Neutral Citation Number: [2021] EWHC 1747 (Ch)

Claim No. CR-2020-000984

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF ETP (UK) LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2006

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

Before:

DEPUTY HIGH COURT JUDGE LANCE ASHWORTH QC

- -

Between:

AZIL YILDIZ

Claimant

- and -

(1) HASSAN TURK
(2) ETP (UK) LIMITED

Defendants

- -
- -

Robert Salis (instructed by **Applerose Solicitors**) for the **Claimants**
James Stuart (instructed by **Miya Solicitors**) for the **1st Defendant**

Hearing dates: 4th, 5th, 6th, 7th and 10th May 2021
Judgment: 28th June 2021

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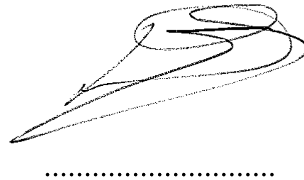
Approved Judgment

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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LANCE ASHWORTH QC

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 am on Monday 28 June 2021.

Introduction

1. The Claimant, Aziz Yildiz ("**Mr Yildiz**") claims to be the beneficial owner of 30% of the issued share capital in ETP (UK) Limited ("**the Company**"), all of the shares in which are currently registered in the name of the First Defendant, Hassan Turk ("**Mr Turk**"). Mr Yildiz seeks a declaration that he has been such since 17 February 2017, along with a declaration that he has been entitled to be entered into the Register of Members as a holder of 30% of the shares since 17 February 2017, and an order for rectification of the Register of Members to show him as owner of 30% of the shares and Mr Turk as the owner of 70% of the shares. He seeks further ancillary orders.

Preliminary Observations

2. This matter was heard fully remotely. Regrettably, neither party had sought directions from the Court as to from where the witnesses were to give evidence. Accordingly, on the first day of trial I was informed that it was intended that the witnesses would give their evidence from their own homes, unsupervised, but apparently having been supplied with access to a copy of the electronic bundle. I indicated that I did not think that this was appropriate and that the witnesses should, at least, be giving evidence from their respective solicitors' offices with the other side having the opportunity, should they so wish, to have an observer present while that evidence was being given.

3. It was too late to do anything about the evidence on the first day with the result that Mr Yildiz began his evidence from his home. While he moved the computer around to show that there was no one else in the room with him, this was very unsatisfactory. It lacked any degree of formality and was not conducive to him giving his best evidence.

4. On day 2, Mr Yildiz continued his evidence from his solicitors' offices, as did all subsequent witnesses, which was more satisfactory, but far from perfect as it transpired part way through his evidence that he had his own notes with him. There also appeared to be IT issues, meaning that the witnesses were having to access the bundle on the solicitors' computer. No representative of the other side's solicitors was present. Had the witnesses given evidence on their own, I have no doubt that locating documents in the bundle would have been even more difficult than it was.

5. The electronic bundle (running to over 1,100 pages) was poorly prepared, with 3 differing and updated versions being lodged with the Court after documents had been inserted, the last of these arriving after I had commenced the pre-reading, marking up the second version as I went. The electronic pagination did not match the hand-written pagination on the hard copies which counsel had, but the Court did not. I am grateful to both counsel that once this had been recognised, they were able to adapt to the electronic pagination although this inevitably led to some stumbles and some confusion with the witnesses from time to time.

6. I make these observations to emphasise the need for parties taking part in remote trials to give proper consideration well in advance of the beginning of the trial as to the practicalities involved in such trials. Parties should discuss such matters in advance and, even if arrangements are agreed between them, they should seek the approval of the Court as to how witnesses are to give their evidence (Navigator Equities Ltd v. Deripaska [2020] EWHC 1798 (Comm) at paragraph [9]).

Background

7. The Company owns and operates a pharmacy at 9 Colman Parade, Southbury Road, Enfield, Middlesex. Until 17 February 2017, 100% of the shares in the company were owned by Mr Dipak Shah ("**Mr Shah**"), who was an authorised dispensing pharmacist. He carried on business through the Company. Mr Shah has a brother, Hitesh Shah ("**Mr Hitesh Shah**"), who is also a pharmacist and who used to be in partnership with Mr Shah until 1977. That partnership used to have 2 branches, one of which was the pharmacy at Enfield.

8. Mr Shah has a sister, who had been suffering from a very severe form of rheumatoid arthritis among other medical conditions. She was dependent on family members, including Mr Shah, to care for her and meet her day-to-day needs.

9. Mr Yildiz is an accredited pharmacy technician. He was employed by the Company from March 2013. He is a member of the Turkish Kurd community in and around Enfield. It is clear that Mr Shah thought highly of him and his work ethic.

10. Mr Turk is a businessman and also a member of the Turkish Kurd community in and around Enfield. He has no pharmacy qualifications nor prior to 17 February 2017 any experience of pharmacy businesses.

11. Mr Turk has a daughter, Ebru Turk, who worked part time in the business run by the Company from about February 2016. Ebru Turk's then fiancé and now husband, Mr Halil Karahan, also worked in the pharmacy business run by the Company, albeit that prior to February 2017 he had no qualifications.

12. Mr Shah found it increasingly difficult to combine his commitment to looking after his sister with his responsibility for running a busy pharmacy. Sometime in late 2015 to early 2016, Mr Shah began to explore the possibility of selling the Company, preferably on terms that included him remaining as the supervising pharmacist for the business albeit on a part-time (3 to 4 days a week) basis.

13. In circumstances which will have to be considered in greater detail below, on 17 February 2017 a detailed Share Purchase Agreement ("**the SPA**") running to over 100 pages was entered into between Mr Shah as "Seller" and Mr Turk and Mr Yildiz as "Buyer", under which Mr Shah sold and Mr Turk and Mr Yildiz bought the entire issued share capital (100 shares) of the Company for the sum of £1,225,000.00 payable in cash on completion. Mr Shah resigned as a director of the Company and Mr Turk and Mr Yildiz were appointed directors.

14. There were 2 supplementary agreements, one for the transfer of the goodwill of the business and fixtures and fittings for £12,500 and the second for the transfer of the stock of the business for £40,000.

The terms of the SPA

15. The SPA is in a fairly standard form for a sale of shares between a seller and a buyer. However, there are some parts of the SPA which are relied on heavily, in particular by Mr Yildiz, which it is necessary to set out:

"*BACKGROUND*

…

(F) On Completion the Buyers will procure that 70% of issue shared and/or voting rights will belong to Mr Hassan Turk and 30% of the issued shares and/or voting rights will belong to Mr Aziz Yildiz.

COMPLETION

4.4 At completion
(a) the Seller shall:
(i) deliver or cause to be delivered to the Buyer the documents and evidence set out in paragraph 1 of 0 (sic – this is clearly intended to be a reference the Completion Conditions and it was not suggested to me otherwise)

15 ***ENTIRE AGREEMENT***

This agreement (together with the documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16 ***VARIATION AND WAIVER***

16.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.2 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

16.4 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

Seller's obligations at Completion

1. DOCUMENTS TO BE DELIVERED AT COMPLETION

At completion, the Seller shall deliver (or cause to be delivered) to the Buyer:

(a) a transfer of the Sale Shares, in agreed form, signed by the registered holder in favour of the Buyer (or its nominee);

> (b) *the share certificates for the Sale Shares in the name of the registered holder or an indemnity, in agreed form, for any lost certificates."*

The Pleadings

16. Mr Yildiz's pleaded case is that in about October 2016, he and Mr Turk approached Mr Shah with a proposal to buy his shares in the Company, along with stock, fixtures and fittings and the goodwill of the pharmacy business, and to take on the existing liabilities of the Company. He pleads that Mr Shah agreed to the proposal and the parties entered into the SPA on 17 February 2017.

17. He sets out in paragraph 7 of the Particulars of Claim the finance which was obtained, namely:
    (a) a loan for £1 million from NatWest plc ("**the Bank**") to Mr Yildiz and Mr Turk jointly, security for the repayment of which was granted over 2 properties owned by Mr Turk, over the Company's leasehold interest in the pharmacy premises and by way of a debenture over the remaining assets of the Company;
    (b) a loan by Mr Shah on 4 November 2016 of £50,000 to Mr Yildiz and Mr Turk jointly; and
    (c) the balance being contributed by Mr Turk, partly from private loans and partly from his personal funds.

    Mr Yildiz does not plead a case that he made any direct financial contribution to the finance raised to purchase the shares.

18. Mr Yildiz goes on to plead terms of the SPA, the execution and completion of the transaction, the appointment of him and Mr Turk as directors and the resignation of Mr Shah. He alleges that following completion, the pharmacy business continued to be run as before, and that he continued to work as a pharmacy technician while Mr Turk did not take any active role in the provision of pharmacy services or the day to day running of the business.

19. He pleads at paragraph 13 of the Particulars of Claim that notwithstanding Recital (F) of the SPA, no share transfer instrument transferring 30% of the shares to him has been executed alternatively delivered to him and he has not received any share certificates. Rather on 9 April 2017, a Confirmation of Capital was filed at Companies House by or at the instruction of Mr Turk stating that all of the shares had been transferred to Mr Turk by Mr Shah. He goes on to plead various steps taken vis-à-vis Companies House both before and after he ceased to work at the pharmacy business on 22 August 2017.

20. At paragraph 24 of the Particulars of Claim, Mr Yildiz pleads that Mr Turk "*in breach of the agreement referred to in Recital (F) of the SPA under the heading "Background", has never acknowledged [Mr Yildiz's] entitlement to thirty percent of the shares in [the Company]…*" He does not provide any particulars of "the agreement referred to in Recital (F)".

21. In his Defence, Mr Turk pleads that he and Ebru Turk approached Mr Shah in October 2015 and in February 2016 agreed in principle to purchase Mr Shah's shares in the Company for £1,225,000. He and Ebru Turk needed to obtain bank finance to assist in the purchase and engaged with banks during 2016. Whereas his intention had been to finance the purchase by taking out a loan for £1 million from a bank and providing £300,000 of his

own finance, the offer in principle of finance from the Bank (which he pleads was made by around October 2016) was subject to the provision of security and a requirement that "*a pharmacy professional invest jointly in the acquisition of the business with [Mr Turk] and work permanently within the business*." It was this which caused Mr Turk to approach Mr Yildiz "*to invest in … the Company by way of joining in the acquisition of the shares from Mr Shah*."

22. Mr Turk pleads an oral agreement, which he describes as the "Joint Investment Agreement", said to have been witnessed by Ebru Turk and Mr Karahan, between Mr Turk and Mr Yildiz in about June 2016 as to the terms on which they would acquire the shares held by Mr Shah. These were set out (in paragraph 5 of the Defence) as follows:

    (a) *"If [Mr Yildiz] (or a third party investing with [Mr Yildiz]) invested £100,000 cash towards the share acquisition cost, then [Mr Yildiz] (or [Mr Yildiz] and his co-investor) would receive 30% of the shares of the Company;*

    (b) *[Mr Turk] would contribute the remaining investment required to acquire Mr Shah's shares and fund the business (estimated at that time at around £200,000) and he would receive the remaining (70%) of the shares of the Company;*

    (c) *The parties agreed that the business loan of £1m would be obtained from NatWest Bank and that the profits of the business of the Company would be used to make the repayments due in respect of such bank loan;*

    (d) *[Mr Turk] agreed to provide legal charges over his own valuable freehold properties … by way of security for the said bank loan. [Mr Yildiz] was not required to provide any security for the said loan. Given the provision of such security (which effectively prevented [Mr Turk] from dealing with his properties) and the amount and availability of [Mr Turk's] money and assets, compared with [Mr Yildiz's] very limited assets, [Mr Turk] thereby effectively took on the entire risk and obligation of repayment of the £1m loan;*

    (e) *[Mr Yildiz] agreed and committed to work permanently as the pharmacy technician for the business of the Second Claimant Company (at a limited agreed salary) until the bank loan had been repaid and the parties had each received back their cash investments."*

23. Mr Turk's Defence does not say by what date Mr Yildiz had to come up with the money, nor plead any agreement as to what would happen in the event of Mr Yildiz not coming up with the £100,000, which it is alleged he had agreed to provide.

24. It does go on to plead that Mr Yildiz only contributed £13,000, the remainder of the monies needed to complete the SPA being provided as to £1 million by way of the loan from the Bank, £235,000 contributed by Mr Turk from his own money, £50,000 contributed by Mr Turk which he had borrowed from a Mr Hasan Sahin and the balance from Mr Shah allowing part of the purchase price to remain unpaid at completion by way of loan.

25. At paragraph 8 of the Defence it is pleaded that by reason of Mr Yildiz's failure to provide the £100,000 as agreed, there was an oral variation of the Joint Investment Agreement on 11 March 2017, the terms of which were:

(a) *"It was agreed that [Mr Yildiz] would not invest £100,000, but rather would only invest the £13,000 already invested;*

(b) *[Mr Turk] would invest such funds (including those already invested) as were necessary in order to proceed with the share acquisition and fund the business (substantially more than previously anticipated)*

(c) *The parties would conduct the business (and [Mr Yildiz] would continue to work for the business of the [Company] permanently at a limited salary) with the intention of repaying the entire £1m bank loan (and thereby releasing the security over [Mr Turk's] freehold properties) and repaying [Mr Turk] a substantial part of his investment using the profits of the business within 2.5 years;*

(d) *If the entire £1m bank loan and a substantial part of [Mr Turk's] investment was repaid (from the distributable profits of the business) within the agreed 2.5 years, then [Mr Yildiz] would be allocated 30% shares in the ... Company at that stage;*

(e) *If such repayment was not achieved within 2.5 years, then, so long as [Mr Yildiz] continued to work for the business permanently (at the agreed limited salary) for such period, then he would instead be allocated 15% shares in the ... Company at that stage."*

26. Mr Turk then goes on to plead that the profits of the business were not sufficient to repay the £1 million bank loan and that Mr Yildiz resigned his employment with the Company with immediate effect on 22 August 2017. Accordingly, it is said that pursuant to the varied Joint Investment Agreement alternatively due to Mr Yildiz's fundamental breaches of/failures to comply with the terms agreed whether under the original or varied Joint Investment Agreement, Mr Yildiz is not entitled to 30% of the shares in the Company. As an alternative to there being no entitlement at all to shares, it is said that if Mr Yildiz is entitled to any shares it should be the lesser of a shareholding proportionate to his cash investment in the acquisition of the shares or at most a 15% shareholding as agreed under the varied Joint Investment Agreement.

27. Mr Yildiz did not serve a Reply. He is accordingly to be taken to not admit the matters raised in the Defence (CPR Part 16.7(1)).

Further procedural steps

28. The matter came before ICC Judge Barber on 2 April 2020 who approved a consent order which had been agreed between the parties, including directions that the parties should agree a List of Issues if possible and that the following issues be tried:

(a) Whether Mr Yildiz has since 17 February 2017 been entitled to be entered into the Register of Members of the Company as a shareholder in the Company; and

(b) If so, the size of the shareholding in the Company, expressed as a percentage of the total shareholding to which Mr Yildiz has been entitled since that date.

29. It is to be noted that questions as to the rights, if any, that such shares, if any, that Mr Yildiz might be found to be entitled to and whether those rights continue in light of the conduct of the parties are not issues which are to be dealt with in this action. They would be the subject of a subsequent petition under section 994 of the Companies Act 2006, if and to the extent that Mr Yildiz becomes a registered shareholder of the Company. Accordingly, while there was a considerable amount of evidence as to conduct of the parties after 17 February 2017, I need only consider that if and in so far as it is relevant to issue (b) identified above.

30. The parties did agree a List of Issues. They fall into the following categories:

    (a) How was the acquisition by Mr Yildiz and Mr Turk of the shares in the Company financed? (Issue 1)

    (b) How should the share capital of the Company have been allocated once it had been acquired, and in particular (i) was Mr Turk's alleged oral agreement reached and if so, what was its effect; and (ii) what is the effect as between Mr Yildiz and Mr Turk of Recital (F) of the SPA; and (iii) if neither (i) nor (ii) is relevant how should the shares have been allocated as at 17 February 2017? (issue 2)

    (c) Post 17 February 2017 events and how, if at all, these impacted on the allocation of shares as between Mr Yildiz and Mr Turk (issues 3-7).

The Witnesses

31. In addition to hearing evidence from Mr Yildiz I also heard evidence on his behalf from Mr Shah, Mr Hitesh Shah, Mr Abdullah Arshad (who worked at the pharmacy from August 2014 to May 2018), Mr Anil Akarsu (who worked at the pharmacy around the time of the negotiations for the sale of the Company) and with the assistance of an interpreter, Mr Aligul Tas (Mr Yildiz's cousin and a builder who did some works at the pharmacy in February 2017).

32. Mr Turk gave evidence on his own behalf (with the assistance of an interpreter), as did Ebru Turk and Halil Karahan.

33. I have borne in mind (without setting them out) the salutary warnings given by Leggatt J (as he then was) in Gestmin SGPS SA v. Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) at paragraphs [15]-[22] and the desirability of relying on documentary evidence and known or probable facts. However, this can only be done "if and to the extent that it is possible do so" as the Court of Appeal has recently stated in Natwest Markets plc v. Bilta (UK) Ltd. [2021] EWCA Div 680 at paragraph [49]-[51]. In their judgment the Court of Appeal said:

    > *"[50] ... it is important to bear in mind that there may be situations in which the approach advocated in Gestmin will not be open to a judge, or, even if it is, will be of limited assistance. There may simply be no, or no relevant, contemporaneous documents, and, even if there are, the documents themselves may be ambivalent or otherwise insufficiently helpful. The case could be one about an oral promise which turns entirely on the word of one person against another's, and the uncontested*

> *facts may well not point towards A's version of events being any more plausible than B's. ...*
>
> *"[51] Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence; the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness box, especially when their version of events was challenged in cross-examination. ..."*

34. In this case, as will become apparent, there is not a substantial amount of documentary evidence that counsel were able to point to in order to assist in reaching a conclusion on the discussions which took place, or oral agreement which Mr Turk alleges was reached, between Mr Yildiz and Mr Turk before the SPA was entered into on 17 February 2017, matters on which the parties' evidence was very starkly at odds. Neither party suggests that there was a written agreement between them in respect of the allocation of the shares, save that Mr Yildiz relies on the terms of the SPA.

35. I am therefore in the position that I have to fall back to a greater extent than would be the norm in a heavily documented case on the considerations identified in paragraph [51] of the Court of Appeal's judgment in NatWest Markets v. Bilta (supra).

36. In closing Mr Stuart for Mr Turk made a sustained attack on Mr Yildiz and all of his witnesses, accusing Mr Yildiz in respect of Mr Tas and Mr Yildiz and Mr Shah in respect of Mr Akarsu of concocting their respective witness statements so as to mislead the Court. It was also asserted that Mr Yildiz had drafted as to the material content parts of the witness statement of Hitesh Shah.

37. There is undoubtedly truth in the suggestion that Mr Yildiz had some involvement in the preparation of the witness statements of Mr Tas and Mr Akarsu, as demonstrated by the documents (both emails and draft statements) which were disclosed by Mr Yildiz's solicitors. Further, in respect of Mr Akarsu, one of the emails disclosed indicated some involvement of Mr Shah in the preparation of that statement. The evidence of Mr Tas and Mr Akarsu that they had drafted the entirety of their witness statements themselves, including the formal parts (which were in identical form and plainly had come from a precedent) was blatantly untrue. Similarly, the evidence given by Mr Yildiz, in particular, when he was recalled to deal with these matters, that he had had no involvement in the preparation of other witnesses' statements, was untrue.

38. There were also some oddities about Mr Hitesh Shah's witness statement, but it is not possible based on the limited metadata presented to come to the conclusion that I was invited to come to, namely that the statement has been concocted by Mr Yildiz. I do not find that Mr Hitesh Shah lied when he said that it was his statement, which he had prepared.

39. Even where I have found that lies have been told about how statements were put together, this does not necessarily mean that the rest of the evidence of these witnesses was untrue. I remind myself of, and give myself, a Lucas direction in accordance with the decision of R v. Lucas [1981] QB 720. Juries are routinely directed that the fact that a defendant tells

lies in the witness box does not necessarily mean that he is guilty. They are told that people tell lies for all sorts of reasons: to bolster a weak defence, to conceal discreditable conduct, or out of panic, distress or confusion. They are also told to have in mind that the fact that a witness tells lies about some things does not mean that he or she is telling lies about everything.

40. It is therefore necessary to consider whether the fact that at least 3 of the Claimant's witnesses, including Mr Yildiz himself, have told lies about the preparation of witness statements is indicative that the rest of their evidence was also dishonest or whether, for example, they might have been panicking or the lies were being told in order to boost a weak case. This is best done by considering each witness in turn.

41. I found Mr Yildiz to be a very unsatisfactory witness, regardless of the matters that I have set out above. He was very excitable, prone to avoiding perfectly proper questions, on occasions refusing to answer questions and was repeatedly argumentative. I have no doubt that, especially having entered into very significant liabilities to the Bank, having been party to the loan agreement with Mr Shah, and in his view having been ousted from the business by Mr Turk and his family, he has a genuine sense of grievance. It is that which in my judgment has led him to seek to bolster his case by getting others, in particular Mr Tas and Mr Akarsu, to give evidence to support him and lying about how those statements were obtained. A genuine sense of grievance does not explain or excuse his conduct in doing so. I therefore treat his evidence with a good deal of caution, but do not reject it entirely as I was invited to do.

42. Mr Shah, who regarded Mr Yildiz very highly, clearly does not like Mr Turk and feels that Mr Turk has wronged him. Mr Shah thought he had found a solution to his problems as to how to care for his sister while being able to remain working on a part-time basis in the pharmacy business he set up. He even lent money to the purchasers (in circumstances I deal with below) in order to allow the purchase to complete, expecting it to be repaid, only to find Mr Turk refusing to repay it, claiming that he was entitled to keep it on account of alleged outstanding tax liabilities. Quite remarkably, Mr Shah was represented by Mr Turk's brother in the sale transaction and now, with the benefit of hindsight, feels that he was badly let down, seeking to lay the blame for this at Mr Turk's door. Once completion of the sale had taken place, Mr Shah felt that he was being undermined by Mr Turk and members of his family. He felt that there were failures to follow standard operating procedures which had been issued by the General Pharmaceutical Council. By 5 July 2017, he had decided he could not stay on and resigned. In my judgment, while Mr Shah was passionate and, at times, his evidence overstated matters especially in the heat of cross-examination, he was essentially honest and doing his best to assist the Court. That is not to say that I accept his evidence in every respect.

43. Mr Hitesh Shah's involvement in the contemporaneous discussions was primarily to support his brother. I found him to be an honest witness, who made appropriate concessions. However, the usefulness of his evidence was limited due to the peripheral nature of his involvement.

44. The evidence of both Mr Tas and Mr Akarsu was, in my judgment, at best unreliable to the extent that it was not wholly lies. I reject the evidence of each of them, save where it is corroborated by other witnesses. Their evidence was, however, of marginal importance in the context of the case.

45. I found Mr Arshad, who used to work in the pharmacy, but is now a civil engineer to be a good witness. He made appropriate concessions but was clear in what he had to say. He did overegg his involvement. I accept his evidence in general terms, although it was ultimately of limited relevance to the issues I have to determine.

46. Mr Turk gave his evidence (through an interpreter) in a very calm, measured way. However, he tended to seek to avoid difficult questions and was quite repetitive. He appeared to me to make up a number of answers in his cross-examination, which I would have expected to have been put to Mr Yildiz had they been mentioned previously. I found his evidence, in particular, as to how 100% of the shares came to be registered in his name following the completion of the SPA very unsatisfactory, it being something he made up in the witness box. He was unable to explain why the alleged requirement for Mr Yildiz to put in £100,000 was not recorded or evidenced in writing or why the solicitors were not told about this, merely repeating on a number of occasions that it was a "matter of goodwill". On some of the key issues, I found his evidence to be lacking credibility.

47. Ebru Turk unsurprisingly accepted that she had talked about the case with her father and her husband. She had dealt with much of the "legal stuff" surrounding the deal and also with the banks about financing the deal. She gave her evidence robustly, however, I got the firm impression that she was simply telling her father's story, repeating that they did things with Mr Yildiz "out of goodwill and out of trust".

48. The final witness, Halil Karahan, is Ebru Turk's husband and therefore Mr Turk's son-in-law, although at the relevant time he was merely engaged to Ebru Turk. He had a story to tell to support the family and he was going to tell it. He made an unfavourable impression on me and I found him not to be a credible witness.

The Agreement – findings

49. Mr Yildiz claimed in evidence that his agreement with Mr Turk was in February, 2016. He was supported in this by Mr Shah. Mr Turk, on the other hand, says he negotiated the price with Mr Shah in 2016 and it was only in about June 2016 that he reached an agreement with Mr Yildiz. I note, as did Mr Stuart on behalf of Mr Turk, that the claim that the agreement between Mr Turk and Mr Yildiz was reached in February 2016 was not pressed by Mr Salis on behalf of Mr Yildiz in closing.

50. I accept Mr Turk's evidence as to the timing of the negotiations with Mr Shah. I find that there were some discussions which took place before February 2016, but in February 2016 Mr Turk agreed in principle to purchase Mr Shah's shares in the Company for £1,225,000. This was subject to Mr Turk being able to raise the monies to do so.

51. Although Mr Shah thought highly of Mr Yildiz by this stage, and I accept both Mr Shah and Mr Yildiz's evidence that in early 2016 Mr Yildiz was set the task of trying to reconcile all of the NHS payments which were outstanding to the business (and that his salary was increased temporarily to reflect these added duties), I do not accept that it was part of the discussions in February 2016 that Mr Shah was insistent that Mr Yildiz had to manage the business.

52. That would be inconsistent with the approach made by Ebru Turk on behalf of her father to Santander for bank finance, which was on Mr Shah's recommendation. While the application has not been disclosed and neither Mr Turk nor Ebru Turk referred to this application in their witness statements (so that it is not clear to me whether the application was for £1 million and was declined in that sum or it was always for £750,000), Ebru Turk must have approached Santander sometime between the discussions in February and 25 May 2016 when she sent an email to Nick Brown of Santander asking if there were "any updates". This application cannot have contemplated Mr Yildiz being involved as a director of, or shareholder in, the Company as when the reply came on 1 June 2016 (following a telephone call on 30 May 2016 between Mr Brown and Ebru Turk), Santander were prepared to agree in principle to a loan of £750,000 on conditions which included that Mr Turk was the sole director of, and 100% shareholder in, the Company. Had it already been agreed in February 2016 that Mr Yildiz was to be a director and shareholder, it would have made no sense for an application to Santander to be made which must have been premised on Mr Turk alone acquiring the shares and being the director.

53. At around this point, Mr Hitesh Shah says that he was introduced to Mr Turk. He became involved because it was thought that it would be necessary for the business to have a second pharmacist and that he might have a role as a locum in the pharmacy business after it had been transferred to the new owners. Given that Mr Shah's intention was only to work part-time after the transfer, it makes sense for Mr Hitesh Shah to have become involved as potential part time cover for when Mr Shah was not working. This would also meet any concerns that Mr Shah might have had as to the business being in capable hands while he was not there. This suggests that it was before there was any question of Mr Yildiz being involved.

54. In my judgment, it is likely that it was only after Mr Turk and Mr Shah had reached their agreement in principle and after the Santander email offering only £750,000 that the prospect of Mr Yildiz being involved at director/shareholder level arose. Ebru Turk, on behalf of her father, had contacted the Bank (which was Mr Turk's bank) at some point prior to 7 June 2016, on which day she and her father met with Dan Johnson the senior relationship manager for the Bank's North London commercial office, followed up by an email of that date from Mr Johnson to Ebru Turk. From that email, it is apparent that she had tried to send through at least one CV either for herself or Mr Yildiz "the other day". It seems more likely to have been for Mr Yildiz than for her.

55. The Bank's email set out a list of what the Bank needed in order to be able to give a proposal for financing. This included a CV for Ebru Turk and one for Mr Yildiz (commenting that the one she said she had sent the other day had not come through). The email continued "*Official association of [Mr Yildiz] will need to happen (30% shareholder) with you, [Mr Turk] and [Mr Yildiz] becoming directors of the Company. ... a directorship will officially tie you 3 to the business ...*"

56. This only makes sense if there had been discussion <u>before</u> as well as at the meeting on 7 June 2016 about Mr Yildiz becoming a shareholder of, and director in, the Company. It was Mr Turk and Ebru Turk's evidence that the approach to Mr Yildiz came after the Bank said it was a condition of lending that there had to be a minority investor/owner who was a pharmacy professional. This cannot be a reference to the email of 7 June 2016, because Mr Yildiz's proposed involvement was expressly referred to in that email. In my judgment it is most likely that the Bank had made its requirement clear in earlier discussions or

correspondence which has not been disclosed, and subsequent to these earlier discussions or correspondence, Mr Yildiz had been approached and agreed to become involved.

57. Accordingly, the discussions between Mr Turk and Mr Yildiz must have taken place sometime around the beginning of June 2016, albeit that matters may not have been finally agreed until after the Bank had formally made its position clear. There have to have been some further communications with the Bank as the email of 7 June 2016 was asking for further information, however, no such communications have been disclosed.

58. Mr Turk's version of those discussions is set out in his pleaded case at paragraph 5 of his Defence set out above. In February 2016 he said that they agreed the price with Mr Shah of £1,225,000. In his cross-examination, he explained that his intention initially was to own all of the business himself, with his daughter and future son-in-law running the business, alongside Mr Shah who was going to stay on as a part-time pharmacist. However, after Santander had only offered £750,000 which was not enough to buy the business, he had approached the Bank, who said that if there was someone in the business who was experienced, that would make it easier. There had to be someone who knew about the business. It was at that point that he approached Mr Yildiz. It was not on the insistence of Mr Shah that Mr Yildiz be involved in the business or have a share in it. Mr Turk said that he understood from the Bank's email of 7 June 2016 that Mr Yildiz had to give some money so that he could be a 30% shareholder, although he accepted that at no stage did the Bank say how much had to come from him and how much had to come from Mr Yildiz. He explained that he was going to put in £1.25 million and Mr Yildiz was only having to put in £100,000. This was, he said, discussed at a meeting at his home, at which he, Ebru Turk, Mr Karahan and Mr Yildiz were present. At that meeting, he claims that it was agreed that £100,000 was to be put in by Mr Yildiz with some limited funds being provided by Mr Karahan towards that sum. The shares would then be split between Mr Yildiz and Mr Karahan depending on how much money Mr Karahan put in. As to the £1 million from the Bank, this was to be a loan taken by Mr Turk and Mr Yildiz "in partnership", which was to be secured by charges on 2 properties owned by Mr Turk, as well as a charge over the Company's leasehold interest in the pharmacy premises and a debenture over the Company's assets. The loan was to be repaid out of profits of the Company.

59. Ebru Turk's evidence in cross-examination was clear as to the need to invest £100,000 but less clear on the 70/30 split. She said that she did not know if the 70/30 split was "fully verbalised" or mentioned, rather she said that she and Mr Turk made Mr Yildiz an offer that if he would like to join them in the business, he could do so for an investment of £100,000. She was clear that this was not a requirement imposed by the Bank. In my judgment, the suggestion that the requirement for a £100,000 financial contribution was made clear, but that the 70/30 split was not is commercially nonsensical and I reject her evidence in this respect.

60. Mr Turk and Ebru Turk both explained that they knew Mr Yildiz did not have £100,000 in cash but that they believed he could borrow it from friends and relations in the Turkish Kurd community, this being they said a common source of raising funds in the community. At one point in Mr Turk's cross-examination, he asserted that Mr Yildiz's wife had said they could delay their house purchase and use at least the money given to him for that purpose by Mr Shah as part of the cash contribution. This was not put to Mr Yildiz, which I have no doubt Mr Stuart would have done had Mr Turk suggested this to him at any stage.

This was an example of Mr Turk embellishing his evidence in the witness box and I reject this part of his evidence.

61. Mr Yildiz has denied in his witness statement and oral evidence that the agreement was for him to have to contribute £100,000 or any other sum. Although he claimed that the agreement was in February 2016, which I have rejected, he went on to say that the agreement was for Mr Turk to have 70% of the shares and for Mr Yildiz to have 30% of the shares (which is common ground) but that he would not have to make any financial contribution, rather his contribution would be his ongoing commitment to the business, as well as the relationships which he had built up with doctors and his role in continuing to increase the turnover of the business. By "financial contribution" Mr Yildiz meant putting any cash into the Company, it being common ground that the loan would be taken out with the Bank in the joint names of Mr Turk and Mr Yildiz and the £1 million raised thereby would be used as part of the funding of the purchase of the shares in the Company from Mr Shah.

62. In paragraph 10 of his witness statement, Mr Shah said that it was essential from his point of view that Mr Yildiz had to be given a share of the business and had to retain a supervising role in the business after he had transferred it. He said that if Mr Turk was not willing to own the business jointly with Mr Yildiz and if Mr Yildiz was not to be given a supervising role, Mr Shah would have preferred to sell the business on the open market. In cross-examination Mr Shah gave slightly different evidence, namely that in response to a specific question, Mr Turk told him that he was providing all of the funding, but that Mr Yildiz was going to get 30% of the shares. He was surprised that Mr Turk was giving Mr Yildiz 30% but Mr Turk said to him that Mr Yildiz was the important person who would do all of the management, as Mr Turk could not run the business, Mr Karahan had no English and Ebru Turk had no pharmacy knowledge. In my judgment, Mr Shah's evidence in cross-examination is to be preferred to the evidence in his witness statement, which was an example of Mr Shah overstating the position. I accept that Mr Shah was keen to ensure that he should continue to retain the role of superintendent pharmacist and that having Mr Yildiz in the business was a good thing as far as he was concerned, but I reject his evidence that it was crucial from the outset of the discussions in February 2016 that when he was not on duty the business was in the hands of someone he could trust and that the only person he could entrust that role to was Mr Yildiz. In my judgment, this is an after the event reconstruction. Had Mr Turk been able to raise sufficient finance on his own following the February 2016 agreement in principle with Mr Shah, I have no doubt that Mr Shah would have been content to sell to Mr Turk alone. Mr Shah did not insist on Mr Yildiz being involved. However, when it became apparent that Mr Turk was not able to do so and needed Mr Yildiz to be involved in order to get sufficient lending from the Bank, it was Mr Turk who told Mr Shah that Mr Yildiz was to be involved and would have a 30% share in the Company. Mr Shah was, as he said, surprised at this, but was no doubt content. The reason for his surprise was, in my judgment, not that Mr Yildiz was becoming involved, but that he was getting 30% of the Company without having to put up any cash.

63. Even if Mr Tas's evidence about Mr Turk accompanying him on trips to the builders' suppliers in February 2017 is correct, which seems unlikely, I reject his evidence that Mr Turk made repeated assurances to him that Mr Yildiz would own 30% of the shares with no requirement to contribute to the deposit needed to obtain the bank loan which was to fund the purchase. Mr Turk would have had no reason to provide any reassurances to Mr Tas and, having seen him give evidence, I do not believe that he would have had any such

discussion with Mr Tas. I accept that this is false evidence procured by Mr Yildiz. However, in my judgment this is evidence which has been obtained to seek to reinforce what is the true position as set out below.

64. I obtained little assistance from the evidence of Mr Arshad on this issue, his only evidence on the source of funds for the acquisition being from what he says he was told by Mr Karahan. This is consistent with Mr Yildiz's case, but does not take matters any further.

65. In my judgment, when the initial agreement was reached between Mr Turk and Mr Yildiz as to the involvement of Mr Yildiz, it was on the basis that Mr Yildiz was going to take out the £1 million loan jointly with Mr Turk, that he would become a director of the Company and would commit to working in the pharmacy, to satisfy the requirements of the Bank so that the necessary funding could be raised to allow the purchase of the shares in the Company from Mr Shah. There was no requirement for Mr Yildiz to contribute £100,000 in order to get the 30% shareholding, it being known by Mr Turk that Mr Yildiz did not have access to such funds.

66. I agree with Mr Salis's submission that it would be remarkable for Mr Yildiz's entitlement to a 30% shareholding to be subject to a condition that he invested £100,000 without there being a single reference in any contemporaneous document to that requirement.

67. There is not one email or text message between Mr Turk and Mr Yildiz which has been disclosed in which this is mentioned either before 17 February 2017 when the SPA was executed or indeed afterwards until after the parties had fallen out. Further, although Mr Turk and Mr Yildiz instructed solicitors, Fortis Rose, to act for them on the purchase, which ultimately led to the very lengthy and detailed SPA being entered into, Mr Turk did not say to Fortis Rose at any stage that the 70/30 split was to be conditional on Mr Yildiz investing £100,000. Fortis Rose wrote to the Bank on 21 October 2016, setting out details of the proposed transaction, showing Mr Turk as having 70% of the issued shares and/or voting rights and Mr Yildiz having 30%, making no suggestion that there was any conditionality to Mr Yildiz obtaining his shares. There was also correspondence between the solicitors and the Company's accountant in December 2016 to the same effect, again with no suggestion of any requirement on Mr Yildiz to contribute £100,000. It would have been a very simple matter for the solicitors to have drawn up a document reflecting the requirement.

68. Mr Turk's answers in cross-examination on this were evasive and he was unable to come up with any rational reason why nothing was said to the solicitors. In re-examination, Mr Turk said that he did not say anything to the solicitors as they were working on the basis of trust that Mr Yildiz was going to bring the money. In my judgment, it would have been remarkable if the £100,000 requirement had been in place since June 2016, and Mr Yildiz had failed to come up with that investment over the following 8 months prior to the SPA (on Mr Turk's case, Mr Yildiz only advanced £13,000 in this period), for nothing at all to have been said to the solicitors. In my judgment the reason why nothing was said to the solicitors is consistent with there being no condition requiring Mr Yildiz to put in £100,000 in order to get his 30% shareholding.

69. When the account opening form for an account in the name of the Company with the Bank was made in September 2016, signed by both Mr Turk and Mr Yildiz, it was expressly stated that Mr Turk held 70% of the shareholding beneficially and Mr Yildiz held 30%

beneficially. While this form was completed 5 months before the SPA was executed, it was in my judgment intended to set out the shareholding that the parties would have once the purchase had been completed. It was not expressed to be conditional on Mr Yildiz making a £100,000 contribution. Ebru Turk (who had the majority of the dealings with the Bank) said that when the form was filled in the Bank was told that Mr Yildiz was going to be a 30% shareholder and in re-examination that "at that time my father and Mr Yildiz were the beneficial owners" of the Company.

70. On 13 February 2017 Mr Turk and Mr Yildiz signed the loan agreement with the Bank. The term of the loan was 60 months. At this point (only 4 days prior to execution of the SPA), Mr Yildiz had not contributed £100,000 and therefore on Mr Turk's case was committing himself to a £1 million loan which would have been solely for the benefit of Mr Turk as the person entitled to 100% of the share capital. In my judgment, it is inconceivable that Mr Yildiz would have entered into this loan agreement if he thought he was not to benefit from the 30% shareholding.

71. Further, that Mr Turk and Mr Yildiz were to be 70/30 shareholders is reflected in Recital (F) of the SPA. If there had been a condition of obtaining the shares that Mr Yildiz had to invest £100,000 given that he had not done so by the time of the SPA, it would make no sense for this recital to have recorded the share split in this way. In my judgment, this recital reflects what had been agreed between the parties as to how the shares were to be split. Mr Turk and Ebru Turk tried to explain in their evidence that the share split was not altered in the SPA because they were still working on the basis of trust and goodwill that Mr Yildiz would come up with the money. This is an after the event attempt to explain why the SPA was in the terms that it was, which were incompatible with the alleged condition on which Mr Yildiz was to get the 30% shareholding. I reject it.

72. Upon execution of the SPA, Mr Shah executed (albeit signing in the wrong place) 2 stock transfer forms, one in favour of Mr Turk for 70 shares and one in favour of Mr Yildiz for 30 shares. This is completely consistent with the 70/30 split and there being no conditionality for Mr Yildiz getting his shares.

73. However, those share transfers were not registered. Rather on 9 April 2017 (unknown to Mr Yildiz at the time), Mr Turk caused a Confirmation Statement to be filed at Companies House stating that he was the owner of 100% of the shares. When asked about how this had come about, Mr Turk accepted that there was no stock transfer form transferring the 30 shares from Mr Yildiz to him, nor was there a stock transfer from transferring these 30 shares from Mr Shah to Mr Turk (in addition to the one transferring the 70 shares). He said, however, that he arranged this with the accountant with the permission of Mr Yildiz, who had said to him "*Uncle, I will not be able to bring you the money so you can have the shares in your name and on 1 May the transfer was done into my name*". This was an explanation not previously mentioned (whether in his pleading or witness statement, nor was it put to Mr Yildiz) and is completely at odds with other evidence in the case for example an email dated 24 July 2017 from Mr Yildiz to Mr Turk following threats to report Mr Yildiz to the police, in which Mr Yildiz asserted he was a shareholder in the Company which Mr Turk did not reply to saying that he was not or referring back to the above conversation. This claim as to the conversation was, in my judgment, made up by Mr Turk in the witness box to justify having caused all the shares to be registered in his name, when he knew he had no entitlement so to do.

74. It was necessary for Mr Turk to come up with some justification for this, because in his cross-examination he expressly accepted twice that Mr Yildiz had 30% at the time of the meeting on 11 March 2017 (which I shall return to below) "but he did not fulfil his tasks". When asked to clarify this in re-examination, Mr Turk said he did not bring the money in relation to his duty. He did not recant from his position that Mr Yildiz had 30% of the shares as at 11 March 2017. This is contrary to Mr Stuart's submission in closing that Mr Yildiz's entitlement to 30% of the shares was lost when the acquisition took place on 17 February 2017 (which was not part of the pleaded case). Having accepted that as at 11 March 2017 Mr Yildiz had 30% of the shares, Mr Turk had to come up with some reason for having directed that he be registered as the sole shareholder. The suggestion of this conversation was that reason, but it was made up and I find that no such conversation took place.

75. Mr Stuart urged on me that a finding that Mr Yildiz was entitled to 30% of the shares without making any financial contribution (or not making the £100,000 contribution) would make no sense for Mr Turk commercially, because Mr Turk would be investing all of the money and Mr Yildiz would be getting 30% of the shares effectively for nothing. In response to the point that Mr Yildiz was jointly and severally liable on the outstanding loan to the Bank (which Mr Turk said was around £800,000), Mr Stuart accepted that he was, but said that because the repayment of the loan was secured by charges over Mr Turk's properties, in practice the Bank would never come after Mr Yildiz but only after Mr Turk's properties. It was, Mr Stuart said, an artificial technicality that Mr Yildiz was liable on the loan. That would not prevent Mr Turk coming after Mr Yildiz for a contribution. In response, Mr Stuart said that the loan was to be repaid from the profits of the business and it would be wholly wrong of Mr Turk to turn round and look to Mr Yildiz if the business failed and the Bank called in the loan, in circumstances where Mr Yildiz did not get 30% of the shares. Although Mr Turk was unable to say that he has offered to indemnify Mr Yildiz in respect of the liability to the Bank, it was Mr Turk's case as explained by Mr Stuart that he cannot seek a contribution to the loan from Mr Yildiz.

76. In my judgment, this submission of Mr Stuart is ill-founded. It makes a lot less commercial sense for Mr Yildiz to take on a massive loan liability to the Bank only 4 days prior to the SPA being executed in return for nothing, which is what Mr Yildiz would have if Mr Turk's claim that the entitlement to 30% of the shares was conditional is correct. Mr Yildiz was not getting any enhanced employment status or salary. There is no agreement for the Bank not to pursue Mr Yildiz. If they chose to do so, he would not have the money, could find himself being made bankrupt with his home (to the extent of his share in it) being exposed to being enforced against. There is no indemnity from Mr Turk to Mr Yildiz were the Bank to come after Mr Yildiz, nor any express agreement that if the Bank were to come after Mr Turk, he could not have recourse against Mr Yildiz. Mr Turk and Mr Yildiz have fallen out badly and it would be surprising for Mr Yildiz to be asked to accept Mr Turk's word (through his counsel) that Mr Turk would not seek any contribution from Mr Yildiz if the Bank called the loan in.

77. Mr Stuart also says that the fact that Mr Yildiz did put in some money shows that he must have been under an obligation to do so in order to get his 30% shareholding. In my judgment this argument does not stand up to scrutiny.

78. Mr Turk accepts that Mr Yildiz put in £13,000 of his own money. Mr Yildiz had said in his witness statement that he had managed to raise £22,520 from his own funds and by

borrowing from friends. On the bank statements, there are 3 payments of £20,000 each on 8, 9 and 10 November 2016 and one of £3,000 on 11 November 2016 from Mr Yildiz's account to the partnership bank account. Of this £60,000, the sum of £50,000 had come from Mr Shah pursuant to a loan agreement dated 4 November 2016 between him and Mr Turk and Mr Yildiz. This came about because the conditions imposed by the Bank on the granting of the loan to Mr Turk and Mr Yildiz as to the provision of additional funds from non-Bank sources were in danger of not being met. Because Mr Shah was keen to get the deal across the line (it having been many months since the sale had originally been agreed in principle in February 2016), he said he was prepared to make a short-term loan for a period of 3 months to enable these conditions to be met (albeit that the loan was not repaid within 3 months, nor has it ever been, as Mr Turk has sought to apply it in set-off against alleged tax liabilities). In his oral evidence, but not before (and therefore it was not put to Mr Shah or Mr Yildiz), Mr Turk claimed that the reason for the loan being made jointly to Mr Turk and Mr Yildiz was that Mr Shah had refused to make the loan to Mr Yildiz alone. This was again new evidence, advanced in an attempt to demonstrate that Mr Yildiz was under an obligation to make an investment. I do not accept that is what happened.

79. Rather, when the deal looked like it might be about to stumble, Mr Turk looked to raise further finance. He obtained a £50,000 loan from a Mr Sahin and with Mr Yildiz jointly the £50,000 from Mr Shah. In addition to this, Mr Yildiz who was anxious that the deal should go through chipped in with £10,000 of his own money and an additional £3,000. On top of this in the course of the evidence, further amounts of £2,500 and £600 were identified.

80. There was the further sum of £7,320 which was paid to Fortis Rose in October 2016 by Mr Yildiz. Mr Turk says that this was funded by cash obtained from his brother-in-law, which he arranged to be collected by Mr Karahan, who paid it into Mr Yildiz's account to allow him to pay a pressing bill to the solicitors. He was unable to make the payment directly because he was in Turkey and therefore had to come up with a means of getting it to Mr Yildiz so that he could pay the solicitors. Mr Karahan confirmed this in his witness statement. In his oral evidence before me, Mr Karahan said he did not put the money into Mr Yildiz's bank account, but rather gave it to Mr Yildiz. Mr Yildiz did not address this in his witness statement but said in cross-examination that this cash credit was actually his cash, £4,000 of which was from gold and jewellery that he had sold some months earlier but which he had retained at home and the rest was cash he had built up.

81. In my judgment it is much more likely that the money came from Mr Turk's brother-in-law than that Mr Yildiz had been sitting on a large amount of cash for a number of months, which he then utilised to pay the solicitors' bill. This is another case of Mr Yildiz seeking to bolster his case, in the event that it were to be determined that he is only entitled to a pro rata share of the 30% depending on how much of the £100,000 he actually put in. I therefore accept Mr Turk's evidence on this.

82. Therefore the total sum paid by Mr Yildiz on the evidence adduced before me was £16,100. However, in my judgment this was not paid as part of an obligation to make a payment of £100,000 in order to obtain the 30% shareholding, but rather because the deal was stumbling as Mr Turk had not been able to raise quite enough to satisfy the Bank's conditions for lending. Mr Yildiz was doing what he could to assist to get the deal across the line, which was in his interests.

83. It follows from the above that I find that an oral agreement was reached in about June 2016 at which it was agreed that Mr Yildiz was to have 30% of the shares in the Company and become a director, in return for which he agreed to take on joint and several liability for the £1 million loan from the Bank and to commit to work for the Company after the purchase of its shares. It was not a condition to Mr Yildiz becoming entitled to the shares that he should in addition contribute the sum of £100,000.

84. Mr Yildiz did take on the joint and several liability and commit to work for the Company. Accordingly, as at 17 February 2017 (in accordance with the stock transfer forms signed by Mr Shah), Mr Yildiz was entitled to 30% of the shares and Mr Turk to 70% of the shares in the Company.

Effect of the Recital (F)

85. Mr Salis for Mr Yildiz placed reliance on Recital (F) combined with clause 15 of the SPA to say that the only agreement between Mr Yildiz and Mr Turk was that in Recital (F), which contained the entire agreement between them.

86. This submission is, in my judgment, wholly misconceived. The SPA sets out the entire agreement between the Buyer (Mr Turk and Mr Yildiz) on the one hand and the Seller (Mr Shah) on the other. It does not purport to regulate relations between Mr Turk and Mr Yildiz as between themselves. Nor can it properly be construed as doing so, as it says nothing about how they are going to operate the Company. I asked Mr Salis what the position would be if the day before entering into the SPA, Mr Turk and Mr Yildiz had entered into a formal shareholders agreement carefully drafted by solicitors. His response was that such an agreement would be of no effect as it was superseded by the SPA and the entire agreement clause. That, in my judgment, is plainly incorrect and demonstrates the absurdity of the submission.

87. All that Recital (F) does is to set out how the shares are to be transferred i.e. as to 30% to Mr Yildiz and 70% to Mr Turk. It reflects an agreement that has been reached between them, but does not set out the terms of that agreement. The terms of the agreement are those that I have set out above.

88. Mr Salis raised the prospect of there being an estoppel by deed, based on the recital. While I accept that an estoppel by deed can arise, no such estoppel arises here as between Mr. Yildiz and Mr Turk.

Meeting of 11 March 2017

89. Mr Turk claims that the original agreement made the previous year was varied as a result of what was said at the meeting on 11 March 2017. This meeting was conducted in Turkish and recorded, but the parties have agreed an English translation of the transcript of that meeting. I am therefore not reliant on the parties' recollections of what was said.

90. What is said to have been agreed is pleaded in paragraph 8 of the Defence, set out in full above. When compared to the transcript of the meeting, the claim in paragraph 8 is not promising. There is, for example, no mention of the sum of £13,000. Nor of the sum of £100,000, despite it being pleaded that it was expressly agreed that Mr Yildiz would not invest £100,000, but rather would only invest the £13,000 already invested and that Mr

Turk would invest such funds (including those already invested) as were necessary in order to proceed with the share acquisition and fund the business (substantially more than previously anticipated). By this time, of course, the share acquisition had completed and the Bank's requirements as to other funding had been met. Mr Turk had even paid back the £50,000 to Mr Sahin.

91. Similarly, there is reference to debt being repaid, but no distinction is drawn between the Bank loan and other monies, let alone there being express reference to "*repaying the entire £1m bank loan (and thereby releasing the security over Mr Turk's freehold properties) and repaying Mr Turk a substantial part of his investment using the profits of the business*".

92. The transcript starts with Mr Yildiz saying that he did not want any money until the debt was finished, he just wanted his salary, before saying "*but from the day we entered the shop until it is over my 30% is permanent*". There was a discussion about when the debt would finish with Mr Turk saying that if it finished in 2.5 years, 30% is Mr Yildiz's. Mr Yildiz's response included that he has "*a 30% share from this day to that day*". The discussion continued about increasing Mr Yildiz's salary to £3,500 from £3,000 to which Mr Turk said "fine", which was then followed by what would happen if the debt was not paid off within 2.5 years. Mr Yildiz said a number of times that it would be paid off, but that if Mr Turk used the money generated it would not finish for 20 to 25 years. Mr Turk pressed Mr Yildiz as to what would happen if the debt was not paid off within 2.5 years, asking what would be his i.e. Mr Yildiz's penalty. After being pressed Mr Yildiz said "*fine, I will agree to 15%. I will agree to your offer of 15%. If it doesn't finish in 2.5 years I will take my 15%*". Mr Turk's response was "*If it doesn't finish in 2.5 years you automatically drop 15%*" to which Mr Yildiz said "*I will drop*". The last comment by Mr Turk was "*Tomorrow we will go to see a solicitor. If this debt is not finished within 2.5 years you are to agree to 15% automatically*".

93. On no proper reading of this exchange can it be said, in my judgment, that Mr Yildiz was only to be allocated shares at the end of 2.5 years and the amount of such shares to be allocated was to be dependent on whether the debt was paid off within that period and on Mr Yildiz working for the whole of the 2.5 year period at the limited salary. It is clear that the conversation proceeded on the basis that Mr Yildiz had 30% of the shares, but that he might "drop" his shareholding to 15% if the debt was not paid off within 2.5 years. That he already had the shares is consistent with my findings above as to the original agreement. He had also had a stock transfer form executed in his favour, albeit his shareholding had not by then been registered. There was no question of allocation of shares. Accordingly, the variation claim as pleaded is not maintainable.

94. However, before getting that far, Mr Turk would need to persuade me that this was intended to be a binding variation to the agreement that I have found as set out above. He has not done so. Firstly, the original agreement had been performed by Mr Yildiz, so there was not an executory agreement to be varied. Further, in my judgment, this conversation was not one in which Mr Yildiz intended to create legal relations, that is to say that he did not intend to vary his entitlement to the shares in the Company in favour of Mr Turk. Rather he was put under pressure to say that his shareholding would drop in certain circumstances. Even Mr Turk felt that the "agreement" needed to be recorded by a solicitor in order for it to be effective. It was not.

95. Nor do I find that there would have been any consideration moving to Mr Yildiz for such a variation. He was not getting anything in return for potentially giving up his then right to 30% of the shares in the Company. Rather on Mr Turk's position Mr Yildiz was committing himself to having to work permanently at a limited (albeit a promised but not enacted slightly increased) salary for 2.5 years in order simply to maintain his 30% shareholding with a penalty being applied to him of a loss of half of his shares if the entire debt to the Bank and an undefined substantial part of Mr Turk's investment was not paid off in that period.

96. Although it does not arise on the basis of my findings set out above, the submission by Mr Salis on behalf of Mr Yildiz that the no variation provision in clause 16 of the SPA operates to prevent any oral variation of the agreement between Mr Yildiz and Mr Turk fails for the same reasons as the submission on the effect of clause 15. The SPA does not purport to, and does not, govern the rights of Mr Yildiz and Mr Turk as between themselves and clause 16 does not apply to the agreement between Mr Yildiz and Mr Turk as to their respective shareholdings.

97. Accordingly, in my judgment there was no variation as to Mr Yildiz's share entitlements in the meeting of 11 March 2017, whether as pleaded or at all. He continued to be entitled to 30% of the shares in the Company.

Events subsequent to 11 March 2017

98. In light of my findings above, in order to answer the issues directed to be heard by ICC Judge Barber, I do not need to make any findings about the causes for the breakdown in relations between Mr Shah and Mr Yildiz on the one hand and Mr Turk and his family members on the other, which culminated in Mr Shah leaving the business in early July 2017 and Mr Yildiz leaving the business on 22 August 2017. There were a number of accusations and counter-accusations levelled by the parties at each other. As those may become the subject of further proceedings (in particular any minority shareholder's action that Mr Yildiz might seek to bring), it is better if I do not comment on them and I refrain from doing so.

99. I should however make it clear that if I had had to make any such findings, there would have been a serious question as to whether it was open to Mr Yildiz to advance a claim that Mr Turk was estopped from relying on his and his family's conduct in so far as it had any relevance to Mr Yildiz's departure from the business in circumstances where he had not pleaded any such estoppel.

Conclusions

100. In respect of the issues identified in the List of Issues, it follows from what I have set out above that my summarised conclusions are:

Issue 1 – the Claimant contributed £16,100 towards the sums needed to acquire the share capital of the Company, the goodwill and stock; £1 million was provided by the Bank loan (which remains partly outstanding), £50,000 by the loan from Mr Shah (which has not been repaid, but in respect of which a set-off has been asserted) and £50,000 by the loan from Mr Sahin (which was loaned to and repaid by the First Defendant); the First Defendant provided the balance from his own money.

Issue 2 – the share capital should have been registered as to 30% in the name of the Claimant and 70% in the name of the First Defendant.

Issue 3 – the Claimant continued to work as an accredited pharmacy technician after 17 February 2017, but was also a director of the Company.

Issue 4 – the Claimant and First Defendant did not enter into any arrangement or agreement after 17 February 2017 in relation to any variation of the agreement between them or alteration of the allocation of the share capital between them.

Issue 5 – I do not need to, and do not, make any findings on this issue.

Issue 6 – I do not need to, and do not, make any findings on this issue.

Issue 7 – I do not need to, and do not, make any findings on this issue.

101. This leads to the answers to the 2 issues which ICC Judge Barber ordered be tried as preliminary issues being:

(a) Mr Yildiz has since 17 February 2017 been entitled to be entered into the Register of Members of the Company as a shareholder in the Company; and

(b) Mr Yildiz has been entitled to 30% of the shares in the Company since that date.

102. I invite Counsel to seek to agree an order based on these rulings, which will include consequential relief as to rectification of the Register of Members of the Company and the provision of share certificates recording Mr Yildiz's entitlement to 30% of the shares.

103. If Counsel are unable to agree an order in this or any other respects, I will hear them on such matters.