining about the mistake and demanding explanations: **[PSC1/338]** (HHB's email of 18 March), **[PSC1/340**] (SH's response of 19 March, re-sending the letter of 12 March), [**PSC1/347-8]** (HHB's letter of 20 March), **[PSC1/349]** (SH's letter of 21 March), **[PSC1/357-8]** (HHB's letter of 2 March), **[PSC1/364]** (SH's letter of 27 March), **[PSC1/367-368]** (HHB's letter of 2 April, wrongly dated 24 March), **[PSC1/376-377]** (SH's letter of 5 April), **[PSC1/388-389]** (HHB's letter of 12 April).

(v) Conduct post-discharge

8. As Mr Cooper explains in **Cooper-3 [19/367/15]** HHB's conduct has continued to increase SH's fees still further, for example:

(1) By replying to only one fee-earner rather than the whole team **[PSC3/60-74]**;

(2) By sending a large volume of correspondence in relation to a misplaced computer **[PSC3/75, 80, 112-133]**; and

(3) By demanding (at length) that the Receivers and SH respond to letters from a journalist or citizen-journalist professing a special interest in matters relating to Owen Oyston (and to whom correspondence between the Receivers and the Claimants is seemingly passed), which, amongst other things, accuse the Receivers of participating in money laundering by making Court-ordered payments in respect of the Claimants' judgment debt to VBFA **[PSC1/78-118]**.