Neutral Citation Number: [2021] EWHC 1315 (Ch)

Case No: G30BM045
G30BM046

IN THE COUNTY COURT AT BIRMINGHAM
Business and Property Courts Work

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 18/05/2021

Before :

HHJ DAVID COOKE

- -

Between :

Jugar Singh Johal (1) **Hardeep Singh Johal (2)**	**Claimants**
- and -	
Sulakhan Singh Johal	**Defendant**

- -
- -

John Brennan (instructed by **Consilium Legal Ltd**) for the **Claimants**
James McWilliams (instructed by **Irwin Mitchell**) for the **Defendant**

Hearing dates: 12-15 April 2021

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Approved Judgment

Covid 19 Protocol: This judgment is deemed to have been handed down at 10.30 on 18 May 2021 by release of electronic copies of this approved final version to the parties and to BAILII

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Approved Judgment

HHJ David Cooke:

Introduction

1. It is common ground that at a meeting on 12 (or 13) June 2013 the defendant Sulakhan Johal said he would pay each of the claimants Jugar Johal and Hardeep Johal, who are brothers of his, £168,000. The claimants accept that they have each received £42,000 and now, by claims consolidated and tried before me, sue for the balance of £126,000 each. Their case is that a binding oral agreement was made for payment of £168,000 to them in four instalments, in consideration of their giving up their claims to an interest in a business that was conducted through a limited company of which the defendant was the sole registered shareholder but which was, they say, treated as a family business in which they shared beneficial interests.

2. The defendant's position is that there was no binding agreement for one or more of the following reasons:

   i) The claimants had no such interest in the company or its business, which belonged to him alone and was not regarded as a family business. Accordingly the claimants could not provide consideration by giving up any such interest.

   ii) Rather the payment was to be made by way of gift, which he was free to honour or not as he saw fit, and he chose not to because his brothers resiled from promises he considered they had made to him not to start a competing business nearby.

   iii) Alternatively there was no intention to create legal relationships by anything said at the meeting.

   iv) Alternatively any agreement reached was too uncertain to be capable of enforcement by the court.

   There was a pleaded claim that if there was such a contract, the defendant entered it under duress and is entitled to avoid it and recover the sums already paid, but at the close of evidence Mr McWilliams rightly accepted that the evidence did not disclose circumstances capable of amounting to duress and that accordingly that pleading fell away.

3. The parties have two other brothers, Makhan Johal and Charanjit Johal. For convenience, I will refer to each of them by their first names, as they were at the trial.

4. Disputes over the beneficial ownership of businesses or properties said to be "family" assets are a very frequent subject of litigation in this court and others. It is very commonly the case that property is acquired and registered in the name of one family member, or a business is established and run on the apparent basis that it is owned by one family member, or a company owned by him, but other family members are involved on a more or less informal basis pursuant to arrangements between the family members that are either not documented or are incompletely documented, or where, to the extent that documents exist, it is said that they were created for external purposes such as presentation to authorities and do not represent the true arrangements within the family.

5. The essential nature of such disputes is whether arrangements can be shown by the evidence to exist that amount to the creation of interests enforceable by law, as they may do if it is shown that an express, constructive or resulting trust arises, or whether any arrangements or understandings that there were exist only as matters of family obligation and expectation that are not legally enforceable. Such claims are not doomed to fail because of the absence of documentary evidence, though that is inevitably a hurdle. The outcome often depends on findings made on disputed evidence of conversations between family members many years in the past, together with inferences from such documents as there are and the way in which the arrangements were implemented. This case is a variation on that theme.

Factual background

6. Given the issues that will be relevant to the outcome of this case, it is only necessary for me to describe the factual background in outline.

7. The parties' father Gurdial Singh came to the UK in 1963. He worked in a foundry in the Midlands. He was joined in 1967 by his wife Malkiat Kaur and their then three children, Makhan, Sulakhan and Charanjit. Hardeep was born in England in 1969, and Jugar in 1972.

8. Sulakhan was made redundant from a job at British Steel Springs in 1984. He purchased from BSS the assets used to make various parts for bicycles and set up a business, at the time unincorporated, to make those parts under the name Whiteburner Products. According to the claimants, this followed a family meeting at which it was agreed that he should do so for the benefit of all the members of the family and the business was financed, in part at least, by monies provided by the parents following the compulsory purchase of their house. Sulakhan's position is that there was no such discussion; the new business was his idea and financed solely by him.

9. In 1996 Sulakhan discovered that Mr Kanu Dheda Patel (aka Joe Patel) wished to sell a pub business that he owned known as the Sportsman in West Bromwich. He agreed a price of £135,000 to be paid in instalments and was allowed into possession in July 1996, notwithstanding the lease could not be assigned immediately. It took nearly three years to complete negotiations with the landlord, but the lease was eventually assigned into Sulakhan's sole name in March 1999.

10. According to the claimants, this purchase was also agreed after a family meeting at which their father agreed that it would be a good investment for the family and should be acquired on the basis that it was a family business to be run for the benefit of all and managed by Jugar. Jugar was trained up by Joe Patel in all aspects of the business and took over as manager with day to day charge of the operations from the beginning while Sulakhan worked during the day at the engineering business and came to the pub in the evenings. The purchase was financed in part by £12,000 provided by Hardeep and his wife (later repaid) and in part by monies lent by family friends Keru Singh and Amrik Singh at their father's request.

11. Sulakhan's account is that there was no such family meeting, the purchase was his idea and for his sole benefit and financed mainly by commercial borrowing by him. The family friends lent to him at his request and not to his father or at his father's request, and funds had come from Hardeep only because he had expressly asked his brothers if they wanted to invest to purchase shares in the business; only Hardeep had wanted to do so and initially provided some money but he later changed his mind and

was repaid. Jugar had worked at the pub but only as employed bar staff and not a manager.

12. Gurdial Singh died in 1998. Whiteburner Products Ltd ("the Company") was incorporated in February 2003 and the engineering and pub businesses were transferred to it. Sulakhan has at all times been the sole registered shareholder and director. Hardeep was named as company secretary, though he says Sulakhan did this without telling him and he never acted as such.

13. Over the years substantial amounts of money have been provided by Sulakhan for the benefit of other family members, to pay for weddings, purchase and/or renovation of houses and acquisition of other business interests. Mr Brennan prepared a schedule from Sulakhan's own evidence that was not disputed; those items that could be quantified totalled over £400,000 but the true total would be much higher if the unquantifiable items were taken into account. There were also other items that emerged in the evidence that were evidently significant but where no figures could be given. Jugar estimated in addition that Sulakhan had spent many hundreds of thousands of pounds buying and rebuilding his own house. In each case the only identifiable source of funds is the business. Sulakhan's case is that any payments he made to or for other family members were gifts by him; the claimants say they represented his obligations to other family members who were considered also to have interests in that business.

14. It is evident that disputes began to arise between the parties from at least some point in 2012, and that the claimants were asserting that they had interests in the business but were not receiving commensurate shares of its fruits. Sulakhan's case is that his brothers never had any such interests, the money generated by the business was his alone and that although he provided substantial sums to his brothers and other family members from those monies, he did so by way of gift without obligation.

15. Among the matters referred to in relation to that dispute are the following:

    i) In late 2012 Hardeep contacted Mr Sira, the solicitor who acted for Sulakhan, and asked him to prepare an agreement documenting a partnership between Hardeep, Jugar and Sulakhan in the Sportsman business. Mr Sira produced a draft document but nothing was executed. According to the claimants, Sulakhan said he would recognise their interests by documenting a partnership, asked Hardeep to make contact with Mr Sira to get a draft agreement and promised that he would attend a meeting with Mr Sira to give instructions, but then reneged. Sulakhan says he made no such promise and Hardeep acted on his own initiative. Mr Sira gave evidence that he regarded Sulakhan as his client and so far as he was aware Sulakhan was the owner of the business, that Hardeep had told him Sulakhan wanted a partnership agreement so he produced a draft, but took it no further when Sulakhan told him he did not intend to enter any partnership with his brothers. Mr Sira had no meetings with the claimants and so could say nothing about what might have been discussed between them and Sulakhan.

    ii) Sulakhan says that from 2012 onwards Hardeep and Jugar started to ask him for shares in the Sportsman, but he always told them they had no interest in it and never had had, and that he had maintained that position despite pressure they put on him.

iii) The claimants say that in early 2013 Sulakhan told them that if they maintained their interest in the Sportsman was valuable they should get it valued. They arranged for a valuer, Mr Toon, to meet them and Sulakhan at the pub, when Sulakhan was to provide financial information for the valuation. When they met however Sulakhan handed over only a single piece of paper, Mr Toon could see at once that it could not truly represent the profitability of the business and so could not produce any valuation. He told them however to "nail your hands to the bar", meaning they should on no account give up their interests unless properly paid as the business was evidently successful and therefore valuable. Sulakhan denies suggesting any valuation or providing any information, and though he accepts that he did encounter Mr Toon at the pub on one occasion, he says that was entirely coincidental and not a result of any arrangement with him and he gave no information to Mr Toon.

iv) The claimants say that in late 2012 or early 2013 as a result of their pressing for a greater share in the benefits from the pub Sulakhan agreed that they could each have £10,000 in cash per quarter from the money it generated, and that he personally gave each of them the first £10,000 at his home in early 2013. In March or April 2013 when the next payment was due Sulakhan was in India and Jugar was managing the pub. Hardeep wanted his £10,000 so Jugar took it from the till and gave it to him. Sulakhan maintains that there was no such agreement, he did not give his brothers £10,000 each and the money taken by Jugar was stolen.

v) In early 2013 Hardeep says he was contacted by Ranbir Mann, a solicitor and friend of the family, who told him that he, Mr Mann, had been contacted by Sulakhan who wished to resolve the dispute with the claimants and was prepared to pay Hardeep and Jugar £200,000 each to "exit" the business. Mr Mann made a witness statement and gave evidence confirming that he had been telephoned by Sulakhan and asked to meet Sulakhan to discuss these matters. He met Sulakhan at the engineering factory and was told about the background to the dispute and that Sulakhan would be prepared to pay his brothers to exit the business, though he could not recall how much Sulakhan said he was prepared to offer. He confirmed that his impression from what was said by Sulakhan was that "exiting" the business meant giving up a share in it and not just leaving as an employee. Sulakhan denies having any such conversation with Mr Mann, but having heard Mr Mann's evidence, I accept it and find that Sulakhan did contact Mr Mann and have the discussion Mr Mann describes.

vi) The claimants say that when Sulakhan returned from India they were asked to meet him at Jugar's house, which they did on 10 June 2013. He said he wanted to buy them out of their shares in the family business but offered £125,000 each and not the £200,000 Mr Mann had relayed to them. They refused this and Sulakhan handed them letters purporting to make them redundant on the grounds of a downturn in business, and proposing a payment of just over £4,000 (or £6,000 according to the draft compromise agreement attached). Later that day the locks at the pub were changed and they were cut off from remote access to the security camera system.

vii) According to Sulakhan there was no such meeting and he served the redundancy letters at his brothers' homes after consulting an employment

solicitor because Hardeep and Jugar were not working as they should have and were stealing from the till.

The meeting on 12 June 2013

16. Hardeep says he was then contacted by Makhan's daughter, Gurbinder, and told that Sulakhan wanted to meet them to resolve the family issues and was prepared to pay him and Jugar £200,000 each. They agreed to meet at Jugar's house in the evening of Wednesday 12 June 2013 (various statements refer to 13 June but all agree it was a Wednesday so must have been 12 June). Sulakhan came with his niece Gurbinder, their brother Makhan and Amrik Singh, a long standing family friend referred to as Sulakhan's brother in law (though he is not actually a brother in law). The parties' mother Malkiat Kaur was present, as was Jugar's and Hardeep's father in law Gurbaskh Singh.

17. When the meeting started however Sulakhan again offered £125,000 and not £200,000. There was a heated discussion but eventually after intervention by Amrik Singh urging them to settle their dispute Hardeep, Jugar and Sulakhan agreed on a figure of £168,000. Sulakhan said he could not afford to pay it all at once but would do so in four instalments over 12-18 months. Amrik Singh said words in Punjabi that Hardeep translates as meaning he would "stand by" Sulakhan's agreement to pay that amount. They shook hands and left.

18. Shortly afterwards, probably on Friday 14 June, a meeting was arranged at the offices of Mr Mann's firm. Mr Mann had been told that terms were agreed and asked one of his colleagues Mr JS Bahra to act for Hardeep and Jugar to prepare a settlement agreement. Hardeep said he could not recall who had arranged the meeting but its purpose was for Sulakhan to make the first payment of £42,000 each. At the meeting, Mr Bahra produced a draft settlement agreement but Sulakhan refused to sign it. He did however hand over a cheque for £42,000 to Hardeep and one for £35,000 to Jugar. He told Jugar that he would pay the balance of £7,000 into a Khut, a community fund from which Jugar had drawn that amount. Jugar accepts that he should give credit for that £7,000. Sulakhan promised that he would pay the remaining instalments and said he would look at the draft agreement and get back to them about it, but he never did.

19. Sulakhan's account is that his niece Gurbinder had spoken to him after he delivered the redundancy letters saying that "the family needed to sort this mess out", and agreed her proposal to attend a meeting at Jugar's house. He denied that he had told her he would pay £200,000, or any amount. At the meeting Hardeep and Jugar had asked him for money, which he had not been expecting, demanding first £280,000 then £200,000 each to help them "get set up". According to his witness statement "they never once mentioned anything about having any share or interest in the Sportsman or Whiteburner". He had reluctantly agreed to pay them £168.000 each but "I reiterated that this was not for shares in my businesses; I said it was just to help them get set up for the future". Hardeep and Jugar had said they wanted to open their own pub; he had told them they should not do so within 5 miles, which they agreed. He had said he would pay over a few years and no specific dates were agreed.

20. A few days later, he thought about a week, he had been asked to go to a meeting at Mr Mann's office to hand over the first cheques. He had been presented with an agreement but refused to sign, saying he had not agreed a legal contract but only to make a gift. He did however hand over the two cheques. Thereafter he discovered, among other things, that Hardeep and Jugar had registered a company called "The

Sportsman Grill Ltd", though it never traded, and had acquired a pub called the Cricketer's Arms about a mile from the Sportsman. These he considered to be contrary to their assurances to him, and he decided not to pay the remaining £126,000.

Relevant law

21. In closing, Mr McWilliams agreed with the submission of Mr Brennan that an agreement not to pursue a claim may be good consideration to support a binding contract, even if the claim is doubtful and even if it is later found by the court to have been without merit, as long as, at the time of the agreement, the party advancing the claim believed in good faith that it had a reasonable chance of success. In contrast, giving up a claim that the person advancing it knows to be invalid or does not believe to have a reasonable prospect of success is no consideration. Mr Brennan referred to *Simantob v Shavelyean* [2019] EWCA Civ 1105 at para 49; the point was restated by the Court of Appeal recently in *CFL Finance Ltd v Laser Trust* [2021] EWCA Civ 228 at para 37.

22. That being so, on the issue of consideration, I do not have to decide whether a claim by Hardeep or Jugar to a beneficial interest in the business would have succeeded but only whether Hardeep and Jugar put forward such a claim in good faith and believed that it had a reasonable prospect of success.

Discussion and conclusions

23. In general, having heard the parties give their evidence, I am satisfied that that of the claimants is more likely to be reliable than that of the defendant. The defendant's account has over time been variable and inconsistent and in important respects is in my judgment incredible.

24. It is clear, and the defendant himself accepted, that the claimants have for some time been asserting that they had beneficial interests in the business at the Sportsman and/or the engineering business. The defendant's own account is that he always rejected these claims, but there can be no doubt that he knew they were being put forward.

25. Further, I am satisfied that from at least the early part of 2013 there were discussions about an agreement for the claimants to be paid a sum in order to buy out those claims, and that the defendant was prepared to offer such a payment. I have already indicated that I accept Mr Mann's evidence that it was the defendant who contacted him to let him know of the disagreements between himself and the claimants and that he was prepared to offer a payment to the claimants for them to "exit" the business, and in the circumstances I have no doubt that Mr Mann was right to understand that what the defendant meant by this was that the claimants would give up whatever claim they had to an interest in that business.

26. I also accept the claimants' evidence that they had discussed the value with the defendant and arranged, as a result of those discussions, for Mr Toon to attend with a view to making a valuation. I am satisfied that the defendant met them and Mr Toon with a view to discussing that valuation, and not by chance, and I accept the claimants' evidence that the defendant handed over some financial information on one piece of paper, which Mr Toon could immediately see was inadequate.

27. It may be that whatever was so provided was taken from the published accounts of the company. If so, it is certainly plausible that Mr Toon may have considered that they could not have fairly represented the performance of the business. All the witnesses were somewhat vague when it came to discussing the actual financial performance of either the Sportsman or the engineering business, but from what material was available it seems likely that the Sportsman at least has been highly cash generative, as it has been the only apparent source of income that has provided deposits for and/or purchase and/or renovation of at least six houses in this country, two of which (Sulakhan's and Jugar's) are said to be very large and to have involved very significant costs, approximately £60,000 towards family weddings, what is described as a large house in Nawanshar in India and two apartments in Dubai, as well as numerous other benefits for family members. At the same time, the company's published accounts seem to show that it has since 2010 suffered cumulative losses exceeding £250,000. Although those accounts do not include profit and loss accounts, the annual losses can be deduced from the mounting cumulative deficit on profit shown in the balance sheets. Jugar had made copies of the till totals for a period which implied turnover at a level at which he said he was certain it was highly profitable, having been its manager and being fully aware of the level of outgoings.

28. I have no doubt that if Mr Toon had experience in the industry he would be well aware of the likely level of true profitability of such businesses and whether that was correctly represented in any published figures, so it is perfectly plausible that he would, as the claimants said, have told them he could not produce a valuation based on such figures and that they should not give up their claims unless properly paid on the basis of reliable financial information.

29. The serving of redundancy notices appears to have been a stratagem by Sulakhan. It was no doubt consistent with his general position that the claimants were no more than paid employees of the business, but I am satisfied there was no genuine dismissal from employment on grounds of redundancy. Jugar I find was the manager of the pub, as was confirmed by Mr Joe Patel who sold the pub and gave evidence for the defendant, so it is highly improbable that his post had ceased to exist. The sums offered for redundancy and notice pay were not consistent with the PAYE returns the company had made stating their earnings, which as Mr Brennan showed were themselves somewhat implausible, making unrealistic claims of regular large payments of statutory sick pay for each of the claimants. The sums offered were not actually paid, and seem to have been forgotten about on all sides after the 12 June meeting and the £42,000 payments.

30. Sulakhan accepts that he was urged by his niece Gurbinder to meet the claimants to sort out "this mess". That can only have referred to the fact that the claimants were in dispute with him over their claim to an interest in the business, which dispute he must have exacerbated by his serving of contrived redundancy notices two days beforehand.

31. As to what was discussed at the meeting on 12 June, there are of course inconsistent accounts from the parties themselves. Amrik Singh gave evidence, but it was of little assistance. He appeared to have a reasonably detailed recollection of how he came to be at the meeting on 12 June, and also at the second meeting a few days later at Mr Mann's office. He could not however apparently recall anything substantial about what was said on either occasion. It was put to him that he had said he would "stand by" the payments Sulakhan said he would make, and Amrik first said he did, and then

that he did not, know what Punjabi phrase was being referred to. On the other hand he clearly knew that Sulakhan had promised some payments and not made them; he said he had been contacted by the claimants afterwards but told them "what do you want me to do about it? Pay you myself?".

32. Sulakhan's account of the meeting is inconsistent. In his witness statement he says that Hardeep and Jugar made no mention of any claim to an interest in the business, which itself would be incredible since that was the focus of the dispute they had been pursuing with him for many months. It is more incredible that he then apparently said of his own initiative, that the money he was to pay was not connected with any such interest. Why would he raise that if the claimants had not?

33. On his own account, Sulakhan was keen to impose conditions about starting up in business nearby, which might or might not have been something the claimants had in mind, but did not seek to get the claimants to agree to withdraw any claims they had to a share in his business although he knew they were making such claims. If that were right, they would have been able to accept his gift and pursue their claims to a share as well. I do not regard it as likely that Sulakhan, who had so strongly resisted such claims for an extended period, and on his own account was at pains to stress that the payments he said he would make did not recognise the validity of those claims, would have omitted to insist that the claimants give them up in return for the money.

34. Sulakhan's pleaded case was that at the meeting he had been asked to provide financial assistance to the claimants to assist with "financial difficulties" and that though he agreed to do so "no terms were agreed at all". He did not expand on this in reply to a Pt 18 request. His account of request for funds "to help them get set up" and imposition of terms by him about non-competition came later in his witness statement and were inconsistent with that pleading. In his oral evidence, Sulakhan said that he had insisted that the claimants should not open a business within five miles when they met at Mr Mann's offices. It seemed to come as an afterthought to him to say that there had been discussion on that topic at the 12 June meeting as well.

35. Considering all the evidence, I find that the meeting was in substance as the claimants describe. It was called to resolve the dispute over the claimants' claimed interest in the business, and whether Sulakhan would make a payment to them for them to "exit" the business, which meant not only ceasing to work in it but ceasing to have any claim to own part of it. It was a continuation of the process Sulakhan himself had started by making his own approach through Mr Mann to buy them out. By the end of the meeting, I find that the parties had agreed on payments of £168,000 to each of the claimants, in return for which they would exit the business, with the meaning described. I find there was no discussion of any condition about not opening a competing business. That, I find, was only raised by Sulakhan much later, as a pretext he gave for not making the further payments he had promised. No doubt during the meeting Sulakhan may have stated his position that the claimants had no ownership interest and that he was not accepting their case by making any payment; he may even have said that he considered he was doing so as a gift to them. But the nature of the conversation was such that in truth, he was agreeing to pay in exchange for the claimants giving up their claims, whatever they were worth, and not as a separate gift independent of whether or not the claimants pursued their disputed claims..

36. As to instalments, in his oral evidence Sulakhan accepted that he had mentioned a period for payment, but that it was for four instalments over two years and not 12-18 months as the claimants said. That acceptance also went beyond his pleaded case. I

am satisfied therefore that instalments were discussed, that the claimants' account of that discussion is more likely to be accurate, and I therefore find that Sulakhan said he would pay in four instalments over a maximum of 18 months. Given that one payment was to be made immediately, the inference would be that he was agreeing to three further evenly spaced payments, ie at six monthly intervals with the last 18 months later.

37. The agreement to pay £168,000 was therefore made in return for each claimant agreeing to give up any claim to an interest in the business. For the reasons given above, that would amount to valuable consideration if the claimants believed in good faith that such a claim would have had a reasonable prospect of success.

38. I am satisfied that the claimants did hold such a belief, and that they had reasonable grounds for doing so. It is not necessary, as I have said, for me to find that the claim would have succeeded if brought before a court. There were no doubt grounds on which it could and would have been defended. But there were good reasons to think that it might have succeeded, including:

    i) A claim based on express or constructive trust would have depended in large part on evidence of matters discussed and agreed orally between family members. The claimants' case was supported by their mother, who would likely have been present on the occasions when relevant discussions were held, and have been in a position to be aware of how the arrangements were regarded within the family. Malkiat Kaur made a witness statement in support of the claimant, though she unfortunately died before she could give her evidence at trial.

    ii) There is credible evidence that both claimants worked in the business in different capacities for rewards that considerably exceeded any stated wages or salaries paid to them, supporting their contentions that they were not truly regarded as mere employees of Sulakhan.

    iii) In particular the evidence shows that contrary to Sulakhan's position Jugar was trained as and acted as the manager of the Sportsman from the time it was acquired, supporting his case that he was much more than an employed barman paid the minimal wages disclosed by the records, even if his responsibilities did not extend to accounting and tax matters that were dealt with by Sulakhan.

    iv) There was evidence, which I have accepted, that Sulakhan himself recognised the viability of such claims by his approach through Mr Mann to offer payment in settlement.

39. I find therefore that the claimants did give valuable consideration for the promise of payment that I have found was made to them.

Intention to create legal relations

40. Next, there is the issue raised as to whether there was any intention to create legal relations in the meeting on 12 June 2013. Mr McWilliams submits that those discussions then were in a social context and that there is a rebuttable presumption that statements made in such a context are not intended to be legally binding. The claimants could not, he submits, have considered that they were legally binding

because they thereafter approached a solicitor to have them drawn up into a written agreement and presented to Sulakhan for signature. That was unusual in the context of family dealings which had previously been done informally without writing and implied that the claimants considered there would be no binding agreement unless written and signed. When Sulakhan did not agree to sign they waited over 5 years before bringing proceedings to enforce the alleged agreement. They were prompted to do so, he suggested, when they discovered that Sulakhan had sold the engineering business premises at a substantial profit. When they first considered doing so they consulted a solicitor with a view to making a claim not to enforce the settlement sum but to assert a continued interest in the Sportsman business.

41. I do not accept that the authorities show any such rebuttable presumption as Mr McWilliams suggested. No such presumption was mentioned in *Blue v Ashley* [2017] EWHC 1928 (Comm), to which Mr McWilliams referred me, although it is right to say that at para 80ff Leggatt J examined in detail the circumstances in which statements were made during an evening's drinking in a pub, finding inter alia that it was a mainly social occasion though having some business purpose, and concluded that on the facts of that case an impartial observer would not have concluded they were intended to be binding.

42. In contrast here the occasion was not a family social gathering but a meeting convened specifically, as Sulakhan himself accepted, for the purpose of resolving family disputes about ownership of a business. Further, as I have found, it was a meeting at which the parties expected to discuss what if any sum Sulakhan was prepared to pay for the claimants to give up their claims to a share of ownership. That in my judgment was predominantly a commercial context, albeit involving commercial matters between family members, and the agreement reached was one that dealt with commercial matters. Accordingly, the starting point is that the onus of proving that there was no intention to create legal relations is on the party so asserting, ie Sulakhan in this case, see Chitty on Contracts (33rd edn) at para 2-169.

43. There is nothing in the circumstances that in my judgment satisfies the onus that Sulakhan faces. Whether or not he maintained at the meeting that he was offering a gift, it is plain that the claimants did not regard it as such and for the reasons I have given it is not what any objective observer would have considered was the outcome. There is no evidence of any statement to the effect that the agreement was "subject to contract", by any of the participants. If the claimants decided to have it documented later, that is not something they mentioned at the meeting because Sulakhan himself says he was taken by surprise when presented with a document at the solicitor's office. It follows that there can have been no joint understanding at the meeting that the terms would not be binding until written down and signed.

44. Any wish by the claimants to have the matter put in writing does not in my judgment imply any acceptance or understanding by them that it was not already binding, but rather a sensible wish on their part to minimise the risk of disputes in the future in circumstances where, on their view, Sulakhan had in the past made oral promises to them from which he had reneged. It is true that the claimants waited some time before suing, but it is clear from the evidence that they did not abandon the position that Sulakhan was obliged to make good what he had promised; the evidence shows that pressure was put on Sulakhan by the claimants themselves and by their mother, and attempts were made to do so through Amrik Singh, albeit to no avail. The claimants'

explanation that they were not able or willing to commit the funds necessary to pursue the claim in court is by no means incredible.

45. It is right that the claimants did consult Mr Bahra about what claim they could make having found out that Sulakhan had sold the engineering factory. For reasons unexplained there is among the disclosure a draft set of instructions to counsel prepared by Mr Bahra seeking advice on whether the claimants could maintain any claim to an interest in the Sportsman. The instructions were never sent, and contain nothing that shows that the claimants gave instructions to Mr Bahra inconsistent with the account they now give. It may be inferred that either the claimants, or Mr Bahra, considered that the effect of Sulakhan's not having complied with the settlement agreement might be that they could resurrect their original claims to an interest in the business or its assets, but if so that would have been wrong as a matter of law, as no doubt the claimants might have been advised if the draft instructions had ever been sent.

Uncertainty

46. Lastly Mr McWilliams submits that if any agreement was reached it was too uncertain and incomplete to be enforceable. There was no agreement as to what interest the claimants had, or how it was to be transferred to Sulakhan. No clear terms were agreed as to when payment had to be made or by what instalments.

47. I reject that submission: it was not necessary to agree what interest the claimants had, or even that they had any such interest, in order for them to agree to give up their claims to such an interest. Given that the claimed interest was merely equitable, no formalities were needed to transfer it to Sulakhan; the compromise reached would operate to prevent any such interest being asserted in future. Even if any assets of the business had been registered in their names, it would not have been necessary to agree in advance what steps would be undertaken to transfer them to Sulakhan or the Company; the claimants would have been obliged to do so as a result of the agreement they had made. Any uncertainty as to dates of payment of instalments can be resolved by findings of fact as to what the parties agreed, expressly or by implication, and I have made those findings. Even if it had been the case that no findings could be made as to instalment terms, the court would be likely to infer that payment of the agreed total was due either immediately or on reasonable demand.

Conclusion

48. There will be judgment for the claimants for £126,000 each, with interest calculated on the basis that payment was due in three equal instalments respectively 6, 12 and 18 months after 12 June 2013.

49. I will fix a date for this judgment to be handed down without a hearing or attendance, and invite the parties to agree the order resulting. If there are matters arising that cannot be resolved by agreement (the rate of interest may be one) they should if possible be dealt with by written submissions, to be received not later than the day before the handing down. If a hearing is necessary, counsel should provide details of the unresolved matters, an agreed time estimate and their dates of availability.